



PRESENTATION TO THE NCOP SELECT COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

**INTERVENTION IN TERMS OF SECTION 139(1)(C) AT NQUTHU MUNICIPALITY
INTERVENTION IN TERMS OF SECTION 139(1)(B) AT EMADLANGENI MUNICIPALITY
CLOSE OUT REPORTS IN RESPECT OF INDAKA, IMBABAZANE AND INGWE MUNICIPALITIES**

**Ms N DUBE NCUBE
MEC for COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
14 FEBRUARY 2017
10H00**

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER **B-B**



TABLE OF CONTENTS

ITEM NO.	CONTENT
	NQUTHU MUNICIPALITY (SECTION 139(1)(C) INTERVENTION
1	INTRODUCTION
2	BACKGROUND FACTS
3	CONSTITUTIONAL MATTERS
4	SUBSTANTIVE MATTERS
5	PROCEDURAL MATTERS
6	CURRENT STATUS
7	CONCLUSIONS

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER **B-B**

2



1. INTRODUCTION

- At its duly constituted meeting held on 08 February 2017 the kwaZulu-Natal Provincial Executive Council resolved to intervene in terms of section 139(1)(c) at Nquthu Local Municipality and thereby dissolving the Municipal Council
- This decision is however subject to approval by both the Minister and the NCOP which approval must take place within 14 days from the date of notice.
- This submission is thus intended to brief members of the Select Committee (SC) on the background facts, constitutional, procedural and substantive matters related to intervention in Nquthu Municipality, in order for the SC to facilitate the decision of the NCOP within the prescribed timeframe.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER **B-B**

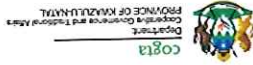


2. BACKGROUND FACTS

- The Nquthu Municipality is one of four local municipalities within the Umzinyathi District family of municipalities.
- The municipality was governed under a coalition arrangement between the ANC and the NFP before the August 2016 Local Government Elections.
- The elections failed to produce an outright winner at this 33 seat council with the IFP obtaining 15 seats, followed by the ANC with 14, the NFP with 2 and one each for the DA and the EFF.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER **B-B**

2. BACKGROUND FACTS (cont.)



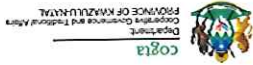
- Local municipalities are required in terms of section 29(2) of the LG: Municipal Structures Act, 1998 (Act No. 117 of 1998) ("the Structures Act"), to convene within 14 days after being declared elected by the IEC to elect the chairperson of council (namely the Speaker) as provided for in section 36 of the Structures Act.
- In the case of Nquthu, the council met on the 18th of August 2016 (first attempt) to elect its office bearers.
- The meeting collapsed due to differences among political parties following the announcement by the Municipal Manager, who was presiding, that the EFF councillor who had just been sworn in, had since been replaced. This happened during the course of the meeting and resulted in a commotion.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER
B-B

- The outcome of the meeting of 22 August was challenged in court by the parties that did not participate in the meeting because they were under the impression that the meeting had been postponed by the Municipal Manager.
- The *Motloung and 15 Others v Nquthu Municipality and Others* (Case No. 9444/2016) was heard on 1 September 2016 at the Pietermaritzburg High Court.
- The court ordered that the council meeting be started de novo on 02 September 2016 (third attempt).
- This meeting also collapsed because political parties disagreed about the effect of the court order. Each party ascribed its own interpretation to the court order. Despite advice from KZN Cogta, the meeting degenerated into chaos with spectators from different parties becoming involved. The meeting had to be abandoned as there was a security risk.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER
B-B

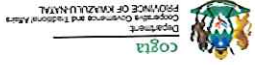
2. BACKGROUND FACTS (cont.)



- The Municipal Manager subsequently produced documents in an effort to prove that the EFF councillor had allegedly resigned and was replaced by another EFF member.
- The EFF councillor who was alleged to have resigned approached the court for relief. The *Ntshangase v Nquthu Municipality and Others* (Case NO. 9663/16) was the first of several court cases that have prevented the constitution of the Nquthu Council.
- On 22 August 2016 another attempt (second attempt) was made to hold the council meeting and this too collapsed due to inconsistent communication from the side of the Municipal Manager. He had been advised by KZN Cogta to postpone the meeting due to security concerns, which he did. However, when a component of council persisted and purported to hold a council meeting despite the postponement, he presided over that meeting. He subsequently claimed he had been coerced to do so.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER
B-B

2. BACKGROUND FACTS (cont.)



- Subsequent to this failed meeting the Municipal Manager was reported to be indisposed and was booked off sick by his doctors. This meant that he was not available to preside over the election of the speaker as provided for in section 36(3) of the Structures Act.
- Both sections 29 and 36 of the Structures Act empower the MEC responsible for local government to designate a person to call the first meeting of council and to preside over the election of the Speaker, in the event, the Municipal Manager is not available.
- The MEC designated Mr BS Duma, an employee of KZN Cogta, to convene and preside over the meeting of the council when electing the Speaker as the MM was indisposed

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B-B



2. BACKGROUND FACTS (cont.)

- The first meeting presided over by Mr Duma was held on the 6th of September 2016 (**fourth attempt**). The presiding officer was supported by KZN Cogta officials who were there to provide technical support. The Provincial Electoral Officer was also present in person as well as officials from National Cogta.
- This meeting also failed due to disagreements about the legitimate EFF representative. The EFF councillor who was alleged to have resigned and had approached the courts obtained a court order interdicting the municipal council from seating unless he was reinstated.
- The municipality subsequently received a letter from the EFF National Office claiming that the EFF member who had gone to court had since been dismissed from the party.
- On the basis of this letter the Municipal Manager declared a vacancy with the IEC despite the fact that he was at that time on sick leave.

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2. BACKGROUND FACTS (cont.)

- Mr Duma, called another meeting for the 13th of September 2016 (**fifth attempt**) which meeting also collapsed.
- This meeting collapsed due to disagreements about the legitimate EFF councillor. Both EFF representatives arrived for the meeting with each claiming to be the legitimate representative.
- The presiding officer decided to exclude both EFF representatives for want of legitimacy. The one representative was barred by the court order and the fact that the MM had declared a vacancy (rightly or wrongly) meant that the other EFF representative was also technically no longer a councillor.
- In any event on the same day another court order was issued directing that the municipal council was prohibited from holding council meetings until the matters before the courts were dealt with by the courts

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2. BACKGROUND FACTS (cont.)

- It is clear from the foregoing disposition that from the time the municipal council was declared elected on 10 August 2016, it had not succeeded to elect its chairperson and thus enabling the election of the other structures and office bearers.
- Most important the municipal council was not exercising its legislative and executive authority as provided for in section 151(2) of the Constitution. The municipality's failure to elect its 5 representatives to the Umzinyathi DM was (is) prejudicial to Umzinyathi District Municipality.
- In the circumstances, and given the fact that both provincial and national Cogta had supported the council in its attempts to elect its chairperson and other office bearers and given the fact that legislation does not allow for a vacuum, the Provincial Executive Council resolved, on 12 October 2016, to intervene at the municipality in terms of sec 139(1)(b) of the Constitution.

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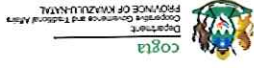


2. BACKGROUND FACTS (cont.)

- It later emerged that there was another court case **SA Mkhize v NFP & Others (Case no: 10326/16)** involving two NFP members who were disputing each others right to occupy one of the two NFP seats.
- An interim order was granted in favour of one of the two members by confirming him as a councillor pending the finalisation of the matter by the Courts.
- The order also prohibited council meetings before conditions of the order were met.
- The matter was supposed to have been argued in court on 10 November 2016, however it was further postponed, and no date has been set as yet.

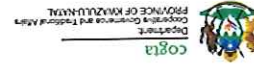
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- On 03 January 2017 the Municipal Manager returned from his prolonged sick leave. On 07 February 2017, after consultation with the Ministerial Representative and KZN Cogta, the Municipal Manager convened another meeting (seventh attempt) of the municipal council.
- The meeting was held at the City Hall in Pietermaritzburg to obviate security concerns. It was presided over by the Municipal Manager, Mr BP Gumbi.



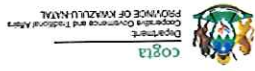
2. BACKGROUND FACTS (cont.)

- On 13 December 2016 another attempt (sixth attempt) to call the first council meeting was made by the Ministerial Representative.
- The meeting was however postponed at the eleventh hour because some councillors reportedly received threats.
- On 12 December 2016, Ms ET Ntshabela (from the NFP) brought urgent proceedings (NFP and ET Ntshabela vs SA Mkhize and Others (Case No. 14040/16P) to prohibit SA Mkhize (also from the NFP) from attending and participating in any meeting scheduled by the Ministerial Representative for 13 December 2016.
- Although this application was dismissed by the court it had a destabilising effect and the prospects for holding a successful meeting were again diminished.



2. BACKGROUND FACTS (cont.)

- Immediately after the start of the meeting political parties raised technical concerns about the venue of the meeting, the recording of the meeting and whether the Municipal Manager had the requisite authority to convene and preside over the meeting in the presence of the Ministerial Representative.
- The Municipal Manager then adjourned the meeting for five minutes in order to consult with the Ministerial Representative and KZN Cogta representatives who were present at the meeting.
- As the Municipal Manager was busy consulting spectators broke into a song and dance. The situation became chaotic with councillors jostling for the attention of the Municipal Manager and the Ministerial Representative.




2. BACKGROUND FACTS (cont.)

- On 19 December 2016, 18 councillors approached the court (Kunene & Others v Nquthu Municipality & Others (Case no: 14271/16P) seeking an order to compel Mr Mkhize, the Ministerial Representative, to convene a Municipal Council meeting within six days of the granting of the order.
- On 21 December 2016, the matter was adjourned to 14 February 2017 in order for interested parties to be joined and supplementary papers filed by specific dates.
- The applicants subsequently changed their legal representatives and had not filed any supplementary papers as prescribed by the court.
- It was thus obvious that on 14 February 2017, the matter would be postponed further as new parties have to be joined before the matter can proceed.



2. BACKGROUND FACTS (cont.)




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2. BACKGROUND FACTS (cont.)

- The situation became uncontrollable forcing the Municipal Manager to call the meeting off. Some of the disgruntled councillors surrounded the Ministerial Representative holding him hostage demanding that he makes arrangements for the MEC to come and address them.
- He was told that they will not release him from the chamber/hall until he had successfully called the MEC to come and address them.
- When the councillors and their supporters suggested that the Ministerial Representative must physically be lifted from the hall and held-up in another venue until the MEC had arrived, police were called to evacuate him.
- He was safely evacuated by members of the Public Order Policing in Pietermaritzburg and has thus far not returned to Nquthu.

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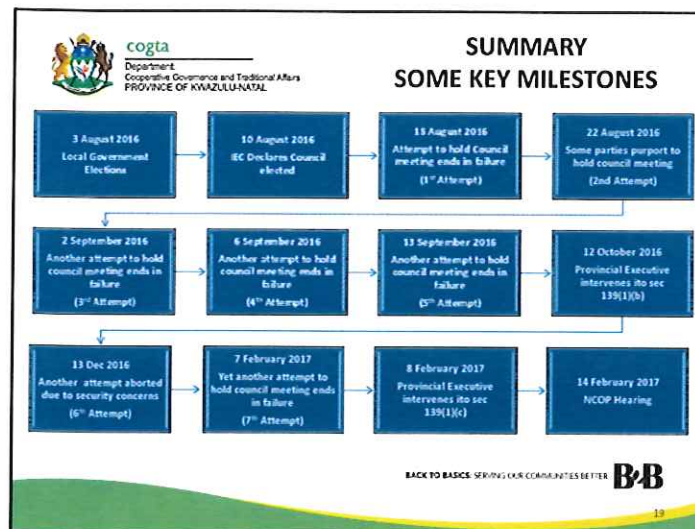
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2. BACKGROUND FACTS (cont.)

Resolution of the KwaZulu/Natal Portfolio Committee on Cooperative Governance and Traditional Affairs:

- On 20 January 2017 the KwaZulu-Natal Portfolio Committee on Cooperative Governance and Traditional Affairs unanimously resolved to request the Provincial Executive Council to escalate the intervention in Nquthu by dissolving the municipal council.
- The MEC, who was present at the meeting noted the Portfolio Committee resolution and promised to bring the views of the committee to the Provincial Executive which is responsible for interventions in municipalities.
- The MEC told the committee that indeed the situation at Nquthu was concerning because councillors are getting salaries while doing nothing and not attending to community issues.

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3. CONSTITUTIONAL MATTERS


- The powers of the Executive and the Legislature of a provincial government are clearly set out in the Constitution.
- Not only does a Local Government institution (municipality) have the right to govern the affairs of its community subject to national and provincial legislation, but it is protected by the provisions of section 151(4) of the Constitution from any actions of the national or a provincial government, which compromise or impede its ability to exercise its powers or perform its functions.
- Section 154(1) of the Constitution provides for the support by provincial government of municipalities.
- Section 155(7) provides for the provincial governments to have "legislative and executive authority to see to the effective performance of municipalities of their functions ..."

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3. CONSTITUTIONAL MATTERS....cont.


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- As demonstrated under the background facts the KwaZulu/Natal Government did everything possible to assist the Nquthu Municipality to overcome its political and legal challenges to elect office bearers, to no avail.
- On 12 October 2016 the Provincial Executive Council in KwaZulu Natal exercised this discretion by intervening in Nquthu Municipality in terms of section 139(1)(b) of the Constitution in an effort to resolve the legal and political crises facing the municipality.
- It has been demonstrated that even with the section 139(1)(b) intervention the situation in the municipality did not improve, thus the Provincial Executive Council having considered the substantive and factual reports tabled before it, resolved:
 - ✓ To intervene in terms of section 139(1)(c) of the Constitution, 1996, and
 - ✓ To authorise the MEC for CoGTA to appoint an Administrator in compliance with the provisions of section 35 of the Structures Act, and to facilitate the election of a new Municipal Council.

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4. SUBSTANTIVE MATTERS....cont.


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- The following are the substantive reasons for the decision of the Provincial Executive Council to intervene in terms of Section 139(1)(c) of Constitution at Nquthu Municipality:
 - ✓ the fact that no executive functions are being performed by the elected Council at the Nquthu Municipality, but by the Ministerial Representative appointed in terms of the current intervention in terms of section 139(1)(b) of the Constitution, which state of affairs cannot be allowed to persist, especially since the intervention in terms of section 139(1)(b) of the Constitution has, over the past three months, not achieved the resolution of the political and legal impasse at the municipality.

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4. SUBSTANTIVE MATTERS


 **CoGTA**
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- The following are the substantive reasons for the decision of the Provincial Executive Council to intervene in terms of Section 139(1)(c) of Constitution at Nquthu Municipality:
 - ✓ the failure by the Nquthu Municipal Council to constitute itself and to elect its chairperson as provided for in sections 29 and 36 of the Structures Act;
 - ✓ the failure by the Nquthu Municipal Council to elect its Executive Committee as provided for in section 43 of the Structures Act;
 - ✓ the failure by the Nquthu Municipal Council to elect its Mayor and Deputy Mayor as provided for in section 48 of the Structures Act;
 - ✓ the failure by the Nquthu Municipal Council to elect its representatives to the uMzinyathi District Municipality, as provided for in section 23, read with Part 1 of Schedule 2 to, the Structures Act, which is prejudicial to the interests of the uMzinyathi Municipality, as it is prevented from constituting its own council and thereby negatively affecting governance and service delivery within the uMzinyathi Municipality's area of jurisdiction; and

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5. PROCEDURAL MATTERS

 **CoGTA**
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- Intervention in terms of section 139(1)(b) at Nquthu Municipality:
 - ✓ The Provincial Executive Council considered a report and resolved to intervene on 12 October 2016
 - ✓ On 13 October 2016 the Minister, the NCOP and the Provincial Legislature were notified of the intervention in line with the requirements of section 139(2) of the Constitution
 - ✓ On 28 October 2016 the Minister approved the intervention within the timeframe prescribed in section 139(2) of the Constitution
 - ✓ On 10 November 2016 the Select Committee on Cooperative Governance and Traditional Affairs conducted an oversight visit to Nquthu Municipality
 - ✓ The decision of the NCOP in this regard is still pending
- It should be noted that when the Provincial Executive Council decided to intervene in terms of sec 139(1)(b) the municipal council had already failed five times to hold a successful meeting.



5. PROCEDURAL MATTERS...cont.

- Further attempts on 13 December 2016 and 7 February 2017 to hold the first meeting failed while the municipality was already under intervention in terms of section 139(1)(b).
- Intervention in terms of section 139(1)(c) at Nquthu Municipality:
 - ✓ In the circumstances the KwaZulu/Natal Provincial Executive Council considered a report and resolved to intervene at Nquthu Municipality on 08 February 2017
 - ✓ On 09 February 2017 the Minister, the NCOP and the Provincial Legislature were notified of the intervention in line with the requirements of section 139(3) of the Constitution
 - ✓ On 14 February 2017 the MEC is appearing before the NCOP SC on Cooperative Governance and Traditional Affairs
 - ✓ The decision of the Minister in this regard is still pending

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6. CURRENT STATUS

- The municipality remains without a duly constituted municipal council, thus the municipal council remains unable to exercise its executive and legislative powers.
- The following are among the powers that the municipal council has been unable to exercise since the election:
 - ✓ Consider and approve the Mid-term Performance Report
 - ✓ The Annual Report including the report of Auditor General
 - ✓ The Adjustment Budget
 - ✓ The Oversight Report
 - ✓ Monthly (section 71) and quarterly (Section 54) reports
 - ✓ The draft IDP and draft Budget (2017/2018) will be considered soon (March 2017)
 - ✓ The Service Delivery and Budget Implementation Plan for 2017/2018

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6. CURRENT STATUS

- The Ministerial Representative who was posted at the municipality by the Provincial Executive Council in terms of the intervention in terms of section 139(1)(b) exercises these powers instead of the elected representatives
- The Ministerial Representative and management are operating on the basis of a Recovery Plan prepared in terms of the above decision
- The municipal council had even failed to appoint the Acting Municipal Manager when the Municipal Manager went on prolonged sick leave. He has since returned to work, however questions still remain over decisions he made while on sick leave.

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7. CONCLUSIONS

- It is submitted that the KwaZulu/Natal Provincial Executive Council and the Department of Cooperative Governance and Traditional Affairs have done everything possible to assist the municipality to overcome its political and legal challenges to elect office bearers, to no avail. It is submitted that the decision to intervene in terms of section 139(1)(c) of the Constitution under these circumstances, is justified.
- Once the intervention is approved, the Administrator will be appointed and a by-election to be held within 90 days from the date of dissolution will be facilitated by the relevant authorities

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ITEM NO.	CONTENT
1	EMADLANGENI MUNICIPALITY (SECTION 139(1)(B)) INTERVENTION
2	PURPOSE
3	CHALLENGES AT THE MUNICIPALITY
4	COGTA SUPPORT AND ASSOCIATED PROCESSES INCLUDING THE COURT APPLICATION
5	REASONS FOR THE INTERVENTION
6	DECISION OF THE PEC
7	CONCLUSION

ITEM NO.	CONTENT
1	1. PURPOSE

ITEM NO.	CONTENT
1	EMADLANGENI MUNICIPALITY (SECTION 139(1)(B)) INTERVENTION
2	BACKGROUND
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4	COGTA SUPPORT AND ASSOCIATED PROCESSES INCLUDING THE COURT APPLICATION
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7	CONCLUSION

ITEM NO.	CONTENT
2	2. BACKGROUND



2. BACKGROUND (cont.)

- Decisions were being taken by the council which were irregular and could financially prejudice the municipality. The MEC deployed teams to advise the municipality on a number of occasions on their mandate of supporting and performing oversight in municipality to no avail.
- The MEC personally visited the municipality and reached an understanding on the way forward, but this too was later ignored by the municipal council. The Department was forced to again take the extraordinary measure of approaching the courts in an attempt to force the municipality towards following correct legal procedures. The matter was adjourned sine die.
- In the meantime the municipality is going off on a tangent. Its oversight structures have been affected by the differences in council and have been become dysfunctional. The administration has been negatively impacted as the Municipal Manager has been away since she was illegally suspended in September 2016.

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33



3. CHALLENGES AT THE MUNICIPALITY

3.1. Suspension of the Municipal Manager

- The municipal council or a faction of the municipal council, took a decision to place the Municipal Manager on 'special leave' within three weeks of coming into office.
- The decision was taken on the basis of 'anonymous' allegations received by the Mayor. Forcing an employee to go special leave is illegal in South African law.
- Thus one of the first decisions that the Emadlangeni Council took was an illegal decision.

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34



3.1 SUSPENSION OF THE MUNICIPAL MANAGER (CONT...)

- Normally the mayor would have had to satisfy herself of the veracity of these allegations, particularly because she is new in office and for that matter in council. The allegations were tabled in council the same day they were received. On the basis of those allegations the council resolved, albeit irregularly, to put the municipal manager on special leave.
- Both the Municipal Manager and Cogta advised the municipality about the illegality of their decisions to no avail. The mayor was advised that the allegations in the anonymous letter had been investigated on at least two occasions by the municipality and Cogta and were finalized.
- The Municipal Manager had been cleared by those investigations. Again the council or at least some in council refused to take heed of such advice.

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35



3.2. Appointment of Acting Municipal Manager

- In their haste to get rid of the Municipal Manager the councillors appointed one of the senior managers as Acting Municipal Manager who did not meet the requirements for that position.
- After conducting a preliminary assessment the MEC established that the acting municipal manager did not meet the minimum requirements for being a municipal manager.
- The council was advised accordingly and the end result was that the municipality was left without a municipal manager from that point in time.


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36

37

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Appointment of Acting Municipal Manager (Cont.)


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- Prior to his removal the Acting Municipal Manager made several strategic decisions such as the appointment of an investigator to investigate the Municipal Manager. This has had a financial impact on the municipality in terms of the costs incurred to investigate allegations that had previously been investigated. It is thus incumbent upon Cogta to review all decisions taken by the Acting Municipal Manager and if needs be have them invalidated by a court of law if council refuses to take such a decision.
- The costs so incurred including the costs of paying two Municipal Managers will be considered with a view to advising both the Auditor General and Provincial Treasury in terms of section 32 of the Municipal Finance Management Act to investigate the matters.

38

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3.4. Impact on the Administration/Institutional Challenges


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- The prevailing situation at the municipality has resulted in the administration being demotivated and lacking in terms of direction.
- The Director Corporate Services contract came to the end without the municipal council making necessary arrangements for a replacement. Thus the municipality is not only without a municipal manager but also without the Director Corporate Services. These two positions are critical to a properly functioning administration.
- The absence of both the Municipal Manager and the Director Corporate Services means that the council has no competent administrators to advise and guide the council on administrative and legal processes.

39

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3.3. Deteriorating Governance Environment

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- The prevailing situation at the municipality has negatively impacted on the oversight structures of the council. The structures are failing to operate optimally. Thus they are failing to fulfil their oversight role such as ensuring that council resources are spent according to the SDBIP of the municipality. For instance, reports submitted by management have claimed to have completed projects that do not exist.
- Committees of council have not considered monthly, quarterly and mid-year reports as required by legislation.

40

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4. COGTA SUPPORT AND ASSOCIATED PROCESSES INCLUDING THE COURT APPLICATION

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- The MEC has the duty to oversee and ensure that municipalities fulfil their constitutional obligations of ensuring sustainable, effective and efficient municipal services, promoting social and economic development, encouraging safe and healthy environments.
- Section 154 of the constitution enjoins the provincial government, in particular the MEC to support and capacitate municipalities to undertake their powers and functions. The MEC is also required to monitor actions of municipalities and cannot rest on her laurels when the actions of a municipality are patently unlawful or ultra vires.
- The MEC sent several delegations to advise the municipality on correct procedures to follow. It is recorded that in the main the advice provided by Cogta delegations was ignored by the municipality and where it was implemented it was done incorrectly.



COGTA SUPPORT AND ASSOCIATED PROCESSES INCLUDING THE COURT APPLICATION (CONT.)

- The intransigence on the part of the council led to the MEC personally meeting with the council on 04 November 2016. After much deliberation the MEC had directed the municipal council to review the resolutions taken on 13 and 21 September 2016. The council agreed to this course of action but later failed to give Cogta officials the co-operation necessary to give effect to the decisions agreed to with the MEC. The MEC did warn the council that failure to govern in terms of the law could result in the Provincial Council invoking section 139 at the municipality.
- In December 2016 the MEC brought an application in the High Court against the municipality which the municipality opposed. The matter was deemed not urgent by the court and will thus be heard by the court at a later stage. In the meantime the municipality is going off on a tangent and if not contained now things will be worse by the time the courts hear the matter.

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5. REASONS FOR THE INTERVENTION

Summary:

- The Emadlangeni Municipal Council took and implemented illegal decisions relating to forcing the Municipal Manager to take special and the subsequent illegal suspension.
- The incurring by Emadlangeni Municipal Council of costs amounting to hundreds of thousands associated with the illegal suspension of the Municipal Manager despite advise to the contrary.
- The rejection by Emadlangeni Municipal Council of support and advisory from Cogta resulting in the municipality being left without an accounting officer a considerable period of time.
- The failure by the Emadlangeni Municipal Council to replace the Director Corporate Services despite timely advise provided by Cogta.
- The appointment by Emadlangeni Municipal Council of the Acting Municipal Manager who did not have the requisite requirements for the job and the concomitant decisions that resulted in the municipality incurring fruitless and wasteful expenditure.

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4. DECISIONS OF THE PROVINCIAL EXCO

- Having considered the facts before it the PEC thus resolved that an intervention in terms section 139(1)(b) of the constitution be instituted at the Emadlangeni Municipality.
- The PEC:
 1. *approved a provincial intervention in terms of section 139(1)(b) of the Constitution at the Emadlangeni Municipality;*
 2. *authorised the MEC for CoGTA to appoint a ministerial representative with the following terms of reference:*
 - a) *to prepare and implement a recovery plan for the municipality;*
 - b) *undertake the appointment/removal of municipal managers or senior managers in terms section 54A and section 56 of the Municipal Systems Act, 2000 as amended;*
 - c) *implement all governance systems and procedures including oversight over the administration;*
 - d) *approve all decisions taken by the Municipal Manager and Section 56 Managers in terms of delegated or original authority; and*
 - e) *to implement programmes to capacitate the councillors of Emadlangeni Municipality on their governance role including oversight on the institutional, financial and service delivery affairs of the municipality*


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10. CONCLUSIONS

- Unless the question of political will is dealt with by the political parties represented in Council, the Emadlangeni Municipal Council will remain dysfunctional no matter how much money and other resources are invested by the government in an attempt to assist the municipality.
- There is a sense in which the Emadlangeni Municipality sees itself as having powers to operate outside of the rule of law.
- A Ministerial Representative has been appointed to develop and implement a recovery plan, which will be monitored closely by CoGTA.
- Quarterly progress reports will be submitted to the Select Committee for noting.

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45

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B:B

TERMINATION OF INTERVENTIONS IN TERMS OF SECTION 139(1)(B) AT INDAKA AND IMBABAZANE MUNICIPALITIES AS WELL AS 139(4) INTERVENTION AT INGWE MUNICIPALITY



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47


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B:B

1. PURPOSE

The purpose of the this report is:

- remind the Select Committee of the reasons for the Constitutional interventions at Indaka, Imbabazane and Ingwe municipalities; and
- to apprise the Select Committee of reasons for the termination of the interventions.



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 PROVINCE OF KWAZULU-NATAL

46

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER

B:B

TABLE OF CONTENTS

ITEM NO.	CONTENT
1	CLOSE OUT REPORTS INDAKA, IMBABAZANE AND INGWE MUNICIPALITIES
2	PURPOSE
3	BACKGROUND AND REASONS FOR THE INTERVENTION
4	MUNICIPAL DEMARCATION BOARD PROCESS
5	CLOSE-OUT OF THE INTERVENTIONS
6	POST-MERGER SUPPORT



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 PROVINCE OF KWAZULU-NATAL

48

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER

B:B

2. BACKGROUND

Indaka Municipality

- The Municipality was under Provincial Intervention for the better part of the last seven years. The first Intervention (Sec 139(1)(b)) commenced in November 2009 until December 2013 when it was reduced to sec 139(1)(a) of the Constitution. This intervention ended in March 2015. Within three months after the end of this intervention, the governance situation at the municipality deteriorated to such an extent that the Provincial Executive Council had to re-intervene in terms of sec 139(1)(b) of the Constitution in July 2015.
- It is perhaps pertinent to state that the said intervention in July 2015 came on the back of the murder in mid-July 2015 of the former Municipal Manager (Khumalo).



2. BACKGROUND (CONT.)

- The reality of governance collapse at Indaka Municipality played out in many and various manifestations; such as
 - Illegal decisions by the Council.
 - Irregular alteration/amendment of the 2015/16 budget to suit/cater for the personal interests of certain powerful Councillors on the Council.
 - Designation of R4 million in the Repairs & Maintenance vote to benefit certain Councillors so that they are made rich, via appointment of hand-picked companies, before the merger between Indaka and Mnambithi is finalised.
 - Placing the former Municipal manager (MM) under duress not to implement strict SCM processes.
 - Forcing the former MM to drop the charges against one official (MB Zwane); so that the said official could facilitate and influence tender processes for the benefit of certain Councillors in one way or other.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER **B-B**

49



2. BACKGROUND (CONT.)

- Rampant abuse of power forcing municipal officials to submit to illegality in all manner of ways (alteration of budget, alteration of Council minutes, appointment of lawyers to defend illegal actions of the Council, misuse of Council resources/assets, etc.).
- Unlawful removal of the Mayor (Mchunu) from the office of the Mayor in April 2015 against the advice from CoGTA.
- Unlawful appointment of Cllr Zikalala (former), who was not a member of EXCO, as the new mayor of the Municipality.
- Unlawful suspension of the former MM.
- Illegal defiance of the lawful award to reinstate the former MM by the SALGBC.
- Total dysfunctionality of Council Committees due to the stand-off between the Speaker (supported by the Council) and EXCO members.
- Failure to participate in the CMC processes for the merger between the Indaka and Mnambithi

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50



2. BACKGROUND (CONT.)

- Notwithstanding many Council meetings in 2015 which took all sort of decisions, the minutes of all Council meetings between February 2015 and January 2016, including the minutes on budget approval, were not approved until March 2016 when such minutes were approved for the record. This is ample evidence of the dysfunctionality of the very Council itself.
- It is on record that at the start of the intervention in July/August 2015, the security situation was tense and dangerous that both the Administrator/Ministerial representative and the Acting MM had to operate from Ladysmith/Mnambithi offices for some time until they had been provided with security protection.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER **B-B**

51



2. BACKGROUND

Imbabazane Municipality

- The Provincial Executive Council resolved on 23 January 2013 to intervene at the Imbabazane Local Municipality in terms of Section 139(1) (b) of the Constitution of the Republic of South Africa, 1996. The Intervention was triggered by political instability at the municipality which had persisted since the inauguration of Council after May 2011 Local Government Elections.
- These challenges culminated in a Council meeting on 20 June 2012 which took a resolution to replace office bearers, a decision which was challenged by the Honourable MEC for Co-operative Governance and Traditional Affairs.

BACK TO BASICS: SERVING OUR COMMUNITIES BETTER **B-B**

52

53

BB BACK TO BASICS: STARTING OUR COMMUNITIES RIGHT

INGWE MUNICIPALITY (CONT.)

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PROVINCE OF KWAZULU-NATAL

The High Court subsequently ruled that the removal of the office bearers was null, void and invalid. The ruling of the High Court had a number of implications for the municipality leading to more challenges.

- The intervention was extended on several occasions due to poor progress and in some cases due to emerging challenges. On 25 February 2015 the intervention was extended to 30 September 2015. On 16 September 2015 the intervention was extended to 31 March 2016 where after the intervention was further extended to the date of the local government elections in August 2016.

55

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2. BACKGROUND

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PROVINCE OF KWAZULU-NATAL

The Municipal Manager convened council meetings for 15 March 2016, 18 March 2016, 30 March 2016, 7 April 2016, 14 April 2016 and 28 April 2016 to allow the council to transact the business which included electing the Speaker, electing the Mayor and tabling the 2016/17 IDP and Budget. All these meetings had to be adjourned due to lack of quorum.

- The MEC warned the municipal councillors that they will be prosecuted in terms of the Code of Conduct should they be found to have breached the said Code, and the Council was also warned that the municipality was sliding into the state of dysfunctionality. It became clear from the failure by the majority of councillors to attend subsequent meetings, that they did not take heed of the MEC's warning.

54

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2. BACKGROUND

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PROVINCE OF KWAZULU-NATAL

The Ingwe Local Municipal Council in the Harry Gwala District was made up of 22 councillors of which 16 represent the ANC, 3 the IFP, 2 the NFP and 1 the DA. The Municipal Council was beset by political instability for more than a year. The instability came to a head when both the Mayor and Speaker resigned from their positions in March 2016, with the Mayor also resigning as a Councillor of the Municipality.

- The result of the resignation was the emergence of open dissent among councillors who, in apparent solidarity with the former Mayor and Speaker, boycotted subsequent council meetings convened by the Municipal Manager for the purposes of electing a Speaker, and for concluding other business of council, including the election of a Mayor and the tabling of the 2016/2017 budget.

56


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2. BACKGROUND

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PROVINCE OF KWAZULU-NATAL

The MEC for CoGTA authorised an investigation in terms of the Code of Conduct for Councillors into the conduct of these councillors. Preliminary indications were that several councillors may have missed three consecutive meetings, which, if proved, warranted expulsion by the MEC.

- The Provincial Executive Council resolved to intervene in terms of section 139(4)(a) in order to ensure that the municipality complied with its obligations in terms of the Municipal Finance Management Act and to pass its budget and IDP.




3. MUNICIPAL DEMARCATION BOARD PROCESS

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- The three municipalities were identified as some of those that were not viable on their own. Submissions were made to the Municipal Demarcation Board (MDB). The MDB approved the merger of these municipalities with adjoining municipalities to ensure sustainability.
- The Change Management Committees (CMC) were created in all three municipalities and dealt with a variety of issues some of which were issues that had led to interventions. Thus in all three intervention municipalities the Ministerial Representatives were instructed to ensure functionality of CMCs among other things.
- Institutional weaknesses at all three municipalities remained an area of concern until the three municipalities were dissolved. None of the three municipalities had full complements of senior managers at the end of the interventions.
- Governance at Ingwe and Indaka Municipalities had collapsed. In both cases poor governance was one of the primary reasons for the interventions.

BACK TO BASICS. SERVING OUR COMMUNITIES BETTER **B:B**

57




3. MUNICIPAL DEMARCATION BOARD PROCESS (CONT.)

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PROVINCE OF KWAZULU-NATAL

- Governance at Ingwe and Indaka Municipalities had collapsed. In both cases poor governance was one of the primary reasons for the interventions.
- Despite poor governance and institutional challenges all three municipalities remained with positive cash flows at the end of the intervention. This, being one aspect that pointed to the positive impact of the interventions, more so in Indaka and Imbabazane municipalities.
- Some service delivery challenges at both Indaka and Imbabazane still remained at the end of the intervention. These challenges were discussed with CMCs and have been reported to the new councils through that process.

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58



4. CLOSE-OUT OF THE INTERVENTIONS

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PROVINCE OF KWAZULU-NATAL

Indaka Municipality

- The municipality ceased to exist on 10 August 2016 when it merged with Ladysmith/Mnambithi to form Alfred Duma Municipality. At this point the intervention terminated automatically by operation of the law, that is, the entity at which the intervention had been instituted no longer existed.

Imbabazane Municipality


- The municipality ceased to exist on 10 August 2016 when it merged with UMTshezi Municipality to form Inkosi Langalibalele Municipality. At this point the intervention also terminated automatically by operation of the law, that is, the entity at which the intervention had been instituted no longer existed.

Ingwe municipality

- The municipality ceased to exist on 10 August 2016 when it merged with kwaSani Municipality to form Dr Nkosazana Dlamini Zuma Municipality. At this point the intervention also terminated automatically by operation of the law, that is, the entity at which the intervention had been instituted no longer existed.

BACK TO BASICS. SERVING OUR COMMUNITIES BETTER **B:B**

59




4. CLOSE-OUT OF THE INTERVENTIONS (CONT.)

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PROVINCE OF KWAZULU-NATAL

- Close out reports were prepared by the three administrators and presented to the Intervention Steering Committees at each of the three municipalities.
- The Intervention Steering Committees comprised of senior managers from intervention municipalities, political office bearers from the affected municipalities, relevant national departments, provincial departments, other state agencies and labour unions. The Steering Committees monitored the interventions and made recommendations to the Provincial Executive Council when necessary.
- Based on the exit reports, the Executive Council noted progress and that by operation of the law, all three interventions terminated when the municipalities were disestablished on 10 August 2016.

BACK TO BASICS. SERVING OUR COMMUNITIES BETTER **B:B**

60




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5. POST-MERGER SUPPORT

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- CogTA provided IT support with regard to the migration of financial systems within the restructured municipalities. This included the:
 - Consolidation of pay rolls, debtors and creditor accounts.
 - Consolidation of valuation rolls
 - Consolidation of asset registers
 - Consolidation of archives with specific reference to the implementation of electronic systems
- CogTA and SALGA provided support on request to merged municipalities with regard to disputes around pay parity issues resulting from the placement of staff. Advice was also provided with regard to objections that were received from staff that objected to placements
- Support was also being provided to financial staff with regard to the compilation of financial statements as required by the Section 14(5) Notices in this regard.
- A post-merger meeting was held where Municipal Managers were requested to table progress reports regarding the amalgamation process and identify any challenges that may be persisting. Solutions were agreed to.
- Support on an on-going basis is currently provided by CogTA to the new municipalities.



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THANK YOU

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