**1. REPORT OF THE SELECT COMMITTEE ON CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS INSPECTION IN LOCO ON NOTICE OF INTERVENTION, ISSUED IN TERMS OF SECTION 139(1)(B) OF THE CONSTITUTION (1996), IN DR NKOSAZANA DLAMINI-ZUMA LOCAL MUNICIPALITY, DATED 11 SEPTEMBER 2018**

**1. Background and Overview**

1.1 The Select Committee on Co-operative Governance and Traditional Affairs, having considered the request by the National Council of Provinces (NCOP), to consider and report on the intervention notice invoked in Dr Nkosazana Dlamini-Zuma Local Municipality in terms of section 139(1)(b) of the Constitution, the Select Committee reports as follows:

1.2 In terms of NCOP Rule 101, the Office of the Chairperson of the NCOP referred the notice of intervention by the KwaZulu-Natal MEC for Cooperative Governance and Traditional Affairs (CoGTA), to the Select Committee for consideration and reporting. On 7 September 2018, the Select Committee conducted a loco inspection in Dr Nkosazana Dlamini-Zuma Local Municipality.

**2. Objective of the Loco Inspection in Dr Nkosazana Dlamini-Zuma Local Municipality**

2.1 The main objective was to interact with the internal and external stakeholders of the Municipality in order to solicit their opinions on the constitutional, procedural and substantive matters related to the invocation of section 139(1)(b) of the Constitution.

**3. Composition of the Delegation**

3.1 The Select Committee’s delegation was composed of the following Members of Parliament and Officials: Hon J Mthethwa (ANC) KwaZulu-Natal; Hon T Mateme (ANC) Limpopo; Hon M Chetty (DA) KwaZulu-Natal; Mr TM Manele (Committee Secretary: Committee Section); Mr N Mfuku (Content Adviser: Committee Section); Mr M Mbebe (Procedural Officer: NCOP) and Mr P Bongco (Intern: Committee Section).

**4. General Overview of the Loco Inspection at Dr Nkosazana Dlamini-Zuma Local Municipality**

4.1 On 17 August 2017, the delegation of the Select Committee interacted with senior officials of the Department of CoGTA, representatives of the African National Congress (ANC), Democratic Alliance (DA), Economic Freedom Fighters (EFF); Inkatha Freedom Party (IFP), the South African Municipal Workers Union (SAMWU), Farmers Association, Youth Formation, Women Forum and the Business Chamber.

4.2 The departmental official made a presentation on the constitutional, procedural and substantive reasons for the intervention. The representatives of the political parties and Organised Labour, shared their opinions with regard to the intervention as tabled by the MEC for CoGTA.

**5. Presentation by Department of CoGTA**

5.1 A presentation on the status of intervention in the Municipality was made by the senior departmental official. The presentation focused on the background; procedural matters. substantive reasons for the intervention, support provided by the department, resolutions of the Provincial Executive Council (PEC), including the terms of reference and support measures implemented to date.

5.2 The Department reported that the Municipality experienced serious and persistent governance and institutional challenges, which appeared to have been caused, particularly, by disagreements within the Municipal Council around the filling of the position of the Municipal Manager. The employment contract of the Municipal Manager at the Municipality expired by operation of the law in August 2017. The Municipal Council subsequently resolved to appoint him on an acting basis for a period of three months. The period expired on 31 December 2017, before the municipality could complete the appointment process.

5.3 The Municipal Council had the option of requesting the MEC to extend the period by another three months in terms of section 54A of the Systems Act, however, they opted to request for secondment in terms of section 54A(6) of the Act. The Municipal Council was specific in its secondment request that it should be for one month only, namely January 2018. The assumption was that the appointment process would have been completed by the end of January 2018.

5.4 The selection panel undertook the process as prescribed in the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers (2014), and presented its recommendations to the Municipal Council on various occasions without success. In an effort to guide the Municipal Council on the correct legislative framework with regard to the recruitment of a Municipal Manager, the Head of Department of CoGTA, directed that a senior official attend various Municipal Council meetings to provide technical advice on this matter.

5.5 The Municipal Council appeared to have followed the prescribed process in recruiting and selecting the Municipal Manager, until the Municipal Council appointed the Selection Panel when one of the candidates objected to the appointment of the Deputy Mayor on that panel. The Municipal Council subsequently appointed another councillor to the panel when the Deputy Mayor withdrew from the panel. The Department of CoGTA also invited the political leadership of the Municipality and had an extensive meeting on the appointment of the Municipal Manager, particularly the legislative requirements associated with the appointment.

5.6 Once the panel had been reconstituted, it shortlisted four out of eight applicants. The shortlisting was concluded on 15 December 2017, while the interviews were conducted on 19 December 2017. The four shortlisted and interviewed candidates included the Acting Municipal Manager. The Department was invited and participated in the process as an observer, and provided technical advice. Despite several attempts and technical legal advice from the Department, the Municipal Council failed to appoint the Municipal Manager. The Municipal Council in the process failed to comply with the requirements of both the Systems Act and the Regulations on the Appointment of Senior Managers.

5.7 In the circumstances it was recommended that the PEC consider intervening at the Municipality, and assume the powers to appoint senior managers and associated processes and procedures. On that basis, the PEC was requested to consider intervening in terms of section 139(1)(b) of the Constitution at the Municipality and assume the power to appoint senior managers. Thus the PEC resolved to intervene at Municipality on 28 March 2018, in terms of section 139(1)(b) of the Constitution.

**6. Constitutional and Procedural Matters Related to the Intervention**

6.1 Section 139(2) of the Constitution provides that whenever a PEC intervenes in terms of section 139(1)(b) of the Constitution, the Minister for CoGTA, the NCOP as well as the relevant Provincial Legislature should be notified within 14 days after the intervention began. The Minister was notified of the intervention on 29 March 2018. The Minister approved the intervention within 28 days as prescribed by the Constitution. The Chairperson of the NCOP was notified of the intervention on 29 March 2018. The Municipality was notified of the intervention on 28 March 2017, and this was thus followed by several engagements between the Municipal Council and the Provincial Department of CoGTA.

**7. Substantive Reasons for the Intervention**

7.1 The Municipality experienced serious and persistent governance and institutional challenges, which appeared to have been caused, particularly, by disagreements within the Municipal Council around the filling of the position of the Municipal Manager. The employment contract of the then Municipal Manager at the Municipality expired in August 2017. The Municipal Council subsequently resolved to appoint him on an acting basis for a period of three months. This period expired on 31 December 2017, before the municipality could complete the appointment process. The Municipal Council failed to appoint the Municipal Manager, and it also failed to fill other three other Senior managers’ posts and such posts remained vacant. This includes: Community Services. Development and Town Planning and Public Works and Basic Services.

**8. Support Provided by Department of CoGTA**

8.1 Given the governance and institutional challenges experienced by the Municipality, the Department assisted the Municipality to appoint the Municipal Manager and has provided technical advices on the filling of other three vacant senior managers positions, which are expected to be approved by the Municipal Council. Further, the Department has also provided capacity building to councillors, supported the review of Skills Development and Employment Equity Plan. Lastly, the Department assisted the Municipality on the implementation of consequence management to ensure maintenance of stability in the workplace.

**9. Resolutions of the PEC and Terms of Reference of the Administrator**

9.1 The PEC resolved to authorize the MEC for CoGTA to appoint suitably qualified person(s) to implement the terms of reference including; the preparation and implementation of a recovery plan approved by the Municipal Council; undertaking the appointment of senior managers in terms section 54A and section 56 of the Municipal Systems Act, 32 of 2000 as amended including disciplinary procedures for senior managers as prescribed where applicable; implement programmes to capacitate the councillors of the Municipality on their governance role including oversight on the institutional, financial and service delivery affairs of the Municipality.

**10. Opinions of Political Parties and Stakeholders of the Municipality**

10.1 During the loco-inspection, the Select Committee interacted and solicited opinions of the various political parties, internal and external stakeholders of the Municipality. Their opinions are tabled below:

**11. Opinion of the African National Congress (ANC)**

11.1 The representative of the ANC welcomed and supported the PEC’s decision to invoke section 139(1)(b) of the Constitution in the Municipality, and the progress made by the administrator. He attested that the unqualified audit opinion from the Auditor-General was proof that the Municipality was functioning well.

**12. Opinion of the Democratic Alliance (DA)**

12.1 The representative of the DA tabled an opinion that supported the intervention. However, concerns were raised with regard to the chairing of the Municipal Public Accounts Committee (MPAC) by the ruling party and the misuse of political power.

**13. Opinion of the Economic Freedom Fighters (EFF)**

13.1 The representative of the EFF tabled an opinion that did not supported the intervention, and the problem was with regard the appointment of the Municipal Manager, and not the functioning of the Municipal Council. The representative argued that the appointment of the Municipal Manager could have been dealt with differently, without placing the Municipality under section 139(1)(b) of the Constitution.

**14. Opinion of the Municipal Organised Labour**

14.1 The representative of SAMWU tabled an opinion that supported the intervention, and welcomed the progress made in respect of the functionality of the local labour forum and the development of the Job Evaluation Committee.

**15. Opinion of Traditional Leaders**

15.1 The representative of the traditional leaders tabled an opinion that supported the intervention and welcomed the progress made by the Municipality, more especially with regard to the participation of traditional leaders in the municipal programmes and the Council.

**16. Opinion of Farmers Association**

16.1 The Farmers’ Association tabled an opinion that supported the intervention. The Association has a relationship with the municipality to develop emerging black farmers to be commercial farmers. The observation from the Association revealed that the Administrator was helpful.

**17. Opinion of Business Sector**

17.1 The Business Sector supported the intervention. However, concerns were raised with regard to exclusion of the business sector’ participation in other districts and local municipalities.

**18. Opinion of Youth Formation**

18.1 The representative of the youth formation supported the intervention. The arrival of the Administrator was appreciated and the increase of the youth budget from R600 000 to R5 million. The representative appealed to the Municipality to establish youth desk that can deal with strategic matters affecting the youth within the Municipality.

**19. Opinion of Women Forum**

19.1 Like the youth formation, the Women Forum supported the intervention. The representative appealed to the Municipality to establish women’s desk that can deal with strategic matters affecting the women in the Municipality.

**20. Select Committee Observations and Opinion**

20.1 With regard to the procedural requirements of section 139(2) of the Constitution, the Minister was notified of the intervention on 29 March 2018. The Minister approved the intervention within 28 days as prescribed by the Constitution. The Chairperson of the NCOP was notified of the intervention on 29 March 2018. The Municipality was notified of the intervention on 28 March 2017.

20.2 The Select Committee wishes to emphasize that interventions should be driven by the municipal failures to fulfil executive obligations, and not be driven by political and other factors that weigh unduly on the decisions to intervene.

20.3 Intervention oversight to municipalities under administration should be made earlier and not at the end of the intervention period by the Select Committee, in order to play a more meaningful role in providing objectivity, mediation, and rectifying emerging governance/institutional and service delivery problems.

20.4 It has been observed that the Municipal Council has repeatedly failed to appoint a Municipal Manager, and in so doing, paralysed the administrative capacity of the Municipality to manage its affairs and to deliver basic services to its residents.

20.5 The problems facing the Dr Nkosazana Dlamini-Zuma Municipality could be a thing of the past if the councillors and political parties, work together instead of working against each other.

20.6 It should be remembered that councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the Municipality.

**21. Recommendations**

21.1 Having conducted the oversight visit to Dr Nkosazana Dlamini-Zuma Local Municipality and interacted with internal and external stakeholders, the Select Committee on Co-operative Governance and Traditional Affairs recommends as follows:

21.1.1 The NCOP approves the intervention in Dr Nkosazana Dlamini-Zuma Local Municipality in terms of section 139(1)(b) of the Constitution.

21.1.2 The Provincial Department of Cooperative Governance and Traditional Affairs in KwaZulu-Natal Province, together with SALGA and in co-operation with the Local Government Sector Education and Training Authority, should facilitate training and capacity building for municipal officials and councillors, to further deepen their competencies and understanding of the oversight role, legal framework, management and policies that govern the activities of the Municipality.

21.1.3 The KwaZulu-Natal MEC for CoGTA should table an exit report to the NCOP on the status of the intervention in the Municipality.

21.1.4 The Select Committee on Co-operative Governance and Traditional Affairs, in co-operation with the relevant Portfolio Committee in KwaZulu-Natal Provincial Legislature, should in future conduct a follow-up oversight visit to the Municipality in order to evaluate the progress made in respect of the intervention in the Municipality.

Report to be considered.