

① 18/06 SC Co-operative Gov. Gov. Gov.



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL COUNCIL OF PROVINCES
THE CHAIRPERSON

PO Box 15 Cape Town 8000 Republic of South Africa
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www.parliament.gov.za

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: SUBMISSION OF ADDITIONAL INFORMATION ON THE INTERVENTION
ISSUED IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION, 1996
TO ENOCH MGJIMA LOCAL MUNICIPALITY, EASTERN CAPE

Further correspondence regarding an intervention issued in the abovementioned Municipality has been received. 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

TR MODISE, MP
CHAIRPERSON: NATIONAL COUNCIL OF PROVINCES



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MEMORANDUM

To : Clerk of Papers

From : T R Modise, MP
Chairperson: National Council of Provinces

Date : 7 September 2018

Re : Referral of Papers tabled to Committees

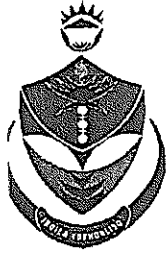
The following papers have been received for tabling and referral to the Ad Hoc Committee on intervention in the North West Province for consideration.

SUBMISSION OF ADDITIONAL INFORMATION ON THE INTERVENTION ISSUED IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION, 1996 TO ENOCH MGIJIMA LOCAL MUNICIPALITY, EASTERN CAPE.

Kindly do the necessary.

TR Modise

TR MODISE, MP
CHAIRPERSON: NATIONAL COUNCIL OF PROVINCES



ENOCH MGIJIMA
LOCAL MUNICIPALITY

MUNICIPAL MANAGER
Physical Address: 70 Cathcart Road, Town Hall, Komani 5320
Postal Address: Private Bag X 7111, Komani 5320

4th September 2018

The Head
National Council of Provinces
CAPE TOWN
8001

Dear Adv Phindela

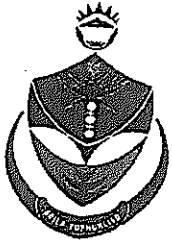
RE: NOTICE OF INTENTION TO INVOKE SECTION 139 OF THE CONSTITUTION

This has reference to various correspondences received from MEC for Cooperative Government and Traditional Affairs on section 139.

INTRODUCTION AND BACKGROUND

Subsequent amalgamation of the three erstwhile entities namely former Tsolwana, Inkwanca and Lukhanji Municipalities to form Enoch Mgijima Municipality came with its challenges. Critical to those challenges was an amalgamation process that was not managed from the start to the end by those entrusted with that responsibility by law. To date there has been no report on amalgamation as a result the municipality is faced by a plethora of litigation from those disestablished municipalities, with some legitimate law suits while others are fictitious.

An intervention through section 154 of the constitution was sourced from the MEC from Cooperative Government and Traditional Affairs. To date that support has not been received, instead we were sent correspondences asking a response from council as to why section 139 of the Constitution cannot be invoked? Responses on behalf of council were sent back to the MEC and without a feedback a letter informing the Executive Mayor that an administrator will be introduced on 03rd September 2018.



ENOCH MGIJIMA
LOCAL MUNICIPALITY

MUNICIPAL MANAGER
Physical Address: 70 Cathcart Road, Town Hall, Komani 5320
Postal Address: Private Bag X 7111, Komani 5320

COUNCIL'S REACTION

Council rejected MEC's intentions to invoke section 139 of the Constitution stating various reasons why invoking section 139 of the Constitution will not be necessary. Council further invited the MEC to consider implementing section 154 of the Constitution. Correspondences to the MEC are attached as annexures for your further perusal.

CONCLUSION

Council views the actions by the MEC as abuse of power and in direct violation of Promotion for Administrative Justice Act. The decision by the MEC is both unjust and unfair. It is against this background that we request for your intervention in the spirit of promoting cooperative governance as espoused in section 153 of the constitution. In this regard, my office and that of the political leadership seek an urgent audience so that the municipal state of affairs can be explained.

Kindly contact me directly at Cell : 066 307 5146 and through the Personal Assistant Ms N Zondani at nzondani@enochmgijima.gov.za.

Yours faithfully,

C MAGWANGQANA
MUNICIPAL MANAGER

CC : The National Chairperson of NCOP, Hon T Modise



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS

Office of the Member of the Executive Council
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Tel: +27 (0)40 609 5788- Fax: +27 (0)40 639 2135

Enquiries: Mr B Duma

Tel: 040 609 5173

Hon. Executive Mayor

Enoch Mgijima Local Municipality

Private Bag X7111

Komani

5320

RECEIVED BY	<i>Cllr. L.E. GUNUZA</i>
DATE	<i>10-11-2017</i>
SIGNATURE	<i>LE 7/1</i>

Dear Cllr. L. Gunuza

Subject: NOTICE OF INTENTION TO INVOKE SECTION 139(1)(a) OF THE CONSTITUTION

I refer to the above matter and wish to advise Enoch Mgijima Municipal Council that I intend to recommend to the Provincial Executive Council to invoke the provisions of section 139(1)(a) of the Constitution.

My decision to recommend invocation of section 139(1)(a) was preceded by a series of interactions between the office of the MEC and the political leadership of the municipality and further between the departmental team led by the DDG and the senior management of the municipality. The reports that emanated from these

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Subject: NOTICE OF INTENTION TO INVOKE SECTION 139(1)(a) OF THE CONSTITUTION

interactions made a reflection wherein the municipality failed to execute fully its executive obligations and this is outlined here below:

- 1. Failure to adhere to the provisions of section 54 and 56 of the Systems Act. In terms of section 54A(1), the municipal council must appoint the Municipal Manager as the head of administration.**

The position of a Municipal Manager has been vacant since December 2016 and this is more than ten months. Over and above the vacancy of the Municipal Manager's position it has been observed that also the position of the Chief Financial Officer has been vacant for almost eight months. Although the recruitment process of a Municipal Manager was initiated, the municipal council failed to finalise this process, instead infights within the council occurred leading to the institution not having the accounting officer up to date. Further to this, the municipal council embarked on irregular processes wherein council appointed a number of different senior managers to act as Municipal Managers whilst this was against the regulations as provided by the above-mentioned provisions. The MEC has attempted to provide guidance and even seconded an official to facilitate appointment of the Municipal Manager and the process was frustrated by the council. I would like to state to you that continued absence of the head of administration hinders the service delivery. It must be said that the power to employ personnel that is necessary for effective performance of municipal councils functions is a constitutional requirement in terms of section 160(1)(d) of the constitution. With the above state of affairs, it clearly reflects that Enoch Mgijima Municipality has failed to execute its executive obligations.

Subject: NOTICE OF INTENTION TO INVOKE SECTION 139(1)(a) OF THE CONSTITUTION

- 2. Failure to observe provision of section 30(5)(c) of the Municipal Structures Act by the council when making appointments.**

Section 30(5)(c) provides that before a municipal council takes a decision on the appointment and conditions of service of the Municipal Manager and a Head of Department of a municipality, it must first require its executive committee or Executive Mayor to submit to it a report and recommendation on the matter. The municipal council has failed to observe the aforesaid provisions of the law when they over a period of time appointed a number of different acting Municipal Managers. This is clearly another failure to execute an obligation by council.

- 3. Non-compliance with section 80(2)(a) of the Municipal Finance Management Act in relation to the availability of CFO in the municipality**

In terms of section 80(2)(a) every municipality must have a chief financial officer. The CFO is in terms of section 81 in charge of the budget and Treasury office and is required to advise the accounting officer among other things. The duty to appoint the CFO is vested with the municipal council after consulting the municipal manager. The absence of CFO has serious consequence in a municipality for example for National Treasury to grant rollover, a municipality must have an appointed of CFO. The non-appointment of the CFO adversely affects municipality's ability to ensure the provision of services to the community of Enoch Mgijima Local Municipality as required by provisions of section 152(1)(b) of the constitution. In your circumstance National Treasury has since decline to approve a total rollover leading to the

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Subject: NOTICE OF INTENTION TO INVOKE SECTION 139(1)(a) OF THE CONSTITUTION

municipality losing an amount of R23 million. This is another failure to implement executive obligation by council.

4. Irregular expenditures caused by not complying to the provision of the Gazette on Implementation of Upperlimits, Allowances and Benefits of Members of Municipal Councils

Your municipality has contravened Section 167(1)(a) by remunerating all the Mayoral Committee members, MPAC Chairperson and Chief Whip without the MEC's concurrence as provided in the Government Gazette No.40763 dated 03 April 2017 on Determination of Upper Limits of Salaries, Allowance and Benefits of Different Members of Municipal Councils.

I demanded your good office to furnish my office with a plan on how the municipality is going to recover the money (remuneration) that was paid to the above mentioned councillors who were remunerated as full time prior to my approval and publishing of the gazette thereof. Up to date your municipality failed to provide me with the requested information. This therefore means that your municipality has failed to address matters related to irregular expenditure as stated above thus failing to execute its executive obligations.

5. Breach of code of conduct

In terms of item 2A of the code of conduct of councillors, a councillor may not vote in favour of or agree to a resolution which is before the council or a committee of the council which conflicts with any legislation applicable to Local Government. The municipal council is clearly in breach of the code which requires councillors to act at all times in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. The breach of the aforementioned items has been manifested in the following instances:

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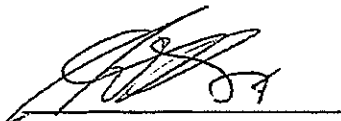


**Subject: NOTICE OF INTENTION TO INVOKE SECTION 139(1)(a) OF THE
CONSTITUTION**

- Section 30(5)(c) provides that before a municipal council takes a decision on the appointment and conditions of service of the Municipal Manager and a Head of Department of a municipality, it must first require its executive committee or Executive Mayor to submit to it a report and recommendation on the matter. (Breach of Item 2A)

The municipality is hereby afforded an opportunity to state reasons why I may not recommend invocation of section 139(1)(a) of the Constitution by the Provincial Executive Council. Your representations, if any, are expected to be submitted to my office within 14 days after receipt of this notice.

Yours in good governance,

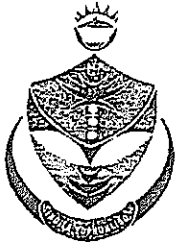


F. D. XASA

MEMBER OF EXECUTIVE COUNCIL

COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 08/11/2017



ENOCH MGIJIMA
LOCAL MUNICIPALITY
OFFICE OF THE MUNICIPAL MANAGER

Address: 70 CathCart Road, Town Hall, Komani 5320

Postal Address: Private Bag X 7111, Komani 5320

OUR REF: 3/3/8 (N Zondani)
YOUR REF:

23 November 2017

The Member of the Executive Committee
Department of Co-Operative Government and Traditional Affairs
Tyamzashe Building
BISHO
5605

The Honourable MEC F.D. Xasa

NOTICE OF INTENTION TO INVOKE SECTION 139(1)(a) OF THE CONSTITUTION

This has a reference to your correspondence dated 8th November 2017 regarding the above, received by my office on the 10th November 2017.

INTRODUCTION & BACKGROUND

The situation prevailing is almost similar in all three amalgamated municipalities in the Eastern Cape and that should be understood in the broader context prior the amalgamation until to the post amalgamation process. As part of the process of managing the interim phase during amalgamation, a number of committees were established to assist with smooth management and thorough preparation for the new institutions that were to emerge after amalgamation.

Part of those structures included the following:

- Political Transformation Committee at a provincial level
- Political Change Management Committee at district level
- Technical Change Management Committee.

The Technical Change Management Committee was beefed up with officials from the district municipality, Department of Cooperative Governance and Traditional Affairs Provincial Treasury among others. In addition to that, workstreams were created per functional area to deal with the details and advise the Technical Change Management Committee which in turn will advise Political Change Management Committee.

Several tasks/activities that needed to have been performed prior amalgamation were identified and a reporting template was designed. Hereunder, we are quoting just four of about 12 activities that had to be achieved pre-amalgamation but unfortunately were not:

ACTIVITY	SUB-ACTIVITY	RESPONSIBLE PERSON	ACTION	DUE DATE	PROGRESS
LEGAL MATTERS	Draft set of rationalized By-laws	CMC		31/03/2016	No progress was reported
	Promulgation of revised By-laws	CMC			
HR MATTERS	Drafting of the new organogram	CMC		31/05/2016	No progress was reported
	Terms of reference for required service provider (work study, Job Evaluation & Job descriptions)			28/02/2016	No progress was reported

All the above targets were never met on the set dates instead the new Council had to undertake all of these tasks on its own.

In addition to that, the Change management structures were expected to at least give a progress report so as to advance the establishment of the new municipality's process forward. And for reasons not known to Enoch Mgijima Municipality, no progress or implementation report was submitted and that made the Council to start from a totally new slate.

On the basis of the above, the Council of Enoch Mgijima Local Municipality is of the view that invoking Section 139 (any Section under 139) would be a harsh decision rather to appeal for other measures to be agreed upon between CoGTA and the Municipal Council as they way of seeking to give the necessary support to the municipality. On top of the above background we hereby wish to give the following responses to your correspondence.

1.Failure to adhere to the provisions of section 54 and 56 of the Systems Act. In terms of section 54 A (1), the Municipal Council must appoint the Municipal Manager as the head of administration.

It should be noted that Enoch Mgijima Local Council is as result of amalgamation and therefore the Interim Municipal Manager was designated in terms of the Section 29 (2) of the Local Government: Structures Act to call the first Council meeting of the new municipality and such a person shall remain the Acting Manager for a period of six months or until the Council appoints a fulltime Municipal Manager as indicated in the Section 12 Notice dated 08 August 2017.

The Council meeting of the 14 December 2016 (Minutes of meeting – ANNEXURE A) considered the declaration of vacancy for the Municipal Manager and on the same day an advert was made on the provincial and national newspapers with the closing date being 20 January 2017 (Advert – ANNEXURE B), which was facilitated by the then Interim Municipal Manager. Interim Municipal Manager: Mrs N. Gqiba resigned with immediate effect from the 13 January 2017. The same resignation was considered by the Mayoral Committee of the 27 January 2017 Minutes – ANNEXURE C).

The shortlisting and interviewing panel was established in line with the regulations on appointment of the senior manager and managers directly reporting to the municipal manager. On the 06 February 2017 shortlisting took place where both CoGTA and Chris Hani District Municipality was represented as panellist in the recruitment process ((i)Minutes of Shortlistig; (ii) Masterlist; (iii) Shortlisted Candidates – ANNEXURE D)). All shortlisted candidates for the position were interviewed on the 20 February 2017 and concluded on the same day (Minute of Interview – ANNEXURE E). All candidates

underwent competency assessments. Having concluded all the above-mentioned processes, the Executive Mayor Cllr. L. Gunuza-Nkwentsha as the chairperson of the panel tabled the report in the Council meeting held on 21 August 2017 ((i) Report – ANNEXURE F1; (ii) Minute of Council meeting – ANNEXURE F2)), with the recommendations of the panel. Upon interrogation and deliberations in the said meeting, Council could not agree on the panel recommendations based on the fact that the recommended candidate obtained Basic knowledge of management in the competency test.

The above process for the recruitment of the Municipal Manager was hamstrung by the Court Interdict (*Rule Nisi* – ANNEXURE G1) imposed by the United Democratic Movement, which was further disposed of by the Court after two months period. Where the UDM interdict was set aside and with full cost to the applicant (Judgement – ANNEXURE G2).

In the meeting of 21 August 2017, a vacancy was declared and a decision to re-advertised was endorsed (See - ANNEXURE F2). A re-advert was made on the provincial and national newspapers. It was published in the Daily Dispatch of the 26 September 2017 and in the Sunday Times on the 01 October 2017, and closing date being 18 October 2017 (Advert – ANNEXURE H. The panel for the shortlisting and interviewing was constituted on the 27 October 2017 in the Council meeting. The recruitment process for the Municipal Manager is underway and interviews are expected to be on the 23 November 2017. Attached to this effect is the process plan for the recruitment of the Municipal Manager ANNEXURE I).

2.Failure to observe provision of section 30 (5)(c) of the Municipal Structures Act by Council when making appointments.

As the municipality is a product of the amalgamation, the new entity has to transfer the staff from all erstwhile municipalities with the same conditions of services as backed by Section 197 of the Labour Relations Act and Section 12 Notice which indicated that all transferred employees to the new municipality with terms and conditions no less

favourable than those under which such employee served immediately before the effective date.

On the 24 August 2016 in the Special Council meeting convened to consider how the new municipality will effectively utilise Senior Managers from all three-erstwhile municipalities thus it has to temporary placed them in Acting positions for a period not exceeding six (6) months (Minutes – ANNEXURE J).

The Mayoral Committee of the 27 September 2017 (Minutes – ANNEXURE K) considered the appointment of acting Directors as the initial ones inherited from erstwhile municipalities employment contracts has expired, but unfortunately the subsequent Council of the 13 October 2017 (Minutes – ANNEXURE L) could not accede to the Mayoral Committee recommendations and further extended contracts of the Senior Managers until 31 December 2017.

Upon the lapse of employment contracts of the said Senior Managers, Council had no option but to circumvent prevalence of the void in the Municipal Administration. Council had to extend the employment contracts of the Senior Managers due to the fact that the institution has no Municipal Manager to drive the recruitment process to appoint Senior Managers and to conduct such in consultation with the Council. Council anticipates that it would have appointed the Municipal Manager in December 2017 who in turn will have the responsibility of appointing Senior Managers reporting directly to him/her. In that the process for the recruitment of Senior Managers is already underway, anticipating that the new Municipal Manager will further drive the process from December 2017 onwards.

See attached adverts for the Senior Managers recruitment process which were on the provincial and national newspapers. (ANNEXURE M)

3. Non-compliance with section (80) (2) (a) of the Municipal Finance Management Act in relation to the availability of CFO in the Municipality.

The municipality comprehend very well the contents of Section (80) (2) (a) of the Municipal Finance Management Act in relation to the availability of CFO in the Municipality. Thus, the

5. Breach of code of conduct.

It is acknowledged that the Council at some instance/ instances had inadvertently breached the code of conduct. This can be attributed to a situation that this Council is composed of Councillors from the different status of local authorities in terms of how the Council of this magnitude is legally structured. Which at some stage the roles and responsibilities of each political bearers are not clear understood where at certain scenarios an overlap is experienced. It be noted that the Council of the new entity was never afforded an induction so as to avert such confusions of overlaps and skewed comprehension of the roles and responsibilities and the jurisdiction thereof.

Furthermore, in my opinion should the municipality finalised appointment of the Municipal Manager as accounting officer would perhaps play a pivotal role in realising the said structures of governance. The municipality cannot recall any instance or instances where in the Council has contravened any prescript of the legislation governing local government deliberately. We were of the view that all decisions as reflected above Council have been embark upon in promoting the interest and spirit of Good Governance. That always thinking we are adhering to the operations and activities to the "Rule of Law".

CONCLUSION

In conclusion, and in reference to our view which has been expounded as part of our background we wish to refer to a decided case that deals with the powers of national and province to supervise, monitor and support " Certification Judgement (In Re: Certification of the Constitution of the Republic of South Africa 1996 – 1996(4) SA 744 CC, the interpretation of Stytler and De Visser in Local Government Law of South Africa as well as SALGA's process chart towards provincial and national intervention.

Of critical importance in their views is the following:

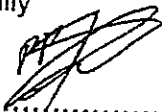
"determination if there were any prior endeavours by the intervening authority, including the provincial executive, to resolve the matter with the municipality especially with regards to the support issues".

It is therefore our view that the above be explored before any intervention can be considered. Our responses herein above demonstrate a process that is being followed by the municipal Council to resolve some of the challenges that we have been able to identify.

However, it is against this background that the Council convened on the 15 November 2017 to consider your correspondence in relation to invoke Section 139(1)(a) of the Constitution and resolved to vehemently reject the said notice of intention to invoke Section 139(1)(a) of the Constitution. The same resolution we took in relation to your notice bears a testimony to the level of our understanding of the executive obligation. We eagerly hope that your good office will grant us an opportunity of providing with full support in all areas that found my Council and municipality wanting.

Thanking you in anticipation of your positive consideration and response in this regard.

Yours Faithfully



.....
CLLR. L. GUNUZA-NKWENTSHA
EXECUTIVE MAYOR



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS

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Enquiries: Mr SB Maqungo

Tel: 040 609 5429

The Executive Mayor
Enoch Mgijima Local Municipality
No. 70 Cathcart Road
QUEENSTOWN
5320

By hand, fax and email

Dear Honourable Executive Mayor, Councillor Tolashe

NOTICE OF INTENTION TO INVOKE SECTION 139(5) OF THE CONSTITUTION

I write to you in your capacity as the Executive Mayor to advise you that, due to the state of affairs that is currently prevailing at Enoch Mgijima Local Municipality, I am considering making a recommendation to the Provincial Executive to invoke the provisions of section 139 of the Constitution. The purpose of this letter is therefore to give the Municipal Council of Enoch Mgijima Local Municipality prior notification of this impending step and further afford it an opportunity to advance its representations either in support or in opposition of this step, or as the Council may deem fit.

On the 1st June 2018, the Sheriff of the High Court in Queenstown sold the attached municipal assets in a public auction in execution of the High Court judgment.

In terms of section 135 of the Municipal Finance Management Act 56 of 2003, ("the MFMA") the primary responsibility to avoid, identify and resolve financial problems in a municipality rests with the municipality itself and the municipality must meet its financial commitments. Subsection 3 of this provision further states as follows:

NOTICE OF INTENTION TO INVOKE SECTION 139(5) OF THE CONSTITUTION

If a municipality encounters a serious financial problem or anticipates problems in meeting its financial commitments, it must immediately-

- (a) Seek solution for the problem;*
- (b) Notify the MEC for local government and the MEC for finance in the province; and*
- (c) Notify organised local government.*

The municipality has failed to observe the provisions of section 135 of the MFMA. It did not only fail to avoid and resolve attachment of the municipal property, it failed to notify the MECs for local government and for finance including SALGA as required by this legislative provision. The attachment of the municipal property was only seen in the newspapers.

Attachment was an indication that there is a serious financial problem in your municipality and as required by section 136 (1) of the MFMA I consulted with you and both political and administrative leadership of the municipality to determine facts.

On the 2nd July 2018, I sent departmental officials to assess the seriousness of the situation and the municipal response to the situation. The assessment was conducted to meet the mandatory provisions of section 136(1)(b) of the MFMA.

The assessment confirmed and further revealed the following:

1. ATTACHED ASSETS

40 vehicles that were attached by the judgment creditor and had a carrying amount of R14 854 000 and the movable assets had a carrying amount of R23 000. This will have a huge impact on the municipality as these vehicles were used to deliver the services to the community. The municipality will not be able to replace these vehicles as these were not budgeted for. Notwithstanding the sale, the judgment debt has not been fully satisfied. There is a substantial amount that is still due, which is R16million and there is a possibility that immovable assets might be attached.

One of the municipal bank accounts has been attached, the bank account belongs to erstwhile Lukhanji local municipality.

2. REVENUE COLLECTION

The municipality is struggling with revenue collection as their collection levels are between 64% -70% and the credit management policy is not fully implemented as other areas of the municipality do not pay rates and the municipality is unable to enforce the collection. Data cleansing is also a major challenge as the municipal billing data is outdated and the billing is not accurate. The department in collaboration with National CoGTA have

NOTICE OF INTENTION TO INVOKE SECTION 139(5) OF THE CONSTITUTION

appointed a service provider to assist the municipality with revenue enhancement in order to bridge the gap of poor revenue collection.

3. ESKOM DEBT

The municipality has an accumulated Eskom debt of R85 097 145.76 of which R44 404 619.47 is a payment arrangement debt and R16 151 982.41 is an arrear debt and R24 540 545.13 is the current account. The municipality is struggling to pay the account and with the equitable expected to come in, the municipality will not be able to make the payment arrangement of more than R50 million.

Having considered the assessment by the departmental officials, I am convinced that the situation requires an intervention in terms of section 139(5) of the Constitution because as a result of a crisis in its financial affairs, the following ^{is} manifested:

- The municipality is at a risk of being unable to provide services effectively such as refuse collection due to the sale in execution of assets;
- The municipality is unable to meet its financial commitments to ESKOM and might have a similar situation with other creditors, more especially that the municipality is struggling with revenue collection.

The municipality is therefore requested to make representations, if any, stating reasons why the Provincial Executive Council, as a result of a crisis in its financial affairs, is not obliged to invoke mandatory provisions of section 139(5) of the Constitution. The representations must be submitted to my office with 7 days from the date of receipt of this letter.

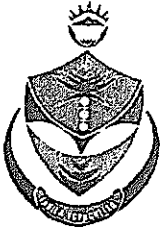
Yours in good governance



F. D. XASA

MEMBER OF EXECUTIVE COUNCIL
COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 06/07/2018



ENOCH MGIJIMA
LOCAL MUNICIPALITY

OFFICE OF THE EXECUTIVE MAYOR
Project 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
Postal Address: Private Bag 017111, Portofino Hill

OUR REF: (K. Zondani)
YOUR REF:

11 July 2018

MEC for Cooperative Governance and Traditional Affairs
Tyamzashe Building, Civic Square
BISHO

5605

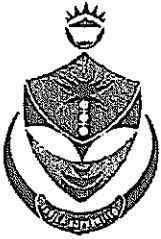
Dear MEC. FD XASA

SUBJECT: NOTICE OF AN INTENTION TO INVOKE SECTION 139 (5) OF THE CONSTITUTION

This is a response to your letter signed on the 06th July 2018, informing Enoch Mgijima Municipal council of your intention to invoke section 139 (5) of the constitution. After having read your letter I immediately submitted it to council on 09th July 2018. Council noted the contents of your letter and further mandated my office to respond as follows:

- That it is of great concern that second notice to invoke section 139 (5) of the constitution comes in less than seven months from the same office after having received the same in November/December 2017 in which we responded and to date we have not received a response.

That your notice is as per section 139 (5) and does not indicate specifically which subsection under section 139(5) you intend to invoke and makes it difficult to assume an appropriate representation/response. However, council resolved that we respond nonetheless.



ENOCH MGIJIMA
LOCAL MUNICIPALITY

OFFICE OF THE EXECUTIVE MAYOR
Physical Address: PO Box 2474, East London, 6051
Postal Address: Private Bag 1111, East London 6050

Section 139 (5) of the Constitution reads: "If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must—

(a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which—

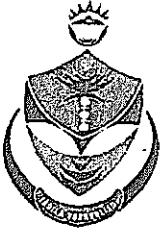
- (i) is to be prepared in accordance with national legislation; and
- (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and

(b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and—

- (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
- (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or

(c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan

- That an assessment report signed by your senior manager by the name of Mr. S Tini and yourself about the state of our finances is news to us as it has not been authenticated by the Accounting Officer, this



ENOCH MGIJIMA
LOCAL MUNICIPALITY

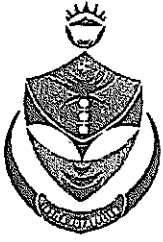
OFFICE OF THE EXECUTIVE DIRECTOR

Private Bag 11111, The West Rand

1709, Johannesburg, Gauteng, South Africa

include the narration in the report that senior management availed junior officials. The report does not expose that no appointment or arrangement was made by your officials to meet our officials on the 02nd July 2018. On the date in question our senior management team attended a pre-planned strategic planning session.

- After having observed section 139 (5) (a), it refers to imposition of a recovery plan by the provincial executive. In our case a recovery plan was developed and presented to council and was approved with copies having been sent to COGTA and Treasury. To mention but a few benefits from the recovery plan is that the municipality managed to identify defaulters on our electricity meters and we have since switched them off and the majority has paid up their debt.
- Council further observed that section 139 (5) (b) talks about dissolving the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan. In our case, budget was approved by council including the recovery plan in line with legislation. A copy of the approved budget, IDP and recovery plan was submitted to COGTA and Treasury in line with legislation. Lastly section 139 (5) (c) only apply when the municipality did not comply to section 139 (5) (a) and (b) and in our case, all the above have been complied to.
- Council admits that assets and mostly vehicles have been attached including a dormant former Lukhanji Municipal bank account, however it is fallacious that we do not have running refuse trucks and vehicles. Out of eleven refuse trucks four were attached and sold by the sheriff.



ENOCH MGIJIMA LOCAL MUNICIPALITY

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Municipal Address: P.O. Box 100, Mmabatho 0701

Seven trucks are still with the municipality, with four trucks in Komani area, one in former Tsoiwana area, one in former Inkwanca area and one in Whittlesea area. All the seven trucks are currently providing services to our communities.

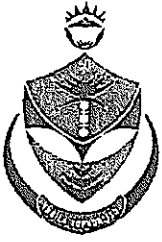
- The debt that led to the attachment of municipal assets is not because council abdicated its legislated responsibilities in managing municipal finances. Rather council inherited a debt which council believes that amongst other reasons was a reason for amalgamation of these municipalities. Investigation report to former Inkwanca Municipality by COGTA reveals this reality in detail.
- The recovery plan I referred to earlier also addresses the issue of billing hence we are now entering phase two to our meter audit. Equally the 64-70% revenue collection rate is disputed and based on old information.
- The reality is that the current revenue collection rate is above 70% and it is not as bad as reflected in the report from COGTA. Comparing to the average collection rate by municipalities both at provincial and national levels we are doing better, at the same time we are convinced that with our recovery plan we shall reach 80% and above in the first quarter of the current financial year. Council is convinced that the 80% increase in collection rate will be realized despite the increase in our indigent register due to amalgamation of previously disadvantaged municipalities.



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OFFICE OF THE EXECUTIVE MAYOR
Private Bag 1011, 1011, Rietfontein, Johannesburg, 2028
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- The municipality have short to medium term interventions and amongst those plans is entering into a partnerships agreement or MOU with provincial department of roads and transport for a yellow plant to maintain our roads. Engagements with potential service provider in leasing refuse trucks and other service delivery machinery at a reasonable cost while the municipality is in a process of improving its cash flow are at an advance stage.
- Positive engagements on the financial support are yielding results between Chris Hani District Municipality Mayoral Committee and Enoch Mgijima Municipality Mayoral Committees. This support is targeted at settling Eskom debt and further settling any other outstanding litigation that might arise from three erstwhile municipalities.
- Enoch Mgijima Municipal Council is of the view that issues raised in the report from your office on the assessment of financial situation at Enoch Mgijima Municipality and your notice to invoke section 139 (5), namely attachment of assets, revenue collection and Eskom debt cannot be a justifiable reason to invoke section 139 (5). It is based on the above reasons that Enoch Mgijima Municipal Council oppose your intention to invoke section 139(5) of the Constitution.
- Council is appealing to your good office that we explore section 154 of the Constitution with a belief that we have not exhausted the provisions of the Constitution on Cooperative Governance.



ENOCH MGIJIMA

LOCAL MUNICIPALITY

OFFICE OF THE EXECUTIVE MAYOR
Municipal Offices, 101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000

Conclusion:

Council further mandated my office to meet with you and your executive management team to further explain ourselves on the matters raised on your notice to invoke section 139 (5). I am looking forward to receiving a date from you to allow my office to further explain ourselves to you and your executive management team.

Yours faithfully,

MS. GN. TOLASHE
EXECUTIVE MAYOR



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS

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Tyamzashe Building | Civic Square | Bisho | 5605
P/Bag X0035 | Civic Square | Bisho | 5605
Tel: +27 (0)40 609 5788 / 5296 | Fax: +27 (0)40 639 2135
Website: www.ecprov.gov.za/igta/

The Office of the Hon. Mayor
Enoch Mgijima Local Municipality
70 Cathcart Road, Town Hall
Komani
5320

Dear Hon. Cllr Tolashe

INTRODUCTION OF THE ADMINISTRATOR

The matter above refers.

In line with the resolution taken by the Executive Council on the 1st August 2018, The MEC of Cooperative Governance and Traditional Affairs the Honourable Mr. F.D Xasa will be visiting your municipality on the 3rd September 2018 to introduce the Administrator to Council and Administration.

Yours in Service Delivery

F. D. XASA
MEMBER OF EXECUTIVE COUNCIL
COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 21/08/2018



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
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www.eccogta.gov.za

The Executive Mayor
Enoch Mgijima Local Municipality
70 Cathcart Road
QUEENSTOWN

Dear Hon. Councillor GN Tolashe

RE: INTRODUCTION OF THE ADMINISTRATOR

Kindly be informed that the meeting that was scheduled for Monday 3rd September to handover the Administrator is hereby **postponed** until further notice, another date will be communicated in due course.

Yours in good governance

F. D. XASA
MEMBER OF EXECUTIVE COUNCIL
COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 29/ 08 / 2018

