



## SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File Ref. No.: WP/1213/0055

In the matter between:

**NETREG CONCERNED RESIDENTS ORGANISATION**      **Complainant**

and

**CITY OF CAPE TOWN**      **Respondent**

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### INVESTIGATIVE REPORT

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#### **1 Introduction**

1.1 The South African Human Rights Commission (the SAHRC or the Commission) is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa 1996 (the Constitution).

1.2 In terms of Chapter 9, Section 184 of the Constitution,

*"184. (1) The South African Human Rights Commission must-*

- (a) promote respect for human rights and a culture of human rights;*
- (b) promote the protection, development and attainment of human rights; and*

*(c) monitor and assess the observance of human rights in the Republic.”*

Further, in terms of Section 184(2)

*“(2) The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power-*

*(a) to investigate and to report on the observance of human rights;*

*(b) to take steps to secure appropriate redress where human rights have been violated;...”*

1.3 The Human Rights Commission Act (the HRCA), Act 54 of 1994 further supplements the powers of the Commission.<sup>1</sup>

1.4 The Complaint Handling Procedures are established under section 9(6) of the HRCA and set out the procedures to follow when conducting an investigation into an alleged violation or a threat to a fundamental right.<sup>2</sup>

## **2 The parties**

2.1 The Complainant is the Netreg Concerned Residents Organisation, a non-governmental organisation that is represented in the matter by its chairman – Mr Willie Stephens. Mr Stephens is himself a resident in Bonteheuwel.

2.2 The Respondent is the City of Cape Town (the City) – a Category “A” Municipality established in terms of the provisions of the Local Government Municipal Structures Act 117 of 1998, which conducts the functions

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<sup>1</sup>At the time of the investigation of this complaint the Human Rights Commission Act 54 of 1996 (HRC Act) was applicable. The Act has since been supplanted by the South African Human Rights Commission Act 40 of 2013 (SAHRC Act).

<sup>2</sup>The Complaints Handling Procedures as promulgated currently are authorised under the provisions of Section 15 (6) of the SAHRC Act.

assigned to it in part B of Schedule 4 of the Constitution from the Civic Centre, 112 Hertzog Boulevard, Cape Town. The Respondent is the owner and manager of housing units which it lets to persons falling within the lower income band earning a monthly income of less than R3500.00.

### **3 The complaint**

3.1 The Complainant alleges that residents of rental housing units owned and managed by the Respondent, in the area of Netreg, Bonteheuwel are forced to live in circumstances where:

3.1.1 The failure by the Respondent to maintain the properties as the owner and landlord has resulted in serious deterioration of the condition of the properties such that:

- a) Inadequate sewerage drainage causes human waste to overflow the drains and spill over onto properties;
- b) Leaking roofs have caused damage to the ceilings, walls and the electrical installations of the properties. As a result of leaking roofs the tenants live in damp and mouldy conditions which are harmful to the health of residents, especially the elderly and the very young;
- c) During winter, the properties are inaccessible due to inadequate storm water drainage. The problem of flooding is made worse by the failure of the Respondent to attend to the cleaning of drains prior to the winter months.

3.1.2 Many of the properties have outside toilets that are in a state of disrepair, problems include:

- a) Toilets have no doors as most doors are broken and have not been repaired for years;
- b) Toilets flushing systems do not work as result of which tenants resort to using buckets to flush them

and access to water depends on availability of working water taps;

- c) Occupants resort to the use of discarded paint buckets and having to dispose of their waste in light of the fact that drains are often blocked. For example, occupants dig holes in backyards to dispose of their waste.
- d) The few toilets that work are often unusable because of blocked drainage as a result of too many people using these few toilets.
- e) In some instances, the use of the toilet by one household triggers an overflow of human waste onto the adjacent properties;
- f) There is an added problem of backyard dwellers who build their structures over the drains and pipes as a result causing damage to the drainage system.
- g) Due to flooding in winter months, the outside toilets are inaccessible.

3.1.3 Some properties have no access to water and when they do access is restricted. After the water supply pipe in the area burst, the residents of one property had no access to running water for three years. The house in question had water before the water supply pipe burst and after repairs to the pipe the house was not reconnected. Despite reporting the matter, no attempt has been made to remedy the problem. It appears that the failure to reconnect the particular household may be based on the practice that if the tenant is in arrears, the Respondent will not provide such tenant with services.

#### **4 Human rights allegedly violated**

The following basic human rights are alleged to have been violated:

- a) Human dignity
- b) Privacy
- c) Environment which is not harmful to health or wellbeing
- d) Access to housing
- e) Access to adequate housing
- f) Access to sufficient water and sanitation

#### **5 The investigation undertaken by the Commission**

- 5.1 The complaint was received on 14 May 2012. On receiving the complaint, it was decided that there was a need to obtain further information about the prevailing conditions in the area.
- 5.2 The Complainant undertook to provide the requested information on or about 18 May 2012, but failed to adhere to the deadline. The Commission in a letter to the Complainant dated the 23 May 2012, requested that the information be supplied on or before 14 June 2012.
- 5.3 On 13 June 2012, Mr Stephens contacted the Commission to request an extension of time within which to provide the requested information.
- 5.4 On 22 June 2012, Mr Stephens attended a consultation and provided further details of the complaints. He further requested that the Commission conduct a site inspection to observe the conditions prevailing in the area which is the subject of the complaint.
- 5.5 It was determined that the allegations required further investigation.
- 5.6 On 25 July 2012, the Commission conducted a site inspection in Netreg, Bonteheuwel. Following the inspection, reports were prepared noting the

condition of the properties and the complaints of the residents. The reports by officials of the Commission are in respect of the properties listed below:

Street Names	Number(s)
Plumbaco	29, 31, 37, 45 and 55A
Oudehout	7, 19, 21, 23C, 23D and 134B
Netreg Avenue	134B
Oliehout	3A
Rosewood	10

- 5.7 On 6 August 2012 and 15 October 2012, further consultations were held with the Complainant.
- 5.8 On 22 October 2012, the Respondent was provided allegations to which to respond. The Respondent was requested to provide its response by 6 November 2012, which was received by the Commission.
- 5.9 On 20 November 2012, the response of the Respondent was sent to the Complainant for his comment and the Commission consulted with the Complainant on the same date with regard to the response.
- 5.10 On 5 March 2013, 28 May 2013 and 11 June 2013, further consultations were held with the Complainant.
- 5.11 On 15 and 21 August 2013, a follow-up inspection was conducted at the houses which were the subject of the initial inspection to assess whether there had been any changes since the initial inspection that had been conducted on 25 July 2012.

**6. Response received from the Respondent**

In its response dated 6 November 2012, the Office of the Executive Director of Human Settlements sets out the position of the Respondent as follows:

6.1 That *"Mr W Stevens (sic) is well known to the Department as well as to the Western Cape Provincial Government as there had been many interactions between the two departments and the Complainant."*<sup>3</sup>A meeting was held on 9 February 2012, between members of staff of the office of the Executive Director of Human Settlements and Mr Stephens (accompanied by a small delegation) where the following issues was [sic] discussed:

- i. Rental arrears;
- ii. Maintenance of the dwellings;
- iii. Evictions and;
- iv. Transfer of the properties to the occupants.

Following said discussion, the parties agreed to the following as a way forward:

- i. *"A door-to-door survey was going to be conducted to check occupancy status and how many tenants were interested in purchasing their units;*
- ii. *An inspection was to be carried out on the structural condition of the units;*
- iii. *A report back meeting to be held with the affected community on the findings as per the above."*<sup>4</sup>

6.2 *"The survey was conducted over three days, on the 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> March 2012, and was confined to what is known as the 'Kreëfgat' area."*<sup>5</sup>

6.3 That *"the agreed upon feedback meeting was originally scheduled for 24<sup>th</sup> May 2012 but could not happen due to various reasons.*

*These being:*

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<sup>3</sup> Response received from the Office of the Executive Director: Human Settlements dated 6 November 2012.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

- i. *The violence that erupted after attempts by the City to carry out two lawful evictions;*
- ii. *The volatility in the area which resulted in the City property and vehicles being damaged making it unsafe for officials to enter the area at the time;*
- iii. *The Netreg Community Centre also not being accessible for many months due to upgrades that was underway.*<sup>6</sup>

The feedback meeting was accordingly held on 29 August 2012, and was attended by 161 people, "...several of these attendees..." as noted by the Respondent from the attendance register, "...were also home owners from the neighbouring "Golden Gate" housing project."<sup>7</sup>

*"Apart from being advised on the findings of the survey, those in attendances were also informed of the benefits of the indigent grant, repairs and maintenance processes and the sales procedures."*<sup>8</sup>

#### 6.4 The survey findings disclosed to the attendees of the meeting were:

- i. That 181 housing units were surveyed over a three day period;
- ii. At least 5% of the tenants of the properties were absent from home at the time when the properties were surveyed;
- iii. Almost all of the properties were found to be occupied by legal tenants and their families. Only in one of the properties surveyed was an unlawful tenant and one transfer of tenancy noted;
- iv. Most of the tenants interviewed expressed an interest in taking transfer of the properties they occupy. It was however established that many of them are in arrears with their rental and services accounts;

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.



- v. The area generally had a very low average household income and most of those interviewed were reliant on state pensions and social grants. Of the persons found to be employed, many were either informally employed or self-employed;
- vi. The buildings surveyed were found to be "*generally structurally sound on the outside*"<sup>9</sup> and no foundations were exposed;
- vii. A structural engineer surveyed a number of the properties and could find no general construction faults which would prevent the sale of the dwellings;
- viii. Several of the properties surveyed, however, were found to be in a poor state of repair due to serious neglect on the part of the tenants who failed to make timely maintenance complaints.
- ix. Defects were mainly found at the front and back doors, electricity and water supply fittings some of which were either; badly damaged, removed or stolen. The general condition of outside toilets was found to be deplorable. The Respondent plans to incorporate the toilet facilities into the affected dwellings.

6.5 The process to be followed for the indigent relief grant to be accessed was explained at the meeting. Tenants who were in arrears on their rental and services accounts were encouraged to approach the local housing office to apply for such grants. It was generally found that tenants in the area had failed to make use of this assistance. Tenants who were first time defaulters would have arrears written off subject to the installation of water management devices and electricity dispenser units.

6.6 The sales process was explained and a slide show presented the process to be followed for tenants to be able to transfer their properties. Tenants were encouraged to start the application process of completing forms for

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<sup>9</sup>ibid.

the Enhanced Extended Discount Benefit Scheme (EEDBS) at the local housing office, and advised of a subsidy offered by the Government to assist tenants take transfer of the rental units which they occupy. The Respondent emphasised that the process of transferring properties required individual applications and could not be facilitated for the entire community as requested by Mr Stephens.

6.7 In terms of the relationship between residents and local housing office, the following was established:

- a) *"...that tenants in the Netreg area do not approach their local Housing Office to report on repairs to be done. The process to be followed for tenants to have repairs/maintenance done to their dwellings was also explained."*<sup>10</sup> The tenants were encouraged to report repairs at the local housing office in order for C3 notifications to be created for repairs and maintenance to be effected.
- b) *"The general response following the Community meeting has been exceptionally poor"*<sup>11</sup> with only seven tenants having approached the housing office and applied for and received indigent relief grants.
- c) *"Even fewer tenants approached the office to apply for the purchase of their dwellings."*<sup>12</sup> Some tenants opted to wait for approval of their indigent grants and the writing off of the arrears.

6.8 With reference to the specific homes referred to by the Commission, the Respondent noted the following:

- a) House numbers 55A, 37, 31 and 29 are dwellings which had been purchased.
- b) The Respondent had obtained an eviction order in respect of the occupant of 19A Oudehout Street and the dwelling was extensively

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<sup>10</sup>Ibid.

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.



vandalised by the community when the Sheriff was prevented from evicting the unlawful occupants on two occasions.

- c) An assessment of the dwellings at Numbers 23D, 23C, 21 and 7 Oudehout Street, Number 134B Netreg Road, Number 3A Oliehout Street and Number 10 Rosewood Street (all rental dwellings), showed that all of the dwellings in question were in need of repairs and maintenance but no record could be found of complaints having been lodged by the tenants. The Respondent reported that they would attend to the repairs.

6.9 On the subject of inadequate drainage systems, the following was established:

That with respect to the alleged inadequacy of the drainage system, further investigation regarding this allegation was required. The Respondent confirmed that the installations in question took place in the 1960's and that there had been a tremendous increase in the volume these pipes have had to carry due to an increase in the population of persons staying in backyard dwellings. The Respondent further noted that overcrowding is a major problem with as many as three families occupying a two bedroom rental unit.

Blockages of the drainage system occur when backyard dwellers dispose of their waste directly into the main drains and they often allow obstructions such as wood and bottles to fall into the drains causing blockages. The blockages are not easily detected or remedied.

Some of the residents are still using outside toilets but Respondent indicates that addressing this challenge is underway. However, due to budgetary constraints only a limited number of toilets may be incorporated into houses per financial year.

That although the local housing office has great difficulty persuading the residents to make use of the services offered, there have been many

dealings with Mr Stephens and individual cases raised by him have been attended to.

6.10 In terms of obligations of the lessor, it was established that:

*"The City has an obligation to collect rentals and service charges and if tenants refuse to accede to the many invitations to discuss debt rescheduling, the City is left with no choice but to take the necessary action as per its Debt Management Policy."*<sup>13</sup> As part of its debt management and indigent support mechanisms for the poorest members of society, water demand management systems and electricity dispenser units are installed.

6.11 The Respondent concluded noting *"...that the City will continue to encourage the residents of Netreg to take responsibility for the rental units they occupy but to also make use of the benefits and assistance the City has to offer."*<sup>14</sup>

## **7 The Complainant's comments on the Respondent's response**

On 5 March 2013, the Complainant hand delivered to the Commission its comments to the response from the Respondent. The Complainant stated that:

7.1 The survey conducted by the Respondent on 28, 29 and 30 March 2012 had been conducted in the wrong area. As a result only 28% of properties were surveyed leaving another 72% which needed to be surveyed.

7.2 On 7 February 2012, an agreement was reached at a meeting arranged by the National Department of Human Settlements *"...that the provincial government will transfer funds to the City of Cape Town Municipality, to write of [sic] the debts of tenants and "help" them to become legal owners of the properties they are occupying."*<sup>15</sup> The Respondent requested an

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<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup> Undated letter received from the Complainants, which was delivered by hand to the Commission on 5 March 2013.

extension of 3 months to enable it to conduct a survey of the properties concerned but had not done so. The survey was merely a means for the Respondent "...to evict people in Netreg..."<sup>16</sup>

- 7.3 The Complainant had "...made a mistake of allowing the Council to evict people in Netreg. One of them was Miranda Coetzee 32A Oliehout Street a sickly person."<sup>17</sup> The eviction that took place on 27 January 2011 was successful because the Complainant had not known of the occupant's situation and she had not attended meetings.

With reference to "lawful evictions"<sup>18</sup> the Complainant states "there is no lawful evictions except people who are dealing with drugs."<sup>19</sup> Rent and arrears of whatever kind the Complainant states may always be negotiated. The aim of the Netreg Concerned Residents is to restore the dignity of the people of Netreg that was lost during apartheid and which the current government, at the national, provincial and local levels, continues to violate.

Regarding the violence which erupted when the Respondent attempted to carry out the eviction of the occupants of No 19A Oudehout Street, the Complainant contended that the occupant (Ms Geraldine Hermanus) is a lawful occupier as her parents (now deceased) were the previous occupants of the property and that, Ms Hermanus grew up in that house. The organisation cannot understand how the Respondent could contend that she is an unlawful occupant as she would have inherited the property on the death of her parents had the property been transferred to her parents during their lifetime as had been previously promised.

- 7.4 The upgrading of the community centre would not have impeded the holding of a meeting. Facilities outside of the hall were being attended to, but the hall itself remained fully functional throughout the upgrade process. The hall itself remained as it had been 10 years ago.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

7.5 Regarding the report back meeting which took place on 29 August 2012, "[a]ll that was explained in that meeting is not that we have agreed upon on the 7<sup>th</sup> February."<sup>20</sup> Many people walked out of the meeting. The Complainant alleges that the Respondent is not being truthful with regards to this matter. The meeting was attended by a few people from Golden Gate but the majority of attendees were from the community of Netreg. That the Respondent's attempt again to justify lack of appropriate action to the plight of the poor people of Netreg by suggesting that the meeting was poorly attended by those who had lodged the complaints is just another example of the Respondent attempting to shift the blame.

7.6 It was not necessary for the Respondent to inform people of the indigent grant system as many people had applied for and received the indigent grant. However, if people failed to pay a month's rent, the grant falls away. According to the Complainant, the information offered is a case of too little too late.

The statement by the Respondent that the people of Netreg wanted to have properties transferred in their names has been the position for at least 28 years. What the residents of Netreg seek is a resolution to the issue of property transfer and a timetable of when the transfers will be affected. The funds have been made available and the Respondent has no reason to further delay the matter.

7.7 The Respondent has tried to avoid the issue of funding and transfers, and officials of the Respondent have not attended meetings as they are no longer able to evade discussion of the topic of the transfer of property and the restoration of the dignity of the people of Netreg.

7.8 The Complainant took issue with the Respondent in so far as arrear accounts were concerned. The arrears were said to have accumulated after

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<sup>20</sup>ibid.

complaints from the residents over significant price increases over a period of time. Residents have been faced with huge accounts. Initially, they paid R20 every three months for water, then the amount increased to R20 per month and thereafter the amounts escalated into hundreds of Rands. Pensioners, people receiving social grants and the unemployed who have no income, cannot afford these amounts. In addition, they pay monthly rent for properties that do not have proper ablution facilities such as working toilets. They have no doors on their toilets and even when toilets work, they have no access to water. The houses have numerous faults including – leaking roofs, broken front and back doors, windows are either non-existent or are broken, walls are cracked, plugs in the houses do not work, wiring is exposed, leaking toilets which cause electrical faults, sewerage spillage, and blocked toilets and drains.

## **8 The Legal framework**

### **8.1 International instruments**

#### **8.1.1 International law and instruments**

##### **Universal Declaration of Human Rights<sup>21</sup>**

The Universal Declaration, which is widely recognised as reflecting customary international law and thus being universally binding, recognises in Article 1 that "*[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*".

Article 25 recognises the rights of all peoples to a minimum standard of health and well-being and states that:

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<sup>21</sup>10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 14 October 2013].

*"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control..."*

Article 25 extends to sanitation. It would be the right of occupants to expect a minimum standard of sanitation in their place of residence.

### **International Covenant on Economic, Social and Cultural Rights**

The obligation placed on states to realise socio-economic rights is set out under Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which highlights that minimum core and progressive realisation are hallmarks of this obligation, while provision of the right is subject to the state's available resources. South Africa is a state party to the Covenant and therefore under an obligation to ensure that rights set out in the treaty are realised.

In terms of Article 11 everyone has the right to an adequate standard of living, which includes accessibility and availability of adequate housing, food and clothing.

#### **8.1.2 The right of access to water**

The UN Committee on Economic, Social and Cultural Rights (CESCR) in General Comment No.4 of 1991 notes that:

*"In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views*



*shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity".<sup>22</sup>*

Furthermore, the CESCR in General Comment No.15 of 2003, stipulates that:

*"Before any action that interferes with an individual's right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies...Where such action is based on a person's failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water."<sup>23</sup>*

#### **United Nations General Assembly resolution Recognising Access to Clean Water and Sanitation<sup>24</sup>**

To emphasise the importance of the right to access clean water, the United Nations (UN) General Assembly adopted a resolution on the subject in 2010.<sup>25</sup> South Africa showed its commitment to the matter by voting in favour of the resolution. The resolution recognises the human right to water and sanitation. It acknowledges that clean drinking water and sanitation are essential to the realisation of all human rights. Member states and international organisations were called upon to provide financial resources and to help in capacity building and technology transfer to developing

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<sup>22</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, available at: <http://www.refworld.org/docid/47a7079a1.html> [accessed 7 October 2013] at paragraph 7.

<sup>23</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html> [accessed 7 October 2013] at paragraph 56.

<sup>24</sup> Resolution 64/292.

<sup>25</sup> UN General Assembly Resolution 64/292 of 28 July 2010.

countries in an effort to ensure access to safe, clean, accessible and affordable drinking water and sanitation for all.

### **8.1.3 Regional instruments**

#### **The African Charter on Human and Peoples' Rights<sup>26</sup>**

South Africa is a state party to the African Charter on Human and Peoples' Rights (African Charter).

The African Charter under Article 5 recognises the right of every individual "to respect of the dignity inherent in a human being".

#### **Southern African Development Community's Protocol on Health**

In terms of the Southern African Development Community's Protocol on Health, Article 23 states that:

*"State parties shall collaborate, co-operate, and assist each other in a cross-sectoral approach to addressing regional environmental health issues and other concerns including toxic waste, waste management, port health services, pollution of air, land and water, and the degradation of natural resources."*

The above reinforces the need for states to maintain an environment that is conducive to health. The need to among others protect water sources and ensure they remain clean.

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

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<sup>26</sup>27 June 1981, CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), available at <http://www.refworld.org/docid/3ae6b3630.html> [accessed 14 October 2013].

The Protocol to the African Charter on Human and Peoples' Rights the Rights of Women in Africa (Protocol on Women) reiterates the rights to health and is therefore relevant to this matter.

Article 15, of the Protocol on Women enshrines the right to food security, which includes "access to clean drinking water".

## **8.2 Domestic law and instruments**

### **8.2.1 The Constitution**

The Constitution has provisions that deal with all the rights that are being addressed in this matter. The right to dignity is addressed in terms of Section 10 which stipulates that,

*"[e]veryone has inherent dignity and the right to have their dignity respected and protected."*

Failing to provide sufficient water and sanitation or liveable housing undermines the right to dignity.

As far as the right to environment is concerned, in Section 24(a) the Constitution provides that

*"[e]veryone has the right –  
to an environment that is not harmful to their health or well being"*

The right to adequate housing is dealt with in terms of Section 26(1) of the Constitution where the right is guaranteed in the following terms:

*"Everyone has the right to have access to adequate housing."*

The Constitution places a duty on the state to ensure that the right is achieved and accordingly under Section 26(2) it provides that:

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

In terms of the right to access water, Section 27(1)(b) of the Constitution provides that everyone has a right to sufficient water and again a duty is placed on the states to *"take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights"*

Besides the sections that deal directly with the rights cited above, other constitutional provisions support and advance the protections for realisation of these rights.

Section 153 of the Constitution states that:

*153. "A municipality must—  
(a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community;"*

Section 156 of the Constitution provides that:

*156. "(1) A municipality has executive authority in respect of, and has the right to administer—  
(a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and  
(b) any other matter assigned to it by national or provincial legislation."*

**Part B of Schedule 4 of the Constitution – Local government responsibilities**

This provision mandates that local government is responsible for:

*"Water and sanitation services limited to potable water supply systems and domestic waste-water and sewerage disposal".*

## **8.2.2 Other relevant legislation:**

### **8.2.2.1 The Municipal Systems Act No. 32 of 2000**

Basic municipal services are defined by the Act in Chapter 1, Section 1 as:

*"A municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment."*

The responsibilities of a municipality are enunciated in Section 73:  
*"(1) a municipality must give effect to the provisions of the Constitution and –*

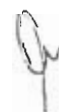
- (a) Give priority to the basic needs of the local community;*
- (b) Promote the development of the local community; and*
- (c) Ensure that all members of the local community have access to at least the minimum level of basic municipal services."<sup>27</sup>*

### **8.2.2.2 Municipal Finance Management Act No. 56 of 2003**

In considering the obligations of the Respondent with regard to its budgeting and finance processes, Chapter Four of the Municipal Finance Management Act (MFMA) must be considered.

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<sup>27</sup> Municipal Systems Act No. 32 of 2000, Chapter 8.



Section 28(1) of the MFMA specifically permits a municipality to revise its budget and states that:

*"A municipality may revise an approved annual budget through an adjustments budget."*

Section 27(5) provides when provincial executives may intervene and as such states that:

*"The provincial executive may intervene in terms of the appropriate provision of section 139 of the Constitution if a municipality cannot or does not comply with a provision of this Chapter, including a provision relating to process."*

### **8.2.2.3 The Housing Act No. 107 of 1997**

The Housing Act defines "housing development" as:

*"The establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis have access to -*

*(a) A permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and*

*(b) Potable water, adequate sanitary facilities and domestic energy supply.<sup>28</sup>*

Section 9(1) outlines the functions of municipalities in the following terms:

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<sup>28</sup>Section 1 (vi) of the Housing Act 107 of 1997.

*"Every municipality must as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to:*

- (a) ensure that –*
  - i the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;*
  - ii conditions not conducive to the health and safety of the inhabitants of its area of jurisdiction are removed;*
  - iii services in respect of water, sanitation, electricity, roads, storm water drainage and transport are provided in a manner that is economically efficient;*
- (b) set housing delivery goals in respect of its area of jurisdiction;*
- (c) identify and designate land for housing development;*
- (d) create and maintain a public environment conducive to housing development which is financially and socially viable;*
- (e) promote the resolution of conflicts arising in the housing development process;*
- (f) initiate, plan, coordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction;...*
- (g) plan and manage land use and development."*

Section 9(2) sets out the general principles applicable to housing development.

*"(1) National, provincial and local spheres of government must –*

- (a) Give priority to the needs of the poor in respect of housing development;*
- (e) (iii) Promote the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions."*

#### **8.2.2.4 The Water Services Act No. 108 of 1997**

The Water Services Act defines "basic sanitation" in Section 1 in the following terms:

*"(1) "basic sanitation" means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste water and sewage from households, including informal households."*

Section 3 is deals with the right of access to basic water supply and basic sanitation and stipulates 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."*

Section 5 is concerned with basic water supply and sanitation:

*"If the water services provided by a water services institution are unable to meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them."*

### **8.2.3 Other relevant documentation**

#### **The Strategic Framework for Water Services<sup>29</sup>**

The Strategic Framework defines "basic sanitation facility" as:

*"The infrastructure necessary to provide a sanitation facility which is safe, reliable, private, protected from the weather and ventilated, keeps smells to*

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<sup>29</sup> The Strategic Framework for Water Services is a framework paper compiled by the Department of Water Affairs and Forestry (September 2003).



*the minimum, is easy to keep clean, minimises the risk of the spread of sanitation related diseases by facilitating the appropriate control of disease carrying flies and pests, and enables safe and appropriate treatment and/or removal of human waste and waste water in an environmentally sound manner.”<sup>30</sup>*

It defines a “basic sanitation service” as:

*“The provision of a basic sanitation service facility which is easily accessible to a household, the sustainable operation of the facility, including the safe removal of human waste and wastewater from the premises where this is appropriate and necessary, and the communication of good sanitation, hygiene and related practices.”<sup>31</sup>*

#### **Free Basic Sanitation Implementation Strategy (2009)<sup>32</sup>**

This strategy was developed to guide water service authorities in “*providing all citizens with free basic sanitation by 2014*”. This strategy acknowledges that there is a “*right of access to a basic level of sanitation service*” enshrined in the Constitution and that municipalities have an obligation to ensure that poor households are not denied access to basic sanitation due to their inability to pay for such services.

#### **City of Cape Town Water Services Development Plan (WSDP) November 2012**

“WSDP” replicates the Framework for Water Services referred to above.

#### **Regulatory Standards**

Regulation 2 of the Compulsory National Standard states that:

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<sup>30</sup>The Strategic Framework for Water Services, the Department of Water Affairs and Forestry, (September 2003), Table 2, page 46.

<sup>31</sup>ibid.

<sup>32</sup>Department of Water Affairs and Forestry (April 2009).

*"The minimum standard for basic sanitation services is –*

*(a) the provision of appropriate sanitation*

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

Regulation 3 of the Compulsory National Standards states that:

*"The minimum standard for basic water supply services is –*

*(a) the provision of appropriate service in respect of effective water use; and*

*(b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month-*

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

*(ii) within 200 metres of a household; and*

*(iii) with an effectiveness such no consumer is without a supply for more than seven full days in any year."<sup>33</sup>*

### **8.3 Case law**

The Bill of Rights requires that basic enquiries which seek to promote the rule of law, human dignity, equality and freedom be undertaken in its interpretation.

Section 39(1) (a) of the Constitution states that:

*"When interpreting the Bill of Rights, a court, tribunal or forum*

*(a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom".*

#### **8.3.1 The Right to Human Dignity**

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<sup>33</sup> General Notice 22355 of 8 June 2001.

equality or the right not to be subjected to slavery, servitude or forced labour, the right to equality or the right not to be subjected to slavery, servitude or forced labour.<sup>36</sup>

Further the Court in *Beja*, quoted the views expressed by the Constitutional Court on the interpretation of the relationship between the rights to privacy and dignity in the matter of *NM v Smith (Freedom of Expression Institute as Amicus Curiae)*<sup>37</sup> in which it held that:

“The right to privacy recognises the importance of protecting the sphere of our personal daily lives from the public. In so doing, it highlights the inter-relationship between privacy, liberty and dignity as the key constitutional rights which construct our understanding of what it means to be a human being. All these rights are therefore interdependent and mutually reinforcing. We value privacy for this reason at least - that the constitutional conception of being a human being asserts and seeks to foster the possibility of human beings choosing how to live their lives within the overall framework of a broader community. The protection of this autonomy, which flows from our recognition of individual human worth, presupposes personal space within which to live this life”.<sup>38</sup>

### 8.3.2 Socio-economic rights and the provision of services

*Government of the Republic of South Africa and Others v Grootboom and Other* was the first matter in which the Constitutional Court thoroughly addressed, interpreted and applied the constitutional right to housing. An examination of this case is relevant in this enquiry as the Court's interpretation of this right has relevance to the provision of all socio-economic rights.

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<sup>36</sup>*Dawood and Another v Minister of Home Affairs; Shalabi and Another v Minister of Home Affairs and Others; and Thomas and Another v Minister of Home Affairs and Others* (CCT35/99) [2000] ZACC 8; 2000 (3) SA 936; 2000 (8) BCLR 837 (7 June 2000) at paragraph 35.

<sup>37</sup> *NM v Smith (Freedom of Expression Institute as Amicus Curiae)* [2007] ZACC 6; 2007 (5) SA 250 (CC) at para 131.

<sup>38</sup> *ibid* at para(s) 49-50.

The Court held that the determination of a minimum core which constitutes the state's obligation in respect of a particular right cannot be done without assessing the needs and opportunities for the enjoyment of that right, which will vary in different areas due to the prevalence or absence of relevant factors. The Court did examine "*whether the measures taken by the State to realise the [socio-economic right concerned] are reasonable*".<sup>39</sup>

In assessing reasonableness, the particular context of the policy under consideration must be taken into account to determine the capacity of the implementing entities. Furthermore, the context of the Bill of Rights as a whole is relevant, in particular the interconnectedness of the socio-economic right concerned and other rights therein in light of the foundational principles (including human dignity).

The Constitutional Court in *Grootboom* declined to define a "minimum core" component of socio-economic rights. However, in the *Residents of Jo Slovo Community, Western Cape v Thubelisha Homes and Others*, Justice O'Reagan did prescribe in detail the form of the temporary alternative accommodation to be provided by the state to those evicted in such circumstances. This includes tarred roads, electricity (by prepaid meter), fresh water and reasonable provision for toilet facilities.

The SAHRC takes particular note of the minimum requirements articulated in the *Joe Slovo* case and the relevance of the residents' complaints regarding the need for formal housing.

Sections 26 and 27 are concerned with access to housing and health care, food, water and social security, respectively. Both sections are subject to an identical qualifying provision. The Court's direction in interpretation of these qualifiers is therefore relevant to all socio economic rights. The courts in interpreting socio-economic rights and the qualification that the

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<sup>39</sup>*Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC), at para 33.

state should *"take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right"* have held that in order to achieve the standards of reasonableness as required by the Constitution the state needs to take specified steps in carrying out its obligations.

### 8.3.3 The State's obligations:

The courts, in a number of key judgements, have interpreted the scope of these rights by providing guidelines in determining reasonableness and criteria for assessment of the State's obligations.

In *Grootboom* it was held that Section 26 of the Constitution requires the government to:

*"establish a coherent public housing program directed towards the progressive realisation of the right of access to adequate housing within the State's available means".<sup>40</sup>*

Further, the Court noted that the legislative measures adopted by the Government must be supported by policies and programmes adopted and must be reasonable *"both in their conception and implementation"*.<sup>41</sup> The Court held that reasonable measures are those that take into account the degree and extent of the denial of the right they endeavour to realise, and do not ignore people whose needs are the most urgent and whose ability to enjoy all the rights is most in peril.<sup>42</sup>

The Court established that the right of access to "adequate housing" entails more than bricks and mortar.<sup>43</sup> It extends to and includes the provision of water and removal of sewerage and the financing of these, including the building of the house itself.<sup>44</sup>

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<sup>40</sup>ibid at paragraph 41.

<sup>41</sup>ibid at paragraph 42.

<sup>42</sup>ibid at para 44.

<sup>43</sup> Ibid, at para 35.

<sup>44</sup> Ibid at para 35.

#### 8.3.4 'Public law right' to basic municipal services

In *Joseph and Others v City of Johannesburg and Others* the Constitutional Court read Sections 152 and 153 of the Constitution alongside the provisions of the Municipal Systems Act and the Housing Act to find that a "public law right to basic municipal services" existed, which imposed a duty on local government to provide such services.<sup>45</sup>

#### 8.3.5 The Right of Access to Water

The case of *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* was one of the first matters in which the court explicitly recognised the constitutional right to water, imposing a duty on the local council concerned to progressively provide for that right.<sup>46</sup>

In the case of *Mazibuko and Others v The City of Johannesburg and Others* the Constitutional Court assessed, interpreted and applied the right of access to sufficient water contained in Section 27(1)(b) of the Constitution.

The Constitutional Court after consideration of the reasonableness of the policy, taking into account the factual circumstances of households which fell within the boundaries of the City of Johannesburg dependent on it for its water supply, declined to interfere with policy finding it to be reasonable.

The Court first outlined the context of the right of access to sufficient water as set out in Section 27(1)(b), holding that the constitutional provision in which it is enshrined must be read alongside the qualification of the state's obligation in that regard as stated in Section 27(2). Consequently, the court stated that:

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<sup>45</sup>*Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 (CC) at paragraphs 35, 38 and 40.

<sup>46</sup>*Residents of Bon Vista Mansions v Southern Metropolitan Local Council* 2002 (6) BCLR 625 (W) at para 12.

*“...it is clear that the right does not require the State upon demand to provide every person with sufficient water without more; rather, it requires the State to take reasonable legislative and other measures progressively to realise the achievement of the right of access to sufficient water, within available resources”.<sup>47</sup>*

However, the Court noted that it was not well placed to determine the actual quantity of water required to meet the state's obligations in this regard. In any event, any such quantification would be too static to constitute sufficient protection of the right. Rather, the relevant test of whether the state has met its obligations is focused on the reasonableness of its conduct.<sup>48</sup>

### **8.3.6 Meaningful engagement**

The courts have also had regard to the requirement of “meaningful engagement”. In *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others*<sup>49</sup> the Court stated that:

“The City has constitutional obligations towards the occupants of Johannesburg. It must provide services to communities in a sustainable manner, promote social and economic development, and encourage the involvement of communities and community organisations in matters of local government”.

### **8.3.7 The obligations of the lessor**

In addition to constitutional and public law rights the courts have also had regard to the private law obligations on landlords and owners of properties which are let for residential use. The High Court had the opportunity to consider the obligations of the lessor to lessee in circumstances where the

<sup>47</sup> *Mazibuko and Others v The City of Johannesburg and Others* 2010 (4) SA 1 CC at para 50.

<sup>48</sup> *Ibid* at para 57.

<sup>49</sup> (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

lessor had provided accommodations which were not as agreed between the parties and which failed to provide adequately for access to sufficient water and sanitation facilities and had unsafe electrical connections. The Court in ***Mpange and Others v Sithole*** referring to *inter alia* ***Cape Town Municipality v Paine 1923 AD 207*** stated that:<sup>50</sup>

“It is trite that a lessee is entitled to full use and enjoyment of the property during the full term of the lease. The respondent is therefore under a duty to deliver and maintain the property in a condition reasonably fit for the purpose for which it has been let. The duty includes the obligation that lessees shall not be exposed to any unnecessary risk to life or property and that lessees shall occupy the premises with safety”<sup>51</sup>

### 8.3.8 International jurisprudence

These rights have been given further expression in cases on the continent where the courts have invoked the obligations of the state in terms of the African Charter.

In ***Social and Economic Rights Action Centre (SERAC) and Another v Nigeria***, a case that dealt with alleged violation of the rights to health and environment contained in the African Charter, the African Commission on Human and Peoples Rights held that:

“The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter...obligate[s] governments to desist from directly threatening the health and environment of their citizens. The state is under an obligation to respect these rights and this largely entails non-interventionist conduct from the

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<sup>50</sup>The court also made reference to *Poynton v Cran* 1910 AD 205 at 214; *Hunter v Cumnor Investments* 1952 (1) SA 735 (C) at 740A; *Harlin Properties (Pty) Ltd & another v Los Angeles Hotel (Pty) Ltd* 1962 (3) SA 143 (A) at 150 H.

<sup>51</sup>*Mpange and Others v Sithole* (07/7063) [2007] ZAGPHC 202 (22 June 2007) at para 28.





state; for example, to desist from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual".<sup>52</sup>

In the matter of *Free Legal Assistance Group and Others v Zaire (2000)*, the petitioners alleged that the State of Zaire had violated numerous rights contained within the African Charter. The Commission held accordingly that:

"Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that state parties should take the necessary measures to protect the health of their people. The failure of the government to provide basic services such as safe drinking water.....constitutes a violation of Article 16".<sup>53</sup>

## 9. Legal Analysis

### 9.1 Assessment of alleged violations

9.1.1 The relevant legal question is whether the common cause conditions prevalent in Netreg, Bonteheuwel violate the Complainants' rights to dignity, privacy, access to housing, access to sufficient water and sanitation, and to an environment not harmful to their well-being. The Commission's inspections confirm the Complainants' allegations with regard to the state of these dwellings.

9.1.2 In order to answer the above question the Commission must determine:

- a) Whether the state of the buildings and facilities alleged by the Complainants is of such condition that it infringes on the

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<sup>52</sup>*Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) at para(s) 51-52.

<sup>53</sup>*Free Legal Assistance Group and Others v Zaire* (2000) AHRLR 74 (ACHPR 1995), at para 47.

Complainants' right to access to housing, dignity, privacy, access to sufficient water and sanitation, and their right to an environment not harmful to their health or wellbeing.

- b) Whether the Municipality has fulfilled its legal obligations to remedy the situation.

Cases on socio-economic rights, as set out above, demonstrate that the courts have approached the issue by providing substance to what constitutes the content of a state's obligation to the realisation of socio-economic rights. Central to the courts' jurisprudence on this issue has been an assessment of reasonableness.

Applying the criteria of reasonableness the Commission must examine whether the action or proposed action by the Respondent meets the 'test' set by the courts to date which requires an enquiry into whether the action:

- i. Is capable of facilitating the realisation of the right;
- ii. Is comprehensive, coherent and co-ordinated;
- iii. Is appropriate – whether financial and human resources have been made available for the programme; does it make provision for short, medium and long term needs;
- iv. Is balanced and flexible;
- v. Has been reasonably conceived and implemented;
- vi. Is transparent and its contents must be made known effectively to the public;
- vii. Addresses short term provision for those whose needs are most urgent and who are living in intolerable conditions.<sup>54</sup>

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<sup>54</sup> Professor Sandra Liebenberg, 'Socio-economic rights: Adjudication under a transformative constitution' (2010) *Juta & Co Ltd*, 152-153; as cited in Jason Brickhill and Nick Ferreira, 'Socio-economic rights' Ch 28 in Ian Currie and Johan de Waal (eds.), *The Bill of Rights Handbook*, (2013, 6<sup>th</sup> Edition: Claremont, Cape Town), 578.

## 9.2 The state of the dwellings

It is common cause between the parties that the rental housing units are in a "deplorable" condition as confirmed by the Commission. The Respondent attributes the conditions to a serious lack of diligence on the part of the occupants and alleges that the occupants have failed to report maintenance issues to the local housing office. This is disputed by the Complainants as noted by the Commission during its inspections, a common theme among the occupants questioned regarding the condition of the properties was that despite reporting the maintenance issues to the local housing office, there had been no adequate response for years.

9.2.1 Furthermore, the Respondent concedes that the housing units are in a state of disrepair and that there are problems with the waterborne sanitation system, which is outdated and could not facilitate the disposal of the current volumes of waste.

9.2.2 The initial site inspection conducted in 25 July 2012 confirmed the conditions. Photographs taken of the properties inspected bear testimony to the conditions which prevail and are attached to this report.

9.2.3 In the follow-up site inspections, in August 2013, the Commission found that toilets had still not been fixed; toilet doors had not been repaired or replaced. Although the Commission was unable to find evidence of any repairs having taken place, the Complainant did however report in that June 2013 it had approached the local housing office in respect of a particular property and after threatening the officials at the local housing office with a lawsuit against them, repairs to that particular property were undertaken.

9.2.4 The Commission noted that the properties inspected revealed that roofs had been leaking for a sufficiently lengthy period for the ceiling boards to have rotted. On both days of the follow-up inspection, the weather

was cold and rainy. All of the properties inspected except one, had buckets and basins put in place to collect water from leaking ceilings and in certain cases the bedrooms could not be used due to the leaks.

- 9.2.5 With regard to the housing units which have outside toilets, the Commission noted that in all of the properties inspected, toilets were not functional and buckets of water had to be used to flush them or they were simply not used. Many blocked toilets were noted.



Photograph 1 showing a broken and inaccessible toilet surrounded by water following heavy winter rains.



Photograph 2 shows a blocked toilet resulting from the outdated waste water disposal system.

The Commission noted the unsanitary conditions which resulted from the blocked and overworked waste water disposal systems. The Commission noted further that in its response, the Respondent acknowledged it was aware of the problem and set out its view of the cause of the problem. In essence, the Respondent submitted that the conditions were attributable to the age of the system and volume of usage. The Respondent has not to date informed the Commission of any plans to ensure access to adequate sanitation facilities for the increasing backyard population, or for the upgrade of the existing waste disposal systems.

The Commission found that access doors to the properties were broken to such an extent that the doors failed to provide protection against the elements and the properties could not be secured against possible intrusion or inclement weather.

9.2.7 The front and backyards of the properties were also difficult to navigate since the heavy rains had caused flooding in the area during the period of the follow-up inspections in August 2013. Besides certain main routes which were impassable as a result of poor storm water drainage, and yards were flooded. In one

instance bricks and pieces of concrete were laid out in the water as stepping stones to enable access a house. Outside toilets were flooded.



Photograph 3 depicts the circuitous route which has to be followed in order to access the houses.

- 9.2.8 The general appearance of neglect was reinforced by visible electrical fittings and fixtures which were no longer working, broken taps and basins, toilets that had been leaking for so long that the waste water had seeped through the concrete floor and into the electrical system thereby damaging the electrical supply such that it was not working.



Photograph 4 depicts unsafe electrical switches and sockets which were a common feature.



Photograph 5 depicts access to running water for certain households within the community.

### 9.3 Reasonableness of steps taken by the Municipality

9.3.1 Regarding the initial response of the Respondent, the Commission considers that as the landlord of the rental housing units, there is an

obligation on the Respondent to perform regular inspections of the properties in the interests of both ensuring the condition of the property as well as protecting its own assets. The Respondent was silent on the question of whether inspections are performed in respect of the properties or not (the Commission failed to receive a response as to whether inspections were conducted on a regular basis).

- 9.3.2 With regard to the issue of the performing of repairs and the initial response of the Respondent to the allegations put to it by the Commission, it is apparent that even after being made aware of the condition of the properties the actions taken by Respondent have been inadequate.

Further, the Respondent failed to respond to subsequent repeated requests for meetings by the community in order to secure firm responses or plans regarding the carrying out of repairs.

- 9.3.3 In order to assess the reasonableness of the Respondents response, regard must be had to steps taken by it. In its response to the Commission, the Respondent had given an undertaking that it would attend to the necessary repairs which had been brought to its attention. The Respondent did not specify in its response when or how it would undertake this task nor what budgetary and human resources would be allocated for the carrying out of the repairs and maintenance.

The follow-up site inspection on 15 and 20 August 2013, undertaken more than a year after the initial inspection, and subsequent to the response by the Respondent, in which it undertook to attend to the necessary repairs which had been brought to its attention, revealed that the repairs in question had still not been attended to. It was further revealed that the conditions of the houses which had been the subject of the original inspection had further deteriorated due to inclement weather.

- 9.3.4 It appears that despite its undertakings to attend to repairs, the Respondent has not done so. It further appears evident that the process



to be followed in reporting repairs has not improved and there is a breakdown in communication between the Complainants and the Respondent.

At the inspections of 15 and 20 August 2013, the tenants were specifically asked whether they had reported the repairs to the local housing office. This question was put in view of the allegation by the Respondent that the problem of the poor state of the properties was in part due to the failure of the tenants to report problems to the local housing office.

The tenants each responded that they had indeed attended at the local housing office and reported the problems. Upon being asked if they had been issued with any documentation in relation to the report made containing perhaps a work order reference number, all of the persons questioned were unable to provide any proof of their attendance at the local housing office.

The Commission emphasises that the tenants were questioned individually at the time of the inspection of the particular property which they occupied and that none of the tenants were questioned in the presence of others or of the office bearers of the organisation. The answers received were consistent and some of the tenants questioned were able to provide dates within two weeks of the inspections, when they had last reported repair issues at the local housing office.

It is clear that the Respondent was aware of the conditions prevailing in Netreg, which by its own admission, it has noted in its inspection of the 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> of March 2012.

- 9.3.5 The tenants of the rental housing units situated in Netreg, Bonteheuwel live in conditions which violate a number of their basic rights which are intrinsically linked to their right to human dignity. The conditions in question are known to the Respondent as the owner and landlord of the housing units. When considered in the light of the obligations of the Respondent as

lessor and owner of the property (as set out in the *Mpange* case above) and in the light of the Respondent's obligations to provide basic municipal services (as set forth in the case of *Olivia Road* case above), the Commission notes that the conduct of the Respondent falls short of standards articulated by the Courts.

## 10 Finding

- 10.1 Having considered the facts before the Commission, the constitutional framework, the legislation and case law, the Commission finds that the condition of the rental housing units owned by the Respondent violates the Complainants' right to access to adequate housing. The structures concerned afford the occupants no privacy or protection against the elements and violate their right to human dignity.
- 10.2 The lack of functional sanitation facilities which obliges this community to resort to the use of discarded paint buckets to take care of their personal needs and the lack of doors on the toilets, violates the rights to access to sanitation, privacy and dignity. The inadequacy of the waste disposal systems which causes human waste to flood yards and blocked toilets further constitutes a *prima facie* violation of the right to an environment which is not harmful to health or well-being.
- 10.3 The lack of access to free basic water supply in some households impinges on the residents' right to access to sufficient water.
- 10.4 The failure of the Respondent to take adequate steps to remedy the defects in the housing units after it acquired knowledge of these defects, and the failure of the Respondent to provide evidence of any intention to address these defects is unreasonable.
- 10.5 In the light of the deterioration of communication between the Respondent and Complainants evident in general the breakdown of communication with local housing office, and failure of the Respondent to institute

measures to address this challenges or to engage and communicate with the community in respect of repairs, the Commission finds that there has been a lack of meaningful engagement in this matter.

## **11 Provisional recommendations**

- 11.1 That the Respondent advises the Commission, within three months of receipt of this report, of its progress in developing a plan to resolve the problems which have already been identified in Netreg and surrounds. That the plan should make provision for urgent repairs as well as on-going maintenance and provide clear time frames for its implementation.
- 11.2 That the plan identify and include immediate interim measures which will be put in place in respect of access to water, sanitation, electricity and safety. The immediate interim measures are to be hereto effected within 48 hours.
- 11.3 In addition to the report to the plan referred to in 11.1 above, the Respondent is to provide the Commission with health and safety audits conducted in Netreg at the time of submission of the plan. The health and safety audit reports are to thereafter be submitted to the Commission on a quarterly basis until June 2016.
- 11.4 The apparent breakdown in communications between the residents of Netreg and the officials at the local housing office be addressed with urgency, and a process of meaningful engagement be instituted with the residents. Records of such consultations are to be submitted together with the plan referred to in 11.1 above.
- 11.4 That the Respondent in general review and strengthen its public consultation and education processes to ensure that it meets with the requirement of meaningful engagement as required by the Constitution, national legislation and as clarified by the Constitutional Court. That the

Respondent's efforts in this regard be incorporated and recorded into the report to the Commission as recommended above in 11.1.

## **12 The Parties responses to the Provisional Finding Report (PFR)**

The Provisional Finding Report was made available to the Parties on 2 July 2015. In a letter accompanying the report the parties were requested to submit their comments, if any, on the report by no later than 22 July 2015 in order for the Commission to consider and possibly incorporate same into its report. The comments received from the parties are set out below.

- 12.1 The Complainant represented by Mr Willie Stephens delivered the requested comments to the offices of the Commission 21 July 2015. In its response the Complainant advised that it accepted the findings and recommendations but that it recorded its dissatisfaction with the length of time it had taken the Commission to arrive at this determination taking into consideration that during the period of the investigation the suffering of the people of Netreg continued. The Complainant indicated its intention of taking the matter on appeal due to what it considered undue delay in the finalisation of this matter.
- 12.2 In a letter dated 17 July 2015, the City of Cape Town (Respondent) responded to the SAHRC's PFR.<sup>55</sup> The response sets out the Respondent's commitment to betterment of the community but denies or caveats some of the SAHRC's findings.
- 12.3 The Respondent stated in its response that the Complainant was wrong in claiming that the Respondent surveyed the wrong area. Instead, the Respondent alleges that it was the area agreed upon at a 9 February 2012 meeting between the parties.<sup>56</sup>

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<sup>55</sup> Response received from the Office of the Executive Director: Human Settlements on 17 July 2015

<sup>56</sup> Ibid.

- 12.4 The Respondent claims that the statement set out in Section 7.2 of this report, concerning a transfer of funds from the Provincial Government to the City, was misinterpreted.
- 12.5 The Respondent stressed that it was not in a position to verify which buildings the SAHRC inspected. They note that 271 of the 432 dwellings in the Netreg Housing Scheme are rental units, while the rest are homeownership units. The Respondent points out that they are not responsible for the upkeep of those dwellings and not liable for human rights violations therein.
- 12.6 While the Respondent conceded in 2012 that the housing units were in disrepair, they qualified the statements by highlighting that the conditions were due to the serious neglect of tenants. The neglect alleged included not filing timely maintenance requests. Over capacity buildings and the proliferation of additional dwellings were also cited as reasons for the disrepair.
- 12.7 The Respondent directed the SAHRC to their policy of executing maintenance on the basis of necessity because of budgetary limitations. Complaints concerning health or safety are dealt with first. Additionally, this policy has resulted in the replacement of 86 toilet doors, 28 toilet cisterns and 26 toilet pans from 2012 to 2014.
- 12.8 Continuing in response to the findings concerning the toilets, the Respondent points out that they are implementing a program to demolish the outside toilets and replace them with bathrooms. The bathrooms are built with brick and mortar and are fitted with a water closet pan, wash basin, bath as well as fitting a kitchen sink and cupboard in the kitchen." The Respondent indicated that 96 of these toilets remain and that they anticipate that this project will be completed by September 2015.

- 12.9 With regard to the problems posed by backyarders, the Respondent stated that they are currently rolling out a City-wide backyarder programme which will begin providing basic services to the backyarders. The Respondent underscores that the sanitation needs of the backyarders will be met.
- 12.10 Regarding the drainage and standing water issues, the Respondent indicated that they will be inspecting these issues as a part of their health and safety audit. Furthermore, Respondent plans on surveying all properties with the end goal of developing a long-term maintenance plan. The response notes that the Respondent does not have the resources to conduct regular inspections, and this survey is not their normal policy.
- 12.11 Pointing out the continued availability of the local housing office, the Respondent disputed the SAHRC's preliminary finding of a "breakdown" in communication between themselves and the Complainant.
- 12.12 The Respondent also disputes the finding that they did not take any action after being informed of the sanitation conditions. They allege that they would, once alerted, immediately come and make the proper repairs.
- 12.13 Furthermore, the Respondent casts doubt concerning whether residents actually filed maintenance requests, citing the C3 notifications that would have been generated and saved within the City system if they actually had complained.
- 12.14 Generally, the Respondent denies violating any of the tenant's basic rights, as they allege they are providing municipal services to all tenants.

- 12.15 Similarly, they dispute the finding that the condition of the housing violates the right to adequate housing. "The City is of the firm view that its rental units do afford its occupants privacy and protection against the elements."<sup>57</sup>
- 12.16 Additionally, the Respondent disagrees with the finding that its sanitation facilities are inadequate. They do, however, agree to improve these facilities as part of their backyarder plan.
- 12.17 In terms of the provisional finding report's recommendations, the Respondent agreed to submit the requested plan within the time period specified. Improving communication with tenants of Netreg was also agreed to by the Respondent. However, the Respondent refuses to implement the interim measures, for they deem them to be unnecessary because tenants do have access to water, sanitation, electricity and safety.
- 12.18 As a conclusion, the Respondent states:
- "The Commission is advised inasmuch as the City is the landlord and needs to maintain its rental units there is also a responsibility on the tenant to adhere to the conditions as set out in his/her Agreement of Lease, of which one is the payment of the monthly rental. The average monthly rental of the 271 tenants residing in this area is just under R300.00 per month. The total rental arrears for these tenants is currently R 3 816 900.00. This means that the average arrear rental per tenant is approximately R 9 400.00.*
- In order for the City to maintain its rental units to the standards as laid down by the Commission, it is imperative that the tenants residing in these units pay their monthly rentals.*

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<sup>57</sup> Response received from the Office of the Executive Director: Human Settlements on 17 July 2015, PARA 10.1.

## **13 Final Findings and Recommendations**

13.1 The Respondent denies that the condition of the structures in question violate the right of access to adequate housing. Noting that they concede that they have not inspected the same properties which the Commission has inspected, the Commission respectfully stands by this finding as substantiated herein. Housing, where the rain streams down the walls because of leaking roofs and the cold enters through gaping holes in the external doors, does not provide protection against the elements and seriously compromises both privacy, health and safety for the occupants. Adequate housing, at the very least, addresses these basic requirements and since the Respondent is unable to deny the factual findings relating to these conditions, the provisional finding in this regard stands.

13.2 The finding, that the condition of the sanitation facilities and the outdated and overworked waste disposal systems violate the right to an environment which is not harmful to the health of the occupants of this area, is confirmed by the Respondent's comments relating to the planned upgrades, the repairs already undertaken and the need to assess and then address the outdated waste water disposal systems. These situations remain current. Taking into account the constraints faced by the Respondent in attending to this situation including: the seepage of untreated human waste into the backyards and public areas; the fact that almost three years have elapsed since this particular complaint was first brought to the attention of the Respondent; and the Respondent has yet to comprehensively survey this problem and address this situation indicates a lack of reasonableness in Respondent's planning processes.

13.3 As regards the finding that the right to access free basic water supply in some households is violated, this has not been addressed by the Respondent in its response. Acknowledging that it is





problematic that water users are unable to pay for water which they have used, the Commission stands by this finding, since measures are available, in the form of the prepaid water meter or other water management devices to ensure that the free basic water supply is available to all households.

13.4 The Respondent avers and the Complainant confirms that it is in the process of remedying the sanitation problems by installing bathrooms attached to the units. The Complainant advises that it is attempting to engage the Respondent regarding problems not only with the planning surrounding these bathrooms but also with the way that this plan is being implemented and issues of inadequate quality control mechanisms. While acknowledging the complaints of the Complainant in this regard, the Commission finds that this violation is in the process of being remedied. It is however brought to the attention of the Respondent that the Complainant again complains about the failure of the Respondent to engage in a meaningful manner with the community as the recipients of these services. The Commission notes that duty to undertake meaningful engagement entails involving the community in all decisions relating to the planning, budgeting and execution of these plans.

13.5 In undertaking to improve communications with this community, the Respondent in effect appears to concede that communications are not as they should be. The alleged neglect on the part of tenants in reporting maintenance issues at the local housing office (which is denied by the Complainant) cannot suffice as justification for the failure by the Respondent to attend to problems which on its own version have been known to it (see the original response of the Respondent dated 6 November 2012 detailing its inspection which had taken place in the area). More especially in light of civil unrest which has intermittently plagued the area when the Respondent is attempting to carry out its obligations in the area, the need for clear and open lines of communication cannot be overemphasised.

13.6 While the Commission notes the Respondent's denial in general of violation of any of the rights of tenants of this community because they are providing municipal services to all tenants and their position that the housing units afford privacy and protection from the elements, since the Respondent cannot vouch for the state of the units, as on its own admission, having not inspected the properties, the Commission is obliged to confirm its provisional findings.

13.7 The provisional recommendations noted at 11.1 to 11.4 above are reiterated and, for purposes of this, report the Commission's final findings.

**14 Appeals clause**

Should either of the parties not be satisfied with this decision, such party may lodge an appeal, in writing within 45 days of receipt of this letter. A copy of the appeal form is available at any office of the Commission. The appeal should be lodged with the Head Office of the Commission – contact details are as follows:

Physical Address:

Appeals Section  
33 Hoofd Street  
4th Floor, Forum 3  
Braampark  
Braamfontein  
2017

Postal Address:  
Private Bag X2700  
Houghton  
2041

Telephone number: 011 877 3632 / 3633

Fax number: 011 403 0567 (Attention – Appeals Section)

SIGNED: AT Johannesburg ON THE 15<sup>th</sup> DAY OF June 2016



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**Commissioner Mohamed S. Ameerma**  
**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**