

SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

WC/2324/0004

In the complaint of:

Mr Dirk Biegenaar

First Complainant

Mr Michael Swartbooi

Second Complainant

against

Stormvlei Farm

First Respondent

Overberg District Municipality

Second Respondent

Swellendam Local Municipality

Third Respondent

Overberg Water Board

Fourth Respondent

FINAL HEARING REPORT

1. INTRODUCTION

- 1.1. The South African Human Rights Commission (Commission/SAHRC) is a state institution, established by S184 of the Constitution of the Republic of South Africa, 1996 (Constitution), as one of the institutions which support constitutional democracy.
- 1.2. The Commission is mandated by S184 (1) of the Constitution, to promote respect for human rights, promote the development, protection and

attainment of human rights, monitor and assess the observance of human rights.

- 1.3. S184 (2) (a) and (b) of the Constitution further invests the Commission with the powers to conduct investigations of alleged human rights violations and report on same. In addition, the Commission is mandated to take steps to secure appropriate redress where it finds rights have been violated.
- 1.4. The South African Human Rights Commission Act, 40 of 2013 (“SAHRC Act”) further affords the Commission specific powers to enable it to carry out investigations of human rights violations.
- 1.5. “Investigation” is defined in the SAHRC Act as an investigation as contemplated in section 15.¹ Section 15 gives practical effect to the powers and obligations set out in section 13(3) and allows for the Commission to request the submission of documents and the appearance of private persons, private organisations, entities and government executives to appear before it.
- 1.6. Section 15 (1) (c) and (d) of the South African Human Rights Commission’s Act, 40 of 2013 as amended (“**the Act**”), provide that:

“Pursuant to the provisions of section 13 (3) the Commission may, in order to enable it to exercise its powers and perform its functions -

- (a) ...*
- (b) ...*
- (c) Require any person by notice in writing...in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under control of any such person and which may be necessary in connection with that investigation...and*
- (d)administer an oath or take an affirmation from any person referred to in paragraph (c) ... and question him or her under oath or affirmation in*

¹ Section 15(1)-(8) of the SAHRC Act.

connection with any matter which may be necessary in connection with that investigation.

- 1.7. The Commission, through section 15 above, therefore held a hearing into this matter to consider the submissions of the parties and affected persons. The hearing began on 22 May 2023 at the Commission's offices and the Commission continued thereafter to gather further evidence and inputs from parties and stakeholders as set out further in the report, to enable it make appropriate findings and recommendations herein.
- 1.8. The hearing was chaired by Mr Matthew du Plessis, Senior Legal Officer of the Western Cape Provincial Office, to whom this authority was conferred by the Commission in terms of section 12 of the SAHRC Act. Mr Du Plessis appointed Ms Bahia Sterris, a fellow Senior Legal Officer, as a member of the hearing panel.
- 1.9. As regards the Commission's investigative reports, including this report, and the findings and recommendations² made in terms thereof, section 18 empowers the Commission to:

*"in writing, make known to any person, the head of the organisation or institution, or the executive authority of any national or provincial department, any finding ... or recommendation in respect of a matter investigated"*³

And it also requires any person affected by the findings and recommendations made by the Commission to:

² In the making of findings and making recommendations, section 13(1)(a) empowers the Commission to:

(i) *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 human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of such rights;*

...

(iii) *request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to human rights"*

Section 13(4) also requires that all organs of state "afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its functions.

³ Section 18(3) of the SAHRC Act.

“within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether his or her organisation, institution or department intends taking any steps to give effect to such finding or recommendation, if any such steps are required.”

2. THE PARTIES

- 2.1. The Complainants are Mr Dirk Biegenaar and Mr Michael Swartbooi, both private individuals and cultural representative workers in the Stormvlei community, working to assist farm dwellers in the Western Cape. Their complaint is lodged on behalf of a community of approximately 45 farm dwellers living on the Stormvlei dairy farm in Swellendam, Western Cape.
- 2.2. The First Respondent is the Stormvlei farm, represented by its owner, Mr Sven Thomson.
- 2.3. The Second Respondent is the Overberg District Municipality
- 2.4. The Third Respondent is the Swellendam Local Municipality.
- 2.5. The Fourth Respondent is the Overberg Water Board.
- 2.6. The Second to Fourth Respondents were not cited in the complaint forming the basis of the hearing. However, given the background of the matter, that became clarified during the hearing, the Commission made contact of its own accord with these authorities and have included them in this report for purposes of noting the Commission's recommendations herein. The Second to Fourth Respondents were furthermore provided with an opportunity to give inputs and responses to the Provisional Report in this matter and did not raise any objections to the contents of the report.

3. THE COMPLAINTS RECEIVED

3.1. Introduction

The South African Human Rights Commission (SAHRC) conducted an investigative hearing in response to complaints received from Mr Dirk Biegenaar and Mr Michael Swartbooi on 17 March 2023, representing a small community living on the Stormvlei dairy farm. The community raised concerns about access to essential services, including water, sanitation, and municipal services. The complainants alleged violations of human rights based on inadequate provision of these fundamental necessities.

3.2. Allegations Raised by the Complainants

The complainants outlined several grievances, highlighting issues related to water access, sanitation, and access to graveyards. The following are the key allegations made:

3.2.1. Water Access

The community previously relied on water from a nearby river, despite its unsuitability for consumption due to its dirty nature. Meetings were held with the Swellendam Local Municipality and farm owners to address this issue. The negotiations were not successful in the end and municipal water supply was not achieved. Mr Thomson, the owner of the portion of the farm in question, initially offered to provide access to clean water using pumps on his property. However, challenges arose when the water remained unclean and the community refused to pay for it. The complainants alleged that Mr Thomson introduced a sterilisation system, making the water accessible only to those who could afford it. Since 2019, the water supply has been disconnected, leaving the community without access to clean water.

3.2.2. Sanitation

The community lacks access to proper sanitation facilities, resulting in the use of bushes for relieving themselves. Despite the presence of old toilets on the

premises, these facilities remain unused due to the absence of functioning water sources. The complainants suggested that access to water would potentially address this issue.

3.2.3. Locked Graveyard Gates

The community raised concerns about the locked gates of the graveyard on the farm. This action prevented the community from visiting the graves of their deceased loved ones, impacting their ability to pay respects and maintain connections with their heritage.

3.3. Response from the Respondent (Farm Owner)

In response to these allegations, the Farm Owner, Mr Sven Thomson, presented a counter-narrative, disputing several aspects of the complaints. The Farm Owner's perspective can be summarised as follows:

3.3.1. Allegations Regarding Complainants

Mr Thomson disputed the relevance of certain complainants, particularly Mr Swartbooi, who allegedly engaged in intrusive inquiries and intimidating behaviour toward his family. He asserted that Mr Swartbooi's presence was unwarranted and led to police intervention to have Mr Swartbooi removed from the property.⁴

3.3.2. Water Supply and Infrastructure

Addressing the water supply, Mr Thomson detailed the suspension of water access, which was being provided by a reservoir that he used for agriculture, due to vandalism and the safety concerns of his livestock. Furthermore, in 2021, floods damaged the water reservoir system. He stated that although he may wish to restore the reservoir system, it is not tenable for him to do so given the costs involved and the fact that if he did so, the issues of vandalism and damage to his livestock would resume.

⁴ Mr Thomson seemed, however, not to appreciate that Mr Swartbooi, as a cultural representative worker in the Stormvlei Community, was lodging his complaint on behalf of the affected farm dwellers in a supportive fashion.

3.3.3. Access to Water for Complainants

Mr Thomson contested claims of lack of water access, pointing out that the adjacent Doornkloof farm provides running water in proximity to complainants' residences. He noted that the presence of water is accessible within walking distance and that Mr Biegenaar's residence is not on his property.

3.3.4. Graveyard Access and Locking Gates

Regarding graveyard access, Mr Thomson explained the existing agreement with Joshua Christian Ministries for graveyard use and maintenance. He justified the locked gates due to concerns of theft and criminal activity, citing his constitutional right to protect his property and family. Mr Thomson alleged that the farm dwellers have not made any requests to him to visit their deceased family members' graves.

3.3.5. Governmental Responsibility and Meeting with Municipality

Mr Thomson emphasised that Stormsvlei farm lacks the status of a water services authority or provider, asserting that water and sanitation are the responsibilities of local government entities. He expressed intentions to meet with the Swellendam Local Municipality to address the situation.

3.3.6. Final Remarks

Mr Thomson concluded by expressing empathy for the complainants' challenges and willingness to cooperate within reasonable bounds. He underlined that housing and services fall under the purview of employers or local government and questioned the accuracy and intentions of the complainants' claims.

3.4. The perspective of local government

3.4.1. The Commission engaged with the Overberg District Municipality, the Swellendam Local Municipality, and the Overberg Water Board during its investigation.

- 3.4.2. Important context in this regard is that the Complainants did not lodge their complaints against the aforementioned local authorities, but rather against the private landowner in question, and these local authorities were thus not *initially* cited as respondents in this investigation but were rather engaged as stakeholders identified by the Commission during its deliberations. These authorities were thereafter cited as Respondents, seeing as the Commission's investigation herein, informed in part by the information helpfully provided by the Second to Fourth Respondents, led to the Commission finding it appropriate to make recommendations that require the assistance of these authorities to implement.
- 3.4.3. Stormvlei falls within the jurisdiction of the Swellendam Local Municipality, which is a part of the Overberg District Municipality. Neither of these municipalities, however, are the water services providers directly responsible for water provision in the particular area in question. This, according to Mr Keith Stuurman (Director of Community Services at Swellendam Local Municipality) and Mr Erik de Bondt (Area Manager of Municipal Health Services from the Overberg District Municipality), is the Overberg Water Board and specifically the Ruensveld East Water Scheme that it administers.
- 3.4.4. The Overberg Water Board is a National Government Business Enterprise as defined in Schedule 3B of the Public Finance Management Act 1 of 1999.
- 3.4.5. In the Commission's engagements with the Overberg Water Board, it became clear that the current management, to their knowledge at least, had not actually been approached by any party regarding the need for water provision to Stormvlei, but they were aware that they did not have any water infrastructure currently in the Stormvlei area.

4. Applicable Legal Framework

4.1. Constitutional Socio-Economic Rights

Section 27(1)(b) of the Constitution guarantees everyone the right to access sufficient food and water. This right, however, is qualified by Section 27(2),

mandating the State to adopt progressive measures, within its available resources, to achieve the realisation of socio-economic rights. Such rights, including water and sanitation, form integral components of individuals' survival and self-actualisation.

4.2. **Municipal Functions and Local Government**

Local government, as enshrined in Section 152(1)(b) of the Constitution, is entrusted with ensuring sustainable service provision to communities. Section 153(a) mandates municipalities to prioritise basic community needs and promote social and economic development.

4.3. **Rights to Water and Sanitation**

The Water Services Act

4.3.1. Section 3 of the Water Services Act 108 of 1997 (“WSA”) solidifies the right of access to basic water supply and sanitation by stating that:

“

- (1) *Everyone has a right of access to basic water supply and basic sanitation.*
- (2) *Every water services institution must take reasonable measures to realise these rights.*
- (3) *Every water services authority must, in its water services development plan, provide for measures to realise these rights.*
- (4) *The rights mentioned in this section are subject to the limitations contained in this Act.”*

Definitions in the NWA

4.3.2. In the context of this report, it is imperative to reference the relevant legal provisions that underpin the standards for water services, basic sanitation, and basic water supply. These legal definitions and provisions hold significant importance in shaping the recommendations for ensuring the rights of the affected community. Below are listed relevant definitions drawn from Section 1 of the NWA:

4.3.2.1. **Water Services Authority:** A water services authority is defined to mean 'any municipality, including a district or rural council as defined in the Local Government Transition Act 209 of 1993, responsible for ensuring access to water services'.

4.3.2.2. **Basic Sanitation:** Basic sanitation is defined to mean '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'.

4.3.2.3. **Basic Water Supply:** Basic water supply is defined to mean 'the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene'.

Ministerial Standards for Water Provision

4.3.3. Additionally, the relevant statutory provision regarding the Minister's power to prescribe compulsory national standards and measures for water services is Section 9(1)(a) of the Water Services Act (WSA). This section empowers the Minister to establish these standards for water provision.

4.3.4. On 8 June 2001, the Minister exercised this power by publishing Regulations relating to compulsory national standards and measures for water, as per the provisions of the WSA. These regulations set out the specific minimum standards that must be upheld for basic sanitation and basic water supply services. The relevant regulations are as follows:

4.3.4.1. **Basic Sanitation Regulation (Regulation 2):** The minimum standard for basic sanitation service is defined as follows: (a) The provision of appropriate health and hygiene education. (b) A toilet which fulfils specific criteria, including being safe, reliable, environmentally sound, easy to clean, provides privacy and protection against the weather, is well ventilated, minimises odors, and prevents the entry and exit of disease-carrying pests.

4.3.4.2. **Basic Water Supply Regulation (Regulation 3(b)):** The minimum standard for basic water supply services is defined as follows:

- a) A minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month.
- b) This water supply should maintain a minimum flow rate of not less than 10 litres per minute.
- c) The water source should be within 200 meters of a household.
- d) The water supply's effectiveness should ensure that no consumer is without water for more than seven full days in any given year.

4.3.5. Water services authorities are mandated to realise the rights to water and sanitation reasonably and in line with the aforementioned compulsory national standards, and are required to incorporate measures for realising these rights within their development plans.

4.3.6. Furthermore, the WSA's provisions elaborate on the detailed duties of water services providers. Section 11(1) of the Act explicitly states that every water services authority must progressively ensure efficient, affordable, economical, and sustainable access to water services. However, section 11(2) states that this duty is tempered by considerations such as:

“

- (a) *the availability of resources*
- (b) *the need for an equitable allocation of resources to all consumers and potential consumers within the authority's area of jurisdiction;*
- (c) *the need to regulate access to water services in an equitable way;*
- (d) *the duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;*
- (e) *the duty to conserve water resources;*
- (f) *the nature, topography, zoning and situation of the land in question; and*
- (g) *the right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.'*

The Municipal Systems Act

- 4.3.7. Section 12(1)(a) and (b) of the Municipal Systems Act 32 of 2000 obligates municipalities designated as water service authorities to formulate water service development plans (WSDPs) as integral components of the Integrated Development Plans (IDPs) mandated by the Act. Further specifications regarding the contents of a WSDP are outlined in Section 13. Additionally, Section 14 mandates the authority to take reasonable measures to notify consumers, potential consumers, industrial users, and water services institutions within its jurisdiction about the draft WSDP and solicit comments within a reasonable timeframe.
- 4.3.8. In accordance with Section 4(2)(c) and (e) of the Municipal Systems Act, a municipal council is mandated to involve, engage, and consult with local community members. Section 5(1) of the Act explicitly guarantees communities the reciprocal right to meaningful engagement, participation, and communication. Moreover, Section 4(2)(j) places upon the municipality the responsibility to contribute, alongside other state entities, to the progressive realisation of fundamental rights enshrined in sections 24, 25, 26, 27, and 29 of the Constitution. The duties specified in Sections 4(2)(f) and 4(2)(d) of the Act require the municipality to provide equitable access to entitled municipal services for local community members and ensure that these services are delivered in a financially and environmentally sustainable manner. Essentially, these obligations align with the responsibilities imposed on the State by the Constitution and the Water Services Act.
- 4.3.9. Section 73(1) of the Municipal Systems Act outlines municipalities' commitments to uphold the Constitution's provisions. It mandates all municipalities to accord precedence to the fundamental needs of the local community and guarantee access to at least the minimum standard of basic municipal services for all community members. According to the Act's definition in Section 1, basic municipal services refer to services essential to maintaining an acceptable and reasonable quality of life, whose absence could jeopardise public health, safety, or the environment. Thus, municipalities

possess a constitutional duty to focus on delivering these core services and cannot prioritise other services at the detriment of basic ones.

- 4.3.10. Of particular importance to the above is the decision of the Pietermaritzburg High Court in *Mshengu v Msunduzi Local Municipality*⁵. The High Court held that section 73(1) of the Municipal Systems Act 32 of 2000 rendered municipalities responsible to ensure the provision of municipal services (water and sanitation included) whether they are water services providers or not. The court explained its reasoning as follows:

*Mr Moodley on behalf of the second respondent [Umshwathi Local Municipality], persisted in the second respondent's contention that it is not a water services authority and has no power to provide bulk water and sanitation to the affected communities within its area of jurisdiction. It seems to me that this contention overlooks the provisions of s 73(1)(c) of the Systems Act which obliges the second respondent to give effect to the provisions of the Constitution and to ensure that all members of the local community have access to at least the minimum level of basic municipal services. It follows therefore that the second respondent cannot absolve itself from its responsibilities by simply contending that it is not the water services authority. It seems to me that both the second and third respondents [the third respondent being the uMgungundlovu District Municipality] have a responsibility to give effect to the provisions of the Constitution in this regard.*⁶

The Extension of Security of Tenure Act

- 4.3.11. The Extension of Security of Tenure Act 62 of 1997 ("ESTA") plays a pivotal role in safeguarding the rights of farm dwellers, particularly in ensuring their access to basic necessities such as water and sanitation. ESTA was enacted to address the challenges faced by vulnerable farm occupiers and labour tenants, affirming their rights to dignified living conditions. This legislation recognises the importance of water and sanitation as fundamental

⁵ [2019] JOL 45319 (KZP).

⁶ *Ibid* at 65.

components of a decent standard of living, and it upholds the rights of farm dwellers in this regard.

4.3.12. ESTA, in Section 6(2)(e) and (f), explicitly grants farm occupiers the right to water and the right to sanitation by stating that they have the right:

“

(e) *not to be denied or deprived of access to water; and*

(f) *not to be denied or deprived of access to educational or health services.”*

4.3.13. Section 6, in the view of the high court in *Mshengu*, “*makes it untenable for a landowner to prevent the municipality from taking steps to provide water, sanitation or refuse collection on their property and obliges the landowners to act reasonably in reaching agreements with the municipality regarding the provisions of services.*”⁷

4.4. **Protection of Cultural and Religious Practices**

Constitutional Safeguards

4.4.1. In the South African legal landscape, the right to cultural and religious practices is enshrined as an essential facet of human rights, safeguarded under the Constitution. This fundamental right finds expression in the Constitution's Bill of Rights, specifically within Sections 15, 30, and 31, which collectively underscore the nation's commitment to diversity, heritage, and the preservation of cultural and religious identity.

4.4.2. Section 15 of the Constitution underpins the right to cultural, religious, and linguistic diversity. It safeguards the right of every person to participate in their cultural, religious, and linguistic community and to enjoy their culture, practice their religion, and use their language.

4.4.3. Sections 30 and 31 further bolster the protection of cultural and religious rights. Section 30 specifically addresses the right to use and enjoy one's language

⁷ *Ibid* at para 53.

and to participate in the cultural life of one's choice. Section 31 safeguards the right of persons belonging to cultural, religious, or linguistic communities to enjoy their culture, practice their religion, and use their language.

The right to visit family graves through the prism of the Extension of Security of Tenure Act

4.4.4. In particular, this matter involves the right of farm dwellers to visit the graves of their family members who have passed on, and these graves are located on the land owned by the farm.

4.4.5. In this regard, section 6(4) of ESTA reads as follows:

‘Any person shall have the right to visit and maintain his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.

5. Analysis and findings

5.1. The Issue of Water and Sanitation

Introduction

5.1.1. The Commission accepts from the outset that the farm dwellers in question do not have access to the minimum standards of water and sanitation as set out in the Regulations to the WSA. They are not being provided with potable water by any local authority and they do not have toilets of any kind.

5.1.2. However, the matter concerning water and sanitation on the Stormvlei dairy farm gives rise to intricate inquiries into the responsibilities of multiple parties, including the Farm Owner, local authorities, and water service entities. The complainants allege infringements upon their constitutional entitlements to access water and sanitation, along with their rights as farm occupants under the Extension of Security of Tenure Act (ESTA). The Farm owner disputes

some of these allegations and accentuates the roles of local government and water service providers. The Commission's analysis and findings are as follows:

Analysis of the responsibilities of the Farm Owner

5.1.3. In regard to the provision of water and sanitation, the Commission concludes that Mr Sven Thomson, as the landowner, bears obligations towards the community of farm dwellers as stipulated by section 6(2)(e) and (f) of ESTA. Although the farm dwellers are not in Mr Thomson's employ, ESTA confers safeguards upon them as occupants of the land. This encompasses the entitlement to not be deprived of access to water and sanitation facilities. Thus, Mr Thomson, in his capacity as the landowner and in terms of ESTA, holds a duty to act reasonably in reaching agreements with the pertinent municipality and authorities to ensure that the fundamental necessities of the farm dwellers are fulfilled, regardless of their employment status .

5.1.4. The Commission notes Mr Thomson's averment that water is allegedly accessible at the nearby Doornkloof farm. However, seeing as the farm dwellers in question live on Stormvlei farm, the owners of Doornkloof hold no responsibilities under ESTA in respect of the farm dwellers. Therefore, Mr Thomson cannot absolve himself of the responsibilities ESTA places on him as the owner of Stormvlei in the hope that the farm dwellers will trespass on another property (Doornkloof) to collect water instead. The Commission was presented with no evidence that there was an agreement in place between the farm dwellers and the neighbouring Doornkloof farm that would allow such water use and even if there were, this would not absolve Mr Thomson of his responsibilities under ESTA should the farm dwellers choose to exercise their rights in respect thereof.

Findings against the Farm Owner

5.1.5. While the Commission agrees with the Court in the *Mshengu matter* that section 6(2)(e) and (f) of ESTA "*obliges the landowners to act reasonably in*

reaching agreements with the municipality regarding the provisions of services”, the Commission does not find that failed attempts at negotiation between the Farm Owner and Swellendam to provide services in the past are sufficient, in themselves, to constitute a violation on the part of the Farm Owner of the rights created by this section.

- 5.1.6. Nevertheless, the Commission is in a position to find, as it does, that the Farm Owner is still obligated, particularly in light of the Commission’s investigation herein, to not hinder any reasonable steps from the relevant municipal authorities to negotiate in respect of this matter and to try reach an agreement with these authorities regarding the latter’s provision of water and sanitation services to the farm dwellers in question. The Commission will make appropriate recommendations to this end.

Analysis of the roles of District and Local Municipalities and Water Service Providers

- 5.1.7. The Commission acknowledges the distinctions in responsibilities between the district and local authorities. The Overberg District Municipality, as the overseeing entity, has a responsibility to ensure sustainable service provision to local communities, even if this responsibility is delegated as needed to local municipalities and other water providers. Concurrently, the local municipalities possess an oversight role in relation to water service providers. It is important to highlight that a collaborative effort between these two tiers is indispensable to meet the stipulations in Section 73(1) of the Municipal Systems Act.
- 5.1.8. The Commission concurs with the principle enunciated in the *Mshengu* case, which elucidates that municipalities are under an obligation to ensure access to essential municipal services, encompassing water and sanitation, irrespective of their direct role as water service providers or otherwise. This underlines the principle that the onus of providing water services extends beyond the immediate service provider, encompassing local government, to uphold the rights to water and sanitation.

- 5.1.9. The Commission notes the endeavours of the Farm Owner to engage with the Swellendam Local Municipality. Nevertheless, it becomes apparent that these dialogues in isolation would have fallen short in addressing the water supply challenge, considering that the ultimate water service provider is the Overberg Water Board.
- 5.1.10. Regardless, however, of exactly why these dialogues did not result in the provision of municipal services, the truth faced by the parties and the Commission is that such services still need to be provided. The Commission does not find it necessary to make a finding against the local authorities herein, partly because these authorities were not cited as respondents in the complaint forming the basis of the Commission's investigation, and partly because it is possible to make recommendations to these authorities that would result in relief for the affected farm dwellers based solely on the existing positive constitutional and legislative obligations of these authorities as set out in this report.

Conclusion on water and sanitation

- 5.1.11. Acknowledging the intricate interplay amongst the Farm Owner, local government, and water service authorities, the Commission recognises the need for progressive realisation of the rights to water and sanitation for the farm dweller community on the Stormvlei dairy farm. The Commission values the attempts by all stakeholders involved in past negotiation processes as well as the Farm Owner's commitment to engage further with Swellendam Municipality. However, it is imperative to emphasise the necessity of a collaborative approach undertaken with full understanding of the powers and responsibilities of the involved authorities (which are clarified in this report) to ensure sustainable access to water and sanitation for the community. The Commission will articulate recommendations to navigate these challenges, encouraging enhanced cooperation and coordination amongst the pertinent stakeholders to ensure the fulfilment of these fundamental rights.

5.2. Access to family graves

- 5.2.1. The right to access and maintain family graves is safeguarded by Section 6(4) of the Extension of Security of Tenure Act (ESTA), ensuring that reasonable conditions imposed by the landowner do not unduly disrupt this fundamental practice.
- 5.2.2. In this context, the actions taken by Mr Sven Thomson to lock the graveyard gates without apparent prior engagement with the families raise pertinent concerns. While it is acknowledged that he asserted his constitutional right to protect his property and family, the locking of the gates impedes the community's right to access a space that is integral to their cultural and religious practices.
- 5.2.3. The right to enjoy one's culture, practice one's religion, and participate in cultural life, as enshrined in the Constitution, encompasses the ability to visit and maintain family graves.
- 5.2.4. The Commission finds that, irrespective of whether specific requests were made by the families to visit these graves, a proactive approach should have been taken by Mr Thomson. Given his awareness that the graveyard was in use and that individuals' family members were buried there, it was reasonable to expect that an effort should be made to engage with the families. This engagement could have included discussions to ascertain their needs, concerns, and any possible agreements that would respect both the landowner's rights and the community's cultural and religious practices.
- 5.2.5. In light of this, the Commission concludes that Mr Thomson should not have locked the gates without first reaching out to the families of the deceased individuals buried in the graveyard to attempt to reach an agreement or compromise that would protect both his property rights and their cultural rights. Such an approach would have demonstrated a respect for their rights, allowed for constructive dialogue, and potentially led to arrangements that accommodate both parties' interests. Instead, the approach used by Mr

Thomson violated the rights of these family members enshrined in sections 15, 30, and 31 of the Constitution.

6. Recommendations

6.1. Water and Sanitation

In light of the findings and analysis presented in this report, the South African Human Rights Commission (SAHRC) makes the following recommendations in respect of water and sanitation in this matter:

Consultative Process

- 6.1.1. The SAHRC recommends that a consultative process be initiated between the Farm Owner, local authorities (Swellendam Local Municipality and Overberg District Municipality), and the Overberg Water Board.
- 6.1.2. This process should be initiated by the local authorities and conducted with the oversight of the SAHRC to collaboratively address the challenges related to water and sanitation access for the farm dwellers on the Stormvlei dairy farm.
- 6.1.3. The consultative process should be initiated within 30 days. The process should clarify the responsibilities of each party in addressing the challenges related to water and sanitation access for the farm dwellers on the Stormvlei dairy farm. The local authorities should thereafter report back to the Commission within 60 days of release of this report indicating what steps will be taken to ensure the provision of water and sanitation services that meet at least the minimum standards set out in the regulations to the WSA.

Emergency Water Provision

- 6.1.4. Pending the finalisation of the consultative process and implementation of longer-term plans for the provision of water and sanitation, the SAHRC

recommends that emergency water provision be made to the farm dwellers as stipulated in the Water Services Act and Municipal Systems Act. This provision should be in accordance with the guidelines set out in these legislative frameworks.

Sustainable Water Solution

- 6.1.5. The SAHRC recommends that the consultative process focus on achieving a sustainable and equitable solution for providing consistent and safe access to clean water for the farm dwellers. The Farm Owner, local authorities, and water service entities should work together to ensure that the rights of the community are realised in a manner that respects all parties' interests and rights.

6.2. Access to Family Graves

- 6.2.1. Considering the findings on the locking of the graveyard gates and the infringement of cultural and religious practices, the SAHRC recommends the following:

Engagement and Agreement

- 6.2.2. The Farm Owner, Mr Sven Thomson, should, within 30 days of receipt of this report, engage with the families of the deceased individuals buried in the graveyard. This engagement should aim to reach an agreement that respects both the cultural and religious practices of the community and the property rights of the landowner.
- 6.2.3. Following the outcome of the engagement and within no more than 7 days thereof, the Farm Owner should contact the Commission with an update on what agreement was reached, if any.

Collaborative Approach

- 6.2.4. The SAHRC emphasises the importance of collaboration, dialogue, and a rights-based approach to resolving these challenges. It is vital that all parties involved work together to ensure the realisation of human rights while respecting the legitimate interests and rights of each party.

6.3. Response from Local Authorities

The SAHRC recommends that the local authorities, Swellendam Local Municipality, and Overberg District Municipality, together with the Overberg Water Board, respond in writing to this report within 60 days of receiving it. The response should indicate the steps they intend to take to give effect to the recommendations made in this report, if any such steps are required.

6.4. Implementation and Review

- 6.4.1. The SAHRC will monitor the implementation of the recommendations provided in this report and will conduct a review to assess the progress made in realising the rights of the farm dwellers with regards to water and sanitation, as well as their access to family graves.
- 6.4.2. This report has been prepared based on the information and evidence gathered during the investigation. It is intended to promote respect for human rights, protect the rights of individuals, and contribute to the development, protection, and attainment of human rights in accordance with the Constitution of the Republic of South Africa.

7. Conclusion

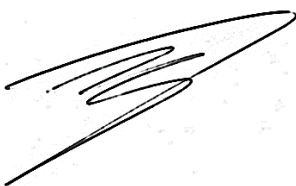
- 7.1.1. The Commission has noted the pressing concerns regarding water and sanitation access for the farm dwellers at Stormvlei dairy farm, along with the challenges surrounding access to family graves. The recommendations

provided herein highlight the need for collaborative efforts that uphold legally defined minimum water supply and sanitation standards, while also respecting the cultural, religious, and property rights of all parties involved.

7.1.2. Both members of the hearing panel concur in respect of the findings and recommendations herein and thus no minority findings and recommendations are made.

7.1.3. If any of the involved parties are dissatisfied with the findings and recommendations outlined in this report, they retain the right to contest these matters in court through a process of judicial review. This legal avenue must be pursued within 180 days from the exhaustion of all internal remedies. In cases where internal remedies are not available, the judicial review application must be submitted within 180 days from the point at which the party became aware of the decision, or when such awareness could reasonably be expected. This framework ensures equitable proceedings within a defined and reasonable timeframe.

SIGNED AT CAPE TOWN ON THIS 13th DAY OF MARCH 2024.



**MATTHEW DU PLESSIS
SENIOR LEGAL OFFICER
HEARING CHAIRPERSON
SOUTH AFRICAN HUMAN RIGHTS COMMISSION**