

28 February 2018

To: **Mr. Mashatile**
The MEC charged with COGTA
Gauteng Province
Per: E-mail (lerutle.ephenia@gauteng.gov.za)

To: **Mrs. Barbara Creecy**
MEC of Finance, Gauteng Province
Per: E-mail (mamokwe.makoloka@gauteng.gov.za)

CC: **The Honourable Dr. Zweli Mkhize**
Minister of COGTA
Per: E-mail (ministry@cogta.gov.za)

The Honourable Mr. Nhlanhla Nene
Minister of Finance
Per: E-mail (vuyiswa.monye@treasury.gov.za)

Mr. Phakamani Hadebe
Acting CEO ESKOM
Per: E-mail (phakamani.hadebe@eskom.co.za)

Auditor General of South Africa
Per: E-mail (pinkiem@agsa.co.za)

Counsellor. Jacob Khawe
The Executive Mayor, Emfuleni Local
Municipality
Per: E-mail (carolv@emfuleni.gov.za)

Mr. Dithabe Nkoane
The Municipal Manager, Emfuleni
Local Municipality
Per: E-mail (mm@emfuleni.gov.za)

Dear Mr. Mashatile,

**FINANCIAL CRISIS: EMFULENI LOCAL MUNICIPALITY (“ELM”): INTERRUPTION OF
WATER AND ELECTRICITY SERVICES
OUR REF: LG/GEN01/001
YOUR REF: UNKNOWN**

1. The Organisation Undoing Tax Abuse (OUTA) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority, in particular the abuse of taxpayers' money.
2. The OUTA Local Government Initiative is an organised initiative to establish an apolitical civil rights platform on a local level within the jurisdiction of a specific local municipality with the sole purpose of ensuring the efficient and prosperous functioning of municipalities, free from the abuse of authority and governed with the efficient use of tax revenue.
3. Therefore, OUTA Local acts on behalf of supporters, the residents, businesses and community of ELM and more specifically, SW5 Action Group NPC and Proudly Three Rivers NPC who represents the interests of residents within the area of jurisdiction of ELM.

4. In terms of Constitutional imperatives, the government in SA is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated¹. The National Assembly must provide for mechanisms to maintain oversight of any organ of state, including municipalities². As MEC charged with local government, you have a duty of oversight over the affairs of ELM.
5. The Constitution also provides for circumstances in which a municipality, as 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. In such circumstances, the relevant provincial executive is under an obligation to intervene by imposing a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments³. Such recovery plan 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. Should a municipality be unable to give effect to such recovery plan by approving the necessary legislative measures, the provincial executive must dissolve the municipal council and appoint an administrator until a newly elected Municipal Council has been declared elected. If the municipal council is not dissolved, the provincial executive must assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.
6. The constitutional obligations of municipalities must be evaluated against the following objects⁴ which must be achieved:
 - 6.1 to provide democratic and accountable government for local communities;
 - 6.2 to ensure the provision of services to communities in a sustainable manner;
 - 6.3 to promote social and economic development;
 - 6.4 to promote a safe and healthy environment; and
 - 6.5 to encourage the involvement of communities and community organisations in the matters of local government.
7. Parliament implemented a variety of mechanisms in place by way of national legislation to conduct oversight to ensure constitutional compliance:
 - 7.1 The accounting officer of a municipality must by no later than 10 working days after the end of each month submit to the mayor of the municipality and the relevant provincial treasury, a statement in the prescribed format on the state of

¹ Section 40 of the Constitution

² Section 55(2)(b)(ii) of the Constitution

³ Section 139(5)(a) of the Constitution

⁴ Section 152(1) of the Constitution

the municipality's budget reflecting the following particulars for that month and for the financial year up to the end of that month⁵;

7.2 The provincial treasury must by no later than 22 working days after the end of each month submit to the National Treasury a consolidated statement in the prescribed format on the state of the municipalities' budgets, per municipality and per municipal entity⁶;

7.3 In addition, the provincial treasury must within 30 days after the end of each quarter, make public as may be prescribed, a consolidated statement in the prescribed format on the state of municipalities' budgets per municipality and per municipal entity. The MEC for finance must submit such consolidated statement to the provincial legislature no later than 45 days after the end of each quarter⁷.

8. Municipalities are obligated to meet their financial obligations and therefore the primary responsibility to avoid, identify and resolve financial problems in a municipality, rests with the municipality as corporate body itself⁸. Attention is directed to the fact that the corporate body of a municipality as organ of state consists of⁹:

- 8.1 the political structures¹⁰ and administration of the municipality; and
- 8.2 the community of the municipality¹¹.

9. If a municipality encounters a serious financial problem or anticipates problems in meeting its financial commitments, it must immediately¹²:

9.1 seek solutions for the problem;

9.2 notify the MEC for local government and the MEC for finance in the province; and

9.3 notify organised local government.

10. It would appear that ELM is either reluctant to admit that it has financial problems or is unaware of its financial demise. It would also appear despite having access to the

⁵ Section 71(1) of the Municipal Finance Management Act

⁶ Section 71(6) of the Municipal Finance Management Act

⁷ Section 71(7) of the Municipal Finance Management Act

⁸ Section 135 of the Municipal Finance Management Act

⁹ Section 2(b) of the Municipal Systems Act

¹⁰ Section 1: Municipal Systems Act: 'political structure', in relation to a municipality, means the council of the municipality or any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act;

¹¹ Section 2(b)(ii) of the Municipal Systems Act

¹² Section 135(3) of the Municipal Finance Management Act

monthly returns from ELM that no one at provincial level is aware of the serious financial demise of ELM.

11. Due to non-payment of electricity and the failure of the municipality to honour the terms of the agreed repayment plan, ESKOM gave notice to the municipality and residents, in the press, of the intended interruption of bulk electricity supply to ELM. As from the 8th of March 2018 the service will be reduced over a 3-week period to the point where the electricity supply will be terminated indefinitely, which will have severe material and adverse effects on the local economy, the environment and the community at large.
12. In addition to the non-payment of electricity, the Municipality has also failed to honour the terms of its agreed repayment plan with Rand Water, which has resulted in the interruption of bulk water supply to ELM. Although reduced water supply has been restored due to the intervention by the ELM Mayor by staging a protest at the Rand Water offices, it is safe to assume that the bulk water supply to ELM is by no means secure”.
13. The solution, to this problem, would be the introduction of a detailed financial recovery plan to illustrate the short, medium and long-term claw back to normalising the situation. This information to be made available to all interested and affected parties.
14. As oversight political functionary in respect of ELM, you are hereby called upon to indicate in writing, by close of business on Friday 2nd March 2018, the steps you are going to take to prevent the disruption of basic services to the communities in ELM.
15. Kindly contact our Legal Manager Mr. R Pandor at rashaad.pandor@outa.co.za in the event of any queries.
16. We trust that you find the above in order and look forward to receiving your response on or before the 1st of August 2017.
17. Kindly acknowledge receipt of this letter.

Yours Sincerely,

Stefanie Fick
Head of Legal Affairs
OUTA – Organisation Undoing Tax Abuse
E-mail: stefanie.fick@outa.co.za