



**REPORT OF THE SELECT COMMITTEE ON CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, WATER, SANITATION AND HUMAN SETTLEMENTS ON NOTICE OF DISSOLUTION ISSUED IN TERMS OF SECTION 139(1)(C) OF THE CONSTITUTION (1996), IN TSWAING LOCAL MUNICIPALITY, DATED 11 OCTOBER 2021**

**1. Background and Overview**

- 1.1 The Select Committee on Co-operative Governance and Traditional Affairs (Water, Sanitation & Human Settlement), having considered the request by the National Council of Provinces (NCOP), to consider and report on the intervention notice invoked in Tswaing Local Municipality in terms of section 139(1)(c) of the Constitution, reports as follows:
- 1.2 On the 5<sup>th</sup> of October 2021, the North West MEC of the Department of Cooperative Governance and Traditional Affairs tabled a notice of dissolution in terms of section 139 (1) (c) of the Constitution in Tswaing Local Municipality to the office of the Chairperson of the National Council of Provinces
- 1.3. Subsequent to the tabling, the Chairperson of the National Council of Provinces referred in NCOP Rule 101, the notice of dissolution of the North West Provincial Executive Council (PEC) to the Select Committee for consideration and reporting.
- 1.3 On 11 November 2021, the Select Committee held a virtual interactive and consultative meeting with the North West Department of Cooperative Governance and Traditional Affairs (CoGTA), the National Department of Cooperative and Traditional Affairs, the municipal internal and external stakeholders on the notice of intervention invoked in terms of section 139(1)(c) of the Constitution in Tswaing Local Municipality.

- 1.4 The main objective of the consultative virtual meeting was to solicit the opinions of all the stakeholders on the constitutional, procedural and substantive matters related to the invocation of the section 139(1)(c) in the Local Municipality.

## **2. General Overview of the Consultative Virtual Meeting**

- 2.1 The North West Department of CoGTA briefed the meeting on the constitutional, procedural and substantive matters. The Department of Cooperative Governance and Traditional Affairs tabled the intervention approval and the municipal's stakeholders tabled their opinions on the invocation of section 139(1)(c) of the Constitution in the Local Municipality.

## **3. Presentation by the North West Department of CoGTA**

- 3.1 The Department of CoGTA briefed the Select Committee and the stakeholders on the invocation of the section 139(1)(c) of the Constitution. The presentation focused on the background; procedural, constitutional and substantive matters related to good governance, financial management and service delivery; support in terms of section 154 of the constitution and way-forward.

## **4. Background**

- 4.1. The North West Provincial Executive Council resolved to dissolve the council of Tswaing Local Municipality by invoking section 139 (1) (c) of the Constitution with immediate effect. The decision was taken at a meeting of EXCO held on 22 September 2021; The dissolution would last until a new Council is elected and assumes office and thereafter, mandatory intervention of section 139 (5) of the Constitution of RSA should be implemented

## **5. Procedural Matters Relating to the Dissolution of the Local Municipality**

- 5.1. The Department of Cooperative Governance and Traditional Affairs submitted a written notice to: The Cabinet member responsible for Local Government on 28 September 2021, the Provincial legislature and the National Council of Provinces on 28 September 2021. The Minister of the Department of Cooperative Governance and Traditional Affairs concurred on 6<sup>th</sup> October with the North West Provincial Executive Council (PEC) decision to dissolve the Council of Tswaing Local Municipality.
- 5.2. The North West Department of CoGTA submitted a written notice to Tswaing Local Municipality on 1 October 2021 for the attention of Municipal Councils through the Mayor/Speaker; An engagement with Municipal Council for a virtual meeting was arranged to take place on the 7 October 2021.
- 5.3. The Speaker of the Tswaing Local Municipality has written to the MEC of the Department of CoGTA raising concern and her inability to convene council, until the MEC responds to the letter from their Lawyers relating to the court interdict status
- 5.4. The appointment of the Administrator and Team is yet to be finalised. The MEC in turn has courteously responded to the issues raised by the letter from the Lawyers

## **5. Good Governance and Administrative Instability Matters Relating to Dissolution of Local Municipality**

- 5.1. Vote of no confidence for two municipal Mayors, two Speakers and two Municipal Managers
- 5.2. Non-functionality of ward committee and closure of municipal offices by members of the union
- 5.3. Municipal stagnation in terms of improving qualified audit opinions received for past three years
- 5.4. Non-functionality of Municipal Public Accounts Committee and problem related to composition of members

5.5. Municipal owing pension funds, medical aids and funeral policies of members due to cash flow challenges

## **6. Financial Management Challenges relating to Dissolution of the Local Municipality**

6.1. Municipal insolvency and inability to meet short term obligations

6.2. Implementation of unfunded budget and total creditors amounting to R354 million as at June 2021

6.3. Municipal owing Eskom R54 million as at June 2021 and other creditors total amount of R159 million

6.4. Municipal failure to implement credit control and collection on household debtors as they owe a huge amount of R282 million of the total debt.

6.5. Municipal inability to pay third party transactions such as pensions fund's and medical aids of the employees

## **7. Service Delivery Challenges Relating to Dissolution of the Local Municipality**

7.1. Municipal collapse of service delivery characterized by refuse removal and clean of towns on dedicated schedule

7.2. Interrupted supply of water due to lack of maintenance and non-payment of water services

7.3. Municipal inability to maintain service delivery fleet.

7.4. general poor maintenance of operational infrastructure

## **8. Provision of Support in terms of section 154 of the Constitution**

8.1. Monitoring and support to comply with MSA regulations on the appointment of senior managers

8.2. Support provided to promote participation in community based local governance processes  
Guided the municipality to comply with the implementation of the MPRA processes.

8.3. Assisted with reconciliation of valuation roll to the billing system to ensure completeness and accurate billing,

8.4. Encouraged the municipality to implement credit control and debt collection policy, to this end the policy was assessed and recommendations provided to effect changes.

- 8.5. Facilitated an engagements session on payment of outstanding debt owed by Government departments
- 8.6. Monitoring the implementation of PAAP and advised the municipality to compile interim/draft AFSs on a quarterly basis
- 8.7. capacity building interventions conducted, which included amongst others sessions with MPACs on their roles and responsibilities including the compilation of Oversight Reports, addressing UIF&W expenditures sessions for both BTO's and MPACs
- 8.8. Assisted with compilation of Draft Annual Reports, the municipality was able to address backlog of Oversight Reports for 9 financial years.

**9. Opinions of the Internal and External Stakeholders on the Invocation of Section 139(1)(c) of the Constitution in the Local Municipality**

**10. Opinion of the Democratic Alliance (DA)**

- 10.1 The representative of the DA tabled an opinion that did not support the invocation of section 139(1)(c) of the Constitution in the Local Municipality. The representative raised concerns lack of departmental support; non-tabling of section 100 intervention report; collapse of service delivery; lack of consequence management within the administration; political infightings and divisions within the ruling party

**11. Opinion of the Economic Freedom Fighters (EFF)**

- 11.1 The representative of the EFF tabled an opinion that rejected the invocation of section 139(1)(c) of the Constitution in the Local Municipality. The representative raised concerns about lack of failure by the Department of CoGTA to address municipal problems; poor municipal administration resulting to poor service delivery; political battles within the ruling party; failure of the department of CoGTA to intervene on municipal challenges related to water, electricity, incomplete RDP housing projects and road construction

**12. Opinion of the African National Congress (ANC)**

12.1 The representative of the ANC tabled an opinion that did not support the invocation of section 139 (1)(c) of the Constitution in the Local Municipality. The representative raised concerns that the reasons of intervention contained in departmental presentation and not the same as the one communicated to the municipality. while acknowledge the challenges faced by the municipality, the representative further raised concerns about lack of support, selective approach of the MEC of the department of CoGTA in consulting internal stakeholders within the municipality and; political division within the ruling party;

**13. Opinion of the Freedom Front Plus (FF+)**

13.1 The representative of the FF+ tabled an opinion that rejected the invocation of section 139(1)(c) of the Constitution in the Local Municipality. The representative raised concerns about the lack of consultation; poor consequence management; and urged that invocation of section 139 (1) 9 (c) of the constitution should be used as a last resort.

**14. Opinion of the IMATU**

14.1 The representative of the IMATU tabled an opinion that rejected the invocation of section 139(1)(c) of the Constitution in the Local Municipality. The representative raised concerns about lack of tabling of reports by the administrators, lack of consequence management for councillors defying the MEC of the Department of CoGTA, section 56 and section 57 managers, political fighting for tenders and non-implementation of court rulings.;

**15. Opinion of SAMMU**

15.1 The representative of the SAMMU tabled an opinion that supported the dissolution of the Local Municipality in terms of section 139 (1) (c) of the Constitution. The representative raised concerns about political infighting emanating from the implementation of section 106 recommendations, non-scheduling and adherence of council meetings; poor political

administration; recurrence of court interdictions by the municipality on section 139 (1) (b) of the Constitution.

**16. Opinion the Tswaing Business Chamber (TBC)**

16.1 The representative of the TBC tabled an opinion that did not approve dissolution of the L IN terms of section 139 (1) (b) of the constitution. The representative raised concerns about collapse of service delivery; non-implementation of court cases and rulings on the provision of water; non-reconciliation of payments and inflated debtors accounts. The representative further argued the intervention to focus on the removal of the municipal manager and the administration.

**17. Opinion of the African Nation Congress Youth League (ANCYL)**

17.1 The representative of the ANCYL tabled an opinion that supported the invocation of section 139(1)(c) of the Constitution in the Local Municipality. The representative raised concerns about lack of service delivery; non-implementation of section 106 recommendations reports; status of corruption since 2016, fighting for tenders and absence of the Mayor in municipal offices.

**18. Opinion of the South African Local Government Association (SALGA)**

18.1 The representative of SALGA tabled an opinion that rejected the invocation of section 139 (1) (c) of the Constitution in the Local Municipality. The representative raised concerns about political infights within the ruling party; lack of portfolio of evidence by the Department of CoGTA on support provide to the local municipality in terms of section 154 of the constitution. the representative further raised concerns with regard to lack of departmental responses to the letters submitted by the local municipality requesting support.

18.2. The representative of SALGA appealed to the Select Committee to place the fulfilment of the Objects of Local Government at the centre of taking a decision to approve or disapprove the Provincial Executive Council decision to dissolve the Tswaing Council

18.3. The representative further request to select committee not to support the dissolution of the Tswaing Council – instead to create space for the Provincial Government to play its Section 154 support role and where necessary invoke Section 106 of the Systems Act.

## **19. Opinion of the Portfolio Committee in North West Provincial Legislature**

19.1 The Chairperson of the Portfolio Committee on CoGTA in North West Provincial legislature tabled an opinion that rejected the invocation of section 139 (1) (c) of the Constitution in the Local Municipality. The Chairperson raised concerns about lack of consultation, non –tabling of the notice of intervention to the provincial legislature; seeing the intention to intervene in the municipality through the local newspaper; lack of consequence management; district municipality failure to provide water related services and non-tabling of section 139 (1) (b) of the constitution. the chairperson emphasised the need to open criminal cases against the Accounting Officers of the Local Municipality

## **20. Observations of the Select Committee**

20.1 The Select Committee has noted that the Department of Cooperative Governance and Traditional Affairs submitted a written notice to the Cabinet member responsible for Local Government on 28 September 2021, the Provincial legislature and the National Council of Provinces on 28 September 2021. The Minister of the Department of Cooperative Governance and Traditional Affairs concurred on 6<sup>th</sup> October with the North West Provincial Executive Council (PEC) decision to dissolve the Council of Tswaing Local Municipality

20.2. The Select Committee has further noted that the North West Department of CoGTA submitted a written notice to Tswaing Local Municipality on 1 October 2021 for the attention of Municipal Councils through the Mayor/Speaker; An engagement with Municipal Council for a virtual meeting was arranged to take place on the 7 October 2021.

- 5.3. The Speaker of the Tswaing Local Municipality has written to the MEC of the Department of CoGTA raising concern and her inability to convene council, until the MEC responds to the letter from their Lawyers relating to the court interdict status
- 20.4 While noting that the substantive matters relating to the invocation of section 139(1)(c) of the Constitution in the local Municipality revolve around local government pillars of financial management, service delivery and good governance, the Select Committee has however noted that majority of the internal and external stakeholders who opposed the invocation of section 139(1)(c) of the Constitution in the Local Municipality with the exception of SAMMU and ANCY.
- 20.5. The Select Committee has noted with concerns the collapse of service delivery, instability of good governance, political infightings within the ruling party; lack of portfolio of evidence on support provided in terms of section 154 of the constitution; lack of consequence management within the administration; municipal failure to process payment of third parties; adoption of unfunded budget; non-compliance of legislations, regulation and municipal policies; non-convening of council meetings; failure to facilitate public participation; failure to perform oversight; non-collection of revenue; late submission of financial statement to the office of Auditor-General and failure to maintain municipal infrastructure
- 20.5 The Select Committee has taken cognisant of the constitutional provision that the dissolution takes effect fourteen days from the date of receipt by the NCOP, that is 13 October 2021. According to the Notice, if the dissolution takes effect, the department of CoGTA will expedite the aappointment of the Administrator and Team; develop clear Terms of Reference for the Administrator and monitoring plan by the Interventions Task Team.

## **21. Recommendations of the Select Committee**

21.1 Having virtual consulted and engaged with the Department of Cooperative Governance and Traditional Affairs as well as the internal and external stakeholders of the Local Municipality, the Select Committee recommends to the NCOP in terms of Rule 101 as follows:

21.1.1 The NCOP approves the invocation of section 139(1)(c) of the Constitution in Tswaing Local Municipality.

21.1.2. The MEC of the Department of Cooperative Governance and Traditional Affairs should ensure the appointment of qualified and competent Administrator.

21.1.3. The appointed Administrator including the intervention team should deal with all problems and challenges of municipality including disciplinary action of any employee and where possible opening of criminal cases on matters related to corruption and financial mismanagement.

21.1.4. The North West MEC of the Department of Cooperative Governance and Traditional Affairs should play a leading role in providing support to the Local Municipality in terms of section 154 of the 1996 Constitution

**Report to be considered.**