



Ministerie van Plaaslike Regering en Behuising
Ministry of Local Government and Housing
iSebe loLawulo lweeDolophu neZindlu



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PRESENTATION TO THE SELECT COMMITTEE FOR LOCAL GOVERNMENT AND ADMINISTRATION

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VENUE COMMITTEE ROOM GH 42, GOOD HOPE BUILDING

BEAUFORT WEST MUNICIPALITY AND CENTRAL KAROO DISTRICT MUNICIPALITY: NON-FULFILLMENT OF EXECUTIVE OBLIGATION FOLLOWING THE SEPTEMBER 2007 FLOOR-CROSSING: UPDATE

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1. PURPOSE

To inform the Select Committee for Local Government and Administration in respect of the recent interventions in the Beaufort-West Municipality and the Central Karoo District Municipality in terms of section 139 of the Constitution, to give an update and evaluation of the current situation.

2. BACKGROUND

- The Western Cape Provincial Cabinet on 22 October 2007, granted approval for the issuing of a directive in terms of section 139(1)(a) of the Constitution to the Council of the Beaufort West Municipality to reconstitute and elect its representatives to the District Municipality within a period of two working days after approval of the intervention and to the Council of the Central Karoo District Municipality to also reconstitute within two working days after the Beaufort West Municipality has reconstituted and elected its representatives to the District Municipality.

- Furthermore, where such directives are not adhered to, the executive obligation of Council to call a meeting or meetings, as the case may be, be assumed by the Minister of Local Government and Housing under the direction of the Provincial Executive in terms of section 139(1)(b) of the Constitution.

- Beaufort West Municipal Council did not meet on the date directed to do so and this obliged the Minister to call a meeting of the Council.

- This meeting took place on Monday, 29 October 2007 and was attended by two officials of the Department. At the said meeting of the Beaufort West Municipal Council new office bearers were elected and all committees appointed.

- However, Council failed to elect their representatives to the Central Karoo District Municipality. Although it was not stated in the meeting, it was clear that the pending litigation, together with the political situation in Beaufort West at the time influenced the decision not to proceed.

- On 5 December 2007, Provincial Cabinet was informed of the legal status of the said two municipalities and the recommendation of Minister accepted, i.e. that the Councils not be dissolved in terms of section 139, but, based on the legal opinion obtained from senior counsel, continue to function over the festive season and that further developments be reported to Provincial Cabinet at its first meeting in 2008.

- On 21 December 2007 the Court dismissed the application in case number 12226/2007 and ordered the applicants to pay the costs jointly and severally.

- The effect of this judgment is that there are now three ward vacancies in Beaufort West for which by-elections must be held as well as three proportional vacancies for ICOSA (two in Beaufort West and one in Central Karoo).

Under the circumstances, the following process would have unfolded:

- The IEC to request the relevant political party to update its proportional list and nominate three members to be appointed from that list as proportional representatives (two in Beaufort West and one in Central Karoo).
- The IEC to, in liaison with the Minister of Local Government and Housing determine a date for by-elections in the three wards. The Commission set the date as 13 February 2008.
- The Beaufort West Municipality has a quorum and is therefore functioning.

Central Karoo District Municipality is quorate and according to legal advice obtained, the members who have thus far represented the Beaufort West Municipality may continue to do so until they are replaced in terms of post floor-crossing procedures. In terms of the legal advice the Council can therefore function.

3. LATEST DEVELOPMENTS

- The process following the Court Order of 21 December 2007 did however, not realize as expected due to the fact that the Applicants in the case of Anneke Baartman, and five Others vs Petrus Roodtman, ICOSA, the IEC and Others filed a notice of appeal against the judgement.
- The effect of the Application for leave to appeal, in terms of the Rules of the Court, suspends the operation of the Order granted in this matter until the resolution of the appeal.

- As a result, by-elections could not be proceeded with. In the meantime the IEC continued with the filling of the three proportional vacancies as it was at the time unaware of the application for leave to appeal.
- The legal position confirmed by the IEC is that the three recently appointed proportional members remain members until the Court indicates otherwise.
- The Applicants are now awaiting the reasons substantiating the judgement in order to motivate their application. During December 2007 the relevant judge indicated that he would hand down judgement in December (21 December 2007) and provide reasons towards the end of January 2008.
- The consequences are that four months after the floor-crossing, the Beaufort West Municipal Council has still not elected its representatives to the Central Karoo District Municipality, which is a highly unsatisfactory state of affairs

With due regard to the above developments, I will by 6 February 2008, at which time the application for leave to appeal would hopefully be heard, apply my mind to the situation and initiate appropriate action.