3. Report of the Select Committee on Co-operative Governance and Traditional Affairs Inspection in Loco on Notice of Intervention issued in terms of section 139(1)(b) of the Constitution (1996), in Mafube Local Municipality, dated 29 August 2017

1. Background and Overview

1.1 The Select Committee on Co-operative Governance and Traditional Affairs, having considered the request by the National Council of Provinces (NCOP), to consider and report on the intervention notice invoked in Mafube Local Municipality in terms of section 139(1)(b) of the Constitution, 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 Free State MEC for Cooperative Governance and Traditional Affairs (CoGTA), to the Select Committee for consideration and reporting. On 17 August 2017, the Multi-Party Delegation of the Select Committee conducted a loco inspection in Mafube Local Municipality.

2. Objective of the Loco Inspection in Mafube 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 delegation was composed of the following Members of Parliament and officials: Hon JM Mohapi, Free State (ANC); Hon T Wana, Eastern Cape (ANC); Hon MT Mhlanga, Mpumalanga (ANC); Hon G Manopole, Northern Cape (ANC); Hon D Ximbi, Western Cape (ANC); Hon J Monakedi, Limpopo (ANC); Hon M Chetty, KwaZulu-Natal (DA); Hon B Engelbrecht, Gauteng (DA); Hon G Michalakis, Free State (DA), Mr TM Manele, Committee Secretary (Committee Section) and Mr B Mahlangeni, Researcher (Research Unit).

4. General Overview of the Loco Inspection at Mafube Local Municipality

4.1 On 17 August 2017, the delegation of the Select Committee interacted with senior officials of the Department of CoGTA, representatives of the African National Congress (ANC), Democratic Alliance (DA), Economic Freedom Fighters (EFF); Freedom Front Plus (FF+) and the South African Municipal Workers Union (SAMWU). The departmental official made a presentation on the constitutional, procedural and substantive reasons for the intervention. The representatives of the political parties and Organised Labour, shared their opinions with regard to the intervention as tabled by the MEC for CoGTA.

5. Presentation by Department of CoGTA

5.1 A presentation on the status of intervention in the Municipality was made by the senior departmental official. The presentation focused on the background; challenges related to service delivery and infrastructure; governance; financial management; building institutional capacity; and progress made since the commencement of section 139(1)(b) intervention.

5.2 The Department reported that the Free State Provincial Executive Council (PEC) took a resolution to intervene in the Mafube Local Municipality in terms of section 139(1)(b) of the Constitution. The Minister for CoGTA approved the intervention, in line with the provisions of the Constitution.

5.3 In accordance with the notice of intervention, the Provincial Department of CoGTA, together with the Provincial Treasury, undertook a monitoring and oversight exercise over the Mafube Local Municipality, and concluded that its financial challenges met the criteria for determining serious financial problems as contemplated in section 138 of the Municipal Finance Management Act, (Act 56 of 2003).

5.4 On 13 April 2017, the Minister for CoGTA recommended the establishment of a Political Intervention Steering committee between himself and the Free State MEC for CoGTA, which should be supported by the Technical Intervention Steering

Committee and work streams, in accordance with the five Back to Basic Pillars. The Minister further stipulated that a broad intervention plan, financial recovery plan and service delivery plan be developed for implementation. Subsequently, the national treasury received a formal request from the Municipality for the development of the financial recovery plan. The process of developing the financial recovery plan commenced on 7 and 8 August 2017.

6. Constitutional, Procedural and Substantive Matters Related to the Intervention

6.1 The Municipality is faced with the challenge of low staff morale, due to the late payment of salaries to municipal employees. SAMWU withdrew its labour for a period of 3 weeks (by the 19th May 2017), which also resulted in the burning of the ANC office in Cornelia town. The Municipality reached an agreement with the Union regarding provisions for repayment of the third party monies owed to municipal employees. However, on 6 July 2017, it was reported that the council did not adhere to the agreement with SAMWU, as it was creating other financial challenges. The municipal employees went on strike in Villiers on 4 July 2017, due to the non-payment of their salaries.

6.2 The service delivery challenges faced by the Municipality included outsourcing of the electricity function to the Rural Maintenance Company, through a PPP arrangement (a 25-year contract which is currently in its 5 year). The Municipality failed to take due diligence with regard to the Rural Maintenance contract, as it only refers to assets that will be administered, but not liabilities of the Municipality.

6.3 The PEC and the Provincial Department of for CoGTA did not have knowledge of the Rural Maintenance contract and the PPP arrangement for the Municipality. The Premiers Coordinating Forum took a resolution that the MEC for Finance should investigate the contract in the Municipality, in consultation with the State Law Advisors.

6.4 The Development Bank of South Africa (DBSA) has also been given a mandate to investigate the legality contract. Generally, the Municipality is facing challenges related water, sanitation, old water meters and filling of potholes. The Minister has

intervened to prevent a planned electricity cut-off, due to the failure of the municipality to settle outstanding amounts with Eskom.

6.5 The major governance challenges facing the municipality included litigation due to payment of third parties, non-submission of the report of the Auditor-General to the council, the non-functionality of the risk management committee and the lack of support to the chairpersons of section 79 committees of Finance, Technical Services and Community Services to perform their oversight responsibilities.

6.6 The financial management challenges faced by the municipality related to the unfunded of approved budget due to cash flow, Integrated Development Planning (IDP) not reflecting on the challenges faced by the Municipality, high level of debt owed to Eskom and a general failure to pay creditors within 30 days. The institutional capacity building challenges facing the Municipality included bloated organogram, removal of 224 vacant posts and failure of senior managers to perform their administrative duties. Due to the inability of the Municipality to pay and meet its financial obligations timeously, the Department of CoGTA had to assist in the payment of salaries and legal costs, totalling R10.7 million.

7. Progress Made Since the Commencement of the Intervention

7.1 Four sites were previously not valued and it was agreed that these sites would be included in the supplementary voters-roll. The community was satisfied with the valuation roll processes as only a few appeals were received by the Municipality.

7.2. The Municipality has signed the MIG MoU with the Fezile Dabi District Municipality on 28 June 2017. In terms of the MoU, the District Municipality will facilitate the transfer of MIG funding on behalf of Mafube Local Municipality and will receive a top slice of 5% of the total value of the MIG for the management and implementation of the 2017/18 financial year projects. The Municipality has also advertised and completed the shortlisting process for the positions of Chief Financial Officer; Director Technical Services; Corporate Services and Community Services.

8. Opinions of Political Parties and Stakeholders of the Municipality

8.1 During 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:

9. Opinion of the African National Congress (ANC)

9.1 The representative of the ANC indicated that the municipal council has acknowledged the PEC's decision to invoke section 139(1)(b) of the Constitution in the Municipality.

10. Opinion of the Democratic Alliance (DA)

10.1 The representative of the DA tabled an opinion that supported the intervention. However, concerns were raised with regard to the non-implementation of the council resolutions and the lack of consequence management system.

11. Opinion of Economic Freedom Fighters (EFF)

11.1 The representative of the EFF tabled an opinion that supported the intervention, and further raised the importance of ensuring unity within the Municipality.

12. Opinion of the Municipal Organised Labour

12.1 The representative of the Independent Municipal and Allied Trade Union (IMATU) tabled an opinion that supported the intervention. The representative then emphasised the importance of implementing organisational decisions.

12.2 The representative of SAMWU tabled an opinion that supported the intervention. However, the representative of the Union raised concerns with regard to the non-payments of salaries, filling of vacant position of the Municipal Manager and the recognition of the signed agreement with the employer.

13. Select Committee Observations and Opinion

13.1 In terms of the constitutional and procedural matters, the Select Committee has observed that the National Minister for CoGTA, the NCOP, the Free State Provincial Legislature and the Municipality were notified of the intervention on 24 March 2017.

13.2 The Minister for CoGTA approved the intervention at Mafube Local Municipality on the 13 April 2017. The approval was on condition that it must end as soon as the Municipality was able to administer its own affairs.

13.3 The Ministerial approval was on conditions that a Political Intervention Steering committee between himself and the Free State MEC for CoGTA be established and supported by the Technical Intervention Steering Committee and work streams, in accordance with the five Back to Basic Pillars. The Minister further stipulated that a broad intervention plan, financial recovery plan and service delivery plan be developed for implementation.

13.4 The Premiers Coordinating Forum took a resolution that the MEC for Finance should investigate the Rural Maintenance contract in the Municipality, in consultation with the State Law Advisors. The DBSA has also been given a mandate to investigate the legality of the contract.

13.5 The Select Committee has further observed service delivery and financial management challenges related to sanitation, water, litigations, debt collection, contractors, property and the valuation-roll, revenue collection, Eskom debt and billing system, data cleansing and money owed by government departments to the Municipality. Furthermore, the Select Committee has observed also the lack of institutional capability with regard to the critical positions in the Municipality.

14. Recommendations

14.1 Having conducted the oversight visit to Mafube Local Municipality and interacted with internal and external stakeholders, the Select Committee on Co-operative Governance and Traditional Affairs recommends as follows:

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

14.1.2 The Administrator should fast-tract the process of implementing the municipal turn-around plan, in accordance with the terms of reference assigned by the Free State MEC for CoGTA.

14.1.3 The Administrator should provide progress reports on the implication of the non-payments of employees' insurance policies; criminal steps on unaccounted funds; municipal plan to pay Eskom debt; filling of critical vacant positions; recovery plan and service delivery plan as recommended by the Minister for CoGTA when approving the intervention.

14.1.4 The South African Local Government Association, in co-operation with Local Government SETA in the Province, should facilitate training and capacity building for Municipal Councillors; in order to deepen their understanding of their oversight role; legal frameworks and policies that govern the activities of the Municipality.

14.1.5 In terms of cooperative government, the Provincial Department of CoGTA should consistently support and strengthen the capacity of the Municipality to manage its own affairs and to perform its functions, in respect to section 154 of the Constitution.

14.1.6 The Free State MEC for CoGTA should table quarterly progress report to the NCOP on the status of the intervention in the Municipality; including challenges encountered.

14.1.7 The Select Committee on Co-operative Governance and Traditional Affairs, in co-operation with the relevant Portfolio Committee in Free State Provincial Legislature, should in future conduct a follow-up oversight visit to the Municipality in order to evaluate the progress made in respect of the intervention in the Municipality.

14.1.8 The Select Committee notes the time lapse between oversight and the necessary follow-ups, hence it is recommended that more time should be allocated for periodic follow-ups visits.

Report to be considered.