**2. 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 MODIMOLLE–MOOKGOPONG LOCAL MUNICIPALITY, DATED 23 OCTOBER 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 Modimolle-Mookgopong 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 Limpopo MEC for Co-operative Governance, Human Settlements and Traditional Affairs, to the Select Committee for consideration and reporting.

1.3 On 16 October 2018, the Multi-Party Delegation of the Select Committee conducted a loco inspection in Modimolle-Mookgopong Local Municipality.

**2. Objective of the Loco Inspection in Modimolle-Mookgopong 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 invoking of intervention in terms of section 139(1)(b) of the Constitution.

**3. Composition of the Delegation**

3.1 The delegation of the Select Committee composed of the following Members of Parliament and officials; Hon G Mthimunye (ANC) Mpumalanga; Hon G Oliphant (ANC) Northern Cape; Hon D Ximbi (ANC) Western Cape, Hon E Mateme (ANC) Limpopo; Hon Engelbrecht (DA) Gauteng; Mr TM Manele (Committee Secretary: Committee Section); Mr N Mfuku (Content Advisor: Committee Section); Mr M Mbebe (Procedural Officer: NCOP) and Mr P Bongco (Intern: Committee Section).

**4. General Overview of the Loco Inspection at Modimolle-Mookgopong Local Municipality**

4.1 On 15 June 2017, the delegation of the Select Committee interacted with senior officials of the Department of Cooperative Governance and Traditional Affairs, representatives of the African National Congress, Democratic Alliance; Economic Freedom Fighters; Freedom Front Plus and the South African Municipal Workers Union (SAMWU).

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 Cooperative Governance, Human Settlement and Traditional Affairs.

**5. Presentation by Department of Cooperative Governance and Traditional Affairs**

5.1 The Senior Departmental Official made a presentation on the status of intervention in the Municipality. The presentation focused on the background; challenges; service delivery and infrastructure; governance; financial management; building institutional capacity; and progress made since the commencement of the intervention in terms of section 139(1)(b) of the Constitution and section 152 of Municipal Finance Management Act (Act 56 of 2003).

5.2 The Department reported that the Limpopo Provincial Executive Council (PEC) took a resolution on 30 May 2018, to intervene in the Municipality in order to stabilize the Municipality. The Department of Co-operative Governance, Human Settlement and Traditional Affairs, together with the Provincial Treasury, should work on the financial resources to implement the intervention.

5.3 The Provincial Treasury was tasked to undertake a forensic investigation on all municipal activities to determine the extent of the challenges and remedial actions necessary to be undertaken. An application was made to the Higher Court on behalf of the Municipality in terms of section 152 of the MFMA or the stay of all legal proceedings, including execution of legal process against the Municipality.

5.4 On 15 November 2017, the Department met the Mayor to deal with concurrences for senior managers and human resource issues. An agreement was later reached for the provincial government to conduct a rapid assessment in the Municipality. This rapid assessment was conducted jointly by the Department of Co-operative Governance and Traditional Affairs, Provincial Treasury and Limpopo: South African Local Government Association (SALGA). This joint assessment team was mandated to provide a fair and objective report on the state of affairs of the Municipality, focusing on all key performance areas with specific recommendations for remedial action and support required for the Municipality.

**6. Municipal Challenges Related to Institutional Building, Audit Opinion, Financial Management and Debts**

6.1 The municipal institutional challenges reported by the Department included high vacancy rate at senior management level; high salary bill estimated at R8 million with an additional R3 million of third parties payment; abuse of leave, leave encashment not complying with leave policy; some employees en-cashed their accumulated leave balances in contravention of both municipal leave policy and regulations on appointment and conditions of employment of senior managers; failure to adhere to normal scheduling of meeting of Local Labour Forum and non-functionality of the sub-committee of Local Labour Forum.

6.2 The municipal audit opinion challenges reported by the Department included a deficit of R29 055 478 during 2015/16 financial period; bankruptcy and liabilities exceeding the total assets. The Municipality used R83 million unconditional grants for operational purpose, and it owed creditors in excess of R350 million on May 2018. The municipal debts reported by the Department included debts to Eskom at R269,6 million, 15 million owed to Magalies Water Board, and the amount of R10 418 386.00 owed to the Department of Transport.

**7. Progress on the Implementation of Intervention in the Local Municipality**

7.1 The Municipality has facilitated the establishment of disestablished organised labour more especially SAMWU, and established the Local Labour Forum. Further, the Municipality made progress with regard to the auditing of staff placement, and submitted a report to the Administrator on 15 August 2018. The report has been served to the special and ordinary Local Labour Forum meeting during August and September 2018 respectively.

7.2 The Local Labour Forum meeting defunct placement report indicating that the placement process contravened section 11(1)(i) of the section 12 Notice which reads that ‘*Upon the completion of job evaluation, work study and grading of new municipality all transferred employees will be placed in accordance with approved placement policy and organogram within two years.*’

7.3 The Department of Cooperative Governance and Traditional Affairs and SALGA provided clarity to the Municipality on the interpretation of placement prescripts, and the Municipality had requested the Department to re-audit the placement process. The Department of Cooperative Governance and Traditional Affairs has delegated two officials from other districts to assist the Human Resource Specialist, to re-audit the placement process.

7.4 The District Job Evaluation Committee has completed the process of evaluating 223 jobs and have been loaded on system SALGA, and is still pending on the moderation of the Provincial Audit Committee.

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

8.1 During the period of loco-inspection, the delegation of the Select Committee interacted and solicited opinions of the political parties, internal and external stakeholders of the Municipality.

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

9.1 The representative of the ANC tabled an opinion that supported the intervention. The representative raised concerns with regard to the financial constrains that inhibit or constrain the Municipality to provide basic services to the community.

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

10.1 The representative of the DA supported the intervention in terms of section 139(1)(b) of the Constitution. The representative stressed the importance of the appointment of the Administrator to provide progress reports to the municipal council.

**11. Opinion of Economic Freedom Fighters (EFF)**

11.1 The representative of the EFF tabled an opinion that supported the intervention.

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

12.1 The representative of the Independent Municipal and Allied Trade Union (IMATU) tabled an opinion that supported the intervention. The representative emphasised the importance of financial support from the National and Provincial Department of Cooperative Governance and Traditional Affairs

12.2 The representative of SAMWU raised concerns with regard to the non-payments of salaries, third parties, lapsing of insurance policies, non- functionality of the Local Labour Forum, implementation of collective agreements and the lack of internal communication.

**13. Opinion of the Business Chamber**

13.1 The Business Chamber confirmed their support for the intervention. The major concerns that were raised related to the lack of clarity on support provided by the Municipality.

**14. South African Youth Council**

14.1 The representation of the South African Youth Council tabled an opinion the supported the intervention.

**15. Community Police Forum, Church and Women Forum**

15.1 The representatives of the above-mentioned forums, tabled opinions that supported the intervention in the Municipality.

**16. Select Committee Observations and Opinion**

16.1 The delegation of the Select Committee has noted with concerns the poor leadership in the Municipality; non signing of attendance registry; poor internal control on financial matters; abuse of leave encashment; payment of service provides at the expense of employees; payment of creditors not listed on council creditor’s book; lack of financial capacity to recover from Eskom and Magalies Water Board’s debts and the Municipality being technically bankrupt.

16.2 The delegation has also noted with concerns the non–accountability on human resource matters, lack of results on financial recovery plans, poor management of leave, fruitless and wasteful expenditure, as well as the non-appointment of the Administrator.

**17. Recommendations**

17.1 Having conducted the loco–inspection to the Municipality and interacted with internal and external stakeholders, the Select Committee on Co-operative Governance and Traditional Affairs recommends as follows:

17.1.1 The NCOP approves the intervention in Modimolle-Mookgopong Local Municipality in terms of section 139(1)(b) of the Constitution.

17.1.2 The MEC for Co-operative Governance, Human Settlements and Traditional Affairs and Provincial Treasury should fast-track the process of instituting a forensic investigation on the abuse of leave encashment and table a report to the National Council of Provinces in this regard.

17.1.3 The MEC for Co-operative Governance, Human Settlements and Traditional Affairs should fast-track the process of appointing an Administrator and provide clear terms of reference, in order to ensure the successful implementation of the municipal finance recovery plan.

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

Report to be considered.