IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

DEMOCRATIC ALLIANCE	First Applicant
RANDALL MERVYN WILLIAMS	Second Applicant
CHRISTO MAURITZ VAN DEN HEEVER	Third Applicant
ZWELIBANZI CHARLES KHUMALO	Fourth Applicant

and

THE PREMIER FOR THE PROVINCE OF GAUTENG	First Respondent
THE EXECUTIVE COUNCIL FOR THE PROVINCE OF GAUTENG	Second Respondent
MINISTER FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent
MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG	Fifth Respondent
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Sixth Respondent
AFRICAN NATIONAL CONGRESS	Seventh Respondent
ECONOMIC FREEDOM FIGHTERS	Eighth Respondent
CONGRESS OF THE PEOPLE	Ninth Respondent
AFRICAN CHRISTIAN DEMOCRATIC PARTY	Tenth Respondent
PAN AFRICANIST CONGRESS OF AZANIA	Eleventh Respondent
FREEDOM FRONT PLUS	Twelfth Respondent
ALL TSHWANE COUNCILLORS WHO ARE MEMBERS OF THE ANC	Thirteenth Respondent

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ALL TSHWANE COUNCILLORS WHO ARE MEMBERS OF THE EFF	Fourteenth Respondent
THE REMAINING TSHWANE COUNCILLORS	Fifteenth Respondent
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	Sixteenth Respondent
ELECTORAL COMMISSION	Seventeenth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

RANDALL MERVYN WILLIAMS

do hereby make oath and say as follows:

1. I am member of the Democratic Alliance of South Africa ("the DA") in Gauteng. I am a councillor in the Tshwane City Council ("the Council"). I am duly authorised to depose to this affidavit on behalf of the DA. I annex a letter demonstrating my authorisation as **FA 1.**

2. The DA is a political party which has a number of representatives in the Council. I am a member of the DA.

3. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct, to the best of my knowledge and belief.

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4. Where I make submission on the law, I do so on the advice of the applicant's legal representatives.

OVERVIEW

5. On 5 March 2020 the Premier announced that the Gauteng Executive Committee ("the Gauteng EC") had resolved to dissolve the City of Tshwane Metropolitan Municipality ("the Municipality") and appoint an administrator in terms of section 139(1)(c) of the Constitution ("the Dissolution Decision").

6. It is appropriate to underscore the extraordinary and drastic effect of the Dissolution Decision. It means that of the term of office of all of the Tshwane Councillors, who were elected in 2016, will come to an immediate end and that entirely fresh elections throughout Tshwane will have to be held within three months. In other words, it is a decision by one sphere of government (the provincial government), that those duly elected in another sphere of government (the municipal government) must vacate their offices.

7. The Dissolution Decision was unlawful and invalid in a series of separate respects:

    7.1. First, the Gauteng EC did not issue any prior notice of its intention to dissolve the Municipality and did not afford the Municipality or any other party an opportunity to make representations as why it should not do so. Therefore, the Dissolution Decision was not procedurally fair or rational.

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7.2. Second, the jurisdictional fact which triggers the application of section 139(1)(c) of the Constitution is a failure or inability on the part of a municipal council to fulfil an executive obligation in terms of the Constitution or legislation. The DA has repeatedly demanded that the Premier and the Gauteng Executive Council identify the executive obligation(s) in terms of the Constitution or legislation that they contend the Municipal Council has failed to fulfil. Despite these demands, they have failed or refused to do so. It remains entirely unclear what obligations it is contended the Municipal Council has breached.

7.3. Third, none of the factors on which the intervention is based amounts to a failure of a Constitutional or statutory executive obligation which amounts to an exceptional circumstance justifying the dissolution of the Municipality. Therefore, the substantive requirements for the Dissolution Decision were not met and it is unlawful.

7.4. Fourth, even if there was any basis to intervene in the Municipality (which is denied), the courts have made clear that dissolution may not be a first resort. Less intrusive means must be pursued first, in particular those contemplated in sections 139(1)(a) and (b) of the Constitution. The Gauteng EC has not issued directives to the Municipality in terms of section 139(1)(a) or taken over any executive obligation in terms of section 139(1)(b). Its first intervention was the most radical possible measure, namely, the dissolution of Council.

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7.5. Fifth, given the protracted history of the MEC's unlawful meddling in the Municipality, as well as the ANC and EFF councillors' unlawful refusal to participate in Council meetings it is clear that the Dissolution Decision was taken for an ulterior, political, purpose. This is also clear from the Gauteng EC's abject failure to intervene in other municipalities.

8. On the basis of these five separate grounds, it is therefore clear the decision falls to be reviewed and set aside and declared invalid. The applicants therefore seek two forms of final relief:

8.1. First, the applicants seek an order reviewing, setting aside and declaring invalid the Dissolution Decision.

8.2. Second, the applicants seek an order compelling the councillors from the ANC and EFF to comply with their statutory obligations to attend and remain in attendance at meetings of the Council. As I explain below, this is necessary to avoid them undermining the functioning of the Council.

9. In the alternative, and only if this Court is unable to grant this final relief for any reason (including, for example, the need for further papers to be filed; the need for a rule 53 record to be filed; or the need for disputes of fact to be resolved), the applicants then seek an order on an interim basis, while the final relief is determined:

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9.1. First, an interim order suspending the effect of the Dissolution Decision; and

9.2. Second, an interim order compelling the councillors from the ANC and EFF to comply with their statutory obligations to attend and remain in attendance at meetings of the Council.

10. This application is brought on an urgent basis. I deal with urgency in more detail below. For now it suffices to say that:

10.1. Unless the Dissolution Decision is set aside by the Minister or the NCOP by 20 March 2020, it will go into effect 21 March 2020.

10.2. From that date on, the Municipal Council will be dissolved, an administrator will take over the powers and functions of the democratically elected Council and the Electoral Commission will have to commence organising fresh elections throughout Tshwane.

10.3. It is therefore clear the Dissolution Decision will have grave and irreparable consequences. If it is unlawful, as the applicants contend it is, it must be reviewed and set aside (or at least suspended) as a matter of great urgency.

10.4. If the application were to be brought and heard in the ordinary course, it would simply be impossible for effective relief to be granted. Indeed, by then the citizens of Tshwane would have voted in new elections and the new Tshwane council would have been elected.

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10.5. I emphasise too that the applicants first received a copy of the resolution recording the Dissolution Decision (and which includes its reasons) on 10 March 2020. This application has been launched within two days of that occurring.

11. Below I set out the DA's case in the following:

11.1. The parties to this application.

11.2. The decision to dissolve the Municipality.

11.3. Recent events in Municipality.

11.4. The events leading to the decision to dissolve the Municipality.

11.5. The procedural unfairness of the decision to dissolve the Municipality.

11.6. The unlawfulness of the decision to dissolve the Municipality.

11.7. The relief sought.

PARTIES

12. The first applicant is the DA, a political party and unitary national organisation and voluntary association governed in terms of its constitution. It is registered with the Independent Electoral Commission in terms of section 15A of the Electoral Commission Act. Its principal offices are at Theba Hosken House, Corner of Breda and Mill Street, Gardens, Cape Town. The DA has a number of representatives in the Council.

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13. The second to fourth applicants are DA councillors in the Municipality.

14. The applicants approach this Court in their own interests and in the public interest.

15. The first respondent is the Premier for the province of Gauteng ("the Premier"), acting in his official capacity. He is cited care of the State Attorney, Pretoria.

16. The second respondent in the Executive Council for the province of Gauteng, herein represented by the Premier ("the Gauteng EC"). It is cited care of the State Attorney, Pretoria.

17. The third respondent in the Minister for Co-Operative Government and Traditional Affairs, in her official capacity ("the Minister"). She is cited care of the State Attorney, Pretoria.

18. The fourth respondent is the Chairperson of the National Council of Provinces ("the NCOP") herein represented by the Chairperson of the National Council of Provinces. He is cited care of the State Attorney, Pretoria.

19. The fifth respondent is the Gauteng MEC for Co-Operative Government and Traditional Affairs, in his official capacity ("the MEC"). He is cited care of the State Attorney, Pretoria.

20. The sixth respondent is the City of Tshwane Metropolitan Municipality ("the Municipality"), a municipal council as defined in section 18 of the Municipal

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Structures Act. Its principal office is Tshwane House, 320 Madiba Street, Pretoria.

21. The seventh respondent is the African National Congress a political party and a unitary national organisation and voluntary association governed in terms of its constitution ("the ANC"). It is registered with the Independent Electoral Commission in terms of section 15A of the Electoral Commission Act. Its principal office is 2nd Floor Tshwane House, Corner of Lillian Ngoyi and Madiba Streets, Pretoria.

22. The eighth respondent is the Economic Freedom Fighters a political party and a unitary national organisation and voluntary association governed in terms of its constitution ("the EFF"). It is registered with the Independent Electoral Commission in terms of section 15A of the Electoral Commission Act. Its principal office is 82 De Korte Street, Johannesburg.

23. The ninth respondent is the Congress of the People, a unitary national organisation and voluntary association governed in terms of its constitution. It is registered with the Independent Electoral Commission in terms of section 15A of the Electoral Commission Act. Its principal office is 1st Floor, 14 Central Avenue, Kempton Park.

24. The tenth respondent is the African Christian Democratic Party, a unitary national organisation and voluntary association governed in terms of its constitution. It is registered with the Independent Electoral Commission in

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terms of section 15A of the Electoral Commission Act. Its principal office is 1st Floor, Stats Building, 2 Fore Street, Alberton.

25. The eleventh respondent is the Pan African Congress of Azania, a unitary national organisation and voluntary association governed in terms of its constitution. It is registered with the Independent Electoral Commission in terms of section 15A of the Electoral Commission Act. Its principal office is 10th Floor, 1005, Romi-Lee Building, Corner of Eloff and Marshal Streets, Johannesburg.

26. The twelfth respondent is the Freedom Front Plus, a unitary national organisation and voluntary association governed in terms of its constitution. It is registered with the Independent Electoral Commission in terms of section 15A of the Electoral Commission Act. Its principal office is Highveld Office Park, Block 8, Centurion, Tshwane.

27. The thirteenth respondents are each of the Tshwane Council Members who are members of the ANC, whose full particulars are set out in the schedule annexed marked **FA 2**.

28. The fourteenth respondents are each of the Tshwane Council Members who are members of the EFF, whose full particulars are set out in the schedule annexed marked **FA 3**.

29. The fifteenth respondents are the remaining Tshwane Council Members, whose full particulars are set out in the schedule annexed marked **FA 4**.

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30. The sixteenth respondent is the Speaker of the Gauteng Provincial Legislation, a provincial legislature in terms of section 104 of the Constitution. He is cited care of the State Attorney, Pretoria.

31. The seventeenth respondent is Electoral Commission, established in terms of the Constitution. It is cited at Election House, Riverside Office Park, 1303 Heuwel Avenue, Centurion and a copy of these papers shall be sent electronically.

32. Costs of this application are only sought against those respondents who oppose any part of the relief sought.

THE DECISION TO DISSOLVE THE MUNICIPALITY

33. At a press conference held on 5 March 2020 the Premier announced that the Gauteng EC had resolved to dissolve the Municipality and appoint an administrator in terms of section 139(1)(c) of the Constitution.

34. He issued a press release on the same day, a copy of which is annexed marked **FA 5** ("the First Press Release").

35. On 6 March 2020 the DA sent two letters to the Premier requesting:

    35.1. Confirmation that the Dissolution Decision was taken in terms of section 139(1)(c).

    35.2. Confirmation as to whether the requisite notices had been sent to the NCOP and the Minister and, if so, the date on which they were sent.

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35.3. Copies of the notices to the Minister and the NCOP.

35.4. Whether an administrator had been appointed and, if so, to be provided with a copy of the required Provincial Gazette notice.

35.5. A copy of the Gauteng EC resolution taking the Dissolution Decision.

35.6. Written reasons for the Dissolution Decision, which specifically identify the executive obligation which the Gauteng EC concluded the City had not fulfilled, and specified all of the fact on which the Gauteng EC relied on in support such conclusion.

36. A follow up letter was sent on 8 March 2020.

37. Copies of these letters are annexed marked **FA 6**.

38. On 9 March 2020 the acting speaker for the Municipality (Zwelibanzi Khumalo) wrote to the MEC informing the MEC that despite seeing the First Press Release, the Municipality had not received any formal notice or correspondence from MEC. A copy of this letter is annexed marked **FA 7**.

39. The notice giving effect to the Dissolution Decision ("the Dissolution Notice") was only sent to the DA on 10 March 2020. It is dated 6 March 2020. It is annexed marked **FA 8**.

40. The Dissolution Notice is entirely vague. It does not set out the executive obligations which the Gauteng EC alleges the Municipality has failed to fulfil. Nor does it clearly set out any facts in support of this conclusion. Nor does it

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attempt to explain why any failures are so exceptional as to justify dissolving the Municipality. This is a fundamental deficiency.

41. Instead the Dissolution Decision appears to be based on the nine *"Key Observations"* made in section 4 of the Dissolution Notice. These are:

41.1. One, that the Municipality faces a leadership crisis and has not been able to function due to disruption in the Council.

41.2. Two, due to this instability the Municipality is without a Mayor, Mayoral Committee or Municipal Manager.

41.3. Three, that there has been widespread corruption.

41.4. Four, there is a water crisis in Hammanskraal.

41.5. Five, the Municipality has failed to spend grants.

41.6. Six, there is a trend of returning grants.

41.7. Seven, the heads of the departments of human settlement and roads and transport have been suspended.

41.8. Eight, there is a widely reported crisis at the Wonderboom National Airport.

41.9. Nine, there was irregular expenditure in R 5 billion as at the end of June 2019.

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42. Below, I set out why these observations do not justify the Dissolution Decision. In brief each of findings suffers from one of more of the following defects:

42.1. They do not relate to an executive obligation in terms of the Constitution or statute.

42.2. They are premised on incorrect facts.

42.3. They have not previously been the subject of a section 139(1)(a) directive or an intervention in terms of section 139(1)(b).

43. Any notice of dissolution must be clear and indicate what executive obligations the municipality has failed to fulfil. The First Press Release, read together with the Dissolution Notice, provides no meaningful answer to this question. Neither one identifies any executive obligation in statute or the Constitution which the Council is alleged not to have fulfilled. Despite repeated demands, the Gauteng EC has failed to even attempt to identify any such obligation.

RECENT EVENTS IN THE MUNICIPALITY

44. The Gauteng EC's decision was preceded by certain events which are relevant to this dispute and therefore are set out below.

45. The Council met on 28 November 2019. Towards the end of the meeting a motion of no confidence in the Mayor was proposed. This motion was disallowed by Katlego Mathebe, the speaker of the Council ("the Speaker") in terms of Rule 19(1)(b) of the rules and orders bylaw. In terms of this rule, the Speaker "*must disallow a motion or proposal if, in his or her opinion, the motion*

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or proposal advances arguments, expresses opinion or contains unnecessary factual, incriminating disparaging or improper suggestions.".

46. In protest against this decision, the ANC and EFF council members left the meeting. As a result, the meeting no longer had a quorum and could not continue. A copy of the agenda for this meeting is annexed marked **FA 9**.

47. The Council met again on 5 December 2019, for the purpose of holding two meetings. The first was a special meeting related to a motion of no confidence in the Speaker ("the Special Meeting"). The second was a continuation meeting related to a motion of no confidence in the Mayor ("the Continuation Meeting"). The Continuation Meeting was a continuation of the 28 November 2019. Copies of the agendas for these meetings are annexed marked **FA 10**.

48. The Speaker recused herself from the Special Meeting, as it related to a motion of no confidence in her. The acting speaker was then forcibly, and unlawfully, prevented by councillors from the ANC and EFF from taking up his role as acting speaker. Following this the Council purported to appoint a new acting speaker and to pass motions of no confidence in the Speaker and the mayor. These resolutions were suspended by Tuchten J on 27 December 2019. I attach a copy of the judgment of Tuchten J as **FA11**. There has been no appeal against that judgment and the review application which seeks to have the relevant resolutions set aside has not been opposed.

49. During the course of both the Special Meeting and the Continuation Meeting, a representative of the MEC (Mr Bhila) purported to assume control of the

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meetings under section 29(2) of the Structures Act and presided over the appointment of Mr Ramabudu as acting speaker. Tuchten J held that this was unlawful.

50. On 6 December 2019 the MEC wrote to the Speaker alleging that her conduct at the 5 December 2019 meeting was misconduct. A copy of this letter is annexed marked **FA 12**. From subsequent correspondence, annexed marked **FA 13**, it appears that the MEC was of the view that the Speaker's recusal from presiding over the motion of no confidence in herself amounted to misconduct.

51. On 6 December 2019 the MEC wrote to Acting Speaker Ramabudu. He said that the Gauteng EC had resolved to intervene in the Municipality in terms section 139(1) and that the Gauteng Department of Co-Operative Governance and Traditional Affairs ("Gauteng COGTA") must immediately develop a plan to set out the steps to be taken to give effect to the Gauteng Government's obligation to support the Municipality. A copy of this letter is annexed marked **FA 14**. Critically, no directives were issued to the Municipal Council at this time, as contemplated by section 139(1)(a). The only directives issued were to the Gauteng Department of COGTA to develop a plan to ensure that the Gauteng Provincial Government complied with its obligations to support the City.

52. It is doubtful that Cllr Ramabudu was the correct recipient of this letter. His appointment as acting speaker was limited to the duration of the 5 December

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meetings and, in any event, had been suspended on an interim basis by Tuchten J on 6 December 2019.

53. The Speaker responded to this letter on 18 December 2019. A copy of this response is annexed marked **FA 15**. It set out the following:

53.1. If the intention was to support the Municipality, section 154 of the Constitution would provide sufficient authority and there was no need to rely on the more intrusive section 139.

53.2. A number of issues raised in the MEC's letter did not relate to an executive obligation and, therefore, were not proper subject matter for a section 139(1) intervention.

53.3. Only the service delivery queries could properly be addressed via and section 139(1). The Speaker set out the steps which the Municipality had taken to address the concerns raised.

54. On 14 January 2020 the MEC sent a letter to the Speaker in which he purported to issue directives in terms of section 139(1)(a) of the Constitution ("the MEC's Directives"). A copy of this letter is annexed marked **FA 16**. It is addressed in detail below. In short, the MEC's Directives were unlawful because only the Gauteng EC, not the MEC, is authorised to issue directives in terms of section 139(1)(a).

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55. The Council met on 16 January 2020. It was due to consider motions of no confidence in the Speaker, the mayor, the acting speaker, and the chair of chairs. A copy of the agenda for this meeting is annexed marked **FA 17**.

56. When the Speaker called the motions of no confidence numerous points of order were raised by councillors representing the ANC and the EFF. The central objection was that the Speaker was obliged to consult with them before determining the order in which those motions should be heard. The Speaker ruled against these objections on the basis the Rules and Bylaws for the City of Tshwane ("the Council Rules") were clear that the Speaker determines the order of business. After a number of caucus breaks the ANC and EFF councillors left the meeting in protest. This rendered the meeting inquorate and it had to cease.

57. Later that day the MEC wrote to the Speaker alleging that the meeting had collapsed due to her "unbecoming conduct" and called for a report of events. The Speaker responded on 2 February 2020 explaining why the MEC was incorrect and setting out what transpired. Copies of this correspondence are annexed marked **FA 18**.

58. On 23 January 2020 the MEC purported to suspend the Speaker as a member of the Council. A copy of the MEC's press statement in this regard in annexed marked **FA 19**.

59. On 24 January 2020 the Speaker (and the DA) applied to this Court to suspend the decision, on the basis that it was *ultra vires* and unlawful. On 27 January

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2020 the MEC rescinded his decision. A copy of his letter doing so is annexed marked **FA 20**.

60. On 28 January 2020 the MEC purported to direct the Municipality to convene urgent disciplinary proceedings against the Speaker. The Chief Whip responded on 29 January 2020 explaining that the MEC did not have the authority to issue such a directive and that his complaint would be treated in the same manner as any other. Copies of this correspondence are annexed marked **FA 21**.

61. The Council met again on 30 January 2020. The meeting lost its quorum and had to be postponed when ANC and EFF members left the meeting in protest of the Chief Whip's decision not to read out the MEC's letter of 28 January and the Speaker's decision not allow a motion to rescind the appointment of the acting speaker in terms under rule 14 of the Council Rules. Had the Chief Whip read out the letter this would have been inconsistent with the process prescribed for the Tshwane Rules and Ethics Committee. The Speaker also had no alternative but to rescind the rule 14 motion as rule 14 was not applicable. A copy of the agenda for this meeting is annexed marked **FA 22**.

62. On 3 February 2020 the MEC wrote to the Speaker calling for reasons why he should not intervene in respect of the Speaker in terms of the Code of Conduct for Councillors. A copy of his letter, including its attachments, is annexed marked **FA 23**. The DA responded on 4 February 2020 advising that the MEC had no authority to do so and that, in any event, the MEC's allegations of misconduct had no merit.

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63. Later that day the ANC launched an urgent application seeking orders compelling the Council to meet and compelling disciplinary proceedings against the Speaker. A copy of the notice of motion for this application is annexed marked **FA 24**. The DA filed an answering affidavit on 6 February 2020. The ANC withdrew the application on the morning of the hearing of the Application and tendered the DA's costs. A copy of the correspondence in this regard is annexed marked **FA 25.**

64. On 6 February 2020 the MEC (via the State Attorney) called for reasons why he should not appoint an advocate to investigate whether the Speaker had breached the Code of Conduct for Councillors. A copy of this letter is annexed marked **FA 26**. The DA responded on 10 February 2020 advising that to do so would be unlawful, as the Municipality had not failed to investigate, and there was no merit to the allegations of misconduct. A copy of this letter is annexed marked **FA 27**.

65. The Municipality provided a comprehensive response to the MEC's Directives of 14 January on 7 February 2020 ("the February Response"). This response is in excess of 1000 pages. Accordingly, I annex, marked **FA 28**, only the body of the response, which is in itself some 188 pages. Should the Court or any of the respondents require copies of the annexures, they will be provided.

66. On 13 February 2020 the MEC appointed Advocate Benedict Makola SC to investigate whether the Speaker had breached the Code of Conduct for Councillors. A copy of the terms of reference for the appointment are annexed marked **FA 29**. The DA launched an application to review this appointment on

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21 February 2020. This application has not been opposed. Despite the terms of reference requiring Mr Makola to deliver his findings by 21 February 2020, as far as I am aware no findings have been published. I am aware that an extension was granted to 6 March 2020.

67. The Council met again on 19 February 2020. No quorum was reached as no EFF or ANC members attended (apart Mr Maluleka and Mr Maepa). A copy of the agenda for this meeting is annexed marked **FA 30**.

68. The Council met again on 27 February 2020. All parties attended. However, the ANC and EFF members left when the Speaker refused to adhere to their demand that she resign. Accordingly, quorum was lost, and the meeting could not continue. A copy of the agenda for this meeting is annexed marked **FA 31**.

69. The Council met again on 28 February. However, quorum was not reached. Apart from Mr Maluleke no counsellors from the ANC or EFF attended. A copy of the agenda for this meeting is annexed marked **FA 32**.

70. On 4 March 2020 the MEC wrote to the Speaker enquiring whether "the Section 139(1)(a) directives served before Council." And, if so, requested a copy of the resolutions authorising her reply. The MEC called for a response within three days. A copy of this letter is annexed marked **FA 33**.

71. Despite the MEC having afforded the Speaker three days (until 7 March) to reply, the Gauteng EC did not wait for the Speaker's response, but instead resolved to dissolve the Municipality on 4 March 2020.

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72. The Premier announced the Dissolution Decision at a press conference on 5 March 2020.

73. The Dissolution Notice was sent to the Minister, the Gauteng Legislature and the NCOP on 6 March 2020. It was sent to the Municipality on 10 March 2020. That was the first time that the applicants had sight of it.

THE BACKGROUND TO THE DECISION TO DISSOLVE

74. It is apparent that the steps leading up to the Dissolution Decision are entwined with the broader sequence of events in the Municipality. For convenience the steps are summarised and expanded upon below.

75. The Gauteng Provincial Government has been attempting to interfere in Municipality since December 2019.

76. On 6 December 2019 the MEC wrote to the (unlawfully appointed) acting speaker informing him that Gauteng EC had resolved:

76.1. To invoke the provisions of section 139(1) read together with section 154 of the Constitution.

76.2. That Gauteng COGTA must develop a plan setting out the steps to give effect to the provincial government's obligations to provide meaningful support to the City.

77. A copy of the MEC's letter has been attached above as FA 12. I will refer to this as the "December Decision".

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78. The MEC did not attach a copy of the Gauteng EC resolution. However, from the MEC's letter it is immediately apparent that the Gauteng EC did not issue any directive to the City in terms of section 139(1). The only directive made was to Gauteng COGTA – not to the Municipality.

79. The Speaker responded to this letter on 18 December 2019 explaining why the intervention was not appropriate. A copy of this letter is annexed above as FA 15.

80. On 14 January 2020 the MEC wrote the Speaker again. A copy of this letter is annexed above as FA 16. I will refer to this as "the MEC's Directive". The penultimate paragraph of this letter reads:

> *It is therefore **my** considered view that it is not necessary to disturb the EXCO decision to intervene in the manner that it has but to proceed accordingly. In the circumstances, **I** hereby, in terms of section 139(1)(a) of the Constitution, as an appropriate step, issue the directives as embedding in the attached Annexure A which I would implore the City to comply with within the specified timeframes.*
>
> [emphasis added]

81. It is immediately apparent from this paragraph that the directives issued as Annexure A were issued by the MEC, not the Gauteng EC. Therefore, they are obviously and fatally *ultra vires* and unlawful.

82. Despite the obvious unlawfulness of the directives, the Speaker responded on 7 February 2020. A copy of the body of this response has been annexed above as FA 28.

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83. On 4 March 2020 the MEC wrote to the Speaker enquiry whether "*the Section 139(1)(a) directives served before Council.*" And, if so, he requested a copy of the resolutions authorising her reply. The MEC called for a response within three days. A copy of this letter is annexed above marked FA 33.

84. Despite the MEC having afforded the Speaker three days to reply, the Gauteng EC then resolved to dissolve the City on 4 March 2020.

85. On 5 March 2020 the Premier announced the Dissolution Decision at a press conference.

86. On 8 March 2020 the Premier issued a press release indicating that the section 139(3) notices had been sent to the Minister and the National Council of Provinces ("the Second Press Release"). A copy of this press release is attached marked **FA 34**.

87. The Dissolution Notices were then apparently sent to the Minister and NCOP on 6 March 2020.

FIRST GROUND OF REVIEW: PROCEDURAL UNFAIRNESS AND IRRATIONALITY

88. A decision to intervene in terms of section 139(1) of the Constitution requires a provincial executive committee to make a factual finding that, objectively, a municipality has failed to fulfil an executive obligation. Obviously, the municipality concerned is uniquely well placed to provide facts and information relevant to that decision. It is not possible for a provincial executive to take a

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fair or rational decision without receiving representations from the municipality concerned. The need to follow such a fair and rational procedure is especially in relation to a dissolution decision, given its extraordinary and drastic consequences.

89. It is apparent from what is set out above that prior to taking the Dissolution Decision the Gauteng EC did not notify of the Municipality of its intention to consider dissolving the Municipality or call for reason why it should not do so. The failure to inform the Council, in advance, that the Gauteng EC was considering dissolution, and the basis upon which it was considering that drastic intervention, meant that the Council and the Councillors were never afforded the opportunity to make meaningful submissions on the issue.

90. In fact the Gauteng EC took the decision on 4 March 2020, in circumstances in which it had written to the Speaker on the same day, and having given her 3 days to respond.

91. The Gauteng EC also did not take any other steps to obtain input from the Municipality (or any other affect or interested party).

92. These fundamental breaches of procedural fairness are compounded by the fact that the Gauteng EC has never attempted even to identify the executive obligation in terms of the Constitution or statute that it contends the Municipal Council has failed to fulfil. Rudimentary procedural fairness and rationality required it do so in advance, and to afford the Council the opportunity to address it on this score. Yet even now, long after the decision has been taken,

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and despite repeated demands, the Gauteng EC appears utterly unable to identify the relevant executive obligations.

93. I submit that a fair and rational process would have entailed, at a minimum, that the Gauteng EC:

93.1. Issue the Municipal Council with a written notice identifying the executive obligation which the Municipal Council is alleged to have failed to fulfil.

93.2. After identifying the relevant obligation, the Gauteng EC should have issued a directive to the Municipal Council demanding that the identified executive obligation be fulfilled.

93.3. Invite the Council and Councillors to submit written representations on the efforts they would take to fulfil the identified executive obligation.

93.4. Allow the Municipal Council and Councillors reasonable time to submit representations and to perform the identified executive obligations.

93.5. Give proper consideration, with an open mind, to the representations of the Municipal Council and Councillors, and tailor its intervention narrowly in accordance with its assessment of the representations.

94. The Gauteng EC did not comply with any of the above procedural requirements. Accordingly, the Gauteng EC failed, entirely, to comply with the principles of procedural fairness and procedural rationality.

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SECOND GROUND OF REVIEW: THE UNLAWFULNESS OF THE DECISION

The requirements for a section 139(1) intervention

95. A decision to intervene in terms of section 139 is an executive act which is subject to the rule of law and the principle of legality.

96. Section 139(1) of the Constitution reads as follows:

> *"When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, - including*
>
> *(a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;*
>
> *(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to –*
>
> *(i) maintain essential national standards or meet established minimum standards for the rendering of a service.*
>
> *(ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole;*
>
> *(iii) maintain economic unity; or*
>
> *(c) dissolving the Municipal Council and appointing and administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step."*

97. This section imposes two clear substantive requirements:

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97.1. First, a municipal council must have failed to fulfil an executive obligation or be unable to fulfil an executive obligation.

97.2. Second, there must be exceptional circumstances which justify the dissolution of the municipal council.

98. I am advised that the section also includes two additional substantive requirements, which are that:

98.1. in all but the most extreme cases a dissolution must be preceded by a directive which affords the municipality an opportunity to answer or remedy its alleged failings; and,

98.2. the provincial government must use the least intrusive means necessary to ensure the fulfilment of the obligation concerned.

99. For the reasons set out below, the Dissolution Decision does not comply with any of these requirements

The Decision to Dissolve is impermissibly vague

100. The jurisdictional fact which triggers the application of section 139(1)(c) of the Constitution is a failure or inability on the part of a municipal council to fulfil an executive obligation in terms of the Constitution or legislation. The DA has repeatedly demanded that the Premier and the Gauteng Executive Council identify the executive obligation(s) in terms of statute or legislation that they contend the Municipal Council has failed to fulfil. Despite these demands, they have failed or refused to even identify any statutory or constitutional obligation

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which it contends has not been fulfilled. It remains entirely unclear what obligations it is contended the Municipal Council has breached.

101. The Dissolution Notice, the First Press Statement, and the correspondence with the State Attorney make no effort at all to identify what constitutional or statutory executive obligation the Municipality has failed to fulfil or why any such failing would be so exceptional as to justify the dissolution of the Municipality.

102. On the Gauteng EC's version, therefore, the jurisdictional fact which triggers the application of section 139(1) of the Constitution is absent.

103. In addition, the Dissolution Notice and First Press Statement, which contain the reasons for the Dissolution Decision, are incapable of justifying the Dissolution Decision. They do not attempt to identify the relevant executive obligations which have allegedly not been fulfilled; and do not attempt to identify any circumstance which renders the situation exceptional. Without more, the Dissolution Decision bears no proper relationship to the reasons given for it, it is irrational and unreasonable, and must to be set aside.

The Decision to Dissolve was not preceded by a valid section 139 directive

104. As set out above a decision to dissolve a municipality must, in all but the most extreme circumstances, be preceded by a directive in terms of section 139(1)(a) of the Constitution.

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105. The December decision of the Gauteng EC was not directed at the Municipal Council. While the Gauteng EC resolved to intervene in terms of section 139, its only directive was to direct the Gauteng Department of COGTA to develop a plan to ensure the provincial government complied with its obligations to support the Municipality.

106. The directive was not addressed to the Municipal Council and could never been one under section 139(1)(a), which relates only to directives issued to municipal councils.

107. The MEC's Directive of 14 January was directed to the Municipal Council but was fatally invalid for a different reason. Section 139(1) only authorises the provincial executive to issue directives. But the 14 January Directive was issued by the MEC acting alone, not the Gauteng Executive Council. Accordingly, MEC's Directive was unlawful.

108. Therefore, the Dissolution Decision was not preceded by a directive seeking to remedy the alleged failing.

109. The Gauteng EC has also not taken any steps under section 139(1)(b) of the Constitution.

110. Therefore, the Dissolution Decision was taken as a first resort in circumstances where there is no basis to do so.

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The alleged failings do not justify the Dissolution Decision

111. The Dissolution Resolution is based on 9 "*Key Observations*" made in paragraph 4 of the Resolution. I briefly address each of these below. None of them permit or justify dissolving the Municipality.

112. Before I do so, I wish to record that the DA accepts that there are serious challenges in the Municipality - as there are in many municipalities in Gauteng and the country. However, as will become clear from what is set out below, many of the challenges in this Municipality are legacy issues which the DA inherited from the previous ANC municipal government. The 2016 local government election was the first time that the DA took control of Tshwane. When it did so, it discovered that it had inherited a municipality suffering from a high degree of dysfunction. It has been a difficult process to address these legacy issues, exacerbated by the deliberate obstruction and disruption caused by ANC and EFF councillors who have been intent on creating chaos for their own political advantage.

Observations 1 and 2: the leadership crisis

113. It is correct that the City does not, at present, have a mayor, mayoral council, or municipal manager.

113.1. The former executive mayor resigned on 26 February 2020, and his successor has not yet been appointed.

113.2. Prior to 28 February 2020 the Municipality had an Acting Municipal Manager, Makgorometje Augustine Makgata. Section 54A(1)(2A)(a)

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provides that an acting municipal manager may not be appointed for more than three months.

114. These vacancies are entirely caused by the council members of the ANC and EFF refusing to participate in council proceedings, being absent from meetings, or walking out of meetings, thereby collapsing the quorum.

115. Only the Council can appoint a mayor or municipal manager.

116. The Speaker has repeatedly attempted to ensure that these vacancies are filled by calling Council meetings to make appointments. The numerous failed council meetings are catalogued above. They each failed for one of two reasons. Either, the ANC and EFF members left in protest or they simply failed to arrive.

117. This is despite the fact that the Code of Conduct for Councillors specifically obliges councillors to attend council meetings, and to remain in attendance.

118. On occasion the ANC and EFF members have indicated that they are unwilling to participate Council meetings because they believe the Speaker to be biased, or because they object to the legality of some her decisions.

119. The obvious recourse for them in that scenario is either to approach the courts, to the extent that they contend that the Speaker has acted unlawfully, or to move a motion of no confidence in the Speaker. The only instance in which they have attempted to move such a motion was on 5 December 2019, which

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was suspended by this Court because the acting speaker was unlawfully prevented from presiding over the motion.

120. Instead they either refuse to attend meetings or leave in protest when they disagree with decision made by the Speaker. The ANC and EFF's conduct in this regard has created the very leadership problem which the Gauteng EC complains of in its Dissolution Notice.

121. Despite the ANC and EFF council members flouting the Code of Conduct neither the MEC nor the Gauteng EC has done anything to address this. If the Gauteng EC or the MEC wished to resolve the current failure to appoint a mayor or municipal manger they could have used one of a number of remedies to address this.

121.1. The Gauteng EC is empowered to issue directives in terms of section 139 of the Constitution.

121.2. The MEC has certain powers in terms of item 14 of the Code to investigate whether absent councillors had breached the Code of Conduct for Councillors.

122. At the same time, the MEC has made multiple efforts to depose the Speaker or to otherwise interfere in the governance of the Municipality. These actions have been set out above and most notably include:

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122.1. At the 5 December 2019 meeting a representative of the MEC unlawfully purported to assume control of the Council and preside over the appointment of an acting speaker.

122.2. Unlawfully, and unilaterally, issuing section 139 directives to the Municipality on 14 January 2020.

122.3. Unlawfully purporting to suspend the Speaker from Council on 23 January 2020.

122.4. Unlawfully directing the Municipality to convene urgent disciplinary proceedings against the Speaker on 30 January 2020.

122.5. Unlawfully appointing Advocate Makola SC to investigate whether the Speaker had breached the Code of Conduct on 13 February 2020.

123. This does not involve a failure to fulfil an executive obligation. Still less was there an exceptional circumstance which justified the dissolution of the Municipality without first attempting to use a less intrusive measure to ensure the appointment of a mayor and municipal manager.

124. However, the DA agrees that the conduct of the ANC and EFF councillors in repeatedly collapsing Council meetings is unconscionable and unlawful. It is inhibiting Council's ability to function. For this reason, as set out in more detail below, the DA seeks an order declaring that the failure of the thirteenth and fourteenth respondents to attend Council meetings is unlawful; and requiring that they attend all future council meetings unless they have a lawful excuse for not doing so.

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Observation 3: unlawful tenders

125. The Dissolution Notice refers to three tenders which are alleged to be unlawful. The Glad Africa Tender (Tender no. COT-CM 001 2017/18); the Aurecon Tender (Tender no. Cb225/2013-GPM01); and the PEU Capital Partners (Pty) Ltd.

126. None of these tenders is any basis to dissolve the Municipality.

127. In respect of the Glad Africa Tender, it is correct that the Auditor General found that the contract was awarded unlawfully. This was confirmed by an internal investigation initiated by the Mayor during August 2018. This contract was terminated on 24 February 2019.

128. In the circumstances, the Glad Africa Tender clearly does not involve a failure to fulfil an executive obligation and an exceptional circumstance justifying the dissolution of the Municipality in March 2020.

129. In respect of the Aurecon Tender, the Auditor General has not made any finding that it was unlawful, nor has the Gauteng EC set out the basis on which it believes the tender to be unlawful.

130. As such the Aurecon Tender clearly does not involve a failure to fulfil an executive obligation and is not an exceptional circumstance justifying the dissolution of the Municipality.

131. In respect of the Aurecon Tender the highwater mark of the findings Dissolution Notice is that there are "*allegations that the Appointment of*

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Aurecon to dispose of municipal property is unlawful". This is far short of a finding of objective fact which is required to justify dissolving the Municipality in terms of section 139(1)(c).

132. The tender to PEU Capital Partners (Pty) Ltd was awarded by the previous ANC administration. The agreement in relation to this tender was concluded on 6 June 2013 and set aside on 23 October 2018. Accordingly, it cannot serve as justification to dissolve current Municipality in March 2020. A copy of the court order setting aside the agreement is annexed marked **FA 35**.

133. In addition to what is set out above, the Municipality is in the process of a comprehensive supply chain management overhaul. In the 2017 to 2018 financial year the Municipality conducted an analysis of its supply chain management processes and performance. Thereafter, a turnaround strategy was developed and presented at a Mayoral Strategic Session on 12 March 2019. This strategy and its implementation are set out in more detail in the February Response (annexure FA X), at section 2.4.

Observation 4: water supply to Hammanskraal

134. The Gauteng EC alleges the Municipality faces a water crisis and the residents of Hammanskraal have been without water for too long.

135. This was addressed in the December Response (at p. 10) and the February Response (at p. 96). It appears that the Gauteng EC gave no consideration to either responses.

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136. It is true that the Municipality faces challenges in supplying clean drinking water to Hammanskraal and its surrounding areas. These areas are supplied with water from the Leeukraal Dam, via the Temba Water Treatment Plant ("WTP"). This water is polluted as the Rooiwal Waste Water Treatment Works ("WWTW") is overloaded and unable to treat influent to the required standard. The Temba WTP is unable to remove such pollution as it should have been removed by the WWTW.

137. The Municipality has continued to face challenges in effectively addressing the water crisis in Hammanskraal. It was, for example, forced to cancel a contract awarded due to the incompetence of the contractor and its failure to provide necessary guarantees. The contractor has brought litigation against the Municipality on this issue, which will be opposed. However, this issue will not affect the delivery of safe drinking water to Hammanskraal.

138. The Municipality is severely hampered in its efforts to address these issues by the repeated failure of the ANC and EFF members of the section 79 Utilities Oversight Committee to attend meetings.

138.1. The last meeting of the Utilities Oversight Committee was in October 2019.

138.2. The Committee did not meet in November 2019 as the relevant reports were not yet ready, and did not meet in December 2020 as it was the recess period.

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138.3. None of the ANC or EFF members attended the January 2020 meeting and it was unable to proceed.

138.4. The ANC members of the Committee collapsed the February 2020 Meeting, blaming it on the Speaker. None of the EFF members of the Committee attended this meeting.

138.5. It is accordingly clear that the ANC and EFF councilors have acted deliberately to create dysfunction and hamper service delivery in the Municipality.

139. It should be noted that the need to upgrade the Rooiwal WWTW before 2019 was recognised by the City's Master Plan in 2004 and successive administrations have failed to address this.

140. The Municipality has awarded a project to address the capacity of the WWTW which is currently in phase 1. Phases 2 and 3 will cost approximately R 2.8 billion and the Municipality is engaging with the Development Bank of South Africa to request funding.

141. In the meantime, a portion of Temba is being supplied with drinking water from the Soshanguve DD bulk pipeline (from Rand Water) and another portion is supplied with drinking water from Magalies Water. The remaining portion is supplied, for non-consumption purposes, with water from the Temba WTP. For consumption purposes it is supplied with water via water tankers which draw water from the Magalies Water pipeline.

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142. The Municipality has signed a memorandum of understanding with the Ekurhuleni Water Care Company, the Department of Water and Sanitation, and Magalies Water in relation to interim intervention and maintenance on the Municipality's WWTWs and WTPs. The priority for these interventions are the three critical WWTWs and WTPS which include the Rooiwal WWTW and Temba WTP.

143. Copies of the memoranda are annexed marked be **FA 36**.

144. In an attempt to try find a solution to the water crisis in Hammanskraal, a Special Mayoral Committee ("the Special Committee") was established to investigate the challenges at Temba WTP. On 23 September 2019, the Special Committee issued its report in this regard. I attach this report as annexure **FA 37.**

145. This report highlights and provides feedback to the Mayoral Committee and the Council on challenges at Rooiwaal WWTP and Temba WTP regarding the water crisis in Hammanskraal.

146. The report sets out a range of interventions being conducted by the Municipality to address the crisis.

147. Importantly, the report concludes that the combined activities at Rooiwaal WWTP and Temba WPP will provide safe drinking water that meets the required standards in Hammanskraal. It notes that (report, para 5):

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"The combined activities at the Rooiwal WWTP and Temba WPP will provide sustained provision of water that meets the SANS 241 standards in Hammanskraal. Maintenance activities will be monitored to ensure equipment availability and reliability. Capital works, where possible, will be accelerated to realize early completion."

148. In the light of the above, the Municipality has not failed to comply with its obligation to supply clean water. It is clear that the City is taking the crisis seriously and has undertaken a range of interventions designed to correct the problem. This certainly does not amount to a failure to fulfil executive obligations, still less an exceptional circumstance which justifies the dissolution of the Municipality.

149. What is more, if the challenges faced in supplying water justify a section 139(1) intervention the Gauteng EC is required to use the least intrusive means to fulfil the obligation. In this regard, it would be far more appropriate for the Gauteng Provincial Government to assume responsibility for this obligation under section 139(1)(b) than to dissolve the Municipality.

Observations 5 and 6: failure to spend conditional grants

150. The Gauteng EC alleges that the Municipality has failed to spend conditional grants and this has resulted in a loss of money to National Treasury.

151. There is no Constitutional or statutory obligation to spend conditional grants. Therefore, this cannot be the basis for a section 139(1) intervention.

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152. On 13 February 2020 the Municipality received a letter from the National Treasury indicating an intention to reduce grant funding and calling for reasons why it should not do so. The Municipality submitted comprehensive submissions in this regard on 21 February 2020. To date, the Municipality has not received any response from the National Treasury. Copies of this correspondence are annexed marked **FA 38**.

153. From the above it is clear that the allegation of a failure to spend conditional grants does not involve a failure to fulfil an executive obligation and is not an exceptional circumstance which justifies dissolving the Municipality.

Observation 7: suspension of the Heads of the Departments of Human Settlements and Roads and Transport

154. During 2019, the then City Manager ("Mr Mosola") suspended two departmental heads in the Department of Human Settlements and Roads and Transport for alleged financial irregularities. Both the head of department for Housing and the head of department for Transport were suspended for a period of one year.

155. However after an investigation was conducted into their suspension, their suspensions were set aside and the two were subsequently reinstated in November 2019.

156. In addition to these suspensions, four other senior officials with this department were also suspended for a period of year. Disciplinary

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proceedings regarding these officials are still underway and at the time of deposing this affidavit I did not have information regarding new developments in those proceedings. In the event that further information comes to light I will make it available to this Court.

157. There is nothing unusual or exceptional about these suspensions. Every bureaucracy with a large labour force will from time to time experience labour disputes of this nature, and I deny that they have caused any institutional instability. The suspensions could not conceivably justify the dissolution of the Council. This certainly does not amount to a failure to fulfil executive obligations, still less an exceptional circumstance which justifies the dissolution of the Municipality.

Observation 8: crisis at the Wonderboom National Airport

158. Based on a report submitted to the Council in October 2019, the Gauteng EC alleges that the state of affairs at Wonderboom National Airport (Wonderboom) is shocking. The report found that there are allegations of irregularities, maladministration and governance lapses at Wonderboom.

159. The crisis at Wonderboom is concerning. The Municipality is acutely aware of the crisis in Wonderboom and has for the past months put measures in place to correct the situation. These measures are still ongoing and will remain on going until the crisis has been remedied and operations at Wonderboom operate at an optimal standard. Service delivery to the airport has been reinstated. The grass around the run way has been cut. New windsocks have been installed, The renovations to the buildings are in the process of being

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finalised. All of this is being done to upgrade the airport from category 2 to 5 for national flights.

160. In spite of this, and in the light of the measures that the Municipality has put in place to remedy the crisis at Wonderboom, I submit that the allegations could never amount to a sufficient basis to dissolve the Council. They do not amount to a failure to fulfil executive obligations, still less an exceptional circumstance which justifies the dissolution of the Municipality.

Observation 9: unauthorised, irregular, fruitless and wasteful expenditure

161. The Gauteng EC alleges that unauthorised, irregular, fruitless and wasteful ("UIFW") expenditure was flagged by the Auditor General and that the Municipality has been slow in apply consequence management to deal with matters raised by the Auditor General.

162. Again, it is impossible to tell what executive obligation the Gauteng EC alleges has not been fulfilled. However, I respond as best I can below.

163. The Municipality's approach to UIFW expenditure is set out in the February Response at pp. 9 to 18. It appears the Gauteng EC ignored this response. In approach is this:

163.1. Where UIFW expenditure is disclosed in the Municipality's annual financial statements the Council Oversight Committee on Public Accounts requests the Group Audit and Risk Department to investigate this, which then conducts such investigations.

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163.2. Once completed reports are submitted to: the Accounting Officer; the Group Chief Financial Officer; the Cluster Head (if applicable); the head of the affected department; the Group Legal and Secretariat Department (where legal or disciplinary actions is to be taken); and; the Financial Misconduct Board.

163.3. An additional report is also sent to: the Municipality's Public Accounts Committee; the Municipality 's Audit and Performance Committee; and to the Mayoral Committee.

163.4. These reports will include recommendations as to whether the Municipality should attempt to recover the expenditure from the person responsible or write off the expenditure.

164. There is nothing in the Municipality's handling of UIFW expenditure which justifies dissolving the Municipality. They do not amount to a failure to fulfil executive obligations, still less an exceptional circumstance which justifies the dissolution of the Municipality.

Conclusion on the stated reasons for the Dissolution

165. In the circumstances, the stated reasons cannot justify the Dissolution Decision. Viewed collectively or singly they do not meet the standard required by section 139 of the Constitution. The Dissolution Decision was for all of these reasons unlawful, irrational, unreasonable and invalid.

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THIRD GROUND OF REVIEW: THE DECISION WAS TAKEN FOR AN ULTERIOR PURPOSE

166. I am advised that the principle of legality requires that all public power is exercised for the purpose for which it was conferred and not for an ulterior purpose.

167. It bears emphasis that the 2016 Local Government Election was the first time that the ANC lost control of the Municipality. Whereas previously the ANC had obtained a clear majority in the Municipality, in 2016 it not only lost that majority but also ceased to be the largest party. Instead, the percentages obtained by the three largest parties were:

167.1. DA – 43.1% of the vote;

167.2. ANC – 41.5% of the vote; and

167.3. EFF – 11.6% of the vote.

168. The facts of this matter indicate that the Dissolution Decision was not taken for the purpose of ensuring the Municipality's executive obligations are fulfilled. Instead, it was taken because the Gauteng EC, which is an ANC provincial government, wishes to create a fresh opportunity to gain control of the Municipality and is not prepared to wait for the next elections to do so.

169. This is clearly apparent from the following.

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169.1. The primary basis for the Gauteng EC's intervention is the dysfunction resulting from the collapsed Council meetings. But this dysfunction has been engineered by the ANC and EFF caucuses in Council.

169.2. The ANC and EFF members of the Council have deliberately, and expressly, flouted their statutory obligations to attend Council obligations. Despite the MEC's spurious, and unlawful, attempts to discipline the Speaker, the MEC has taken no steps discipline them.

169.3. The Gauteng EC, which is an ANC provincial government, has focussed on the dysfunction created in part by the ANC councillors, to justify its dissolution of Council and appointment of an administrator. But it is clear that the true purpose is to seize control of the Municipality in circumstances in which the voters did not give either the ANC or the EFF a clear majority to govern in Council.

169.4. That this is the true purpose of the dissolution is also clear from the fact that the MEC has been attempting to unlawfully interfere in the Municipality since at least December 2019. This has been catalogued above.

169.5. The behaviour of the Gauteng EC after taking its decision confirms its *mala fides*. Despite announcing the Dissolution Decision at a press conference on 5 March 2020, the Gauteng EC did not send the Dissolution Notice to the NCOP or the National Minister until 6 March 2020.

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169.6. And despite repeated demands, inexplicably, it did not send the Dissolution Notice to the Speaker of the Municipality or the DA at the same time. Instead, it did not send the Dissolution Notice to the Speaker until 4 days had passed, on 10 March 2020.

169.7. It is clear that the Gauteng EC's purpose is to seize power from its political foe, the DA, and that it is not acting in the best interests of the people of Tshwane.

170. Moreover, the Gauteng EC has failed to exercise this drastic power in municipalities that are much more dysfunctional than Tshwane such as Merafong, Lesedi and Emfuleni. The only apparent distinguishing feature is that those other municipalities are controlled by the ANC, which is also the majority party of the Gauteng Provincial Government.

170.1. In Merafong, there has been a near total collapse of local government, including ongoing water and electricity issues in the area. Part of the difficulties have arisen as a result of local government officials' "investment" of municipal funds into the corrupt VBS Bank. I attach a copy of two recent news articles illustrating some of the issues as **FA39.**

170.2. In Lesedi, there are credible allegations of widespread tender irregularities, and cronyism. The Public Protector has made adverse findings against the municipality and former current officials. I attach a copy of two recent news articles illustrating some the issues as **FA40.**

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170.3. The Emfuleni Municipality is one of the worst-performing in the country, with serious allegations of corruption, service delivery failures, and notorious sewage spills into the Vaal river. It has incurred UIFW expenditure of some R872m. Emfuleni's assets were attached this week by the sheriff to satisfy part of its R2.3bn debt to Eskom. I attach a copy of a news article illustrating some of the issues as **FA41**.

170.4. These municipalities are plainly in a much worse state of dysfunction than Tshwane.

170.5. Yet to the best of my knowledge, the Gauteng EC has done little or nothing to intervene in such municipalities.

171. In the circumstances, it clear that the Dissolution Decision was not taken as a *bona fide* effort to avert some exceptional failure by the Municipality to comply with an executive obligation in terms of the Constitution or legislation. Instead, it is part of a transparent effort to seize control of the Tshwane Council in circumstances where the ANC and EFF have failed to do so by lawful means.

172. Therefore, the Dissolution Decision was unlawful and stands to be set aside.

THE APPROPRIATE RELIEF

173. As indicated above, as their primary relief, the applicants seek two forms of final relief:

173.1. First, the applicants seek an order reviewing, setting aside and declaring invalid the Dissolution Decision.

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173.2. Second, the applicants seek an order compelling the councillors from the ANC and EFF to comply with their statutory obligations to attend and remain in attendance at meetings of the Council unless they have a lawful reason to be absent.

174. In the alternative, and only if this Court is unable to grant this final relief for any reason (including, for example, the need for further papers to be filed; the need for a rule 53 record to be filed; or the need for disputes of fact), the applicants then seek order on an interim basis, while the final relief is determined:

174.1. First, an interim order suspending the effect of the Dissolution Decision; and

174.2. Second, an interim order compelling the councillors from the ANC and EFF to comply with their statutory obligations to attend and remain in attendance at meetings of the Council unless they have a lawful reason to be absent.

Order to attend Council Meetings

175. Item 3 of the Code of Conduct for Councillors obliges all councillors attend every council meeting unless he or she:

175.1. Has been granted a leave of absence; or,

175.2. That councillor is required by the Code of Conduct to withdraw from the meeting.

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176. The thirteenth and fourteenth respondents have failed to attend or failed to remain in attendance at numerous meetings, in a deliberate attempt to create dysfunction and create the conditions for the dissolution.

177. What is more, the Tshwane leaders for the ANC and the EFF have indicated that neither party's councillors will attend any council meetings until a new council is elected, despite the fact that at the time of the planned Council meeting, the Dissolution Decision had not yet taken effect. This was reported in an article on News24 on 9 March 2020, a copy of which is annexed marked **FA 42**. This confirms that it is their deliberate attempt to create dysfunction in the Council.

178. The DA has a clear right to have the thirteenth and fourteenth respondents attend council meetings.

179. The DA, the City and its citizens will suffer harm if the order is not granted. The absence of the thirteenth and fourteenth respondents prevents the council from reaching a quorum or conducting any business.

180. The DA has no other remedy to secure the attendance of the thirteenth and fourteenth respondents. The Municipality cannot take disciplinary action without a quorum and the MEC has elected to, unlawfully, dissolve the Municipality rather than seek to discipline the delinquent councillors.

181. The Speaker intends to call weekly special meetings of the City Council until a mayor and municipal manager have been appointed. The thirteenth and

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fourteenth respondents have expressly indicated that they will not attend these meetings. The City is suffering ongoing harm as a result of this refusal.

182. Therefore, the applicant is entitled to a mandatory interdict compelling the thirteenth and fourteenth respondents to attend and remain in attendance at council meetings unless they have a lawful reason to be absent.

Interim relief (if final relief cannot be granted)

183. If for any reason this Court is unable to grant final relief on these papers, the applicants seek interim relief. I submit that the necessary case for interim relief has plainly been made out.

184. A *prima facie* right has been established:

184.1. The applicants have established (at the very least) a *prima facie* right have the present and duly elected Tshwane Council continue to operate rather than be dissolved, given that the Dissolution Decision is unlawful and invalid for all the reasons set out above.

184.2. The voters of Tshwane have (at the very least) a *prima facie* right to be represented in their Municipal Council by duly elected councillors, not an unelected administrator, given that the Dissolution Decision is unlawful and invalid for all the reasons set out above.

185. If the interim relief is not granted, the applicants, the City and its citizens will suffer irreparable harm:

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185.1. The effect of the Dissolution Decision is self-evidently extreme. It dissolves a democratically elected government before the end of its term and places the government of the Municipality in the hands of an unelected administrator for a period of at least 90 days.

185.2. The removal of a democratically elected government is a severe and irreversible harm.

185.3. The applicants are not insensitive to the need for the Council to function and take decisions pending the determination of the review. This is why they have sought a mandamus compelling the ANC and EFF councillors to attend meetings as they are obliged to do. This relief will address the stasis that has occurred in Council in recent months.

186. The balance of convenience plainly favours the grant of the interim relief:

186.1. Fresh elections must be held to elect a new Council within 90 days, in terms of section 159(2) of the Constitution. If this matter is not heard and the interim relief granted, the costs of those elections will be incurred, voters will go to the polls, and new councillors may be installed. If so, either the review relief will become moot; or this Court will have to set aside the fresh elections, at massive practical and administrative inconvenience.

186.2. If the effect of the Dissolution Decision is not suspended the administrator will be empowered to govern the City. If the Dissolution

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Decision is unlawful the appointment of the administrator would also be unlawful and so would any decision he took. Much litigation would no doubt be required to unwind these decisions and their consequences.

186.3. I understand that the question of "separation of powers harm" is a consideration in relation to interim relief. In the present case, the need to consider the separation of powers operates in favour of granting interim relief, not against it. This is because the interim relief is necessary to preserve the autonomy and independence of the Council from the actions of the Gauteng Provincial Government, where the unlawfulness of those actions remains in dispute and is still to be finally determined.

187. The DA has no alternative remedy but to seek this interim relief.

187.1. Unless the Dissolution Decision is set aside by the Minister or the NCOP by 20 March 2020 it will go into effect 21 March 2020.

187.2. From that date on, the Municipal Council will be dissolved, an administrator will take over the powers and functions of the democratically elected Council and the Electoral Commission will have to commence organising fresh elections throughout Tshwane.

187.3. Accordingly, if final relief cannot be determined now for any reason, it is essential that interim relief be granted. Absent that and if final relief is only determined in due course, it would simply be impossible for

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effective relief to be granted. Indeed, by then the citizens of Tshwane would have voted and the new Tshwane council would have been elected.

188. In all the circumstances, if final relief cannot be granted for any reason, the applicants have made out the necessary case – and indeed a clear case – for interim relief.

URGENCY

189. The applicants are mindful of the fact that the Dissolution Decision is not yet operative and that it could be set aside by the Minister or the NCOP by 20 March 2020. However, if that does not occur, the decision will go into effect 21 March 2020.

190. The applicants could not wait until 21 March 2020 to launch this application. To do so would have led to a delay in the hearing and determination of the relief sought; would have opened the applicants to a contention of self-created urgency; and would have allowed the harmful and unlawful effects of the Dissolution Decision to take effect.

191. The applicants have therefore launched this application with great speed (and within two days having sight of the Dissolution Resolution), but have set the matter down for the first Tuesday after the Dissolution Decision would have come into effect. If the Dissolution Decision is set aside by the Minister or the NCOP by 20 March 2020, this application will be withdrawn and no costs will be sought.

M.S.

192. This matter is plainly urgent.

192.1. If the Dissolution Decision is not set aside by the Minister or NCOP, the decision will go into effect 21 March 2020. From that date on, the Municipal Council will be dissolved, an administrator will take over the powers and functions of the democratically elected Council and the Electoral Commission will have to commence organising fresh elections throughout Tshwane.

192.2. This will have grave and irreparable consequences – both practically and in relation to fundamental principles of constitutional governance. If the Dissolution Decision is unlawful, it must be reviewed and set aside (or at least suspended) as a matter of great urgency.

192.3. If the application were to be brought and heard in the ordinary course, it would simply be impossible for effective relief to be granted. Indeed, by then the citizens of Tshwane would have voted and the new Tshwane council would have been elected.

193. I emphasise that the applicants have moved with great speed to launch this application:

194. Shortly after the announcement by the First Respondent, the Applicant's attorneys of record addressed correspondence to the First Respondent, requesting certain information and copies of the Notices issued. The First Respondent was also requested to furnish reasons for the decision made. Applicants' immediately obtained legal advice to launch this Application. Copies

M.S.

of the correspondence have already been annexed. These papers were prepared and deposed to 2 days thereafter.

WHEREFORE I pray that the application be granted as prayed for.

RANDALL MERVYN WILLIAMS

I hereby certify that the deponent has declared that she knows and understands the contents of this Affidavit and that to the best of her knowledge and belief it is the truth, which Affidavit has been signed to and affirmed to before me at SUNNYSIDE on this the 12TH day of March 2020 and that the provisions of the regulations as contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

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