**Report of the Select Committee n Co-Operative Governance and Traditional Affairs, Water, Sanitation and Human Settlements on Notice of interventions in terms of Sections 139(7) of the Constitution And 150 of the Local Government: Municipal Finance Management Act in Mangaung Metro Municipality and Enoch Mgijima Local Municipality - dated 2 August 2022**

**1. Background and Overview**

1.1 The Select Committee on Co-operative Governance and Traditional Affairs (Water, Sanitation & Human Settlements), having considered the request by the National Council of Provinces (NCOP), to consider and report on the interventions invoked in Mangaung Metropolitan Municipality and Enoch Mgijima Local Municipality in terms of section 139(7) of the Constitution and section 150 of the Local Government: Municipal Finance Management Act (MFMA), reports as follows:

1.2 On 2022, the Minister of Finance tabled a notice of interventions in terms of section 139 (7) of the Constitution and section 150 of the MFMA in Mangaung Metropolitan Municipality and Enoch Mgijima Local Municipality to the Office of the Chairperson of the NCOP.

1.3 Subsequent to the tabling, the Chairperson of the NCOP referred in terms NCOP Rule 101, the notice of interventions in the above-mentioned municipalities to the Select Committee for consideration and reporting.

1.4 On 7th June 2022, the Select Committee held a virtual interactive and consultative meeting with the National Treasury and the Department of Cooperative Governance and Traditional Affairs. The main objective of the consultative virtual meeting was to accord the Departments a platform to brief the Select Committee on the constitutional, procedural and substantive matters related to the invocation of the interventions in terms of the Constitution and the legislation.

**2.** **Briefing by the National Treasury on Interventions in Mangaung Metropolitan Municipality and Enoch Mgijima Local Municipality**

2.1 The National Treasury briefed the Select Committee on interventions in terms of section 139(7) of the Constitution and section 150 of the MFMA in Mangaung Metropolitan Municipality and Enoch Mgijima Local Municipality. The departmental presentation focused on the background, constitutional considerations, unsuccessful interventions by the provinces, procedural requirements and substantive requirements in both the municipalities.

**3. Background**

3.1 On 06 April 2022, Cabinet approved a section 139(7) national intervention in both the Mangaung Metro and the Enoch Mgijima Local Municipality. In both municipalities, the national intervention was preceded by a provincial Intervention in terms of section 139(5) of the Constitution. In the case of the Enoch Mgijima, the provincial intervention was first invoked in 2018, in line with section 139(5)(a) of the Constitution.

3.2 In the Mangaung Metro, the intervention was invoked in December 2019, in terms of section 139(5)(a) and (c) of the Constitution. No improvements were recorded in implementing the mandatory financial recovery plan since the provincial interventions were invoked. A national intervention was necessary as a result of the deepening of the crisis in these municipalities, as well as requests for national intervention from the respective provinces.

**4. Constitutional Considerations**

4.1 Section 139 of the Constitution provides for provincial intervention in local government under three circumstances: when a municipality fails to fulfil an executive obligation in terms of section 139(1); when a municipality fails to pass a budget or revenue raising measures that give effect to the budget in terms of section 139(4); when a municipality is in a financial crisis or is in persistent and material breach of its obligations to provide basic services and / or meet its financial commitments.

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4.2 The hierarchy of interventions as per the Constitution requires that the Provincial Executive Council must first intervene. In the event that the Provincial Executive cannot or does not intervene, national intervention is required in terms of section 139(7) of the Constitution.

4.3 Section 139(7) states: “If a Provincial Executive ***cannot or does not or does not adequately exercise*** the powers or perform the functions referred to in subsection (4) or (5) of the Constitution, the ***national executive must intervene*** in terms of subsection (4) or (5) in the stead of the relevant provincial executive.”

4.4 In both Mangaung Metro and the Enoch Mgijima Local Municipality, the provincial interventions were unsuccessful – the Financial Recovery Plans were not implemented as required, leading to an exacerbation of the crisis.

4.5 In the case of the Mangaung Metro, the Premier of the Province requested national intervention from the Deputy Minister of Finance, as the Province could not resolve the political challenges in the Metro. In the Enoch Mgijima Local Municipality, the Province concurred with the view that a national intervention was required.

**5. Unsuccessful Interventions by the Free State and Eastern Cape Provinces**

5.1 Provinces are very reluctant to invoke mandatory interventions. To date, the preferred intervention has been a discretionary intervention in terms of section 139(1) of the Constitution. Provinces also prefer to provide support under section 154 of the Constitution, rather than intervene when circumstances are evident in terms of section 139.

5.2 Discretionary interventions do not require a mandatory Financial Recovery Plan (FRP), and are therefore ineffective for resolving financial crises. Interventions are poorly monitored by the Provinces and remedial actions required to deal with pressing problems is often lacking.

5.3 There is also the misconception that a FRP will automatically resolve the crisis in a municipality, and the root causes of the problem are often left unaddressed. The incorrect use and often poor selection of an Administrator has also contributed to the lack of success in this process.

**6. Procedural Requirements and Considerations**

6.1 An intervention invoked in terms of section 139(7) of the Constitution is a replica of a section 139(5) intervention, with the exception that the national Cabinet acts instead of the Provincial Executive. The provisions applicable to section 139(5) thus apply to section 139(7) interventions.

6.2 Therefore, Cabinet has the same three options: to impose a recovery plan to enable the municipality to meet its financial and service delivery obligations; dissolve the municipal council where circumstances warrant; assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not implement the FRP.

6.3 Cabinet must also notify the key stakeholders including the NCOP, the Speaker of the Legislature – within 7 days. The Minister of CoGTA is a party to the invocation of a national intervention and therefore, notification of the intervention is not necessary.

6.4 When a section 139(7) intervention is invoked, the following processes must immediately be put into motion: obtain approval from Cabinet; notify the Legislature, NCOP and municipality; publish a notice in the Government Gazette; prepare terms of reference to appoint a National Intervention Team (including a National Cabinet Representative and subject matter experts); invite bids and conduct interviews; deploy the National Intervention Team; arrange for security to protect the National Intervention Team – grey area requiring further direction from SAPS; monitor progress monthly and report quarterly to Cabinet.

**7. Substantive Requirements and Considerations**

7.1 The criteria to determine a financial crisis, is specified in section 140 of the MFMA. A financial crisis is evident when one or more of the following criteria is met by the municipality: failure to make any payment to a lender or investor as and when due; failure to meet a contractual obligation which provides security in terms of section 48; failure to make any other payment when due which individually or in aggregate is more than a prescribed amount – where no amount is prescribed then a cut-off of 2% of the municipality’s budgeted operating expenditure is used; failure to meet its financial commitments which impacts or may impact on the availability or the price of credit to other municipalities; recurring or continuous failure by a municipality to meet its financial commitments which then substantially impairs its ability to procure goods, services or credit on usual commercial terms.

7.2 In addition to section 140 of the MFMA, governance, institutional arrangements and service delivery are also assessed financial performance, governance, institutional arrangements and service delivery are referred to as the four pillars of municipal sustainability. Generally, when a municipality is in crisis on matters related to governance, institutional development, financial management and service delivery.

**8. Substantive Matters Related to Intervention in Enoch Mgijima Local Municipality**

8.1 The Municipality received a qualified audit opinion for the last two financial years. The Auditor-General observed that the inability of the Municipality to operate, was an ongoing concern. There were drastic reductions in irregular and unauthorised expenditure, due to write offs without proper investigation. There was an increase in fruitless and wasteful expenditure (R3,1 million in 2016/17 to R126,7 million in 2020/21). There was no consequence management for UIFW expenditure. Lack of internal controls /adherence to SCM policies. The MPAC meetings were not taken seriously by management and council.

8.2 It was identified that the salary costs were 38.8 % of OPEX, and the organisational structure was not aligned to size of Municipality. There was slow progress in reviewing current organisational structure, and most senior management positions were filled, although competency is yet to be determined. Average spending on conditional grants was 58.6% between 2016/17 and 2020/21 financial years. The cumulative amount of R84.5 million in conditional grants returned to National Revenue Fund for the period 2016/17 – 2020/21. Further, there were backlogs in electricity provision and refuse removal.

**9. Substantive Matters Related to Intervention in Mangaung Metro Municipality**

9.1 The Metro received an unqualified audit opinion with findings for the last two financial years, but is still in a financial crisis. SCM irregularities were noted, and the composition of the Bid Adjudication Committee (BAC) was incorrect. Service Provider contracts were increased without council approval to the value of R244 million. No consequence management in place. There was an increase in all categories of UIFW: unauthorised expenditure was R3,9 billion; irregular expenditure was R2,7 billion; fruitless/wasteful expenditure stood at R115 million. There were also indications of council failure in performing fiduciary responsibility. No progress in implementing mandatory FRP approved in 2020, as part of section 139(5) intervention by the Province.

9.2 The change in political leadership pre 2021 Local Government Elections lead to uncertainty and instability in administration. The position of the Municipal Manager was vacant for more than one and a half years. The acting Municipal Managers were appointed on a continuous basis, created further instability in the organisation. There was mismanagement of overtime policies, of which the Executive Management Team failed to manage and control the problem. Political Office Bearers also claimed overtime payments. The establishment of the Metro Police increase the salary bill of the Metro, salary notch increments without process and irregular appointments. The council and administration failed to oversee the municipal entity, CENTLEC (financial dispute remain unresolved).

9.3 In terms of financial performance, the Metro moved from an unfunded to a funded budget in 2019/20 adjustments budget. The Metro had operating deficits for the last 3 financial years. For 2020/21 financial year, the operating deficits was R566 million. Debtors collection rate stood at 64%. Outstanding debtors were R2,7 billion and outstanding creditors were R1,8 billion. The Eskom debt stood at R242 million and Bloem Water debt was R524 million. The Metro cash coverage ratio was 0 months.

9.4 Water losses have increased from 39% in 2018/19 to 42% in 2020/21. There was poor routine maintenance of roads, water, sanitation and storm water infrastructure. There is visible evidence of a lack of refuse/waste collection in the Metro. Service delivery targets were not met, due to poor contract management and delays in the SCM processes. Inadequate and poorly maintained fleet to respond to service delivery issues. Poor spend on repairs and maintenance of 2,6 % in 2020/21. A total of R849 million of unspent conditional grants were returned to the National Revenue Fund over the last five years.

**10. Observations of the Select Committee**

10.1 The Select Committee has noted that in terms of the constitutional and procedural requirements, the National Treasury has complied by tabling the notices of interventions in terms of section 139(7) of the Constitution and section 150 of the MFMA. The respective Provincial Legistures and the NCOP have been duly notified, within the stipulated 7 days after the intervention began.

10.2 The Select Committee has observed that the substantive matters that led to the invocation of interventions in Mangaung Metro and Enock Mgijima Local Municipality revolve around political instability, lack of service delivery, poor financial management, lack of progress in the implementation of financial recovery plan, unfunded budget and non-compliance with supply chain management and lack of oversight and consequence management.

10.3 While welcoming the intervention by the National Treasury in Mangaung Metro and Enoch Mgijima Local Municipality, the Select Committee has noted with concerns the lack of progress on the implementation of previous interventions aimed at assisting the Municipalities to implement the financial recovery plans.

10.4 The Select Committee further noted with concern about the delay on the tabling of the Intergovernmental Monitoring, Support and Intervention Bill to Parliament by the Department of Cooperative Governance and Traditional Affairs.

10.5 The Select Committee is of the opinion that the tabling of the Intergovernmental Monitoring, Support and Intervention Bill will provide a legislative framework for the implementation of proper guidelines, norms and standards on the invocation and implementation of interventions in local government.

**11. Recommendations of the Select Committee**

11.1 Having considered the notices of interventions in terms of section 139(7) of the Constitution and section 150 of the Municipal Finance Management Act in Mangaung Metro and Enock Mgijima Local Municipality, the Select Committee recommends as follow:

11.1.1 The National Council of Provinces notes the interventions in terms of section 139(7) of the Constitution and section 150 of the Municipal Finance Management Act in Mangaung Metro and Enock Mgijima Local Municipality.

11.1.2 The National Treasury should ensure the deployment of qualified, competent and professional Administrators in implementing the interventions terms of references in Mangaung Metro and Enock Mgijima Local Municipality.The National Treasury after appointing competent administrators provide the select committee with the profile of the appointed administrators

11.1.3 The appointed Administrators should provide regular reports to the councils of both Municipalities, in line with the terms of references of the interventions.

11.1.4 The National Treasury should provide quarterly reports to the Provincial Legislatures and the National Council of Provinces on the implementation of section 139(7) of the Constitution and section 150 of the Municipal Finance Management Act in Mangaung Metro and Enock Mgijima Local Municipality.

11.1.5 The Minister for Cooperative Governance and Traditional Affairs should fast track the tabling of the Intergovernmental Monitoring, Support and Intervention Bill to Parliament, in order to provide norms and standards for the invocation and implementation of interventions in local government.

11.1.6 The Select Committee should, in collaboration with the relevant Portfolio Committee in Free State and Eastern Cape Provincial Legislatures, monitor the implementation of interventions and were feasible, conduct joint oversight visits to the Mangaung Metro and Enock Mgijima Local Municipality, in order to engage the internal and external stakeholders of the Municipalities on progress made in respect of the implementation of the interventions.

**Report to be considered.**