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Our Ref: Shaatirah/Limacher/LRC/17-08-2020/01

Your Ref:

Date: 19 August 2020

**TO: THE HONOURABLE MINISTER OF HUMAN SETTLEMENTS,
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**AND TO: THE HONORABLE PRESIDENT OF THE REPUBLIC OF SOUTH
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**RE: LETTER OF DEMAND AND URGENT REQUEST FOR INTERVENTION
BY THE DEPARTMENT OF HUMAN SETTLEMENT, WATER AND
SANITATION TO PROVIDE WATER TO 125 COMMUNITIES ACROSS
SOUTH AFRICA**

DEAR SIRS AND MESDAMES

1. Please take note that the Legal Resources Centre acts on behalf of the Co-operative and Policy Alternative Centre (“**COPAC**”), who has been at the coal-face of the current water crisis gripping South Africa during the two national declarations of disaster for the COVID-19 virus and the national drought.
2. COPAC’s main objectives as a twenty-year-old non-profit organisation is to assist in building capacity amongst poor communities in order to achieve self-reliance, collectively driven objectives and sustainable and participatory development. As a result, COPAC has worked with progressive social movements, government departments, township communities and has partnered with both local and international non-governmental organisations with the aim of meeting these objectives.
3. COPAC is a co-founder and vibrant alliance partner of the South African Food Sovereignty Campaign (“**SAFSC**”). COPAC is currently coordinating the SAFSC response to Covid-19 which includes convening the National Food Crisis Forum endorsed by 110 organisations. On the SAFSC platform, COPAC and like-minded organisations focus on three crises that are gripping South Africa: climate change, access to water and access to sufficient food.
4. Our client is a concerned organisation and as such is operating and acting in the public’s interest and in the interest of a group of communities that are currently being impacted by not having access to water.

Background:

5. On or about 7 April 2020, COPAC together with the SAFSC had created a website tool, accessible on <https://www.safsc.org.za/water-stressed-communities-map/>. This website tool was created for communities to report on their water needs and challenges during the current Covid-19 lockdown and ongoing climate change-induced drought in different parts of the country.
6. As a result of the website tool, COPAC had compiled four national reports on behalf of the SAFSC that were sent to the Department of Human Settlement, Water and Sanitation and made publicly available on various social media platforms.
7. For the sake of not making this letter prolix, the reports are not reworded in this letter. Generally, each report captures the following:

7.1. Report 1:

- 7.1.1. The first report was sent to the Department of Human Settlements, Water and Sanitation and made public on various media platforms on 16 April 2020. The report had stated that 19 communities were currently water stressed and did not have access to water. The main reasons for not having access to water was due to infrastructure, non-delivery of water to water tanks, boreholes damage or boreholes had run dry and failure by water service institutions to provide water or plan for water infrastructure to those affected. The report demands the state to intervene urgently.

7.2. Report 2:

- 7.2.1. The second report was sent to the Department of Human Settlements, Water and Sanitation and made public on various media platforms on 29 April 2020 . The report had added another 28 communities who were currently water-stressed and did not have access to water. Similar reasons highlighted in the above paragraph are given in this report as to why the water was not

accessible. Over and above, the report highlights these communities' plight due to not having access to water. The report further makes demands on the state to intervene urgently.

7.3. Report 3:

7.3.1. The third report was sent to the Department of Human Settlements, Water and Sanitation and made public on various media platforms on 26 May 2020. The report had added another 32 communities who were currently water-stressed and did not have access to water. At this juncture, the total number was 79 communities. The report again reiterated the same reasons why the communities were water-stressed in the two previous reports. The report makes demands on the state to intervene urgently.

7.4. Report 4:

7.4.1. The fourth report was sent to the Department of Human Settlements, Water and Sanitation and made public on 24 July 2020. The report added another 9 communities. The total at this juncture was 88 communities. Again, the report highlighted the reasons for the communities being water stressed.. The report also included various rights being violated due to not having access to water and made some demands on the state to intervene urgently.

8. Report 1, Report 2, Report 3 and Report 4 are attached hereto and annexed as “CP1, “CP2”, “CP3” and “CP4” respectively (collectively known as “the Reports”)
9. On or about 30 April 2020, a member from COPAC sent an email which included the first two reports mentioned above to the Department of Human Settlement, Water and Sanitation. The reports were sent after an attendee from the Department of Human Settlement, Water and Sanitation requested for the reports to be sent to them during a zoom meeting, wherein COPAC had raised the water crisis.

10. On or about 26 May 2020, an email was sent to a member of the advisory committee of water specialists who reports to the Minister of Human Settlement, Water and Sanitation requesting that the Minister respond to the various reports. The advisor responded in an email stating that the Department for Human Settlement, Water and Sanitation would respond to the various reports and that the Department was working on the various lists provided in the reports.
11. On or about the 1 July 2020 COPAC had a meeting with the South African Human Rights Commission. Within that meeting, it was agreed that the reports would be tabled in the monthly meetings between the South African Human Rights Commission and the Department of Human Settlement, Water and Sanitation.
12. In terms of the Reports and the various meetings held, COPAC and other contact persons listed (from the South African Food Sovereignty Campaigns) in the Reports have not received acknowledgement of the Reports nor have they been approached by the Department of Human Settlement, Water and Sanitation to engage on this issue nor has any community listed in this letter received the relief it is asking for in the Reports.
13. Due to the government not responding to the Reports or providing the demanded access to water, COPAC had commenced in obtaining further information from the various communities.
14. This process has been wrought with difficulties as most of the communities affected are in remote areas with very little access to telecommunication services. Further various stages of lockdown have prevented COPAC members from travelling to the various areas of the communities to obtain information.
15. Currently, COPAC has 125 communities who have reported that they do not have access to water in the prescripts of the Regulations of the Compulsory National Standards and Measures to Conserve Water in terms of Government Notice R509 of 8 June 2001.

16. The 125 communities are listed in an pdf document, which includes the provinces of where the communities are located and ,where possible, the municipalities. The pdf document is annexed and attached hereto as “**CP5.**”

Covid-19 and the impact of not having access to water:

17. Due to the Covid-19 virus ability to spread at a rapid rate, the government has issued multiple regulations, directives and guidelines in order to curb the spread of the Covid-19 virus. Some of those requests and legal requirements have been to wear a mask, to sanitise ones hand regularly by either using hand-sanitiser or by washing them with warm water and soap, to increase personal hygiene measures and to stay home and socially distant as much as possible.
18. All of these guidelines, legal requirements and requests from the government require the use of water immediately, failing which communities are at a higher risk.

The drought currently taking place in South Africa:

19. On 4 July 2020, the Minister of Co-operative Governance and Traditional Affairs took the decision not to renew the national disaster declaration in respect of the drought facing South Africa made on 4 March 2020. The the decision not to renew the declaration in terms of the Disaster Management Act 52 of 2002, this should not be construed to mean that South Africa is currently not in a drought and/or is not being impacted by the current climate crisis.
20. Last year South Africa, like the rest of the world, recorded the second warmest year. The highest recorded temperature was recorded in 2016. South Africa experienced below average rainfall from 2013 to 2015. All of this has culminated in a plethora of droughts, most notably the day zero drought in the City of Cape Town. Currently, South Africa is still under a server drought, most notably in the Eastern Cape, western

areas of the Limpopo and the Northern Cape. The current rainfall patterns are projecting that South Africa will have further severe droughts in the future.

21. The impact of these natural disasters means more and more communities are going to struggle to get access to water, and their rights are going to be violated even further.

Rights being violated:

22. The following 125 communities' rights are being violated:

- 22.1. the right to live in an environment that is not harmful to their health or well-being is being violated;
- 22.2. the right to have access to sufficient food is being violated;
- 22.3. the right to have access to food is being violated;
- 22.4. the right to life is being violated;
- 22.5. the right to dignity is being violated;
- 22.6. the right to basic health care is being violated; and
- 22.7. the right to basic nutrition, shelter and basic health care services.

Governments powers and obligations:

23. The regulations on Compulsory National Standard and Measures to Conserve Water promulgated under government notice R509 and gazetted under number 22355 on 8 June 2001 details the minimum standard for access to water and sanitation for domestic, industrial and commercial use. The government must provide:

- 23.1. *“Basic sanitation.—The minimum standard for basic sanitation services is—
(a) the provision of appropriate health and hygiene education; and (b) a toilet which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a*

minimum and prevents the entry and exit of flies and other disease-carrying pests; and

23.2. *Basic water supply.—The minimum standard for basic water supply services is— (a) the provision of appropriate education in respect of effective water use; and (b) a minimum quantity of potable water of 25 litres per person per day or six kilolitres per household per month— (i) at a minimum flow rate of not less than 10 litres per minute; (ii) within 200 metres of a household; and (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.”*

24. Section 27 of the Disaster Management Act 57 of 2002 allows the Department of Co-operative Governance and Traditional Affairs to issue a declaration to give powers to other ministers within the South African cabinet to issue directives.

25. As a result the Minister for Human Settlement, Water and Sanitation had issued the Water and Sanitation Emergency Procurement Covid-19 Disaster Response Directions. These were issued in terms of regulation 10(8) of the Regulations issued in terms of section 27(2) of Disaster Management Act 57 of 2002 (the “**Directives**”).

26. The purpose of the Directives is to give control to the National Disaster Water Command Centre in order to take appropriate measures to prevent the spread of Covid-19. This includes directing water service institutions to perform certain tasks and to cooperate with the officials comprising the National Disaster Water Command Centre, as well as any other person authorised by Minister to give effect to these directions, to provide for the emergency procurement of goods and services required for the provision of water services through the manufacturing, supply and delivery of water tanks and related goods and services as a response to the Covid-19 pandemic, to establish and regulate the administration of the National Disaster Water Command Centre for the purpose of the centralisation of emergency procurement provision of water and sanitation equipment and to authorise the National Disaster Water

Command Centre to be responsible for the emergency procurement of water and sanitation equipment to procure directly with the manufacturing and suppliers.

27. In terms of Directive 7, the Department of Human Settlement, Water and Sanitation has the following obligations and powers:

“In fulfilling its constitutional obligations of providing access to basic water supply and basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being, and, specifically to mitigate the impact of Covid-19 epidemic, the Department may employ emergency procurement measures for the procurement of the following goods and services:

- *Water;*
- *Water tankers;*
- *Water tanks;*
- *Installation of water tanks and stands;*
- *Taps and communal standpipes;*
- *Sanitation packs [...];*
- *Ablution blocks and toilets.”*

28. In terms of directive 8(8), it states that:

“All emergency procurement for the provision of water through the manufacturing, supply, delivery and procurement of water tanks, water tankers, sanitation and related goods and services are hereby centralised under the auspices of the National Disaster Command Centre.”

29. In terms of section 73 of the Water Services Act 108 of 1997, it states that *“the Minister may provide water in emergency situations [and] perform the functions of a water services authority or water board [and] act as a water service provider under contract or approval only if the relevant water services authority is unable to provide water services.”*

30. In terms section 63 of the Water Services Act 108 of 1997, it states that *“if a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may [...] request the Province to intervene in terms of section 139 of the Constitution [and] if, within a reasonable time after the request, the Minister may assume responsibility for that function to the extent necessary.”*

Urgent intervention and demand:

31. In light of the above information, we are instructed by our Client for urgent action to be undertaken in terms of governments obligations under the Water Service Act, the Directives and the Regulations on Compulsory National Standard and Measures to Conserve Water. Such urgent actions are as follows:

- 31.1. To do all things necessary to procure and provide water, water tankers, water tanks, installation of water tanks and stands to the 125 communities in terms of Directive 7 read with Section 73(1)(e) and Regulation 3 and 4;
- 31.2. To do all things necessary to procure and provide taps and communal stands to the 125 communities in terms of Directive 7;
- 31.3. To do all things necessary to procure and provide sanitation packs consisting of hand soap, sanitisers, rubber gloves and masks to 125 communities in terms of Directive 7;
- 31.4. To immediately engage with the water service institutions wherein the communities are located and finalise a plan for the distribution mechanisms of the water and sanitation packs in terms of Directive 7;
- 31.5. To do all things necessary to continue to provide water after the Minister for Co-operation, Governance and Traditional Affairs declare that the National Declaration of a Disaster for the Covid-19 virus is not a national disaster

anymore, until such time that the water service institutions are able to take over the supply of water in terms of section 73 of the Water Services Act read against the Regulations on Compulsory National Standard and Measures to Conserve Water and the Directives.

31.6. To commence the procedures under section 63 of the Water Services Act.

32. Should the above demands not be met, and a written response not be received by 1 September 2020, we will proceed to initiate legal action.

33. We trust that you find the above in order and await your urgent response herein.

34. Our client's rights are reserved.

Yours faithfully,



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