**4. Report of the Select Committee on Co-operative 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 Ratlou Local Municipality, dated 29 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 Ratlou Local Municipality in terms of section 139(1)(b) of the Constitution, 1996 the Select Committee reports as follows:

1.2 On 5 April 2019, the North West MEC for Local Government and Human Settlements tabled to the Office of the Chairperson of the NCOP the notice of intervention in terms of section 139(1)(b) of the Constitution in Ratlou Local Municipality.

1.3 Subsequent to the tabling, the NCOP, 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, to the Select Committee for consideration and report. On 28 August 2019, the Select Committee conducted inspection in *loco* to Ratlou Local Municipality.

**2. Objective of the *Loco* Inspection in Ratlou 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 Mackay (Committee Assistant: Committee Section).

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

4.1 On 28 August 2019, the Select Committee interacted with the MEC, Administrator, Representatives of the African National Congress (ANC), Democratic Alliance (DA), Economic Freedom Fighters (EFF), and the Representative of Traditional Leaders, organised labour (SAMWU and IMATU).

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 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 departmental presentation focused on the background, procedural matters relating to the intervention, substantive matters relating to the intervention, appointment of the Administrator and recommendations.

**6. Collapsed of service delivery and reasons for intervention in the Municipality**

* The Municipality’s failure to spend its MIG allocation, currently the expenditure on the MIG allocation stood at 52%, as at the end of March 2019.
* There is lack of plan and mechanisms to discharge service delivery.
* Interrupted supply of water due to lack of maintenance, and non-payment of water services.
* General there is poor maintenance and operations of infrastructure.

**7. Instability of good governance and reasons for intervention in the Municipality**

* The suspension of the current Municipal Manager by council, appointment and extension of the period of acting of the Municipal Manager that does not qualify to Act as a Municipal Manager, which the extension has now being declared unlawful and invalid by a court of law.
* Any decisions taken by the Acting Municipal Manager are declared invalid, and of no force and effect by the court.
* The Municipality owes pension funds and medical aids of and funeral policies of members, due to cash flow challenges.
* The Municipality has remained stagnant in terms of improving on audit, a qualified audit opinion was received for the past five years, except in 2014/15 financial year, where it received unqualified audit opinion.
* Unauthorized, irregular and fruitless and wasteful expenditures incurred by the Municipality in prior year was not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(a) and (b) of MFMA.

**8. Distress in financial management and reasons for intervention in the Municipality**

* The Municipality is currently implementing a budget which is not funded.
* Total outstanding debtors amounts to R29 million, of which R28 million or 97% of the debt is outstanding for over 151 days’ period.
* The long outstanding debt is mainly for commercial farmers, as there was a dispute declared due to incorrect accounts provided by the Municipality.
* In total, businesses/commercial owes R20 million to the Municipality, followed by Government Departments at R8 million.

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

9.1 The Intervention Team was introduced at Ratlou Local Municipality on 24 July 2019. The Team was introduced by the MEC of Local Government and Human Settlements in a council sitting.

9.2 The Municipality had been on a shutdown of three weeks, following intimidation of staff, compounded by effects of weak security measures and non-visibility or unresponsiveness of the SAPS. This action triggered apparently in reaction to the decision that had been taken by the PEC.

9.3 The Administration Team could not immediately start working as a result of continued acts of violence and intimidation directed at the Administrator and Team. However, through the assistance of SAPS, stability was eventually attained from 29 July 2019 with SAPS, POPS Unit on site and monitoring the situation. Criminal charges have been laid against the perpetrators of the violence, however no arrests have been made.

9.4 Reinstatement of the Municipal Manager in compliance with the court orders, after 9 months of unlawful suspension. Reversal of decision suspending employees for a period exceeding 7 months without due process.

9.5 Reversal of unilateral change of reporting stations of employees, and unilateral salary adjustments with budgetary implications of approximately R3 million. Further, the initiation of disciplinary process against the former Acting Municipal Manager has commenced.

9.6 Meetings were attended with the District Municipality, in line with forging intergovernmental relations, and obtaining status of functions and support. Meetings with community protesters were held and a way forward to stop the protests was crafted; and th local labour forum meetings were resuscitated; changing signatories at the municipal primary bank account and meeting attorneys of council to brief on intervention and obtaining status of litigation. Site inspections on unfinished projects mentioned are being attended on the memorandum to the Premier. Action plan was finalized by the Intervention Team and the term of refence discussed with management.

**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. The representative confirmed the consultative meeting conducted by the MEC, and further encouraged municipal and stakeholders’ cooperation to work together with the appointed Administrator.

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

12.1 The representative of the DA welcomed the process and the merits of the invocation of section 139(1)(b) of the Constitution. However, concerns were raised with regards to the municipal failure to investigate cases before the MPAC, labour unrest, failure to appoint senior managers, R10 million of the MIG spent on operations rather than on projects.

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

13.1 The EFF did not support the intervention. The representative indicated that there is a need to diagnose the nature of the problem, before invoking section 139 intervention in municipalities. The representative argued that the intervention is used as job creation for members of the ruling party.

**14. Opinion of Traditional Leaders**

14.1 The representative of the traditional leaders welcomed the intervention, however, the concerns with regard to potholes damaging cars, non-provision of electricity and water in certain areas were raised. The representative emphasised the need to prioritize the construction and maintenance of roads, provision of water and working together with the Municipality.

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

15.1 The Union tabled an opinion that supported the intervention. The Union representative however, raised concerns with the salary disparities, poor leadership and management, lack of promotion, unfair remuneration system, divisions among the municipal workers, non-functionality of the local labour forum. The Union then appealed to the Administrator to deal with the internal problems of the Municipality without biasness, and prioritizing service delivery within the communities.

**16. Opinion of the Independent Municipal Allied Trade Union (IMATU)**

16.1 The representative of the Union supported the invocation of section 139 in the Municipality, and confirmed the validity of the progress report tabled by the Administrator. However, concerns were raised about the lack of security, non-functioning of the local labour forum, irregular expenditure, and the instability casued on the appointment of municipal manager.

**17. Opinion of the Forum for Service Delivery**

17.1 The Forum raised concerns on the Municipality’s court challenge of section 139 of the intervention. The main concerns raised included the non-provision in the Constitution to appoint an administrator in respect of section 139(1)(b) of the Constitution, political divisions within the ruling party and the appointment of the contract workers, as the cause of the instability in the Municipality.

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

18.1 The Select Committee has found that the North West PEC resolved to invoke section 139(1)(b) of the Constitution in Ratlou Local Municipality, with effect from 2 May 2019, for a minimum period of six months and maximum period of twelve months, and that the decision was taken at a meeting of the PEC held on 2 May 2019.

18.2 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 CoGTA on the decision of the PEC to place the Municipality under intervention in terms of section 139(1)(b) of the Constitution. The Minister for CoGTA was notified on 5 May 2019, and approved the intervention notice on 30 May 2019.

18.3 The Select Committee has also observed and noted that the MEC for Local Government and Human Settlements notified the Municipality on the substantive matters of intervention on 6 May 2019, and introduced the Intervention Team and and terms of reference to the municipal council during a council sitting dated 16 July 2019.

18.4 The Select Committee has further noted that the MEC for Local Government and Human Settlements has notified in terms of the sconstitutional requirements, the NCOP and the North West Provincial Legislature of the notice of intervention in the Municipality on 5 April 2019.

18.5 On substantive matters, the Select Committee has found and noted that the collapse of service delivery, instability on good governance and the distress in the financial management, have all contributed to executive decision to invoke section 139(1)(b) of the Constitution in Ratlou Local Municipality. The Select Committee has also noted that the Municipality implemented an unfunded budget, the Municipality had a total outstanding debtors amounting to R29 million, of which R28 million of the debt is outstanding for over 151 days’ period.

18.6 On governance related matters, the Select Committee has noted that the Municipality has failed to investigate problems related to fruitless and wasteful expenditure, to determine if any person was liable for the expenditure, as required by section 32 of the MFMA.

18.7 The Select Committee has found that the Municipality has failed to take effective and reasonable steps to prevent unauthorised, irregular, fruitless and wasteful expenditure. An amount of R9 718 266 which was incurred in the financial year, as reviewed by the Auditor-General. This clearly demonstrated that the Municipality lacks adequate system to monitor and detect unauthorised expenditure.

18.8 The Select Committee has noted that majority of internal and external stakeholder 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.

18.9 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.

**19. Opinion of the Select Committee**

19.1 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 a municipality must promote a safe and healthy 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.

19.2 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. Further, 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.

19.3 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.

19.4 The Select Committee is of the opinion that the financial distress of the Municipality, implementation of unfunded budget, outstanding debtors amounting to R184 million, of which R127 million of the debt is outstanding for over 90 days’ period, has provided the rationale and justification for the invocation of section 139(1)(b) of the Constitution in the Municipality.

19.5 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.

**20. Recommendations of the Select Committee**

20.1 Having conducted the oversight visit to Ratlou 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:

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

20.1.2 The Administrator should conduct an investigation on the unauthorized, irregular and fruitless and wasteful expenditures incurred in prior years, to determine if any person was liable for the expenditure as required by section 32(2)(a) and (b) of the Municipal Finance Management Act.

20.1.3 The Administrator should revise the drafted turn-around strategy, in order to also focus on consequence management, filling of critical vacant positions and the payment of third parties.

20.1.4 The North West MEC for Local Government and Human Settlements should, in collaboration with the Minister CoGTA, provide support to the Municipality in terms of section 154 of the constitution and other legislative prescripts.

20.1.5 The North West MEC for Local Government and Human Settlements should table quarterly reports to the NCOP on progress made in respect of the implementation of intervention in terms of section 139(1)(b) of the Constitution.

20.1.6 The MEC for Local Government and Human Settlements should table a termination or exit report to the NCOP on the implementation of the intervention in the Municipality.

20.1.7 The Administrator should develop measurable municipal turn-around strategy, aligned with the terms of reference, and provide the MEC for Local Government and Human Settlements and the municipal council with regular reports on the implementation of the intervention. The administrator must ensure investigation and implementation of consequence management.

20.1.8 The Department of CoGTA in the province must ensure security and safety of all appointed administration in collaboration with the relevant state security agencies.

20.1.9 The Select Committee on Co-operative 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 six months or termination of the intervention, whichever comes first, 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.