



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

File Ref No: FS/2012/0319

In the matter between:

**Lindiwe Mazibuko (DA Parliamentary Leader)**

**(On behalf of Brandfort Residents)**

**Complainant**

And

**Masiloyana Local Municipality**

**Respondent**

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### **REPORT**

*(In terms of Article 21 of the Complaints Handling Procedures of the SAHRC)*

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## **1. Introduction**

1.1. The South African Human Rights Commission (hereinafter referred to as the "**Commission**") is an institution established in terms of Section 181 of the

Constitution of the Republic of South Africa Act, 108 of 1996 (hereinafter referred to as "*the Constitution*").

1.2. The Commission is specifically required to:

1.2.1. Promote respect for human rights;

1.2.2. Promote the protection, development and attainment of human rights;  
and

1.2.3. Monitor and assess the observance of human rights in the Republic.

1.3. Section 184(2) of the Constitution empowers the Commission to *investigate and report on the observance of human rights* in the country.

1.4. The Human Rights Commission Act, 54 of 1994, provides the enabling framework for the powers of the Commission.

1.5. Section 9(6) of the Human Rights Commission, 1994 determines the procedure to be followed in conducting an investigation regarding the alleged violation of or threat to a fundamental right.

1.6. Article 3(b) of the South African Human Rights Commission's Complaints Handling Procedures, provides that *the Commission has the jurisdiction to conduct or cause to be conducted any investigation on its own accord*, into any alleged violation of or a threat to a fundamental right.

## 2. Parties

- 2.1. The Complainant is Lindiwe Mazibuko, a Member of Parliament, acting on behalf of residents of Brandfort, cited in her official capacity as the Parliamentary Leader of Democratic Alliance. (Hereinafter referred to as "**Complainant**")
- 2.2. The Respondent is Masilonyana Municipality, a Municipality established in terms of the provisions of the Local Government Municipal Structures Act 117 of 1998 with its Head Office situated at corner Theron & Le Roux Streets, Theunissen (hereinafter referred to as "**Respondent**").

## 3. Background to the Complaint

- 3.1. The Commission received a complaint from the DA Parliamentary Leader Ms. Lindiwe Mazibuko (MP)<sup>1</sup>. This complaint was filed with the SAHRC Head Office in Johannesburg on 2 April 2012 after the Free State office had received a media inquiry on the 28<sup>th</sup> of March 2012 regarding the DA press release.
- 3.2. The thrust of the complaint is that the Respondent has failed and/or refused and/or neglected to provide residents of the Municipality with adequate, clean and safe water supply.
- 3.3. This alleged inadequate supply of water to the residents of this Municipality also received widespread media coverage in the Free State.
- 3.4. The *Express* and *Volksblad* newspapers in particular, stated the following:

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<sup>1</sup> Member of Parliament

2.2.1 *"When water is available, it is generally not clean and it tastes bitter and smells bad. Every week for a whole day most of the time, there is no water and this has been going on for years but government is doing nothing about this..."*<sup>2</sup>

2.3.2 *"Dit is verskriklik. Vroue en meisies, wat eintlik op skool moet wees, stoot kruitwaens kilometres om 20 liter water te gaan haal. Dit neem amper 'n halwe dag."*<sup>3</sup> (**English translation:** "This is terrible. Women and girls, who really should be in school, pushing wheelbarrows miles to fetch 20 litres of water")

3.5. Further, a press statement<sup>4</sup> was released by the DA on 22 March 2012 in which the following allegations were contained:

2.5.1 *"Residence of the Joe Slovo informal settlement in Brandfort, have to walk 3.5km on a daily basis to collect water from the waterworks";*

2.5.2 *"The reason for this is the municipality's failure to provide clean running water to residence of the informal settlement and surrounding area";*

2.5.3 *"The Marantha Clinic was without a regular supply of water for four weeks, resulting in nurses being hesitant to treat patients as the nurses could not wash their hands";*

2.5.4 *"In 2011 the army were called upon to provide water to the community after it had been without water for a week";*

3.6. The aforementioned press statement cites the root causes of the problem as being the following:

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<sup>2</sup> Express newspaper; date unknown; Jabulani Dlamini

<sup>3</sup> Volksblad; Fri 23 March 2012; Pieter Steyn

*2.6.1 Firstly, no maintenance is being performed at the Kanaal pump station;*

*2.6.2 Secondly, there is a serious leakage of water from the canal to the purification plant;*

*2.6.3 Thirdly, the water treatment plant is poorly-maintained and operated;*

*2.6.4 Fourthly, the municipality does not manage the drinking water supply, and there have been indications of bacteria in the water, including e-coli.*

3.7. No documents evidencing the aforementioned allegations were provided by the Complainants.

#### **4. Preliminary Assessment**

The Provincial Office of the Free State made a preliminary assessment of the matter in light of the complaint received and the media reports. The preliminary assessment of the Provincial Office was:

- That the allegations constituted a *prima facie violation* of the human rights of the residents of the Joe Slovo informal settlement and the surrounding Brandfort area.
- In particular, the assessment determined that Sections 10, 24, 27(1)(a) & (b), and S28(2) of the Constitution had *prima facie* been violated;
- That the alleged violation *fell within the mandate and jurisdiction* of the South African Human Rights Commission;
- That the alleged *violation merited a full investigation* in terms of the Commissions Complaints Handling Procedures of the Commission.

## **5. Steps Taken by the Commission**

In investigating the allegations, the methodology used by the Free State Office in conducting the investigation, involved a combination of primary and secondary research namely:

### **5.1 Primary research** which included

- a) *Face to face interviews* with the Residents in the affected areas and interviews with the Respondent<sup>5</sup>;
- b) *Written requests* for feedback and reports from the Respondent<sup>6</sup>
- c) *Inspection in loco* of the area;<sup>7</sup>

### **5.2 Secondary research**, which included

- a) An examination of media reports and related articles;
- b) An analysis of relevant legislation and case law.

### **5.3 Inspection in loco:**

- a) On Friday, 30 March 2012, the Free State Provincial Office conducted an *inspection in loco* in Brandfort, an area falling under the jurisdiction of the

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<sup>5</sup> The interviews were conducted during the course of the inspection in loco on the 30<sup>th</sup> of March 2012

<sup>6</sup> 22 May 2012 Allegations letter directed to the Municipal Manger, Ms M Maphobole; 13 July 2012 follow up letter to Municipal Manager iro none compliance;

<sup>7</sup> 22 March 2011

Masilonyana Municipality (hereinafter referred to as the "**Respondent**") to inspect and investigate the allegations as filed with the Commission.

- b) The purpose of the inspection was to verify the allegations made in the media as well as by the complainant Ms. Mazibuko in the DA's press statement released on 22 March 2012.

## **6. Results of Investigation**

The following general observations were noted during the course of the investigation:

### **6.1 Face to Face Interviews:**

- (a) The investigation team conducted several interviews with local residents during its *inspection in loco* to verify the allegations as contained in the press release and the media reports.
- (b) During the interviews with the residents, some interviewees stated that it was approximately two years ago that the water shortages and contamination started;
- (c) Residents also told the investigators during the interview that they would experience water shortages for days at a time;
- (d) The interviewees informed the investigation team that some residents in the area experienced stomach problems due to the unclean water they have been exposed to;

- (e) One of the residence interviewed by the team alleged that on occasion when opening her tap to access water she was met with a slippery/slimy substance emanating from the tap. The team was also informed by the interviewee, that she has had on occasion being met with flesh-like substances, as if from an animal, being excreted from the tap on opening it. The interviewee also experienced illness allegedly related to the consumption of the contaminated water.
- (f) It was also noted during the interviews that residence allege that at some points when they have access to water they are met with water containing dead flies and mosquitoes, which when collected in a bucket smell foul. Residence advised during the interviews that when they collected water in a bucket from the taps the dirty would settle at the bottom of the bucket and the water would emit a bad smell.

## **6.2 Interview with Respondent**

- (g) On Friday, 12 October 2012, the Free State Provincial Office met with the Municipality Acting Technical Director regarding the complaint received.
- (h) The following issues were discussed and the municipality were requested to provide a report in respect of these discussions:
- Background on water supply;
  - Assessment of municipality's water and sanitation delivery;



- Current status and challenges pertaining to supply of uncontaminated water;
- IDP for 2012/13;
- Water supply and infrastructure development plans;
- Copy of short, medium and long term scenarios presentation;
- Copy of blue and green status report;
- Capacity (technical and institutional expertise) and budget constraints;
- Projected timeframes on elimination of contaminated water supply;
- Environmental and health impact studies on the supply of contaminated water;
- Evidence of community participation and continued engagement regarding water supply to the residents of Brandfort (minutes of municipality's engagements with affected residents)

No report has to date been received from the municipality in respect of the above.

## **7 Respondent's Response to Allegations**

In response to the allegations of human rights violations, the Respondent responded as follows:

- (a) The Commission sent a formal letter requesting the Municipality to respond to the alleged violation. The Respondent did not provide the SAHRC with a comprehensive report within the stipulated time.
- (b) The Commission received a response from the Respondent on 23 July 2012, informing us that they are experiencing shortage of water due to old bulk infrastructure water supply, but that they had since sought funding through Public Grants.
- (c) The Respondent further explained that R8 million had been allocated to the Municipality by Department of Water Affairs (DWA) to upgrade the raw water bulk line in Brandfort.
- (d) They also indicated that the first phase of the project is in the planning stage, and that it will be completed by end of March 2013, which would resolve the capacity problem.
- (e) The Respondent also indicated that they had implemented phase 1 of the Brandfort water treatment works upgrading by R13 058 531 in 2011/2012 financial year through Municipal Infrastructure Grant ('MIG'), and the project was to increase the capacity and production of water in order to meet the increasing water demand. The Respondent alleges that they have applied for approximately R20 million for phase 2 of the project.

- (f) As for water quality, the Respondent alleges it had been trying with all resources available to provide clean water and that their latest results of water samples have proven that the water is drinkable.
- (g) The Respondent further mentioned that it had held a Water Summit in Brandtfort on the 23 and 24 of May 2012, and that all the relevant stakeholders including COGTA, DWA, were invited to come up with strategic and action plans on how to resolve the water crisis around Masilonyana. Upon the receipt of the response, the Commission requested the copy of the report of the Water Summit that the Respondent referred to.<sup>8</sup>
- (h) The Respondent alleges that some of the challenges that they had emanated from management, lack of monitoring of processes, lack of maintenance of machinery, reservoirs were not cleaned regularly and some were not covered.
- (i) In terms of Water Supply and Infrastructure Development, the Respondent indicated that they had challenges of funding, insufficient plant capacity, incompetent contractors and consultant, cable and pump theft, and also negligence by the community and the Municipal officers.
- (j) According to the report<sup>9</sup> from the Respondent, training and development of operators and officials, and the community development workshops which include Councillors, Ward Committee members, CDW's and NGO's concerning Water Sector Institutional Development and capacity building was advised.
- (k) The Respondent further mentioned that it had planned to recruit the local youth and other graduates that have potential to be trained as process controllers, and should also ensure that as a way forward, all the persons that are recruited or allowed to work at the treatment plants meet the necessary requirements of the Blue Drop.

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<sup>8</sup> 23 July 2012

<sup>9</sup> Respondent's report to the Commission

## **8 Applicable Legal Framework**

### **(a) Constitutional Framework**

#### **8.1 Section 1 (a) of the Constitution Act 108, 1996**

Section 1(a) of the Constitution entrenches respect for human dignity, the achievement of equality and the advancement of human rights and freedoms. These are the foundational values of the Constitution and therefore form the bedrock upon which the Constitution is based.

#### **8.2 Section 7(2) of the Constitution**

This section requires the State, in this instance, the Respondent, to respect, protect, promote and fulfill all fundamental rights.

#### **8.3 Section 10: The Right to Human Dignity**

Section 10 of the Constitution provides that:

*"Everyone has inherent dignity and the right to have their dignity respected and protected."*

## **8.4 Section 24: The Right to a Clean Environment**

Section 24 of the Constitution provides that:

*"Everyone has the right –*

*(a) to an environment that is not harmful to their health or well-being; and*

*(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –*

*(i) Prevent pollution and ecological degradation*

*(ii) Promote conservation; and*

*(iii) Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."*

## **8.5 Section 27 (1)(a) & (b)**

Section 27 of the Constitution provides that:

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

*(a) health care services, including reproductive health care;*

*(b) sufficient...water..;*

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

## **(b) International Legal Framework**

### *Universal Declaration of Human Rights*

*Article 25* of the UDHR provides:

*“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...”*

### International Convention on Economic, Social and Cultural Rights

*Article 11* of the ICESCR states that:

*“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”*

*The ICESCR further states in Article 12*

*"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken . . . to achieve the full realization of this right shall include those necessary for. . . (3) The prevention, treatment and control of epidemic, endemic, occupational and other diseases."*

## **(c) Regional Legal Instruments**

### ***African Charter on Human and People's Rights***

*The African Charter on Human and Peoples' Rights (African Charter) does not explicitly mention the right to water. Article 16(2) obliges state parties to the African Charter to take the necessary measures to protect the health of their people. As with the above instruments, the right to water must be deduced from the express provision of other rights such as health, the realization of which cannot be achieved without providing water and basic sanitation services.<sup>10</sup>*

### ***African Charter on the Rights and Welfare of the Child***

*"The African Charter on the Rights and Welfare of the Child (Charter on Welfare of the Child) explicitly includes the right to water. First, the Charter on Welfare of the Child provides that every child has the right "to enjoy the best state of physical, mental and spiritual health."*

In more explicit terms, the Charter on Welfare of the Child states that:

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<sup>10</sup> **Access to sufficient water in South Africa: How far have we come?;Siyambonga Heleba** ; Research Paper, 2009. Research, Community Law Centre, University of the Western Cape. [www.communitylawcentre.org.za](http://www.communitylawcentre.org.za)

*States parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures to ensure the provision of adequate nutrition and safe drinking water.*

## **(d) Domestic Legal Framework**

### **8.1 The Water Services Act<sup>11</sup>**

8.1.1 Section 3 of the Water Services Act states 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.*

8.1.2 Section 5 of the Water Services Act states that:

*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.*

8.1.3 The Water Services Act defines basic sanitation as:

*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.*

8.1.4 Regulation 3 of the Compulsory National Standards states that the minimum standard for basic water supply services is –

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<sup>11</sup> 108 of 1997



(a) *the provision of appropriate education 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.*

8.1.5 And may be obtained for *"the acquisition of land, where the land to be developed is in private ownership, through negotiation or expropriation."*

8.1.6 The Programme makes provision for a comprehensive, fully costed, four-phase process for the upgrading of informal settlements. The four-phase process –

- Phase 1: The Application
- Phase 2: Project Initiation
- Phase 3: Project Implementation
- Phase 4: Housing Consolidation

8.1.7 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."*

## **8.2 The Municipal Systems Act<sup>12</sup>**

8.2.1 The definition of basic municipal services according to the Act <sup>13</sup>is:

*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.*

8.2.2 Section 73(1) of the Act states that 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.

## **8.3 The Development Facilitation Act<sup>14</sup>**

8.3.1 The Development Facilitation Act (“DFA”) was introduced to fast track low-income housing developments. It is one of a few routes available for land use planning and development in South Africa.

8.3.2 This Act creates two separate bodies responsible for land use planning in the same area.

## **8.4 Municipal Finance Management Act<sup>15</sup>**

8.4.1 In considering the obligations of the Respondent with regard to its budgeting and finance processes, the Commission paid close consideration to Chapter Four

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<sup>12</sup> 32 of 2000

<sup>13</sup> Chapter 8 of the Municipal Systems Act

<sup>14</sup> 67 of 1995

<sup>15</sup> Act 56 of 2003

of the Municipal Finance Management Act (hereinafter referred to as the “MFMA”). Section 28(1) of the MFMA is of particular relevance in its directive that municipalities may revise and approve their annual budget through an adjustments budget.

8.4.2 Section 27(5) is also relevant in that it permits provincial executives to intervene in terms of Section 139 of the Constitution if a municipality cannot or does not comply with the provisions of Chapter four of the MFMA.

## **(e) Policy Framework**

### **8.5 White Paper on Water Supply and Sanitation Policy<sup>16</sup>**

8.5.1 The White Paper on Water Supply and sanitation Policy defines adequate sanitation as follows:

*The immediate priority is to provide sanitation services to all which meet basic health and functional requirements including the protection of the quality of both surface and underground water. Higher levels of service will only be achievable if incomes in poor communities rise substantially. Conventional waterborne sanitation is in most cases not a realistic, viable and achievable minimum service standard in the short term due to its cost. The Ventilated Improved Pit (VIP), if constructed to agreed standards and maintained properly, provides an appropriate and adequate basic level of sanitation service.*

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<sup>16</sup> Department of Water Affairs and Forestry (1994)

## **8.6 National Sanitation Policy<sup>17</sup>**

8.6.1 The National Sanitation Policy defines sanitation as “the principles and practices relating to the collection, removal or disposal of human excreta, refuse and waste water, as they impact on users, operators and the environment.

8.6.2 The policy lists the main types of sanitation systems used in South Africa:

- Traditional unimproved pits;
- Bucket toilets;
- Portable chemical toilets;
- Ventilated Improved Pit toilets;
- Low flow on-site sanitation (LOFLOS);
- Septic tanks and soakaways;
- Septic tank effluent drainage (solids-free sewerage) systems; and
- Full water-borne sewerage.

## **8.7 White Paper on Basic Household Sanitation<sup>18</sup>**

8.7.1 According to the 2001 White Paper on Basic Household Sanitation, the Department of Water Affairs and Forestry had the following responsibilities, together with other national role-players:

- Developing norms and standards for the provision of sanitation;
- Providing support to the provinces and municipalities in the planning and implementation of sanitation improvement programmes;

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<sup>17</sup> Department of Water Affairs and Forestry (1996)

<sup>18</sup> Department of Water Affairs and Forestry (2001)

- Co-ordinating the development by the municipalities of their Water Services Development Plans as a component of their Integrated Development Plan;
- Monitoring the outcome of such programmes and maintain a database of sanitation requirements and interventions;
- Providing capacity building support to provinces and municipalities in matters relating to sanitation;
- Providing financial support to sanitation programmes until such time as these are consolidated into a single programme; and
- Undertaking pilot projects in programmes of low cost sanitation

## **8.8 The Strategic Framework for Water Services<sup>19</sup>**

8.8.1 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 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>20</sup>*

8.8.2 It further 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*

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<sup>19</sup> Department of Water Affairs and Forestry (2003)

<sup>20</sup> Ibid

*necessary, and the communication of good sanitation, hygiene and related practices.*

## **8.9 Free Basic Sanitation Implementation Strategy<sup>21</sup>**

8.9.1 According to this policy, municipalities are required to ensure that every household has access to basic sanitation, as per the Constitution, Water Services Act and the Municipal Systems Act. It acknowledges that there is a “right of access to a basic level of sanitation service” enshrined in the Constitution.

### **(d) Case Law**

The Constitution entreats the Commission to consider relevant *case law* in determining the nature and scope of a human right:

## **8.10 NM v Smith**

8.10.1 In **NM v Smith** (*Freedom of Expression Institute as Amicus Curiae*)

**2007 (5) SA 250 (CC)**<sup>22</sup> the Court held:

*"[49] A constant refrain in our Constitution is that our society aims at the restoration of human dignity because of the many years of oppression and disadvantage. While it is not suggested that there is a hierarchy of rights it cannot be gainsaid that dignity occupies a central position. After all, that was the whole aim of the struggle against apartheid - the restoration of human dignity, equality and freedom.*

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<sup>21</sup> Department of Water Affairs and Forestry (April 2009)

<sup>22</sup> at paragraph [49]-[51]

*[50] If human dignity is regarded as foundational in our Constitution, a corollary thereto must be that it must be jealously guarded and protected. As this Court held in Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others:*

*'The value of dignity in our constitutional framework cannot therefore be doubted. The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights. This Court has already acknowledged the importance of the constitutional value of dignity in interpreting rights such as the right to equality, the right not to be punished in a cruel, inhuman or degrading way, and the right to life. Human dignity is also a constitutional value that is of central significance in the limitations analysis. Section 10, however, makes it plain that dignity is not only a value fundamental to our Constitution, it is a justiciable and enforceable right that must be respected and protected.'*

The former Constitutional Court judge, Albie Sachs, in arguing that the right to dignity is of central significance, states:

*"Respect for human dignity is the unifying constitutional principle that is not only particularly diverse, but extremely unequal. This implies that the Bill of Rights exists not to simply ensure that the 'haves' continue to have but to help create conditions in which the basic dignity of the 'have nots' can be secured".<sup>23</sup>*

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<sup>23</sup> Sachs, A. (2009). *The Strange Alchemy of Life and Law*. Oxford University Press

8.10.2 In fact the Court has repeatedly held that the State, including municipalities, is obliged to treat vulnerable people with care and concern.<sup>24</sup>

8.10.3 The role of local government, as stated in the Constitution is, among other things, *"to ensure the provision of services to communities in a sustainable manner"*<sup>25</sup> and *"to promote a safe and healthy environment"*<sup>26</sup>. A municipality is obliged to try to achieve these objectives. Section 73(1)(c) of the Local Government: Municipal Systems Act<sup>27</sup>, echoes the constitutional precepts and obliges a municipality to provide all members of communities with *"the minimum level of basic municipal services"*.

8.10.4 Such minimum level of service would include the provision of water which is safe and clean for human consumption.

## **8.11 Joseph Leon & Others v City of Johannesburg**

8.11.1 **In Joseph case,**<sup>28</sup> the Constitutional Court read sections 152 and 153 of the Constitution together with provisions contained in the Municipal Systems Act and the Housing Act, creating a public law "right to basic municipal services" and outlining the duty on local government to provide these services.

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<sup>24</sup> Joe Slovo at para [76]

<sup>25</sup> Section 152(1)(b) of the Constitution

<sup>26</sup> Section 152(1)(d) of the Constitution

<sup>27</sup> Act 32 of 2000

<sup>28</sup> See Leon Joseph and Others v City of Johannesburg and Others [2009] ZACC 30



## **9 Analysis of the Investigation Findings**

- 9.1 The Respondent is alleged to have violated the right to human dignity, a clean environment and access to sufficient and clean water and health of residents by its failure to supply sufficient water and thereby leaving residents with no alternative but to take arduous 3 km walks to fetch partially purified water.
- 9.2 The inspection in loco of the affected areas in the township undertaken by the Commission revealed that the media reports were indeed accurate. Interviews conducted with residents further confirmed allegations made by the Complainant.
- 9.3 Section 27(1) (b) of the Constitution provides that “everyone has the right to have access to sufficient water”, and section 27 (2) obliges the State to “take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” of everyone’s right of access to sufficient water. The above sections are particularly relevant in the context of the present complaint.
- 9.4 Information gleaned from the investigation indicates that the municipality did not properly manage and protect its water resources due to poor maintenance of infrastructure thereby failing to secure sufficient water that is not harmful to human health or well-being.

- 9.5 Respondent contends that the water and sanitation challenges in the Brandfort townships stem from the lack of fulfilment of functions in respect of roles and responsibilities by the Water Affairs and Cooperative Governance and Traditional Affairs.<sup>29</sup>
- 9.6 In light of the above, it is important to highlight that, although municipalities have the responsibility and authority to administer water and sanitation services, all spheres of government have a duty, within their physical and financial capabilities, to work towards the objective<sup>30</sup> of ensuring that access to sufficient water as enshrined in the Constitution is progressively realized.
- 9.7 Further to above, it should be noted that the primary responsibility for providing water and sanitation services in South Africa lies with municipalities, in terms of Part B of Schedule 4 of the Constitution
- 9.8 The Respondent indicated in a brief report to the Commission that tests concluded that the current water supply in Brandfort is clean and drinkable; the rests of these tests were not made available to the Commission nor were the results independently verified.
- 9.9 The Respondent failed to discharge its primary responsibility for provision water services to the local community.

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<sup>29</sup> Respondent has not provided the Commission with information regarding interaction with the relevant Provincial government departments.

<sup>30</sup> Preamble of the Water Services Act

- 9.10 The summit conducted by the DWA and the Respondent that enabled open platform discussions by the community on issues pertaining to water, to a certain level sought to ensure that there was community participation and better understanding of challenges relating to access to water.
- 9.11 The Respondent has to date not provided adequate information in respect of other steps that it has taken to improve access to basic water supply. There is an indication that sufficient duty and diligence has not been practiced by the Municipality in carrying out its duty to ensure that the crisis could have been averted.

## **10. Finding**

On the basis of the analysis carried out in the afore-going section, the finding of the SAHRC on the complaint lodged is as follows:

### *10.1 Right to water*

The SAHRC finds that the Respondent has violated the rights of the residents in that it has failed and/or neglected to take reasonable steps to provide the residents with interim supply of clean and safe water for domestic purposes;

### *10.2 Right to clean environment*

The SAHRC finds that in failing to notify the Residents about the possible contamination, and not providing and implementing sufficient emergency relief the Respondent has violated the rights of the residents in that it has failed and/or neglected to take reasonable steps to provide the residents with an adequate supply of clean and safe water;

### *10.3 Right to human dignity*

The SAHRC finds that the Respondent by facilitating the provision of emergency relief such as portable water which resulted in residence having to walk 3km every day alternatively be left without water to bath, to cook or for sanitation purposes, has violated the right of the residents to human dignity.

### *10.2 Right of access to information*

The lack of effective communication between the Respondent and the community and the inability to disseminate information about plans to ameliorate their access to basic water services and general lack of information upholds the complaint of a violation of the right to access to information.

## **11.Recommendations**

In terms of the Human Rights Commission Act, the Commission is entitled to *"make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution."*

In view of the findings set out in Section 10 above, the Commission recommends the following:

- 11.1 The Respondent to furnish it with an operations and maintenance plan required to run water supply in an efficient, effective and sustainable manner to address access to basic water challenges facing residents of the Municipality, especially women, children and other vulnerable groups within a period of three (3) months from the date of this finding;
- 11.2 The Respondent is required to enhance community participation and demonstrate some level of transparency in its governance by convening regular feedback sessions every three (3) months relating to the supply of water to residents. A copy of the minutes to be submitted to the Commission.
- 11.3 The Department of Water Affairs to furnish the Commission with a report on capacity building support provided to the Respondent relating to supply of uncontaminated water to residents of the Municipality within six (6) months from the date of this finding;

11.4 The Department of Water Affairs is further directed to continue to monitor the water supply and infrastructural improvement programmes of the Respondent and to take regular water samples for testing to ensure supply of safe and clean water.

## **12. APPEAL**

You have the **right to lodge an appeal** against this decision. Should you wish to lodge such an appeal, you are hereby advised that you must do so in writing **within 45 days of the date of receipt of this finding**, by writing to:

**The Chairperson, Adv M.L. Mushwana  
South African Human Rights Commission  
Private Bag X2700  
Houghton, 2041**

SIGNED IN \_\_\_\_\_ THE \_\_\_\_\_ DAY OF

\_\_\_\_\_ **2013.**

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Deputy Chairperson

Commissioner P. Govender

**South African Human Rights Commission**

uncontaminated water to residents of the Municipality within six (6) months from the date of this finding;

- 11.4 The Department of Water Affairs is further directed to continue to monitor the water supply and infrastructural improvement programmes of the Respondent and to take regular water samples for testing to ensure supply of safe and clean water.

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SIGNED IN \_\_\_\_\_ THE \_\_\_\_\_ DAY OF



10 JUNE

2013.



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Deputy Chairperson

Commissioner P. Govender

**South African Human Rights Commission**