[The original to the SAHRC has Mr Moletsane’s signature on this letter]

30 May 2017.

To: Ms Tammy Carter,

South African Human Rights Commission,

Cape Town.

Dear Ms Carter,

**Re: Complaint against the City of Cape Town concerning**

**sanitation provisions in the informal part of Masiphumele.**

On behalf of the complainants of Masiphumelele I want to thank you for your letter of 2 June 2016 and the response you received from the City of Cape Town on 9 March 2017. We note that it took the City nine months to respond. Below we respond in detail to the explanations the City offers but we wish to make it clear from the outset that the sanitary conditions in Masi and the imminent health dangers especially those children are exposed to have further deteriorated since we engaged with you one year ago. Herewith our detailed response to the City’s letter.

1. We reject the explanation that the delay by the City to respond, is due to the City having to seek “consultation with a number of internal departments as well as external stakeholders”. Our contention, and the reason for our appeal to you, is that the situation poses a health crisis. Any attempt to describe our concerns as “allegations” beggars belief. It should be apparent to any politician or official visiting the area in question that interim measures are called for, if permanent solutions take time to be implemented. We witness no “improvements”. We deal with each measure the City claims to be involved in since our complaint, in detail below. The City appears to take the view that it is dealing with a crises by adopting a ‘business as usual’ approach “within the ambit of its resources”. This, we submit, is a wrong reaction and underscores our impression that the City does not care what happens in Masiphumelele.
2. We note (in paragraph 2) that the City attempts to divest itself of part of the problem by stating that one part of the area where sanitation has collapsed, belongs to the “Provincial Housing Board” rather than the City. This is disingenuous to say the least. Ever since we can remember the City has provided the same unsatisfactory services without distinction to the area it owns and the area it now tells us is outside its jurisdiction. If this posed a problem, why did the City not deal with the matter, especially since both jurisdictions have Democratic Alliance majorities?
3. The City laments its lack of legal or possibly other tools to control “the on-going influx of people into the settlement”. The remainder of the paragraph expands on this sentiment. We submit that this is an outrageous and ahistorical claim to make. What control or regime of “permission” does the City want? A return to apartheid ‘influx control’? A new Eiselen Line? Post-apartheid cities throughout South Africa are subjected to urbanisation the apartheid regime countered with its race-based measures. Present urbanisation happens in that context and it behoves a City like Cape Town to accept and plan accordingly so that this apartheid legacy is managed in humane ways.

We contend that at least one third of the Masi population lives in the informal area under discussion here. People have lived here for 10 and some for 20 years. What is the real motive of the City when it appears to want to put brakes on the influx of rural people? The City’s response is especially hard to swallow when people come to this area because of the high level of job on offer when compared to other areas. The City’s argument is even harder to fathom when the City purchased and owns vast tracks of land in areas adjacent to Masi. We refer to the balance of Erf 5131, Solole, other land toward Noordhoek and the willingness of TMNP to cede more land for Masi’s expansion.

1. Paragraph 4 concerns the City’s ‘Action Matrix’ intended to deal with actions “contemplated by responsible departments in response to the challenges.” Those measures are all remedial in our view and do not deal with the root causes of sanitary arrangements that are broken, inadequate or inappropriate. We return to this point further down.

1. In paragraph 5 the letter falls into the usual out-dated and unhelpful term of “the community”. It implies unity of purpose and response to City initiatives. Throughout the letter the City bemoans ‘reactions’ or ‘responses’ from the people of Masi. We respectfully submit that the City failure to talk to ‘the community’ is its own social distance from the reality of the challenges facing the population of Masi. Its refusal to engage with elected leaders, albeit leaders from the ANC, suggest top-down arrogance and failure to understand.

We submit the following about the 241 full-flush toilets:

* 1. Whatever the City claims, many of the toilets are out of service. Some cubicles are victim to subsidence. In some areas toilets have not been repaired for many months.
  2. At places, e.g. Zululand, the toilets discharge their effluent openly into the lane next to the sole tap that provides fresh water for a huge number of homes. The effluent then flows down an alley, down another alley before it flows into a canal that has stagnant effluent in it, meandering between countless further homes. This open sewer has not been repaired for 8 months.
  3. The sewer pipes from the existing toilets are less than 20 cm beneath the soil. Invariably when a peg is driven into the ground a sewer pipe is damaged and sewage is disgorged. This is evidence of the poor quality of services provided.
  4. On the assumption that at minimum 15,000 live in the informal part and that “241” toilets are provided, the people living here, 62 people have to use one toilet. In reality the figure is much higher, given the toilets that are constantly broken. The City policy of one key per five households (minimum 25 people) is more than double the City’s own policy.
  5. The claim that there is a lack of space for toilets is of the City’s own making. As stated elsewhere, the City purchased land for Masi’s expansion. Lack of space is entirely created by forcing people to live in the congested conditions the City has so decreed.
  6. To claim that the Water and Sanitation Department ensures that the “sewers are functional” is hard to fathom. From my and our vista, the sewers are in a shocking state, which is the basis of our complaint to the SAHRC. The claim of “regular clean-ups” and “monitoring” creates a picture of municipal servicing that is simply untrue. We challenge anyone who doubts what is said, to visit Masi and see the reality of the dysfunctional service delivery for themselves. In our view the City lacks a plan and the will to regain control of the situation they have long lost control of.
  7. The claim of “reed cutting” to allow effluent to flow beyond Masi demonstrates the absence of on-the-ground knowledge of the situation. In reality the bobcats have pushed sludge to the edge of the inhabited reed bed, creating a dam wall that allows little water to flow through it.
  8. “Envisioning… at least one” washhouse in 2017 is part of the non-committal range of statements this letter is full of.
  9. Countless people will affirm that they have not been allocated a key (5 keys for 5 households who are meant to have access to one toilet) for a toilet. They beg the use of a key from those who have, which incurs the anger of the houses that have not been asked and causes serious tension on a regular basis.
  10. Women and children are not safe to walk long distances through unlit passages to toilets at night. Not least this contributes to the collection of night soil in containers that are dumped into the canals.
  11. It should be noted that there are self-made men’s urinals over the canals, another means to overcome the absence adequate toilet facilities.
  12. It should be noted that the crises over adequate toilets has driven residents to connect via self-made walkways through the reed land to relieve themselves, despite the fear of snakes. These passages go all the way to the perimeter wall of Lake Michelle.
  13. We acknowledge that the City provides and collects blue plastic bags to reduce the night soil danger to public health, but we dispute that this has in any way contributes to solving the issue. The same has to be said for the “green bin” introduction.
  14. What we would have expected from the City would have been that they will test the canal waters, the sludge mounds in the reed beds and the soil on which countless homes are located, for faecal content in it. We now demand that such investigations be made and be made public. Both the Masi residents and the wider community who employ people from Masi are entitled to independently verified results.

1. In paragraph 10 the City states that it is “exploring new parcels of suitable land”. This claim detracts from the fact that the City owns large parcels of land (Erf 5131 and Solole) it has owned for 11 years in one instance and 3 years in the other. We submit that City intransigence and opposition from surrounding suburbs is the real reason no plans for Masi’s expansion have been implemented. We are mystified about the claim that the City “has to keep all informal settlements within borders …”. It, once more, points to a lack of planning and a lack of will to solve these matters.

Without wishing to divert from the central issue of our complaint, the “phase 4 housing” now undertaken is an inappropriate use of the scarce land and building resources. We equally question how adjacent sports fields were built some years ago, without addressing the real problems.

Our disappointment with the City’s response could be expanded upon. In light of the seemingly vast gap between what we see and experience each day, and what the City says it is planning and doing, we refrain from expanding on detiled complaints here.

7. From the City’s letter we are unable to reconcile Erf’s 4926 and 4927 and how they relate to the map provided. We would appreciate further clarification.

Allow us to conclude by making these observations:

* The sanitary problems cannot be resolved unless the City deals with the population density in what is called the Wetlands. This cannot be achieved by making the living conditions in the area so bad that people are forced to leave. The only way to solve the Masi problems, created since the time of the apartheid period, is by immediately making more land available.
* Instead of claims and counter claims, the City should be obliged to monitor and release data about the incidence of diarrhoea as reported by citizens in Wetlands, the Clinic in Masi and by False Bay Hospital.
* The City often makes bold that it is doing the “best it can within available resources”. This is a disingenuous claim when considering the absence of a vision and a plan for poor people within the confines of the City. To avoid an outbreak of typhoid or related diseases requires urgent and exceptional measures for which funds have to planned within the budget cycles, notably when the problem has been known for several years.
* If budgets are tight, the City should consider re-prioritising budgets so this matter can be dealt with. If this is insufficient an additional levy should be discussed from households in the area, whether voluntary or mandatory.
* We strongly urge the SAHRC to hold a public hearing on the health crises in Masi. We believe residents have a right to air their frustration with the unresolved and deepening crises. To give vent to frustration in formal structures and democratically established forums is preferable to anger exploding in unproductive protests.
* We have no argument with the City having to follow processes and administrative rules. This makes for transparent and clean governance. We also recognise the need to set budgets and ensure funding for the budget. Our argument is a different one. We believe that the sanitary provisions in Masi have reached a crises level and require extraordinary measures to solve. This should be done through the legal process of re-prioritising of budget line items that can be deferred in the in view the crises here before us. The City should also consider raising additional rates, possibly from the well-off residents of the area. Some residents might even consider additional funds on a voluntary self-tax basis. Our concern is such that these and other options should be mooted in the public domain.
* Adequate and proper consultation is a very sore point for Masi residents. Given they represent the poorest community (with Ocean View) of the valley, they are entitled to extra and better means of information and when required, consultation. The whole of Masi accommodates some 50% of the residents of the valley, from Fish Hoek to Kommetjie and Noordhoek. Being half of the valley’s population they deserve similar services provided to the other half of the valley’s population. The demand for proper consultation has added urgency: The 40,000-member Masi community live on roughly 10% of the land with the other 40,000 living on 90% of the land in the valley. This obvious inequality demands extra-ordinary measures at all levels at which the City engages with Masi.

We conclude by stating that we are deeply disappointed by the defensive response from the City to our complaint. We engaged the SAHRC only after the City failed to hear or deal with our complaints directly. The health risk is ignored and instead the City’s letter argues that it is attending to the sanitation problems on a business-as-usual basis. We are not encouraged by this response. We reserve the right to make this letter public in the interests of making known what terrible conditions one-third or 15,000 people in Wetlands, are exposed to on a daily basis.

We wish to thank the Human Rights Commission for intervening on our behalf. We are affirmed in our belief that channels exist in our young democratic institutions through which we are able to point to matters that continue to be an affront to a better life as provided for in our Bill of Rights.

I am,

Yours faithfully,

Tshepo Moletsane. (082 490 0623)

Masiphumele Community Leader.