**UNREVISED HANSARD**

**NATIONAL COUNCIL OF PROVINCES**

**THURSDAY, 22 JULY 2021**

***PROCEEDINGS OF THE NATIONAL COUNCIL OF PROVINCES***

The Council met at 10:00.

The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

# ANNOUNCEMENT

The CHAIRPERSON OF THE NCOP: Greetings to everyone. In keeping with tradition, I’ll start by bowing to my right and then bow to my left. Having done so, hon members, let me make the following remarks very briefly. Just to remind ourselves of the context that we needed a time when the COVID-19 pandemic is ravaging the world. South Africans have not been spared in all of this, neither has Parliament and public representatives. New cases as of this morning are reported to be around 16 240 which translate to 27,5% positivity rate. The new deaths today stands at 516, which increases our numbers to date to 68 192. The recoveries are around 2 980 818. Active

cases stands at 160 462 and the total cases stands at 2 327 472.

On our part as Parliament we note the passing on amongst other, Dr Abbey Nkomo, former Member of Parliament in the National Assembly, Aubrey Mokoena, Member of Parliament and former National Assembly member. A few days ago we were also burying Morutoa, also a former Member of Parliament and a member of the National Assembly. Now we have heard of Ms Maluleke, who has also passed on. Of course we know that many others are getting infected. We also note the passing on of PCO officials and related or similar persons, people who are assisting us to do constituency work and related work in communicates. Vaccination centres are open and workers are continuing to do their work. What is also important to know is that in the context of the continent, work continues albeit with whatever difficulties that are being experienced including, amongst others, vaccine nationalism.

We call on all of us to observe COVID-19 protocols. We should stay at home as much as we can and avoid crowded places. We must wash our hands regularly and sanitise. We should also keep the social distance and wear masks at all times and do whatever we can to make sure that this is done and never lose

the relevant and necessary momentum. Together we remain optimistic. So, with these few words let us be reminded of our responsibility and all the kinds of things that we do now and in the coming period.

*Sepedi:*

Morena, boloka setṧhaba sa geṧo.

*English:*

God bless Africa. Having said that, I will now request delegates to observe a moment of silence for prayers or meditation. Thank you very much.

Hon delegates, before we proceed, I would like to remind you of the following: That the virtual sitting constitutes a sitting of the National Council of Provinces. The place of the sitting is deemed to be Cape Town, where the seat of the National Council of Provinces is. Delegates in the virtual sitting enjoy the same powers and privileges that apply in the sitting of the National Council of Provinces. For the purpose of the quorum, all delegates who have logged on to the virtual platform shall be considered present and delegates must always switch on their videos. Delegates should ensure that the microphones on their gadgets are muted and must always remain

muted unless they have permission to speak. The interpretation facility is active and any delegate who wishes to speak must use the ‘raise your hand’ function.

I am told that there will be no notices of motion or motions without notice. Hon delegates, we would now proceed with the Order of the Day.

# CONSIDERATION OF REPORT OF SELECT COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, WATER, SANITATION AND HUMAN SETTLEMENTS - NOTICE OF INTERVENTION ISSUED IN TERMS OF SECTION 139(1)(B) OF THE CONSTITUTION, 1996, IN UMKHANYAKUDE DISTRICT MUNICIPALITY, DATED 6 JULY 2021

Mr T S C DODOVU: Thank you very much hon Chair. Allow me to present a statement on Notice of Intervention of section 139(1)(b) of the Constitution, in Umkhanyakude District Municipality. In October 2015, the Provincial Executive Council in KwaZulu-Natal took a resolution to intervene at Umkhanyakude District Municipality in terms of section 139(1)(b) of the Constitution. The decision was informed by the assessment for a number of years the municipality has been limping from one problem to another. Problems have been implicated by persistent governance, financial and service

delivery challenges, that the municipality has been unable to resolve despite provincial and national government support.

Since then, the municipality had subsequently made good progress in all key performance areas. The intervention was terminated on 15 November 2017.

In spite of the measures by Department of Cooperative Governance and Traditional Affairs, Cogta to support the municipality in terms of section 154 of the Constitution, the municipality regressed to dysfunctionality due to chronic divisions amongst other reasons. Despite guidance, advice and support in terms of section 154, the municipality remained dysfunctional and regressed in financial management, oversight and governance. There was frequent and persistent breakdown of council meetings due to internal divisions within the council itself. This was triggered by the suspension in the main of the chief financial officer by the accounting officer on 13 February 2020, and again on 11 March 2020 due to alleged maladministration, fraud and corruption. This all triggered allegations, counter allegations of maladministration, fraud and corruption by the mayor against the accounting officer following the appointment of three security service providers in November 2019.

The tension escalated further and on 28 May 2020, the council could not pass the Integrated Development Plan, IDP and budget due to internal divisions within the majority party. Hence the current state of dysfunctionality calls for reinvocation of section 139(1)(b) of the Constitution in order to restore some aspect of internal institutional stability, sound financial management and effective service delivery.

In terms of governance and institutional matters: On governance and institutional matters, the municipality experienced challenges of frequent and persistent breakdown of council meetings due to internal divisions. This was triggered as I indicated, by the suspension of the chief financial officer. In terms of viability and management, the cash flow situation in the municipality has deteriorated over the last two financial years. Although management had developed a cash flow plan, there is no commitment and urgency to take decisions that are critical to the sustainability of the institution. The municipality does not have sufficient cash to meet its current or short-term obligations such as payments to creditors.

In terms of the internal control environment, several indicators showed that the internal control environment in the

municipality remains weak. The management persistently failed to implement policies and ... [Inaudible] ... of the municipality, leading to the ballooning of unauthorised, irregular, fruitless and wasteful expenditures, which is currently sitting at R2,7 billion. This points to a complete disregard of its policy framework and procedures and no regular reporting in terms of section 32 of the Municipal Finance Management Act of 2003, MFMA.

In terms of service delivery, although there is a use of consultants, the municipality’s compliance with the ... [Inaudible]... Infrastructure Programme is described as inconsistent. The municipality does not have a planned and preventative programme in place and no funds to finance such a programme.

With all this in mind hon Chair, on the basis of serious challenges prevailing in the Umkhanyakude District Municipality, the provincial executive council resolved to intervene in terms of section 139 of the Constitution at the municipality on 27 February 2021, by assuming the functions specified in terms of sections 51, 54(a) and 56 of the Municipal Systems Act of 2000, as well as those related to financial management. The provincial executive council also

authorised the MEC for Cogta to appoint a suitable qualified person to emend the following turbulences:

To be a compulsory signatory to the municipality’s primary bank account. To establish and appoint the acting chairperson to the council’s finance meetings to monitor the cash flow of the municipality.

To ensure that the interim financial committee meets regularly and reports monthly to the executive committee of council on the cash flow’s position of the municipality, so that also payments that are approved or disapproved are ensured that they are taken forward accordingly. To implement governance systems and provide oversight over the administration gratification of decision taken by the municipal council executive committee and all the relevant authorities within the municipality. Ensure that the implementation of findings arising from any investigation into fraud, maladministration or corruption taking place.

Given all of this hon Chair, the committee engaged with both the internal and the external stakeholders in the municipality, to solicit their views in terms of the decision by the provincial executive council to invoke section 139 of

the Constitution in that municipality. In terms of the constitutional procedural requirement, the Select committee has noted that the Minister of Cogta hon Dlamini-Zuma and the Chairperson of the NCOP were notified on the intervention on

27 February 2021. The Minister approved the intervention as such. The Select committee further noted that the substantive matters relating to the invocation of section 139 (1)(b) of the Constitution ...[Inaudible] ... around the municipality’s failure and challenges relating to governance ... [Inaudible]

... financial viability amendment as well as service delivery.

The Select committee has noted with concern the failure of the municipality to implement the findings and recommendations of the four commissioned forensic investigations from 2012 until 2019. The Select committee has also noted that, the MEC has commissioned an investigation in terms of section 106 of the Municipal Systems Act of 2000. The investigation has been finalised and approved by the MEC. However, the forensic report has not been tabled to council, due to council’s instability and collapse of council meetings.

The Select committee has noted with concern on stability, noncompliance of code of conduct by councillors, lack of consequence management, lack of service delivery, nonsitting

of meetings and non ...[Inaudible] ... of forensic investigation repots. The Select committee has noted all the

... [Inaudible] ... parties including ... [Inaudible]

...labour subjected the invocation of the section 139 of the Constitution in the Umkhanyakude Distict Municipality.

The Select committee is of the opinion that, the invocation of section 139(1)(b) of the Constitution is justifiable on substantive and procedural matters as contained in the Notice of Intervention to the NCOP.

With all that in mind hon Chair, the Select committee place the following recommendations to the House that: The NCOP approves the intervention in Umkhanyakude District Municipality in terms of section 139(1)(b) of the Constitution. That, the appointed administrator should be in line with the terms of reference fast-track the implementation of the findings arising from any investigation to fraud, maladministration and corruption. That, the KwaZulu-Natal MEC for Cooperative Governance and Traditional Affairs should table the report from these investigations in terms of section

106 of the Local Government Municipal Systems Act of 2000.

That, the Ministerial representative from the Department of Cooperative Governance and Traditional Affairs should work

together with the office of the speaker and the mayor to prioritise the passing of the municipal integrated development plan and the budget in the interest of the provision of service to the community of the Umkhanyakude District Municipality.

The MEC should take locally progressed reports on the implementation of section 139(1)(b) of the Constitution, including the implementation of the findings and recommendations of the previous commission investigation reports to the NCOP. Lastly, the said Committee on Cooperative Governance and Traditional Affairs together with the relevant portfolio in the KwaZulu-Natal legislature should monitor progress in respect of the implementation of the recommendation of the Select committee and the resolution of this particular House. Thank you very much hon Chair of the House.

Debate concluded.

*Declarations of vote:*

Ms C LABUSCHAGNE: Hon Chair, the Western Cape DA adopts the report of section 139(1)(b) Intervention of the Constitution in the Umkhanyakude District Municipality. We raised our

concern about the constant failure to implement section 154 of the Constitution that speaks to provincial support to assist municipalities as well as incapacity of administrative to restore the constitutional statutory obligations and address the mismanagement of incapacitated administrations.

The fact that there are no recorded successful section 139 interventions in South Africa is further proof that both the constitutional section 154 and section 139 interventions are only legislative documented compliance to the Constitution without results or consequences of noncompliance.

The chronic failure of discipline and all amongst councillors to the constitutional obligations and the regulated legislation must be addressed by the said administrations and the said political party should proactively ensure municipal governance disasters are averted and that communities are protected from local government mismanagement and political infightings. The lack of support and assistance from the Provincial Department of Co-operative Governance and Traditional Affairs is clearly seen in the lack of miserable results. It needs to be noted that the priority of compliance and discipline in implementation are vital to save our municipalities. I thank you.

Ms M BARTLETT: Hon Chairperson, I see vision for local government is located within the paradigm of a capable and developmental state. When the state is inundated capacities mobilise domestic and foreign capital working together with other social partners to achieve the state objective for eradicating poverty, unemployment and underdevelopment. In order to achieve the objectives of developmental state local government must be able to deliver the services to the local population in an efficient and sustainable manner. Thus improve the quality of life for local residents and creates a contempt for development. I have a problem with my ... can I speak, Chair?

The CHAIRPERSON OF THE NCOP: Yes. Please, proceed. You will be patience with me.

Ms M BARTLETT: It is in this context that we stand in support of section 139 (1)(b) intervention to Umkhanyakude District Municipality. That is aimed at resolving the challenges in governance, administration and financial management. Due to internal divisions in council there has been a failure to convene meetings in three conservative place. That has resulted in serious implications for service delivery and

administration which has led to crucial decisions not being made.

The breakdown in governance has also led important report not being processed by council. This also include the conclude of forensic investigation report and has compromised the fight against corruption, malfeasance and maladministration in their district.

Since the last section 139 intervention, which ended in 2017 and produced good results, according to the Auditor-General’s Public Finance Management Act, PFMA, report of 2019-20, Umkhanyakude District Municipality has regress in terms of its audit outcomes.

There has been also a failure to respond to the Auditor- Genera’s recommendations. This intervention will allow the provincial government to appoint a representative. There has been also a failure to respond to the Auditor-Genera’s recommendations. This intervention will allow the provincial government to appoint the representative who will take over certain functions as prescribe in the Municipal System Act, including section 55, 56 and 57. The appointed authority will ensure that compliance and capable human resources are

appointed. They will ensure that the recovery planning design and implemented. This will be ultimately aimed as civilising municipal finances and ensure that crucial services delivery process is well finally executed. I thank you, Chair.

Question put: That the Report be adopted.

In favour**:** Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance with section 65 of the Constitution.

The Council adjourned at 10:29.