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Department:  
Co-operative Governance and Traditional Affairs  
**PROVINCE OF KWAZULU-NATAL**

**PRESENTATION  
TO NCOP  
ON INTERVENTIONS IN TERMS OF  
SEC.139(1)(b) OF THE  
CONSTITUTION**

**PEOPLE-CENTERED SUSTAINABLE CO-OPERATIVE GOVERNANCE WHICH FOCUSES  
ON EFFECTIVE SERVICE DELIVERY RESPONSIVE TO THE NEEDS OF THE COMMUNITY**

## BACKGROUND

- In accordance with an invitation dated 24/04/2013 this presentation seeks to brief the SC on the following:-
  - The extension of the intervention at Indaka municipality by the Provincial Executive Council of KwaZulu-Natal (“Executive Council”) dated ;
  - The resolution of the Executive Council to intervene in terms of section 139(1)(b) at Imbabazane municipality dated
  - The resolution of the Executive Council to intervene in terms of section 139(1)(b) at Abaqulusi municipality, dated

## BACKGROUND

- The SC was previously briefed on the reasons for the intervention at Indaka;
- This presentation will deal with progress and challenges that motivated the decision of the Executive Council to extend the intervention at Indaka;
- The SC will be briefed on the reasons that gave rise to the interventions at Imbabazane and Abaqulusi municipalities, the scope of the interventions and the progress to date in respect of these interventions.

## **EXTENSION OF THE INTERVENTION AT INDAKA**

- The Executive Council had previously resolved to extend the intervention on 18 July 2012 to December 2012;
- Prior to and towards December 2012, the Ministerial Representative (“MN”) had reported as follows:-
  - There was a healthy financial cash flow balance of R47 million in October 2012 (this balance would increase to R60 million when the municipality received the November trench of Equitable Share).
  - All outstanding creditors of R7.6 million from previous financial years had been paid.
  - The financial records of Indaka Municipality had been successfully reconstructed to enable the municipality to produce credible AFS for the year ended in June 2012.
  - R3.7 million had been paid back to National Treasury for all misappropriated conditional grants for 2005/6, 2006/7, 2007/8, 2008/9 and 2009/10.

## **EXTENSION OF THE INTERVENTION AT INDAKA**

- Summons were being finalized against the former MM and the former CFO for irregular and fruitless and wasteful expenditure for various amounts reflected in a Forensic Investigation Report submitted to the Municipality in March 2011.
- The majority of priorities in respect of governance as identified in the recovery plan had been met.
- The Internal Auditor was functional, but was limited in effectiveness by the management's failure or inability to either respond to the audit findings or failure to implement the recommendations.
- Although, all the necessary Policy Frameworks were in place, there was a lack of implementation.
- The Audit Committee Charter had been reviewed in order to enhance its effectiveness. A delegations framework had been adopted and appropriate roles and responsibilities had been adopted in terms of a Departmental guideline.

## EXTENSION OF THE INTERVENTION AT INDAKA

- Performance reporting remained problematic despite a reporting framework being developed and introduced by the MN.
- Consistent reminders were sent to management on what they should report on in each quarter for the quarterly reports with no response. Reminders were sent to the mayor telling him to demand the quarterly/monthly report, also with no success.
- The council had failed to approve an organisational performance management system (OPMS) as the basis for the management SDBIP. For the duration of the 1st quarter, the council had operated without an approved OPMS. As at the end of September 2012, the SDBIP was not finalised due to the council's refusal to approve the OPMS.
- Council's oversight and performance management and reporting was still a serious concern.

## **EXTENSION OF THE INTERVENTION AT INDAKA**

- The finance department, with the exception of the financial expert appointed by the Department, was being supported mainly by interns. The substantial work done by the financial experts and the ministerial representative could not be sustained and improved with the existing finance department. The recruitment of finance staff had commenced, however, was not complete.
- Although there were newly appointed section 56 managers, these directors would have not been in a position to fully implement the intervention priorities, with the lack of capacity and for the fact that they were not familiar with the challenges that are inherent at Indaka.

## EXTENSION OF THE INTERVENTION AT INDAKA

- Despite some improvements, the MN reported that there were still other serious challenges he further illustrated as follows:-
  - Despite the introduction of performance reporting framework being introduced, it was not being implemented.
  - The council failed to approve OPMS as the basis for the management SDBIP. The MN was of the view that the OPMS was delayed with the hope that once the intervention is terminated, then OPMS and the budget can be adjusted to cater for some of the activities/programmes which the MN declared to be either fruitless and wasteful or beyond the competency of local government (e.g. pauper burials).
  - There was rampant abuse of municipal vehicles by political office bearers.
  - Despite the advices of the MN, the council had avoided the due process for irregular expenditure of R22.509 million in 2010/11. Similarly, the council had refused to approve the recovery of the irregular and fruitless and wasteful expenditure of R19.6 in 2011/12 because councillors were part of the expenditure. Councillors were liable, jointly and severally, for a portion of R331 050 of the said R19.6m. Most of this figure is expenditure which originated from the financial years before 2011/12.
  - In 2011, the deputy mayor received a double benefit, he was allocated a municipal vehicle and received a transport allowance in contravention of the Public Office Bearers Act, 1998. He, with the support of the council, refused to pay it back.



## **RESOLUTION DATED 28 NOVEMBER 2012**

- Based on the aforementioned progress and challenges that were still apparent, the Executive Council resolved on 28 November 2012 to extend the intervention at Indaka municipality until 31 December 2013.
- During this period it will be necessary to ensure that the municipality is capacitated and that the organisational structure is suitably aligned and weighted to deliver services and to fulfill its Constitutional objectives.
- The recruitment of municipal officials at all levels would have to commence, based on identified critical posts.
- All outstanding matters in respect of performance management and reporting must be finalised.
- A sustainable infrastructure plan and rural development strategy would have to be finalised for implementation by the municipality.
- Furthermore, a comprehensive exit plan and monitoring mechanism for the implementation of that plan would also have to be developed during this period, if the municipality is to implement an exit strategy with support from the Department, outside of an intervention.

## INTERVENTION AT IMBABAZANE MUNICIPALITY

- Since the election of new council there were numerous challenges at Imbabazane municipality, particularly with councillors staging walk-outs at council meetings based on various disagreements.
- The Imbabazane municipal council had failed to have a meeting for at least two consecutive quarters.
- The municipal manager forwarded a written request dated, 25/08/2011 for the Department's advises on certain challenges in council indicating that the challenges were impacting negatively on governance and functionality of the municipality.
- He also sent a letter dated 12 March 2012, wherein he informed the Department that the "municipality's problems had been endless, occurring continuously and varying from case to case".
- Details of these problems are in the report submitted to the SC.

## INTERVENTION AT IMBABAZANE MUNICIPALITY

- Disagreements amongst councillors on the extension of section 56 contracts lead to councillors staging walk-outs;
- Disagreements amongst councillors and political indifferences had caused critical issues to be neglected i.e. Annual Report 2010/2011;
- Disagreements in respect of the termination of the municipal manager's contract of employment, resulted in walk-outs
- The issue of the termination of the MM's contract was on the agenda of a meeting held on 22 May 2012, for discussion and a resolution. The meeting did not proceed as IFP and NFP councillors walked-out of the meeting;
- The item was then moved to 31 May 2012 agenda, all items on the agenda were considered and deliberated on, however, when discussions around the item in respect of the MM's contract was due to commence, the NFP and IFP councillors left the council chamber without obtaining leave of absence from the Speaker.
- Following this resistance to deal with the MM's contract an unlawful meeting was held by certain councillors at which the Mayor and Speaker were purportedly removed from office and new office bearers were elected. This meeting purported to appoint the municipal manager as well;
- Unlawful state of affairs prevailed.

## INTERVENTION AT IMBABAZANE MUNICIPALITY

- The MEC instituted High Court litigation to restore the state of legality;
- Judgment was delivered granting the MEC relief, declaring the contract of former municipal manager void and all resolutions passed by the council from 20 June 2012 to the date of the order null, void ab initio and invalid;
- The respondents filed an application for leave to appeal; The impact of such leave to appeal was that it suspended the operation of the judgment pending the appeal;
- The MEC filed an application in terms of Rule 49(11) of the High Court Rules to ensure that the operation of the judgment was delivered;

## INTERVENTION AT IMBABAZANE MUNICIPALITY

- The delay in respect of the High Court matter resulted in the perpetuation of unlawfulness and instability which is contrary to the constitutional imperatives of democratic and accountable government.
- Subsequent to the meeting held on 20 June 2012, the Department was informed that the NFP and IFP lead council were refusing or neglecting to notify other councillors, particularly the ANC, of council meetings that were due to be held, being of the view that their numbers were sufficient to constitute a quorum.
- This only changed when the ANC councillors were notified of meetings in August 2012.
- An intervention in terms of section 139 of the Constitution, is triggered when a municipality cannot or does not fulfill an executive obligation. Once it is established that a municipality cannot or does not fulfill an executive obligation, the Executive Council may intervene and take “appropriate steps to ensure fulfillment of that obligation”.
- The Constitutional Court (Second Certification Judgment) stated that in the constitutional scheme as embodied in the Constitution, the “Provincial Executive is fully entitled, if not obliged to do what is necessary to ensure that the Constitution and legislation consistent with the Constitution are adhered to”. The power to intervene must be read in this context as well.

## **INTERVENTION AT IMBABAZANE MUNICIPALITY**

- Due to aforementioned reasons, the Provincial Executive Council, on 23 January 2013, resolved to intervene at Imbabazane municipality in terms of section 139(1)(b) of the Constitution by assuming the functions specified in section 51 of the Local Government: Municipal Systems Act 32 of 2000 (“Systems Act”);
- The MEC responsible for Co-operative Governance and Traditional Affairs, was authorised to appoint her representative to undertake the functions in terms of section 51 of the Systems Act to establish and organise the administration in a manner that would enable the municipality to achieve the objects of local government as set out in section 152 of the Constitution.
- The purpose of the intervention would be to ensure that that the municipality meets its constitutional objectives within the constitutional imperative of legality and participatory democracy.
- A ministerial representative was appointed and introduced to the council on 31 January 2013.
- A recovery plan has been drafted and introduced to the council. The recovery plan with the guidance of a support team facilitated by the Department is being implemented.
- The scope of the intervention was extended to include the functions in terms of section 54A and section 56 of the Systems Act.

## INTERVENTION AT ABAQULUSI MUNICIPALITY

- The state of affairs at Abaqulusi municipality was being monitored which revealed some challenges;
- Abaqulusi municipality received a disclaimer audit opinion for the 2011/2012 financial year regressing from a previous unqualified audit opinion highlighting significant deficiencies in financial management, performance management and compliance with laws and regulations which reflect a clear failure to fulfill executive obligations.
- The municipality did not raise and account for interest on arrears as required by section 64(2)(g) of the MFMA. There was no council resolution to grant the exemption from charging interest as required by the act.

## INTERVENTION AT ABAQULUSI MUNICIPALITY

- Non-compliance with numerous SA Standards of GRAP including:
  - GRAP 17 relating to property, plant and equipment in relation the carrying amount of assets. Deficiencies in the asset register and assets that were not depreciated. Impairment found not to be written down to its actual life amount and the exclusion of certain assets in the register and the PPE disclosures in the annual financial statements.
  - GRAP 16 relating to investment property resulting in the inability to determine the completeness and valuation thereof.
  - The municipality did not include certain provisions for the adjustment to the retirement benefit obligation in the statement of financial performance as required by GRAP 1.
  - Employee related costs included an adjustment of R4,5m for which the supporting evidence to validate the adjustment could not be provided. The auditor was therefore unable to obtain sufficient appropriate evidence by alternative means and was unable to determine the occurrence and accuracy of employee related costs.



## INTERVENTION AT ABAQULUSI MUNICIPALITY

- Irregular expenditure amounting to R15 million was disclosed in note 34 to the financial statement. Misstatements were identified during the audit and no evidence was provided to support the evaluation. The auditor could not obtain sufficient appropriate audit evidence to confirm the completeness of irregular expenditure. The irregular expenditure in itself reflects non-compliance with the Supply Chain Management Regulations promulgated in terms of the MFMA.
- Unauthorised expenditure amounting to R19,1 million was incurred by the municipality reflecting poor budgetary control.
- Fruitless and wasteful expenditure relating to the payment of acting allowances in an amount of R618 087 was incurred. The municipality has not recovered such expenditure.
- The annual report of Abaqulusi municipality was not compliant with section 121 of the MFMA as it did not include a comparison of performance with targets set for and performances in the previous year in terms of the MSA s46 (1)( b ) as well as measures that were taken to improve performance in terms of the MSA s46 (1)( c ).

## INTERVENTION AT ABAQULUSI MUNICIPALITY

- There has been substantial disagreement in council regarding the filling of the post of MM;
- The MEC had raised concerns regarding the appointment, council was failing to address these concerns, until a very late stage;
- The municipality refused or neglected to opt for support offered by the Department, despite having no to structure in place;
- The municipality was without an MM or acting MM from 31 January 2013 to 05 March 2013; This is a statutory violation.
- The poor financial capability and performance of the municipality as well as a lack of capacity was presented to the Executive Council

## INTERVENTION AT ABAQULUSI MUNICIPALITY

- It was found that the municipality had failed to fulfill various executive obligations, as is illustrated in the report before the SC;
- Based on the aforementioned state of affairs and executive obligations not met, the Provincial Executive Council resolved on 20 March 2013, to intervene at Abaqulusi municipality in terms of section 139(1)(b) of the Constitution.
- The MEC was authorized to appoint her representative to undertake the function in terms of section 51 of the Municipal Systems Act to establish and organise the administration in a manner that would enable the municipality to achieve the objects of local government as set out in section 152 of the Constitution and those functions in terms of section 54A and section 56 of the Systems Act.
- A MN has been appointed and a recovery plan has been drafted.



**THANK YOU**

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