
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO: 106 of 2019/20

"Allegations of maladministration in the matter between Mr Bhine and Others and Ngaka Modiri Molema District Municipality"

REPORT ON AN INVESTIGATION INTO SYSTEMIC DEFICIENCIES RELATING TO THE SUPPLY OF ADEQUATE WATER BY NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY TO THE COMMUNITIES IN VARIOUS LOCAL MUNICIPALITIES WITHIN ITS AREA OF JURISDICTION
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Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

(ii) The report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into systemic deficiencies relating to the supply of adequate water by the Ngaka Modiri Molema District Municipality (NMMDM) to the communities in various local municipalities within its area of jurisdiction.

(iii) Between 2012 and 2013, my office received several complaints from different communities in both rural and urban areas within the jurisdiction of the NMMDM regarding the lack of adequate water supply.

(iv) On analysis of the complaints, the following issues were identified to inform and focus the investigation:

(a) Whether, due to its systemic administrative deficiencies, the Ngaka Modiri Molema District Municipality improperly failed and or omitted to ensure that local communities around its area of jurisdiction receive adequate water; and

(b) Whether the local communities suffered any prejudice as a result of the conduct of the Ngaka Modiri Molema District Municipality in the circumstances.

(v) Key laws and policies taken into account to determine if there had been maladministration or improper conduct by the NMMDM and prejudice suffered by the local communities, were principally those imposing administrative standards that should have been complied with by the NMMDM and its officials when failing to attend to a complaint lodged by local communities relating to failure and /or omission to ensure that
local communities around its area of jurisdiction receive adequate water. They include the following:


(b) The Water Service Act, 108 of 1997; and

(c) The Public Protector Act, 23 of 1994.

(vi) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act, 1994. The process involved sourcing and analysing documents, correspondence, interviews and examination of regulatory instruments, including constitutional provisions, legislation, regulations, relevant court decisions and applicable previous Public Protector Decisions or Touchstones.

I issued notices in terms of section 7(9) of the Public Protector Act, on 20 August 2019 to the Premier of the North West Provincial Government; the Director General of the Department of Cooperative Governance and Traditional Affairs, the Director General of the Department of Water and Sanitation; the Member of Executive Council of: the Department of Cooperative Governance and Traditional Affairs; the Executive Mayor of the Ngaka Modiri Molema District Municipality; the Municipal Manager of the Ngaka Modiri Molema District Municipality; the Regional Head: Sedibeng Waters and the Regional Head: Department of Water and Sanitation. Mr O Allan Losaba, the Municipal Manager of Ngaka Modiri Molema District Municipality, responded to the above notice per letter dated 05 September 2019.

(vii) Having considered the evidence received during the investigation, as against the relevant regulatory framework, the complaints received as against the concomitant responses received from all parties, I make the following findings:
(a) Regarding whether, due to its systemic administrative deficiencies, the Ngaka Modiri Molema District Municipality improperly failed to and or omitted to ensure that local communities around its area of jurisdiction receive adequate water:

(aa) The allegations that the NMMDM failed and/or omitted to ensure that water consumers in its area of jurisdiction receive adequate water, is substantiated.

(bb) Although the NMMDM has made an attempt to adhere to its Constitutional obligations, the investigation revealed that the most vulnerable groups within its area of jurisdiction do not enjoy access to clean and adequate water. The investigation further uncovered that most of the challenges within the NMMDM relate to worn-out infrastructure, vandalised and/or dilapidated boreholes, lack of infrastructure, high cost of water distribution and poor management of water infrastructure.

(cc) Central to my findings is that I could not, based on the prima facie evidence at my disposal, find any wrongdoing in respect of budget allocated and the utilisation thereof. I am however of the view that the NMMDM failed to prioritise the maintenance of water infrastructure specifically of areas that I focused on in my investigation.

(dd) The NMMDM has failed to ensure that the water service equipment are regularly maintained and that old infrastructure is refurbished. The conduct of the NMMDM is thus in contravention of sections 152(1)(b), 153(a), 27(2) of the Constitution as well as section 3(2) of the WSA.

(ee) The NMMDM failed to prepare a Water Service Development Plan during the period 2012 to 2019. The NMMDM’s failure to prepare a Water Services Development Plan is in contravention of section 27(2) of the Constitution read with section 11(1), and 12 of the WSA. As a result of the non-existence of a water service development plan, the Municipality has for the past seven (7) years been
unable to deal with water shortages in the areas identified for investigation; there was also poor maintenance of existing infrastructure (boreholes); poor management of emergency water provisioning services (water tankering); service backlogs and a lack of cost recovery measures.

(ff) Without a Water Service Development Plan there has not been any proper plan to address water issues within the NMMDM.

(gg) The failure by the NMMDM to ensure that it implements its own by-laws to address issues of vandalism, illegal connections and unaccounted water losses, is in contravention of section 21 of the WSA.

(hh) It goes without saying that my investigation uncovered that access to sufficient water is inadequate within communities in areas identified for investigation, namely Ramotshere, Mahikeng, Ditsobotla and Ratlou local municipalities. I have, during the investigation, uncovered that the cause for the water shortage in these areas is, amongst others, the non-functioning of water pumps and boreholes, and mainly the failure to ensure that there is adequate infrastructure and effective maintenance of facilities and equipment.

(ii) The conduct of the NMMDM constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the local communities suffered any prejudice as a result of the conduct of the Ngaka Modiri Molema District Municipality in the circumstances.

(aa) The allegation that the water consumers suffered prejudice as a result of the conduct of the NMMDM, is substantiated.
(bb) I acknowledge that areas of the NMMDM are mostly rural and had for many years experienced water supply shortages, leaving the communities with no option but to rely on the water supplied through water tankers. In most of these areas where water tankers are used, the storage tanks are not lifted above the ground; there are inordinate delays in refilling tanks; water is not purified; and tanks are not regularly cleaned by service providers appointed to supply water, leaving the communities vulnerable to use contaminated water.

(cc) Failure by the NMMDM to ensure that communities receive adequate water and basic sanitation contravenes Section 27(1)(b) of the Constitution read with Section 3(1) of the WSA.

(viii) The appropriate remedial action that I am taking as envisaged in section 182(1)(c) of the Constitution, with a view to remedying the improper conduct and maladministration referred to in this report, is the following:

(a) The Municipal Manager of Ngaka Modiri Molema District Municipality who specifically must:

(i) Ensure that the following outstanding projects within area of its jurisdiction are completed, as indicated below:

(aa) Regarding Ramotshere-Moiloa Local Municipality

(aaa) Zeerust Water Treatment Plant

(i) The water pumps are replaced and reinstated.
(ii) The electrical cables are installed at the plant, protective wall is built and there should be provision of security.
(iii) Water clarifiers are functional.
(bbb) Mokgola Village

(i) The Eskom electricity account in arrears for the borehole at Monogelo Section is settled.
(ii) The engines for boreholes are repaired.
(iii) Service boreholes at Phakedi, Rakoipe, and Marotong sections.

(ccc) Gopane Village

(i) The root cause analysis for the malfunctioning of the sixth borehole is established, the water reticulation network at the high lying areas in ward 5 and 6 is configured and water storage facilities are augmented.

(ddd) Braklaagte Village

(i) The three boreholes at Mogajane, Ga-Martin and Sechotlo sections are functional.

(bb) Regarding Ratlou Local Municipality

(aaa) Setlagole Bulk Water Supply

(i) A service provider is appointed, for construction and completion of a Water Reservoir.

(ii) A service provider is appointed, for completion of a pump housing and equipping of remaining boreholes.

(iii) The appointed service provider, Leano Solutions, complete pipework reticulation.
(cc) Regarding Ditsohotla Local Municipality

(aaa) **Groundwater Source – Bakerville**

(i) The appointed contractor completes the construction of the steel tank/reservoir.

(ii) A service provider is appointed, for completion of a pump housing and equipping of remaining boreholes.

(iii) The appointed service provider completes pipework reticulation.

(iv) The Contractor appointed under the project named “Rising Main” for the water supply project, to complete it.

(bbb) **Groundwater Source – Ga Maloka**

(i) The appointed contractor completes the construction of the steel tank/reservoir.

(ii) The appointed contractor completes the finalization of the construction of pump housing, equipping of boreholes, finalization of the electrical control panel and powering the pumps.

(iii) The appointed service provider completes pipework reticulation.

(iv) The Contractor appointed under the project named “Rising Main” for the water supply project, to complete it.
(ccc) Bulk Water Supply augmentation – Itsoseng

(i) The pump at borehole 8 (eight) is replaced and reinstated.

(ii) The Eskom electricity account in arrears for the three boreholes that are not running, i.e. 12, 14 and 15 Mono, are settled.

(ddd) Water supply augmentation – Coligny

(i) The 1.2 km pipeline project meant for the augmentation of the water supply from the three boreholes to the 662 KL steel storage tank, is implemented.

(dd) Regarding Lomanyaneng village in Mahikeng Local Municipality

(i) The appointed contractor, Sedibeng Water board to complete the Mahikeng South Bulk Water Project.

(ii) Ensure that the Municipal Council draft and adopt its water service plan including the Integrated Development Plan. A copy of the draft plan must be made available for public comment and thereafter must be submitted to the MEC for Local Government and Human Settlement and to the Minister For Water and Sanitation.

(iii) Ensure that the Municipal Council draft and approve its by-laws for the provision of water services.

(iv) Comply with the terms and conditions of the Service Level Agreement entered into and signed between itself and Sedibeng Water, that it must provide basic water services whilst Sedibeng Water has the duty to
implement water supply projects, to ensure that there is adequate water supply in/or around the affected areas.

(a) The MEC for the Department of Cooperative Governance and Traditional Affairs must:

(aa) Monitor the process of drafting the Integrated Development Plan (IDP) and assist, coordinate or take any appropriate steps to ensure the planning, drafting, adoption of or review of such plans.

(bb) Establish mechanism, processes, procedures to monitor NMMDM in managing its own affairs, exercising its powers and performing its functions; assess the support needed by NMMDM to strengthen its capacity, to manage its own affairs, exercise its powers and perform its functions.

(cc) Impose a recovery plan aimed at securing the NMMDM ability to meet its obligations to provide basic services or its financial commitments where there is serious or persistent material breach of its obligations to provide basic service or to meet its financial commitments.

(b) The Minister of Water and Sanitation must:

(aa) Appoint a task team to assist the NMMDM and monitor the process of drafting of the water service plan, coordinate or take any appropriate steps to ensure the planning, drafting, adoption of or review of such plans.

(bb) Monitor the performance of Ngaka Modiri Molema District Municipality and intervene where there is gross failure of delivery on the part of Ngaka Modiri Molema District Municipality, non-compliance and the ability to hand over water service functions to different villages within its area of jurisdiction.
(cc) In accordance to the recommendations of the Financial and Fiscal Commission (FFC): Submission for the Division of Revenue 2019/20, ensure that stronger conditions are attached to financial transfers to ensure compliance and that funds allocated are properly spent for the purposes indicated.
1. **INTRODUCTION**

1.1 This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(2A)(a) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8 of the Public Protector Act to the following people to inform them of the outcome of the investigation and implementation of the remedial actions:

1.2.1 The Premier of the North West Provincial Government: Professor JT Mokgoro for noting;

1.2.2 The Administrator in the Office of the Premier (North West): Mr S Mpanza;

1.2.3 The member of the Executive Council for the Department of Cooperative Governance and Traditional Affairs (the MEC): Mr G Kegakilwe (MPL);

1.2.4 The Head of the Department of Corporate Governance and Traditional Affairs: Mr P H Motoko;

1.2.5 Minister of Cooperative Governance, Traditional Affairs: Dr Nkosazana Dlamini-Zuma (MP);

1.2.6 The Acting Director General for the Department of Water and Sanitation: Mr Mbulelo Tshangana;
1.2.7 The Executive Mayor for Ngaka Modiri Molema District Municipality: Councillor (CLLR) TJ Makolomakwa.

1.2.8 The Municipal Manager for Ngaka Modiri Molema District Municipality: Mr Olehile Losaba.

1.2.9 The Speaker for Ngaka Modiri Molema District Municipality: Councillor Y Sechoaro

1.2.10 The Regional Head for the Department of Water and Sanitation: Mr Chadwick Maiketso Lobakeng.

1.2.11 The Regional Manager for Sedibeng Water: Mr. Aphumle Mnyaka and

1.3 Copies of the report are also submitted to the Complainants, Mr Bhine & Others, to inform them about the outcome of the investigation.

1.4 The report relates to an investigation into systemic deficiencies relating to the supply of adequate water by the district municipality to the communities in various local municipalities within its area of jurisdiction.

2. THE COMPLAINT

2.1 Between 2012 and 2013 my office received several complaints from different communities in both rural and urban areas within the jurisdiction of the NMMDDM regarding lack of water supply. Initially, the complaints were investigated independently from each other, however during the investigation of these similar individual matters, my office established a common systemic deficiency regarding issues raised by the Complainants. It followed that these complaints emanated from the area of jurisdiction of the NMMDDM and mostly from the most vulnerable
communities in the rural areas, specifically areas at Ditsobotla, Mahikeng, Ratlou and Ramotshere-Moiloa local municipalities.

2.2 Having taken consideration of all the complaints received, my office initiated a systemic investigation relating to the failure by the NMMDM to supply water, with focus on the specified areas within the NMMDM.

2.3 The specific complaints were as follows:

2.3.1 **Mr J Bhine, the former Acting Municipal Manager for Ditsobotla Local Municipality (Ditsobotla) submitted that:**

2.3.1.1 The following areas around Ditsobotla have since 01 August 2012 been experiencing insufficient water supply: Bakerville, Gamaloka, Putfontein, Welverdiend, Rietvlei and Bokamoso. During this period, the NMMDM never bothered to communicate with these communities regarding the cause of inadequate supply of water in their areas; and

2.3.1.2 There is no water service development plan.

2.3.2 **Mr PM Moiloa, the Headman at Lomanyaneng village in the Mahikeng Local Municipality submitted that:**

2.3.2.1 They have been living without water in their village since July 2012; and

2.3.2.2 Their water tokens (prepaid cards) were not functioning and nothing had been done by the NMMDM to address the situation.
2.3.3  Ms Sylvia Masango, a resident of Makgobistad Village in the Ratlou Local Municipality submitted that:

2.3.3.1  There is no water in most parts of their village;

2.3.3.2  The only accessible water, from a borehole using diesel engine, is contaminated by grease; and

2.3.3.3  There is a tap installation project in the village, however, the majority of taps do not have water.

2.3.4  The late Mr Daniel Bushi Tolo on behalf of the Bahurutshe Tribe of Chief Sebogodi at Braklaagte and Lekubu in the Ramotshere-Moiloa Local Municipality (Ramotshere-Moiloa) submitted that:

2.3.4.1  They are experiencing shortage of water;

2.3.4.2  They have been struggling to find a solution to address the problem for years; and

2.3.4.3  They consulted the then Ward Councillor, Mr Machedi Lamola, who promised that shortage of water in the village would be addressed and to date nothing has materialised.

2.3.5  Mr P Mokgatlhe, a resident of Mokgola village in the Ramotshere-Moiloa submitted that:

2.3.5.1  The community of Mokgola village has been experiencing high water shortage since January 2012;

2.3.5.2  The reservoir at Mokakana Section of the village is always empty; and
2.3.5.3 The Councilor responsible for Ward 7, Mr Mokotedi, kept on promising that water shortage experienced by the community would be resolved and nothing has materialised.

2.3.6 Mr P Lekwape, a resident of Gopane village in the Ramotshere-Moiloa alleged that:

2.3.6.1 They used to have 4 boreholes supplying the whole village of Gopane with water;

2.3.6.2 Twenty (20) more boreholes were dug in January 2010, however, the community does not have water; and;

2.3.6.3 The community receives water from water tankers, which is not even enough to supply the community.

2.4 When the complainants lodged their complaints relating to the failure by the NMMDM to supply water, with focus on the specified areas within the NMMDM jurisdiction, the NMMDM had not yet attended to their complaints.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established under 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 additional powers and functions prescribed by legislation.

3.4 In Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others[2016]ZACC 11:2016 SA 580(CC) BCLR 618 the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.\(^1\) The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences".\(^2\)

3.5 In the above-mentioned Constitutional matter of Economic Freedom Fighters v Speaker of the National Assembly and others: Democratic Alliance v Speaker of the National Assembly and others; Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:

3.5.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

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\(^1\) [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
\(^2\) Supra at para [73].
3.5.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

3.5.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.5.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);

3.5.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);

3.5.6 The Public Protector’s power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);

3.5.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a);
3.5.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and

3.5.9 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.5.10 In the matter of President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:

3.5.10.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71 of the judgment);

3.5.10.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question (paragraph 82 of the judgement);

3.5.10.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(10) afford the Public Protector with the following three separate powers (paragraphs 100 and 101 of the judgement):

a) Conduct an investigation;
b) Report on that conduct; and
c) To take remedial action.

3.5.10.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings. (paragraph 104 of the judgement);
3.5.10.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105 of the report);

3.5.10.6 The fact that there are no firm findings on wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute *prima facie* findings that point to serious misconduct (paragraphs 107 and 108 of the judgement); and

3.5.10.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgement).

3.6 Section 182 (2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation;

3.7 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and abuse or unjustifiable exercise of power in the conduct of state affairs or an improper or dishonest act by any person in the employ of government at any level;

3.8 Section 6(9) of the Public Protector Act grants me discretionary powers to accept complaints which are lodged more than two years after the occurrence of the incident. Some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation.
Admittedly, in terms of section 6(9) of the Public Protector Act, I am barred from entertaining complaints reported after two years of the date of an incident unless special circumstances exist. However, the mere fact that the incident occurred more than two years before being reported to my office does not, in itself, bar me from investigating. Instead, it is mainly the interests of justice that dictate whether I should investigate the matter or not. It is axiomatic that I have to identify special circumstances using my discretion should I decide to entertain such a complaint. In this case, I submit that there is a huge public interest in the public administration or in the governing of public affairs.

3.9 The NMMDM is an organ of state and its conduct falls within the Public Protector’s mandate to investigate; and

3.10 The Public Protector’s powers and jurisdiction to investigate and take appropriate remedial action were not disputed by the NMMDM.

4. **THE INVESTIGATION**

4.1 **Methodology**

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

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3 The investigation process was initiated with a preliminary investigation in terms of section 7(1) of the Public Protector Act, which includes consulting the previous Public Protector investigation files on the subject matter, correspondence issued and received from the NMMDM and Sedibeng Water; analysis of relevant documents
received; inspections *in loco*, including research and consideration of legal applicable
prescripts

4.1.4 During the investigation process, notices in terms of section 7(9)(a) of the Public
Protector Act (section 7(9) notices) were served on the Director General of the
Department of Cooperative Governance and Traditional Affairs, the Director General:
Department of Water and Sanitation, the Member of Executive Council: the
Department of Cooperative Governance and Traditional Affairs, the Executive Mayor,
the Municipal Manager, the Regional Head: Sedibeng Waters and the Regional Head:
Department of Water and Sanitation dated 20 August 2019, respectively, to afford
them an opportunity to respond to my provisional findings.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an
enquiry process that seeks to find out:

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened
and does that deviation amount to maladministration or improper conduct?
4.2.1.4 In the event of maladministration or improper conduct what would it take to remedy
the wrong or to place the Complainant as close as possible to where they would
have been but for the maladministration or improper conduct?

4.2.2 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. In this particular case, the factual enquiry principally focused on
whether the NMMDM acted improperly due to its systemic administrative deficiencies,
the NMMDM improperly failed and/or omitted to ensure that local communities around
its area of jurisdiction receive adequate water; and if so, whether local communities suffered any prejudice as a result of the conduct of NMMDM in the circumstances.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the NMMDM or organ of state to prevent maladministration or improper conduct and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the NMMDM or organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether, due to its systemic administrative deficiencies, the NMMDM improperly failed and/or omitted to ensure that water consumers around its area of jurisdiction receive adequate water; and

4.3.2 Whether the water consumers suffered any prejudice as a result of the conduct of NMMDM in the circumstances.

4.4 The Key Sources of information

4.4.1 Documents received and considered

4.4.1.1 A letter from the Municipal Manager of Ngaka Modiri Molema District Municipality dated 07 September 2013.
4.4.1.2 A letter signed by the Municipal Manager, Mr ME Mojaki, of Ngaka Modiri Molema District Municipality dated 07 September 2013.

4.4.1.3 A Paper clip-Mail Author unknown (Dinokana water project launched) dated 28 March 2014.

4.4.2 Interviews conducted

4.4.2.1 A meeting between Public Protector South Africa (PPSA) and Ramotshere Moiloa staff (infrastructure) 21 October 2016.

4.4.2.2 A meeting with the community members of Itsoseng Township and Bodibe village on 19 January 2017.

4.4.2.3 A meeting with the community members of Setlagole and Madibogo village on 07 February 2017.

4.4.2.4 A meeting with the Speaker/ Mayor and the Municipal Manager of Mahikeng Local Municipality on 23 February 2017.

4.4.3 Correspondence sent and received

4.4.3.1 A response letter dated 23 November 2015 received from the NMMDM.

4.4.3.2 A copy of the names of Councilors within the area of Ramotshere Moiloa dated 23 November 2016.

4.4.3.3 An email sent to Ratlou Local Municipality requesting a meeting on 21 July 2017.

4.4.3.4 An acknowledgement letter received from Ratlou Local Municipality dated 21 June 2017.

4.4.3.5 A Letter addressed to Mr RG Nair, Administrator of Ngaka Modiri Molema District Municipality dated 03 December 2014.

4.4.3.6 A reminder to Mr RG Nair, Administrator of the NMMDM dated 15 December 2014.

4.4.3.7 A letter sent to the Acting District Manager of NMMDM (Ms. SR Dince) dated 11 March 2015.

4.4.3.8 An acknowledgement letter received from the Municipal Manager of the NMMDM dated 13 April 2015.
4.4.4 Notices issued and responses received

4.4.4.1 Section 7(9)(a) notices to:

4.4.4.1.1 The Premier of the North West Provincial Government,
4.4.4.1.2 The Director General: of the Department of Cooperative Governance and Traditional Affairs,
4.4.4.1.3 The Director General: Department of Water and Sanitation,
4.4.4.1.4 The Member of Executive Council: Department of Cooperative Governance and Traditional Affairs,
4.4.4.1.5 The Executive Mayor of the NMMDM,
4.4.4.1.6 The Municipal Manager of the NMMDM,
4.4.4.1.7 The Regional Head: Sedibeng Waters; and
4.4.4.1.8 The Regional Head: Department of Water and Sanitation.
4.4.4.1.9 Response to the Section 7(9)(a) Notice from the Municipal Manager of the NMMDM.

4.4.5 Inspections in loco conducted

4.4.5.1 Zeerust Water Treatment Plant, 12 July 2017
4.4.5.2 Ratiou Local Municipality (Setlagole village, Makgobistad village & Madibogo Village: 13 July 2017
4.4.5.3 Mahikeng Local Municipality: Lomanyaneng village, 18 July 2017
4.4.5.4 Ramotshere-Molopo Local Municipality: Mokgola village, Gopane village & Braklaagte village: 22 November 2017
4.4.5.5 Ditsobotla Local Municipality: Bakerville village, Bokamoso, Welverdiend village, Blaauwbank farm, Putfontein farm, Bodibe village Verdwal 1 & 2 villages, Sheila village, Itsoseng Township & Coligny: 28 November 2017
4.4.6 Websites consulted/ electronic sources

4.4.6.1 https://Dictionary.Cambridge.org

4.4.7 Legislation and other prescripts

4.4.7.2 The Water Service Act, Act 108 of 1997
4.4.7.3 The Public Protector Act 23 of 1994

4.4.7 Case law

4.4.7.1 Lindiwe Mazibuko and Others v City of Johannesburg and Others CCT 39/09.
4.4.7.2 Government of the Republic of South Africa and Others v Grootboom and Others 2000] ZACC 19, 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC)
4.4.7.3 Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC).

5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether, due to its systemic administrative deficiencies, the NMMDM improperly failed and/or omitted to ensure that water consumers around its area of jurisdiction receive adequate water.
Common cause issues

5.1.1 The NMMDM is the water service authority for its area of jurisdiction in terms of the Water Service Act, the Tripartite RBIG Funding and Implementation Agreement as well as Water Services Provider Contract, and as such it bears the responsibility for ensuring access to water services.

5.1.2 It is the responsibility of the NMMDM, through water service providers which amongst others include Sedibeng Water, to ensure access to both water supply services and sanitation services.

5.1.3 In March 2014, the Department entered into a Tripartite RBIG Funding and Implementation Agreement with the NMMDM and Sedibeng Water.

5.1.4 In May 2015, the NMMDM entered into a Water Services Provider Contract with the Sedibeng Water in accordance with section 30(2) of the Water Service Act. In terms of Clause 5.1 of the contract, the Sedibeng Water is the appointed water service provider for the supply of retail and bulk water services.

5.1.5 The areas identified for investigation fall within the jurisdiction of the NMMDM.

5.1.6 The NMMDM is a semi-arid area. Most areas, particularly rural areas, within the NMMDM, have for many years experienced water supply shortage. In most of these rural areas, the NMMDM depends mainly on ground water as the source of supply.

Issues in dispute

5.1.7 The Complainants submitted that the NMMDM failed to ensure that consumers receive adequate water supply.

5.1.8 The Municipality disputed that it had failed and/or omitted to ensure that consumers receive adequate water supply.
Alleged systemic inadequacy water supply in Ramotshere –Moiloa Local Municipality

Submission by NMMDM

5.1.9 In a letter dated 07 September 2013, Mr ME Mojaki, the Municipal Manager at NMMDM informed my office, inter alia, that:

"Ramotshere Moiloa Local Municipality is one of the relatively dry areas in Ngaka Modiri Molema District Municipality; as a result the Municipality depends mainly on ground water as the source of supply.

The Municipality appointed a Service Provider in 2009 to conduct ground water study for augmentation of water supply at Vergenoeg Farm (15km to Welbedacht).

Currently the District Municipality is completing an in-house project which incorporates five boreholes (21l/s) at Welbedacht pumping water to the local reservoir (5km) in an endeavor to address the problem of water shortages. All areas that experience inadequacy of water supply and those that have no access to infrastructure will continue to receive water through tankering services."

5.1.10 The NMMDM further submitted that it is continuously engaging Ward Councilors and Ward Committee Members on a regular basis on this systemic challenge.

5.1.11 Mr Mojaki further indicated that they delivered water as per an agreement between them and various communities experiencing draught and/or where there is no access to water infrastructure.

5.1.12 However, he stated that their challenges are that while they are trying to refurbish the dilapidating infrastructure, the communities on the other hand, continue with illegal
yard connections and vandalise existing infrastructure which creates high levels of water loss and demand.

5.1.13 It is further indicated that some community leaders demand royalties from the NMMDM for water, whilst in other areas, the community is using water for livestock other than for human consumption.

5.1.14 The NMMDM further made submissions as per the list below of all projects implemented at Ramotshere-Moiloa:

<table>
<thead>
<tr>
<th>PROJECT NAME</th>
<th>PROJECT CODE</th>
<th>BUDGET 2013/2014</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOSWEU BULK WATER SUPPLY</td>
<td>NMMDMM/10/11/35/PMU</td>
<td>R450,000.00</td>
<td>RETENTION RELEASE</td>
</tr>
<tr>
<td>DOORNLAGTE/PACHSDRAAI WATER SUPPLY</td>
<td>MIG/NW/1030/W/09/11</td>
<td>R585,954.66</td>
<td>RETENTION RELEASE</td>
</tr>
<tr>
<td>MOTSWEDI WATER SUPPLY</td>
<td>NMMDM 10/11/36 PMU-1</td>
<td>R -</td>
<td>ON HOLD DUE TO BUDGET CONSTRAINTS</td>
</tr>
<tr>
<td>OLIENHOUT PARK PHASE 1 WATER RETICULATION</td>
<td>MIG/NW0039/S/05/07</td>
<td>R2,700,000.00</td>
<td>IN CONSTRUCTION</td>
</tr>
<tr>
<td>BRRAKLAGTE</td>
<td></td>
<td></td>
<td>RETENTION RELEASE</td>
</tr>
<tr>
<td>DINOKONA WATER SUPPLY PHASE 2</td>
<td>NMMDM 10/11/24/PMU</td>
<td>R22 000,000.00</td>
<td>EVALUATION STAGE</td>
</tr>
</tbody>
</table>
5.1.15 Mr LA Gopane, the then Acting Municipal Manager at the NMMDM, in response to my letter dated 18 August 2015, addressed a letter dated 23 November 2015 to my office, with a report on the status of water supply projects for the following areas:

"Braklaagte Village"

The Bulk Water Project is incomplete and has never been handed over to the community. The Consultant decommissioned 4 boreholes and re-equipped 3 with big pumps stating that only 3 boreholes can supply the whole village. Currently there is a shortage of water and boreholes are failing to produce as expected. The O&M unit is on site trying to restore the decommissioned boreholes”.

Mokgola Village

Dept. of water and Sanitation (DWS) & NMMDM are working together on a project to drilling and equipping boreholes; installing storage tanks for new stands and reticulation.

Also busy removing 8 non-return valves in the main bulk pipeline to enhance free flow of water from existing boreholes.

The project has been completed, only a snack list needs to be attended to before handing over the project to the community. There is however a problem that the high lift pumps are unable to match with the volume of water pumped from new boreholes. NMMDM has sent out a SP to install bigger pumps.

Gopane Village

The District Municipality has drilled, equipped and connected six additional boreholes in the system. Still some sections are experiencing water shortage especially at high lying areas.
Another predicament is that the community is sharing water with livestock and there are also illegal yard connections. This brings high demand of water. The District is planning to address the water shortage working with Sedibeng Water Board as per approved Business Plan from Sedibeng Water”. [sic]

Submission by Sedibeng Water

5.1.16 Mr Mpheteng Mokubung, the Regional Manager of Sedibeng Water in the North West Province provided my office with a report dated 13 December 2017, following various inspection in loco conducted, outlining the status of water supply at Ramotshere-Moiloa as follows:

"Braklaagte and Mokgola:

The District Municipality (NMMDM) is operating and maintaining in these villages, SW supplies only diesel.

Gopane:

Of the six boreholes that were connected to the reticulation, five are operational and one has no yield though running.

Root cause analysis will involve pulling out the rods and pump, to be established by 31 December 2017.

The pressure for high lying areas in ward 5&6 remain low. There are still some challenges in certain areas which require water reticulation network to be reconfigured and water storage facilities to be augmented".
Meetings with the Ramotshere-Moiloa Municipality

5.1.17 On 12 July 2017, my investigation team met with Mr Makaukau, the Director Technical Services; Councilor (Cllr) PK Moiloa and the Executive Mayor, Cllr K Mothaogae from Ramotshere-Moiloa who reported as follows:

(a) Water shortage has always been a problem around their villages, and they further emphasized that it is the responsibility of NMMDM to supply water in those villages. Whilst they are responsible to provide water and sanitation services to communities in Zeerust, Sandflagte, Shalima Park and Bonanza Townships.

(b) There is lack of co-operation between them and NMMDM in particular from the site of NMMDM. In 2016 the Municipality incurred a debt to an amount of R685 000 when fixing Groot Marico water pump and R11 million for the provision of water and sanitation and to date NMMDM has not reimbursed Ramotshere-Moiloa. Further that the water plant is not functioning properly. However, the Member of Executive Council (MEC) for Local Government undertook to intervene and to date the debt is yet to be settled”.

Inspection in loco

Zeerust Water Treatment Plant

5.1.18 On 12 July 2017 Mr Makaukau, accompanied my investigation team to the water treatment plant where the inspection in loco was conducted and the following observations were made:

(a) The equipment at the plant is very old;
(b) The plant had several water channels;
(c) Most of the water pumps were not functional;
(d) There were two main pipes going into the water treatment plant, one from town, and the other from local farmers;

(e) The machine that selects the waste material from the water was not functional;

(f) The chlorine storage was empty;

(g) The electrical cables in the control room were cut and the protective wall was vandalised, and

(h) Water clarifiers were not functional.

5.1.19 Mr Ditaba Sepele, the general worker at the water treatment plant, who was interviewed by my investigation team during the inspection *in loco*, submitted that some of the water pumps were stolen and others were not functional, despite the fact that they were taken for repairs by technicians. He also reported that the plant equipment needs to be maintained and/or replaced.

5.1.20 He said that the electrical cables were stolen at the plant and the protective wall was vandalised during such theft.

5.1.21 On 22 November 2017, my investigation team conducted an inspection *in loco* around Ramotshere-Moiloa and the following observation were made:

**Mokgola Village**

5.1.22 Prior to the inspection *in loco*, my investigation team held a meeting with Mr Lesego Ramoloso, the Coordinator for the Community Work Programme at the Mokgola Tribal Office. He advised that the Ramotshere had drilled four additional boreholes and the community currently has a total of six (6) boreholes.

5.1.23 There were twenty four (24) water tanks supplied by six boreholes, some functioning by means of electricity, whilst others by diesel. The challenges experienced were that the engines were not serviced and diesel was not filled on a regular basis. Five (5)
engines were taken by the NMMDM for repairs, but were never returned. The water pipes at Mokgola Clinic have not been attended to since 2015.

5.1.24 The inspection in loco discovered six (6) boreholes around the village: Three (3) boreholes at Phakedi section were not working, one (1) was without the engine and the other two (2) engines were dysfunctional. The fourth (4) borehole at Rakopie section was working, however there was no diesel on the date of the inspection. The fifth (5) borehole at Marotong section was functional; however it was not operational, due to the lack of diesel. The sixth (6) borehole in Monogelo section was functional and uses an electric generator; but Eskom had cut off supply due to the electricity account being in arrears.

Gopane village

5.1.25 Prior to the inspection in loco, my investigation team held a meeting with Mr Modisakgotla Seletswane, the Headman of Gopane village, and Mrs Seleka Mmeng the secretary at Gopane tribal office. They informed my investigation team that Ramotshere Local Municipality drilled, equipped and connected six (6) boreholes, some functioning by means of electricity, whilst others by diesel, however there are areas still experiencing shortages especially high lying areas, such as Tlhomiso Section. They further indicated that they were not aware of any illegal yard connections.

5.1.26 The inspection in loco, discovered six (6) boreholes drilled and equipped around the village. Of the six (6), four (4) were functional; one at Gopane Section, two (2) at Ga-Matlhola section and one (1) at Puana Section. The remaining two (2) boreholes are situated at Boseja section and one (1) was malfunction and the other not functional.
Braklaagte village

5.1.27 Prior to the inspection in loco, a meeting was held with Kgosi Sebogodi on behalf of Bahurutshe Ba-ga Sebogodi Traditional Authority who advised that there is serious water shortage within the Braklaagte village and proposed that boreholes should be dealt away with and the Water Authorities should draw water from the nearby dams, namely Rietfontein and Tagane. He further submitted that in areas where water tankers are used, the storage tanks are not lifted above the ground. There is undue delay in refilling tanks; water is not purified and tanks are not regularly cleaned by service providers engaged to supply water, leaving the communities vulnerable to using contaminated water.

5.1.28 My investigation team discovered that there were seven (7) boreholes around the village. Four (4) out of seven (7) were functional and provided water; one (1) at Ramesega section, one (1) at Malebelela Primary School and two (2) at Garungwana section. The other three (3) boreholes were not functional; one (1) at Mogajane section, one (1) at Ga-Martin section and one (1) at Sechothlo section. The seven (7) boreholes are connected to two (2) Steel Water Tanks and are supposed to supply the entire village.

Conclusion

5.1.29 In light of the above, it is evident that the main cause for water shortage in areas around Ramotshere are the non-functional water pumps and/or boreholes, and mainly failure by the NMMDM to maintain the water infrastructure.

Alleged systemic inadequate water supply in Ratlou Local Municipality

5.1.30 On 29 January 2018, the then Acting Municipal Manager of the Ratlou Local Municipality, Mr Jonas Molefe, submitted copies of the Integrated Development Plans (IDPs) for the period 2012 to 2016 to my investigation team. Of importance is that the
following projects were approved by the Ratlou Municipality in terms of the IDPs for implementation by the NMMDM:

(a) 2012-2013: Setlagole Ward 4 Bulk Water Supply Phase 2 at a budget of R5000 000.00.
(b) 2013-2014: Setlagole Ward 4 Bulk Water Supply Phase 2 at a budget of R3000 000.00. Madibogo Water Supply Phase 1 Wards 6, 9 and 12 at a budget of R29 500 000.00.
(c) 2014/2015: Setlagole Bulk Water Supply, Wards 5 and 14, at a budget of R37 426 181.49. Madibogo Water Supply Phase 1, Wards 6, 09, 12 and 13 at a budget of R1 500 000.00
(d) 2015/2016: Setlagole Bulk Water Supply and reticulation, Wards 4 and 5 at a budget of R19 000 000.00

5.1.31 Of importance to note is that the following were identified as issues for implementation by the NMMDM under the heading “provision of basic municipal services and infrastructure” in all the IDPs submitted to my office:

(a) Inadequate water sources and water shortage in the area (bulk);
(b) Poor maintenance of existing infrastructure (boreholes);
(c) No proper plan to address water issues in the Ratlou Local Municipality;
(d) Poor management of emergency water provisioning service (water tankering);
(e) Vandalism of infrastructure and illegal water connections;
(f) Service backlogs; and
(g) No cost recovery measures.

Submission by the NMMDM

5.1.32 In a report dated 23 November 2015, the NMMDM informed my office, inter alia, that:
"DWS and SW have come up with a bulk water supply project at Setlagole village and Contractors are on site drilling and equipping 32 boreholes and construction of additional reservoir for the village. As for Madibogo, the bulk water supply project has been established and the contractor is also on site. NMMDM is currently planning to dig a bulk water pipeline for the community of Makgobistad. The distance is 18km, work to commence in January 2016."

**Submission by the Sedibeng Water**

5.1.33 In a letter dated 18 September 2017, Mr M Mokubung, informed my office, *inter alia*, that the following was the status on water projects around Ratlou villages:

<table>
<thead>
<tr>
<th>NO.</th>
<th>PROJECT/ ARAEA</th>
<th>STATUS OF THE PROJECT</th>
</tr>
</thead>
</table>
| 1.  | Setlagole Bulk Water Supply Scheme | This project comprises of four contract phases:  
➤ PHASE 1: CONSTRUCTION OF 5.5 ML RESERVOIR  
The project is almost 97% complete and only water tightness test activity is outstanding. However, due to the delays in the civil contractor’s progress, there is currently no water available to fill the reservoir.  
➤ PHASE 2: CONSTRUCTION OF 35KM WATER PIPELINES, 32 BOREHOLES AND ASSOCIATED WORKS:  
Construction is at 67% of its completion. The appointed Contractor had experienced serious internal financial problems and their contract was terminated due to poor progress and non-compliance to health and safety requirements. Tenderers were invited for the outstanding work and a site briefing took place on 18 August 2017. It is anticipated that tender award will be made during October 2017 with construction resuming at the beginning of November 2017. |
PHASE 3: CONSTRUCTION OF 1200 MM DIAMETER PIPE JACKING THROUGH N18 AND 450MM DIAMETER THROUGH R507:

The project has been completed.

PHASE 4 INSTALLATION AND COMMISSIONING OF 2.4 ML/D ION EXCHANGE PLANT AND CHLORINATION SYSTEM:

Project is at 90% completion. Installation awaits completion of civil works which has been re-advertised.

2. Madibogo Bulk Water Scheme

Original appointment for the implementation was done by NMMDM. During January 2016, SW requested that the appointment of this project be limited to Implementation and readiness stage (IRS) and Aurecon be appointed as sub-consultant due to their previous involvement.

3. Makgobistad Pipeline

The construction of 18km bulk pipeline to Makgobistad is being managed by NMMDM through their own Project Management Unit (PMU).

5.1.34 In the aforementioned report received from Mr Mokubung, the status of Ratiou Setlagole Bulk Water Supply Scheme was provided as follows:

"TABLE1":

<table>
<thead>
<tr>
<th>Quantities</th>
<th>Status</th>
<th>Reason for overrun</th>
<th>Corrective action</th>
<th>Proposed Implementation date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of reservoir</td>
<td>97% complete</td>
<td>Termination of contract due to non-performance</td>
<td>Appoint the new service provider. Briefing done on 08 Dec 2017</td>
<td>16 Jan 2018</td>
</tr>
</tbody>
</table>
In the matter between Mr Bhine & others and the Ngaka Modiri Molema District Municipality
Report of the Public Protector

<table>
<thead>
<tr>
<th>Pump housing and Equipping of remaining boreholes</th>
<th>12 of 32 pump houses built</th>
<th>As above</th>
<th>Appoint the new service provider Briefing done on 08 Dec 2017</th>
<th>16 Jan 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pipe work/ Reticulation</td>
<td>70% complete</td>
<td>As above</td>
<td>Leano Solution appointed to complete the remaining work</td>
<td>Start 17 Jan 2018</td>
</tr>
<tr>
<td>Ion Exchange plant</td>
<td>Plant equipment procured</td>
<td>Outstanding earthworks &amp; previous Civil contract terminated due to non-performance</td>
<td>Reabeng Group appointed to do earthworks and erect the IE plant</td>
<td>Start 17 Jan 2018</td>
</tr>
</tbody>
</table>

NB. Project is estimated to be completed in 14 Months from January 2018 to March 2019

**Inspection in loco**

5.1.35 Prior to the inspection *in loco* on 13 July 2017, my investigation team met with Kgosi Phoi, on behalf of the Barolong Boo-Phoi Traditional Authority, and Ward Councillors within the ambit of Ratlou Local Municipality. The following submissions were made by both parties:

(a) Madibogo village is currently without water during the day due to non-maintenance of boreholes. Community members are connecting water illegally into their yards as a result of inadequate water supply by the Municipality.

5.1.36 On 24 November 2017, Mr Phatutshedzo Thanyani; Technical Superintendent from Sedibeng Water, as well as the officials from Ratlou Municipality, Mr Johnny Marumola; Acting Scheme Coordinator and Mr Steven Bolkanyo, the Yellow Fleet Officer, assisted my investigation team with the identification of water sources during
the inspection *in loco*, at the most affected areas and the following were discovered respectively:

**Setlagole Village**

(a) There was shortage of water around some sections of the village as the residents were seen drawing water from the Municipal Offices, where they had to stand in a very long queue waiting for their chance to fetch water. There was no sign of water tanks around the village.

(b) Inspection entourage proceeded to the Setlagole Bulk Water Project, where it was found that a new concrete reservoir had been built, and water pipes had been laid to connect the areas that were experiencing no access to water supply; though it was not functional on the day. According to the Sedibeng Water, they were awaiting structural and pressure testing. The Contractor was still on site and next to the newly built reservoir is the Old Small water reservoir, which was functional on the day and there was evidence of water supplied into the network.

(c) It was also noted that fourteen (14) new boreholes were equipped and they used electricity to pump water, though on the day they were not yet in use as the reservoir had not undergone structural testing. The boreholes are intended to supply water into a new reservoir, according to Sedibeng Water.

(d) On 18 June 2019 the NMMDM’s Manager: Water Services Provision, Mr Abram Senwedi, confirmed that currently the Village is funded through RBIG where 34 boreholes are being developed to supply the village with water. The reservoir has been constructed and completed. Previously the Contractor left site due to non-payment and the issue has been resolved by Department of Water and Sanitation who is the funder.
(e) Mr Senwedi further confirmed that the NMMDM has also restored a borehole that feeds the steel storage tank at Mokoto Section and also another one at Letsapa Section through the Operation and Maintenance budget.

**Madibogo Village**

(f) Currently, the community is receiving water from an old reservoir. However, the supply is limited as most members of the community rely on those with boreholes for water supply.

(g) My investigation team came across a construction site with water conduit pipes allegedly bought and intended for Madibogo Bulk Water Supply Project by the appointed contractor, who had abandoned the site.

(h) The current status per Mr Senwedi’s submission is that the NMMDM has restored the two (2) high productive boreholes for Tlhaping Section and Motsitlane Section respectively. The District has received R157.6m for Drought Relief Programme and Madibogo Pan has been prioritised where six (6) boreholes are being developed for bulk Water supply

**Makgobistad village**

(i) Sedibeng Water officials as well as Ratlou Municipal officials excused themselves from the inspection *in loco*. My team was accompanied by Ms M Moseje, the Community Liaison Officer (CLO).

(j) It was noticed that there was inadequate water supply in the village, as the community was seen driving donkey carts to go and draw water far from their yards and/or drawing water from neighbours with water yard connections.
(k) There was a borehole that supplied the community with water; however, the supply was mainly accessible in the centre of the village, and residents residing on the outskirts of the village had no water supply.

(l) It was further discovered that there was Makgobistad Bulk Water Project, aimed at addressing the water supply challenge around the village. Through the project, two (2) tower steel reservoirs had been constructed and five (5) new boreholes had been equipped to supply water into the reservoirs. There were additional standpipes erected around the village to supply water. Although Ms Moseje indicated that the project was completed around July 2017, the project is still not functional and/or handed over to the community. There was no water supply at the time of the inspection.

(m) Mr Senwedi advised my investigation team that the incomplete Project Implemented by Sedibeng Water has been resuscitated through Drought Relief Programme and is expected to be completed before end of July 2019.

Conclusion

5.1.37 In the light of the above, it is evident that the water service institutions had made efforts to address the water supply challenges around Ratlou through the construction of the reservoirs and erecting water networks around the village. However, the challenge is that there are inordinate delays in completing and handing over the projects to the community by means of supplying water. The 18km bulk water pipeline, which was completed in July 2017 at Makgobistad was not functional as at end of November 2017.
**Alleged systemic shortage of water around Ditsobotla Local Municipality (Ditsobotla)**

5.1.38 On 30 January 2018, the IDP Manager, Mr Israel Motlhabane, provided my investigation team with copies of IDPs for the period 2014 to 2016. Accordingly, the following projects were approved:

<table>
<thead>
<tr>
<th>PROJECT DESCRIPTION</th>
<th>ESTIMATED VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Springbokpan Bulk and Internal Water Supply</td>
<td>R5 500 000.00</td>
</tr>
<tr>
<td>Sheila Bulk and Internal Water Supply</td>
<td>R6 500,000.00</td>
</tr>
<tr>
<td>Verdwaal Water Supply</td>
<td>R4 500 000.00</td>
</tr>
<tr>
<td>Sheila Water Infrastructure Upgrade</td>
<td>R4 500 000.00</td>
</tr>
<tr>
<td>Bakerville Water Reticulation &amp; Yard Connections</td>
<td>R1 500 000.00</td>
</tr>
<tr>
<td>Bodibe Water Supply Network Upgrade</td>
<td>R4 000 000.00</td>
</tr>
<tr>
<td>Bodibe Individual Yard Water Connections</td>
<td>R3 000 000.00</td>
</tr>
</tbody>
</table>

5.1.39 In terms of the 2014/15 IDP under the heading "water infrastructure" the following is stated:

"The municipal infrastructure audit indicates a total of sixteen (16) reservoirs within the municipal area. Nine of these reservoirs are classified as being in good conditions, one in average condition and three in a poor condition. The district municipality has recently constructed a reservoir in Itsoseng to address water shortages experienced in the past".

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Submission by the NMMDM

5.1.40 The following submissions, per letter dated 07 September 2013, were made to my office by the NMMDM:

"...,

We have been doing several interventions at Ditsobotla Local Municipality as it is our responsibility as a Water Services Authority. We have been and still providing water through water tankers at all areas that experience inadequacy of water supply and those that have no infrastructure at new stands until water supply has been augmented".

5.1.41 The NMMDM furnished my office with the status report on water supply as follows:

'Bodibe Village

The Pump Station was vandalized and equipment stolen as well as the Eskom transformer. They repaired it by installing new equipment and the Pump Station is fully operational. They are running it using an electric generator because they are still waiting for Eskom to replace the transformer. They also have a Water Supply Project at the same village augmenting and constructing reticulation at new stands of Bodibe. They are also tankering at sections where there is a shortage of water.

Springbokpan Village

They are effectively tankering water at Springbokpan since they appointed a new Service Provider and there is a Water Supply Project that is about to start.
Verdwaal Village

Water Supply Project was completed in July 2012 at Verdwaal No1. At Verdwaal No2 there is a refurbishment Project on dilapidating infrastructure, they have also built a storage reservoir that will cater for Verdwaal No.2 as well as Itsoseng Township.

Sheila Village

The borehole had operational problems due to a damaged submersible pump and electrical shock in the control panel but it was sorted out and to date the borehole is still running well.

Bakerville Village

They equipped an additional borehole (5L/s) working together with the Local Municipality as the place is served with a high level of service (yard connections). The area is also growing very fast and at the new stands we are providing water with tankers until infrastructure is expanded.

Gamaloka Village

The place is also awaiting a Water Supply Project but as we are required by legislation to ensure that Communities receive at least a basic level of service which is not interrupted for more than 24 hours, we are also tankering at the moment.

Welverdiend Village

The borehole and the storage tanks were vandalized but they managed as a District to install new equipment including a new water engine and storage tanks. Thereafter the Local Municipality changed the borehole from a diesel engine to electrical and they downsized the pump. This is disturbing. However with our limited budget they
are still addressing the sabotage. At the moment inadequacy of water provision is addressed through tankering.

**Rietvlei Village**

*Rietvlei* is being tankered regularly but there is a water supply project that is about to start. The budget is R4, 9 000 000.00.

**Bokamoso Village**

The District Municipality working together with the Local Municipality have equipped a borehole at this farm and installed communal standpipes for them. Because of unreliable electricity, they gave the Community two tanks as standby for tankering in case of emergency."

5.1.42 A further submission was made by the NMMDM per letter dated 23 November 2015 as follows:

**“Bodibe Village”**

The pump station was vandalized and equipment stolen as well as the Eskom transformer. They repaired it by installing new equipment and the pump station is fully operational. They are running it using an electric generator because we are still waiting for Eskom to replace the transformer.

The bulk Water Supply Project at the same village has been stopped by the Community alleging that consultation was not done and the process of employing local residents was not properly followed. They are also tankering water at sections where there is a Shortage of water.

This village needs a serious political social intervention. The Community is vandalizing their own infrastructure so that some individuals can benefit financial from
a water tankering project. The office of the Administrator is busy engaging the Provincial Government about this issue. Currently NMMDM is using the internal staff to, restore the vandalized two boreholes, equip three existing boreholes and connect them to the storage tank, dig a 500m bulk pipeline to the reservoir, unblock the reticulation network for the end user with the aim of eradicating water tankering in the village. The projects or work was expected to be completed before the end of December 2015”.

5.1.43 The NMMDM informed the Public Protector that “there was no infrastructures at the following villages and the District Municipality is providing water through water tankers while waiting for capital projects:

“Tlhabologang/Coligny Township

People who are living on the high lying section in Coligny are only getting water during the night. However the District is currently equipping three newly drilled boreholes and will dig a trench of 1.2km bulk pipeline to the storage tank. The work is expected to be completed before the end of December 2015.

Itsoseng Township

The Bulk Water Supply project (drilling and equipping of boreholes) at Itsoseng has been completed including construction of the new reservoir. However, there is still a challenge of pipes that need to be properly directed to the new reservoir and unblocking of part of the reticulation network. Sedibeng Water Board has been requested to attend to the matter”.

Submission by Sedibeng Water

5.1.44 In a report dated 13 December 2017, Sedibeng Water informed my office, inter alia that:
**Itsoseng Township**

(a) The bulk water supply project is complete, including the reservoir. Sedibeng Water is only responsible for bulk production and maintenance of boreholes whereas Ditsobotla Local Municipality is responsible for water distribution network.

(b) That re-routing of the main pipeline from the old reservoir to the new reservoir is met with objection from the community living adjacent and drawing water from the same line. Further investigation will be undertaken to optimise the old and new reservoirs. Three boreholes are not running due to electricity account with ESKOM being in arrears.

(c) Two (2) were vandalised and will only be re-equipped when power is reinstated. The quality of borehole yield is reducing in the Itsoseng area. The initial number of boreholes has decreased and the water yielded had also declined whilst the water demand had increased necessitating for augmentation of the water supply system.

(d) The following status report was provided:

<table>
<thead>
<tr>
<th>Equipment No./ Functional Location</th>
<th>Status</th>
<th>Reason</th>
<th>Corrective action</th>
<th>Return to service Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Borehole 8</td>
<td>Not running</td>
<td>Pump ceased</td>
<td>Replace and reinstating</td>
<td>Replacement pump requisitioned: 15 Dec 2017</td>
</tr>
<tr>
<td>12 Mono</td>
<td>Not running</td>
<td>Electricity account in arrears (NMMDM)</td>
<td>District Municipality to pay the account</td>
<td>On Eskom receiving payment</td>
</tr>
</tbody>
</table>
(e) The following status report was provided:

<table>
<thead>
<tr>
<th>Quantities</th>
<th>Status</th>
<th>Reason for overrun</th>
<th>Corrective action</th>
<th>Revised completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of steel tank/ reservoir</td>
<td>87% complete</td>
<td>Contractor onsite due to no payment</td>
<td>Processing of payment is an enabler</td>
<td>31 March 2018</td>
</tr>
<tr>
<td>Pump housing and Equipping of boreholes</td>
<td>80%</td>
<td>As above</td>
<td>As above</td>
<td>31 March 2018</td>
</tr>
<tr>
<td>Reticulation</td>
<td>92% complete</td>
<td>As above</td>
<td>As above</td>
<td>31 March 2018</td>
</tr>
<tr>
<td>Rising main</td>
<td>30%</td>
<td>As above</td>
<td>As above</td>
<td>31 March 2018</td>
</tr>
</tbody>
</table>

NB. Project is expected to be completed in March 2018
Gamaloka Village

(f) The following status report was provided:

<table>
<thead>
<tr>
<th>Quantities</th>
<th>Status</th>
<th>Reason for overrun</th>
<th>Corrective action</th>
<th>Revised completion date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of steel tank/reservoir</td>
<td>0%</td>
<td>Contractor offsite due to no-payment</td>
<td>Funding is an enabler</td>
<td>31 March 2018</td>
</tr>
<tr>
<td>Pump housing and Equipping of boreholes</td>
<td>80%</td>
<td>As above</td>
<td>As above Finalise electrical control panel &amp; power the pumps</td>
<td>31 March 2018</td>
</tr>
<tr>
<td>Reticulation</td>
<td>15%</td>
<td>As above</td>
<td>Funding is an enabler to finalised. (sic)</td>
<td>31 March 2018</td>
</tr>
<tr>
<td>Rising main</td>
<td>0%</td>
<td>Contractor offsite due to no-payment</td>
<td>Funding is an enable, to be finalised</td>
<td>31 March 2018</td>
</tr>
</tbody>
</table>

NB. Project is expected to be completed in March 2018

Coligny Town

Inspection in loco

5.1.45 On 28 November 2017, my investigation team; Sedibeng Water represented by Mr Lesego Motsepe and Mr. Phathutshedzo Thanyani; NMMDM’s Senior Foreman: Mr Tshekiso Motlakase and officials from Ditsobotla Local Municipality; Acting Supervisor; Technical Support, Mr Erick Dipholo, Supervisor: Technical Support (Itsoseng/Bodibe), Mr Plaakie; Supervisor: Technical Support (Lichtenburg) Mr. April Olifant; conducted “inspection in loco”, in areas within the Ditsobotla Local Municipality and the following was observed:
Bakerville Village

(a) There are three (3) boreholes; however, due to the Water Project taking place at the area the boreholes were disconnected and the Contractor was the one supplying water to residents through refilling their tanks. Noticeably the residents have connections in their yards that were temporary not functional due to the water project.

Bokamoso

(b) There were only two (2) tanks that supply the entire community and there is no borehole infrastructure.

Welverdiend Village

(c) There is one (1) borehole supplying two uplifted water tanks and all residents have access to water.

Blaauwbank Farm

(d) There are two boreholes and only one is functioning and supply water to the small residents of this farm. However, the NMMDM advised the investigation team that the non-functional borehole shall be repaired. However, the residents have sufficient water supply.

Putfontein Farm

(e) There are four (4) boreholes that are not functioning; two are vandalised and the other two were not yet equipped. The residents receives water from a communal standpipe drawing water from the local mine borehole, which the
inspection team understood has been donated by the mine as part of social responsibility.

(f) It was noted that there are two concrete reservoirs in the village that supply water to the community. The electrical pump is used to draw water into the reservoirs from the boreholes. Communal taps are connected to supply water to the villagers, however they are not effective due to lack of supply from the reservoirs. The pressure pump from the reservoirs is not functioning as a result of a damaged transformer which was allegedly struck by lightning two weeks before the inspection. As such, the reservoirs have water, however the pressure pump is ineffective as a result of lack of electricity. The reservoirs are unable to effectively supply water into the water network across the village.

**Verdwaal 1 & 2 Villages**

(a) The inspections *in loco* was conducted at Verdwaal 1 and 2 and the following was observed.

**Verdwaal No 1**

(b) There were two (2) boreholes and the main borehole was not working. The Sedibeng Water indicated that the borehole was last tested by the NMMDM in 2013 and has since remained dormant. This dormant borehole was supposed to supply water mainly to section B of the village, which was without water on the day of the inspection. The other borehole was functional, but lacked sufficient pressure to propel water to all corners of the village.

**Verdwaal No 2**

(c) There were boreholes directly connected into the network and supplied the residents with water. Only one (1) part of the village had access to water. The
water network was, however, unable to propel water to all corners of the village due to a lack of sufficient pressure.

**Verdwaal 2 extension**

(d) There were two (2) communal taps situated at the ends of the village. One was not supplying water at all as it was fitted with a stopper. The other was vandalised, but the community made connection to the water pump.

**Sheila Village**

(e) Two (2) boreholes were found and only one (1) was working. The pump was functioning; but could not supply water to the whole village due to lack of pressure. Only one (1) section of the village had access to water supply.

According to the Sedibeng Water technician, the pump needed regular service in order to function properly, and there was no sufficient pressure to push and provide the whole village with water and this was confirmed by Mr Motlakase who further advised that the water pump yielded 0.7 l/s less than the normal required supply of 2 l/s.

The other pump was not working and Mr Motlakase informed the team that the transformer was struck by lightning on 3 November 2017. He further stated that the matter was reported to Eskom and they were awaiting Eskom’s response.

**Welverdiend (New Stands)**

(f) There was one (1) borehole supplying two (2) uplifted water tanks and all residents had access to water.
Itsoseng Township

(g) During the inspection Mr Motsepe of Sedibeng Water informed the investigation team that Sedibeng Water provides bulk water services and the NMMDM deals with water reticulation and supply to the community. The reservoir was almost full as the level gauge indicated.

There is a new reservoir built next to Itsoseng Zone 3 but some sections of the township were without water supply. It was further discovered that there were pumps that were not functional.

There were two (2) boreholes, BH8 and BH9, at the new reservoir. BH8 was, at the time of the inspection, not working, but the NMMDM undertook to repair it by 15 November 2017.

The old reservoirs were, amongst others, supplied by boreholes 12 and 13 pumps, which at the time of the inspection were not working as a result of the failure by the NMMDM to pay Eskom for electricity supply.

Coligny

(h) On 6 December 2017, my investigation team; Sedibeng Water represented by Mr Motsepe, the NMMDM represented by Messrs Motlakase and Headman Tali, and Mr Ivan Smith from Coligny Local Municipality proceeded with an “inspection in loco” at Tlhabologang/Coligny Township and the following were observed:

There were three (3) concrete water reservoirs in the area that were functional and supplied water to the whole of Coligny through two (2) steel tanks, one (1) in Extension 5, which was intended to supply water to Extension 3 and 5, and the other at Ou-Kassie section. The one in Extension 5 (largest) was empty and
it was noticed that the water pipes that supply water into the steel tank were
damaged. The steel tank at Ou-Kassie was functional, though it had leakages
and water was wasted.

The three (3) reservoirs were supplied by nine (9) boreholes around
Coligny. There was a water project in the area and three (3) boreholes were dug
and equipped; however, they were not functional on the day of the inspection.
They had no pump houses, and/or protective structure and exposed to public.
The boreholes were meant to supply the steel tank situated at Extension 5.

According to Mr Motlakase, the boreholes were drilled in 2012 and the project
was not completed as they could not complete 1.2km pipeline connection. The
reason provided was that there was a shortage of material. This pipeline was to
be used to supply water from the three (3) boreholes directly to the steel water
tank which is at the high lying section in Coligny i.e. Extension 5. He further
indicated that the boreholes have electricity propelled engines, which were
vandalised and stolen. However, they were connected to the main reservoir
network.

The inspection further uncovered that the water pump at the reservoir meant to
supply the steel tank at extension 5 was broken. The standby water pump was
also broken.

Conclusion

5.1.46 It is my considered view that there are efforts to ensure that residents of Ditsobotla
Local Municipality receive water services. There are already projects implemented to
bring a long term solution for water services through building of reservoirs and
implementation of Bulk Water Service Projects around the area. Where there is no
infrastructure and/or inadequate water supply, water institutions are providing water
through water tankers.
5.1.47 However, there are still challenges particularly on maintenance and refurbishment of the infrastructure. This was evident during the "inspections in loco" conducted, where pump stations, pumps at respective reservoirs and boreholes were not functional. At Springbokpan and Bodibe, for example, pumps were reported to have no sufficient pressure to push water into the reticulation networks. In every single area there are boreholes that are not functional due to lack of maintenance, though vandalism also play a role.

5.1.48 The water institutions are still using old reticulation network infrastructure that were erected many years ago (even before 1994). There is no indication that measures were taken to ensure that leakages are attended to and that there is sufficient pressure to push water through the network.

5.1.49 It was also evident that there are inordinate delays in completing and handing over the projects. For instance, water supply augmentation at Coligny is being executed since 2012 but still water supply remains inadequate.

5.1.50 Though when Sedibeng Water started working with the NMMDM as the water institution in 2014, in particular as the water service provider, and could have at the time, found backlog on water supply that necessitated embarking on many projects at once, as a result of incomplete projects left by service providers due to lack of payment, the delay is not acceptable.

**Alleged systemic inadequate water supply in Lomanyaneng village in Mahikeng Local Municipality (Mahikeng)**

**Submission by the NMMDM**

5.1.51 In a letter dated 23 November 2015, the NMMDM informed my office that:

"The Village is getting water from boreholes of Grootfontein and Molopo eye. These water schemes are under the operation of Dept. of Water and Sanitation (DWS)."
There is a challenge that six out of nine boreholes have dried up. The yield of the eye has also dropped due to lack of rain and farmers consuming lot of water.

NMMDM is currently busy with the Mahikeng South Bulk Water Project which is currently being completed by Sedibeng Water Board because the Contractor has been terminated due to poor performance. NMMDM has equipped one of three boreholes as a means of augmentation and the work is expected to be completed before the end of December 2015. A Tankering service is also provided where the Community is experiencing shortage of water". [sic]

Inspection in loco

5.1.52 On 18 July 2017, my investigation team, the Complainant, Kgosana Moiloa, and Ward Committee members visited Lomanyaneng village to conduct an inspection in loco with a view to verify the information received from the NMMDM and Sedibeng Water. The following were discovered:

(a) Most of the communal stand pipes in the area were vandalised and not working. Noticeably, the standpipe used prepaid device to supply water. Around the village, there were water tanks, some with and others without water. Some tanks had leakages and were very dirty inside. Twenty two (22) tanks were inspected and only eight were refilled with water whilst the remaining fourteen (14) tanks were empty. There were four (4) boreholes and three (3) were vandalised, whilst the other borehole was functional and supplied water.

Conclusion

5.1.53 There are efforts by the NMMDM and Sedibeng Water to ensure that the communities receive basic supply of water. The only challenge observed was the delay to complete the bulk water supply project due to non-payment by the NMMDM to the Contractor who allegedly abandoned the project.
Application of the relevant legal framework

5.1.54 Section 27 of the Constitution provides that:

“(1) Everyone has the right to have access to—
   (a) ...
   (b) Sufficient food and water; and
   (c) ...
(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights”.
(3) ...

5.1.55 The Constitution thus obliges the NMMDM to ensure that the community within its area of jurisdiction is able to access sufficient water in a sustainable manner.

5.1.56 It goes without saying that access to sufficient water is not just an ordinary basic service required to be delivered by the NMMDM, but the Constitution embedded this service as a “right” afforded to all citizens.

5.1.57 Section 152(1) of the Constitution provides that:

“152. (1) The objects of local government are—

(a) To provide democratic and accountable government for local communities;
(b) To ensure the provision of services to communities in a sustainable manner;
(c) ...
(d) ...
(e) ...
(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).”
5.1.58 Section 153 of the Constitution provides that:

"153 A municipality must —

(a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and

(b) .........."

5.1.59 In terms of both sections 152 and 153 of the Constitution, municipalities are thus the most basic components of government in the country and are tasked with providing basic services and fostering development in the areas they control. Local government is attributed to service delivery and the Constitution assigns municipalities the role to organise economic resources towards the improvement of the lives of everyone. Basic services are the fundamental building blocks of improved quality of life, and adequate supplies of safe water is necessary for life, well-being and human dignity.

5.1.60 Section 3 of the Water Service Act, 1977 (WSA) provides that:

"Everyone has a right of access to basic water supply and basic sanitation."

5.1.61 Section 11 (1) of the WSA provides that:

"11(1) Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services."

5.1.62 It needs to be pointed out that the basis of the investigation by my office was to determine whether the relevant state institutions failed and/or omitted to ensure that the communities within the jurisdiction of the NMMDM receive adequate water and, in so doing, I had to establish whether the relevant state institutions complied with the relevant legal framework.
5.1.63 Although it can be argued that the Constitution, as per the provisions of section 27, enjoins the NMMDM to ensure access to sufficient water and that the provision does not create an obligation to provide water to the communities, it remains a fact that the NMMDM is under obligation to create mechanisms that enable people to have access to sufficient water.

5.1.64 The Cambridge English Dictionary\(^3\) defines access as "the method or possibility of getting near to a place or person". Tantamount to this definition, is the following offered by the Oxford Advanced Learner's Dictionary\(^4\): "A means of approaching or entering a place".

5.1.65 The Cambridge dictionary defines the word provide as "Make available for use". The Cambridge Dictionary defines the same word as: "to give someone something that they need".

5.1.66 In Grootboom\(^5\), the Constitutional Court considered the distinction between the right to adequate housing and the right of access to adequate housing and appeared to give the latter right a broader sphere that captured the former right. Encompassing this reasoning to the parallel language of Section 27, it could be argued that the wording of the Constitution reflects the Legislature's desire to redress past socio-economic inequities rather than its intention to enforce only a portion of the content of the human right to water.

5.1.67 For the actual realisation of the access to water to manifest, the mechanism that must be created, where there is no water, denotes that the state and/or the relevant state organ must make water available for it to be accessed. Bulk supply of water is a perfect example in this regard.

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\(^3\) [https://Dictionary.Cambridge.org](https://Dictionary.Cambridge.org)


5.1.68 Clause 5.6 of the Water Services Provider Contract (the Contract) entered into between the NMMDM and Sedibeng Water provides that the Water Service Authority, the NMMDM in this matter, assigned its responsibilities to the Water Service Provider, the Sedibeng Water, “to ensure the efficient, affordable, economical and sustainable provision of and access to retail water services as well as the management of all retail and bulk water services infrastructure”. (own emphasis added)

5.1.69 Clause 5.6 is construed to mean that the duty lies with the Sedibeng Water to ensure that equipment as well as water infrastructure is effectively maintained. The gist of the matter is that as a result of the failure to ensure that there is adequate infrastructure and effective maintenance of facilities and equipment the communities ended up not accessing sufficient water.

5.1.70 Be it so, clause 27 of the contract provides that:

"27. MONITORING

27.1 A duly appointed official of the WSA [NMMDM] shall monitor the activities and performance of the WSP [Sedibeng Water] in terms of the provisions of this contract and regulatory provisions, and he/she shall have the powers allocated to him/her by the WSA."

5.1.71 According to the contract the NMMDM, through Sedibeng Water, has an obligation to ensure that there is sufficient provision of water to the affected communities within its area of jurisdiction. This provision, in essence, means that the NMMDM has a duty to ensure that the responsibilities assigned to the Sedibeng Water are carried out.

5.1.72 Although, as revealed by evidence, the NMMDM has shown that measures were taken to ensure access to adequate water. The question that follows is whether such measures confirm the progressive realisation as well as sustainable provision of and access to sufficient water in accordance with Clause 5.6 of the Water Services
Provider Contract and in terms of section 27 of the Constitution as well as section 11(1) of the WSA and whether such measures can said to be reasonable as envisaged by section 27(2) of the Constitution.

5.1.73 It has been held by the Courts\(^6\) that the pace at which socio-economic rights are progressively realised depends on the resources available to the State. This is because the state has to take full advantage of the available resources to ensure that these rights are fully realised.

5.1.74 In *Mazibuko*\(^7\) the Constitutional Court held that the scope of positive obligation is delineated\(^8\) by section 27(2) of the Constitution, and that it is clear that the right does not require the state upon demand to provide every person with sufficient water, rather it requires that the state to take reasonable Legislative and other measures to progressively realise the achievement of the right of access to sufficient water, within available resources. The Constitutional Court held that this is a matter for Legislature and Executive, institutions of government best placed to investigate social conditions in the light of available budgets. It is a matter of democratic accountability for it is their programmes and promises that are subjected to democratic popular choice.

5.1.75 I accept the fact that the responsibility for the provision of water is split between various spheres of government\(^9\), which results in serious challenges in terms of the co-ordination of the delivery of services.

5.1.76 It is, in essence, my considered view that a state and/or the organ of state cannot escape the obligation to adopt a plan of action on the ground that the necessary

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\(^6\) Lindiwe Mazibuko and Others v City of Johannesburg and Others CCT 39/09, [2009] ZACC 28 at para 50

\(^7\) As cited above

\(^8\) The Constitutional Court in this regard cited Government of the Republic of South Africa and Others v Grootboom and Others 2000] ZACC 19, 2001 at para 38

resources are not available. Even if the necessary resources are available, without a plan, such resources would be wasted. This view is expressed by the Constitutional Court in both cases of Mazibuko\textsuperscript{10} and Grootboom\textsuperscript{11}. The court, in Mazibuko, held as follows\textsuperscript{12}:

"In terms of the Constitution one of the objects of local government is to ensure the provision of services to communities in a sustainable manner (Section 152(1)(b)). Like the other objects of local government, a municipality must strive, within its financial and administrative capacity, to achieve that object (Section 152(2)). It has executive authority in respect of, and has the right to administer, among others, water and sanitation services (Section 156(1)) and may make by-laws for the effective administration of these services (Section 156(2))"

5.1.77 Section 12 of the WSA provides that:

"(1) Every water services authority must, within one year after the commencement of this Act –

(iii) as part of the process of preparing any integrated development plan in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993); or

(iv) Separately, if no process contemplated in paragraph (a) has been initiated, prepare

a. A draft water services development plan for its area of jurisdiction; and

b. A summary of that plan."

5.1.78 In terms of the above provision, the Municipality should have had a draft plan to enable it to sustainably manage the provision of water to residents as required by

\textsuperscript{10} As cited above
\textsuperscript{11} As cited above
\textsuperscript{12} City of Johannesburg v L Mazibuko (489/08) [2009] ZASCA 20 (25 March 2009), para 3
section 11 and 3 of the WSA. In an e-mail dated 23 February 2018 the NMMDM stated that it had no draft development plan which results in a contravention of the WSA. This fact was subsequently echoed by the court in Nokotyana and Other v Ekurhuleni Metropolitan Municipality and Others\textsuperscript{13}, where the court stated that "the Water Services Act imposes upon a water service authority to take reasonable measures to realize these rights, and to provide for measures to realize these rights in its Water Service Development Plan". This is understood to mean Municipalities are obliged to provide water services to the public in line with the WSA, and to take progressive measures, which may include drafting, passing and implementing policies and bylaws to achieve this right.

5.1.79 Section 3 of the WSA provides that:

(a) "Every water services institution must take reasonable measures to realize these rights.

(b) Every water services authority must, in its water services development plan provide for measures to realise these rights"

5.1.80 The key to ensuring that reasonable measures are taken to realize the right of access to basic water supply is the water services development plan, for objective without a proper plan is just ,but an aspiration.

5.1.81 In an e-mail dated 23 February 2018, the NMMDM Senior Manager: Public Works and Basic Services, Mr Mohamed Jafer Rassool, advised my office as follows with regard to the Water Service Development Plan:

"The required Water Service Development Plan from 2012 is on draft stage with the assistance of the Department of Water and Sanitation (it's a National Approach). The

\textsuperscript{13}( CCT 31/09) 2009 ZACC 33, 2010 (4) BCLR (CC 19 November 2009)
"Last Water Service Development Plan for the NMMDM was in 2009 but has since expired." [Slc.]

5.1.82 In the 2019/20 Annual Submission for the Division of Revenue\textsuperscript{14}, the Financial and Fiscal Commission (FFC) made the following recommendations:

"...

\(c\) Municipalities indicate what standards they intend to provide and how their capital and operational costs are to be funded. This should be done through their Water Services Development Plans (WSDPs).

Municipalities are providing water services to a standard higher than the regulated basic minimum levels, incurring operating costs that are not covered by equitable share allocations, tariff revenues or other sources. While the cost of water for water-borne sanitation is considered in the LES, the costs of wastewater treatment are not provided for. Where water-borne sanitation is supplied, this must be adequately provided for in the overall water services tariff and/or grant revenue".

5.1.83 Section 156(2) of the Constitution provides that:

"A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer" (My emphasis added)

5.1.84 Section 21 WSA provide that:

"(1) Every water services authority must make by-laws which contain conditions for the provision of water services."

\textsuperscript{14} Financial and Fiscal Commission: Submission for the Division of Revenue 2019/20, Chapter 6: Assessing the effectiveness of intergovernmental fiscal relations instruments in addressing water challenges Recommendations
5.1.85 I uncovered during the inspection *in loco* that in many areas, particularly in rural villages there are illegal connections; vandalism of infrastructure; failure or delays in reporting water leakages and/or broken taps. These behaviour by residents contributes to a high water demand and also loss of revenue by the NMMDM, Sedibeng Water and Local Municipalities, when the latter had to repair and/or service infrastructures. In terms of section 156(2) of the Constitution r/w section 21 of WSA, by-laws, in essence, are meant to have an effect measures which will assist the NMMDM to have an effective administration of the matters which it has the right to administer, and the matter in this regard to be administered by the NMMDM is the provision of water services.

5.1.86 In the 2019/20 Annual Submission for the Division of Revenue, the FFC made the following recommendations:

"d) The allocation of grants be made conditional on the employment of appropriately qualified staff with commensurate mandates.

Municipalities do not have the required skills to plan, manage and operate their water services. According to a variety of surveys, the skills required are increasingly available.

2) The Commission recommends that stronger conditions be attached to financial transfers to ensure compliance and that funds allocated are properly spent for the purposes indicated. Grant funding should be withheld from municipalities that do not have the necessary measures to monitor and control water consumption, or which do not meet criteria or have valid abstraction licences. Similar procedures must be applied for water-borne sanitation projects".
Conclusion

5.1.87 The provision of services to local communities in a sustainable manner is a constitutional obligation of all Municipalities. In light of this constitutional requirement, service provision is an ongoing process. However, ongoing service provision depends on municipal institutions that are properly managed both financially and administratively.

5.1.88 Of importance is that every water services authority has a duty to prepare a draft water services development plan, and the contents of the plan are set out in sections 12 and 13 of the WSA. The plan must include an implementation structure for five years, details of the proposed infrastructure, the estimated capital and operating costs, financial arrangements for funding, the number and locations of persons to whom water services cannot be provided within the five-year period, the reasons therefore and a delivery timeframe. A copy of the draft plan must be made available for public comment and thereafter must be submitted to the Minister, by the relevant province.

5.2 Regarding whether the water consumers have suffered any prejudice as a result of the conduct of the NMMDM.

5.2.1 Turning now to the issue under discussion, I must say that it is common cause that the communities within the areas identified for this investigation, particularly rural areas within the NMMDM, have for many years experienced water supply shortage as it appears from the basis of the complaints, as discussed earlier. The central factual issue in the matter is the adequacy of water provision by the NMMDM to its local communities in a sustainable manner which is, in essence, a constitutional imperative for the NMMDM.

5.2.2 The most vulnerable amongst the sectors of the community, the unemployed, the elderly and children, the disabled people as well as people who live in dire poverty
are those whose rights have been impeded by the NMMDM. These people may validly raise a denial of a right of access to water against the NMMDM. The cause of this, amongst others, is incomplete, abandoned and dysfunctional projects which were initiated to supply water, infrastructure problems, unsolved problems between and amongst services providers (i.e. NMMDM, Local Municipalities and Sedibeng Water) who deliver water services to the people.

5.2.3 It has been established from the evidence obtained, that the NMMDM has failed to provide the communities within the areas identified in this investigation with adequate and sufficient drinking water.

5.2.4 Access to safe water is crucial to sustain human life. If a country's water supply and sanitation is not sufficient or is of poor quality, diseases such as cholera and diarrhea will be common.

5.2.5 The complainants in this regard did suffer prejudice as a result of failure by the NMMDM to provide adequate and sufficient drinking water to them, resulting in them drinking contaminated water and sharing water with livestock, which is likely to cause diseases.

Application of the relevant legal framework

5.2.6 Section 27 of the Constitution provides that:

"(1) Everyone has the right to have access to—
(a) ...
(b) Sufficient food and water; and
(c) ..."

5.2.7 Section 3 of the WSA provides that:
"(1) Everyone has a right of access to basic water supply and basic sanitation."

5.2.8 A clear message conveyed by section 27(1) of the Constitution, read with section 3(1) of the WSA, is that the provision of safe drinking water is not an offering but a legal prerogative afforded individual citizens.

5.2.9 Section 10 of the Constitution provides that:

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

5.2.10 The fact that water is the essence of life need not be overemphasised, for the Constitutional right of safe drinking water and sanitation are requisite to sustain life and health, and essential to the Constitutional right to dignity of all.

5.2.11 Of importance is that section 1 (iii) of the WSA provides for the definition of "basic water supply" as follows:

"The prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene"

5.2.12 When the State fails to comply with its Constitutional obligations towards its citizens, the very same citizens are likely to suffer prejudice, moreover when the obligation vested upon the State is directly linked to the rights afforded to all.

Conclusion

5.2.13 Based on the evidence gathered, it can be concluded that the residents of the NMMDM suffered prejudice as a result of its failure in ensuring provision of access to water within its area of jurisdiction.
5.2.14 At the conclusion of my investigation, the following persons were served with section 7(9) notice, namely: the Premier of North West Provincial Government; the Administrator in the Office of the Premier; the Member of Executive Council: the Department of Cooperative Governance and Traditional Affairs; the Head of the Department of Cooperative Governance and Traditional Affairs; the Executive Mayor, the Municipal Manager and the Speaker of the NMMDM, the Regional Head: Sedibeng Water; the Regional Head: Department of Water and Sanitation and the Acting Director General: Department of Water and Sanitation.

5.2.15 The purpose of the Notice was to afford them an opportunity to comment on the possible findings arising from the investigation. The recipients were afforded ten (10) working days to respond to the notices. Mr Alan O Losaba, the Municipal Manager at Ngaka Modiri Molema District Municipality acknowledged receipt of the Section 7(9) notice on 21 August 2019, by appending his signature and official date stamp on the PPSA-acknowledgment receipt form and responded as follows in a letter dated 5 September 2019:

"The Municipality hereby acknowledges receipt of your letter as reflected in the heading above. It must be noted that most of the issues raised were reported a few years ago. Over the years a great deal of work took place to address some of these challenges.

The Ngaka Modiri Molema District Municipality (NMMDM) hereby responds to issues as raised by the office of the Public Protector. The issues referred to are within the District and an attempt shall be made to respond per town and/or village as captured in the Public Protector report."
(a) RAMOTSGHERE MOILOA LOCAL MUNICIPALITY

(aa) Zeerust Waste Water Treatment Works (WWTW)

(i) The Ngaka Modiri Molema District Municipality (NMMDM) appointed a service provider to upgrade the Zeerust WWTW in December 2018. The project is implemented under the Municipal Infrastructure Grant (MIG) where construction began in January 2019. Completion of the project is expected before December 2020. The project is meant to address the overworked plant and to increase the plant’s capacity as to meet the latest demands.

(ab) Mokgola Village

(i) Over the years, the infrastructure in Mokgola has been subjected to vandalism which led to water shortages experienced in the village. In June of 2018, the municipality repaired three of the non-functional boreholes. The three boreholes worked until December of the same year only for them to be damaged once more. The NMMDM responded and repaired the boreholes again.

(ii) The Municipality together with the Department of Water and Sanitation (DWS) and Sedibeng Water (SW) further augmented water supply in Mokgola, between 2016-2018, with 08 additional boreholes. The current status is that all boreholes are functional, while at the same time SW is currently electrifying 07 existing diesel boreholes through the Drought Relief Programme.
(ac) Gopane Village

(i) The 2 non-functional boreholes were attended to and other functional boreholes have been refurbished. The higher areas of the Gopane village are served with water tankering as to ensure communities receive water. The major challenge is that the pressure to pump water to high lying areas is insufficient pressure.

(ad) Braklaagte Village

(i) The 3 non-functional boreholes in Braklaagte have been attended to and are functional. The Municipality is currently augmenting water supply through the Drought Relief Program by drilling and equipping 04 additional boreholes that will supply the existing water network.

(b) RATLOU LOCAL MUNICIPALITY

(ba) Setlagole Village

(i) The challenges at Setlagole remain but efforts are currently in place to address them. To that end, the following interventions should be noted:

- DWS has through RBIG set aside R40 million to complete the project implemented by SW,

- The Municipality is currently implementing Setlagole Bulk Water Supply Phase 2, through the MIG which will contribute to the water network which is being developed through the RBIG by SW.
(bb) Madibogo Village

(i) Through the draft relief programme, NMMDM has drilled six boreholes but only two of the six yield enough water. The two will be completed by the end of September 2019. Meanwhile, the search for underground water, which is the source of water in the District shall continue.

(bc) Makgobistad Village

(ii) The project has been resuscitated through the draft relief programme. It is anticipated that the project shall be completed by the end of September 2019. The reason for the delay is consequent to the reason that the grant was received late into the financial year.

(c) DITSOBOTLA LOCAL MUNICIPALITY

(ca) Bakerville Village

(i) The project referred to in the report has been completed through the drought relief programme. It has been handed over and the community is receiving adequate water.

(cb) Bokamoso

(j) One borehole has been developed to supply the Bokamoso section and is currently running.

(cc) Welverdiend Village

(i) The status quo remains the same where people are supplied with water.
(cd) Blaauwbank Farm

(i) The status quo remains the same, the non-functional borehole was found to have yielded insufficient water when the Municipality wanted to repair it, and hence it was not repaired. But the community still receives enough water supply from the existing borehole.

(ce) Putfontein Farm

(i) Two boreholes are currently being equipped through the drought relief program. The borehole that was donated by the mine has now been taken over by the Municipality.

(cf) Bodibe Village

(i) The transformer that was damaged by lighting has since been replaced and the pressure has been restored. However, the two high lift pumps are functional but not yielding water as much water as in the past. The Municipality through the drought relief program will refurbish the pump station as to achieve the original yield.

(cg) Verdwaal 1 and 2 Villages

(i) The non-functional borehole at Verdwaal 1 has since been repaired and is currently delivering water. The issues raised in Verdwaal 2 are being addressed through an MIG project which is almost complete, and this should augment enough water.
(ch) Sheila Village

(i) The non-functional and well as the functional borehole was refurbished through the drought relief program and both boreholes are currently supplying adequate water.

(ci) Itsoseng Township

(i) Itsoseng has a total of fifteen (15) boreholes, currently twelve (12) boreholes are operational and three (3) and non-functional. This was found to be the case after the drought relief program was implemented, the municipality has put in place measures to address the three non-functional boreholes through operations and maintenance.

(ii) Two (2) additional boreholes are being developed through the drought relief program. One of the boreholes is to augment water supply to the old reservoir (zone 3) and the second is to re-commission the reservoir in zone 1.

(cj) Coligny

(j) The three (3) boreholes have been restored and pump houses have been built through the drought relief program. Two (2) additional pump stations have been restored in Coligny through operations and maintenance. Coligny is currently being supplied with enough water where the entire community is receiving water.

(iii) The Coligny project was implemented in house by the Municipality and has since been completed through the drought relief program.
(d) VILLAGE IN MAHIKENG LOCAL MUNICIPALITY

(i) The municipality has drilled and equipped four (4) additional boreholes through the drought relief program. The boreholes are currently operational, however the water from the boreholes are to supply a steel tank which is yet to be installed through the drought relief program, all other construction related work has been completed (pipelines and boreholes). Once the steel tank is delivered and installed the boreholes will then be commissioned.

(e) CONCLUSION

In conclusion the Municipality has already adopted a draft water services development plan (WSDP). The next stage of the plan is to involve all the Local Municipalities of which the process is already on-going, thereafter public participation will be conducted before finalising the document.

The Municipality strives to provide adequate and quality water to its communities and is constantly refurbishing infrastructure which is limited to the available budget.

It is important to note that the general level of ground water across the District is depleting more and more every year. This poses a serious threat into water supply for the future. However, the Municipality is further investigating options of sourcing water from other sources for a long-term sustainable solution. This will however only be possible if the Municipality receives assistance from other relevant government departments as the Municipality does not generate enough revenue.”
5.2.16 From the evidence tendered above, it is clear that the NMMDM has not yet completed some of the identified projects investigated specifically of areas that I focused on in my investigation.

6 FINDINGS

6.1 Regarding whether, due to its systemic administrative deficiencies, the NMMDM improperly failed and/or omitted to ensure that water consumers around its area of jurisdiction receive adequate water.

6.1.1 The allegation that the NMMDM failed and/or omitted to ensure that water consumers receive adequate water, is substantiated.

6.1.2 Although the NMMDM has made an attempt to adhere to its Constitutional mandate, the investigation revealed that the most vulnerable groups within its area of jurisdiction do not enjoy access to clean and adequate water. The investigation further uncovered that most of the challenges within the NMMDM relate to worn-out infrastructure, vandalised and/or dilapidated boreholes, lack of infrastructure maintenance, high cost of water distribution and poor management of water infrastructure.

6.1.3 Central to my findings is that I could not, based on the prima facie evidence at my disposal, find any wrongdoing in respect of budget allocated and the utilisation thereof. I am however of the view that the NMMDM failed to prioritise the maintenance of water infrastructure specifically of areas that I focused on in my investigation.

6.1.4 The NMMDM has failed to ensure that the water service equipment is regularly maintained and that old infrastructure is refurbished.
6.1.5 The conduct of the NMMDM is thus in contravention of sections 152(1)(b),
153(a), 27(2) of the Constitution as well as section 3(2) of the WSA.

6.1.6 The NMMDM failed to prepare a Water Service Development Plan during the
period 2012 to 2017. The NMMDM's failure to prepare a Water Services
Development Plan is in contravention of section 27(2) of the Constitution read
with section 11(1), and 12 of the WSA. As a result of a non-existence of a
Water Service Development Plan the NMMDM has for the past seven (7) years
been unable to combat, inadequate water sources and water shortage in the
areas identified for investigation; poor maintenance of existing infrastructure
(boreholes), poor management of emergency water provisioning service
(water tankering), service backlog and cost recovery measures.

6.1.7 Without a Water Service Development Plan there has not been any proper
plan to address water issues within the NMMDM.

6.1.8 The failure by the NMMDM to ensure that it implements its own water by-laws
to address issues of vandalism, illegal connection and unaccounted water
loss, is in contravention of section 21 of the WSA.

6.1.9 It goes without saying that my investigation team uncovered that access to
sufficient water is lesser than envisaged within communities in areas identified
for investigation namely: Ramotshere, Mahikeng, Ditsobotla and Rtilou local
Municipalities. In essence, I have, during the investigation, uncovered that the
cause for this shortage in these areas is, amongst others, the non-functioning
of water pumps and boreholes, and mainly failure to ensure that there is
adequate infrastructure and the effective maintenance of facilities and
equipment.
6.1.10 The conduct of the NMMDM constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in section 6(4)(a)(i) of the Public Protector Act.

6.2 Regarding whether the water consumers have suffered any prejudice as a result of the conduct of NMMDM.

6.2.1 The allegation that the water consumers have suffered prejudice as a result of the conduct of the NMMDM, is substantiated.

6.2.2 I acknowledge that areas of the NMMDM are mostly rural villages and had for many years experienced water supply shortages, leaving the communities with no options, but to rely on the water supplied through water tankers, as per its submissions and as uncovered by my investigation. In most of these areas where water tankers are used, the storage tanks are not lifted above the ground; there are inordinate delays in refilling tanks; water is not purified; and tanks are not regularly cleaned by service providers engaged to supply water leaving the communities vulnerable to use contaminated water.

6.2.3 Failure by the NMMDM to ensure that communities receive adequate water and basic sanitation contravenes Sections 27(1)(b) of the Constitution read with Section 3(1) of the WSA

7. REMEDIAL ACTION

The appropriate remedial action that I am taking as envisaged in section 182(1)(c) of the Constitution is the following:

7.1 The Municipal Manager of Ngaka Modiri Molema District Municipality must:
7.1.1 Ensure that the following outstanding projects within its area of jurisdiction are completed, as indicated below;

7.1.1.1 **Regarding Ramotshere-Molopo Local Municipality**

(a) Zeerust Water Treatment Plant

(i) The water pumps are replaced and/or reinstalled.
(ii) The electrical cables are installed at the plant; protective wall is built and there should be provision of security.
(iii) Water clarifiers are functional.

(b) Mokgola Village

(i) Speed-up the finalisation of the electrification of seven (7) existing diesel boreholes.
(ii) Ensure that the engines for boreholes are repaired.
(iii) Ensure that the boreholes at Phakedi, Rakolpe, and Marotong sections are serviced.

(c) Gopane Village

(i) Establish the root cause analysis for the malfunctioning of the sixth borehole, configure the water reticulation network at the high lying areas in ward 5 and 6 and augment water storage facilities.

(d) Braklaagte Village

(i) Ensure that the three (3) boreholes at Mogajane, Ga-Martin and Secholho sections are functional.
7.1.1.2 **Regarding Ratlou Local Municipality**

(a) **Setlagole Bulk Water Supply**

(i) Ensure that the service provider is appointed and the construction of the reservoir project is completed.

(ii) Ensure that the service provider is appointed, for the completion of the Pump housing project and equipping the remaining boreholes.

(iii) Ensure that the appointed service provider, namely Leano Solutions, completes the Pipe work/ Reticulation project.

7.1.1.3 **Regarding Ditsobotla Local Municipality**

(a) **Groundwater Source – Bakerville**

(i) Ensure that the appointed contractor completes the Construction of steel tank/reservoir project.

(ii) Ensure that the appointed contractor completes the Pump housing project and the equipping of boreholes.

(iii) Ensure that the appointed contractor completes the Water Reticulation project.

(iv) Ensure that the appointed contractor completes the Rising main project.
(b) **Groundwater Source – Ga Maloka**

(i) Ensure that the appointed contractor completes the Construction of steel tank/reservoir project.

(ii) Ensure that the appointed contractor completes the Pump housing project, the equipping of boreholes, finalisation of the electrical control panel and powering the pumps.

(iii) Ensure that the appointed contractor completes the Water Reticulation project.

(v) Ensure that the appointed contractor completes the Rising main project.

(c) **Bulk Water Supply augmentation – Itsoseng**

(i) Ensure that the pump at borehole 8 (eight) is replaced and reinstalled.

(ii) The Eskom electricity account in arrears for the three boreholes that are not running, i.e. 12, 14 and 15 Mono, are settled.

(d) **Water supply augmentation – Coligny**

Ensure that the 1.2 km pipeline project meant for the augmentation of the water supply from the three boreholes to the 662 KL steel storage tank, is implemented.
7.1.4 Regarding Lomanyaneng village in Mahikeng Local Municipality

(a) Mahikeng South Bulk Water Project

(i) Ensure that Bulk Water project is completed.

7.1.2 Ensure that the Municipal Council drafts and adopts its water service plan including the Integrated Development Plan. A copy of the draft plan must be made available for public comment and thereafter must be submitted to the MEC for Cooperative Governance, Human Settlements and Traditional Affairs and to the Minister for Water and Sanitation.

7.1.3 Ensure that the Municipal Council drafts and approves its by-laws for the provision of water services.

7.1.4 Comply with the terms and conditions of the Service Level Agreement entered into and signed between itself and Sedibeng Water, that it must provide basic water services whilst Sedibeng Water has the duty to implement water supply projects, to ensure that there is adequate water supply in/or around the affected areas.

7.2 The MEC for the Department of Cooperative Governance and Traditional Affairs must:

7.2.1 Monitor the process of drafting the integrated development plan and assist, coordinate or take any appropriate steps to ensure the planning, drafting, adoption of or review of such plans.

7.2.2 Establish mechanism, processes, procedures to monitor the NMMDM in managing its own affairs, exercising its powers and performing its functions; assess the support needed by the NMMDM to strengthen its capacity, to manage its own affairs, exercise its powers and perform its functions.
7.2.3 Impose a recovery plan aimed at securing the NMMDM’s ability to meet its obligations to provide basic services or its financial commitments where there is serious or persistent material breach of its obligations to provide basic service or to meet its financial commitments.

7.3 The Minister of Water and Sanitation must:

7.3.1 Monitor the performance of the Ngaka Modiri Molema District Municipality and intervene were there is gross failure of delivery on the part of the Ngaka Modiri Molema District Municipality, non-compliance and the ability to hand over water service functions to different villages within its area of jurisdiction.

7.3.2 Appoint the task team to assist, monitor the process of drafting of the water service plan, coordinate or take any appropriate steps to ensure the planning, drafting, adoption of or review of such plans.

7.3.3 In accordance to the recommendations of the FFC: Submission for the Division of Revenue 2019/20, ensure that stronger conditions are attached to financial transfers to ensure compliance and that funds allocated are properly spent for the purposes indicated.

8. MONITORING

8.1 The Municipal Manager must, within fifteen (15) working days from the date of the issuing of this Report, and for my approval, submit the implementation Plan to me indicating when and how the remedial actions prescribed in this Report will be implemented.

8.2 The MEC must, within fifteen (15) working days from the date of the issuing of this Report, and for my approval, submit the implementation Plan to me indicating when and how the remedial actions prescribed in this Report will be implemented.
8.3 The Minister must, within fifteen (15) working days from the date of the issuing of this Report, and for my approval, submit the implementation Plan to me indicating when and how the remedial actions prescribed in this Report will be implemented.

8.4 The Municipal Manager must submit quarterly reports to my office on the progress made in respect of the implementation of the remedial action.

8.5 In line with the Constitutional Court judgment in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11*, and in order to ensure the effectiveness of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the Municipal Manager of Ngaka Modiri Molema District Municipality, the MEC and the Minister unless a Court order directing otherwise is obtained.

ADV. BUSISWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 22/12/2019

Assisted by: Ms. Laetitia Selamolela (Snr Investigator), Gift Matane, Odireleng Sebogodi (Investigators), Sechele J Keebine (Provincial Representative)