



SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

FILE REF NO: MP/1819/0359

In the matter between:

MARIETTE PREDDY

FIRST COMPLAINANT

JAMES MASANGO

SECOND COMPLAINANT

THABISO TSHABALALA

THIRD COMPLAINANT

And

NKOMAZI LOCAL MUNICIPALITY

FIRST RESPONDENT

LEKWA LOCAL MUNICIPALITY

SECOND RESPONDENT

GOVAN MBEKI LOCAL MUNICIPALITY

THIRD RESPONDENT

DEPARTMENT OF WATER AND SANITATION

FOURTH RESPONDENT

DEPARTMENT OF CO-OPERATIVE GOVERNANCE

AND TRADITIONAL AFFAIRS, MPUMALANGA

FIFTH RESPONDENT

DEPARTMENT OF HUMAN SETTLEMENTS, MPUMALANGA

SIXTH RESPONDENT

DEPARTMENT OF AGRICULTURE, RURAL

DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS,

MPUMALANGA

SEVENTH RESPONDENT

INKOMATI-USUTHU CATCHMENT MANAGEMENT AGENCY

EIGHTH RESPONDENT

FINAL INVESTIGATIVE REPORT

1. INTRODUCTION

- 1.1. This is a report of an investigation conducted by the South African Human Rights Commission (“**Commission**”) into systemic sewage spillages and waste water treatment challenges across various municipalities in Mpumalanga. The investigation came at the back of various individual complaints to the Commission relating to sewage spillages and waste water treatment challenges at the First to Third Respondents.
- 1.2. In the various complaints received, it was alleged that the sewage spillages and/or the inadequate treatment of waste water violated the affected communities’ right to an environment that is not harmful to their health and well-being (section 24 Constitution of the Republic of South Africa (“**the Constitution**”)).

2. PARTIES

- 2.1. The First Complainant in this matter is Ms Mariette Preddy, an adult female, currently serving as the Democratic Alliance’s Proportionate Representation Councillor in the Nkomazi Local Municipality. She lodged the complaint against the Nkomazi Local Municipality on behalf of the residents of Malelane and Komatipoort.
- 2.2. The Second Complainant in this matter is Mr James Masango, an adult male, an erstwhile Democratic Alliance’s representative at the Mpumalanga Provincial Legislature. He lodged the complaint against Lekwa Local Municipality on behalf of the residents of Lekwa Local Municipality.
- 2.3. The Third Complainant in this matter is Mr Thabiso Tshabalala, an adult male, who lodged the complaint in the public interest.

- 2.4. The First Respondent in this matter is Nkomazi Local Municipality, a municipality established in terms of the provisions of the Local Government Municipal Structures Act, 117 of 1998, with its offices situated at 9 Park Street, Malelane.
- 2.5. The Second Respondent in this matter is Lekwa Local Municipality, a municipality established in terms of the provisions of the Local Government Municipal Structures Act, 117 of 1998, with its offices situated at Cnr Mbonani Mayisela & Dr Beyers Naude Streets, Standerton.
- 2.6. The Third Respondent in this matter is Govan Mbeki Local Municipality, a municipality established in terms of the provisions of the Local Government Municipal Structures Act 117 of 1998, with its main offices situated at Horwood Street, Secunda.
- 2.7. The Fourth Respondent in this matter is the Department of Water and Sanitation, the custodian of water resources in South Africa, with its Mpumalanga offices situated at Prorom Building, corner of Brown & Paul Kruger Streets, Nelspruit. The primary responsibility of the Fourth Respondent is the formulation and implementation of policy governing the water and sanitation sector. It is also responsible for ensuring access to clean water and dignified sanitation for all residents, whilst also promoting effective and efficient water resources management to ensure sustainable economic and social development.
- 2.8. The Fifth Respondent in this matter is the Mpumalanga Department of Co-Operative Governance and Traditional Affairs, which has the primary responsibility of coordinating, supporting, monitoring and strengthening an integrated cooperative governance system in Mpumalanga. Its main offices are situated at 7 Government Boulevard, Building 6, Riverside Park, Mbombela.
- 2.9. The Sixth Respondent in this matter is the Mpumalanga Department of Human Settlements, which has the primary responsibility of facilitating the creation of integrated sustainable human settlements in Mpumalanga. Its main offices are situated at 7 Government Boulevard, Building 6, Riverside Park, Mbombela.
- 2.10. The Seventh Respondent in this matter is the Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs, whose main offices are situated at 7 Government Boulevard, Building 6, Riverside Park, Mbombela.

2.11. The Eighth Respondent in this matter is the Inkomati-Usuthu Catchment Management Agency, a water resource management authority established in terms of section 78 of the National Water Act 36 of 1998, to perform water resource management within the Inkomati-Usuthu Water Management Area. The Eighth Respondent has its offices at 13 Streak Street, Mbombela.

3. MANDATE OF THE COMMISSION

3.1. The Commission is an institution established in terms of section 181 of the Constitution.

3.2. The Commission is specifically required to:

3.2.1. Promote respect for human rights;

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

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

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

3.4. The South African Human Rights Commission Act, 40 of 2013 (“**the SAHRC Act**”), provides the enabling framework for the powers of the Commission.

3.5. Section 15(6) of the SAHRC Act determines the procedure to be followed in conducting an investigation regarding an alleged violation of or threat to a fundamental right.

4. BACKGROUND

4.1. The Commission has received a number of complaints over a period of time relating to sewage spillages and waste water treatment challenges at the cited municipalities.

- 4.2. The first of these complaints was received from the First Complainant on 10 February 2016 against the First Respondent. In the complaint, she alleged the following, amongst others:
- 4.2.1. For several years, there has been a chronic challenge of sewage spillages in Malelane and Komatipoort, which adversely affects residents' right to an environment that is not harmful to health and wellbeing. In relation to Komatipoort, the problem dates as far back as 1998, whilst in Malelane, the problem dates back to 2010. In Malelane, some of the untreated sewage flows into nearby water sources such as the Crocodile River and Buffelspruit River, making water from those sources unsuitable for human and animal consumption. In Komatipoort on the other hand, the untreated sewage flows into the Transnet Train station, which is located at the lowest point of the town.
 - 4.2.2. The cause of these challenges is, in the main, that the sewer infrastructure in Malelane and Komatipoort is overstretched due to the addition of new users, without increasing the capacity of the infrastructure.
 - 4.2.3. A few years ago, it was reported that approximately R24 Million was required for the sewage system upgrade in Malelane. The Municipality has however failed and/or refused to include the upgrade project in its Intergraded Development Plans ("IDPs").
- 4.3. The second of these complaints was received from the Second Complainant on 11 October 2016 against the Second Respondent. In the complaint, he alleged the following:
- 4.3.1. The Second Respondent has been knowingly channelling sewage water directly into a tributary which links to the Vaal River.
 - 4.3.2. The community of Rooikoppen (Sakhile) in Standerton has lived with raw sewage which flows into their yards for several years, in violation of their right to an environment that is conducive to health and well-being.
- 4.4. The Third of these complaints was received from the Third Complainant on 10 July 2018 against the Third Respondent. In the complaint, he alleged that he saw a story

on SABC News of sewage running through an old woman's house, with toilets not even flushing at all. He further alleged that sewage flows are a common sight in the streets of eMbalenhle.

- 4.5. Similar complaints were received against the Third Respondent from Mr Roelf Pretorius ("**Mr Pretorius**") and Mr Anthony Benadie ("**Mr Benadie**") in April 2012 and May 2013 respectively and were finalised at the time on the basis of representations from the Third Respondent that it had put plans in place to address the issues complained of by Mr Pretorius and Mr Benadie respectively.

5. PRELIMINARY ASSESSMENT

- 5.1. The Commission's preliminary assessment of the above complaints was that the complaints disclosed a *prima facie* violation of the affected communities' right to an environment that is not harmful to their health and well-being (section 24 of the Constitution), as well as their right to human dignity (section 10 of the Constitution).

6. INVESTIGATIVE METHODOLOGY

- 6.1. The investigation of the above complaints was conducted using a combination of investigative methodologies, which included:
 - 6.1.1. Corresponding with all the affected parties;
 - 6.1.2. Interviewing affected residents;
 - 6.1.3. Conducting site inspections; and
 - 6.1.4. Convening investigative inquiries.

7. INVESTIGATIVE PROCESS IN RELATION TO THE COMPLAINT AGAINST THE FIRST RESPONDENT

7.1. After the receipt of the initial complaint from the First Complainant, the Commission conducted the first site inspection at Malelane on 19 February 2016. The Commission made the following observations during the inspection amongst others:

7.1.1. The neighbourhood smelt of untreated sewage;

7.1.2. The sewage pumps were not in a good and proper working condition and needed to be replaced; and

7.1.3. The sewage pumps were too small and were unable to pump sewage to the sewer plant, resulting in sewage flowing into the nearby river.

7.2. Following the site inspection, a letter was sent to the First Respondent, inviting a response to the allegations that had been levelled against it. In a response to the allegations dated 16 May 2016, the First Respondent stated the following, amongst others:

7.2.1. It has qualified and experienced engineers and when designing any infrastructure, a detailed assessment is done to ensure that the sizes of the pumps installed are adequate and have enough capacity to handle any loads discharged. The pumps currently have enough capacity to handle the existing loads, however, challenges occur when it rains, as a number of the residential storm water connections are connected to the sewer drains, which causes overflows when it rains. To address this challenge, it is strengthening its bylaws to ensure that residents comply with building standards and to ensure that law breakers are fined.

7.2.2. It had also put all future development for the next five years on hold, as a detailed assessment indicated that the current sewerage infrastructure could only handle the current volume of sewage from the existing residents, and any future development would require a further upgrade of the infrastructure.

7.2.3. In its 2016/2017 IDP, it had put aside R2.5 million for the Malelane Water and Sewer infrastructure master plan and R800 000 for the upgrading of

the Komatipoort Station sewer pump station, to handle loads from the new development in Komatipoort, Rissik Street.

- 7.3. Following fresh claims from the First Complainant of continuing challenges with sewage overflows in the Malelane and Komatipoort area in July 2018, a second site inspection was conducted in Malelane and Komatipoort Transnet Station on 2 August 2018. Although no sewage overflows were observed on the day in question, residents in Malelane and employees at the Komatipoort Transnet Station confirmed their regular occurrence. Traces of recent sewage spillages could also be observed in both Malelane and the Komatipoort Transnet Station. Although residents confirmed that the municipal officials respond quickly whenever notified of sewer spillages, they lamented the frequency of the spillages, which had resulted in the loss of enjoyment of their home and work spaces and their right to an environment that is not harmful to their health or well-being. It was evident therefore that the challenge was persisting two years after assurances were received from the First Respondent that it had taken steps to attend to the challenges complained of by the First Complainant.
- 7.4. An investigative inquiry was convened in November 2018, December 2018 and February 2019 by the Commission to further probe the allegations made by the First Complainant, as well as the rebuttals received from the First Respondent in response to the complaint against it.
- 7.5. The First Complainant appeared before the Commission on 29 November 2018 and 3 December 2018 respectively. At the investigative inquiry, the First Complainant submitted that the challenge of sewage spillages in Malelane and Komatipoort was persisting, for a period in excess of 8 years despite having reported the matter. She insisted that the main reason for this persisting challenge is that the current system is overstretched, as new users keep being added onto the system, despite a 2010 Blue Drop report indicating that in 2010, the system was already operating at full capacity. As a result of these challenges, some homeowners in Malelane¹ have started manipulating the sewer infrastructure to prevent sewage flooding their homes. The sewage that would ordinarily have flooded their homes now flows unhindered and unmonitored into the Crocodile River. According to her therefore, the only real solution to this challenge is an overall system upgrade. Although she is a Councillor

¹ These are homeowners on Visarends Street.

on the council, she has been unsuccessful in getting the Malelane and Komatipoort system upgrade project into Councils IDPs.

7.6. Transnet, being the entity most affected by the sewage overflows in Komatipoort, was also invited to make representations at the inquiry and appeared before the Commission on 29 November 2018. Transnet made the following submissions at the inquiry:

- 7.6.1. The challenge of sewage overflows to the Transnet Rail Station is not new, as it is a challenge that spans several years.
- 7.6.2. The cause of the challenge is the downgradient of the Town. Given the location of Transnet Rail Station at the lowest point of the town, the station regularly gets flooded with sewage whenever there is a blockage in the system.
- 7.6.3. In addition to the sewage overflows, the toilets at the Transnet Offices do not work properly, as users experience backflows when they flush the toilets.
- 7.6.4. Transnet has sustained damages to its office furniture as a result, and the health and wellbeing of both staff and rail passengers has been adversely affected by this persisting challenge.
- 7.6.5. It has had several engagements with the First Respondent over the years to address the challenge. In the latest series of engagements, it was agreed that Transnet will procure and install a septic tank, into which sewage can flow in the event of system failures. It was also agreed that in turn, the First Respondent will replace parts of the sewage network with jumbo pipes, to ensure that the system does not experience blockages as easily.
- 7.6.6. In accordance with the above agreement, Transnet installed a septic tank at its North Yard.² As a result of the installation, the North Yard is no longer experiencing as many challenges with sewage overflows and toilet

² Transnet Station is divided into two sections: North Yard and South Yard. North Yard is the section which is only open to employees, whilst the South Yard is the section of the Station open to members of the public.

backflows. The installation of the septic tank at the North Yard, however, has resulted in the challenge of sewage overflows being transferred to the South Yard, compounding the challenges of sewage overflows and backflows in that area, and necessitating installation of a septic tank at the South Yard. However, installation of a septic tank in the South Yard, although will alleviate the challenge somewhat, will not completely resolve the challenge, as the South Yard will always experience sewage overflows from the municipal sewage mainline, whenever there are blockages in the system, as the municipal's mainline runs through Transnet's property.

7.6.7. Accordingly, the only real solution to this challenge is to get the First Respondent's sewer network in Komatipoort to work as it should. One intervention that could assist in this regard is the procurement of a standby pump by the First Respondent, to ensure that the system can run, even in the event of the main sewage pump failing. All the interventions they (Transnet) had made, including the procurement of a septic tank, had been their attempt at trying to assist the situation. The primary responsibility for addressing this problem however is that of the First Respondent. The First Respondent has however consistently failed to take any steps towards addressing this challenge, including reneging on its commitment to install jumbo pipes.

7.7. The First Respondent was given an opportunity to respond to the various allegations levelled against it by both the First Complainant and Transnet.

7.8. In its initial written response during the enquiry, dated 6 November 2018, the First Respondent made the following submissions:

7.8.1. The First Respondent has a 24 hour call centre system where all sewage spillage related complaints are reported. From the records of the call centre system, only 24 complaints were reported from May 2016 to October 2018, with 3 complaints recorded in 2016 and 13 complaints recorded in 2017. The remaining 8 complaints were recorded in 2018.

7.8.2. Once reported, complaints are attended to and fixed by the Municipality's technical team within 24 hours.

- 7.8.3. The sewage spillages that were reported were mostly caused by power outages and blockages of the sewer line caused by residents throwing foreign objects in the sewage systems.
- 7.8.4. The First Respondent denies that there are capacity issues within the Malelane and Komatipoort sewer systems, as the Malelane Sewer Plant has an operation capacity of 750 cubic metres per day and is currently operating at 600 cubic metres per day. The Komatipoort sewer system on the other hand has an operating capacity of 1250 cubic metres per day and is currently operating at 900 cubic metres per day. This notwithstanding, no new developments that require connection to the existing sewer network have been approved.
- 7.8.5. Komatipoort Station Sewer Pump Station was upgraded in March 2018, with new and bigger pumps being installed and the older pipework being replaced.
- 7.8.6. Since the coming into effect of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) by-law in 2015, residents must submit building plans for approval before building their houses.
- 7.9. In addition to its written submissions, in its oral submissions at the inquiry on 19 December 2018, the First Respondent made the following submissions, amongst others:
- 7.9.1. It conceded that there were challenges with the sewer system across its jurisdiction, but maintained that the challenges were not attributable primarily to the Municipality. In this regard:
- 7.9.1.1. In relation to Malelane, the First Respondent maintained that the challenges with sewer systems are in the main attributable to power failures, blockages caused by the introduction of foreign objects into the system, as well as flooding during rainy periods. The First Respondent further submitted that though previously it suspected that the channelling of storm water to the sewage network was compounding the sewage spillage challenges in Malelane. This is no longer the case since the introduction of the

SPLUMA by-law in 2015. When cross questioned, however, the First Respondent conceded that there are also challenges with the pre-emptive maintenance of the sewer network. The First Respondent, however, indicated that it does not have a sufficient budget for maintenance, as it has limited capacity to collect revenue from its residents.

- 7.9.1.2. In relation to Komatipoort, the First Respondent submitted that the challenges at the Komatipoort Station are attributable to the incorrect design of the sewage line from Transnet Offices to the Railway Pump Station. The line which transfers sewage from the Transnet Offices to the Railway Pump Station is 8 metres below the surface of the sump at the Railway Pump Station. This was done to avoid the need for pumping sewage from the Transnet Office to the Railway Pump Station. As a result, the line is gravity fed and accordingly, if there are any disturbances in the system caused by power failure or blockages by foreign objects (and the pumps stop pumping for even a second), the sewage reverses back to Transnet Offices, resulting in sewage overflows there. As a long term measure, in order to address this problem, it would be necessary to cut off Transnet Offices' sewer line from the municipal sewer line and to construct a septic tank at the Transnet Office for Transnet's internal sewer. The First Respondent's sewer line will then have to be re-routed away from Transnet in order to eliminate sewage overflows to Transnet Offices from the municipal sewer line. The responsibility for the construction or installation of a septic tank remains that of Transnet, whilst the responsibility of re-routing the main sewer line remains that of the First Respondent. Transnet has however since installed one plastic septic tank at its North Yard and its South Yard remains as is. The septic tank was however not correctly installed, resulting in the problem being shifted to the South Yard. Transnet is also yet to cut off its sewer line from the municipal sewer line. The First Respondent can only attend to re-routing its sewer line, once Transnet has

constructed a proper septic tank to properly service all of its offices and has disconnected its sewer from the municipal sewer line.

- 7.9.2. It further conceded that there are other complaints that are reported directly to officials, which are promptly attended to but not recorded.³
- 7.9.3. It is in the process of finalising its sewage masterplan for both Malelane and Komatipoort and expected to have it finalised by the end of April 2019. The masterplan will enable it to properly plan for future development.
- 7.9.4. It had previously procured one standby pump for the use of all four towns serviced by it in the event of power failures. Previously, the one standby pump was sufficient, as power failures were not frequent. Power failures have however increased due to load shedding and consequently, plans are in place to procure an additional standby pump in the 2020/2021 financial year.
- 7.10. The Fourth, Fifth, Seventh and Eighth Respondents were also invited to make submissions before the inquiry in relation to the complaint against the First Respondent.
- 7.11. On 4 February 2019, the Fourth Respondent submitted that it had previously conducted inspections of the waste water treatment works at the First Respondent's area of jurisdiction. The latest of these inspections were conducted in October 2018, during which it found, amongst others, that:
- 7.11.1. The Mhlatikop Waste Water Treatment Works was not in a good state of upkeep, and discharged inadequately treated effluent into a stream that flows into the Crocodile River.
- 7.11.2. The Mhlatiplaas Waste Water Treatment Works was also not in a good state of upkeep, with its oxidation ponds overgrown. The chlorine added to

³ At the conclusion of the inquiry, the First Respondent was instructed to consult its call out records (job cards), with the view to reconstructing the record of sewage complaints received by the First Respondent and to submit the reconstructed record to the Commission by end of February 2019. To date, however, the First Respondent has failed and/or refused to submit the requested information to the Commission. The First Respondent also failed to provide the Commission with other requested documentation including copies of their IDPs, annual reports and water tests conducted by it in the last five years.

the effluent at the end of the treatment process before the effluent is discharged into the Crocodile River was found to be “not at its best”.

- 7.11.3. In its submissions before the inquiry on 4 February 2019, the Fifth Respondent criticised the assertion made by the First Respondent that there are no capacity challenges in the sewerage network system in both Malelane and Komatipoort. In this regard, the Fifth Respondent asserted that the issue of capacity cannot be determined at treatment plant level only but must be determined at each point of the sewerage network system. System capacity extends to the size and slopping of the sewage pipes. In this regard, the bigger the settlement, the bigger the pipes should be and steeper the slope.
- 7.11.4. In the case of Komatipoort, the Fifth Respondent specifically submitted that the infrastructure in Komatipoort was designed to service mainly agricultural and farm areas. As a result of the increase in development and business activities, however, the infrastructure began to be overloaded and as such, it is not coping with the current demands. This is the same reason why the Transnet Offices continue to experience challenges with sewage spillages, as the gravitation of the sewer lines between the Transnet Offices and the Railway Pump Station was not designed to carry the current demands to the Pump Station, resulting in backflows and sewage spillages at the Transnet Office.
- 7.11.5. In the case of Malelane, the sewerage infrastructure currently in use is also old and was originally designed for a small settlement. The current demand on the infrastructure was therefore not anticipated in the original design and could therefore not have been catered for in the design. Other challenges in the sewerage network system in Malelane include the close proximity of sewerage pump stations to residential areas, resulting in sewage flooding residents' homes in the event of system failures. Accordingly, as a long term measure for addressing the challenge of sewage spillages in Malelane, it would be necessary to relocate the pump stations away from the residential areas and to reroute the sewage network.

- 7.11.6. On the issue of compliance, the 2017 SANS 241 compliance report (2017 Blue Drop Report) indicated that the drinking water quality at the First Respondent was poor, with the compliance levels for effluent for the same year (2017 Green Drop Report) indicated as bad. This would not be the case if there were no systemic issues insofar as waste water treatment and sewage spillages are concerned as the First Respondent claims.
- 7.11.7. On the issue of power failures being a significant contributor to sewage spillages in Malelane and Komatipoort, the Fifth Respondent submitted that power failures are not an everyday occurrence and can therefore not be a major contributor to sewage spillages in Malelane and Komatipoort.
- 7.11.8. On the issue of foreign objects being a significant contributor to sewage spillages in Malelane and Komatipoort, the Fifth Respondent submitted that foreign objects should not be a big contributor to system failures if regular maintenance is carried out on the system and foreign objects are pre-emptively removed before they cause blockages.
- 7.11.9. On the issue of lack of maintenance budget by small municipalities like the First Respondent, the Fifth Respondent submitted that it is the primary responsibility of municipalities to find ways and means to raise funds to fund their projects. The funds municipalities receive from infrastructure grants and the equitable share are supposed to add to the self-generated revenues of any municipality and not to be relied upon as the primary source of funding for infrastructural projects. Municipalities can increase their tax base through proper and effective implementation of town planning bylaws. There is also a tendency amongst municipalities to use all the grant funds they receive to invest in new infrastructural projects, instead of using some of the funds to maintain the existing infrastructure.
- 7.11.10. The Seventh Respondent's submission on 6 February 2019 were that in 2017, there were challenges of sewage overflows in the Nkomazi area due to the strained capacity of the Mhlatiplaas sewage treatment plant. In response to the concerns raised, an application to refurbish the treatment plant and increase its capacity was submitted by the Ehlanzeni District Municipality on behalf of the First Respondent. Although that application

was lodged, the application is yet to be finalised, due to the First Respondent's failure to pay the administrative fine that was imposed on it for commencing with the plant refurbishments and upgrades before obtaining all the necessary licenses and/or permits.

7.11.11. The Eighth Respondent submitted the following, when it appeared before the Commission on 6 February 2019:

7.11.11.1. Over the years, it has received intermittent complaints of untreated sewage flowing into the Crocodile and Buffelspurit Rivers in the Nkomazi area. On receipt of these complaints, it issued verbal instructions to the First Respondent to address the issues. The immediate issues raised with the First Respondent were all addressed. The challenge, however, remains that the issues are recurring, in that as soon as one problem is resolved, another surfaces.

7.11.11.2. The main cause of these recurring sewage spillages or overflows is the infrastructural inadequacies of the sewerage network in the Nkomazi area. In this regard, the infrastructure is not only old, but has also not kept up with development. Lack of maintenance is also a contributing factor to the sewage system failures in Nkomazi, which results in regular blockages and manholes overflowing.

7.11.11.3. Another urgent issue that is contributing to environmental degradation is the state of the Mhlatiplaas and Mhlatikop Treatment Plants.

7.11.11.4. The Mhlatiplaas treatment plant uses an oxidation pond system to treat sewage waste through a process of oxidation. How the system works is that the solids must first be separated from the liquid waste. The effluent is thereafter channelled into the ponds, where effluent is meant to gradually decrease through the natural process of evaporation, whilst the solids settle at the bottom of the ponds. By design therefore, in an oxidation pond system, effluent is not meant to flow out of the ponds into the

water resources. What has happened in Mhlatiplaas, however, is that over the years, inflows into the treatment plant have increasingly grown greater than the evaporation rate, resulting in water from the ponds now discharging into the Crocodile River. This points to capacity issues. The First Respondent has now introduced a chlorination system to try and treat the effluent from the ponds before discharge into the Crocodile River. This system is however not allowed in law and in any event cannot treat water to the required standards. The First Respondent has since made an application to expand its pond system but the application is still pending, due to the failure of the First Respondent to pay the administrative fine imposed on it by the Seventh Respondent, amongst others.

7.11.11.5. The Mhlatikop Treatment Plant on the other hand, though using a mechanical system, as opposed to the oxidation pond system, is also experiencing capacity constraints, resulting in the effluent not being adequately treated when discharged at the end of the treatment process. System upgrades at Mhlatikop commenced in 2017 and had not been completed when the Eighth Respondent undertook its last site inspection at the plant in May 2018.

7.11.11.6. The results of Water Resource Quality tests conducted from 2013 to 2018 at Crocodile River at the Malelane Kruger National Park Gate on the Bridge downstream of Mhlatikop and Mhlatiplaas Waste Water Treatment Works; Crocodile River downstream of Komatipoort Sewage Pump Station; and the Tributary of Crocodile River downstream of Komatipoort Waste Water Treatment Works indicate that the levels of E.coli in the water exceeded the set limit of 130 (cfu/100ml) most of the time at all points, except for the Crocodile River downstream of Komatipoort sewage pump station. E.coli is an indicator of sewage in the water or animal waste contamination. In the present case, the Eighth Respondent is aware of untreated

sewage flowing into the water resources in the Nkomazi area. The water quality in the tributary of Crocodile River downstream of Komatipoort Waste Water Treatment Works also does not comply with the Resource Quality Objectives and Target Water Quality Range limit set for Electrical Conductivity and Nitrates. The persisting sewage spillage and waste water treatment challenges in Nkomazi have, therefore, resulted in the water quality in the Nkomazi area being compromised.

7.11.11.7. Although it has a legislative mandate of preventing and remedying incidents of water pollution, it has limited powers and budget for carrying out its mandate. Moreover, it has not received the support it requires from other stakeholders in carrying out its mandate. In this regard, although it has powers to issue compliance directives and failure to comply with the compliance directives is a criminal offence, it is yet to register a single conviction against violators. In a number of occasions, matters were reported to the South African Police Services but were not prosecuted. In this regard, there appears to be limited awareness of environmental crimes within the criminal justice sector.

7.12. As part of the investigation into the matter, the Commission embarked on a follow up site inspection in Malelane and Komatipoort on 22 March 2019. It must be noted that due to time constraints, the investigating team could not visit all the sites allegedly affected by the sewage spillage in Malelane and Komatipoort. The Commission was accompanied by the First Complainant and the representatives of the Eighth Respondent during the site inspection. There was no representation from the First Respondent and the other Respondents, despite a notice of the inspection being forwarded to them. The following sites were visited during the inspection:

7.12.1. Manhole behind the Clinic in Malelane;

7.12.2. Visarends Street in Malelane;

7.12.3. Buffel Street in Malelane;

- 7.12.4. Air Street in Malelane;
 - 7.12.5. Mhlatiplaas Waste Water Treatment Works;
 - 7.12.6. Komatipoort Train Station;
 - 7.12.7. Komatipoort Rail Pump Station; and
 - 7.12.8. Crocodile River Pump Station in Komatipoort.
- 7.13. No sewer overflows were found at the manhole behind the clinic where sewage was alleged to ordinarily overflow. The Commission, however, noted debris around the manhole, which evidenced recent overflows.
- 7.14. No sewer overflows were found at Buffel Street where sewage was alleged to ordinarily overflow. A contractor who was found working on a site along the street advised that in 2018, frequent sewage overflows were experienced. Matters had somewhat improved in 2019, with two incidents of sewage overflows noted since January 2019. The Commission was advised that the raw sewage flows directly into Buffelspurit River when overflows occur. The contractor further advised that at all material times, however, municipal officials have been very responsive when called upon to assist, with a turnaround time of approximately 30 minutes in some instances.
- 7.15. At Air Street, the Commission made the same observations and found no evidence of recent sewer overflows. A resident interviewed during the inspection advised that there are two manholes in her yard and that in 2018, they experienced approximately 5 sewage overflows in their yard. One incident of sewage overflow into their yard had taken place in 2019. The resident advised that at all material times, municipal officials respond quickly to calls for assistance, even attending to a sewage spillage at 10:00 pm at night on one occasion.
- 7.16. At Visarends Street,⁴ no sewage spillages were identified on the day of the inspection. Residents living along the street, however, complained bitterly about regular sewage overflows in their area. They averred that sewage overflows are most acute during rainy seasons and they had lost count of the number of times sewage overflowed into their yards during 2019. They also experienced backflows in their

⁴ This is the street that has homes along the Crocodile River. Accordingly, any sewage overflows experienced in this area flow directly into the Crocodile River.

houses whenever the manholes fill up. One of the residents interviewed indicated that he has had to leave one of the drains in his yard open, to allow the sewage which would have otherwise flooded his home, to flow out into the Crocodile River. There was no indication however that the resident had changed the sewage infrastructure for this purpose. The other homes that the First Complainant specifically alleged had changed the sewage infrastructure to allow the sewage which would have otherwise flooded their homes to flow into the Crocodile River could not be accessed during the inspection. The Commission accordingly, could not verify the First Complainant's allegations in respect of these home owners and cannot, in the circumstances, make any findings in relation to those home owners. It suffices to point out, however, that, the residents/home-owners would not have had to resort to self-help if the sewage infrastructure was fit for purpose and working as intended.

- 7.17. At Mhlatiplaas, the Commission noted that the plant was properly fenced, with an operator on site. The oxidation ponds were, however, overgrown. The representatives of the Eighth Respondent advised therefore that the overgrowth impeded the oxidation processes and needed to be cleaned up. The Commission also noted that water from the plant was discharged into a channel leading to the Crocodile River after the chlorination process, which the representatives of the Eighth Respondent advised should not be done.
- 7.18. At the Komatipoort Train Station, South Yard, the Commission noted sewer water at the entrance of the office building. There was a foul smell on the approach to the office block. There were also sand bags by the door of one of the offices to stop sewage from going into the building. The employees of Transnet confirmed that there was sewage overflow earlier in the day when interviewed. The Commission also noted sewage overflows from one of the outside drains. At the North Yard, there was also sewage overflowing from the manhole just outside the North Yard, into the North Yard. Further investigations revealed that the Rail Pump Station was not working on the day, resulting in the overflows in the manholes. Employees of the First Respondent were on site during the inspection and they advised that the pump station stopped working due to a mechanical fault, which they had been trying to fix since morning.

7.19. At the Crocodile River Pump Station, the Commission did not find any sewage overflows. The Commission, however, noted debris in the surrounds of the pump station, which evidenced past sewage overflows directly into the Crocodile River.

8. INVESTIGATIVE PROCESS IN RELATION TO THE COMPLAINT AGAINST THE SECOND RESPONDENT

8.1. After the receipt of the initial complaint from the Second Complainant, the Commission addressed an allegation letter to the Second Respondent, inviting a response to the allegations that have been levelled against it. In a response to the allegations levelled against it dated 2 May 2017, the Second Respondent stated the following, amongst others:

8.1.1. The Standerton Waste Water Treatment Works ("**Standerton WWTWs**") became non-operational in 2011 and was only refurbished in 2014.

8.1.2. It has already completed the design, began with upgrading of the inlet works, and is in the process of refurbishing the Standerton WWTWs. Due to budgetary constraints, however, the upgrade project will be implemented in phases.

8.1.3. The sanitation network within Sakhile and Standerton is fraught with many challenges which range from ageing infrastructure to maintenance challenges. Other challenges include complete system failures as a result of the pipe levels and manholes dropping due to soil settlement and/or poor workmanship.

8.1.4. Since 2015, with the assistance of the Department of Water and Sanitation, it has embarked on a project of refurbishing the ailing pump stations in the area. Additionally, it has applied for funding to complete the reconstruction of the Rooikoppen sewer network, which funding has been confirmed.

8.1.5. It also plans to complete its sanitation master Plan within the 2017/2018 financial year, in order to fully understand the extent of the challenges within its sanitation network.

- 8.2. Following fresh claims from the Second Complainant relating to the continuing challenges with sewage overflows in Rooikoppen in April 2018, the Commission conducted a site inspection on 8 May 2018 at Rooikoppen and surrounding areas. During the site inspection, the Commission observed Sewer was flowing freely onto the streets of Rooikoppen, outside residents' homes, crèches and a primary school. Some of the sewage had found its way to the nearby streams which flow into the Vaal River. In addition, officials interviewed during the site inspection reported that though the Standerton WWTWs was refurbished in 2014, it was not operating optimally due to many of the components having been stolen by vandals. They reported that as a result, the effluent discharged at the end of the treatment process did not meet the requisite treatment standards.
- 8.3. Following the site inspection, further correspondence was addressed to the Second and Fourth Respondents on 16 May 2018, regarding the observations made during the site inspection and calling for additional information in relation to the Commission's investigation of this matter.
- 8.4. No response was received from the Second Respondent. A response was, however, received from the Fourth Respondent on 27 July 2018, in terms of which it advised, amongst others, that:
- 8.4.1. The Standerton WWTWs was not operating optimally despite the refurbishments of 2014 due to vandalism and electrical cable theft.
 - 8.4.2. Although 8 sewer pump stations were refurbished during the 2017/2018 financial year, there are concerns relating to the poor operation and maintenance of the pump stations, resulting in some of them no longer being in a good state of repair.
 - 8.4.3. It is in the process of assisting with the reconstruction of the Rooikoppen sewer network, an intervention to be carried out over a period of three years.
 - 8.4.4. The challenges with the Rooikoppen sewer network range from poor workmanship (small pipes laid, incorrect design elevation, and inferior construction material used during construction), resulting in the overflow of manholes and sewer spillages.

- 8.5. At the investigative inquiry, the Second Complainant was represented by one Mr Louis Jansen van Rensburg, a Democratic Alliance Councillor for Ward 4 at the Second Respondent. He made the following submissions before the inquiry when he appeared before it on 30 November 2019:
- 8.5.1. He has been a resident of Standerton since 2009 and the challenge of sewage spillages was already in existence then. He had brought this matter to the attention of the Second Complainant, as the problem is happening in his ward.
 - 8.5.2. The Second Respondent has not been able to resolve this issue, due in part to the misuse of municipal funds; lack of political will to address the challenge; incompetence on the part of officials tasked with resolving this challenge; and diversion of municipal funds to low priority matters such as sport outings for employees, camera handling fees and catering services.
 - 8.5.3. The Second Respondent's Mayor reported in Council that one of the reasons Rooikoppen continues to experience challenges with sewage overflows is that the initial contractor did not lay the sewage pipeline correctly, leaving the pipework unconnected in some places. As a result, most of the effluent does not go into the sewer network, but flows freely onto the streets and fields, eventually making its way into the Vaal River.
 - 8.5.4. Despite the above revelation, the Mayor has refused to open this matter for discussion in Council and the Second Respondent has failed to take any steps against the contractors who did the initial work.
 - 8.5.5. Although sewer pump stations were refurbished by the Second Respondent, some of them are no longer functioning. Various reasons have been provided for this, including theft.
 - 8.5.6. He called for greater accountability within the Second Respondent and a greater display of political will in order to have this matter finally resolved.
- 8.6. The Second Respondent was given an opportunity to respond to the various allegations levelled against it by Mr Janse Van Rensburg. The Second Respondent made the following submissions, before the inquiry, amongst others:

- 8.6.1. It conceded that it is experiencing colossal challenges with its sewer infrastructure. In this regard, it was taken to court by the Fourth Respondent, which action it did not contest, as it acknowledges its failures in servicing its residents.
- 8.6.2. The causes of these challenges include the following:
- 8.6.2.1. Ageing infrastructure in the greater Standerton area;
 - 8.6.2.2. Incorrect design and installation of the sewer network in Rooikoppen;⁵
 - 8.6.2.3. Poor workmanship in the installation of the Rooikoppen sewer network;⁶
 - 8.6.2.4. Vandalism of the sewer infrastructure;
 - 8.6.2.5. Introduction of foreign objects into the system;
 - 8.6.2.6. Lack of or inadequate maintenance of the sewer infrastructure due to budgetary and human resource constraints;⁷
 - 8.6.2.7. Capacity constraints at the Standerton WWTWs.
- 8.6.3. To compound matters, there is currently a lack of proper planning and coordination of the work of the municipality, as well as that of other government functionaries. In this regard, despite the challenges the Second Respondent has been facing with its sewer infrastructure, development in the area has continued unabated, with the Sixth Respondent completing an RDP housing programme in an area called Extension 8. At Extension 8, houses were built and handed over to residents, despite the absence of bulk sewer infrastructure in the area. Unaware of these challenges, residents started using their water borne

⁵ In this regard, the size of sewer pipes is small and the gradient of the pipes is incorrect, resulting in regular backflows.

⁶ In this regard, investigation has shown that inferior material was used in the construction of the network and that in some parts, the pipes were not joined together. This notwithstanding, no one has been held accountable for these failures

⁷ Currently only undertaking reactive and unscheduled maintenance.

system toilets, resulting in sewage overflows in the newly established settlement.

8.6.4. Despite these challenges, it is making efforts to address the challenges, with the support of the Fourth and Sixth Respondents. Some of these interventions include:

8.6.4.1. The reconstruction of the Rooikoppen sewer network;⁸

8.6.4.2. The refurbishment of Rooikoppen Pump Station 2;⁹

8.6.4.3. The construction of a booster pump station between Rooikoppen Pump Station 2 and Rooikoppen Pump Station 1.¹⁰

8.6.5. Once completed, the above interventions will enable the Second Respondent to pump sewer out of Rooikoppen to the Standerton WWTWs and thereby significantly reduce sewer spillages in Rooikoppen. Sewer spillages will, however, not be completely eradicated, until such time that the capacity of the Standerton WWTWs is addressed.

8.6.6. Other interventions and/or planned interventions include:

8.6.6.1. The refurbishment of the Johan Sewer Pump Station;¹¹

8.6.6.2. The refurbishment of the TLC Sewer Pump Station;¹²

8.6.6.3. Installation of electric fencing and alarm systems at the various pump stations, in order to address the issue of cable theft and vandalism;¹³

8.6.6.4. Appointment of the required staff to operate the various pump stations and the WWTWs;¹⁴

⁸ This project is due for completion in June 2021. The Second Respondent submitted that the project can be carried out and completed within a shorter period of time. The project has, however, been staggered over a three year period, as that is the rate at which the Department of Water and Sanitation will make funds available.

⁹ This project is due for completion in June 2019.

¹⁰ This project is due for completion in February 2019.

¹¹ This project was due for completion in December 2018.

¹² This project was due for completion in December 2018.

¹³ This project is due for completion in June 2019.

¹⁴ The Second Respondent currently has 7 plumbers and require 8 more. Recruitment project due for completion in June 2019.

8.6.6.5. Construction of two sewer pump stations in Extension 8 by the Sixth Respondent;¹⁵

8.6.6.6. Refurbishment of the Standerton WWTWs, in order to bring it back to functionality.¹⁶

8.6.6.7. Capacity upgrade of the Standerton WWTWs.¹⁷

8.6.7. Many of the major planned interventions (i.e. refurbishment and upgrade of the Standerton WWTWs) are dependent on the availability of funds, which the Second Respondent does not currently have, as it is technically insolvent. It can be accepted therefore that many of the unfunded “planned” interventions cannot, therefore, be carried out in the absence of funding for this purpose. The Second Respondent indicated that the current financial state is largely due to the fact that it has not been able to collect sufficient revenue from its residents and that it also owes huge debts to Eskom, the Fourth Respondent and other service providers, which need to be serviced. The Respondents met with the Office of the Mpumalanga Premier and the National Department of Water and Sanitation, in order to solicit their assistance to deal with the challenges plaguing them. No commitments of financial assistance have, however, been secured as yet.

8.7. The Fourth to Seventh Respondents were also invited to make submissions before the inquiry in relation to the complaint against the Second Respondent.

¹⁵ This project is due for completion in June 2019.

¹⁶ In this regard, the Standerton WWTWs stopped functioning in July 2018, following further acts of theft and vandalism. Only R4.1 Million, out of the required R20 million, has been set aside for the project. As a result of the vandalism of the Standerton WWTWs, untreated sewer from the Standerton WWTWs is now flowing freely into the Vaal River. This project is due to completion in June 2019, depending on the availability of funds to complete the project.

¹⁷ On the issue of capacity, currently, the WWTWs has a design capacity of 9ML/ Day. The current inflows into the WWTWs are however between 17-18ML/Day. These inflow figures do not take into account the sewer that flows freely onto the streets in the various parts of Standerton, including Rooikoppen and Extension 8. In order to cope with the inflows therefore, the WWTWs needs to be upgraded to at least 21 ML of sewer per day. The costs of such upgrades are currently estimated to be R145 million. In order to cope with future development, however, and the unaccounted sewer, it is necessary to upgrade the WWTWs' capacity to 30 ML/Day. The estimated costs of such an upgrade currently stands at R250 million. The Second Respondent currently has no funds to undertake such a projects and the completion of the project is therefore dependent on the availability of funds.

- 8.7.1. The Fourth Respondent appeared before the inquiry on 4 February 2019 and made the following submissions, amongst others:
- 8.7.1.1. The challenges at the Second Respondent are known and over the years, it has invested a significant amount of resources in an attempt to address the challenges. All its efforts, however, failed to bear any fruit. As a result therefore, in September 2018, its National Office took the Second Respondent to court and obtained a court order against the Second Respondent on an unopposed basis. In the court order, the Second Respondent was directed to take steps to address the scourge of sewage spillages within its jurisdiction.
 - 8.7.1.2. Its National Office is following up with the Second Respondent, to ensure the enforcement of the judgment.
 - 8.7.1.3. As things currently stand, there are no plans in place to provide additional financial support to the Second Respondent, as it is not spending its current grant allocations at the required pace.
- 8.7.2. The Fifth Respondent also appeared before the inquiry on 4 February 2019 and made the following submissions amongst others:
- 8.7.2.1. The Second Respondent has been identified as one of the most distressed municipalities nation-wide. Accordingly, other than challenges in relation to its sewer infrastructure, it is experiencing challenges in other areas including the provision of access to water and electricity.
 - 8.7.2.2. In the main, the challenges of sewer spillages at the Second Respondent stem from the Second Respondent's dysfunctional infrastructure. Currently, a number of pump stations at the Second Respondent are either totally or partially dysfunctional, resulting in sewer flowing from residential areas down streams leading to the Vaal River. The dysfunctional pump stations include the Muller Pump Station, Rooikoppen 1 and 2 Pump Stations, Steijn Pump Station, Johan Pump Station, Standerton

WWTWs, and Taljaard Pump Station. Many of these pump stations were refurbished in the last two years, but due to vandalism and theft, some have collapsed again. Lack of or inadequate maintenance of the infrastructure is a further challenge.

8.7.2.3. Through the Sixth Respondent, the Provincial Government had intervened to address the sewer spillage challenges at Standerton Extension 8. In this regard, the Sixth Respondent will be installing two pump stations at Standerton Ext 8, for the conduct of sewer to the Standerton WWTWs. The Provincial Government has also deployed additional expertise from the Municipal Infrastructure Support Agent (“MISA”) to provide hands-on support to the Second Respondent, in the form of resident Engineers. Working with the Second Respondent, it is also currently engaging the National Government and the Development Bank of South Africa with the aim of obtaining further financial assistance to refurbish and upgrade the Standerton WWTWs. Additionally, the Fourth Respondent has also made funds available for the reconstruction of the sewer network in Rooikoppen.

8.7.2.4. What remains to be done by the Second Respondent is to:

- (i) Secure funding for the remaining aspects of its intervention plan through its own efforts and that of the Gert Sibande District Municipality;
- (ii) Appoint technical staff and maintenance technicians;
- (iii) Conduct immediate feasibility studies and designs for the upgrading of the Standerton WWTP;
- (iv) Draw up technical reports and business plans for the installation of the sewer package plant prioritised from the Municipal Infrastructure Grant (“MIG”) funding, as a temporary measure for curbing further sewage spillages;

(v) Expedite the development of Master Plans and Comprehensive Infrastructure Plans.

8.7.2.5. With regards to the Second Respondent's request for further funding, the Provincial Government can only be in a position to assist once the Second Respondent begins to use its existing available funds appropriately. Currently, MIG funding is given to the Second Respondent, but not utilised due to various factors, including late procurements, disruption of bidding processes and protest action.

8.7.2.6. An intervention is currently underway at the Second Respondent by the National Treasury Department, after the Second Respondent admitted that it could not fulfil its financial obligations. In this regard, National Treasury has deployed a support unit to assist the Second Respondent with the drafting of its financial recovery plan, which will begin to assist the Second Respondent to do what it needs to do in order to generate its own revenue.

8.7.2.7. Despite the dire state the Second Respondent finds itself in, placing the Second Respondent under administration¹⁸ is not the best solution, as most of the challenges it is facing are political in nature. In this regard, the Second Respondent was once placed under administration but the administrators were threatened and the underlying problems which led to the Second Respondent being placed under administration could not be addressed.

8.7.3. The Sixth Respondent also appeared before the inquiry on 5 and 19 February 2019 and made the following submissions in relation to its role in the sewer spillage crisis in Extension 8:

8.7.3.1. The function of developing human settlements is a concurrent function between provincial and local government. Whilst the

¹⁸ In terms of section 139(1)(b) and (c) of the Constitution.

provincial government is responsible for the erection of houses and the erection of top structures for toilets, the local government is responsible for the provision of land and bulk services.

- 8.7.3.2. Previously, the process followed before a human settlement could be established was that the municipality concerned would confirm the availability of bulk infrastructure and its readiness for the project. Provincial government did not have processes to verify the information provided to it by the municipalities concerned and would proceed with the development of the project on the basis of the information provided to it by the municipalities. This was also the case in the Extension 8 development project.
- 8.7.3.3. It was only after the project had commenced that it discovered that there was no bulk sewer infrastructure at Extension 8. At that point, it had to make a difficult decision of either bringing the project to a halt or proceeding despite the challenges. The Sixth Respondent took the decision to proceed with the project, as insisting on bulk infrastructure before proceeding would have resulted in the development grant being returned to Treasury. There was also political pressure to eradicate informal settlements in that area. The Second Respondent undertook to put bulk services in place in the area, but this was not done.
- 8.7.3.4. According to information available to the Sixth Respondent, the Second Respondent has a contractual arrangement with a developer, in terms of which the Second Respondent made land available to the developer and the developer was in turn required to install bulk infrastructure in the area. This was, however, not done by the developer. Despite the breach of contract by the developer, the Second Respondent has continued to make land available to the developer and has not taken the developer to task for the breach.

- 8.7.3.5. On completion of the houses, the houses were handed over to the Second Respondent, which proceeded to hand the houses over to the beneficiaries, despite the absence of bulk services. Beneficiaries started using the unconnected top structures, which soon resulted in sewer overflows in Extension 8.
- 8.7.3.6. In order to remediate the situation, the Sixth Respondent is in the process of constructing two pump stations in the area, as well as bulk collector lines, which will carry sewer from Extension 8 to Extension 6, and thereafter to the Standerton WWTWs. R10 000 000 (ten million rand) has been set aside for the project. A consultant has been appointed for the project and an inception report has been submitted by the consultant for the consideration of the Sixth Respondent. Detailed designs are also in the process of being finalised for the project. Once the project has been completed, the Second Respondent would need to ensure that electricity is available in order for the pump stations to work.
- 8.7.3.7. The Sixth Respondent conceded that there was poor planning at all levels of the project and that there were gaps in its development processes. There were, however, learnings taken from the challenges in that project. In this regard, the Sixth Respondent now insists on there being bulk infrastructure before commencing with development projects. The Sixth Respondent has also embarked on a programme of assisting municipalities to build bulk infrastructure, to prepare municipalities for future housing development projects. Moreover, before embarking on a development project in existing settlements, they now conduct a comprehensive analysis of the state of infrastructure. Insofar as new settlements are concerned, they get involved in the planning for the projects from inception, including the purchasing of land in some instances.
- 8.7.4. The Seventh Respondent appeared before the inquiry on 6 February 2019 and advised that it had not dealt with any complaints in relation to the

Second Respondent, as the matter was being dealt with by the Fourth Respondent.

8.8. As part of the investigative process, the Commission conducted follow up site inspections in Lekwa Local Municipality (Second Respondent) on 12 March 2019. The Commission was accompanied by Mr Janse Van Rensburg, as well as representatives from the Second and Sixth Respondents during the inspection. The following sites were visited during the site inspection:

8.8.1. Steijn Sewer Pump Station;

8.8.2. Johan Sewer Pump Station;

8.8.3. Extension 8;

8.8.4. Standerton WWTWs;

8.8.5. Taljaard Pump Station;

8.8.6. TLC Pump Station;

8.8.7. Rooikoppen 1 Pump Station; and

8.8.8. Rooikoppen 2 Pump Station.

8.9. At the Steijn Sewer Pump Station, the Commission observed that the station was properly fenced off with iron bars. There was, however, no evidence that the pump station was working at the time of the visit. Representatives of the Second Respondent advised that the pump station is automated and only kick-starts when the water levels in the sump reach a certain point. This notwithstanding, debris and solid waste could be observed on the surface of the pump station, together with evidence of recent sewer overflows at the pump station. There were also water channels that had been dug leading to the pump station. The channels appeared to be for the conduct of storm water into the sewer pump station, which according to the representatives of the Sixth Respondent, should not be done. It was unclear who had dug those channels.

8.10. At Johan Sewer Pump Station, the Commission observed the overflow of sewage, with the whole surface of the pump station submerged in sewer. The sewage flowing

from the pump station made its way directly into the Vaal River behind the pump station. The Commission was informed by the representative of the Second Respondent that despite this ghastly sight, the pump station was in fact working. The pump station is manually operated and the person who was supposed to operate the pump station was held up somewhere, resulting in the overflows. One of the homes serviced by the pump station was also visited. The residents reported that they have been experiencing toilet backflows for years and that sewage sometimes comes out of the drains. They had to dig channels to conduct the sewage out of their home. The sewage is channelled directly into the Vaal River. The representatives of the Sixth Respondent advised that this is one of the consequences of the dysfunctional pump station.

- 8.11. At Extension 8, the Commission observed sewage flowing out of manholes, into people's yards and streets in some places. Residents interviewed indicated that this is what they have had to live with for years and that almost all the areas are similarly affected. The representative of the Second Respondent advised that as a result of the lack of bulk infrastructure in the area, the manholes are essentially used as septic tanks where they are present. The municipality uses honey suckers to drain overflowing manholes from time to time.
- 8.12. At the Standerton WWTWs, the Commission observed that all processes had come to a halt and that therefore, sewage flowing into the WWTWs on one end, was leaving the WWTWs untreated on the other end. The untreated sewage was flowing directly into the Vaal River.
- 8.13. At Taljaard, the Commission found an operator on site and no overflows were observed. There was, however, debris around the pump station, evidencing recent overflows. The Commission was advised by the representative of the Second Respondent that the pump station normally overflows when there are power failures. With the recent spate of load shedding, the pump station experienced its latest sewer overflow the previous week. The sewage from the pump station flows directly into a nearby river.
- 8.14. At the TLC Pump Station, the Commission found the whole surface of the pump station completely submerged in sewage and bloodied water. Through a series of channels, the sewage flowed into the Vaal River. There was also no operator on site.

The representative from the Second Respondent, however, advised that the pump station was working and overflowed because there was no operator on site to operate it. She further advised that they have been experiencing challenges with the operation of the pump station, since the departure of one of the operators. The waste water was quickly sucked in when the pump station was manually switched on. An operator emerged during the course of the inspection.

- 8.15. At Rooikoppen 1 Pump Station, there was no immediate evidence that the pump station was functioning. There were also no sewer overflows observed at the pump station. The Commission was informed that the pump station uses a manual system and is only switched on when the sump reaches certain levels. At the time of the inspections, the sump levels were very low. The operator informed the Commission that the sump levels at that pump station are generally low. Rooikoppen 1 Pump Station is the station servicing most of the areas that are experiencing sewer spillages in Rooikoppen. The Station is also meant to receive sewage from Rooikoppen 2 Pump Station, which is currently dysfunctional.
- 8.16. Construction work was evident at Rooikoppen 2 Pump Station. The Commission was advised by the representative of the Second Respondent that the pump station has been shut down to allow for the completion of the upgrades. Sewer that is meant to be pumped by the station is currently flowing directly into the Vaal River.

9. INVESTIGATIVE PROCESS IN RELATION TO THE COMPLAINT AGAINST THE THIRD RESPONDENT

- 9.1. After receipt of the initial complaint from Mr Pretorius in 2012, the Commission addressed an allegation letter to the Third Respondent on 13 September 2012, inviting a response to the allegations that had been levelled against it. No response was received from the Third Respondent.
- 9.2. Following the second complaint from Mr Benadie, in 2013, another allegation letter was addressed to the Third Respondent on 22 July 2013, inviting its response to the allegations that had been levelled against it. In a response to the second allegation letter dated 21 August 2013, the Third Respondent stated the following, amongst others:

- 9.2.1. It is experiencing challenges in providing effective and safe sanitation within its jurisdiction, particularly in eMbalenhle.
- 9.2.2. The causes of the challenges include blockages at various points in the sewer network, as well as defective booster pump stations, which result in sewer spillages.
- 9.2.3. The sewer reticulation and house connections in eMbalenhle Extensions 14, 16, 18, 19, 20, 21, 22, and 26 were implemented as part of the bucket eradication project in the municipality. The project was, however, completed without a completion certificate being issued to the municipality and as a result, no official hand over was conducted.
- 9.2.4. The scale of the challenge is as follows:
 - 9.2.4.1. The whole network is not functioning as it should;
 - 9.2.4.2. Manholes in some areas have tilted causing pipe blockages;
 - 9.2.4.3. The outfall sewer lines leading to the pump station are not functioning properly;
 - 9.2.4.4. Some toilets are not connected to the network and have never worked;
 - 9.2.4.5. Some of the manholes have been damaged by the community and used as waste drains;
 - 9.2.4.6. Embalenhle Ext 18, 24, 25, and 22 pump stations are overflowing, due to mechanical and technical challenges;
 - 9.2.4.7. Approximately 135 metres of 160mm diameter pipe line to the pump station was not laid by the contractors upon completion of the project; and
 - 9.2.4.8. The sewer lines are blocked and accumulation of sludge and sedimentation can be seen inside sewer manholes.
- 9.2.5. It has put in place plans to address the challenge in the short to long term.

- 9.2.5.1. In the short term, it will be rehabilitating those areas showing signs of malfunction (i.e. defective manholes, defective pump stations, and cleaning of the greater part of the network to facilitate the easy flow of sewage through the pipes).
- 9.2.5.2. In the medium term, with the support of the Gert Sibande District Municipality, SASOL and the Fifth Respondent, R73.5 million has been put aside for various sanitation projects within eMbalenhle during the course of the 2012/2013 and 2013/2014 financial year.

| Project name and description | Allocated budget | Project Status | Funding Source |
|---|-------------------------|----------------------------|-----------------------|
| eMbalenhle Ext 16, Sewer Reticulation upgrading | R6 000 000.00 | Procurement Stage | MIG |
| eMbalenhle Ext 18, sewer reticulation upgrading | R4 000 000.00 | Feasibility Study/Planning | GSDM |
| eMbalenhle Ext 22, sewer reticulation network rectification | R4 000 000.00 | Design | SASOL/GSDM |
| eMbalenhle Ext 26, sewer reticulation network rectification | R8 000 000.00 | Design | SASOL |
| eMbalenhle Wastewater Treatment Works, Refurbishment | R60 000 000.00 | Procurement | MIG |
| eMbalenhle Ext 16, sewer operational support | R500 000.00 | Implementation | GSDM |

9.2.5.3. In the long term, a new sewer reticulation network will need to be relayed, along with the rebuilding of new sewer poster pump stations, with energy efficient electrical and mechanical components, as well as 24 hour emergency storage facilities at strategic areas. In addition, pump stations will need to be secured to minimise theft and vandalism, which will include a 24 hour armed security guard.

9.3. On 6 February 2018, following the receipt of the third complaint by the Third Complainant in this matter, the Commission addressed a follow up letter to the Third Respondent on 8 February 2018, in terms of which it sought a progress report on the implementation of the projects it undertook to implement in 2013. A progress report was, however, not forthcoming. Instead of a progress report, in its letter of 9 October 2018, the Third Respondent provided the Commission with what appears to be a new project plan, with a reduced budget of R58 000 000. In the new project plan, the scope of the project was also reduced and segmented into 5 projects, covering the areas of eMbalenhle Ext 10, 16, 18, 19, 21 and 22.

9.4. On 25 January 2019, the Commission was provided with a copy of a letter from the Third Respondent to the Office of the Premier. In that letter, the Third Respondent further elaborated on the causes of its challenges with sewer spillages and waste water treatment, as well as its planned interventions to address the challenges. In this regard, the Third Respondent advised that it has a high rate of none payment of services in the township areas and consequently struggles to maintain basic infrastructure as it is mostly reliant on grants and the limited budget from its revenue. Other challenges include the overloading of the sewer outfall lines, small pipelines, sludge, foreign objects and sand build up in the sewer line, which all consequently result in sewage spillages. The Third Respondent thereafter outlined its planned intervention as follows:

| Hot Spot | Cause of Spill | Required intervention | Progress |
|--------------------------|--|--|--|
| eMbalenhle Ext 10 and 16 | Overloaded Sewer Lines and small sized pipelines | - Upgrade sewer line from 100 to 160mm | - In Ext 10, the length that needs to be |

| | | | |
|--------------------|--|---|--|
| | | <ul style="list-style-type: none"> - Lift sewer line and manholes - Vacuum manholes | <p>upgraded is 12 050m and currently no progress made</p> <p>- In Ext 16, the length required to be upgraded is 7610m and length upgraded is currently 2015m</p> |
| eMbalenhle Ext 18 | <ul style="list-style-type: none"> - Overload of sewer line - Collapse of manholes | Upgrade outfall sewer line from extension 18 to pump station and the WWTW | The length required to be upgraded is 11305m and length upgraded is currently 2225m |
| eMbalenhle Ext 21 | <ul style="list-style-type: none"> - Overload of sewer line | Upgrade sewer line to 250mm | The length required to be upgraded is 5490m and length upgraded is currently 353m |
| eMbalenhle Ext 222 | <ul style="list-style-type: none"> - Collapse of manholes | Upgrade sewer lines from 160mm to 315 mm | The length required to be upgraded is 5531m and length upgraded is currently 2673m |

9.5. As with the other investigations, an investigative inquiry was convened in respect of this complaint in February 2019. The Third Respondent appeared before the Commission on 1 February 2019, with the Fourth, Fifth, Sixth and Seventh Respondents appearing before the Commission on 4, 5 and 6 February 2019 respectively.

9.6. The Third Complainant was not in attendance at the inquiry. The Second Complainant, however, appeared at the inquiry on behalf of the Democratic Alliance, which had previously referred a similar complaint to the Commission. The Second

Complainant made the following submissions at the inquiry in relation to the Third Respondent:

- 9.6.1. The challenges at eMbalenhle stem from the hastily and poorly executed 2009 bucket eradication programme and continue 10 years on. In this regard, there was no sewer line installed in some places, whilst in other places, the sewer pipes installed were too small, and could not cope with the volumes of sewer in the network. As a result of the poor execution of the programme by the Third Respondent, almost immediately after the hand over the project, communities started experiencing sewer overflows in their homes, resulting in residents digging furrows to channel sewage out of their homes. Many residents reverted to using bucket toilets and to emptying them in holes or nearby fields. The challenges are acute in Ext 10, 13 and 14. Despite these challenges, however, the Third Respondent has continued to allow further development in the area, which exacerbates the problem.
- 9.6.2. A resolution had previously been taken by the municipal council to hold the contractor(s) and the responsible employees to account for the failures in the implementation of the project but was not carried out. To date therefore, no one has been held to account for the failures in the implementation of the project.
- 9.6.3. Other areas experiencing sewer spillages include Leslie, Lebohang (Leandra), Evander and Mzinoni Extension 5.
- 9.6.4. It is only now that some of the challenges are being attended to in some of the affected areas, namely Ext 18, 19, 21 and 22. Other areas, such as Extension 10 and 16, are however yet to be attended to.
- 9.6.5. Whilst none payment of services affects the provision of services at the Third Respondent, it is ultimately the responsibility of the Third Respondent to ensure that residents pay for services. In any event, lack of money is not the main challenge faced by the Third Respondent, as the Third Respondent has not been spending its MIG grant allocations, resulting in allocations to the Third Respondent declining year on year. The main

challenge faced by the Third Respondent therefore is its technical capacity.¹⁹

- 9.6.6. In view of these myriad of challenges, the Second Complainant proposed that the Third Respondent be placed under administration, in order to begin to resolve some of these challenges.
- 9.6.7. He is also not satisfied with the Third Respondent's latest proposed intervention plan, as there are no implementation dates provided in the plan.
- 9.7. The Third Respondent was given an opportunity to respond to the allegations levelled against it by the Second Complainant. The Third Respondent made the following submissions before the inquiry on 1 February 2019:
 - 9.7.1. The allegations made by the Second Complainant against it are true, as historically, it has had challenges with sewage spillages, following the 2009 rapid bucket eradication programme. It, however, does not have the capacity to address the problem and has consequently solicited the assistance of the provincial government in addressing the challenges. In this regard, it is facing a myriad of other challenges which range from water supply to electricity supply and poor road infrastructure.
 - 9.7.2. Through the Sixth Respondent, the Provincial Government is assisting it to re-lay its sewer reticulation network from scratch. This programme is ongoing, with the deadline for the completion of the various projects being June 2019.
 - 9.7.3. It is also working with other stakeholders, such as SASOL, who have agreed to sponsor parts of the project as outlined above.
 - 9.7.4. MIG was not spent in previous years due to unsuccessful bidders in the areas threatening the winning contractors, resulting in them not being able to finish their work and claim against the allocated budget. It is on course

¹⁹ Other challenges include the technical insolvency of the Third Respondent and its ability to maintain the existing infrastructure.

with its budget spend, and does not, therefore, anticipate any challenges in the 2018/2019 financial year.

- 9.7.5. It is currently busy with its sewer master plan and has, to this end, solicited the assistance of the Fifth Respondent.
- 9.7.6. With regards to the impact of the sewer spillages, it conceded that the sewer spillages and inadequate treatment of sewer waste has had an adverse impact on the environment, as well as its residents. Livestock that drinks water from polluted rivers and streams has also been adversely affected.
- 9.8. The Accounting Officer of the Third Respondent was cross questioned regarding the Third Respondent's failure to implement its own resolution to hold the contractor and the concerned employees accountable for the failures in the implementation of the bucket eradication project. In reply, however, the Accounting Officer of the Third Respondent advised that he has only been in the employ of the Third Respondent since 1 October 2018 and was therefore not aware of such a resolution. He undertook to investigate the matter further and revert to the Commission, but did not do so.
- 9.9. The Fourth to Seventh Respondents were also invited to make submissions before the inquiry in relation to the complaint against the Third Respondent.
 - 9.9.1. The Fourth Respondent appeared before the inquiry on 4 February 2019 and made the following submission amongst others:
 - 9.9.1.1. The challenges with sewage spillages and waste water treatment at eMbalenhle and surrounding areas are known to it. The causes of these challenges include increased population in the area, which has resulted in the overloading of the existing sewer system; the inadequate maintenance and operation of the sewer system by the Third Respondent; the storm water ingress, due to poor storm water management; and debris being thrown into manholes, leading to blockages along the sewer network.
 - 9.9.1.2. The impact of these sewage spillages on residents and the environment has been immense and has potential to cause

waterborne diseases that may be harmful to both human health and the environment.

9.9.1.3. It has conducted site visits at eMbalenhle and issued recommendations to the Third Respondent on how to address some of its challenges. In addition, it has made R10 000 000.00 (ten million rand) available to the Third Respondent for the refurbishment of the Kinross Waste Water Treatment Works (“Kinross WWTWs”). A request for future budget allocation for the upgrade of the Kinross WWTWs has also been made to National Treasury. It is part of the task team which comprises of the Fifth and Sixth Respondents, which seeks to address the sewer spillage challenges at the Third Respondent.

9.9.2. The Fifth Respondent also appeared before the inquiry on 4 February 2019 and made the following submission amongst others:

9.9.2.1. Most of the wards and towns of the Third Respondent are experiencing sewer spillage challenges. Some of the causes of these challenges include population growth; failure to upgrade the sewer infrastructure; vandalism and the illegal connections of electricity at pump stations; inadequate pre-emptive and reactive maintenance; total collapse of manholes and the overloading of outfall lines; and poor spatial planning, with some houses built on sewer servitudes, leading to the total collapse of the sewer lines.

9.9.2.2. Many of these challenges can, indeed, be traced back to the 2009 bucket eradication programme. At the time, the bucket eradication programme was a national government priority, linked to the Millennium Development Goals. There were consultations at all levels of government on the implementation of the project. Affected municipalities had an option of either replacing the bucket toilets with VIP toilets or water borne toilets. The Third Respondent opted for the latter. Money was made available to the Third Respondent by National Treasury and

SASOL for the implementation of the project. The project was unfortunately poorly implemented, with the Gert Sibande District Municipality, opting for incorrect project designs. It was only after the connection of the top structures to the network that the challenges in the system were picked up. An investigation was conducted and a report issued on the matter, which uncovered wrongdoings on the part of the contractor and some employees. It was for the Third Respondent, however, to act on the report and to hold those responsible for the project implementation failures accountable for their role in the failed project.

9.9.2.3. In order to address some of the identified challenges, the Provincial government, through the Sixth Respondent, has made R53 155 054.12 available for various sewer rehabilitation projects²⁰ in eMbalenhle at Extensions 10, 16, 18, 19, 21, 22 and 25 in the 2018/2019 financial year. Work is in progress at Extensions 18, 19 and 22, whilst work is yet to commence at Extensions 10, 16, 21 and 25, with designs for the work at Extension 25 at the final stage. Overall, R126 537 938.50 is required for the work in eMbalenhle. There is therefore a funding shortfall of R73 382 884.38.²¹ An additional amount of R30 000 000.00 has been made available by the Provincial Government to address bulk sanitation and internal sewer reticulation challenges in Leandra, which include unconnected and blocked sewer lines, as well as collapsed manholes. In addition, SASOL has made R9 736 474.58 available to address bulk sewer challenges in Kinross, Secunda, Leandra and Trichardt.

9.9.2.4. Other proposed interventions include the following:

²⁰ The scope of the projects include addressing bulk sanitation and internal sewer reticulation challenges, which include blocked and unconnected sewer lines; collapsed and blocked manholes' vandalised and overloaded pump stations; and malfunctioning equipment.

²¹ It must be noted that this submission is different to that made by the Sixth Respondent. According to the Sixth Respondent, R126 537 938.50 is required for all the projects. The available funding for the 2018/2019 financial year is R73 115 054, with a shortfall of R53 442 884.50. Despite these differences, what is important to note for our purposes is that there is a funding shortfall. No submissions were made on how the shortfall will be raised.

- i) In the short term, the Provincial Government will need to accelerate and closely monitor the various sanitation projects currently underway at the Third Respondent and provide ongoing support to the Third Respondent to ensure that both electrical and mechanical failures for the majority of the pump stations are attended to. On the other hand, the Third Respondent will need to develop routine maintenance plans for all sewer networks through MISA and to continue to vacuum and jet blow all blocked lines as a temporary measure, pending the complete refurbishment of the network. In addition, the Third Respondent will need to conduct community awareness and education programmes against vandalism and fill all critical funded vacant posts, especially in the technical department, by May 2019.
- ii) In the long term, it would be necessary to refurbish and upgrade all the sewer infrastructure that has reached its lifespan; reassess the functionality and design capability of all bulk sewer infrastructure; engage SASOL with the view to reaching a permanent agreement on the utilization of their engineering expertise for infrastructure designing and rapid responses; assist the Third Respondent, through MISA, to develop infrastructure assets management plans and develop a credible long term capital asset investment plan.

9.9.3. The Sixth Respondent also appeared before the inquiry on 5 and 19 February 2019 and provided the following progress report on its intervention at the Third Respondent:

| Project description | % of Work Completed | % of Work Outstanding | Contract amount | Amount Claimed |
|---|----------------------------|------------------------------|------------------------|-----------------------|
| Rehabilitation of sewer reticulation infrastructure | 0m of pipeline replaced | 97% | R27 517 533.00 | R867 612.34 |

| | | | | |
|--|---|-----|-----------------|----------------|
| in Extension 10: 12050m of pipeline to be replaced | 3% of the work completed | | | |
| Rehabilitation of sewer reticulation infrastructure in Extension 16: 7610m of pipeline to be replaced | 2015m of pipeline replaced 29% of the work completed | 71% | R17 184 850.96 | R1 814 096.00 |
| Rehabilitation of sewer reticulation infrastructure in Extension 18: 11305m of pipeline to be replaced | 2225m of pipeline replaced 22% of the work completed | 78% | R32 981 025.60 | R3 302 983.49 |
| Rehabilitation of sewer reticulation infrastructure in Extension 19: 200m of pipeline to be replaced | 0m of pipeline replaced 45% of the work completed | 55% | R3 416 801.71 | R2 514 375.45 |
| Rehabilitation of sewer reticulation infrastructure in Extension 21: 5490m of pipeline to be replaced | 353m of pipeline replaced 9% of the work completed | 91% | R13 607 368.20 | R1 184 781.07 |
| Rehabilitation of sewer reticulation infrastructure in Extension 22: 5531m of pipeline to be replaced | 2673m of pipeline replaced 51% of the work completed | 49% | R13 444 831.00 | R4 855 269.50 |
| Totals | | | R108 152 410.47 | R14 539 117.85 |

- 9.9.4. The Sixth Respondent reported that the above amounts for the project exclude professional fees and that therefore, the total amount required for the project is R126 537 938.50. The amount available for it in the 2018/2019 financial year is R73 115 054.00 and there is therefore a short fall of R53 442 884.50.²²
- 9.9.5. The Sixth Respondent also reported that the contractor was running behind schedule in respect of all the projects due to challenges experienced on the project, but has been requested to submit a turn-around plan on how the lost time will be recovered in order to align with the initial project schedule.
- 9.9.6. Although the Seventh Respondent was also invited to make submissions in relation to the sewage spillages and waste water treatment challenges at the Third Respondent, it did not make any substantive submissions when it appeared before the Commission on 6 February 2019, as it had not dealt with any complaints involving the Third Respondent.
- 9.10. As part of the investigative process, as was the case with the other investigations, the Commission conducted follow up site inspections at the Third Respondent on 19 March 2019. Due to time constraints, the investigating team could not visit all the sites allegedly affected by the sewage spillages at the Third Respondent. The Commission was accompanied by Cllr Marian Chamberline from the Democratic Alliance, as well as representatives from the Third and Sixth Respondents during the inspection. The following sites were visited during the site inspection:
- 9.10.1. Areas near Klebies Pump Station in Leandra;
- 9.10.2. The N17 Pump Station in Leandra;
- 9.10.3. The Leandra Waste Water Treatment Plant;
- 9.10.4. Embalenhle Extension 22;

²² No submission were made on how the shortfall with be raised.

9.10.5. Embalenhle Extension 18;

9.10.6. Embalenhle Extension 10.

- 9.11. At the area near Klebies Pump Station, the Commission noted an overflowing manhole, with the sewer flowing directly into a nearby stream. The Commission was advised by a representative of the Third Respondent that Klebies Pump Station is not functioning because it is currently under refurbishment. The sewage which was supposed to be conducted by the pump station is now flowing directly onto the streets and nearby streams. The representative of the Third Respondent advised that in order to ameliorate the challenge, the Third Respondent sends honey suckers to drain blocked manholes. The representative was pressed during the inspection on whether the operation of the honey suckers was scheduled or whether they were only sent out to respond to emergencies. The Commission also raised concerns with the representative regarding the lack of contingency measures to deal and treat sewer in the affected communities, pending the completion of the refurbishment project at the pump station. The representative of the Third Respondent failed to provide the Commission with responses to its probes.
- 9.12. On the way to the N17 Pump Station, the Commission noted an overflowing manhole just outside the Pump Station. The Commission was advised that the manhole was overflowing because the pump station was not yet operational, due to the upgrade work currently being done. At the N17 Pump Station itself, the Commission found the contractor and the operator on site. The contractor advised that the pump station was nearly complete and that the project was due to be handed over by the end of March 2019. The only issue outstanding was the electrification of the pump station.
- 9.13. At the Leandra WWTWs, the Commission found a number of contract workers on site but no notable activity on the site could be observed. The Commission was advised by the representative of the Third Respondent that the WWTWs was not operational, as it is in the process of being refurbished. The sewage flowing into the WWTWs was therefore discharged untreated into the nearby river (Braakfontein River). It was expected that the refurbishment work would be completed by the end of June 2019. The representative further advised that, when operational, the capacity of the WWTWs is 8.5ML/Day. The WWTWs has, however, been receiving around

3.5MLof sewage per day on average, due to the sewage spillages across the various points in the network.

- 9.14. At eMbalenhle Extension 22, contractors were on site. They advised the Commission that they were upgrading the pipework from a size of 110mm to 160mm. They further advised that part of the project was almost complete and that they had hoped to handover that aspect of the project by the end of March 2019. They also advised that the pump station servicing the area (Extension 22 Pump Station) was fully functional and that the only challenge was the network, which they were in the process of upgrading. During the site inspection, however, the Commission observed heavy and uncontrolled spillages into the Blekbokspruit River from a connecting pipe leading to the Extension 22 Pump Station.
- 9.15. At eMbalenhle Extension 18, the Commission further noted sewage overflows onto the streets and from various manholes. The sewage flowed into the Blekbokspruit River through a series of channels.
- 9.16. At eMbalenhle Extension 10, the Commission also noted sewage overflows from residential homes into the Blekbokspruit River. The contractor and the municipal representative advised that work progress in Extension 10 had been slow but they had expected the progress to improve soon.

10. FACTUAL ANALYSIS

- 10.1. From the above, it is apparent that there are serious and systemic challenges with sewage spillages and the treatment of waste water at the First to Third Respondents, which have serious and adverse impacts on a number of communities and the environment.²³ In addition, the challenges continue to pressure responses from municipalities. Whilst the causes of these challenges are many, in respect of the First and Second Respondents, they may safely be attributed to the constrained capacity of existing sewer systems (as a result of poorly planned and executed development).

²³ In this regard, excerpts of the 2017 Blue Drop and Green Drop Reports submitted by the Fifth Respondent at the inquiry showed that the drinking water quality at the Second Respondent was bad (50% and below), with the levels of compliance with effluent treatment standards indicated as equally bad (standing at 0%). In respect of the Third Respondent, excerpts of the 2017 Blue Drop and Green Drop Reports showed that whilst the drinking water quality at the Third Respondent was Legendry (above 95%), the levels of compliance with effluent treatment standards was bad (below 80%).

The lack of pre-emptive and routine maintenance of the sewer systems is however attributable to all Respondents. Additional contributing factors in respect of the Second and Third Respondents include inadequate monitoring and evaluation of project delivery, and a lack of accountability for the poor workmanship in the installation of the sewer network in the jurisdiction of the respective Respondents. The absence of control measures to manage risks attendant on the security of sewer infrastructure has compounded challenges and is unduly increasing costs and adverse impacts to the public.

- 10.2. Whilst the Second and Third Respondents have freely admitted their shortcomings as documented above, this has not been the case in respect of the First Respondent. In this regard, whilst admitting that sewer spillages do occur in Malelane from time to time, the First Respondent has consistently denied that these challenges are systemic. Moreover, the First Respondent has denied the existence of systemic challenges with waste water treatment in Malelane. In respect of Komatipoort, whilst admitting to the existence of systemic challenges with its sewer system there, it has sought to pass the blame for these challenges to a third party being, Transnet.
- 10.3. In the Commission's view, the First Respondent's denial of systemic challenges with sewer spillages in Malelane could not be supported by evidence. In this regard, the evidence from the First Complainant and a number of the residents of Malelane clearly indicate that though not a daily occurrence, sewage spillages in the town are a regular occurrence. The First Respondent was given an opportunity to refute this evidence but failed to do so.²⁴ Moreover, although the Commission did not find actual sewage spillages on the occasions it attended at Malelane for site inspections, there was evidence on all the occasions of recent sewage spillages. In the circumstances, it must be accepted that there are systemic challenges of sewage spillages in both Malelane and Komatipoort. What needs to be determined next is who or what these challenges are attributable to.
- 10.4. The First Respondent has maintained that the sewer spillage challenges that do exist in Malelane are in the main, not attributable to it, but attributable to other external factors such as power failures, blockages caused by the introduction of foreign

²⁴ The First Respondent was requested to provide the Commission with information on the number of times their technicians have been called to attend to sewage spillages since May 2016 to November 2018, whether through the call centre or other means. The First Respondent failed and/or refused and/or neglect to provide the Commission with the requested information, which only the First Respondent will have access to.

objects, as well as flooding during raining seasons. The evidence from the First Complainant, as well as the Fourth, Fifth, Seventh and Eighth Respondents, however, contradicted these assertions. In turn, they submitted that as is the case at the Second and Third Respondents, the challenges at the First Respondent are largely owing to systemic failures on the part of First Respondent, and not external factors as alleged by the First Respondent.

- 10.5. In this regard, it was submitted that power failures should not be a major contributor to sewer spillages at the First Respondents, as power failures are not an everyday occurrence, while the spillages have been frequent. Further, it was submitted that the challenge of foreign objects can be successfully dealt with through pre-emptive and routine maintenance, which the First Respondent conceded it was not undertaking. The Commission is inclined to a view that once identified, a challenge with the sewer system requires probing and remedying. The responsibility for such action is within the remit of the First Respondent. Given the long span of time over which challenges have persisted, it is not unreasonable to conclude that the First Respondent failed to adequately fulfil this duty.
- 10.6. The First Respondent's denial of systemic challenges with waste water treatment in Malelane is equally without basis. In this regard, the evidence before the Commission is that there are high levels of water pollution in the rivers where the First Respondent discharges its "treated" effluent, which evidence the inadequacy of the First Respondent's water treatment processes. The evidence before the Commission is also that the proper functioning of Mhlatiplaas WWTWs is seriously curtailed by capacity constraints and lack of proper maintenance of the oxidation ponds, rendering the effluent discharged at the end of the treatment process less than optimal.
- 10.7. The First Respondent however, vehemently denied any capacity constraints within its sewer system, submitting that it had more than enough capacity at the treatment works level in both Malelane and Komatipoort. The Eighth Respondent however submitted that the fact that the First Respondent is discharging effluent from its Mhlatiplaas WWTWs points to capacity constraints, as in its original design, the WWTWs was not supposed to discharge any effluent. In addition, it was submitted by the Seventh and the Eighth Respondents that the First Respondent made an application for the refurbishment and upgrade of Mhlatiplaas WWTWs, which process

the First Respondent did not pursue further. In the Commission's view, it is highly unlikely that the First Respondent would have applied for a capacity upgrade if there were no capacity challenges as it claims. Although no substantive submissions were made to the Commission regarding the extent of these capacity constraints, the evidence submitted before the Commission appears to support the allegation that there are capacity constraints within the sewer system, particularly at the treatment works level. This conclusion is bolstered by the First Respondent's own admission in its 2016/2017 annual report which was released towards the end of 2017 that its treatment works are operating above capacity. In view thereof, the position of the First Respondent about the capacity of its sewer system in Malelane is concerning.

- 10.8. In view of the above, the Commission finds that there are systemic challenges with sewer spillages and waste water treatment in Malelane, which are attributable to failings on the part of the First Respondent.
- 10.9. Insofar as Komatipoort is concerned, whilst complex submissions were made by both the First Respondent and Transnet on the causes of the challenges in that area, together with submissions regarding remedial actions to address the challenges, it is common cause that Transnet would not be experiencing regular sewage spillages if the First Respondent's sewer system had been working as it should have been. It would follow therefore that the cause of the challenge of regular sewage overflows at Transnet cannot be attributed to Transnet's failure to install a new septic tank and gradient, but to the systemic failures of the Komatipoort sewer system as a whole and the Transnet Pump Station in particular, for which the First Respondent is responsible.
- 10.10. In light of the above, it is apparent that the sewer spillage and waste water treatment challenges at the First Respondent are largely owing to systemic failures on the part of the First Respondent.
- 10.11. The results of these systemic failures are self-evident. The excerpts of the 2017 Blue Drop and Green Drop Reports submitted by the Fifth Respondent at the inquiry showed that the drinking water quality at the First Respondent was poor, with the levels of compliance with acceptable effluent treatment standards indicated as bad.
- 10.12. In the face of such evidence, it is curious how the First Respondent could persist in its assertion that there are no systemic challenges with sewer spillages and waste

water treatment within its jurisdiction. Moreover, it boggles the mind how the First Respondent could persist in its assertion that the challenges it admits exist are, in the main, not attributable to it but to external factors.

10.13. Having established that there are systemic challenges with sewer spillages and the treatment of waste water in the three municipalities identified in this investigation, the legal framework applicable to the issue of sewer spillages and the treatment of waste water is considered below. The aim of such consideration is to determine whether the systemic challenges identified above violate the rights of residents as alleged and if so, the roles and responsibilities of the various duty bearers in redressing the identified challenges.

11. LEGAL ANALYSIS

11.1. Together with deep social injustice, environmental justice was a key area of concern for the drafters of the South African Constitution in recognition of the interrelated nature of rights and sustainability of life. It is for this reason that South Africa is one of the growing number of countries in the world that has environmental rights enshrined in its Constitution.

11.2. In this regard, section 24 of the Constitution provides as follows:

“Everyone has a right –

(a) to an environment that is not harmful to their health or wellbeing; 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.”

11.3. From the above, it is apparent that the right provided for in section 24 of the Constitution is a two-fold right, with the first part being the fundamental right of every

person to be protected from the harmful effects of environment pollution and degradation and, the second part requiring the state to take positive steps to ensure the protection of the environment for the benefit of present and future generations. Section 24(b) of the Constitution is an extension of the state's duty in terms of section 7(2) of the Constitution.²⁵

- 11.4. Insofar as the content of the right in section 24(a) is concerned, "environment" is defined as the surroundings within which humans exist, and includes land, water, the atmosphere of the earth, micro-organisms, plant and animal life, as well as other properties that influence human health and wellbeing.²⁶ "Health" on the other hand is defined as the "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."²⁷ It is therefore not necessary to show a causal nexus between an incident of environmental degradation and actual disease in order to conclude the right enshrined in section 24(a) has been violated. It would suffice to show that a person's physical, mental or social well-being has been adversely impacted. Finally, well-being refers to the idea of "personal fulfilment and freedom from mental distress" and includes "notions of concern for the aesthetic and spiritual dimension of the natural environment, including the idea of 'sense of place'".²⁸ For Kidd, therefore, this could mean that a person's well-being could be affected by environmental degradation at a place geographically distant from that person.
- 11.5. Examples of violations to the right in section 24(a) include exposure to air pollution and exposure to polluted water for personal use.²⁹ In *Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products*,³⁰ the court specifically found that exposure to stench has adverse impacts on one's well-being and that therefore, no one should be required to operate in an environment of stench.
- 11.6. It can hardly be gainsaid that exposure to sewage spillages has an adverse impact on human health and wellbeing. Not only is untreated sewer aesthetically offensive, it is usually accompanied by an unpleasant stench, as was observed during the

²⁵ Section 7(2) of the Constitution provides that the State has an obligation to "respect, protect and fulfil the rights in the Bill of Rights".

²⁶ Section 1 of the National Environmental Management Act 107 of 1996 ("NEMA").

²⁷ Preamble of the World Health Organisation Constitution, <https://www.who.int/about/who-we-are/constitution> [Accessed on 13 June 2019].

²⁸ Kidd, M. "Environment". In Currie, I and De Waal, J. *The Bill of Rights Handbook*. 6ed. 2013. Juta and Co. Cape Town, Page 522.

²⁹ *Ibid*, Page 516.

³⁰ 2004 (2) SA 393 (E).

Commission's site inspections at the various municipalities. In addition, the release of air-borne disease from exposed sewage is more than likely to affect the health of people and vulnerable groups such as children, and older persons quite adversely. The pollution of scarce water resources with untreated or inadequately treated sewage also has an adverse impact on human health and wellbeing. Not only are the users of such water directly exposed to disease and infirmity, the environmental degradation that results from the pollution also offends the mental wellbeing of the locals and other environmentally conscious persons world over, and is a cause for serious anxiety. It was therefore rightly conceded by the Respondents that the ongoing challenges of sewage spillages and the inadequate treatment of waste water at the municipalities under investigation have had an adverse impact on the affected residents' health and wellbeing. The municipalities under investigation therefore violated residents' rights in terms of section 24(a) by failing to provide sanitation services in a manner that does not cause environmental degradation or pose harm to residences' health and wellbeing.

11.7. The First to Third Respondents' conduct is in violation of environmental legislation enacted to give effect to the state's obligations in terms of section 24(b) of the Constitution. The most relevant pieces of legislation for the purposes of this investigation are:

11.7.1. The Water Services Act 108 of 1997 ("**Water Services Act**") and its related regulations;

11.7.2. The National Water Act 36 of 1998 ("**National Water Act**"); and

11.7.3. National Environmental Management Act 107 of 1998 ("**NEMA**").

11.8. In this regard, in terms of section 9 of the Water Services Act, the Minister of Water and Sanitation may, from time to time, prescribe compulsory national standards relating to the provision of water services (which includes sanitation services), as well as the quality of water discharged into any water resource system, amongst others.³¹ In developing the said compulsory national standards, the Minister is required to take into account the impact which the water services might have on the environment

³¹ Section 9(1(a) and (b) of the Water Services Act.

amongst other factors.³² The quality standards of water discharged into a water resource have been prescribed in the “Revision of General Authorisations in terms of section 39 of the National Water Act” published under Government Notice 665 in Government Gazette 36820, dated 6 September 2013.³³

11.9. Furthermore, the National Guideline for the Discharge of Effluent from Land-based Sources into the Coastal Environment³⁴ emphasises the importance of upgrading of WWTWs and managing of effluent discharges as part of the holistic ‘Master Plan’ for water as required by the Water Service Act.

11.10. Also in accordance with section 9 of the Water Services Act, in 2001, the then Minister issued regulations relating to the compulsory National Standards and Measures to conserve Water.³⁵ In terms of section 9 of the issued regulations, “a water service institution³⁶ is only obliged to accept the quantity and quality of industrial effluent or **any other substance** into a sewer system that the sewage

³² Section 9(3)(g) of the Water Services Act.

³³ Table 2.1 of the document prescribes the standards as follows:

- Faecal Coliforms (per 100 ml) - General Limit is 1000, whilst the Special Limit is 0;
- Chemical Oxygen Demand (mg/l) – General Limit is 75 (i), whilst the Special Limit is 30(i);
- pH – General Limit is 5.5 – 9.5 , whilst the Special Limit is 5.5 – 7.5;
- Ammonia (ionised and un-ionised) as Nitrogen (mg/l) - General Limit is 6, whilst the Special Limit is 2;
- Nitrate/Nitrite as Nitrogen (mg/l) – General Limit is 15, whilst the Special Limit is 1.5;
- Chlorine as Free Chlorine (mg/l) – General Limit is 0.25, whilst the Special Limit is 0;
- Suspended Solids (mg/l) – General Limit is 25, whilst the Special Limit is 10;
- Electrical Conductivity (mS/m) – General Limit is 70 mS/m above intake to a maximum of 150 mS/m, whilst the Special Limit is 50 mS/m above background receiving water, to a maximum of 100 mS/m;
- Ortho-Phosphate as phosphorous (mg/l) – General Limit is 10, whilst the Special Limit is 1 (median) and 2.5 (maximum);
- Fluoride (mg/l) – General Limit is 1, whilst the Special Limit is also 1;
- Soap, oil or grease (mg/l) – General Limit is 2.5, whilst the Special Limit is 0;
- Dissolved Arsenic (mg/l) – General Limit is 0.02, whilst the Special Limit is 0.01;
- Dissolved Cadmium (mg/l) – General Limit is 0.005, whilst the Special Limit is 0.001;
- Dissolved Chromium (VI) (mg/l) – General Limit is 0.05, whilst the Special Limit is 0.02;
- Dissolved Copper (mg/l) – General Limit is 0.01, whilst the Special Limit is 0.002;
- Dissolved Cyanide (mg/l) – General Limit is 0.02, whilst the Special Limit is 0.01;
- Dissolved Iron (mg/l) – General and Special Limit is 0.3;
- Dissolved Lead (mg/l) – General Limit is 0.01, whilst the Special Limit is 0.006;
- Dissolved Manganese (mg/l) – General and Special Limit is 0.1;
- Mercury and its compounds (mg/l) - General Limit is 0.005, whilst the Special Limit is 0.001;
- Dissolved Selenium (mg/l) – Special and General Limit is 0.02;
- Dissolved Zinc (mg/l) – General Limit is 0.1, whilst the Special Limit is 0.04;
- Boron (mg/l) - General Limit is 1, whilst the Special Limit is 0.5.

³⁴ Published IN 2014 in terms of Section 83(1)f and 83(1)g of NEMA: Coastal Management Act, 2008 (Act No. 24 of 2008), https://www.environment.gov.za/sites/default/files/legislations/nationalguideline_landbasedinfluent_dischargecoastal_0.pdf [Accessed on 04 November 2019].

³⁵ Standards issued in terms of Government Notice R509 in Government Gazette 22355.

³⁶ In terms of section 1 of the Water Services Act, a water service institution is defined as a water services authority, a water services provider, a water board and a water services committee.

treatment plant linked to that system is capable of purifying or treating to ensure that any discharge to a water resource complies with any standard prescribed under the National Water Act.”

11.11. According to the National Standards for the provision of water services therefore, a water services institution may not accept any effluent into its sewage system that its sewage treatment plants cannot treat to the required standards. Moreover, any leaks in the water services system, which include the sewer system, must be repaired within 48 hours of being known. As water services institutions therefore, the First and Second Respondents are both in breach of their obligations in terms of the National Standards by allowing the continued operation of their, sewage plants above their capacity design, resulting in sewage not been treated to the required standards, as confirmed by the 2017 green drop report. Moreover, the Second and Third Respondents are both in breach of their obligations in terms of the National Standards by continuing to receive sewer into their dysfunctional treatment plants and discharging same into the water resources untreated. Additionally, the Second and Third Respondents are both in breach of their obligations in terms of the National Standards in failing to address sewage spillages within the prescribed 48 hour period.

11.12. Section 19 of the National Water Act, on the other hand, imposes a duty on land owners or users to prevent and remedy the effects of pollution. In this regard, an owner or user of land on which any activity is undertaken which causes or is likely to cause pollution of a water resource is required to take **all reasonable measures** to prevent any such pollution from occurring, continuing or recurring.³⁷ These measures may include modifying or controlling the processes causing pollution, complying with waste management standards, and remedying the effects of the pollution.³⁸ The National Water Act makes it a criminal offence to “unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource” or “which detrimentally affects or is likely to affect a water resource”.³⁹ This offence is punishable by a fine or imprisonment not exceeding five years on first conviction.⁴⁰

³⁷ Section 19(1) of the National Water Act.

³⁸ Section 19(2) of the National Water Act.

³⁹ Section 151(1)(i) and (j) of the National Water Act.

⁴⁰ Section 151 (2) of the National Water Act.

- 11.13. Equally, section 28 of NEMA imposes a duty on every person “who causes, has caused or may cause significant pollution or degradation of the environment to **take reasonable measures** to prevent such pollution or degradation from occurring, continuing or recurring.”⁴¹ These measures may also include modifying or controlling the processes causing pollution or remedying the effects of the pollution or degradation.⁴² NEMA also makes it a criminal offence to “unlawfully and intentionally or negligently commit any act or omission which causes significant pollution or degradation of the environment” or “which detrimentally affects or is likely to affect the environment”.⁴³ This offence is punishable by a fine not exceeding R10 000 000 or imprisonment not exceeding 10 years on conviction.⁴⁴
- 11.14. Collectively, NEMA and the National Water Act imposes a duty on municipalities who provide sanitation services to take all reasonable measures to ensure that the provision of such services does not cause environmental degradation or the pollution of water resources, either through sewage spillages or through the discharge of inadequately treated effluent. Moreover, where pollution has occurred, there is a duty on such municipalities to take steps to remedy the effects of the pollution on both the environment and the water resources in particular.
- 11.15. In the cases under investigation, given how long the challenges of sewer spillages and the inadequate treatment of waste has persisted, it is apparent that the First to Third Respondents have failed in their obligation to take all reasonable measures to prevent and, to remedy the effects of environmental pollution or degradation.
- 11.16. At a practical level, the First to Third Respondents had, in the first instance, an obligation to ensure that as they were expanding sanitation services to their communities, they had sufficient capacity to provide such services in a manner that would not simultaneously cause widespread and ongoing environmental pollution or degradation. This required proper and co-ordinated development planning within the affected municipalities and a consideration of alternative sanitation solutions when it became apparent that the existing systems were strained. It also required the proper and routine maintenance of the sewer infrastructure. From the evidence before the Commission, had this been done, the First to Third Respondents would not be

⁴¹ Section 28(1) of NEMA.

⁴² Section 28(2) of NEMA.

⁴³ Section 49A(e) and (f) of NEMA.

⁴⁴ Section 49B(1) of NEMA.

experiencing the current crisis of sewer spillages and the inadequate treatment of waste water.

- 11.17. Having failed to prevent this crisis in the first instance, the First to Third Respondent had an obligation to take all reasonable steps to remedy the effects of the environmental pollution or degradation resulting from this crisis. From the evidence presented, it is apparent that remedying the effects of environmental pollution has simply not been a priority.
- 11.18. In the case of the First Respondent, responses to challenges appear to be erratic and not directed to remedying root causes relating to persistent endemic challenges in its jurisdiction. Accordingly, other than attending to sewage spillages as and when called upon to do so by residents, the First Respondent has failed and/or refused and/or neglected to take any steps to address these challenges in the medium to long term.
- 11.19. Although the Second and Third Respondents acknowledged the existence of serious and systemic challenges insofar as sewer spillages and the treatment of sewage waste are concerned, they too have failed to take reasonable and effective steps for a number of years to address the challenges conclusively. Whilst the absence of financial resources may have prevented the Second and Third Respondents from undertaking capital intensive projects to prevent further environmental pollution and to remedy the effects of the existing environment pollution in their areas of jurisdiction, they have failed to even take less capital intensive measures to minimise the impact of these challenges. In this regard, during the site inspections at the Second Respondent, the Commission learnt with shock that some of the pump stations that were observed to be overflowing with sewage were in fact working but overflowed simply because there was no one on site to operate them, something that could have been avoided through the proper management of the available human resources. Further in both municipalities, whilst vandalism and theft were highlighted as some of the major contributors to the crippling challenges faced by the respective municipalities, no effective security measures had been introduced to deal with the challenges. Instead, year on year, millions of rand have been used to repair the damaged infrastructure only for it to be damaged again within a short period of time, instead of using resources to introduce effective security measures to safeguard the infrastructure. Other less capital intensive measures that could have been taken to

minimize the impact of environmental pollution include scheduled (as opposed to reactive) drainage of the sewer system using honey suckers, particularly in areas where the pump stations are currently not operational, which would have minimized the incidents of sewage spillages and environmental degradation.

11.20. In view of the above, it is apparent that the First to Third Respondents have failed in their constitutional and legislative obligations to ensure to its citizens an environmental that is not harmful to their health and well-being.

11.21. Whilst the Commission appreciates the interventions of the Fourth to Sixth Respondents in addressing the sewer spillages at the Second and Third Respondents, it is not persuaded that the interventions will effectively and expeditiously remedy the concerns brought to the attention of the Commission by the Complainants. Insofar as the Second Respondent is concerned, whilst the planned interventions in Rooikoppen and Extension 8 will go a long way in addressing the challenges of sewage spillages in those areas, the interventions do not extend to repairing and increasing the capacity of the Standerton WWTWs, which all parties agree must be done, if the challenge of the inadequate treatment of waste is to be addressed. The intervention at Extension 8 also falls short of what is required, as there is no time bound plan for the bulk infrastructure project and no plans have been made to address the challenges faced by the residents in the short term. Equally, in respect of Rooikoppen, whilst there is a time bound plan for the sewage network reconstruction project, it is apparent from the plan that residents have to wait until June 2021 at the very least for the completion of the project. No short term measures have been put in place to provide some relief to the residents in the interim.

11.22. The interventions planned at the Third Respondent also fall short of what is required to adequately and fully deal with the challenges at that municipality. In this regard, whilst a time bound plan has been provided to the Commission for the various projects at that municipality, the actual progress made in the implementation of the projects has been less than expected. There is also a funding shortfall of over R50 million for the projects, and it is likely therefore that some of the projects may not be completed, unless funding is secured for the shortfall. At the inquiry, the Commission was not properly addressed on where the money to fund the shortfall will come from.

11.23. In view thereof, the Commission is not satisfied that the identified constitutional and legislative breaches will be fully and adequately addressed through the planned interventions by the Fourth to the Sixth Respondents.

11.24. It can also not be gainsaid that subjecting communities to a living environment characterised by stench and the odious sight of sewage also violates their right to human dignity, which right, according to O'Regan, requires the "acknowledgement of the intrinsic work of human beings" and the recognition that "human being are entitled to be treated as worthy of respect and concern".⁴⁵

12. COMMENTS TO THE PRELIMINARY INVESTIGATIVE REPORT

12.1. All the parties cited in this report were invited to submit their comments to the preliminary report in writing within 14 days of that report, which was issued on 12 July 2019.

12.2. As at the date of the finalisation of this report, however, only four of the parties cited had submitted their comments to the report. These parties are namely the First Complainant, as well as the Third, Fifth and Sixth Respondents respectively.

12.3. Comments by the First Complainant

12.3.1. In her comments to the preliminary report received on 24 July 2019,⁴⁶ the First Complainant, in the main, welcomed the Commission's report findings and directives, as well as reiterated her initial allegations against the First Respondent. The First Complainant also sought to provide additional evidence and factual basis to substantiate her claims. As the additional evidence was not canvassed during the investigation of the complaint, this evidence is not cited here. In any event, as the Commission's findings in this matter are substantially in favour of remedying violations to the rights of the Complainant and others, the additional evidence by the First Complainant while not necessary for the purposes of the determination,

⁴⁵ National Coalition For Gay and Lesbian Equality v Minister of Justice 1999 (1) SA 6 (CC).

⁴⁶ It must be noted that the First Complainant has continued to send additional information to the Commission on a weekly basis almost, which is simply not possible to consider, without further prolonging the finalisation of this matter. As indicated elsewhere in the report, the Commission has already found in favour of the First Complainant on many of the issues about which she seeks to provide further information.

shall be retained by the Commission. In the circumstances, the comments from the First Complainant do not have any material impact on the preliminary findings and directives of the Commission.

12.4. Comments by the Third Respondent

12.4.1. In its comments to the preliminary report received on 7 August 2019, the Third Respondent mainly noted the Commission's report findings and directives and raised the following issues and concerns:

12.4.1.1. The bucket eradication programme was an intervention of government spearheaded by the provincial sphere of government. The service providers for the project were also, in the main, appointed by the provincial sphere of government, whilst the project was implemented by itself, the Provincial Government and Gert Sibande District Municipality. The poor workmanship in the project can be attributed to poor coordination and agreed operating model between the different spheres of government referred to.

12.4.1.2. It has been informed by MISA that it does not have budget to assist it with the development of the maintenance plan due to budgetary constraints.

12.4.1.3. Due to budgetary constraints, it is not in a position to develop a sanitation masterplan within 3 months of this report and proposes therefore that it be allowed to prepare such plan during the 2020/21 financial year.

12.4.2. It must be noted that the allegations being made by the Third Respondent against Gert Sibande District Municipality and the Provincial Government did not form part of their submissions before the inquiry. These allegations are therefore new to the Commission. Given that the Commission has concluded its investigation of this matter, it must consider whether the findings and directives which follow are unfair to the Third Respondent. The Commission has done so outside of the enquiry as any other process would ultimately delay the conclusion and provision of appropriate relief to

the affected communities unacceptably. The Commission, considering that the Third Respondent bore joint responsibility for the success of the project to deliver on its mandate, is of the view that the Third Respondent shall ultimately be permitted to provide exculpatory evidence on these allegation to the investigating authority. This opportunity is likely to be provided on the basis of the referral of allegations of wrongdoing in relation to the implementation of the project to the Special Investigation Unit and/or the Office of the Public Protector for further investigation as provided for in the directive in 14.1.2.6 below.

- 12.4.3. The issue of budgetary constraints limiting the implementation of the directives by the Commission is addressed in the directive in 14.1.5 below. Given the gravity of the existing challenges, urgent attention and action is required to stop continued violations to basic rights and the timeframes for the implementation of the directives are both reasonable and achievable. The request for a change to the timeframes is therefore not supported.

12.5. Comments by the Fifth Respondent

- 12.5.1. In its comments to the preliminary report received on 5 August 2019, the Fifth Respondent also mainly welcomed the Commission's report findings and directives in the matter.
- 12.5.2. The Fifth Respondent raised concerns with the preliminary directive that the "Fifth to Seventh Respondents comply with their obligations in terms of section 139 of the Constitution in respect of the First to Third Respondents, to ensure the fulfilment of the obligations in section 24 of the Constitution". In this regard, the Fifth Respondent submitted that, in the main, it derives its mandate from section 154 of the Constitution, which requires both the national and provincial government to "support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their function". According to the Fifth Respondent, therefore, the implementation of section 139 of the Constitution should be a matter of last resort, if all the other interventions do not yield results.
- 12.5.3. The Commission accepts this submission and has reflected it accordingly in the directive in 14.1.5 below.

12.6. Comments by the Sixth Respondent

- 12.6.1. In its comments to the preliminary report received on 6 August 2019, the Sixth Respondent merely sought to provide the Commission with a progress report on its interventions at the Second and Third Respondents.
- 12.6.2. The progress report indicated in respect of the Second Respondent, that save for completion of the designs for the bulk sewer pump stations and the costing of the project, no further work had been done in relation to the Extension 8 bulk sewer pump station project. Of particular concern to the Commission is that the progress report did not indicate expected dates for completion of the project. There was also an indication on the report that land invasions on the land earmarked for the second pump station were taking place. However, no indication of the steps being taken to address that particular challenge and to secure the land earmarked for the first pump station was provided.
- 12.6.3. The eMbalenhle sewer network rehabilitation project was reported at 92% to completion. The planned completion date for that project is 30 August 2019. With regards to the Leandra sewer spillage urgent repair project, however, progress has been much slower, with the overall progress standing at 43.45% and the planned completion date (30 June 2019) having already passed.

13. FINDINGS

13.1. In light of the above, the Commission makes the following findings:

- 13.1.1. The First to Third Respondents are in violation of section 24(a) and section 10 of the Constitution, as a result of their continued failure to effectively address the challenges of sewage spillages and the inadequate treatment of effluent within their jurisdictions.
- 13.1.2. The First to Third Respondents are in breach of their obligations in terms of section 19 of the National Water Act and Section 28 of NEMA respectively, as a result of their failure to prevent and remedy the effects

of environmental pollution, in the course of providing sanitation services to their residents.

- 13.1.3. The First and Second Respondents are in breach of their obligations in terms of section 9 of the National Standards and Measures to Conserve Water by continuing to accept more sewage waste into their sewer systems than the sewage treatment plants linked to those systems are capable of purifying or treating to the required standard. The Second and Third Respondents are also in breach of their obligations in terms of section 9 of the National Standards and Measures to Conserve Water by continuing to receive and discharge untreated and/or inadequately treated sewage into the water resources.
- 13.1.4. Whilst the causes of these challenges are many, in respect of the First and Second Respondents, they may safely be attributed to the constrained capacity of existing sewer systems (as a result of poorly planned and executed development). The lack of pre-emptive and routine maintenance of the sewer systems is however attributable to all Respondents. Additional contributing factors in respect of the Second and Third Respondents include inadequate monitoring and evaluation of project delivery, and a lack of accountability for the poor workmanship in the installation of the sewer network in the jurisdiction of the respective Respondents. The absence of control measures to manage risks attendant on the security of sewer infrastructure has compounded challenges and is unduly increasing costs and adverse impacts to the public.
- 13.1.5. Whilst the interventions being planned and undertaken at various levels of government in order to address some of the identified challenges are welcomed, the planned interventions fall short of what is required in terms of national norms and standards to adequately and fully deal with the challenges at the affected municipalities. Urgent and comprehensive interventions are required to adequately resolve the identified challenges.
- 13.1.6. In view of the Third Respondent's failure or reluctance to act on reports of wrongdoings in the implementation of the project, a probe into the alleged wrongdoings on the part of government functionaries and/or the service

providers who were involved in the implementation of the bucket eradication programme at the Third Respondent is required.

- 13.1.7. In view of the Second Respondent's failure or reluctance to act against the developer, despite the developer's apparent breach of the service level agreement in respect of Extension 8 also warrants a probe.

14. DIRECTIVES

- 14.1. In the light of the findings set out in paragraph 13 above, as well as the requirement in terms of the Water Services Act, 1997 (Act No 108 of 1997) the Commission makes the following directives:

- 14.1.1. In respect of the First Respondent:

14.1.1.1. The First Respondent must continue with its short term intervention measures insofar as the management of sewer spillages in both Komatipoort and Malelane is concerned.

14.1.1.2. The Fourth and Fifth Respondents, in consultation with the First and Eighth Respondents, must immediately conduct a comprehensive assessment of the current capacity of the First Respondent's sewer system at all levels in both Malelane and Komatipoort, with the view to determining the full extent of the capacity challenges at the First Respondent. A report of the assessment must be submitted to the Commission and the First Respondent within three (3) months of this report. The Commission shall issue such further directives as may be appropriate on consideration of the said report.

14.1.1.3. Within three (3) months of this report, the First Respondent must submit a detailed plan on the steps it will be taking, beyond those already prescribed in these directives, to address the inadequacies of its sewer network in Komatipoort, to ensure relief for Transnet, as well as its employees and customers.

14.1.1.4. The Eighth Respondent must continue to monitor the quality of the effluent emitted into the water resources within its jurisdiction and to advise the Commission on the quality of water resources, on a quarterly basis over the next 36 months.

14.1.2. In respect of the Second Respondent:

14.1.2.1. Within one (1) month of this report, the Second Respondent must report on the implementation of its plan of action reflected in 8.6.4 and 8.6.6 above. The report must:

- i) indicate short term measures to minimise the impact of the sewage spillages on both the residents and the environment;
- ii) indicate progress and regression in respect of implementation of plan referred to in 14.1.2.1 above;
- iii) provide a review of security measures currently in place to safeguard its sewer infrastructure, and to advise the Commission of its plans to address its security challenges going forward; and
- iv) To this end, progress reports must be provided to the Commission on a quarterly basis until all the identified concerns have been fully resolved.

14.1.2.2. Within six (6) months of this report, the Second Respondent must submit a time bound plan for the funding of the shortfall required for the full implementation of its plan of action.

14.1.2.3. Within one (1) month of this report, the Second and Sixth Respondents must provide a report to the Commission on the steps they have taken or are taking to address the challenge of the availability of land for the installation of a second bulk pump station for the Extension 8 Project, as well as the steps taken or being taken to safeguard the land earmarked for the first bulk pump station.

- 14.1.2.4. Within one (1) month of this report, the Sixth Respondent must provide the Commission with an update on the implementation of its bulk sewer infrastructure project in Extension 8. The report must clearly indicate areas of progress and regression, if any. Where the project has not progressed as planned, the Sixth Respondent must indicate the remedial steps it has taken or it is intending on taking to address the identified challenges. Further updated reports must be provided to the Commission on a quarterly basis, until all the challenges identified have been fully resolved.
- 14.1.2.5. The Fourth Respondent must monitor the quality of the effluent emitted into the water resources within the Second Respondent's jurisdiction and to advise the Commission on a quarterly basis on whether the quality of effluent being emitted into the water resources is improving.
- 14.1.2.6. The violations resulting in the affected areas have raised concerns around the conclusion, implementation and management of the service level agreement between the Second Respondent and the Extension 8 developer. The processes relating to the conclusion and the implementation of the service level agreement must be referred to the Special Investigation Unit and the Office of the Public Protector for further investigation.
- 14.1.3. In respect of the Third Respondent:
- 14.1.3.1. Within one (1) month of this report, the Third Respondent must submit a plan to address the sewer spillages challenge within its jurisdiction in the short term, in order to minimise the impact of the sewage spillages on both the residents and the environment.
- 14.1.3.2. Within one (1) month of this report, the Third and Sixth Respondents must provide the Commission with an update on the implementation of their plan of action submitted to the Commission at the inquiry. The report must clearly indicate

areas of progress and regression, if any. Where the project has not progressed as planned, the Third and Sixth Respondents must report on the remedial steps they have taken or are taking to address the identified challenges. Further updated reports must be provided to the Commission on a quarterly basis, until all the challenges identified have been fully resolved.

14.1.3.3. A report must be submitted within three (3) months hereof to the Commission reflecting the following information:

- i) a time bound plan to address the funding of the shortfall required for the full implementation of its plan of action;
- ii) a detailed review of the security measures currently in place to safeguard its sewer infrastructure, and plan to address sewer infrastructure security challenges going forward.

14.1.3.4. The Fourth Respondent to monitor the quality of the effluent emitted into the water resources within the Third Respondent's jurisdiction and to advise the Commission on a quarterly basis whether the quality of the water resources is improving.

14.1.3.5. The investigation of alleged wrongdoings on the part of government functionaries and/or service providers involved in the implementation of the bucket eradication programme is referred to the Special Investigation Unit and/or the Office of the Public Protector for further investigation.

14.1.4. In respect of the First to Third Respondents collectively:

14.1.4.1. The First to Third Respondents must ensure more co-ordinated development and joint development planning going forward, to ensure that existing infrastructure can meet the demands of new developments.

- 14.1.4.2. The First to Third Respondents must immediately put plans in place for the regular and routine pre-emptive maintenance of their sewer systems.
- 14.1.4.3. The First to Third Respondents to immediately halt all new developments (both commercial and residential) that would require connection to the municipal sewer network, until such time that capacity challenges in their sewer systems have been adequately addressed.
- 14.1.4.4. Within three (3) months of this report, the First to Third Respondents must:
- i) develop and submit their sanitation master plans to the Commission; and
 - ii) submit their time bound plans for the remediation of the environmental damage caused (particularly to the water resources) by the sewage spillages and the discharge of inadequately treated effluent into the water course.
- 14.1.4.5. The First to Third Respondents must table this Report in their respective council meetings and ensure that the Report is a standing item at council meetings and provide to the Commission the council resolution reflecting such.
- 14.1.5. The Fifth to Seventh Respondents must comply with their obligations in terms of section 154 of the Constitution, which requires them to “support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their function”, which includes the fulfilment of their obligations in terms of section 24 of the Constitution, as well as the relevant environmental legislation. The steps to be taken by the Fifth to Seventh Respondents in terms of section 154 of the Constitution may include but is not limited to the provision of additional funding and technical support to the affected municipalities and to enable them to comply with their obligations in terms of section 24 of the Constitution. Should these interventions prove unfruitful, consideration should be given

to intervening in the affected municipalities in terms of section 139 of the Constitution.

14.1.6. The Seventh Respondent, through its Environmental Management Inspectorate, must investigate and take the appropriate action in instances of non-compliance with applicable standards, policies or legislation. The Seventh Respondent should also ensure timeous enforcement of its notices and the law.

14.1.7. The South African Police Services, in consultation with the Environmental Management Inspectorate of the Seventh Respondent as well as the National Prosecution Authority, must further investigate the recorded environmental rights violations from a criminal law perspective in terms of section 19 of the National Water Act and Section 28 of NEMA and to advise the Commission on the progress of the investigation on a quarterly basis, insofar as they are able to.

14.1.8. More generally:

14.1.8.1. The Minister of Human Settlements, Water and Sanitation must take steps to ensure that the Eighth Respondent has the necessary capacity (financial and human) to effectively carry out its legislative mandate.

14.1.8.2. The Fourth, Seventh, Eighth Respondents and ultimately the Minister of Water and Sanitation must ensure that the polluter-pays principle is invoked with immediate effect for both state and private actors who pollute water resources without any distinction, in view of the imminent danger to health and wellbeing that such pollution causes to animal life and everyone, especially poor, marginalized and vulnerable communities.

SIGNED AT Johannesburg ON THE 6th DAY OF December 2019.



Mohamed Shafie Ameerma
Commissioner - South African Human Rights Commission