



Create Safe Communities - Defend the Rule of Law - Advance the Constitution

REPORT OF THE KHAYELITSHA 'MSHENGU' TOILET SOCIAL AUDIT



22-27 APRIL, 2013

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LIST OF THANKS¹

The SJC would like to thank the following organisations for their support of this project:



Society for Social Audit, Accountability and Transparency in India



¹ The organisations listed here have not officially endorsed this report.

FOREWORD

On 27 April, people across South Africa commemorate Freedom Day – a public holiday marking our country's transition to democracy in 1994. Exactly nineteen years later, 150 people gathered in Khayelitsha to assert their fundamental and hard-fought right to hold our leaders accountable in advancing the basic rights of all people, but particularly those in historically disenfranchised communities. The subject of the day: communal toilets servicing thousands of households in informal settlements across the City of Cape Town.

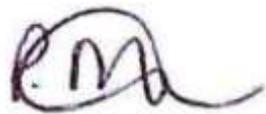
Almost two decades after our first democratic election, millions of South Africans continue to wait for what is arguably the most basic service. It is estimated that over sixteen million people in South Africa do not have access to basic sanitation facilities.² In the City of Cape Town there are at least 500 000 people living without access to basic sanitation facilities. Poor sanitation provision has significant adverse consequences on public health, safety and dignity. Improving access to this essential service is a critical step in improving quality of life in our communities.

There are many challenges to providing a toilet to all in need, including high rates of urbanization, a lack of coordinated planning and development, and poor meaningful engagement and partnership with communities. However, the question posed at the Freedom Day community meeting was a simple one. Why has the City of Cape Town paid a private service provider R126 million for a service that is not being fully delivered?

The Freedom Day community meeting followed a weeklong social audit, in which affected residents worked in partnership with trained practitioners to assess whether Mshengu Services – a provider of more than 5000 communal toilets - is delivering on the obligations outlined in their contract with the City. The results of this audit are detailed in this report. They suggest that the City is failing to monitor Mshengu and other contractors, which is leading to wasteful expenditure and human rights violations.

The Social Justice Coalition's (SJC) social audit into chemical toilets in Khayelitsha has illustrated how citizens can work alongside government in monitoring service provision and that communities themselves can participate directly in both monitoring service delivery and holding leaders accountable. The City of Cape Town has already responded to the audit results by acknowledging that it needs to "improve the monitoring of service providers",³ but much more must be done to ensure that remedial action is taken and that improvements are sustained. We hope that the findings will be used to improve service provision in Cape Town, but also across South Africa.

Sincerely,



Phumeza Mlungwana

General-Secretary
Social Justice Coalition

² Presentation to the Human Rights Commission by the Department of Performance, Monitoring and Evaluation, Cape Town (March 2012).

³ Statement by the Executive Mayor of Cape Town, Patricia De Lille. 'City Takes Steps To Improve Monitoring of Toilet Services', (6 May 2013).

<http://www.capetown.gov.za/en/MediaReleases/Pages/CITYTAKESSTEPSTOIMPROVEMONITORINGOFTOILETSERVICES.aspx>

SUMMARY OF FINDINGS

Between 22 and 26 April 2013 the SJC and residents of Khayelitsha conducted a social audit on chemical toilets – otherwise known as ‘Mshengu’ toilets. The audit was undertaken with the assistance of the International Budget Partnership (IBP) and the Society for Social Audit, Accountability and Transparency in India.

On Freedom Day, 27 April 2013, SJC hosted a public hearing where participants reported the evidence of the social audit and community members gave testimonies of their own experiences with this service. Community members raised concerns regarding safety, hygiene, a shortage of facilities, lack of meaningful engagement, fault reporting, lack of cleaning, the number of people sharing toilets, the lack of coordination over locked toilets and the problems regarding toilets not being secured to the ground..

Members of government and Mshengu Services were invited to listen to the reports, offer their views on remedial action, and respond to and engage with community members on the issues and concerns raised.

The social audit represents a crucial mechanism of engagement for communities in the provision of this basic service. During the social audit, over 60 participants interviewed 270 residents of 4 informal settlements - RR-Section, Taiwan/CT, Green Point, and Emsindweni. The participants inspected all 256 chemical toilets found across these four areas.

The audit found that:

- The City of Cape Town (the City) has paid Mshengu Services more than R126 million to provide and maintain temporary toilets. On inspection, only 256 toilets were found leaving 90 toilets missing and a distribution in all areas that falls far short of the 1 to 5 ratio. In many cases more than 10 families were sharing a single toilet and in one area 26 families were sharing 1 toilet.
- Of the toilets inspected, only 68% had been serviced by Honey Sucker in the last week, even though this is supposed to happen three times a week in those areas. No daily cleaning takes place in the areas under the audit, even though this is a contractual obligation.
- 54% of toilets were in an unusable state and a further 66% of toilets were damaged.
- None of the toilets inspected were secured to the ground and residents complained about the dangers of using a toilet that could easily topple or be pushed over. The contract requires that all toilets are safely secured to the ground, including those in sandy areas.
- No Community Liaison Officers (CLOs) were found on site and residents also reported that they did not know of any CLOs employed for this service. CLOs are meant to ensure the smooth running of the service and facilitate communication.
- Local labour does not appear to have been used. The contract states that labour should be sourced from within the community.
- A worrying amount of human waste appears to be unaccounted for, indicating that the regularity and/or the amount of toilets being cleaned is far less than what should be according to the stated number of toilets.

PART 1: DEVELOPMENT OF THE SOCIAL AUDIT

BACKGROUND

The Social Justice Coalition

The SJC is a mass-member based social movement campaigning for safe, healthy and dignified communities in some of South Africa's largest, most under-developed and dangerous townships. The SJC's main focus area is Khayelitsha, home to approximately 700 000 people, most of whom live in shacks made of wood and metal sheeting. With 14 active branches, 2000 members, and over 60 partner organisations, the SJC promotes active citizenship through education, policy and research, and community organising to ensure government is accountable, open and responsive. It also participates in broader campaigns to combat hate crimes, prevent corruption, and protect the supremacy of the Constitution and rule of law.

Clean and Safe Sanitation

The South African Constitution guarantees all people the rights to water, health, safety and a clean and safe environment; yet these rights are violated daily. It has recently been estimated that sixteen million people in South Africa do not have access to basic sanitation facilities. Using a toilet is the most dangerous activity for people living in informal settlements. Residents are robbed, beaten, raped and murdered while trying to relieve themselves. It is often women, children, the elderly, and the disabled, who suffer the brunt of this.

There are far too few communal toilets and taps, and residents must walk very long distances to relieve themselves or fetch water. In some cases, more than one hundred people have to share one toilet stall. Polluted water and raw sewerage routinely flows between and through homes making these communities places of illness and death. Lack of access to clean and safe sanitation routinely emerges as the number one concern for those living in these communities. In addition to improving safety, increased access to basic sanitation will also dramatically improve health conditions in communities where preventable illnesses attributable to poor sanitation and hygiene standards – such as diarrhoea, gastroenteritis, worms and TB – are widespread.

The SJC believes that by ensuring that existing toilets work optimally – through improved maintenance, monitoring and coordination – and by encouraging meaningful engagement between the state, communities, civic movements, and experts; universal access to the most basic of services can be achieved.

COMMUNITY DRIVEN SOCIAL AUDITS AND THE SJC

Development of the 'Mshengu' social audit

A social audit, "is a structured way of measuring, understanding and reporting on funds destined to benefit a community. The goal of the social audit is to improve the performance of government – and in so doing enhance accountability and transparency. Social auditing values the voice of the stakeholders, in particular the voices of the beneficiaries, referred to as right holders - whose voices are rarely heard".⁴

The social audit is a model that has been used successfully in countries such as India, where government encourages communities to assist in monitoring by providing detailed information, training and reporting mechanisms. It entails analyzing Service Delivery Agreements (SDAs) - which are the contracts between service providers and government - and other documents related to contracts, training residents and doing physical verification on the actual service and administering questionnaires to residents about the service.

Over the past two years, through the Imali Yethu (Xhosa for 'Our Money') project, the SJC has worked with Ndifuna Ukwazi (NU) to promote public engagement with government budgets, ensure that government adequately allocates funds to the needs of marginalised communities, and monitor the implementation of allocated funds. The project comprises three core components: education and capacity building; research and advocacy; and community-based monitoring.

The project aims to ensure that budget monitoring is expanded beyond an analysis of documents by a select few individuals and the SJC has received support from the IBP and NU. Staff members have undertaken consistent training over the last two years on local and national budget processes and monitoring.

The SJC has been monitoring 'Mshengu' toilets and other service providers for a number of years and continues to identify shortcomings with regard to cleaning and general maintenance. Early in 2012, the SJC and NU attended a Budget Monitoring Implementation workshop conducted by the IBP, which included training in conducting social audits. During the training, participants undertook a trial social audit exercise. For the exercise, participants evaluated the placement and servicing of portable chemical toilets in two informal settlements in Khayelitsha, namely RR section and Taiwan.

The trial exercise indicated a number of key problems regarding deviations from contract specifications and inadequate fault reporting. The social audit of 'Mshengu' toilets represents an example of auditing a basic service. The SJC, along with its partners, have used similar methods to audit other government services, such as street lights in Khayelitsha.⁵

'Engagement with the City on private contractors

The City is responsible for the provision of basic services including water, sanitation and refuse removal. In Cape Town's informal settlements many of these services are outsourced to private contractors, for which the City pays hundreds of millions of Rands.

⁴ MUHURI, *Social Audit Guide*, p. vi.

⁵ Nokubonga Yawa and GroundUp Staff. "Khayelitsha lights mostly on but disturbing signs of decline". *GroundUp* <http://groundup.org.za/content/khayelitsha-lights-mostly-concerning-signs-decline> (10 April 2013).

According to the Local Government Municipal Systems Act, 32 of 2000 (MSA), the municipal government is legally bound to monitor and ensure that the service is implemented adequately. This is particularly true for communal sanitation facilities, where there can be more than one hundred people sharing one toilet. It is community members that suffer when contractors do not fulfil their obligations.⁶ Toilets become unhygienic and unusable and uncollected rubbish attracts disease. This exposes people to serious health and safety risks.

The SJC has been consistently engaging with the City, including Mayor Patricia de Lille, on serious problems with private contractors related to basic service delivery, including Mshengu Services, dating back more than two years. On many occasions City officials have agreed that the City is not doing enough to monitor performance, and have promised to take remedial action. In May 2012, Mayor de Lille stated publicly in reference to poor outsourced refuse collection services that “the quality of the service (in informal settlements) is dropping because there’s no monitoring from the city’s side”.⁷

During the period of 12 July to 19 October 2011, the SJC and NU requested that the City release a number of SDAs and specifications of tenders relating to solid waste and sanitation in informal settlements. Numerous requests were submitted to the City’s Supply Chain Management (SCM) office. However, it was only through the direct intervention of Mayor de Lille that on 20 October 2011 that information was then provided by the City. The attempts to gain access to these documents were made in order to assist informal settlement residents to work with the City by monitoring and improving the delivery of basic services.

On 27 October 2011, Councillor Shehaam Sims, the then Mayoral Committee Member for Utility Services, Afzal Brey, representing the Mayor’s office, and other City officials, requested that the SJC make a submission on tender specification for basic municipal services in informal settlements. In February 2012, in a joint submission by the SJC and NU a number of issues were raised regarding tender specifications for basic municipal services in informal settlements (Annexure D). These were: accountability and openness; pre-award scrutiny of, and support to prospective service providers; recording and addressing complaints by residents; monitoring and evaluation of service providers; communication; and support for service providers.

During the past year, the SJC has directly engaged the City on the state of chemical toilets and worked towards accessing critical documents related to expenditure on this service.⁸ Chief of Staff in the Mayor’s office, Paul Boughey, responded directly to these requests. Most notable of these documents are SDAs and contracts between the City and private service providers tasked with providing basic services.

There were numerous delays and obstacles in interacting with officials at the City’s SCM office. The documents are by law required to be available immediately at government offices. However, it took the SJC significant time to access them and ultimately received two documents from the City:

1. The signed tender document between the City and ‘Mshengu’ (hereafter, ‘Contract’), without appendices.⁹ This was received after having received just the pricing schedules, which are included in the Contract.

⁶ Sisi Lwandle. ‘Stink Over Toilets’, *Cape Argus* (4 April, 2013).

⁷ Babalo Ndenze. ‘De Lille Slams City for Neglecting Poorer Areas’, *Cape Times*, (14 May 2012).

<http://www.iol.co.za/news/politics/de-lille-slams-city-for-neglecting-poorer-areas-1.1296023#.UX9bPSvk6nY>

⁸ Mary-Anne Gontsana. ‘Toilet Mess in Khayelitsha – SJC demands Service Delivery Contracts’, *Groundup* (20 March, 2013), <http://www.groundup.org.za/content/toilet-mess-khayelitsha-sjc-demands-service-delivery-contracts>

⁹ Accessible at <http://www.sjc.org.za/wp-content/uploads/2013/05/Contract-between-Mshengu-and-City.pdf>

2. A letter from Councillor Ernest Sonnenberg, dated 18 March 2013 with a copy of the tender details with the recorded waste volume received at Borchards Quarry disposal facility for the month of February 2013 (hereafter: 'Sonnenberg Letter').¹⁰

The City refused to provide a number of other documents relating to the Mshengu contract and on 25 March, 2013, the SJC submitted an application in terms of the Promotion of Access to Information Act (PAIA).

The SJC called for the following documents in the PAIA application:

1. A signed current copy of the agreement between the City of Cape Town and Imvusa Trading 700 CC trading as Mshengu Services (Tender no. 418S/2009/2010), including all appendices;
2. Copies of all the invoices from Mshengu Services generated for payment by City of Cape Town for services delivered in Khayelitsha over the last twelve months or the most recent twelve month period for which invoices are available related to the agreement stipulated in 1 above;
3. Copies of all proof-of-payments from the City of Cape Town to Mshengu Services over the last twelve months or the most recent twelve month period for which proof-of-payments are available related to the agreement stipulated in 1 above;
4. Delivery notes or other signed documents that serve as proof of the delivery of the chemical toilet units by Mshengu Services in Khayelitsha.

Sections 83(1)(d) and 84(3) of the MSA and section 75(1) of the Local Government Municipal Finance Management Act, 56 of 2003 (MFMA) both require tenders and service delivery agreements to be available to any person for inspection and to be posted on the website of the contracting municipalities.

Section 84 of the Local Government Municipal Systems Act (MSA) states that "when a municipality has entered into a service delivery agreement it must make copies of the agreement available at its offices for public inspection during office hours". However, the obstacles we faced in accessing these documents violate this section of the MSA. The handling of the matter is also contrary to the City's claims of being an open and transparent government.

CONDUCTING THE SOCIAL AUDIT ON 'MSHENGU' TOILETS IN KHAYELITSHA

Training and document analysis

From 22 to 26 April, 2013 the SJC and residents of four informal settlements in Khayelitsha conducted a social audit on 'Mshengu' toilets in RR-Section, Taiwan, Green Point, and Emsindweni. During the first two days, roughly 60 participants divided into teams drawn from each community underwent daily training. At the training, a presentation was given by the Open Democracy Advice Centre (ODAC) on access to information and PAIA. The second presentation was given by the City - Councillor Ernest Sonnenberg, (Mayoral Committee Member for Utility Services), Pierre Maritz, Manager, (Reticulation services) and Lllast Mudondo, (Monitoring and Evaluation officer). They explained the contract between the City and Mshengu Services and fielded questions from the participants.

¹⁰ Accessible at <http://www.sjc.org.za/wp-content/uploads/2013/05/Letter-from-Sonnenberg-18-March-2013.pdf>



*Ernest Sonnenberg, Pierre Maritz, and Llast Mudondo presenting at the social audit training, 22 April 2013.
Photo: SJC*

A large part of the training during the second day was based on analysing the contract documents relating to Mshengu Services, and training in administering the questionnaires.



Participants discussing Contracts
Photo: Neil Overy

The first document analysed was the Sonnenberg Letter, detailing the recorded waste volume received at Borchards Quarry disposal facility for the month of February 2013. The document reflects informal settlements serviced, servicing schedule for each settlement and the total volume of waste collected on certain days and times. The letter also provides the registration of each vehicle that deposited waste at the facility and the name of the driver for every drop-off.

The second document analysed was the Contract for rental, delivering, placement and servicing of portable chemical toilet units for informal settlements and public transport interchange sites within Cape Town. The sections that we focused on in the Contract were the price schedule, minimum dimensions of the toilet unit, installation guidelines, cleaning and monitoring guidelines, local labour, protective equipment and health care for employees and equipment for cleaning the toilet inside and outside. Both the Sonnenberg Letter and Contract specify the number of units supplied by the contractor.

The Contract states under Quality Control (p. 19), that the monthly processing of payment certificates will require a breakdown of invoices per informal settlement and or public transport interchange, indicating delivery and collection charge (if applicable), applicable daily rental charge per unit multiplied by the number of days, waste extraction and mechanical cleaning of interior of the portable chemical toilets, applicable miscellaneous labour charges. It also states that all invoices submitted should be accompanied

with access control sheets of waste disposal sites and a vehicle tracking report which should amongst other things contain information on dates, times and locations.

However, we only received the control sheets with no invoices from the City. We were not able to analyse the invoices related to Mshengu Services as the City had as yet not provided these, notwithstanding that the SJC called for these over a number of months and ultimately launched a PAIA application on 25 March 2013.

The questionnaires used for the social audit are meant to provide a check-list of issues for the team conducting the social audit. The questions enable the team to collect evidence when they physically verify government infrastructure projects and receive feedback from people living in the communities that are targeted by government projects under audit. Thus, some questions ask whether the toilets installed in the ground are consistent with the count provided in the government contract and whether these toilets are in a usable condition. Other questions seek information from the community for example on how often the toilets are cleaned or whether cleaners are recruited from within the community as required by the contract. The questionnaire is attached as Annexure C.

Going into the field

On Wednesday the participants were divided into two groups which went to Taiwan (also known as CT) and RR informal settlement to conduct the audit. Firstly, once in the area, the groups undertook rigorous physical verification of the toilets, capturing the information according to the structured checklist.



*Teams inspecting chemical toilets
Photo: Sowmya Kidambi*



Teams visiting chemical toilet sites
Photo: Sowmya Kidambi

Secondly, participants administered the questionnaire to residents. On Thursday, participants repeated the process in Green Point and Emsindweni with a group in each settlement. Participants inspected all of the 256 chemical toilets found in the four areas and interviewed 270 residents.



Teams interviewing users of the chemical toilets
Photo: Sowmya Kidambi



Participants discussing their findings
Photo: Neil Overy

Public Hearing

On 27 April, 2013 a public hearing was held at Matthew Goniwe Memorial High School, Khayelitsha Site B. At the public hearing team leaders presented the evidence from the social audit, community members provided testimonies of experiences using this service and representatives of government and private contractors were invited to listen and respond.

After a week of rigorous training and investigations, this hearing represented a crucial mechanism of engagement for communities with both government and the service provider.

The representatives present were as follows:

1. City of Cape Town

- Gisela Kaiser, Executive Director of Utility Services
- Tertius de Jager, Head of Water & Sanitation, District 3
- Lawrence Grootboom, Functional Operations Manager

2. Office of the Premier of the Western Cape

- Zak Mbhele, Spokesperson to the Premier

3. Western Cape Human Settlements Department

- Emmanuel Muanza, Programme Manager

4. Mshengu Services

- Sydney Esau, Operations Manager

The hearing also included an independent panel of observers. Together with the attendees, the panel listened to the evidence from the social audit, testimonies from community members, and responses.

The panel was made up of observers from different sectors of civil society who were independent, both from those undertaking the social audit as well as those responding. Panelists were welcome to comment during the proceedings, but were not obligated to do so. The panel included: Alide Dasnois (Cape Times), Mike Louw (COSATU), Yoliswa Dwane (Equal Education), and Amelia Mfiki (Treatment Action Campaign).



*Public Hearing, 27 April 2013
Photo: Sowmya Kidambi*



*Public Hearing, 27 April 2013
Photo: Sowmya Kidambi*

PART 2: KEY FINDINGS OF ‘MSHENGU’ CHEMICAL TOILET SOCIAL AUDIT

Expenditure for chemical toilets

As shown in Table 1 below, Mshengu Services was paid roughly 126 million from 1 November 2010 to 31 March 2013. The total number of toilets provided as part of the service as of February 2013 was 5014. Based on this number of toilets, the upkeep per chemical toilet for the duration of the contract up to 31 March 2013 is roughly R25,000. It is consequently R10 000 per toilet each year, and over R 800 per toilet per month.

Whilst the original estimate was for just under R165 million, only R126 million has been spent. There are still 3 months remaining in the contract, but based on the average of R4.3 million spent per month to date, there will still be a considerable amount – more than R30 million – that remains unspent. It is unclear why this is the case.

Table 1. Expenditure on ‘Mshengu’ contract up to 31 March 2013¹¹

City’s estimate of total cost of ‘Mshengu’ Chemical Toilet Contract	R164 885 227
Total Amount Spent by City on ‘Mshengu’ Chemical Toilet Contract (1 Nov 2010 - 31 March 2013)	R126 372 738 ¹²
Total Number of Chemical Toilets Hired from Mshengu (according to February 2013 statistics)	5014
Average expenditure per toilet over the period of the contract up to 31 March 2013	R 24 930
Average expenditure per toilet per year	R 10 315
Average expenditure per toilet per month	R 860

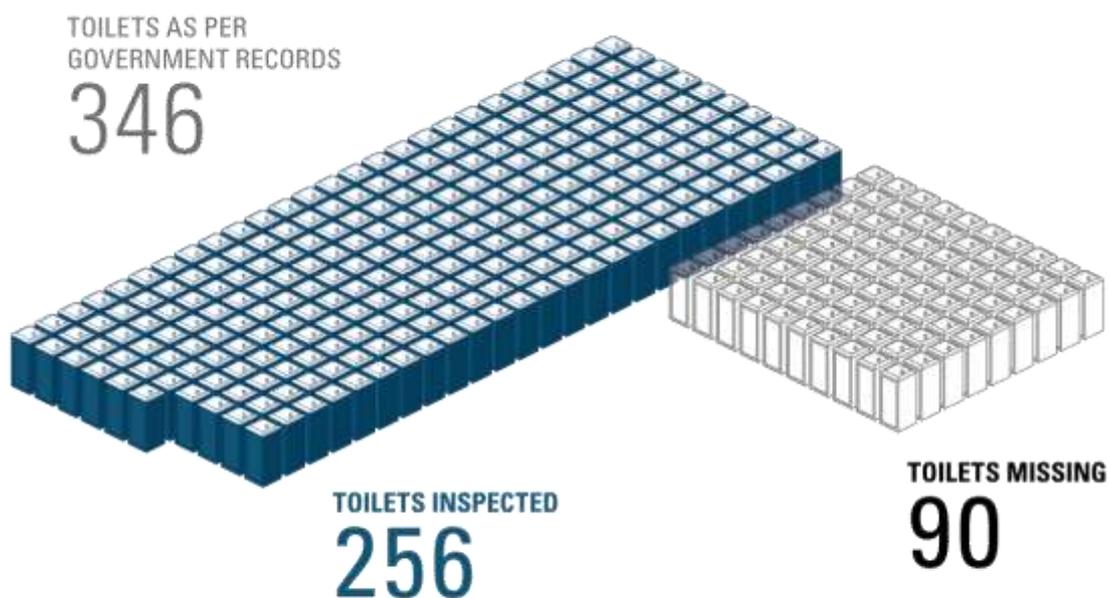
Limited supply of chemical toilets

According to both the Contract and Sonnenberg Letter there should have been 346 chemical toilets in the four areas - RR-Section, Taiwan, Greenpoint, and Emsindweni. The teams however were only able to locate 256 toilets, leaving 90 toilets missing. Of the 90 that were missing, 63 were in Green Point.

The City may be paying for toilets that are no longer in use or that may have been moved elsewhere. Without adequate monitoring and coordination, it is impossible to know whether toilets are missing, have been moved, or what is actually being paid for. It is also impossible for the City to claim that they are servicing all of the toilets if they do not know their location.

¹¹ These calculations are based on the numbers stated in the available documentation and as provided to us by the City.

¹² Presentation to the SJC social audit training by the City of Cape Town, Green Point White Hall, Khayelitsha (22 April, 2013).



The missing toilets are equally problematic given the distribution as can be seen in Table 2. The distribution of these 256 toilets is problematic with regard to national norms and standards. Whilst 5 households to 1 toilet is the required standard, we found that this standard is not met in any of the areas.

Table 2. Distribution of chemical toilets

	Green Point	CT Section	RR Section	Emsindweni
How many families on an average should use one toilet as per government target?	5	5	5	5
How many families on an average use each toilet?	more than 10	between 14 and 27 families	between 12 to 15 households	more than 26

“Last year in October I was going to the toilet. I was approached by a rapist and he dragged me to the bush and raped me, because of the toilets.”

- Green Point resident, Public Hearing, 27 April, 2013.

Lack of servicing and cleaning of chemical toilets

There are two forms of cleaning required by the contract. The first is daily cleaning of the toilets. The second is waste removal through servicing the toilets by a honey sucker.

The Contract states that,

“both the fixed chemical toilet storage tanks and the removable chemical toilet storage tanks must be serviced by Vacuum Tanker with high pressure water dispensing unit and/or Honey Sucker with high pressure water dispensing unit...”

Importantly, the Sonnenberg Letter indicates how many times per week this servicing must take place at each area. In the three areas that were part of the social audit, this cleaning should take place *three times per week*.

The Contract further states that

“guided by the number of users per day and the resultant pan soiling, the number of cleaning staff from the community should be determined in order to perform consistent cleaning cycles per day for each toilet (as determined by the City’s Project Manager), in addition to the Vacuum Tanker...and/or Honey Sucker...” (p. 17).

The audit however found that only 68% had been cleaned by the Honey Sucker during the last week. In terms of daily cleaning in addition to the honey sucker as stipulated in the contract, community members report that there are no daily cleaners.

“What worries me the most about Mshengu, yes we appreciate that we have them but Mshengu abuses us because they get full and we don’t know who to report to. When you complain to these people they tell you okay we will pass your complaints. I even asked them one day why are people from Emsindweni not employed so that when the toilets are full we can report to them and they can call other people. They told us no leave it as it is, it’s okay the way it is now.”

- Nolwazi, Emsindweni resident, Public Hearing, 27 April, 2013.

NUMBER OF TOILETS SERVICED IN THE LAST WEEK: 173

68%



Uncleaned chemical toilets
Photo: Sowmya Kidambi

During the inspection, we found that over half of the toilets were in an unusable state.

NUMBER OF TOILETS IN AN UNUSABLE STATE: 138

54%



“The people who live close to those toilets complain about flies coming from those toilets.”

- Odwa, DT Section resident, Public Hearing, 27 April, 2013.

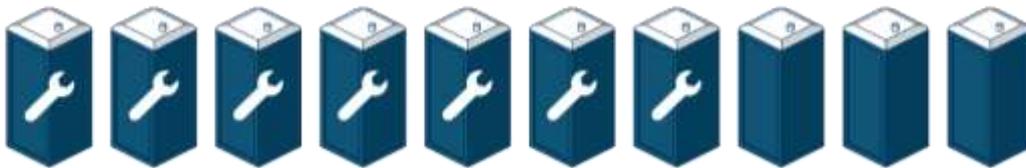
“What happens there is that children get rashes.”

- DT Section resident, Public Hearing, 27 April 2013.

We found further that two thirds of the toilets were damaged. This included broken doors, missing ventilation pipes, and broken seat covers. Damaged toilets may still be usable. As per the contract (tender specification 3), the contractor is required to replace or fix lost or damaged toilets.

NUMBER OF DAMAGED TOILETS: 170

66%



“We are asking that when the Mshengus be looked into when they are placed because they fall and they are very far from houses. If you are sick you wouldn’t get up at night and go to the Mshengus.”

- Mam’uNomzi Mpukwana, Emsindweni resident, Public Hearing, 27 April, 2013.



*Damaged chemical toilet
Photo: Sowmya Kidambi*

Three other key issues emerged regarding non-compliance with the contractual obligations set out in the Contract as seen in Table 3 below:

Table 3. Securing of toilets, community liaison officers (CLOs), and local labour

	Green Point	Taiwan	RR Section	Emsindweni
Number of toilets to be secured to the ground as per government contract	All	All	All	All
Number of toilets actually secured to the ground as per physical verification	None	None	None	None
How many CLOs/Team Leaders did you meet?	None	None	None	None

Number of cleaners to be employed from local informal settlement as per EPWP guidelines	All	All	All	All
Number of unskilled labourers actually employed from local informal settlement as per physical verification	0	0	0	0

Failure of contractor to secure toilets

The Contract states that regarding installation guidelines:

“When locating the toilet, ensure that the founding area is compacted and secure. Sandbags with a weak cement mixture should be used in sandy areas to assist with securing the founding area. All portable chemical toilets shall be secured to the ground to the satisfaction of the City’s Project Manager, in order to prevent them toppling due to wind or any other cause” (p. 17).

Securing the toilets is crucial to ensure that the toilets can be safely used and that they are not toppled. Toppling is a risk for those using the toilets, is hazardous when chemicals are spilt, and makes toilets unusable. The Contract is clear that securing the toilets is a requirement and that in sandy areas a weak cement mixture with sandbags should be used. On inspection, we found that no toilet had been secured to the ground in any way, in any of the areas subject to the audit, including those in sandy areas.

The City holds that toilets should not be secured to the ground since they are designed to be mobile, but this is in contravention of the Contract.

“I think where I live there maybe more than thirty of us using one ‘Mshengu’ that at this moment its lock cannot be closed, you have to use your hand to hold at the side. It shakes because there is a pallet underneath, the pallet gets rotten because of the wetness underneath caused by the spillage of the chemicals they pour.”

- Thabitha Booii, RR resident, Public Hearing, 27 April 2013.

No employment of community liaison officers

The Contract includes provision for the employment of one Community Liaison Officer (CLO) for each area. The CLO is hired:

“to assist with project initiation, allocation and hand-over of toilets to beneficiary communities and general communication regarding project with beneficiary communities” (p. 10).

During the audit, we were unable to locate any CLOs and residents did not know who they were or whether in fact any CLOs were employed for their area. This is particularly problematic with regard to coordination of the locking of toilets and community education on the use of the service.

No apparent use of local labour

The Contract emphasizes the importance of using local labour with regard to EPWP guidelines. Specifically it states that:

“contractor/s shall be required to maximize opportunities for the local unemployed people from informal settlements within which they operate through the use of labour intensive methods as per the EPWP guidelines. All unskilled labour should be sourced from the local informal settlement community. The section of local labour shall be made in consultation with City of Cape Town officials” (p. 18).

Based on the available evidence, there were no labourers who were locally employed.

Unaccounted for waste

The audit shows that significant amounts of waste appear to be unaccounted for. The City claims to cross verify the volume of waste deposited by the contractor in its designated waste disposal site against the total number of toilets on site (see Sonnenberg Letter).

Conservative estimates made by the SJC indicate that five families (25 individuals) who use a toilet once a day or two times within a cleaning cycle (typically three times a week) would generate 50 litres of waste. This volume together with the volume of chemicals (20 litres) adds up to 70 litres of waste that can be expected to be in each toilet when it is cleaned. The waste disposal container in each toilet can hold 200 litres of waste. When this volume of waste (70 litres per toilet) is multiplied by the number of times all 5,014 toilets in the City were cleaned in February 2013 as per the City’s records, SJC estimates that 4,119,080 litres of waste should have been disposed in Borchards Quarry. Yet, the City’s records only show 1,121,610 litres of waste as being deposited in the Quarry. The difference of 2,997,470 litres of waste appears to be unaccounted for.

There may be a number of explanations for this. However, it also may point to and support the findings that toilets are not being serviced as regularly as they are supposed to be and that toilets are not being serviced at all.

PART 3: DEMANDS

The SJC notes and welcomes the City of Cape Town's decision following the social audit to make information – including invoices - available to us. This will allow us to better understand why the service is not being implemented in line with its contractual obligations.

The social audit has exposed serious violations of the rights to dignity, privacy, health, equality and sanitation access in Khayelitsha. It also exposes egregious maladministration by the City of Cape Town in relation to outsourced services. In addition, we believe that Mshengu Services acted unlawfully by not fulfilling its contractual obligations. To prevent such occurrences in the future the SJC will now ask the Auditor General to investigate the contract, the Public Protector to investigate maladministration and the South African Human Rights Commission to investigate the rights violations.

People in Khayelitsha and SJC members undertake this not to punish the City but to hold it accountable. The SJC believes that these complaints to our Chapter Nine institutions will lay the foundation for action by informal settlement residents across our country.

The City of Cape Town has started the remedial process but much more action is needed to ensure that meaningful remedial action is taken.

We demand the following:

The City of Cape Town must:

1. Take immediate action to ensure that all chemical toilets that it has paid for:
 - are in their proper locations;
 - are where possible not being used by more than five families;
 - are cleaned regularly as per the cleaning schedule;
 - are secured to the ground;
 - if damaged, are repaired so that they are in a good working condition;
 - are cleaned by labour recruited from the local community;
 - are monitored and coordinated by the Community Liaison Officer as per the contract terms; and
 - are managed in a transparent manner, and relevant financial and project-related information is disclosed to anyone seeking such information.
2. Produce plans and timelines detailing how it will review the complaints lodged against Mshengu Services
3. Produce plans and timelines regarding how it will ensure that other outsourced providers of basic services to informal settlements meet the obligations outlined in their contracts
4. Produce plans and deadlines regarding how it will make publicly available– in accordance with the Municipal Finance Management Act - all necessary information (on its website and in hard copy when necessary) related to all outsourced service providers including contracts and invoices
5. Take responsibility to ensure that toilets are cleaned and maintained, just as public, communal facilities are in formal areas. Further, the City must acknowledge its mandate to ensure that the

system is operational and not shift the burden of responsibility to ensure that toilets are clean and working onto communities.

The Auditor General of South Africa must:

1. Immediately conduct a performance and expenditure audit of the contract between the City of Cape Town and Mshengu Services to provide chemical toilets to informal settlements

The Public Protector must:

1. Launch a time-bound investigation into the management of the chemical toilets contract. Appropriate action should be taken against City officials found responsible for mismanagement. Recovery proceedings should be launched and criminal action should be taken against the contractor, if the investigation finds that person responsible for violating the terms of the contract.

The South African Human Rights Commission must:

1. Launch an immediate investigation into possible human rights violations arising from the poor quality of chemical toilets provided by Mshengu Services

The Western Cape Provincial Government, as well as the national departments of Cooperative Governance and Traditional Affairs and Treasury must:

1. Submit plans and deadlines - in line with their oversight responsibilities - regarding how they plan to investigate whether the City of Cape Town and other municipalities/provinces are failing to monitor outsourced service providers to prevent further rights violations and wasteful expenditure

ANNEXURE A: RESOLUTIONS OF THE PUBLIC HEARING

RESOLUTIONS ON THE PROVISION OF SANITATION SERVICES TO INFORMAL SETTLEMENTS IN THE CITY OF CAPE TOWN

TAKEN AT THE PUBLIC HEARING HOSTED BY THE SOCIAL JUSTICE COALITION

27 April 2013 at Matthe Goniwe Memorial High School, Khayelitsha

Preamble:

Access to clean and safe sanitation is a basic human right. Our Constitution and national legislation states that everyone has the right to safety, health, dignity, and an environment that is not harmful.

In South Africa 1 in 3 people do not have access to basic sanitation. In Cape Town approximately 500 000 people do not have access to basic sanitation facilities.

From 22 to 26 April 2013 we, the Social Justice Coalition and residents of RR, Taiwan, Green Point and Emsidweni, conducted a Social Audit of chemical toilets provided by Mshengu Services in Khayelitsha. As part of this process we physically inspected 256 toilets in our communities and compared it to information provided to us by the City of Cape Town (the City).

We found that:

- 1 in 4 toilets was missing;
- 1 in 3 toilets had not been cleaned in the last week;
- 2 in 3 toilets were damaged.

We also met with 270 users of these toilets who raised concerns regarding safety, hygiene and a shortage of facilities.

It is hereby resolved, that at this public hearing, held on this day that:

1. Information

- 1.1 All information related to sanitation services across the City of Cape Town's informal settlements should be made public and accessible.

This information must include, but is not limited to:

- Tenders
- Contracts

- Rates
- Invoices
- Delivery notes
- Penalties

1.2 Information related to the weekly cleaning schedule (including differentiation between manual and machine labour), as well as the cleaning work actually undertaken each week, should be publically displayed within the community.

2. Provision of Sanitation Services in Informal Settlements

2.1 Location of toilets should be based on user-needs including the following considerations:

- Security
- Accessibility
- Health
- Stability of toilet structure
- Suitability of land
- Proximity to water source
- Existing facilities and distribution to ensure equitable usage

2.2 Damaged toilets should be replaced immediately and the details of this requirement needs to be stipulated in any contract or agreement.

3. Monitoring & Evaluation

3.1 The City of Cape Town must take full responsibility for monitoring and evaluation for ensuring that sanitation services are implemented in a safe and satisfactory manner.

3.2 The City of Cape Town must monitor that sanitation services are being delivered to the satisfaction of users and in adherence to all contracts or agreements. The City must ensure it is adequately resourced to implement its monitoring and evaluation responsibilities.

4. Meaningful Public Consultation & Participation

4.1 The public needs to be involved in the design, delivery and oversight of sanitation services. This includes consultation and participation:

- 4.1.1 During the preparation and development of the contract or agreement and including decisions regarding the chosen toilet technology and the placement of toilets;
 - 4.1.2 Before making payment, the City of Cape Town must convene public meetings to receive feedback from the community regarding the delivery of sanitation services;
 - 4.1.3 To receive the feedback from the community after the contract has been completed;
- 4.2 The City of Cape Town must install toll-free telephones in all areas in which sanitation services are provided for residents to make complaints when there are problems with the services.

ANNEXURE B: SUMMARY STATISTICS

	Greenpoint	CT Section	RR Section (Taiwan)	Emsidweni	All four areas that were part of social audit	Percentage
Number of toilets inspected	23 (includes one that was burnt)	89	92	52	256	
Number of toilets as per government records	86	110	100	50	346	
Number of missing/(excess) toilets	63	21	8	-2	90	26%
Number of damaged toilets	23	58	44	45	170	66%
Number of locked toilets	14	52	63	0	129	50%
Number of toilets cleaned in the last week	23	69	58	23	173	68%
Frequency with which toilets should be cleaned per week as per government records	3 (Tues, Thurs, Sat)	3 (Tues, Thurs, Sat)	3 (Tues, Thurs, Sat)	3 (Tues, Thurs, Sat)	3 (Tues, Thurs, Sat)	
Frequency with which toilets were actually cleaned last week	1 or 2 times	2 or 3 times	2 times	1 or 2 times	/	
Number of toilets to be secured to the ground as per government contract	All	All	All	All	All	
Number of toilets actually secured to the ground as per physical verification	None	None	None	None	None	
Number of toilets in an unusable state	6	89	26	17	138	54%
Were the areas surrounding the toilets clean?	No	No	No	No	No	
Number of cleaners to be employed from local informal settlement as per EPWP guidelines	All	All	All	All	All	
Number of cleaners actually employed from local informal settlement as per physical verification	0	0	0	0	0	
How many CLOs/Team Leaders did you meet?	None	None	None	None	None	
How many users did you meet?	64	80	81	45	270	
How many families on an average should use one toilet as per government target?	5	5	5	5	5	
How many families on an average use each toilet?	more than 10	between 14 and 27 families	between 12 to 15 households	more than 26	/	
Did users know where to register complaints?	No	No	No (sometimes they complain to the street committees)	No	No	
How many people expressed an interest in knowing more about the contract/service provider/payments?	Almost all	Almost all	Almost all	Almost all	Almost all	
How many people were willing to come and speak at the public hearing?	Most people we met	Most people we met	Most people we met	Most people we met	Most people we met	
Concerns/Issues related to toilets raised by the community/users –						
i. Safety related issues	Yes	Yes	No	Yes	/	
ii. Cleanliness related issues	Yes	Yes	Yes	Yes	/	
iii. Stability of the toilets-	Yes	Yes	Yes	Yes	/	
iv. Chemical related issues-	No	Yes	No	Yes	/	
v. Health	No	Yes	No	Yes	/	
vi. Consultation	No	Yes	No	Yes	/	
vii. Monitoring	No	No	No	Yes	/	
viii. Shortage of toilets	No	Yes	No	No	/	
ix. No local employment	No	Yes	No	No	/	

ANNEXURE C: QUESTIONNAIRE

Social Audit User Questionnaire

Location – C.T.Section / R.R.Section

Sl.No	Question to be asked to the user	Response
1.	Name	
2.	Father/ Husband Name	
3.	Location	
4.	Is there a chemical toilet located near your home?	
5.	When was the toilet installed?	
6.	Is it an individual toilet or a community toilet?	
7.	Do you use the toilet?	
8.	How many members in your family make use of the toilet?	
9.	Have you seen the toilet being cleaned?	
10.	How many times in a week have you seen the toilet being cleaned (frequency – once/twice etc)	
11.	How is the chemical toilet cleaned?	
12.	Do you know who provides the chemical toilets and services them?	
13.	If there is any problem with the toilet, who do you approach to register your grievance?	
14.	Do you know who a Community Liaison Officer is?	
15.	Have you ever been employed to work as a CLO?	
16.	Are you aware of anyone from the community who has been employed to work as a CLO?	
17.	Has anyone from the community been employed by the service provider as cleaners?	
18.	Are you aware of the fact that the service provider is supposed to employ local community members as CLOs and as cleaners?	
19.	Are you aware of the fact that the City spends SAR - ___ to clean each toilet?	
20.	Would you like to know details of the services that the service provider is supposed to provide?	
21.	Any other comments -	

Social Audit User Questionnaire

Location – C.T.Section / R.R.Section

Sl.No	Question to be asked to the user	Response
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1.	Name	
2.	Father/ Husband Name	
3.	Location	
4.	Is there a chemical toilet located near your home?	
5.	When was the toilet installed?	
6.	Is it an individual toilet or a community toilet?	
7.	Do you use the toilet?	
8.	How many members in your family make use of the toilet?	
9.	Have you seen the toilet being cleaned?	
10.	How many times in a week have you seen the toilet being cleaned (frequency – once/twice etc)	
11.	How is the chemical toilet cleaned?	
12.	Do you know who provides the chemical toilets and services them?	
13.	If there is any problem with the toilet, who do you approach to register your grievance?	
14.	Do you know who a Community Liaison Officer is?	
15.	Have you ever been employed to work as a CLO?	
16.	Are you aware of anyone from the community who has been employed to work as a CLO?	
17.	Has anyone from the community been employed by the service provider as cleaners?	
18.	Are you aware of the fact that the service provider is supposed to employ local community members as CLOs and as cleaners?	
19.	Are you aware of the fact that the City spends SAR - ___ to clean each toilet?	
20.	Would you like to know details of the services that the service provider is supposed to provide?	
21.	Any other comments -	

Social Audit User Questionnaire

Location – C.T.Section / R.R.Section

Sl.No	Question to be asked to the user	Response
1.	Name	
2.	Father/ Husband Name	
3.	Location	
4.	Is there a chemical toilet located near your home?	
5.	When was the toilet installed?	
6.	Is it an individual toilet or a	

	community toilet?	
7.	Do you use the toilet?	
8.	How many members in your family make use of the toilet?	
9.	Have you seen the toilet being cleaned?	
10.	How many times in a week have you seen the toilet being cleaned (frequency – once/twice etc)	
11.	How is the chemical toilet cleaned?	
12.	Do you know who provides the chemical toilets and services them?	
13.	If there is any problem with the toilet, who do you approach to register your grievance?	
14.	Do you know who a Community Liaison Officer is?	
15.	Have you ever been employed to work as a CLO?	
16.	Are you aware of anyone from the community who has been employed to work as a CLO?	
17.	Has anyone from the community been employed by the service provider as cleaners?	
18.	Are you aware of the fact that the service provider is supposed to employ local community members as CLOs and as cleaners?	
19.	Are you aware of the fact that the City spends SAR - ___ to clean each toilet?	
20.	Would you like to know details of the services that the service provider is supposed to provide?	
21.	Any other comments -	

Social Audit User Questionnaire
Location – C.T.Section / R.R.Section

SI.No	Question to be asked to the user	Response
1.	Name	
2.	Father/ Husband Name	
3.	Location	
4.	Is there a chemical toilet located near your home?	
5.	When was the toilet installed?	
6.	Is it an individual toilet or a community toilet?	
7.	Do you use the toilet?	
8.	How many members in your family make use of the toilet?	
9.	Have you seen the toilet being cleaned?	
10.	How many times in a week have	

	you seen the toilet being cleaned (frequency – once/twice etc)	
11.	How is the chemical toilet cleaned?	
12.	Do you know who provides the chemical toilets and services them?	
13.	If there is any problem with the toilet, who do you approach to register your grievance?	
14.	Do you know who a Community Liaison Officer is?	
15.	Have you ever been employed to work as a CLO?	
16.	Are you aware of anyone from the community who has been employed to work as a CLO?	
17.	Has anyone from the community been employed by the service provider as cleaners?	
18.	Are you aware of the fact that the service provider is supposed to employ local community members as CLOs and as cleaners?	
19.	Are you aware of the fact that the City spends SAR - ___ to clean each toilet?	
20.	Would you like to know details of the services that the service provider is supposed to provide?	
21.	Any other comments -	

Social Audit User Questionnaire

Location – C.T.Section / R.R.Section

Sl.No	Question to be asked to the user	Response
1.	Name	
2.	Father/ Husband Name	
3.	Location	
4.	Is there a chemical toilet located near your home?	
5.	When was the toilet installed?	
6.	Is it an individual toilet or a community toilet?	
7.	Do you use the toilet?	
8.	How many members in your family make use of the toilet?	
9.	Have you seen the toilet being cleaned?	
10.	How many times in a week have you seen the toilet being cleaned (frequency – once/twice etc)	
11.	How is the chemical toilet cleaned?	
12.	Do you know who provides the chemical toilets and services them?	
13.	If there is any problem with the toilet, who do you approach to	

	register your grievance?	
14.	Do you know who a Community Liaison Officer is?	
15.	Have you ever been employed to work as a CLO?	
16.	Are you aware of anyone from the community who has been employed to work as a CLO?	
17.	Has anyone from the community been employed by the service provider as cleaners?	
18.	Are you aware of the fact that the service provider is supposed to employ local community members as CLOs and as cleaners?	
19.	Are you aware of the fact that the City spends SAR - ___ to clean each toilet?	
20.	Would you like to know details of the services that the service provider is supposed to provide?	
21.	Any other comments -	

Social Audit Questionnaire for CLO/Cleaners

Location – C.T.Section / R.R.Section

SI.No	Questions to be asked	Response
1.	Name	
2.	Have you been employed as a CLO / Team Leader /Cleaner?	
3.	Have you received training as a CLO / Team Leader?	
4.	Who did you receive training from?	
5.	How many times have you been employed as a CLO/Team Leader/Cleaner?	
6.	How many hours did you have to work?	
7.	What were the tasks assigned to you?	
8.	How much did you get paid each hour/ day?	
9.	Was the cleaning undertaken according to the guidelines in Section 8 of the Contract- page 17?	
10.	Were you provided with the tools that are listed below – <ul style="list-style-type: none"> • Gum Boots • Gloves • Respirator masks • Rainsuits • Reflective vests • 2 sets of overalls • Anti bacterial skin cleanser 	

	<ul style="list-style-type: none"> • Shower facilities • Inoculation injections 	
11.	Have you ever been injured while working?	
12.	If yes, what was the immediate relief that the service provider ensured you get?	
13.	Any other comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

SI.No	Verification Item	Response
1.	Toilet Number (Please mention the #)	
2.	Locked / Unlocked	
3.	Clean / Unclean	
4.	Is the toilet secured to the ground?	
5.	Any damages in the toilet? (Parts that might be missing – please refer to the Section 4- General Product Specifications on page 12)	
6.	Are the toilets as per the dimensions in the contract? (Please refer to Page 16 of the contract – section 6 – minimum dimensions of the toilet unit)	
7.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
8.	Is the area surrounding the toilets clean? (Please click photos is possible)	
9.	Additional Comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

SI.No	Verification Item	Response
1.	Toilet Number (Please mention the #)	
2.	Locked / Unlocked	
3.	Clean / Unclean	
4.	Is the toilet secured to the ground?	
5.	Any damages in the toilet? (Parts that might be missing – please refer to the Section 4- General Product Specifications on page 12)	
6.	Are the toilets as per the dimensions in the contract? (Please refer to Page 16 of the contract – section 6 – minimum dimensions of the toilet unit)	
7.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
8.	Is the area surrounding the toilets clean? (Please click photos is possible)	
9.	Additional Comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

Sl.No	Verification Item	Response
10.	Toilet Number (Please mention the #)	
11.	Locked / Unlocked	
12.	Clean / Unclean	
13.	Is the toilet secured to the ground?	
14.	Any damages in the toilet? (Parts that might be missing – please refer to the Section 4- General Product Specifications on page 12)	
15.	Are the toilets as per the dimensions in the contract? (Please refer to Page 16 of the contract – section 6 – minimum dimensions of the toilet unit)	
16.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
17.	Is the area surrounding the toilets clean? (Please click photos is possible)	
18.	Additional Comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

Sl.No	Verification Item	Response
10.	Toilet Number (Please mention the #)	
11.	Locked / Unlocked	
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16.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
17.	Is the area surrounding the toilets clean? (Please click photos is possible)	
18.	Additional Comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

Sl.No	Verification Item	Response
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19.	Toilet Number (Please mention the #)	
20.	Locked / Unlocked	
21.	Clean / Unclean	
22.	Is the toilet secured to the ground?	
23.	Any damages in the toilet? (Parts that might be missing – please refer to the Section 4- General Product Specifications on page 12)	
24.	Are the toilets as per the dimensions in the contract? (Please refer to Page 16 of the contract – section 6 – minimum dimensions of the toilet unit)	
25.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
26.	Is the area surrounding the toilets clean? (Please click photos is possible)	
27.	Additional Comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

SI.No	Verification Item	Response
19.	Toilet Number (Please mention the #)	
20.	Locked / Unlocked	
21.	Clean / Unclean	
22.	Is the toilet secured to the ground?	
23.	Any damages in the toilet? (Parts that might be missing – please refer to the Section 4- General Product Specifications on page 12)	
24.	Are the toilets as per the dimensions in the contract? (Please refer to Page 16 of the contract – section 6 – minimum dimensions of the toilet unit)	
25.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
26.	Is the area surrounding the toilets clean? (Please click photos is possible)	
27.	Additional Comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

Sl.No	Verification Item	Response
28.	Toilet Number (Please mention the #)	
29.	Locked / Unlocked	
30.	Clean / Unclean	
31.	Is the toilet secured to the ground?	
32.	Any damages in the toilet? (Parts that might be missing – please refer to the Section 4- General Product Specifications on page 12)	
33.	Are the toilets as per the dimensions in the contract? (Please refer to Page 16 of the contract – section 6 – minimum dimensions of the toilet unit)	
34.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
35.	Is the area surrounding the toilets clean? (Please click photos is possible)	
36.	Additional Comments	

Physical Verification Exercise Format (Location – C.T.Section / R.R.Section)

Sl.No	Verification Item	Response
28.	Toilet Number (Please mention the #)	
29.	Locked / Unlocked	
30.	Clean / Unclean	
31.	Is the toilet secured to the ground?	
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34.	When was the last time the toilet was cleaned (please ask the people who live close to the toilet)?	
35.	Is the area surrounding the toilets clean? (Please click photos is possible)	
36.	Additional Comments	

Summary Sheets (Exzai)

I. Summary Sheets on Trucks –

2 trucks per team

Truck # _____ Driver Name- _____

Date	Serviced/No. of Sites/Toilets	Volume	Time

II. Summary Sheet on CT/RR – Location wise

Settlement Name – RR Section / CT Section

Cleaning Schedule –

No. of Toilets –

Date	Volume	Truck #	Other sites cleaned
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FOR THE ATTENTION OF:

CITY OF CAPE TOWN MAYORAL COMMITTEE MEMBER FOR UTILITY SERVICES, CLLR SHEHAAM SIMS

REGARDING:

SUBMISSION AND RECOMMENDATIONS ON TENDER SPECIFICATIONS FOR EXTERNAL SERVICE PROVIDERS OF BASIC MUNICIPAL SERVICES IN INFORMAL SETTLEMENTS

EXECUTIVE SUMMARY

Chapter 7 of the Constitution sets out the functions and powers of local government. Section 153(a) provides that a municipality must “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”.

The Local Government Municipal Systems Act, 32 of 2000(MSA) was enacted to provide for the core principles, “mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all”. Importantly, it provides for community participation in “strategic decisions” regarding all aspects of Chapter 8 of the Act. These strategic decisions refer to municipal services including service delivery agreements(SDAs) in the City of Cape Town. Such SDAs include those for the provision of community-based refuse collection and area cleaning services, the disposal of waste from storage areas, and the provision and maintenance of temporary sanitation services in informal settlements.

The Social Justice Coalition (SJC) and Ndifuna Ukwazi (NU) welcome the opportunity to make submissions relating to new tender specifications for basic municipal services in informal settlements. Our submission is made in terms of sections 16, 17 and 20 of the MSA which codifies meaningful engagement with communities and organisations representing them, as well, as sections 81, 83 and 84 of the same Act.

After studying the current SDAs, we have identified the following areas that could be strengthened in the new tender specifications:

- A. Accountability and openness;
- B. Pre-award scrutiny of, and support to prospective service providers;
- C. Recording and addressing complaints by residents;
- D. Monitoring and evaluation of service providers;
- E. Communication; and
- F. Support for service providers.

Introduction

1. The SJC is a mass-member based social movement located in Khayelitsha, Cape Town, campaigning for safe communities for all. With 11 active branches and over 40 partner organisations, the SJC promotes active citizenship through education, policy and research, and community organising to ensure government is accountable, open and responsive.
2. NU is a recently established not-for-profit Trust based in Cape Town, whose central purpose is the building of a cadre of young leaders through systematic and sustained education and mentorship, while also providing legal and research support for social justice organisations, such as the SJC.
3. We welcome the willingness expressed by CoCT Executive Mayor Patricia de Lille and Councillor Shehaam Sims (Utility Services) to work with civil society to ensure acceptable service delivery to all of Cape Town residents. We further wish to thank Councillor Sims for the opportunity, acknowledged at a meeting held on 28 November 2011, to make a submission relating to new tenders for the provision of basic municipal services in informal settlements.

A. ACCOUNTABILITY AND OPENNESS

4. Although prospective and appointed service providers have legal duties to the contracting municipality, the CoCT “remains responsible for ensuring that the service is provided...in the best interest of the local community”. The legal duties of the CoCT include the reasonable implementation and monitoring services as well as the managing of potential conflicts of interest. (Section 81 of the MSA)

5. Sections 83(1)(d) and 84(3) of the MSA and section 75(1) of the Local Government Municipal Finance Management, Act 56 of 2003 (MFMA) both require tenders and service delivery agreements to be available to any person for inspection and to be posted on the website of the contracting municipalities.
6. Initially, NU and the SJC struggled to access the Service Delivery Agreements (SDAs) of the CoCT. This process took six months. Our aim was to establish the corporate identities and duties of the service providers responsible for sanitation and solid waste removal in Khayelitsha to determine whether these duties were appropriate and to hold them accountable for implementation. After accessing the agreements we identified the following shortcomings.

Broad operational plans

7. The community-based refuse collection and area cleaning services tenders all include the following requirement:

*“As part of the tendering process, tenderers must provide a **broad operating plan** outlining their proposed operating plan outlining their proposed operating methods.”*

(See tender no. 383S/2008/09; emphasis added)

8. The majority of SDAs that were signed, and which required such broad operational plans to have been submitted, did not contain them. This suggests a weakness of contract management within the CoCT and the inability of service providers to fulfil a minimum requirement of any SDA.

Detailed operational plans

9. Community-based refuse collection and area cleaning tenders further require the submission of a detailed operating plan:

*“By the end of the first month of operation, each MC [managing contractor] will be required to submit a **detailed operating plan**.”* (See tender no. 383S/2008/09; emphasis added)

10. The requirement for the submission of a broad operational plan as part of the tendering process and a detailed operational plan when the contract is awarded to a service provider is central and indispensable to accountability and openness. Further, this is fundamental to ensure adequate service delivery and performance management in informal settlements.

11. As a means to ensure the community’s full awareness of the specific nature of the basic municipal services being provided through external mechanisms, the detailed operating plans submitted by

appointed service providers (aside from the broad operating plans initially submitted) should also be attached to SDAs to enable public inspection.

12. Indeed, the administration of a municipality is obliged by Section 6(2)(e) of the MSA to “give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive”.

B. PRE-AWARD SCRUTINY OF, AND SUPPORT TO PROSPECTIVE SERVICE PROVIDERS

13. Section 78(3)(b)(ii) of the MSA requires municipalities who are exploring how best to provide a service through an external mechanism, to assess different service delivery options while taking into account “the capacity and potential future capacity of prospective service providers to furnish the skills, expertise and resources necessary for the provision of the service”.

14. As mentioned above, the majority of SDAs do not include a broad operating plan, despite this being a requirement in the tender specifications.

15. This suggests that insufficient scrutiny is applied by CoCT management when evaluating tender submissions. It also suggests that many service providers are unable to fulfil the basic requirements of the submission.

16. In order to ensure compliance with submission requirements, technical support needs to be offered to prospective tenderers when completing their submission, particularly to those that are identified as being inexperienced.

17. In offering such technical support consideration must be given to ensure that the tender process itself is not influenced or compromised. The support should only allow prospective tenderers an opportunity to ask questions relating to the tender and to request clarification. One avenue would be to appoint a clarifications officer who deals with pre-submission queries. Another would be through the implementation of a hotline for prospective tenderers. If such a hotline is in operation, details of the service and its phone number need to be publicised.

18. Given the critical nature of basic services in informal settlement, a service provider must also only be selected if he is deemed to meet a certain level of suitable qualification.

C. RECORDING AND ADDRESSING COMPLAINTS BY RESIDENTS

19. All tenders for the provision of community-based refuse collection and area cleaning services in informal settlements require the managing contractor to “facilitate the receiving and recording of complaints”. This requirement includes the following:

“In order to do this, the contractor must:

- *inform residents of their right and the need to report complaints and incidents and encourage them to do so*
- *provide a reporting venue ... and ensure residents are informed thereof as well as his/her telephone number*
- *provide a recording book at this venue and ensure all complaints and incidents are recorded in this book. The contractor must also automatically record any known incidents ...”*

(See tender no. 230S/2008/09)

20. The recording of residents’ complaints is essential to the continued evaluation of appointed service providers, to identify shortcomings, and to ensure sustained service delivery of an acceptable quality.

21. However, to our knowledge appointed service providers for the delivery of community-based refuse collection and area cleaning services seldom maintain recording books or receive residents’ complaints. Service providers have an incentive not to report complaints as they would reflect negatively on the provider.

22. To ensure that residents’ complaints are adequately noted, the responsibility to inform residents of their right to complain and to record complaints should not lie with appointed service providers. It is unreasonable to expect residents to complain directly to the service provider as this represents a significant conflict of interests. Instead the responsibility should be assigned to a separate body or institution. This body will be responsible for relaying complaints to CoCT officials and for monitoring how officials address the complaints.

23. Unlike the refuse collection tenders mentioned above, tenders for the provision and maintenance of temporary sanitation in informal settlements (including chemical and container toilets) do not include measures whereby residents can lodge complaints. Such measures must be included in the tender specifications to ensure that residents have recourse when facing issues with basic service delivery.

D. MONITORING AND EVALUATION OF SERVICE PROVIDERS

24. Section 81(1) obliges municipalities providing services through SDAs with external service providers to “regulate the provision of the service” and “monitor and assess the implementation of the agreement, including the performance of the service provider”.
25. There is a need for sustained monitoring and evaluation of appointed service providers to ensure compliance with tender specifications, to avoid delays in service delivery, and to make sure that delivered services are of a sufficient quality.

Monitoring by a third-party agency or additional monitoring staff

26. The possibility of appointing an external agency or institution (such as a specialised department in an academic institution) to perform a monitoring function should also be considered. Given that a large number of services are outsourced, the CoCT’s monitoring capacity is strained and the appointment of an external institution could be useful to address this. Further, this will allow for a more objective and unbiased reflection of the nature of service delivery in informal settlements.
27. If such an appointment is not possible, then the CoCT must recruit sufficient monitoring staff, and the possibility of having monitoring reports evaluated by an external institution needs to be considered.

Monthly meetings between appointed service providers and CoCT officials

28. Active tenders for the provision of many municipal services in informal settlements already require appointed service providers to participate in monthly monitoring meetings with CoCT officials.
29. These meetings are an important opportunity for engagement between providers and CoCT management and the requirement that they take place is welcomed. This requirement should form part of the specifications of all basic municipal service delivery tenders, if it does not already.
30. Many active tenders require that minutes be taken at monthly monitoring meetings, and that these need to form part of the Agreements between the City and external providers – most notably tender specifications for the provision of community-based refuse collections services in informal settlements. However, having examined copies of SDAs provided by the CoCT Supply Chain Management (SCM) office we noticed that none included these minutes.
31. The requirement to include the minutes in the SDAs needs to be extended to all tenders to provide basic municipal services, and this requirement needs to be enforced.

E. COMMUNICATION

Communication with the community

32. Tenders for the provision of community-based refuse collection and area cleaning services in informal settlements require service providers to “maintain contact with the community in each given area” (see Tender No 230S/2008/09).
33. In order to do so “the Council may require the contractor to ... distribute pamphlets to each and every dwelling [or] make physical and direct verbal contact to convey a message”.
34. While communication with the community is a requirement in the SDAs, there are few guidelines as to how this communication is to occur beyond the provisional requirement mention in the point above.
35. It is important that measures are in place to ensure that external providers remain accountable to the community, councillors and CoCT management. To this end, clear guidelines as to how the service provider is to communicate with members of the community need to be added to the tender specifications. Such guidelines need to be extended to all tenders for the provision of municipal services in informal settlements, including those around the provision and maintenance of temporary sanitation services.

Language used in SDAs and tender specifications

36. As previously mentioned, Section 6(2)(e) of the MSA obliges municipalities to “give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive”. One means for community members to gain information about the delivery of municipal services is to inspect the SDAs between the CoCT and appointed external service providers. Section 84(3) of the MSA requires municipalities to make copies of the SDAs available for public inspection.
37. In order to ensure that community members can gain a comprehensive and clear understanding of the service delivery specification from the SDAs, it is important that the language employed in the documents is clear and specific. Requirements need to be phrased in a way that is lucid and allows for no misinterpretation or confusion on the part of the community, the provider or City management. The use of permissive language (such as the words ‘may’ or ‘can’), is also to be avoided to ensure that tender requirements are specific and enforceable. Further, the translation of the tender specifications of SDAS into other languages used in the region (for example, Xhosa and Afrikaans) must be

considered to allow those who are not native English speakers to engage with service delivery requirements.

F. SUPPORT FOR SERVICE PROVIDERS

38. Section 78(3)(b)(ii) of the MSA requires municipalities to take into account “the capacity and potential future capacity of prospective service providers to furnish the skills, expertise and resources necessary for the provision of the service”.

39. However, in our experience, many external service providers working in informal settlements face capacity constraints and lack business experience. There is a need to offer continued support to service providers appointed to provide basic municipal services. This support needs to include assistance with submitting reports to the CoCT, with preparing financial statements, and with auditing.

Conclusion

We trust that our comments and recommendations will prove useful in drafting the specifications for future informal settlement service delivery tenders, and for ensuring adequate service delivery.

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