



**Ministry: Local Government
Housing and Traditional Affairs**
KwaZulu-Natal Provincial Government

Mr Sydney Mufamadi
Minister for Provincial & Local Government
Private Bag X9083
CAPE TOWN
8000

Dear Minister

**INTERVENTION INTO UTRECHT MUNICIPALITY IN TERMS OF SECTION 139 OF
THE CONSTITUTION**

This letter serves to notify you, as required by section 139 (2) of the Constitution, of a resolution taken by the Executive Council of the Province of KwaZulu-Natal on 22 August 2007 to intervene in Utrecht Municipality as contemplated in section 139(1)(b) of the Constitution.

The Executive Council of the Province of KwaZulu-Natal resolved to intervene in the Utrecht Local Municipality as contemplated in terms of section 139(1)(b) of the Constitution as follows:-

1. The Executive Council appoints a special committee or committees to investigate and make findings on the allegations against the Mayor Councillor Khoza and any other Councillor arising from the Special Investigation Report into Allegations of Mismanagement, Maladministration, Fraud and Corruption at Utrecht Municipality, dated 14 May 2007 ("the Special Investigation Report") and on breaches of the Code of Conduct for Councillors arising therefrom as contemplated in item 14(1)(b)(i) of the Code;
2. The Executive Council appoints a special committee or committees to investigate and make findings on the allegations against municipal employees arising from the Special Investigation Report and on breaches of the Code of Conduct for Municipal Staff Members and all applicable legislation arising

therefrom, as contemplated in item 14 of the Code of Conduct for Municipal Staff members, read with section 67(1)(h) of the Local Government: Municipal Systems Act, 32 of 2000, and the Disciplinary Procedure Collective Agreement (if applicable);

3. That I be authorised to appoint the relevant special committee or committees for the purposes of conducting the investigations and making the findings contemplated above;
4. That the Executive Council directs that the special committee or committees appointed by me make recommendations to the Executive Council on the appropriate sanctions to be imposed on the Councillors and municipal employees who are found to have committed a breach of the applicable Code or committed a disciplinary offence;
5. That the Mayor Councillor M E Khoza, the Municipal Manager (V M Kubeka) and municipal employee B Zungu be suspended pending the outcome of the procedures contemplated above.
6. That I be directed to appoint an Acting Municipal Manager to act on behalf of the Municipal Manager pending the outcome of the procedures contemplated above.

Pursuant to the resolution of the Executive Council, I confirm that I have appointed Advocate M Mkhize and Attorney M E Ngubane to constitute the Special Committee referred to in the resolution.

The background to the intervention in terms of section 139 of the Constitution is briefly the following:-

1. During September 2006 the Department of Local Government and Traditional Affairs received various reports of maladministration, fraud, corruption and other serious malpractices in the Utrecht Municipality.
2. As a result of these reports Dr Z L Mkhize (who was acting as MEC at that time) resolved to investigate the reports and complaints received by the department, and appointed a firm of consultants to investigate the allegations.

3. I had received reports that certain Councillors attempted to frustrate the investigation, and accordingly I applied to the High Court for an order suspending Councillors M E Khoza and B C Mabaso as Councillors pending the finalisation of the investigation. (Councillor Khoza is the Mayor of the municipality.) The application was granted by Mr Justice Moleko. The Councillors have however sought leave to appeal against Judge Moleko's order, and that application is still pending.
4. On 14 May 2007 the investigators reported on the outcome of their investigation and made the following recommendations:-
 - 4.1. that disciplinary action should be taken against certain Councillors (including Khoza and Mabaso) and the Municipal Manager for failing to comply with the municipality's Recruitment, Selection and Appointment Policy;
 - 4.2. that disciplinary action should be taken against the Municipal Manager and Councillor Khoza for irregularities in the allocation of sites;
 - 4.3. that disciplinary action should be taken against Messrs Zungu and Mtshali for unauthorised allocations in the Goederhoop Low Cost Housing Development;
 - 4.4. that disciplinary action should be taken against Messrs Zungu and Ndlovu for irregularities in the expenditure of Poverty Alleviation Funds and local economic development projects, and that the Municipal Manager and other officials be charged with financial misconduct;
 - 4.5. that the Municipal Manager and Chief Financial Officer should be held liable for unauthorised expenditure and charged with financial misconduct relating to the employment of consultants;
 - 4.6. that a criminal case of fraud and theft should be registered against Mr R Stannard and that charges of misconduct should be brought against a council employee with regard to irregularities relating to the council game park;

- 4.7. that disciplinary action and criminal charges should be brought against Councillor Khoza for wrongful claims for S and T, and that charges of misconduct be brought against the Municipal Manager as a result.
5. As can be seen from the above the report seriously implicates the Mayor (Councillor Khoza, who also acts as Speaker) and four senior council employees, including the Municipal Manager and CFO. Utrecht Municipal Council is comprised of seven Councillors.
6. In accordance with normal practice the I referred the report to the Utrecht Municipal Council and requested it to report to me within 21 days on the action that the council intended to take as a result thereof.
7. Despite the fact that the deadline of 21 days has expired and more than 3 months had elapsed since the Report was provided to the municipal council, it failed to take any action against those implicated in the report, and no disciplinary action has been instituted against either the Councillor concerned, or the Municipal Manager and other senior council officials.
8. The Council is under a statutory obligation arising from various pieces of legislation to act if there is unlawful or irregular activity taking place within the council or the municipality. It has not complied with these regulations.
9. Arising from, inter alia:
- 9.1. the municipal council's failure to discharge its executive obligations and to invoke the required disciplinary procedures as contemplated by the MFMA, the Systems Act and the Code of Conduct;
- 9.2. the municipal council and municipal employees' failure to discharge their obligations to institute disciplinary proceedings against the Councillors or against the municipal employees named in the report (as the case may be);
- 9.3. the delay in taking action;
- 9.4. the fact that Mayor is alleged to have committed serious infractions in the report;

- 9.5. the fact that the most senior council employees are named in the report, and
- 9.6. the fact that it was necessary for me to intervene because of earlier allegations of interference with the investigation;

I recommended to the Executive Council that it should resolve to intervene in Utrecht Municipality in order to ensure fulfilment of the relevant obligations.

10. It was furthermore recommended that the Mayor / Speaker Councillor M E Khoza, the Municipal Manager, and B Zungu (of the council's engineering department) be suspended pending the outcome of the disciplinary proceedings to be instituted against them for the following reasons:-
 - 10.1. the allegations against the Mayor / Speaker Councillor M E Khoza are serious and involve irregular allocations of housing and theft and fraud;
 - 10.2. it is alleged that Councillor Khoza has previously intervened in the investigation;
 - 10.3. the allegations against the Municipal Manager are serious, and it appears that the Municipal Manager has previously frustrated the investigation;
 - 10.4. the allegation against Mr Zungu involved misappropriation of funds.

These recommendations were accepted.

11. While there are allegations against other Councillors and staff members, it is not recommended that they be suspended as, for example, the allegations against the remaining Councillors involve technical breaches such as the failure to comply with policies and procedures (see above).

I will report to you in the near future on further developments arising from this matter.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Michael Mabuyakhulu', followed by a large, stylized flourish or initial.

**Mr Michael Mabuyakhulu, MPP
MEC FOR LOCAL GOVERNMENT,
HOUSING AND TRADITIONAL AFFAIRS**

Date: 22 August 2007