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Municipal Manager of Mquma Local Municipality

Councillor Sithembiso Ncethezo
Mayor of Mquma Local Municipality

Mayor Maneli
Amathole District Municipality

Dr Mnyimba
Municipal Manager
Amathole District Municipality

Mr Dungu
Engineering Department Director
Amathole District Municipality

Ms Nompucuko Badi
Senior Manager of the Project Management Unit
Amathole District Municipality

Ms Zikhona Maduma
Regional manager of the Eastern Region of the Project
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Mr Sakhiwo Balfour
Operations Manager for the Eastern Region
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Boniswa Hene,
Acting CEO of the Amatola Water Board

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Your reference

Our reference

Date

M Hathorn / S Robb
3042125

9 December 2020

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Dear Sirs

**LETTER OF DEMAND: WATER AND SANITATION SERVICES TO WARD 28, CENTANE
REGION, AMATHOLE DISTRICT MUNICIPALITY**

1. We represent the Centre for Environmental Rights ("**CER**"), the Masifundise Development Trust ("**Masifundise**") and Mr Harvey Ntshoko, a community activist from Coastal Links, an organisation associated with Masifundise. Mr Ntshoko is also a resident and community activist from Nombanjane Village in Ward 28, Centane, Eastern Cape.
2. As you are aware, there are certain villages in the Centane region that have been facing a severe water crisis that pre-dates the COVID-19 health pandemic.¹ We and CER have specifically been in contact with community members from various villages in Ward 28, including Nombanjane; Nxarxo; Ngcizele; Mazeppa; Gcina; and Cebe Villages, which to date, have no access to water and sanitation services. For example, Nombanjane Village, despite having taps installed in 2018, has not had access to water from these taps.
3. We note that the abovementioned villages are located in Ward 28 in the Centane region of the Mnquma Local Municipality ("**MLM**"), which in turn falls within the jurisdiction of the Amathole District Municipality ("**ADM**").

¹ Various letters from the South African Water Caucus to the relevant national, provincial and municipal officials, were delivered to ADM officials on 27 August 2020. A copy of this email with the letters is attached as annexure "**WW1**".

4. Despite numerous recent news reports of significant government spend on emergency water provisions and water tanks having being delivered to all communities in the Eastern Cape,² many communities in Ward 28 (and in the Centane Region as a whole) still have no access to water and sanitation. The abovementioned communities have not been provided with any water from local government since the start of the national lockdown, declared by the President, as a result of the COVID-19 crisis.
5. We write this letter as a final demand on behalf of our clients, and the communities in Ward 28 which they represent, to provide these communities with access to emergency water and sanitation, in line with government's directives relating to the COVID-19 crisis, as well as to provide our clients with a plan and timeline as to how and when water and sanitation services in the ordinary course will be supplied to the communities in Ward 28.
6. Our letter shall canvass the following:
 - 6.1 the constitutional right of the residents of ward 28 to water and sanitation services;
 - 6.2 the responsibilities of the respective municipalities in providing water and sanitation services to the villages in Ward 28;
 - 6.3 responsibility for the provision of emergency water and sanitation services during the COVID-19 Pandemic;
 - 6.4 the funding received by local government for drought intervention measures;
 - 6.5 the recent meeting held between our clients and numerous officials from the MLM; and
 - 6.6 our clients' demands based on their constitutional right to water and sanitation; their right to emergency water in terms of the COVID-19 directions; their right to emergency water intervention in terms of the declaration of the Eastern Cape as a drought stricken area; and demands based on promises made by MLM officials at the recent meeting with our clients.

² The following government announcement of 21 October 2020, for example, indicates that the government delivered 171 water trucks and 5694 water tanks to all municipalities in the Eastern Cape since the arrival of the Coronavirus pandemic: <https://www.gov.za/speeches/water-and-sanitation-update-mnquma-local-municipality-water-situation-21-oct-2020-0000>

THE RIGHT OF ACCESS TO WATER AND SANITATION

7. The Constitution, 1996 under section 27(1)(b), provides for the right of access to sufficient water. Section 27(2) requires the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right. In addition to the express right to water, section 24 of the Constitution provides for the right to an environment that is not harmful to one's health or well-being.
8. Section 3(1) of the Water Services Act, 1997 ("**WSA**") provides that everyone has a right of access to basic water supply and basic sanitation. Section 3(2) of the WSA provides that every water services institution must take reasonable measures to realise these rights.
9. Water and sanitation services are constitutionally guaranteed rights and the lack of provision of these services to the villages in Ward 28 is an infringement on their most basic fundamental human rights.

WHO IS RESPONSIBLE FOR WATER AND SANITATION SERVICES IN WARD 28

10. The Local Government Municipal Structures Act, 1998 ("**Structures Act**") provides for the division of functions and powers between district and local municipalities. Section 84(1)(b) and (d) provides that the powers and functions of a district municipality include "potable water supply systems" and "domestic waste-water and sewage disposal systems," respectively which places water and sanitation under the jurisdiction of the district municipality. Section 84(2) of the Structures Act provides that the functions and powers of the local municipality are classified as those assigned to it in terms of section 156 and 229 of the Constitution and excluding those specifically vested in the district municipality in whose area it falls.
11. In terms of section 76 of the Local Government: Municipal Systems Act 32 of 2000 ("**Systems Act**") a municipality may elect to perform the function of a water services provider itself or it may enter into a contract with a water services provider to provide water services within its area of jurisdiction.
12. According to the Systems Act, when a municipality elects to perform the function of a water services provider, it must allocate sufficient human, financial and other resources for the proposed provision of the service (section 79(a) of the Systems Act).

13. We understand that the ADM has been a Water Services Authority since 2003 and a Water Services Provider for the Amathole District since 2006. Accordingly, it is the ADM who is responsible for the provision of water and sanitation services to the villages in Ward 28. In this regard, Ward 28 falls under the MLM and the MLM, in turn, comprises one of six local municipalities within ADM's jurisdiction.
14. From the ADM's website, we understand that water and sanitation services fall under the Engineering Services Department and the management responsible for water and sanitation is as follows:
 - 14.1 Ms Nompucuko Badi is the Senior Manager of the Project Management Unit ("**PMU**"). The PMU is responsible for providing basic levels of water and sanitation services to the seven local municipalities within ADM which are divided into three regions managed by Regional Managers.
 - 14.2 The website states that MLM falls under the central region (and later indicates that it falls under the eastern region). Given the location of the communities in the MLM we can only assume that the former is an error and that it should have been listed under the eastern region. The Regional Manager for all the infrastructure projects implemented by the PMU in the eastern region is Zikhona Maduma.
 - 14.3 There are three operations managers managing operations in the seven local municipalities. As MLM falls into the Eastern Region, the operations manager is Mr Sakhwiwo Balfour. Our clients have been in contact with Mr Balfour and he is well aware of the issues that they face.
 - 14.4 We have addressed this letter to all three of the above individuals, as well as Mr Dungu who is the Engineering Department Director. We have also addressed this letter to the Mayor of ADM, Mayor Manyeli and Dr Mnyima, the Municipal Manager of ADM, due to the oversight role that they play over the affairs of ADM
15. The Amatola Water Board is an essential water services utility and its primary activity under sections 29 and 30 of the Water Services Act is to provide bulk water services. Its area of operation in terms of water supply includes the ADM.

WHO IS RESPONSIBLE FOR THE PROVISION OF EMERGENCY WATER AND SANITATION SERVICES DURING THE COVID-19 PANDEMIC

16. On 15 April 2020 the Water and Sanitation Emergency Procurement COVID-19 Disaster Response Directions, issued in terms of regulation 10(8) of Regulations under section 27(2) of the Disaster Management Act, 2002 ("**Directions**") were issued. The Directions established a process whereby emergency water and sanitation services would be provided to communities in need by the relevant municipalities and water services authorities, under the direction of Rand Water.
17. It is undeniable that the villages in Ward 28, Centane are "communities in need" of emergency water and sanitation services, as they lack infrastructure that provides them with water.
18. Direction 2 of the Directions states that they apply to, inter alia, municipalities as defined in the Structures Act and any district, metropolitan or local municipality that has been nominated and appointed to be a water services authority. ADM has been appointed as a water services authority.
19. The Directions provide that emergency water and sanitation services must be provided to all communities in need. Direction 7(2) provides that water services authorities must identify the mechanisms for the distribution of water and sanitation packs, in compliance with established policies.
20. Rand Water, as the coordinator of the National Disaster Water Command Centre, is responsible for managing the implementation and administering of water and sanitation. Direction 9(5) makes Rand Water responsible for the procurement, at a national level, for all municipal areas within the Republic of South Africa. Direction 9(7) gives Rand Water the power, under the supervision of the Minister, to delegate to another water board or municipality, the procurement, delivery and monitoring of the service standards of goods and services required within such water board or Municipality's area of control. Direction 9(11) provides that Rand Water must give guidance to regions of the Department of Human Settlements, Water and Sanitation, water boards and municipalities, to access water in order to prevent or reduce the risk of COVID -19.
21. Lastly, and importantly, Direction 10 provides for the distribution of water and sanitation. The National Disaster Water Command Centre is obliged to set up a monitoring system

- under direction 10(1) which tracks the distribution of emergency water and sanitation procurement. The National Disaster Water Command Centre is responsible for providing the precise coordinates and delivery points as to where the equipment should be delivered under direction 10(3). The National Disaster Water Command Centre is required, under direction 10(4), to coordinate its activities in the municipalities through the Department of Cooperative Governance and Traditional Affairs ("**COGTA**") and engage with municipal managers to secure the distribution points and ensure the safety of the equipment.
22. Our understanding is thus that ultimately, Rand Water (as the National Disaster Water Command Centre) plays a supervisory role and is responsible for identifying areas that are in desperate need of water and must allocate the exact location where water tanks should be delivered. However, it is the responsibility of the water services provider in the jurisdiction to ensure that emergency water and sanitation services are available and the responsibility of the relevant district municipality to ensure such resources are distributed to communities in need. As mentioned above, in the Centane region, the Amatola Water Board is responsible for bulk water services provision and, in accordance with the intervention efforts by the Department of Human Settlements, Water and Sanitation ("**DWS**"), was made responsible for co-ordinating water tanker delivery to all districts and metros in the Eastern Cape (with ADM being one of them).³ The ADM is then responsible for ensuring that such emergency water (and sanitation packs) are distributed to the villages in need in its jurisdiction, which includes the villages in Ward 28.
23. Accordingly, the Amatola Water Board still has a role to play in relation to the provision of emergency water services to Ward 28 as it has the responsibility of directing ADM to deliver emergency water tanks provided by DWS to ward 28. We have thus copied the Amatola Water Board into this correspondence.
24. Most importantly, and like in the normal course of the provision of water and sanitation services, ADM is responsible for ensuring that water tanks, water to fill the water tanks and sanitation packs reach the villages in Ward 28 under the Directions.

³ In this regard, we refer to the following announcement by the Amatola Water Board: <http://www.amatolawater.co.za/news/details/eastern-cape-receives-3355-water-tanks-and-168-tankers-from-dws-cogta-and-private-donors>

DROUGHT INTERVENTION MEASURES

25. The Minister of Human Settlements, Water and Sanitation has declared the Eastern Cape Province a drought stricken area. On 2 August 2019, the Council of the ADM declared the ADM as a Drought Disaster Area.⁴ Minister Sisulu has commissioned the Amatola Water Board to lead the drought intervention plan in the Eastern Cape.⁵
26. The Amatola Water Board has received significant national government funding to undertake emergency measures in relation to water provision in the Eastern Cape (even though the Amatola Water Board is not the water services authority or water services provider for the ADM). There have been news reports (as recent as September 2020) of R50 million being made available in this financial year to the Amatola Water Board for drought intervention in the Eastern Cape.⁶ This is part of a reported R230 million funding package over three years to assist the Eastern Cape to mitigate the effects of drought.⁷
27. ADM has also received drought intervention funding from DWS. Minister Sisulu provided a table of drought funding in answer to a Parliamentary question on 15 June 2020. The question was on the 2018/2019 financial year, and an amount R64 088 000 of was pledged to ADM for this period, which comprised as follows:
- 27.1 Butterworth Water supply: Water Treatment Works (WTW) backwash water recovery R8 000 000;
- 27.2 Butterworth Water supply: Augmentation of bulk water supply to Ibika from boreholes R49 929 000;
- 27.3 Mnqingweni Village emergency supply: Groundwater development R 1 559 000; and
- 27.4 Dutywa water supply augmentation: Targeting high yield aquifers R4 600 000.⁸

⁴ https://www.gov.za/sites/default/files/gcis_document/201908/42608gon1023.pdf

⁵ In this regard we refer to the following announcement by the Amatola Water Board: <http://www.amatolawater.co.za/news/details/amatola-water-commissioned-for-drought-intervention>

⁶ <https://www.timeslive.co.za/news/south-africa/2020-09-22-r50m-made-available-for-drought-intervention-in-ec-municipalities/>

⁷ <https://reliefweb.int/report/south-africa/funds-allocated-ec-drought-relief>

⁸ https://static.pmg.org.za/RNW540-2020-06-15-Annexure_A.pdf

28. It is clear from the above that significant funding has been provided to both ADM and Amatola Water Board for drought relief intervention. Despite this, villages in Ward 28 still have no access to municipal water.

RECENT MEETING BETWEEN MLM AND WARD 28 COMMUNITY MEMBERS

29. Our clients have informed us that the Traditional Leaders and community activists from Ward 28 called a meeting with ADM and MLM and that this meeting took place between officials from MLM and residents of the Nombanjane, Nxarxo and Thakazi villages on 18 September 2020. Both Mr Mafilika and Mr Ntshoka were present at this meeting. ADM officials, including Mr Balfour, were invited to attend the meeting but did not attend.
30. Below, we record the promises that were made by MLM officials at this meeting. We note, as explained above, that it is the responsibility of ADM to provide the water and sanitation services that our clients are demanding. However, MLM made certain promises at this meeting. The expectation of the communities was that MLM would follow up with the ADM regarding the water and sanitation issues that were raised at this meeting.
31. The 18 September 2020 meeting was held in response to a number of initiatives and interventions from local community members, traditional authorities, water activists and community based organisations. Previously, members of Masifundise Development Trust and Afesis-Corplan held a meeting in Nombanjane Village on 27 August 2020, to which MLM and ADM officials were invited to attend. The same officials were also invited to participate in a fact-finding mission on 27 August 2020, relating to lack of water access in villages in Ward 28. Unfortunately, the various officials who were invited did not attend the meeting nor did they participate in the fact finding mission. This prompted Mr Mafilika to reach out to traditional leadership for intervention in the matter. As a result of such intervention, the Office of King Jongilanga contacted MLM and ADM officials, requesting that they make themselves available for a further meeting.
32. Therefore, on 18 September 2020, various MLM officials visited Nombanjane Village and met with local community members as well as senior representatives of traditional leadership. Our clients have informed us that the following officials attended the meeting:
- 32.1 Councillor Thobeka Bikisha, MLM Speaker;
- 32.2 Councillor Tunyiswa Nkamisa-Manxila, Strategic Management for MLM ;

- 32.3 Mr Nowanga, MLM official responsible for Ward Committees; and
- 32.4 Mrs. Nozukile Stoyile, Community Development Worker for the MLM.
33. The meeting was also attended by the local Chief, Mr P Tyali and approximately 50 community members, the majority of whom were senior citizens residing in villages in Ward 28.
34. The meeting was chaired by Ms Nkamisa-Manxila, who gave the community members the chance to air their grievances about the lack of water and sanitation services in Ward 28. A summary of the complaints and statements made by our clients and other community members at the meeting is provided below:
- 34.1 It was noted that MLM and ADM officials have not responded to the ongoing water crisis, both in terms of drought intervention as well as intervention under emergency Covid-19 measures, despite the fact that the communities have made numerous calls and sent emails and messages to its offices. MLM and ADM officials also failed to respond to the invitation from Masifundise Development Trust & Afesis-Corplan to participate in their joint fact finding mission held over 27 – 29 August 2020. These failures have indicated a lack of respect and clear disregard for villages in Ward 28 and the House of Traditional Leaders.
- 34.2 The Community members aired their grievances about Mr. Balfour, the operational manager of ADM. They indicated that they have kept Mr Balfour informed of the issues in the area over the past few years but he has failed to assist the community in any way. The community demanded at the meeting to go over Mr Balfour's head and to meet with the Mayor of ADM.
- 34.3 Mr Ntshoko and Mr Mafilika reported on the five tanks which were donated by the Al-Imdaad Foundation (“**Foundation**”) on or about 14 August 2020. We attach as annexure “**WW2**” correspondence between Mr Mafilika and the Foundation confirming the donation of the tanks. At the request of Mr Mafilika, the Foundation donated five tanks with a capacity of 1900 litres to Ward 28. However, the Foundation indicated that the tanks would need to be collected from the Foundation’s warehouse in King Williams Town and that a municipality would be required to fill the tanks with water. In addition, the municipality would be required to build the stands for the water tankers. On 14 August 2020, Mr Mafilika contacted Mr Balfour, via sms, to request

that arrangements be made for the water tankers to be collected. We have copied the sms conversation into a word document and attached it as annexure "WW3". Mr Balfour requested that Mr Mafilika send him an email and Mr Balfour responded that he would escalate the request to the office of the Director Engineering services. This correspondence is attached as annexure "WW4". To date, the water tankers have not been collected by ADM and are still awaiting collection in the King Williams Town warehouse.

34.4 Mr Mafilika also addressed the meeting and reported on how Masifundise Trust became involved in this issue. He recounted the communication between himself, Mr Balfour, Mr Dungu, and MLM Councillor Nkamisa-Manxila from April 2020 until August 2020 and how despite numerous conversations, the villages in Ward 28 still do not have water.

34.5 Mr Mafilika highlighted the reports made by officials who stated that water tankers had been provided to communities when, in fact, no water had been delivered to the communities. He referred to the pictures which were shared by Mr Balfour which showed water coming out of taps claimed to be in Nombanjane, however, the pictures were not in fact taken in Nombanjane as the village has not had running water for two years prior to the meeting.. This was corroborated by the local chief, Mr P Tyali, who was present at the meeting and who indicated that the pictures could never have been taken at Nombanjane Village.

34.6 The community members requested time frames from the MLM officials, as to when they would receive a report back on the issues raised at the meeting.

35. Our clients have informed us that the MLM officials made the following promises to the community at this meeting:

35.1 Councillor Thobeka Bikisha agreed to hold another meeting to update the community in the week after 7 October 2020. She indicated further that her Office will notify the local chief three to four days in advance of the next meeting so that community members could be informed timeously about the next meeting.

35.2 Councillor Thobeka Bikisha also said that on MLM officials' next visit they would ensure that all the departments relevant to the water access issue in Ward 28 would attend be present so that they could respond directly to the questions of the

community. Our clients took this to mean that all relevant officials from ADM and MLM would be present.

35.3 Councillor Thobeka Bikisha also made a commitment to ensure that all the requirements for transporting, installing and filling the water tanks donated by the Foundation, would be fulfilled within a week of the meeting.

35.4 Councillor Thobeka Bikisha committed to speaking to all relevant departments and officials in order to understand the reasons for the failures of the MLM and ADM to ensure water provision to Ward 28.

35.5 As Speaker of the Council, Councillor Thobeka Bikisha committed to asking the Mayor and the Municipal Manager for MLM to write letters of recommendation and consent in respect of all the requirements for ensuring that the tanks donated by the Foundation would be installed.

35.6 A commitment was made by Councillor Nkamisa-Manxila that as of the next week, a survey on community toilets would take place in Ward 28, which would include an assessment and survey of:

35.6.1 how many broken down toilets there are in the village;

35.6.2 how many of the toilets are full; and

35.6.3 how many households there are with no toilets.

OUR CLIENTS' DEMANDS

36. Residents from the villages in Ward 28, including our clients, have been in constant engagements with ADM, through Mr Balfour, since the start of the national lockdown as a result of the COVID-19 crisis, as well as prior to this crisis. There has been no tangible commitment from him that they will soon receive emergency water and sanitation services, or that their water and sanitation infrastructure will be developed so that they are provided with the services to which they have a right.

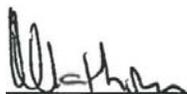
37. As noted above, ADM is responsible for providing emergency water and sanitation packs under the Directions and for providing municipal water and sanitation services in the ordinary course. Despite this, however, our clients were desperate to engage with the authorities on this issue and so when only MLM officials, and no ADM officials, attended the

meeting with them they were willing to give these officials the time to deliver on their promises. It has now been over two months since this meeting and not one of the promises made by these officials, relating to water and sanitation services, has been delivered.

38. Our clients and the communities they represent have been more than patient with local government and they can no longer live in these conditions without taking further action. They accordingly demand the following:
 - 38.1 Confirmation from ADM by 15 December 2020, that the water tanks donated by the Foundation will be transported from their warehouse in King Williams Town to villages in Ward 28 in Centane within 1 day from such confirmation and that the requirements for the installation of the water tanks have been met.
 - 38.2 Confirmation from ADM by 15 December 2020 that the water tanks donated by the Foundation will be filled with water the day after they are installed and that they will remain filled with water until the ADM is able to provide long-term water and sanitation services.
 - 38.3 ADM is to confirm by 15 December 2020 when the villages in Ward 28, Centane can expect to receive emergency water and sanitation packs as promised by the Government in terms of the Directions, including:
 - 38.3.1 how many tanks will be delivered;
 - 38.3.2 where the tanks will be properly installed and located;
 - 38.3.3 the date the tanks will be delivered; and
 - 38.3.4 a commitment that the tanks will remain filled.
 - 38.4 The Amatola Water Board is to provide Webber Wentzel with the most up to date drought intervention plan and indicate what specific interventions they intend to put in place to ensure there is bulk water provision to ADM by 15 January 2021. If the Amatola Water Board is not providing bulk water services to ADM, then the Amatola Water Board should indicate this and provide us with full reasons why such services are not being supplied to ADM.
 - 38.5 ADM is requested to provide us with its most up to date drought intervention plan by 15 January 2021 that specifically affects the villages in Ward 28.

- 38.6 ADM is to engage with the Amatola Water Board and indicate in writing to Webber Wentzel by 15 January 2021 what practical emergency water services will be undertaken in Ward 28 by ADM, in response to the drought crisis in the Eastern Cape. ADM is to provide a timeline of the implementation of these emergency measures in Ward 28.
- 38.7 ADM is to confirm by 15 December 2020 if a survey for the community toilets will take place, as promised by MLM officials at the 18 September 2020 meeting. If such survey is to take place, ADM must confirm by 18 December 2020 who will conduct the survey, when it will take place and what the survey will entail.
- 38.8 ADM is to host a meeting with the communities of Ward 28 no later than 15 January 2021 wherein they will engage with the communities about their long-term plan for the provision of water and sanitation services. We demand that, at least, Ms Badi, Ms Maduma and Mr Balfour are present at this meeting
- 38.9 Two weeks following the meeting with the community mentioned in paragraph 38.8 above, ADM must submit a written report to Webber Wentzel indicating the final plan for the consistent and long-term provision of water and sanitation services in Ward 28, Centane. This plan must include the proposed timeline for the installation of the infrastructure required to provide these services and the proposed date for which ADM envisages running water will be accessible to the community.
39. Should ADM, Amatola Water Board and MLM where necessary, fail to respond to the above demands and fail to provide both emergency and long-term solutions to the water and sanitation crisis in Ward 28, Centane, our clients will have no option but to approach the courts.

Yours faithfully



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