

29 June 2022

## THE SPEAKER OF COUNCIL

### REPORT ON THE STATUS AND FUNCTIONING OF THE MANGAUNG MUNICIPAL ENTITY – CENTLEC

#### 1. PURPOSE

- 1.1 The purpose of this report is to apprise Municipal Council on the status update on CENTLEC and inform committee members of the resignation of four (4) board members at CENTLEC.

#### 2. BACKGROUND

- 2.1 The board was appointed by the Municipal Council on the 1<sup>st</sup> of November 2020 for a period of three (3) years. The Board consisted of seven (7) board of directors, namely, Adv T Manye, Adv K Moroka, MS T Mazibuko, Ms Y Skwintshi, Ms R Tsiki, Mr. C Choau and Mr. T Ngubeni. During February 2021 Mr. C Choau passed away and the board remained with six non-directors.
- 2.2 In May 2022, the Municipality received a letter from the CEO of Centlec dated the 23<sup>rd</sup> of May 2022, addressed to the Executive Mayor, informing the Executive Mayor of the resignation of four Board Members of Centlec. A copy of the letter from the CEO is attached hereto as **Annexure A**.
- 2.3 The letter *inter alia* states that four (4) non-executive directors who resigned from the CENTLEC board include Adv T Manye, Mr. T Ngubeni, Ms T Mazibuko and Ms Y Skwintshi. The resignation letters are attached as **Annexure B**. With the resignation of the four Board Members and the passing away of one, the Board is left with only two members.

#### 3. DISCUSSION

- 3.1 As stated above, the Board of Centlec was appointed by the Municipal Council on the 01 November 2020 for a duration of three (3) years. The Board consisted of seven (7) directors namely Adv T Manye, Adv K Moroka, MS T Mazibuko, Ms Y Skwintshi, Ms R Tsiki, Mr. C Choau and Mr. T Ngubeni. Mr. C Choau passed away in February 2021 which left six non-executive directors.
- 3.2 With the resignation of the four Directors, only two Directors remain. In addressing the legal status of the Board, the Board Secretary, Mr Thabo Malgas, addressed a letter to the Executive Mayor dated the 27<sup>th</sup> of May 2022, providing what he termed a “synoptical opinion of the status of the Board in its current form.” The letter is attached hereto as **Annexure C**. In terms of section 66(2)(b) of the Companies Act, Act 71 of 2008 the

board of a public company must comprise of at least three directors. It is apparent that two board members does not fulfill the requirement of section 66(2)(b) and would certainly also not constitute a quorum.

- 3.3 It must however be noted that even if the number criteria can be satisfied, section 93E of the Local Government Municipal Systems Act, Act 32 of 2000, provides that the directors of a municipal entity must, *inter alia*, have the requisite range of expertise to effectively manage and guide the activities of the municipal entity. It is highly unlikely that one individual would possess the requisite skills to complement the existing skills basis and therefore more than one member may be required for the optimal performance of the Board.
- 3.4 Notwithstanding the lack of adequate Members on the Board, the correspondence received from the CEO of Centlec, the Board Secretary as well as the Chairperson of the Board indicate that there are major challenges facing the entity which require the urgent intervention of the municipality as Shareholder. This assertion was also articulated in a report to written by the Chairperson to National CoGTA during the Ministerial Task Team visit to Mangaung and its entity in March 2022, wherein the Chairperson made several recommendation that provincial or national government must institute an inquiry into reasons of non-functioning of the Board, that the Board of Centlec be dissolved with immediate effect and that Council appoint an interim Board Administrator whilst a process of recruitment for a new board of directors is undertaken as **Annexure D**.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 One of the largest revenues generating services municipalities have control over is the sale of electricity. Poor performance of the Entity results in poor revenue collection. This has huge financial implications for the municipality which cannot be ignored.

#### **5. LEGAL IMPLICATION**

- 5.1 Section 93A of the Systems Act provides for the duties of parent municipalities with respect to municipal entities and states, *inter alia*, that the parent municipality of a municipal entity must exercise any shareholder, statutory, contractual, or other rights and powers it may have in respect of the municipal entity to ensure that both the municipality and the municipal entity comply with this Act, the Municipal Finance Management Act and any other applicable legislation. The parent Municipality must also ensure that the municipal entity is managed responsibly and transparently, meets its statutory, contractual, and other obligations.
- 5.2 From the correspondence received from the entity, it is apparent that the last Ordinary Board meeting of the entity was held on 26 November 2021. Notwithstanding the above challenges, the failure to satisfy statutory obligations and absence of policy decision making structure in line with corporate governance principles may compromise management of the entity leading to audit queries and a negative finding by the Auditor General.

#### **6. STRATEGIC IMPLICATION**

- 6.1 The Municipality as the Parent Entity must ensure the appropriate functioning of any Entity within its control, in terms of the Municipal Systems Act. The Strategic objective

of this report is therefore to ensure good governance, financial viability, optimal revenue generation, optimal institutional transformation with capacity to execute its mandate.

## 7. CONSULTATIONS

- 7.1 The Acting City Manager, CEO Centlec, Executive Mayor and Section 80 Committee, Corporate Services have been consulted and briefed on the status of board members at CENTLEC.

## 8. RECOMMENDATIONS

It is recommended that Municipal Council

- (1) Note the status of board members at CENTLEC.
- (2) That the Board of CENTLEC be dissolved with immediate effect.
- (3) That Council appoint an interim Board Administrator whilst the process of recruitment for new board of directors is undertaken.
- (4) That this process of the recruitment and appointment of the board of Directors be completed within six months.
- (5) That the Interim Board Administrator report monthly on progress to Council.



.....  
**Adv N Mpangane**  
Acting HoD: Corporate Services  
Submitted

29/07/2022

.....  
Date



.....  
**Mr T Motlashuping**  
Acting City Manager  
Approved/ Not Approved

29/07/2022

.....  
Date



.....  
**Cllr Mxolisi Siyozana**  
Executive Mayor  
Ratified/ Not Ratified

29/07/2022

.....  
Date

.....  
**Mr E Maseko**  
National Cabinet Rep  
Ratified/ Not Ratified

.....  
Date

**OFFICE OF THE CEO**

[www.centlec.co.za](http://www.centlec.co.za)

✉ @centlec@ @centlecutility

<b>Contact Person: Malefane Sekoboto</b>	<b>Date: 23 May 2022</b>
<b>E-mail: Malefane.sekoboto@centlec.co.za</b>	<b>Tel: 051 409 2255</b> <b>Fax:</b>
<b>Our Ref.: CENTLEC's Request to the Shareholders in Respect of the Business of the Entity</b>	<b>Your Ref.:</b>

**The Executive Mayor (Mr. M Siyonzana)**

**The Acting City Manager (Mr. T Motlashuping)**

Mangaung Metropolitan Municipality

**BLOEMFONTEIN**

Dear Sir/s

**RE: CENTLEC'S REQUESTS TO THE SHAREHOLDER IN RESPECT OF THE BUSINESS OF THE ENTITY**

The above matter has reference.

The Centlec management together with the Company Secretary met the Ministerial team from Cogta and National Treasury on Friday the 4<sup>th</sup> of March 2022. Discussions were held in respect of the operations of the entity, amongst others, and the relationship of the entity with the parent municipality.

In the meeting, parties discussed in detail the legislative relationship and operational relations between the entity and the shareholder. It became glaring to the meeting that there are areas that needs attention in as far as the above-mentioned relations are concerned hence the Ministerial Team advised us to direct this communicate in respect of what hampers us as the entity and made those known to the shareholder to see whether a cordial and professional working environment could be established in the dealings of the entity and the shareholder. It is therefore against this background that Centlec management wishes to bring the following to the attention of the shareholder in trying to re-establish the above-mentioned relations.

## 1. The Board

Section 66(1) of the Companies Act 71 of 2008 provides that the business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.

Further to the above, Clause 5.10 of the Memorandum of Incorporation provides for the holding of meetings in relation to the business of the entity. We wish to bring to the attention of the shareholder that the last Ordinary Board of the entity was held on the 26<sup>th</sup> of November 2021 dealing with the Quarter 4 Reporting of the entity which had to be sent to the shareholder by the Board in terms of Chapter 12 of the Municipal Finance Management Act read with Clause 3.4 of the Memorandum of Incorporation.

## 2. CENTLEC Board Charter

In terms of clause 10 Removal of Directors

Section 93G of Municipal Systems Act states that the parent municipality may remove or recall a Director appointed or nominated by the parent municipality, if the performance of the Director is unsatisfactory; if the Director, either through illness or for any other reason, is unable to perform the functions of office effectively; or if the Director, whilst holding office is convicted of fraud or theft or any offence involving fraudulent conduct; or has failed to comply with or breached any legislation regulating the conduct of Directors, including any applicable code of conduct. It is recommended that the parent municipality clearly spells out its expectation and possibly a performance contract would be a suitable instrument to be used in this regard. Should the Director fail to meet the performance targets stated in his or her contract, then the municipality is encouraged to intervene and remove such Director. Notwithstanding the performance contract, should a director breach any of his common law or fiduciary duties, the parent municipality should still be in a position to remove such director.



### 3. Board Evaluation and Performance

- i. Clause 14.1 states that "In line with the recommendation of Corporate Governance, the Board individually and collectively shall evaluate its performance annually and shall endeavor to benchmark its performance against international best practice. KPI's ("Key Performance Indicators") should be identified in all areas, and these should be regularly measured against actual performance".
- ii. Clause 14.2 states that "The Board shall appraise the performance of the CEO annually or such other basis as the Board may determine".
- iii. Clause 14.3 states that "The Board shall also endeavor to regularly review the performance of each of the Board committees to ensure that their composition, mandate, and authority which enables them to provide effective assistance to the Board in the key areas in which they function".

### 4. Current status of our affairs

The board was appointed by council on the ,01 November 2020 for a period of three (3) years consisted of seven (7) board of directors viz. Adv T Manye, Adv K Moroka, MS T Mazibuko, Ms Y Skwintshi, Ms R Tsiki, Mr. C Choau and Mr. T Ngubeni. One member passed (Mr. C Choau) during the month of February 2021 and the board remained with six non-directors.

Several Special Meetings were then held, with the businesses affecting the Board and other legislated reporting of the Entity enroute to the Shareholder being part of the agenda to those meetings. We should further bring to the attention of the shareholder that ever since the above ordinary meeting, the Board has not sat to deal with the current financial year's reporting, which in our opinion raises an audit finding by the AGSA should the situation with the Board is not addressed.

It is without doubt that there are tensions in the Board between, amongst others, the members of the Board, to which the shareholder was called upon by members of the board to intervene. **It is worth noting that, four (4) non directors resigned from CENTLEC board (Adv T Manye, Mr. T Ngubeni, Ms T Mazibuko and Ms Y Skwintshi). Attached resignation letters.**

The entity's CEO also requested intervention of the shareholder in relation to the interference of the Board Chairperson to the operations of the entity.

These matters are still outstanding, and the shareholder has yet to address them.



These are but some of the matters that hampers the operations of Centlec in as far as governance is concerned and therefore the shareholder is hereby requested to act and address these fundamental issues so that the business of the entity may continue as it should.



## 5. Recommendations

1. That, the board be dissolved immediate effect because only two members remains which is supported by the letter of the Chairperson of the board dated 17 January 2022 submitted to the Executive Mayor stated that "16.1.3 the Board consistently fails to exercise its fiduciary duties and prudence in terms of the Companies Act, Municipal Systems Act and the Municipal Finance Management Act because of the following reasons and/or facts.
2. 16.1.3.1 the Board is not functional; The Board of the Municipal Entity, "for reasons best known to individual Board of Directors", has not been having functional meetings due to reprehensible conduct by some Board of Directors resulting in the paralysis of the Board's work in that its scheduled business become disrupted leading to noncompliance with legislative prescripts including the cessation of the relationship between the Chairperson and the CEO.
3. Invoke Section 93G of Municipal Systems Act states that the parent municipality may remove or recall a Director appointed or nominated by the parent municipality, if the performance of the Director is unsatisfactory; if the Director, either through illness or for any other reason, is unable to perform the functions of office effectively; or if the Director, whilst holding office is convicted of fraud or theft or any offence involving fraudulent conduct; or has failed to comply with or breached any legislation regulating the conduct of Directors, including any applicable code of conduct.
4. The council appoint interim board administrator whilst the process of new recruitment of board of directors is ensuing within a period of three months.

Kind Regards



MS. Sekoboto

**CHIEF EXECUTIVE OFFICER**





**Adv. T. L. MANYE**

**Free State Society of Advocates**

ADVOCATES CHAMBERS  
03 ZOLA BUDD STREET  
PARK WEST/MILLOWS  
BLOEMFONTEIN

Tel: 051 430 3567  
Cell: 072 472 8555  
Fax: 051 447 4228  
email: [manyet@lth.co.za](mailto:manyet@lth.co.za)

TO: **COMPANY SECRETARY**

CENTLEC

70 RHODES AVENUE

ORANJESIG

Re: Board of Non-Executive Directors

1. It is regrettable that I have to inform you of my resignation from Centlec Board of Directors with immediate effect.
2. I thank the Chairperson, fellow Directors, Company Secretary, CEO and his executive management for time spent in meetings and the support received in execution of Board business.

**T L MANYE**

**19 JANUARY 2022**

No.30 Constantia Street  
Lilyvale Estate  
Bloemfontein  
9322

23 May 2022

The Company Secretary  
Centlec (SOC) Ltd  
30 Rhodes Avenue  
Bloemfontein 9300

By Email : [Thabo.Malgas@centlec.co.za](mailto:Thabo.Malgas@centlec.co.za)

Cc: [Valencia.Motseki@centlec.co.za](mailto:Valencia.Motseki@centlec.co.za)

**Attention: Mr T. Malgas**

**RE: RESIGNATION FROM CENTLEC (SOC) Ltd as the NON – EXECUTIVE DIRECTOR**

I wish to tender my resignation from the Centlec (SOC) Ltd Board of Directors with immediate effect.

The recent challenges and the none functionality of the Board over the past couple of months had made it very difficult for one to execute the Boards fiduciary duties and responsibilities to ensure that Centlec (SOC) Ltd strives to attain its strategic objective and mission.

I wish the Board well in the pursuit of its business and had really gained a lot during a short tenure as the Board Member.

Hope the above is in order



Themba Ngubeni

23/05/2022

St Remy, Arundo Estate  
Rietspruit Road  
Centurion  
20 May, 2022

Company Secretary  
Centlec  
30 Rhodes Avenue  
Bloemfontein

Dear Mr Malgas,

Please accept this letter as my formal resignation from the board of directors of Centlec, effective immediately.

It has been my pleasure to serve on the board for the past year and a half. However, due to the recent non-operational state of the board and to protect my personal career from reputational damage I have decided to step down.

I wish the organization only the best for the future, and regret any inconvenience my resignation may cause.

Sincerely,  
Yolisa Skwintshi



Ms. T Mazibuko  
22955 Hillside View  
Bloemfontein  
9323  
21 May 2022

Mr. T Malgas  
Company Secretary  
Centlec (SOC) Ltd  
30 Rhodes Avenue  
Bloemfontein  
9300

Dear Mr Malgas

**Resignation as Centlec (SOC) Ltd Non-Executive Director**

Kindly accept this letter as my formal resignation from the Centlec (SOC) Ltd board of directors with immediate effect.

It was great a pleasure having served as a Non-Executive Director for the entity for the past one and half year, due to recent developments and the board not being able to function, I have opted to resign in order to avoid reputational damage to my name and career.

I wish the organization the best for future endeavors and regret any inconvenience that might have caused due to my resignation.

Regards,

Thandi Mazibuko



**OFFICE OF THE COMPANY SECRETARY**

<b>Contact Person:</b> Thabo Malgas	<b>Date:</b> 27 May 2022
<b>E-mail:</b> <a href="mailto:thabo.malgas@centlec.co.za">thabo.malgas@centlec.co.za</a>	<b>Tel:</b> 051 412 2605
<b>Our Ref.:</b>	<b>Your Ref.:</b> Executive Mayor

**The Executive Mayor  
Mangaung Metropolitan Municipality  
BLOEMFONTEIN**

Dear Sir/s

**RE: CENTLEC BOARD // RESIGNATION OF BOARD OF DIRECTORS  
DIRECTOR THANDI MAZIBUKO  
DIRECTOR YOLISWA SKWINTSHI  
DIRECTOR THEMBA NGUBENI**

The above matter has reference, and the email of the chairperson and response of the CEO also bears reference.

We have perused both the letter of the Board Chairperson and the email response of the CEO thereto and wish to provide a synoptical opinion of the status of the Board in its current form and further whether certain members are indeed Directors in the true meaning of the Companies Act, Municipal Systems Act and Centlec's Memorandum of Incorporation. These legislations are intertwined in determining the concept of who is a director considering that individual's participation rights and voting rights in a Board Meeting.

In this advice/memorandum therefore we shall deal first with the Shareholder's representatives and whether they are Board members and or Directors in terms of the Municipal Systems Act as this is a piece of legislation that gives effect to their participation thereof in the entity's Board.

Section 93D. of the MSA provides the following in relation to the Municipal(shareholder) representatives:

**Directors:** KM Moroka (Chairperson), T Ngubeni (NED), Y Skwintshi (NED), R Tsiki (NED), T Mazibuko (NED),  
T Manye (NED), MS Sekoboto (CEO), T Malgas (Company Secretary)

(1) The council of a parent municipality must designate a councilor or an official of the parent municipality, or both, as the representative or representatives of the parent municipality— (a) to represent the parent municipality as a non-participating observer at meetings of the board of directors of the municipal entity concerned.

Section 93F of the MSA disqualifies the Shareholder Representatives further to being a Director of the entity and states the following:

- (1) A person is not eligible to be a director of a municipal entity if he or she— (a) holds office as a councilor of any municipality; (b) is a member of the National Assembly or a provincial legislature; (c) is a permanent delegate to the National Council of Provinces; (d) is an official of the parent municipality of that municipal entity.

Consequential, it is common cause that the Shareholder Representatives are Councilors and as such cannot be Directors of the entity.

Section 66 of the Companies Act provides the following, which is also postulated in Clause 5.1.1 of the Entity's Memorandum of Incorporation:

- (1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.
- (2) The board of a company must comprise—
- (a) in the case of a private company, or a personal liability company, at least one director; or
  - (b) in the case of a public company, or a non-profit company, at least three directors.

These three directors are, for all intents and purposes, Non-Executive Directors as also specified and maintained in Section 95E of the Municipal Systems Act and which provides the following, in relation to the appointment of Directors:

Section 93E provides, in relation to the Appointment of directors:

- (1) The board of directors of a municipal entity—
- (a) must have the requisite range of expertise to effectively manage and guide the activities of the municipal entity;
  - (b) must consist of at least a third non-executive directors; and
  - (c) must have a non-executive chairperson...

Thus, in respect of the abovementioned legislation/s, the Shareholder Representatives are not Directors as provided for in the legislation. The CEO and the CFO are Executive Directors and for a quorum (my emphasis), as specified in Section 93E, the Board must consist of at least a Third Non-Executive Directors.

Presently, after resignations of the other for (4) Directors, the Board only has Two (2) Non-Executive Directors and as such no quorum will be established for a sitting of a



board meeting unless and/or until the Shareholder intervenes in relation to the status and/or composition of the Entity's Board.

Hopefully this assist for purposes of a way forward henceforth.

Yours Sincerely

Electronically sent  
(thus not signed)

---

**THABO MALGAS**  
Company Secretary



Contact Person: KM	Date: 15 March 2022
E-mail: morokaoo2@gmail.com	Tel: 051 447 2406 Fax: 051 447 2462
Our Ref.: Chairperson	Your Ref.: COGTA

**Mr MPHOGOGALE  
LEADER-MINISTERIAL TASK TEAM  
CHIEF DIRECTOR  
LOCAL GOVERNMENT SUPPORT &  
INTERVENTION MANAGEMENT  
MINISTRY: COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS OF  
REPUBLIC OF SOUTH AFRICA  
PRETORIA**

**“Without Prejudice & Confidential”**

**Per Email: MphoM@cogta.gov.za**

Dear Sir,

**RE: REPORT ON THE GOVERNANCE PARALYSIS OF CENTLEC // MINISTERIAL TEAM VISIT – MANGAUNG GOVERNANCE PARALYSIS**

1. I refer to our previous correspondence relating to the above matter and find attached hereto a status Report as well as annexures thereto regarding the paralysis of governance at Centlec.
2. I express profound gratitude for the opportunity granted to me to set-out in a Report, albeit, in a summarised manner the facts and circumstances that has resulted in what I perceive as Chairperson of the Board as the paralysis of Governance in Centlec.



3. I place it on record that I strictly reserve my rights to add, amend and/or vary the contents of the Report in due course.
4. I trust that you shall find this in order.

Yours Faithfully,

Electronically sent

**K.M MOROKA**

**Chairperson: Centlec (SOC) (Pty) Ltd**

---

## **CHAIRPERSON'S REPORT IN RESPECT OF THE GOVERNANCE PARAYLSIS AT CENTLEC AND THE IMPLICATIONS THEREOF ON SERVICE DELIVERY**

---

### **1. INTRODUCTION:**

1.1. This Report is compiled in my capacity as the Chairperson of the Centlec Board of Directors and without consultation and assistance of fellow members of the said Board, for reasons that shall be apparent at a later stage in this Report.

1.2. I confirm that I have been a member of the Centlec Board of Directors for 13 years or more and only assumed incumbency of the Chairperson position on the 1<sup>st</sup> of November 2020. I have also served as a Board Member of several other State Owned Enterprises (SOE) and have in the process amassed extensive knowledge, skills and experience in SOE governance.

1.3. Centlec is a Municipal Entity as contemplated in various municipality-related original and subordinate legislations. Principally, it has two governance strands being, on one hand, the Board of Directors, who are appointed by the Parent Municipality and on another hand, the Executive

Management, who are employees employed by the BOD. It is wholly owned by the Mangaung Metropolitan Municipality (MMM) which is commonly referred to, interchangeably, as its “Sole Shareholder” or “Parent Municipality”.

- 1.4. Centlec’s constitutional mandate is primarily the distribution of electricity to the Mangaung Municipal area and contractual municipalities in the Southern Free State. Currently, it employs approximately 726 employees.
- 1.5. In the execution of its mandate, the entity utilises its own employees and other resources. Under certain circumstances, it is compelled to procure goods and services through the public procurement system. In this instance, it is governed by the relevant public procurement prescripts emanating from the Constitutional imperatives set out in section 217 of the Constitution.

## **2. STRUCTURE AND FUNCTIONING OF THE MUNICIPAL ENTITY:**

- 2.1. Centlec’s governance, operations and/or systems are governed by the provisions of the Constitution, Companies Act, Municipal Structures Act, Municipal Systems Act, Municipal Finance Management Act and relevant directives regulated by National Treasury.
- 2.2. In addition to the said legislation, the relationship between the Sole Shareholder and the entity is governed by the Shareholder’s Compact and there is also a Memorandum of Incorporation (MOI).

- 2.3. The Municipal Entity was duly incorporated in terms of the provisions of the Companies Act and is essentially a State Owned Company (SOC) which translates to the fact that, its quintessential purpose is not for profit making but is to deliver a basic service to the community, who are one of its extremely important stakeholder within its licensed area.
- 2.4. The BOD is charged with a fiduciary duty of overseeing the administration of the Municipal Entity and provide policy direction. The standard of conduct prescribed for the Board Members includes, but is not limited to, acting with a degree of care, skill and diligence and honesty, acting in good faith, and acting for a proper purpose, acting in the best interest of and for the benefit of the Municipal Entity.
- 2.5. As required by the Companies Act, the Municipal Entity duly employed a Company Secretary who is accountable to the Board and is responsible for the performance of all the duties as outlined in section 88 of the Companies Act and any other duties as may be assigned to him by the Board. The Company Secretary is also a repository of governance knowledge and advice and is the source of company's conscience and ensuring that the municipal integrity takes precedence over short term personal gain and benefit.
- 2.6. The Executive Management is on the other hand, charged with the implementation of BOD's decisions and execution of operational and management issues. The CEO is essentially accountable to the Board of

Directors for the administration and management of the Entity, and must comply with various duties and responsibilities as set out in section 94 to 107 of the MFMA.

2.7. The BOD is led by the Chairperson who is drawn amongst the members of the Board and is appointed by the Council of the Sole Shareholder. The Board of Directors' tenure in office is 3 years and in the current financial year it had 7 members, 5 of which were Non-Executive members and 2 are Executive Members who included the CEO and CFO of the entity.

2.8. In the litany of operational and management issues that the executive management is responsible for, it is procurement of goods and services, human resource, financial management, engineering, retail and sales, to mention a few. The Executive Management is under the stewardship of the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and different the Executive Managers.

2.9. On a periodical basis, the Entity must account about the financial affairs and service delivery matters to the Sole Shareholder and also to the Auditor General of South Africa (AGSA).

### **3. DISSENSION BETWEEN THE BOARD AND THE EXECUTIVE MANAGEMENT**

- 3.1. Given my length of tenure as a member of Centlec Board, experience, knowledge and skills acquired over the years in Local Government and Corporate affairs. By reason of the aforesaid, I can vouch that the relationship between the Board and the Executive Management has deteriorated to an abysmal level due to untoward conducts.
- 3.2. I have no doubt that the CEO has, primarily, played a major causative role in the breakdown of the relationship between the two centres of power in the entity. Those who are in complicit with the CEO include some members of the Executive Management. Furthermore, some Board Members have aided and abetted the CEO in the perpetration of the wrongdoings.
- 3.3. As a consequence of the dissension, the Municipal Entity in its various forms has been rendered dysfunctional with the consequence that service delivery has been adversely impacted.
- 3.4. In an attempt to regularise the affairs of the Municipal Entity, I have employed various means including reiterating *ad naseaum* on every opportunity I had the importance of compliance with statutory reports and governance prescripts to both the BOD and the Parent Municipality. Hence, as a last straw, my request for the Shareholder's intervention.

3.5. At the core of the dissension are the following factors, and this is not by any means, an exhaustive list:

3.5.1. Non-compliance with procurement prescripts;

3.5.2. Non-compliance with statutory reporting obligations;

3.5.3. Non-compliance with the Shareholders Compact and Memorandum of Incorporation (MOI);

3.5.4. Financial mismanagement;

3.5.5. Unaccountability to the Board and Shareholder; and

3.5.6. Maladministration

#### **4. IMPACT OF THE DISSENSION IN THE PARALYSIS OF THE BOARD:**

##### **4.1. Lack of coherence and cooperation amongst Board Members:**

4.1.1 The BOD is one of the victims of the internal wrangling in the entity with its functioning and activities seriously disrupted. Some members of the BOD have raised issues that lack merit but are misplaced. This is as a result of information placed at their disposal without providing proper context. This is exemplified by uninformed allegations made against me relating to the era when I was requested to stand in as an Acting CEO.

4.1.2 The concerned BOD members acted in conjunction with the members of the Executive Management to peddle certain falsehoods about the award of the ICT tender. In their media

campaigns they omitted to mention that the alleged irregularities were duly condoned by the Council of the Parent Municipality as audited by AGSA.

4.2. Lack of assistance to and cooperation with the Board;

4.2.1 The legislative reports from the CEO were inexplicably delayed and in some instances were not even placed before the BOD. This remiss was further compounded by the fact that those members of management responsible for the items were not available to present to the BOD;

4.2.2 Circumstances were aggravated by the CEO's express decision that he would not attend the BOD's meeting and subsequently persisted with the boycott;

4.2.3 There is a disturbing trend that has come to my observation, that officials who insist on compliance and those who are compliant have unconventional means applied against them with a view to dissuade (silence) them from insisting on compliance including those acting in compliance with the prescripts.

4.3. Inability to properly account to Shareholder and AGSA;

4.3.1 Despite the legislative obligation on the part of the Entity to submit Annual Financial Statements (AFS) as constitutionally mandated



by section 126(1) of the MFMA; the CEO failed to comply with stipulated date for submission;

4.3.2 The failure to inform the BOD's on the progress of the statutory Audit by means of the presentation of detailed progress Management Report (MR) which ultimately would inform the Audit opinion in the final Audit Report. This resulted in an impasse wherein the final audited AFS was not signed by me;

4.3.3 When Management made available the detailed MR, after it had persistently refused to do so, the MR was (is) riddled with discrepancies relating to its contents;

4.3.4 For instance, and I quote verbatim on the Overall Message of AGSA:

a) *"The AFS submitted for Auditing were not prepared in all material respects as material misstatements occurred. Adequate review of the system of internal control and compliance with laws and regulations did not regularly take place in addition, Financial Statements should be properly reviewed for completeness and accuracy prior to submissions thereof for Auditing due to non-compliance with General Recognised Accounting Practices (GRAP)", and further in the Management Report;*

b) *“Note 42 to the Financial Statements indicates that the Municipal Entity incurred a net loss of R22m during the year ended 30 June 2021 and as of that, the Entity’s current liabilities exceeded its current assets by R62m. These events or conditions, along with other matters a set forth in note 42, indicate that a material uncertainty exists that may cast significant doubt on the Municipal Entity’s ability to continue as a going concern”.*

4.3.5 Some of the findings raised by the AGSA in the detailed MR indicated that there were in some instances “no management comments” and or “awaiting management comments” which signified that Management was non-responsive. It is my considered view that this fact is a source of consternation taking to account that AGSA had to ultimately conclude its statutory Audit. It remains a mystery to me how the AGSA could be expected to discharge its statutory duties without responses on crucial findings.

#### 4.4. Relationship with Parent Municipality

4.1.1 The non-fulfilment of the Entity’s obligations as prescribed in the Shareholders Compact regarding the quarterly monetary contributions to the Shareholder culminated in discontent on the part of the Shareholder. The latter contends that without payment

of the contributions, the Entity is of no value to it considering the huge investment it made on the Entity;

4.1.2 The Management has on several occasions by-passed the Board in communicating with the Parent Municipality. This is manifested by the tendency on the part of the CEO to submit reports to the Parent Municipality without the approval of the BOD.

## **5. IMPACT ON SERVICE DELIVERY**

### **5.1. Distribution of electricity supply:**

The intermitted power failures in the supply and/or transmission of electricity occasioned by poor maintenance of the electricity infrastructure resulted in distribution centres blown out. Inevitably that resulted in declining levels of the delivery of service.

### **5.2 Community dissatisfaction:**

Due to the poor service delivery the consumers have opted for alternative energy sources such as solar systems. This is also evidenced by declining revenue as reported in the quarterly reports of the Entity. Media abounds with reports of prevalent failures on the part of the Entity that the community is extremely dissatisfied about. The image and gravitas of the Entity is severely compromised.

### 5.3 Adverse Media attention

It has come to my cognizance that the irregularities and inefficiencies at Centlec are widely reported in the mass media, print and electronic. This emanates from the growing community dissatisfaction which has manifested its self through mass protests which have not escaped the attention of the media. Inevitably, the image of the Entity is adversely impacted by the unfavourable reports.

## 6. EFFORTS TO STEP-IN OR INTERVENE

### 6.1. Communication to the Sole Shareholder:

In an efforts to arrest the declining fortunes of the Entity I constantly reported and discussed the areas of my concern with the Executive Mayor wherein I invited intervention on the part of the Parent Municipality.

### 6.2. Step-in processes:

In terms of the Shareholder compact, the Parent Municipality in its capacity as the Shareholder is entitled to intervene in the affairs of the Entity under certain circumstances. Pursuant to my request for intervention the Council of the Parent Municipality resolved to embark on an intervention. This move is dependent on, *inter alia*, a resolution of the BOD and it appears from my observations that there is no consensus amongst the members of the BOD.

**6.3. Impeding factors against intervention.**

The much-needed resolution of the BOD appears to be elusive and that there appears to be no buy-in by the rest of the BOD members. There are tentative signs that the management of the Entity might resist the anticipated intervention. This is borne out by the fact that they already have sought a Senior Counsel's legal opinion, without the Board's consent and knowledge. Lastly, the Parent Municipality must nominate and appoint a suitable qualified person as a step-in representative.

**7. WAYFORWARD (RECOMMENDATIONS)**

After having taken into consideration all the facts and circumstances as set out in this Report I humbly wish to make the following remarks accompanied by recommendations:

7.1. Remote possibilities of restoration of a normal relationship between Board and Executive Management and other stakeholders;

7.1.1 It is my respectful submission that the matters have so deteriorated so much between the two strands of leadership at the Entity, that a stable relationship is remotely possible;

7.1.2 In the circumstances, the only avenue that appears to be viable is for the Board and/or the Chairperson of the Board be authorised to, amongst others:

- a) institute disciplinary proceedings against errant officials and/or members of the Executive Management;
- b) Commission an in-depth forensic investigation into the management of financial activities of the entity since the tenure of the current CEO for the period he rendered services as the Chief Executive Officer of the Entity;
- c) By reason of the Management's non-responsiveness to crucial Audit Findings raised by AGSA, the competence of Management is brought to question. Consequently, it becomes vital that a competency level requirement assessment through an extensive and intensive skills audit be conducted.

7.1.3. Without detracting from the provisions of 7.1.2 hereinbefore, that the Shareholder and/or authorised Representatives or officials of the Shareholder and/or the relevant Provincial or National Department:

- a) Institute an inquiry into the reasons of the non-functioning of the Board and/or abdication of the fiduciary responsibilities (duties) by the BODs;

- b) Appointment of additional new Board members with relevant skills and knowledge to facilitate a full complement of the BODs; and/or
- c) Disbandment of the current Board.

7.2 That the Ministerial Task Team considers any other additional and/or appropriate alternative measure(s) to improve service delivery for the benefit of the communities in the Province.