**2. Report of the Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements Inspection in Loco on Notice of Intervention, issued in terms of section 139(1)(b) and (5) of the Constitution (1996), in Phokwane Local Municipality, dated 4 September 2019**

**1. Background and Overview**

1.1 The Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements, having considered the request by the National Council of Provinces (NCOP), to consider and report on the intervention notice invoked in the Phokwane Local Municipality in terms of section 139(1)(b) and (5) of the Constitution, the Select Committee reports as follows:

1.2 On 15 April 2019, the Northern Cape MEC for Cooperative Governance, Human Settlements and Traditional Affairs tabled to the Office of the Chairperson of the NCOP the notice of intervention in terms of section 139(1)(b) and (5) of the Constitution in Phokwane Local Municipality.

1.3 Subsequent to the tabling, the Office of the Chairperson of the NCOP referred in terms of Rule 101 of the NCOP, the notice of intervention by the Northern Cape MEC, to the Select Committee for consideration and reporting. On 2 September 2019, the Select Committee conducted an inspection in loco to the Phokwane Local Municipality.

**2. Objective of the Loco Inspection in Phokwane 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) and (5) of the Constitution.

**3. Composition of the Delegation**

3.1 The Select Committee delegation was composed of the following Members of Parliament and officials: Hon A Gxoyiya (ANC) Northern Cape; Hon ZV Ncitha (ANC) Eastern Cape; Hon IM Sileku (DA) Western Cape; Hon SE Mfayela (IFP) KwaZulu-Natal; Hon K Motsamai (EFF) Gauteng; Hon TSC Dodovu (ANC) North West; Mr TM Manele (Committee Secretary: Committee Section); Mr N Mfuku (Content Adviser: Committee Section); Mr B Mahlangeni (Researcher: Research Unit); Ms J le Roux (Researcher: Research Unit); Mr M Mbebe (Procedural Officer: NCOP) and Mr F Bulawa (Committee Assistant: Committee Section).

**4. General Overview of the Loco Inspection at Phokwane Local Municipality**

4.1 On 2 September 2019, the multi-party delegation of the Select Committee interacted with the MEC and Administrator, representatives of the African National Congress (ANC), Democratic Alliance (DA), Economic Freedom Fighters (EFF), African Independent Congress (AIC), South African Local Government Association (SALGA), Organised Labour (COSATU, SAMWU and IMATU) Vaalharts Ratepayers Association, Utilities (Sedibeng, Vaalharts Water and Eskom) Council of Churches, and Non- Government Association.

4.2 The MEC made a presentation on the procedural and substantive reasons for the intervention. The representatives of the internal and external stakeholders of the Municipality tabled their opinion on the invocation of the intervention in terms of section 139(1)(b) and (5) of the Constitution in the Municipality.

**5. Presentation by the Northern Cape MEC for Cooperative Governance, Human Settlements and Traditional Affairs**

5.1 The MEC made a presentation on the status of intervention in the Municipality. The departmental presentation focused on background, governance and administration, financial management and infrastructure.

**6. Background**

6.1 On the 27 September 2018, due to the serious financial challenges the municipal council experienced to the extent that it described the situation as “*a financial crisis that paralysis the Municipality and makes service delivery difficult*” the council requested the intervention of the MEC’s of Finance and Cooperative Governance in terms of section 139 and 140 of the Local Government: MFMA, 56 of 2003.

6.2 The above request for the intervention was due to the financial crisis and was confirmed to the representative of the Vaalharts Ratepayers Association (“VRA”) on the 29 January 2019, by the Acting Municipal Manager Mr. Nikani.

6.3 The letters have been used and submitted on 12 February 2019, as sufficient evidence to the High Court in the litigation by the Vaalharts Ratepayers Association against the Municipality, and other respondents (namely, the Premier of the Northern Cape, Ministers of Cooperative Governance, Energy and Finance), for a direct mandatory intervention as contemplated by section 139(5) of the Constitution read with section 139 of the MFMA.

6.4 That the Premier and CoGHSTA be mandated to provide a report back to the High Court after one week of the Order being granted to confirm that Phokwane Municipality has been declared under financial administration. Provide a report back in three weeks of the Order being made to indicate that section 139 has been complied with.

6.5 The Minister of Finance be ordered to implement the provisions of section 139 of the MFMA and to report to Court in two months. However, on 22 March 2019 the High Court interdicted and restrained Eskom from taking a decision to interrupt the bulk power supply to the Municipality, and postponed the matter to 14 June 2019, pending the exchange of pleadings by the parties.

**7. Governance and Administration and reasons for the intervention in the Municipality**

* Non-compliance with the provisions of section 49(3) of the Municipal Structures Act, in the designation of an Acting Mayor during the recent leave of absence of the Mayor.
* The Municipality’s persistent configuration and operation of the portfolios and/or committees that assist the Executive Committee in contravention of the provisions of section 80(3)(a) of the Structures Act.
* The non-compliance with the provisions of section 41 of the Municipal Structures Act, in the designation of an Acting Speaker.
* The contravention of the Systems Act in respect of the filling and/or extension of contracts of senior manager posts, which includes all the senior manager posts, Municipal Manager, CFO, Directors of Human Settlements, Technical Services and Corporate Services.
* The Municipality’s fundamental posture of ignoring the MEC’s request to provide support and advice premised on intergovernmental cooperation between the spheres by declining the offer of an official to be seconded to the Municipality (at its request) as the Acting Municipal Manager to assist with the restoration of the effective functioning of the Municipal Council and management of the administration.
* The Municipal Council’s failure to appoint the CFO and/or an acting CFO from amongst the managers in the Municipality, since the resignation of the CFO in December 2017. Notwithstanding the fact that it has requested the intervention due to its serious financial crisis, but yet becomes comfortable to appoint a “Financial Task Team” to turn the financial situation of the Municipality around. No terms of reference of the Task Team nor a report of such a structure has ever been tabled.
* The Municipal Council has failed to implement the outcome of the section 106 investigation, which was presented to the Municipal Council on 22 January 2019. The delay is the outstanding legal opinion which was sought at the end of January 2019.

**8. Financial management and reasons for the intervention in the Municipality**

* Annual Financial Statements (AFS) for 2016/17 were submitted late, resulting in the audit outcome thereof being released only in February 2019, and the AFS for 2017/18 are still outstanding.
* Management has not compiled an audit action plan of the 2016/17 FY audit and had experienced low revenue collection rate.
* The Municipality is not sustainable due to poor cash flow management.
* Management’s failure to introduce effective financial management systems to deal with “uncontrollable expenditure on overtime.”
* The budget was unfunded and unsustainable for the past three financial years. Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to R7,299 633 million. The municipality does not have any financial misconduct to report on (However the Municipal Manager was suspended for alleged financial misconduct).
* The Municipal manager is currently on suspension, the CFO’s position has been vacant for over a year since December 2017 and the Municipal Council has not appointed any unit manager to act in the position.

**9. Infrastructure and reasons for the intervention in the Local Municipality**

* In respect of infrastructure, the Municipality is experiencing high water and electricity losses.
* Roads that need maintenance – lots of potholes; and ageing infrastructure including, municipal office building.
* There has been a lack of provision of water in Pampierstad for over three (3) months, without any intervention by the Municipal Council.
* The Municipality applied for a rollover of the balance of the 2017/18 FY, but the request for R14,4 million (including the R11,290,000.00 ring fenced for the Ganspan Sport Complex (MIG 1483) was rejected.
* From all the above factors, it was evident that the Municipal Council has persistently taking uninformed, irregular and/or unlawful decisions on its own and/or without being properly advised by management to its own detriment and of the community.
* The cumulative effect of the above actions and/or omissions resulted in the “Failure by the Municipal Council to execute Executive obligations and/or functions.”
* As part of providing support and assistance, the Department communicated with the municipality regarding the poor state of governance and administration and the lack of responses thereto and/or cooperation with the intention to amicably find a sustainable solution to the challenges.
* In view of the absence of the Head of Administration and/or Accounting Officer with the Acting appointment of the Municipal manager having expired, the Department again offered the Municipality to second an official, albeit at the Municipality’s request, to be appointed an acting municipal manager to assist the council to restore good governance and administration. This offer was never accepted.

**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 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) and (5) of the Constitution in the Municipality. The representative raised concerns on the non-tabling of forensic investigation report conducted in terms of section 106 of the Municipal System Act, denying that the Municipality owes Sedibeng Water Services. The representative called for the investigation of the claims made by the Sedibeng Water about the water debt of the Municipality.

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

12.1 The representative of the DA tabled an opinion that did not support the merits of the imposition of intervention. The representative raised concerns with regard to the escalation of Sedibeng Water billing, allegations of irregular expenditure, abuse of overtime, Administrator not properly implementing cost containment measures, allocation of R70 million to the municipal sports committee, Municipal Manager failing to apply for rollover of R14,4 million and the failure to submit section 71 reports.

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

13.1 The representative of the EFF tabled an opinion that did not support the intervention. The representative raised concerns with regard to the non-submission of the forensic investigation report in terms of section 106, corruption, lack of service delivery and the Sedibeng Water billing system looting the Municipality.

**14. Opinion of South African Municipal Worker Union (SAMWU)**

14.1 The representative of the Union tabled an opinion that did not support the intervention. The Union representative however, raised concerns with regard to the divisions amongst the municipal workers, failure to follow proper procedures on issuing of notice of intervention in terms of section 139, the Department lacking human capital to implement the financial recovery plan, the failure of the former Municipal Manager to provide written documents, disruption of council meetings by some councillors.

**15. Opinion of the Skema Shutdown**

15.1 The representative of the Skema Shutdown tabled the opinion that did support the intervention. The main concerns raised included the non-implementation of projects within the community, allegation that the intervention is aimed at accessing municipal bank accounts, Administrator surrounded by body guards, allegation of the former Mayor corrupting the community members and failure of the councillors to consult the community on the implementation of projects. The representative called for the need to charge the former Municipal Mayor and the Speaker for allegations of corruption.

**16. Opinion of the Business Forum**

16.1 The representative of the forum did not support the intervention. The representative raised concerns on matters related to the lack of support and assistance to the Municipality. The representative called for the screening of the appointed Administrator, the deployment of the Administrator who has surrounded by allegations of scandals, and investigation in terms of section 106 of Municipal System Act on allegations of corruption.

**17. Opinion of Utilities Sedibeng Water**

17.1 The representative of the utilities raised concerns about the Municipality water debt of R14 million which started in 2014, and now was R85 million. The representative argued that the Municipality was responsible for collecting the source of service but not transferring to the utilities. The representative indicated that despite the failure to transfer, the utilities had no intention of closing down the provision and supply of water to the communities.

**18. Council of Churches**

18.1 The representative of the Council of Churches tabled an opinion that did not support the intervention. The representative raised concerns with regard to the procedural incorrectness of the notice of intervention and lack of consultation.

**19. Lebone Youth Organisation**

19.1 The representative of the Youth Organisation supported the intervention, subject to the condition that it will address the municipal problems. The representative indicated that the Municipality has failed to comply with the provisions of the Municipal Structures Act, Systems Act, MFMA and that the intervention has been long needed since 2013/14. The representative however, raised concerns with regard to the municipal financial situation, captured in the progress report of the Administrator.

**20. Findings and Observations of the Select Committee**

20.1 The Select Committee has found, noted and acknowledged that the Northern Cape PEC resolved to invoke section 139(1)(b) and (5) of the Constitution in Phokwane, on 08 April 2019.

20.2 The Select Committee has noted that the MEC has complied with the procedural requirements as stipulated in the Constitution to notify within 14 days, the Minister for CoGTA of the decision of the PEC to place the Municipality under intervention in terms of section 139(1)(b) and (5) of the Constitution.

20.3 The Minister’s approved the intervention in terms of section 139(2) of the Constitution on 24 April 2019, on conditions which include a Financial Recovery Plan, led by the National Treasury.

20.4 The Select Committee has also observed and noted that the MEC has notified the Municipality on the substantive matters of intervention on 6 May 2019, and introduced the Intervention Teams and terms of reference to the Municipality during a council sitting dated 16 July 2019.

20.5 The Select Committee has further noted that the MEC has been authorised to intervene in terms of section 139(1)(b) and (5) of the Constitution by assuming the functions related to the recruitment of senior managers, the uninterrupted provision of the water services to the community and ensure financial accountability and compliance with the MFMA.

20.6 Furthermore, the Select Committee noted that the MEC was authorised by the PEC to appoint an administrator and three technical experts, to assist in resolving the governance and administrative challenges prevalent at the Municipality.

20.7 The Select Committee has further noted that the MEC has never tabled a notice of intervention in terms of section 106 of the Municipal System Act to the NCOP, to investigate any allegation of maladministration, corruption and fraud and table the report on findings to it.

20.8 On procedural compliance, the Select Committee has noted that the PEC took a decision to invoke section 139(1)(b) and (5) of the Constitution on 27 March 2019, the Office of the NCOP wrote to the MEC for CoGTA on 26 April 2019, acknowledging receipt of the notice of intervention to the Phokwane Local Municipality.

20.9 The Select Committee has found during the stakeholder engagement, that the majority of internal and external stakeholders did not supported the intervention, and argued that the invocation was procedurally incorrect. That the MEC did not provide support in terms of section 154 of the Constitution and had imposed the Administrator in the administration of the Municipality.

**21. Recommendations of the Select Committee**

21.1 Having conducted the oversight visit to Phokwane Local Municipality and interacted with internal and external stakeholders, the Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements, recommends to the House as follows:

21.1.1 The NCOP approves the intervention in Phokwane Local Municipality in terms of section 139(1)(b) and (5) of the Constitution.

21.1.2 The Northern Cape MEC for Cooperative Governance, Human Settlements and Traditional Affairs should upon approval of this intervention, table quarterly reports on the implementation of the Financial Recovery Plan. Further, consider replacing the current Administrator and appoint a credible, ethical, qualified and competent Administrator.

21.1.3 The Administrator should focus on the approved terms of reference that are time framed, produce and table quarterly reports to the NCOP.

21.1.4 The Administrator’s report should be accompanied by a monthly Internal Audit Report, reflective of the state of performance and compliance of the Municipality across all functional units.

21.1.5 The Municipal Council should conduct an oversight of performance and compliance of the Municipality, including implementation of consequence management for wrong-doing.

21.1.6 The Administrator should ensure the tabling of all outstanding reports, including forensic investigations to the Municipal Council, within a period of fourteen (14) days.

21.1.7 The Administrator should fast-track the process of filling all vacant senior management positions, including all those in key skill areas.

21.1.8 The Select Committee should, in collaboration with the relevant Portfolio Committee in the Northern Cape Provincial Legislature, conduct a follow-up visit within a period of sixty (60) days on the status of implementation of the recommendations and resolutions of the NCOP.

21.1.9 The Northern Cape MEC for Cooperative Governance, Human Settlements and Traditional Affairs should, in collaboration with the Minister for CoGTA provide continuous support to the Municipality in terms of section 154 of the Constitution, and show demonstrable portfolio of evidence of the quality support and capacity.

21.1.10 The Northern Cape MEC for Cooperative Governance, Human Settlements and Traditional Affairs should fast-track the process of tabling the forensic investigation report conducted in terms of section 106 of the Municipal System Act to Phokwane Municipal Council, and then after to the NCOP.

Report to be considered.