2. Report of the Select Committee on Cooperative Governance and Traditional Affairs Inspection in Loco on Notice of Intervention issued in terms of section 139(1)(b) of the Constitution (1996), in Masilonyana 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 Masilonyana 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.

1.3 On 15 August 2017, the Multi-Party Delegation of the Select Committee conducted a loco inspection in Masilonyana Local Municipality.

2. Objective of the Loco Inspection in Masilonyana 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 delegation 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 Masilonyana Local Municipality

4.1 On 15 June 2017, the delegation of the Select Committee interacted with senior officials of the Department of Cooperative Governance and Traditional Affairs, 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).

4.2 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 The senior departmental official made a presentation on the status of intervention in the municipality. The presentation focused on the background; challenges service delivery and infrastructure; governance; financial management; building institutional capacity and progress made since the commencement of the intervention.

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

5.3 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.

5.4 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 August 2017.

6. Substantive Matters Related to the Intervention

6.1 The major substantive matters related to the resolution to invoke section 139(1)(b) of the Constitution in the Municipality centred around service delivery, governance, financial management and institutional capacity challenges. The service delivery challenges faced by the Municipality related to the failure to spend R11 million of the Municipal Infrastructure Grant (MIG) with a R7.1 million not approved as a roll-over; water meters reaching life spans and requiring replacement; water and sanitation challenges and the restriction of traffic personnel to local roads and the need for permission to operate on N1. Potholes remain a vast challenge, and the impact of potholes on community vehicles might result in excessive litigations against the Municipality.

6.2 The governance challenges faced by the Municipality related to the history of litigations; wrongful settling of litigation cases of approximately R40 million; summons from the court amounting to R700 000 and R120 000; non finalization of supplementary valuation-roll due to non-payment of the service provider and complaints from the Department of Water and Sanitation regarding challenges of the valuation-roll and data cleansing.

6.3 The financial management challenges faced by the Municipality included the outdated billing system that requires purification; high level of salary bill; creditors and third parties as well as Auditor-General findings (disclaimer audit opinion for 2015/16 and

qualified audit opinion for 2014/15). 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, totalling R12.5 million.

6.4 The institutional capacity building challenges faced by the Municipality related to the absence of a Town Planner, who could be responsible for the planning phase of the Municipality; filling of vacant positions of Municipal Manager; Directors Planning, Corporate Services and Technical Services. There is also no Electrical Engineer to address challenges related to the electricity network.

7. Progress Made Since the Commencement of the Intervention

7.1 The Municipality has advertised critical positions of the Municipal Manager, Directors Planning; Technical Services and Corporate Services on 11 June 2017, and shortlisting of candidates have been completed for supply chain management positions.

7.2 The annual budget of the Municipality was adopted on 26 June 2017, and the opposition parties voted for the budget for the first time, due to extensive consultation. All outstanding third-party payments were made except for the insurance payments.

7.3 Revenue collection has improved, as the Municipality was able to settle a R2,8 million overdraft loan to pay salaries within 10 days. The MIG has now a positive balance of R6 million as at the end of June 2017.

7.4 A tender was issued to undertake vending machine, due to the lack of a billing system for pre-paid electricity meters and the credit control policy have been updated.

8. Opinions of Political Parties and Stakeholders of the Municipality

8.1 During loco-inspection, the delegation of the Select Committee interacted and solicited opinions of the political parties, internal and external stakeholders of the Municipality. Their opinions is 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 the notice of intervention in the Municipality in terms of section 139(1)(b) of the Constitution. The representative raised concerns with regard to communication and understanding of the terms of reference of the Administrator; non-communication of progress reports; advertisements of critical vacant positions with the knowledge and decisions of the municipal council; divisions within the organised labour and failure by the Administrator to work with section 56 managers.

10. Opinion of the Democratic Alliance (DA)

10.1 The representative of the DA tabled an opinion that supported the intervention. The representative stressed the importance of the Administrator to provide progress reports to the municipal council.

11. Opinion of the Economic Freedom Fighters (EFF)

11.1 The EFF raised concerns with regard to the non-functionality of the Municipal Public Accounts Committee (MPAC); valuation roll; payment of salaries; infrastructure and lack of collective decision making within the municipal council.

12. Opinion of the Municipal Organised Labour

12.1 The Independent Municipal Allied Trade Union (IMATU) tabled an opinion that supported the intervention. The representative then emphasized the importance of the financial support from the National and Provincial Departments of CoGTA. The representative of the South African Municipal Worker Union (SAMWU) raised

concerns with regard to the non-payments of salaries; third parties; lapsing of insurance policies; non-functionality of the Local Labour Forum; implementation of collective agreements and the lack of internal communication.

13. Opinion of Masilonyana Forum and Business Chamber

13.1 The representative of Masilonyana Forum indicated their support for the intervention. The major concerns raised related to the billing system; the need to improve the Finance Department; valuation-roll and the implementation of the performance management system for all municipal employees. The Business Chamber supported the intervention and the major concerns raised, however, related to the municipal billing system; municipal financial status and the valuation-roll and the incompetency of people dealing with the valuation-roll.

14. Select Committee Observations and Opinion

14.1 In terms of the constitutional and procedural matters, the Select Committee have 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.

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

14.3 The delegation of the Select Committee has observed and noted the non-functionality of the Local Labour Forum, lack of internal and external communication strategy in respect to the terms of reference of the Administrator.

14.4 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 debts and the billing system, data cleansing and money owed by government departments to the Municipality.

14.5 Furthermore, the Select Committee has observed also the lack of institutional capability with regard to the critical position of a Town Planner, who could be responsible for the planning phase of the Municipality; Municipal Manager; Directors of Planning, Corporate Service, Technical Services and Electrical Engineer, to address challenges related to the electricity network.

15. Recommendations

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

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

15.1.2 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.

15.1.3 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; stakeholders' communication strategy; valuation-roll; data cleansing; findings by Municipal Public

Accounts Committee (MPAC); improvement of municipal information technology system; revenue collection; financial recovery plan and service delivery plan as recommended by the Minister for CoGTA when approving the intervention. Noting the submission on the Human Rights' report on water challenges, the Select Committee will consider conducting a follow-up visit to the Municipality.

15.1.4 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.

15.1.5 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.

15.1.6 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.

15.1.7 The Select Committee on Co-operative Governance and Traditional Affairs, in co-operation with the relevant Portfolio Committee in the 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.

Report to be considered.