# WEDNESDAY, 13 OCTOBER 2021

**PROCEEDINGS OF THE NATIONAL COUNCIL OF PROVINCES**

The Council met at 10:01.

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

The Chairperson announced that the sitting constituted a sitting of the National Council of Provinces.

# CONSIDERATION OF REPORT OF SELECT COMMITTEE ON HEALTH AND SOCIAL SERVICES - AGREEMENT AMENDING THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) PROTOCOL ON GENDER AND DEVELOPMENT, DATED 21 SEPTEMBER 2021

Mr M N GILLION: Hon Chairperson, the report of the Select Committee on Health and Social Services and agreement amending the Southern African Development Community, SADC, protocol on gender and development, dated 21 September 2021, the Select Committee on Health and Social Services have considered the

agreement amending the SADC protocol on gender and development on section 231(2) of the Constitution of the Republic of South Africa report as follows: That the committee recommends that the council in terms of section 231(2) of the Constitution accept and approved the said protocol.

Chairperson, the following amendments are made to the SADC protocol on gender and development: On Article 4 is amended by inserting immediately after the paragraph, state parties shall develop and strengthens specific laws, policies and programmes to achieve gender equality and equity.

Article 5 is amended by deleting affirmative action whenever it appears and replace it with special measures. Article 8 sub paragraph A paragraph 2 of Article A is amended to read as follows: No person under the age of 18 shall marry.

Article 10 is amended to read as follows: Widows and widowers’ rights. State parties shall act and enforce legislation to ensure that widows and widowers are not subjected to human humiliation or degrading treatment automatically becomes guardians and custodians of the children when the husband or wife dies unless otherwise determined by a competent locoed of law have the right to an equitable share in the narrations of

properties of the spouses have the right to remarry any person of their choice and have protection against all forms of violence and discrimination faced under the statements.

Article 11 - a girl and a boy child. State parties shall on adopt laws, policies and programmes to ensure that development and protection of the girl and a boy child by eliminating all forms of discrimination against them in the family, community, and institution at state level ensuring that they have equal access to education and healthcare and are not subjected to any treatment which causes them to develop a negative self- image ensuring that the they enjoy the same right and are protected from harmful, cultural attitude and practices in accordance with the United Nations Convention and the rights of the child and the African Charter on the Rights and Welfare of the Child, protecting them from economic exploitation, trafficking and all forms of violence, including sexual abuse and ensuring that they have their rights to education services and facilities and sexual and reproductive of young rights.

Article 11 continue under a girl and a boy child. State parties shall develop concreate measures to prevent and eliminate violence, harmful practices, child marriages, force marriages, teenage pregnancies, genital mutilation and child

labour as well as mitigate the impacts on girls’ and boys’

health, wellbeing, education, future opportunities and ...

Article 12 paragraph 12 of Article 12 of the protocol is amended to read as follows: State parties are endeavour to ensure that equal and effective representation argument in the season making positions in the political, public and private sectors, including through the use of special measures provided for in Article 5.

Article 14 is amended to read as follows: State parties are at laws and that promote equal access to retention and completion of early childhood education, primary, secondary, tertiary, vocational and none formal education, including adult literacy in accordance with the protocol, education and training and the sustainable development goals. State parties shall have a special measure to increase the number the number of girls taking up science, technology, engineering and mathematics subjects and information communication technology at the primary, secondary tertiary and higher levels. State parties shall adopt and implement gender sensitive, educational curricular policies and programmes, addressing the gender stereotypes in education and gender-based violence, amongst others.

Article 16 is amended to read as follows: Multiple roles of women. State parties shall conduct time use, studies and adopt policy measures through promoting shared responsibility between men and women within the households and family to ease the burden of the multiple roles played by women, recognise and value unfair care and domestic work through the provision of public services, infrastructure and social protection policies.

Article 17 is amended to read as follows: Economic empowerment. State parties shall undertake reforms to give men and women equal rights and opportunity to economic resources and improve access to control and ownership over productive resources, land and other forms of property, financial services, inheritance and natural resources.

Article 17 is amended to read as follows: State parties shall review national trade and entrepreneurship policies to make them gender responsive. State parties shall in accordance with the provisions of special measures Article 5 develops strategies to ensure that women benefits equally from economic opportunities, including those created through public procurement.

Article 19 paragraph 1 of the protocol is amended to read as follows: State parties shall view deem and at laws and develop policies that ensure women and men have equal excess to weight employment to achieve full and productive employment, descent work, including social protection and equal pay for work of equal value of all women and men in all sectors in line with t SADC protocol, employment and labour.

Article 20 paragraph 1 and 5 of the protocol are amended and read as follows: State parties shall ensure that they develop strategies to prevent and eliminate all harmful, social and cultural practices such as child marriage, forced marriage, teenage marriage, teenage pregnancies, slavery and female genital mutilation and ensure that perpetrators of gender- based violence, including domestic violence, rape, femicide, sexual harassment, female genital mutilation and all other forms of gender-based violence are tried by a court of competent jurisdiction and act and adopt special legislative provisions to prevent trafficking in persons and provide domestic services to the victims with the aim of reintegrating them into society.

Putting in place mechanism by with all relevant laws enforcement authorities and institution should eradicate

national, regional and international trafficking in persons’ syndicates, put in place harmonise data collection mechanism to improve research and reporting type and most of trafficking to ensure effective programing with monitoring

The CHAIRPERSON OF THE NCOP: Conclude, hon Gillion.

Mr M N GILLION: Thank you, Chairperson. It is a very long amendment under protocol but I just want to urge the council to approve the amendment under protocol. Thank you, Chair.

The CHAIRPERSON OF THE NCOP: Thank you very much, hon delegate.

Debate concluded.

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.

# CONSIDERATION OF REPORT OF SELECT COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, WATER, SANITATION AND HUMAN SETTLEMENTS - NOTICE OF DISSOLUTION ISSUED IN TERMS OF SECTION 139(1)(C) OF THE CONSTITUTION, 1996, IN TSWAING LOCAL MUNICIPALITY

Mr T S C DODOVU: Hon Chairperson of the NCOP, hon Amos Masondo, Premiers of different provinces, especially of the North West, hon Bushy Maape, and all MECs from different provinces, Chief Whip of the NCOP, hon Seiso Mohai, permanent delegates and special delegates, representatives of SA Local Government Association, Salga, ladies and gentlemen, six months ago, the national Department of Co-operative Governance and Traditional Affairs, Cogta, under the leadership of Dr Nkosazana Zuma, conducted an extensive assessment of the state of all municipalities in South Africa.

The assessment report, which was subsequently adopted by Cabinet, noted that there were 64 high-risk municipalities, which were facing political, financial and service delivery crises. The Cabinet then agreed that decisive steps were required, which would include the disbandment of some municipalities.

The Cabinet further agreed to deploy response teams to municipalities and to establish technical support teams and political champions, to work closely with the provincial governments, to give support to municipalities and to strengthen their capacities to fulfil their obligations, which include good governance, public participation and service delivery to the people.

The Tswaing Local Municipality, which is a subject matter of this debate today, was one of the four higher-risk municipalities in the North West province, identified by the national Cabinet as a candidate for possible dissolution because of persistent and never-ending political, governance, administrative, financial management and service delivery crises it is facing.

On 22 September 2021, the North West Government resolved to dissolve the council of Tswaing Local Municipality by invoking section 139(1)(c) of the Constitution, with immediate effect, because in its view, there are exceptional circumstances that exist and these warrant a dissolution step on that municipality. According to the North West Government, the dissolution would last until a new council is elected and

assumes office after the elections, which will take place in less than three weeks, on 1 November 2021.

On Monday, 11 November 2021, the Select Committee Cogta in the NCOP held a virtual meeting with internal and external stakeholders in the Tswaing Local Municipality, to fully investigate the circumstances and the reasons under which the North West Government decided to dissolve it.

With regard to the political crisis in the municipality, the provincial government highlighted that Tswaing council was characterised by infightings, intrapolitical-party divisions and the divisions in political caucuses. As a result, the council has two mayors, two speakers and two municipal managers.

In terms of poor governance and administrative instability, the following were cited by the Provincial Government of the North West: The nonfunctional of ward committees and closure of municipal offices by members of the unions; municipal stagnation in terms of improving audit opinions received for the past three years; nonfunctionality of the municipal public accounts committee and problems related to the composition of

its members; and municipal owing pension funds, medical aids, and funeral policies of members due to cash flow challenges.

In terms of financial management challenges, the North West Government cited that the following: Municipal insolvency and instability to meet short-term obligations; implementation of unfunded budget and total creditors amounting to R354 million, as end of June 2021; the municipality owing Eskom R54 million, as at June 2021 and other creditors totalling the amount of R159 million; the municipal failure to implement credit control and collection of household debts, as they owe a huge sum of R282 million of the total debt; and the municipality’s inability to pay third party transactions, such as pension funds and medical aid employees.

In terms of service delivery challenges, the provincial government cited the following: The municipal collapse of service delivery, characterised by potholes, sewer, and water spillages; no consistent refuse removal and the cleaning of town not on dedicated schedules; the disrupted water supply due to lack of maintenance and nonpayment of water services; municipal inability to maintain service delivery fleet; and lastly, general poor maintenance of infrastructure.

The select committee has noted that the Department of Cogta submitted a written notice to the Cabinet member responsible for Cogta, the provincial legislature and the NCOP on 28 September 2021. On 6 October 2021, the Minister of Cogta, Hon Dlamini-Zuma, concurred and agreed with the North West Government’s decision to dissolve the Council of Tswaing Local Municipality.

While noting that the substantive matters relating to the invocation of section 139(1)(c) of the Constitution in the municipality revolved around local government pillars of financial management, service delivery and good governance, the select committee has however noted that the majority of internal and external stakeholders opposed the dissolution of the municipality.

The select committee has further noted, with consent: The collapse of service delivery in the municipality; instability of good governance; politically fighting within the parties; lack of portfolio evidence on support provided by the provincial government in terms of section 154 of the constitution; also lack of consequence management within the administration; failure to post as payment third parties; the adoption of the unfunded budget; noncompliance of legislation,

regulation and other policies; non-convening of council and other committee meetings; failure to facilitate public participation; failure to perform oversight; long collection of revenue; and late submission of financial statements to the office of the Auditor-General.

Based on the above observations, the committee recommends the following: That the NCOP approves the invocation of section 139(1)(c) of the Constitution in the Tswaing Local Municipality; that the MEC of Cogta in the North West should ensure the appointment of qualified and competent administrator and the team to deal with the challenges of the municipality in the immediate term; the appointment of the administrator, which include the intervention team should deal with all problems and challenges of the municipality, including disciplinary action of any employee, and where possible, opening of criminal cases on matters related to corruption and financial mismanagement; and lastly, that the North West MEC of Cogta should play a leading role in providing support to the municipality of Tswaing in terms of section 154 of the Constitution.

Thank you very much, hon Chairperson. That is the report of the Select Committee on Co-operative Governance and Traditional Affairs. Thank you very much.

Question put: That the Report be adopted.

*Declarations of Vote:*

Mr M DANGOR: Thank you very much Chairperson. Chairperson the NCOP has been convened in an extra ordinary sitting to consider a section 139 (1)(c) intervention in the municipality. As we have stated before, the NCOP does not take lightly any section 139 application for intervention in the affairs of the municipality.

Our local government week in September 2020 in fact expressed reservation that the mere application of section 139 may in fact not necessarily provide the solutions to the problems specific in municipalities.

Cogta’s own classification of the municipality placed the set local authority in one of the 64 that required intervention. Our appeal is that all members in fact should support this particular intervention. We are dealing with a municipality that has to endure a series of motions of no confidence. Two

mayors, two speakers, two municipal managers in a short period of time. The municipality is dysfunctional.

To argue to do nothing other than criticize in itself isn’t responsible. To do so is to let down the community that is meant to be served by the municipality. We stand with the community [Interjections.] in demanding that basic services, accountability and proper management of the municipal takes place and that is why we are in support of the invocation of section 139 (1)(c) and section 139 (f).

We are in support of the intervention by the Minister to formulate a task team that will clearly identify the challenges and work closely with key stakeholders to improve the current stakeholders. We so move Chairperson. Thank you.

Ms M BARTLETT: Thank you, hon Chair, good morning. The local government elections will be taking place in the next few weeks where the people of South Africa will express their voice [Interjections.] ...

The CHAIRPERSON OF THE NCOP: Order hon members, if you can just make sure that you do not disturb the people who are speaking because we want to hear what it is that they are

saying. Hackling here and there is understandable but can we please keep it within the normal standard limit. Hon Bartlett please proceed.

Ms M BARTLETT: Thank you Chair. One minute gone already. The local government elections will be taking place in the next few weeks where the people of South Africa will express their voices on who should govern them in the municipalities and local municipalities communities.

As the ANC we are confident that the people will want to get a special overwhelming support with a movement that has no doubts to transform South Africa from the ruins of apartheid.

The local government sphere is the most critical area in the transformation project because it’s a sphere closer to the people and is charged with the responsibility to deliver basic services to see to the needs of our communities. We still believe there’s a need for a strong and effective government as a result of the last disparities between local areas in regions.

Hon Chair, the central government is required to address the legacy of apartheid and ensure more balanced forms of local

developments. Our strong local government should be complimented by provincial government whose primary task will be to ensure integrated and coordinated local development planning to the provision of the appropriate visual services and to provide support to those local authorities which lack resources.

Hon Chair, it’s in this content that we stand to support the implementation of section 139 (c) and 5 of the Constitution in Tswaing Local Municipality. Chair, this will allow national government an opportunity to intervene together with the provincial government in the resolution of the challenges in governance, administration and financial management which [Inaudible.] the municipality’s [Inaudible.].

Hon Chairperson, the municipality has failed to properly implement the Municipal Systems Act and further, more nepotism and corruption have become the epidemic. The priorities to ensure that the municipality attracts capable and qualified human resources especially in the financial department in order to ensure that the municipality is able to deliver services efficiently and sustainably.

Hon Chair, the Northern Cape supports the section 139 intervention in Tswaing Municipality. I thank you hon Chairperson.

Ms N E NKOSI: Thank you very much hon Chairperson. Chairperson the ANC’s vision for local government is located within paradigm of capable and developmental state that has the responsibility to generate revenue and work in collaboration with social partners to eradicate poverty, address unemployment and underdevelopment.

This local government must be able to deliver basic services to the population in an efficient and sustainable manner and improve the quality of life for residents whilst the task is clear. Its implementation has suffered from numerous challenges.

Tswaing Municipality’s matter is not new and neither should any opposition party try to claim that matters can wait. We have an election on the 1st of November, these interventions seek to address the persistent challenges of governance, administrative and financial management which continue to engulf the municipality.

Hon Chairperson, the situation is precarious and any further delay will result in further challenges after the 1st of November. The current dysfunctionality of the Tswaing municipality threatens service delivery and political administrative interface cannot be allowed to continue.

Rational and reason have prevailed and this the Constitution needs to speak.

We also welcome that this particular intervention is also coupled with the invocation of section 139 (5) which is aimed at restoring the municipality back to financial health. It is concerning that the municipality has been failing to meet its financial obligations and furthermore not being responsive to the findings of the Auditor General.

The intervention task team that will be constituted to attend these pressing matters will consist of experienced national and provincial officials whose task will be to develop a road map and report to provincial executive and Ministry once a month.

Chairperson, Mpumalanga stands in support of the invocation of Section 139 (1)(c). I submit Chairperson, thank you very much.

The CHAIRPERSON OF THE NCOP: Thank you very much hon Nkosi. The next person on my list is hon Du Toit. Hon du Toit as you speak please clarify whether you are speaking on behalf of the province or the party.

Mr S F DU TOIT: Hon Chair, I am speaking on behalf of the FF Plus. May I proceed?

The CHAIRPERSON OF THE NCOP: No, unfortunately you can’t.

Mr S F DU TOIT: This is a political fan fair that’s taking

place. The dissolution of Tswaing [Interjections.].

Ms A D MALEKA: Hon Du Toit does not have the right to make a declaration on behalf of the North West province Chairperson.

The CHAIRPERSON OF THE NCOP: Hon Du Toit Please spare us the unnecessary... [Interjections.]

Ms M MOKAUSE: Chairperson, when racists rise in this House and make declarations, not even at the right time you allow them but if it was the EFF, you would be jumping up and down on that chair. You allow them and even smile when they waste our time. We’ve got elections to win here!

The CHAIRPERSON OF THE NCOP: Thank you very much. We will move on to hon Labuschagne.

Ms C LABUSCHAGNE: Than you Chair. Hon Chair, municipalities across South Africa have collapsed clearly indicating that national and local government is in a state of disaster. Yet, the ANC government that has caused this disaster consistently avoids discussions and investigations to find the obvious reasons, they simply ignore the elephant in the room.

To embark with section 139 (1)(c) intervention and dissolve a municipality less than three weeks before the local government elections is now indication that the elephant in the room has been identified. With the collapsing Tswaing local government restored, governance will be re-established after the 2021 local government elections.

The rush to have the NCOP certify the North West provincial government’s application for the dissolution considering the three failed interventions from 2011 to 2019. The constant replacement of administrators, their failure to successfully comply with their terms of reference.

The instability of the section 100 intervention in the North West province raises concerns about the value of section 154, the systems of national and provincial governance, further than that, the depleted endemic rot, the inability to address political issues of ill-discipline of councilors fraud and corruption, financial mismanagement and maladministration confirms the dysfunctional council but without a doubt a collapse of administration.

The dissolved accounts [Inaudible.] will not contribute to political stability or good governance. After the 2021 local government election have merely indicated short sightedness, the institutionalized corrupt and fraudulent principles, the lack in delivering basic and essential services and the blatant theft of tax money should identify the elephant in the room.

The NCOP needs to ensure that provincial governance implements section 154 for support effectively at the earliest size of mismanagement and maladministration and if necessary invoke section 106 of the Systems Act.

Political parties must ensure that their councils are disciplined and well educated in the legislative values of

local government. What we have now as the provincial government avoiding the constitutional role by rushing into what they see as a quick fix or a muscle flex.

The NCOP has the constitutional role to investigate whether any interventions in municipalities and provinces are justified and in accordance with the spirit of our Constitution and cooperative governance.

The application of the North West province is too little too late due to very little unprecedented time for adequate engagement. Therefore, it is evident that the section 139 (1) (c)will not serve its purpose.

The Western cape does not support the dissolution of Tswaing Local Municipality since there’s no guarantee that this dissolution will be successful. I thank you.

Adv M Phindela: Chairperson.

The CHAIRPERSON OF THE NCOP: Yes, Phindela.

Adv M Phindela: KZN.

The CHAIRPERSON OF THE NCOP: KZN, yes.

Adv M Phindela: Declaration.

The CHAIRPERSON OF THE NCOP: No, but they are not on the list.

Mr E M MTHETHWA: We are Chair; we have raised our hand.

The CHAIRPERSON OF THE NCOP: It doesn’t show on my computer.

Okay, Enock Mthethwa, please proceed.

Mr E M MTHETHWA: Thank you very much hon Chairperson and members of the NCOP good morning. Chair, the 2020/21 municipality finance report of the Auditor General entitled the “Ethical and accountability leadership should drive the requirement change,” not only a painted picture of the deepening crisis at the local government sphere but lays down a challenge to the local government and Parliament to pay serious attention to the challenges facing local government and come up with a solution that underpins an evidence based research and supported by the regulator environment.

Our formal concern as the NCOP has been that what the Auditor General is raising is not new. The challenges were truly

highlight in the Auditor General 2019/20 budget to 2020 report into the state of municipality finance entitled “Not much to go around, yet not the right hands and the till”.

It is report that [Interjections.]. Tswaing Local Municipality has remained one of the worst performing municipality in the North West despite serious interventions. It is for this reason that we welcome the intervention in Tswaing municipality particularly the section 139 (5) of the Constitution which deals with financial challenges of the municipality.

The Tswaing Local Municipality is unable to meet short term obligations and has unfunded budget as the Chairperson highlighted. Of all the funds, Eskom being owed R54 million not being able to pay that [Interjections.]. You can imagine how the workers are feeling when they are retiring.

This desire state of affairs directly results of the failure to adhere to Municipality Systems Act especially in the related municipality public accounts committee which is supposed to be provided with necessary oversight in municipality financing.

The intervention task team will restore the municipality ability to meet its financial obligation and ensure that people of Tswaing receive services in a sustainable manner.

This is one reason the KZN supports the section 139 intervention. We therefore support this intervention Chair. Thank you very much.

Question put: That the Report be adopted.

VOTING:

Declarations of votes made on behalf of Gauteng, Northern Cape, Mpumalanga, Western Cape, KwaZulu-Natal.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West.

AGAINST: Western Cape.

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

The CHAIRPERSON OF THE NCOP: Hon members let me take this opportunity to express the appreciation of the NCOP to the provinces. In this context especially the Premier of the North West province, hon Maape, the MECs, the speakers to the deputy speakers, all special delegates present as well as all Salga representatives present at this sitting of the NCOP. Your presence and your participation is indeed greatly appreciated.

Hon members, that concludes the business of the day and the House is adjourned. Thank you very much.

The Council adjourned at 10:51.