**1. Report of the Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements on Notice of Intervention, issued in terms of section 139(1)(c) of the Constitution, 1996 in Mamusa Local Municipality, dated 16 October 2019**

**1. Background and Overview**

1.1 The Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements, having received the referral from the National Council of Provinces (NCOP), to consider and report on the intervention notice invoked in Mamusa Local Municipality in terms of section 139(1)(c) of the Constitution, 1996 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 North West MEC for Cooperative Governance, Human Settlements and Traditional Affairs, to the Select Committee for consideration and report.

1.3 On 16 October 2019, the Select Committee was briefed by the MEC for Cooperative Governance, Human Settlements and Traditional Affairs on the constitutional, procedural and substantive matters related to the invocation of section 139(1)(c) of the Constitution in Mamusa Local Municipality.

1.4 The Select Committee also received a legal opinion and advice from the Parliamentary Legal Services on the consideration of the notice of intervention in Mamusa in in respect of 139(1)(c) of the Constitution, and the litigation in terms of section 139(1)(b) of the Constitution by some municipalities in the Province of North West.

**2. Briefing on intervention in terms of section 139(1)(c) of the Constitution in Mamusa Local Municipality**

2.1 On 16 October 2019, the MEC for Cooperative Governance, Human Settlements and Traditional Affairs briefed the Select Committee on Cooperative Governance and Traditional Affairs (Water, Sanitation and Human Settlements) on the substantive reasons, constitutional and procedural steps related to the intervention.

2.2 The presentation focused on service delivery, good governance and financial management challenges that triggered the invocation of section 139(1)(b) and the Provincial Executive Council’s (PECs) decision to invoke section 139(1)(c) of the Constitution in the Municipality.

2.3 Each of the substantive matters that provided rational and justification for the invocation of section 139(1)(c) of the Constitution in the Municipality are reported in the proceeding sections.

**3. Service Delivery Challenges that Triggered the Invocation of Section 139(1)(b) of the Constitution**

3.1 The service delivery challenges that prompted the assumption of executive obligations, included: poor maintenance of infrastructure; failure to collect refuse removal and cleaning of town and townships; interrupted supply of water due to the lack of maintenance; non-payment of water services; and the inability of the Municipality to spend its Municipal Infrastructure Grant (MIG) allocation. The MIG allocation stood at 32% as at the end of March 2019, and the expenditure was expected to be at least above 60%.

**4.** **Good Governance and Administration Challenges that Triggered the Invocation of Section 139(1)(b) of the Constitution**

4.1 The challenges composed of the removal of the former Mayor and the suspension of the current Municipal Manager by the Council; non-payment of pension funds, medical aid and funeral policies of members due to cash flow challenges; poor audit outcomes, with recurrent disclaimer audit findings for six (6) consecutive years: 2012/13; 2013/14; 2014/15; 2015/16; 2016/17 and 2017/18 and municipal backlog of over 09 financial years of oversight reports.

**5. Financial Viability and Management Challenges that Triggered the Invocation of Section 139(1)(b) of the Constitution**

5.1 The financial viability and management challenges that prompted the assumption of executive obligations, included: non-tabling of the draft budget and Integrated Development Planning (IDP) for 2019/20 to the Municipal Council; structurally and imbalanced budget adopted for 2018/19 and the non-alignment with the IDP; outstanding debtor’s amounts to the tune of R230 million as at February 2019, of which R210 million is outstanding for over 181 days; Municipality’s inability to service the debt owed to the creditors, especially Eskom account.

The total debt owed to Eskom amounted to R57 million as at the end of February 2019, and failure to pay creditors within the legislative period of 30 days.

**6.** **Progress on the Implementation of the Intervention in terms of Section 139(1)(b) of the Constitution in the Municipality**

6.1 The Intervention Team has managed to pay outstanding creditors and recovered all service delivery fleet equipment taken by the Sheriff (e.g. Refuse Truck, Sewerage Jet, Cherry Picker truck). The Municipality also managed to pay R7 million to Eskom. The Municipality has provided electricity in Schweizer-Reneke Town, Farms and Charon, while Eskom provided electricity in other towns.

6.2 The Municipality was busy with the drafting of water and sanitation maintenance plan, through the assistance of the Intervention Team. The Municipality will be the Implementing Agent of the MIG grant for the financial year 2019/20.

6.3 The Intervention Team managed to pay outstanding pensions and medical aid to date. It has a draft schedule of council meetings, which will be tabled at the next council meeting. It also managed to pay outstanding Ward Committee stipends for the period of three months.

6.4 As a form of consequence management, the Intervention Team suspended the Municipal Manager and the Chief Financial Officer. It has compiled the Annual Financial Statements (AFS) and the Annual Performance Report (Section 46). The Intervention Team was busy unlocking the withholding of the grants of the Extended Public Works Programme (EPWP), and ensuring the recruitment of EPWP is conducted in an open and transparent manner.

**7. Deliberations, Observations and Opinion of the Select Committee**

7.1 The Select Committee has observed that the PEC at its meeting of the 25 September 2019 resolved, due to the deteriorating situation and non-corporation of the councillors in particular, to dissolve the Municipality by intervening through section 139(1)(c) of the Constitution, with immediate effect.

7.2 The Select Committee has noted that the PEC will appoint administrators who will implement the interventions on its behalf, with immediate effect for a period not more than 12 months.

7.3 The Select Committee has further noted that since the invocation of section 139(1)(b) of the Constitution, the situation in the Municipality has become worse than before and hence the invocation of section 139(1)(c) of the Constitution.

7.4 The situation referred above include absence of leadership, presence of two mayors within a short space of time, deep divisions in the council, lack of professional ethics amongst councillors, non-acceptance of administrators to implement the terms of reference in accordance with section 139(1)(b) of the Constitution, the need for the instituting of forensic investigation in terms of section 106 of the Municipal System Act to investigate allegations of rampant looting of municipal resources by councillors conniving with officials.

7.5 The Select Committee has noted that Section 152(1)(b) of the Constitution provides that a municipality must ensure the provision of services to communities in a sustainable manner. Section 152(1)(d) of the Constitution provides that the municipality must promote a safe and healthy environment.

7.6 In the opinion of the Select Committee, the service delivery failures, instability related to good governance, financial distress of the Municipality, inability to submit AFS and ensuring alignment of the budget with the IDP, has to a large extent, triggered the rationale and motivation for the invocation of section 139(1)(c) of the Constitution in the Municipality.

7.7 The Select Committee has noted that during its deliberations, the majority of political parties such as the African National Congress (ANC), Economic Freedom Fighters (EFF), Inkatha Freedom Party (IFP) and the Freedom Front Plus (FF+), supported the intervention on the basis of the substantive, procedural and constitutional matters in the Municipality, with the exception of the Democratic Alliance (DA).

**8.** **Recommendations of the Select Committee**

8.1 Having deliberated on the notice of intervention in terms of section 139(1)(c) of the Constitution in Mamusa Local Municipality, and the legal opinion provided by the Parliamentary Legal Services, the Select Committee on Co-operative Governance and Traditional Affairs, Water, Sanitation and Human Settlements recommends as follows:

8.1.1 The NCOP approves the intervention in Mamusa Local Municipality in terms of section 139(1)(c) of the Constitution.

8.1.2 The North West Provincial Executive Council should ensure the appointment of qualified, competent Administrators who are vetted, who can implement the decision of the dissolution of the Municipality.

9.1.3 The North West MEC for Cooperative Governance, Human Settlements and Traditional Affairs should institute a forensic investigation in terms of section 106 of the Local Government: Municipal System Act, to investigate all allegations of rampant looting of municipal resources by councillors and other officials.

8.1.4 The North West MEC for Local Government and Human Settlements should provide the NCOP and the North West Provincial Legislature with quarterly reports on the progress made in respect of the implementation of the intervention in the Municipality.

8.1.5 The North West MEC for Local Government and Human Settlements should table the report on the termination of the intervention in terms of section 139(1)(c) of the Constitution, to the NCOP and the North West Provincial Legislature.

8.1.6 The Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements, in co-operation with the relevant Portfolio Committee in the North West Provincial Legislature, should after the termination of the intervention, conduct a follow-up oversight visit to the Municipality in order to evaluate the impact of the dissolution of the Municipality in terms of section 139(1)(c) of the Constitution.

Report to be considered.