**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) of the Constitution, 1996 in Tswaing Local Municipality, dated 29 October 2019**

**1. Background and Overview**

1.1 The Select Committee on Cooperative Governance and Traditional Affairs, having received the referral from the National Council of Provinces (NCOP), to consider and report on the notice of intervention invoked in Tswaing 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 Tswaing 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 North West MEC for Local Government and Human Settlements, to the Select Committee for consideration and report. On 28 August 2019, the Select Committee conducted an inspection in *loco* to Tswaing Local Municipality.

**2. Objective of the *Loco* Inspection in Tswaing 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 Tswaing Local Municipality**

4.1 On 28 August 2019, the multi-party delegation of the Select Committee interacted with the MEC, Administrator, representatives of the African National Congress (ANC), Democratic Alliance (DA), Economic Freedom Fighters (EFF), Freedom Front Plus (FF+), traditional leaders, and organised labour (SAMWU & IMATU).

4.2 The MEC for Local Government and Human Settlements made a presentation on the procedural and substantive reasons for the intervention, while the Administrator tabled a progress report. 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 departmental presentation focused on the background, procedural matters relating to the intervention, substantive matters relating to intervention, status on the appointment of the Administrator and recommendations.

**6. Service delivery issues as substantive matters for motivation in invoking section 139(1)(b) of the Constitution**

* Refuse removal and cleaning of the town and townships were not done, and there is no dedicated schedule.
* Interrupted supply of water as a result of lack of maintenance and non-payment of water services.
* Municipality is unable to maintain its service delivery fleet.
* There is generally poor maintenance and operations of infrastructure.

**7**. G**ood governance issues as substantive matters for motivation in invoking section 139(1)(b) of the Constitution**

* Closing of the municipal offices by members of the Unions.
* The Municipality owes pension funds and medical aids and funeral policies of members, due to cash flow challenges.
* The Municipality has remained stagnant in terms of improving on audit outcomes, a qualified audit opinion was received for the past three years
* The MPAC is not functional, the Municipality has a challenge of changing the composition of MPAC members as and when, for example MPAC was recently re-established (December 2018).
* The Municipality has a backlog of over 09 financial years of oversight reports, the council of the Municipality failed to comply with section 129 of the MFMA, to consider the Annual Reports and adopt oversight reports.

**8. Financial management challenges as substantive matters for motivation in invoking section 139(1)(b) of the Constitution**

* The Municipality was technically insolvent, and unable to meet its short term obligations.
* The Municipality has been implementing a budget which is not funded.
* The total municipal outstanding debtors amount to R184 million, of which R127 million or 69% of the debt is outstanding for over 90 days’ period.
* The Municipality failed to control credit and collect debt, especially on the households’ debtors (R167 million).
* The total outstanding creditors amount to R106 million, with the Municipality owing Eskom the total amount of R66 millions, of which R52 million is owed for more than 90 days.
* Municipality inability to pay third party transactions such as pension funds, medical aids of employees, etc. mainly because of cash flow challenges. As at February 2019, the total amount owed to third parties (in this case pension funds) amounted to R15 million. Eleven million is outstanding for over 90 days’ period (Current account is R1.4 million).

**9. Progress in terms of the implementation of section 139(1)(b) of the Constitution in the Municipality**

* The MPAC has tabled oversight reports before the council of 22 august 2019.
* The Municipal Institute Support Agency (MISA) and the University of the North West have made undertaken to cooperate in skilling the municipal personnel.
* The Municipality has put systems and mechanism to install smart technology electricity meters across the community, with the intention to penalise all illegal connections in line with the municipal by-law.
* The Municipality has made progress in respect of the completion of the indigent register, agreeing with Eskom for debt repayment, and upgrading of the electricity infrastructure.
* A water service level agreement has been signed by the Water Service Authority (WSA) and Water Support Provider (WSP), with the assistance of the South African Local Government Association (SALGA).
* The District Municipality has made an undertaken to construct a Waste Water Treatment Plant in Sannieshof, and contractors are expected to be on site in September 2019.
* The Municipality has unblocked the sewer network in Agisanang, Letsopa and Ottosdal.
* Despite the progress reported, the Municipality has outstanding challenges related to the provision of water in the villages, illegal connection in both business and residential areas, skilled electricians, dysfunctionality of Ward Committees, executive committee and council not playing the necessary oversight on 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, and emphasised the importance of fast-tracking service delivery and ethical leadership within the Municipality.

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

12.1 The DA tabled an opinion that supported the intervention. However, concerns were raised about the lack of impact of the previous interventions, violation of the standing rules by the speaker, recruitment of unqualified personnel, lack of consequence management. The representative called for an assessment of all Municipal Infrastructure Grant (MIG) projects, and possible investigation in terms of section 106 of the Municipal System Act.

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

13.1 The EFF supported the intervention, and further raised concerns related to employees’ lack of understanding of their job descriptions, lack of tools of trade for councillors, inadequate time provided to councillors to pursue studies, improper investigation of cases and non-sharing of investigation findings, especially on the accident report of the municipal driver.

**14. Opinion of the Traditional Leaders**

14.1 The representative of the traditional leaders supported the intervention in terms of section 139(1)(b) of the Constitution. The main concern raised related to potholes and water challenges.

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

15.1 The Union supported the invocation of section 139(1)(b) of the Constitution. The Union representative however, raised concerns with regard to the lapsing of pension funds due to the non-payment, late payment of salaries, non-implementation of the resolutions of Municipal Council and Local Labour Forum, safety of employees and violation of Occupational Health and Safety Act.

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

16.1 The representative of the Union supported the placing of the Municipality under administration. The representative indicated that the Administrator has made progress in respect of building relations with organised labour. The major concerns raised by the Union representative related to the non-payment of the medical aids, and employee’s benefits. The representative further proposed for the extension of the period of the administrator, so as to deal with all the outstanding matters related to the implementation of the intervention.

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

17.1 The Select Committee has found that the North West Provincial Executive Council resolved to invoke section 139(1)(b) of the Constitution in Tswaing 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.

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

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

17.4 The Select Committee has further noted that the MEC has notified per constitutional requirements, the NCOP and the North West Provincial Legislature of the notice of intervention in the Municipality on 5 April 2019.

17.5 On substantive matters, the Select Committee has found and noted that the collapse of service delivery, instability on good governance and in the administration as well as distress on financial viability and management, have all contributed to the executive decision to invoke section 139(1)(b) of the Constitution in the Municipality.

17.6 The Select Committee has noted on the substantive matters related to the procurement and contract management, that the Municipality has procured goods and services with the value of below R200 000 without obtaining the required price quotations. Some quotations were accepted from service providers who were not on the list of accredited prospective providers. Some of the contracts and quotations were awarded to bidders based on preference points that were not calculated in accordance with the requirements of the Preferential Procurement Policy Framework Act and its Regulations.

17.7 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 was incurred in the financial year as reviewed by the Auditor-General. This clearly demonstrated that the Municipality lacks adequate systems to monitor and detect unauthorised expenditure.

17.8 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. 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 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.

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.

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 for Local Government and Human Settlements on 27 August 2019, has provided justifiable substantive reasons for putting the Municipality under administration.

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, that is insolvent, 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 rational and justification for the invocation of section 139(1)(b) of the Constitution in the Municipality.

18.6 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. Recommendations of the Select Committee**

19.1 Having conducted the oversight visit to Tswaing Local Municipality and interacted with internal and external stakeholders, the Select Committee on Co-operative Governance and Traditional Affairs, Water, Sanitation and Human Settlements, recommends as follows:

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

19.1.2 The Administrator should implement consequence management with regard to the non–compliance of the requirements of the Preferential Procurement Policy Framework and its Regulations.

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

19.1.4 The Administrator should develop and implement a post-audit action plan to address previous audit queries and qualification. There should be mechanisms and systems in place to strengthen internal control and implement revenue enhancement strategy.

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

19.1.6 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.

19.1.7 The MEC for Local Government and Human Settlements should table the termination or exit report on the intervention in the Municipality, to the NCOP.

19.1.8 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.