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REPUBLIC OF SOUTH AFRICA



# STATE OF MUNICIPALITIES IN THE NORTH WEST PROVINCE

## NATIONAL COUNCIL OF PROVINCES

PRESENTED BY MEC B.T. MOILOA

**28 OCTOBER 2020**

*Let's Grow  
North West  
Together*

# PRESENTATION OUTLINE

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- 2. BACKGROUND**
- 3. PROBLEM STATEMENT**
- 4. PREVIOUS AND CURRENT PERFORMANCE ON MIG PROGR.**
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# PRESENTATION OUTLINE

- 10. INTERVENTIONS**
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# 1. PURPOSE

The purpose of the report is to present to NATIONAL COUNCIL OF PROVINCES "NCOP" by the MEC a **"STATE OF LOCAL GOVERNMENT REPORT IN THE NORTH WEST PROVINCE"**



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## 2. BACKGROUND -01

- The Constitution of South Africa recognises **3 spheres of governance** (national, provincial and local) “which are distinctive, interdependent and interrelated”.
- **Section 152(1) of the Constitution**, 1996 stipulates that the mandate of local government is to provide democratic and accountable government for local communities; ensure provision of services to the communities in a sustainable manner; promote social and economic development; promote a safe and healthy environment and encourage the involvement of communities and community organizations in the matters of local government. These constitutional mandates remain our foundation to put necessary systems and controls in place if we were to change the phase of local government in our province.



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## 2. BACKGROUND -02

- **Section 152(2) of the Constitution** stipulates that a municipality must strive, within its financial and administrative capacity, to achieve the mandate as set out in Section 152(1) above. Furthermore **Section 153 of the Constitution** stipulates 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.
- The National and Provincial Government in terms of Section 154 of the Constitution must by legislative and other measures support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.



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# 3. PROBLEM STATEMENT -01

- Despite these empowering provisions of legislation, it is a well-documented fact that local government in the North West is in a state of paralysis; our municipalities have invariably and in varying degrees been and/or are bedeviled by immense capacity challenges. These challenges includes but not limited to the following:
  - a) Failure and collapse of governance and administrative systems in municipalities;
  - b) Non-compliance with MFMA and other legislative conditions that led to loss and or withholding of Equitable Share and Conditional Grants such as MIG;
  - c) Inability to provide sustainable, uninterrupted and quality services

These challenges are further elaborated in the following slides in terms of:

- Governance and Administration;
- Financial Management;
- Service Delivery and Infrastructure Development



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## Previous & Current Performance on the MIG Programme

FINANCIAL YEAR	ALLOCATION	EXPENDITURE	%
2017-18	R1 782 328 000.00	R1 632 052 963.26	92%
2018-19	R1 742 871 000.00	R1 563 107 463.61	91%
2019-20	R1 787 741 000.00	R1 396 407 038.77	78%
2020-21	R1 774 671 000.00	R206 907 235.84	12% Current (Sep-2020)



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# Summary of 2017/18 projects per Category and Expenditure as at end June 2018:

- Social Infrastructure

Number of Projects: 94

Amount Spent R 245 016 114.36

- Roads and Storm water

Number of Projects: 110

Amount Spent: R 467 411 739.76

- Water and Sanitation

Number of Projects: 107

Amount Spent R 829 022 937.16

- Economic Infrastructure

Number of Projects: 7

Amount Spent: R 3 442 832.12

Total Number of projects: 318

Total Expenditure on projects excluding PMU Operations): R1 544 893 623.40



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# Summary of 2018/19 projects per Category and Expenditure as at end June 2019:

## ▪ Social Infrastructure

Number of Projects: 58

Amount Spent R 126 912 493.35

## ▪ Roads and Storm water

Number of Projects: 91

Amount Spent: R 446 098 319.96

## ▪ Water and Sanitation

Number of Projects: 77

Amount Spent R 635 963 571.56

## ▪ Economic Infrastructure

Number of Projects: 5

Amount Spent: R 27 258 460.41

Total Number of projects: 231

Total Expenditure on projects excluding PMU Operations): R1 236 232 845.28



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# Summary of 2019/20 projects per Category and Expenditure as at end June 2020:

- Social Infrastructure

- Number of projects = 83

Amount Spent R 165 980 143.17

- Roads and Storm water

- Number of projects = 86

Amount Spent: R 496 534 038.65

- Water and Sanitation

- Number of projects = 88

Amount Spent R 639 850 181.79

- Waste Facilities

- Number of projects = 4

Amount Spent R 12 066 311.71

- Economic Infrastructure

- Number of projects

- Amount Spent: R 12 315 922.23



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# INTERVENTIONS AND SUPPORT REGARDING GRANT EXPENDITURE EXPENDITURE

As per MIG Policy a maximum of 5 per cent of a municipality's MIG allocation may be used for the project management unit capacity and operations

It is important to note that project management capacity is essential for a municipality to be in a position to implement capital projects in an effective and efficient manner and taking into consideration the aspects of costs, time and quality.

The PMU units are monitored on a quarterly basis to establish if the model and the initial indicated resources still exist and the functioning thereof. All the MIG receiving municipalities PMU's are functional with all having PMU Managers or Acting. The capacity differs per municipality in terms of personnel based on the percentage of their allocation. Most units fall under the technical department as required by the MIG policy Framework and each District has a MISA deployee giving support in planning and monitoring

## **Challenges:**

Lack of capacity to plan, implement and monitor (including monitoring appointed consultants), No sufficient planning done prior to project implementation, no integrated planning amongst municipalities with Districts

There is capacity to report, challenge is with reporting on time

# INTERVENTIONS AND SUPPORT REGARDING GRANT EXPENDITURE

The following municipalities have been put on close monitoring by CoGTA because of previous poor performance , not showing signs of improvement, previous roll-over applications not been approved, and also those that are showing a risk of not performing in the current financial year:

**Madibeng LM, Kgetleng Rivier LM, Moretele LM, Moses Kotane LM, Tswaing LM, Ramotshere Moiloa LM, Ratlou LM, NMMDM, Matlosana LM, Mamusa LM, Naledi LM, and DRRSMDM**

Before processing all payments for invoices of the above mentioned municipalities, the Municipality need to comply to the following,

1. submit invoices and bill of quantities for verification against work done by MISA and COGTA Provincial. Site visits will be done where possible based on the assessment of risks imposed by COVID 19 and approval for payment will be granted on confirmation of work done by MISA.
2. municipality is expected to comply with the monthly reporting requirements on the financial and non-financial reporting utilizing the MIG MIS and uploading the signed site visit reports by the Director Technical Services, confirming that the invoices are a true reflection of the progress made on project site.

Municipalities are reminded that the MIG funds should be utilized for its intended

## INTERVENTIONS AND SUPPORT REGARDING GRANT EXPENDITURE

- MIG Provincial workshop coordinated by CoGTA is held end of November yearly, with Sector Departments, National CoGTA invited to workshop Municipalities on Policy issues, conditions, frameworks, Sector departments Norms and Standards, best practices, expectations and targets for the next financial year
- Appraisal sessions is held on quarterly basis for registration of projects (and special appraisals when is necessary)
- Monthly District engagements with Municipalities are held on regular basis without fail. National CoGTA and relevant Sector Departments are also invited.
- One on one sessions are held weekly with Municipalities on issues and challenges raised from Monthly engagements
- In terms of monitoring of projects, a schedule of site visit is prepared yearly and followed on monthly basis. Projects are selected randomly by the MIG unit for inspection with National and Sector Departments invited

# INTERVENTIONS AND SUPPORT REGARDING GRANT EXPENDITURE

purpose, and that is enhance access to service delivery by the communities. Municipalities have confirmed the commitment with the signed Certificate of Compliance for the 2020/21 MIG funding submitted to the Department.

It should be noted that failure by the Municipalities to adhere to the MIG certificate of compliance requirements would imply that more stringent measures will be instituted to ensure the appropriate utilisation of MIG funds.



# INTERVENTIONS AND SUPPORT REGARDING GRANT EXPENDITURE

- PMU Business plans Appraisal session is held during May before the beginning of the municipal financial year to evaluate the previous plans, make recommendations and approve the current plans, with CoGTA, Sectors invited.
- MIG Provincial workshop coordinated by CoGTA is held end of May yearly, with Sector Departments, National CoGTA invited. Municipalities are given platform to show and prove the readiness, then a monitoring tool is developed based on the outcome of the workshop. (Monitoring tool – Template used on Monthly basis for monitoring)
- Regular engagement on one on one with slow spending municipalities. These municipalities are given attention based on expenditure reports that are not satisfactory and also engage on issues of PMU conditions and utilization of 5% top slice.
- Interventions with accounting officers on under expenditure to prevent withholding of their MIG money and possibility of stopping and re-allocating sum of the allocations to other Municipalities.

# SECTION 139 OF THE CONSTITUTION INTERVENTION

- As a result of this state of affairs, the Executive Council of the North West Province on its resolved to place 13 local municipalities under administration in terms of section 139 (1) (b) and (c) of the Constitution. And District Municipality in terms of Section 137 of the Municipal Finance Management Act.
- It should be noted that the essence of an intervention step is that it is a unilateral imposed measure that binds a municipality. The power of intervention in terms of the Constitution is that the provincial government can exercise its powers of intervention unilaterally without the co-operation or agreement of a municipality. There is thus no statutory requirement to seek a negotiated settlement of the matter prior to taking section 139 steps or not.
- One of the most important element of an intervention measure is that it binds a municipality in the exercise of its executive powers. This is the exception to the general principle of intergovernmental relations that one sphere of government must “respect the constitutional status, institutions, powers and functions of government in the other spheres” (section 41(1)(e) of the Constitution);

# PROCEDURAL ISSUES

PROCEDURAL REQUIREMENTS	COMPLIANCE
<p>Section 139 (2): If a Provincial Executive Intervenes in a municipality in terms of subsection (1)(b)-</p> <p>(a) It must submit a written notice of the intervention to-</p> <p>(i) The Cabinet Minister responsible for Local Government affairs and;</p> <p>(ii) The relevant Provincial Legislature and the National Council of Provinces within 14 days after the intervention began</p>	<p>A written notices was submitted to</p> <p>(i) the Cabinet member responsible for Local Government and;</p> <p>(ii) The Provincial legislature and National Council of Provinces;</p>
<p>Section 139 (2): If a Provincial Executive Intervenes in a municipality in terms of subsection (1)(b)-</p> <p>(b) The intervention must end if –</p> <p>(i) The Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or</p> <p>(ii) The Council (NCOP) disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the</p>	<p>(i) A written notice of approval of the intervention was received from the Cabinet member responsible for local government on 30 May 2019;</p> <p>(ii) The department appeared before the Select Committee on Co-operative Governance and Traditional Affairs to brief the Committee on status of Interventions in terms of section 139 (1)(b) of the Constitution in the NW Local Municipalities</p> <p>(iii) The Select Committee conducted loco-inspection;</p> <p>(iv) The NCOP therefore concurred with the Provincial EXCO</p>

# ROCEDURAL MATTERS

- It should further be noted that a written notices were submitted to the five listed municipalities for the attention of Municipal Councils through Executive Mayors/Mayors. Engagements with Municipal Troikas and Senior Management of these municipalities were held to communicate the decision of the Provincial Executive and also engagement for the introduction of the Administrator and Terms of Reference were held despite challenges of resistance experienced.



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# SUMMARY OF ISSUES LEADING TO INVOCATION OF SECTION 139 OF THE CONSTITUTION

- **At Mahikeng LM**
- VBS investment matter was the major cause of political instability, as they allege that mayor influenced the investment process
- Negatively affects governance & oversight in Council, & attendant collapse of service delivery
- Violent service delivery protests become the norm
- Financial state of the municipality – loss of yellow and white fleet.



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# SUMMARY OF ISSUES LEADING TO INVOCATION OF SECTION 139 OF THE CONSTITUTION

- **At Naledi LM** - Exco & Council functional but there are political divisions, that affects effective functioning of Council
- Caucus Management Committee not intact, resulting in lack of oversight over administration
- Allegations are made that some Cllrs contract the services of thugs to settle political scores.
- Lack of capacity of some Cllrs who occupy senior positions in EXCO
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# SUMMARY OF ISSUES LEADING TO INVOCATION OF SECTION 139 OF THE CONSTITUTION

- At Madibeng LM - Municipality in state of paralysis, Council operating in factions
- Mayoral Committee total dysfunctional, fails to quorate
- Mayco divided into 2 groups,
- Caucus not held in last 2 months, Cllrs operate as individuals or groupings
- Afflicted by VBS scandal, which divided Caucus
- Divisions lead to community protests (mostly over water provision)



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# SUMMARY OF ISSUES LEADING TO INVOCATION OF SECTION 139 OF THE CONSTITUTION

- At Maquassi Hills LM - Instability in Council with infighting.
- Appointments of Sec 56 & 57 Managers recently concluded without following due processes
- Cllrs. defied the MEC when advised that Municipality is under Section 139 and cannot appoint Senior Managers without involving the Administrator– possible litigation s
- Divisions permeated into political life of members of the

## **SOME LESSONS LEARNT FROM PREVIOUS INTERVENTIONS**

- Silent resistance by both Municipal Councils and Administration which influence the necessary support the Intervention Team requires;
- Inadequate resourcing of the Intervention by the Provincial Government due to financial constraints;
- Poor Management of the authority between the Administrator, Council and Accounting Officers;
- Timing of the interventions impacted negatively on alignment of the municipal resources and the proposed intervention plans by the Intervention Team;
- Failure by municipalities to implement the recommendations presented through the Close-Out Reports;
- Reversing the progress made during interventions by rescinding some of the key decisions taken by the Administrator.

## **SOME LESSONS LEARNT FROM PREVIOUS INTERVENTIONS**

- Increase in challenging interventions in the courts of law by councils as they view that the process to intervene was not properly followed.
- Municipalities are opposed to interventions utilising the provisions of section 139 (1) (b) of the Constitution; debating that an administrator is required for 139 (1) (C) only.
- Municipal Councils views intervention as settling political scores rather than providing additional support; through section 139 of the constitution.
- Municipalities accuse the Provincial Department of not following proper processes before invoking sections 139 of the constitution;
- Section 139 of the Constitution Interventions are mostly unsuccessful because when implemented they don't enjoy support of councils; and improvement to systems are discarded immediately the Administrators leave.
- By the time intervention happens municipalities are already bankrupt, and in dysfunctional state, and there are no funds to sustain the turn around plan by the administrator, even at province budget is only provided for cost of employment for the administrator and team no capital budget etc. funded.

# STATUS OF INTERVENTIONS

NAME OF MUNICIPALITY	PERIOD OF INTERVENTION	STATE OF ADMINISTRATION/INTERVENTION
<b>FIRST GROUP OF MUNICIPALITIES THAT WERE PLACED UNDER ADMINISTRATION AS FROM THE 1 SEPTEMBER 2018.</b>		
1. Ditsobotla LM	1/09/2018-31/08/2019	Administration approved by EXCO ended 1 August 2019: Close-out Report was submitted to the Department.
2. Naledi LM	1/09/2018-31/08/2019	Administration Period was ended on 31 December 2019, the NCOP did not approve the intervention in Naledi LM. Close-out Report was submitted to the Department.
3. Maquassi hills LM	1/09/2018-31/08/2019	Administration period approved by EXCO ended on the 1 August 2019, A closeout Report was submitted to the Department.
4. Mahikeng LM	1/09/2018-30/06/2020	Administration started from 1 September 2018 being placed under 137 of the MFMA, on 5 December 2018 EXCO took a decision to escalate the intervention to Section 139 (1) (b) of the constitution. Intervention period ended on 30 <sup>th</sup> June 2020, currently compiling the Close-Out Report
5. Ramotshere Moiloa LM	1/09/2018-30/07/2019	Administration period approved by EXCO ended month early (30/07/2019), as per the progress report presented by the administrator, the situation had improved to the point that it was necessary to relocate the resource to where the need was, and in this case it was Naledi LM. A Close-Out Report was submitted to the Department.
6. Kgetleng Rivier LM	1/09/2018-31/08/2019	Administration approved by EXCO ended 1 August 2019: Close-out Report was submitted to the Department and presented to the Mayoral EXCO.
7. Kagisano Molopo LM	1/09/2018-31/08/2019	Council Resisted the Intervention, Court nullified the Intervention-Department is appealing the judgment.
8. NMM DM	1/09/2018-31/08/2019	Administration approved by EXCO ended 1 August 2019: Close-out Report was submitted to the Department

# STATUS OF INTERVENTIONS

NAME OF MUNICIPALITY	PERIOD OF INTERVENTION	STATE OF ADMINISTRATION/INTERVENTION
<b>SECOND GROUP OF MUNICIPALITIES THAT WERE PLACED UNDER ADMINISTRATION AS FROM THE 1July 2019</b>		
<b>9. Mamusa LM</b>	1/07/2019-31/01/2020	Administration was escalated to section 139 (1) (C) of the constitution, thus dissolving council.  New council elected in compliance with the Constitution. Intervention ended 31 January 2020 and a detailed report/Close-Out Report submitted by Administrator.
<b>10. Lekwa-Teemane LM</b>	1/07/2019-30/06/2020	Administration started from 1 July 2019 until 30 Jun 2020. Close-Out Report submitted to the department
<b>11. Tswaing LM</b>	1/07/2019-30/06/2020	Administration started from 1 July 2019 until 30 Jun 2020. Close-Out Report submitted to the department
<b>12. Madibeng LM</b>	1/07/2019-30/06/2020	Administration started from 1 July 2019 until 30 Jun 2020. Close-Out Report submitted to the department
<b>13. Ratlou LM</b>	1/07/2019-30/06/2020	Administration started from 1 July 2019 until 30 Jun 2020. Close-Out Report submitted to the department
<b>14. JB Marks LM</b>	1/07/2019-30/06/2020	The municipality rejected intervention by Province, thus affected the effective implementation of the Intervention.

# STATUS OF INTERVENTIONS (RECENT)

NAME OF A MUNICIPALITY	TYPE OF INTERVENTION	STATUS OF INTERVENTION	COMMENTS
<b>1. Madibeng Local Municipality</b>	Section 139 (1)(b) of the Constitution	Administrator assumed office – September 2020	Council receptive of Administrator- Administration Progressing Well.
<b>2. JB Marks Local Municipality</b>	Section 139 (1)(b) of the Constitution	Administrator appointed – September 2020	Council not receptive of Administrator- Administration Progressing
<b>3. Tswaing Local Municipality</b>	Section 139 (1)(b) of the Constitution	Administrator assumed office – September 2020	Council rejected the Administrator- Municipal Offices Closed, Interdicted Premier, MEC etc.
<b>4. Ramotshremoiloa Local Municipality</b>	Section 139 (1)(b) of the Constitution	Administrator assumed office – September 2020	Council receptive of Administrator – Administration NOT Progressing well Resistance experienced.

# **SECTION 139 (1)(B) INTERVENTIONS LITIGATIONS UPDATE ....01**

## **1. RAMOTSHERE LOCAL MUNICIPALITY**

They seek an interim order interdicting implementation of intervention pending the review of EXCO decision. Case struck-off the roll today 10 September 2020 by the Court

## **2. MADIBENG LOCAL MUNICIPALITY**

A few Councillors (Not Council) seek an Order setting aside EXCO decision. The records have been filed with the Registrar. They do not seek an order interdicting intervention pending review. In other words the Administrator can continue with his work.

## **3. KAGISANO MOLOPO LOCAL MUNICIPALITY**

The High Court did set aside EXCO's decision to intervene. The decision was appealed and we await the Court date to hear the appeal. The appeal is in Court on the 13 November 2020.



# **SECTION 139 (1)(B) INTERVENTIONS LITIGATION UPDATE ....02**

## **4. TSWAING LOCAL MUNICIPALITY**

The Court ordered that the intervention should not be implemented pending the review of the EXCO resolution. The normal review process will proceed.

## **5. JB MARKS LOCAL MUNICIPALITY**

In the first intervention, the Court dismissed the application on the grounds that the matter was not urgent. They removed the review application on merits from the roll. On the current intervention, we have not received any Court papers and it can therefore be inferred that they do not challenge it.

## **6. MAMUSA LOCAL MUNICIPALITY**

The then Section 139 (1)(b) intervention was challenged but the Court dismissed their application for lack of urgency. The matter was not pursued further until Section 139(1)(c) was invoked.

It should be noted that in all the above cases, the State Attorney is acting on behalf of EXCO and Instructed by the Office of the Premier.

# Way forward

- Section 139 of the Constitution to be used as a last resort to intervene in municipalities.
- The province to fully implement District Development Model as a method to provide support and to attend to IGR matters at municipal level



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## **DDM PROGRESS TO DATE (1)**

### **DDM Approach has been used to support the Mamusa reelection of councilors after the invocation of section 139 (1) (c) of the constitution:**

1. Profiles per district have been compiled;
2. The corona command councils will now be structured to foresee the implementation of the DDM,
3. To strengthen (Sect. 154 of the constitution Support) and the Governance Structures: Ministers and Deputy Ministers have been assigned to the four districts.
4. Technical teams that will support Ministerial engagements have been established for the four districts.
5. First political engagement was held led by the Premier and all Senior Managers of the Provincial Government, stakeholders and the Political deployees to the Districts to oversee the implementation of the DDM via a virtual meeting.

## **“DDM” THE LG THURSDAY (2)**

- 5. Under the stewardship of the Premier, every Thursday of the Week one identified municipality is engaged one on one with councilors, Community structures and organized labour unions to forge a common understanding of the challenges, and utilizing the DDM approach to develop a support plan and the implementation thereof.**
6. All the political deployees have touched base in all the four districts to foster support, and provide leadership on how the process to expedite the implementation of the DDM.
7. DDM has been Launched in the District of Dr. Ruth Segomotsi Mompati DM by Deputy ministers Soty and Nzuzi in the District.

# CONCLUSION

- There must be national regulations to support invocation of Section 139(1)(b);
- Other intervention instruments may need to be considered as opposed to Section 139(1)(b);
- Improvements made during interventions should be maintained;
- Close-out reports should be implemented without fail;
- Intervention teams should be government employees or individuals with impeccable credentials;
- The interventions in municipality should be timely;
- Develop Post-Intervention Plans for Municipalities

## **5. RECOMMENDATION**

**The report is submitted for noting by members of NATIONAL COUNCIL OF PROVINCES.**

**THANK YOU** Siyabonga  
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