

## **CHAPTER 1**

### **INTRODUCTION: PROBLEM STATEMENT AND METHODOLOGY**

#### **Key Words**

Developmental local government, environmental rights, integrated development plan

#### **1.1 INTRODUCTION**

This chapter gives an exposition of the developmental local government in promoting environmental rights. The problems relating to the promotion of environmental rights in the local sphere of government are highlighted. The hypothesis for research is stated, so are the research questions and objectives of the study. Methods for research are explained to involve literature review and empirical study, and the outline of chapters ends the discussion.

#### **1.2 ORIENTATION**

Environmental issues are a function of Developmental Economics. The theory of it involves as envisaged in the Brundtland Report, among others, population growth and development, food security, species and ecosystems, energy consumption and energy sources, industrialisation, urbanisation and migration (Van Wyk 2004: 26). Article 25(1) of the Universal Declaration of Human Rights (1948) provides that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services.

Four district municipalities of the Free State Province will be evaluated. *Free State Provincial Growth and Developmental Strategy (2007:10)* succinctly describe them as follows:

The Xhariep District is located in the south-west of the Province and is a semi-arid area with extensive farming, mainly sheep. The district comprises open grasslands with small wide dispersed towns. The Motheo District in the centre is the largest populated and comprises mainly of open grassland, with mountains in the most eastern region. The main urban centre is Bloemfontein. The Thabo Mofutsanyana District borders Lesotho to the east and has beautiful hills and fruit farms. The Fezile Dabi District in the north is an important agricultural production area, particularly for maize. The Vaal Dam is the main source of water and offers a wide variety of sports and leisure facilities along the Vaal River. The Lejweleputswa District boasts goldfields and it is a major agricultural area.

The government has in the past adopted economic strategies not complementing the struggle for environmental justice. Bond (2002: 44) correctly asserts that post-1994 macroeconomic policy, as spelt out in the *Growth, Employment and Redistribution* (GEAR) strategy, contains just one token mention of 'environmental responsibility' in the attraction of new foreign investments, but no provisions to reverse any of the structural economic features associated with the legacy spelled out above. On the contrary, the emerging export strategy is based on expansion by minerals- and base metal firms, partly thanks to massive state subsidies and consumer cross-subsidies.

It is abundantly clear that environmental issues are not just one of the tasks facing the municipality. Rather, they are fundamental rights entrenched in the constitution. Promotion of environmental rights is not separate from the overarching objectives of poverty alleviation and better life for all. In fact, local government has no options but to promote environmental rights in all its developmental objectives and activities. Social development and local economic development are inextricably linked to environmental justice. The concept of environmental right represents a revolutionary epoch that seeks to undo the wrongs and ills of apartheid colonialism and all its vestiges. The government has developed a set of legislation and policies to give effect to this universally recognised right to the environment. The issue remains whether or not it is practical to put these in place from a local government perspective.

### 1.2.1 Problem Statement

Section 24 of the *Constitution of the Republic of South Africa* (Act 108 of 1996), hereinafter referred to as the Constitution, provides that everyone has a right to an environment that is not harmful to their health or well-being. The *National Environmental Management Act* 107 of 1998 (NEMA) creates a fundamental legal framework that ensures the concretisation of the environmental rights guaranteed in section 24 of the Constitution.

In terms of the *White Paper on Environmental Management Policy for South Africa* (1998:50), the role of provincial and local governments is to cooperate within the national framework of sustainable development and integrated environmental management. The provincial and local governments will, where appropriate, develop their own legislation and implementation strategies to address their specific needs and conditions within its framework.

*The Local Government: Municipal Systems Act No 32 of 2000*, hereinafter referred to as the Systems Act, provides for, inter alia, the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities and ensure universal access to essential services that are affordable to all. Section 4 (2)(j) of the Act provides that the council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to contribute, together with other organisations of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the 1996 Constitution. These rights are: environment, property, housing, health care, food, water and social security and education, respectively.

The *National Health Act* (No 61 of 2003) defines Municipal Health Services as including a list of selected environmental health services activities and aspects, namely, water quality management, food control, waste management, health surveillance of premises,

surveillance and prevention of communicable diseases (excluding immunisations), vector control, environmental pollution control, disposal of the dead and chemical safety. Schedule 4 Part B of the Constitution lists, *inter alia*, air pollution and municipal health services as local government matters. In terms of section 84(1)(i) of the *Local Government: Municipal Structures Act* (No 117 of 1998) a district municipality has municipal health services as one of its powers and functions.

In terms of section 152 (1)(c) of the Constitution, the objectives of local government are to promote social and economic development, while section 152 (1)(b) instructs local government to ensure the provision of services to communities in a sustainable manner. A continued, sustainable and improving delivery of services such as water, sanitation, electricity, refuse removal and municipal health are inextricably linked to standard of living. With regard to the promotion of social and economic development, subsection 152 (1)(c) of the Constitution recognises that the improvement of an adequate standard of living through the delivery of government services and through self-empowerment (employment, social upliftment) is dependent upon a productive local economy and improved social conditions (De Visser 2005:71). However this must be in close collaboration and co-operation with other spheres of government. National and provincial departments responsible for water, health, environment and indeed finance are central in complementing this developmental role of local government.

Section 35(1) of the *Intergovernmental Relations Framework Act, 2005* (Act No.13 of 2005) provides that where the implementation of a policy, the exercise of a statutory power, the performance of a statutory function or the provision of a service depends on the participation of organs of state in different governments, those organs of state must co-ordinate their actions in such a manner as may be appropriate or required in the circumstances, and may do so by entering into an implementation protocol.

National Health Act enjoins all district municipalities in the Free State ensure, *inter alia*; water quality monitoring, food control, waste management, health surveillance of premises, surveillance and prevention of communicable diseases, vector control,

environmental pollution control, disposal of the dead and chemical safety. To achieve these objectives district municipalities are also expected to pass by-laws and ensure that there is compliance.

Section 25(1)(a) of the Systems Act provides that each municipal council must adopt a single, inclusive and strategic plan for the development of the municipality which links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality. Section 53(1)(c) of the MFMA provides that the mayor must take all reasonable steps to ensure, *inter alia*, that the annual performance agreements for the municipal managers and all senior managers are linked to the measurable performance objectives approved with the budget and to the service delivery and implementation plan (SDBIP). In terms of the *Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Manager* (2006) key performance areas for the municipal managers are basic service delivery, municipal institutional development and management, local economic development (LED), municipal financial viability and management, and good governance and public participation. These key performance areas will determine whether or not district municipalities in the Free State Province are performing with regard to the environmental issues.

Sowman and Brown (2006:707) rightly observed that in the larger municipalities, the organisation is structured along sectoral lines. Environmental issues, mainly relevant to the 'green' environmental agenda, are the responsibility of the environmental department or division. Although some of the metropolitan councils have developed environmental management policies and strategy for the city the integration of these principles and ideas into the IDP has been limited, suggesting that in practice the activities of the environmental departments and those concerned with development planning are operating separately. In the smaller local municipalities, the lack of mainstreaming of environmental sustainability issues is largely due to the lack of capacity in terms of human resources, technical expertise and financial resources.

A study conducted by the Development Bank of Southern Africa (DBSA 2007:10) summarises the problem of concurrency and devolution of function to the district municipalities as follows: Capacity limitations in terms of human and financial resources are among the main challenges facing municipalities. Although funds are available, these reside with provincial health departments and local municipalities, with little evidence that such funds will be directed towards district municipalities. Although Treasury has provided funds for rendering municipal health services, these funds are inadequate, especially for the setting up of new services. Ironically, although funds are available, these reside with provincial departments and local municipalities.

There are challenges in fulfilling developmental mandate of promoting environmental rights by district municipalities in the Free State Province. Municipalities depend largely on the provincial and national departments for funding. Concurrency of jurisdiction between the district municipalities and provincial and national spheres of government are not properly managed. These funds have since been proven to be inadequate to enable the district municipalities in the Free State Province to discharge their responsibilities of promoting environmental rights. District municipalities in the Free State Province do not have adequate human resource capacity to render municipal health services. It is important to note that there are various national departments tasked with the responsibilities of promoting environmental rights. Some of these departments are: Department of Water and Forestry (DWAF), Department of Health (DoH), Department of Environmental and Tourism (DEAT), Department of Agriculture (DOA), Department of Land Affairs (DLA). DEAT is a government's lead department for environmental management. The issue is whether these departments are complementing the district municipalities in discharging their responsibilities on environmental issues within the context of intergovernmental relations. Relevant policies and municipal by-laws giving effects to the Constitutional Right to Environment must be in place in the district municipalities in the Free State Province to fulfil its constitutionally entrenched developmental mandate.

Therefore a problem statement can be summarised as follows: the district municipalities

in the Free State Province are tasked with the responsibilities of promoting environmental health but the challenge is that they seem not to have adequate human and financial resources. It is also apparent that all spheres of government are enjoined to work together in addressing the environmental health challenges and that district municipalities in the Free State Province are mostly depending on other spheres of government to discharge its responsibilities. It remains to be seen whether or not other spheres of government are assisting the district municipalities in meeting the environmental challenges.

### **1.2.2 Rationale**

This study seeks to evaluate the challenges facing District Municipalities in the Free State Province in collaboration with other spheres of government in discharging this mandate and to advise on how the district municipalities can improve their service delivery on environmental issues.

### **1.3 RESEARCH QUESTIONS**

Based on the above problem statement, the following research questions arise:

- What is meant by developmental mandate of local government in dealing with Development Economics and Sustainable Development?
- What is meant by the concept “environment” in relation to sustainable development?
- What is the role of local government in promoting environmental rights?
- What challenges exist in inter-governmental co-operation on environmental issues in South Africa?
- Do the District Municipalities in the Free State Province have environmental issues as part of their priorities in the IDPs?
- What financial and human resource capacity do District Municipalities in the Free State Province possess to promote environmental rights?

- What is the role of other spheres of government in promoting environmental challenges?

#### **1.4 RESEARCH OBJECTIVES**

The following objectives are being pursued in this study:

- To give a theoretical exposition of Developmental Economics and environment.
- To discuss the relationship between “environment” and sustainable development.
- To discuss the concept of sustainable development and its relevance to local government.
- To evaluate the preparedness of the District Municipalities in the Free State Province in promoting environmental rights as enshrined in the Constitution.
- To discuss the role of co-operative government in promoting environmental rights.
- To evaluate programmes of the District Municipalities on environmental issues.
- To offer recommendations on how best the local government can fulfil its mandate on environmental rights.

#### **1.5 HYPOTHESIS**

The following hypothesis has been formulated to operationalise the study:

The concurrency of jurisdiction and devolution between local government and other spheres of government on environmental issues is not properly managed and resourced to enable district municipalities in the Free State Province to discharge its developmental mandate in an effective, efficient and economical manner.

## **1.6 RESEARCH METHODS**

A wide variety of sources has been used to obtain a broader theoretical and factual basis of the study. These sources include literature study and empirical study.

### **1.6.1 Literature Study**

The study analysed books, journals and electronic sources on environmental issues, sustainable development and on Development Economics. Further analyses were made on the Constitution, legislations, regulations, white papers, international instruments and case law on environmental rights, with special focus on the following documents:

- The Constitution of the Republic of South Africa (1996), Act 108 of 1996.
- National Environmental Management Act (1998), Act 107 of 1998.
- Local Government: Municipal Systems Act (2000), Act 32 of 2000.
- White Paper on Local Government (1998).
- White Paper on Environmental Management in South Africa (1998).
- Local Government: Municipal Finance Management Act (2003), Act 56 of 2003.
- United Nations Conference on Environment and Development (2002)
- Free State Provincial Growth and Development Strategy (2007)
- White Paper on Integrated Pollution and Waste Management for South Africa, (1997)
- National Health Act (2003), Act 61 of 2003.
- National Water Act (1998), Act 36 of 1998.

### **1.6.2 Empirical Study**

Data was collected by means of questionnaires, personal observations and structured interviews. The historical methods of research like collection of research reports, dissertations, theses, and textbooks were also resorted to. Survey questions and

interviews were done with the relevant Directors or Managers of the environmental health in the municipalities and provincial departments of health and environment. The interviews were also conducted with the Environmental Health Officers to account on their experience with councillors and officials in both Local and District Municipalities on environmental issues.

The researcher conducted interviews in District Municipalities in the Free State Province, namely; Fezile Dabi, Lejweleputswa, Motheo, and Thabo Mofutsanyana. Officials from the Department of Environment and Water Affairs gave an account of their co-operation with the municipalities on environmental issues. Managers from district municipalities outside the Free State Province were also interviewed. For purpose of the comparative study, Chris Hani District Municipality in the Eastern Cape Province and Sedibeng District Municipality in Gauteng Province were chosen. They were chosen because of their ground-breaking development on the issues of environment.

## **1.7 ETHICS**

Data collection procedures need to be organized both to maximize the quality of data, and to deal with the related issues of access and ethics. Since researchers cannot demand access to people, situations or data for research purposes, assistance and permission are involved. These are necessarily linked to ethical issues (Punch 2000:59). According to Denscombe (1998:104), the questionnaire needs to adopt an ethical stance, in which recognition is given to the respondents' right to have the information they supply treated according to strict professional standards. Apart from legal requirements associated with data protection when personal information is stored on computer, there is some moral obligation on the researcher to protect the interests of those who supply information and give them sufficient information about the nature of the research so that they can make an informed judgment about whether they wish to cooperate with the research. These ethical requirements were complied with.

## **1.8 PARTICIPANT OBSERVATION**

Qualitative researchers use techniques such as participant observations in which they become actual participants in the groups or organizations being studied (Fink 2005:139). According to Collis and Hussey (2003:171), participant observation is a method of collecting data where the researcher is fully involved with the participants and in the phenomena being researched. The aim is to provide the means of obtaining a detailed understanding of values, motives and practices of those being observed.

According to Welman and Kruger (2002:184), participant observation does not observe the experiences of individuals involved as detached outsiders, but experience them firsthand as insiders. The participant observer thus becomes a member of the inner circle of the group or event that is being studied.

The researcher has extensive knowledge and experience in local government. He was the municipal manager of Metsimaholo Local Municipality from 2001 to 2007 and he is currently employed as the Director of Community, Health and Environmental Services at Fezile Dabi District Municipality. He has also served in the Department of Environment and Tourism (DEAT) Steering Committee tasked to review IDP Environmental toolkit for the Free State Province. In addition to this he has written widely on local government issues. These first hand involvements provided rich experience that facilitated data collection and the study in general.

## **1.9 CHAPTER OUTLINE**

Chapter 1 Introduction: Problem Statement and Methodology

Chapter 2 Theoretical exposition of Development Economics and Environment

Chapter 3 Theoretical exposition of concepts of Environment in relation to Sustainable Development

Chapter 4 Co-operative governance and Intergovernmental Relations in promoting Environmental Rights

Chapter 5 The role of Local Government in promoting Environmental Rights

Chapter 6 Evaluation of the capacity of District Municipalities in the Free State Province on environmental issues: Empirical Findings.

Chapter 7 Summary, Findings and Recommendations

The next chapter provides conceptual framework on the study.