

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF  
THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND  
SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY BY THE  
FUNCTIONARIES OF EMFULENI LOCAL MUNICIPALITY TO RESTORE WATER  
SUPPLY SERVICES TO RESIDENTS OF SEBOKENG ZONE 3**

TABLE OF CONTENTS		
ITEM	DESCRIPTION	PAGE
	LIST OF ACRONYMS AND ABBREVIATIONS	3
	EXECUTIVE SUMMARY	5
1.	INTRODUCTION	12
2.	THE COMPLAINT	12
3.	POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	13
4.	THE ISSUE IDENTIFIED FOR INVESTIGATION	14
5.	THE INVESTIGATION	15
6.	THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS	21
7.	FINDINGS	61
8.	REMEDIAL ACTION	64
9.	MONITORING	65

## LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
<b>AAMD</b>	Annual Average Monthly Demand
<b>AGSA</b>	Auditor General South Africa
<b>CEO</b>	Chief Executive Officer
<b>CoGTA</b>	Gauteng Department of Cooperative Governance and Traditional Affairs
<b>DCoG</b>	Department of Cooperative Governance
<b>DG</b>	Director General
<b>DoRA</b>	Division of Revenue Act, 2023
<b>DWS</b>	Department of Water and Sanitation
<b>ELM</b>	Emfuleni Local Municipality
<b>FRP</b>	Financial Recovery Plan
<b>GDARD</b>	Gauteng Department of Agriculture and Rural Development
<b>GDRT</b>	Gauteng Department of Roads and Transport
<b>HoD</b>	Head of Department
<b>IQMS</b>	Integrated Quality Management System
<b>Kpa</b>	Kilopascal
<b>MFMA</b>	Municipal Finance Management Act, 2003
<b>MIG</b>	Municipal Infrastructure Grant
<b>MISA</b>	Municipal Infrastructure Support Agent
<b>MI/d</b>	Megalitres per day
<b>MM</b>	Municipal Manager
<b>NRW</b>	Non-Revenue Water
<b>PMU</b>	Project Management Unit
<b>Public Protector Act</b>	Public Protector Act, 1994
<b>PRV</b>	Pressure Reducing Valves

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<b>SCM</b>	Supply Chain Management
<b>SIV</b>	System Input Volume
<b>VJ</b>	Viking Johnson coupling
<b>VVS</b>	Vanderbijlpark, Vereeniging and Sasolburg
<b>WCWDM</b>	Water Conservation Water Demand Management
<b>WSA</b>	Water Services Authority
<b>WSP</b>	Water Services Provider
<b>WTP</b>	Water Treatment Plant

## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of undue delay by the functionaries of Emfuleni Local Municipality (ELM) to restore the provision of water to the community of Sebokeng Zone 3 in the Gauteng Province, following a prolonged water outage.
- (iii) The investigation originates from a complaint lodged by Ms Neria Tatane Xaba (the Complainant), on 19 September 2023.
- (iv) The Complainant alleged, *inter alia*, that:
  - (a) At the time of lodgement of the complaint, the community of Sebokeng Zone 3 had been without water for seven (07) months, and the ELM was not dispatching water tankers on a regular basis to supply water to the community. As a result, the community is left without water supply, which makes life difficult for them;
  - (b) She raised the matter with the ELM as well as Rand Water on 07 September 2023, but no response was received by the community or affected residents;

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- (c) The Complainant was further supported by nine (09) other residents who filed confirmatory affidavits detailing the daily prejudice and suffering which they are subjected to, due to dry taps or a lack of water supply in Sebokeng Zone 3. The affidavits stated amongst other things, that residents are forced to travel long distances to get water from neighbouring areas, such as Orange Farm, which is financially costly and even unaffordable as most of them are elderly citizens and unemployed.
- (v) Based on the analysis of the complaint, the following issues were considered and investigated:
- (a) Whether the functionaries of the Emfuleni Local Municipality unduly delayed to restore the provision of water to the community of Sebokeng Zone 3, for over a period of seven (07) months, if so, whether such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and amounts to prejudice in terms of section 6(4)(a)(v) of the Public Protector Act, 1994.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law, and related prescripts.
- (vii) Notices in terms of section 7(9)(a) of the Public Protector Act (the Notice/s) were issued to all the following implicated and/or affected parties to provide them with an opportunity to respond to the proposed provisional findings and remedial action on 07 August 2024:
- (a) The Municipal Manager of ELM, Mr April Ntuli (Mr Ntuli), and
  - (b) The Executive Mayor of ELM, Councillor Sipho Radebe (Councillor Radebe).

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- (viii) A written response to the Notices were received on 21 August 2024 signed by both Councillor Radebe and Mr Ntuli.
- (ix) The response and information/evidence submitted by the respondent was duly considered by the Public Protector.
- (x) Having regard to the evidence and regulatory framework determining the standard that should have been complied with by ELM, the Public Protector makes the following findings:
- (a) **Whether the functionaries of Emfuleni Local Municipality unduly delayed to restore the provision of water to the community of Sebokeng Zone 3 with water for over a period of seven (07) months, if so, whether such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and amounts to prejudice in terms of sections 6(4)(a)(v) of the Public Protector Act, 1994**
- (aa) The allegation that the functionaries of the Emfuleni Local Municipality unduly delayed to restore the provision of water to the community of Sebokeng Zone 3, for over a period of seven (07) months, is substantiated.
- (bb) The lack of supply of water resulted in the community of Sebokeng Zone 3 being without access to water for a prolonged period of at least seven (07) months, from September 2023 to May 2024. As a result, the residents, including elderly citizens were forced to spend hours laboriously collecting their daily supply of water from distant taps as well as from neighbouring areas such as Orange Farm.
- (cc) The lack of water supply in high-lying areas, including Sebokeng Zone 3 was acknowledged by the functionaries of ELM during the course of the investigation.

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- (dd) The evidence obtained by the Public Protector reveals that the ELM's water supply network infrastructure is in a state of deterioration, thus it suffers water losses due to leaks, burst pipes and aging water infrastructure. The dilapidated condition of the ELM's water network infrastructure has caused Metsi-a-Lekoa to experience operational challenges, which affect its ability to efficiently supply water to the residents of Sebokeng Zone 3 and other affected precincts in its area of jurisdiction. These challenges are further compounded by the lack of sufficient resources required to effect maintenance such as vehicles and human capital.
- (ee) Electricity power outages further hampered the efficient performance of the infrastructure located at the Amanzimtoti Pumping Station. The unavailability of water network plans created difficulties for the ELM in identifying the precise location of critical valves in order to effect repairs.
- (ff) The inability of ELM to provide the community of Sebokeng Zone 3 and other areas with sufficient water was in contravention section 27(1)(b) and subsection (2) of the Constitution, which provides for the right of access to sufficient water. In failing to ensure prioritisation of the basic needs of the community and that it has access to the minimum level of basic services, ELM contravened section 73(1)(a) and (c) of the Municipal Systems Act.
- (gg) The ELM functionaries contravened section 11(1) of the Water Services Act, which places a duty on Water Service Authorities towards all consumers or potential consumers in its area of jurisdiction to progressively ensure sustainable access to water services.
- (hh) The investigation revealed an underutilisation of the MIG by ELM, in this instance it was established that for the financial year 2022/23, ELM received an MIG allocation of R194 208 000.00, however, only R17 143 000.00 was utilised. The conduct of the ELM functionaries in underspending on its MIG allocation is in conflict with the intended purpose of the MIG



which include the development of basic infrastructure for disadvantaged communities, to rehabilitate and upgrade existing infrastructure to basic levels.

- (ii) DCoG should put in place more stringent measures to ensure that ELM effectively executes on its infrastructure programmes and utilises the MIG efficiently, taking into account the unsatisfactory performance it has observed.
- (jj) The Public Protector takes cognisance of the temporary measures implemented by ELM in March 2024 to provide short-term relief by installing “Jojo” water storage tanks, scheduling regular water tanker deliveries for the community, and utilising the procurement procedure outlined in section 63 of the Water Services Act, 1997 to obtain equipment required for repairs, whilst working towards long term solutions.
- (kk) The Public Protector finds that the overall conduct of ELM functionaries in failing to provide consistent water supply to the residents of Sebokeng Zone 3 during the period in question, fell short of the standards, expectations and obligations imposed on it by the provisions of sections 27, 152, 153, and 195 of the Constitution, sections 3(1), 4(2) and 73(1) of the Local Government Municipal Systems Act as well as sections 3(1), 11(1)(2)(e) of the Water Services Act.
- (ll) Accordingly, the conduct of the functionaries of ELM constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice as contemplated in section 6(4)(a)(v) of the Public Protector Act.
- (xi) The Public Protector takes note of the report received from Complainant on 07 May 2024, that the running water supply was restored by ELM to all houses in Sebokeng Zone 3.

- (xii) Having regard to the evidence, the regulatory framework determining the standard that ELM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

#### **The MEC for CoGTA**

- (aa) Take cognizance of the findings and remedial actions contained in this report and exercise oversight over the implementation of this report in line with the provisions of section 133(1) of the Constitution.

#### **The Municipal Manager of ELM**

- (bb) Within **one hundred and twenty (120) calendar days** from the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct a full assessment to determine all the underlying causes of water supply challenges as identified in this report in Sebokeng Zone 3 and other affected areas in its jurisdiction.
- (cc) Within **one hundred and twenty (120) calendar days** from the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan with timelines for tabling before Council, setting out the measures to be undertaken and/or already undertaken in addressing the causes of water challenges identified in this report, within ELM.

#### **The Executive Mayor of ELM**

- (dd) Within **sixty (60) calendar days** of the date of this report table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Mayor in terms of section 56 of the Municipal Structures

Act. The Municipal Council for ELM is to consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken and/or already taken to address underlying causes of water supply challenges identified in this report, in line with the obligations of municipalities contemplated in section 152(1)(b) of the Constitution;

- (ee) Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address all the underlying causes of water supply challenges, as identified in this report.

## **1. INTRODUCTION**

- 1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution and section 8(1) of the Public Protector Act.
- 1.2 This report is submitted in terms of sections 8(1) read with section 8(3) of the Public Protector Act, which empower the Public Protector to make known the findings of an investigation to affected parties, for such persons to note the outcome of the investigation and to implement the remedial action.
- 1.3 The report is submitted to the following persons:
- 1.3.1 The Premier of Gauteng province, Mr Panyaza Lesufi;
  - 1.3.2 The MEC for COGTA in Gauteng province, Mr Jacob Mamabolo;
  - 1.3.3 The Executive Mayor of ELM, Councillor Radebe;
  - 1.3.4 The Municipal Manager of ELM, Mr Ntuli; and
  - 1.3.5 The Complainant.
- 1.4 This report relates to an investigation into allegations of undue delay by the functionaries of ELM to restore the provision of water to the community of Sebokeng Zone 3 in the Gauteng Province, following a prolonged water outage.

## **2. THE COMPLAINT**

- 2.1 The investigation originates from a complaint lodged by Ms Neria Tatane Xaba (the Complainant), on 19 September 2023.
- 2.2 The Complainant alleged, *inter alia*, that:

- 2.2.1 At the time of lodgement of the complaint, the community of Sebokeng Zone 3 had been without water for seven (07) months and the ELM was not dispatching water tankers on a regular basis to supply water to the community. As a result, the community is left without water supply, which makes life difficult for them;
- 2.2.2 She raised the matter with the ELM as well as Rand Water on 07 September 2023, but no response was received by the community or affected residents;
- 2.3 The Complainant is further supported by nine (09) other residents who filed confirmatory affidavits detailing the daily prejudice and suffering they are subjected to, due to dry taps or a lack of water supply in Sebokeng Zone 3. The affidavits stated, amongst other things, that residents are forced to travel long distances to get water from neighbouring areas, such as Orange Farm, which is financially costly and even unaffordable as most of them are elderly citizens and unemployed.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

- 3.1 The Public Protector is an independent constitutional institution established in terms of section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has the power, as regulated by national legislation–*

- (a) *to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) *to report on that conduct; and*
- (c) *to take appropriate remedial action.”*

3.3 Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 The Emfuleni Local Municipality is an organ of state in terms of section 239 of the Constitution and the conduct of its functionaries amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act.

#### **4. THE ISSUE IDENTIFIED FOR INVESTIGATION**

4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

4.1.1 Whether the functionaries of the Emfuleni Local Municipality unduly delayed to restore the provision of water to the community of Sebokeng Zone 3, for over a period of seven months, if so, whether such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and amounts to prejudice in terms of section 6(4)(a)(v) of the Public Protector Act, 1994.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

5.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to investigate with due regard to the circumstances of each case.

### **5.2 Approach to the investigation**

5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation, and consideration and application of the relevant laws, regulatory framework, and prescripts.

5.2.2 The investigation was approached using an enquiry process that seeks to determine:

(a) What happened?

(b) What should have happened?

(c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power, or other improper conduct?

(d) In the event of a violation, what action should be taken?

5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence is evaluated and a

determination is made on what happened based on a balance of probabilities. In this case, the factual enquiry principally focused on whether the alleged conduct by the functionaries of ELM resulted in prejudice to the residents of Sebokeng Zone 3.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the functionaries of ELM when supplying water services to the affected residents of Sebokeng Zone 3.

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration.

### 5.3 **The Investigation Process**

5.3.1 The investigation process included meetings with the Complainant, community members as well as the functionaries of ELM, site inspections, and an exchange of correspondence with the Complainant and the functionaries of ELM, Rand Water, the Gauteng CoGTA, Department of Cooperative Governance (DCoG), the Department of Water and Sanitation (DWS), the Auditor General South Africa (AGSA) and Eskom. Documents obtained during the investigation were analysed and evaluated. The process also included the consideration and application of the relevant law and prescripts.



## 5.4 Key sources of information

### 5.4.1 Correspondence exchanged

- 5.4.1.1 Complaint from Ms Neria Tatane Xaba, dated 19 September 2023;
- 5.4.1.2 Allegations letter from the Public Protector to Mr Ntuli, dated 03 October 2023;
- 5.4.1.3 Response letter to the Public Protector from Mr Ntuli, dated 08 November 2023;
- 5.4.1.4 Email from the Public Protector to Mr Ntuli seeking clarity on his earlier response of 08 November 2023, regarding the schedule of water tankers and time frames for the suggested interventions, dated 16 November 2023;
- 5.4.1.5 Additional response letter from Mr Ntuli to the Public Protector, dated 18 January 2024;
- 5.4.1.6 Allegations letter from the Public Protector to Mr Mbulelo Tshangana (Mr Tshangana), the Director General (DG) of DCoG seeking clarity on the grant funding given to ELM, on 07 February 2024;
- 5.4.1.7 Response letter from the DG, Mr Tshangana to the Public Protector, dated 21 February 2024;
- 5.4.1.8 Allegations letter from the Public Protector to Mr Sipho Mosai (Mr Mosai), the Chief Executive Officer (CEO) of Rand Water seeking clarity on its role in this matter, on 12 February 2024;
- 5.4.1.9 Allegations letter from the Public Protector to Dr Sean Phillips (Dr Phillips), the DG at the DWS seeking clarity on its role in this matter, on 23 February 2024;

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- 5.4.1.10 Allegations letter from the Public Protector to Dr Darion Barclay (Dr Barclay), the Head of Department (HoD) of Gauteng CoGTA requesting clarity on its intervention at ELM, on 23 February 2024;
  - 5.4.1.11 Response letter from Mr Mosai to the Public Protector, dated 06 March 2024;
  - 5.4.1.12 Response letter from Dr Phillips to the Public Protector, dated 12 March 2024;
  - 5.4.1.13 Response letter from Dr Barclay to the Public Protector, dated 14 March 2024;
  - 5.4.1.14 Email from the Complainant to the Public Protector communicating the installation of “Jojo” tanks by ELM, on 18 March 2024;
  - 5.4.1.15 Allegations letter from the Public Protector to Mr Dumisani Cebekhulu (Mr Cebekhulu), the Business Unit Leader of Gauteng AGSA, regarding audit of ELM’s MIG projects, dated 04 April 2024;
  - 5.4.1.16 Allegations letter from the Public Protector to Mr Dan Marokane, the Group Chief Executive of Eskom, seeking clarity on its role in connection with power outages affecting ELM’s water pressure, dated 04 April 2024;
  - 5.4.1.17 Response letter from Mr Cebekhulu to the Public Protector, dated 19 April 2024;
  - 5.4.1.18 Email from the Complainant to the Public Protector regarding water restoration to all houses in Sebokeng Zone 3, dated 07 May 2024; and
  - 5.4.1.19 Response letter from Mr Sibusiso Madlala, the acting General Manager at the Eskom Gauteng Cluster, to the Public Protector, dated on 28 May 2024.

#### 5.4.2 Documents received

- 5.4.2.1 Notification in terms of section 22(4) of Division of Revenue Act, 2022 (DoRA) on the MIG payment schedule 2022/2023 financial year & compliance certificate, dated 07 July 2022;
- 5.4.2.2 Compliance notice to the provisions of the DoRA and MIG framework, dated 12 July 2022;
- 5.4.2.3 Notification of engagement with ELM about under expenditure and or under commitment from the Director: Municipal Infrastructure Grant Administration, Mr Werner Heydenreich, dated 12 January 2023;
- 5.4.2.4 Notification in terms of section 22(4) of DoRA on the MIG payment schedule 2022/2023 financial year & compliance certificate, dated 04 July 2023;
- 5.4.2.5 Compliance notice to the provisions of the DoRA and MIG framework, dated 10 July 2023;
- 5.4.2.6 Assessment reports on valve replacement at ELM compiled by M. Nenzhelele, dated 08 September 2023 and 06 October 2023;
- 5.4.2.7 Notification of engagement with ELM about under expenditure and or under commitment issued by the Director of Local Government Operations and Support Gauteng, Mr Maduna, on 15 January 2024; and
- 5.4.2.8 Undated Annexure A – Extract from ELM's management and auditor's report relating to MIG audit observations.

#### 5.4.3 Meetings held

- 5.4.3.1 A meeting was held between the Public Protector Investigation Team (Investigation Team) and ELM's *Metsi a Lekoa* officials, led by Mr Madoda Besani (Mr Besani), the Chief Director, on 21 February 2024.

#### 5.4.4 Legal framework

- 5.4.4.1 Constitution of the Republic of South Africa, 1996;
- 5.4.4.2 Local Government Municipal Systems Act, 2000; and
- 5.4.4.3 The Water Services Act, 1997.

#### 5.4.5 Case Law

- 5.4.5.1 *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017);
- 5.4.5.2 *Public Protector and Others v President of the Republic of South Africa and Others* (CCT 62/20) [2021] ZACC 19; 2021 (9) BCLR 929 (CC); 2021 (6) SA 37 (CC) (1 July 2021);
- 5.4.5.3 In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011); and
- 5.4.5.4 *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

### **Notices issued in terms of section 7(9)(a) of the Public Protector Act**

5.4.6 On 07 August 2024, Notices in terms of section 7(9)(a) of the Public Protector Act (Notices) were issued to the following implicated and/or affected parties to provide them with an opportunity to respond to the proposed findings and remedial action:

5.4.6.1 Councillor Radebe; and

5.4.6.1.1 Mr Ntuli.

5.4.7 **Response received to the Notice issued in terms of section 7(9) of the Public Protector Act**

5.4.8 A combined written response to the Notice was received from Councillor Radebe and Mr Ntuli, on 21 August 2024;

## **6 THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**

6.1. **Whether the functionaries of the Emfuleni Local Municipality unduly delayed to restore the provision of water to the community of Sebokeng Zone 3, for over a period of seven (07) months, if so, whether such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and amounts to prejudice in terms of section 6(4)(a)(v) of the Public Protector Act, 1994**

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*Common cause*

- 6.1.1. ELM receives its bulk water supply from Rand Water as governed by the Bulk Water Supply Contract between the two (02) entities.
- 6.1.2. Upon receipt of the bulk water from the take-off or meter point, ELM is responsible for the distribution of potable water to its entire area of jurisdiction. ELM determines how water is distributed to various sections and zones of the community, which includes the Sebokeng Zone 3 area.
- 6.1.3. The water services infrastructure is owned, operated, and maintained by ELM as a Water Service Authority (WSA).

*Issue in dispute*

- 6.1.4. The issue for the Public Protector's determination is whether the community of Sebokeng Zone 3 experienced a prolonged water supply outage due to ELM's inability to maintain the water network infrastructure.

*The Complainant's version*

- 6.1.5. The Complainant stated that the community of Sebokeng Zone 3 had been without water supply for seven (07) months, at the time when the complaint was reported to the Public Protector in September 2023; and
- 6.1.6. ELM does not dispatch water tankers regularly, and as a result, the community has no water supply, which makes life difficult for the residents.
- 6.1.7. The allegations by the Complainant were corroborated by nine (09) other residents of Sebokeng Zone 3, who filed confirmatory affidavits, supporting the Complainant's version insofar as the issue of water supply challenges

is concerned, including the inadequacy of short-term intervention measures by the ELM, in the form of water carting.

*Version of the ELM*

- 6.1.8. On 03 October 2023, the Public Protector raised the allegations with Mr Ntuli. On 09 November 2023, the Public Protector received his response via a letter, dated 08 November 2023, wherein he stated the following:
- 6.1.8.1. ELM is aware of the water supply challenges in high-lying areas such as Evaton West, Evaton North, Lakeside, Sebokeng Zone 3, Zone 6, Zone 7, and Palm Springs. Rand Water's water supply difficulties result from the ongoing power outages at the Amanzimtoti Pumping Station, which causes the water levels at the Langerand Reservoir to be very low;
- 6.1.8.2. As a result, the higher regions, such as Sebokeng Zone 3, are impacted or affected by the low water levels. Rand Water's Reservoir level readings obtained on 27 September 2023 indicated values of 10.25% and 11.94%, which meant that the Reservoir level was minimal (extremely low);
- 6.1.8.3. Therefore, the regions in high-lying areas are significantly impacted by the decreased Reservoir levels, whilst the low-lying areas are supplied with water when Reservoir levels exceed 20%. Thus, the high-lying areas continue to face water supply challenges;
- 6.1.8.4. For normal operations, the Rand Water pressure at Evaton and Sebokeng must exceed 1000 kilopascal (Kpa), the equivalent of ten (10) bar. However, ELM would reduce it to 400 to 600 Kpa, four (04) to six (06) bar, to mitigate against burst pipes on the water network. The water pressure at Amanzimtoti Pumping Station and Vereeniging Purification Works was severely disrupted by power outages and restrictions, which in turn,

impacted the elevated areas, such as Evaton West, Evaton North, Lakeside, Sebokeng Zone 3, Zone 6, Zone 7, and Palm Springs;

- 6.1.8.5. From 11 to 18 September 2023, the ELM team investigated the Evaton Water pressure challenges at the Waterdal pressure reducing station, which indicated that the water pressure in Evaton improved, and the high-lying areas started receiving water. The pressure readings ranged from three-point two (3.2) bar downstream, and three-point eight (3.8) bar upstream. The operational team visited multiple regions where residents expressed dissatisfaction with the water supply;
- 6.1.8.6. The water network is in a state of deterioration, and it experiences operational including additional water challenges due to pipe bursts, closed valves, or sinking valves. The Sebokeng and Evaton water network plans, which would aid in determining the precise locations of the underground valves, were not readily available. As a result, the work of the team responsible for identifying water network valves that may be non-operational or closed, was affected;
- 6.1.8.7. The inaccessibility of water plans, extremely low pressure, power outages, lack of vehicles, inadequate human capital, and old infrastructure, impede the ability of the assigned team to concentrate and operate efficiently in regions identified as having water supply issues. There is also an operational team, which addresses ELM's daily water complaints;
- 6.1.8.8. ELM's short-term intervention was to replace twenty (20) valves within the system identified as non-functional through the procurement procedure outlined in section 63 of the Water Services Act,<sup>1</sup> and the procurement process had commenced. Rand Water's intervention consisted of closing

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<sup>1</sup> Act 108 of 1997.



outlet number 2 of Langerand Reservoir and supplying water through outlet number one (01) of the Langerand Reservoir;

- 6.1.8.9. The bypass of the direct pipeline would improve water Reservoir levels and assist in improving the water supply to Evaton and Sebokeng. This intervention started on 06 October 2023, and the system pressures have improved slightly. The Evaton water supply system's normal operating pressure is four (04) bars, and the improvement observed is inadequate at one-point two (1.2) bars;
- 6.1.8.10. ELM's long-term intervention was to elevate water Reservoir containers and bulk conduits to improve the storage and bulk water systems within the water infrastructure of the greater Evaton region. The storage would balance the water supply to high-lying areas and enhance water storage. The water network will require sectorisation to distinguish between high-lying and low-lying areas;
- 6.1.8.11. Multiple investigations are ongoing in the Greater Evaton region concerning the intermittent to low-pressure water supply in the pipelines, which resulted in the lack of water supply; and
- 6.1.8.12. ELM is using a fleet of seven (07) water tankers to provide water to informal settlements and high-lying areas while investigating water supply issues. The water tankers, however, fall short of meeting the demands of all regions that are without water supply.

*Additional response from the Municipal Manager of ELM, dated 18 January 2024*

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- 6.1.9. On 16 November 2023, the Investigation Team sent a follow-up email enquiry to Mr Ntuli requesting clarity on his earlier response regarding the schedule of water tankers and time frames for the suggested interventions.
- 6.1.10. In a response letter dated 18 January 2024, Mr Ntuli stated as follows:
- 6.1.10.1. ELM was undertaking a process of appointing contractor/s for the installation, repair, maintenance, and additional works on the water network on an as-and-when basis for a period of thirty-six (36) months. The anticipated time for finalisation of the process and issuing of appointment letters was November 2023. The tender included an item for the supply of water tanker services, and this would assist in the acquisition of service providers to provide additional water tankers to the affected areas, but that is subject to budget availability;
- 6.1.10.2. The work of the operational team was adversely affected by the old infrastructure and the team's inability to locate the water valves. As a result, the operational team struggles to identify the functional and non-functional valves. The old valves remain a challenge because they delay the restoration of water to affected areas;
- 6.1.10.3. ELM and Rand Water will be appointing a service provider for water conservation and demand management. This tender was advertised in November 2023, and the tender would assist with the replacement of old valves on the water network. ELM had allocated funds towards replacement of old valves on the water network system that would be registered in the municipal asset register and the Integrated Quality Management System (IQMS) system;
- 6.1.10.4. Upon completion of the process of appointing service providers for tender number 11/2023/26, the process of replacing valves will commence;

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- 6.1.10.5. A request for the purchase of an additional five (05) vehicles for the Water Department was submitted to the office of the Chief Director, and this would assist in conducting audits to identify non-functional valves in the affected areas;
- 6.1.10.6. ELM's Water Department has human capital challenges, as it operates with one (01) Senior Engineering Technician. In the 2022/23 financial year, the Water Department advertised the positions of Assistant Manager and two (02) Senior Engineering Technicians to partially address the vacancy rate of 58% within the Water Department. The shortlisting of candidates was finalised in October 2023;
- 6.1.10.7. Rand Water would install a dedicated line from Vereeniging to Langerand and complete as well as commission the two (02) 60Ml/d pumps at Amanzimtoti Pumping Station including a balancing Reservoir. This project was part of the Integrated Execution Programme to be issued to the market by January 2024 and to be completed by 2026;
- 6.1.10.8. Sasolburg is part of the Vanderbijlpark, Vereeniging and Sasol water system (VVS), and the Sasol Reservoir is consistently at about 80-90% full. Therefore, the water can be rerouted from the Sasolburg system to the Langerand system. This is a long-term plan which can be achieved by installing a cross-connection between the A21 pipeline. The above is under investigation to determine the expected growth in the Sasolburg system and the optimal hydraulics for future implementation; and
- 6.1.10.9. The long-term intervention project will be implemented *“after the business plan is approved by the Municipal Infrastructure Grant (MIG) and Department of Water and Sanitation”*.

*The version of DCoG*

- 6.1.11. On 07 February 2024, the Public Protector raised the allegations with Mr Tshangana in a letter dated 06 February 2024, seeking clarity on the grant funding given to ELM. On 28 February 2024, a response letter dated 21 February 2024 was received from Mr Tshangana, wherein he stated the following:
- 6.1.11.1. The payment schedules for 2022/23 and 2023/24 submitted by the Gauteng Province, were based on the cashflow forecast as predicted in the project implementation plan, submitted by the receiving officer on registered Municipal Infrastructure Grant (MIG) projects and ELM's transfers were not processed in terms of the standard tranches. ELM is under a different procedure known as a cost reimbursement for the 2022/23 and 2023/24 financial years;
- 6.1.11.2. In terms of cost reimbursement, ELM must submit invoices of completed work segments to DCoG for assessment and verification against the completed works. Recommendations are submitted to National Treasury for the transfer of the portion of the MIG allocation;
- 6.1.11.3. DCoG made the following transfers to ELM as part of the MIG for the 2022/23 financial year:

<b>Transfer date:</b>	<b>Transfer amount</b>
09 September 2022	R 5 772 000.00
29 October 2022	R 8 809 000.00
01 December 2022	R 3 851 000.00
10 February 2023	R 28 370 000.00
10 March 2023	R 3 579 000.00
30 March 2023	R103 827 000.00

<b>TOTAL</b>	<b>R154 208 000.00</b>
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- 6.1.11.4. DCoG made the following transfers for 2023/24 (between July and December 2023):

<b>Transfer date:</b>	<b>Transfer amount</b>
21 December 2023	R15 547 000.00
<b>TOTAL</b>	<b>R15 547 000.00</b>

- 6.1.11.5. Section 10(1)(b)(ii) of the Division of Revenue Act (DoRA) 2022 and 2023, directs the Transferring Officer (in this instance, the DG of DCoG) to transfer funding into the primary bank account of the receiving municipality. However, in this instance, this was problematic as the account of ELM was periodically attached by Eskom and Rand Water, resulting in funds meant for service delivery going to other creditors. Thus, there was a delay in effecting transfers until the cancellation of the attachment order, and DCoG started transferring funds in December 2023;
- 6.1.11.6. The MIG framework places upon the administering Department (DCoG) the responsibility of having to monitor the financial and non-financial performance of the municipalities receiving MIG. The mechanism that has been established is the MIG stakeholder committee comprising of DCoG, the Provincial CoGTA, the Municipal Infrastructure Support Agent (MISA), Provincial Departments responsible for Treasury, Water and Sanitation, Sports as well as Infrastructure Development;
- 6.1.11.7. The monitoring processes involve the MIG stakeholder committee undertaking monthly meetings with ELM to assess its financial performance and conducting site visits to monitor non-financial performance. MISA engineers also undertake the verification of technical projects. The MIG stakeholder committee also interrogates each invoice by the contractors

and consultants before any transfer is made to ELM by the National Treasury and DCoG;

- 6.1.11.8. There are also quarterly "*three (03) spheres meetings*" where all municipalities report their progress on their implementation plans. Collaboration meetings between stakeholders, excluding the municipalities, to discuss challenges reported and find solutions as part of support measures;
- 6.1.11.9. At the planning stages, the committee assesses the implementation plan to ensure that it complies with the conditions of the MIG framework and other statutes and further appraises project business plans. The municipality's Project Management Unit (PMU) capacity is additionally assessed against the project implementation plan. In addition, relevant sector departments further assess the technical reports against the sector norms and standards and recommend their implementation;
- 6.1.11.10. ELM has been placed under the cost reimbursement transfer arrangement, as indicated above, which implies that transfers are only made based on invoices submitted to the committee, which subjects them to an assessment and site visit verification before approving the transfer;
- 6.1.11.11. The DCoG has submitted DoRA reports in the prescribed format to the National Treasury for the municipal financial year 2022/23 and 2023/24. DCoG evaluates the performance of ELM on both schedules 5 and 6 allocations and submits the reports to National Treasury;
- 6.1.11.12. The committee conducts quarterly site visits to match the financial against the non-financial performance. MISA submits monthly reports to verify the status of the implementation of MIG projects, which informs the cost reimbursement payments to municipalities; and

6.1.11.13. The quarterly reports submitted to CoGTA clearly distinguish the expenditure of different grants as per the National Treasury provisions. The monthly one-on-one engagements take a similar shape in terms of focusing on evaluating each grant's performance against its implementation plan.

*Documentary evidence received from DCoG*

*Notification in terms of section 22(4) of DoRA on the MIG payment schedule 2022/2023 financial year & compliance certificate, dated 07 July 2022*

6.1.12. The Notification addressed from the acting Director of MIG Grant Administration to the Municipal Manager indicates that:

6.1.12.1 Based on the implementation plans requested and received on 29 April 2022, including the approval by National Treasury, the distribution of the 2022/23 MIG allocation to the municipality will be subjected to cost reimbursement intervention. This implies that funds will only be transferred to the municipality once invoices have been submitted to the National MIG Administration Unit and have been verified as work completed;

6.1.12.2 The municipality was urged to comply with the provisions of the DoRA, 2022 as failure to do so would result in the implementation of section 17, (withholding of the first transfer) of the DoRA, 2022;

6.1.12.3 DCoG noted that ELM has not performed satisfactorily over the last four years (2017/18 – 2020/21) on the MIG and/or has not adequately addressed water services directives issued by the DWS and/or addressed non-compliance notices that impact on residential waste issues by the provincial department responsible for waste management;

6.1.13. DCoG would engage with ELM regarding whether this could be addressed through the conversion of a portion of ELM's 2022/23 MIG allocation to be implemented by DCoG on their behalf to address the challenges, or reprioritisation of ELM's 2022/23 MIG allocation to address the challenges; and

6.1.14. A compliance certificate was enclosed for completion and return to DCoG by the ELM.

*Notification in terms of section 22(4) of DoRA on the MIG payment schedule 2022/2023 financial year & compliance certificate, dated 04 July 2023*

6.1.15. Mr Clive Maduna (Mr Maduna), the Director of Local Government Operations and Support Gauteng, issued a notice to the ELM Municipal Manager, advising him that the distribution of the 2023/24 MIG allocation to ELM will be subject to the cost reimbursement transfer arrangement. The notice further indicated that DCoG explained the requirements and conditions of the MIG payments to ELM and advised ELM to confirm the requirements and timelines for this arrangement with the Provincial MIG Unit; and

6.1.16. ELM should comply with the provisions of DoRA, and failure to do so would result in the withholding of transfers in terms of section 17 of DoRA.

*Compliance notice to the provisions of the DoRA and MIG framework*

6.1.17. On 12 July 2022, Mr Ntuli, who was the acting MM at the time, certified that he had noted the sections of DoRA and MIG framework. He stated that he would ensure compliance with the MIG framework for the MIG allocations for 2022/23. On 10 July 2023, Mr Ntuli completed a similar compliance notice to the one above.



*Notification of engagement with ELM about under expenditure and or under commitment from the Director: Municipal Infrastructure Grant Administration, Mr Werner Heydenreich, dated 12 January 2023*

- 6.1.18. The DCoG indicated that it had noted that ELM submitted an expenditure amounting to seventeen million one hundred forty-three thousand rands (R17 143 000.00) which is 8,83% of the one hundred ninety four million two hundred eight thousand rands (R194 208 000.00) allocation as at the end of December 2022 for the 2022/23 financial year. As a result, DCoG requested to formally engage with ELM's Chief Financial Officer, the Director of Technical Services Manager, and the Municipal Manager on 20 January 2023 to discuss the poor expenditure against the 2022/23 MIG allocation.

*Notification of engagement with ELM about under expenditure and or under commitment issued by the Director of Local Government Operations and Support Gauteng, Mr Maduna, on 15 January 2024*

- 6.1.19. DCoG requested a virtual meeting on 18 January 2024 with ELM's Chief Financial Officer, the Director of Technical Services Manager, and the Municipal Manager to discuss the poor expenditure against the 2022/23 MIG allocation. According to DCoG, ELM had underspent because they submitted expenditure amounting to fifteen million five hundred forty-seven thousand rands (R15 547 000.00), which is 7.65% of the two hundred three million two hundred forty-two thousand rands (R203 242 000.00) allocated as the end of December 2023 for the 2023/24 financial year.

*The version of Rand Water*

- 6.1.20. On 12 February 2024, the Public Protector raised the allegations with Mr Mosai seeking clarity on the role of Rand Water in this matter. On 06 March

2024, the Public Protector received a response letter from Mr Mosai, wherein he stated the following:

- 6.1.20.1. Rand Water is an organ of the state, established in terms of the Water Services Act, 1997. As a state organ, Rand Water is further governed by other legislative frameworks as determined and enacted by the South African Government. Rand Water supplies areas such as the Gauteng Province and parts of the Free State, Mpumalanga and North-West with water;
- 6.1.20.2. Rand Water extracts approximately five thousand two hundred (5200) Megalitres per day (Ml/d) from the Vaal Dam, and 77% of the water is supplied to the three Metros, namely the City of Johannesburg, the City of Ekurhuleni, and the City of Tshwane. In total, Rand Water supplies seventeen (17) municipalities, eight (08) in Gauteng Province, two (02) in Free State Province, three (03) in Mpumalanga Province and four (04) in North-West Province. There are also direct customers, such as industries and mines;
- 6.1.20.3. Rand Water supplies bulk water to ELM as governed by the Bulk Water Supply Contract between the two (02) entities. Rand Water does not distribute water to sections, zones, and individual households around ELM;
- 6.1.20.4. Rand Water supplies Sebokeng Township through Rand Water's Sebokeng meter, with Meter No. 0520 1084. Rand Water's boundary and responsibility ends at the meter point. The distribution of water is the responsibility of ELM, which must determine how the water supply is distributed in the network from the bulk meter onwards. The Annual Average Water Demand for Sebokeng Meter is 59.2 Ml/d;
- 6.1.20.5. Rand Water was advised by ELM through various engagements about the water supply challenges in the high-lying areas in Sebokeng and Evaton.

Rand Water is also aware of the low water levels in the Langerand Reservoir, and the engagements held with ELM discussed the following factors:

- (a) Langerand Reservoir supplies two of the top three (03) ELM meters, namely the Evaton Meter with an Annual Average Water Demand of 58.9 MI/d and the Sebokeng meter. Langerand Reservoir supplies other meters with its combined Annual Average Water Demand amounting to 9.7 MI/d, and during peak periods, the consumption of all these meters increases to about 20% above the average consumption;
- (b) The Sebokeng meter consumption has increased to 25% compared to last year's consumption;
- (c) Water supply from Rand Water's Vereeniging Water Treatment Plant (WTP) to Amanzimtoti Pumping Station is limited to the designed supply of 150 MI/d, and from the Rand Water Vereeniging WTP, there are meters along the way that consume an average of 18.3 MI/d. It then leaves an average of 132 MI/d for pumping via the Amanzimtoti Pumping Station;
- (d) Amanzimtoti Pumping Station depends on power supply from ELM, which gets interrupted frequently due to failures. During these power failures, Amanzimtoti Pumping Station can only pump 45% of the normal load using generators. This results in depleting storage levels in the Langerand Reservoirs; and
- (e) The average demand from the meters after Amanzimtoti Pumping Station is 132 MI/d, and this indicates that its consumption upstream

is higher than its supply, which does not allow any storage at Langerand Reservoirs as they become depleted during peak periods.

- 6.1.20.6. The Amanzimtoti Pumping Station functions effectively, and its pumping is maintained at maximum loads unless there are power supply interruptions. The water supply to Sebokeng is being severely affected by power outages at Amanzimtoti Pumping Station, and to mitigate this Rand Water installed mobile generators that can run up to 45% of the load during the power failures.

*Documentary evidence received from Rand Water*

*Assessment reports on valve replacement at ELM compiled by M. Nenzhelele, dated 08 September 2023 and 06 October 2023*

- 6.1.21. In terms of the above-mentioned reports, Rand Water undertook an assessment of the valves on the above-mentioned dates and discovered the following challenges:
- 6.1.21.1. Leaks at Reservoir numbers 3, 4 and 5;
- 6.1.21.2. The valves were flooded with water which required draining before being assessed; and
- 6.1.21.3. 500mm sluice valves inside the concrete chamber were not at the Rand Water standard and one of the valves was located inside a concrete chamber which must be demolished and rebuilt.
- 6.1.22. Rand Water recommended the outsourcing of the Pressure Reducing Valves (PRVs) and Viking Johnson (VJ) couplings since they did not have them in stock. It further recommended the outsourcing of the replacement

of the valves to an external contractor, who would demolish the concrete chamber around the valves and reconstruct it.

*Version of DWS*

- 6.1.23. On 23 February 2024, the Public Protector raised the allegations with Dr Phillips seeking clarity on the role of DWS in this matter. On 12 March 2024, the Public Protector received a response letter from Dr Phillips, wherein he stated the following:
- 6.1.23.1. ELM is a WSA and Water Services Provider (WSP) in terms of the Water Services Act, 1997. Rand Water is a Water Board supplying bulk water to ELM. Upon receipt of the water from the take-off point and bulk system, ELM determines how water is distributed to various sections. The water services infrastructure is owned, operated, and maintained by ELM as a WSA;
- 6.1.23.2. The Gauteng Provincial Government invoked section 139 of the Constitution<sup>2</sup> to intervene in ELM due to several service delivery failures. The failure also affected sanitation services resulting in the Minister of Water and Sanitation invoking section 63 of the Water Services Act, 1997, to intervene and address sewer spillages that were resulting in the pollution of the environment, including the Vaal River. Rand Water was appointed as an Implementing Agent for the intervention on 05 October 2021;
- 6.1.23.3. The South African Human Rights Commission (SAHRC) also investigated the matter and directed the DWS to intervene to curb the sewerage pollution. Significant progress has been made to address the sewerage spillages;

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<sup>2</sup> Which explains the provincial intervention in local government.

- 6.1.23.4. DWS is implementing an intervention in terms of section 63 of the Water Services Act, 1997 to assist ELM with sanitation services, but not for water supply challenges through the rehabilitation and upgrading of sewer infrastructure. The scope of the intervention incorporates the unblocking of sewer pipelines, the replacement of old/collapsed sewer pipes and the refurbishment of forty-four (44) sewer pump stations as well as the refurbishment and upgrade of Wastewater Treatment Plants;
- 6.1.23.5. Part of the intervention includes the assessment and training of the process controllers and the management of the Vaaloewer Water Treatment Works, including maintaining the plant. The WTP supplies the Vaaloewer settlement, which is situated on the northwestern side of Vanderbijlpark;
- 6.1.23.6. DWS assisted *Metsi-a-Lekoa* (the dedicated water services authority of ELM) by procuring vehicles, equipment and machinery for operation and maintenance to facilitate effective service delivery; and
- 6.1.23.7. Rand Water also assists ELM with Water Conservation Water Demand Management (WCWDM), water pressure management or tankering where necessary, in terms of the contractual agreements between the water board and ELM. ELM's water losses are reported to be 70% due to the dilapidated water supply infrastructure, and as a result, it is struggling to service the debt owed to Rand Water. The water losses affect the supply of available water to communities.

*The version of CoGTA*

- 6.1.24. On 23 February 2024, the Public Protector raised the allegations with Dr Barclay requesting clarity on CoGTA's intervention on ELM. On 14 March 2024, the Public Protector received a response letter from Dr Barclay, wherein he stated the following:

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- 6.1.24.1. CoGTA is aware of the intervention undertaken by DWS in terms of section 63 of the Water Services Act, 1997 to address the water supply challenges within ELM. Furthermore, CoGTA is actively involved with DWS and Rand Water on the intervention, which started in July 2021 and will remain effective for three (03) years. The intervention pertains to the planning and refurbishment of water and sanitation infrastructure;
- 6.1.24.2. The intervention was motivated by ELM's failure to fulfil its executive and financial obligations in terms of the Constitution and legislation. The nature of the intervention consisted of executing the executive and financial obligations of ELM, including the exercise of exclusive decision-making powers in the specific key areas, such as:
- (a) Supply Chain Management (SCM);
  - (b) Finance; and
  - (c) Infrastructure/Service delivery.
- 6.1.24.3. This entailed executing three executive functions and related obligations of the municipal council;
- 6.1.24.4. The overall objective of the intervention was to stabilise ELM's performance by undertaking specific remedial measures in the areas listed below:
- a) Finance: the review and implementation of sound financial systems, policies, procedures, cost-cutting measures, and increase revenue collection;
  - b) SCM: the setting up of Bid Committees and facilitating the functionality thereof and SCM turn around compliance framework strategy and action plan; and

- c) Infrastructure/Service delivery: performance of MIG programme for increased spending and improved service in the areas, Roads and Stormwater, Water Services Supply, Sanitation Services Supply and Social Services Amenities.

6.1.24.5. The project plan for the overall intervention was anchored around the pillars listed below:

- (a) financial management and viability;
- (b) basic services and urban management;
- (c) governance and institutional management;
- (d) communications and stakeholder engagements; and
- (e) implementing mega projects on infrastructure.

6.1.24.6. CoGTA provided human resources comprising of a team of experienced administrators such as a professional Architect, an Electrical Engineer, two (02) Chartered Accountants, and a Change Management Strategist to drive and oversee the implementation of section 139(1)(b) of the Constitution;

6.1.24.7. CoGTA also facilitated financial support from other spheres of government in support of the realisation of the interventions. The following contributed financially:

- (a) Gauteng Department of Agriculture and Rural Development (GDARD) contributed fifty-one million rand (R51 000 000);
- (b) Gauteng Department of Roads and Transport (GDRT) contributed one hundred seventy-three million rand (R173 000 000);



- (c) DWS allocated six hundred-million-rand (R600 000 000); two billion two hundred million rand (R 2 200 000 000) towards the refurbishments and repairs and four billion eight hundred million rand (R 4 800 000 000) towards capacity upgrade.

6.1.24.8. The expected deliverables from the intervention were:

- (a) Coordination of the implementation of the Financial Recovery Plan (FRP);
- (b) Review and implementation of sound financial systems, policies, procedures, cost-cutting measures, and increase revenue collection;
- (c) Filling of senior management positions including Municipal Manager's position;
- (d) Dealing with disciplinary matters, including criminal, maladministration, disciplinary and civil action executed;
- (e) Negotiate and enter into payment agreements with the third parties currently owed by ELM;
- (f) Review the organisational structure of ELM, focusing on curbing ballooning salary costs whilst improving performance;
- (g) Oversee all budgetary and expenditure processes in ELM;
- (h) Ensure the implementation of Municipal Council Resolutions by the administration within the current budgetary position of ELM;
- (i) Ensure the implementation of remedial action plans dealing with the Auditor General;
- (j) Review all contractual obligations of ELM and negotiate contractual payments, scope and agreed schedule with service providers; and
- (k) Review all litigation by and against the municipality and finalisation of such.

- 6.1.24.9. The section 139 intervention started on 05 February 2019 and terminated in 2022.

*The version of AGSA*

- 6.1.25. On 04 April 2024, the Public Protector raised the allegations with Mr Cebekhulu to verify if ELM's MIG projects have been audited. On 16 May 2024, the Public Protector received a response letter dated 19 April 2024, which stated the following:
- 6.1.25.1. AGSA is acutely aware of the unacceptable levels of poor service delivery in the country and the need to investigate allegations of acts that negatively impact the lived realities of citizens and drain the limited resources of the Republic of South Africa. The AGSA is therefore keen to cooperate with any investigative process aimed at holding those responsible for wrongdoing accountable in terms of the law;
- 6.1.25.2. AGSA's commitment to cooperate, however, comes with the responsibility to advise those with whom they engage to fully understand the value and inherent limitations of its work including the information that it discloses;
- 6.1.25.3. The requested information is released solely for the investigation that the Public Protector is tasked with; and
- 6.1.25.4. AGSA scoped the MIG during the 2022/23 financial year audit, and they did not identify any material findings relating to the utilisation of the MIG. However, their audit observations noted amongst other things the overall spending on grants and achieving of targets linked to projects funded by the MIG.

*Documentary evidence received from AGSA*

*Annexure A – Extract from ELM management and auditor’s report relating to MIG audit observations*

- 6.1.26. According to the extract, the following audit observations and insights that are related to MIG processes were included in the final management and/or auditor’s reports:
- 6.1.27. In paragraph 28 of the extract of the final auditor’s report as of 30 December 2023, AGSA indicated that it could not determine if the reported achievements were correct, as adequate supporting evidence was not provided for auditing and/or adequate measurement processes did not exist. As a result, AGSA indicated that the reported achievements were not reliable for determining if the targets had been achieved. Some of the target indicators are linked to projects that are funded by the MIG:

Indicator	Target	Reported achievement
BS.42 Percentage: Bulk water supply from Tshepisoong to Sharpeville (W&S) (multi-year implementation)	10%	0%
BS.42 Percentage: Bulk water supply from Evaton Reservoir to Dadeville (W&S) (multi-year implementation)	10%	0%

- 6.1.28. In paragraph 43 of the extract of the final management report of 30 December 2024, AGSA indicated that ELM is not spending adequately on repairs and maintenance concerning refurbishment, rehabilitation, or repairs of immovable and infrastructure assets to return these assets to their desired service performance levels and to sustain the useful life of these assets;

- 6.1.29. Paragraph 50 of the extract of the final auditor's report as of 30 December 2023, indicated that the performance of some of the contractors or service providers was not monitored monthly, as required by section 116(2) (b) of the Municipal Finance Management Act<sup>3</sup> (MFMA). Similar non-compliance was also reported in the year prior. Some of the contractors were engaged in projects that were funded by the MIG;
- 6.1.30. ELM was underspending on repairs and maintenance because ELM's expenditure was two hundred ninety five million nine hundred seventy eight thousand eight hundred one rand (R295 978 801) which is 2.6% of the total carrying amount of eleven billion two hundred twenty million two hundred sixteen thousand two hundred ninety six rand (R11 220 216 296) of property, plant, and equipment, instead of the accepted national norm of 8% as determined by the National Treasury, for ELM this expenditure should be much higher given the state of the movable assets;
- 6.1.31. This was due to a lower-than-expected collection rate for service charges, which resulted in ELM passing an unfunded budget, thus impacting poor maintenance of infrastructure assets, and resulting in a disruption of services such as water and electricity; and
- 6.1.32. In paragraph 49, AGSA noted that ELM had to return the unspent grant amounting to thirty-eight million fifty-nine thousand one hundred forty eight rand (R38 059 148) for the year prior and the Management was encouraged to develop an action plan to ensure the condition grant allocated to improve infrastructure service delivery is spent in full.

*The version of Eskom*

- 6.1.33. On 04 April 2024, the Public Protector raised the allegations with Mr Marokane, the Group Chief Executive of Eskom requesting clarity on the alleged influence of load shedding and/or power outages on ELM's water pressure. On 30 May 2024, the Public Protector received a response letter signed on behalf of Mr Sibusiso Madlala, the acting General Manager: Gauteng Cluster, which stated the following:
- 6.1.33.1. Eskom investigated the matter and determined that the Rand Water branch that is supplying Amanzimtoti Pumping Station is not within Eskom's area of electricity supply. The demarcation indicates that this is ELM's area of supply, and Eskom supplies electricity as a bulk supply to ELM. ELM then distributes the electricity from the bulk point to its customers, including the Amanzimtoti Pumping Station. Eskom has not received any complaints from the ELM about any form of ongoing power outages; and
- 6.1.33.2. Eskom has no record of power interruption in their entire network supplying bulk to ELM and that the matter be referred to ELM, which is a competent authority in terms of its Distribution Licence issued by the regulator.

*Site inspections and Meetings on 29 January 2024*

- 6.1.34. On 29 January 2024, the Investigation Team visited Sebokeng Zone 3 and engaged with the Complainant, affected residents and Mr Moeketsi Mosia, a local Ward Councillor. During this visit, residents alleged that the water tankers are not reaching them regularly to deliver water and that life without access to water has become extremely difficult. The meeting was concluded with a brief walkabout in Sebokeng Zone 3, where residents showed the Public Protector dry taps in their houses.

*Meeting and Site Inspection with the functionaries of ELM on 21 February 2024*

- 6.1.35. On 21 February 2024, a meeting was held between the Investigation Team and ELM's *Metsi a Lekoa*<sup>4</sup> officials, led by Mr Besani to discuss the short and long-term solutions to the water challenges in the area. During the meeting, *Metsi a Lekoa*'s officials reiterated that Rand Water's Langerand Reservoir's water supply is significantly low because the supply does not meet the demand. According to the functionaries of *Metsi a Lekoa*, the water supply at the Langerand was initially ten (10) bar, but it has been reduced to two (02) bar lately, thus affecting supply;
- 6.1.35.1. *Metsi a Lekoa* also advised the Public Protector about the intervention by DWS undertaken in terms of section 63 of the Water Services Act, 1997, which is currently underway to improve and or assist in water supply challenges within ELM;
- 6.1.35.2. After the meeting, a site inspection was conducted with the functionaries of *Metsi a Lekoa* at the Amanzimtoti Pumping Station to check pressure level readings and the dilapidated condition of the valve in the concrete chamber. The Investigation Team was also able to observe as functionaries of *Metsi a Lekoa* were discovering valves and meters around Sebokeng Zone 3, some of which were hidden by wall fences and housing structures/shacks that had been built on top of them. During the site inspection, the Investigation Team made observations as illustrated in the following photographs:

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<sup>4</sup> Metsi a Lekoa is dedicated water services authority entity for Emfuleni Local Municipality and its core functions is the water and sanitation functions of the Municipality, Emfuleni Local Municipality - Metsi-a-Lekoa (accessed on 03 September 2024)



**Photo A:** depicts a visibly rusty and dilapidated water isolation valve inside the concrete chamber next to Amanzimtoti pumping station



**Photo B**



**Photo C**

- 6.1.35.3. The pictures above depict underground water valve and meter upon which perimeter walls and housing structures have been built in Sebokeng Zone 3.

*Updated information received from the Complainant*

- 6.1.36. On 18 March 2024, the Complainant advised the Investigation Team that ELM had installed “Jojo” water storage tanks around Sebokeng Zone 3. The Complainant further stated that two “Jojo” tanks were installed outside two



houses in Sebokeng Zone 3 and the third Jojo tank was installed in an open space. Furthermore, all the tanks are accessible by community members and are re-filled every day or two (02).

- 6.1.37. The Complainant also furnished the Investigation Team with images of all three installed “Jojo” tanks as shown below:



**Photo D:** depicts 3 JoJo Tanks installed by ELM in Sebokeng Zone 3.

- 6.1.38. On 07 May 2024, the Complainant advised the Investigation Team that the water supply had been fully restored to all houses in Sebokeng Zone 3.

### **Response to the Notice issued in terms of section 7(9)(a) of the Public Protector Act**

*Councillor Radebe and Mr Ntuli's response*



- 6.1.39. Councillor Radebe and Mr Ntuli responded jointly to the Notice on 21 August 2024 and stated that they undertake to co-operate with the Public Protector's proposed remedial action and to assist by conducting a full assessment to determine all the underlying causes of the water supply challenges identified in Sebokeng Zone 3 and other affected areas within its area of jurisdiction.
- 6.1.40. They further indicated that they would develop a water implementation plan which will be tabled at the Municipal Council meeting, setting out measures to be taken to address the water challenges as set out in the Notice within the stipulated timeframes.

*Applicable law*

**Constitution of the Republic of South Africa, 1996**

- 6.1.41. Section 7(2) of the Constitution imposes a duty on the State to respect, protect, promote, and fulfill the rights in the Bill of Rights.
- 6.1.42. Section 27(1)(b) and subsection (2) of the Constitution provides amongst other things, that everyone has the right to have access to sufficient water and further enjoins the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 6.1.43. Section 41(1) of the Constitution provides that all organs of State must work collaboratively and provide a government which is not only effective, transparent, and coherent, but also government which is accountable.
- 6.1.44. Section 152(1) of the Constitution mandates for municipalities to strive to provide a democratic and accountable government for local communities,

to ensure the provision of services to communities in a sustainable manner, and to promote a safe and healthy environment.

- 6.1.45. Section 133(1) of the Constitution provides that the members of the executive council of a province are responsible for the functions of the executive assigned to them by the Premier.
- 6.1.46. Section 153 of the Constitution provides that municipalities have a developmental duty which entails structuring and managing their budget, administration and planning processes in a manner that prioritises the basic needs of their communities whilst promoting social and economic development within their communities.
- 6.1.47. Section 195(1) of the Constitution provides, *inter alia*, that public administration must be governed by the democratic values and principles enshrined in the Constitution, including to ensure that people's needs are responded to.

### **Local Government Municipal Systems Act, 2000**

- 6.1.48. The Local Government Municipal Systems Act is a principal legal instrument enacted to give effect to the constitutional obligations in relation to municipalities.
- 6.1.49. Section 1 defines "*basic municipal services*" as a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.
- 6.1.50. Section 3(1) provides that municipalities must exercise their executive and legislative authority within the constitutional system of co-operative government envisaged in section 41 of the Constitution.

- 6.1.51. Section 4(2) provides that the council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has amongst other things a duty to strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner, give members of the local community equitable access to the municipal services to which they are entitled, promote a safe and healthy environment in the municipality and contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.
- 6.1.52. Section 73(1) places a general duty on municipalities to give effect to the provisions of the Constitution and –
- (a) to give priority to the basic needs of the local community,
  - (b) to promote the development of the local community, and
  - (c) ensure that all members of the local community have access to at least the minimum level of basic services.

### **Municipal Finance Management Act, 2003**

- 6.1.53. Section 63(1)(a) of the MFMA provides that the Accounting Officer of a municipality is responsible for the management of the assets of the municipality, including the safeguarding and the maintenance of those assets.

### **The Water Services Act, 1997**

- 6.1.54. The Water Services Act is a major piece of legislation that highlights the connection between the rights of people to have access to a basic water supply and the government's duty to manage water services sustainably.
- 6.1.55. Section 2 provides *inter alia* that the main objects of the Water Services Act are to provide for the right of access to basic water supply, the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being.
- 6.1.56. Section 3 provides, *inter alia*, that everyone has the right of access to basic water supply and basic sanitation, every water services institution must take reasonable measures to realise these rights and every water services authority must, in its water services development plan provide for measures to realise these rights.
- 6.1.57. According to section 11(1), every Water Service Authority<sup>5</sup> has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure, affordable, economical, and sustainable access to water services.
- 6.1.58. In terms of section 11(2) the duty to provide access to water services is subject to the following factors:
- (a) The availability of resources;
  - (b) The need for equitable allocation of resources to all consumers and potential consumers within the authority's area of jurisdiction;
  - (c) The need to regulate access to water services equitably;
  - (d) The duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;
  - (e) The duty to conserve water resources;

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<sup>5</sup> *Water Services Authority* means any municipality, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993) responsible for ensuring access to water services.

- (f) The nature, topography, zoning, and situation of the land in question; and
- (g) The right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.

6.1.59. Section 62 deals with the monitoring of water services institutions and provides, amongst other things, that the Minister and any relevant province must monitor the performance of every water services institution to ensure compliance with all applicable national standards prescribed under this Act.

6.1.60. Section 63(1) states that if a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development (now CoGTA) request the relevant province to intervene in terms of section 139 of the Constitution.

#### **Division of Revenue Act, 2022**

6.1.61. The objectives of DoRA is to provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government for the 2022/23 financial year;

6.1.62. Section 8(1) of DoRA relates to conditional allocations to municipalities and provides that:

- (1) Conditional allocations to municipalities in respect of the 2022/23 financial year from the national government's share of revenue raised nationally are set out in—

- (a) Part B of Schedule 4, specifying allocations to municipalities to supplement the funding of functions funded from municipal budgets;
- (b) Part B of Schedule 5, specifying specific-purpose allocations to municipalities;
- (c) Part B of Schedule 6, specifying allocations-in-kind to municipalities for designated special programmes; and
- (d) Part B of Schedule 7, specifying funds that are not allocated to specific municipalities that may be released to municipalities to fund an immediate response to a classified disaster or housing emergency.

6.1.63. Section 10 of DoRA regulates the duties of transferring a officer in respect of Schedule 5 or 6 allocations. Subsection (5) states that the transferring officer of a Schedule 5 allocation to a municipality is responsible for monitoring financial and non-financial performance information on programmes funded by the allocation.

#### *Case law*

6.1.64. In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*,<sup>6</sup> the Constitutional Court stated that section 73(1) of the Local Government Municipal Systems Act places a general duty on municipalities to give effect to the provisions of the Constitution and to “*give priority to the basic needs of the local community, promote the development of the local community, and ensure that all members of the local community have access to at least the minimum level of basic services*”.

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<sup>6</sup> (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at paragraph, 22 and 53.

- 6.1.65. The Constitutional Court rejected arguments relating to a lack of financial resources to deliver basic services and stated that *“determination of the reasonableness of measures within available resources cannot be restricted by budgetary and other decisions that may well have resulted from a mistaken understanding of constitutional or statutory obligations”*. In other words, it is not sufficient for an organ of state to merely state that it does not have sufficient budget for something if it should indeed have planned and budgeted for it in the fulfilment of its obligations.<sup>7</sup>
- 6.1.66. The Constitutional Court further stated that section 4(2)(j) of the Local Government Municipal Systems Act requires municipalities to contribute, together with other organs of state, to the progressive realisation of fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.
- 6.1.67. In *Government of the Republic of South Africa and Others v Grootboom and Others*<sup>8</sup>, the Constitutional Court stated that *“effective implementation requires at least adequate budgetary support by national government”*.

### Analysis

- 6.1.68. The evidence at the Public Protector’s disposal indicates that the community of Sebokeng Zone 3 had no access to potable water supply for a period of 07 months, as at the date of lodgement of the complaint with the Public Protector in September 2023. During this period, residents were forced to travel long distances to get water from neighbouring areas, such as Orange Farm, which is approximately 14km away from Sebokeng. This was financially costly, as most of them are either elderly citizens and/or unemployed.

<sup>7</sup> (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at paragraph 74.

<sup>8</sup> (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) at paragraph 68.

- 6.1.69. The evidence further revealed that due to the ELM's old infrastructure and poor condition of its water network, *Metsi-a-Lekoa* experiences operational challenges due to prolonged poor infrastructure maintenance leading to closed and/or sinking valves, and extremely low water pressure. Furthermore, ELM's water supply infrastructure is dilapidated and suffers water losses due to leaks and burst pipes at a rate of 70%. During the site inspection, the Investigation Team observed a visibly rusty isolation valve inside a concrete chamber near the Amanzimtoti Pumping Station.
- 6.1.70. The functionaries of ELM were aware of the water supply shortages in high-lying areas such as Evaton West, Evaton North, Lakeside, Sebokeng Zone 3, Zone 6, Zone 7, and Palm Springs, as confirmed by Mr Ntuli and they acknowledged that its water infrastructure is in a state of deterioration.
- 6.1.71. The lack of maintenance to the water supply infrastructure is exacerbated by the unavailability of water network plans, as a result, critical infrastructure repairs cannot be effected due to the difficulties in locating and accessing the valves and/or meters. A shortage of vehicles, inadequate human capital and illegal connections by informal dwellers also affects maintenance to the water supply infrastructure. The Investigation Team observed during the inspection in loco in one of the informal settlements a perimeter wall that was constructed on top of a valve and a house built on a water meter, as result, these had become inaccessible to undertake the necessary maintenance or repairs.
- 6.1.72. The contention by ELM functionaries that power outages adversely affected the efficient functioning of the water supply at Amanzimtoti Pumping Station cannot be sustained, as ELM in its capacity as a bulk electricity distributor, is responsible for the power supply to Amanzimtoti Pumping Station. Therefore, it is unclear why ELM could not provide sufficient power to the Pumping Station.



- 6.1.73. The ELM as an organ of the state, has a legal duty to provide sufficient water to the community of Sebokeng Zone 3 as envisaged in Section 27(1)(b) and subsection (2) of the Constitution, which *provides inter alia* that everyone has the right to have access to sufficient water and enjoins the State to take measures, within its available resources, to achieve the progressive realisation of this right.
- 6.1.74. It was incumbent on the functionaries of ELM to ensure that the basic needs of the community of Sebokeng Zone 3 are prioritised, and that they are provided access to at least the minimum level of basic services as contemplated in Section 73(1)(a) and (c) of the Municipal Systems Act, which in this instance was not done as the community was without water for an extended period of approximately 07 months, before seeking the Public Protector's intervention.
- 6.1.75. The conduct of the ELM functionaries was further in conflict with the provisions of section 11(1) of the Water Services Act, which places a duty on Water Service Authorities towards all consumers or potential consumers in its area of jurisdiction to progressively ensure, affordable, economical, and sustainable access to water services.
- 6.1.76. The ELM functionaries acknowledged that several factors relating to the administration of the municipality, such as missing water network plans, shortage of vehicles and staff, resulted in its inability to conduct necessary maintenance to the water supply infrastructure. This ultimately led to its failure to provide water to the community. It is evident from the submission of ELM that there was a historical failure on the part of its accounting officers to ensure proper management, safeguarding and maintenance of the municipality's water supply network as required in terms of section 63(1)(a) of the MFMA.

- 6.1.77. The right to have access to clean water means that it is an immediate enforceable right. Therefore, the obligation is on the state as set out in the seminal case of *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* to ensure the progressive realisation and achievement of socio-economic rights.
- 6.1.78. The evidence submitted to the Public Protector by AGSA and DCoG indicates that ELM is underspending on its MIG allocation. This under expenditure contributed to poor maintenance of infrastructure, which contributed to the disruption of services such as water. During the financial year 2022/23 ELM received an MIG allocation in the amount of R194 208 000, however, only R17 143 000 was utilised by ELM, as at the end of December 2022 for the 2022/23 financial year.
- 6.1.79. Furthermore, the evidence obtained from the AGSA indicates that ELM was underspending on repairs and maintenance as ELM's expenditure was R295 978 801 which is 2.6% of the total carrying amount of R11 220 216 296 of property, plant, and equipment, instead of the accepted national norm of 8% as determined by the National Treasury. According to the AGSA, this expenditure should be much higher given the state of its movable assets.
- 6.1.80. The objectives of DoRA are to provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government. The conduct of the ELM functionaries in not making appropriate use of its MIG allocation is in conflict with the intended purpose of the MIG which includes, inter *alia*, the development of basic infrastructure which is used by the poor, building new infrastructure and rehabilitating existing infrastructure (i.e. reconstruction of infrastructure which has reached the end of its life) and the upgrading existing infrastructure to basic levels.

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- 6.1.81. The role of CoGTA in as far as the MIG is concerned includes co-ordinating MIG policy on behalf of all departments, establishing MIG management and administrative structures, administering the transfer of funds to municipalities according to the DoRA schedule, providing support to municipalities and monitoring performance of the overall MIG programme.
- 6.1.82. Section 10 of DoRA regulates the duties of a transferring officer in respect of Schedule 5 or 6 allocations. Subsection (5) states that the transferring officer of a Schedule 5 allocation to a municipality is responsible for monitoring financial and non-financial performance information on programmes funded by the allocation.
- 6.1.83. DCoG noted that ELM has not performed satisfactorily over the last four years (2017/18 – 2020/21) on the MIG and/or has not adequately addressed water services directives issued by the DWS and/or addressed non-compliance notices that impact residential waste issues by the provincial department responsible for waste management.
- 6.1.84. The Public Protector notes that DCoG report on the unsatisfactory performance by ELM in its utilisation of the MIG over the last four years, which resulted in its inability to address water challenges impacting the communities under its jurisdiction, however, more stringent measures need to be implemented to ensure that ELM effectively executes its infrastructure programmes and utilises the MIG efficiently.
- 6.1.85. The Public Protector takes cognisance of the steps taken by ELM in March 2024 to provide short-term interventions by installing “Jojo” water storage tanks in Sebokeng Zone 3 and providing the community with a water tank schedule, while working on long-term solutions to address the challenge of water supply in the area in line with the procurement procedure outlined in section 63 of the Water Services Act, 1997.

- 6.1.86. The Public Protector further notes the report received from the Complainant on 07 May 2024 that potable water supply was restored by ELM to all households in Sebokeng Zone 3.
- 6.1.87. The Public Protector notes the undertaking by Councillor Radebe and Mr Ntuli in their response to the section 7(9)(a) notice to implement the remedial action by the Public Protector.

### *Conclusion*

- 6.1.88. The Complainant and the broader community of Sebokeng Zone 3 and other affected areas are entitled to live in a humane, healthy and clean environment and to receive a reasonable supply of potable water.
- 6.1.89. Based on the totality of the evidence presented by ELM and received from other stakeholders, the Public Protector concludes that ELM did not provide the community of Sebokeng Zone 3 with a reliable supply of water and as a result, residents experienced inhumane conditions without access to water for a prolonged period of at least seven (07) months.
- 6.1.90. The conduct of the functionaries of the ELM is in breach of its Constitutional duties imposed by section 27(1)(b) and (2), as well as section 3(1) and (3) of the Water Services Act, which impose a duty on it to provide everyone with sufficient water.
- 6.1.91. Based on the exposition of the factual evidence stated above, the Public Protector concludes that the ELM did not adhere to its statutory obligations imposed by the Constitution, the Local Government Municipal Systems Act and the Water Services Act.

## 7. FINDINGS

Having regard to the evidence, the regulatory framework determining the prejudice suffered, the Public Protector makes the following adverse findings:

**7.1 Whether the functionaries of Emfuleni Local Municipality unduly delayed to restore the provision of water to the community of Sebokeng Zone 3, for over a period of seven (07) months, if so, whether such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and amounts to prejudice in terms of section 6(4)(a)(v) of the Public Protector Act, 1994**

**7.1.1** The allegation that the functionaries of the Emfuleni Local Municipality unduly delayed to restore the provision of water to the community of Sebokeng Zone 3, for over a period of seven (07) months, **is substantiated.**

**7.1.2** The lack of supply of water resulted in the community of Sebokeng Zone 3 being without access to water for a prolonged period of at least seven (07) months, from September 2023 to May 2024. As a result, the residents, including elderly citizens were forced to spend hours laboriously collecting their daily supply of water from distant taps as well as from neighbouring areas such as Orange Farm.

**7.1.3** The lack of water supply in high-lying areas, including Sebokeng Zone 3 was acknowledged by the functionaries of ELM during the course of the investigation.

**7.1.4** The evidence obtained by the Public Protector reveals that the ELM's water supply network infrastructure is in a state of deterioration, thus it suffers

water losses due to leaks, burst pipes and aging water infrastructure. The dilapidated condition of the ELM's water network infrastructure has caused *Metsi-a-Lekoa* to experience operational challenges, which affect its ability to efficiently supply water to the residents of Sebokeng Zone 3 and other affected precincts in its area of jurisdiction. These challenges are further compounded by the lack of sufficient resources required to effect maintenance such as vehicles and human capital.

- 7.1.5 Electricity power outages further hampered the efficient performance of the infrastructure located at the Amanzimtoti Pumping Station. The unavailability of water network plans created difficulties for the ELM in identifying the precise location of critical valves in order to effect repairs.
- 7.1.6 The inability of ELM to provide the community of Sebokeng Zone 3 and other areas with sufficient water was in contravention section 27(1)(b) and subsection (2) of the Constitution, which provides for the right of access to sufficient water. In failing to ensure prioritisation of the basic needs of the community and that it has access to the minimum level of basic services, ELM contravened section 73(1)(a) and (c) of the Municipal Systems Act.
- 7.1.7 The ELM functionaries contravened section 11(1) of the Water Services Act, which places a duty on Water Service Authorities towards all consumers or potential consumers in its area of jurisdiction to progressively ensure sustainable access to water services.
- 7.1.8 The investigation revealed an underutilisation of the MIG by ELM, in this instance it was established that for the financial year 2022/23, ELM received an MIG allocation of R194 208 000.00, however, only R17 143 000.00 was utilised. The conduct of the ELM functionaries in underspending on its MIG allocation is in conflict with the intended purpose of the MIG which include the development of basic infrastructure for disadvantaged

communities, to rehabilitate and upgrade existing infrastructure to basic levels.

- 7.1.9 DCoG should put in place more stringent measures to ensure that ELM effectively executes on its infrastructure programmes and utilises the MIG efficiently, taking into account the unsatisfactory performance it has observed.
- 7.1.10 The Public Protector takes cognisance of the temporary measures implemented by ELM in March 2024 to provide short-term relief by installing “Jojo” water storage tanks, scheduling regular water tanker deliveries for the community, and utilising the procurement procedure outlined in section 63 of the Water Services Act, 1997 to obtain equipment required for repairs, whilst working towards long term solutions.
- 7.1.11 The Public Protector finds that the overall conduct of ELM functionaries in failing to provide consistent water supply to the residents of Sebokeng Zone 3 during the period in question, fell short of the standards, expectations and obligations imposed on it by the provisions of sections 27, 152, 153, and 195 of the Constitution, sections 3(1), 4(2) and 73(1) of the Local Government Municipal Systems Act as well as sections 3(1), 11(1)(2)(e) of the Water Services Act.
- 7.1.12 Accordingly, the conduct of the functionaries of ELM constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice as contemplated in section 6(4)(a)(v) of the Public Protector Act.

## 8. REMEDIAL ACTION

- 8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this report.
- 8.2 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others*, the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.
- 8.3 The Public Protector take note of the report received from Complainant on 07 May 2024, that the running water supply was restored by ELM to all houses in Sebokeng Zone 3.
- 8.4 Having regard to the evidence and the regulatory framework determining the standard the ELM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

### The MEC for CoGTA

- 8.4.1 Take cognizance of the findings and remedial actions contained in this report and exercise oversight over the implementation of this report in line with the provisions of section 133(1) of the Constitution.

### The Municipal Manager of ELM

- 8.4.2 Within **one hundred and twenty (120) calendar days** from the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct a full assessment to determine all the



underlying causes of water supply challenges as identified in this report in Sebokeng Zone 3 and other affected areas in its jurisdiction.

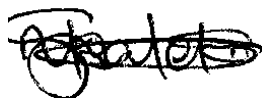
- 8.4.3 Within **one hundred and twenty (120) calendar days** from the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan with timelines for tabling before Council, setting out the measures to be undertaken and/or already undertaken in addressing the causes of water challenges identified in this report, within ELM.

#### **The Executive Mayor of ELM**

- 8.4.4 Within **sixty (60) calendar days** of the date of this report table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council for ELM is to consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken and/or already taken to address underlying causes of water supply challenges identified in this report, in line with the obligations of municipalities contemplated in section 152(1)(b) of the Constitution;
- 8.4.5 Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address all the underlying causes of water supply challenges, as identified in this report.

## 9 MONITORING

- 9.1 The Executive Mayor and Municipal Manager to submit action plans to the Public Protector within **thirty (30) calendar days** from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.
- 9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



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**ADV. KHOLEKA GCALEKA**  
**PUBLIC PROTECTOR**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE:30 SEPTEMBER 2024**

*Assisted by:*

*Mr Vusumuzi Dlamini: Gauteng Provincial Representative*

*Ms Lerato Motaung: Senior Investigator*