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**NATIONAL ASSEMBLY**

**QUESTIONS FOR ORAL REPLY**

**QUESTION NUMBER 2021/1459**

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**1459. Mr K J Mileham (DA) to ask the Minister of Cooperative Governance and Traditional Affairs:**

(1) With reference to her reply to question 710 on 29 March 2021, in which she merely outlines the legal framework for her mandatory intervention in a municipality in terms of section 139(7) of the Constitution of the Republic, 1996, and the judgment in the *Unemployed Peoples Movement v Premier, Province of the Eastern Cape and Others*, which found that the Provincial Executive had failed to adequately intervene in terms of section 139(5) and that there were grounds for a mandatory intervention, what are the reasons that she has not yet intervened in the Makana Local Municipality in her official capacity.

(2) whether she considers her intervention in dysfunctional municipalities where provinces have failed to intervene as a discretionary function; if not, what are the reasons that she and her department have failed to address the financial crisis of local government in the numerous municipalities that are unable to meet their financial obligations through mandatory national interventions; if so, on what legal and/or statutory provisions does she rely in reaching that conclusion;

(3) why does no regulatory and/or legislative framework exist for interventions, despite the promise of the Intergovernmental Monitoring, Support and Interventions Bill as far back as 2013? NW1662E

**REPLY:**

1. The department is guided by the constitution and the rule of law when it comes to interventions. The interventions invoked in terms of the two subsections (4) and (5) of section 139 of the Constitution are mandatory financial interventions, and the provincial executives must invoke these subsections if the municipalities satisfy the criteria outlined in those two subsections. The only time when the national executive may intervene in these scenarios are when:

(i) the provincial executive cannot,

(ii) the provincial executive does not, or

(iii) the provincial executive does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5) of section 139 of the Constitution, then the national executive must intervene in the stead of the provincial executive.

In the *Unemployed Peoples Movement v Premier, Province of the Eastern Cape, and Others*, the courts of the first and second instance directed that the Provincial Executive to invoke mandatory intervention in terms of Section 139(5) of the Constitution. The Eastern Cape Provincial Executive petitioned the Constitutional Court to appeal the decision of the lower courts. To that end, the court judgements were suspended by the appeal and therefore the requirements of section 139(7) of the Constitution were no longer applicable in this case.

1. The prerogative powers to intervene in municipalities due to failure to fulfil executive obligations in terms of Constitution or legislative are bestowed to the provincial executive council of provinces in terms of Section 139 of the Constitution. In addition, Section 105 of the Municipal Systems Act mandates the province to monitor municipalities in managing their own affairs, monitor development of municipalities in their jurisdiction and assess support required by those municipalities to strengthen their capacity to manage their own affairs. It is within this hierarchy prescribed in the Constitution that provinces are the first structure within government that must provide support and intervene in municipalities. Thereafter, the requirements of failure or inadequacy or insufficiency of the provincial executive council to intervene should be met prior any intervention in terms of Section 139(7) of the Constitution.

In addition, once municipalities are categorized as dysfunctional and not financially viable, provincial government must immediately differentiate between circumstances that require interventions in terms of section 139(1) of the Constitution and those that requires section 139(5) of the Constitution interventions (serious financial issues). Once the criteria for section 139(5) of the Constitution are met, provinces often align their section 154 of the Constitution support package and the approved Financial Recovery Plans (FRPs) for municipalities, and together with national departments provides sustained support for successful implementations of FRPs.

1. The Intergovernmental Monitoring, Support and Interventions (IMSI) Bill gives effect to the Constitution that prescribes for the enactment of legislation to deal with processes and procedures in the application of sections 100 and 139 of the Constitution. The IMSI Bill has been in the past, consulted with relevant stakeholders, and undertaken the socio-economic impact assessment and certification with the state law advisors. However due to lessons learned in numerous interventions invoked either in terms of section 100 and 139 of the Constitution, the Department reviewed the Bill to incorporate those lessons learned, and currently the department is conducting wider consultation with stakeholders in provinces and municipalities, before processing it through to Cabinet. It is envisaged that the parliamentary process will commence during the beginning of 2022/2023 financial year.