



Province of the
EASTERN CAPE
COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS

BRIEFING OF NCOP ON NOTICE OF INTERVENTION: WALTER SISULU LOCAL MUNICIPALITY

15 MAY 2018

MEC: F.D.XASA

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PRESENTATION OUTLINE

- PURPOSE
- BACKGROUND
- FAILURE BY WALTER SISULU LM TO FULFILL ITS EXECUTIVE OBLIGATIONS
- PROCEDURAL STEPS UNDERTAKEN
- PROGRESS TO DATE

PURPOSE

- This presentation seeks to brief the members of the Select Committee on Cooperative Governance and Traditional Affairs on the constitutional, procedural and substantive matters related to the issuing of notice of intervention in terms of Section 139(1)(b) and 139(5) of the Constitution of the Republic of South Africa at Walter Sisulu Local Municipality.
- Lastly, the presentation seeks to report on the progress of the intervention thus far.

BACKGROUND

- Walter Sisulu Local Municipality is a newly established municipality that existed after the amalgamation of the erstwhile Maletswai and Gariep municipalities.
- As early as from the time of its establishment, the department established multi-disciplinary teams that were to support the municipality in all the functional areas.
- The various work – streams developed support packages that outlined what the functionaries in the municipality should implement.
- There were also within the support plans certain areas that needed council resolutions in order for them to be implemented, this included amongst other things the approval of the organogram.
- It became clear to the department that the municipality was dragging its feet in implementing what was contained in the support plans.
- The department on numerous occasions continued to engage the municipality as a form of support in addressing issues that had a recipe of hindering service delivery, weakening administration and negatively affecting financial management.
- Over and above the hands on support, financial support was also given to the municipality in the form of transfers from the department to attend to matters that emerged through the amalgamation process.

BACKGROUND (Cont....)

- As a way of rendering support In line with **Section 154 of the Constitution of the Republic of South Africa (Act 108 of 1996) as amended**, the Department on a number of occasions observed challenges that beset the municipality and held series of engagements with Walter Sisulu L.M functionaries.
- The engagements were held with a view to enforce the municipality to implement support plans that were aimed at addressing the identified challenges that were confronting the municipality.
- The sessions were between the MEC and the political leadership of the municipality and further between the departmental team led by the then Acting HOD and the senior management of the municipality.
- Further, service delivery issues were taking the center stage at the municipality to an extent that community members in December & January blockaded the Orange River Bridge thus preventing holiday makers from leaving the province at the end of the holiday season and preventing people coming into the province.
- The issue received a wide media coverage and the MEC took an initiative to visit the municipality on 06 January 2018 wherein he held a number of engagements with various stakeholders.
- Regardless of the efforts by the Department in support of the municipality, the Council failed to implement the support plans thus leading to the failure in fulfilling its executive obligations.

BACKGROUND (Cont....)

- Failure by the council to implement the support plans that were provided to it, the department decided to serve the municipality with a Notice of Intention to invoke Section 139(a) of the Constitution.
- Subsequent to serving Walter Sisulu Local Municipality with the Notice of Intention to invoke Section 139(1)(a) of the Constitution, the Council of the municipality in a council meeting of 16 January 2018 resolved to accept the support of the Department by way of the proposed Section 139 intervention and forwarded a communique to the Office of the MEC to that effect.
- In its sitting on 7 February 2018, the Provincial Executive Council (EXCO) resolved to approve the intervention in the affairs of Walter Sisulu LM in terms of Section 139 (1)(b) and 139(5) of the Constitution.
- An Administrator was appointed for a period of six (6) months subject to review with clear Terms of Reference and assumed duties on 22 February 2018.

EXECUTIVE FAILURES AND LEGISLATIVE RECOURSE

- The possibility for a provincial executive to intervene in local government in terms of Section 139 of the Constitution is an integral part of the institutional framework for developmental local government.
- It is a necessary corrective measure when a municipality fails to govern and thus jeopardises the enterprise of development and stability of the community. It is also an aspect of intergovernmental relations and as such it must be exercised within the spirit of co-operative government as outlined in Chapter 3 of the Constitution.
- Paramount in this is the requirement that, for the provincial executive to intervene in terms of Section 139(1) it **must be established that the municipality concerned cannot or does not fulfil an executive obligation in terms of the Constitution or legislation.**
- In the instance of Walter Sisulu Local Municipality its Council has failed to execute its executive function in the following instances as outlined in the below slides -

FAILURE BY WALTER SISULU TO FULFILL ITS EXECUTIVE OBLIGATIONS

Non-compliance with section 80 (2)(a) of the MFMA in relation to the availability of the 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.
- The duty to appoint the CFO is vested with the municipal council after consulting the municipal manager.
- The absence of the CFO has serious consequences in a municipality, e.g. for National Treasury to grant rollover.
- The non-appointment of the CFO adversely affects municipality's ability to ensure the provision of services to the community as required by provisions of Section 152(1)(b) of the Constitution.
- In the case of Walter Sisulu LM, the municipality has not submitted an application for a rollover of unspent Grants (R7,8 MDTG & R2,3 MIG) and as a result National Treasury has withheld an amount R10m from equitable share with a view to substitute unspent Grants. This is a failure to execute obligation by Council.
- Non-appointment of Managers in the vacancies of Section 56 and the position of the Municipal Manager (MM) is critical and the contract of the MM was illegally extended.
- It must be stated that the power to employ personnel that is necessary for effective performance of municipal council's functions is a constitutional requirement in terms of Section 160 (1)(d) of the Constitution.
- The above state of affairs clearly reflects that Walter Sisulu LM has failed to execute its executive obligations.

FAILURE BY WALTER SISULU TO FULFILL ITS EXECUTIVE OBLIGATIONS

(Cont.....)

Non-Compliance with Section 65(2)(e) of the Municipal Finance Management Act in relation to expenditure management

- In terms of section 65(2)(e) the Accounting Officer must take all reasonable steps to ensure that all money owing by the municipality be paid within 30 days of receiving the relevant invoice or statements, unless prescribed otherwise for certain categories of expenditure.
- The municipality failed to pay all monies owing to its creditors within 30 days. As at end of 2016/17 F/Y the municipality owed its creditors R153 million and amongst those are major creditors which include:
 1. ESKOM with a debt amounting to R141 million.
 2. Auditor-General SA with a debt amounting to R2 million.
 3. SEBATA with a debt amounting to R2 million
- Section 138 of the MFMA states that the criteria for determining serious financial problems, all relevant factors, singly or in combination, may indicate serious financial problem:
 - a) the municipality has failed to make payments as and when due;
 - b) the municipality has defaulted on financial obligations for financial reasons
- This then indicates that the municipality is unable to meet its financial obligations and all of the above necessitate the discretionary provincial interventions.

PROCEDURAL STEPS UNDERTAKEN

The following procedural steps were undertaken:

- On 4 January 2018, a Notice of intention to invoke Section 139 (1) (a) was served to the Mayor of Walter Sisulu LM.
- On 16 January 2018, the Council of the municipality set and resolved to accept the support proposed by the Department and forwarded a communique to the Office of the MEC.
- On 7 February 2018, the Department presented the matter to the EXCO which resolved on the approval of the proposed intervention.
- All Statutory bodies (Minister, NCOP, Legislature, SALGA and Executive Mayor of Joe Gqabi DM) were notified about the Notice of intervention at Walter Sisulu LM within the legislated time frame.
- The Administrator was introduced by the MEC to the municipality on 16 February 2018 and assumed duties on 22 February 2018.
- The Minister approved the intervention in a letter to the MEC dated 23 March 2018.

ACHIEVEMENTS OF THE ADMINISTRATOR THUS FAR

- Supply Chain Management - the bid committees are now in place and bid committee members have been appointed. Furthermore, an internal memorandum was issued in March 2018 giving a directive that procurement would be centralized to the SCM unit.
- All budgeted related policies were included in the budget process and were discussed in the organisational strategic planning session that was held on 16 - 19 April 2018.
- The 2018/19 draft IDP and budget were tabled and approved on 29 March 2018
- Public consultation on the draft IDP and Budget were conducted in April and beginning of May 2018
- Appointment of a Municipal Manager - submission was presented to council meeting and a panel was appointed that will handle recruitment and appointment.
- Appointment of a CFO - submission was presented to council meeting and a panel was appointed that will handle recruitment and appointment.
- Procurement of material for street and electricity light repairs has started. Priority service delivery areas have been identified.
- Establishment of an Audit Committee - Joe Gqabi District Municipality has committed to provide interim support through its Audit Committee.
- Eskom Debt - To this end, a series of meetings have been held between WSLM and Eskom and there are good indicators that a sustainable and amicable solution would soon be found, whereby the current Eskom account would be consistently paid, while ensuring that the previous debt is equally serviced in terms of
- Legal Matters - The legal advisor of the municipality is constantly given instructions by the Administrator on pending legal matters.

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