MEMORANDUM

TO: CHAIRPERSON OF SELECT COMMITTEE ON CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

FROM: N A MASONDO, MP
CHAIRPERSON: NATIONAL COUNCIL OF PROVINCES

DATE: 29 MAY 2019

RE: NOTICE OF INTERVENTIONS ISSUED IN TERMS OF SECTION 139(1)(a) OF THE CONSTITUTION, 1996 TO DR RUTH SEGOMOTSI MOMPATI DISTRICT MUNICIPALITY AND SECTION 139(1)(b) TO JB MARKS, TSWAING, LEKWA-TEEMANE, RATLOU, MADIBENG AND MAMUSA LOCAL MUNICIPALITIES, NORTH WEST

The Office of the Chairperson has received correspondence from the former MEC for Local Government and Human Settlements in North West in terms of section 139(2)(a)(ii) of the Constitution, 1996. A copy is therefore attached.

Pursuant to Rule 101 the correspondence is accordingly referred to the Select Committee on Co-operative Governance and Traditional Affairs for consideration and report.

Yours sincerely,

N A MASONDO, MP
CHAIRPERSON: NATIONAL COUNCIL OF PROVINCES
THE CHAIRPERSON
NATIONAL COUNCIL OF PROVINCES (NCOP)
P.O. BOX 15
CAPE TOWN
8000

06 May 2019

Hon. T. Modise

NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 1 (a) AND (b) OF THE CONSTITUTION OF RSA IN 7 IDENTIFIED MUNICIPALITIES IN THE NORTH WEST PROVINCE

This notice serves to communicate to the Honourable Minister, that the North West Provincial Executive Council has resolved to invoke Provincial intervention in seven (7) identified municipalities in the Province.

The North West Provincial Executive Council during its special sitting of the 2nd May 2019 has resolved to invoke section 139 (1a) and (1b) of the constitution of South Africa with immediate effect, for a minimum period of six (6) months and a maximum of twelve (12) months.

EXCO has identified 7 municipalities that require intervention in terms of the constitution the challenges relate to:

- Governance issues;
- Service Delivery issues;
- Administrative issues and;
- Financial issues

The following table presents the seven municipalities identified and the type of intervention as resolved:

"Moving Bokone Bophirima Forward - A re yeng Bokone Bophirima"
NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 (1)(a) AND (1)(b) OF THE CONSTITUTION IN 7 IDENTIFIED MUNICIPALITIES.

<table>
<thead>
<tr>
<th>NAME OF MUNICIPALITY</th>
<th>TYPE OF INTERVENTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. JB Marks Local Municipality</td>
<td>Section 139 (1) (b) of the Constitution</td>
</tr>
<tr>
<td>2. Tswaing Local Municipality</td>
<td>Section 139 (1) (b) of the Constitution</td>
</tr>
<tr>
<td>3. Lekwa-Teemane Local Municipality</td>
<td>Section 139 (1) (b) of the Constitution</td>
</tr>
<tr>
<td>4. Ratlou Local Municipality</td>
<td>Section 139 (1) (b) of the Constitution</td>
</tr>
<tr>
<td>5. Madibeng Local Municipality</td>
<td>Section 139 (1) (b) of the Constitution</td>
</tr>
<tr>
<td>6. Mamusa Local Municipality</td>
<td>Section 139 (1) (b) of the Constitution</td>
</tr>
<tr>
<td>7. Dr. Ruth Segomotsi Mompati District Municipality</td>
<td>Section 139 (1) (a) of the Constitution</td>
</tr>
</tbody>
</table>

The Basis/Reasons of the Provincial Executive Council to invoke section 139 (1) (a) and (b) of the constitution include among others, but not limited to, the following:

**1. JB MARKS LOCAL MUNICIPALITY – SECTION 139 (1) (B) INTERVENTION:**

**1.1. State of Governance and Administration:**

- Instability in Council weakens oversight, as council is not sitting regularly as scheduled;
- Although the municipality has improved audit opinion for 2017/18 financial year from disclaimer to Qualified audit opinion it still need to rectify the ever increasing Unauthorized, Irregular, Fruitless and Wasteful expenditure. UIF&W expenditure increased from R791 million in 2016/17 financial year to R2 billion during the 2017/18 financial year. Section 32 of the MFMA processes to rectify such are not implemented.
- MPAC is not functional because of non-attendance of members to the meetings (struggle to form a quorum).
- Position for Director Infrastructure vacant for over a period of 6 months.

**1.2. State of Service Delivery**

- Value for money on recreation facilities constructed and accounted expenditure on internal roads reportedly constructed;
NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 (1)(a) AND (1)(b) OF THE CONSTITUTION IN 7 IDENTIFIED MUNICIPALITIES.

- Community Unrests in Venterdorp Town resulting in the N14 being closed;

- Refuse removal and cleaning town and townships not done, especially in Ventersdorp Town.

- No sufficient bulk water in the municipality currently.

- Poor maintenance of internal roads, services on roads and storm water drainage, management of cemeteries and allocation of stands for residential use.

- The municipality is unable to spend its MIG allocation, currently the MIG allocation stands at 39% as at the end of March 2019, Expenditure is expected to be at least above 60% ;

- Contamination of streams and water courses, there is generally poor maintenance and operations of infrastructure.

1.3. State of Financial Management

- The municipality is currently implementing a budget which is not funded due to overstatement of non-current receivable which inflates cash flow, increasing shortfall on the statement of financial performance (A4), cash flow statement (A7) and accumulated surplus reconciliation (A8).

- Total outstanding Debtors as at February 2019 amounted to R 461 million, of which R286 million is owed for over a year. Collection of some of these outstanding debtors is of a concern especially households debt. Households constitutes most of the outstanding debt at R362 million, followed by debt owed by businesses/commercial and Government at R58 million and R39 million respectively.

- Total outstanding creditors as at end of February 2019 amounted to R66 million. Most of the debt is on current i.e. Eskom account at R36 million is on
current. Bulk water account of R10.7 million is owed for over 90 days which is the only worrying factor.

2. TSWAING LOCAL MUNICIPALITY – SECTION 139 (1) (B) INTERVENTION

2.1. State of Governance and Administration

- Poor Oversight on Administration due to Council being Divided in decision making;
- Closing of the Municipal Offices by members of the Unions; because of accusations of improper appointments in the BTO being done and municipality owing pension funds, medical aid and funeral plans of their 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 three years. There is a potential to can improve the situation only if full concentration can be applied on improving the internal control environment and fully implementing the post audit action plan.
- 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 (Dec 2018).
- The municipality has a backlog of over 09 financial years of Oversight reports, the council of a municipality failed to comply with section 129 of the MFMA to consider the Annual Reports and adopt oversight reports.

2.2. State of Service Delivery

- Refuse removal and cleaning town and townships not done, no dedicated schedule
- Interrupted supply of water due to lack of maintenance and none-payment of water services
- Municipality is unable to maintain its Service Delivery Fleet
- There is generally poor maintenance and operations of infrastructure
2.3. **State of Financial Management**

- The municipality is technically insolvent and unable to meet its short term obligations if they fall due;

- The municipality is currently implementing a budget which is not funded, there is insufficient cash to cover municipal operations;

- Total outstanding debtors amount to R184 million of which R127 million or 69% of the debt is outstanding for over 90 days period. Credit control and debt collection is not implemented especially on the households debtors as they owe a huge amount of R167 million of the total debt;

- The total outstanding creditors amount to R106 million. Tswaing LM owes Eskom the total amount of R66 million of which R52 million is owed for more than 90 days. This is a clear indication that creditors are not paid within the legislative required period of 30 days;

- This is the municipality that is also unable 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) amount to R15 million. R11 million is outstanding for over 90 days period (Current account is R1.4 million).

3. **LEKWA-TEEMANE LOCAL MUNICIPALITY – SECTION 139 (1) (B) INTERVENTION**

3.1. **State of Governance and Administration**

- Public participation processes has collapsed, this has led to communities not having confidence to its elected councilors;

- Poor Audit Outcomes with recurrent disclaimer audit findings for the past five years: 2012/13; 2013/14; 2015/16; 2016/17 and 2017/18 financial years;
NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 (1)(a) AND (1)(b) OF THE CONSTITUTION IN 7 IDENTIFIED MUNICIPALITIES.

- Municipal Public Accounts Committee is not functional, there is no commitment amongst MPAC members, and meetings are not taking place. Backlogs of oversight reports for more than 5 years;

3.2. State of Service Delivery
- Community Unrests, Memorandums send to the Offices of LG and the Premier regarding the municipality not providing services to communities;

- Refuse removal and cleaning town and townships not done, no dedicated schedule;

- Interrupted supply of water due to lack of maintenance and non-payment water services;

- Municipality is unable to maintain its Service Delivery Fleet;

- There is generally poor maintenance and operations of infrastructure Poor expenditure of MIG which affect infrastructure development

3.3. State of Financial Management
- The municipality is technically insolvent and unable to meet its short term obligations if they fall due; it owes pension funds of members;

- The municipality is currently implementing a budget which is not funded due insufficient cash to cover municipal operations, creditors exceeds available cash and investments.

- Total outstanding Debtors as at February 2019 amounted to R 657 million, of which R493 million is owed for over 91 days. Collection of some of these outstanding debtors is of a concern especially households debt. Households
constitutes most of the outstanding debt at 589 million, followed by debt owed by businesses/commercial and Government at R29 million and R23 million respectively.

- Total outstanding creditors as at end of February 2019 amounted to R240 millions of which R220 million is recorded for other creditors which is concerning. In terms of Eskom debt management, the municipality is on current account.

4. RATLOU LOCAL MUNICIPALITY – SECTION 139 (1) (B) INTERVENTION

4.1. **State of Governance and Administration**

- Suspension of the current Municipal Manager by council, and appointed and extended the period of acting of a 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.

- Municipality owes Pension funds, Medical Aids 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. There is a potential to can improve the situation only if full concentration can be applied on improving the internal control environment and fully implementing the post audit action plan.

- 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.
4.2. **State of Service delivery**

- The municipality is unable to spend its MIG allocation, currently Expenditure on the MIG allocation stands at 52% as at the end of March 2019, Expenditure is expected to be at least above 60% ;

- Labour Protests instigated by labour unions over appointments issues;

- No plant and machinery for service delivery.

- Interrupted supply of water due to lack of maintenance and none-payment water services

- There is generally poor maintenance and operations of infrastructure.

4.3. **State of Financial Management**

- The municipality is technically insolvent and unable to meet its short term obligations if they fall due;

- The municipality is currently implementing a budget which is not funded, cash flow projections have been overstated.

- Total outstanding debtors amount to R29 millions 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 Organs of state at R8m.
NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 (1)(a) AND (1)(b) OF THE CONSTITUTION IN 7 IDENTIFIED MUNICIPALITIES.

5. MADIBENG LOCAL MUNICIPALITY – SECTION 139 (1) (B) INTERVENTION

5.1. State of Governance and Administration

- Poor Oversight by Council

- Vacancies on Key Senior Management Positions due to resignations of the Municipal Manager, the Chief Financial Officer and the Technical Director;

- There is no administrative capacity characterised by low staff morale.

- Poor Audit Outcomes with recurrent disclaimer audit findings for the past three consecutive years: 2015/16; 2016/17 and 2017/18 financial years;

- Irregular expenditure increased from R1.32 billion in 2016/17 financial year to R1.38 billion during the 2017/18 financial year. Section 32 of the MFMA processes to rectify such are not implemented.

5.2. State of Service Delivery

- No sufficient bulk water in the municipality currently;

- Interrupted supply of water due to lack of maintenance and none-payment water services;

- There is generally poor maintenance and operations of infrastructure;

- Poor Management of conditional grants in particular Municipal Infrastructure Grant (59% expenditure and R60 million adjusted).
5.3. **State of Financial Management**

- The municipality is currently implementing a budget which is not funded due unrealistic budget assumptions on property rates and service charges due to inflated collection rate. Insufficient cash to cover its operations.

- Total outstanding Debtors as at February 2019 amounted to R 1.8 billion, of which R1.6 billion is owed for over 91 days. Collection of some of these outstanding debtors is of concern especially households debt. Households constitutes most of the outstanding debt at R1.4 billion, followed by debt owed by businesses/commercial and Government at R333 million and R75 million respectively.

- Total outstanding creditors as at end of February 2019 amounted to R222 million. For Bulk purchases, the municipality owes R121 million for bulk water, 42% is owed for over 181 days which shows that payment agreement with the sector is not honoured. In terms of Eskom debt management, the municipality in on current account which is an improvement.

6. **MAMUSA LOCAL MUNICIPALITY – SECTION 139 (1) (B) INTERVENTION**

6.1. **State of Governance and Administration**

- Instability in Council depicted by the way the removal of the former Mayor was done; and Suspension of the current Municipal Manager by council;

- Municipality owes Pension funds, Medical Aid and Funeral Policies of members due to cash flow challenges;

- Poor Audit Outcomes with recurrent disclaimer audit findings for Seven (7) consecutive years: 2012/13; 2013/14; 2014/15; 2015/16; 2016/17 and 2017/18;
NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 (1)(a) AND (1)(b) OF THE CONSTITUTION IN 7 IDENTIFIED MUNICIPALITIES.

- The municipality has a backlog of over 09 financial years of Oversight reports, the council of a municipality failed to comply with section 129 of the MFMA to consider the Annual Reports and adopt oversight reports.

6.2. **State of Service delivery**

- Refuse removal and cleaning town and townships not done, no dedicated schedule;

- The municipality is unable to spend its MIG allocation, currently the MIG allocation stands at 32% as at the end of March 2019, Expenditure is expected to be at least above 60% ;

- Interrupted supply of water due to lack of maintenance and none-payment of water services;

- Municipality is unable to maintain its Service Delivery Fleet and there is generally poor maintenance and operations of infrastructure.

6.3. **State of Financial Management**

- Draft Budget/IDP for 2019/20 was not tabled at council, this could lead to automatically dissolvent of council as legislation dictates;

- Budget adopted for 2018/19 is structurally imbalanced and not aligned to the IDP;

- Total outstanding debtors amounts to R230m as at February 2019 of which R210m is outstanding for over 181 days;

- The municipality is unable to serve the debt owed to creditors especially Eskom account. The total debt owed to Eskom amount to R57m as at the end
of February 2019. This is an indication that creditors are not paid within the legislatively required period of 30 days;

- The municipality is failing to appoint a service provider for compilation of the new General Valuation roll which must be implemented on the 1st July 2020 and this can pose as a threat for the loss of revenue on property rates. In order for the municipality to implement a credible valuation roll they need 18 months period to compile the roll, to date the process has not yet unfolded.

7. DR. RUTH SEGOMOTSI MOMPATI DISTRICT MUNICIPALITY – SECTION 139 (1) (A) INTERVENTION

7.1. **State of Governance and administration**

- The DR. Ruth S. Mompati District Municipality has been experiencing governance and Administrative challenges since the August 2016 Local Government Elections which have affected the Delivery of Services through its Constituent Local Municipalities.

- The municipality have been non-responsive to the provision of Section 152 (1) (b) of the Constitution which states that:
  
  - A municipality to Ensure the Provision of Services to Communities in a Sustainable Manner;

7.2. **State of Service Delivery**

- Poor Water and Sanitation Services Provision which often Results in Water Supply Disruptions;

- Poor Project Planning and Registration with Cogta;

- Poor Water Quality (Blue and Green Drop Status);
NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 (1)(a) AND (1)(b) OF THE CONSTITUTION IN 7 IDENTIFIED MUNICIPALITIES.

- Poor Maintenance and Operations of Water and Sanitation Infrastructure;
- Uneven Provision of Services to Communities;
- Project delays due to Prolonged Procurement Processes and Possible Fraud and Corruption;

7.3. State of Financial Management

- The District municipality has over committed itself by investing R150m of conditional grants and own capital projects budget with the VBS Mutual Bank;
- The District restructured its budget pushing some of its planned projects to the outer years,
- The Investment with the Mutual Bank is in Contradiction with the MFMA and the Municipal Investment Regulations.
- The Cash Management and Investment Policy of the municipality is also not consistent with the MFMA and Municipal Investment Regulations.
- Council took a resolution to adjust MIG funded projects downwards as follows:
  
  > Rural Sanitation budget for Greater Taung LM and Kagisano Molopo LM areas for R10 million each from the initial budget of R15 million and R14 million respectively.
  
  > New WWTW in Naledi LM (Naledi LM ) adjusted to R4 million
  
  > The Oxidation Ponds in Stella with R5 million.
NOTICE OF THE PROVINCIAL INTERVENTION IN TERMS OF SECTION 139 (1)(a) AND (1)(b) OF THE CONSTITUTION IN 7 IDENTIFIED MUNICIPALITIES.

Were currently finalizing the appointments of administrators in consultation with the Premier, who will implement the interventions on behalf of the Provincial Executive Council.

Kind Regards,

Ms. M. Rosho
MEC for Local Government & Human Settlements

Date: 06 | 05 | 2019

CC: North West Premier: Prof. Job Mokgoro