**6. 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) of the Constitution, 1996 in Madibeng Local Municipality, dated 29 October 2019**

**1. Background and Overview**

* 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 Madibeng Local Municipality in terms of section 139(1)(b) of the Constitution, 1996 the Select Committee reports as follows:
  2. On 5 April 2019, the North West MEC for Local Government and Human Settlements tabled a notice of intervention in terms of section 139(1)(b) of the Constitution in Madibeng Local Municipality, to the Office of the NCOP.

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 North West MEC for Local Government and Human Settlements, to the Select Committee for consideration and report. On 29 August 2019, the Select Committee conducted an inspection in *loco* to Madibeng Local Municipality.

**2. Objective of the *Loco* Inspection in Madibeng 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 was composed of the following Members of Parliament and officials: Hon SE Mfayela (IFP) KwaZulu-Natal; Hon EM Mthethwa (ANC) KwaZulu-Natal; Hon MP Mmola (ANC) Mpumalanga; Hon S Zandamela (EFF) Mpumalanga; 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 G Mankay (Committee Assistant: Committee Section).

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

4.1 On 27 August 2019, the Select Committee interacted with the MEC for Local Government and Human Settlements; Administrator; representatives of the African National Congress (ANC); Democratic Alliance (DA); Economic Freedom Fighters (EFF); Organised Labour (SAMWU and IMATU) and Brits Industrial Association.

4.2 The MEC for Local Government and Human Settlements 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 opinions on the invocation of the intervention in terms of section 139(1)(b) of the Constitution in the Municipality.

**5. Presentation by the MEC for Local Government and Human Settlements**

5.1 The MEC made a presentation on the status of intervention in the Municipality. The presentation focused on the background, investigation conducted by the Department, protests and violence at the Municipality, developments and changes in the political leadership, executive failures of the council, procedural steps undertaken by the department and the terms of reference of the Administrator.

**6.** **Service delivery and rationale for intervention in terms of section 139(1)(b) of the Constitution**

* No sufficient bulk water in the Municipality currently.
* Interrupted supply of water due to the lack of maintenance and non-payment of water services.
* Poor maintenance and operations of infrastructure.
* Poor Management of conditional grants in particular the Municipal Infrastructure Grant (59% expenditure and R60 million adjusted).

**7**. G**ood governance and rationale for intervention in terms section 139(1)(b) of the Constitution**

* The resignations of the Municipal Manager, the Chief Financial Officer and the Technical Service Director.
* There is no administrative capacity due to low staff morale.
* Poor audit outcomes, with recurrent disclaimer audit findings for the past three consecutive years: 2015/16; 2016/17 and 2017/18 financial years.
* Irregular expenditure increased from R1.32 billion in 2016/17 financial year to R1.38 billion during the 2017/18 financial year. Section 32 of the MFMA processes to rectify such are not implemented.

**8**. **Financial management and rationale for intervention in terms of section 139(1)(b) of the Constitution**

* The Municipality is currently implementing a budget which is not funded.
* Total outstanding debtors as at February 2019, amounted to R1.8 billion, of which R1.6 billion is owed for over 91 days.
* Collection of some of these outstanding debtors is of a concern, especially households’ debt.
* Households constitutes most of the outstanding debt at R1.4 billion, followed by debt owed by businesses/commercial and Government at R333 million and R75 million, respectively.
* Total outstanding creditors as at end of February 2019, amounted to R222 million.
* For bulk purchases, the Municipality owes R121 million for bulk water, 42% is owed for over 181 days, which shows that payment agreement with the sector is not honored.
* In terms of Eskom debt management, the Municipality is on current account, which is an improvement.

**9. Progress Report on the implementation of the intervention in the Municipality**

9.1 In order to resolve some of the challenges above (Bulk Supply and Water Quality), the upgrade of the Madibeng Brits Water Treatment Plant by a further 40 Mℓ/d was undertaken. Provide technical and project management support in the implementation of MIG and PIG funded projects, was provided. Procurement processes for service related to MIG and PIG funded projects, were guided and supported in an efficient and effective manner, within the existing legal provisions and policies of the Municipality.

9.2 Support in the management of service providers in MIG and PIG funded projects to ensure delivery, was provided. Contract management processes in ensuring the delivery of specified quality and quantity of products, infrastructure and services, within the approved budget and contract period were supported. A process of investigating all awarded contracts to establish validity and legitimacy thereof, terminate those that are not legitimate in terms of applicable regulations was established.

9.3 The Draught Relief appointment due to irregular appointment was terminated, also terminated was the contract for water and sanitation backlog eradication, due to irregular appointment. The procurement process for the appointment of IT contract (Flame IT) was being investigated, the procurement process of the contract for Fleet Management as it is over-burdening the Municipality (Bertobrite Fleet Management) was also being investigated.

9.4 Administrator and Executive Mayor held biweekly meetings for an update on key issues and IT/Governance held meetings with the Chairperson of Municipal Public Accounts Committee, Secretariat and management of Office of the Speaker and the Local Labour Forum.

**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) of the Constitution in the Municipality, and the progress made by the Administrator. The representative acknowledged the existence of factions with the party and the determination and commitment to deal with factions and all those found involved in corruption practices with the Municipality.

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

12.1 The DA supported the intervention. However, concerns were raised with the late payment of Eskom account. The representative emphasised the need to release the report of the investigation conducted by the Provincial Department of Local Government and Human Settlements.

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

13.1 The representative of the EFF tabled an opinion that supported the intervention, and further raised concerns on the lack of financial support to the Municipality, political factions, use of non-governmental organisations by political factional group, misuse of municipal vehicles by councillors and officials, SIU investigation and the requirement for the Municipality to pay for the release of the investigation report.

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

14.1 The Union supported the invocation of section 139(1)(b) of the Constitution. They indicated that they have played a key role in mobilizing and calling for the intervention in the Municipality.

**15. Opinion of Independent Municipal and Allied Trade Union (IMATU)**

15.1 The Union welcomed intervention and the visit of the NCOP Select Committee. However, concerns were raised on the inconsistencies of policies by management, consequence management, health hazard and disparities on salary scales.

**16. Opinion of the Brits Industrial Association (BIA)**

16.1 The representative of the Association supported the intervention. Issues of concerns included service delivery, the need to upgrade the De Kroon Substation. It was further raised that businesses in Madibeng were considering relocating their business to other towns.

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

17.1 The Select Committee has observed that the MEC for Local Government and Human Settlements has complied with the procedural requirements as stipulated in the Constitution to notify within 14 days the Minister for Cooperative Governance and Traditional Affairs of the decision of the PEC to place the Municipality under intervention in terms of section 139(1)(b) Constitution. The Select Committee has noted that the Minister for CoGTA approved the intervention notice on 30 May 2019.

17.2 The Select Committee has also observed and noted that the MEC notified the Municipality of the procedural and substantive matters of intervention on 6 July 2019, and introduced the Intervention Team and terms of reference to the Municipality, during a council sitting dated 8 July 2019.

17.3 The Select Committee has further noted that the MEC has notified in terms of constitutional requirements, the NCOP and the North West Provincial Legislature of the notice of intervention in the Municipality on 10 April 2019.

17.4 On substantive matters, the Select Committee has found and noted that the collapse of service delivery, instability on good governance in the administration as well as distress on financial viability and management, have been the root cause of invoking section 139(1)(b) of the Constitution in the Madibeng Local Municipality.

17.5 On implementation of the intervention, the Select Committee has found and noted the appointed Administrators (Intervention Team) has instituted investigation on irregular appointment of contractors and terminated contracts of appointments of the Draught Relief and water and sanitation backlog eradication, due to irregular appointments.

17.6 The Select Committee has noted that majority of internal and external stakeholders’ engaged during the period on oversight in the Municipality, supported the invocation of section 139(1)(b) of the Constitution, while the representative of the Economic Freedom Fighters argued for the invocation of section 139(1)(c) of the Constitution.

17.7 The Select Committee has noted during its deliberations on the matter, the majority of political parties in this house such as the African National Congress (ANC), Economic Freedom Fighters (EFF), Inkatha Freedom Party (IFP) and the Freedom Front Plus (FF+), supports the intervention on the basis of the substantive, procedural and constitutional matters in the Municipality. It is only the Democratic Alliance (DA) which has requested that its rejection of the intervention be recorded.

**18. Opinion of the Select Committee**

18.1 Section 152 (1)(b) of the Constitution provides that a municipality must ensure the provision of services to communities in a sustainable manner. Further, section 152(1)(d) of the Constitution provides that the municipality must promote a safe and healthy to environment. The Select Committee is of the opinion that the service delivery failures of the municipality have triggered the invocation of section 139(1)(b) of the Constitution.

18.2 Section 153(a) of the Constitution provides that a municipality must structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community. Section 129 of the MFMA provides that it should consider the Annual Reports and adopt oversight reports.

18.3 The Select Committee is of the opinion that the instability related to good governance as captured in the notices tabled to the NCOP, the Minister for CoGTA and the presentation made by the MEC on 27 August 2019, has provided justifiable substantive reasons for putting the Municipality under section 139(1)(b) of the Constitution.

18.4 Section 153(a) of the Constitution provides that a municipality must structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community. Section 95 of the Municipal Systems Act provides that the Accounting officer must put systems and controls in place for credit control and debt collection.

18.5 The Select Committee is of the opinion that the financial distress of the Municipality, its inability to submit annual financial statements and ensuring alignment of the budget with Integrated Development Plan (IDP), has to large extent, triggered the rational and motivation for invocation of the section 139 in the Municipality.

**19. Recommendations of the Select Committee**

19.1 Having conducted the oversight visit to Madibeng 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:

19.1.1 The NCOP approves the intervention in Madibeng Local Municipality in terms of section 139(1)(b) of the Constitution.

19.1.2 The North West MEC for Local Government and Human Settlements should table the departmental investigation report, implementation plan and the forensic investigation report in terms of section 106 of the Municipal System Act to the NCOP, after tabling it to the municipal council of the Municipality.

19.1.3 The Administrator should fast-track the process of investigating the irregular appointment of contractors within the Municipality, and table quarterly preliminary reports to the NCOP.

19.1.4 The North West MEC for Local Government and Human Settlements should put in place monitoring mechanisms on forensic investigation reports, to ensure implementation of the findings and recommendations of the Administrator.

19.1.5 The Select Committee on Co-operative Governance and Traditional Affairs, Water, Sanitation and Human Settlements; in cooperation 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 intervention in accordance with the terms of reference of the Administrator.

Report to be considered.