



Centre for Applied
Legal Studies

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Ref: A Scher

TO: Honourable Minister Dr Nkosazana Dlamini Zuma
Department of Cooperative Governance & Traditional Affairs

Care of: Ms Mandisa Mbele & Ms Pamela Salusalu

By Email: MandisaMB@cogta.gov.za & PamelaS@cogta.gov.za

AND TO: Honourable President Mr Cyril Ramaphosa
President of the Republic of South Africa

Care of: Ms Khusela Diko & Mr Mike Louw

By Email: khusela@presidency.gov.za & presidentrsa@presidency.gov.za

AND TO: Honourable Lubabalo Oscar Mabuyane
Premier, Eastern Cape

Care of: Siphumezo Makuzeni, Private Office: Executive Support

By Email: siphumezo.makuzeni@ecotp.gov.za

9 September 2020

Honourable Minister

**RE: REQUEST FOR INTERVENTION IN THE SAKHISIZWE LOCAL MUNICIPALITY IN
TERMS OF CONSTITUTION SECTION 139**

1. The Centre for Applied Legal Studies ("**CALS**") is a civil society organisation based at the School of Law at the University of the Witwatersrand. CALS is also a law



clinic registered with the Legal Practice Council. As such, CALS connects the worlds of both academia and social justice.

2. CALS represents the Cala University Students Association (“**CALUSA**”/“**our client**”), which is a developmental non-governmental organisation based in Cala, within the jurisdiction of the Sakhisizwe Local Municipality, Eastern Cape (“**the Municipality**”). CALUSA is mandated by structures such as the Sakhisizwe Moral Regeneration Movement, the Cala Ratepayers’ Association, Elliot Residents Association, Domestic Violence Monitoring Unit, Siyazakha Land and Development Forum.

The situation on the ground in the Sakhisizwe Local Municipality, Eastern Cape

3. Our client has long believed that there is a crisis within the Municipality, emanating from maladministration and financial mismanagement and resulting in *inter alia* sustained poor service delivery. That crisis is borne out by the following –
 - 3.1. Subsequent to protests by residents in July 2018, the Municipality has experienced both political and administrative instability, disrupting various programmes of and service delivery by the Municipality;
 - 3.1.1. The service delivery complaints include that raw sewerage flows through the streets of the towns of Cala and Elliot, that the streets are in a state of disrepair and that burst pipes are not repaired;
 - 3.1.2. In addition, Municipal projects that have been left unfinished include the paving of roads, the installation of a sanitation plant, the construction of a sports field in Elliot, and the reticulation of the sewerage line;
 - 3.2. The Municipality failed to submit its 2017/2018 Annual Financial Statements to the Auditor-General as at 26 October 2018;¹

¹ Daily Dispatch ‘Unqualified: 25 CFOs do not meet standards – Oscar’, 26 October 2018, available at <https://www.dispatchlive.co.za/news/2018-10-26-unqualified-25-cfos-do-not-meet-standards-oscar/> [Accessed on 19 March 2020].



- 3.3. The Mayor and Municipal Manager were both suspended in November 2018. A vacancy announcement for the position of Municipal Manager was published in mid-2020 and we are not aware of the outcome of the appointment process, if any;
- 3.4. Various allegations of misappropriation of funds have been levelled against the former Municipal Manager,² who remained on suspension as late as 28 January 2020;³
- 3.5. The Municipal Council meeting of 10 April 2019 lacked the necessary quorum of councilors and was accordingly not held; and
- 3.6. The Municipality has generally failed to consult with civil society and ensure the participation of relevant stakeholders and the public more broadly when taking important decisions, in violation of *inter alia* section 5 of the Local Government: Municipal Systems Act 32 of 2000 (“**the MSA**”).
4. Our clients have been corresponding with municipal and provincial officials since 2018 in this regard, including requesting access to specific documents held by the Municipality which would assist in identifying and understanding the root cause of the crisis, towards resolving it. To date, our client has not received the full complement of documents requested and this is being pursued under the Promotion of Access to Information Act 2 of 2000 (“**PAIA**”).
- 4.1. We are cognizant that the establishment of the failure of the Municipality to fulfil its constitutional obligations is largely dependent on the contents of the documents requested by CALUSA in the PAIA application.
- 4.2. We are nevertheless of the opinion that the sustained failure to grant our client access to those documents is yet another indication of the Municipality’s

² Daily Dispatch ‘Pressure mounts for ‘reinstated’ town boss’, 15 May 2019, available at <https://www.dispatchlive.co.za/news/2019-05-15-pressure-mounts-for-reinstated-town-boss/> [Accessed on 20 March 2020].

³ New Frame ‘Sakhisizwe municipality residents made to live in sewage swamp’, 28 January 2020, available at <https://www.newframe.com/kowa-municipality-residents-made-to-live-in-sewage-swamp/> [Accessed on 20 March 2020].



ongoing crisis. That failure cannot be relied on as a barrier to the ultimate relief sought by our client.

CALUSA's request to the Eastern Cape Premier to intervene in the Municipality

5. On 11 May 2020 and on our client's instructions, we directed correspondence to the Premier of the Eastern Cape ("**the Premier**") and his Member of the Executive Council for the Department of Cooperative Governance and Traditional Affairs ("**the COGTA MEC**") which –
 - 5.1. Outlined our client's concerns regarding the state of the Municipality, and in particular its belief that the Municipality is currently in financial crisis and is consequently failing to perform its basic constitutional and statutory duties;
 - 5.2. Confirmed that CALUSA believes that the *status quo* in the Municipality constitutes 'exceptional circumstances' which justify an intervention from provincial and/or national government; and
 - 5.3. Requested that the Premier invoke section 139(1)(c) of the Constitution of the Republic of South Africa, 1996 ("**the Constitution**") to dissolve the Municipal Council and appoint an interim administrator to assume its functions.

We attach that correspondence hereto as **CALS 1**.

6. On 23 June 2020 the Premier responded and advised that his administration had –

"invoked the provisions of section 154 of the Constitution to support the functions of the Municipality in line with a clearly defined turn-around plan that was developed with the objective of ameliorating areas of concern in the operations of the Municipality.

The Department of Cooperative Governance and Traditional Affairs has, in the course of supporting the Municipality, seconded a seasoned senior departmental official as an acting municipal manager to implement the turn-around plan. The Provincial Treasury actively joins in facilitating and overseeing change in the municipality for the benefit of the affected communities. The



support in the Sakhisizwe Local Municipality in terms of section 154 of the Constitution is well in progress.”

The Premier accordingly declined to invoke section 139(1)(c) of the Constitution in respect of the Municipality. We attach that response hereto as **CALS 2**.

7. In response, we addressed further correspondence to the Premier on 29 June 2020 in which we requested the documents and/or information referred to and relied upon by the Premier in reaching his decision. We have to date not received a substantive response to that correspondence. We attach that correspondence hereto as **CALS 3**.
8. We are nevertheless instructed that –
 - 8.1. Our client has not seen the “improvement in the running of the municipality” to which the Premier refers;
 - 8.2. The Municipality remains in “serious or persistent material breach of its obligations to provide basic services” as a result of a crisis in its financial affairs; and
 - 8.3. The crisis in the Municipality is accordingly ongoing.
9. In the absence of access to the documents and/or information referred to and relied upon by the Premier in reaching his decision not to intervene in the Municipality, that decision appears unfounded in light of the ongoing factual situation.

CALUSA’s request to the Honourable Minister

10. The Premier and his provincial executive have thus demonstrated that they cannot and have not adequately exercised the powers or performed the functions accorded to them in section 139 of the Constitution in relation to the Municipality, despite the necessary factual situation being present. This includes any intervention by the province in terms of either sub-sections (1)(c) or (5).



11. The national executive *must* therefore intervene in the stead of the provincial executive as provided for in section 139(7) of the Constitution.
12. In the circumstances, we are instructed to request that the national executive intervene in the Municipality in terms of section 139(7) read with 139(5)(b) of the Constitution, by dissolving the Municipal Council and appointing an interim administrator to assume its functions.
13. We advise that any administrator should be empowered and capacitated to –
 - 13.1. Take action against any municipal officials who are not supporting the intervention;
 - 13.2. Take action against any municipal officials who have failed to perform their constitutional and legislative duties;
 - 13.3. Take action against any municipal officials implicated in financial misconduct; and
 - 13.4. Assist the Municipality to design and implement systems, mechanisms and procedures to improve good governance and meet its constitutional obligations.
14. Finally, we draw your attention to the broad provision for consultation with and the involvement of members of the local community in the functioning of local government, pursuant to section 5 of the MSA. We accordingly advise that both the appointment of any administrator and the development of their mandate should be done in consultation with the residents of the Municipality, including representatives of civil society therein.
15. We continue to consider this matter to be urgent, and accordingly request that you respond hereto within 30 (thirty) days, namely by close of business on Friday 9 October 2020. Should we not receive a response by then, we are instructed to apply for a court-ordered intervention in the form of the dissolution of the Municipal Council and the appointment of an interim administrator.



16. Should you require any clarification, please do not hesitate to contact us on the email address provided below.

17. We look forward to hearing from you.

Yours faithfully,

Ariella Scher

Attorney: Centre for Applied Legal Studies

[Unsigned due to electronic communication]

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