

## SA HUMAN RIGHTS COMMISSION PROVINCIAL INQUIRY ON ACCESS TO WATER IN THE KWAZULU-NATAL PROVINCE

Submission by Msunduzi Association of Residents  
Ratepayers and Civics (MARRC)

2 August 2022

Durban



## **Introduction**

On behalf of Msunduzi Association of Residents Ratepayers and Civics (MARRC) we would like to thank and acknowledge the SA Human Right Commission (SAHRC) for providing us a platform on which to submit details of the ongoing water crisis that we residents are facing daily in Pietermaritzburg.

Our submission will focus on Pietermaritzburg, the capital city where we are based.

The SAHRC provincial inquiry will focus on the following broad and overarching issues for investigation:

1. The extent of the challenges experienced by the communities in KwaZulu-Natal relating to access to clean drinking water.
2. The systemic nature of the violations.
3. The extent to which the organs of the state have respected, protected, promoted, and fulfilled the right to sufficient water.
4. The reasonableness of measures including legislation, by-laws, policies, and programmes adopted by organs of the state to ensure the realisation of the right to sufficient water.
5. Ultimately, the aim of the inquiry will be to determine whether water service authorities within the KwaZulu-Natal Province have violated residents' right to access clean drinking water, as provided for in national legislation as well as the Constitution. In the event of an adverse finding, the inquiry will aim to make recommendations on appropriate redress.

MARRC is a constituted and registered non-profit voluntary organisation representing a non-partisan, progressive and inclusive civil society movement. We aim to be solution-driven, to promote active citizenship, and to hold the Msunduzi Municipality accountable to its stakeholder base.

Beyond our local ambitions, we hope to contribute to strengthening a wider movement of active citizens, to improve the policy environment, and to generate greater social and political will and ultimately to enable South African municipalities work for their residents.

We trust our submission contributes towards the recommendations of the inquiry and places pressure on our municipalities to implement the human rights as espoused in South Africa's constitution.

## **Factors affecting poor service delivery of water**

The South African Constitution of 1996, Chapter 2, Bill of Rights clause 27 (1) (b) states that everyone has the right to have access to sufficient food and water.

Chapter 7 of the constitution, clause 152 (1) (b) requires local government to ensure the provision of services to communities in a sustainable manner.

Furthermore, clause 153 of the Constitution reads as follows:

*153. Developmental duties of municipalities*

*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. participate in national and provincial development programmes.*

This is not happening in the Msunduzi Municipality.

The [2020/2021 report](#) of the South African Auditor-General on local government audit outcomes 2020/2021, reveals a chilling reminder of how much must be done to clean up the sector. Only 41 out of 257 municipalities received clean audits – and this despite years of guidance and recommendations from the Auditor-General [AG] and enhanced powers in terms of the Amended Public Audit Act to chase down missing money.

This accurately reflects the reality of Msunduzi Municipality – it is currently under administration for the second time since 2010. The state of the municipality was summed up by Mr Scelo Duma, a former Ministerial Representative of KwaZulu-Natal Cooperative Governance and Traditional Affairs (COGTA) who resigned from the position of administrator of Msunduzi Municipality in April 2022, in his report titled “Msunduzi Report Card ‘Dust Unsettled’ 2019/2020” to the full council meeting in December 2020 as follows:

*“Msunduzi faces a unique conundrum where the problem is known, the answer is known, yet it seems the problem cannot get solved.*

*These are the four main reasons for the state of affairs: a culture of entitlement and impunity; political interference; the abuse of state resources for personal gain; and maladministration, fraud, and corruption.”<sup>1</sup>*

In a follow-up report titled “Council Handover Report, March 2022”<sup>2</sup> presented to the full council meeting in March 2022, Duma named a set of more specific, persistent problems besetting Msunduzi municipality, including:

- *The failure of **key infrastructure**, such as electricity and water due to poor/inadequate maintenance, age and vandalism;*
- *Failure to attend to the **repair** of potholes, street lights and storm water drains;*
- *Failure to **clean** the city and surrounding nodal and residential areas including irregular collection of solid waste and challenges associated with the processing and disposal of solid waste;*
- *Failure to adequately **plan** for and spend conditional grants over the past Medium Term Expenditure Framework;*
- *Failure to **contain costs** associated with support services such as security as well as external consultants.*

We work in an environment of **political interference and cadre deployment** of unskilled, unqualified, and inexperienced managers. which has contributed significantly towards poor **management** of the municipality. Persistent poor and unreliable billing of **revenue** from customers for rates and services rendered; dysfunctional **customer care** and inadequate **communication** with residents, business, and the public at large; slow and lacklustre consequence management to address abuses and infractions by municipal staff and officials; and complicated performance management systems all contribute to sustaining and worsening this situation. Preliminary findings of a municipal **qualifications** audit have revealed serious skills gaps and limited or non-existent consequence management. There are also several ongoing forensic investigations into the affairs of the municipality.

At a **structural** level, current legislation (e.g., the Electoral Act) makes it difficult for voters to hold their local representatives accountable – disabling functional local democracy.

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<sup>1</sup> <https://marrc.org.za/wp-content/uploads/2022/04/MR-Report-to-Council-2020.12.15i.pdf>

<sup>2</sup> <https://marrc.org.za/wp-content/uploads/2022/04/MR-Report-February-2022...v2022.03.10.pdf>

Policy around municipal systems also mitigates against effective public participation in critical processes, such as Integrated Development Planning (IDP). Ultimately, there is a need for shifts in local practices and policies, but also in the national laws and policies that have enabled current levels of dysfunction.

Finally, all the above, coupled with a range of more widespread and dramatic developments in recent years<sup>3</sup> have diminished people's **trust in local government** and, to a degree, in democracy itself. Many communities have turned inward in search of local solutions – sometimes in destructive ways (e.g., vigilante responses to looters in July 2021), but also by initiating self-help initiatives, participating in community policing, and other means of generating local solidarity and mutual support to mitigate against poor or non-existent service delivery. Others have all but given up hope – a response to the collapse of the local state and this results in destructive demonstrations in which remaining infrastructure is damaged or destroyed in protest to absent infrastructure and service delivery.

This kind of self-defeating action is exacerbated by a pattern of government neglect – communities know from experience that they will only get prompt attention if they cause government departments and their fellow citizens bigger problems than the ones they already face – an extreme case in which only the squeakiest wheels get greased.

The following are summaries of the major reasons for poor service delivery of water at the Msunduzi municipality and are included in submissions from various resident and ratepayer associations, ministerial representative reports, and recent AG 2021/2022 audit report on municipalities:



- The poor and decaying water infrastructure that has not been maintained for years has resulted in ongoing burst pipes. There are many community WhatsApp groups that report burst pipes on a daily basis.
- Only 5% or less of the municipal budget is earmarked for repairs and maintenance of infrastructure [Billions needed to fix Pietermaritzburg's pipes and power | Witness \(news24.com\)](https://www.news24.com/news24/infrastructure/billions-needed-to-fix-pietermaritzburgs-pipes-and-power-witness)
- Unqualified, inexperienced, unskilled senior managers and staff. This is illustrated by the submission of the Lincoln Meade RRA where staff weren't able to read plans and didn't know how to turn on the water valve. It was a local resident who intervened and showed the staff what to do.

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<sup>3</sup> Cf. the outcomes of the Zondo Commission of Inquiry into State Capture; the July 2021 unrest in KwaZulu-Natal and Gauteng, which included widespread looting, rioting and public violence; the aftermath of the April 2022 floods in KwaZulu-Natal, including several lacklustre state responses, and the public call for relief funds to be directed through civil society initiatives (such as Gift of the Givers) rather than the state.

- Total vacancy rate for all combined business units is 48.8%.
- Political interference and cadre deployment has resulted in unqualified, inexperienced, unskilled senior managers. It has been reported that some senior managers have standard eight or matric only. Skilled and experienced municipal staff who have worked at the municipality for many years are overlooked.  
<https://www.dailymaverick.co.za/article/2022-06-24-cadre-deployment-unconstitutional-and-illegal-commissions-bombshell-finding-on-ancs-key-policy/>
- <https://www.citizen.co.za/witness/news/why-councils-fall-apart/>
- <https://www.tei.org.za/Igeli/> study by The Ethical Institute on why councils fall apart
- Delays and turn around time in repairs of burst pipes and poor workmanship is a contributing factor. This has resulted in residents being without water for weeks on end. [Msunduzi Municipality appeals for patience after 3-day water outage \(iol.co.za\)](https://www.iol.co.za/news/south-africa/musunduzi-municipality-appeals-for-patience-after-3-day-water-outage-2022-06-24)
- Lack, or no availability, of water tankers to supply water during times of long water outages. Sabotage of water pipes by water tanker owners and contractors is a possibility.
- Poor communication with the call centre, senior managers, ward councillors.
- Reported burst pipes are not repaired for years despite residents follow-up and with reference numbers of calls. A prime example is of the burst pipe at the Edendale fire department which was reported immediately and not repaired until recently, a year later. This also demonstrates wastage of water.
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- Residents are billed high water costs due to damaged or leaking water meters that at times are not repaired timeously.
- Major problems with the SAP billing system and is highlighted by a case study MARRC did in October 2020. Here is a link to the report <https://marrc.org.za/wp-content/uploads/2021/01/Billing-case-study-report.pdf>. In an interview on ENCA the Msunduzi Mayor also mentioned the challenges of the SAP system <https://youtu.be/LHFKCiDTnDE>

The following are evidence of the major water challenges that residents face on the daily basis and captured on various social media platforms and WhatsApp community chat groups.

#### **Water leak in Woodlands for the past five years and still not repaired and reported**

<https://www.facebook.com/groups/506241673238313/permalink/1324947258034413/?sfnsn=scwspm&ref=share>

#### **Water leak in Sweetwaters for the past four months**

<https://www.facebook.com/groups/506241673238313/permalink/1247622539100219/?sfnsn=scwspm&ref=share>

#### **Resident reported two weeks without water**

<https://www.facebook.com/100000641102919/posts/pfbid03b8qKYRFDxwUa3j7kNKuxj7NbDRZpxs2Bkr6jyEbrCPMbnLus5n5H3GaR82tqW9cl/?sfnsn=scwspm>

#### **Water leak for the past seven days in Ward 17**

<https://www.facebook.com/100007773613554/posts/pfbid034ycz5EDijAdaDFmUrFAcz71zAj8nZ6vbDp4ZGBU6nXpvrFHw4Rm8oBeWnBrzPtJcl/?sfnsn=scwspm>

#### **Burst water pipes**

<https://www.facebook.com/groups/506241673238313/permalink/1311591772703295/?sfnsn=scwspm&ref=share>



Eastwood Resident and Ratepayer Association distributing bottled water to Eastwood residents  
<https://www.facebook.com/101235649253445/posts/pfbid01KkxR9JyS4xdokSoPBHBTvEKK1jJHvJuEv1WnoLxKxMRAD1btV6dBVmtBfGQUyHnl/?sfnsn=scwspmo>

WhatsApp chat screenshots with ward councillor and resident from Eastwood in Ward 34 – Msunduzi. Includes videos of water leakages.

<https://www.dropbox.com/sh/t10c3y54lb0nfca/AADoXMZSNOtYn8EFvmvQZzuYa?dl=0>

<https://drive.google.com/file/d/1KJan7YKax76x3i7bMDFeMRlqUse4at7W/view?usp=sharing>

<https://drive.google.com/file/d/1KolHKjP0cc4k7MJlG07ufROftXFyRvg7/view?usp=sharing>

## **Recommendations**

The following are our recommendations and proposed solutions to the major crisis of the water challenges we face in Msunduzi, and we hope that the SAHRC may include them in their recommendations and/or directives.

1. Address the political interference in the running of municipalities
2. Ensure qualified, skilled and experienced municipal staff are employed at the water department and scrap the cadre deployment policy of the governing party.  
(<https://www.dailymaverick.co.za/article/2022-06-24-cadre-deployment-unconstitutional-and-illegal-commissions-bombshell-finding-on-ancs-key-policy/>)
3. Implement the recommendations of the MARRC case study report on the billing challenges
4. Improve communication system on reporting on leaks at call centre and with senior managers
5. Msunduzi EXCO and Council allocate more funding for the repairs and maintenance of water infrastructure in the current and future budgets
6. Ensure adequate water tankers are distributed during water outages and investigate sabotage by water tanker owners and contractors on water infrastructure. We recommend that these services must be retained within municipality and stop the outsourcing of contractors and consultants.
7. Fill the vacancy rate of senior managers as a matter of urgency and do skills audit of current senior managers to ensure they duly qualified for said positions
8. Improve the turnaround time for repairs of burst pipes and follow-up on all reported leaks timeously
9. As a temporary measure employ local qualified residents to assist with repairs of all plumbing and leakages. Bring in retired or former municipal staff to assist here
10. Msunduzi municipality develop a five-year plan to address all challenges faced by the municipality and implemented by senior managers and overseen by the council

## **Conclusion**

MARRCs submission is our contribution towards a solution driven approach to address the many challenges faced by the Msunduzi municipality and it is hoped that our recommendations will be taken in good faith by the municipality and council.

We would like to thank the SAHRC for providing us a platform to input and to contribute towards those challenges of water needs for residents. Water is a constitutional right and residents should not be deprived of this basic and valuable resource.

We look forward to engaging with both the Msunduzi municipality and SAHRC in implementing recommendations and/or directives from this inquiry so that residents may ultimately benefit.

## **Annexure A**

Submissions by Resident and Ratepayer Associations affiliated to MARRC