



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

1 June 2010


Att: Mr. Dan Plato
Mayor, City of Cape Town


Cc: Ms. Helen Zille
Premier, Western Cape

Open Letter to Mayor Dan Plato Leadership is Urgently Needed in Makhaza

Dear Mayor,

1. In a statement last week and an associated opinion piece in the *Cape Times* (27 May 2010) the SJC – a grassroots social movement campaigning non-violently for improved sanitation services in informal settlements – condemned the politicisation of the provision of toilets to residents in Makhaza. We urged all parties to refocus on the fundamental issue, specifically that countless people in Makhaza have been and continue to be deprived of their constitutional rights to health, safety and dignity.
2. We strongly condemned the incitement of violence by ANCYL regional secretary Loyiso Nkohle, but also called on the City to acknowledge that the Makhaza arrangement – regardless of its initial intentions – had serious flaws. It is clear that these toilets did not meet basic norms and standards. Contrary to the assertion in your statement of 31 May 2010, national norms and standards are not met solely when there is “one toilet for every five dwellings”, but also require that they be “safe and hygienic” and “private and protected from the weather”.
3. We called on you as Mayor to take the lead in building consensus around long-term solutions through a comprehensive consultation process incorporating community members and other stakeholders. The SJC is dismayed to see, then, that instead of rising above the dispute and embarking on a process of reconciliation and consultation with the residents of Makhaza, the City has embarked on a policy of unilateralism and collective punishment in what appears to be politically motivated action. On Monday 31 May the City of Cape Town took the retrogressive step of removing the 65 unenclosed toilets that have generated controversy in Makhaza since the end of 2009.
4. By dismantling the toilets after months of unrest which peaked last week, the City has exacerbated an already tense situation. The Municipality is obligated under the Constitution to take reasonable steps to progressively realise the right of basic sanitation for the residents of

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Makhaza. The unilateral removal of the toilets seemingly without any notice, engagement with the community, or the provision of temporary sanitation facilities can only be described as unreasonable. Residents have gone from having an unacceptable level of sanitation (in the form of unenclosed toilets) to no sanitation whatsoever. This is a reversal of the realisation of the residents' rights, which is both unlawful, unconstitutional and must be rectified with immediate effect.

5. We are equally concerned by your call yesterday for residents to "protest and burn tyres". You have spoken out strongly against calls by Nkohlé for residents of Makhaza to destroy property and render the city "ungovernable", and have said that you are investigating pursuing charges of "incitement of violence". In a period of such high tension, your words are also tantamount to incitement. Since this statement was made, violent protests have erupted in Makhaza and elsewhere. This illustrates the potential for violence to spread beyond Makhaza, if an amicable solution is not reached expeditiously. As a leader we expect you to bring calm to such situations, not put peoples' lives at risks by fuelling the fire. As the highest ranking official in the local municipality, we expect you to put residents' needs regarding sanitation first, as stipulated in the Water Services Act. You have to date failed in both these roles with regards to the situation in Makhaza.
6. You indicated yesterday that the City would be "willing to go back and reinstall the toilets as soon the community reaches an agreement with the youth league". This is unreasonable. The ANCYL is not an elected body which speaks for the community. It also wholly excludes the City from fulfilling a mandate which it is legally obligated to do. Moreover, we noted last week that the resentment in the community cannot be blamed on the ANCYL alone. We must be cautious in simplifying the situation to the extent that we hold a single organisation responsible for what transpired, or punish the community for the actions of a few.
7. The SJC thus strongly condemns both the dismantling of the toilets and your statement calling on residents to behave violently. At a time when tensions need to be eased and leaders need to be responsible, such actions are actively counterproductive. The situation is quickly and dangerously spiralling into a war of attrition. The only acceptable solution is for the City to renounce this approach and immediately embark on a process of reconciliation and consultation with the Makhaza community. We fear that anything else will result in further violence, vandalism and suffering.
8. We have copied Premier Zille on this letter, as Sec. 63 of the Water Services Act notes that Provincial Government has a duty to intervene should the municipality fail to act in accordance with the act. We will call on the Provincial Government to intervene should you fail within seven days to demonstrate leadership by adopting a productive approach, and producing a formal plan to ensure that the people of Makhaza receive sanitation facilities in line with the prescribed legal standard. These measures must enlist a process that is procedurally just and fair.

Sincerely,



PP

Gavin Silber
Coordinator

Angy Peter
Co-Chairperson