



REPORT

Inquiry into Access to Water and the Efficacy of Water Services Authorities within Limpopo Province

19-22 OCTOBER 2021

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APPRECIATION

The South African Human Rights Commission (SAHRC) extends a word of gratitude to all various interested stakeholders, including institutions of higher learning namely the University of Limpopo and University of Venda, chapter 9 institutions namely Commission for Gender Equality (CGE) and Public Protector South Africa (PPSA), community-based organisations, regional and provincial government departments who participated in the Inquiry. The SAHRC acknowledges the immense contribution of the Inquiry panel, chaired by Commissioner Philile Ntuli supported by Victor Mavhidula, SAHRC Limpopo Provincial Manager and Dr Eileen Carter, Senior Legal Officer Limpopo (now Provincial Manager Eastern Cape Province). Special appreciation is extended to the staff of the SAHRC Limpopo Provincial Office, namely Mankese Thema, Lybon Maluleka, Tsiko Maboho and Basani Ngobeni contributed to the production of this Inquiry report. The contribution of Dr Martin Nsibirwa, Head of Research and Peacemore Mhodi, Research Advisor both of the SAHRC to the preparation of this Inquiry report is duly acknowledged.

LIST OF ACRONYMS

BLM	Bela-Bela Local Municipality
CDM	Capricorn District Municipality
COPAC	Co-operative and Policy Alternative Centre
CGE	Commission for Gender Equality
CoGHSTA	Cooperative Governance, Human Settlements and Traditional Affairs
Commission/SAHRC	South African Human Rights Commission
Constitution	Constitution of the Republic of South Africa, 1996
DoH	Department of Health
DBSA	Development Bank of Southern Africa
DWS	Department of Water and Sanitation
LPO	Limpopo Provincial Office
IRS	Implementation Readiness Studies
MDM	Mopani District Municipality
MIG	Municipal Infrastructure Grant
MLM	Mogalakwena Local Municipality
MMLM	Modimolle-Mookgopong Local Municipality
NGO	Non-Governmental Organisation
PLM	Polokwane Local Municipality
PPSA	Public Protector South Africa
RBIG	Regional Bulk Infrastructure Grant

RDP	Reconstruction and Development Plan
SDM	Sekhukhune District Municipality
SDG	Sustainable Development Goals
Stats SA	Statistics South Africa
TLM	Thabazimbi Local Municipality
VDM	Vhembe District Municipality
WDM	Waterberg District Municipality
WSA	Water Services Authority
WSDG	Water Services Development Grant
WSIG	Water Services Infrastructure Grant

EXECUTIVE SUMMARY

In recent years, the South African Human Rights Commission (Commission/SAHRC) has received several complaints relating to the challenges of sufficient access to water in various districts in Limpopo Province. The issue of poor and/or insufficient access to water remains a significant challenge for many communities in Limpopo Province.

According to Statistics South Africa (Stats SA)'s General Household Survey of 2019, which tracks the progress of development and service delivery gaps, less than half of South African homes had piped water. Only an estimated 44,9% of households had access to piped water in their dwellings in 2019, the survey found a further 28,5% accessed water on site, while 12,2% relied on communal taps and 2.5% on their neighbours' taps.

Although household access to water has improved increasingly since 1994, 3.1% of households still have to fetch water from rivers, streams, stagnant water pools, dams, wells, springs, Statistics South Africa (Stats SA) 2019.

In this regard, the South African Human Rights Commission, Limpopo Provincial Office (LPO) noted a continuous increase in complaints relating to access to drinking water within Limpopo. Disparity over clean drinking water across the province can be said to be systemic, as demonstrated by the persistence of water-related complaints.

The LPO noted that these matters had reached a level where urgent intervention was required. Thus, the Commission found it necessary to hold the provincial Inquiry, to establish the cause of these challenges. Furthermore, the Inquiry was purposed to engage the relevant role-players and stakeholders to address the complaints as received by the Commission.

In terms of section 184 (2) of the Constitution, the Commission is empowered to investigate and to report on the observance of human rights in South Africa. In preserving and protecting the rights of the community, the Commission has powers to establish inquiries as a form of investigation and promotion of the protection of human rights.

The Inquiry into Access to Water and the Efficacy of Water Services Authorities within the Limpopo Province (Inquiry) was conducted over a period of 4 days from 19 to 22 October 2021 at Protea Landmark Hotel in Polokwane.

1. INTRODUCTION

The South African Human Rights Commission (SAHRC/Commission) is a state institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (Constitution) to support constitutional democracy. The SAHRC is mandated in terms of section 184 of the Constitution to promote the protection, development, and attainment of human rights, and to monitor the observance of such rights within the Republic of South Africa. The SAHRC can:

- Investigate allegations of human rights violations.
- Mediate or conciliate on matters of human rights where appropriate; and
- To litigate if required.

Section 4(2) of the South African Human Rights Act 40 of 2013 (SAHRC Act) provides that all organs of state must afford the SAHRC such assistance as may be reasonably required for the protection of the independence, impartiality, and dignity of the SAHRC in pursuit of its objective.

The Commission is empowered to determine its own complaints handling procedures to investigate alleged human rights violations. Therefore, after considering all relevant information regarding the alleged shortage of water, the Commission decided to conduct an Inquiry to resolve or determine the appropriate relief.

1.1 Background and Objectives

Limpopo Province (Limpopo) is situated in the northern part of South Africa. It shares its borders with three countries, namely – Botswana, Zimbabwe and Mozambique. Limpopo has five District Municipalities and 20 Local Municipalities. Ten municipalities are Water Service Authorities (WSAs), having a responsibility to provide water to the communities within their jurisdictions. The main source of water in Limpopo is surface water.

Limpopo is regarded as a “water scarce province” on the basis that the available water resources may not be sufficient to supply water to Limpopo. However, Limpopo has a number of dams that can ensure uninterrupted supply of water in different communities. At the time of the Inquiry, all major dams in Limpopo were more than 90% full. Yet, many communities were not receiving clean drinking water. This clearly demonstrates that the failures of Municipalities to provide water may not be attributed to the shortage of water in Limpopo.

The SAHRC received several complaints related to the right of access to water from all municipalities in Limpopo. The remarkable increase in the number of complaints was concerning, particularly noting that all major dams in Limpopo were reported to be full. The SAHRC took a decision to conduct the Inquiry in order to achieve the following objectives to:

- Establish the root causes of water shortage in Limpopo.
- Determine whether municipalities, particularly the WSAs within Limpopo have violated residents’ right to access sufficient basic water supply, as provided for in relevant national legislation such as the Water Services Act 108 of 1997 (Water Services Act) as well as the Constitution.
- Make recommendations on appropriate redress.

1.2 Structure of the Inquiry

The Limpopo Provincial Office consolidated complaints related to the shortage of water in the province. The structure of the Inquiry was therefore determined and informed by the existing and previous water-related complaints lodged with the LPO. The Inquiry took place from 19 to 22 October 2021. All the ten (10) WSAs in Limpopo were invited to make submissions during the inquiry together with other selected stakeholders. The WSAs as well as selected stakeholders were afforded an opportunity to make their oral submissions and engage with questions from the panel members.

1.3 Composition of the Inquiry Panel

The Inquiry panel was comprised:

- Commissioner Philile Ntuli, Commissioner of the SAHRC (Chairperson of the Panel)
- Mr Victor Mavhidula, Provincial Manager at the LPO
- Dr Eileen Carter, then Senior Legal Officer at the LPO



Picture 1: Inquiry Panel (Mr Victor Mavhidula, Commissioner Philile Ntuli and Dr Eileen Carter)

2. SUMMARY OF SUBMISSIONS OF UNIVERSITIES, CHAPTER 9 INSTITUTIONS AND NON-GOVERNMENTAL ORGANISATIONS

2.1 University of Venda

Dr Joshua Edokpayi a senior lecturer from the University of Venda, Department of Hydrology and Water Resources, Mining and Environmental Geology was the first presenter. He presented on availability, sources, and access to clean water in Limpopo. He stated that access to clean drinking water is still a challenge in Limpopo particularly in rural areas where there is no infrastructure to supply clean water. He further submitted that water contributes to the cognitive development of children and that Limpopo does not have sufficient water resources and it is important that all stakeholders should play an active role in preserving water.

2.2 University of Limpopo

Prof Munyaradzi Mujuru from the University of Limpopo joined the hearing virtually and gave a presentation about the Limpopo demographics and water scarcity within Limpopo¹. He focused on the impact of climate change on water in Limpopo and noted that only 49% of Limpopo has a reliable supply of water. He further cited Stats SA (2020) noting that in 2019 and 2002 the general access to water declined by 3.8%. He indicated that the scarcity of water can also be attributed to climate change as well as urbanisation, drought, unreliable rainfall, and increased temperature.

2.3 Commission for Gender Equality

Tshepang Mokgokong, the Limpopo Provincial Manager of the Commission for Gender Equality (CGE) presented on gender experiences and provided insights relating to the

¹ <https://www.youtube.com/watch?v=ht0x40F827o&t=19s>

lack of sufficient clean drinking water. He submitted that the lack of water impacts negatively on the economic power of women, as they are the primary participants in informal trading, such as street vendors who sell cooked food and small-scale farming. He further emphasised that the lack of access to sufficient water greatly impacts on women's personal hygiene which violates their inherent human dignity.

2.4 Public Protector South Africa

Bernard Mahloko, Senior Investigator in the Office of Public Protector South Africa (PPSA) presented on how maladministration and corruption affect access to clean drinking water. He noted that complaints from Mogalakwena Local Municipality, Polokwane Local Municipality and Capricorn District Municipality were still under investigation by the PPSA at the time of the Inquiry.²

² <https://www.youtube.com/watch?v=j33cxlQO3RA&t=7s>

2.5 Limpopo Department of Health



Picture 2: Delegates from the Limpopo Department of Health

The Department of Health (DoH) submitted that as a department it receives isolated cases about water borne diseases. The DoH further submitted that it has no shortage of water, except for the recent reduced water supply from the municipality and communal resources due to loadshedding and the quantity and quality of underground water.

2.6 Co-operative and Policy Alternative Centre

Awande Buthelezi, a researcher from Co-operative and Policy Alternative Centre (COPAC) submitted that the lack of water resources is worsened by drought. He indicated

that through COPAC's on-line tool, 129 communities in South Africa have water supply problems. According to COPAC, in Limpopo there are seventeen (17) communities that experience water supply problems. The community of Giyani has experienced a perennial shortage of water-supply over the last ten (10) years, with the year 2020 being the worst year.

2.7 Global Human Rights Rescue and Services

William Chaba indicated that Global Human Rights Rescue Services (GHRRS) has a memorandum of understanding with the PPSA. He made a submission on a complaint from the Vhembe District Municipality. He submitted that his organisation engages the highest authorities (for example, municipal managers and mayors) in addressing the challenges of access to water.

3. COMPLAINANTS SUBMISSIONS

3.1 Meriam Masupa

Meriam Masupa was a complainant from Ramokgopa village, in Botlokwa under the Molemole Local Municipality. She submitted that they have been experiencing a shortage of water since July 2020. She further submitted that there are taps in the village that are leaking and that affects water supply resulting in some elderly persons utilising their social grant monies to buy water for households. She further submitted that businesses are affected by lack of access to water.

3.2 Mpho Manaka

The complainant, Mpho Manaka indicated that he is from a village called Ramanaka in the Blouberg Municipality and that he is a member of the Royal Council (Acting tribal

headman). The complainant made submissions that water challenges in his area began in 2016 and that he had engaged the ward committee as well as the Ward Councillor. He submitted that there is an ongoing project to fix water infrastructure in the municipality to purify underground water as it is salty. He further submitted that the community members are forced to buy water from neighboring villages, which is unsustainable because it is costly.

3.3 Hosi Cedrick Mhinga



Picture 3: Hosi Cedrick Mhinga (Traditional leader from Mhinga Village)

Hosi Cedrick Mhinga (a traditional leader of the Mhinga village) made a submission on behalf of his village. Hosi Mhinga submitted that his village has been without water for a very long time and as a result the villagers have to resort to drawing drinking water from streams and lakes which their animals also rely upon for drinking. He further indicated

that the water from streams and lakes is often-times contaminated. In his submission, Hosi Mhinga indicated that the Vhembe District Municipality built a small reticulation plant to resolve water shortages in Mhinga village. The reticulation plant is small and is unable to meet the water needs in the village.³ He raised concerns about the Vhembe District Municipality with regards to wasteful expenditure relating to incomplete projects regarding water access.

3.4 Tshifhiwa Tshikonelo

Tshifhiwa Tshikonelo from the Mutoti Village which is less than 3km from the Nandoni Dam testified at the Inquiry. He submitted that the problem of access to sufficient water began in 2016, this despite the community residing adjacent to a water source (Nandoni Dam and a water treatment plant) that was completed in 2005.⁴ He indicated that there is a pipeline that provides water to a reservoir in Thohoyandou and further that if the reservoir is not full the village is unable to receive any water supply.

3.5 Caswell Mushi

Caswell Mushi, a traditional leader from Ga-Mushi village presented testimony at the Inquiry. He submitted that Ga-Mushi village has been struggling with access to sufficient water since 2016. As a result, the community has resorted to buying water from local shops. He further indicated that the village has a communal borehole that is not functioning. In 2018 the community contributed money to buy equipment with a view to fixing the borehole. However, the Mogalakwena Local Municipality did not permit the community to fix the borehole.⁵

³ <https://www.youtube.com/watch?v=d3yCt3ltiPQ>

⁴ As above.

⁵ As above.

3.6 Moses Tladi

Moses Tladi from the Ga-Marishane village under the Sekhukhune District Municipality submitted that the water problems in his community were historical. Community members had to travel approximately 9 kilometres to fetch water from streams and wells. He further mentioned that they collect water from the same sources used by animals (donkeys and dogs).⁶ He indicated that there are boreholes in the village constructed by the municipality, however, they are not operational due to the lack of connecting pipes from the Goodhope Dam to the villages. Tladi testified that he had attempted to engage with the Sekhukhune District Municipality about water challenges in his community, but those attempts had not borne the desired positive results.

3.7 Mphogo Jekeele

In her testimony, Mphogo Jekeele from the Sekororo village under the Mopani District Municipality, stated that there is a lack of sufficient water in the village and that this has hindered the running of her foundation where she takes care of orphans, persons with disabilities and chronic patients. She submitted that she struggles to find water to cook for people under her care due to water shortages. In her submission, she indicated that the community has resorted to buying water from neighboring villages and those who cannot afford to buy water resort to drawing water from streams which they share with pigs and donkeys.

3.8 Matome Kapa

Matome Kapa from Matseke village under the Capricorn District Municipality, submitted that the community has been having a challenge of access to sufficient water in his community and that it is a historical problem. He further indicated that they receive between 25 to 50 litres of water per week per family regardless of the number of people

⁶ As above.

in a family. The amount of water received was insufficient to cater for the needs of most households. The ward councillors for Capricorn District Municipality and Molemole Local Municipality were engaged regarding the problem and no assistance was provided. As a result, the situation continues unabated.

3.9 Lindy Wilson

Lindy Wilson, a member of Parliament, testified at the Inquiry. She submitted that 65% of Sekhukhune has no water. In her submission, Lindy Wilson indicated that communities draw water from ditches which are contaminated. She indicated that the Sekhukhune District Municipality implements projects as part of the Integrated Development Plan (IDP) without consulting communities. In concluding her submission, she pointed out that in her view most of the problems were because of shortage of skills and expertise, with those hired for engineering services lacking the requisite skills to maintain the water infrastructure.

4. SUBMISSIONS FROM WATER SERVICES AUTHORITY MUNICIPALITIES IN LIMPOPO

4.1 Mopani District Municipality

The Mopani District Municipality was represented by Councillor Pule Shai, the Executive Mayor and Queite Kgatla, the Municipal Manager.

The Mopani District Municipality is a Water Services Authority and has signed a Water Service Level Agreement⁷ with the 5 Local Municipalities, which effectively makes them Water Services Providers. Mopani District Municipality is a drought-stricken municipality. The submission highlighted eight (8) purification plants that need to be upgraded, due to

⁷ In terms of Chapter 3 of the Water Services Act.

their limited capacity and that Maruleng Local Municipality has three (3) villages that are without water supply.⁸

The Mopani District Municipality submitted a presentation to the Inquiry and the extract below shows the challenges and the plans which the municipality is to implement in ensuring communities have access to sufficient water.

⁸ <https://www.youtube.com/watch?v=3Z1kTv0ye8w>

Item	Challenge	Description	Resolutions
1	Grants over commitment	Municipality has identified projects for the MIG funding. The funds required exceeds the municipality current three (3) year allocation.	Review of the municipality MTEF on grants to accommodate identified and approved projects.
2	Stalled Projects	The municipality have stalled projects which require funding to be completed and commissioned (Some of the projects were stalled due to litigations)	A funding mechanism required to resuscitate the stalled projects.
3	Mametja Sekororo IRS	Delay in the finalization of the IRS and approval to enable implementation of approved subsequent phases.	The Feasibility study (FS) has been recommended on the 22 June 2021. The consultant is currently busy with the IRS report and due to complete in October 2021. (Note: WSDP & Master Plan)
4	WSIG Business plans 2021/2022	Delays in approval of business plans by DWS.	DWS to fast-track approval process. Engagements were done with The DWS provincial office.
5	Water rights issues versus irrigation boards	Irrigation boards and farmers association litigation issues regarding increase of water quota for growing towns (Maruleng, Greater Letaba and Greater Tzaneen local Municipalities.	DWS Minister had been engaged by Executive Mayor to urgently intervene to solving these challenges as they are impacting on growths of towns.
6	Land issues in Maruleng for a reservoir	MDM had engaged Department of Public works to allow MDM to construct the planned reservoir along site the DPW reservoirs in Hoedspruit	DWS and DRDLA to intervene with expropriation to deal with land challenges for a reservoir.
7	Ageing infrastructure	Replacement of old AC pipes that are regularly bursting and causing unplanned interruptions	DWS to assist with alternative funding to address these challenges
8	Nwamitwa Dam and Tzaneen Dam wall	Construction of Nwamitwa Dam and the raising of the Tzaneen dam by 2.5m high to allow for more raw water storage.	DWS to fast-track implementation of these two projects as at the moment we are not sure when will the construction start
9	Giyani WTW upgrading project	Upgrading of the Giyani WTW from 30 MGL to 36 Ml/day	DWS to assist with funding to fast track the implementation of this project.
10	Nandoni water pipeline project and the Giyani pipeline project.	Slow progress on implementation of the two projects.	DWS to consider appointing MDM as the implementing agent on future projects like this two as we have the capacity to implement.

Figure 1: Depiction of challenges and recommendations by the Mopani District Municipality

Item	Challenge	Description	Resolutions
11	Theft and vandalism of water infrastructure	The significant number of incidents for theft and vandalism of infrastructure is a going concern as the budget allocated for improving service delivery ends up being utilized on repairing and replacing the vandalized and stolen infrastructure components	Public awareness on By-Laws and enforcement to prevent further illegal connections and vandalism
12	Illegal connections	Illegal connections on the main bulk water supply pipelines results in water not reaching the intended areas and water leakages	Uprooting of illegal connections, extension of water reticulation networks, erection of steel bulk pipelines and implementation of cost recovery.
13	Delays in electrification of completed projects by ESKOM	Numerous projects and boreholes have been completed by MDM however, they remain non-operational as they are pending electrification by ESKOM	MDM is having continuous engagements with ESKOM to expedite the electrification process. The possibilities of Self-Built and use of Renewable energy is being considered.
14	Insufficient budget for maintenance of water infrastructure	The municipality is not generating sufficient revenue on services rendered to communities.	Implementation of cost recovery to areas where 100% of water supply is achieved. Cost recovered will assist in maintenance of infrastructure.
15	Uncoordinated settlements	Lack of integrated planning between local municipalities and traditional leaders	Regular interactions between local and district municipalities with traditional leaders to avoid unplanned settlements which might need services
16	Debts to other organs of state	MDM is owing DWS, LNW and Local municipalities for provision of water	MDM has already had engagement with the stakeholders

Figure 2: Depiction of challenges and recommendations by the Mopani District Municipality

4.2 Vhembe District Municipality



Picture 4: Mayor Dowelani Nengudza and Municipal Manager Tshimangadzo Ndou of Vhembe District Municipality

The Executive Mayor Councillor Dowelani Nengudza and the Municipal Manager Tshimangadzo Ndou represented the Vhembe District Municipality. The Municipal Manager submitted that the Vhembe District Municipality largely depends on surface and ground water sources. The main source of water supply in the village are boreholes and the surface water from the Letaba Treatment Works. The Vhembe District Municipality faces major challenges in the provision of water due to the limited revenue collection, drying of boreholes, the aging infrastructure and vandalism of infrastructure. She further indicated that the Vhembe District Municipality has 14 water tankers that are used to provide people with water in the Municipality. The Municipal Manager committed that the Vhembe District Municipality will upgrade the existing water infrastructure and will replace the aging water infrastructure.

4.3 Sekhukhune District Municipality

The Mayor Councillor Keamotseng Stanley Ramaila and the Municipal Manager, Ntshudisane Maureen of the Sekhukhune District Municipality submitted that the Municipality supplies water to community members through water tankers, particularly to the areas where there are challenges regarding the water infrastructure.

It was submitted by the mayor that the Municipality owns twenty-one (21) water tankering trucks that supply water in the district. However, twenty-two (22) other trucks have been rented from private service providers.

The Mayor also stated the challenge of vandalism of water tanks by community members. It was revealed that the Municipality returned grant allocations from the Water Services Infrastructure Grant and Municipal Infrastructure Grant.

4.4 Waterberg District Municipality



Picture 5: Preciousstone Raputsoa Municipal Manager and Gastina Matlala Infrastructure Development Manager of the Waterberg District Municipality

Preciousstone Raputsoa, submitted that the Waterberg District Municipality is not a Water Services Authority or Water Service Provider, whereas all its four (4) Local Municipalities are Water Services Authorities. The Local Municipalities are Mogalakwena, Modimolle-Mookgopong, Bela-Bela and Thabazimbi.

The Waterberg District Municipality only plays an oversight role to the Local Municipalities falling within its authority. He further submitted that the Waterberg District Municipality is a water scarce district, and its main sources of water are boreholes, dams and the waterboards.

The Waterberg District Municipality submitted a presentation to the Commission, however, there was a proposal for intervention of the District Municipality to ensure sufficient water access to the community.

4.5 Capricorn District Municipality



Picture 6: The Executive Mayor Councillor Mamedupi Teffo and the Municipal Manager Thuso Nemugumoni of Capricorn District Municipality

The Executive Mayor Councillor Mamedupi Teffo and the Municipal Manager Thuso Nemugumoni represented Capricorn District Municipality. The Capricorn District Municipality is predominately rural, and made up of five local municipalities namely, Aganang, Blouberg, Lepelle-Nkumpi, Molemole and Polokwane. The five municipalities differ in terms of their levels of socio-economic development. Across the Capricorn District Municipality, there are 547 settlements, distributed as follows: 167 in Polokwane, 138 in Blouberg, 109 in Lepelle –Nkumpi, 96 in Aganang and 37 in Molemole.

The Capricorn District is a Water Services Authority in terms of the Water Services Act (108 of 1997). The District Municipality receives its main bulk water supplies from Lepelle Northern Water. The District Municipality has a water quality laboratory situated in Mankweng, inside the compound of the University of Limpopo. Amongst the local municipalities within its jurisdiction, Polokwane Municipality is a Water Services Authority

and a Water Service Provider (WSP). The other three local municipalities within the district are WSPs. Water and sanitation infrastructure in the three local municipalities is generally in a poor condition. As a result, many areas are experiencing high water losses due to old infrastructure.

It was submitted that the Blouberg Local Municipality main water source are boreholes. Lepelle-Nkumpi's main water sources are boreholes and surface water. The Molemole Local Municipality is solely dependent on boreholes as a water source. It was further submitted that water tankers are being vandalised by community members. The Municipality is planning to place cameras to monitor illegal conduct or behavior to curb vandalism.

4.6 Polokwane Local Municipality



Picture 7: The Executive Mayor Councillor John Mpe and Acting Municipal Manager Ramakuntwane Selepe and the Director of Water and Sanitation Sammy Makoti of the Polokwane Local Municipality

The Executive Mayor Councillor John Mpe and Acting Municipal Manager Ramakuntwane Selepe together with the Director of Water and Sanitation Sammy Makoti, represented the Polokwane Local Municipality.

Polokwane Municipality is both a Water Services Authority and a Water Service Provider. The Municipality is a water scarce City with more than 60% of its water sourced outside its boundaries. According to its Integrated Development Plan (IDP), in 2020 the number of households without access to clean drinking water was 27.01% of the total population.

It was submitted that the water infrastructure was constructed in the 1970's and has aged severely. The Polokwane Local Municipality is a water scarce region and it is drought prone which further puts the strain on the system. It was indicated that the water demand is far more than the allocation, as in rural areas the tribal authorities allocate land which is not part of the water master plan developments.

Due to the increase in the population, which is exacerbating the access to water, the Executive Mayor further submitted that the Polokwane Local Municipality is in the process of implementing the ground water projects that will increase an additional 19 megalitres to augment the current water supply.⁹

⁹ <https://www.youtube.com/watch?v=DpFPp0Lw-CU&t=5176s>

4.7 Mookgophong/ Modimolle Local Municipality



Picture 8: The Mayor Councillor Marlene van Staden and the Municipal Manager Melusi Mhlanga of the Mookgophong-Modimolle Local Municipality

The Mayor Councillor Marlene van Staden and the Municipal Manager Melusi Mhlanga represented Mookgophong-Modimolle Local Municipality. The Municipality is a Water Services Authority and Water Services Provider. Water is one of the scarcest resources in the Municipality. The hydrology of the area includes both the surface and groundwater features. The municipal water sources are Donkerpoort Dam, Frikkie Geyser Dam/Welgevonden Dam, Magalies Water, and boreholes. The Municipality has five (5) water supply systems, namely Modimolle, Mabaleng, Mabatlane, Mookgopong and Roedtan.¹⁰

The majority of households in the Municipality have access to piped water in their yards. In all informal settlements, communal taps and water tankers are used for water delivery.

¹⁰ Mookgopong/Modimolle Local Municipality Draft Integrated Development Plan 2022/2023. As modified on 6 April 2022. Accessed on 18 March 2023: <https://www.mmlm.gov.za/documents>

It was submitted that there is a water supply rotation schedule through which community members receive water through water tankers; and the Municipality is highly reliant on the boreholes system to supply water.¹¹

4.8 Thabazimbi Local Municipality



Picture 9: The Mayor Councillor Jeremiah Fischer and Municipal Manager Letseka Gladwin Tloubatla of the Thabazimbi Local Municipality

The Thabazimbi Local Municipality was represented by the Mayor Cllr Jeremiah Fischer and Municipal Manager, Letseka Gladwin Tloubatla. The Municipality's water sources are Magalies Water, ground water and boreholes. Approximately 70% of households have access to piped water, while approximately 30% of households receive water from other sources, such as boreholes and water tankers.

Thabazimbi Local Municipality is a Water Services Authority and Water Service Provider. As of 2022/2023, the bulk water supply infrastructure had a design capacity of approximately 13ML/day consisting of 4ML/day from ground water sources and 9ML/day from the Magalies Water bulk supply scheme.

¹¹ <https://www.youtube.com/watch?v=3Z1kTv0ye8w>

The municipality distributes water to its regions as such: Thabazimbi and Regorogile rely on surface water supply (Magalies Water) and it is augmented by groundwater supply. Northam relies entirely on surface water supply (Magalies Water). The Leeupoort and Rooiberg rely entirely on groundwater supply. There are 34 boreholes across the municipality, half of which are operational.

It was submitted that the main challenges in Thabazimbi Local Municipality is the aging water infrastructure and constant leakages. The DWS has been engaged on the issue and has approved the business plan in addressing the water leakages.

4.9 Bela-Bela Local Municipality



Picture 10: The Mayor Councillor Jeremiah Ngobeni and acting Municipal Manager Selepyane Janele of the Bela-Bela Local Municipality

The Bela-Bela Local Municipality was represented by the Mayor, Councillor Jeremiah Ngobeni, and the Municipal Manager, Selepyane Janele.

Bela-Bela Local Municipality is both a Water Services Authority and a Water Service Provider. Below is an extract of the presentation submitted by the Bela-Bela Local Municipality depicting challenges and mitigating plans to address the challenge of access to water.

4. CHALLENGES AND MITIGATION PLANS

Challenge	Current Measures	Proposed Interventions		
		Short-Term Solutions	Medium-Term Solutions	Long-Term Solutions
Mushrooming of Informal Settlement	Formalization of some of the Informal Settlements e.g Koppewaal, Vingerkraal and Jacob Zuma.		<ul style="list-style-type: none"> Pro-active planning i.e spatial restructuring by doing township establishment within the urban edge of the Spatial Development Framework. 	
Insufficient and unreliable water sources	Tankering in place to augment water supply.	Development of the Water and Sanitation Master Plan to commence, Service Provider recently appointed.	<ul style="list-style-type: none"> Investigate and implement alternative sources of water for areas such as Rapotokwane (dried boreholes) and Vingerkraal (limited sources). Refurbish existing Boreholes 	Development of a Regional Bulk Water Supply by the National Government to realise reliable water supply in Rapotokwane (Inter Provincial).

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Figure 3: depiction of challenges and mitigation plans by the Bela-Bela Local Municipality

During the deliberations, the panel requested information on whether the municipality owns water tankers. The panel commended the municipality on its spending of WSIG but urged the municipality to ensure full spending of the grant. Challenges of the community in the area of Savanna not being provided with water was lamented by the panel. In response, Bela-Bela Local Municipality highlighted that the expenditure of WSIG was not at hundred percent due to the municipality receiving additional grant funding from CoGHSTA. The municipality resorts to provision of water through water tankers to communities as a short-term measure to ensure access to water by households. The Mayor committed that water will be provided to the area of Savanna Informal settlement (an informal settlement located in the border of Limpopo and Mpumalanga) through water tankering and the municipality will ensure that the area has constant supply of water. Further, the municipality will fix the damaged jojo tank and ensure that the area of

Savanna informal settlement is incorporated into the water delivery schedule of the municipality.

4.10 Lephalale Local Municipality



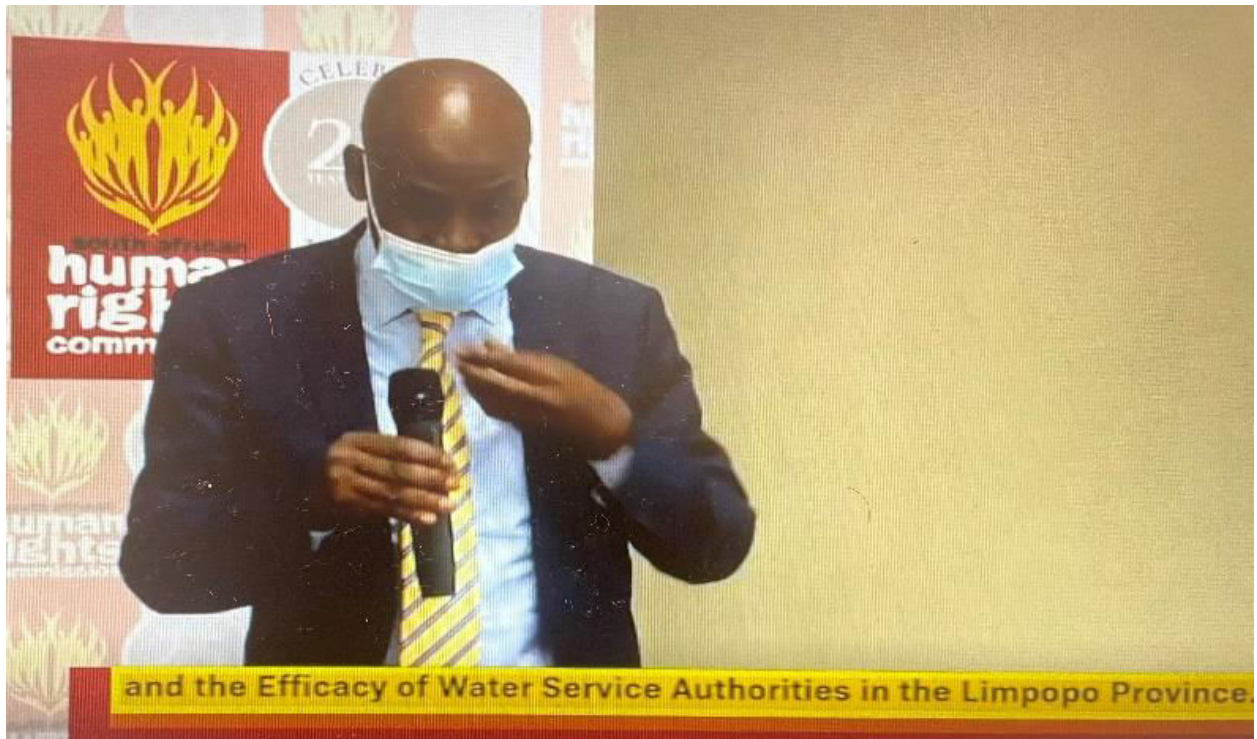
Picture 11: The Municipal Manager Maria Cocquyt Matome William Motlokoa (the Councillor) and Simon Nkwe (attached to Water Division) of the Lephalale Local Municipality

The Lephalale Local Municipality was represented by William Motlokoa, a Councillor, Maria Cocquyt the Municipal Manager and Simon Nkwe. The Lephalale Local Municipality is both a Water Services Authority and a Water Services Provider. The main water source is Mokolo Dam built in 1980 to supply water to Matimba power station, Grooteegeluk coal mine, urban areas and irrigation farmers within Lephalale Local Municipality. The water distribution and reticulation infrastructure is aging, with forty-percent (40%) of the current water infrastructure being older than 20 years. The Lephalale Municipality has a challenge of unplanned village-extensions and rapidly growing population that poses difficulties in the provision of water as those village-extensions are located very far from water reservoirs. However, to mitigate this challenge, the Municipality has been providing water through water tankering.

The Municipality has challenges with illegal connections with some households unlawfully connecting to the water pipelines. The Municipality is close to the Botswana Border (Grobblersburg) wherein undocumented non-nationals easily access the Municipality and create informal settlements thereby exacerbating the water adequacy issues. Lephalale Local Municipality struggles with revenue base due to challenges of non-payment of water services, which threatens the financial viability of the Municipality. The panel noted that in 2019-2020, Lephalale Local Municipality did not spend its allocation of the Water Services Infrastructure Grant (WSIG) and in 2020-2021, the Municipality had only spent nine percent (9%) of the WSIG allocation. The panel was concerned by the lack of spending of the grant funds allocated to the Municipality, particularly noting that the Municipality was battling with challenges of aging infrastructure. In response the Municipality stated that the low spending of WSIG could be attributed to the capacity challenges of the appointed contractors who were unable to complete projects timeously. To remedy the situation, the Municipality had appointed new contractors to complete the stalled projects.

The panel also raised concern over the fact that about two thousand and seventy-five (2075) households still draw water from rivers and streams, particularly in the context of high levels of irregular expenditure by the Municipality. Further, the panel inquired from the Municipality on initiatives to boost rainwater harvesting noting that only a few households were being provided with water tanks for those purposes. Lephalale Local Municipality stated that to curb future irregular expenditure it has appointed a panel of investigators to investigate irregular expenditure and provide recommendations to council for purposes of consequence management. The Municipality stated that it owns about six (6) water tankers. To cater for the 2075 households relying on water from rivers and streams, the Municipality has installed eight (8) jojo tanks which are filled twice a week.

4.11 Mogalakwena Local Municipality



Picture 12: The Municipal Mayor, Councillor Malesela Frans Mokwele of Mogalakwena Local Municipality

The Mogalakwena Local Municipality was represented by the Municipal Mayor, Councillor Malesela Frans Mokwele and Acting Technical Manager, Sydney Samuel Mafoko. Mogalakwena Local Municipality is both a Water Services Authority and a Water Service Provider.

The Mogalakwena Local Municipality is responsible for the urban and peri-urban water service infrastructure to ensure that the communities receive basic water supply. It was further submitted that water infrastructure continues to be constructed to ensure the provision of water for the growing demand. Communities are largely dependent on ground water supply which has been affected by drought.

Households in urban and peri-urban areas in Mogalakwena Local Municipality have limited access to drinking water because of stretched water resources. The Municipality has a water supply deficit which is estimated to be 25ML/day, which has led to the Municipality implementing water shedding. The Municipality has a communication system to alert households on the duration of the water shedding. Mogalakwena Local Municipality faces challenges of vandalism and theft of water infrastructure. The Municipality has various short-term, medium and long-term plans which are geared towards ensuring bulk water infrastructure in the Municipality.

In deliberation, the panel noted that several households walk long distances to fetch water and contend with water interruptions on a regular basis within the jurisdiction of the Mogalakwena Local Municipality. The panel further noted that the Municipality was not spending the Water Services Infrastructure Grant (WSIG) largely due to poor performing contractors. The community of Ga-Mushi's lack of access to water, despite numerous requests to the Municipality, was lamented by the panel. The effects of mining operations on the environment were noted by the panel.

The Mogalakwena Local Municipality stated that it has a water master plan which it continues to implement in an endeavour to reduce the distance walked by households to fetch water. The water interruption was attributed to theft and vandalism largely due to the Municipality being predominantly rural. The Municipality stated that the slow pace of expenditure on WSIG was due to the delays in the appointment of contractors. This has since been rectified with the contractors being appointed. The Municipality has mechanisms to deal with poor performing contractors, these mechanisms include termination of contracts in instances of poor performance. Mogalakwena Local Municipality acknowledged that it is not providing water to all communities within its jurisdiction, with Ga-Mushi and other villages not being supplied with water. The Mayor of Mogalakwena Local Municipality committed to the urgent and immediate provision of water by the Municipality to the community of Ga-Mushi through water tankering until a permanent solution to water challenges is found.

5. OVERSIGHT DEPARTMENTS

5.1 Department of Water and Sanitation



Picture 13: Delegates from the Department of Water and Sanitation

The Department of Water and Sanitation was represented by Lucy Kobe the Provincial Head and Cecilia Mashaba responsible for Regulation and Compliance at the Department of Water and Sanitation (DWS).

The Department of Water and Sanitation is the sector leader, regulator, and the policy maker which is constitutionally mandated to provide support and capacity to the water services institutions. The DWS is the custodian of water resources and the overall water sector leader. The DWS in Limpopo promotes effectiveness and efficacy through its regulatory role. Further, the DWS provides support through the various grants and funding

of municipal projects, such as the Blue and Green Drop programme, the Regional Bulk Infrastructure Grant (RBIG) and Water Services Infrastructure Grant (WSIG).

The DWS submitted that Limpopo has numerous challenges such as aging infrastructure; lack of coordinated planning of source to tap concept; lack of capacity at WSA level to operate and maintain the existing water services infrastructure; and WSAs not having sufficient capacity to implement bulk water projects which leads to delays in the completion of bulk water projects.

In deliberation, the panel noted challenges of capacity within the WSAs to implement bulk infrastructure projects through grant funding such as WSIG and RBIG. This leads to underspending of such funds by WSAs, with millions of rands being returned to the National Treasury whilst communities remain without water. The DWS has provided training and capacity to Municipalities on how to apply for the grants, such as the submission of business plans. However, Municipalities still struggle with timeous submission of business plans to access grant funds as well as the utilisation of grant funds. As a result, challenges of underspending persist.¹²

Issues of lack of operation and maintenance of water infrastructure were raised, with the DWS indicating that about twenty (20) wastewater treatment works are in critical condition in Limpopo. During the deliberations it became clear that a legislative gap exists in that apart from the power of the provincial DWS to escalate to the National Department of Water and Sanitation the non-fulfillment of constitutional obligation to provide access to water by WSAs in terms of the Water Services Act, there is no other recourse the provincial DWS wields in ensuring that WSAs fulfill their constitutional obligation to provide access to water.

¹² <https://www.youtube.com/watch?v=DpFPp0Lw-CU&t=5176s>

5.2 Department of Cooperative Governance, Human Settlements and Traditional Affairs



Picture14: Ngaka Dumalisile, Head of Department and Norman Mariba, of CoGHSTA

The Department of Cooperative Governance, Human Settlements and Traditional Affairs (CoGHSTA) was represented by Ngaka Dumalisile, Head of Department and Norman Mariba, Chief Director responsible for municipal infrastructure development. CoGHSTA is responsible for all the affairs of local government including coordination of water services within water services authorities. The Limpopo Province has 10 water services authorities and access to water has declined by 8% (from 78,8% to 70%) between 2015 and 2019. This is mainly due to the problem of aging infrastructure (mostly underground) in municipalities which has an effect on sustainable and reliable water supply.

CoGHSTA has conditional grants which municipalities can access through applications where guidelines exist. These include the Municipal Infrastructure Grant (MIG).

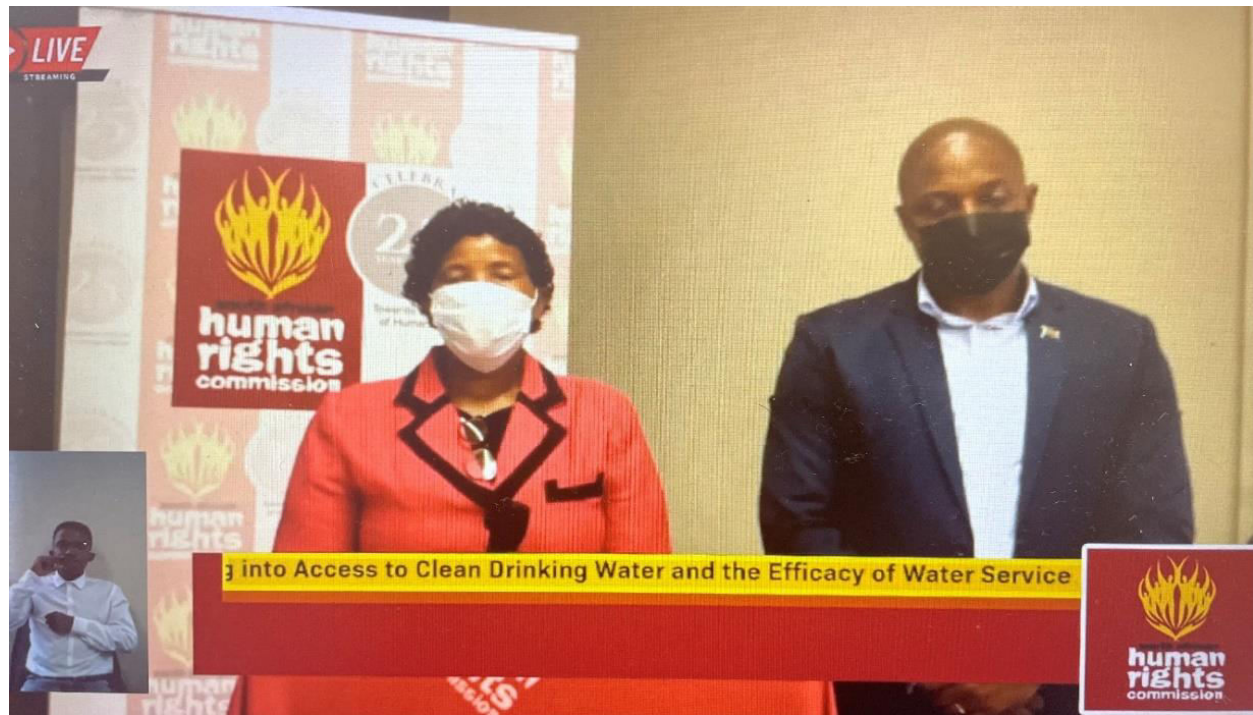
Underspending of conditional grants was mainly due to delays in the procurement of service providers as well as the capacity of some of the appointed service providers to deliver the infrastructure on time.

The support and monitoring interventions provided by CoGHSTA to municipalities were outlined. These include monitoring the utilisation of national infrastructure conditional grants as well as assessing the compliance of infrastructure delivery programmes in municipalities. Further, several intergovernmental relations forums have been established to provide technical support to municipalities. CoGHSTA supports municipalities through encouraging them to apply for the various Development Banks of Southern Africa (DBSA) water support programmes which are in existence.

The panel raised concerns on the dismal spending rate of the WSIG by WSAs, yet WSAs lament inadequacy of funds. The panel noted with concern that some WSAs lack the requisite skill and wherewithal to apply for grants such as WSIG. Challenges of over-reliance on consultants, yet the audit outcomes remain poor were also raised during the deliberations. CoGHSTA was questioned on what role it plays given that it has overall responsibility over all affairs concerning the local sphere of government. Particularly, in the milieu of seemingly insufficient consequence management for failure to spend the allocated funds. Further, the high turnover of senior staff was raised as a concern by the Inquiry panel.

In response CoGHSTA noted that most municipalities are not able to generate enough revenue. Thus, they are reliant on conditional grants which is not enough to cover the needs of municipalities. CoGHSTA concurred with the need for sufficient consequence management and advocated for the strengthening of monitoring prescripts. The grading of municipalities was attributed as a major cause of the high turnover of senior staff in municipalities.

5.3 Office of the Premier of Limpopo



Picture 15: Sindisiwe Magwaza (DGG: Planning, Coordination, Monitoring) and Tebatso Mabitsela (Chief Director: Integrated Planning and Growth Strategy) of Office of the Premier

The Office of the Premier was represented by Sindisiwe Magwaza, Deputy Director General: Planning, Coordination, Monitoring and Tebatso Mabitsela, Chief Director: Integrated Planning and Growth Strategy.

The Office of the Premier has developed the Limpopo Development Plan (2020 – 2025) which sets out various targets aimed at addressing poverty, unemployment and inequality. As a result, the Office of the Premier has established the Premier's Inter-Governmental Forum which is comprised of all Executive Mayors, all water service authorities, and the Department of Water and Sanitation. There is also a technical committee chaired by the Director General of the Province which processes all reports prior to them being shared with the Premier's Inter-Governmental Forum. The Premier's Inter-Governmental Forum provides a space where challenges regarding water provisioning can be ventilated and solutions explored. The Office of the Premier has

established a Water Infrastructure Technical Working Group made up of all the water services authorities, and key departments responsible for economic development to deliberate on the developed plans and ensure implementation thereof. The Office of the Premier has over the years been hosting various summits to deliberate on challenges regarding water and come up with proposed solutions. The Office of the Premier further has a hotline which serves as a platform through which communities can share their concerns, which includes water challenges.

During the deliberations, the panel decried the seemingly absence of enforcement powers on the part of oversight institutions to deal with the several failures of WSAs in the provision of water. The Office of the Premier outlined measures such as development of implementation plans by district municipalities as well as allocation of resources to municipalities in line with the targets in the Limpopo Development Plan (2020 – 2025) were some of the measures aimed at fostering greater oversight and accountability.

6. LEGISLATIVE AND POLICY FRAMEWORK

6.1 United Nations human rights standards

6.1.1 Universal Declaration of Human Rights

Although the Universal Declaration of Human Rights does not provide for a right to have sufficient water, however, having access to sufficient water is increasingly becoming a discussion point. There is even a call for a right to be included in this regard.

The right to water is neither widely recognised at an international level nor explicitly provided for in key UN instruments such as the Universal Declaration of Human Rights (UDR),¹⁴ the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁵ or the International Covenant on Civil and Political Rights (ICCPR),¹⁶ together known as the International Bill of Rights.¹⁷ Few reasons have been advanced for what

appears at first sight to be a glaring omission on the part of the framers of the International Bill of Rights.¹³

6.1.2 International Covenant on Economic, Social and Cultural Rights

South Africa is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ICESCR provides in article 2(1) that:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

In order to further explain certain aspects of a treaty, General Comments may be issued by a Committee, in this case the Committee on Economic, Social and Cultural Rights (CESCR) that is established under the treaty. Such General Comment provides clarity and guidance to state parties in order to ensure better implementation of provision of the treaty. As regards the ICESCR, General Comment No 3 (The Nature of States Parties' Obligations) provides that:

The means which should be used to satisfy the obligation to take steps are stated in article 2 (1) to be “all appropriate means, including particularly the adoption of legislative measures. The Committee recognizes that in many instances legislation is highly desirable and, in some cases, may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9, legislation may also be an indispensable element for many purposes.

The CESCR has further expanded on the right to water in particular, stating in General Comment No 15 (The right to water, articles 11 and 12 of the ICESCR) that:

¹³ S Heleba “The right of access to sufficient water in South Africa: How far have we come” *Law, Democracy and Development Vol 15 (2011)* available at <https://law.uwc.ac.za/images/stories/Idd/heleba-new.pdf.za> (Accessed on 16 March 2023).

Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over 1 billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water.¹⁴ The continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.¹⁴

6.1.3 Convention on the Elimination of All Forms of Discrimination Against Women

Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) the need to provide water. CEDAW for instance in article 14(2)(d) provides that:

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The issue of water is therefore regarded as very important and is captured in two major treaties to which South Africa is a party.

6.1.4 Sustainable Developmental Goals

In 2015 the United Nations General Assembly set up 17 interlinked global goals regarded as a “shared blueprint for peace and prosperity for people and planet now and into the future”. These goals are intended to be achieved by 2030.

¹⁴ General Comment 15 available at <https://www.refworld.org/pdfid/4538838d11.pdf> (Accessed on 16 March 2023).

Goal 6 is to “ensure availability and sustainable management of water and sanitation for all”. It is therefore important to note that it will be difficult for the South African Government to achieve this goal if decisive action is not taken to improve the provision of water by local and district municipalities in Limpopo and other parts of the country.

6.2 African regional human rights standards

6.2.1 African Charter on Human and Peoples’ Rights

At African regional level, water has also been dealt with through a guideline that was provided by the African Commission on Human and Peoples’ Rights. (African Commission)¹⁵. While South Africa is a state party to the African Charter on Human and Peoples’ Rights (African Charter), the African Charter does not expressly provide for the right to water. Guidelines provided by the African Commission are also intended to guide states when implementing human rights and the African Commission is guided by emerging human rights issues and provides guidance on how a right should be dealt with. The guide on the right to water does not mark the first time that the African Commission provides guidance on a right that is not expressly stated in the African Charter.

As regards the right to water, the guideline by the African Commission provides in paragraph 2.2 and 4.1 that:

States shall pursue, through an integrated water strategy, the realization of the right to water and all other water-related human rights, such as the right to life, the right to survival and development of children, the right to economic, social and cultural development, the right to food, the right to livelihood, the right to health, the right to education, the right to a satisfactory environment and the right to sanitation.

.....

States shall mobilise available resources in order to respect, protect, promote and fulfill the right to water.

¹⁵ “Guidelines on the Right to Water in Africa” adopted during the 26th Extra-Ordinary Session of the African Commission on Human and Peoples’ Rights held from 16 to 30 July 2019, in Banjul, The Gambia, available at <https://www.waterlex.org/wp-content/uploads/2021/04/ENG-ACHPR-Guidelines-on-the-Right-to-Water-in-Africa.pdf> (Accessed on 17 March 2023).

The guidelines on the right to water are quite comprehensive thereby underlining the importance of access to water in Africa. The importance of these guidelines is that they are African standards and unlike the United Nations treaties address the concerns and needs of Africa and are therefore vital for adherence by South Africa which is a water stressed country already.

6.2.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

While the right to water is not provided for in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa¹⁶ (Protocol on Women) no specific provision is made on the right to water, the general principle promoted by the Protocol on Women is that states are required under Article 18(2)(a) to:

Ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;

South Africa is a state party to the Protocol on Women and is bound by the provision on the natural resources sustainable use of which water is arguably an important part because without water and access to it, other rights are not achievable.

6.3 South African domestic human rights standards

6.3.1 Constitution of the Republic of South Africa

The Constitution makes a provision for service delivery which includes the provision of water in South Africa. The right to access to sufficient water is provided for in the South African Constitution. Section 27(1)(b) of the Constitution which states that:

Everyone has the right to have access to sufficient food and water.

¹⁶ "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa" available at <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa> (Accessed on 17 March 2023).

Section 27(2) of the Constitution provides that:

The State must take reasonable legislative and other measures, within its available resources to achieve the progressive realisation of the right.

According to the Limburg Principles, progressive realisation does not imply that the state can defer indefinitely, efforts for the full realisation of the right. On the contrary, state parties are to move as expeditiously as possible towards the full realisation of the right and are required to take immediate steps to provide minimum core entitlements.

Section 7(2) of the Constitution provides that:

The State is obliged to respect, protect, promote, and fulfil all the rights in the Bill of Rights.

The obligation to respect the right, obliges the State to refrain from denying or limiting access to sufficient water to anyone. The obligation to protect includes, *inter alia*, adopting legislation and other measures to ensure equal access to sufficient water. The obligation to promote requires the State to share appropriate information and advance awareness; foster research and support people to make informed choices.

The obligation to fulfil requires that the State must implement legislative and other measures in recognition of the right to sufficient water, adopt policy with detailed plans on how to realise the right. The State is also obliged to provide the right for people in disaster situations or in dire need when an individual or group is unable, for reasons beyond their control, to realise that right themselves with the means at their disposal.

Provincial government has the responsibility to support municipalities in fulfilling their functions.¹⁷ Section 139 of the Constitution confers on them the responsibility to intervene where municipalities fail to deliver on services, as mandated by their constitutional and legal obligations.¹⁸

¹⁷ Section 154 (1) of the Constitution.

¹⁸ Section 139(1) of the Constitution.

6.3.2 Water Services Act 108 of 1997

The Water Services Act is the primary legal instrument relating to the accessibility and provision of water services. This includes drinking water and sanitation services, to households and other municipal water users by local government. The purpose of the Water Services Act is to provide for *inter alia*: the rights of access to basic water supply and basic sanitation; setting the national standards and norms for tariffs; water services development plans; regulatory framework for water services providers and water services intermediaries.

The responsibility for the management of water resources falls within the authority of the DWS. The provision of water to households at a local level is the responsibility of the respective local government or municipality.

Section 3 of the Water Services Act provides that:

- (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.

The Water Services Act defines a WSA as “any municipality, including a district or rural council as defined in the Local Government Transition Act 209 of 1993 (Local Government Transition Act) responsible for ensuring access to water services”. A WSA has a “duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient affordable, economical and sustainable access to water services,” and must draft a Municipal Water Services Development Plan for implementation within its boundaries.¹⁹

The Regulations issued in terms of the Water Services Act – The Compulsory National Water Standards Regulation GNR 509 of 8 June 2001 (Compulsory Standards) provides for “the minimum standard for basic water supply”.

¹⁹ Section 12 of Water Services Act.

Basic water supply is defined in article 3 of the Compulsory Standards relating to compulsory national standards and measures to conserve water as the "minimum quantity of potable water of 25 litres per person per day or 6kilolitres per household per month; at a minimum flow rate of not less than 10litres per minute; within 200 metres of a household; and with an effectiveness such that no consumer is without a supply of water for more than 7 days in any year."

The Compulsory Standards includes education in the effective use of water as part of the minimum standard, acknowledging the fact that the proper operation and maintenance of infrastructure and sound health and hygiene practices would complement the provision of water supply services in improving people's health.

6.3.3 Case Law

Mazibuko v City of Johannesburg 2010 4 SA 1 CC

In this case the applicants were residents in one of the poorest areas in Johannesburg. The City of Johannesburg (a metropolitan municipality) had decided to supply 6 kiloliters of water per month for free to every account holder in the city. The applicants challenged the constitutionality of this decision on the ground that the Constitution provides that everyone has the right of access to sufficient water. The applicants argued further that it was unlawful for the City of Johannesburg to install prepaid water meters in certain households. The legal question, therefore, was the constitutional obligation of the City of Johannesburg as an organ of state to fulfil the rights to access to sufficient water.

The Court held that local government is one of the three spheres of government in the Republic of South Africa. A municipal council is a body that exercises both legislative and executive functions and where such a council takes a decision in pursuance of its legislative and executive functions, that decision will not ordinarily be one that is of an administrative nature.²⁰ The State may be challenged judicially to account for its decisions, and must then show that the policy selected is reasonable and that it is being

²⁰ *Mazibuko v City of Johannesburg* 2010 (4) SA 1 CC para 130.

reconsidered in the light of its obligation to progressively realise the relevant socio-economic rights.²¹

Government of Republic of South Africa v Grootboom 2001 (1) SA 46 CC

In this case the Constitutional Court dealt, among others, with the interpretation of section 26 (2) of the Constitution of the Republic of South Africa, the section is couched in comparable manner with section 27(2) of the Constitution of the Republic of South Africa.

The Court held the state is obliged to act to achieve the intended results, and legislative measures will invariably have to be supported by appropriate well directed policies and programmes, implemented by the executive. Further that these policies and programmes must be reasonable both in their conception and implementation.²²

In considering whether the measures are reasonable it is necessary to consider the social, economic, and historical context of the problem and the capacity of the institution responsible for implementing the programme. The programme must be balanced and flexible and cater appropriately to the crises and to the short, medium- and long-term needs.²³

6.4 Policy framework

South Africa has one of the most progressive legislative and policy frameworks for basic services in the world, including a constitutional right of access to sufficient water, a right to basic sanitation, and a Free Basic Water (FBW) policy and Free Basic Sanitation (FBSan) policy at the national level. The Free Basic Services (FBS) policy commits to, free services to indigent households, providing a minimum of 6 kilolitres of water per household per month within a 200-meter radius of the household.

²¹ *Mazibuko v City of Johannesburg* 2010 (4) SA 1 CC para 61.

²² *Government of Republic of South Africa v Grootboom* 2001 (1) SA 46 CC para 42.

²³ *Government of Republic of South Africa v Grootboom* 2001 (1) SA 46 CC para 43.

7. ANALYSIS OF SUBMISSIONS

Based on the submissions, the shortage of access to clean drinking water impacts on the cognitive development of children in poor areas. The risk of poor cognitive development mostly affects people in rural areas because of the lack of water infrastructure.

Some of the problems of access to sufficient water is attributed to external challenges, for example, drought, unreliable rainfall, however, other challenges can be attributed to water services authorities' failure to manage resources. Water was identified as a key resource for human existence and communities in general.

Grant funds are available to assist municipalities in the provision of water. However, municipalities do not apply for the grants or submit applications that do not meet the minimum requirements. Some of the municipalities do not use the grant for the purposes that they have applied for. However, information was not provided on the issue of consequence management to deal with failures by municipalities to abide by their constitutional and statutory obligations of water provision to communities. It was clear during the Inquiry that the oversight departments take no remedial action when the municipalities are not providing water to their communities, and this renders the departments' oversight role meaningless.

The lack of access to sufficient water impacts negatively on the vulnerable groups. For example, women who are a vulnerable group are likely to have their economic rights mostly impacted since they are mostly the participants in informal trading and the negative impact on the hygiene of women is apparent.

The submission by the Department of Health was not helpful as it did not show the correlation between the shortage of water and its concomitant impact and negative effects on the right to health, particularly the shortage of water at health facilities.

Several municipalities are under investigation for maladministration and water resources are part of these investigations. The fact that municipalities are under investigation is testament to the fact that there are major problems regarding water necessitating the matters to be investigated.

Some ward councillors are not equipped to deal with challenges relating to access of sufficient water in their communities. Further, the fact that some complainants testified that their communities have not had water for years is testament to the non-compliance with the Water Services Act and the standards contained in the Compulsory Standards. Some communities have surpassed the 7-day rule that is acceptable for water not to be available. In some cases, the non-availability of water last for years. Water had to be fetched from sources that were used by domestic and wild animals and therefore exposing communities to cross-contamination. Diseases such as Ebola and other diseases have been reported to be transmitted from animals to humans and the state of affairs in Limpopo if unaddressed pose a danger to human health and well-being.

Water reticulation plants are sometimes unable to meet the needs and are not improved upon to ensure that they meet the standards and needs of a community as times change. The failure to fulfil this requirement undermines the provisions in the Water Services Act that requires a WSA to have a water services development plan which takes into cognisance the size and distribution of the population when devising projects.²⁴

What became apparent was the poor and inadequate planning on the part of government. For instance, it is inexplicable how communities that are adjacent to water sources still grapple with lack of access to sufficient drinking water.

The testimonies indicate that the challenges of lack of access to sufficient drinking water in the Limpopo Province are historical. Further, communities have made attempts to alert the relevant role players. However, their pleas have largely fallen on deaf ears. As a result, communities have to contend with fetching water in streams, rivers and lakes. The state of affairs undermines other rights or achievement of those rights.

WSAs do not seem to have updated indigent registers. The submission from complaints indicated that households receive water quantity which is far below the prescribed norms and standards as issued in terms of Water Act and Compulsory Standards.

The submissions made by the WSAs showed that municipalities are grappling with aging water infrastructure. Issues around adequate maintenance of their water infrastructure

²⁴ Section 13(1)(b) of the Water Services Act.

arise. Insufficient budget for water infrastructure maintenance arises in addition to availability of know-how to maintain the water infrastructure. In terms of the recommendation from the National Treasury, municipalities are encouraged to ringfence 8% of their budgets for the maintenance of infrastructure. The submissions of the WSAs also highlight that the demand for water is far greater than what they can currently provide. However, it is unclear what plans are in place to deal with this supply deficit particularly in the context of climatological considerations with projections being that the country will continue to experience water scarcity.

In terms of adherence to international and regional standards regarding the right to access water, the continued failure to ensure that the population in Limpopo has adequate access to water undermines the human rights obligations to which South Africa is committed. Access to water is considered as a bedrock upon which other rights are dependent because access to water is in essence the beginning of the existence of a person. Therefore, failure to realise access to water is undermining a plethora of other human rights as guaranteed in human rights instruments and the domestic legal standards.

8. FINDINGS AND RECOMMENDATIONS

Following the assessment and consideration of the submissions provided by the Complainants, WSAs, Government Departments and related stakeholders, including the evidence gathered by the Commission during inspections *in loco* and investigations around different municipalities that were conducted prior to the Inquiry, the Commission makes the below findings and recommendations:

8.1 Mopani District Municipality

Findings:

Mopani District Municipality acknowledged that:

- It has challenges and is not providing water to communities within its jurisdiction.
- It has also indicated that it has alternative measures in place such as water tankering, however, communities under its jurisdiction are still without water.
- The Mayor acknowledged that Maruleng local municipality has 3 villages without any access to water. *The Commission has found that the Municipality does not comply with the Water Services Act and Compulsory Standards, which relate to the norms and standards with the provision of clean drinking water. The Commission therefore finds that the Municipality is in violation of section 27 of the Constitution which provides for the right to have access to sufficient water.*

Recommendations:

- The Commission recommends that the Municipality must forthwith comply with regulation 3 of the Compulsory Standards by - 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 kiloliters per household per month to the residents of the municipality; at a minimum flow rate of not less than 10 litres per minute; within 200 meters of each of the residents' households; and effectively such that the residents are not without a water supply for more than seven full days in any year.
- The Municipality must provide the Commission with a detailed plan with timeframes within three (3) months after the receipt of this report, on how the Municipality will provide water to every resident within its jurisdiction in line with the Water Services Act and Compulsory Standards.

8.2 Vhembe District Municipality

Findings:

- The Commission has found that the Vhembe District Municipality has many projects that were supposed to be completed years ago such as Botsoleni reservoir, Mhinga

Water Treatment plant and Ka-Josepha reservoir. The Vhembe District Municipality failed to submit a clear plan on when these projects will be completed. The Municipality further acknowledged that it has not been continuously providing water to areas in Musina, Malamulele, Makhado, Ka-Josefa, Ka-Mhinga to name just a few.

- *The Commission finds that the Municipality does not comply with the Water Services Act and Compulsory Standards. The Vhembe District Municipality is in violation of section 27 of the Constitution that provides for the right to have access to sufficient water.*

Recommendations:

- After the Inquiry Vhembe District Municipality submitted a plan to the Commission, however, during a follow-up it was found that the Municipality was not implementing the said plan. The Commission recommends that within three (3) months after the receipt of this report, the Municipality resubmits a detailed plan with timeframes.
- The Commission further recommends that the plan above must contain detailed plans with timeframes as to when Botsoleni and Ka-Josepha reservoirs will be fully completed and operational.

8.3 Sekhukhune District Municipality

Findings:

- Sekhukhune District Municipality acknowledged that it is unable to supply adequate water to some areas such as Elandskraal, Morarela, Mbuzini, Dichoeng and Tsantsabela which fall within its jurisdiction.
- *The Commission finds that the Municipality does not comply with the Water Services Act and Compulsory Standards.*

Recommendation:

- The Commission recommends that within three (3) months after the receipt of this report, the Municipality must submit a detailed plan to show how the Municipality will provide sufficient water to communities within its jurisdiction.

8.4 Waterberg District Municipality

Findings:

- Waterberg District Municipality is not a WSA, however, it is responsible for district wide planning and capacity building.
- *The Commission finds that the Waterberg District Municipality plays a contributory role towards the violation of the right to water as guaranteed in the Constitution by not providing the required support and capacitation in terms of legislative prescripts.*

Recommendation:

- The Waterberg District Municipality must, within three (3) months after the receipt of this report, submit to the Commission a detailed district wide plan on how it will capacitate these constituent local municipalities within its jurisdiction in order to supply water in terms of Water Services Act and the Compulsory Standards.

8.5 Capricorn District Municipality

Findings:

- The Capricorn District Municipality acknowledged that it is not providing water to all the residents within its jurisdiction and gave as reasons issues such as increasing population, urbanisation and aging water infrastructure.

- *The Commission finds that the Capricorn District Municipality is in violation of its obligations to supply water to some of the communities in its jurisdiction.*

Recommendation:

- The Capricorn District Municipality must, within three (3) months after receipt of this report, submit to the Commission a detailed plan with timeframes on how it plans to ensure that it supplies adequate water to all affected areas in its jurisdiction. The plan must include a water maintenance plan for aging water infrastructure.

8.6 Polokwane Local Municipality

Findings:

- The Polokwane Local Municipality acknowledged that it is not providing water to all the residents within its jurisdiction due to an increasing population, traditional leadership allocation of residential land which does not comply with the Municipal Development Master Plan, urbanisation, as well as the lack of maintenance of aging infrastructure.
- *The Commission finds that the Municipality is in violation of its obligations to supply water to some of the communities in its jurisdiction.*

Recommendations:

- The Municipality must provide the Commission with a detailed plan indicating how the Municipality will continuously ensure access to water to all affected areas. The plan must be supplied to the Commission within three (3) months after receipt of this report.
- The Municipality must further establish the measures of addressing the synergy on the allocation of residential land by traditional leaders with the municipal master development plan and submit same to the Commission within three months of its receipt of this report.

8.7 Mookgophong/ Modimolle Local Municipality

Finding:

- *The Commission finds that the Municipality is in violation of its obligations to supply clean drinking water.*

Recommendations:

- The Municipality indicated that it has a rotational schedule of providing the communities with water, therefore the Commission recommends that the Municipality submits the schedule referred to, within three (3) months after receipt of this report.
- The Municipality must provide the Commission with a detailed plan with timeframes within three (3) months after the receipt of this report, on how it will provide water to communities within its jurisdiction in line with the Water Services Act and Compulsory Standards.

8.8 Thabazimbi Local Municipality

Findings:

- The Municipality acknowledged that it was not providing sufficient water to all the residents within its jurisdiction due to aging infrastructure and constant leakage of the water infrastructure. The Commission has found that there is a lack of proper servicing of water infrastructure in the Municipality.
- *The Commission finds that the Municipality does not comply with the Water Services Act and Compulsory Standards.*

Recommendation:

- The Municipality must submit to the Commission a detailed plan with timeframes on how it will comply with Section 27 of the Constitution. This plan must be submitted within three (3) months after receipt of this report.

8.9 Bela-Bela Local Municipality

Findings:

- The Bela-Bela Local Municipality acknowledged that it is not providing sufficient water to all the residents within its jurisdiction due to increasing population as well as the lack of maintenance of aging infrastructure.
- *The Commission finds that the Municipality does not comply with the Water Services Act and Compulsory Standards.*

Recommendations:

- The Commission recommends that the Municipality must submit a detailed schedule of how communities will be provided with water within three (3) months after the receipt of this report.
- The Municipality must provide the Commission with a detailed plan with timeframes within three (3) months after the receipt of the report, on how it will provide water to every resident within its jurisdiction in line with the Water Services Act and Compulsory Standards.

8.10 Lephalale Local Municipality

Findings:

- The Lephalale Municipality acknowledged that it is not providing water to communities within its jurisdiction and gave reasons of increasing population, the mushrooming of unplanned informal settlements as well as the aging infrastructure.
- *The Commission finds that the Municipality does not comply with the Water Services Act and Compulsory Standards.*

Recommendations:

- The Municipality must come up with measures to curb the mushrooming of informal settlements in the Municipality.
- The Commission recommends that the Municipality must submit a detailed schedule of how communities will be provided with water within three (3) months after the receipt of this report.
- The Municipality must provide the Commission a detailed plan with timeframes within three (3) months after the receipt of this report, on how it will provide water to every resident within its jurisdiction in line with the Water Services Act and the Compulsory Standards.

8.11 Mogalakwena Local Municipality

Findings:

- The Mogalakwena Local Municipality acknowledged that it is not providing water to all communities within its jurisdiction, for example, Ga-Mushi and other villages.
- *The Commission finds that the Municipality does not comply with the Water Services Act and Compulsory Standards.*

Recommendations:

- The Commission recommends that the Municipality must develop and submit a detailed schedule of how communities will be provided with water within three (3) months after the receipt of this report.
- The Municipality must provide the Commission with a detailed plan with timeframes within three (3) months after the receipt of the report, on how it will provide water to every resident within its jurisdiction in line with the Water Services Act and the Compulsory Standards.

8.12 Department of Cooperative Governance, Human Settlements and Traditional Affairs***Finding:***

- The Commission finds that the Limpopo Department of Cooperative Governance, Human Settlements and Traditional Affairs (CoGHSTA) is not effectively playing its role as an oversight body in terms of ensuring that access to water is a reality within the Limpopo Province.

Recommendation:

- The Commission recommends that the CoGHSTA identifies municipalities that (i) apply for grants and fail to spend such grants, (ii) do not apply for grants at all; and (iii) receive the grants and use them inappropriately. The CoGHSTA should come up with an action plan on how this will be mitigated. This action plan is to be submitted to the Commission within three (3) months after the receipt of this report.

8.13 Department of Water and Sanitation

Findings:

- The Commission finds that the Limpopo Department of Water and Sanitation (DWS) is failing to play its oversight role.
- The DWS does not assist or intervene when the Municipalities fail to provide sufficient water to their communities in terms of sections 62 and 63 of the Water Services Act, respectively.
- The DWS has failed to take action when a municipality has failed or is unable to apply/ access municipality grants while communities are not provided with water.

Recommendations:

- The Commission recommends that the DWS must submit to the Commission, a detailed plan, with timeframes on how it will provide support to the municipalities in order to resolve the water crisis in Limpopo.
- The DWS must submit to the Commission a list of municipalities that applied for water grant/s, the list must also provide the outcome of the grant/s or progress made in processing the grant/s.
- If the application had been declined, the DWS must provide the reason/s as to why the application was declined.
- The DWS must also provide details of the assistance provided to the municipality after declining the application.
- The above requested information must be submitted to the Commission within three (3) months after the receipt of this report.

8.14 Office of the Premier of Limpopo Province

Findings:

- The Commission has found that it is not clear as to how the Office of the Premier for the Limpopo Province plays its oversight role over municipalities that are failing to provide water.
- The Office of the Premier for the Limpopo Province is therefore failing to monitor the provision of water by the municipalities in Limpopo.

Recommendation:

- The Commission recommends that the Office of the Premier for the Limpopo Province must conduct an assessment and evaluation of the provision of water in the Limpopo Province, develop and submit measures to effectively support the municipalities to ensure adherence to the Water Services Act and Compulsory Standards. This information must be submitted to the Commission within three (3) months of the receipt of this report.

9. CONCLUSION

The Commission acknowledges that Limpopo Province does not have infinite water sources and the main source of water is surface water. However, during the Inquiry none of the municipalities attributed the shortage of water to the sources or unavailability of water resources in Limpopo. The contributing factors across all the municipalities are mismanagement of water resources and lack of funding. The Commission also found that there is a lack of sufficient skills in some of the municipalities.

The Commission intends to closely monitor the implementation of its recommendations by the municipalities in Limpopo and to take appropriate steps where necessary.

10. OPPORTUNITY TO COMMENT ON THE INQUIRY REPORT

An opportunity to comment on the report was afforded to the parties. Parties were afforded a period of twenty one (21) days to submit their written comments on the report in accordance with the principles of procedural fairness and legality.

Comments on the report were received from the Limpopo Department of Cooperative Governance, Human Settlements and Traditional Affairs (CoGHSTA) as well as from the Mogalakwena Local Municipality.

CoGHSTA in its written submissions contended that the point contained in the report that refers to municipalities having to apply for grant funding was incorrect because grants are allocated by the National Treasury through the Division of Revenue. For those reasons CoGHSTA argued that the recommendations directed at CoGHSTA should be reviewed to be in line with the correct application of conditional grants to municipalities. The Commission has considered the input made by CoGHSTA and has concluded that the input does not necessitate a reconsideration of the findings and recommendations made by the Commission in the report. The basis for this conclusion is that although it may be correct that grants are allocated by National Treasury, through the Division of Revenue, CoGHSTA still have a role to play. Further, the recommendations made by the Commission to CoGHSTA when properly read do not in any way impose an obligation on CoGHSTA which it does not presently have. It is undisputed that CoGHSTA as the relevant department wielding overall responsibility over all affairs concerning the local sphere of government, has a duty and an obligation in law, particularly section 154 of the Constitution to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. Surely, that duty to support entails the duty to support municipalities to be able not only to apply for grants but to appropriately spend them in the quest to progressively realise the right of access to water. Thus, the recommendation by the Commission that CoGHSTA should come up with an action plan on how it will mitigate amongst others the failure by municipalities to apply for grants and the failure to spend such grants is not out of kilter with the already existing obligations imposed on CoGHSTA.

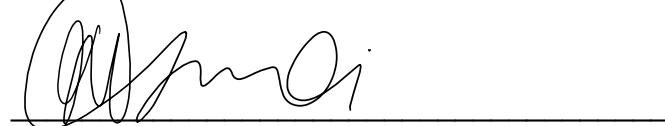
Mogalakwena Local Municipality provided in its written submissions an update on the repairs done on the boreholes which had broken down. Regrettably, the municipality does not address the issues noted in the report such as the fact that the municipality is not providing water to all households in its jurisdiction and that some households contend with water interruptions on a regular basis.

Therefore, having considered the submissions from both CoGHSTA and Mogalakwena Local Municipality, the Commission is of the view that there is no basis for the reconsideration of the substantive findings and recommendations made by the Commission in its report. Consequently, the analysis, finding and recommendations made by the Commission in the report issued to parties for comment has been confirmed in this report unaltered.

11. JUDICIAL REVIEW

In this regard, the Commission issues this report which contains findings and recommendations. The findings and recommendations contained herein are binding on the Respondents. Should any of the parties be aggrieved by the findings and recommendations 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 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 ON THIS THE 12th DAY OF SEPTEMBER 2023.



Commissioner P Ntuli

Inquiry Panel Chairperson

South African Human Rights Commission