

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 1438 [NW1637E]

1438. Mr C Brink (DA) to ask the Minister of Finance:

- (1) With reference to the court action by Astral Foods Limited compelling the National Treasury to prepare a financial recovery plan for the Lekwa Local Municipality in Mpumalanga, what are the reasons that such a financial recovery plan could not have been prepared by the Government without court action being taken by residents
- (2) on what date is the financial recovery plan expected to be (a) finalised and (b) implemented;
- (3) whether the National Treasury is currently a party to any other case that seeks to compel the Government to intervene in the financial management of a municipality; if not, what is the position in this regard; if so, what are the relevant details of each of the cases

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REPLY:

- (1) The court order granted in favour of the applicant Astral Operations Limited related to a failure of the Provincial Executive to ensure implementation of the financial recovery plan rather than a failure of government to prepare a financial recovery plan for the Lekwa Local Municipality. When the application for a national intervention was first sought by Astral Operations Limited in 2018, it was agreed that a national intervention at that time was premature, since the Province had already resolved to intervene in the Lekwa Local Municipality in October 2018. A national intervention is a last resort remedy in terms of the hierarchy of interventions outlined in S139 of the Constitution. Consequently, the key role players agreed to support the provincial intervention and the application was subsequently held in abeyance to allow the provincial intervention to unfold and for the financial recovery plan to be implemented with the view that the intervention would address the concerns raised by Astral.

However, since the approval of the financial recovery plan for the Lekwa Local Municipality by the MEC for Finance in the Mpumalanga Province in October 2019, no significant

improvement has been noted in the Municipality. Astral Operations Limited has now revived the application on the principle basis that the financial recovery plan was not implemented and ultimately the provincial intervention has failed. Astral now insisted on a national intervention.

(2) Section 139(1) (a) (v) (bb) of the Municipal Finance Management Act, No. 56 of 2003 (MFMA) requires that a financial recovery plan be prepared within a period not exceeding 90 days determined by the MEC for Finance in the Province. The court order issued on 12 April 2021 allows for a period of 6 months from the date of the order, however, the financial recovery plan will be prepared in terms of the timeframes in the MFMA.

(3) There are court applications and orders in this regard against the following municipalities:

- Emalahleni Local Municipality in Mpumalanga - a High court application brought by Save Emalahleni Action Group and Others to compel the province to invoke a mandatory intervention in the municipality. An order by consent of all parties was granted by the Court for the mandatory intervention. If the province fails to comply with statutory provisions relating to mandatory intervention and if the applicants intend to review any decision the applicants may enrol the matter file supplementary papers seeking appropriate relief which might possibly also include national intervention in terms of section 139(7) of the Constitution.
- Enoch Mgijima Local Municipality in the Eastern Cape - a High Court application brought by Let's talk Komani against the Premier and Others seeking a mandatory intervention in terms of section 139 of the Constitution. An order by consent of all parties was granted by the Court to the effect that the financial recovery plan approved by the province was made an Order of Court; the province reports quarterly to the High Court on progress on the implementation of the financial recovery plan.
- Makana Local Municipality in the Eastern Cape - a High Court application was brought by the Unemployed Peoples Movement against the Premier of the Eastern Cape and Others seeking a mandatory intervention by the province into the Makana Local Municipality; the dissolution of the municipal council; and the appointment of an administrator.

- Kannaland Local Municipality in the Western Cape - a High Court application brought by the municipality against the provincial government for judicial review of decisions of the provincial executive to intervene in the municipality, claiming that the financial recovery plan of March 2017 and appointment of administrators was unlawful and unconstitutional.
- Maluti-A-Phofung Local Municipality in Free State province - a High Court application which was brought by Harrismith Business Forum to interdict Eskom from discontinuing electricity supply to Maluti-A-Phofung municipality and to compel national government to intervene in terms of section 139(7) of the Constitution. An order by consent of all parties was granted by the Court to, amongst others, establish a consultative committee chaired by the Minister of Cooperative Governance and Traditional Affairs and prepare a financial recovery plan;
- Mafube Local Municipality in Free State province – a High Court application brought by Mafube Business Forum and Afriforum seeking declaration that the provincial intervention has failed and jurisdictional facts for national intervention in terms of section 139(7) of the Constitution are present.