

20 March 2017

COMPLAINTS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION REGARDING THE VIOLATION OF SECTIONS 24 AND 27 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

Executive Summary

OUTA submitted a complaint to the South African Human Rights Commission (“SAHRC”) in conjunction with the widespread violation of the public’s constitutional right to access to clean and sufficient water as contemplated in section 27(1)(b) and the right to a healthy environment as contemplated in section 24 of the Constitution had taken place due to the Department of Water and Sanitation’s (“DWS”) failure to comply with the Water Services Act and the National Water Act, which gives effect to this significant constitutional provision. The prolonged inaction of the department amounts to a constitutional violation on a continuous basis, utterly lacking in transparency and accountability.

The Blue Drop (“BD”) 2014 Report was released in January 2017, indicating that a total of 44 systems out of 1093 drinking water systems achieved BD status. The report indicates a reduction of 8% in the national average score from 87,6 % in 2012 to 79,6% in 2014 which clearly indicates a decline in performance. Drinking water quality compliance showed that approximately 20% of the supply systems did not comply with microbiological standards as per SANS 241: 2006 whilst 76% of systems did not comply with chemical compliance standards.

The effect of this within the drought period as experienced during 2016, also put severe pressure on the water users and businesses, however, most water was lost due to municipal leakage (37%) and not due to consumption. There was no accountability on the side of Municipal Officials, but water users had to bear the cost of increased tariffs and fines.

To date, no explanation of envisaged end user tariffs has been provided and how it will affect water users in Gauteng regarding the Lesotho Highland Water Project Phase 2. With the Minister delaying the project in 2016, it is estimated that this project’s cost will escalate to around R2 billion. We must ensure that there are no further delays and that the Minister is held accountable for any future delays. It is worrying that a delay within a project of such significance can have such dire consequences, including that the taxpayer must bear the cost, whereas the Minister is not held accountable for a cent.

It is also clear in the introduction of the BD 2013 Executive Summary that the DWS’s indifference has led to no criminal prosecution of municipal officials. “It is not the purpose of this assessment to criminalise poor or high risk drinking water services and water quality, but rather to act as a precautionary tool, warning the Water Services Institutions in the country about the level of risk at which water services and water quality is delivered to the citizens of South Africa.”

Target 6.3 of the Sustainable Development Goals speaks especially about the reduction of pollution and improving of water quality by treatment of waste water flows (sewage). The status where Green Drop (“GD”) Reports have not been released (full report last published in 2012) and where more than 248 Waste Water Systems in South Africa “*are in crisis*”- flies in the face of this international commitment. For the 2013 GD Report, only an Executive Summary was released. This report was rightly proud about the increasing number of GD Certificates but also honest about the Purple Drops (Waste Water Systems scoring less than 30%).

The DWS website provides a glimpse on GD compliance for the period of February 2017 to March 2017 (the latest information after 2013 GD Executive Summary had been released). The website indicated that only 24.78% of all public (municipal) wastewater treatment plants in South Africa submitted wastewater quality data. This GD compliance report over the last 12 months indicates that only 29% of waste water discharged comply with microbiological waste discharge standards.

A total flow of 5258 MI/day is received at the 821 treatment facilities, which has a collective hydraulic design capacity of 6614 MI/day. This means that 80% of the design capacity is taken up by the current operational flows, leaving 20% to meet the future demand without creating new capacity.

This means that more than 71% of waste water treatment facilities is non-compliant, discharging more than 3 734 million (3,7 Billion litres) litres of waste water (Toxic Waste) that is partially treated or untreated raw sewage causing severe pollution to the water resources of the country and placing the health of all our people at risk.

Coincidentally the Minister did not seem phased by the pollution occurring throughout the country, seemingly instructing enforcement officials to step down and not act against municipalities before the 2016 municipal elections.

The persistence of the government's indifferent attitude towards the public's most basic human needs, undermines the public's enshrined constitutional rights as contemplated in sections 24 and 27 and potentially the public's right to human dignity.

Water is essential for human survival and must be protected against contamination and unhygienic environmental practices for drinking purposes. The right to a healthy environment requires the appropriate disposal of sewage where basic sanitation services should at the very least provide on-site services such as ventilated pit latrines.

The prolonged inaction of the department and the absence of transparency and accountability amounts to a constitutional violation on a continuous basis. Moreover, OUTA submitted that the conduct (or lack thereof) by the DWS, constitutes a violation of the public's constitutional rights in terms of sections 24 and 27 of the Constitution. The DWS's failure to adhere to relevant water legislation is in direct contrast to its constitutional duties.

Relief sought

In line with the SAHRC's constitutional mandate as contemplated in section 184 of the Constitution, OUTA requested the following relief from the SAHRC:

- 65.1 that a comprehensive investigation be conducted into the alleged violation of the public's constitutional rights in terms of sections 24 and 27;
- 65.2 to take appropriate steps to secure redress where it is determined that the public's constitutional rights in terms of sections 24 and 27 had been or are continuously being violated;
- 65.3 request that the DWS provide it with sufficient information relating to legislative compliance;

- 65.4 make recommendations to the DWS where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law;
- 65.5 to bring proceedings in a competent court or tribunal in its own name, or on behalf of the public and/or the complainant.