



**cogta**

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

Enquiries:  
Imbuzo: T. Tubane  
Navrae:

My Reference:  
Inkomba Yam: 223/10/1/R  
My Verwysing:

E-mail ttubane@gmail.com

Date:  
Uauku:  
Datum:

**The Chairperson  
National Council of Provinces ("NCOP")  
P.O. Box 15  
Cape Town  
8000**

Attention : Ms. Thandi Modise, MP  
Fax : 021 - 403 3649/021 - 481 9480

Dear Madam

**INTERVENTION IN TERMS OF SECTION 139(1)(c) OF THE CONSTITUTION OF THE  
REPUBLIC OF SOUTH AFRICA, 1996("Constitution") AT MPOFANA LOCAL MUNICIPALITY**

You are, hereby, informed, in terms of section 139(3)(a)(ii) of the Constitution, that on 01 September 2014, the KwaZulu-Natal Provincial Executive Council ("Executive Council"), resolved to intervene in terms of section 139(1)(c) of the Constitution at Mpozana Local Municipality as a result of exceptional challenges prevalent at the municipality which have led to the collapse of the municipality.

Since 2012, the Mpozana Municipality has been plagued by a continuous series of labour unrest incidents, community protest actions and serious financial difficulties. All of these matters have enjoyed substantial press coverage and have severely damaged the public confidence in the system of local government. One of the compounding factors to the situation at the municipality is that the posts of strategic senior managers were vacant for a lengthy period. This led to a lack of discipline within the staff complement and resulted in service delivery being compromised. The situation gave rise to substantial community unrest and the Municipality finds itself in a state of total anarchy.

The Municipality scored 47.54% for its IDP in the 2013/14 financial year, which is well below the provincial average. The IDP was not credible, in that it omitted critical aspects such as an HR strategy, workplace skills plan, integrated waste management plan, status of road networks, human settlements, associated levels of services and backlogs, consumer debt, borrowing and a spatial development framework. This is indicative of the lack of planning and commitment to orderly developmental local government.

In respect of financial matters, for two consecutive years Mpfana Municipality received an unqualified audit opinion by the Auditor General. However in the submission of the 2012/2013 annual financial statements the Auditor-General issued an opinion on the audit report that regressed the Municipality to a qualified audit.

The Municipality did not include particulars of Irregular expenditure in the notes of the financial statements as required by section 40(3)(i) or 55(2)(b)(i) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) ("the MFMA"). The Municipality made payments in contravention of the supply chain management requirements which were not included in irregular expenditure, resulting in irregular expenditure being understated by R 26.43 million. No disclosures were made in the financial statements regarding irregular expenditure or such expenditure that was condoned. Irregular expenditure of R 26.43 million is a substantial percentage of the municipal budget which was expended in an irregular manner.

The findings raised in the audit report of the Municipality reflect that the Municipality is embattled with cash flow problems and mismanagement of funds. As disclosed in note 11 to the financial statements, the Municipality has provided for bad debts impairment amounting to R 34.16 million, as the recoverability thereof was doubtful.

In the 2011/12 financial year, the Municipality incurred a loss on the sale of electricity in the amount of R 11.3 million. The income received from the sale of electricity is R 27.9 million but bulk expenditure was R 39.2 million. In the 2012/13 financial year, as disclosed in note 49 to the financial statements, the Municipality suffered electricity losses of 15,193,338 KWh amounting to R 6.87 million. These losses were due to electricity line losses within the network infrastructure, illegal connections and poor debt management. The Municipality appointed a service provider to verify connections and to put proper measures in place to prevent illegal connections. The project has not been finalised and the Municipality is not satisfied with the services provided as the losses have not been reduced and further illegal connections have occurred.

With reference to note 51 to the municipal financial statements, the Municipality is a defendant in various lawsuits and there are also uncertainties arising from the fact that SALGA has appealed the recent court order regarding the wage curve agreement. If the outcome is unfavourable, the Municipality will have to embark on a job evaluation process before implementing the wage curve. Therefore, the ultimate outcomes of these matters cannot presently be determined and no provision for any liability that may result has been made in the financial statements.

Furthermore, amounts owed by the Municipality were not always paid within 30 days or an agreed period, as required by section 65(2)(e) of the MFMA. Payments were made without the approval of the accounting officer or a properly authorised official, as required by section 11(1) of the MFMA. An effective system of expenditure control, including procedures for the approval was not in place, as required by section 65(2)(a) of MFMA. An adequate management, accounting and information system were not in place which recognised expenditure when it was incurred, as required by

section 65(2)(b) of the MFMA. Reasonable steps were not taken to prevent unauthorised, irregular and fruitless and wasteful expenditure, as required by section 62(1)(d) of the MFMA.

In respect of supply chain management, sufficient appropriate audit evidence could not be obtained that-

- (a) goods and services with a transaction value below R 200,000.00 were procured by means of obtaining the required price quotations;
- (b) goods and services with a transaction value above R 500,000.00 were procured by means of inviting competitive bids;
- (c) bid specifications for procurement of goods and services through competitive bids were drafted in an unbiased manner that allowed all potential suppliers to offer their goods and services;
- (d) contracts and quotations were awarded to bidders based on points given for criteria that were stipulated in the original invitation for bidding and quotation;
- (e) bid adjudication was always done by committees which were composed in accordance with SCM regulation 29(2);
- (f) the preference point system was applied in all procurement of goods and services above R 30,000.00 as required by section 2(a) of the Preferential Procurement Policy Framework Act and SCM regulation 28(1)(a);
- (g) contracts and quotations were awarded to suppliers based on preference points that were allocated and calculated in accordance with the requirements of the Preferential Procurement Policy Framework Act and its Regulations;
- (h) contracts were only extended or modified after tabling the proposed amendment in the council of the Municipality, as required by section 116(3) of the MFMA; and
- (i) construction contracts were awarded to contractors that were not registered with the Construction Industry Development Board (CIDB) and qualified for the contract, in accordance with section 18(1) of the CIDB Act and CIDB regulations 17 and 25(7A).

It is clear that the Municipality has ignored and disregarded all supply chain management regulations and the lack of financial controls in this regard has given rise to a situation where abuse of public funds is rife.

The Internal Audit Unit did not audit the performance measurements on a continuous basis and submitted quarterly reports on their audits to the accounting officer and the performance audit committee, as required by Municipal Planning and Performance Management Regulation 14(1)(c). The non-functionality of the Internal Audit Unit led to a system of no internal controls being in place with a resultant lack of checks and balances. The Municipality did not have an Audit Committee which is a contravention of section 166(1) of the MFMA. This led to a further breakdown of oversight from an independent body, which was vital for the proper functioning of the administration.

The Accounting officer did not exercise adequate oversight over financial and performance reporting and compliance as well as internal control. In this regard the accounting officer did not

periodically assess whether staff members had essential skills and knowledge to support the achievement of credible reporting. Adequate processes were not in place in order to communicate timely and relevant information to those charged with governance, in that monthly reporting of financial and performance results was not effective. This is evidenced by the findings on performance management that arose during the audit.

The Chief Financial Officer has declared that material amounts affecting the financial statements were not disclosed correctly in the prior year hence major findings will impact negatively on the presentation of the financial information of the current year. He alleged said that these amounts were a possible cover-up of the actual financial situation at the Municipality. The Municipal Manager stated that current mechanisms are in place to recover over-payments to councillors made in error during the previous administration.

It has also been discovered that a Debtor, Tai Yeun Textile, had previously been billed on an incorrect formula. This has given rise to litigation in respect of the payment of R 54,913,444.00. A high court interdict is currently being defended by the Municipality regarding the raising of tariffs to the Tai Yeun Textile consumer. This matter has a significant impact on the financial sustainability of the Municipality. There are threats by the company to re-locate elsewhere, which would have a further negative effect on the unemployment rate and poverty in the area. There are also contingencies arising from pending litigation on the wage curve agreement which has not yet been finalised. An uncertainty arises as to the obligation due or to be met by the Municipality and cannot currently be provided for.

Unspent conditional grants of R 15,744,437.00 are not cash-backed by an amount of R 7 million. This further raises the question of the Municipality to operate as a going concern. The Auditor-General has raised the going concern of the Municipality in the 2012/13 audit. On the matter of fruitless and wasteful expenditure it emerged that expenditure for cell phones amounted to R 212,532.00 in addition to allowances of R 182,078.00 already paid to the same employees.

Unlawful Industrial action has been occurring on a regular and extended basis at the municipality. The first illegal strike occurred in August 2012, and continued for over four weeks. The issues raised were that Mporana municipality was not collecting sufficient revenue and were compelled to operate on an overdraft, the grounding of some municipal vehicles, the unfilled vacant positions of senior managers, non-consultation of unions on matters pertaining to workers and the non-functioning of the Local Labour Forum ("LLF").

During an illegal strike in June 2013, the striking workers proceeded enmass to the Mayor's office where they became extremely abusive. The Mayor had to be escorted, unseen by the approaching mass, to a place of safety until the SAPS arrived to escort her to the police station for safety. It would appear that the staff members of the Municipality do not regard themselves as being accountable to the public which they are supposed to serve. In a letter dated 20 September 2013, the newly appointed Municipal Manager stated the following:

- (a) He has witnessed with disbelief, levels of indiscipline and conduct by employees who have absolutely no regard for the implications of their behavior or the purpose of their existence as employees and of the well-being of the municipality;
- (b) The situation is turbulent, highly volatile and life-threatening to the extent that urgent steps to ensure the safety of the Mayor and other Office-bearers had to be taken;
- (c) The conduct of municipal staff is totally unacceptable in that they openly make threatening remarks to Councillors and Managers and refer to previous incidents where they have become a law unto themselves;
- (d) The culture of non-performance is prevalent and is the reason for the municipality's dismal performance. The municipality has become popular for the wrong reasons to the extent that some officials cannot draw the line between being politicians and being officials;
- (e) On 01 August 2013, as a special Council meeting was to commence, a SAMWU Shop Steward led a crowd of employees into a Council Chamber and disrupted the proceedings. He insulted the Mayor, councillors and management and appeared to want to assault a councillor Diadla physically. The situation was very volatile and councillors and management were under serious risk of violence. The SAPS were called in to assist and to calm the situation;
- (f) On 05 and 06 September 2013, a state of violent threats and physical demonstrations occurred at the residences of both the Mayor and the Whip. The actions were of such a serious nature that the SAPS had to be called to intervene and disperse the crowd outside the residences;
- (g) There had been a request made by members of the community, including staff members who operate as politicians for authorisation to conduct a march. They wished to submit a memorandum to the ANC REC and COGTA, calling for the removal of the Mayor and the Whip from office. Permission for the march was not granted by the municipality, however, the organizers indicated whether illegal or not they would still conduct the march. The extent of the aggression and militancy on the part of the employees involved in this incident is alarming to say the least; and
- (h) On 16 September 2013, on arrival at the municipal offices, a mock coffin, placed at the entrance to the office of the municipal manager, was found, inscribed with derogatory and defamatory words directed at the Mayor and the Whip. This unacceptable behavior is unheard of and is grossly insubordinate conduct which cannot be condoned or taken lightly.

In August 2013, the staff provided a petition detailing a number of concerns including, the non-filling of senior manager posts, the library and youth centre not having toilets and a range of issues which should have been dealt with in the LLF. Included in the list of concerns was the fact that there were no fire extinguishers in the offices. The municipality's response to this aspect was that the fire extinguishers had been used by the employees to flood the offices.

The Municipal Manager has described the unbecoming and unruly behavior of municipal staff as rebellious and mutinous, with a blatant disregard of the laws that govern a Municipality as well as the Code of Conduct. Indeed, staff members are allegedly, in some cases, leading protest marches against service delivery that they should be providing. Anarchy amongst junior staff

members following the curbing of overtime had resulted in a go-slow and alleged incitement of violent protest action.

On 22 August 2014, a further unlawful and volatile community protest action took place at the Mpofana Municipality. The community from Wards 1 and 3 gathered and blockaded, as early as 2 am, all the entrances to Bruntville Township and rocks were also thrown on to the N3. The blockading of the roads in Bruntville resulted in the community not being able to commute to work places as well as the learners not able to attend school. The main artery between Gauteng and eThekweni had to be closed to traffic. The community embarked on the protest because they were dissatisfied with the office of the Mayor and demanded that she resigns, as she had allegedly failed the community. The SAPS was deployed and monitored the situation. The protesters continued with the action till late in the day. In order to diffuse the situation the SAPS Public Order Unit was deployed and had to use minimum force to disperse the crowd. In the process 14 protestors were arrested.

The municipal offices were closed and service provision, such as the sale of prepaid electricity was non-existent. The senior managers and Councillors of the Municipality were absent and there were clearly no contingency plans in place. It was also reported that some Councillors were part of the community protest against their own institution. Despite repeated efforts to convene meetings to address the community concerns, such meetings were disrupted and proved to be fruitless. The protestors continued to demand the removal of the Mayor and the release of the arrested protestors.

Following the protest action by disgruntled residents it has emerged that the Municipality will not be submitting their annual financial statements within the statutory deadline of 31 August. This will be the first time that in four consecutive years KwaZulu-Natal will have their proven track record of Annual Financial Statement submission compliance in terms of the MFMA broken by this Municipality.

It is evident that the current state of affairs at the Mpofana Municipality is not conducive to a sustainable and viable local government. The continued protest action over the past financial years has escalated to a point of non-tolerance by the community. Events of the past week have displayed that such violent action cannot be condoned and urgent intervention in respect of addressing the prevalent challenges is required.

It must be emphasised that the Municipality has failed to govern within the legislative framework and has in a number of instances, totally disregarded the prescripts of good governance and financial management. The staff members of the Municipality are ill-disciplined and unruly and have little regard for service delivery to the community. It is clear that the Municipality has deteriorated to a state where it is impractical to deliver on its legal mandates. This is as a result mainly of political tensions within Council, lack of political will and capacity to address the challenges, and the lack of any control over the staff complement. Despite on-going support from Provincial government to resolve challenges and prevalent problems, the Municipality continues to

deteriorate. However, the lack of political leadership, the vacancies of senior officials for lengthy periods and the aggressive behaviour of municipal staff have all contributed to a state of chaos and anarchy at the Municipality. This situation has also received extensive media coverage, which has had a substantial negative impact on the credibility of local government in general. In addition the community is demanding that appropriate intervention occurs to ensure that delivery of services is restored to normality.

It is submitted that the assumption of certain functions in accordance with section 139(1)(b) of the Constitution would not be sufficient to address the prevailing circumstances at the Municipality and that the exceptional circumstances which prevail, justify an intervention in terms of section 139(1)(c) of the Constitution. Therefore, on this basis, on 01 September 2014, the Executive Council resolved to intervene in terms of section 139(1)(c) of the Constitution at the Mpopana Municipality.

Letters have been sent to the municipality to inform them of the dissolution. The Executive Council also authorised me to appoint an Administrator who must assume the executive authority of the Municipal Council. The Administrator will develop and implement a recovery plan for the Municipality, to be supported by all relevant line function provincial departments. In addition, appropriate unions will be engaged to restore normality within the labour force.

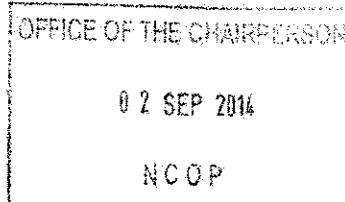
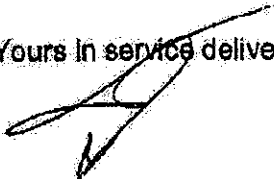
As the election unfolds to re-elect the Council, a comprehensive and integrated plan will be developed in order to improve the social and economic situation at the Municipality. The plan will include strategies for job creation, eradication of poverty, economic growth and improved access to basic services.

The NCOP is hereby informed, in terms of section 139(3)(a)(ii) of the Constitution, of the resolution of the Provincial Executive dated 30 September 2014 to intervene in terms of section 139(1)(c) of the Constitution at Mpopana municipality by dissolving the Mpopana municipal Council and:-

- (a) appointing an Administrator; and
- (b) facilitating an election for a new municipal Council.

The intervention will take effect 14 days after the NCOP and the Cabinet Minister for Co-operative Governance and Traditional Affairs have been informed of such Executive Council resolution.

Yours in service delivery



MS. N. DUBE-NCUBE MPL

MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS KWAZULU NATAL

DATE: 01/09/2014