



## **SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT**

Ref: NW/2021/0230/ZL

**JOHANNES SENNA ON BEHALF OF  
THE RESIDENTS OF PALAMAKUWA,  
EXTENSION 5 LEHURUTSE, ZEERUST**

Complainant

**NGAKA MODIRI MOLEMA  
DISTRICT MUNICIPALITY**

First Respondent

**RAMOTSHERE MOILOA LOCAL MUNICIPALITY**

Second Respondent

**BAHURUTSHE BA GA MOILOA  
TRIBAL AUTHORITY**

Third Respondent

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### **FINAL INVESTIGATIVE REPORT**

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#### **INTRODUCTION**

1. This is a report of the South African Human Rights Commission (“the Commission”) issued in terms of section 13 of the South African Human Rights Commission Act 40 of 2013 (“the SAHRC Act”).
2. This report relates to an investigation by the Commission into allegations that residents of Palamakuwa, Extension 5 Lehurutse, Zeerust (“Palamakuwa”) do not have access to basic municipal services including electricity, water and basic sanitation.

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## **MANDATE OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

3. The Commission is an independent State institution established in terms of section 181 of the Constitution of the Republic of South Africa of 1996 (“the Constitution”) to strengthen constitutional democracy. In terms of section 184(1) of the Constitution, the Commission is mandated to:
  - 3.1. promote respect for human rights and a culture of human rights;
  - 3.2. promote the protection, development and attainment of human rights; and
  - 3.3. monitor and assess the observance of human rights in the Republic.
4. The Commission is empowered, in terms of section 184(2)(a) and (b) of the Constitution to investigate and report on the observance of human rights in the country and to take steps to secure appropriate redress where human rights have been violated.
5. The Commission has additional powers in terms of legislation, including the SAHRC Act. Further, the Commission follows the procedures set out in the South African Human Rights Commission Complaints Handling Procedures in conducting investigations into allegations of human rights violations.

## **THE PARTIES**

6. The parties are as follows:
  - 6.1. The Complainant is Mr Johannes Senna, an adult male resident at Palamakuwa. He lodged the complainant in his personal capacity as an affected resident, and on behalf of the residents of Palamakuwa.
  - 6.2. The First Respondent is the Ngaka Modiri Molema District Municipality, a category C municipality, as envisaged in section 155(1)(c) of the Constitution. Accordingly, Category C municipalities have municipal executive and legislative authority in areas that include more than one municipality.

- 6.3. The Ngaka Modiri Molemo District Municipality is mandated to deliver basic services, particularly sanitation and water, throughout the five constituent local municipalities, including the Second Respondent, in terms of the Local Government: Municipal Systems Act, No. 32 of 2000.
- 6.4. The Second Respondent is the Ramotshere Moiloa Local Municipality, a category B municipality, as envisaged in section 155(1)(b) of the Constitution. Accordingly, a Category B municipality shares the municipal executive and legislative authority in its area with a category C municipality within whose area such Category B municipality falls.
- 6.5. The Third Respondent is the Bahurutshe Ba Ga Moiloa Tribal Authority, a traditional council established in terms of the provisions of the North West Traditional Leadership and Governance Act (2 of 2005). No adverse findings and recommendations are made against the Third Respondent. It is cited for any interest it may have in this matter arising from its roles and functions in communities such as those in Palamakuwa.

## **FACTUAL BACKGROUND**

7. On 29 June 2020, the Complainant lodged a complaint with the Commission raising several allegations of human rights violations, including the following:
  - 7.1. The residents of Palamakuwa have, since 2010, had no access to basic municipal services including water, sanitation, electricity and roads.
  - 7.2. There is a dispute between the Bahurutshe Ba Ga Moiloa Tribal Authority (“the Tribal Authority”) and the Second Respondent regarding the ownership of the land on which Palamakuwa was established.
  - 7.3. Most of the residents have been living in Palamakuwa since 2010, and that there has not been any human settlement development, or basic municipal services provided to them to date.

8. The Commission determined that the complaint raises allegations of human rights violations which fall within the mandate of the Commission, including the rights to:
  - 8.1. dignity in terms of section 10 of the Constitution.
  - 8.2. access to housing in terms of section 26 of the Constitution.
  - 8.3. access to sufficient water in terms of section 27 of the Constitution.
  - 8.4. access to electricity as a matter of public duty in terms of section 152 of the Constitution.
  - 8.5. basic sanitation in terms of section 156 (1) (a), read with Schedule 4B of the Constitution which enjoins the Municipality to administer water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.

#### **STEPS TAKEN BY THE COMMISSION IN CONDUCTING ITS INVESTIGATION**

9. On 2 July 2020, the Commission addressed correspondence in respect of the complaints inviting a response to the allegations that had been levelled against the First and Second Respondents.
10. On 6 November 2020, the Second Respondent responded through correspondence stating as follows:

*“The Municipality cannot render services because the occupants did not buy the land from the Municipality which makes it to be an informal settlement and they should consult the relevant authorities in order to obtain the required services. Kindly refer to the attached court order.”*

11. The Court Order referred to in paragraph 10 above is dated 17 February 2015 and relates to the authorisation of the Ramotshere Moiloa Local Municipality's notice of proceedings in terms of section 4(2) of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 ("the PIE Act"). The Court Order further directed the Sheriff of the High Court to serve the aforementioned notice to the Respondents, being the unlawful occupiers of the land known as the Remaining Extent of the Farm Welbedacht 47, Registration Division JO, Welbedacht. No clarity was received from the First Respondent regarding the relevance of the aforesaid Court Order to the service delivery challenges in Palamakuwa. It is presumed in the absence of clarity that the RMLM did not deem it necessary to provide basic services to the affected on the basis that a process for the authorisation of their eviction had been initiated as the court had ordered service of the notice of eviction on the occupiers by the Sheriff.
12. On 22 September 2021, the Commission addressed correspondence to the First Respondent advising that it would conduct site inspections in various areas including Palamakuwa and requested officials of the First Respondent to join the site inspections. No response was received from the First Respondent.
13. On 27 September 2021, the Commission conducted a site inspection at Palamakuwa. The inspection was preceded by a meeting between the Commission's officials, the Complainant and other residents. The Commission was advised, and/or observed that:
  - 13.1. Palamakuwa is home to hundreds of people, living in approximately 200 households. The settlement was first established in 2010 when Kgosi Moiloa allocated residential stands to the residents. It is situated on a piece of land described as The Remaining Extent of the Farm Welbedacht 47, Registration Division JO Welbedacht. It is situated within a few metres from an established township called Lehurutse which has other public amenities such as a civic centre and a shopping complex.
  - 13.2. The residents have no access to basic municipal services.

- 13.3. They rely on makeshift water supply from water tanks. Other residents use wheelbarrows to fetch water from public facilities such as the shopping complex and the civic centre.
  - 13.4. Conditions in the settlement are very poor indeed. None of the occupiers have access to any form of formal sanitation. They rely on hand dug pit latrines for sanitation.
  - 13.5. They have no access to electricity and use candles and solar systems for lighting. They use open fires to cook meals.
  - 13.6. A vast majority of the residents live in brick houses.
  - 13.7. As indicated above, a number of residents have lived in the area since 2010. No development has taken place in the area since 2013.
14. On 28 September 2021, the Commission's investigators requested a meeting with the Municipal Manager of the First Respondent, Mr Allan Losaba at the offices of the First Respondent. The Municipal Manager facilitated a meeting between the Commission's investigators and Mr Mohamed Rassool and Mrs Malebogo Mokgalagadi in the office of the Municipal Manager. The Commission's investigators informed the officials of the First Respondent about the complaints it had received. The First Respondent's officials confirmed they were aware that the residents of Palamakuwa did not have access to municipal services. They further advised that they were aware of a land dispute between the Second Respondent and the Tribal Authority.

## **LEGAL FRAMEWORK**

### ***Constitution***

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

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

- (a) . . .
- (b) *sufficient food and water;*
- (c) . . .

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

16. Section 26 of the Constitution states that everyone has the right to have access to adequate housing.
17. The fundamental right to dignity under section 10 of the Constitution is also relevant to the issues of access to socio-economic rights. It is inconsistent with the right to dignity to live without access to water and sanitation.
18. Also relevant, is the duty of local government, in terms of section 7(2) of the Constitution to “*respect, protect, promote and fulfil*” the rights in the Bill of Rights.
19. Section 152 of the Constitution states that the objects of local government are to:
  - (a) *provide democratic and accountable government for local communities;*
  - (b) *ensure the provision of services to communities in a sustainable manner;*
  - (c) *promote social and economic development;*
  - (d) *to promote a safe and healthy environment; and*
  - (e) *encourage the involvement of communities and community organisations in the matters of local government.*
20. In terms of Section 156(1)(a), read with Schedule 5B of the Constitution, local government is responsible for administering “*Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.*”

## ***The Water Services Act 108 of 1997 (“the Water Services Act”)***

21. The Water Services Act was adopted *inter alia* “To provide for the rights of access to basic water supply and basic sanitation”. It regulates the right of access to water and the state’s obligations in that regard.
22. Section 1 of the Water Services Act provides that –
  - 22.1. *“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.*
  - 22.2. *“Basic water supply” means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quality and quantity of water to households, including informal households, to support life and personal hygiene.*
23. A “water services authority” is defined in the Water Services Act as any municipality or District responsible for ensuring access to water services. This definition includes the First and Second Respondents. A “water services provider” is defined to mean any person who provides water services to consumers or to another water services institution. A “water services institution” is, in turn, defined to include both a water services authority and a water services provider.<sup>1</sup>
24. Section 3 of the Water Services Act establishes the following rights and obligations in respect of access to basic water supply and basic sanitation –
  - (1) *Everyone has a right of access to basic water supply and basic sanitation.*
  - (2) *Every water services institution must take reasonable measures to realise these rights.*

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<sup>1</sup> Section 1 of the Water Services Act.

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*(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.”*

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

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

26. Regulation 2 provides as follows –

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

*(a) . . .*

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

27. Regulation 3 provides as follows –

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

*(a) . . .*

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

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

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

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

### **National Housing Code**

28. The National Housing Code was adopted in terms of the Housing Act of 1997. In terms of section 4(6) of the Housing Act, the provisions of the National Housing Code are binding on all three spheres of government. Included in the National Housing Code is the Upgrading of Informal Settlements Programme ("the Programme"). The Programme provides that informal settlements are to be upgraded *in situ* in partnership with the residents thereof, in order to establish sustainable human settlements. The National Housing Code introduces the Programme as follows:

*"This chapter deals with the process and procedure for the in situ upgrading of informal settlements as it relates to the provision of grants to a municipality to carry out the upgrading of informal settlements within its jurisdiction in a structured manner. The grant funding so provided will assist the municipality in fast tracking the provision of security of tenure, basic municipal services, social and economic amenities and the empowerment of residents in informal settlements to take control of housing development directly applicable to them. The Programme includes, as a last resort, in exceptional circumstances, the possible relocation and resettlement of people on a voluntary and co-operative basis as a result of the implementation of upgrading projects."*

29. As to the definition of "informal settlements," the Programme provides as follows:

*"Informal settlements typically can be identified on the basis of the following characteristics:*

- *Illegality and informality;*
- *inappropriate locations;*
- *restricted public and private sector investment;*
- *poverty and vulnerability; and*
- *social stress."*

30. The Programme is therefore applicable to all settlements that demonstrate one or more of the above characteristics.
31. The Programme provides that informal settlements must be upgraded *in situ*. Where this is not possible, such as where the land is not suitable for residential development or where de-densification is required, then the Programme provides for *“relocation in terms of a relocation strategy developed in collaboration with the community.”*
32. The upgrading of informal settlements must be effected in collaboration with the residents thereof. Thus the Programme provides as follows:
- “In order to ensure that community members assume ownership of their own development and project, the involvement of the community from the onset is key. Hence community participation should be undertaken within the context of a structured agreement between the municipality and the community.”*
33. The Programme recognizes that many informal settlements are situated on privately owned land and that often the first step in an upgrading project will be the acquisition of such land. Thus, the Programme provides that funding is available and may be obtained for *“the acquisition of land, where the land to be developed is in private ownership, through negotiation or expropriation.”*
34. Funding for the implementation of the Programme is allocated to Provincial Governments through the Minister for Human Settlements on an annual basis. Such funds are transferred to the provinces in terms of the provisions of the Division of Revenue Act.
35. The Programme provides that *“it will be the responsibility of a municipality to consider whether living conditions in a settlement in the area of jurisdiction merit the submission of an application for assistance under the Programme.”* If so, the Municipality is required to make the necessary application to the relevant Provincial Department of Housing.

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36. The Programme provides that the Provincial Government (through the relevant Department of Housing) will be responsible for the funding and implementation of the Programme and *“must do everything in their power to assist municipalities to achieve their obligations under this Programme.”*
37. The Programme makes provision for a comprehensive, fully costed, four-phase process for the upgrading of informal settlements comprising: The Application, Project Initiation, Project Implementation and Housing Consolidation phases.
38. It is apparent from the above that the Programme makes provision for the installation of both interim services and permanent municipal engineering services. The Programme states that *“where interim services are to be provided it must always be undertaken on the basis that such interim services constitute the first phase of the provision of permanent services.”*

#### **ISSUES FOR DETERMINATION**

39. The issues for determination in this matter are:
  - 39.1. Whether the First and Second Respondents have breached their constitutional and statutory obligations to deliver municipal services including water, sanitation, electricity and housing to the residents of Palamakuwa.
  - 39.2. Whether the First and Second Respondents have violated the residents of Palamakuwa’s human rights including the right to water, sanitation, electricity, housing and dignity.

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## ANALYSIS

### ***Whether the First and Second Respondents have breached their constitutional and statutory obligations to deliver municipal services including water, sanitation, electricity and housing to the residents of Palamakuwa***

40. As verified by the Commission, the residents of Palamakuwa do not have access to water, sanitation and electricity. The First Respondent has not denied its failure to provide these municipal services to the residents of Palamakuwa, but denies the responsibility to do so, in stating that the Second Respondent could not render services as the occupants did not buy the land from the Municipality, and that the area is therefore an informal settlement.
41. Section 152 of the Constitution and the Municipal Systems Act enjoin the First and Second Respondents to provide basic municipal services. Section 1 of the Municipal Systems Act defines basic municipal services as a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.
42. In addition to these objects of local government, the Constitution specifically entrenches the developmental duties of municipalities. Under section 153, a municipality is obliged to prioritise the basic needs of the community and to promote the social and economic development of the community.<sup>2</sup>
43. The Municipal Systems Act gives legislative content to the various constitutional duties of local government. Section 4(2) of the Municipal Systems Act sets out the duties of municipal councils, which exercise the executive and legislative authority at municipal level. In particular, section 4(2)(f) provides as follows:

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<sup>2</sup> Section 153 of the Constitution provides as follows:

“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; and
- (b) participate in national and provincial development programmes.”

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*(2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to—*

*. . . .*

*(f) give members of the local community equitable access to the municipal services to which they are entitled”.*

44. Further content is given to the general duty of a municipality to provide municipal services under section 73 of the Municipal Systems Act, which provides:

*“(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.*

*(2) Municipal services must—*

*(a) be equitable and accessible;*

*(b) be provided in a manner that is conducive to—*

*(i) the prudent, economic, efficient and effective use of available resources; and*

*(ii) the improvement of standards of quality over time;*

*(c) be financially sustainable;*

*(d) be environmentally sustainable; and*

*(e) be regularly reviewed with a view to upgrading, extension and improvement.”*

45. The Housing Act 107 of 1997 imposes a specific obligation on municipalities to provide basic municipal services, including electricity. Section 9(1)(a)(iii) provides:

*“(1) 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—*

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*(iii) services in respect of water, sanitation, electricity, roads, stormwater drainage and transport are provided in a manner which is economically efficient”.*

46. In *Joseph and Others v City of Johannesburg and Others*,<sup>3</sup> the Constitutional Court held that taken together, the above provisions impose constitutional and statutory obligations on local government to provide basic municipal services, which include electricity. It is accepted in our law that the residents of areas such as Palamakuwa are entitled to receive basic municipal services.
47. These rights and obligations have their basis in public law. In *Joseph and Others v City of Johannesburg and Others*, the Constitutional Court held that *[A]lthough, in contrast to water, there is no specific provision in respect of electricity in the Constitution, electricity is an important basic municipal service which local government is ordinarily obliged to provide. The respondents are certainly subject to the duty to provide it.*
48. Section 26 of the Constitution states that everyone has the right to have access to adequate housing. Section 9 of the Housing Act enjoins the local government to take all reasonable and necessary steps to ensure that the inhabitants in its area of jurisdiction have access to adequate housing on a progressive basis and to ensure the provision of basic municipal services.
49. In its denial of liability to deliver services at Palamakuwa, the Second Respondent alleged that the area is an informal settlement. It appears that the informality of Palamakuwa was one of the reasons relied on by the Second Respondent to refuse to provide services in Palamakuwa. At best, this reasoning is premised on an incorrect misunderstanding of the law and at worst it is unlawful. The Programme in terms of the National Housing Code was adopted purely to provide for the housing rights of those living in informal settlement and in situ development.

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<sup>3</sup> 2010 (4) SA 55 (CC) para 40.

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50. The residents provided documentation demonstrating that they paid sums of money to the Tribal Authority which, in turn, allocated stands to them. The allocation, use and occupation of other land was administered in accordance with indigenous land tenure by an institution of traditional leadership which is recognised in terms of the Traditional Leadership and Governance Framework Act 41 of 2003. The residents believed that the land they occupy falls under the jurisdiction of a Tribal Authority.
51. Under Apartheid, African people were dispossessed of their land and provided insecure tenure over the land they occupied. One of the goals of our Constitution is the reversal of dispossession and land tenure insecurity. It requires the restoration of land to people and communities that were dispossessed of land by colonial and apartheid laws after 19 June 1913. It also requires that people and communities whose tenure of land is legally insecure as a result of racially discriminatory colonial and apartheid laws be provided with legally secure tenure or comparable redress.<sup>4</sup>
52. Based on our law, there is a clear duty to provide adequate access to basic municipal services regardless of the type of community or whether the area occupied is the subject of a dispute and even when court proceedings for evictions are in progress. Such a duty would remain until proceedings are concluded, and the terms of a court order are fully implemented.
53. Having regard to the above, the First and Second Respondents are under an undisputed constitutional obligation to provide access to water, sanitation, housing and electricity for all residents living under their areas of jurisdiction.
54. It is evident that the First and Second Respondents breached their constitutional and statutory obligations to deliver such municipal services including water, sanitation, electricity and housing to the residents of Palamakuwa.

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<sup>4</sup> *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* (CCT100/09) [2010] ZACC 10; 2010 (6) SA 214 (CC); 2010 (8) BCLR 741 (CC) para 28.

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***Whether the First and Second Respondents have violated the residents of Palamakuwa's human rights including the right to water, sanitation, electricity, housing and dignity.***

55. In terms of the Constitution, everyone has the right of access to sufficient water, and the state has the corresponding obligation to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.<sup>5</sup> Local government is primarily responsible for the supply of potable water to the residents in its jurisdiction. The First Respondent is the water services authority in respect of Palamakuwa.
56. In *Mazibuko and Others v City of Johannesburg and Others* ("Mazibuko"), the Constitutional Court stated as follows:
- "Cultures in all parts of the world acknowledge the importance of water. Water is life. Without it, nothing organic grows. Human beings need water to drink, to cook, to wash and to grow our food. Without it, we will die. It is not surprising then that our Constitution entrenches the right of access to water."*<sup>6</sup>
57. Section 3 of the Water Services Act provides that everyone has a right of access to basic water supply and basic sanitation. Every water services authority is prompted to take reasonable measures to realise these rights. The section furthermore requires every water services authority to provide for measures to realise these rights in its water services development plan.
58. Regulation 2 of the National Water Standards Regulations describes the minimum standard for basic sanitation services as a toilet which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against weather, well ventilated, keeps smells to the minimum and prevents the entry and exit of flies and other disease-carrying pests.

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<sup>5</sup> Section 27 of the Constitution.

<sup>6</sup> 2010 (4) SA 1 (CC) para 1.

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59. In *Mazibuko*, the Constitutional Court held that the achievement of equality, one of the founding values of our Constitution, will not be accomplished while water is abundantly available to the wealthy, but not to the poor.<sup>7</sup>

60. It further held that:

*“At the time the Constitution was adopted, millions of South Africans did not have access to the basic necessities of life, including water. The purpose of the constitutional entrenchment of social and economic rights was thus to ensure that the state continue to take reasonable legislative and other measures progressively to achieve the realisation of the rights to the basic necessities of life. It was not expected, nor could it have been, that the state would be able to furnish citizens immediately with all the basic necessities of life. Social and economic rights empower citizens to demand of the state that it acts reasonably and progressively to ensure that all enjoy the basic necessities of life. In so doing, the social and economic rights enable citizens to hold government to account for the manner in which it seeks to pursue the achievement of social and economic rights.”*

61. In its Integrated Development Plan for the 2021/22 financial year, the First Respondent stated that “As a water authority, the district shall ensure that water and sanitation are provided, and this will be part of a broader effort to fight the pandemic.” However, these services are not provided to the residents of Palamakuwa.

62. The residents of Palamakuwa need access to water, sanitation, electricity and housing for a dignified human existence in compliance with their rights in the Bill of Rights. The South African Constitution is considered among the most progressive in the world. It entrenches both civil and political rights and social and economic rights. According to section 1 of the Constitution, South Africa is founded on human dignity, the achievement of equality and the advancement of human rights and

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<sup>7</sup> 2010 (4) SA 1 (CC) para 2.

freedoms which are essential “pillar stones of democracy”.<sup>8</sup> These values underlie and give substance to the rights in the Bill of Rights. The Constitution also enshrines the rights to equality and dignity.

63. The socio-economic rights enshrined in the Constitution include the rights to housing, healthcare services, water, social security, food and education. In *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development (Khosa)*, the Constitutional Court confirmed that the socio-economic rights in our Constitution are closely related to the founding values of human dignity, equality and freedom.<sup>9</sup> In *Government of the Republic of South Africa and Others v Grootboom and Others* (Grootboom), the Constitutional Court held that the state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Affording socio-economic rights to all people enables them to enjoy other human rights.<sup>10</sup>
64. For a period in excess of twelve years, enjoyment of key rights such as access to adequate water, and sanitation have been denied to the residents of Palamakuwa who have not been provided access even against basic minimums envisaged in national norms and standards. This situation is observable from the fact people are forced to dig holes in the absence of even basic sanitation or ablution facilities.
65. In *Khosa*, the Constitutional Court affirmed that a society must seek to ensure that the basic necessities of life are accessible to all if it is to be a society in which human dignity, freedom and equality are foundational.<sup>11</sup>
66. It is therefore important to note that the exclusion of the residents of Palamakuwa from the scheme of service delivery seriously impacts their dignity, especially the residents who are left to fend for themselves and who must resort to digging pit

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<sup>8</sup> *Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another* 2008 (5) SA 94 (CC) para 80.

<sup>9</sup> 2004 (6) SA 505 (CC) para 40.

<sup>10</sup> 2001 (1) SA 46 para 24.

<sup>11</sup> *Khosa* para 52.

latrines, and walking long distances to fetch water in order to meet basic human needs.

67. It is evident that First and Second Respondents in failing to discharge their mandates, violated the human rights of the residents of Palamakuwa, including the rights to water, sanitation, electricity, housing and dignity.

## **FINDINGS**

68. After considering the Complainant's complaint, the response of the Second Respondent and the observations made during the inspection in *loco*, the Commission makes the following findings:<sup>12</sup>

- 68.1. The allegations that the First and Second Respondents have failed to provide the residents of Palamakuwa with access to municipal services are substantiated.

- 68.2. The Second Respondent's refusal to provide municipal services to the residents of Palamakuwa is unlawful.

- 68.3. The First and Second Respondents have breached their constitutional and statutory obligations to deliver municipal services including water, sanitation, electricity and housing to the residents of Palamakuwa.

- 68.4. The First and Second Respondents' failure to provide water and sanitation to the residents of Palamakuwa constitutes a violation of the residents' right to water and basic sanitation in terms of section 27 of the Constitution, section 3 of the Water Services Act and Regulation 3 of the National Water Standards Regulations.

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<sup>12</sup> The Commission notes that the findings and directives contained herein shall not in any way limit the rights of affected persons to seek recourse before the courts.

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- 68.5. In terms of the Upgrading of Informal Settlements Programme contained in the National Housing Code 2009, it is the responsibility of the Municipality to consider whether living conditions in a settlement in the area of jurisdiction merit the submission of an application for assistance under the aforementioned Programme. If so, the relevant municipality should, *inter alia*, initiate, plan and formulate applications for projects relating to the *in situ* upgrading of informal settlements and request assistance from the provincial government on any of the matters concerned if the municipality lacks the capacity, resources or expertise. The First and Second Respondents herein failed to take a decision to make an application to the MEC for Cooperative Governance, Human Settlements and Traditional Affairs: North West Province for funding to upgrade the Palamakuwa.
- 68.6. In addition to the violation of the other rights as set out above, the exclusion of the residents of Palamakuwa from the scheme of service delivery has a severe impact on their dignity.

## **DIRECTIVES**

69. In view of the above findings, the Commission makes the following directives:
- 69.1. The First and Second Respondents are directed to forthwith to comply with Regulation 3 of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN R509 in GG 22355 of 8 June 2001) by -
- 69.1.1. Installing a sufficient number of water user connections to supply a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month to the residents of the Palamakuwa;
- 69.1.2. at a minimum flow rate of not less than 10 litres per minute;
- 69.1.3. within 200 metres of each of the residents' households; and

A handwritten signature in black ink, consisting of a stylized 'P' followed by a flourish.

- 69.1.4. effectively such that the residents are not without a water supply for more than seven full days in any year.
- 69.2. The First and Second Respondents are directed forthwith to comply with Regulation 2 of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN R509 in GG 22355 of 8 June 2001) by providing the residents of Palamakuwa with toilets which are safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against weather, well ventilated, keeps smells to the minimum and prevents the entry and exit of flies and other disease-carrying pests.
- 69.3. The First and Second Respondents are directed, within one month of the date of this Report, to submit a report to the Commission, setting out a time-bound plan on steps they have taken since the issuing of this Report, and steps they envisage taking in future, towards the adoption of a permanent solution to the provision of water, basic sanitation, electricity and housing to the residents of Palamakuwa.
- 69.4. In consultation with all relevant stakeholders, including the affected residents, the Second Respondent is directed within three months from the date of this Report to consider making an application to the MEC for Cooperative Governance, Human Settlements and Traditional Affairs: North West Province for funding to upgrade the Palamakuwa in terms of the Upgrading of Informal Settlements Programme. The Second Respondent to thereafter report to the Commission on its decision in this regard, together with proof of consultations with all relevant stakeholders and reason(s) for the decisions, together with all supporting documents.
- 69.5. The First and Second Respondents are directed to engage actively and meaningfully with the residents of Palamakuwa regarding the short, medium and long term measures to address the challenges relating to the provision of water, basic sanitation, electricity and housing to the residents.

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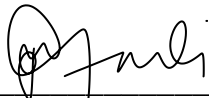
## **OPPORTUNITY TO COMMENT ON THE PROVISIONAL INVESTIGATIVE REPORT**

70. On 17 May 2022, a copy of the provisional investigative report was shared with the parties for their review and comments. In this regard, the parties were invited to submit their comments to the provisional investigative report in writing within twenty one (21) days of the report, being on or before 15 June 2022.
71. No comments were received from the parties, save for the telephone call received from Mr Johannes Senna on 20 May 2022, expressing his satisfaction with the contents of the provisional investigative report.
72. In view of the above, the Commission's analysis, findings and directives in the provisional investigative report have been confirmed in this report unaltered.

## **JUDICIAL REVIEW**

73. The Commission's directives herein are binding on the Respondent. Should any of the parties be aggrieved by the findings and directives of the Commission as contained herein, such a party is entitled to challenge same in court through the process of judicial review. An application for judicial review must be made within 180 days of the date on which all internal remedies were exhausted. Where there are no internal remedies available, the application must be made within 180 days of the date on which the applicant became aware of the decision (or could reasonably be expected to have become aware of the decision).

SIGNED AT Cape Town ON THIS THE 9 DAY OF November 2022.



**Ms Philile Ntuli**

**Commissioner - South African Human Rights Commission**