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MEMORANDUM

TO: M J MOHAPI, MP
CHAIRPERSON OF SELECT COMMITTEE ON CO-OPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS

FROM: T R MODISE, MP
CHAIRPERSON: NATIONAL COUNCIL OF PROVINCES

DATE: 7 SEPTEMBER 2018

RE: ✕ NOTICE OF INTERVENTION ISSUED IN TERMS OF SECTION 139(1)(b)
OF THE CONSTITUTION, 1996 TO UTHUKELA DISTRICT
MUNICIPALITY, KWAZULU-NATAL

I have received correspondence from the MEC for Co-operative Governance and Traditional Affairs in KwaZulu-Natal in terms of section 139(2)(a)(ii) of the Constitution, 1996. A copy is therefore attached.

Pursuant to Rule 101 the correspondence is accordingly referred to the Select Committee on Co-operative Governance and Traditional Affairs for consideration and report.

Yours sincerely,

TR MODISE, MP
CHAIRPERSON: NATIONAL COUNCIL OF PROVINCES



COGTA

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The Honourable Chairperson
National Council of Provinces
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Attention : Ms. Thandi Modise, MP
Fax : 021- 403 3649/021- 461 9460

Dear Colleague,

WRITTEN NOTICE IN TERMS OF SECTION 139(2) OF THE CONSTITUTION: INTERVENTION IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION, 1996 AT UTHUKELA DISTRICT MUNICIPALITY

You are hereby notified that on 21 August 2018, the KwaZulu-Natal Provincial Executive Council ("Executive Council"), resolved to intervene in terms of section 139(1)(b) of the Constitution at uThukela District Municipality ("the municipality"). The following report outlines the background and reasons that led to the Executive Council's decision.

1. BACKGROUND

1.1. The kwaZulu/Natal Provincial Executive ("Provincial Executive") conducts oversight visits, called OSS Cabinet days, to municipalities across the province on a regular basis. In April 2018 the Provincial Executive visited communities (in various wards) of Okhahlamba Local Municipality in

the Uthukela District Municipality where communities raised various water and sanitation related challenges.

- 1.2. The Subcommittee of the Provincial Executive Council subsequently met with the leadership and management of Uthukela Municipality in May and June 2018 in an effort to assist the municipality to overcome its challenges.
- 1.3. Later in June 2018 COGTA became aware that employees from the UThukela Water and Sanitation Department, particularly at the Pieter's Depot in Ladysmith, had blocked the entrance and the road leading to the depot. The Thukela Estates Waste Treatment Works (WTW) was also shut down. Valves in Ladysmith and Ezakheni water works were vandalised and burst pipes could not be fixed. The call centre was also forced to shut down.
- 1.4. The municipality had also been under financial stress for over a period of two to three years which has deteriorated recently. In July 2018, the MEC for Cooperative Governance and Traditional Affairs had sent a letter to the Mayor of the municipality requesting confirmation of facts surrounding the serious financial challenges faced by the municipality, and also enquiring whether the municipal Council had plans to turnaround the unfavourable financial situation. The Mayor was yet to respond to the letter at the time of the Provincial Executive invoked section 139.
- 1.5. Communities of Waaihoek, Ekuvukeni and Uitval Closer Complex under the Alfred Duma municipality had also protested over time starting when the drought was at its worst in the province and the district. The protests erupted again in August 2018 causing major disruptions to transport routes linking the area and their economic centre of the town of Ladysmith.
- 1.6. Both the Honourable Premier and the MEC for Cogta as well as officials from Cogta had to intervene at different intervals to help the municipality quell the run-away protest actions.
- 1.7. Upon assessment, it was discovered that there were concrete indicators to the effect that the municipal leadership and management had failed in their oversight and administrative roles respectively. This is beyond the financial stress that the municipality has been experiencing over time. The governance and administrative failures had thus made the financial situation worse.

2. DISCUSSION

2.1. Support to the Municipality (DCOG and KZN CoGTA)

- 2.1.1. DCOG through the implementation of the Simplified Revenue Plan Project and CoGTA KZN Municipal Finance supported the Municipality as follows:
- (a) Review of VAT reconciliations;
 - (b) Engagement with the municipal Council on financial viability and providing recommendations on financial challenges;
 - (c) Review of UIFW registers and the provision of technical advice;
 - (d) Analysis and feedback of 2017/2018 budget and cash flows;
 - (e) Review and feedback on AFS MFMA compliance, annual reports and audit action plan and the establishment of the Interim Finance Committee for cash flow management.
- 2.1.2 KZN CoGTA assisted the municipality with the establishment of the Revenue and Debt Steering Committee and provided technical guidance and advice in relation to government debt (This resulted in government debt reducing by about R3m between 1 July 2017 and 31 May 2018);
- 2.1.3 Training of MPAC members on financial management overview, the reading of annual financial statements, the analysis of annual report and the preparation of oversight report and expenditure management;
- 2.1.4 Several teams of Cogta officials visited the municipality over the past few months to assist the municipality in dealing with financial, governance, institutional and service delivery challenges.
- 2.1.2. When the employee protests started in June 2018, Cogta officials supported the municipality in resolving the issues.
- 2.1.3. Cogta also activated the Water Resource Protection Technical Committee led by DWS which involves various Sector Departments and Cogta Governance Unit through a series of meetings to provide assistance.

2.2. Persistent Challenges despite concerted support

Despite the support, the Municipal Council and Administration have to date not been able to rescue the municipality from financial distress, governance and organisational challenges which are negatively impacting service delivery. These challenges can be classified as follows:

2.2.1. Sound Financial Management (Back to Basics Pillar 2)

Financial Viability and Liquidity

- (a) The Auditor General had identified weak financial management controls and processes which led to non-compliance, compounded by rapidly depleting cash reserves which limit expansion and development and thus impeding crucial service delivery.
- (b) As a Water Services Authority, the water service function is not profitable and the financial ratios and cash flows of the municipality are therefore negatively impacted.
- (c) In May 2018 the Cogta financial assessment noted that the municipality has low cash coverage ratio of -1.63 and low current ratio of 0.66, which reflects the unfavourable financial position. This implies that the municipality would not be able to continue with its business operations and the municipality might not be able to meet its short term financial obligations.
- (d) The 2016/17 Annual Financial Statements (audited) of the municipality indicated that as 30 June 2017 the municipality's current liabilities exceeded its current assets by R92,37m. This scenario appears to have worsened during the 2017/2018 financial year despite the support and assurances from the municipality.
- (e) For the same period, unspent conditional grants of R69,71m and consumer deposits of R13,58m were disclosed in financial statements but were not cashed backed as at year end. The municipality had thus used conditional grants for operational expenses. This scenario appears to have worsened during the 2017/2018 financial year despite the support and assurances from the municipality.
- (f) The approved municipal budget for the 2018/2019 financial year was assessed as unfunded by Provincial Treasury despite recommendations to review expenditure.

Financial Management and Performance

- a) The municipal budget estimated R252.2m in revenue for the period ending 31 May 2018, however the municipality billed only R220.5m of which only 44% (R97.4m) was collected during the same period.
- b) Water losses incurred by the municipality amounted to R153,48m (26.27 m kl) in 2016/2017 financial year which is an increase from the R127,653m (20.89 m kl) in 2015/2016. The loss is mainly due to the distribution losses as a result of the ageing infrastructure and theft through illegal connections as reported by the AG.
- c) Consumer debtors stood at R797.4m as at 31 May 2018 of which households accounted for 91% which indicated the municipality's inability to collect consumer debt.

Expenditure and Creditor Management

- a) As at 31 May 2018 the municipality had only spent 70% or R259,3m of its capital budget for the period ending 30 June 2018.
- b) The municipality has employee related costs of 55.29% which is way above the norm range of between 25%-40% as determined by National Treasury.
- c) The municipal creditors for more than 30 days amounted to R53,7m as at 31 May 2018. The municipality's creditor payment period thus exceeded the 30 days MFMA legislative requirement.
- d) The municipality incurred irregular expenditure and fruitless & wasteful expenditure of R136.0m and R64,581 respectively for the period ending in May 2018.

Unspent conditional grants

- a) The unspent conditional grants for 2016/2017 financial year were not cash backed with cash and cash equivalents amounting to R5,9 million whilst unspent conditional grants amounted to R69.71 million. The application for rollover of RBIG and RRAMS grants amounting to R51,779,390 were not approved by National Treasury.
- b) Based on the financial assessment conducted for period ending 31 May 2018, it was estimated that the municipality would not be able to cash back its unspent conditional grants of R80m for

the 2017/2018 financial year. This indicates that the municipality continued to utilise conditional grants on operating expenditure.

2.2.2. Sound Governance (Back to Basics Pillar 3)

- (a) The Municipality has a Municipal Public Accounts Committee (MPAC) which meets every quarter but it is ineffective as oversight is not adequately conducted particularly on financial information/reporting. For instance, MPAC conducted exercised an oversight role on the review of unauthorised, irregular, fruitless and wasteful expenditure but no consequence management measures were implemented.
- (b) The municipality has an Audit Committee which provides another layer of oversight. This too does not appear to be effective. Without prejudging the matter, all indications are that the municipality will not improve on its qualified 2016/2017 audit outcome, if anything, it is likely to regress. The AG is not likely to rely on the assurances from the Audit Committee.
- (c) The Auditor General (AG) was scathing in finding that the leadership of the municipality which comprises of various structures such as the Council, the Executive Committee and Portfolio Committees as well as functionaries or office bearers did not adequately oversee financial, performance reporting, non-financial performance and compliance with legislation.
- (d) The accounting officer for his part was found to have not appropriately monitored the implementation of policies and procedures and to ensure that effective measures were taken to address previous findings by the AG.

2.2.3. Institutional/Organizational Challenges (Back to Basics Pillar 5)

Labour Disputes/Protests

- (a) COGTA became aware in June 2018 that employees from Uthukela Water and Sanitation Department, particularly at the Pieter's Depot in Ladysmith had blocked the entrance and the road leading to the depot. The Thukela Estates Waste Treatment Works (WTW) was also shut down, valves in Ladysmith and Ezakheni water works were vandalised, burst pipes could not be fixed and the call centre was also forced to shut down.

- (b) The employees were demanding the payment of overtime and standby allowances that had been stopped by the municipality as these exceeded the prescribed thresholds; they also demanded the employment of EPWP workers and interns as permanent employees. The employees also alleged that the municipality was not consistent in its treatment of employees; the reimbursement of Group Life benefits; that employees who have been occupying acting positions for a while should not be interviewed for appointment in positions in which they were acting; and that the employer should consult with employees on the restructuring and review of the organogram. The employees also had issues with the subsistence and travelling (S&T) policy of the municipality.
- (c) On the 25th of June 2018 the employees gathered at the municipality's main offices. During the process the Municipality's TLB Operator brought treated sludge from the Ladysmith Waste Water Treatment plant which the employees spilled in passages in the in the Finance Department and other parts of the municipal building. The SAPS and the Political Leadership intervened in an attempt to calm the situation down without success.
- (d) The municipality paid the same overtime and standby allowances the same day (25th of June). Other employees climbed on the bandwagon while others claimed they had not been paid and thus persisted with the blockade of the Pieter's Water Depot. This was attended to by senior management at the municipality and the situation went back to normalcy.
- (e) There were no protests in July 2018 but and on Thursday, 2 August 2018 employees from Water and Sanitation Department again protested. Employees, largely from the Pieters' Depot arrived at the municipality's main offices where they hurled insults at management. They were joined by employees from the main office. The employees demanded to be addressed by the Municipal Manager regarding a list of demands as tabled at the end June 2018. The Municipal Manager tried in vain to address the employees. The Mayor also attempted to assist the Municipal Manager in addressing the employees but in vain.
- (f) On Friday the 3rd of August 2018 certain employees forced operators to shut down the Ladysmith Water Treatment Works. Private Service Providers were procured to fix pipe bursts that happened on Saturday the 4th of August 2018. The pipe bursts were affecting areas

including the township of Steadville as well as the industrial area where the Sumimoto (formerly Dunlop) tyre manufacturing plant is located. Sumimoto is a foreign company and employs in excess of one thousand employees. Their operations rely heavily on water availability. Following interventions from Cogta including MEC as well as the Premier, supply was restored by the end of the day.

- (g) On the 6th of August 2018 the Municipal Council met to consider the matters and while the meeting was underway, some employees again tried to throw faecal matter inside the reception area at the main offices as well as the covered parking where politicians and senior managers park their vehicles. They were prevented by the SAPS and municipal security.

Community Protests

- a) On 13 August 2018 the community of both Ekuvukeni and Vaalkop in the Alfred Duma Municipality embarked on violent community protest over lack of service delivery particularly water and sanitation. It had been stated that water supply interruptions in Ekuvukeni and surrounding areas were due to sabotage of water works in uThukela. It was alleged that aggrieved employees were responsible for the alleged sabotage.
- b) The Department of Community Safety and Liaison in the Province and the Municipal Leadership addressed the community of Ekuvukeni and surrounding areas who were protesting over the interruption of water supply and the shutting down of the Rose Hill Water Works. The municipality appointed a private contractor to address the specific challenge of the system so that water supply could be restored.
- c) The residents of Ekuvukeni and Vaalkop (Alfred Duma Municipality in Uthukela DM) barricaded roads with boulders and tree stumps and pelted passing vehicles with stones.
- d) It is alleged that the taxi owners of Vaalkop retaliated against the community which led to a standoff. A shooting incident was reported.
- e) The employees of the municipality in turn alleged that they were prevented by the community protest from accessing the water works to operate the system so that water supply could be restored. A 'catch 22' situation developed where the local communities protested about the

non-availability of water and inadvertently prevented the municipality artisans from reaching the water works to restore water supply.

- f) The community, particularly in Ekuvukeni also alleged that they had been experiencing intermittent water cuts and that the employees of the Uthukela Municipality Water Department had been unavailable resulting in sewer spillages in the streets. Needless to say, sewer spillages are a cause for concern as they pose a health hazard to the residents. Normal life was thus disrupted as children could not attend schools for two days due to unavailability of water and the unhygienic conditions caused by sewer spillages.
- g) The Uthukela Municipality claims that the Ekuvukeni Waste Water Works was vandalised during the community protest in 2017 and is thus dysfunctional, this according to the municipality, resulted on a number of sewer spillages. The municipality claims to have filed an insurance claim which has since been approved. Apparently a service provider has been appointed to refurbish the plant, which work will be completed by end of October 2018. There is however no explanation as why communities have been left with sewer spillages for more than a year.

Response to the Community Protests

- a) Municipal Leadership from both Alfred Duma and UThukela Municipalities had been consulting protesting communities over time but it did not yield any positive results. Lack of intensive feedback sessions by local councillors was identified as one of the weak links.
- b) The Premier in his capacity as District Champion for UThukela District, engaged the Uthukela Municipal Leadership as well as the Alfred Duma Municipal Leadership over the matter and subsequently engaged the protesting communities of Ekuvukeni and Vaalkop (within Alfred Duma Municipality).
- c) On 14 August 2018 the Premier met with Municipal and Local Leadership to tease out the issues that had led to community protests. On the 15th of August the Premier held community engagements at Ekuvukeni and Vaalkop.

- d) The issues ranged from water to sanitation, schools, housing, land related disputes, non-convening of community meetings by councillors as well as access roads and community facilities. These matters were referred to the relevant departments and the affected municipalities for attention.
- e) The Premier visited these communities on Sunday 26 August 2018 where he announced, among other things, that the Provincial Executive had resolved to authorise the MEC for Cogta to appoint an Administrator who will turn around the situation at the municipality.

2.2.4. Delivering Services (Back to Basics Pillar 2)

Capacity of the Water Services Authority (WSA) – The municipality

- (a) The municipality (WSA) currently does not have adequately skilled and trained personnel to undertake effective water and sanitation supply services in its area of jurisdiction. This is despite the organogram of the municipality being bloated and the municipality exceeding the National Treasury norm on employee costs. Thus, even if the infrastructure was in good shape and the municipality had all the resources it requires, without adequately trained and capacitated employees, the municipality would still not be able to deliver water and sanitation supply services.

State of Infrastructure (including refurbishment and upgrading of infrastructure)

- (b) The municipality owns a total of 13 WTW that have a total design capacity of 113 MI / day. To meet demand, eight of the Works are being operated beyond design capacity and are collectively producing 138.5 MI / day. In terms of the conditions of these plants, only 4 are in prime operating condition. The balance of 9 works are operational, but not in prime condition. The municipality estimates that refurbishment costs for all their Works total R 164.1 million. Water losses are high – in excess of 40 % in 8 schemes. The municipality has consistently failed to budget adequately for repairs and maintenance (budgeting far below the National Treasury norm of 8% of the value of property, plant and equipment).

- (c) Based upon a 2017 assessment undertaken by the municipality, the cost of refurbishment and upgrading work on the schemes across the district is estimated at R 950m.
- (d) Currently the status of supply from groundwater sources is as follows: BOREHOLE HANDPUMP - 820 functional and 468 non-functional. PRODUCTION BOREHOLE - 42 functional; 26 non-functional and PROTECTED SPRINGS - 95 functional; 60 non-functional. The municipality estimates that the refurbishment costs for all their underground water supply infrastructure is total R 105 million.
- (e) The municipality provided an operational status and condition report on their Waste Water Treatment Works (WWTW). Of the 9 Works throughout the district, 4 are operational and the other 5 are dysfunctional. The estimated refurbishment costs for all the works is R190 million.

Immediate interventions plans

- (f) Immediate intervention plans have been developed for each of the three Local Municipalities within the district. These will require an injection of R77m broken down as follows: 1) Alfred Duma - R33.5m, 2) Okhahlamba – R25.6m and Inkosi Langalibalele – R17.8m. These costs do not include operating costs but refurbishment of infrastructure.
- (g) The municipality does not appear to have the will and the competency to reprioritize its activities, reduce costs from non-core activities so that money can be released to fund these essential services.

3. Resolutions of the Provincial Executive Council

In the circumstances, the Provincial Executive Council took the view that adequate support had been provided to the municipality but despite such support it was failing.

The Executive Council thus resolved to:

- 3.1. Intervene at UThukela District Municipality in terms of section 139(1)(b) of the Constitution, 1996 and to assume the functions related to financial management; the functions specified in sections 51,

66 and 67 of the Local Government Municipal Systems Act and the Water Services Authority function of the municipality.

3.2. Authorize the MEC for Cooperative Governance and Traditional Affairs to appoint suitably qualified person(s) to implement the following terms of reference:

- (a) preparation and implementation of a recovery plan approved by the municipal council;
- (b) assume responsibility for the whole Water Services Authority function;
- (c) attend to and deal with WSA failures related to water and sanitation services including, but not limited to those raised during the OSS Cabinet visit in Okhahlamba Municipality in April 2018, and during community protests in Alfred Duma Municipality in August 2018;
- (d) attend to and deal with reasons for the failure by the Municipal Council to attend to failures related to the water and sanitation services function following the meeting between the Uthukela District Municipality leadership and the Provincial Executive Council Subcommittee in May and June 2018;
- (e) ensure implementation of financial systems, policies and procedures including preparation and implementation of cost cutting measures;
- (f) to be a compulsory signatory on the municipality's primary bank account and other bank accounts that the municipality may operate;
- (g) revitalize and act as chairperson of the Interim Finance Committee (IFC) to monitor and manage the cash flow of the municipality, approve or dis-approve purchase requisitions and to ensure that the municipality's cash position is not overdrawn;
- (h) ensure that the IFC meets regularly and reports fortnightly to the Executive Committee of Council on the cash flow position, payments approved and disapproved and commitments made (via approved purchase orders);
- (i) implement governance systems and procedures including oversight over the administration including ratification of decisions taken by the Municipal Council, the Executive Committee, Municipal Manager and Section 56 Managers in terms of delegated or original authority;
- (j) ensure implementation of findings arising from any investigations into fraud or maladministration or corruption and to initiate new investigations where necessary;

- (k) ensure implementation of all projects undertaken by the municipality including unblocking projects that have stalled; and
- (l) open and conclude negotiations with creditors of the municipality including the application of processes envisaged in sections 152 and 153 of the Municipal Finance Management Act, 56 of 2003, and

3.3. Authorise the MEC for Cooperative Governance and Traditional Affairs to conclude all formalities related to the intervention.

Accordingly, the Council is requested to consider this submission and to advise of its decisions in this regard within the prescribed timeframe.

Yours in service delivery,



MS. N. DUBE-NCUBE, MPL
KWAZULU-NATAL MEC FOR CO-OPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 29/9/2018

