

# **Sustaining Section 139(1) interventions in local government: The case of selected municipalities in North West Province**

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Thesis accepted for the degree *Doctor of Philosophy in  
Governance and Political Transformation* at the North-West  
University

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Graduation: June 2022

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## **PREFACE AND DECLARATION**

I, Mokotedi Samuel Bole (Student number 12412589), hereby declared that the thesis entitled: **Sustaining Section 139(1) interventions in local government: The case of selected municipalities in North West Province** submitted in fulfilment of the requirements for the degree, Doctor of Philosophy in Governance and Political Transformation at the North-West University, remains my own work and has never been submitted by me to any other university. I also declare that, as far as possible, all the sources used have been acknowledged by means of complete referencing according to the standard of the faculty at the North-West University.

I understand that the copies of the thesis submitted for examination will remain the property of North-West University

Signed ..... on this day ..... of December 2021

## ACKNOWLEDGEMENTS

*'It always seems impossible until it is done.'*—Nelson Mandela, 10 February 2001”

With a deep sense of humility, I am grateful to acknowledge the following individuals for their respective contributions in making it possible for me to traverse this academic trajectory:

Professor André Duvenhage for his unwavering supervision, patience, support and academic mentorship;

To my late parents Mpolokeng Bole and Josephine Bole for the foundation of humility they instilled in me.

My wife, Charlotte Bole, and our three children, Karabo, Mpolokeng and Ben Jnr, for their continued prayer, love and support during the difficult times of this journey.

Mr Itumeleng Legoete for his skilled legal advice.

In particular, my colleagues in the Department of Cooperative Governance and Traditional Affairs in the North West Province and the North-West University who made it possible for me to complete this research.

Ms Diana Coetzee for her due diligence in copy-editing.

Ms Simone Roos for her commitment and due diligence in dealing with technical aspects.

My friends for their input, support, interest and encouragement which assisted me in completing this study, in particular Dr Wandile Tsabedze.

## **ABSTRACT**

Section 139 of the Constitution of the Republic of South Africa, 1996 (the Constitution) allows provincial government intervention when municipalities fail to implement their executive obligations. This Section of the Constitution has become more popular in the local government environment in recent years. Its invocation and implementation are not initiated without controversy and suspicion on the part of provincial government led by the ruling political party, the African National Congress (ANC). Provincial governments have been perceived as endeavouring to usurp power from municipalities through the implementation of Section 139. In addition, factionalism within the ruling party is also viewed as a contributory factor to the invocation of Section 139 interventions.

It is against this backdrop that the implementation of the above causes tension between different role players, particularly provincial government and the affected municipalities. This became evident in the present study through the litigation between provincial governments and the specific municipalities. In the main, the affected municipalities have always challenged justification for the implementation of Section 139 intervention through the courts. The study shows that the majority of these court judgments have been in favour of the municipalities. The litigation has arisen primarily because of the absence of regulations regulating the implementation of Section 139 interventions.

It is therefore important that the current Intergovernmental Monitoring Support and Interventions Bill, which was gazetted in February 2021 and intended to regulate the implementation of Sections 139 and 100, be finalised as soon as possible to provide clarity.

This study was conducted within the discipline of Political Science and Public Administration, and the sub discipline Governance. The chapters are dedicated to meta-theoretical and theoretical aspects to justify the study. Furthermore, the critical aspects of the constitutional and legal framework that regulates local government were explored to determine whether Section 139 was applied within the law.

The overarching aim of the study was to analyse the current state of local government through case studies of selected municipalities in the North West Province, namely Ngaka Modiri Molema District Municipality, Madibeng Local Municipality and the City of Matlosana Local Municipality. This was done with specific focus on how Section 139(1) was applied in these municipalities.

Attention was given to the failures or successes of Section 139(1) intervention and specific recommendations are provided.

The study demonstrates that the invocation and implementation of Section 139 intervention by provincial government in the North West Province were never successful and, instead, in some instances have worsened the situation.

**Key words:**

Auditor-General of South Africa, African National Congress, City of Matlosana Local Municipality, Constitution of the Republic of South Africa, Cooperative Governance and Traditional Affairs, Madibeng Local Municipality, Municipal Structure Act, municipality, *Municipal Systems Act*, National Council of Provinces, National Democratic Revolution, Ngaka Modiri Molema District Municipality, North West Provincial Executive Council, Provincial Executive Council, *White Paper on Local Government*, 9 March 1998.

## OPSOMMING

Artikel 139 van die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet) laat provinsiale regeringsingryping toe wanneer munisipaliteite versuim om hul uitvoerende verpligtinge uit te voer. Hierdie gedeelte van die Grondwet het die afgelope paar jaar meer gewild geword in die plaaslike regeringsomgewing. Die oproep en implementering daarvan word nie sonder omstredenheid en agterdog aan die kant van die provinsiale regering onder leiding van die regerende politieke party, die African National Congress (ANC) begin nie. Provinsiale regerings word beskou as 'n poging om mag van munisipaliteite af te neem deur die implementering van artikel 139. Daarbenewens word faksionalisme binne die regerende party ook beskou as 'n bydraende faktor tot die oproep van artikel 139-ingrypings.

Dit is teen hierdie agtergrond dat die implementering van bogenoemde spanning veroorsaak tussen verskillende rolspelers, veral die provinsiale regering en die geaffekteerde munisipaliteite. Dit het duidelik geword in die huidige studie deur die litigasie tussen provinsiale regerings en die spesifieke munisipaliteite. In die hoofsaak het die geaffekteerde munisipaliteite nog altyd die regverdiging vir die implementering van artikel 139-ingryping deur die howe betwis. Die studie toon dat die meerderheid van hierdie hofuitsprake ten gunste van die munisipaliteite was. Die litigasie het hoofsaaklik ontstaan as gevolg van die afwesigheid van regulasies wat die implementering van artikel 139-ingrypings reguleer.

Dit is dus belangrik dat die huidige Wetsontwerp op Interregeringsmoniteringsondersteuning en -intervensies, wat in Februarie 2021 in die koerant gepubliseer is en bedoel is om die implementering van artikels 139 en 100 te reguleer, so gou moontlik afgehandel word om duidelikheid te verskaf.

Hierdie studie is uitgevoer binne die dissipline Politieke Wetenskap en Publieke Administrasie, en die subdissipline Regering. Die hoofstukke word gewy aan metateoretiese en teoretiese aspekte om die studie te regverdig. Verder is die kritieke aspekte van die grondwetlike en wetlike raamwerk wat plaaslike regering reguleer ondersoek om te bepaal of artikel 139 binne die wet toegepas is.

Die oorkoepelende doel van die studie was om die huidige stand van plaaslike regering te ontleed deur gevallestudies van geselekteerde munisipaliteite in die Noordwes Provinsie, naamlik Ngaka Modiri Molema Distriksmunisipaliteit, Madibeng Plaaslike Munisipaliteit en die Stad Matlosana Plaaslike Munisipaliteit. Dit is gedoen met spesifieke fokus op hoe artikel 139(1) in hierdie

munisipaliteite toegepas is. Aandag is gegee aan die mislukkings of suksesse van artikel 139(1)-ingryping en spesifieke aanbevelings word verskaf.

Die studie toon dat die aanroep en implementering van artikel 139-ingryping deur provinsiale regering in die Noordwes-provinsie nooit suksesvol was nie en eerder in sommige gevalle die situasie vererger het.

**Sleutelwoorde:**

Ouditeur-generaal van Suid-Afrika, African National Congress, Stad Matlosana Plaaslike Munisipaliteit, Grondwet van die Republiek van Suid-Afrika, Samewerkende Regering en Tradisionele Sake, Madibeng Plaaslike Munisipaliteit, Munisipale Struktuurwet, Munisipaliteit, Munisipale Stelsels Wet Nasionale Raad van Provinsies, Nasionale Demokratiese Revolusie, Ngaka Modiri Molema Distriksmunisipaliteit, Noordwes Provinsiale Uitvoerende Raad, Provinsiale Uitvoerende Raad, Witskrif oor Plaaslike Regering

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# CHAPTER 1: INTRODUCTION

## 1.1 Orientation

The Republic of South Africa's government structures are founded on three spheres of government, namely (1) national, (2) provincial and (3) local. The *Constitution of the Republic of South Africa* 1996 (hereinafter 'the Constitution') sets the rules for how each of the spheres of government should function. The three spheres of government are autonomous and should not be seen as hierarchical. The Constitution states in this regard that each sphere is distinctive, inter-related and inter-dependent. In addition, they all operate according to the Constitution, laws and policies made by the national Parliament (Constitution, 1996: Section 40(1) and (2)).

Steytler and De Visser (2007:3) agree with the above and state that although each sphere of government is on a different level in the government structures, they are dependent on one another in terms of their relationships. The government, as 'one' body or entity, has the responsibility to make legislation and policies to improve the lives of all people living in South Africa and to deliver government services (Constitution, 1996: Section 40(1) and (2)).

Section 18(a)(i) of the Intergovernmental Relations Framework Act 13 of 2005 (hereinafter 'Intergovernmental Relations Framework Act') concentrates on provincial governments, which is the focus of this study. It states that a provincial premier's Intergovernmental Forums are consultative bodies for consultations between the province and its local government structures. Consultations and discussions focus on matters of mutual interest, such as service delivery within a municipal jurisdiction. An important function of these forums is also to determine what role the provinces and municipalities have to play when it comes to implementing government legislation and policies relevant to them (Intergovernmental Relations Framework, 2005, Section 18(a)(i)).

Effective service delivery is mandated by Section 152(1) of the Constitution, which stipulates that the mandate of local government is to provide democratic and accountable government to local communities; ensure provision of services to communities in a sustainable manner; promote social and economic development; promote a safe and healthy environment; and encourage the involvement of communities and community organisations in matters of local government.

Furthermore, this mandate is also expressed in the White Paper on Local Government of 9 March 1998 (White Paper Working Committee, 1998), which stipulates the developmental role of local government to find sustainable ways to meet the basic needs of communities (social, economic and material), and to improve the quality of their lives. Local government is thus a critical sphere

of government, which is tasked to deliver basic services to communities, based on the responsibilities that the Constitution imposes on it.

It is against this background that Van der Waldt (2014:3) describes local government as an institution established by central government for residents of a particular area. It further remains an autonomous body within the limits of the Constitution of the country, as well as national legislation (p. 3). Therefore, the residents living in a specific area expect local government to be effective in delivering basic services; and when it is unable to fulfil that expectation, this will require the other spheres of government, especially provincial government, to ensure that it fulfils its constitutional mandate (Mathenjwa, 2017:5).

Provincial interventions must be within the confines of Sections 139(1) and 100(1) of the Constitution, which require the province (or national government) to take over certain functions of local government, depending on the nature of the non-compliance with legislation in providing services.

Section 139(1) of the Constitution makes provision for provincial executive intervention when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. Such intervention includes the following:

Issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; assuming responsibility for the relevant obligation in that municipality to the extent necessary to: maintain essential national standards or meet minimum standards for the rendering of a service; prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or maintaining economic unity; dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

In keeping with the above, the focus of the present study is on how the invocation of Section 139(1) of the Constitution was applied in three municipalities in the North West Province, namely (1) Ngaka Modiri Molema District Municipality (NMMDM), (2) Madibeng Local Municipality (Madibeng Local Municipality ) and (3) the City of Matlosana Local Municipality (CMLM).

The rationale behind the choice of the above-mentioned municipalities is based on, first, their geographic spread across the three districts in the North West Province. Second, in the 2014/2015 financial year, the three municipalities were placed under Section 139(1) interventions. Third, Ngaka Modiri Molema was the first district to be dissolved in the North West Province in terms of Section 139(1)(c) and the other two local municipalities, namely Madibeng and

Matlosana, were placed under Section 139(1)(b) administrations (Ledger & Rampedi, 2019:33-36). Therefore, these municipalities were both well positioned and representative, which was expected to enable the researcher to gather relevant information that would enrich this study.

Furthermore, the study investigates what triggered the interventions and whether there were covert intentions when the intervention was made. What happened during and after the intervention period, and whether or not there were strong mechanisms or guidelines put in place for the said municipalities to sustain the outcomes of the intervention is determined.

National and provincial governments have the mandate to support and strengthen the capacity of municipalities to manage their own affairs better and more effectively (Constitution, 1996: Section 154(1). During the implementation of such a support function to local government, Chapter 3, Section 41(g) of the Constitution regulates the kind of support that will be given, and it must happen in a manner that does not encroach on the geographical, functional or institutional integrity of one government into another government's sphere.

The Constitution anticipated that, at some point, Section 139(1) would be invoked for intervention by a provincial government in the event that a municipality failed to deliver on its constitutional mandate.

## **1.2 Problem statement**

Since 1994, when South Africa became a democracy, there has been a growing expectation from the citizens that the local government sphere should deliver basic services in a more sustainable manner. This expectation and poor service delivery has also created a platform for community protests when there is a slow response on issues of service delivery. According to Akinboade, Mokwena and Kinck (2013:466), municipal IQ statistics indicate that the largest number of service delivery protests between 2004 and the first quarter of 2012 occurred in Gauteng Province, followed by the Western Cape Province and the North West Province (See Appendix A).

In April 2018, service delivery protests escalated in the North West Province with several community uprisings, which started in the capital city of Mahikeng and later spread to other areas such as Taung, Delareyville, Stella, Blydeville and Coligny Township (2018:1). These protests were as a result of dysfunctional municipalities that were unable to provide basic services to communities under their jurisdiction.

In addition, municipalities are being seen by politicians and administrators as resource organisations to be used to follow party-political interests, which ignores the constitutional

mandate they are supposed to serve. This attitude often leads to conflicts, factionalism and dysfunctional municipalities, which ultimately calls for intervention by other spheres of government.

A further problem facing the majority of these municipalities is the number of vacant key senior management positions; this means that officials lack appropriate competencies, and there is a lack of appropriate measures to address poor performance and transgressions (PMG, 2013).

Furthermore, these municipalities still lack the capacity to manage municipal finances and to compile quality financial statements and annual reports. This means that they do not take accountability for following the guidelines as stated by Section 152 of the Constitution. Most of these reports contain irrelevant information, which limits the Department of Local Government in the North West Province (North West Department of Local Government 2016:16) in evaluating the performance of municipalities on their delivered mandate. Therefore, the research is going to have a closer look to the three municipalities, namely NMMDM, Madibeng Local Municipality and the CMLM. The latest audit by the Auditor-General of South Africa (AGSA) (AGSA, 2016a:8) revealed that Madibeng Local Municipality received a disclaimer audit outcome on the basis that, among other things, its leadership did not exercise adequate oversight responsibility regarding financial and performance matters, did not comply with key laws and regulations, and there was a lack of internal controls.

Regarding the CMLM, the AGSA (2016b:6) revealed that the CMLM received a negative audit report, on the basis that, among other things, 'the leadership has not been able to enforce a culture of honesty, ethical business practices and good governance.' In NMMDM, the AGSA (2016c:9) revealed that leadership did not exercise oversight responsibility regarding accurate and complete financial and performance reporting, and it did not comply with related internal controls, to such an extent that it was placed under administration.

On the basis of the AGSA's findings in these three municipalities in the North West Province, it is clear that there are, according to the AGSA, severe problems when it comes to the management of the municipalities, which has a negative effect on service delivery. It is clear that these municipalities have experienced the invocation of Section 139(1) intervention as a result of their failure to provide basic services from 1996 to 2015.

In order to reduce the number of service delivery protests, there is a dire need to provide political and administrative leadership in municipalities. Appropriate and available resources need to be effectively allocated to improve service delivery. The municipal staff should be trained for service delivery, and roles and responsibilities of all staff should be clearly determined and

communicated. There is also a need to give incentives for good performance and poor performing staff should be disciplined (Ndevu & Muller, 2017:24).

Hence, failure by political leadership to provide guidance and play an oversight role over municipal administration to strengthen good governance will ultimately result in invocation of Section 139(1) of the Constitution, which allows the provincial government to take over certain municipal functions. The frequency of provincial interventions since 1994 in South Africa has increased dramatically. Whereas there were 26 Section 139(1) interventions in the 12 years between 1996 and 2008, and from 2009 to 2018 there has already been a total of 48 such interventions. This clearly illustrates an increasing trend in provincial interventions, which, if extrapolated, is likely to increase in the future (Greffrath & Van der Waldt, 2016a:153) (See Appendix A.)

Greffrath and Van der Waldt (2016a:158) indicate that the North West Province alone had 13 interventions during the period of August 1999 to June 2015. With the repeat interventions in Mafikeng Local Municipality (March 2004, July 2010) and the CMLM (April 2013, June 2015), Greffrath and Van der Waldt (2016a:158) came to the conclusion that -

“[g]overnment intervention becomes likely in the context of dysfunctional municipalities and as service delivery deteriorates to the extent that it may constitute an identifiable practice in the form of intervention. Political factors are indicative of state dysfunction, such as factionalism, which may also serve as reasons to intervene in municipalities with the aim of influencing the balance of political power in a given municipality or within a party itself”.

A repeat of these interventions in other municipalities provides a clear picture that these interventions have not been effective in yielding the required results. Either there have been inconsistencies in the implementation of a Section 139(1) intervention or there were poor handover reports after intervention, which happens as a result of a lack of guidelines in the post-intervention period. This research thesis answers in these fundamental questions at the end of the study.

This view is supported by Ledger and Rampedi (2019:8), who argue that

“[a]part from a few guidelines in Section 139 itself, there are no prescribed standardised administrative practises around the initiation of an intervention that cover the entire Section 139 framework. The MFMA covers how a financial recovery plan is to be drawn up in the instance of a Section 139(5) intervention, and provides some guidelines for assessing financial problems in a municipality, but these are merely guidelines. There is no similar regulation in respect of Section 139(1) interventions, which is a serious gap, given that most

of the interventions are in fact initiated under this part of the legislation. *As a result of this regulatory gap, a particular set of administrative practices – which have little in common with the actual content and spirit of the legislation – have become the norm”.*

Table 1-1 depicts the provincial distribution of interventions between 1998 and 2019.

**Table 1-1: Provinces with numbers of interventions**

PROVINCE	NUMBER OF INTERVENTIONS	SET ASIDE
Eastern Cape	15	Including 3 set aside
Free State	14	
Gauteng	03	
KwaZulu-Natal	40	Including 2 set aside
Limpopo	2	Including 1 set aside
Mpumalanga	11	
North West	43	Including 7 set aside
Northern Cape	3	
Western Cape	9	Including 2 set aside

**Source: Extrapolated from Ledger and Rampedi (2018)**

The North West Province remains the most highly affected province with regard to the number of interventions that took place between 1998 and 2019, with 43 interventions, including 7 that have been set aside.

Based on the above context, the general research question is: What are the core problems facing the struggling municipalities that permit the intervention of Section 139(1) of the Constitution by provincial government, and which systems, guidelines and control measures must be put in place to secure sustained effective service delivery to their respective communities? This question leads into the following research questions:

### 1.3 Specific research questions

In view of the research topic, its importance and problem statement above, the following questions are addressed throughout the study:

- The primary research question of this study is: What is the current state of local government in the North West Province with specific reference to Section 139(1) intervention in the specified municipalities?

Several secondary questions arise based on the primary research question, namely

- What are the major theoretical and paradigmatic points of departure with regard to local government?
- What is the constitutional and legal framework of local government in the post-apartheid South African context (i.e., the Constitution of South Africa and legislation regulating local government)?
- What is the meaning of Section 139(1) within a constitutional and legal context, as well as its interpretation by the courts of law?
- What is the state of affairs with regard to local government in the North West Province with reference to Section 139(1)?
- How was invocation of Section 139(1)(c) applied in Ngaka Modiri Molema District Municipality, and what were its outcomes?
- How was invocation of Section 139(1)(b) applied in Madibeng Local Municipality, and what were its outcomes?
- How was invocation of Section 139(1)(b) applied in the City of Matlosana Local Municipality, and what were its outcomes?
- What are the recommendations that can be made to the provincial governments to ensure that Section 139(1) interventions have a positive effect on effective service delivery at the level of municipal government?

To address the questions that have been asked, the researcher concentrated on the following objectives:

## **1.4 Research objectives**

The primary research objective can be described as follows:

- To analyse the current state of local government in the North West Province with specific reference to Section 139(1) interventions, its successes, failures in the specified municipalities and provide recommendations.

In this context, the primary research objective is simplified by the following secondary objectives:

- To analyse the major theoretical and paradigmatic points of departure affecting local government in South Africa.
- To analyse the constitutional and legal framework of local government in a South African context (i.e., the Constitution of South Africa and legislation regulate local government).
- To explain the meaning of Section 139(1) within a constitutional and legal context, as well as its interpretation by the courts of law.
- To assess the state of affairs with regard to local government in the North West Province with reference to Section 139(1) intervention.
- To assess how invocation of Section 139(1)(c) was applied in Ngaka Modiri Molema District Municipality, and its outcomes.
- To assess how invocation of Section 139(1)(b) was applied in Madibeng Local Municipality, and its outcomes.
- To assess how invocation of Section 139(1)(b) was applied in the City of Matlosana Local Municipality, and its outcomes.
- To provide recommendations on the ideal implementation of Section 139 intervention by provincial governments that will have a positive effect on effective service delivery at municipal government level.

## **1.5 Central theoretical statements**

Since 1994, the transformation of local government in South Africa has been extraordinary. The local government system itself has been transformed in terms of race from the post-apartheid era. The communities now live together within clear municipal jurisdictions that have been consolidated and de-racialised. Therefore, the important focus becomes the provision of basic services to the communities.

Unfortunately, in the North West Province, the provision of basic services has experienced gradual deterioration. Some critics have attributed this to populist politics at the local level and a

high level of political factionalism that continues to exist within political parties. The rationale behind this tendency is that local government has been perceived by political parties and ordinary South Africans as a resource institution. As such, there are those who are seen to be pursuing selfish personal interests as opposed to the interests of the majority of the people under the local government's jurisdiction.

This gradual deterioration of service delivery in the North West Province has resulted in the rise of the invocation of Section 139(1) intervention by provincial government. It means the provincial executives should have the discretion to exercise intervention measures as a 'necessary measure when a municipality fails to govern' (November, 2015:7).

For the purposes of this research, three municipalities were identified for case studies to assess how Section 139(1) interventions were applied, that is, in NMMDM, Madibeng Local Municipality and the CMLM. These municipalities have experienced the repeat of Section 139(1) interventions, which means that either the implementation was problematic from the beginning or there was no framework to be used after the intervention to sustain the good work that had been done by administrators.

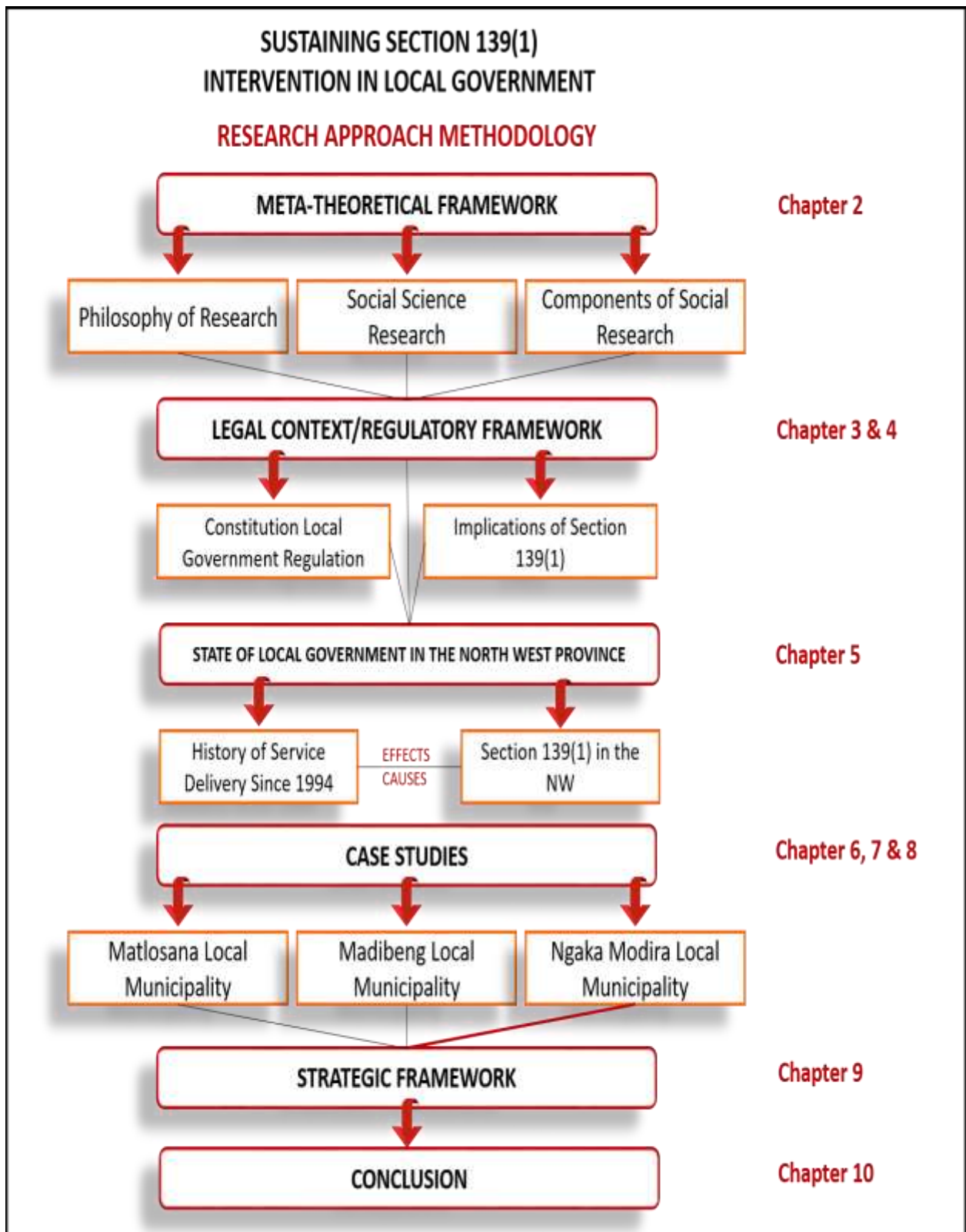
It is against this background that some checks and balances in the affairs of local government are needed, without necessarily encroaching on its environment. Hence the national and provincial governments must, by legislative and other measures, support and strengthen the capacity of municipalities to fulfil their mandates, execute their powers and perform their functions according to Section 154(1) of the Constitution, 1996.

To ensure that the objectives of the study were reached, a specific methodology was followed.

## **1.6 Research methodology**

This study followed a qualitative research approach to explore the causes and effects of the implementation of Section 139(1) of the Constitution in the identified municipalities, namely NMMDM, Madibeng Local Municipality and CMLM, in the North West Province. A qualitative research encompasses studying features or qualities that cannot be interpreted in the form of numerical values (Leedy & Ormrod, 2015:97). This qualitative approach will focus on a specific phenomenon in the real world in order to understand that phenomenon better. The primary data-collecting technique for any research (qualitative or quantitative) starts with an in-depth analysis and discussion of available literature. This also included the landmark case laws and findings by the courts on the application of Section 139 interventions. The study was thus built on knowledge obtained through the analysis of academic and scholarly literature.

The literature was used throughout the study as part of the approach followed in the ten chapters that make up this thesis. Chapter 2 focuses on the meta-theoretical framework. Chapters 3 and 4 analyse the legal context of the study, starting with a discussion around the Constitution and the regulatory framework that governs local government. The emphasis in Chapter 4 is on the outcomes of court judgments during the different litigation processes between the Provincial Executive Councils and municipalities in Section 139 intervention. Chapter 5 examines the state of local government in the North West Province, and Chapters 6, 7 and 8 look at the three municipalities identified for the case studies to assess how Section 139(1) intervention was applied respectively. Chapter 9 discusses the strategic interventions, and assesses the successes and failures that informed the development of a strategic framework to be used post-intervention. Lastly, Chapter 10 is a summary of the study, which is the conclusion.



Source: Author's own construct

Figure 1-1: Research approach methodology

## 1.7 Literature study

This study is situated within the disciplines of Political Science and Public Administration, which will be explained in Chapter 2. Van der Waldt and Du Toit (1999:51) explain Public Administration as the product of Political Science and a discipline in its own right. Political Science is more concerned with political behaviour, and systems where local government remains at the centre. The disciplines of Political Science and Public Administration, with the sub-discipline Governance, within the wider social sciences permit the achievement of the research objectives.

Therefore, the literature study comprises an analysis of primary and secondary sources. The primary sources include the *Constitution of the Republic of South Africa*, 1996; the specific legislation that regulates municipalities, namely the *Municipal Structure Act 117 of 1998*, *Municipal Systems Act 32 of 2000*, *White Paper on Local Government* of 9 March 1998, *Intergovernmental Relations Framework Act 13 of 2005*, *Municipal Public Finance Management Act 56 of 2003*, and *Public Administration Act 11 of 2014*. Bodies that have a direct bearing on issues of local government, such as the National Council of Provinces (NCOP), South African Local Government Association (SALGA) and Cooperative Governance and Traditional Affairs (COGTA), who retain relevant information with regard to the intervention in terms of Section 139(1) of the Constitution, are included.

Secondary sources include scholarly articles in journals; in particular, those by Van der Waldt and Greffrath, who have written extensively on the subject matter; portfolio committee and government reports relevant to the research topic. The literature study, furthermore, also includes a review of similar material on what has already been written about Section 139(1) interventions to point out or uncover areas where research is needed to add to the body of knowledge.

In addition, the African National Congress's (ANC) cadre deployment policy is investigated within the broad policy frameworks. The reality in the post-apartheid era at the time of writing this thesis was that South Africa had been governed by the ANC since 1994. The majority of municipalities across South Africa had been led by the ANC, including the three municipalities identified in Section 1.1 for case studies. Therefore, it was important to review how the ANC's cadre deployment policy impacted on local government.

Furthermore, Duvenhage's (2013) reflections on the process of transformation and the National Democratic Revolution (NDR) are examined. Duvenhage has written a great deal about these two concepts, which assisted the researcher in analysing how the NDR process ultimately influenced the ANC's policy of cadre deployment and its impact on local government.

Sources such as Mouton and Marais' *Basic concepts in the methodology of the social sciences* (1990) also helped the researcher to construct a scientific methodology for the study. Ledger and Rampedi's 2019 scientific paper, 'Section 139: Intervention in theory and practice', details the implications of Section 139(1) intervention. The study also sheds some light on how other relevant Sections of the Constitution have been ignored by government; for example, instead of using Sections 139(4) and 139(5), which deal with financial intervention, government continues to intervene in terms of Section 139(1).

The present study requires a strong theoretical background to come to an understanding and make a scientific analysis of how Section 139(1) has been implemented in the local government sphere. However, although only limited academic material on Section 139(1) intervention exists, many journal articles, papers and opinion pieces have been written.

Krishnan's (2009) work on academic disciplines helped to unpack various academic disciplines. Allana and Clark's 'Applying meta-theory to qualitative and mixed methods' (2018) shed more light on qualitative methods, because this is what this study is about. Wacker's 'A definition of theory: Research guidelines for different theory building research methods in operations management' (1990) emphasises guidelines in dealing with different theories.

November's 'The role of provinces in the use of intervention in terms of Section 139(1)(A)–(C) of the Constitution' (2015) details the critical role played by provinces in invoking Section 139(1) and its implementation. Mathenjwa's *Supervision of local government* (2017) helps to understand critical aspects to consider when supervision is made in local government. Steytler and Visser (2007) explain local government within the legal and constitutional context on whether spheres of government should relate to one *another* in terms of intergovernmental relations and cooperative governance. This is important because this study is about sustaining Section 139(1) intervention in local government by provincial government. Therefore, the execution of this intervention becomes critical in showing how it is implemented.

In this regard, sources such as Kuhn's, *The structure of scientific revolutions* (1962), Craythorne's *Municipal administration* (2006), Weiss's 'Governance, good governance: Conceptual and actual challenges' (2000), Venter's *Municipal management: Serving the people* (2014), Ntonzima's 'Public financial controls: Can South African municipalities improve?' (2011), Orr and Vince's 'Traditions of local government' (2009), among others, all give vital information on the management and governance of local government, which determines provincial government intervention when these governments collapse.

## **1.8 Empirical study and data-collecting techniques**

In a qualitative research approach, there are certain data-collecting techniques that can be utilised, such as literature reviews, semi-structured interviews, focus groups, analysis of legislation, analysis of official documentation, observations and questionnaires.

For the purposes of this study, semi-structured interviews by way of purposive sampling and literature review, and analysis of legislation and official documentation were utilised.

## **1.9 Semi-structured interviews (purposive sampling)**

In this case, semi-structured interviews with relevant officials and politicians of NMMDM, Madibeng Local Municipality and the CMLM were conducted. The purpose thereof was to generate qualitative data on the extent to which the North West Provincial Government implemented the invocation of Section 139(1) of the Constitution and assess the current municipal performance at the time of the research. (See attached questionnaire, Appendix B)

## **1.10 Ethical consideration**

This study was conducted within the context of ethical guidelines laid down by the North-West University's Research and Ethics Regulatory Committee (RERC), and assessment of the ethical part of the study was monitored by the Faculty of Humanities (Arts) Ethics Committee. Once ethically approved, the NWU Research and Ethics Regulatory Committee allocated an ethics number to the study by.

## **1.11 Contribution of the study**

The researcher has observed that insufficient literature had been created on the subject under discussion, and that scholars and academics had not written comprehensively on the topic. What Section 139(1) intervention in the Constitution entails is thus not clear to municipalities and their communities. This is specifically the case in the North West Province.

Therefore, the contribution of this study is the development of clear guidelines prior to and post-intervention to sustain Section 139(1) of the Constitution. The envisaged guidelines will assist municipalities in sustaining good governance post-intervention, although the focus will be on the North West Province. The outcome of the study can serve as a model that can be replicated throughout South Africa.

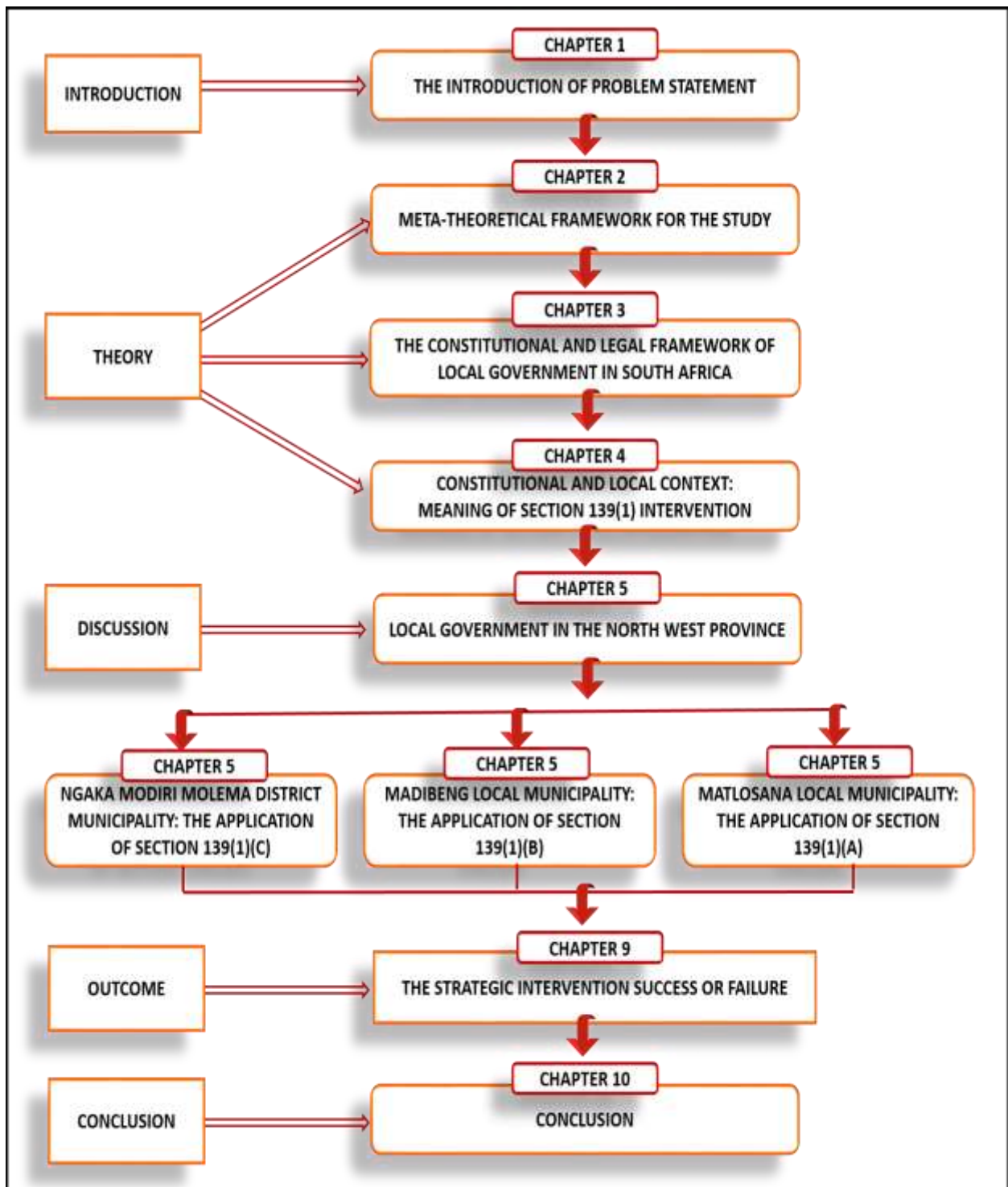
### **1.12 Limitations of the study**

Factors that are known and that pose potential limitations to this study are the following: In this study, the availability of resource material is limited. This resource material refers to books, scholarly articles, legislation and policies, because there are not many authors who have written about Section 139(1) of the Constitution, except for a few who have authored articles in journals.

The researcher has selected the most important people for interviews who can give feedback with regard to the application of Section 139 intervention. These people include the former Head of Department for Local Government in the North West Province, managers, administrators and politicians in the identified municipalities of NMMDM, Madibeng Local Municipality and the CMLM. Although the researcher would have liked to have interviewed more people, for practical reasons it was not possible. The researcher did, however, ensure that the sample selected was representative and relevant to the study.

### 1.13 Summary of chapters

The focus of the research includes the following chapters:



Source: Author's own construct

Figure 1-2: Summary of chapters

### **1.13.1 Chapter 1: The introduction and problem statement**

This chapter presents an introduction to the study. An orientation to the research topic is discussed and the problem statement of the study is stated. The chapter also formulates research questions that are linked to the research objectives and research design. The theoretical statements upon which the study was built are discussed and the methodology followed to reach the objectives of the study is explained. The study followed a qualitative research approach, which focuses on an analysis of the literature review on Section 139(1) intervention.

### **1.13.2 Chapter 2: Meta-theoretical framework for the study**

This chapter explores the theory and literature review upon which the entire study is based. The meta-theoretical framework is developed for this chapter that would, in combination with Chapter 3, give specific theoretical outcomes. Furthermore, the chapter demonstrates the contrast between metatheory (scientific) and ideology (NDR).

### **1.13.3 Chapter 3: The constitutional and legal framework of local government in South Africa**

The pieces of legislation regulating local government are discussed to evaluate the extent to which such legislation is observed by municipalities in the North West Province. The principles and guidelines determining intervention by provincial government in local government are also analysed.

### **1.13.4 Chapter 4: constitutional and legal context: The meaning of Section 139(1) intervention and its interpretations by the courts of law**

This chapter describes the meaning and procedural aspects within a legal framework when Section 139(1) is implemented. It further explains what the provincial government should do when local government fails to deliver on its mandate. Some outcomes of the court cases are analysed to assess what judges have said during litigation processes between provincial government and municipalities.

### **1.13.5 Chapter 5: Local government in the North West Province**

The focus of this chapter is on the brief history of local government in the North West Province since 1994. The chapter reveals the evolution of local government in the North West Province with particular focus on service delivery, and assesses the current state of affairs in providing basic services.

### **1.13.6 Chapter 6: Ngaka Modiri Molema District Municipality: The application of Section 139(1)(c)**

The NMMDM in the North West Province is assessed to determine how Section 139(1)(c) of the Constitution was applied. Data were sourced by means of semi-structured interviews with managers, former administrators and politicians in NMMDM.

### **1.13.7 Chapter 7: Madibeng Local Municipality: The application of Section 139(1)(b)**

This chapter comprises an exploration of invocations of Section 139(1)(b) in Madibeng Local Municipality, and its application and outcomes, again by means of semi-structured interviews with managers, former administrators and politicians in Madibeng Local Municipality.

### **1.13.8 Chapter 8: Matlosana Local Municipality: The application of Section 139(1)(b)**

This chapter comprises an investigation of invocations of Section 139(1)(b) in the CMLM, how it was applied and its outcomes. Once again, the information was gathered through semi-structured interviews with managers, former administrators and politicians in the CMLM.

### **1.13.9 Chapter 9: Strategic interventions: Success or failure**

This chapter provides a strategic framework and guidelines that must be considered by different role players in the local government environment to sustain Section 139 interventions.

### **1.13.10 Chapter 10: Summary and concluding perspectives**

This chapter contains a summary of the entire study. High-level insights are provided on the basis of a reflection on the experiences and data gained through the study.

## **CHAPTER 2: META-THEORETICAL CLARIFICATION AND APPLICATIONS**

### **2.1 Introduction**

Chapter 1 explained the importance of the current study. Particular reference was made to the problem statement, the research questions and objectives. Furthermore, the chapter detailed the central theoretical statements and research methodology involved that guided the study to reach its ultimate objective.

The research methodology detailed the meta-theoretical point of departure, which is the most important aspect of the current study to support the provisions of Section 139(1) of the Constitution in local government. In addition, the theoretical point of departure also helped to contextualise the study within a particular discipline.

Based on the above, this chapter ascertains the veracity of the research through the conception of the crucial scientific basis for the study of Section 139(1) intervention in local government, within the discipline of Political Science and Public Administration. In order to generate the intervention in local government, it is important that certain critical concepts be clarified around ordinary and scientific knowledge.

Mouton and Marais (1990:136) view science as 'a system of concepts, theories, findings and methods that are accepted by a number of scientists and refer science to the system of scientific knowledge.' Hence, the present study and this chapter in particular, identify relevant concepts and theories that can be used to justify the findings of the study. This minimises the influence of bias, which must be avoided at all costs, or of prejudice to the researcher. It further helped the researcher to be objective and have a standardised approach in conducting the research work.

Furthermore, this chapter becomes critically important in the sense that it forms the building block of the entire study. This means that the discussion in this chapter around meta-theoretical framework is significant because it gives the outline and foundation on which this study was conducted. This was achieved through focusing on the literature review that included different theoretical works within the disciplines of Political Science and Public Administration.

The literature review includes various theoretical works within these disciplines. Moloney (2000:203) and Krishnan (2009) report that research guidelines for different theory-building research methods in operations management place an emphasis on guidelines in dealing with different theories. Therefore, the role of provinces in the use of intervention in terms of Section

139(1)(2015) is crucial (Mathenjwa, 2017:48). Steytler and Du Toit (2007) explain local government within the legal and constitutional context, which should relate to each other in terms of intergovernmental relations and cooperative governance, as stated by Craythorne (2006).

Moreover, in terms of legislation, the following was examined to guide the study: The Constitution; and relevant pieces of legislation that regulate local government, such as, the *White Paper on Local Government* of 9 March 1998, the *Municipal Structures Act* 117 of 1998, the *Municipal Systems Act* 32 of 2000, the *Intergovernmental Relations Framework Act* 13 of 2005, the *Public Administration Act* 11 of 2014, the *Organised Local Government Act* 52 of 1997, the *Municipal Finance Management Act* 56 of 2003 (MFMA) and the *Division of Revenue Act* 3 of 2016. This legislation was analysed using a formalised structure for each one of the Acts in terms of their respective background, aim, content, specification and implementation in Section 139(1) intervention.

In addition, this chapter also clarifies meta-theory (science) and political ideology on the basis that political ideology of any ruling party in the world does influence government policy positions. In this study, three municipalities in the North West Province governed by the ruling party in South Africa, the ANC, were identified for case studies. Therefore, it is important to assess the impact of the party's ideology (NDR), which gave rise to cadre deployment in the three case study municipalities.

The following is a brief summary of the main aspects of the chapter:

- *Theory and meta-theoretical point of departure:* This Section provides a brief discussion on the concepts of theory and meta-theory as points of departure, upon which the study is reliant to arrive at valid findings.
- *The philosophy of research:* This Section focuses on, and gives an explanation of, how this study finds itself within the framework of the social sciences. The discussions pay attention to the dimensions of social science research: sociological, ontological, teleological, epistemological and methodological.
- *Components of social research:* These components include the pre-scientific consciousness, scientific knowledge, discipline, tradition, paradigm, conceptual framework, definitions and concepts. Each aspect is discussed in greater detail and follows the sequence as mentioned.
- *Policy frameworks:* This aspect includes the scientific definition of 'policy' and demonstrates dialectics between meta-theory (science) and political ideology. Initial strategic policies post 1994 which intended to deal with the legacy of apartheid system are discussed.

Furthermore, cadre deployment and its implications in the specified municipalities used as case studies is analysed.

- *A conceptual framework to understand sustaining Section 139(1) post-intervention:* The chapter ends with a conceptual framework to understand the sustaining of Section 139(1) post-intervention within the context of a social science research component.

## **2.2 Meta-theoretical: A conceptual framework**

The success of any scientific research is based on a number of scientific theories upon which a study is based. In this case, the concept of theory and meta-theoretical framework as a point of departure to support the sustaining of Section 139(1) intervention in local government is discussed in detail.

Scholars have proven that they use different theories in their research work to justify findings of a particular phenomenon. They have similar understanding of how they define it and still have different propositions on how they explain theory in the academic context (Wacker, 1998:361).

Wacker (1998:364) defines *theory* as having three fundamental components that need to be taken into consideration: (1) It should be predictive; (2) it must recognise the relationships domain and (3) it must be clearly defined. Predictive means it must respond to whether the model used could likely give an outcome that could be falsified; the relationship should respond to how and why the variables used relate to one another; and the domain should respond to whether conditions for when and where the outcomes obtained were communicated clearly.

Van der Waldt (2017:183) takes the concept of theory further and asserts that

*[t]heory underpins social science endeavours by providing the philosophical assumptions on the following aspects: aspects that constitute social reality (ontology); is accepted as valid evidence of that reality (epistemology); the means to investigate the context (methodology); and the manner in which evidence is gathered (methods). Both positivists and interpretivists generally concur that theory occupies a central role in scientific inquiry into the social world. In disciplines of applied social science such as Public Administration, research generally fosters the transition from theory to practice. In this respect, theory underlies the designs, methods, and findings of the research process.*

From these definitions, theory can be understood to be first and foremost a truth-seeking aspect of a fact, using concrete methods and techniques applied to reach certain conclusions. In addition, theory remains central to scientific enquiry, and grounds a researcher to follow a specific vantage point to the study in justifying findings. That is the fundamental reason why the theoretical

framework to any study becomes more important because it provides the system of concepts, assumptions, expectations, beliefs and theories that inform discourse or research in a given field.

According to Webster and Watson (2002:102), meta-theory creates a basis for a researcher to conduct research work and helps the reader to interpret and understand the study better, whereas Allana and Clark (2018) understand the meta-theory as broad perspectives about the nature of the underpinning research and practice. They further argue that meta-theory deals with the basic belief in how the world is viewed, and moulds individual conduct towards worldviews. Wester, *et al.* (2009:25) view is that meta-theory is about description, investigation, analysis or criticisms of the theories in a domain, whereas Thomas (1962) gives deep and modern meaning to meta-theory as overlapping the concept of *paradigm*. This has a broader meaning than meta-theory; the theory, the methodology and the ethos all combined, of a discipline or speciality. Hesketh and Fleetwood (2006:677) elaborate meta-theory as being what lies beyond or outside any substantive theory in empirical research or human practice, while Sousa (2010) demonstrates a practical meaning to meta-theory as it paves the way for the substantive theory that a researcher is likely to create or endorse during the process of conducting research relevant to the study that is undertaken.

Based on the academic explanations above, meta-theory is the broad theoretical framework that creates a fundamental rationale for the study. Furthermore, it crafts an opportunity for the reader to understand the importance of the study, and gives better perspective and interpretation to the study. It also helps the researcher to conduct an investigation within specified parameters so that the study remains in context. This is done through an understanding of the researcher's worldview, which influences the attitude towards the study.

### **2.3 The philosophy of research**

According to the *Concise Oxford English dictionary* (Stevenson & Waite, 2010:884), *philosophy* is the 'study of the fundamental nature of knowledge, reality, and existence; a set of theories of a particular philosopher; the study of the theoretical basis of a branch of knowledge or experience; a theory or attitude that guides one's behaviour.'

Saunders *et al.* (2007:124) take it further and simply define philosophy as a system of beliefs and assumptions about the development of knowledge. These include assumptions concerning human knowledge, which are epistemological assumptions. Ontological assumptions deal with realities the researcher encounters in the research. Moreover, the axiological assumptions affirm one's own values that influence the research process. Therefore, they concluded that philosophy was about the study of practical realities, which influences the development of knowledge,

thinking and attitudes of an individual from the perspective of a worldview. The knowledge and the attitude, once developed, become critical towards the development of theories of a particular individual to interpret the world, as it was for Karl Marx with his Marxist theory.

In order to give more meaning to philosophy, which has to do with the study of practical realities, the study of human social reality becomes critical within the context of social science research, which will be discussed in detail in the next Section.

## **2.4 Social science research**

The present study finds expression within the fields of Political Science and Public Administration and fits into the area of social science. The success of strengthening the conceptual meta-theoretical framework as a starting point to the study is dependent upon giving a detailed discussion on the concept of *social science research*.

Mouton and Marais (1996:7) assert that 'social science research is a collaborative human activity in which social reality is studied objectively with the aim of gaining a valid understanding of it.' This definition depicts the fact that for any scientific research work to succeed, there is a need for joint concerted effort with a relevant research community who are at the centre of the study to arrive at objective valid findings. In this regard, such a research community has been identified (see Chapter 1) as part of the research methodology. The research community helps to understand how Section 139(1) intervention has been applied in the targeted municipalities, namely NMMDM Madibeng Local Municipality and the CMLM.

Within the context of social science research, five dimensions that have been identified are fundamental in conducting research work in social science. These dimensions are mentioned and are applied to a research topic. Furthermore, these dimensions are interconnected as pillars towards a growing scientific knowledge. They are depicted in Table 2-1:

Table 2-1: Dimensions of social science research

NAME	DESCRIPTION	VALUE & APPLICATION
Sociological	Collaborative Activity Structure Functioning of human society Social Problems	Section 139(1) of the Constitution, its application must have collaboration activity between Provincial Government, NCOP, Community & Municipality itself to succeed.
Ontological	Social Reality What Informs Reality Investigated Reality Nature of Reality	What are the causes of invoking Section 139(1) by Provincial Executive Council of a Province. And how reality is perceived.
Teleological	Understanding Human Goal Gaining Insight and explanation Goal or Aim Intention of the Research Goal	Understanding of the research goal or its ultimate objective. In this case to have an insight on how Section 139(1) was applied in identified municipalities.
Epistemological	Provide Valid and Reliable Nature of Knowledge	Knowledge of Local Government to enable the research study to be scientific and provide valid and reliable information on how Section 139(1) was applied.
Methodological	Objective Planning Structure Implementation Tools or Instruments to be used	Qualitative method is concerned with how the research was conducted. Methods used to arrive at the outcome of the study. Explanation must be fully given with regard to the implementation of research methods in dealing with Section 139(1) intervention.

Source: Author's own construct

Based on Table 2-1, the first sociological dimension refers to the central component in any analysis of what science ought to be, and the fact that scientists operate within a clearly defined scientific community and belong to identifiable paradigms (Mouton & Marais, 1996:9). The operational definition of *sociology* is the study of the development, structure and functioning of human society; the study of social problems. This sociological dimension focuses on who does the research work and in what context. Moreover, it encompasses not only social, but also economic, political, cultural and linguistic factors. In this regard, Section 139(1) intervention takes place within the government context with a particular focus on the local government sphere. Furthermore, its application has collaborative activity between the provincial government, the National Council of Provinces (NCOP), the community and the municipalities themselves. At the centre of this research topic are the social problems and the functioning of human society found in the municipalities, which will also contribute to the research findings.

The second dimension is ontology, which emphasises the fact that research work has always been an object, be it empirical or non-empirical (Mouton & Marais, 1996:8). The term *ontology* refers to the study of being or reality (p. 11). A functioning definition of *ontology* is the branch of metaphysics concerned with the nature of being. Furthermore, this dimension is concerned with the reality that is being investigated, which is also referred to as the research domain of social sciences. These are domain statements about nature, the beliefs, structure and status of social phenomena (pp. 11-12).

According to Scotland (2012:9), ontology is the study of being and is more concerned with what informs reality. It guides the researcher to take a position with regard to perceptions of how the situation is and how things really work. Creswell and Poth (2018:20) raise a similar view that ontology remains the nature of reality and its characteristics. In this instance, the dimension helps to understand what might be the reality behind the invocation of Section 139(1) by the Provincial Executive Council of a province.

With regard to teleology, this dimension is directed specifically towards the human goal of understanding and gaining insight and explanation (Mouton & Marais, 1996:8). *Teleos* is the Greek word for goal or aim (p. 13). According to the *Oxford dictionary* (Oxford University Press, 2010:1219), teleology explains the 'phenomena by the purpose they serve rather than by postulating causes.' Furthermore, this dimension relates to the ultimate objective of a particular practice, which a researcher has set for himself or herself to achieve through his or her work and activities. It further defines the intentionality and relates to the overall research project and vision that underline the research work (Kampi, 2017).

The epistemology dimension is not only about the understanding of reality (Mouton & Marais, 1996:8). Instead, it is to provide a valid and reliable insight into reality. This is a critical dimension, which places a high premium upon the epistemic status of scientific statements which must be as close as possible to the social reality. Epistemology has assumptions about knowledge, what constitutes acceptable valid and legitimate knowledge, and how we can communicate knowledge to others (p. 14). Furthermore, epistemology is concerned with the nature of knowledge, its possibility, scope and general basis. Another way of looking at it is to ask the fundamental question of 'What is the nature of the knowledge and the relationship between the knower and the would-be known?' It means the researcher is expected to provide valid and reliable information on how Section 139(1) interventions have been implemented and their consequences (Lor, 2012:53). Creswell and Poth (2018:20) argue that epistemological assumptions in conducting qualitative research is when the researcher get as close as possible to the participants being studied. Furthermore, this dimension puts emphasis on the outcome of the research, which must be scientific in providing valid and reliable information about the application of Section 139(1).

The methodological dimension is more concerned with how social science research should be planned, structured and implemented to comply with the criteria of science (Mouton & Marais, 1996:15). Furthermore, it is concerned with methods that can be used for data collection and how data should be analysed; what do the findings mean and how they relate to the original formulation of a problem (Mouton & Marais, 1996:16). In a simplified way, it refers to the approach a researcher needs to undertake to achieve the objective of the study, what tools or instruments are justifiable to be used to achieve the objective of the study. In addition, Creswell and Poth (2018:22) assert that the procedure of qualitative research is characterised as inductive, emerging, and shaped by the researcher's experience in collecting and interpreting data. In the current study the methodology are the methods used in particular for the understanding of the research approach. The qualitative method is concerned with collecting data through interviews or semi-structured interviews, and recording observation. Whereas quantitative methods deal with gathering information or data in the form of numbers and applying statistical analysis to arrive at particular findings.

Therefore, the present study focuses on qualitative methodology by applying an inclusive literature review that helped reach the objectives of the study as set out in Chapter 1 This methodology helped to investigate how Section 139(1) intervention in the following municipalities: Madibeng, Matlosana, and Ngaka Modiri Molema was applied. Figure 2-1 provides a summary of the social science dimensions and how they are connected to one another to grow scientific knowledge.



Source: Author's own construct

**Figure 2-1: Social science research dimensions**

Figure 2-1 depicts the summary of the earlier discussions. Having set out the social science research dimensions in detail, it is therefore important to outline what the fundamental components of social science research are (see the next Section).

## 2.5 Components of social research

The previous Section discussed the dimensions of social science and the philosophy of research. The explanation was given on how they relate to each other in conducting social research. The following discussion is based on the components of social research taking into consideration social science research and research philosophy as part of the structural wedge to grow scientific knowledge. Such components include paradigms, science, definitions, concepts, views on ordinary knowledge and scientific knowledge, study discipline and tradition.

The reason for this approach is to locate the study within a particular field of the scientific world and meta-theoretical framework for the study, to understand what the paradigms and study traditions are, the discipline in which the study belongs, and the researcher's background in terms of religion. This will help the reader to understand the researcher's line of argument, that is, whether his views are based on Christianity or Marxism.

The starting point of this Section is to conceptualise knowledge and how it relates to the concept of *science* to build the theoretical foundation to this study.

Apshvalka and Wendorff (2005) express their understanding of knowledge 'as a fluid mix of framed experience, values, contextual information, and expert insight that provides a framework for evaluating and incorporating new experiences and information. It originates and is applied in the minds of the knower,' whereas Mannie (2013) understand knowledge to be increasingly viewed as a commodity or an intellectual asset.

With a particular reference to this study, 'knowledge' will be generated through interaction of different role players, observation and through reading different theories related to the study. As it relates to science, knowledge can be gained through experience, and science must demonstrate intellectual capacity based on a particular subject of either natural or social science. At the same time, knowledge can be gained through a scientific approach. The concepts of knowledge and science complement each other and cannot be separated. It is worth mentioning that the researcher's worldview will be different from other researchers based on his experience of how he was exposed to the world.

However, based on the above definitions, one can deduce that there is a different understanding and interpretation concerning the concept *knowledge* and it can be classified into two: (1) non-scientific and (2) scientific knowledge. Non-scientific knowledge is based on world experience while scientific knowledge is based on scientific research. It is worth mentioning that the current study was based on scientific knowledge and its intention is to grow the scientific body of knowledge. Therefore, it is important to clarify the two concepts *non-scientific* and *scientific knowledge* (see below).

## **2.6 Non-scientific knowledge or worldview**

The fundamental point of research work starts with the researcher's area of interest based on his life experience and what his worldview looks like. In other words, this would become non-scientific knowledge, because his experience was never subjected to any test. At the same time, it is important to understand the researchers' background, which will ultimately influence the research work, because the researcher is religious and a cultural background plays a key role on how worldview is construed. In this instance, the researcher might have gained experience in working in the North West provincial government, in particular, the department of Local Government and Human Settlements, which is responsible, among other things, to support municipalities to achieve their basic mandate of provision of basic services. This does not translate into making him an authority on local government matters.

Boshoff (2014:11) concludes that knowledge derived from experience may also be considered as factual sometimes. However, he does recognise that in order for such knowledge to earn the label of 'science' it needs to be properly recorded for it to be validated, that is, through replication studies or peer review, on the basis that science is essentially a public endeavour. He further argues that personal knowledge does not only develop on the basis of multiple experiences encompassing both failures and successes, but also because of encounters with different sources of external information such as early training materials, practising guidelines and fellow practitioners; for instance, it is common knowledge that people know about the intervention, which has been taking place in different municipalities across South Africa, as part of non-scientific knowledge. The scientific part is to understand the rationale behind such interventions, which would require specific methods to arrive at epistemological findings.

Furthermore, when one jumps into a pool, one will feel the very coldness of the water in the first instance as part of the non-scientific knowledge. However, when staying longer inside the pool, the body feels warm. For someone to get to understand the reasons why, will require scientific methods to arrive at epistemological findings.

It is therefore important to highlight how the researcher views the world to support the study, and make the reader understand the researcher's background, how he interprets the reality that corresponds with the ontological dimension explained earlier. It is worth mentioning that the researcher in this instance comes from a religious background. Therefore, this study is based on his religious worldview, with specific reference to the Christian worldview. Hence the research work was completed from these vantage points which will explain what informs views and arguments in terms of their originality.

The explanation was made earlier that knowledge is categorised into two, namely (1) non-scientific knowledge and (2) scientific knowledge. Non-scientific knowledge formed the first part of the discussion. The following Section will detail the concept of science and scientific knowledge.

## **2.7 Science and scientific knowledge**

According to the *Concise Oxford English dictionary* (Stevenson & Waite, 2010:1057), the word *science* is the 'intellectual and practical activity encompassing the systematic study of the structure and behaviour of the physical and natural world through observation and experiment. A systematically organised body of knowledge on any subject.'

Kuhn (1970:1) argued that 'if science is the constellation of facts, theories, and methods used to collect in current text, then scientists are the ones who successfully or not have striven to contribute one or another element.' Furthermore, Kuhn (1962) took this argument to another level and argued that 'science does not progress as a straight gathering of new knowledge; instead it undergoes periodic revolutions called "paradigm shifts".' In this case, he defined *paradigm* as a specific theoretical orientation, which is based upon a particular epistemology and research methods, reflective of a particular scientific community at a particular time in chronicles. Therefore, he concludes that science is not a neat steady revolution in consciousness, but a sequence of puzzle games, marked by transformative revolutions. In simple terms, Heintz *et al.* (2003:2) understand science to be about principles, evidence and methods. Furthermore (Heintz *et al.*, 2003) categorise the understanding of science as the use of a particular procedure and practices, a search for the truth, an instrumental perspective, the power of knowledge, as paradigms and as a process of learning. Therefore, this study is about gaining scientific knowledge because it is conducted within a context of particular methods to gather facts, and define concepts that will be used to justify findings.

According to Chen and Song (2017:2), scientific knowledge is the most reliable knowledge that everybody can have about how the natural world works, on the basis that scientists have developed a methodology. This is learning based on the principles of critical thinking that can improve or amplify greatly the reliability of scientific knowledge. Scientific knowledge is public knowledge which is available for scrutiny and study by anybody who has an interest in it. Therefore, this study is about presenting scientific knowledge at the end which will be used by anyone who is interested to study local government and presents fact on how Section 139(1) intervention was executed to draw guidelines on how to sustain such intervention.

Boshoff (2014:5) distinguishes common features between factual knowledge, potential factual knowledge and ordinary beliefs, which all include claims that can easily be codified in that they differ in terms of the level of their supporting scientific evidence. Factual knowledge has a known scientific backing, ordinary beliefs have none and potential factual knowledge is somewhere in between – a special category of belief that may or may not be promoted to factual knowledge once the relevant claim has been subjected to the scientific method.

Based on the above explanations, ordinary knowledge cannot be relied upon. However, it forms a basis to grow scientific knowledge, which therefore can be relied upon. Scientists use different words in their thinking of how they understand science and scientific knowledge to be. At the same time, a common golden thread can be recognised in their definitions; for instance, some place emphasis on the approach and methods, while focus on the findings, results and outcomes.

From these explanations of what science and scientific knowledge is all about, one can determine that science is about systematic practical thinking that involves methodologies, and strong academic acumen to explain a social world of a particular phenomenon. Whereas scientific knowledge is a product of specific methods applied to understand a phenomenon.

It has been confirmed that this study is founded on a Christian worldview and it is at the centre of social science. Furthermore, it is important to indicate which social sciences the study belongs to within the context of study discipline.

## **2.8 Study discipline**

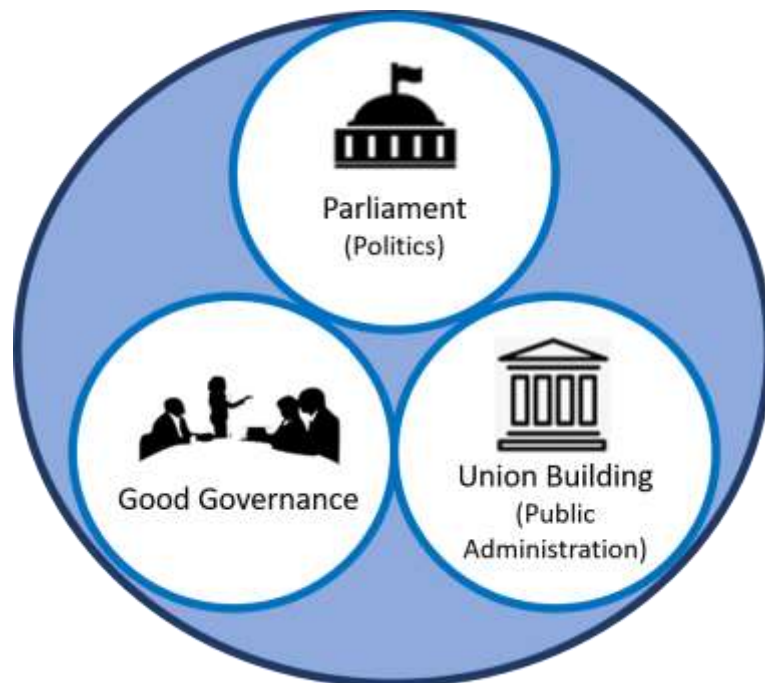
According to the *Oxford advanced learner's dictionary* (Bradbery & Deuter, 2010:414), discipline is an area of knowledge; a subject that people study or are taught, especially at university. Within this context, it is important to locate the area within which this study is based in terms of discipline. It is worth mentioning that each study can be distinguished in terms of its own paradigms, theories, language and traditions. This is the basis on which social science can be classified into various Sections such as public administration, political science, economics, education, and psychology, to mention just a few.

Krishnan (2009:8) defines *academic discipline* as a form of specific and rigorous scientific training that will turn out practitioners who have been trained by their various disciplines for their own good. The term *academic discipline* encompasses many elements; it has become a technical term for the organisation of learning and the systematic production of new knowledge. It is often identified with taught subjects, though there is a recognition that not every subject taught at university can be called a *discipline*. There is more to discipline than the fact that something is a subject taught in an academic setting. Furthermore, Krishnan (2009:9) identified five characteristics of an academic discipline:

1. Disciplines must have developed specific research methods according to their specific research requirements.
2. Disciplines must use a specific terminology or a specific technical language adjusted to their research object.
3. Disciplines must have theories and concepts that can organise the accumulated specialist knowledge effectively.
4. Disciplines must have a body of accumulated specialist knowledge referring to their object of research specific to them without sharing with other disciplines.
5. Disciplines must have a particular object of research.

In this instance, this study deals with issues of local government and finds expression within the disciplines of Political Science and Public Administration. Van der Waldt and Du Toit (1999:51) suggest that Public Administration is the product of Political Science and is a discipline in its own right. The field of study of Public Administration is about government institutions and the operations to achieve their mandate. Political Science, however, is more concerned with political behaviour and political systems. Therefore, both disciplines focus on the dynamics of government systems.

The research topic for this study is about provincial intervention, which happens at the local government level, which is a political institution by its formation. The Municipal Council becomes the highest decision-making body, which is comprised of different political parties. As such, decisions are implemented within the context of the administration. These two disciplines do satisfy the characteristics, which Krishnan has identified above, to have an object of research and have a specific terminology. Furthermore, each study does have its own chronicles and tradition passed from academic generation to generation, which will be discussed below. Figure 2-2 shows how the study relates to the disciplines of Political Science, Public Administration and Governance within the context of provincial government and local government. However, political decisions contribute to new legislation, which must be implemented administratively to have a positive effect on good governance.



Source: Author's own construct

Figure 2-2: Political Science, Public Administration and Governance

This Section has explained how this study finds itself within Public Administration, Political Science and Governance. Every discipline has its own outlook in terms of traditions, paradigms, concepts and conceptual framework which remain relevant and unique to that specific field of study. The next Section will give more detail on said components.

## 2.9 Tradition

According to the *Oxford advanced learner's dictionary* (Bradbery & Deuter, 2010:1604), *tradition* is a belief, customs or a way of doing something that existed for a long time among a particular group of people. Bevir and Rhodes (1999:217) assert that *tradition* is a set of connected beliefs and habits that have intentionally or unintentionally passed from generation to generation at some point in the past.

In any field of academic study there are different approaches, practices and beliefs that underpin the field of studies. Such practices are passed down from generation to generation. As such, it is important for any researcher who conducts scientific research to understand traditions within his or her field of study. In this case, the topic for this study hinges on issues of local government whose traditions must be well understood.

In local government settings, traditions can be used in the study and evaluation of political and managerial practices. It provides lenses through which the routines, structures and processes of management and politics may be viewed. The delineation of multiple traditions heightens the sense that local government is not a unified, homogeneous organisational entity, but rather a *mélange* of voices, interests and assumptions about how to organise, prioritise and mobilise action. It can be used to engage practitioners with the idea that different traditions inform political and managerial practices and processes in local councils. The approach embraces the significance of participants' constitutive stories about local government rather than the search for essential truths about the politics and management of the public sector (Orr & Vince, 2009).

As indicated earlier, this study is within the disciplines of Political Science, Public Administration and Governance. Therefore, it is important to unpack the traditions of these disciplines.

These traditions reflect the methodology and approaches to the study of political objects or phenomena. Within this context, this study has discussed some approaches as applicable to the pre-scientific context to the study of politics. For instance, the big five dimensions of social science research (ontology, epistemology, teleology, sociology and methodology), as explained earlier, also have an impact on traditions within political science (Pierson & Skocpol, 2002:19). In addition, Schatz (2013:18) lists and describes the following main approaches to the study of politics, namely

- Traditional/historic approach predominant in the early years of modern political science and concentrated on legal, historic, philosophical or institutions of government
- Scientific/behaviourism approach, which focuses on the informal aspect of politics, how individuals behave within political institutions and how this contributes to policy making;
- Post-behaviourism approach which is a combination of methods of enquiry from both the traditional and behaviourist schools
- General theory approach which aims to identify all critical structures and processes of the society, explain their interrelationships with politics and predict a wide range of governmental outcomes
- System approach is based on the general theory that provides a framework for analysis whereby the politics of a country is depicted by the interaction between social environment and the abstract political system which processes or converts demands and supports into output
- Political economy approach concerns government and economic relations.

In line with the above, Public Administration remains an action that seeks to serve the public. It is more concerned with procedures, with translating policies derived from others into action, and with office management. Management includes administration, but also involves organisation to achieve objectives with maximum efficiency, as well as genuine responsibility for the results (Hughes, 2002:3). In addition, Hughes (2002:4) argued that the two elements, namely (1) 'administration' and (2) 'management' were not necessarily present in the traditional administrative system. Public administration focuses on process, on procedures and propriety, while public management involves much more.

Hughes (2002:5) identified the following seven principles of tradition in public administration:

1. *Organisation by the principle of bureaucracy.* Therefore, governments should organise themselves according to the hierarchical, bureaucratic principles.
2. There should be one best way of working, and strict adherence to scientific management principles.
3. The principle of bureaucratic delivery: Once a government has involved itself in a policy area, it also became the direct provider of goods and services through the bureaucracy.
4. A general belief among administrators in the politics/administration dichotomy, which is where political and administrative matters could be strictly separated.
5. The motivation of the individual public servant was assumed to be the public interest, in that service to the public was to be provided selflessly.

6. Public administration was considered to be a special kind of activity and therefore required a professional bureaucracy that was neutral, anonymous, employed for life with the ability to serve any political master equally.
7. The tasks involved in public service were indeed administrative in the dictionary sense; that is following the instructions provided by others without having personal responsibility for the results.

With specific reference to the study, which focuses on Section 139(1) intervention, which has an impact at local government level, it means that the study on local government will differ fundamentally based on the following reasons:

- Before 1994, no single, uniform system of local government existed across South Africa; each province had its own configuration of local government institutions.
- Local government as an institution of governance was passive, racist and illegitimate.
- The subservience of local government was manifest in that local authorities existed in terms of provincial laws, and in that their powers and functions were dependent on and curtailed by those laws.
- The development of separate local authorities for separate racial groups, under the leading theme of 'own management for own areas', produced a clever scheme of naked exploitation based on race.

Post 1994, local government has not only survived a fundamental restructuring, but has also made great strides towards extending service delivery and development to marginalised communities (Melchior & Visser, 2011:36). It therefore means that the history of local government has evolved over the years from the apartheid system to the new dispensation. This has influenced the studies on local government and its traditions. The current research topic, namely sustaining Section 139(1) intervention, finds its traction within the context of the new dispensation and this is how it is going to be dealt with.



Source: Author's own construct

**Figure 2-3: Integrated administrative management processes for effective service delivery**

## 2.10 Paradigm

*Paradigm* originates from the Greek word *paradeigma*, which has its origin in a Platonic term, meaning 'example'. Today, *paradigm* means worldview and a general theory. It is a term that is applied in the philosophy of science and refers to a principle that dominates an individual's insight into things and the world (Azizi, 2014:1575).

Plato and Aristotle are known to be the oldest sources elaborating on the concept of paradigm. In Plato's dialectics paradigm, derived from the word '*paradeigma*,' sometimes acts from sensible things to ideas, whereas sometimes it acts from ideas to the things, while Aristotle asserts that an example '*paradeigma*' is (a kind) of rhetorical counterpart of dialectic induction. Aristotle went further and stated that 'when two statements are of the same order, but one is more familiar (knowable) than the other, the former is an example' (Göktürk, 2005).

Thomas Kuhn, an American philosopher of science, amplified these assertions in his famous book, *The structure of scientific revolutions*, first published in 1962. He writes and argues that a

paradigm remains a specific theoretical point of reference based upon a particular epistemology and research methodology, reflective of a particular period. He went further to emphasise that a paradigm frames and directs the nature of the type of research inquiries generated from that theoretical orientation, as well as providing the fundamental basis for evaluating the results of generated research.

At the same time, Kuhn (1970) acknowledged that rival paradigms are incommensurate, that is, it is not possible to understand one paradigm through the conceptual framework and terminology of another paradigm. Kuhn understands the concept of paradigm against the backdrop of the nature of growth and development in the sciences. That the chronicle of physical science reflects and distinguished two periods, namely *normal science* and *scientific revolutions*. He defined *normal science* as the practice of scientific research within, and from, the frame of reference supplied by a dominant paradigm, for instance, from a collection of mutually accepted achievements (theories, predictions and laws). Mouton and Marais (1996:145-146) summarise the concept *paradigm* as primarily a model for conducting normal research.

A scientific revolution is defined as those discontinuities or non-cumulative episodes in the history of the discipline in which an existing and inadequate paradigm is replaced with a new one (Mouton & Marais, 1996:149).

In fact, after Kuhn (1970) had published his famous book he accepted that he had defined the word *paradigm* in an ambiguous way. He referred to the general meaning of paradigm as a mental framework that had an intention to dominate individual insight into the complete events of the world, while the specific meaning of paradigm referred to a certain area of the world which revealed the rules and determined the interpretation of the issues (Azizi, 2014:1575).

Furthermore, Kuhn asserted that if we were to analyse various traditions in the chronicle of science, we would come to a conclusion that the researchers in those periods made a variety of commitments to components of the specific paradigm, namely

- Social scientists commit themselves to a specific theory or law, or to a set of theories or laws.
- The researcher espouses a given methodology or set of research techniques that are dictated by the paradigm.
- Social scientists commit themselves to particular metaphysical assumptions and preconceptions (Mouton & Marais, 1996:146).

Therefore, it can be concluded that *paradigm* refers to how an individual viewed the world at a particular period in history. This individual view has a direct bearing on the relevant methodology to be applied in any scientific study, to yield a research outcome that is valid and reliable.

In this case, this research study finds itself in the governance paradigm because it deals with sustaining Section 139(1) intervention in local government. The study of local government has to do with constitutionality, good governance, administration, financial management and service delivery.

Following on from the above discussion of the concept of *paradigm*, the next Section will pay attention to the conceptual framework within the context of the identified study paradigm and its elements.

### **2.11 Conceptual framework**

The sixth component is the conceptual framework. Mouton and Marais (1996:136) understand concepts to be certain types of statements (definitions, hypotheses or observation statements) informed by specific syntactic rules. Furthermore, they argue that scientific knowledge consists of scientific statements. Therefore, the outlook of the conceptual framework is established by the regulative function that the framework has to fulfil.

Mouton and Marais (1996:137) differentiate between three types of conceptual frameworks, that is, (1) typologies, (2) models and (3) theories. They define *typology* as a conceptual framework in which phenomena are classified in terms of characteristics that they have in common with other phenomena. In turn, models are represented as the aspect of a dynamic phenomenon by indicating the relationships between the major elements of that phenomenon in a simple way. Furthermore, Kaplan sees a model as a particular mode of representation so that all its features talk to some of the characteristics of its subject matter. According to Mouton and Marais (1996:142) define *theories* as 'a set of interrelated constructs (concepts), definitions, and propositions that represent a systematic view of phenomenon by specifying relations between variables, with the purpose of explaining and predicting the phenomenon'.

In addition to the above discussion, Jabareen (2009:51) characterises the features of conceptual framework as follows:

- Each concept plays an important role within the study and all the concepts must be seen as a collective.
- A conceptual framework provides an interpretive approach to a social phenomenon.

- Conceptual framework within qualitative research offers understanding of the social phenomenon.
- A conceptual framework can be constructed through qualitative analysis.

For the purposes of this study, a conceptual framework is understood to be defining, clarifying identified concepts and their theories which are relevant to the study. In this case, the study deals with issues of local government. Therefore, it is important to identify relevant concepts that feature more prominently in the study. Such concepts will be discussed in the next Section.

## **2.12 Definitions and concepts**

The most fundamental approach to any research work is to explain concepts within the context of the study. This will help the reader to understand and interpret the application of concepts in the entire study. According to the *Oxford advanced learner's dictionary* (Bradbery & Deuter, 2010:298), a *concept* is 'an idea or a principle that is connected with something abstract'.

Mouton and Marais (1990:126) define *concepts* as the 'pigeonholes' into which we sort our unconstructed empirical experiences'. Concepts are therefore the primary instruments by means of which humans come to grips with reality. Furthermore, concepts are seen as a symbolic structure whereby people make sense of and give meaning to how they see the world. A concept remains a symbol of meaning.

Therefore, for the purposes of this study, concepts can be understood as tools that can be used to follow a particular line of argument in ensuring that the reader understands the interpretation of certain words. With regard to the definition, this gives the original meaning and explanation of certain words.

The following key concepts have been identified, which are the main drivers for effective service delivery at the municipal level: Figure 2-4 depicts a solid round chain wheel; if any one of the links breaks, the wheel will not be in a position to run. It means that the governance system will collapse. In this case, for the effective service delivery of any municipality, governance, administration, financial management and service delivery all play a key role.



Source: Author's own construct

**Figure 2-4: Municipal structures for effective service delivery**

### 2.12.1 Constitutionality

According to the *Oxford South African concise dictionary* (OUP Dictionary Unit for South African English, 2010:250), a *constitution* is 'a body of fundamental principles or established precedents according to which a state or organisation is governed'. The majority of current constitutions explains the fundamental principles of the state, the structures and processes of government, and the basic rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act. This higher law is usually referred to as a *constitution* (Bulmer, 2014).

A constitution remains a set of fundamental legal-political rules which dictates the following: it is binding on everyone in the state, including ordinary law-making institutions; concerned with the structure and operation of the institutions of government, political principles and the rights of citizens; based on widespread public legitimacy; harder to change than ordinary laws (e.g. a two-thirds majority vote or a referendum is needed; a minimum; meet the internationally recognised criteria for a democratic system in terms of representation and human rights (Bulmer, 2014).

In the South African context, the Constitution is the supreme law of the Republic of South Africa. It provides the legal basis for the existence of the republic, it sets out the rights and duties of its citizens, and defines the structure of the government.

It can therefore be concluded that a constitution is the supreme law that governs a country or an organisation. It defines the rules of engagement within a particular country or an organisation. It deals with operations, structures and what a country or organisation stands for. In the South African context, it defines governance structures, gives priority to its citizens by entrenching human dignity, human rights, freedoms, non-racialism and non-sexism.

The topic for this study finds resonance in the South African Constitution with a particular focus on Section 139(1), the intervention in local government by the Provincial Executive Council of the province. Therefore, the issue of constitutionality becomes critically important in the implementation of Section 139(1) intervention which must be followed to the latter. This aspect will be explored in detail later in the study.

### **2.12.2 Governance**

According to the *Oxford advanced learner's dictionary* (Bradbery & Deuter, 2010:649), *governance* is the 'activity of governing a country or controlling a company or an organisation; the way in which a country is governed or a company or institution is controlled'. The World Bank summarises three distinct aspects of governance: (1) the form of political regime; (2) the process by which authority is exercised in the management of country's economic and social resources for development; and (3) the capacity of government to design, formulate and implement policies and discharge functions. The Institute of Governance, Ottawa, defines *governance* as an institution composed of processes and conventions in a community that makes a determination on how power is exercised, how important decisions affecting the community are made and how various interests are afforded a place in such decisions. The former United Nations Secretary-General Kofi Annan amplified and added words and talked about good governance, arguing that this is about 'ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration' (Weiss, 2000).

Bala (2017:593) characterises good governance based on the following: good governance includes values and practices such as legality, justice, trust of laws and institutions, efficiency, responsible budgeting, management of human resources and crisis management; good governance means performing effectively in clearly defined functions and roles; good governance means promoting values for the whole organisation and demonstrating the values for good governance through behaviours; good governance means taking informed, transparent decisions

and managing risk; good governance means engaging stakeholders and making accountability real, and lastly; good governance is the basic principle of our efforts to strengthen public administration in partnership with clients or citizen (Bala, 2017:599-600).

For the purposes of this study and in the light of the above definitions, *good governance* can be described as the work of a responsive public institution that embodies clean governance that is, it should espouse and practise transparency, good value systems, integrity and accountability.

Leaders who head public institutions across the board, at whatever level, are duty-bound to be transparent and accountable. Any decisions taken by the leaders of such intuitions should be in the best interests of the community they serve. This can only happen when those who are given the responsibility to govern involve the community from time to time.

Respect for the rule of law remains fundamental. The legislation and policies governing public institutions must be upheld and implemented effectively. This will help public institutions to maintain their integrity and to ensure that the administration strengthens good governance.

### **2.12.3 Administration**

According to the *Oxford advanced learner's dictionary* (Bradbery & Deuter, 2010:18), *administration* 'is the activities that are done in order to plan, organise and run a business, school or other institution, and administrative costs are passed on to the customer'. Bala (2017:593) states that public administration should be efficient, responsive, transparent and accountable. In addition, public administration is by and large composed of appointed officials who are expected to manage processes and policy implementation. Furthermore, public administration must have the capacity to provide citizens and enterprises with quality public services (Bala, 2017:597). The Constitution of the Republic of South Africa, Chapter 10, Section 195(1) provides for certain values and principles governing public administration which are applied to all spheres of government so that a high standard of professional ethics must be promoted and maintained; efficiency, economic and effective use of resources must be promoted; public administration must be development-oriented; services must be provided impartially, fairly, equitably, and without bias; people's needs must be responded to and the public must be encouraged to participate in policy-making; public administration must be accountable; transparency must be fostered by providing the public with timely, accessible and accurate information; good human-resource management and career development practice to maximise human potential must be cultivated; public administration must be broadly representative of the South African people with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve a broad representation.

A new leadership and management ethos is needed at municipal level that will be driven by the principles set out in the Constitution and legislation pertaining to local government. The Constitution prescribes the following values for leadership and management: honesty, integrity, trustworthiness, ethical behaviour, accountability and responsiveness.

The legitimacy of the municipality suffers when institutional leadership and management are not viewed as trustworthy custodians or are out of touch with community needs and values. 'Leadership and management should be good not only in doing traditional hierarchical management but also at creating and operating in loosely constructed networks and confederations that are held together by agreement rather than rules and the exercise of hard power' (Ndevu & Muller, 2017).

In the light of the above discussions, *public administration* can be understood as a management function whereby the decisions taken by policy makers are implemented. In the municipal context, that would be the councillors. In addition, public administration is carried out by officials who have been appointed on the basis of their competency, relevant skills and experience in discharging specific responsibilities with high distinction. Furthermore, such officials must maintain high ethical standards and moral values when interacting with the communities in the process of discharging their responsibilities. They must be beyond reproach because they are also expected to strengthen the municipality's financial management systems and put controls in place.

#### **2.12.4 Financial management**

Ntonzima (2011:1011) asserts that *financial management* is 'the application of effective and efficient public financial controls to ensure that spending is incurred according to pre-determined plans or budgeted items, while spending is conducted within stipulated rules, regulations, manuals, directives and relevant guiding legislation.' Furthermore, he argues that the rationale behind public spending is to ascertain that there is reasonable accountability and transparency in handling public finances for the benefit of the community. Ntonzima (2011:1017) makes the complementary assertion that government accountability, which includes financial management and expenditure, is a fiduciary duty owed to the governed by the governing bodies. Ntonzima (2011:1011) regards financial controls as sub-systems of a standard system from a broader public financial management system, which is perceived in three aspects as: (1) records, memorandums, receipts, invoices, contracts, journals and ledgers; (2) procedures for data capturing and processing, journalising posting, casting, and (3) personnel numbers, calibre, technical competence and professional ethics. Mafolo (2015:889) states in summary that the control system of municipalities should be effective and efficient operations; with reliability of financial reporting, and compliance with applicable laws and regulations.

Thus, *financial management* can be explained as public money that must be managed by public officials in any institution of government and should be spent for the purposes for which it was budgeted, and it must have the input of affected stakeholders in the area. In addition, effective and efficient management control measures must be put in place to avoid deviation, and wasteful and fruitless expenditure in the delivery of services.

#### **2.12.5 Service delivery**

This is a broad concept, and for the purposes of this study, it must be understood within the context of governance. Essien (2015:55) argues that service delivery happens because of an informed decision of government, its institutions and the input from the community. According to Essien (2015:55), 'effective service delivery entails the provision of basic social services and amenities to the citizenry in such a way that their expectations are met or exceeded while, at same time, the business of governance remains viable.' Essien (2015:55) simplified the concept of *service delivery*, saying that all citizens must be provided with government services on an equal basis because they are entitled to them.

In this regard, service delivery has government ownership, commitment to deliver basic services to its citizen without any discrimination. It is therefore understood as a provision of services such as water and sanitation, electricity, education, grants, health and general infrastructure to the citizens who are in dire need of such services.

From the above discussions it is very clear that concepts such as *governance*, *administration*, *financial management* and *service delivery* cannot be separated from one another in the municipal environment. They have a strong linkage to one another; in other words, they are inseparable for the public good in providing basic services. For instance, in the municipal environment, governance structures take decisions, which must be implemented administratively by officials to deliver services based on the approved budget. It is in this context that if one component of the chain breaks, it affects the whole system.

The discussions that arise from the above demonstrate that the success or failures of service delivery is dependent upon the governing party of the day. Therefore, in order to clarify this study from a meta-theoretical perspective, it is important to set out the role of policy frameworks and their applications with specific reference to the ruling party in South Africa since 1994.

It is against this backdrop that the ruling party has deployed its cadres in public institutions, ranging from local to provincial and national government, to implement its mandate. Therefore, it is important to examine what informs such deployment from broad policy perspectives, which will be dealt with in the next Section.

### 2.13 Policy frameworks

Policies are guidelines or frameworks that are adopted or considered by an organisation to achieve long-term goals and are crafted such that they influence all major decisions within an organisation (Safeopedia, 2017). Torjman (2005:3) provides more clarity and categorises policy in terms of being reactive or proactive. Reactive policy emerges in response to a concern or crisis that must be addressed, whereas proactive policies, by contrast, are introduced and pursued through deliberate choice. Thus, policy becomes a course of action adopted or proposed by an organisation or individual who intends to address a particular crisis. This means that policies are not derived from a vacuum, but are informed by ideologies that can be described as a set of opinions or beliefs of a group or individual. Very often ideologies are referred to as a set of political beliefs or a set of ideas that characterise a particular culture (Anon, 2021).

Furthermore, ideology becomes a set of ideas or beliefs, or a stance that defines the position that social and political realities should be interpreted. This term is used either in a judgemental or in a neutral sense. However, it contains political connotations. Karl Marx defined *ideology* as a 'false consciousness' of a ruling class in a society that represents its ideas as if they were universal truths. He further argued that these ideas emerged out of and serve their own interests (New World Encyclopedia Contributors, 2018).

John *et al.* (2009:309) define ideology as 'a set of beliefs about the proper order of society and how it can be achieved'. Duvenhage (2013) went further and added that political *ideology* as a 'belief system by virtue of being designed to serve, on a relatively permanent basis, a group of people to justify, in reliance on moral norms and a modicum of factual evidence and self-consciously rational coherence, the legitimacy of the implements and technical prescriptions which are [used] to ensure concerted action for the preservation, reform, destruction or reconstruction of a given order'.

Kaunda (1990) is of the view that political ideology is an individual political partisanship that has been considered as a cue for goal orientated motivated by reasoning which enforces their political ideology (Park & Rim, 2018:5).

Thus, political ideology becomes a system of ideas that aspire to a political action by a group of people, individuals or political parties to change the status quo towards their direction.

In essence, there are fundamental dialectics between science and political ideology. Mouton and Marais (1990:136) defined *science* as a system of concepts, theories, findings and methods that were accepted by a number of scientists. This concept was thoroughly discussed in Section 2.1. The *Concise Oxford English dictionary* (Stevenson & Waite, 2010:1057) as discussed in Section

2.7 defined *science* as the intellectual and practical activity encompassing the systematic study of the structure.

Political ideology does not have to be proven. Once an organisation has adopted a belief system, it crafts its ideological outlook based on it to launch a struggle against the status quo. Whereas science requires methods, development of concepts and theories to be used to arrive at epistemological finding that will be agreed upon by scientists.

In this case the study finds itself in contrast dealing both with the ideology coming from the ruling party that influenced government policy frameworks in South Africa which will be discussed in the next Sections before concluding the chapter and the constitutional and legal framework affecting local government in Chapter 3.

The ANC adopted the National Democratic Revolution as its ideological outlook to drive a process of transformation. Therefore, it is important to conceptualise the National Democratic Revolution as ideology and the impact it had on transforming South Africa.

#### **2.14 The concept of National Democratic Revolution**

The National Democratic Revolution can be viewed within the context of the above ideological discussions. However, it must also be interpreted within the historical development of the ANC and its alliance partners. In 1928 the Sixth Congress of the Communist International resolved that the Communist Party of South Africa (CPSA) should pay particular attention to the ANC. This resolution was to transform the ANC into a fighting nationalist revolutionary organisation. This position laid the foundation for the entrenchment of the National Democratic Revolution within the organisational culture of the ANC (Jankielson, 2016:292).

It is against this bedrock that the ANC *Strategy and tactics* (2007:21) document defines the *National Democratic Revolution* as 'a process of struggle that seeks to transfer power to the people and transform society into a non-racial, non-sexist, united, democratic one, and change the manner in which wealth is shared in order to benefit all the people'.

In addition, Duvenhage (2013) stresses that the National Democratic Revolution is the foundational framework within which the ANC tries to find consensus and is of the view that this revolution must be continually interpreted and reinterpreted to determine the success or lack thereof, and to find a connection with ever-changing circumstances.

In view of these discussions, the following: In 1962, the South African Communist Party (SACP) adopted a programme of action that became known as 'The Road to South African Freedom'. The programme was intended to eradicate the colonial state of white supremacy and establish a

national democratic state that should be led by the ANC to effect the National Democratic Revolution consistently. It therefore meant that the revolution was not only about the political empowerment of the majority of black people, but would go beyond that and look into other aspects of white domination. This included the restructuring of the apartheid state machinery with particular focus on public service, police, judiciary and the army to make full representation of the society (Jankielson, 2016:292). These processes needed to be engineered through a process of transformation (which will be dealt with in the next Section).

## **2.15 Transformation of the State**

According to Duvenhage (2007:383), *transformation* is 'the fast, progressive, comprehensive and fundamental political change of society that arises from an unacceptable past and that takes the form of central planning (social engineering and political manipulation), often driven by hegemony, with an emphasis on the management of change in general and conflict management in particular'. In line with the above, Duvenhage (2007:383-387) identifies the following aspects of transformation:

1. A reaction to an unjust past
2. A new and better future (utopia)
3. A social and political plan for fundamental and far-reaching change
4. Planned (structured) political change and strategic political change.

In the South African context, *transformation* can be defined as a progressive change to an unjust system and progressively brings structural change to apartheid institutions that were meant to serve the aspiration of the white minority through state machinery.

In the context of the above explanation on transformation, the ANC as a ruling party initiated and adopted critical policy instruments as part of transforming the state, such as the Reconstruction and Development Programme (RDP); Growth, Employment and Redistribution (GEAR); Accelerated and Shared Growth Initiative for South Africa (AsgiSA) and National Development Plan (NDP), which will be discussed briefly below.

### **2.15.1 Reconstruction and Development Programme (RDP)**

The RDP became the first South African socio-economic policy that was initiated and adopted by the ANC government led by Nelson Mandela in 1994. This policy brought about major advances in addressing many social problems facing South Africa. It identified five policy programmes to rectify and deal with the injustices of the past. This included (1) a programme of meeting basic needs of the poorer 40% of the South African population living in absolute poverty; (2) a

programme to develop the neglected human resources of mainly Africans; (3) a programme to bring about fundamental restructuring of the economy; (4) a programme to democratise the state and society, and (5) a programme for the successful implementation of the RDP (Terreblanche, 1999). The expectation was that these programmes were to come about and be implemented through transformation of state institutions which included local government.

### **2.15.2 Growth, Employment and Redistribution (GEAR)**

Growth, Employment and Redistribution (1996) was the second economic policy after the RDP in post-1994 South Africa. It was introduced as a macroeconomic strategy by the Department of Finance at the time when it was evident that the South African currency, the rand, was not doing well and foreign-exchange reserves were at low levels. At the time, the high unemployment rate and overall growth rate were not adequate to meet social investment demands (Masters, 2019:52). Its point of departure, as opposed to the RDP, was on the basis that sustainable economic development could only be achieved by the redistribution through growth approach (Terreblanche, 1999). GEAR was to be viewed as macroeconomic policy that was meant specifically to stimulate markets and strengthen the rand to be competitive with international markets.

### **2.15.3 Accelerated and Shared Growth Initiative for South Africa (AsgiSA)**

The Accelerated and Shared Growth Initiative for South Africa (AsgiSA) was prepared during 2005 and launched in February 2006. Its objectives were to introduce policies, programmes and interventions that would allow the South African economy to grow enough to halve poverty and unemployment between 2004 and 2014.

At the time, government believed that South Africa was ready for AsgiSA to be a national shared growth initiative, rather than a government programme. It further identified critical initiatives, which included matters of public administration. In particular, at local government level in terms of service delivery, the focus was on addressing the skills gaps and introducing skills interventions. These interventions included the deployment of experienced professionals and managers to the local government sphere to improve project development implementation and sustain capabilities (Mlambo-Ngcuka, 2006:11). Hence, AsgiSA could be seen as a policy initiative that was directed specifically to look into two social ills, namely (1) drastically reducing poverty and (2) unemployment.

Section 152(1)(c) of the Constitution promotes social and economic development in local government.

#### 2.15.4 The National Development Plan Vision 2030

The NDP is the latest ANC-led government plan that envisages that by the year 2030 poverty and inequality would be reduced, if not eradicated. It envisages a South Africa in which all its people would have capabilities to grasp the ever-broadening opportunities available to change the life of millions of South Africans, particularly the youth who remain underdeveloped by the history of apartheid.

Chapter 13 of the NDP envisaged 'Building a Capable State', through the 'critical interventions to build a professional public service and state capable of playing a transformative and developmental role in realizing the vision 2030' (National Planning Commission, 2011:363). Therefore, this would demand management and effectively coordinated public institutions run by qualified public servants who remained committed to the public good and capable of delivering high-quality services on a consistent basis for all South Africans (National Planning Commission, 2011:365). In particular, the National Planning Commission (2011:371) envisaged that the local government sphere would increase the pool of skilled people in ensuring that public service became a career of choice for graduates who wished to contribute to the development of South Africa. Therefore, the NDP called for a distinct strategy that the high-calibre of people who would be recruited into the local government and municipalities would need to provide adequate training and supports for new recruits (National Planning Commission, 2011:375).

In view of the above policy discussions, the ANC as a ruling party needed to transform state institutions by implementing these key policy positions, particularly the RDP, GEAR and AsgiSA. The NDP was the latest plan in 2011 as a vision for the year 2030, to visualise a future South Africa that would have strong, corruption-free public institutions to deliver on its mandate. This is where cadre deployment according to the ANC came into power and control in the name of transforming state institutions. The rationale was to have representativity in all state institution irrespective of race. The concept of *cadre deployment* will be discussed in more detail in the next Section.

Figure 2-5 contains a summary of the key policy documents as discussed above:



Source: Author's own construct

**Figure 2-5: Summary of the key initial policy frameworks within the context of the ruling party in South Africa**

### 2.15.5 What is cadre deployment?

The ANC and its alliance partners adopted the policy of cadre deployment to ensure equity, equality and representatively in all government institutions. It has been implemented since the party assumed power in 1994. Loyal party members have been deployed on all levels of power in government with the intention of fast-tracking the transformation process. While certain cadres deployed in public administration have been able to function at an acceptable level, there is also a sense that their actions have been informed by loyalty to the individuals who influenced their deployment. Historians and political scientists agree that cadre deployment undermines the accountability structures within the public service environment. In addition, a number of critics

argue that the implementation of a cadre deployment policy is an attempt to centralise democratic powers within the ruling party (Twala, 2014:163).

ANC president Cyril Ramaphosa (hereinafter 'the President') defended the cadre deployment policy when he appeared before the Zondo Commission of Enquiry. The President argued that cadre deployment was an important part of implementing the ruling party's mandate.

- *It is the ANC's view that the practice of cadre deployment should not be inconsistent with the principles of fairness, transparency and merit in the appointment of individuals to public entities. Cadre deployment cannot be faulted in principle; it is a common feature of democratic practice around the world. But we would concede that there are weaknesses in its practical implementation that make the case for greater clarity, both within political parties and the state. (Paton, 2021)*

The Zondo Commission was established as a public inquiry by the government led by former President Jacob Zuma in January 2018. Its mandate was to investigate allegations of state capture, corruption, fraud, and other allegations in the public sector.

The former Premier of the Free State, who was the current (albeit suspended) Secretary-General of the ANC at the time of writing up this research, Ace Magashule, promised South Africans that the ANC would never abandon its cadre deployment policy, despite the widespread criticism that it contributed to poor service delivery. He emphasised that the ANC remained unshaken: 'We are not ashamed of cadre deployment. We will continue to implement it without fail' (Letsoala, 2015). In contrast, the Human Sciences Research Council previously indicated that the ANC's policy on cadre deployment was negatively affecting public services. According to the HSRC researcher, Modimowabarwa Kanyane (cited by Letsoala, 2015), the ANC seems to be implementing the cadre deployment policy by prioritising loyalty ahead of merit and even competence. Therefore, it is considered a serious obstacle to efficient service delivery.

Hence, *the cadre deployment policy* can be defined as an instrument to accelerate the process of transformation from apartheid institutions to democratic institutions and thus to ensure representatively, equity and equality in terms of race.

It is against this backdrop that the ANC relies on its loyal members who have the necessary skills and qualifications for deployment. However, within the ANC itself, there is growing concern that the manner in which it has been implemented is a cause for criticism. It is because of this that the ANC has spoken about organisational renewal.

### **2.15.6 ANC organisational renewal**

The ANC's intended organisational renewal is about structuring its flexibility in such a way that it improves its own transformation agenda. The intention thereof is to position its capacity to adjust to changing situations so that it can continue to serve and lead the people. The critical tasks relating to its renewal are the following:

- Deepening its analysis of the current political, economic and social conjuncture and the shifts that have occurred since 1994
- The development and systematic implementation of its cadre and leadership policy
- A renewal of the ANC's core values and safeguarding its reputation
- Reorganising the ANC's organisational machinery to improve its performance in all the pillars of transformation
- Strengthening the Alliance and progressive civil society, as well as the progressive 2012 Strategy and Tactics regarding social movements
- Improving the capacity of the developmental state
- Improving the financial sustainability and self-sufficiency of the ANC.

This programme of renewal will require consistent work by the leadership, cadres and membership of the ANC at all levels to ensure that negative tendencies are rooted out. It is also vital that the ANC strengthens its capabilities as leader of the progressive forces and agents of change. If there were any central factor that needs to be addressed to ensure the progress of the South African nation in this period of the life of the ANC to usher in a new phase, it is the quality of the ANC: its leadership, its cadres and its membership (ANC, 2012:12-13).

## **2.16 Conclusion**

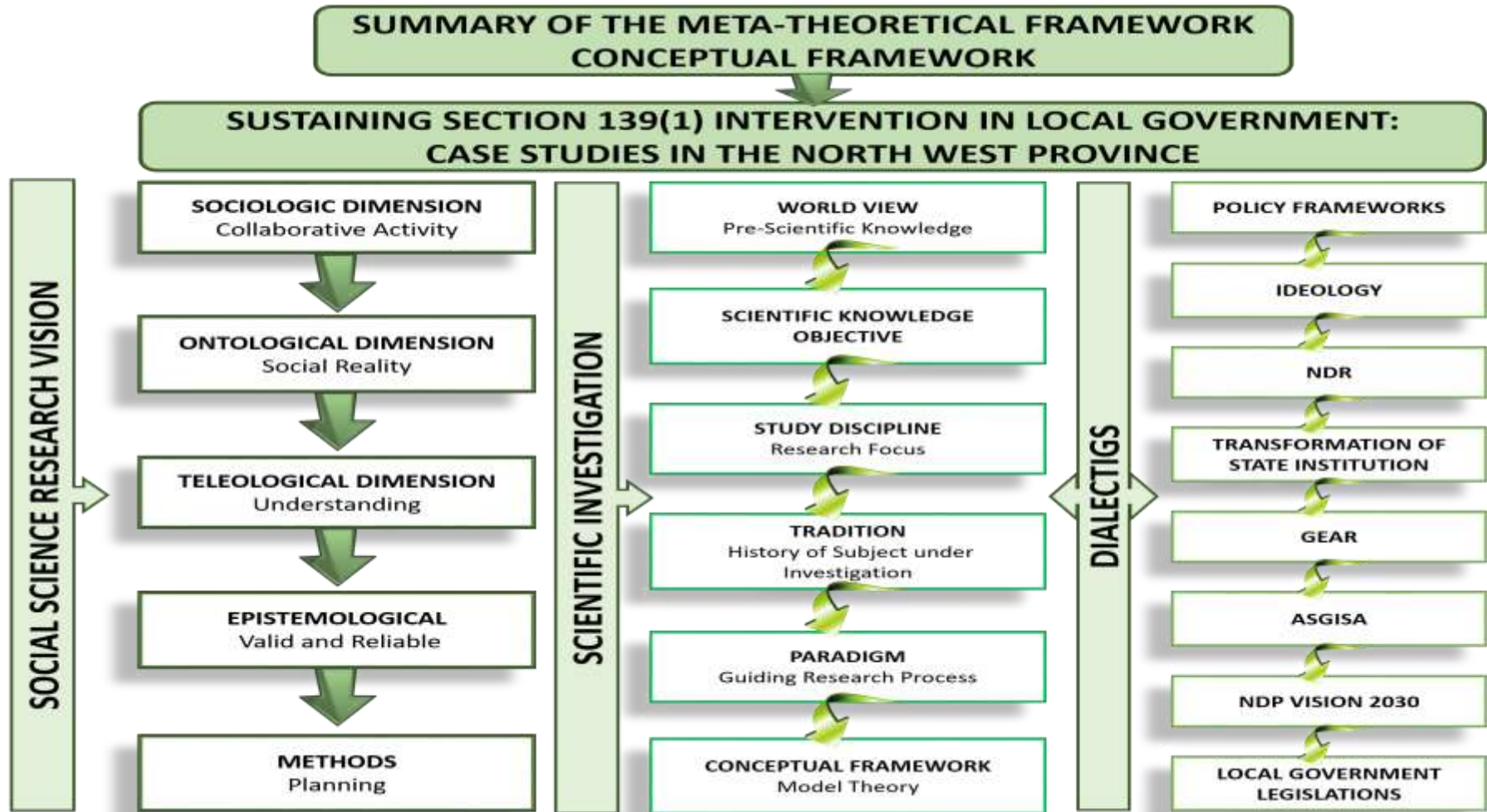
The main intention of this chapter was to clarify meta-science, the scientific point of departure, and the dialectics between science and political ideology in order to develop an analytical framework that could be used to understand and analyse Section 139(1) intervention.

Not much literature exists on Section 139(1), thus warranting the need to broaden its academic pedestal. The fundamental point of departure was to broaden this academic vacuum and pay more attention to the meta-theoretical framework. This framework helped to achieve the study objective to investigate how Section 139(1) was invoked in the identified municipalities for case studies. In order to reach the objective of this chapter, the critical aspects were discussed in greater detail.

Furthermore, the social science research components were highlighted as a paradigm, study traditions, discipline, pre-scientific knowledge and scientific knowledge, conceptual frameworks and concepts. These components were explained within the context of the social sciences and local government. Critical concepts were successfully identified that form the backbone of service delivery in the municipal context and they were clearly defined. Furthermore, the dialectic between science and political ideology was discussed and it was found that science needs to be proven and agreed upon by scientists, whereas political ideology did not need to be proven as long as an organisation had a system that it believed was its ideology to change the status quo.

In summary, this chapter demonstrated that the researcher understood his worldview from a Christian point of view. The study belongs to the disciplines of Public Administration and Political Science, whose sub-discipline is Governance.

The discussion in this chapter will assist in forming the basis of the next chapters and guide the research process going forward. Chapter 3 will focus on the constitutional and legal framework of local government within the South African context.



Source: Author's own construct

Figure 2-6: Summary of conceptual framework to understand the invocation of Section 139(1) intervention in local government

## **CHAPTER 3: THE CONSTITUTIONAL AND LEGAL FRAMEWORK OF LOCAL GOVERNMENT IN SOUTH AFRICA**

*“Constitutionalism means that no office and no institution can be higher than the law.”— Chief Justice of the Constitutional Court of South Africa Mogoeng Mogoeng, ‘Constitutionalism as an instrument for transformation’: The 17th Nelson Mandela Annual Lecture*

### **3.1 Introduction**

The South African Constitution (the Constitution) did not only create the local government sphere, but it also set out its objectives in various pieces of legislation. The Constitution regulates different areas of local government which include its formation and the development of municipalities. The critical areas of focus in the development of municipalities include governance, administration, financial management and service delivery.

The Constitution also empowers communities to be at the centre of their development and be involved in matters of local government. This has also imposed a responsibility on municipalities to create a conducive environment for community engagement. Communities and municipalities are legally bound to play a critical role in the running of their municipalities. It is, however, unfortunate that in most cases, communities are not aware of their legal rights and responsibilities on matters of local government.

The previous chapter (Chapter 2) provided a detailed analytical framework for the conceptualisation and the understanding of social science research. The chapter explained the sociological facet that embraced the collaboration between different role players (provincial government, the NCOP, the community and the municipality) when Section 139(1) was applied. It also explained the ontology, which is to investigate the reality around the causes of Section 139(1) intervention, and how this reality is being perceived. The understanding of the research goal (teleological) is also important, which guides the researcher to stay focused on the topic and to have reliable information at the end (epistemological). The methodological approach to the study determines the research outcome. Therefore, in this case this study embraces the qualitative method.

The chapter further explains the philosophy of research and components of social research with specific reference to Section 139(1) intervention. However, Section 139(1) forms the foundation of this study and it needs to be discussed in greater detail within the context of the Constitution and other legal frameworks in the next chapter (Chapter 4).

Therefore, this chapter focuses on the constitutional and legal framework regulating local government in South Africa. The importance of this framework will help to create an analytical framework to understand the local government environment with a special focus on Section 139(1) intervention in the North West Province.

Ndevu and Muller (2017:17) point out that 'the perusal of the legislative and policy framework applicable to local government in South Africa has led to a better understanding of the legal environment within which local government operates.' Therefore, in this case, the perusal and the analysis of local government legislation will help us understand and draw the legislative framework that governs local government in the light of Section 139(1) intervention.

The said regulatory frameworks will be discussed in terms of a specific criterion for each one of them. The criteria will include the following: background, aim, content, specifications and implementation within the context of Section 139(1) of the Constitution.

The point of departure will be an in-depth discussion around the Constitution which has come to form the basis for all pieces of legislation regulating local government. The discussion will focus on the set of values, principles and norms upon which the Constitution is founded and the view of the State with regard to the Constitution.

### **3.2 The Constitution of the Republic of South Africa, 1996**

Chapter 2 explains how a worldview can influence the researcher's background, that is, how he or she views the world can form the basis of his or her research.

The same can be said about how the Constitution was conceived, in terms of its values, principles, norms and what the view of the State was. This will help us better understand its background and fundamental constitutional objectives.

Prior to a constitutional revolution brought about by the two post-apartheid Constitutions, being the interim Constitution and the Constitution (Van der Walt, 2018), South Africa already had had three Constitutions. The three Constitutions were adopted in 1910, 1961 and 1983 respectively. These Constitutions took little account of the multi-cultural society South Africa is today.

Under these Constitutions, citizens had to be racially qualified to be accorded political and civil rights (Van der Walt, 2018). These Constitutions catered almost exclusively for a white, Afrikaner, Christian and male-controlled minority to the exclusion of the black majority.

The black majority were, among other things, dispossessed of their land, had their languages and cultures marginalised, and their human rights grossly violated. They were also denied access to some institutions, different amenities and opportunities. The state at the time deliberately violated the rights of black people and subjected them to socio-economic deprivation. The majority of black people were removed from their places of origin and had their citizenship removed (Winter, 2020).

Consequently, South Africa became a highly polarised and divided society in terms of race. Hence putting together the then interim Constitution and ultimately the current democratic Constitution which, among other things, abolished the past constitutional order which had qualified people according to race, and served as a guardian accompanying years of colonialism, segregation and apartheid. The new Constitution replaced parliamentary sovereignty with constitutional supremacy – the Bill of Rights – to protect human rights and to guard against their violation; and replaced the past potent central regime with a regime in which legislative power and executive power is divided among national, provincial and local spheres of government.

This Constitution was adopted on 8 May 1996 and amended on 11 October 1996 by the constitutional Assembly.

It is against this background that the current democratic Constitution had to be founded on a set of values, principles and norms, in order to address the injustices of the past. In the first instance, the South African State had a liberal, social and democratic approach towards the development of the Constitution. The key elements of such liberal approach can be extrapolated from Jankielsohn (2016:75), and explained hereunder, which formed the basis of the current Constitution.

The key elements of liberalism set out in Table 3-1 are the key features in the current Constitution.

**Table 3-1: Elements of liberalism**

<b>INDIVIDUALISM</b>	Liberalism is morally neutral and allows individuals to make their own moral decisions
<b>FREEDOM</b>	Liberty and individual freedom are often regarded as interchangeable. Although freedom means that each person should be able to act as he or she chooses, freedom under the law recognises the potential threat of the liberty of one person to another
<b>REASON</b>	Liberals believe in progress and the ability of individuals to resolve their differences through debate and arguments instead of violence.
<b>EQUALITY</b>	Individuals are born equal, at least in terms of moral worth. This has resulted in a commitment to equal rights and entitlements such as equality before the law and political freedoms and rights such as the right to vote, freedom of association , movement, speech etc.
<b>TOLERATION</b>	There is a balance between rival ideas and views, and the concept of irreconcilable conflict is discarded.
<b>CONSENT</b>	Government is based on consent by the governed which is the basis for democracy.
<b>CONSTITUTIONALISM</b>	A constitution defines a bill of rights as well as the various relationships between the state, government and individuals acting in accordance with constitutional principles.

**Source: Extrapolated from Jankielsohn (2016:75)**

The above key features can be identified in Chapter two of the Constitution, which is the Bill of Rights. The Bill of Rights carries the liberal elements as discussed above and seeks to protect the rights of individuals. Furthermore, it reflects the nation's values about human dignity, equality and freedom.

The Bill of Rights declared itself to be aspiring to be a historic bridge from the past of a deeply divided society. Strife, conflict, untold suffering and injustice characterised this society. Furthermore, the Bill of Rights sought a future founded on the recognition of human rights, democracy and peace. It further recognised the coexistence and development opportunities for all, irrespective of colour, race, class, belief or sex.

Section 27 of the Bill of Rights guarantees everyone 'access to health care services; sufficient food and water; social security, including, if they are unable to support themselves and their dependant, appropriate social assistance; the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of these rights; no one may be refused emergency medical treatment.'

The above means that the Constitution gives the South African government the overall responsibility to protect the rights of individuals. Such rights, among others, will include the provision of basic services and the provision of social grants to the poor under its limited resources, creating an equal society and giving people the opportunity to participate in economic activities. In addition, people must have equal access to strategic institutions of government without discrimination.

Hence, the Constitution provided for government intervention through Section 100 when provincial government fails in its executive obligation, and Section 139 for provincial government intervention if a municipality fails in its executive obligation. These interventions, in the main, protect citizens against poor service delivery.

In line with the above, Chapter seven of the Constitution remains the overarching chapter that gives impetus to regulate local government. It has empowered local government to play a significant role in improving the lives of local communities. The reasons for this was to ensure a democratic, integrated, prosperous and non-racial society. In addition, it is also structured in such a way that municipalities are given the right under the Constitution to govern on their own initiative, as Section 151(3) of the Constitution confirms.

Section 152(1) of the Constitution imposes certain responsibilities for performance on local government, among others, to provide basic services to communities in its jurisdiction.

According to Ababio and Mahlatsi (2008:344), '[i]n the case of the *City of Cape Town and Another v Robertson, and another* case CCT 19/04, the Constitutional Court held that subsection 40(1) of the Constitution entrenches the institutions of local government as a sphere of government and pronounces all spheres of government to be distinctive, interdependent and interrelated.'

This is in line with Section 156 of the Constitution, which affirms powers and functions of municipalities to have executive authority to administer local government matters. It gives the municipalities powers to make and administer by-laws for the effective administration, and also empowers municipalities to administer matters listed in Part B of Schedule 4 and Part B of Schedule 5. These schedules include the following:

- *Part B of Schedule 4 refers to air pollution, building regulations, electricity and gas reticulation, local tourism, municipal planning, municipal health services, municipal public transport, municipal public works, storm-water management systems in built-up areas and water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems.*

- *Part B of Schedule 5 refers to cleansing, control of public nuisances, facilities for the accommodation, care and burial of animals, fencing and fences, local amenities, municipal parks and recreation, municipal roads, noise pollution, public places, refuse removal, refuse dumps and solid waste disposal, street trading, street lighting, traffic and parking. (Constitution Section 156)*

These are important schedules to be administered by municipalities as part of providing basic services. When these schedules are not implemented as expected, services delivery deteriorate to the extent that, Section 139 intervention by the provincial government becomes justified.

Furthermore, Sections 43(c) and 151(2) empower original legislative and executive authority to Municipal Councils through local government legislation, which shall be discussed in greater detail later in the chapter.

At the same time, the Constitution prevents the national or a provincial government from hampering or compromising the proper exercise of powers and functions of municipalities. It is against this background that municipalities have the right to govern local government affairs under their jurisdiction. In fact, local government becomes a government closest to the people and has been given full powers to govern at grassroots level. At the same time, the powers and functions of municipalities have to be exercised taking into consideration the fact that the national and provincial governments have the responsibility to monitor and supervise through legislation as provided for in Sections 154(1) and 155(6) of the Constitution. Section 154(1) states that '[t]he national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their own powers and to perform their functions.' Whereas Section 155(6)(a) to (b) 'provide for the monitoring and support of local government in the province, and promote for the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.'

Hence, Section 139(1) of the Constitution makes provision for Provincial Executive Council intervention when a municipality fails to implement its constitutional mandate. Such intervention includes the following:

- *Issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; assuming responsibility for the relevant obligation in that municipality to the extent necessary to: maintain essential national standards or meet minimum standards for the rendering of a service; prevent that Municipal Council from taking unreasonable action that is*

*prejudicial to the interests of another municipality or to the province as a whole; or maintaining economic unity; dissolving the Municipal Council and appointing an administrator until a newly-elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step. (Constitution, Section 139(1))*

It is clear that the Constitution has empowered local government to run its own affairs. At the same time, it has to protect the fundamental rights of the people as enshrined in Sections 24, 25, 26, 27 and 29. Section 24 protects citizens from being exposed to a harmful environment; whereas Section 25(1) guarantees the assurance that 'no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.' Section 26 guarantees everyone access to adequate housing and puts the responsibility on the state to take reasonable legislative measures within its means to achieve the realisation of this right. Section 27 guarantees everyone the right to health care services, sufficient food, water and social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. Section 29 guarantees everyone the right to a basic education, including adult basic education.

In order to achieve what the Bill of Rights envisages in the Constitution requires strong leadership. Management at the municipal level should have passion and be inspired by the principles as set out in the Constitution and legislation with regard to local government. The Constitution (1996) details the following values for leadership and management: honesty, integrity, trustworthiness, ethical conduct, accountability and responsiveness. It can be concluded that leadership and its management must be truthful, sincere and frank, and stay away from deceit or fraud. These leaders also need to adhere to moral and ethical principles in daily dealings when serving the community.

The correctness of the municipality suffers when the leadership at the municipal level are not seen as people who have the high moral ground or are not at the centre of community needs. According to Ndevu and Muller (2017:192), '[l]eadership and management should be good not only in doing traditional hierarchical management, but also at creating and operating in loosely constructed networks and confederations that are held together by agreement rather than rules and the exercise of hard power.'

This leads to several pieces of legislation that are meant specifically to regulate local municipalities. The most important ones, which are relevant for the purposes of this research, have been identified and are explained hereunder, in terms of background, aim and content relevant to the

### 3.3 The White Paper on Local Government of 9 March 1998

Following the political transitional process as regulated by the Local Government Transition Act 209 of 1993, the current Constitution predicted a complete overhaul of the system of local government. The *White Paper on Local Government* (White Paper Working Committee, 1998) became the first and most critical piece of legislation that was developed to regulate local government. The process towards its development had been inclusive, interactive and transparent.

- *A three-phase approach ensured that all stakeholders were included in the consultative process over the past eighteen months. The first phase of consultations resulted in a discussion document published in April 1997, containing the initial strategic questions to be addressed in the White Paper. The second phase, which consisted of issue-focused research processes, provincial and local workshops and other consultation mechanisms, resulted in the Green Paper on Local Government, which was released for public comment in October 1997. The third phase, consisting of Portfolio Committee hearings, a local government Summit, public submissions and sectoral consultative conferences, resulted in the White Paper on Local Government, which has been approved by Cabinet. Appropriate legislation will now be prepared to enact the policy directions contained in the White Paper. (Foreword by Mohammed Valli Moosa, Minister for Provincial Affairs and constitutional Development, South Africa, 1998)*

This piece of legislation established programmes and a framework for a radical transformation of the existing local government system. Within the realm of the Constitution, it further provided for a commitment by working with citizens, groups and communities to ensure a decent livelihood and create sustainable human settlements for all (South Africa, 1998b:14). Furthermore, it remained a unique document 'as it does not deal with sectoral policy, but with the entire sphere of government. Hence it can be regarded as a 'mini Constitution' for local government, as it will affect all South Africans' (South Africa, 1998b:11).

The *White Paper* identifies two unified and equally important features of developmental local government. In the first instance, it deals with the Integrated Development Plan (IDP), which is a strategic planning tool for municipalities to enable integrated and co-ordinated service delivery within their locality (White Paper Working Committee, 1998:19). In the second instance, it makes reference to the notion of Performance Management (PM) that guarantees that the IDP is being applied and that municipalities are having the anticipated impact on development.

The powers and functions of local government should be executed in such a way that there is maximum impact in the developmental aspect of local communities, focusing on the basic needs of the poor in particular (White Paper Working Committee, 1998:38). Furthermore, the *White Paper* (White Paper Working Committee, 1998:41) provides that socio-economic development and community empowerment are mainly directed at poverty eradication. It also reaffirms the constitutional mandate of local government to social and economic development of communities.

According to McCann (2003:198), the *White Paper on Local Government* makes the ground fertile for fundamental reconsideration of the way in which the municipal developmental role should be supported by other spheres of government and notes that the authority of local government is, in most cases, undermined by sectoral departments by implementing their functions directly within municipal jurisdictions. The *White Paper* remains a policy framework that aims at guiding the municipality in fulfilling its developmental mandate. It gives provision for the co-operation with other spheres of government to realise the constitutional mandate.

It also encapsulates the Batho Pele Principles which provides a useful approach to building a culture and practice of customer service. It is based on eight key principles:

1. *Consultation*: Citizens should be consulted about the level and quality of public service they receive, and, where possible, should be given a choice about the services which are provided.
2. *Service standards*: Citizens should know what standard of service to expect.
3. *Access*: All citizens should have equal access to the services to which they are entitled.
4. *Courtesy*: Citizens should be treated with courtesy and consideration
5. *Information*: Citizens should be given full and accurate information about the public services that they are entitled to receive.
6. *Openness and transparency*: Citizens should know how departments are run, how resources are spent and who is in charge of particular services.
7. *Redress*: If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are lodged, citizens should receive a sympathetic, positive response.
8. *Value for money*: Public services should be provided economically and efficiently in order to give citizens the best possible value for money (Department of Public Service and Administration, 1998).

If the above-mentioned issues are not in place in guiding the municipality to fulfil its developmental mandate, then this triggers provincial government intervention in terms of Section 139(1).

The *White Paper on Local Government* (1998) should be seen as a foundation for the entire sphere of local government. What is particularly significant is that it puts people first – at the centre of their development – by extensive consultation during a process of developing the IDP, which is the strategic planning tool of municipalities. It further deals with the performance management systems that seek to appreciate the performance of labour in the municipal environment. It is against this background that Section 139(1) of the Constitution makes it possible for provincial government intervention when the two critical areas are not effective. Other pieces of legislation affecting local government derive their mandate from this legislation, notwithstanding the fact that the Constitution remains the overarching document and the supreme law that gave birth to all other legislation.

### **3.4 Municipal Structures Act 117 of 1998**

The inception of the Municipal Structures Act came against the bedrock of racial segregation. The Group Areas Act 41 of 1950 then became the key piece of apartheid legislation which created strict residential segregation and the removal of black people to their 'own group' areas.

The *White Paper on Local Government* (1998) recognises the fact that, through spatial separation, influx control and a policy of 'own management for own areas', apartheid aimed to limit the extent to which affluent white municipalities would bear the financial burden of servicing disadvantaged black areas. Furthermore, the Group Areas Act restricted the permanent presence of Africans in urban areas through the pass system, and reserved a viable municipal revenue base for white areas by separating townships and industrial and commercial development.

In line with the above, the Municipal Structures Act makes provision for a determination in terms of the category of municipality to be established in a particular area. It further explains the powers and functions of each municipality according to its category. It regulates internal systems, structures and office bearers of municipalities and gives suitable electoral systems (South Africa, 1998a:4).

Section 18(3) of the Municipal Structures Act compels municipalities to have Municipal Councils. These Municipal Councils consist of a number of councillors determined by the Members of the Executive Council (MECs) in the province through a notice in the *Provincial Gazette*. They remain entrusted with the executive obligations, and if such obligations cannot be fulfilled, it warrants provincial intervention in terms of Section 139(1) of the Constitution.

The councils can be regarded as governors of the municipalities. They are governance structures that take decisions with regard to service delivery to communities. According to Section 19(2) of the Municipal Structures Act 117 of 1998, Municipal Councils, on a yearly basis, are expected to

review the needs of the community and prioritise them by community involvement. Furthermore, they should review organisational and delivery mechanisms for meeting the needs of the community.

It can therefore be concluded that this piece of legislation deals with the establishment of structures for the smooth running of the municipalities, for instance, it establishes key structures such as Municipal Councils, which provide strategic guidance and direction to the administration; develops policies and by-laws to provide a legal basis; approves plans developed by administration; conducts oversight over the administration; and holds administration accountable. As councils, they are not a law unto themselves. They become accountable to their respective political parties, organs of state, that is, the Legislature, and the electorate, which is the public.

Once they can no longer exercise these functions for whatever reason, the Provincial Executive Council of the province invokes a Section 139(1) intervention of the Constitution depending on the nature and the extent to which the municipal systems have collapsed.

### **3.5 Municipal Systems Act 32 of 2000**

The *Municipal Systems Act 32 of 2000* was introduced to strengthen local government administrations by putting necessary systems and controls in place. It came about as a result of the identified need for changes to the existing administrative organisation and operations of municipalities. It also seeks to outline a set of principles and alternative options for more effective service delivery. It further asserts the need for sound labour relations to underpin developmental local government, and discusses the roles and responsibilities of national government in assisting municipalities to transform themselves (White Paper Working Committee, 1998: Section F).

The *Municipal Systems Act* is part of a legislative series that is intended to empower local government to respond to its constitutional mandate. This Act puts out the fundamental principles, mechanisms and processes that are important for municipalities to function properly. It explains the legal nature of a municipality, and the manner in which municipal powers and functions are to be exercised. Such powers and functions are to be performed by allowing community participation; providing for methods that councils must use to engage communities; performance management in municipalities; municipal services; municipal entities; public administration and human resources in municipalities; and credit control and debt collection in municipalities (Corruption Watch, 2014).

Section 4 of the *Municipal Systems Act* 'provide[s] a framework for local public administration and human resource development; empowers the poor and ensures that municipalities put in place

service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services’.

Within the constitutional context, Section 73(1)(a) to (c) of the *Municipal Systems Act* imposes an obligation on municipalities to make these constitutional dictates and to prioritise the elementary desires of local communities by ensuring that they render and deliver sustainable municipal services to the inhabitants within the community. According to Section 73(1)(a) to (b) of the *Municipal Systems Act*, the rendering of services must be equitable and sustainable, and must be done in a manner that is economical, efficient and effective, given the limited resources allocated. To be able to successfully perform its functions and obligations, a municipality and the entire leadership and officials should possess a high level of skills and competence (Greffrath & Van der Waldt, 2016a).

Section 50(1) of the *Municipal Systems Act* guarantees the local public administration to have basic values and principles as enshrined in Section 195(1) of the Constitution. This Section envisages the following:

- *Public administration must be governed by democratic values which include a high standard of professional ethics to be promoted and maintained; efficient, economic and effective use of resources must be promoted. Public administration must be development-orientated; services must be provided with impartiality, fairly, equitably and without bias; people’s needs must be responded to, and the public must be encouraged to participate in the policy-making; public administration must be accountable; transparency must be fostered by providing the public with timely, accessible and accurate information; good human-resource management and career development practices to maximise human potential, must be activated, and public administration must be broadly representative of the South African people.*

These are the values that must be embraced within a municipal environment to sustain service delivery to the people. The Act also provides that the MEC of local government must establish a mechanisms to monitor performance of municipalities in the province. Section 105(1)(a) to (c) stipulates that ‘[t]he MEC of local government in a province to establish mechanisms processes and procedures in terms of Section 155(6) of the Constitution to (a) Monitor municipalities in the province to manage their own affairs; (b) Monitor the development of local government capacity in the province; and (c) Assess the support needed by municipalities to strengthen their capacity.’

At the same time, annual reports are expected to be detailed by the municipality to the legislature and the Minister of Local Government and Human Settlements to Parliament. Section 46(1)(a) to

(c) makes provision for the municipalities to prepare annual performance reports for each financial year. Such reports must reflect (a) the performance of the municipality and of each external service provided during that financial year; (b) a comparison of the performances referred to in paragraph (a) with targets set for and performances in the previous financial year; and (c) measure must be taken to improve performance.

Whereas, Section 47(1)(a) to (c) provides for 'the MEC for local government to annually compile and submit a report to the provincial legislatures and the Minister; a consolidated report on the performance of municipalities in the province. The report must identify the following: (a) Municipalities that under-performed during the year; (b) Propose remedial action to be taken; and; (c) Be published in the *Provincial Gazette* and the copy of the report be submitted to the National Council of Provinces.' Furthermore, Section 48(1) to (2) compels the 'Minister to annually compile and submit to Parliament and the MECs for local government a consolidated report of local government performance in terms of general key performance indicators (2) the report must be published in the gazette.'

If all of the above fails in terms of legislation, service delivery can be affected negatively and the invocation of Section 139(1) of the Constitution becomes a necessary tool for provincial intervention. This *Municipal Systems Act* also recognises the responsibilities of various structures within the municipal environment, such as Municipal Councils, administration and community members, which are discussed below.

### **3.5.1 The Municipal Council's responsibilities**

Section 4(2) of the *Municipal Systems Act* places the following duties on the Municipal Council: to exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community; provide, without favour or prejudice, democratic and accountable government; encourage the involvement of the local community; and to strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner.

Furthermore, the Municipal Council has the responsibility to consult the local community about the following:

- Guarantee the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider
- Make available options for service delivery
- Give members of the local community equitable access to the municipal services to which they are entitled

- Promote and undertake development in the community
- Promote gender equity in the exercise of the municipality's executive and legislative authority
- Promote a safe and healthy environment in the municipality
- Contribute, together with other organs of state, to the realisation of the fundamental rights contained in Sections 24, 25, 26, 27, and 29 of the Constitution.

The focus of the *Municipal Systems Act* is clearly on the municipal systems and processes that are intended to strengthen the administration. The Act identifies the clear roles of the council, administration and community members that enable a municipality to function.

The Municipal Council comprises elected public representatives who were voted in on the basis of promises they had made to community members through their manifestos during local government elections. Therefore, they carry a responsibility to use their power within the prescripts of the law and to use the resources of the municipality in the best interests of the community. Success in this respect requires strong municipal administration because it is the implementing agent on behalf of council, which is the highest decision-making body in the municipality. The municipal administration's specific responsibilities are explained in the next Section.

### **3.5.2 The municipal administration's responsibilities**

The municipal administration remains the implementing agent following council decisions. This municipal administration is responsible for putting systems in place to ensure efficient and effective service delivery in an integrated manner to communities.

Section 6 of the *Municipal Systems Act* demands that the municipal administration be responsive to the needs of the local community; facilitate a culture of public service and accountability among staff; take measures to prevent corruption; establish clear relationships; facilitate cooperation and communication between it and the local community; give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and inform the local community how the municipality is managed, of the cost involved and the person in charge.

It can be concluded that the municipal administration is required to implement the council's decisions. In so doing, it is expected to put systems and mechanisms in place within the ambit of the law to implement such decisions. An example is the IDP and the Service Delivery and Budget Implementation Plan (SDBIP).

Section 26 of the *Municipal Systems Act* sets out the components of the IDP, which is the municipal strategic planning tool that was drawn up with community participation. The IDP reflects 'the Municipal Council's vision for the long-term development of the municipality, with special emphasis on the municipality's most critical development and internal transformation needs' in terms of Section 26(a) of the *Municipal Systems Act*. At the same time, this long-term vision and critical development must be aligned to achieve the objectives of local government as enshrined in Section 152 of the Constitution.

The SDBIP translates the IDP and budget into measurable criteria in terms of how, where and when the strategies, objectives and normal business processes of the municipality will be implemented. The implementation of service delivery and the budget for the financial year has to be in compliance with the MFMA, which will be explained below (Law Insider, 2021). The municipal administration has a responsibility to facilitate cooperation and communication between it and the local community, but the community also has a responsibility to cooperate with the municipality to accelerate service delivery.

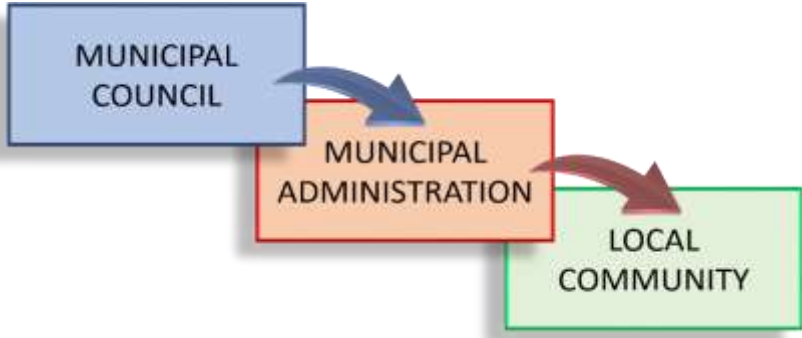
### **3.5.3 The responsibilities of the members of the local community**

Section (5)(1)(2) of the *Municipal Systems Act* empowers members of the community to contribute to the decision-making process of the municipality; be informed of decisions of the Municipal Council, regular disclosure of the state of affairs of the municipality, including its finances; demand that the proceedings of the Municipal Council and those of its committees be open to the public; have access to municipal services that the municipality provides; promptly pay service fees, surcharges on fees, rates on property and other taxes, levies and duties imposed by the municipality; respect the municipal rights of other members of the local community; and comply with by-laws of the municipality applicable to them.

The above means that local communities have the legislative power to participate in issues of local government. At the same time, the Municipal Council has a responsibility in terms of Section 4(2)(c) of the *Municipal Systems Act* to encourage the involvement of the local community in matters of local government. This can only happen if the Municipal Council creates an enabling environment for such participation by the community. This is necessary because the municipality cannot exist without the local community. The municipality exists to serve the community under its jurisdiction. At the same time, the local community also has a specific responsibility to comply and work with the local municipality for the rendering of services. It can, therefore, be concluded that the local community, the Municipal Council and municipal administration need one another to succeed with respect to the provision of basic services. Failure by the three structures to work

together will result in the invocation of Section 139(1) by the Provincial Executive Council because it would be common knowledge that the municipality's systems are disorganised.

Figure 3-1 demonstrates the relationship between the Municipal Council, administration and local community:



Source: Author's own construct

Figure 3-1: Relationship between council, administration and local community

### 3.6 Intergovernmental Relations Framework Act 13 of 2005

Prior to 1994, municipalities were organised based on old models which made it difficult to identify basic needs, promote human rights, provide social and economic development and generally provide basic services.

There was a need to introduce specific support mechanisms to help municipalities transform and provide basic services in an integrated manner. However, national and provincial governments had an obligation to intervene on behalf of communities where municipalities, through inefficiency or a lack of commitment, failed to deliver such services in terms of Sections 100 and 139 of the Constitution.

In the main, this intervention was solely intended to ensure that administrative transformation took place and municipalities did meet their legislative mandate. Hence, there was a need to introduce new legislation that had to regulate the relations among the spheres of government, namely local, provincial and national. These relations had to be regulated by the Intergovernmental Relations Framework Act.

This legislation, namely the Intergovernmental Relations Framework Act, is aimed at co-ordinating and establishing a framework in terms of the working relations between spheres of governments; national, provincial and local governments.

It also provides systems, procedures and mechanisms on how disputes should be resolved between spheres of governments (South Africa, 2005:11). Furthermore, this legislation is in tandem with Section 154 of the Constitution, which puts the responsibility on national and provincial governments to support local government in achieving its primary constitutional mandate.

Section 17 of this Act determines the composition of the Premier's intergovernmental forum. This forum consists of the Premier of the province; the MEC for local government in the province; other members of the Executive Council designated by the Premier; mayors of district and metropolitan municipalities in the province; the administrator of those municipalities which are subjected to an intervention in terms of Section 139 of the Constitution; and Municipal Councillors designated by organised local government in the province. This forum has mainly identified people who are in a position of power and decision-makers who are able to enhance and provide service delivery to the communities in an integrated manner.

The conclusion can be drawn that the Intergovernmental Relations Framework Act caters for a synergy among spheres of government on policy implementation. The sole intention is to strengthen the capacity of municipalities to deliver basic services. Furthermore, it also places an obligation on the premier, who is the head of the Provincial Executive Council, to ensure that the various provincial departments deliver services in an integrated manner. The very same executive council must make a decision in the event that a municipality fails in its executive obligations to intervene through Section 139(1) of the Constitution.

### **3.7 Municipal Finance Management Act 56 of 2003**

Moosa, cited in the *Green Paper on Local Government of 1997* (Ministry for Provincial Affairs and Constitutional Development, 1997) that South African municipalities were experiencing financial stress, and, in some instances, a crisis. These were combined with service backlogs, collapsed or deteriorating infrastructure, deteriorating creditworthiness and borrowing capacity, administrative inefficiencies, and non-payment.

In some municipalities, budgeting, accounting, financial reporting and management practices were weak. Problems included under-capacitated financial staff, unrealistic budgeting and a lack of meaningful popular participation in the budgeting process. Improved municipal accounting systems and capacitation programmed were required.

There was an absence of municipal financial systems, including local revenue instruments and policies, intergovernmental transfers and the leveraging of additional investment in municipal infrastructure. No systems were put in place to determine the root causes of financial problems

faced by municipalities and programmes for poverty eradication. There were no strategies to improve growth, job creation and competitiveness.

Municipalities could not be differentiated in terms of division of revenue, because municipalities in the rural areas could not generate revenue as compared to municipalities in urban areas. Even in those metropolitan municipalities, their financial circumstances were different.

As a result of the above-mentioned, the MFMA was introduced and it became a product of several consultations to safeguard public finance at the local government level. It is in line with the *Public Finance Management Act 1* of 1999 (PFMA) which regulate financial management in the national government and provincial governments.

The MFMA, is aimed at regulating all financial matters with regard to local government. It 'secure[s] sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; and establish[es] Treasury norms and standards for the local sphere of government'. This legislation also provides for provincial government intervention in a situation where a municipality has failed to fulfil its executive obligation insofar as municipal finances are concerned.

### **3.7.1 Types of provincial interventions through MFMA**

Section 136(1) of the MFMA gives powers to the MEC for local government in a province to consult the Mayor of a municipality if he or she becomes aware that there are serious financial problems in a municipality. These consultations are intended to determine the facts, assess the seriousness of the situation and determine whether the situation justifies or requires the intervention in terms of Section 139(1) of the *Constitution*.

Furthermore, Section 136(2) of the MFMA emphasises the following:

- *If the financial problem has been caused by or resulted in a failure by the municipality to comply with an executive obligation in terms of legislation or the Constitution, and the conditions for an intervention in terms of Section 139(1) of the Constitution are met, the provincial executive must promptly decide whether or not to intervene in the municipality. If the provincial executive decides to intervene, Section 137 applies.*

Section 137(1) of the MFMA states that if the conditions for a provincial intervention in a municipality in terms of Section 139(1) of the Constitution are met and the provincial executive makes a decision in terms of Section 136(2) as stated above, the provincial executive may take any appropriate steps referred to in Section 139(1) of the Constitution, to do the following:

- Assess the seriousness of the financial problem in the municipality
- Seek solutions to resolve the financial problem in a way that would be sustainable and would build the municipality's capacity to manage its own financial affairs
- Determine whether the financial problem, singly or in combination with other problems, is sufficiently serious or sustained that the municipality would benefit from a financial recovery plan and, if so, requesting any suitably qualified person to prepare an appropriate financial recovery plan for the municipality; recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan; and to submit the recovery plan to the MEC for local government in the province within a period determined by the MEC.

If the municipality in terms of Section 136(3) has failed to approve a budget or any revenue-raising measures necessary to give effect to the budget, as a result of which the conditions for an intervention in terms of Section 139(4) of the *Constitution* are met, the provincial executive must intervene in the municipality in accordance with Section 26. If by the start of the budget year a Municipal Council has not approved an annual budget or any revenue-raising measures necessary to give effect to the budget, the provincial executive of the relevant province must intervene in the municipality in terms of Section 139(4) of the *Constitution* by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the council and (a) appointing an administrator until a newly elected council has been declared elected; and (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

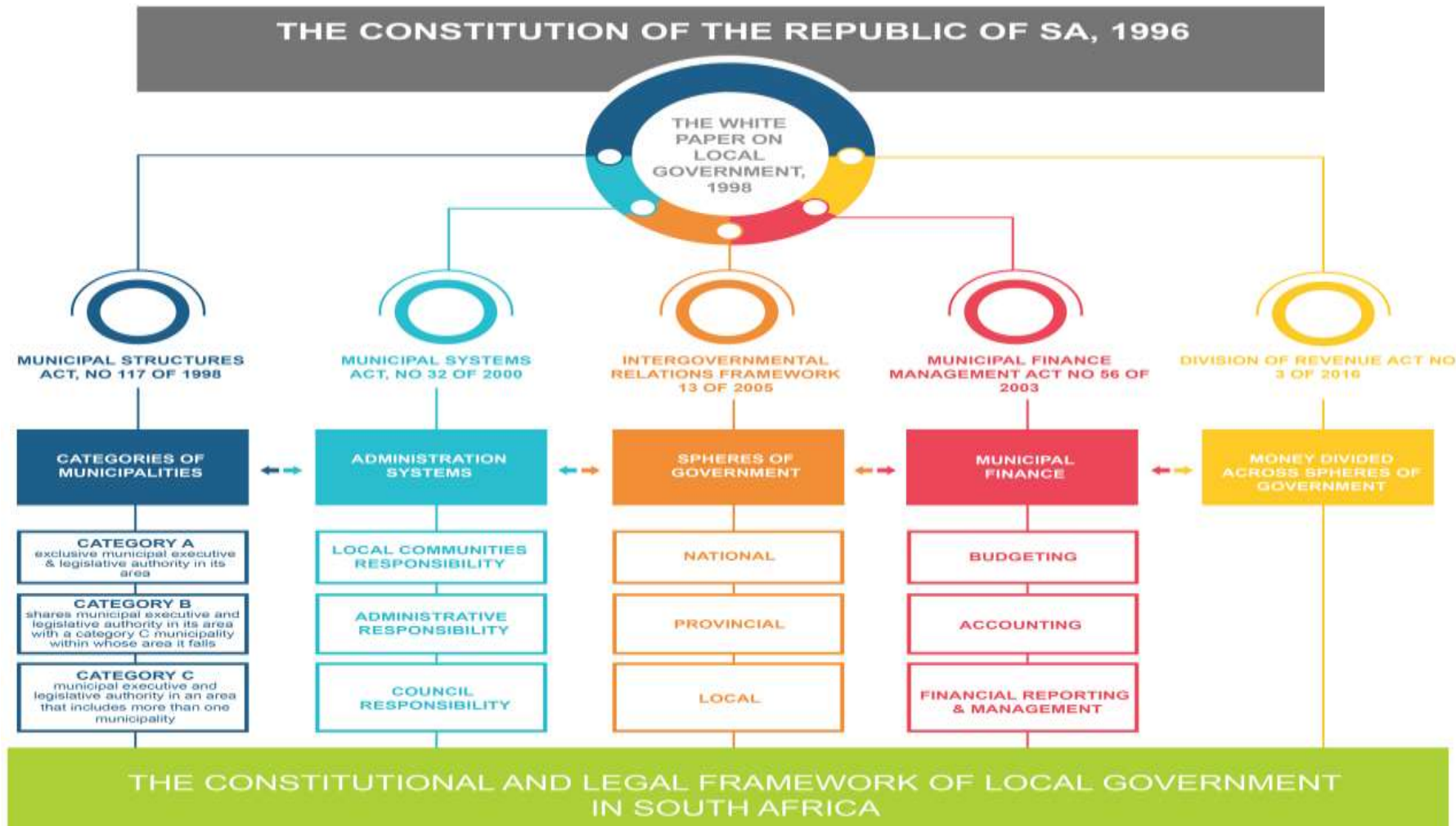
The MFMA can be seen as a financial nucleus that regulates municipal finances. It provides guidance on how to put financial controls and systems in place. At the same time, it makes provision for provincial government intervention during a financial crisis as a result of the collapse of systems and controls. It further recognises the *Constitution* as the supreme law by including Section 139(1) as a provision for provincial government intervention through the MFMA. This demonstrates a clear synergy between the *Constitution* and the MFMA on provincial government intervention in respect of a poor state of financial affairs in local government.

### **3.8 Division of Revenue Act 3 of 2016**

This Act makes a determination in terms of equitable share across spheres of government based on the revenue which shall have been raised nationally. These are taxpayers' monies raised from individuals who are working, and private businesses who are doing business in South Africa.

This Act is in line with Section 214(1) (c) of the *Constitution*, which indicates that an Act of Parliament must provide for ‘any other allocations to provinces, local government or municipalities from national government’s share of that revenue, and any conditions on which those allocations may be made.’

Section 214(2) of the *Constitution* provides such conditions and compels provincial governments, organised local government and the Financial and Fiscal Commission to be consulted, and any recommendations of the Commission, among others, must take into consideration the national interest, and whether provinces and local municipalities have the capacity to provide basic services and functions which are allocated to them. Figure 3-2 summarises the chapter by providing the legislative framework that regulates local government in South Africa.



Source: Author's own construct

Figure 3-2: Legal framework regulating local government

### **3.9 The Intergovernmental Monitoring, Support and Interventions Bill**

Sections 139(8) and 100(3) of the *Constitution* provides that national legislation may regulate the implementation of Sections 139 and 100 in its entirety. In order to regulate the implementation of both Sections, the Intergovernmental Monitoring, Support and Interventions Bill (hereinafter the Bill') has been proposed. The Bill was drafted with the purpose of providing for standards in the implementation of Section 139 and 100. It was also drafted to provide measures of support and intervention to strengthen the capacity and performance of each sphere to fulfil its executive obligation, and to stabilise the interventions environment through clearer procedures and processes. However, the study is about Section 139 intervention and therefore the focus will be on the processes in the Bill that seek to regulate Section 139 intervention.

#### **3.9.1 Monitoring**

The *Constitution* and other legislation focused on in this chapter empower the provincial government to monitor the performance of municipalities. Section 155(6) of the *Constitution* provides that each provincial government must provide for the monitoring and support of local government, and promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.

#### **3.9.2 Support**

The *Constitution* creates an obligation on national and provincial governments to support local government to achieve its objectives. In particular, Section 145(1) provides that '[t]he national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.'

Monitoring enables national and provincial government to identify areas of support to municipalities. Section 45 of the Bill provides for provincial support to municipalities facing possible, impending or actual failure to fulfil their executive obligations, as well as for the attendant procedures or processes to be followed. Section 45(1), (2) and (3), in particular, create obligations for the MEC for local government to follow certain procedures and processes in support of local government.

Section 45(1) creates an obligation on the MEC to follow a certain procedure 'if the provincial executive is alerted through the provincial monitoring system, or by any other indicator, or any means, to a possible, impending or actual failure by a municipality to fulfil any of its executive obligations'. Section 45(1)(a) to (c) sets out the procedure. The MEC must, among other things,

establish 'whether the municipality is considering taking, or has taken any remedial steps to prevent a possible or impending failure from occurring, or to deal with the consequences of an actual failure'.

In terms of Section 45(2), the MEC is obligated to determine whether provincial support for the municipality is needed depending on whether or not the municipality has the skills, resources and capacity to take remedial steps to prevent 'non-fulfilment of the obligation, or to deal with the consequences should non-fulfilment occur, or if non-fulfilment has already occurred, to ensure a turnaround and sustained future fulfilment of the obligation'; and then prepare and submit a report about the situation to the Premier, Minister, the national executive member responsible for finance, the organised local government and any other national executive member responsible for administering sectoral legislation affected by the matter.

Section 45(3), too, creates an obligation on the MEC to prepare and implement a support initiative in terms of Section 44 of the Bill if any proposed provincial support is approved.

Intervention into the affairs of local government comes from the Constitution. Section 139 of the Constitution empowers the provincial executive to intervene in the affairs of local government when a municipality fails to fulfil its constitutional obligations, and the regulation of its executive powers does not succeed in ensuring that it performs its functions effectively.

### **3.10 Conclusion**

The critical analysis of the Constitution and legislation that regulates local government have helped to create an understanding of how they relate to each other in as far as the invocation of Section 139(1) of the *Constitution* is concerned. The chapter began with the background to, and the values, principles and norms that have informed the current Constitution. It is clear that the current democratic Constitution was adopted as a result of the past apartheid Constitutions which promoted white supremacy over the majority of black South Africans. It is against this background that the preamble to the current democratic Constitution intends

- *to heal the divisions of the past and establish a society based on the democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.*

The chapter demonstrated the importance of the local government sphere which seeks to improve the quality of life of all citizens. This can be seen in Chapter seven of the *Constitution*, which has given municipalities the legal power to govern on their own initiative and run the affairs of the communities under their jurisdiction.

The *White Paper on Local Government* (White Paper Working Committee, 1998) came under scrutiny and it became very clear that it is a mini-constitution on issues of local government. It is genetic to all pieces of legislation that regulate local government. It has emphasised developmental local government which is committed to working with all citizens and groups within the community. The intention of working together is to find sustainable ways to meet their social, economic and material needs to improve the quality of their lives.

In this chapter critical pieces of legislation that govern local government flowing from the *White Paper on Local Government*, were identified, that is, the Municipal Structures Act, the *Municipal Systems Act*, the MFMA, the Intergovernmental Relations Framework and the Division of Revenue Act.

The Municipal Structures Act provided for the structural and institutional setup of municipalities, including categories, types and electoral system. This Act also provided for the first mechanisms for participatory democracy in local government through the establishment of ward committees. The *Municipal Systems Act* explained the internal systems and controls of municipalities, and pivots on the system of integrated development planning, which is the strategic planning tool, and performance management. The most important element of this Act strengthens the view that municipalities should craft a culture of community participation through the ward committees system, as well as other mechanisms. It prioritises community engagement and the involvement and participation in municipal affairs. The MFMA regulates all financial matters with regard to local government. It was very clear in this chapter that the MFMA secures sound and sustainable management of the financial affairs of municipalities. It further establishes Treasury norms and standards for the local sphere of government. This is where the synergy between Section 139(1) of the Constitution and Sections 136(1) (2) and 137 of the MFMA are visible in terms of provincial government intervention on financial matters of municipalities. The chapter demonstrated that Sections 136 and 137 cannot be implemented by provincial government unless all the requirements of Section 139(1) of the *Constitution* are met. This is clear evidence that the *Constitution* remains the supreme law of the Republic of South Africa.

With regard to the Intergovernmental Relations Framework, the chapter demonstrated that this is a piece of legislation that brings spheres of government together. The intention is co-ordination and the establishment of a framework in terms of the working relations between national, provincial and local governments. It lays out the rules of engagement between spheres of government and also provides systems, procedures and mechanisms on how disputes should be resolved between spheres of governments.

The *Division of Revenue Act* regulates equitable share across spheres of government based on the revenue that shall have been collected at the national level. This is the taxpayers' monies raised from individuals who are working and private businesses who are doing business in South Africa.

## CHAPTER 4: THE MEANING OF SECTION 139(1) WITHIN A CONSTITUTIONAL AND LEGAL CONTEXT

### 4.1 Introduction

There is emerging jurisprudence that somehow ensures consistency in the methodology of dealing with Section 139 interventions. An example in this regard can be made from the case of *Premier of the Western Cape v Overberg District Municipality* 2011 (4) SA 441 (SCA), where the Supreme Court of Appeal had to adjudicate a dispute dealing with an intervention on the basis of Section 139(4) of the *Constitution*. The court found that the provincial government was not justified in deciding to intervene and dissolve the Municipal Council due to its failure to approve its annual budget. Failure to meet the timeframe for annual budget is not a good reason or justification to dissolve a Municipal Council that has failed to adopt an annual budget by the prescribed timeframes. In this instance, the *Constitution* imposes an obligation on provincial government to lend support to the council by affording the municipality the necessary support to meet its executive and constitutional obligations.

Section 139 of the Constitution has become common knowledge and language among local government practitioners in South Africa. The broader context of the alleged poor governance at local government level has become the breeding ground of such common knowledge and language. It is when intervention is executed by the provincial government that this alleged poor governance – which has been marred by political factionalism, corruption, greed, patronage, nepotism and financial embezzlement – comes onto the lips of local government practitioners and communities.

Greffrath and Van der Waldt (2016a:135) supplement the above statement and assert that '[p]olitical factors that are indicative of state dysfunction may also serve as more covert reasons to intervene in municipalities in order to influence the balance of political power in a given province, municipality, or within a party itself.' Thus, politics becomes central in some instances to usurp political power and control of the municipality in order to have access to local government resources. This aspect will be further explored in the following chapters dealing with case studies.

Chapter 3 of this research provided the constitutional and legal framework of local government in South Africa. Specific reference was made to the Constitution and specific pieces of legislation regulating local government. It became evident that the Constitution is the supreme law and remains fundamental to all pieces of legislation in the local government environment. The origin of the invocation of Section 139 emanates from the Constitution itself and other pieces of

legislation. In particular, the MFMA draws its provincial government intervention processes from the Constitution.

Within the realm of the Constitution, the *White Paper on Local Government* was seen as the fundamental piece of legislation in the local government environment. This piece of legislation informed all other legislation in local government. The said pieces of legislation were all identified and explained in the previous chapter (Chapter 3); for instance, the *Municipal Structures Act*, which focused on the municipal structures, namely municipal categories in terms of A, B, and C; the *Municipal Systems Act*, which focused on municipal systems and detailed the responsibilities of communities, administration and council; the *Intergovernmental Relations Framework Act*, which focused on how the three spheres of government, these being national, provincial and local, should relate to one another; the MFMA, which focused on municipal financial systems and control; and the Division of Revenue Act, which focused on equitable shares of the finances across the spheres of government, these being monies which have been raised at national level through the South African Revenue Service (SARS).

This chapter describes the meaning and procedural aspects within a legal framework when Section 139(1) is implemented. The chapter further explains what the provincial government should do when local government fails to deliver on its mandate. Some of the court judgments relate to the Section concerned are analysed in order to assess what judges have said concerning the provincial government and municipalities.

## **4.2 Application of Section 139 of the Constitution**

It is important to note that there are no prescribed standardised administrative practices around the initiation of an intervention covering the entire Section 139 framework, except for a few guidelines. The MFMA gives a mandate to draw a financial recovery plan in instances where Section 139(5) intervention is invoked by the provincial government. In respect of Section 139(1) interventions, there is a serious gap given the fact that most interventions are initiated under this part of the legislation. As a result of this regulatory gap, a particular set of administrative practices, which have little in common with the actual content and spirit of the legislation, have become the norm (Ledger & Rampedi, 2019:8).

The *Constitution* becomes the only document that can be relied upon, although Section 139(8) of the Constitution does make provision for national legislation that may regulate the implementation of Section 139, including the processes established by this Section. It is against this backdrop that the Bill was initiated by the Minister of Cooperative Governance and Traditional Affairs, published in the *Government Gazette* in February 2021. The Bill was explained in Section 3.8 of

the previous chapter of this thesis and is applied below. The sooner the Bill to regulate the implementation of Section 139 is finalised, the better. It will also reduce the high rate of litigation between the provincial and local governments.

The Constitution gives the national government regulatory powers over the provincial and local governments. It also gives the national and provincial government the mandate to support the local government. This arrangement is obviously intended to maintain and ensure optimum performance of public service and, furthermore, to ensure effective governance, accountability and transparency.

The most critical Sections of the Constitution meant for interventions are Sections 100 and 139. Section 100 regulates national government interventions in provinces and Section 139 regulates provincial interventions in the affairs of local government.

Section 100 of the Constitution prescribes that 'when a province cannot or does not fulfil an executive obligation, the national executive may intervene by taking appropriate steps to ensure the fulfilment of that obligation.' Hence, failure by the provincial government to execute its executive obligation triggers intervention by the national government. The North West Provincial Government can be cited as a recent example where the national government invoked Section 100 of the Constitution, effective on 9 May 2018, placing ten provincial departments under administration; some were placed under Section 100 (a) and others under Section 100 (b).

Provincial departments placed under Section 100(1)(a):

- Finance, Economy and Enterprise Development (FEED) (Provincial Treasury)
- Rural, Environment and Agriculture Development (READ)
- Social Development
- Local Government and Human Settlements
- Tourism.

Provincial departments placed under Section 100(1)(b):

- Health
- Office of the Premier
- Education and Sports Development
- Public Works and Roads
- Community Safety and Transport Management

This intervention was in response to the widespread violent protests in some parts of the province and poor governance presided over by then Premier Supra Mahumapelo.

For the purpose of this study, the focus is on the application of Section 139 intervention in the North West Province. This provision of the Constitution provides that '[w]hen a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation.' This means that the Constitution authorises national and provincial executives to intervene in provincial administration and local government respectively within certain constitutional constraints (Phindela, 2017).

The most common and important part in both interventions in terms of Sections 100 and 139 of the Constitution is failure by provincial or local government to fulfil 'an executive obligation'. It is therefore important to clarify and have a common understanding of the meaning of 'executive obligation' for the purposes of the study.

#### **4.2.1 Meaning of 'executive obligation'**

Judge Van Zyl, in the High Court case of *Mnquma Local Municipality v The Premier of the Eastern Cape* (Case No: 90/2009), a case which shall be dealt with in detail later in this chapter, carefully stated that executive obligations were at times confused with the statutory obligations or duties of the municipality. In the judge's view, a statutory obligation is aimed at ensuring the effective fulfilment of executive obligations and does not necessarily result in failure to fulfil an executive obligation (*Mnquma* para 65).

Furthermore, Judge Van Zyl was of the view that the Mayor's failure to submit an annual performance report of the various departments constituted non-compliance with a statutory obligation but did not necessarily result in failure to fulfil an executive obligation. Here, the High Court determined that the 'alleged failure was wrongly considered to constitute an executive obligation' (*Mnquma* para 90). Hence, Section 139(1)(b) links the executive obligation to maintaining 'essential national standards' or meeting 'established minimum standards for the rendering of a service.'

It remains the duty of the local government to provide and administer services that are closely associated with the 'executive obligations' of municipalities. In contrast, an executive obligation may mean the delivery of basic services and improvement of the lives of the people, development of policy and initiation of by-laws, implementation and administration of legislation related to local government (Phindela, 2017).

In summary, the court identified the following five elements of the concept 'executive obligation':

- The implementation and administration of legislation
- The provision of services
- The provision of an administration
- The development of policy
- The initiation of by-laws (*Mnquma* case para 99).

Statutory obligations inform executive obligations in a sense that 'statutory' means statute, that is, legislation. Therefore, Municipal Councils have the responsibility to initiate policies that seek to better the lives of their citizens as per the legislative requirements. An executive obligation then means the implementation of legislative requirements to provide basic services, which includes policy implementation.

#### **4.3 Constitutional and procedural requirements during Section 139 intervention in local government**

The Constitution fundamentally makes provision for five types of interventions. However, all five interventions respond to different degrees of malfunctioning in a municipality, and mandate the provincial executive to initiate processes of instituting various corrective measures (De Visser & November, 2017:6).

Section 139 of the Constitution prescribes five approaches by which the Provincial Executive Council may invoke an intervention in a municipality, namely (1) issuing of a directive in terms of Section 139(1)(a); (2) assuming responsibility in terms of Section 139(1)(b); (3) dissolving the Municipal Council in terms of Section 139(1)(c); (4) taking appropriate steps to ensure that the budget or revenue-raising measures are approved in terms of Section 139(4); and (5) imposing a recovery plan on the Municipal Council in terms of Section 139(5). These provisions of the Constitution are explained later in this chapter.

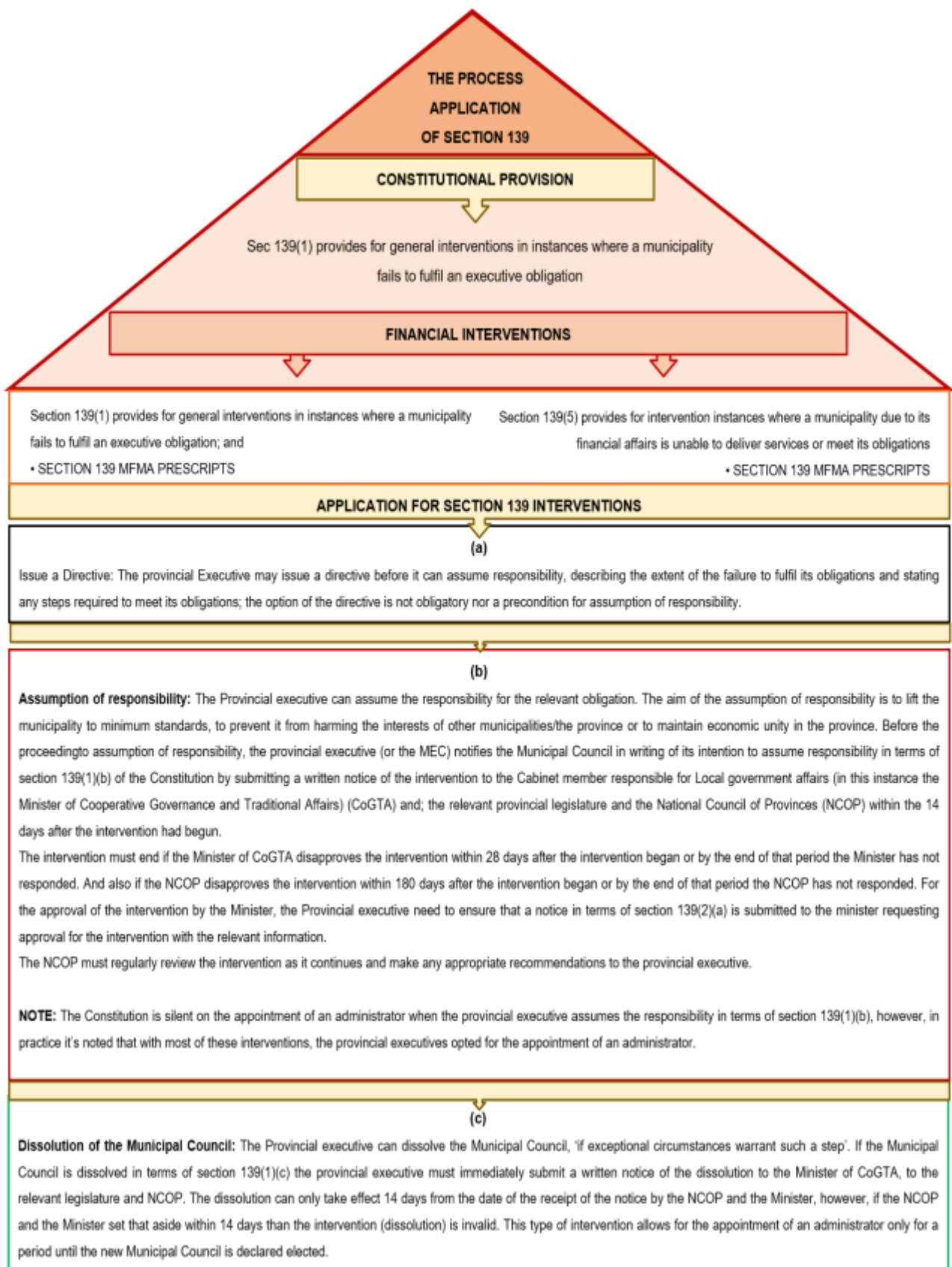
Once the Provincial Executive Council has taken a decision to invoke Section 139(1) of the Constitution, it is compelled to follow procedure as described by the Constitution in Section 139(2).

If the intervention is in terms of subsection (1) paragraph (b) above, the Provincial Executive Council must do the following:

- Submit a written notice of the intervention to the Cabinet member responsible for local government; the relevant provincial legislature and the National Council of Provinces within 14 days after the intervention began.
- The said intervention must end if the Cabinet member responsible for local government disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention.
- The Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.

In addition, if the municipality is dissolved in terms of subsection (1) paragraph (c); Section 139(3) of the Constitution compels the Provincial Executive Council to immediately submit a written notice of the dissolution to the Cabinet member responsible for local government, and the relevant legislature and the National Council of Provinces. The dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days. Because each structure has specific timeframes within which to respond as provided for in the Constitution. These timeframes will, to some extent, eliminate bias and strengthen objectivity. This is also in line with the spirit of the Intergovernmental Relations Framework as discussed in Chapter 3 of this thesis for spheres of government (local, provincial and national) to work together as government structures.

Figure 4-1 is a summary of the application of Section 139 interventions.



Source: Author's own construct

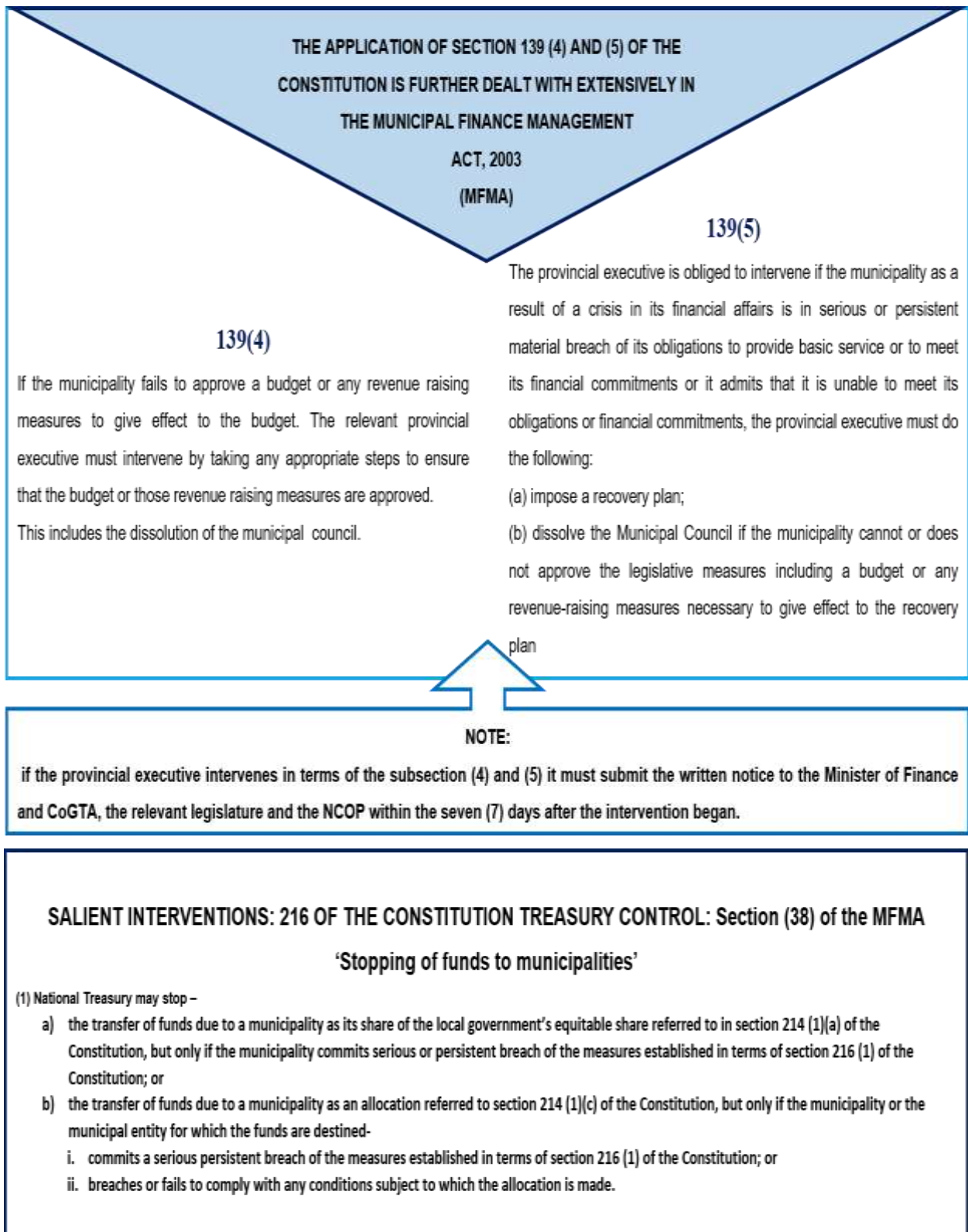
**Figure 4-1: Summary of the application of Section 139 interventions**

#### **4.4 Provincial intervention during municipal financial crises**

Section 139(4) of the *Constitution* permits the relevant provincial executive intervention when the municipality does not fulfil its obligation in terms of budget approval or any revenue-raising measures to give effect to the budget. This intervention includes dissolving the council and appointing an administrator to run the affairs of the municipality until a newly elected council is declared, at the same time approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

In tandem with the above, Section 139(5) of the *Constitution* makes provision for provincial executive intervention when municipalities are facing a financial crisis, to the extent that it fails to honour its financial commitment to provide basic services or is unable to meet its financial obligation. This provision in the *Constitution* gives the provincial executive the power to impose a recovery plan which is intended to help the municipality to meet its financial commitments. Furthermore, this provision also gives the provincial executive the power to dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures that can give effect to the recovery plan.

Equally, Section 139(6) of the *Constitution* also permits that if the provincial executive intervenes in terms of subsections 4 and 5 above, then it must submit a written notice of intervention to the Cabinet member responsible for local government, the relevant provincial legislature and the NCOP within seven days after the intervention began.



Source: Adapted from SALGA process flow chart

**Figure 4-2: Financially related interventions**

#### 4.5 Causes of Section 139 interventions in local government (scholarly interpretation)

Ledger and Rampedi (2019:8) argued and assert that the Provincial Executive Council can invoke Section 139 when systems of the municipality are close to a state of complete non-operational or financial collapse after many years of serious problems. These serious problems can be ascribed to poor audit outcomes; deteriorating finances; multiple allegations of corruption; or severe political in-fighting that has paralysed the council. At the same time, what makes it more difficult is the fact that there are no prescribed standardised administrative practices around the initiation of an intervention that cover the entire Section 139 framework, apart from a few guidelines in Section 139 as discussed in the previous Section.

In most cases, when Section 139 of the Constitution is invoked and this happens as a result of a specific trigger, for example, a series of violent protests or a threat by the national power supplier Eskom to cut off the power supply, this trigger occupies everybody's minds without a careful review of the problems that might be faced by the municipality. Without these triggers, it is not clear that all the interventions would actually have taken place (Ledger & Rampedi, 2019:8).

Furthermore, Ledger and Rampedi, categorise triggers for intervention as governance, finances and service delivery. They argue that '[g]overnance problems range from political in-fighting to political mismanagement and include instances of Council's inability to perform as required by legislation.'

Greffrath and Van der Waldt (2016a:148) assert that intervention is triggered as a result of general municipal dysfunction, inadequate service delivery levels and rising levels of public protest.

In addition:

- *The theoretical body of knowledge related to the phenomenon of state dysfunction suggests that issues of poor service delivery and 'bad' governance are not exclusively at play in interventionism. Political factors that are indicative of state dysfunction may also serve as more covert reasons to intervene in municipalities in order to influence the balance of political power in a given province, municipality, or within a party itself. (Greffrath and Van der Waldt, 2016a:135).*

Makoti and Odeku (2018:68) take this argument further and assert that the law permits the intervention by the provincial government if a municipality fails to discharge its constitutional responsibility and functions. Therefore, interventions could be in various forms such as support, monitoring or outright takeover. However, they cautioned that an intervention should be introduced without prejudice or any bias. Furthermore, it must be justifiable and legal. In addition,

the intervention would be justified if support and assistance to rescue the municipality have totally failed, or the municipality has been unresponsive to all the support being given in order to rescue it from failing or collapse.

According to scholarly interpretations, provincial interventions in municipal affairs happens as a result of the inability of Municipal Councils to execute their mandate as enshrined in Section 4(2) of the *Municipal Systems Act*. This aspect was thoroughly explained in Section 3.4.1 above. In addition, internal factors such as poor governance, maladministration and financial mismanagement become the triggers for provincial intervention. Corruption, political infighting and factionalism can also contribute to the collapse of a municipality, which will then trigger provincial intervention. However, this intervention is meant to be progressive in nature to genuinely assist municipalities to respond to their mandate, as enshrined in Section 152 of the Constitution. It means that the intervention must be justified, otherwise the courts become the final arbiter. The legal interpretation of Section 139 is therefore dealt with in the next Section.

#### **4.6 Legal interpretations and practice of Section 139 interventions**

There are several landmark cases on which the courts have ruled regarding the implementation of Section 139 of the *Constitution*. Some of these landmark cases will be analysed to help understand the legal implications of Section 139 interventions. Discussions are centred on different subsections of Section 139, namely 139(1)(a)(b)(c) within the legal context and interpretations by the South African court system. The reason for this choice is directly related to the identified case studies in this study that will be dealt with later in Chapters 6, 7 and 8, within the context of Section 139 interventions in the North West Province.

For emphasis, Section 139 of the *Constitution* permits the Provincial Executive Council to intervene in the affairs of a municipality, to, among other things, assume the executive functions of a particular municipality. Although this provision intends to provide a mechanism to avert maladministration and corruption, if applied improperly, it may lead to conflict between provincial and local government (Makoti & Odeku, 2018:69). This conflict often ends up in South African courts for adjudication.

##### **4.6.1 Mogalakwena Local Municipality v Provincial Executive Council of Limpopo and Others**

One of the landmark cases that will help to create an understanding of whether or not intervention is justified is the case of *Mogalakwena Local Municipality v Provincial Executive Council of Limpopo and Others* 2014] 4 All SA 67 (GP) (19 June 2014). This case was instituted as an urgent application in the Gauteng Division of the High Court under case number, 35248/14. The

Councillors of the Mogalakwena Local Municipality took the Provincial Executive Council to court over its decision to intervene in the affairs of the municipality.

This decision was made on 17 March 2014. It was conveyed to the municipality in a notice on the same date and reached the municipality on 18 March 2014. It was signed by an MEC cited as the Second Respondent with political responsibility for the provincial Department of Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA) and addressed to the municipality. Paragraph 12 of the judgment reads as follows:

- *Notice that the Provincial Executive Council of Limpopo Province is assuming responsibility for some executive obligations of the Mogalakwena Local Municipality in terms of Section 139(1)(b) of the Constitution.*
- *The Provincial Executive Council has resolved to intervene in Mogalakwena Local Municipality in terms of Section 139(1)(b) by assuming responsibility of some executive obligations and to appoint a designate a person to act on its behalf with regard to the implementation thereof.*
- *The Provincial Executive Council has reason to believe that the Municipal Council does not fulfil an executive obligation in terms of the Constitution or legislation as follows: a) Financial Management; b) Coordination of Executive Committee and Municipal Council; c) Implementation and review of IDP and budget, and; d) Development of policy and initiation of bylaws.*
- *The Provincial Executive Council is therefore intervening in terms of Section 139(1)(b) of the Constitution by assuming responsibility for the executive obligations listed in paragraph 2 above.*

Judge Tuchten found that 'a directive must precede an intervention to allow a municipality to answer the allegations against it or, if it had been negligent in the fulfilment of an executive obligation, it get its house in order, failing which intervention must be expected' (para 24). In the circumstances of this case, a directive was not issued prior to intervention as required by Section 139(1)(a) of the *Constitution*. The judge was of the view that if such a directive was issued it was going to promote the constitutional values of democracy and separation of powers (para 25).

This gave the municipality reason to believe that the provincial government applied its power to intervene for covert intentions. As a result, this intervention was then viewed as promoting the interests of the faction of the former Mayor, Mr Mashamaite, who was removed by the council, over the faction now in control of the municipality. The judge found further that it was common

knowledge that the party that was in power in the province was the same party in power in the Municipality, and that Messrs Mashamaite and Kgetjepe, who held the office of MEC until after the present application was launched, were friends (para 26).

The judge further found that the notice of intervention was exceptionally vague. Therefore, it was impossible in engaging with the notice to understand what executive obligations the Provincial Executive Council had in mind when it took its decision, because it was important to note that Section 139 interventions are not designed to be punitive in nature.

Therefore, the judge was of the view that, for at least three reasons need to be explored:

- *Firstly, a specific notice would enable the municipality to identify its alleged shortcomings and contribute its resources towards remedying the respects in which it is allegedly remiss, thus removing the need to perpetuate the intervention. Secondly, it would enable the municipality to challenge the intrusion into its sphere, whether by representations to the Minister or the National Council of Provinces under Section 139(2) (b), or by way of judicial review; and, thirdly, the notice would demarcate the scope of the intervention by the province into the areas of power and function which the Constitution has otherwise vested in a municipality. (Para 31)*

For the said reasons, the judge was of the view that the municipality had established a strong *prima facie* case for setting the decision aside on review on the grounds of undue vagueness, and thus lack of rationality (para 32). Therefore, the judge made an order as follows:

- *Pending the final determination in this court of the application for relief on review set out in Part B of the applicant's notice of motion dated 15 May 2014:*
- *The first (Provincial Executive Council), second (MEC) and sixth (administrator) respondents are interdicted and restrained from:*
- *Implementing in any manner whatsoever, the first respondent's decision to assume, under s 139(1)(b) of the Constitution, responsibility for executive obligations of the applicant; and*
- *interfering in any way whatsoever with the ability or right of council of the applicant, its municipal manager or any of its officials to exercise powers or perform functions vested in them under the Constitution or any other applicable legislation;*

- *the first respondent is interdicted and restrained from intervening in the applicant's affairs in terms of s 139(1) of the Constitution and particularly from appointing an administrator to act on its behalf in terms of this subsection;*
- *the effect of the first respondent's decision to assume responsibility for executive obligations of the applicant under s 139(1)(b) of the Constitution as set out in annexure M2 to the applicant's notice of motion as well as of any actions performed by the sixth respondent relating to such decision are suspended with immediate effect;*
- *The costs of this application, including the questions whether the costs of the employment of both senior and junior counsel and the scale upon which such costs should be awarded, are reserved for the consideration of the court hearing the review. (Para 81)*

On the basis of the order made by the judge, it can therefore be concluded that, in the first instance, Section 139(1)(a) of the *Constitution* was not implemented in issuing or giving a directive to the Municipality describing its failure to fulfil its executive obligations. Instead, the Provincial Executive Council prioritised Section 139(1)(b) to assume a municipal executive obligation, which the judge found was unacceptable. Furthermore, in the correspondence that came from the MEC stating the reason for intervention, financial management was also raised as a serious concern. However, Section 139(4) and (5) of the *Constitution* is meant for intervention on matters of financial crises; failure to approve a budget was not even raised by the Provincial Executive Council. It means the Provincial Executive Council was quick to intervene in running the constitutional mandate of the municipality without applying its mind to the fullest. In addition, evidence cannot be found that the council had done everything in its power through the MEC to assist the municipality before the intervention. As such, and as said by the judge, a conclusion can be arrived at that this was about factional political interest rather than the interest to strengthen good governance in the municipality.

#### **4.6.2 Mayor of the Mquma Local Municipality v the Premier of the Eastern Cape**

In another High Court matter in Bisho, between the Mayor of the Mquma Local Municipality, Webster Mbsa Ntongana, and the Premier of the Eastern Cape, under case number 90/2009, the provincial government dissolved the council of the municipality in terms of Section 139(1)(c) of the Constitution. Here it was alleged by the provincial government that the municipality was failing to perform its executive obligations. Kemp AJ held that 'an executive obligation' was the 'type of failure that empowers the provincial executive to intervene'.

The 'executive obligation' the High Court holds is the 'type of failures that empower the provincial executive to intervene'.

In their court papers, the Applicants complained that the *audi alteram partem* rule (both sides of the story must be heard) was not applied. This rule is critical to South African law and affords the affected party the chance to voice their opinion with regard to the concerns raised. In the circumstances of this case, the council was not informed of what it had supposedly done wrong, nor had it been given an opportunity to refute any such allegations (para 23).

The Counsel for the Applicants, Mr Heunis, argued that

- *[i]ntervention by way of dissolution is only warranted in exceptional circumstances and that this is a factual finding, as it indeed must be. Although it is trite law that when an administrator makes a factual finding that it must give the party against whom a factual finding may be found an opportunity to meet the case against it. (Para 25)*

The counsel for the municipality further argued that

- *[t]he factual finding made by the MEC (or for that matter the Executive Committee) should have been an administratively justifiable decision, and would not have been the exercise of an executive power. The executive decision to dissolve the Council would then have followed after the factual finding and whether or not that decision would be reviewable under the Promotion of Administrative Justice Act (PAJA) or at common law, based on the principles of legality. (Para 25)*

The judge found that the Applicants were never afforded any opportunity to make any representations before any findings of fact were made against them or the municipality (para 26).

In the final analysis, the court found that the provincial government did not have good grounds to justify the dissolution of the council and set aside the decision as *ultra vires* and irrational.

It becomes important in this instance that any decision made by the provincial government on matters of intervention in municipal affairs should be justified within a legal context. There should be administrative evidence that indicates the extent to which or how the provincial government has supported the Municipality through the Department of Local Government to fulfil its constitutional mandate. Section 154(1) of the *Constitution* clearly stipulates that 'the national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.'

### **4.6.3 Lessons learnt in two abovementioned court judgements**

Lessons learnt in these two aforementioned court judgments are the following:

The Provincial Executive Council must at least be specific and identify problems in their notice of intervention towards an affected municipality. Such notice should identify areas in respect of which the municipality is failing; must describe the extent of failure by the municipality; also make an indication of the intention of the Provincial Executive Council to start a Section 139 process; the important part is to create an opportunity for the municipality to make written representations, and afford them a reasonable time period to make such representations.

Furthermore, a directive by the Provincial Executive Council in terms of Section 139(1)(a) must precede an intervention. It becomes the responsibility of the council to provide evidence that proves that, indeed, a municipality has failed in its duty to provide basic services to the community. What is of the utmost importance is the fact that Provincial Executive Council must then rely on the current state of affairs of the municipality to intervene without necessarily relying on the history of the municipality.

It is common knowledge that the intervention should come to an end when the problems have been solved by the municipality through the intervention. Therefore, the intervention in terms of Section 139(1)(b) ends when the municipality is able to: maintain the essential services or meet the minimum established standard of services; not prejudice the interests of other municipalities; and maintain economic unity.

Section 139(1)(c) ends when the newly elected council takes control of the executive and legislative functions of the municipality. The appointment of the administrator thus ends when the Municipal Council once again takes control of the municipality. Upon ending the intervention, all interested parties such as the municipality, Minister of Finance, Minister of Local Government, any creditors with pending litigation, the provincial legislature and organised local government have to be informed by the MEC for Finance of the termination of the intervention (November, 2015:30).

### **4.6.4 Democratic Alliance (DA) Councillors in the City of Tshwane Metropolitan Municipality v the Premier of Gauteng and Others**

The case of the *Democratic Alliance (DA) Councillors in the City of Tshwane Metropolitan Municipality v the Premier of Gauteng, Provincial Executive Council, MEC for COGTA, Minister for COGTA, Chairperson of NCOP, Speaker of Gauteng Provincial Legislature, Electoral Commission, All ANC Councillors, All Economic Freedom Fighters (EFF) Councillors, City of*

*Tshwane Metropolitan Council and all political parties represented in the Metropolitan Council as respondents was brought before court on an urgent basis. It was instituted on the basis of a decision of 10 March 2020 by the Gauteng Executive Council, the Second Respondent, to dissolve the City of Tshwane Metropolitan Municipality, the Sixth Respondent. The Applicants (three DA Councillors: Randall Mervyn Williams, Christo Mauritz van den Heever and Zwelibanzi Charles Khumalo) requested that this decision be reviewed, declared invalid and set aside.*

The common issue to the matter, as part of the background, that the parties could not dispute, was that the inability of the city to convene and retain the necessary quorum dated back to 27 September 2018. There were further failed council meetings in 2019, on 25 April, 25 July and 29 August. This trend continued to 28 November 2019, when the council convened, and the Speaker disallowed a Motion of No Confidence in the Mayor. The ANC and EFF councillors walked out and the meeting lost its quorum (para 10 in the judgment).

Subsequent to the collapse of all these council meetings, the MEC of COGTA blamed all this on the Speaker for failing to execute her duties, in contravention of the Code of Conduct for Councillors found in Schedule 1 of the *Municipal Systems Act*. This code warrants councillors to perform the functions of their offices in good faith, honestly and in a transparent manner, and that at all times councillors must act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

While the MEC engaged with the Speaker in terms of her conduct, on 6 December 2019, the Gauteng Executive Council resolved to invoke Section 139(1) read with Section 154 of the Constitution. This decision was conveyed to the acting Speaker by means of a letter dated 6 December 2019 through the MEC, and the relevant part read as follows:

*The Provincial Executive Council invokes the provisions of Section 139(1) read together with Section 154 of the Constitution. Taking appropriate steps to support and strengthen the capacity of the City of Tshwane to effectively execute the constitutional obligation of the provincial government as embedded in Section 152 of the Constitution. In addition, the Gauteng Department of Co-operative Governance and Traditional Affairs ('COGTA'), must immediately develop a cogent plan that must expose the appropriate steps to be taken in order to give effect to the constitutional obligation of the provincial government in terms of Section 154 that will culminate in proper and meaningful support to the City of Tshwane. (Para 13)*

*The Gauteng EC stated that it took this decision upon consideration of a detailed report on the state of affairs in the Municipal Council with reference to Financial Management, Service*

*Delivery, Governance (including issues of maladministration and corruption) and Institutional Capacity (Administration). (Para 14).*

Fourteen days later, on 18 December 2019, the Speaker responded to the MEC's letter, indicating that a Section 139 intervention was not the most fitting mechanism to bring service delivery to the residents.

The Speaker complained that the MEC's letter lacked necessary details in terms of why a Section 139(1) intervention should be invoked. She further asserted that the Municipal Council was never given an opportunity to present its side of the story before the decision was taken. The Speaker further complained that the MEC's letter was extremely vague and therefore it was impossible to make a determination as to whether the intervention was in terms of sub-Section (1)(a), (b) or (c).

*The Speaker's response further pointed out that the MEC's letter failed to identify the executive obligation(s) that the Municipal Council had not complied with. The response went further to point out that the Gauteng EC had also not engaged with the Municipal Council to provide dedicated support to assist it in addressing any of the matters raised in the intervention. The Speaker further provided detailed answers to the concerns raised in the MEC's letter relating to service delivery in the informal areas, service delivery in regions 5 and 7, the provision of mobile drinking water tankers and alternatives for the supply of water, sanitation services and the issue of the water quality in Hammanskraal. (Para 15)*

In this regard, on 14 January 2020 the MEC responded to the Speaker's letter, disputing her competence to provide such a response on the basis that it was unclear if his earlier letter containing the intervention notice had served before Council (para 17).

The MEC in the process then issued a directive containing the following:

*Failure to execute or render uninterrupted services for communities. Failure to adequately address water and electricity losses. Inadequate revenue Collection and debtor management. Weaknesses in governance and accountability: Corruption and Maladministration. Unauthorised, Irregular Fruitless and Wasteful Expenditure (UIFW). Weak Contract management Glad Africa: Aurecon Tender, Fuel tender fraud. Wonder-boom Airport. Smart meter. Recurring Audit issues and Implementation of Audit Plans. Inability of the City to spent [sic] on grants. Failure to fill Senior Management Positions (i.e., City Manager). Failure to finalise disciplinary proceedings of senior managers (i.e., Head EMS). Lack of transparency and compliance concerning the separation agreement between former City Manager and Municipal Council. Delayed ward committee establishment. Connectivity*

*failures in Centurion Satellite Disaster Management Centre. Inadequate capacity in Municipal Disaster Management Centre (MDMC) due to high vacancy rate and recurring audit issues and implementation of audit plans. (Para 18)*

On 7 February 2020, the Speaker responded to the directives attached to the MEC's letter dated 14 January 2019 with a 188-page document. In this document the Speaker detailed action plans and programmes undertaken by the Municipal Council to address the directives issued by the Gauteng Executive Council through the office of the MEC (para 19).

On 4 March 2020 the MEC wrote to the Speaker enquiring whether the Section 139(1)(a) directives had served before the Council. The MEC granted the Speaker three days to respond. Despite the three-day response period, on the same day, the Gauteng Executive Council took the decision to dissolve (para 26).

In view of the above, the court held that there must be a direct link between the exercises of the power, for example, the decision to dissolve the Municipal Council, and the objective sought to be achieved, namely the fulfilment of the stated executive obligation. Therefore, the decision must ensure the fulfilment of the executive duty, namely the dissolution will ensure that the relevant obligation will be fulfilled. The dissolution decision taken by the Gauteng Executive Council must be rationally related to the fulfilment of the city's executive obligations sought to be achieved through the decision (para 35).

Furthermore, the judge referred to *Mnquma Local Municipality and Another v Premier of the Eastern Cape and Others* and raised a critical question whether the municipality would be able to fulfil its obligations after the intervention was over; in other words, as a corrective measure, would it be successful in remedying or resolving the particular problem in the municipality? Dissolution of the council and its replacement with a newly elected council would after all serve no purpose if it would not resolve the problems at hand (para 36).

The court raised the most important issue to say that executive obligations must be substantively described as an objective fact that can be independently assessed by a court. The rationale behind this was that the provincial government could only invoke Section 139(1)(c) when an executive obligation had not been fulfilled.

In this case the judge agreed with Judge Van Zyl in the *Mnquma Local Municipality* case that

*[e]xecutive obligations must not be confused with statutory obligations or duties that are aimed at ensuring the effective performance by local government of its executive obligations. Non-compliance with a statutory obligation or duty aimed at ensuring the effective*

*performance of executive obligations would not necessarily result in a failure to fulfil an executive obligation.*

The question is whether the Gauteng Executive Council had identified the statutory or constitutional obligations that the Municipal Council had not fulfilled. An obligation is a non-discretionary instruction in law to the Municipal Council to exercise a function when a specific set of facts occur. It is only if the function is mandatory and not fulfilled that the provincial government can step in (para 40).

The court was of the view that tenders could not constitute objective facts on which the Gauteng Executive Council could base its decision to dissolve the Municipal Council. More so, some tenders were awarded during the previous council's dispensation. Again, the Premier argued that the council failed to spend conditional grants, which resulted in poor service delivery. The court's view was that this aspect was not mentioned in the answering affidavit as a source of dissolution.

In the process, the City Manager suspended the Head of Human Settlements and Head of Department of Roads and Transport in 2019. The court found that these suspensions could not be used as a reason for non-fulfilment of executive obligations. This was a labour dispute issue that could not constitute non-fulfilment of an executive obligation.

In the light of the above-mentioned, the court made the following order (para 109):

- *The decision of the Gauteng Executive Council to dissolve the City of Tshwane Metropolitan Municipality, taken on 4 March 2020 and communicated to the applicants on 10 March 2020 ("the dissolution decision"), is reviewed, declared invalid and set aside.*
- *The thirteenth (ANC Cllrs) and fourteenth (EFF Cllrs) respondents are ordered, in terms of the Code of Good Conduct of Councillors, to attend and remain in attendance at all meetings of the City of Tshwane Metropolitan Municipality Council unless they have a lawful reason to be absent.*
- *The orders in paragraphs 1 and 2 are suspended until five days after the Level 5 nationwide lockdown, enforced by the National Coronavirus Command Council and announced by the President of the Republic of South Africa on 23 March 2020, has been lifted.*

*During the period of suspension:*

- *The administrator appointed by the second respondent in respect of the City of Tshwane Metropolitan Municipality shall be entitled to exercise the powers conferred by such appointment; and*
- *The dissolution decision shall have no impact on the entitlement of the Councillors of the Municipal Council of Tshwane to continue to receive their salaries and benefits.*
- *The costs of this application are to be paid by the first, second, fifth and seventh respondents, jointly and severally, including the costs of three counsel.*

In this instance, the courts exposed the fact that the MEC of COGTA and the Gauteng Executive Council had focused on the politics of the council instead of genuine issues affecting service delivery. The main focus of the MEC, supported by the Executive Committee, was on the Speaker of Council, in order to discredit her. This view was supported by the exchange of correspondence between the Speaker and the MEC.

The position of the court was that Section 139 set out a process. This means that, once the Provincial Executive Council has decided to intervene under Section 139(1), it must follow the steps set out in the Section: issuance of a directive, assumption of responsibility and, finally, in exceptional circumstances, dissolution of the council. With each step, the authority of the Provincial Executive Council increases, while that of the Municipal Council decreases. Furthermore, the judgment pointed out that there were less intrusive measures that could have been adopted by the Gauteng Executive Council, instead of dissolution to address the root cause of the council's inability to fulfil its core responsibilities. The MEC and Provincial Executive Council had done nothing to rein in errant ANC and EFF councillors, who kept walking out of council meetings. As a result of this behaviour, council meetings kept on collapsing as a quorum could not be reached.

The court held that the most effective way to address the disruptions by councillors of walking out of every council meeting was by invoking the procedures ordained in Schedule 1, items 3 and 4, of the *Municipal Systems Act*, and to enforce their statutory duty to attend meetings and remain in attendance.

#### **4.6.5 Lessons learnt from the three court judgments**

The Provincial Executive Council must at least be specific and identify problems in its notice of intervention to the municipality. Such notice should identify areas in respect of which the municipality is failing; it must describe the extent of failure by the municipality; it should also

indicate the intention of the Provincial Executive to start a Section 139 process. The important part is to create an opportunity for the municipality to make written representations and afford it a reasonable period within which to make such representations.

Furthermore, a directive by the Provincial Executive Council in terms of Section 139(1)(a) must precede an intervention. It becomes the responsibility of the Provincial Executive Council to provide evidence that proves that a municipality has indeed failed in its duty to provide basic services to the community. What is of the utmost importance is the fact that the Provincial Executive Council must rely only on the current state of affairs of the municipality to intervene, without relying on the history of the municipality. In addition, non-fulfilment of the executive obligation must be clearly identified as an objective fact and be substantiated.

The intervention should end its course when the municipality, through the intervention, has solved the problems. Therefore, the intervention in terms of Section 139(1)(b) ends when the municipality is able to maintain the essential services or meet the minimum established standard of services, not prejudice the interests of other municipalities and maintain economic unity.

Section 139(1)(c) ends when the newly elected council takes control of the executive and legislative functions of the municipality. The appointment of the administrator thus ends when the Municipal Council once again takes control of the municipality. Upon ending the intervention, all interested parties, such as the municipality, Minister of Finance, Minister of Local Government, any creditors with pending litigation, the provincial legislature, and organised local government have to be informed by the MEC for Finance of the termination of the intervention, (November, 2015:30).

#### **4.7 Conclusion**

The main aim of this chapter was to explain the meaning and procedural aspects within a legal framework when Section 139 intervention is implemented. In particular, it explains what the provincial government should do when local government fails to deliver on its mandate. Most important is the fact that this study is about sustaining Section 139 intervention in local government in the North West Province. Therefore, it was important to identify relevant case law related to Section 139 of the Constitution and make an assessment in terms of how it was applied in various instances and also what pronouncements the courts made in each case.

Three cases in law were analysed, namely *Mogalakwena Local Municipality v Provincial Executive of Limpopo*; the *Mnquma Local Municipality and Another v Premier of the Eastern Cape*; and *Democratic Alliance (DA) Councillors in the City of Tshwane Metropolitan Municipality v the Premier of Gauteng and Others* In all three cases the Provincial Executive Council lost the

cases. It became evident that when decisions are taken by the Provincial Executive Councils to invoke Section 139(1), whether subsection (b) or (c), in most cases, the provincial executives are found not to have raised substantive and relevant issues to warrant their actions.

In some instances, the courts raised issues of political factionalism as the reason for intervention, which the courts found completely unacceptable; for instance, in the case of *Mogalakwena Local Municipality v Provincial Executive of Limpopo*, the court found that, in fact, there was a friendship between the then Mayor Mashamaite and the MEC Kgetjefe, which made the intervention not objective. Because the Mayor was fighting with the Municipal Manager at the time, the intervention was seen as taking away the power of the council and Municipal Manager in favour of the Mayor.

The courts held the view that when Section 139 is invoked by a Provincial Executive Council, all the necessary steps must be followed, because intervention cannot be seen as punitive rather than progressive. Before Section 139 is invoked, there should be clear evidence that demonstrates the extent to which Section 154 of the Constitution was applied. In addition, when Section 139(1) is applied, subsections (a), (b) and (c) must be explored to the letter in a sequential manner; in other words, provincial executives cannot jump into subsection (b) or (c) when 1(a) was not dealt with sufficiently.

Furthermore, when directives are issued to the municipalities in terms of Section 139(1)(a) regarding the non-fulfilment of the 'executive obligation', such directives must be specific not vague. This will then allow the municipality to attend to those specific issues with the help of the Provincial Executive Council and the municipality must be allowed to deal sufficiently with identified issues. When all else fails, subsection 139(1)(b) can be invoked to help the municipality. The courts held that Section 139(1)(c) should be invoked only in exceptional circumstances if the situation warrants that, and an administrator be appointed until such time as a new council was elected.

The most important and critical part is that Provincial Executives Councils must not bring historical issues as the reasons for interventions. The current issues must be identified and be dealt with objectively before the intervention.

This chapter continued to demonstrate that the powers of municipalities are not absolute but are, in fact, relative because the Constitution allows the invocation of Section 139 intervention and Section 154 of the Constitution to provide support by national and provincial departments in municipal affairs. It is a clear demonstration that the deterioration of services activates the above-mentioned structures. The same goes for the Provincial Executives Councils; when they invoke

Section 139, other structures must be notified for concurrence within a specific period in terms of the Constitution, namely the Legislature, the Minister of COGTA and the NCOP.

**Table 4-1: Summary of Section 139 intervention in terms of the Constitution**

SECTION 139(1)		
SUBSECTION	DESCRIPTION	TIMEFRAME
A	Issuing of directives to the municipality by Provincial Executive Council describing failure to fulfil executive obligation	
B	Assuming responsibility by Provincial Executive Council to maintain essential service at municipal level	
C	Dissolution of the municipality by Provincial Executive Council and an administrator appointed till the new council is declared elected	
SECTION 139(2)		
SUBSECTION	DESCRIPTION	TIMEFRAME
A	If the intervention is in terms of subsection (1)(b), the Provincial Executive Council must notify the Legislature, NCOP and COGTA Minister	This must happen within 14 days after the intervention began
B	<ul style="list-style-type: none"> <li>Intervention must end if the Minister disapproves the intervention</li> <li>NCOP disapproves the intervention within 180 days after the intervention began or by the end of that period if they have not approved the intervention</li> </ul>	This must happen within 28 days or by the end of that period if the Minister has not approved the intervention within 180 days
C	NCOP must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the Provincial Executive Council	
SECTION 139(3)		
SUBSECTION	DESCRIPTION	TIMEFRAME
A	If the municipality is dissolved in terms of subsection (1) (c), the Provincial Executive Council must immediately submit a written notice to the Minister of COGTA, relevant legislature, NCOP.	The dissolution takes effect 14 days from the date of notice receipt by the NCOP unless set aside by the Minister or NCOP before expiry of those 14 days.
SECTION 139(4)		
SUBSECTION	DESCRIPTION	TIMEFRAME
-	Failure by the municipality to approve budget or raising measures to give effect to the budget warranted Provincial Executive intervention	

SECTION 139(5)		
SUBSECTION	DESCRIPTION	TIMEFRAME
-	This happens when a municipality is facing financial crises and fails to honour its financial commitment to provide basic services. Then it calls for Provincial Executive intervention	
SECTION 139(6)		
SUBSECTION	DESCRIPTION	TIMEFRAME
(4) and (5)	This happens when a municipality is facing financial crises and fails to honour its financial commitment to provide basic services. Then it calls for Provincial Executive intervention	This notification must happen within 7 seven days
SECTION 139(7)		
SUBSECTION	DESCRIPTION	TIMEFRAME
(4) and (5)	If the Provincial Executive Council fails to intervene on matters described in subsection 4 and 5. Then it gives the power for National Executive to intervene.	
S		

**Source: Author's own construct**

The next chapter (Chapter 5) focuses on the state of local government in the North West Province with specific reference to the history of the invocation of Section 139 interventions.

## **CHAPTER 5: LOCAL GOVERNMENT IN THE NORTH WEST PROVINCE**

### **5.1 Introduction**

Municipalities are the most fundamental institutions of government in South Africa and are mandated in terms of Section 152 of the *Constitution* to provide basic services. Such services remain important building blocks to bring about improved quality of life. This quality of life includes the sufficient supply of safe drinking water and sufficient sanitation, which remains necessary for life, well-being and human dignity.

Chapter 4 dealt with the constitutional and legal context of the invocation of intervention in terms of Section 139(1) of the *Constitution*. The chapter demonstrated the due diligence that must be followed when Section 139(1) is invoked. In particular, the reasons must be justifiable for decisions to place any municipality under administration. The South African court system has proven itself to be providing objective and valid reasons to agree with the applicants in some instances to set aside a Provincial Executive Council decision to place a municipality under administration. The lesson learnt from court judgments therefore helped the researcher to critically analyse the case studies in the chapters that follow (Chapters 6, 7 and 8). The analysis will be whether the North West Provincial Executive Council had justifiable reasons for intervention or whether due diligence was done when Section 139(1) was invoked.

In tandem with the above, this chapter (Chapter 5) focuses on the brief history of local government in the North West Province since 1994. The chapter reveals the evolution of local government with a particular focus on service delivery. An assessment is made of the current state of affairs in providing basic services for the past five years. Specific reference is made to service delivery and the invocation of Section 139 intervention post-1994. Furthermore, an overview of the identified municipalities for case studies, namely Madibeng, Matlosana and Ngaka Modiri Molema District is provided. It is important to give an overview of each one of them to motivate their importance to this study.

Christopher (2016:610) reported that there was no doubt that remarkable progress had been registered over the years since 1994 in the delivery of basic services. The Community Survey 2016 found that 89,8% of households used piped water, that 63,4% used flush toilets connected to either the public sewerage or to a local septic system, that 63,9% of households receive refuse removal services, and finally, that 87,6% of households had access to electricity. However, this progress varied from province to province based on the district councils and between municipalities. Those who live in rural municipalities remain in a disadvantaged position in terms

of service delivery as compared to those living in richer urban municipalities. In some instances, Rodseth *et al.* (2020:4) affirmed the fact that there were enormous service delivery backlogs, which came with the legacy of apartheid of unequal development. A high level of poverty makes it difficult for some households to pay for services, which is exacerbated by the practical limitations of extending services to far-flung rural areas.

In this case, the North West Province is not different from the national analysis in terms of service delivery. The Provincial Department on Cooperative Governance and Traditional Affairs, Feni (2010) and Mathiba (2020) indicated that the North West Province had acknowledged the fact that the majority of its municipalities were faced with many capacity challenges to deliver services. Hence, there was a large number of provincial interventions in terms of Section 139(1) of the *Constitution*, details of which will be dealt with later in this chapter.

**5.2 Evolution and composition of local government in the North West Province post-1994**

The North West Province was incorporated after the end of apartheid in 1994, and includes parts of the former Transvaal Province and Cape Province, as well as most of the former Bantustan of Bophuthatswana. The province is divided into four district municipalities, namely Bojanala Platinum District, Dr Ruth Segomotsi Mompati, Ngaka Modiri Molema and Dr Kenneth Kaunda.

The districts municipalities, in turn, are divided into 18 local municipalities: Moretele; Madibeng; Rustenburg; Kgetlengrivier; and Moses Kotane are within Bojanala Platinum District. Naledi; Mamusa; Greater Taung; Kagisano-Molopo; Lekwa-Teemane are within Dr Ruth Segomotsi Mompati District. Mahikeng; Ratlou; Tswaing; Ditsobotla; Ramotshere are within Ngaka Modiri Molema District. JB Marks; Matlosana; and Maquassi Hills are within Dr Kenneth Kaunda District.

**Table 5-1: Summary of four district municipalities in the North West Province in terms of administrative centre, square kilometres, number of people and people per square kilometre**

NAME	TYPE	SEAT	AREA	POPULATION	DENSITY
		Administrative Centre	Square Kilometres	Number of People	People per Square Kilometre
Bojanala Platinum	District	Rustenburg	18,333	1,657,148	90
Dr Kenneth Kaunda	District	Klerksdorp	14,671	742,821	51

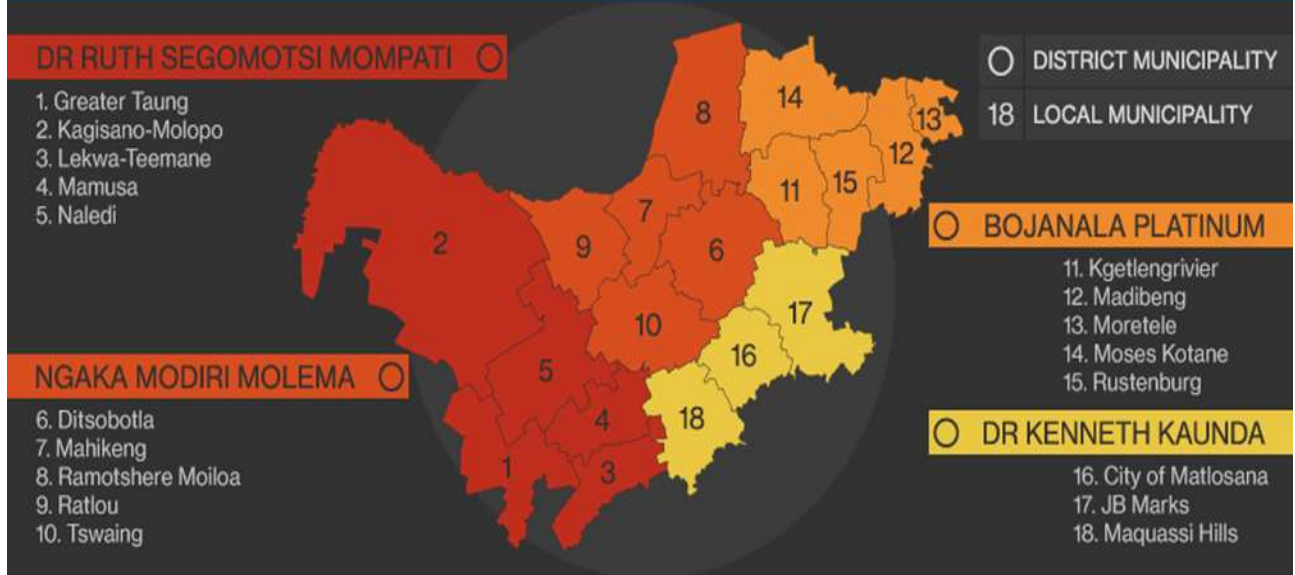
NAME	TYPE	SEAT	AREA	POPULATION	DENSITY
		<b>Administrative Centre</b>	<b>Square Kilometres</b>	<b>Number of People</b>	<b>People per Square Kilometre</b>
Dr Ruth Segomotsi Mompoti	District	Vryburg	43,764	459,357	11
Ngaka Modiri Molema	District	Mahikeng	28,114	889,108	32

**Source: Stats SA, 2016**

According to Tseane-Gumbi and Ani (2018:130), the backbone of the economy of North West Province is mining, which generates more than half of the province's gross domestic product and provides jobs for a quarter of its workforce. The chief minerals are gold, mined at Orkney and Klerksdorp; uranium, mined at Klerksdorp; platinum, mined at Rustenburg and Brits; and diamonds, mined at Lichtenburg, Christiana and Bloemhof. About 85% of all moneymaking activities take place between Klerksdorp and Potchefstroom. The economic heart of the province is Klerksdorp. The northern and western parts of the province have many sheep farms, and cattle and game ranches. The eastern and southern parts are crop-growing regions that produce maize (corn), sunflowers, tobacco, cotton and citrus fruit. The entertainment and casino complex at Sun City and the Lost City also contributes to the provincial economy.

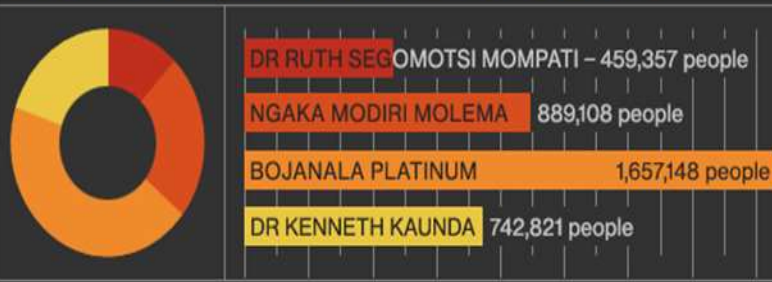
The majority of the province's residents are Tswana people who speak Setswana and the neighbouring country is Botswana. Smaller groups include Afrikaans-, Sesotho-, and isXhosa-speaking people (Fransman & Yu, 2019:60). English is spoken primarily as a second language. Most of the population belong to Christian denominations. According to the 2007 community survey cited in StatsSA (2016), 90.8% of the province's population was black African (mostly Setswana-speaking), 7.2% white (mostly Afrikaans speaking), 1.6% coloured and 0.4% Asian. The 2007 community survey showed that the province had a population of just over 3 million. The province's white population is very unevenly distributed. In the southern and eastern municipalities, the white percentage is in double figures such as in Tlokwe and Matlosana, where the white percentages were 27% and 12% respectively.

# Municipalities of North West province, South Africa



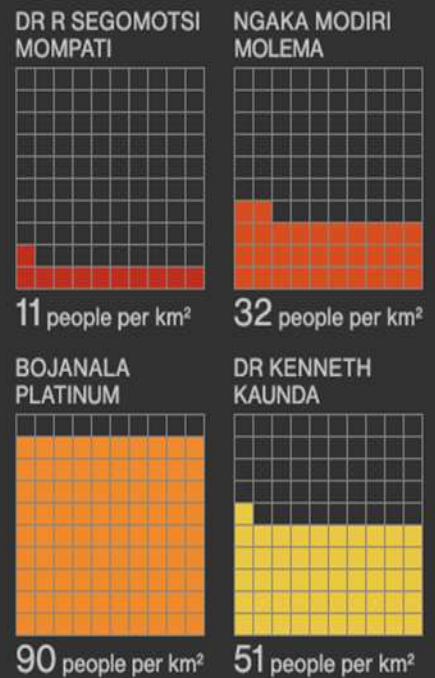
North West is divided into four **district municipalities**. The province also has 18 smaller **local municipalities**, each falling under one of the four district municipalities. North West has no **metropolitan municipalities**.

## Population of North West municipalities

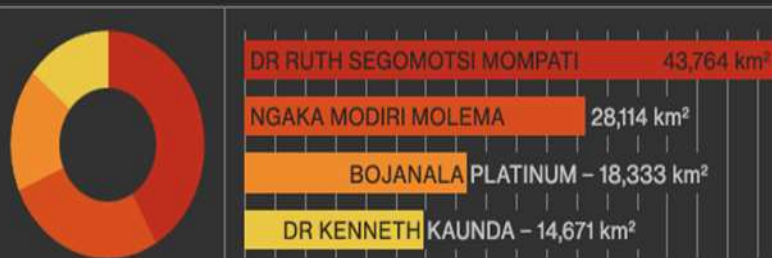


Population in millions: 0.2 0.4 0.6 0.8 1 1.2 1.4 1.6

## Population density



## Land area of North West municipalities



Land area in km<sup>2</sup>: 0 10,000 20,000 30,000 40,000

Source: Stats, 2016; Demarcation Board, 2016

Figure 5-1: Map of the North West Province and indication of district location

### **5.3 History of service delivery in the North West Province**

More than two decades after the dawn of democracy in South Africa, municipalities still continue to experience the difficult task of running their affairs in a more accountable and transparent manner. An assessments of the running of municipalities revealed that party-political factionalism and polarisation of interests over the last few years remain problems in running municipalities effectively. The formation of political alliances and elites have contributed to the progressive deterioration of municipal functionality.

Evidence by Moyo (2016:7) showed how the political/administrative interface had resulted in faction fighting over access to state resources, rather than any ideological or policy differences. The lack of values, principles or ethics in these cases indicates that there are officials and public representatives for whom public service is not a concern, but accruing wealth at the expense of poor communities is their priority. Relationships at the local level are tainted by these contestations among the elites of local areas.

The province has been ravaged by a whole host of issues, which have contributed to the poor service delivery. Such issues range from poor communication and accountability relationships with communities; problems with the political administrative interface; corruption and fraud; poor financial management, namely negative audit opinions; to scores of service delivery protests; weak civil society formations; intra- and inter-political party issues negatively affecting governance and delivery; and insufficient municipal capacity due to lack of scarce skills (Mathiba, 2020).

Maliti-Ntshwe (2019) confirmed the poor delivery of basic services as a major problem. These basic services range from water and sanitation, to electricity and infrastructure. In addition, there is a general incapacity and failure to retain valuable highly skilled human capital in most of the local municipalities. This has resulted in some municipalities successively receiving qualified audit reports and disclaimers (NCOP, 2019). SALGA and the provincial Auditor-General's Office also confirmed the above, as did various other stakeholders, including the North West Premier, Tebogo Job Mokgoro. In addition, the Premier pointed out to the NCOP permanent delegates during their visit in the province in September 2019: 'If we are to tell the truth and be honest with whoever would care to listen to us, the state of our 22 municipalities in the North West Province is nowhere near becoming sustainable, responsible and people-centred.' He also informed the delegation that there were instances of various municipalities resisting Section 139 intervention, where instead of working together with the provincial government to stabilise and turn around the state of municipalities, they opted to challenge the intervention in courts of law: 'It is public knowledge that all the municipalities in this province, including both the district and local

municipalities, did not exactly cover themselves in glory, as reported by the Auditor-General about three months ago, on their performance in the past financial year' (Mokgoro, 2019).

Hence, the issues of political factionalism, political alliances and elites have indeed contributed to the progressive deterioration of municipal functionality. The political and administrative interface has resulted in factionalism on a scale that, in some instances, has become a battle over access to state resources rather than a priority to serve the people. The lack of morals, principles or ethics points to the fact that there are officials and politicians for whom public service and interest is not a major concern to them; instead, accruing wealth at the expense of poor communities is their priority. This is contrary to what Chapter ten, Section 195(1) of the Constitution stipulates in terms of the basic values and principles governing public administration.

It is important to look at how the audit outcomes issued by the AGSA have been for at least the past seven years in the North West Province.

**5.3.1 Municipal audit outcomes by the Auditor-General of South Africa, North West Province**

According to the AGSA’s report of 2015 for the financial year 2013/14, the audit outcomes revealed the following for the North West Province municipalities:

**Table 5-2: Summary of the audit outcomes in the North West Province in 2015**

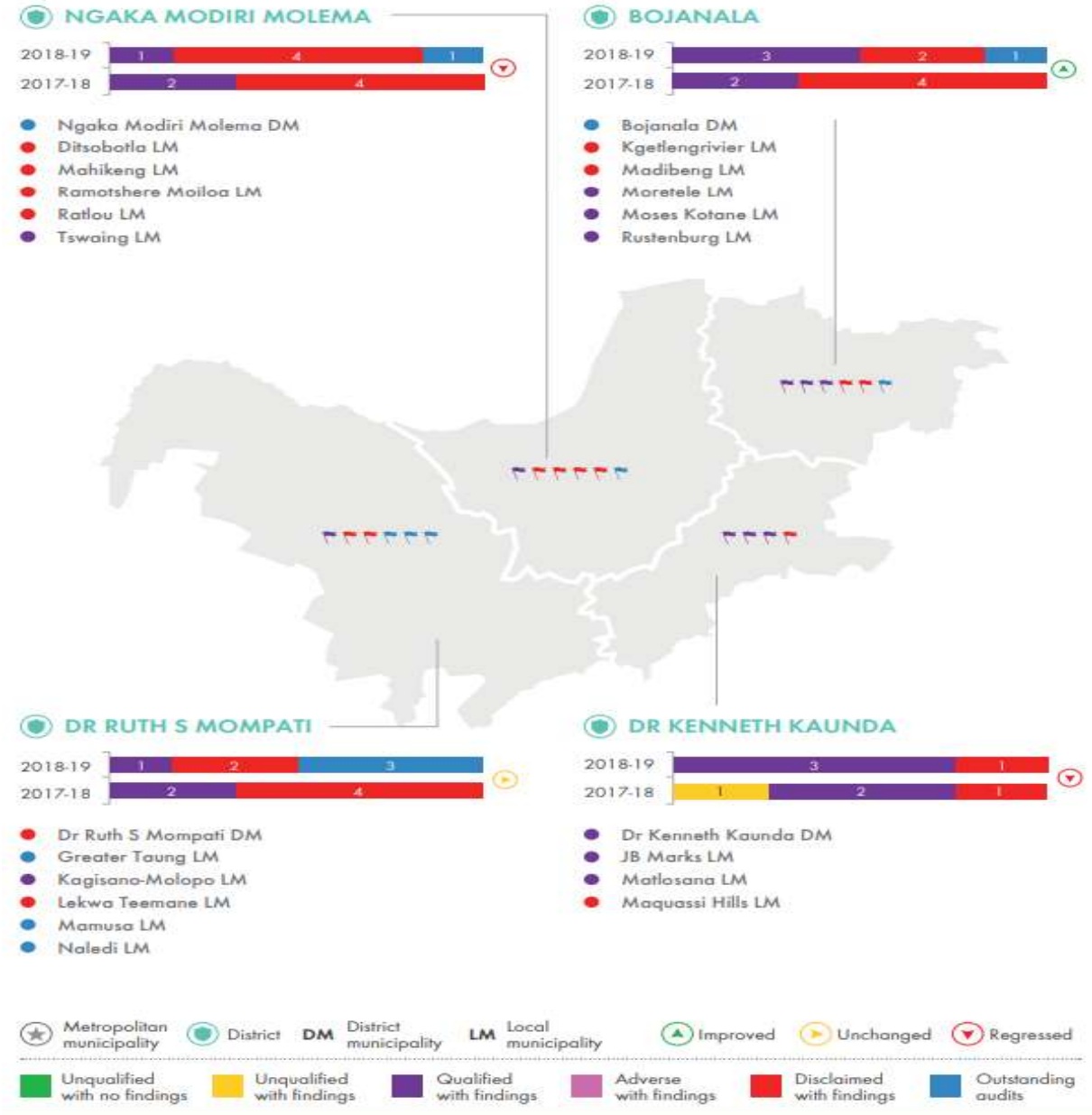
TYPE OF DECISION	NUMBER OF MUNICIPALITIES
Clean Audit	0
Unqualified	2
Qualified	2
Adverse/Disclaimer	5
Audit Outstanding	15

**Source: AGSA, 2015**

Table 5-2 shows that two unqualified audit reports were observed in the North West Province, with 15 local municipalities having outstanding audit reports. The province’s municipalities were made up of four district municipalities and 19 local municipalities at the time. The municipalities were operating on a budget of R15.9 billion (operating expenditure: R12.2 billion and capital expenditure: R3.7 billion.) The audit of Ngaka Modiri Molema District Municipality was outstanding

at the end of January 2015, which was the cut-off date for inclusion in the report. There were still no clean audits in the North West Province, despite the target of 100% clean audits by 2014 that the provincial government set itself through operation 'Clean Audit' (Moyo, 2016).

Five years later and no municipality in the North West Province has achieved a clean audit. It has become one of the worst-performing provinces, characterised by a lack of financial controls, an ongoing culture of a lack of accountability and a tolerance for transgressions (AGSA, 2020).



Source: AGSA, 2020

Figure 5-2: Summary of the municipalities in the North West Province without clean audit opinions

**Table 5-3: Audit outcomes per municipality for the financial years 2012/13 to 2018/19**

No.	Municipality	2018/19	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13	Progress
1.	Bojanala	Audit not finalised	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Unqualified	Unqualified	
2.	Kgetlengrivier	Disclaimer	Disclaimer	Unqualified	Unqualified	Qualified	Qualified	Disclaimer	Stagnant
3.	Madibeng	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Qualified	Qualified	Qualified	Stagnant
4.	Moretele	Qualified	Qualified	Qualified	Qualified	Qualified	Qualified	Disclaimer	Stagnant
5.	Moses Kotane	Qualified	Disclaimer	Disclaimer	Qualified	Qualified	Unqualified	Qualified	Improved
6.	Rustenburg	Qualified	Qualified	Qualified	Qualified	Unqualified	Qualified	Qualified	Stagnant
7.	Dr Kenneth Kaunda	Qualified	Qualified	Qualified	Qualified	Unqualified	Unqualified	Unqualified	Stagnant
8.	Matlosana	Qualified	Unqualified	Qualified	Qualified	Qualified	Qualified	Disclaimer	Regressed
9.	Maquassi Hills	Disclaimer	Disclaimer	Qualified	Qualified	Qualified	Disclaimer	Disclaimer	Stagnant
10.	JB Marks	Qualified	Qualified	Disclaimer	Qualified	Unqualified	Unqualified	Unqualified	Stagnant
11.	Dr Ruth S Mompoti	Disclaimer	Qualified	Unqualified	Unqualified	Qualified	Disclaimer	Qualified	Regressed
12.	Greater Taung	Audit not finalised	Qualified	Qualified	Qualified	Qualified	Disclaimer	Disclaimer	
13.	Kagisano-Molopo	Qualified	Disclaimer	Qualified	Unqualified	Qualified	Qualified	Disclaimer	Improved
14.	Lekwa-Teemane	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Qualified	Disclaimer	Disclaimer	Stagnant
15.	Mamusa	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Stagnant
16.	Naledi	Disclaimer	Disclaimer	Qualified	Unqualified	Unqualified	Unqualified	Qualified	Stagnant
17.	NgakaModiriMolema	ADVERSE	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Disclaimer	Regressed
18.	Ditsobotla	Disclaimer	Disclaimer	Disclaimer	Qualified	Disclaimer	Disclaimer	Disclaimer	Stagnant
19.	Mafikeng	Disclaimer	Disclaimer	Qualified	Disclaimer	Disclaimer	Qualified	Disclaimer	Stagnant
20.	RamotshereMoiloa	Disclaimer	Disclaimer	Qualified	Qualified	Unqualified	Qualified	Disclaimer	Stagnant
21.	Ratlou	Disclaimer	Qualified	Qualified	Qualified	Unqualified	Qualified	Qualified	Regressed
22.	Tswaing	Qualified	Qualified	Qualified	Qualified	Disclaimer	Disclaimer	Disclaimer	Stagnant

Source: Unpublished report, 11 August 2020:7 on the state of local government in the North West Province

Table 5-3 depicts the following in terms of the municipal audit outcomes:

- 04 Regressions
- 09 No Improvement, receiving Disclaimer audit outcomes
- 05 No Improvement, stagnant in terms of receiving Qualified audit outcomes
- 02 Improvement from Disclaimer to Qualified
- 02 Audit process not yet finalised

The inability of the province to reverse the trend of negative audit outcomes points to a culture that is not proactive in dealing with control weaknesses flagged in prior years. These abovementioned municipalities incurred irregular expenditure totalling R3.7 billion, with a further R1.8 billion relating to audits outcomes (Xaba, 2020).

In the recent budget vote speech for the 2021/22 financial year, the MEC responsible for the Department of Cooperative Governance and Traditional Affairs in the North West Province, Mmoloki Cwaile (2021) raised a concern about municipal audit outcomes in the North West Province:

*“Madam Speaker, in the past audit cycle, none of the municipalities received a clean and this situation is a cause for concern. Little is being done to improve the audit outcome and implement the Auditor-General Recommendations year in year out. There is a total disregard for legislative provisions, prescripts, supply chain management processes and procedures, non-compliance with the Municipal Financial Management Act (MFMA) and other legislative conditions that have led to loss and withholding of the equitable share and conditional grants such as the Municipal Infrastructure Grant (MIG) over the years”*

It can be concluded that there is no sign that indicates that any time soon the province will pride itself on clean audit outcomes. This is because of the downward spiral in audit outcomes. The municipalities continue to show an increase in disclaimers and qualified audit opinions, which paints a bleak picture.

In the financial years 2018/2019 and 2017/2018, irregular expenditure of R3.7 billion was recorded. It meant that these monies were spent outside the policy prescripts that regulate supply chain management processes.

This irregular expenditure points to the lack of political will to turn the situation around to achieve better audit outcomes. In addition, the oversight bodies that are supposed to oversee municipal administration, namely municipal public accounts committees (MPACs) and the Standing

Committee on Public Accounts are not effective. In fact, this clearly indicates that Section 139(4)(5) of the *Constitution* was supposed to be applied instead of a Section 139(1) intervention.

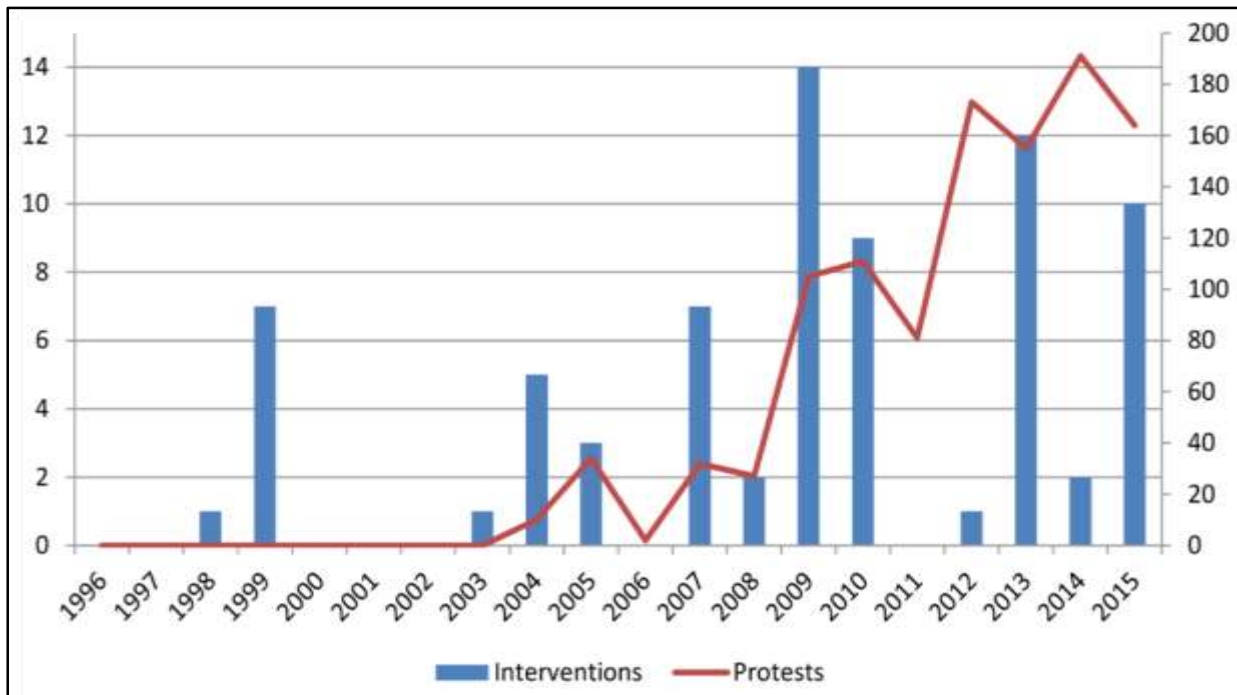
#### **5.4 Section 139(1) Intervention: A national and provincial perspective (North West Province)**

The growing trends in South Africa have proven that national and provincial government interventions in local government affairs have become the norm. Almost every month in the media space, South Africans witnessed protests, either due to fraud and corruption or poor service delivery at the municipal level. Issues of poor service delivery and fraud and corruption are not the only issues which have triggered interventions. Political instability in most instances has become a symbol of municipal dysfunction to push self-serving people to have access to state resources. The result thereof justifies provincial government intervention in terms of Section 139. The following Sections analyse national and provincial interventions.

##### **5.4.1 National overview of Section 139 intervention**

The epoch towards the 2009 election was a time of important political developments at local government level. It was not long after the ruling party, the ANC, came from its elective national conference in Polokwane in 2007. The conference was highly contested by former President Thabo Mbeki and Jacob Zuma in terms of the leadership of the party. Zuma won the ANC Presidency and those who were loyal to Mbeki became the victims of purges, and those supportive of Zuma sought to obtain positions of power and influence. This intra-party reconfiguration, combined with the instability inherent in election years, produced a spike in both Section 139 interventions and service delivery protests. Since that time, the number of service delivery protests per annum has been consistently high, and Section 139 interventions have occurred more or less regularly, with the exception of 2011, which was a local government election year. The link between interventions and service delivery protests would appear to support government interventionism related to state dysfunction (Greffrath & Van der Waldt, 2016a:154).

**Graph 5-1: The correlation between Section 139 interventions and service delivery protests from 1994 to 2015**



Source: Greffrath & Van der Waldt, 2016a:155

The above graphic representation indicates the large number of interventions prior to local government elections. The local government elections took place in the years 2000, 2006 and 2011, and during these years no interventions were conducted. However, in the two years preceding each election, there were eight, thirteen and twenty-three interventions, respectively. ‘One logical conclusion that can be drawn from this pattern is that Section 139 interventions are used tactically in order to secure electoral support prior to local government elections, which directly determine the balance of power in the local sphere of government’ (Greffrath & Van der Waldt, 2016a).

**Table 5-4: Number of municipalities nationally placed under Section 139 Intervention 2015–2019**

MUNICIPALITY	PROVINCE	SECTION(S)	START	END
<b>2015/2016</b>				
Oudtshoorn LM	W Cape	S 139(1)(b) + S 139(4)	Jul 15	Aug 16
Indaka LM	KZN	S 139(1)(b)	Jul 15	Aug 16

MUNICIPALITY	PROVINCE	SECTION(S)	START	END
Umkhanyakude DM	KZN	S 139(1)(b)	Oct 15	Nov 17
Ditsobotla LM	North West	S 139(1)(c)	Jan 16 (?)	
Tswaing LM	North West	S 139(1)(c)	Jan 16 (?)	
Ventersdorp LM	North West	S 139(1)(c)	Jan 16 (?)	
Thabazimbi LM	Limpopo	S 139(1)(b)	Feb 16	Oct 16
Ingwe LM	KZN	S 139(4)	May 16	Aug 16
Mafikeng LM	North West	S 139(1)(b)	Jun 16 (?)	Jun 17 (?)
Lekwa Teemane LM	North West	S 139(1)(b)	Jan 16 (?)	Jun 17 (?)
Ditsobotla LM	North West	S 139(1)(b)	Jan 16 (?)	Jun 17 (?)
<b>2016/2017</b>				
Mamusa LM	North West	S 139(1)(b)	Jul 16 (?)	Aug 16 (?)
Jozini LM	KZN	S 139(1)(b)	Jul 16 (?)	Jul 16 (?)
Nquthu LM	KZN	S 139(1)(b)	Oct 16	Feb 17
Umzinyathi DM	KZN	S 139(1)(b)	Oct 16 (?)	Current
Kannaland LM	W Cape	S 139(5)	Dec 16	Current
Emadlangeni LM	KZN	S 139(1)(b)	Jan 17	Mar 19
Nquthu LM	KZN	S 139(1)(c)	Feb 17	May 17
Mafube LM	Free State	S 139(1)(b)	Mar 17	Current
Masilonyana LM	Free State	S 139(1)(b)	Mar 17	Current
<b>2017/2018</b>				
Metsimaholo	Free State	S 139(4)	July 17	Current
eDumbe	KZN	S 139(1)(b)	July 17	Current
Maluti-A-Phofung	Free State	S 139(1)(b)	Feb 18	Current
Nkosasana Dlamini-Zuma	KZN	S 139(1)(b)	Mar 18	Mar 19
Emfuleni	Gauteng	S 139(1)(b)	June 18	Current
Great Kei	EC	S139(1)(b)	June 18	Current
<b>2018/2019</b>				
Enoch Mgijima	EC	Ss 139(1)(b) and 139(5)	Aug 18	Current
Mahikeng	NW	S 139(1)(b)	Sept 18	Current
Kagisano-Molopo	NW	S 139(1)(b)	Sept 18	Current
Ramotshere Moiloa	NW	S 139(1)(b)	Sept 18	Current
Ditsobotla	NW	S 139(1)(b)	Sept 18	Current

MUNICIPALITY	PROVINCE	SECTION(S)	START	END
Kgetlengrivier	NW	S 139(1)(b)	Sept 18	Current
<b>Maquassi Hills</b>	<b>NW</b>	<b>S 139(1)(b)</b>	<b>Sept 18</b>	<b>Current</b>
Naledi	NW	S 139(1)(b)	Sept 18	Current
<b>Ngaka Modiri Molema DM</b>	<b>NW</b>	<b>S 139(1)(b)</b>	<b>Sept 18</b>	<b>Current</b>
<b>uThukela DM</b>	<b>KZN</b>	<b>S 139(1)(b)</b>	<b>Sept 18</b>	<b>Current</b>
<b>Emalahleni LM</b>	<b>Mpumalanga</b>	<b>S 139(5)</b>	<b>Oct 18</b>	<b>Current</b>
Endumeni	KZN	S 139(1)(b)	Dec 18	Current
<b>Mpofana</b>	<b>KZN</b>	<b>S 139(1)(b)</b>	<b>Dec 18</b>	<b>Current</b>
Inkosi Langalibalele	KZN	S 139(1)(b)	Dec 18	Current
Amahlathi	EC	S 139(1)(b) & S 139 (5)	Feb 19	Current
<b>AbaQulusi</b>	<b>KZN</b>	<b>S 139(1)(b)</b>	<b>Mar 19</b>	<b>Current</b>
<b>Mtubatuba</b>	<b>KZN</b>	<b>S 139(1)(b)</b>	<b>Mar 19</b>	<b>Current</b>
Richmond	KZN	s 139(1)(b)	Mar 19	Current
<b>Msunduzi</b>	<b>KZN</b>	<b>S 139(1)(b)</b>	<b>Apr 19</b>	<b>Current</b>
Phokwane	N Cape	S 139(1)(b)	Apr 19	Current
<b>Mamusa</b>	<b>NW</b>	<b>S 139(1)(b)</b>	<b>May 19</b>	<b>Current</b>
<b>Lekwa Teemane</b>	<b>NW</b>	<b>S 139(1)(b)</b>	<b>May 19</b>	<b>Current</b>
Ratlou	NW	S 139(1)(b)	May 19	Current
JB Marks	NW	S 139(1)(b)	May 19	Current
<b>Tswaing LM</b>	<b>NW</b>	<b>S 139(1)(b)</b>	<b>May 19</b>	<b>Current</b>
<b>Madibeng Local Municipality</b>	<b>NW</b>	<b>S 139(1)(b)</b>	<b>May 19</b>	<b>Current</b>

**Source: Adapted from Ledger and Rampedi (2019)**

Based on the above-mentioned national analysis, the North West Province has had a large number of municipalities that have been placed under Section 139 intervention. During the 2015/16 financial year, Ditsobotla, Tswaing, and Ventersdorp Local Municipalities were placed under Section 139(1)(c), and Mahikeng, Lekwa Teemane and Ditsobotla Local Municipalities were placed under Section 139(1)(b). In the 2016/2017 financial year, only Mamusa local municipality was placed under Section 139(b).

In the financial year 2018/19, there was an increase in the invocation of Section 139 intervention. More than 60% of municipalities were placed under Section 139 intervention, namely Mahikeng, Kagisano-Molopo, Ramotshere Moiloa, Ditsobotla, Kgetleng River, Maquassi Hills, Naledi,

Mamusa, Lekwa-Teemane, Ratlou, JB Marks, Tswaing, and Madibeng local municipalities, and Dr Ruth Segomotsi Mompati and Ngaka Modiri Molema District Municipalities.

According to the Deputy Director-General of the national COGTA, Themba Fosi, the interventions were as a result of political infighting and instability within the municipalities, which has delayed improved delivery of services to communities. He further emphasised the fact that national government had to intervene in the North West Province due to financial and governance issues. All 22 municipalities (under the auspices of Section 100(1)(a) of the *Constitution*) were issued with directives in terms of Section 139(1)(a) of the Constitution (Felix, 2020).

In addition, what contributes to the ineffective of implementation of Section 139(1) is that '[p]rovinces tend to deploy one person as an administrator without concomitant experts as per the diagnosis of the challenges encountered in the municipality, such as financial or human resource experts where required.' (Felix, 2020). Furthermore, the insufficient oversight function by some provincial legislatures contributes to the non-submission of progress reports. This sometimes leads to an intervention not yielding positive results (Felix, 2020).

This constitutes a bleak picture of service delivery in the North West Province. The high number of municipalities that have been placed under administration is indicative of failing municipalities that need to be rescued. Political factionalism and infighting seem to be at play as contributory factors with respect to the invocation of Section 139 interventions. The bar graph in Section 5.4.1 shows that the number rose further in 2009 because it was a national election year, which gave birth to the Presidency of Jacob Zuma. Therefore, his loyalists wanted to entrench themselves by taking control of local government and defamed those who were loyal to the outgoing president, Thabo Mbeki. The fastest way of taking municipal control was to use Section 139(1) invocations, as the court judgments discussed in Chapter 4 indicate. In the next Section, the provincial overview of Section 139(1) interventions is detailed.

#### **5.4.2 Provincial overview of Section 139(1) interventions**

The North West Province is one of the provinces that has had a high number of municipalities that have been placed under administration due to poor service delivery. On 22 August 2018, the Provincial Executive Council of the North West Province, led by Premier Tebogo Job Mokgoro, resolved to invoke Section 139(1)(b) of the *Constitution* and Section 137 of the MFMA in eight municipalities with effect from 1 September 2018.

**Table 5-5: Summary of municipalities placed under Section 139 intervention in 2018**

#	NAME OF A MUNICIPALITY	TYPE OF INTERVENTION	EXPIRY OF INTERVENTION	COMMENTS
1	<b>Ditsobotla Local Municipality</b>	Section 139(1)(b) of the Constitution	12 months (Start: 1/09/2018 End: 28 August 2019)	Administrator on site, progressing well.
2	<b>Ramotshere Moiloa Local Municipality</b>	Section 139(1)(b) of the Constitution	12 months (Start: 1/09/2018 End: 28 August 2019)	Administrator on site, progressing well.
3	<b>Maquassi Local Municipality</b>	Section 139(1)(b) of the Constitution	12 months (Start: 1/09/2018 End: 28 August 2019)	Administrator on site, progressing well.
4	<b>Kgetleng River Local Municipality</b>	Section 139(1)(b) of the Constitution	12 months (Start: 1/09/2018 End: 28 August 2019)	Administrator on site, progressing well.
5	<b>Kagisano Molopo Local Municipality</b>	Section 139(1)(b) of the Constitution	12 months (Start: 1/09/2018 End: 28 August 2019)	Municipality resisted Administrator.
6	<b>Naledi Local Municipality</b>	Section 139(1)(b) of the Constitution	12 months (Start: 1/09/2018 End: 28 August 2019)	Administrator on site, progressing well.
7	<b>Mahikeng Local Municipality</b>	Section 139(1)(b) of the Constitution	12 months (Start: 1/09/2018 End: 28 August 2019)	Administrator on site, progressing well.
8	<b>Ngaka Modiri Molema District Municipality</b>	Section 137 of the MFMA	12 months (Start: 1/09/2018 End: 28 August 2019)	Administrator on site, progressing well.

Furthermore, an additional seven (7) municipalities were also placed under administration by a resolution taken by the Provincial Executive Council on the May 2019 to invoke Section 139(1)(b) and (a) in other municipalities with immediate effect.

**Table 5-6: Additional municipalities placed under Section 139 in 2019**

#	NAME OF AMUNICIPALITY	TYPE OF INTERVENTION	EXPIRY OF INTERVENTION
9	<b>JB Marks Local Municipality</b>	Section 139(1)(b) of the Constitution	6 months (Start: 2/05/2019 End: 2 November 2019)
10	<b>Tswaing Local Municipality</b>	Section 139(1)(b) of the Constitution	6 months (Start: 2/05/2019 End: 2 November 2019)
11	<b>Lekwa-Teemane Local Municipality</b>	Section 139(1)(b) of the Constitution	6 months (Start: 2/05/2019 End: 2 November 2019)
12	<b>Ratlou Local Municipality</b>	Section 139(1)(b) of the Constitution	6 months (Start: 2/05/2019 End: 2 November 2019)
13	<b>Madibeng Local Municipality</b>	Section 139(1)(b) of the Constitution	6 months (Start: 2/05/2019 End: 2 November 2019)
14	<b>Mamusa Local Municipality</b>	Section 139(1)(b) of the Constitution	6 months (start 2/05/2019 End: 2 November 2019)
15	<b>Dr RSM</b>	Section 139(1)(a) (Water & Sanitation Financial Administration)	6 months (start 2/05/2019 End: 2 November 2019)

**Source: COGTA report North West Province**

The decision of the Provincial Executive Council came as a result of the 'Report on state of municipalities', tabled by the Department of Local Government and Human Settlements which identified serious maladministration, poor governance and poor financial administration, which had a negative impact on service delivery and general administration of these institutions (Rosho, 2019a).

The NCOP Select Committee also endorsed the decision of the Provincial Executive Council to place the above-mentioned municipalities under administration. The Committee Chair, TSC Dodovu, reported on 29 October 2019 that

*[t]he committee observed widespread political factionalism; ill-discipline amongst councillors; appointment of unqualified municipal officials; non-compliance with the existing legislation; and general lack of consequence management and capacity of municipal leadership to ensure smooth, efficient, effective and people-centred local government. All of these are the major causes for the collapse of the municipalities and their dysfunctionality, hence the invocation of Section 139 of the Constitution.*

Thus, for the first time in the post-apartheid era in South Africa, the majority of municipalities in one province were placed under section 139(1) interventions. What made the situation even worse was the fact that the entire provincial government of the North West Province was placed under section 100 of the *Constitution*, which enabled national government to run the province. This was attributed to the fact that there was no political will to turn the situation around to establish good governance and to combat corruption.

## **5.5 Case studies: The invocation of Section 139(1)**

In the following three chapters (Chapters 6, 7 and 8) the case studies are conducted in three municipalities to assess how the North West provincial government applied Section 139 in NMMDM, Madibeng Local Municipality and CMLM are discussed. As a matter of emphasis, the three municipalities were chosen based on the reasons supplied in Section 1.1, in the introductory chapter (Chapter 1) of this thesis. Therefore, the next Sections will highlight their importance in the outcome of the study. A brief overview of each is made, focusing on governance, administration and service delivery. This is followed by in-depth discussions in the subsequent three chapters (Chapters 6, 7 and 8).

### **5.5.1 Ngaka Modiri Molema District Municipality**

The NMMDM was placed under Section 139(1) intervention four times, starting in 2009/2010; twice in 2014/2015, which included the dissolution of its Municipal Council; and in 2018/2019. The district municipality is a Water Services Authority. Furthermore, it is responsible for disaster management and construction of municipal roads and storm water (Ledger & Rampedi, 2019:32-36).

#### **5.5.1.1 Governance**

According to a report of the Select Committee on Co-operative Governance and Traditional Affairs, Water, Sanitation and Human Settlements (15 September 2014), the district municipality had experienced governance and administrative problems. At the same time, one of the district's responsibilities, among others, was to coordinate the Inter-

Governmental Forum (IGR) within the district. The IGR was meant to coordinate effective service delivery within the district through local municipalities. Unfortunately, the IGR became dysfunctional; as a result, this led to a series of complaints from the local municipalities about the poor relations between themselves and the district.

The dysfunctionality of the district IGR led to a deterioration in its regional planning capacity and the coordination of the provision of water services. There were no service level agreements (SLAs) between the district (as water services authority,) local municipalities and Botshelo Water as water services provider. The SLAs were meant to detail the bulk water distribution, operations and maintenance and provision of free basic services (Select Committee on COGTA, Water, Sanitation and Human Settlements 2014).

Because of the poor working relationship and the collapse of the IGR in coordinating the local municipalities, the district was failing its local municipalities on the identification, prioritisation and project implementation. Though efforts were made by the provincial COGTA to resuscitate the IGR, unfortunately, attendance by leadership of local municipalities remain poor (Select Committee on COGTA, Water, Sanitation and Human Settlements 2014).

#### **5.5.1.2 Administration**

With regard to the district municipal administration, the District Council continued to appoint senior managers who did not meet the competency requirements in terms of local government regulations. The advice from the provincial COGTA not to proceed with such appointments was ignored.

The situation has resulted in the district having received disclaimers for three consecutive years according to the AGSA, namely in 2010/11, 2011/12 and 2012/13. The cause for these disclaimers in the main was due to the poor internal controls that had compromised the supply chain management processes. The Auditor-General reported a total of irregular expenditure of R339,864,539.00 in the 2011/2012 and 2013 financial years. The irregular expenditure related to expenditure that had been incurred without following proper procedures, and not adhering to regulations:

*There were reports that the supply chain management processes have been flouted by the Municipal Manager and senior managers on key services, such as the provision of water-tanking services to water distressed communities within the District. It was alleged that the contract was given to one supplier, and that some senior officials in the District are connected to the supplier. Communities receiving this service have complained about the inconsistent*

*supply of the water as well as the poor quality of the water (Select Committee on COGTA, Water, Sanitation and Human Settlements 2014).*

### **5.5.1.3 Service delivery**

With regard to service delivery, the district has experienced several service delivery protests due to poor service delivery; in particular the delivery of water to the village communities. The communities of Ratlou Local Municipality (Madibogo, Setlagole), Ramotshere Moiloa Local Municipality (Dinokana, Khunotshwana), and Ditsobotla Local Municipality (Itsoseng, Bodibe) have protested against the lack of water provision in their areas for many years (Select Committee on COGTA, Water, Sanitation and Human Settlements 2014).

These communities have, on many occasions, raised the issue of water provision with the authorities concerned without any success. It is common knowledge that the District Municipality is one of the two water-stressed districts in the province. As much as there are water source problems in the district, the poor management of water provision programmes by the district exacerbates the situation (Select Committee on COGTA, Water, Sanitation and Human Settlements, 2014).

In the first instance, the district was unable to develop and maintain a good working relationship with the local municipalities as the water authority. There were no SLAs that should have outlined each party's roles and responsibilities for water provision. Local municipalities in the district have been complaining about the district's lack of consultation and involvement when water and sanitation projects are initiated, planned and implemented (Select Committee on COGTA, Water, Sanitation and Human Settlements, 2014).

This poor management of water provision by the district municipality has resulted in the intervention of the Department of Water and Sanitation (DWS). The DWS became worried that the business practices were in a critical state. It therefore required urgent municipal and provincial local government intervention to turn the situation around. It noted that the interventions that occurred in the past did not yield positive results on the water provision (Select Committee on COGTA, Water, Sanitation and Human Settlements, 2014).

Poor leadership and a lack of political will resulted in poor service delivery. It is evident that there was a lack of political commitment from the council in NMMDM to coordinate IGR forums to plan properly with local municipalities to deliver basic services. Inexperienced senior managers were pushed into critical positions. This indicates a lack of accountability and poor record management to account for the expenditure incurred.

The rising number of protests in villages about water provision was also an indication that the municipality lacked the necessary political commitment to put permanent infrastructure in place for water provision to the village communities. Thus, the invocation of a Section 139(1) intervention was repeated in the district, which included the dissolution of the council in terms of Section 139(1)(c).

## **5.5.2 Madibeng Local Municipality**

The Madibeng Local Municipality is found in the Bojanala Platinum District Municipality. This municipality falls in Category B, according to the Municipal Structures Act. The seat of the Local Municipality is the town of Brits. The popular tourist area of Hartebeespoort is also located in the municipality area. This municipality was placed under Section 139(1)(b) intervention five times: in 2009/2010; 2013/2014; 2018/2019 and 2020/2021.

### **5.5.2.1 Governance**

In 2009 and before, the Madibeng Local Municipality was under severe financial pressure in terms of revenue shortages and cash flow. These shortages had a negative impact on its financial sustainability and delivery of basic services. The municipality was unable to service its long-outstanding Public Investment Corporation loan of more than R400 million and the Tshwane Metro account of R60 million. Furthermore, it was also unable to pay its creditors.

In addition, the municipality was unable to deliver basic services, such as water, sanitation, electricity and refuse removal. This was due to poor decision-making, resulting in a high degree of non-compliance with the regulatory environment governing the municipality's operations. The poor financial situation of the Madibeng Local Municipality has resulted in it placing substantial reliance on grants to support its operations (Feni, 2010).

### **5.5.2.2 Administration**

The administration of Madibeng Local Municipality has been unstable for quite some time, which has negatively affected the provision of basic services. At some point the Municipal Manager, the Chief Financial Officer and the Technical Service Director resigned. There was no administrative capacity to execute administrative functions due to low staff morale.

Poor audit outcomes have also affected the municipality badly, namely the recurrent disclaimer audit findings for the three consecutive financial years; 2015/16, 2016/17 and 2017/18. The irregular expenditure increased from R1.32 billion in the 2016/17 financial year to R1.38 billion during the 2017/18 financial year. Section 32 of the MFMA processes to rectify these were not implemented (Select Committee on COGTA, 2019).

At some point the municipality was implementing a budget that was not funded. The total amount outstanding to debtors as at February 2019 amounted to R1.8 billion, of which R1.6 billion had been owed for over 91 days.

The debt from households, which constitutes an outstanding debt of R1.4 billion, is of grave concern. The debt owed by businesses/commercial enterprises and government stood at R333 million and R75 million, respectively. The total outstanding to creditors at the end of February 2019 amounted to R222 million. For bulk purchases, the municipality owes R121 million for bulk water, 42% of which is had been owed for over 181 days. This shows that the payment agreement with the sector has not been honoured (Select Committee on COGTA, 2019).

The continued administrative problems of Madibeng Local Municipality at some point triggered the Municipal Council to approve the implementation of Section 154(1) of the *Constitution*. In addition, it also approved the establishment of the Ministerial Support Team (MST) to strengthen the administration of the municipality. The team comprised the following officials from national COGTA: Tebogo Motlashuping Pascal Moloi and Boysie Phehlukwayo.

The team was given the following terms of reference or the mandate to turn the situation around: improvement of service delivery; prioritising water and sanitation services; improving the financial controls, expenditure management, procurement processes, revenue enhancement and debt collection, and addressing the AGSA's reports, analysis and implementation of past and current investigations, commissions of enquiry and forensic audits; attending to labour matters (outstanding disciplinary cases, labour disputes and functionality of LLF); instilling the culture of work and discipline among workers; facilitating the improvement of governance within the council; concluding the disciplinary cases of the previously suspended and reinstated managers (developing charges and commencing with disciplinary processes); and investigating all recently awarded contracts to establish their validity and legitimacy, and terminate those that are not legitimate (NCOP Select Committee on COGTA, 2014:4). This was a clear indication that this municipality had suffered and compromised its mandate as enshrined in Section 152 of the *Constitution*. It is against this background that the municipality was placed under Section 139(1) five times.

### **5.5.2.3 Service delivery**

Madibeng Local Municipality has experienced the following problems in servicing its communities as part of service delivery: lack of sufficient bulk water; interrupted supply of water due to the lack of maintenance and non-payment of water services; poor maintenance and operations of infrastructure; and poor management of conditional grants, in particular the Municipal

Infrastructure Grant (59% expenditure and R60 million adjusted) (Select Committee on COGTA, 2019).

Furthermore, the municipality has had poor relationship with its stakeholders. As a result, this has led to several service delivery protests from some of its communities. Some of the community members and stakeholders submitted memorandums to the offices of the Premier, the Minister and the President. In their memorandums, they complained about the poor service that was rendered by the municipality. The President's hotline was also flooded with queries from the local community. Some of the residents ended up establishing the Concerned Residents' Rates Payers Association, which withheld payment of services to the municipality and, instead, opened a separate trust account (NCOP Select Committee on COGTA :2).

Madibeng Local Municipality's administration and council had been unstable for the entire 20 years prior to this study. The municipality was placed under Section 139(1) intervention five times, which demonstrates a lack of political will to turn the situation around for the better.

The resignations of senior managers who held strategic positions, namely the municipal manager, chief finance officer and technical services director seems to have contributed to the disclaimer audit opinions. This situation included allegations of corruption, labour issues and ill-discipline from municipal employees. There was also an allegation of the flouting of supply chain management processes, meaning that procedures were not followed in the awarding of tenders, which triggered investigations and a forensic audit into the affairs of the municipality.

It seems the municipality's systems and controls became worse, making service delivery impossible, to the extent that the ministerial support team was called in with clear terms of reference to assist the municipality in delivering on its mandate.

### **5.5.3 Matlosana Local Municipality**

The CMLM is a Category B municipality situated within the Dr Kenneth Kaunda District in the North West Province. It is bordered by the NMMDM in the north, the Free State Province in the south, JB Marks Local Municipality in the east, and Maquassi Hills Local Municipality in the west. There are towns that remain part of the municipality, namely Hartbeesfontein, Klerksdorp, Orkney and Stilfontein. This municipality has been placed under Section 139(1)(b) intervention three times: in 1999/2000, 2012/2013 and 2014/2015.

### **5.5.3.1 Governance**

The AGSA's Report for the 2016/17 financial year revealed the fact that the leadership of the CMLM did not adequately monitor management action plans to address the prior year's audit findings regarding financial and performance reporting, compliance, and related internal controls. Although resolutions had been adopted by the council to address prior year's audit findings, their implementation was mostly done through consultants with limited transfer of skills to the city's own staff (City of Matlosana, 2017a:279). Owing to the lack of monitoring systems and mechanisms by municipal leadership, the CMLM became one of the 'top' five municipalities in terms of the highest rate of irregular expenditure, at R3 billion accumulated over a number of years. The municipality has also been singled out for failing to investigate the irregularities (Saba, 2020).

The poor leadership at the municipality has resulted in statutory obligations not being honoured. Furthermore, the non-payment of the bulk electricity and bulk water accounts to Eskom and Midvaal Water Board has resulted in notices of disconnection by Eskom being served. This was a result of poor administration and governance. COGTA in the province had to conduct an analysis of the financial status of the municipality; the outcome of the analysis revealed the following:

The municipality was not collecting what was due for services rendered to consumers and the debtors book was standing at about R960 million; there was non-enforcement of debt collection and credit control policies as adopted by council; and the municipality was using the revenue from the sale of electricity to subsidise other services that consumers were not paying. The municipality had numerous contractual obligations with consultants for services such as debt collection, meter reading and other services that could be rendered internally; there was a lack of management and leadership capacity in the Budget and Treasury Office, which led to poor financial management and administration of the municipality's finances.

The MEC for COGTA stated that the municipality had been experiencing serious financial problems, to the extent that it failed to honour its statutory financial obligations. It incurred a long-standing debt with Eskom and Midvaal Water Board, which resulted in the two bulk services accounts being in arrears by in excess of R100 million. In March 2013 the Eskom arrears were standing at about R68 million (Select Committee on COGTA, 2013).

### **5.5.3.2 Administration**

The municipality lacked effective human resource management to ensure that adequate and sufficiently skilled resources were in place and that performance was monitored. The

organisational structure for placing appropriately skilled people was not in place. There was also a lack of continuity in key management positions due to resignations, which caused instability in management functions.

Management's failure to comply with laws and regulations and inability to implement controls to ensure reliable and accurate financial and performance reporting are of concern. These factors, as well as the continuous non-adherence to the council's supply chain management policy without consequences, reflect negatively on management's commitment to a clean administration. Management did not have an adequate risk strategy that addressed identified risks in supply chain management, and non-compliance with laws and regulations (City of Matlosana, 2017b).

### **5.5.3.3 Service delivery**

With regard to service delivery at the municipality, the AGSA 2016/2017 report disclosed in the statement of comparison of budget and actual amounts that the municipality had underspent on capital expenditure by R31 693 235, and on repairs and maintenance by R18 891 075, due to cash flow shortages. As a consequence, the municipality was unable to adequately fulfil its mandate regarding service delivery (City of Matlosana, 2017a:274).

Thus, evidence indicates that the CMLM was faced with poor leadership and financial crises. Section 139(5) of the *Constitution* states that '[i]f a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its commitment to provide basic services or to meets its financial commitments or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must intervene.' This intervention should be in terms of Section 139(5)(a), (b) and (c) of the *Constitution*. This municipality experienced huge amounts of irregular expenditure as expressed by the AGSA. It could not service its debts, in particular, to the Midvaal Water Authority and Eskom. This is a clear indication of the lack of expertise in the financial management of the municipality. Hence, Section 139(1) intervention was repeated in this municipality due to lack of political will to turn the situation around.

## **5.6 Conclusion**

It has been very clear from the findings in this chapter (Chapter 5) that the local government in the North West Province has met many challenges, ranging from administration and leadership in Municipal Councils. Hence, Provincial Executive Council issued a series of invocations of Section 139(1) interventions.

This chapter provided the composition of local government in the North West Province. The province consists of four district municipalities, namely (1) Ngaka Modiri Molema, (2) Bojanala, (3) Dr Ruth Segomotsi Mompati and (4) Dr Kenneth Kaunda, and eighteen local municipalities as outlined in Section 5.2 above.

It is evident that, according to the AGSA, for the past ten years not a single municipality in this region obtained a clean audit outcome. The evidence points to the fact there is no municipality that will obtain a clean audit in the near future based on the number of municipalities that have been placed under administration.

This chapter has demonstrated that, in some instance, fifteen municipalities had outstanding audit reports; meaning, these municipalities did not submit their audit reports in time for the AGSA to audit their books. This constitutes non-compliance on the basis that there was no regard for the rule of law and it clearly demonstrates that the North West Province was definitely one of the worst-performing provinces in South Africa.

In the 2018/2019 financial year the NMMDM had an outstanding report for audit and, at the same time, it had received an adverse audit opinion. The Madibeng Local Municipality had received a disclaimer audit outcome for two consecutive years: in 2017/18 and 2018/19, and the CMLM received a qualified audit opinion in the 2018/19 financial year. This situation points to the lack of political will by politicians to hold the administration accountable for their actions and lack of skills on the part of officials.

Furthermore, the chapter highlighted the fact that the NMMDM had failed to coordinate its local municipalities as districts through the IGR to improve service delivery, especially not water provision around district villages which had been hit by water scarcity. In addition, what became worse was the appointment of senior staff members who did not meet the requirements of the posts. The municipality thus found itself in the state of poor performance and the repeat of Section 139(1) interventions, which included dissolution.

With regard to Madibeng Local Municipality, this chapter clearly showed that the municipality could not honour its commitment to creditors, particularly the Public Investment Corporation and Tshwane Metro accounts. This municipality implemented a budget that was not funded, which is one of the reasons it received two consecutive disclaimer audit opinions. The resignations of a few senior management staff members also contributed to the poor performance of the municipality. This demonstrates poor financial management and controls.

Furthermore, this chapter showed up the leadership failure in playing an oversight role over the administration in the CMLM to the extent that issues that the AGSA raised was not monitored by the leadership to ensure that the municipal administration addressed them.

The North West Province has made history in post-apartheid South Africa by having more than 60% of its municipalities placed under Section 139(1) interventions in one financial year. Evidence has shown that these huge and repeated interventions were mainly caused by political instability in Municipal Councils, and political factionalism within the ruling party, the ANC. This it also clear evidence that the cadre deployment affects service delivery negatively because these are ANC governed municipalities.

This political instability in Municipal Councils has caused deterioration of service delivery across the North West Province. The provincial government was supposed to attract the private sector to improve service delivery in the province, particularly the mining industry; for instance, this chapter stated that Rustenburg and Brits were known for producing platinum; Orkney and Klerksdorp are known for producing gold; Klerksdorp alone was known for producing Uranium; Lichtenburg and Christiana produced diamonds. Not one of these mines have been utilised to the optimum to forge a partnership with provincial government to improve service delivery in the North West Province. This means those who have been at the helm of running provincial government lacked strategic thinking and political will to tap into these opportunities.

Furthermore, the International Casino, Sun City and the Los City, based in the North West Province are not been engaged optimally to also assist with service delivery. This can help the surrounding villages around the Moses Kotane Local Municipality to improve service delivery.

The next three chapters (Chapter 6, 7 and 8) contain the case studies. The invocation and the implementation of Section 139(1) are assessed on how the provincial government of the North West Province applied them. Chapter 6 discusses the NMMDM, followed by Madibeng Local Municipality and the CMLM. Table 5.6 is a summary of the invocation of Section 139(1) interventions in three municipalities, which are going to be discussed in greater detail next.

**Table 5-7: Summary of three municipalities under Section 139(1) interventions**

<b>MUNICIPALITY</b>	<b>TYPE OF INTERVENTION AND PERIOD</b>	<b>TIMEFRAMES</b>
<b>Ngaka Modiri Molema District</b>	Section 139(1)(b): 2009/2010	?
	Section 139(1)(c): 2014/2015	September 14 – December 14
	Section 139(1)(b): 2014/2015	March 15 – August 16
	Section 139(1)(b): 2018/2019	September 18 –?
<b>Madibeng Local Municipality</b>	Section 139(1)(b): 2009/2010	March 10 – May 11
	Section 139(1)(b): 2013/2014	February 14 – March 14
	Section 139(1)(b): 2014/2015	March 15 – August 16
	Section 139(1)(b): 2018/2019	May 19 –?
	Section 139(1)(b): 2020/2021	August 3 for the next six to twelve months
<b>Matlosana Local Municipality</b>	Section 139(1)(b): 2012/2013	April 13 – June 14
	Section 139(1)(b): 2014/2015	January 15 – August 16
	Section 139(1)(b): 1999/2000	July 1999 – December 2000

**Source: Author's own construct**

## **CHAPTER 6: NGAKA MODIRI MOLEMA (DISTRICT MUNICIPALITY – THE APPLICATION OF SECTION 139(1)(C)**

### **6.1 Introduction**

The focus of this chapter is on how Section 139(1)(c) was applied in the NMMDM by the North West Provincial Executive Council. As noted in 1.8 in Chapter 1, this was investigated by means of semi-structured interviews with appropriate role players. However, before presenting the findings from the interview, the meta-theoretical framework explained in Chapter 2 is revisited as a point of departure. This framework provided the criteria against which the information generated in the interviews was assessed. Thus, in both this chapter and the two subsequent chapters (Chapters 7 and 8) the report proceeds from theory to practice.

Van der Waldt (2017:183) emphasises the fact that theory underpins social science activities by providing the philosophical assumptions on aspects such as ontology, which in this context relates to social reality; epistemology which helps to explain which findings need to be accepted as valid evidence of that reality; and the methodology, which dictates the manner in which the investigation is conducted (see Table 2.1). The dimensions can be applied to social science research, which, in this study, is Section 139(1) interventions. He explains further that theory occupies a central role in scientific enquiry into the social world. Therefore, the above-mentioned dimensions of social science research are the building blocks of this chapter. This is appropriate because this study is about social science research, which embraces a collaborative study of human activity, as explained by Mouton and Marais (1996:7).

Moreover, it is important that the research be guided by a conceptual framework. Jabareen (2009:51) characterises the features of a conceptual framework as an interpretive approach to a social phenomenon that can be constructed through qualitative analysis.

Mouton and Marais (1996:137) distinguish three types of conceptual frameworks, namely (1) typology, (2) models and (3) theories, as explained in Section 2.11 in Chapter 2. For the purposes of this research, the focus will be on a model, which is defined as a representative aspect of a dynamic phenomenon in which there are relationships between the major elements of that phenomenon. This model emanates from the discipline of political science and public administration, as explained in Section 2.8.

Hughes (1994:3) argues that public administration is an activity that is intended to serve the public. It is therefore concerned with procedures, with translating policies derived from others into action and with office management. The focus of this study is on processes and procedures.

It is against this backdrop that the chosen model comprises four core criteria, namely (1) governance, (2) administration, (3) financial management and (4) basic service delivery, which are the primary elements of the conceptual framework explained in Section 2.12 in Chapter 2 and which were used to assess municipal performance and the application of Section 139 interventions in this and the two subsequent chapters (Chapters 7 and 8). In addition, the identified operational criteria are also applied. Furthermore, the outcomes of the AGSA reports are examined and explained in the language used when audit opinions are issued. The focus of assessment is on the period between the financial years 2009/2010 and 2019/2020.

With regard to governance, the focus is on the *oversight function* as the operational criterion. The Constitution delegates the oversight function to Parliament to monitor and oversee government actions in terms of the implementation of laws and regulations. (Parliamentary Oversight) Furthermore, this function is viewed as the assessment of the effectiveness of public service programmes and the suitability of financial resource allocations and management (South African Legislative Sector, 2012:7). Therefore, in the municipal context, the council has the responsibility to monitor the administrative arm of the municipality when it discharges its responsibilities, for the simple reason that the administration derives its mandate from the Municipal Council.

With regard to administration, the operational criteria are *human capital and skilled staffing*. The operational criteria for financial management are the following: *procurement* and *unauthorised, irregular, and fruitless and wasteful expenditure*.

*Procurement* involves ensuring that value for money is obtained. It must thus be practised in a cost-effective manner. Whether the procurement is handled centrally or delegated to individual departments, it should include (1) avoiding any unnecessary costs and delays for the municipality or suppliers; (2) monitoring the supply arrangements and reconsidering them if they cease to provide the expected benefits; and (3) ensuring continuous improvement in the efficiency of internal processes and systems (Hendriks, 2012:4).



*Unauthorised expenditure* refers to overspending on a vote or a main division within a vote; or expenditure that was not made in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division (National Treasury, s.a.; Van Schalkwyk, 2015:14).

*Irregular expenditure* refers to expenditure that is not in accordance with the requirements of any applicable legislation, which includes the *Public Finance Management Act* 1 of 1999 (as amended by Act 29 of 1999); the *State Tender Board Act* 86 of 1968 or any regulation made in terms of that Act; or any provincial legislation providing for the procurement procedures in that provincial government (Van Schalkwyk, 2015:16).

*Fruitless and wasteful expenditure* means expenditure that was made without receiving the appropriate returns, which would have been avoided had reasonable care been exercised (Dept. National Treasury Accounting Manual for Departments Unauthorised, Irregular, Fruitless and Wasteful Expenditure (Van Schalkwyk, 2015:17). With regard to the core criterion on basic service delivery, the operational criterion will be water and sanitation.

Table 6-1 is a summary of the core criteria and the corresponding operational criteria.

**Table 6-1: The municipal performance assessment core and operational criteria**

CORE CRITERIA		OPERATIONAL CRITERIA	
Governance		Oversight Function	
Administration		Human Capital and Skilled Staff	
Financial Management		Procurement, unauthorised, irregular, fruitless and wasteful expenditure	
Basic Service Delivery		Water and Sanitation	

Source: Author’s own construct

**6.2 Types of audit opinions**

In addition, the municipal audit outcomes by the AGSA are scrutinised per municipality in this chapter and the two subsequent chapters (Chapters 7 and 8). The rationale behind this is that the AGSA is the auditing authority in South African government institutions that evaluates performance.

Therefore, four types of audit opinions used as language by the AGSA are identified below and defined as part of municipal analysis to be used in this chapter and in the next two chapters. They are as follows:

1. Unqualified audit opinion.
2. Qualified audit opinion.
3. Disclaimer audit opinion.
4. Adverse audit opinion.

1. *Unqualified audit opinion*: An unqualified opinion is also known as a clean audit opinion. This happens when financial statements of institutions are accepted to be free from material misstatements. In addition, an unqualified opinion is given over the internal controls of an entity if management has claimed responsibility for its establishment and maintenance, and the auditor has performed fieldwork to test its effectiveness.
2. *Qualified audit opinion*: This audit opinion is issued when an institution's financial records have not followed a recognised financial system in all its financial transactions. Even though the wording of a qualified audit opinion is similar to an unqualified opinion, auditors offer an additional paragraph which includes deviations from financial systems in the financial statements and indicate a reason as to why the auditor report is not unqualified.
3. *Adverse audit opinion*: This is a bad audit opinion an institution may receive. It indicates financial records that are not in accordance with the recognised financial system and contain grossly material and persistent misstatements. Furthermore, it may be an indicator of fraud (Chen, 2021). Public institutions that receive an adverse opinion are forced to correct their financial statements and have the financial statements re-audited.
4. *Disclaimer audit opinion*: This audit opinion indicates that the auditor is unable to complete the audit report due to the absence of financial records or insufficient cooperation from management. Therefore, the auditor issues a disclaimer audit opinion. This is referred to as a *scope limitation* and is an indication that no opinion over the financial statements was able to be determined. Furthermore, a disclaimer is not an opinion itself. (Tuovila & James, 2020; Friess, 2021).

In tandem with the above, the main features of this chapter will therefore give a detailed discussion on the following areas:

Municipal background and its establishment.

- Demographic/Structure of the population.
- History of Section 139(1) in the municipality.
- Assessment of service delivery in the district municipality through the core and operational criteria as mentioned above, that is, governance, administration, financial management, and basic service delivery. These criteria include the integration of responses emanating from the questionnaire based on semi-structured interviews.
- Conclusion.

### **6.3 Municipal establishment and background**

The NMMDM was established in terms of the *Municipal Structures Act* as a Category C municipality as explained in Figure 3-3 (Legal framework regulating local government). The *Municipal Structures Act* empowers the district municipality to have the municipal executive and legislative authority in the area which is comprised of more than one municipality.

The NMMDM is one of four district municipalities in the North West Province, which occupies about 28 114 square kilometres. It is found within Mahikeng, which is the capital of the North West Province. The district is located central to the province and is close to the border with Botswana. It encompasses five local municipalities, namely (1) Mahikeng Local Municipality, (2) Ratlou Local Municipality, (3) Ramotshere Moiloa Local Municipality, (4) Ditsobotla Local Municipality and (5) Tswaing Local Municipality (COGTA, 2020:5-6). A detailed map of the district municipality is contained in Figure 6-1, reflecting the road networks, major towns, local municipalities, railways, traditional authorities, surrounding areas and population density within the district.



Source: COGTA, 2020:5

**Figure 6-1: Municipal Demarcation Board MDB Municipal Capacity Assessment (2018:18)**

#### **6.4 District population growth**

The population of NMMDM is almost 961 960 people, accommodating nearly 1.6% of South Africa's total population, or 23.3% of the total population in the North West Province in 2019. The population growth averaged 1.33% per annum between 2008 and 2018, which was just below the growth rate of the province and South Africa, at 1.97% and 1.61%, respectively. Within the period of 2008 to 2018, the population in Ditsobotla Local Municipality has increased significantly. This increase was at an average annual growth rate of 1.7%, which became the highest growth within the district. The Mafikeng Local Municipality had the second highest growth in terms of its population, accounting for average annual growth rate of 1.5%. The Ratlou Local Municipality experienced the lowest average annual growth rate of 0.55% relative to the others within the NMMDM (COGTA, 2020). It can be concluded that the total population within the NMMDM remains at least below one million. This means in broad terms that when strategic planning documents are developed by the district and municipalities, the population growth is taken into consideration for the purposes of service delivery. Therefore, it is important to make a brief service delivery assessment of the district to determine how services have been delivered.

## 6.5 History of service delivery in Ngaka Modiri Molema District Municipality

The NMMDM is driven by its vision and mission to deliver services to the entire district through local municipalities. It is the same vision and mission that determine or influence service delivery direction because it envisaged the ideal implementation of services and the strategy on how to achieve this. The NMMDM vision and mission statements, and business core values are as follows:

**VISION:** Leaders in Integrated Municipal Governance

**MISSION:** To provide a developmental municipal governance system for better life for all in Ngaka Modiri Molema District (NMMDM, 2017:3).

The vision and mission are driven by the specific business core values are as follows:

### **BUSINESS VALUES**

**Integrity:** Honesty / ethical / transparent / trustworthy / reliable / objectivity / openness.

**Consultative:** Collaborative / participative / cooperative / inclusive / teamwork / partnering / integrating).

**Accountable:** Results oriented / taking charge / ownership / productive / decisive / assertive / disciplined / quality conscious / responsible.

**Committed:** Determined / diligent / motivated / dedicated / passionate / driven.

**Proactive:** Innovative / creative / flexible / initiative / adaptable.

**People-centred:** Continuous learning / knowledge sharing / development focus / caring / empathy / considerate.

**Service excellence:** Responsive / client-focused / helpful / time sensitive) (NMMDM, 2017:3.)

Figure 6-2 summarises the above vision, mission and business values of the NMMDM.

# NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY



Source: Author's own construct

**Figure 6-2: Summary of vision, mission and business values of the NMMDM**

These vision, mission and business values of the NMMDM indicate the commitment and envisaged service delivery that should be delivered with a high level of integrity. Such service delivery will be assessed through core and operational criteria, as briefly discussed in the introduction of this chapter.

## **6.5.1 Governance (oversight function)**

As explained in Chapter 2, Section 2.11.2, governance is more about how an institution is governed and the process by which authority is exercised in managing such an institution. The involvement of the community in the decision-making process becomes critical, more so when policy has to be developed that affects them. The success of the community involvement would require strong leadership in an institution to govern effectively.

In this instance, the NMMDM leadership struggled to exercise its oversight function over the municipal administration. Had they done so, it would have ensured compliance with regard to

performance management and reporting, and further put necessary controls in place for effective service delivery. As a result, the municipality was placed under administration in terms of Section 139(1)(b) of the *Constitution* in 2009/2010. It became evident that the municipality lacked the skilled personnel to ensure that proper implementation of internal processes took place (AGSA, 2013-2014:169).

The internal watchdog body, the Internal Audit Committee, whose mandate is to audit the municipal performance and prepare for the external audit, was not constituted properly. The committee could not receive the necessary support from the management and the leadership of the municipality. The risk assessment processes were also not properly managed, which resulted in serious deficiencies, according to the AGSA. Therefore, it became evident that the audit committee could not perform its oversight function over municipal administration due to the lack of necessary support from municipal leadership (AGSA, 2013-2014:170). This is contrary to the business values the NMMDM stands for, namely teamwork and being responsive.

- *The accounting officer and the council did not exercise their oversight responsibilities in relation to promoting the audit committee as an independent advisory body for strengthening internal controls. This led to several internal control deficiencies and non-compliance findings on various subjects (AGSA, 2013-2014:149).*

In essence, the municipal leadership failed to conduct oversight responsibility to foster compliance with regard to performance and strengthen internal controls. The effective human resource management processes to ensure that adequate and sufficient relevant skills were put in place and performance was monitored could not be implemented by management (AGSA, 2013-2014:169).

The situation continued without decisive intervention by municipal leadership and management to strengthen the Internal Audit Committee to do its work. The leadership continued to demonstrate a lack of appetite to conduct an oversight function over the administration. To this effect, the AGSA gave the municipality a disclaimer audit opinion because of poor performance and lack of recordkeeping to justify service delivery (AGSA, 2015-2016:186).

As required by the *Intergovernmental Relations Framework Act 3* of 2005, which seeks to promote healthy working relationships among spheres of government, and for district municipalities to establish an IGR, it became clear that the NMMDM IGR was dysfunctional due to the consistent complaints from local municipalities about the poor working relationship with the district (Select Committee on COGTA, Water, Sanitation and Human Settlements 2014).

Furthermore, the Departmental Report of Local Government and Human Settlements, presented by former MEC Rosho on municipalities that were placed under administration, confirmed the collapse of the IGR in the district, and non-commitment to resuscitate it. This was exacerbated by the fact that local municipalities seemed to have lost confidence in the district, as they failed to execute their legislative mandate (Rosho, 2019a).

The conclusion can be drawn that the Municipal Council did not effectively exercise its oversight function over the municipal administration. This conduct is in conflict with the municipal vision, which is to strive for 'integrated municipal governance'. It is a requirement, in terms of the *Municipal Systems Act*, as explained in detail in Section 3.5 above, that the Municipal Council has specific responsibilities to perform in delivering services efficiently and effectively. Moreover, the municipal administration has the responsibility to facilitate a culture of public service and accountability among the staff, as explained in Section 3.4.2 above. Section 4(2)(d) of the *Municipal Systems Act* puts the responsibility on council to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner. In addition, Section 73(1)(a) to (b) of the *Municipal Systems Act* puts responsibility on the municipality to render services in an equitable, sustainable, economic, efficient and effective manner, given their limited resources.

Clearly in this instance, the municipality did not have enough monitoring mechanisms to ensure the correct implementation of the overall process of planning, budgeting and reporting, hence the municipality was placed under administration.

The governance of the municipality was in a shambles due to bad political appointments. The NMMDM has been governed by the ANC since its establishment. Therefore, the cadre deployment policy might have been the source of the poor performance in this municipality.

There was no good governance as characterised by Bala (2017:593). Good governance means to perform effectively in clearly defined functions and roles, and promoting values for the entire organisation in pursuit of demonstrating the values for good governance through behaviours.

### **6.5.2 Administration (Human capital, skilled staffing)**

Administration serves as the nucleus of any institution to function properly. It needs men and women who are skilled and qualified to serve in specific positions. The culture of performance needs to be inculcated in the staff to respond to the vision and mission of the institution with a specific values system as mentioned above. In addition, the administration

entails activities that are engaged upon to plan, organise and to run an institution to be efficient, responsive, transparent and accountable, as explained in Section 2.11.2.

Human resource management forms the backbone of any administration of an institution to be accountable and responsive. This is because of its responsibility in as far as recruitment processes are concerned. Hence, the success of any institution depends on good human resource management in terms of ensuring that people who are recruited meet the requirements for the vacant advertised positions.

The above is contrary to the situation in the NMMDM. The AGSA found that the head of the Supply Chain Management Unit was appointed without having met the prescribed minimum competency levels as per the dictates of Section 56(1) (b) of the *Municipal Systems Act*. The same happened in the case of the Chief Finance Officer, who was also appointed without meeting the minimum competency levels as required by Section 83 of MFMA, and Regulations 4 and 5 of the Municipal Regulations on minimum competency levels. These appointments went through because, at the time, the municipality had failed to develop and adopt policies and procedures to avert the situation (AGSA, 2013/2014:147). This situation contradicts the assertion of the ANC President, who indicated that cadre deployment should not be inconsistent with the principles of fairness, transparency and merit when appointing individuals to public entities, as explained in Section 2.12.1.1 above. The picture in the NMMDM clearly indicates the lack of commitment and competency of both the politicians and officials deployed by the ANC.

Furthermore, the AGSA identified weaknesses in the human resource management, in that the municipality failed to employ skilled personnel to manage and govern the municipality. The performance evaluation policy was not in place, and a performance agreement was not signed by all employees. The municipality did not hold performance management and reporting staff accountable for weaknesses identified during the internal and external audit processes (AGSA, 2013/2014:147).

The administration of leave of absence was not updated on the payroll system. The municipal leadership made it difficult for the AGSA to audit human resource management to make a determination as to whether permission was given to employees to work overtime and whether such permission was given well in advance (NMMDM, 2014:158).

It is against this backdrop that, when the Council Speaker was asked about the organisational culture of the municipality during the interviews, the view of the Speaker was that, since the dissolution of the NMMDM in September 2014 by the North West Provincial Executive in terms of Section 139(1)(c) of the *Constitution*, the staff of the municipality, among others, found it difficult

to work with the new administration. Instead, they paid allegiance to the dissolved administration. They withheld important institutional information and deliberately leaked information to the former administration. When the council took resolutions that sought to effect service delivery, the administration deliberately found it difficult to implement such resolutions.

The Speaker further stated that the human resource management Section had become weak and contributed to the poor service delivery. The municipality had vacant positions for senior managers from 2014 until 2018. She argued that during the said period the municipality had appointed acting senior managers to occupy positions until December 2019, when these positions were fully filled with permanent staff members. It was against this backdrop that, shortly after the new council was inaugurated after dissolution, the municipality was again placed under Section 139(1)(b) of the *Constitution*.

The former administrator who took over immediately after this invocation of Section 139(1)(b) in 2015 found that 600 additional municipal officials (organogram) had been appointed irregularly. Her view was that, as a result, the municipal salary bill was above the legislated threshold and put immense strain on the municipality's finances.

The municipal manager complemented the position of the Speaker, when he agreed that generally the municipality had a history of acting Senior Managers and an Accounting Officer, though he emphasised that the matter had been dealt with as there were now substantive Senior Managers and the Accounting Officer, except for the resignation of the Senior Manager responsible for planning. The recruitment process for the replacement is currently under way.

Thus, inexperienced people appointed in key positions without following due process contribute to poor service delivery and negative audit outcomes by the AGSA. The performance agreement remains a fundamental document that needs to be signed and agreed upon between the two parties, namely the employer and employee. This is meant to define the expectation of both parties in terms of performance. During the performance assessment period of employees, the performance agreement document will then be used to determine the extent to which work has been done by employees.

It was not the case in the NMMDM according to the AGSA. Not all employees had signed the performance agreement during the 2013/2014 financial year. In addition, the performance assessment policy was not even in place, which made the situation even more difficult. Such irregularities often affect the finances of the municipality negatively, to the extent that performance bonuses will be paid to municipal employees without due diligence in terms of the process. The result therefore becomes irregular and unauthorised expenditure, which will normally activate the

invocation of Section 139(1)(4) (5) of the *Constitution*, or Section 137 of the MFMA. One can conclude that the administration of the NMMDM was not as efficient, responsive, transparent and accountable as it should have been, according to Bala's (2017:593) definition and the municipal business values themselves. This means that the ANC has to take a responsibility for this poor performance due to its cadre deployment policy.

### **6.5.3 Financial management (Procurement, unauthorised and irregular expenditures; fruitless and wasteful expenditures)**

As explained in Section 2.12.4, *financial management* refers to how public funds are being managed by any institution. Ntonzima (2011:1011) put it outright, that financial management

- *[i]s the application of effective and efficient public financial controls to ensure that spending is incurred according to pre-determined plans or budgeted items, while spending is conducted within stipulated rules, regulations, manuals, directives, and relevant guiding legislation.*

In most instances, when the AGSA audits any institution, in particular, government institutions, he will show a keen interest, among others, on the following: procurement processes; irregular and unauthorised expenditures; and fruitless and wasteful expenditures. Often these are issues that trigger provincial government interventions in terms of Section 139(1)(4) and (5) of the *Constitution*, or Section 137 of the MFMA intervention when they are compromised.

#### **6.5.3.1 Procurement**

In terms of procurement and contract management, in most instances the AGSA has found that institutions of government compromise legislative processes to procure services. In this instance, the AGSA found that in the NMMDM, enough evidence during audit could not be found that all contracts and quotations were awarded within a context of procurement processes. Such processes should be fair, equitable, transparent and comparative. This was due to the lack of proper record management. (NMMDM, 2014:167).

The above position was supplemented by former Administrator 1, who took over in 2015. This interviewee confirmed that the NMMDM had a huge cash-flow problem because due diligence had not been practised during budget processes. She stated that the municipality would sit with many invoices that could not be paid all at the same time. They had to prioritise service providers in terms of order of payment.

This situation indicates that there were no effective or efficient public financial controls to ensure that spending was incurred according to predetermined plans or budgeted items, or conducted

within stipulated rules, regulations, manuals, directives and relevant guiding legislation, as indicated by Ntonzima (2011:1011). Furthermore, this situation contradicts the NMMDM business values of providing service excellence.

### **6.5.3.2 Unauthorised expenditure**

Unauthorised expenditure was also experienced in the NMMDM. The AGSA was unable to get enough evidence for unauthorised expenditures of R145,646,634 incurred during the 2013/2014 financial year. Furthermore, the AGSA could not make a determination as to whether the Municipal Council had approved or condoned the above-mentioned amounts in terms of Section 32(2) of the MFMA (AGSA 2013/2014:163).

The unauthorised expenditures continued at least into the 2018/2019 financial year. The AGSA emphasised the fact he was unable to ascertain the unauthorised expenditure balance by alternatives means:

*I was unable to confirm the unauthorised expenditure balance by alternative means. In addition, the current year's unauthorised expenditure was understated by R196 877 090, as the municipality incorrectly calculated unauthorised expenditure by netting off savings from different votes against each other as well as the budget amounts not agreeing to the approved budget. Consequently, I was unable to determine whether any further adjustment to the unauthorised expenditure of R3 783 075 229 (2018: R3 771 650 131) as disclosed in note 37 to the financial statements was necessary. (AGSA, 2019:158).*

### **6.5.3.3 Irregular expenditure**

In the 2013/2014 financial year, the NMMDM incurred irregular expenditure of R367,566,176 due to the contravention of supply chain management legislation. This happens as a result of lack of effective preventive measures, and lack of monitoring of the implementation of policies and procedures of the municipality, which ultimately contributed to the disclaimer audit opinion (NMMDM, 2014:163).

The same situation continued in the next financial year, where the irregular expenditure continued without been prevented or putting necessary measures in place to prevent recurrence. And again, the municipality received a disclaimer audit opinion (NMMDM, 2014:163). In 2018/2019 the NMMDM effected payment in the amount of R72,673,084 without following supply chain management processes, and the said amount was not included in the irregular expenditure disclosed (NMMDM, 2019:158).

#### **6.5.3.4 Fruitless and wasteful expenditure**

It is a requirement in terms of Section 125 of the MFMA fruitless and wasteful expenditure must be disclosed. In the 2013/2014 financial year, the NMMDM made a payment of R9,816,889 was made in contravention of Section 62(1)(d) of the MFMA, which was not disclosed as fruitless and wasteful expenditure incurred (NMMDM, 2014:163).

This situation continued in the 2014/2015 financial year, where the municipality made payments of R15,581,811 (2014: R9,820,145) that was regarded as fruitless and wasteful expenditure which was not disclosed (NMMDM, 2015:163). At least, the latest was in the 2018/2019 financial year, where an amount of R7,673,712 was incurred as fruitless and wasteful expenditure; at the same time, an amount of R12,536,167 from previous years was not dealt with in accordance with Section 32 of the MFMA (NMMDM, 2019:160).

#### **6.6 Consequence management**

In tandem with the above, the AGSA came to the conclusion that unauthorised, irregular, and fruitless and wasteful expenditure incurred by the municipality were not dealt with. It is a requirement in terms of Section 32(2) (a) (ii) of the MFMA to determine if any person is liable for the expenditure incurred. This would allow action to be taken against official(s) who were responsible for such, as part of consequence management. (NMMDM, 2015:170). Again in 2018/2019, the situation continued without been attended to by NMMDM leadership (AGSA, 2019:163).

On the basis of the above discussions, it became patently clear that the NMMDM could not account properly to the AGSA due to poor recordkeeping. As such, the AGSA had no option but to issue a qualification to the municipality. For three consecutive years, the municipality received disclaimer audit opinions in the financial years 2013/2014; 2014/2015; and 2015/2016. It meant that the AGSA distanced himself from providing any opinion at all related to the financial statements of the municipality. In 2018/2019 the municipality received an adverse audit opinion. It meant that the AGSA expressed an opinion that stated that the NMMDM financial statements were misrepresented, misstated and did not accurately reflect municipality's financial performance.

This is a clear indication that there was no political will to turn the situation around for the better. Thus, the Municipal Council failed in its responsibility, as enshrined in Section 4(2) of the *Municipal Systems Act* and as explained in Section 3.4.1 of this thesis, to provide democratic and accountable government without favour or prejudice. Section 32(2)(a)(ii) of the MFMA gives permission for the leadership of the municipality to apply for consequence management. This

provision of the legislation was ignored and not implemented, which is the reason why disclaimer audit opinions continued for three consecutive years. There was no post-audit action plan (PAAP) which was implemented as part of the AGSA recommendations, which would help the NMMDM to avoid bad audit outcomes.

Ndevu and Muller (2017:192) argue that '[l]eadership and management should be good not only in doing traditional hierarchical management but also at creating and operating in loosely constructed networks and confederations that are held together by agreement rather than rules and the exercise of hard power.' Clearly in this instance, leadership and management were not pulling in one direction. As a result, this has contributed to the lack of systems and controls in the Finance Unit. It is against this background that the Provincial Executive Council had no other option but to invoke Section 139(1) of the *Constitution* and Section 137 of the MFMA due to poor service delivery.

## **6.7 Basic service delivery (Water and sanitation)**

According to Essien (2015:55), service delivery entails the provision of basic services and facilities to the citizens in such a way that their expectations are met. The NMMDM over the years has experienced protests due to poor service delivery, in particular in the provision of water services. The affected villages were the communities in Ratlou Local Municipality (Madibogo and Setlagole), Ramotshere Moiloa Local Municipality (Dinokana and Khunotshwana), and Ditsobotla Local Municipality (Itsoseng and Bodibe) (Select Committee on COGTA, Water, Sanitation and Human Settlements, 2014).

The district failed to forge and sustain healthy relations with local municipalities as the water service authority. A service level agreement (SLA) was not in place to clarify the roles and responsibilities of both parties, namely the district and its local municipalities. Local municipalities have consistently complained about the district with regard to poor consultation and involvement of water and sanitation projects when they are initiated, planned and implemented (Select Committee on COGTA, Water, Sanitation and Human Settlements, 2014).

The district had no integrated infrastructure plan to address water and sanitation problems. The district's absence of the formalisation of the relationships with its local municipalities on water sanitation compromised service delivery. Thus, there have been communities who have been without the provision of water consistently for many years (Rosho, 2019a). In addition, the district had experienced severe drought. Water distribution has been

insufficient to cater for the above-mentioned areas due to population growth, dewatering of boreholes, damage to existing boreholes, theft and vandalism (NMMDM, 2019).

Generally, the entire district is a water-scare area, with the majority of communities receiving water from groundwater resources. Mahikeng and areas next to it are the only areas in the district that receive water from surface resources. This area obtains about 40% of its water from Setumo Dam (NMMDM, 2015:35) Other institutions, such as hospitals, prisons and large formal towns in the district, are serviced by a total of 15 water treatment works (NMMDM, 2015:35)

In terms of sanitation, the NMMDM has a responsibility to implement bulk sanitation, which includes the operation and management of 12 water treatment works. Other functions would include de-sludging of community and public ventilated improved pit (VIP) toilets. The hygiene within the district remains a serious headache as a result of sanitation backlogs, which affect the community (NMMDM, 2015:43).

The above-mentioned water challenges were also confirmed by the Speaker's views during the interview: the water across the district remains a problem. As a result, the number of boreholes had to be increased to make water accessible to the communities. In addition, the municipality entered into an SLA with Sedibeng Water as an implementing agent. In the process, the municipality experienced serious problems with Sedibeng because of non-cooperation with the municipality. Instead, they ran parallel programmes outside the SLA to the extent that at some point they had abandoned a few projects and left them unfinished. This has resulted in the community marching to the municipality because they knew that the NMMDM was a water service authority. The municipality therefore had no option but to finish unfinished projects left by Sedibeng Water. What was more concerning was the fact that the SLA provided that the transfer of skills to the municipality officials should be done to sustain the water provision after the involvement of Sedibeng Water, which was not honoured either.

At the same time, Sedibeng Water took exception to the district municipality, and issued a notice to suspend all their operations and maintenance services with effect from 01 June 2021. The rationale behind this was as a result of unpaid bills, which they claimed the municipality failed to honour.

*Sedibeng Water has taken a firm decision to suspend all the operations and maintenance services to the municipality until the district municipality changes their posture on their refusal to pay for the aforementioned services. Sedibeng Water cannot continue to offer services for free at the detriment of its financial health. You are therefore directed to suspend all operations and maintenance services at Lehurutshe, Mahikeng and Ratlou local*

*municipalities, as of 1 June 2021. Further suspension of services for bulk water supply must be effected at Ditsobotla local municipality's Itsoeng plant, effective from 1 July 2021 (Tshikalange, 2021).*

With regard to water tinkering, which came at a huge cost, the municipality managed to minimise it and save costs. Only water tankers that were left for emergencies were used, the Speaker said.

Former Administrator 1 agreed with the Speaker that, generally, the district had experienced water provision problems in the surrounding villages. She raised a serious concern during the semi-structured interviews that the boreholes in some of the villages around the district had been deliberately destroyed.

This is a clear indication that the NMMDM failed to bring its local municipalities together to have integrated planning and implementation with regard to issues of water and sanitation. Essien (2015:55) argues that effective service delivery is all about provision of basic social services. Therefore, in this instance, water provision and sanitation remain the key basic services which the communities must receive. A conclusion can be made that the NMMDM has compromised this aspect of basic services. It is against this background that the communities in most instances raise protests to demand these basic services. In particular, the NMMDM has struggled to service its debt in the growing tension with Sedibeng Water over unpaid bills by the municipality.

## **6.8 Municipal audit findings within the district**

The NMMDM obtained an adverse audit opinion in 2018/2019 and a disclaimer audit opinion for the two years. Ditsobotla Local Municipality received a disclaimer audit opinion for three years, 2016/2017 to 2018/2019. Ratlou Local Municipality degenerated to a disclaimer in 2018/2019, had a qualified audit opinion for two years, and Tswaing has remained at a qualified audit opinion for three years, 2016/2017 to 2018/2019. Mafikeng and Ramotshere Moiloa Local Municipalities received a disclaimer audit opinion for two years and a qualified audit opinion in 2016/2017 (COGTA, 2020:26-27).

Based on the above-mentioned picture, a conclusion can be reached that this district municipality, which includes its local municipalities, is far from reaching clean audit outcomes. It also justifies the provincial government intervention in terms of Section 139 of the Constitution. In all these municipalities within the NMMDM, and the district itself, the invocation of Section 139 intervention by the North West provincial government has been prevalent. At the centre of these audit outcomes, management of municipal finances becomes critical, which contributes to the audit outcomes.

### **6.8.1 Municipal finances within the district**

Prudent financial management across the district's municipalities, which includes the district itself, remains a serious problem. In the first instance, the NMMDM and its local municipalities are largely dependent on the service providers to compile their annual financial statements. In addition, these municipalities fail to spend their annual allocated budget to the extent that the budget was returned to the Treasury.

For instance, a total of R415 million was returned to the Treasury from the municipalities' allocated budgets across the district. Out of the total budget returned, NMMDM's accounted for the balance of R258 million; R48 million for Mahikeng Local Municipality, Ratlou Local Municipality R29 million, Tswaing Local Municipality R20.5 million, Ditsobotla Local Municipality R32 million and Ramotshere Moiloa Local Municipality R27 million (COGTA, 2020:26-27).

The return of R415 million is rather a large amount to be returned to the National Treasury while communities need water infrastructure for a permanent water solution. This situation demonstrates clear incompetence on the part of both the Municipal Council and administration, which are supposed to ensure that these amounts benefit the affected communities. Section 4(2)(d) of the *Municipal Systems Act* requires the Municipal Council to provide municipal services to the local community in a financially and environmentally sustainable manner, whereas Section 6(2)(a) of the *Municipal Systems Act* stipulates that the municipal administration has to be responsive to the needs of the local community. The situation described above clearly shows that both structures (the council and administration) lacked commitment and were not results-orientated, as espoused in their municipal business values. Because this is a municipality led by the ANC, they should be in a better position to understand what it means when the money intended to be spent for the benefit of the disadvantaged of the community is returned to the National Treasury. They need to take responsibility for this situation because they deployed their cadres to take charge of the municipality in accordance with their deployment policy.



Source: Author's own construct

**Figure 6-3: Summary of the audit outcomes of municipalities within the NMMDM district**

The NMMDM's current liabilities far exceed its current assets, which highlights a serious financial challenge and likely liquidity problems. This means the district experiences high debt as compared to its assets. Furthermore, it is struggling to pay its creditors as a result of its cash flow problems and it continues to default on the bulk supply of water, in particular the Sedibeng Water Board (Rosho, 2019b).

#### **6.8.1.1 Unauthorised, irregular, fruitless and wasteful expenditure**

The NMMDM irregular expenditure has been growing over the three years being studied, from R401 million in 2014/2015 to R1.4 billion in 2016/2017. The total unauthorised, irregular, fruitless and wasteful expenditure (UIF&W) exceeded R3.2 billion in 2016/2017, having increased from R878 million in the 2014/2015 financial year, which is an increase of 364% over three years. The municipality is one of the top ten contributors to irregular expenditure in the country (Rosho 2019b).

In addition, the NMMDM has experienced repetitive findings that included insufficient appropriate audit evidence, unspent conditional grants, and unauthorised and irregular expenditure (GOGTA, 2020:26-27).

These financial irregularities and challenges were also confirmed by the council Speaker when questions were raised about the financial systems of the NMMDM. She accepted that the finance Section of the municipality had had capacity problems for some time. She referred to a complaint

that had been lodged by the workers, complaining that their salaries had not been consistent but rather fluctuated every month. Workers' salaries were being paid late (after the official payment date) due to the financial system failure. At some point the municipality struggled to pay the workers' salaries because of the lack of funds in the municipality. She further argued that the municipality at some point found it difficult to service its debt due to bankruptcy and admitted that at least at the time of reporting the situation had changed for the better. The municipality is currently able to service its debts.

Thus, financial management becomes a critical aspect in any organisation. In this case, the return of unspent funds to the Treasury demonstrates poor financial management and lack of financial skills from municipal officials responsible for the municipal budget. It also means there was a lack of the application of effective and efficient public financial controls to ensure that spending happens according to pre-determined plans, as explained in the first paragraph of Section 2.11.3 in Chapter 2. It is against this backdrop that the NMMDM was placed under administration more than twice to rescue the situation and the administrator was sent to intervene. It is therefore important to make a brief assessment in terms of the history of the invocation of Section 139 intervention in the NMMDM.

In general terms, the position of the Speaker was that the intervention was not good and incorrectly implemented. In some instances, the municipality will receive a correspondence from the EXCO that says Section 139(1) is going to be invoked. The administrator will be sent alone without a team or terms of reference, at the start. As such, it makes the work of the council difficult because the lines will be blurred between what the council should do, as opposed to the terms of reference of the administrator. Especially after the Council was dissolved in terms of Section 139(1)(c), the administrator had no regard to working with the administration. Instead, he became a law unto himself and made the municipality deteriorate further. That is the reason why the new council was immediately inaugurated and the municipality was placed under Section 139(1)(b). The Provincial Executive Council sends people without the necessary skills and capacity who have never worked in the local government environment as an intervention team. The very same team will not give a close-out report, because they would have left the municipality abruptly.

When former Administrator 2 was asked about the support he received from the department and the Provincial Executive Council during the intervention period, he argued that during his intervention period in the NMMDM he did not receive the necessary support from the Provincial Executive Council or the MEC. He was not even given the preliminary brief of the status of the municipality prior to the intervention in order for him to prioritise issues that needed immediate attention. This means directives prior to the intervention to the municipality, as per requirement of the Constitution in terms of Section 139(1)(a), as explained in Section 4.2 were questionable. If

directives were clear, it was going to be useful for the administrator to prioritise issues that needed urgent attention to turn around the situation. In Chapter 4, Section 4.5.1 in the case of *Magalakwena Local Municipality v Provincial Executive of Limpopo and Others*, Ms Justice Tuchten emphasised the fact that a directive must come first before an intervention, to allow the municipality an opportunity to answer to the allegation against it, or whether it had been negligent in the fulfilment of an executive obligation.

Administrator 2 further raised his frustration that no platform had been created to give regular reports, to the extent that a close-out report was not even entertained. He would have expected that the MEC would convene a meeting as the executive authority to present the close-out report to Council but, unfortunately, this did not happen. The administrator was of the view that this was a culture where, when the intervention ends in any municipality, a close-out report is not entertained, which would probably help the council to sustain Section 139 intervention.

The only time when a close-out report was requested from him was three months after the end of intervention. The report was necessitated by the Portfolio Committee visit in the province, otherwise he is convinced that the report would have been in his drawer gathering dust.

#### **6.9 Brief overview/history of Section 139 in Ngaka Modiri Molema District Municipality (NMMDM)**

The NMMDM was placed under administration by the North West Provincial Executive Council at least three times: in 2009/2010, 2014/2015 and 2018/2019. The worst intervention was when the NMMDM was placed under Section 139(1)(c) with effect from 26 September 2014 until December of the same year. The following year, on 21 May 2015, the municipality was again placed under Section 139(1)(b) intervention. The main reason for interventions was to deal decisively with the water and sanitation situation that bedevilled the municipality (NMMDM, 2015: 26).

**Table 6-2: Summary of the period of intervention**

NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY PLACED UNDER ADMINISTRATION BY NORTH WEST EXCO		
YEAR	INTERVENTION	
	Section 139 (1)(b)	Section 139 (1)(c)
2009/2010		
2014/2015		
2018/2019		

Source: Author’s own construct

In 2009 for the very first time the Provincial Executive Council of the North West invoked a Section 139(1) of the Constitution intervention. This intervention was extended to 2010 and continued until after the local government intervention in 2011. In July 2014 the Provincial Executive Council of the North West Province resolved to invoke Section 139(1)(b) again. The NMMDM raised an objection on the procedure followed by the Provincial Executive Council through the North West High Court in Mahikeng. The court listened to both parties and ruled in favour of the NMMDM and, ultimately, the Provincial Executive Council withdrew its intervention. As if that was not enough, in September 2014 the Provincial Executive Council invoked Section 139(1)(c) of the Constitution to dissolve the NMMDM, based on the collapse of governance, administration and service delivery. Once again, the NMMDM resisted and took the Provincial Executive Council to the Mahikeng High Court for an interdict. The court dismissed the interdict out of hand, which gave the Provincial Executive Council the green light to dissolve the Municipal Council in September 2014. This intervention lasted for three months until December 2014 after the by-elections. Immediately after the new council had been in place, it requested assistance from the Provincial Executive Council of the North West, and Section 139(1)(b) was invoked. This request for assistance was triggered upon the realisation that the financial status of the municipality was deteriorating (Kampi, 2017). Section 139(1) of the *Constitution* was implemented in the Ngaka Modiri Molema (NMMDM, 2017:56).

On the dissolution of the NMMDM, the members of the NCOP had mixed reactions on the procedural aspects concerning the invocation. They sought clarity on the credibility of allegations of maladministration, on why Section 139(1)(b) was not an option, on other possible interventions that were made prior to invocation of the dissolution clause, and on whether there was any municipality or metro or district in the North West Province that was experiencing similar

problems. The members unanimously supported the invocation of the dissolution clause (PMG, 2014).

## **6.10 Conclusion**

The main focus of this chapter was on assessing how Section 139(1)(c) was applied in the NMMDM by the North West Provincial Government, looking at its failures and success. In order to reach this objective, the point of departure was to give a brief background of the municipality and how it was established in terms of legislation. The chapter gave the structure of the population in the district, which normally informs the planning and how it should be executed. The history of the invocation of Section 139(1) was also dealt with, which remains central to the study. In addition, it was more critical to use the model that was informed by the four core and operational criteria to assess the performance of the municipality, namely (1) governance, (2) administration, (3) financial management and (4) service delivery. The response of the participants was integrated into these core criteria to make sense of the state of governance in NMMDM and the invocation of Section 139(1) by the North West Province Executive Council.

It became very clear that there was a need for provincial government intervention in the affairs of the municipality. The governance structures were dysfunctional, which was a sharp contradiction of the NMMDM mission of providing a developmental municipal governance system for a better life. Furthermore, the situation also constituted non-compliance with Section 4(2)(d) of the *Municipal Systems Act*, as explained in Section 3.5 in Chapter 3, which requires the provision of services to communities in sustainable manner.

The appointment of inexperienced people in strategic positions also contributed to poor service delivery and the negative audit outcomes. The ANC, as the governing party in this district, had an influence on these appointments due to its cadre deployment policy. Therefore, it has to take full responsibility for the district's poor performance. This is an indication that the cadre deployment policy of the ANC does not improve the situation; instead, it results in poor performance.

Furthermore, the roles and responsibilities of employees were not clearly defined in job descriptions, contrary to the district's business values of service excellence and being client-focused.

The performance agreements of the senior managers were not signed, which created an opportunity for non-compliance and non-accountability, which is in direct contrast to the accountability espoused in the municipal business values. In addition, it is contrary to Section 6 of the *Municipal Systems Act*, which requires accountability among staff members.

The finances of the district municipality were in shambles. The municipality received disclaimers, which included adverse findings for seven years, between the 2012/13 and 2018/19 financial years, as explained in Section 5.3.1 above. This indicates a lack of financial management and control systems. No consequence management was applied in this situation, as required by Section 32(2)(a)(ii). The bad audit outcomes were a result of the calibre of the appointed officials in the various departments of the municipality. Therefore, action needed to be taken to hold people accountable.

The fact that the irregular expenditure of the municipality grew over three years, from R401 million in 2014/15 to R1.4 billion in 2016/17, is a serious cause for concern. This has made the municipality one of the top ten contributors to irregular expenditure in South Africa (Rosho, 2019b).

In addition, in the District Municipality, as much as it has serious problems with the provision of basic services to its communities, an unspent amount of R250 million was returned to the Treasury. This points to the lack of oversight by the leadership of the council and poor financial management.

This state of financial affairs in the NMMDM has also contributed in a way to the return of funds to the Treasury by local municipalities, because the district is supposed to help the local municipalities in terms of Intergovernmental Relations Framework 13 of 2005, as explained in Section 3.7 of Chapter 3.

For instance, Ditsobotla Local Municipality returned R32 million to Treasury in financial years 2016/2017–2018/2019; Ratlou Local Municipality returned R29 million in 2018/19 financial year; Ramotshere Moiloa Local Municipality returned R27 million in 2016/17 financial year; Tswaing Local Municipality returned R20,5 million in 2016/17–2018/19 financial year and Mahikeng Local Municipality returned R48 million in 2016/17 financial year. The total monies, included of the NMMDM which were returned to the Treasury came to R414, 5 million. These were huge sums of money that were supposed to change the lives of the total population of almost 961 960 within the district, as explained in Section 6.3 of this chapter.

It is against this backdrop that the municipality experienced the invocation of Section 139(1) which included a dissolution on four occasions. It became very clear from the respondents that, in most instances, procedure was not followed by the North West Provincial Executive Council in terms of the constitutional dictates.

There was a general agreement by respondents that the intervention was justified, except for inconsistency in terms of its application. In some instances, clear directives were not issued as

required by Section 139(1)(a) of the *Constitution* prior to the intervention to allow a response from the municipality.

The administrator was not supported during the intervention by North West Provincial Executive Council through the MEC responsible for COGTA. A close-out report was not presented to the Municipal Council and the Provincial Executive Council to allow follow-up on issues identified and to sustain progress made by the administrator.

This situation points to the general failures of the implementation of Section 139(1) intervention in the NMMDM. This chapter has proven with cogent reasons provincial government intervention in affairs of the NMMDM. This became evident through the collapse of governance structures, poor financial management and service delivery, and the irregular appointments of staff in the municipality.

Though there was enough evidence for provincial government intervention, it became clear that the interventions had failed to help the municipality out of its poor performance due to how both parties (NWPEC and NMMDM) handled the intervention; for instance, in July 2014 the North West Provincial Executive Council resolved to place the NMMDM under Section 139(1)(b). The municipality rejected it and took the NWPEC to Court. The court ruled in favour of the municipality within three months in September 2014, the Provincial Executive Council then took the worst decision and dissolved the municipality. The NMMDM challenged the decision in court and the court ruled in favour of the Provincial Executive Council. A by-election was held and a new council was constituted in December 2014. In May 2015 the NMMDM was again placed under administration in terms of Section 139(1)(b).

This situation demonstrated severe tensions between the two parties. As such, it became clear from the beginning that there was no way in which the intervention could become successful. It is against this backdrop that the NMMDM was placed under administration three times without any success. Judges have ruled that the invocation of Section 139(1) cannot be used to punish the municipality. This aspect was discussed in greater detail in Chapter 4, Section 4.6.


In conclusion, the ANC has to take full responsibility for the situation in the NMMDM and how Section 139(1) was applied because it governs both the provincial government and the district municipality.

# CHAPTER 7: MADIBENG LOCAL MUNICIPALITY - THE APPLICATION OF SECTION 139(1)(B)

## 7.1 Introduction

In this chapter the findings of the semi-structured interviews with the role players concerned (see Section 1.8 in Chapter 1) regarding how Section 139(1)(b) of the *Constitution* was applied in Madibeng Local Municipality by the North West Provincial Executive Council are presented. The same model that was described in Section 6.1 is applicable in this chapter; that is, the findings are interpreted in the light of four core criteria, namely (1) governance, (2) administration, (3) financial management and (4) basic service delivery. Furthermore, the meta-theoretical framework that was followed in the previous chapter (Chapter 6) is applicable in this chapter. The municipal performance assessment is limited to the 2009/2010 to 2020/2021 financial year. Table 7-1 summarises the core and operational criteria that are going to be used throughout the chapter.

**Table 7-1: The Municipal performance assessment core and operational criteria**

CORE CRITERIA		OPERATIONAL CRITERIA
Governance		Oversight Function
Administration		Human Capital and Skilled Staff
Financial Management		Procurement, unauthorised, irregular, fruitless and wasteful expenditure
Basic Service Delivery		Water and Sanitation

Source: Author’s own construct

The following topics are dealt with in this chapter:

- Municipal background and its establishment.
- Demographic structure of the population.
- History of Section 139(1) in the municipality.

- Assessment of service delivery in Madibeng Local Municipality in relation to the core and operational criteria mentioned above. These criteria will include the integration of the responses emanating from the semi-structural interviews.
- Conclusion.

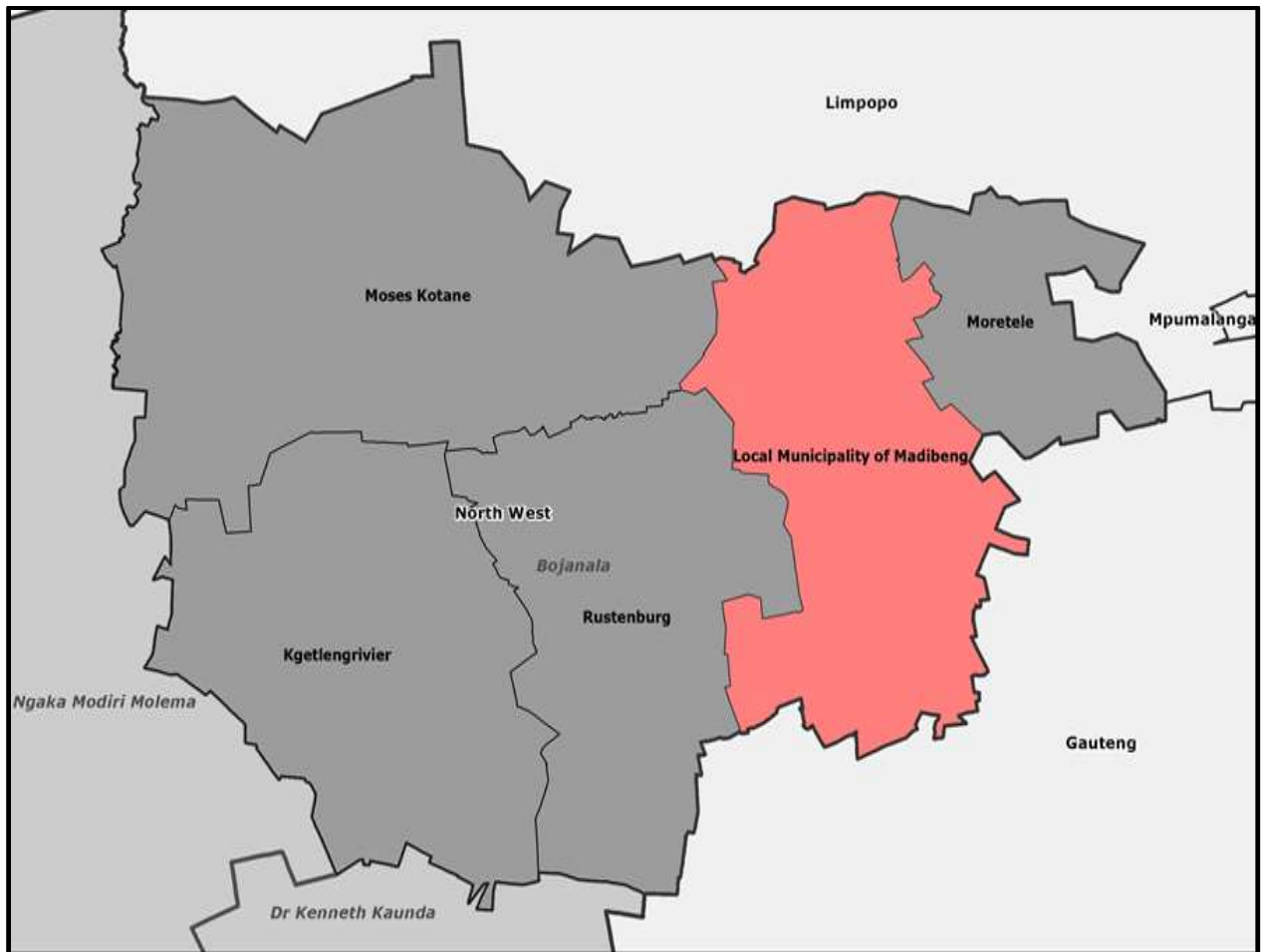
## **7.2 The background and establishment of the municipality**

Madibeng Local Municipality is in the town of Brits in the North West Province. The town was established on 25 May 1924 on the farm Roode Kopjes and was named after the owner, Gert Brits. It gained municipal status in 1944 and in 2000 the municipalities of Brits and Hartbeespoort were merged together and named *NW372*. In 2001 it was renamed *Madibeng Local Municipality* (Madibeng Local Municipality, 2018:8).

The municipality is currently part of the Bojanala Platinum District Municipality, which has five local municipalities, namely (1) Moses Kotane, (2) Rustenburg, (3) Kgetlengrivier, (4) Moretele and (5) Madibeng. It is classified as a Category B municipality according to the Municipal Structures Act. It borders Rustenburg, Pretoria, Johannesburg and Krugersdorp (Madibeng Local Municipality, 2019:11).

The municipality consists of 41 wards and eighty-two councillors, of whom ten are members of the Mayoral Committee, including a full-time Speaker, Chief Whip and Executive Mayor. The council is the highest decision-making body on matters of service delivery, which is implemented by the municipal administration. This structure means the council, administration and local community complement one another on matters of basic service delivery, as shown in Figure 7.1 (Madibeng Local Municipality, 2019:11).

The map in Figure 7-1 details the position of the Madibeng Local Municipality and all the local municipalities in the Bojanala District, and in the neighbouring districts and provinces.



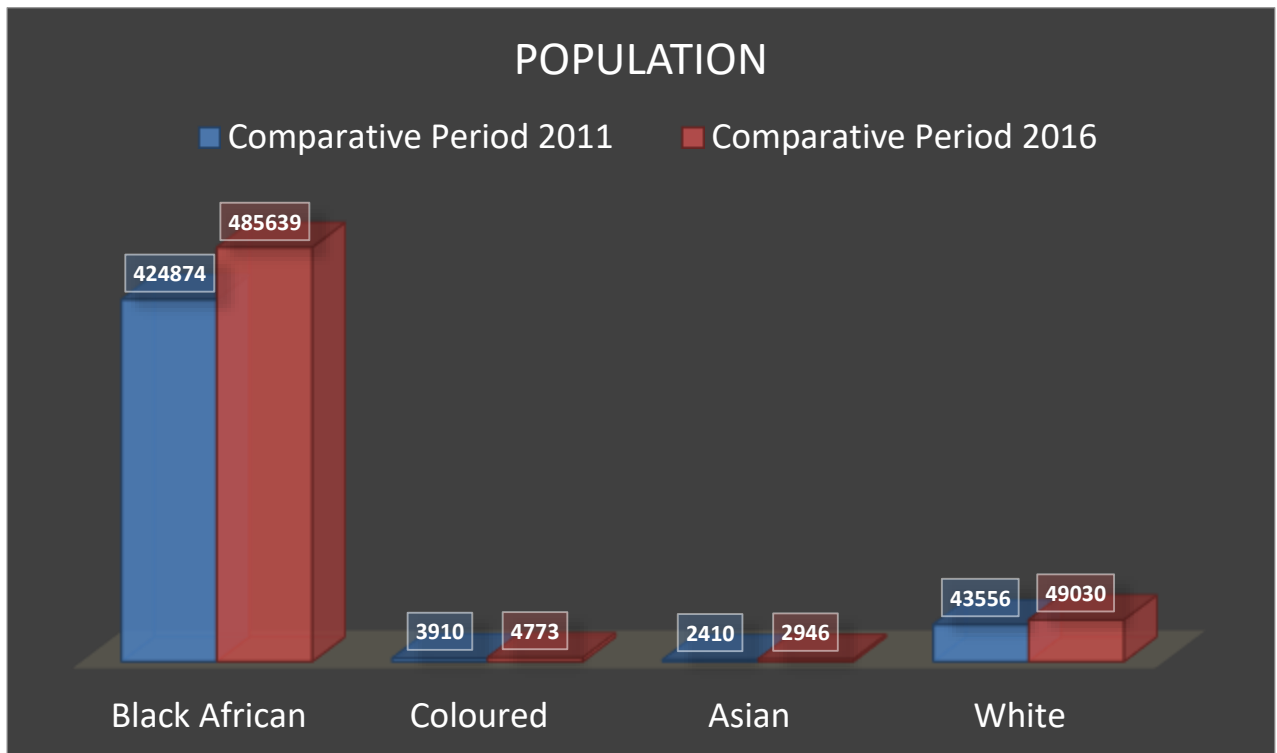
**Figure 7-1: Municipal Demarcation Board Municipal Capacity Assessment 2018, Madibeng NW372**

The basic responsibility of the municipality is to serve its population, who pay rates and taxes, in accordance with Section 152 of the Constitution, which compels the municipality to deliver basic services to its population. Therefore, it is important to reflect on municipal population growth.

### **7.3 Municipal population growth**

The bar graph 7-1 contains details of the population dynamics within the municipality. This includes the total population and growth rate, the race breakdown and total population of 2011 and 2016, according to the national census.

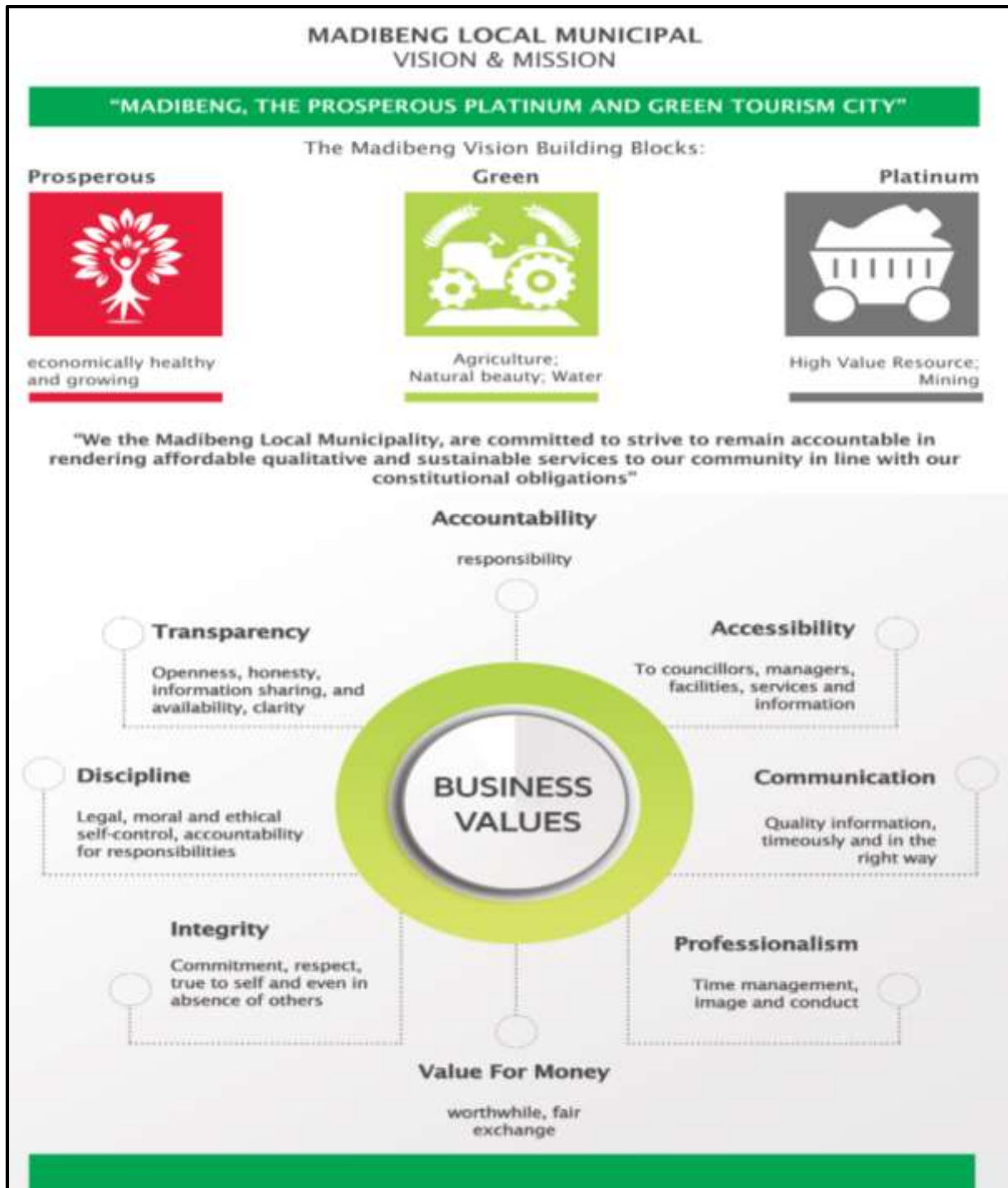
**Graph 7-1: Demographics statistical overview, as per Census 2011 and 2016**



Source: Adapted from Madibeng Local Municipality (2018:10)

#### **7.4 History of service delivery in Madibeng Local Municipality**

The historical background of service delivery by Madibeng Local Municipality is presented based on the model described in Table 7-1 above. These key core criteria form the backbone of municipal service delivery, as explained in Chapter 2 (see Figure 2-4). The same core criteria in any municipal environment are implemented in line with the municipality's vision, mission and core values. In the light of this, Madibeng's vision building blocks and its core business values are shown in Figure 7-2. This helped the researcher to determine to what extent these values had been observed.



Source: Author's own construct

**Figure 7-2: Madibeng local municipality vision and mission with core values**

### 7.5 Governance (Oversight function)

During the 2018/2019 financial year, AGSA raised a concern about the Madibeng Local Municipality's leadership. He identified the municipal leadership's lack of oversight over the administration, including the lack of enforcement of an ethical business culture; inaccurate financial and performance reporting; a lack of compliance and related internal controls monitoring;

and a lack of implementation of the approved policies and procedures of the Madibeng Municipal Council (AGSA, 2019:12).

Furthermore, management had failed to put systems in place to strengthen the monitoring controls and ensure proper recordkeeping. The reconciliation of transactions and transactions that supported reported financial information and performance related to predetermined objectives was seen as a weakness (Madibeng Local Municipality, 2019:12).

The post-audit action plans that were put in place to address issues emanating from the AGSA report were not effectively implemented or monitored. Audit outcomes were often repeated without being attended to. No effective systems or controls were put in place to prevent and detect non-compliance with legislation. The issues that the AGSA raised called into question the commitment of the municipal staff and their competency (AGSA, 2019:12).

The Risk Manager at the Madibeng Local Municipality was of the view that although AGSA had expressed a view about the lack of oversight by municipal leadership, the oversight function was not possible during the intervention because the powers and functions of political structures were taken over altogether by the administrator. Thus, decisions were made without necessarily consulting the council. In effect, the oversight structures had basically been disabled.

However, in the normal municipal operation, before the intervention, her view was that municipal portfolio committees, as oversight structures, did not sit regularly to consider reports prepared by the administration. She added that some of the reports could be technical, which made it difficult for the councillors to interpret them. Furthermore, some of the reports were of a poor standard, making it difficult for the council to make informed decisions.

The above situation demonstrates a lack of accountability and responsibility on the part of the council's leadership. This conduct contravenes the Municipal Council's own business values, namely to be accountable and responsive. Although the council is comprised of several political parties, the ANC is more responsible as the governing political party in this municipality. Once again, the problem appears to be directly related to the manner in which the cadre deployment policy was implemented.

In addition, there was no good governance, as defined by Bala (2017:593): 'Good governance means promoting the values of the whole organisation and demonstrating the values of good governance through [appropriate] behaviours, and taking informed, transparent decisions and managing risk.' This is enshrined in the municipal business values mentioned in Section 7.3 above. It means that the vision and mission associated with the business values have been boldly

formulated and advertised by the municipality but there is no commitment to them. They therefore do not translate into practice.

### **7.5.1 Administration (Human capital, skilled staffing)**

In any institution, be it public or private, a job description in which the duties of individual employees are set out is fundamental. In the case of the Madibeng Local Municipality, AGSA found that job descriptions were not prepared for all the positions when appointments were made. This was in contravention of Section 66(1)(b) of the *Municipal Systems Act*. The result thereof was that proper systems and procedures to monitor, measure and evaluate the performance of staff were not developed or implemented, which was in contravention of Section 67(1)(d) of the *Municipal Systems Act* (AGSA, 2019:11).

The situation became worse with the resignation of people in senior strategic positions, which included the Municipal Manager, the Chief Financial Officer and Technical Services Director. Moreover, there was no administrative capacity due to low staff morale (Select Committee on COGTA, 2019).

The Risk Manager agreed with the AGSA's findings. She emphasised the fact that some people who occupied strategic positions did not have the relevant skills, which had a negative impact on the capacity and functionality of the municipality. Some people were not necessarily permanent in some of the positions but occupied them in an acting capacity. Because the post was vacant and the municipality needed a body in that position, people were made watchdogs over the vacant position without having the necessary experience.

This situation goes against the spirit of the municipality's own vision and mission statement: 'We the Madibeng Local Municipality, are committed to striving to remain accountable in rendering affordable qualitative and sustainable services to our community in line with our constitutional obligations.' It is not possible for the municipality to render such quality services because proper systems and procedures to monitor, measure and evaluate the performance of staff have not been formulated.

The resignation of the Municipal Manager, the Chief Financial Officer and the Technical Director could be viewed as being suspicious. It could indicate factionalism within the ruling party, which might have laid the groundwork for this situation. In addition, it points to how ANC cadre deployment can undermine accountability structures and cause administrative stability within the public service, because the ANC governs the municipality. The outcome of this situation is that the administration is not efficient, responsive, transparent or accountable, as defined by Bala

(2017:593). It is against this backdrop that the municipality kept on being placed under Section 139(1) of the Constitution intervention.

## **7.5.2 Financial management (procurement, unauthorised and irregular expenditure, and fruitless and wasteful expenditure)**

The non-compliance with respect to the measurement and evaluation of the performance of staff often has direct bearing on institutional financial management, is dealt with as follows:

### **7.5.2.1 Procurement**

Any government institution or private company is expected to develop a procurement plan on a yearly basis to inform procurement activities. Such a plan is developed prior to the new financial year. The implementation of such a plan during the year must be done within the context of supply chain management policies and other relevant pieces of legislation that determine procurement.

In the case of Madibeng Local Municipality, the AGSA could not find sufficient evidence during the audit that all the contracts were awarded procedurally, according to the relevant legislation, because there was a lack of supporting documentation to that effect. Moreover, goods and services to the value of above R200,000 were procured without a tender, as required by regulation 19(a) of the Supply Chain Management Act. The same was also reported in the previous year. There was also insufficient evidence that the preference point system had been implemented for all the procurement of goods and services above R30,000, as required by Section 2(a) of the *Preferential Procurement Policy Framework Act* (AGSA, 2019:11).

'Awards were made to providers who were in the service of other state institutions or whose directors or principal shareholders were in the service of other state institutions, in contravention of Section 112(j) of the MFMA and Supply Chain Management Regulation 44. Persons in the service of the municipality who had a private or business interest in contracts awarded by the municipality failed to disclose such interest, in contravention of Supply Chain Management Regulation 46(2)(e) and the code of conduct for staff members issued in terms of the *Municipal Systems Act*' (AGSA, 2019:11).

The incidents described above indicate unethical conduct and misbehaviour on the part of municipal officials. This situation warrants the implementation of consequence management in terms Section 32(2)(a) of the MFMA to investigate the officials concerned and to hold them accountable for their actions. The MEC for local government in the province has the power to act in terms of Section 106 of the *Municipal Systems Act* if he or she is concerned that a municipality is failing to fulfil a binding statutory obligation, or that other wrongs have occurred or are occurring

in that municipality. In this case, there is no evidence to suggest that the MEC has invoked this provision of the act.

It also goes against the municipality's own business values of being *transparent*, which encompasses openness and honesty, and *discipline*, which entails sound morals, ethics, self-control and accountability. In addition, it is tantamount to corruption. It is mandatory, in terms of Section 6 of the *Municipal Systems Act*, that the administration of the municipality take measures to counter corruption. Furthermore, this situation is contrary to Ntozima (2011:11), who argues that spending of the public purse must be incurred in accordance with predetermined plans or budgeted items, and must happen in line with the stipulated rules, regulations, manuals, directives and relevant guiding legislation. This conduct often leads to unauthorised expenditure.

#### **7.5.2.2 Unauthorised expenditure**

Section 125 of the MFMA requires the disclosure of any unauthorised expenditure incurred. The AGSA was unable to acquire sufficient and appropriate evidence of unauthorised expenditure being disclosed. He was unable to confirm the unauthorised expenditure by alternate means or to determine whether any adjustment relating to unauthorised expenditure of R1,593,652,097 (2018: R1,604,273,594), as disclosed, was necessary (AGSA, 2019:4). This means that the municipality had overspent in a main division within a vote or has incurred expenditure that was not made in accordance with the purpose of a vote, as explained in the introduction to Chapter 6.

#### **7.5.2.3 Irregular expenditure**

The AGSA found that the municipality made payments of R51,401,076 (2018: R56,257,572) that were not included in the irregular expenditure that was disclosed, in contravention of the supply chain management requirements. In addition, the municipality did not quantify the full extent of the irregular expenditure and it was impossible for the AGSA to determine the resultant understatement of the irregular expenditure of R1,829,443,862 (2018: R1,396,228,574) that was disclosed (AGSA, 2019:11:4). The Select Committee of Parliament also found that irregular expenditure increased from R1.32 billion in the 2016/2017 financial year to R1.38 billion during the 2017/2018 financial year (Select Committee on COGTA, 2019).

This is damning because irregular expenditure entails expenditure that is not in accordance with the requirements of any applicable legislation, including the PFMA and MFMA, as explained in the introduction to Chapter 6.

#### **7.5.2.4 Fruitless and wasteful expenditure**

With regard to fruitless and wasteful expenditure, the AGSA found that the municipality had made payments of R28,713,837 (2018: R10,189,419) that were regarded as fruitless and wasteful expenditure. These amounts were not included in the fruitless and wasteful expenditure disclosed. The municipality failed to measure the full extent of fruitless and wasteful expenditure because it was impracticable to do so. As a result, the AGSA was unable to determine whether any further adjustment to the fruitless and wasteful expenditure of R37, 284,463 (2018: R33,143,433) was necessary. Based on the above-mentioned unauthorised, irregular and fruitless and wasteful expenditure, among others, the municipality received a disclaimer audit opinion (AGSA, 2019:4). It is also mean that these expenditures were incurred wastefully and could have been avoided if reasonable care had been exercised. This is contrary to the municipality's own business value of 'value for money'.

Furthermore, the Select Committee of Parliament also found that there had been a poor audit outcome for the recurrent disclaimer audit findings for the previous three consecutive years, namely the 2015/2016; 2016/2017 and 2017/2018 financial years (Select Committee on COGTA, 2019).

The Risk Manager concurred with the AGSA report and added that the municipality had received disclaimers for the previous five years. She said the differing financial systems contributed to the disclaimer audit outcomes. Failure by the financial systems to identify deficiencies will always lead to disclaimers.

#### **7.5.2.5 Consequence management**

Section 32(2) (a) of the MFMA demands that officials be investigated and held accountable or liable for irregular expenditure incurred by the municipality as part of consequence management. In this instance, unauthorised, irregular, and fruitless and wasteful expenditure incurred by the municipality was not investigated to determine if any person was liable, as required by Section 32(2)(b) of the MFMA (AGSA, 2019:10).

It can be concluded that there was poor financial management in Madibeng Local Municipality. There were no systems or controls in place to prevent unauthorised, irregular or fruitless and wasteful expenditure.

The fact that the municipality received a disclaimer audit opinion for three consecutive years means the auditor was unable to complete the audit report due to the absence of financial records or insufficient cooperation from management. In addition, this is an indication that the municipal

leadership was unable to perform effective oversight over the administration. This indicates a lack of political will to implement consequence management, as required in terms of Section 32(2) (a) of the MFMA, to hold people accountable for poor performance.

Mafolo (2015:889) asserts that the municipal controls systems should be effective, have efficient operations with reliable financial reporting and be compliant with applicable laws and regulations. This was not the case in Madibeng Local Municipality. In fact, it was the direct opposite. This situation has had a negative effect on service delivery.

## **7.6 Basic service delivery (Water and sanitation)**

As explained in Section 2.12.5 above, Essien (2015:55) is of the view that service delivery happens when government takes informed decisions based on input from the community and relevant institutions. In Madibeng Local Municipality, the lack of water supply has been central to the community's demands for many years.

During their inspection *in loco* of Madibeng Local Municipality, the Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements found the following: the municipality had an insufficient bulk water supply; water supply was often interrupted, usually due to the lack of maintenance and non-payment for water services; poor maintenance and operation of infrastructure; and poor management of conditional grants, in particular the municipal infrastructure grant (Select Committee on COGTA, 2019; Ubisi, *et al.*, 2019).

The insufficient water supply resulted in several service delivery protests. This led to a submission of memorandums to the Offices of the Premier, the Minister and the President. The community members complained, among others things, about the poor service that was rendered by the municipality. The President's hotline was also inundated with queries from the local community. Some of the residents established the Concerned Residents Ratepayers Association, which withheld payment of services to the municipality and instead opened a separate trust account (NCOP: Select Committee on COGTA, 2014:2).

Mapholi (2018:44) argues that water is critical for all socioeconomic development and the maintenance of healthy ecosystems. When water demands become high it creates strain and leads to fights among users, and extreme pressure on the environment. This puts the municipality under immense pressure to ensure that there is a constant water supply to all stakeholders. At times, the quality of the water was also questionable, to the extent that the residents staged demonstrations, marches and strikes in 2014. Four lives were lost in the process (Mapholi, 2018:190).

The Risk Manager acknowledged that the municipality had been facing challenges in terms of water provision over the years and that Madibeng communities had not been receiving sufficient access to water. This was identified as one of the top risks by the municipal executive management. Water has been provided by various means, including to those who had taps at their homes. In some areas, boreholes were a solution, which led to unpopular water tinkering where there was no infrastructure.

Madibeng Local Municipality has in the past experienced violent service delivery protests due to a lack of water supply. This is primarily because communities and other stakeholders were not involved in decision-making.

It is a requirement, in terms of Section 4(2)(e) of the *Municipal Systems Act*, that the Municipal Council should consult the local community about the level, quality, range and impact of municipal services provided by the municipality, either directly or indirectly, through another service provider and discuss the available options for service delivery. In a similar vein, Section 6 of the *Municipal Systems Act* imposes a responsibility upon the municipal administration to be responsive to the needs of the community, as explained in Section 3.4.2 above. The situation described above also contradicts the municipality's own business values. It has publicly communicated its intention to provide 'quality information timeously and in the right way'. Doing so might have obviated service delivery protests.

The councillors' lack of commitment to addressing the community's needs led to the community of Madibeng without any other option but to plead to those in higher offices, such as the Premier, Minister and the President, for help because of their lack of trust in the municipality. Again, this is contrary to the business values the municipality claims to stand for, namely the accessibility of councillors, managers, facilities, services and information.

It against this backdrop that the Madibeng Local Municipality was placed under administration several times in terms of Section 139(1) of the Constitution. This will be explored in the next Section.

## **7.7 Brief history of Section 139 interventions in Madibeng Local Municipality**

At the beginning of 2009, and prior to that, the Madibeng Local Municipality experienced serious financial problems in terms of revenue shortfall and cash flow. This has negatively affected the municipality's ability to sustain its finances and to deliver on basic services. In 2009, the municipality found itself unable to service its debts; for example, it was unable to service its long outstanding Public Investment Corporation loan of more than R400 million and Tshwane Metro account of R60 million. As a result, it became difficult for the municipality to deliver on its

immediate mandate to provide basic service such as water, sanitation, electricity and refuse removal (NCOP Select Committee on COGTA, 2014:2).

It is against this backdrop that the North West Provincial Executive Council took a decision in March 2010 to invoke Section 139(1)(b) of the *Constitution* with respect to the municipality, and again in subsequent years, that is, for the 2009/2010, 2013/2014, 2014/2015, 2018;2019 and 2020/2021 financial years. Table 7.2 contains a summary of the periods of the invocation of Section 139 intervention in Madibeng Local Municipality in the North West Province.

**Table 7-2: Summary of the periods of the invocation of Section 139 intervention in Madibeng Local Municipality in the North West Province**

MADIBENG LOCAL MUNICIPALITY PLACED UNDER ADMINISTRATION BY NORTH WEST EXCO		
YEAR	INTERVENTION	
	Section 139 (1)(b)	Section 139 (1)(c)
2009/2010		
2013/2014		
2014/2015		
2018/2019		
2020/2021		

Source: Author’s own construct

The above-mentioned interventions indicate that the situation never improved in Madibeng Local Municipality. In fact, other issues emerged during the intervention periods that caused service delivery to deteriorate further; for instance, it was alleged that, at some point, the MEC for Local Government and Traditional Affairs in the North West could not formally table the administrator’s close-out report before the Municipal Council, although several attempts were made to meet with the leadership of the municipality (NCOP Select Committee on CPGTA, 2014:3).

The Select Committee (2019) Report on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements cited the following reasons for the intervention at Madibeng Local Municipality in terms of Section 139(1)(b) of the *Constitution*.

- The municipality was implementing a budget that was not funded.
- Total outstanding debts, as at February 2019, amounted to R1.8 billion, of which R1.6 billion had been owed for more than 91 days.

- The collection of some of these outstanding debts was a concern, especially household debts.
- Household arrears constituted most of the outstanding debt, at R1.4 billion, followed by debt owed by businesses and the government, which stood at R333 million and R75 million respectively.
- Total outstanding creditors, as at the end of February 2019, amounted to R222 million.
- For bulk purchases, the municipality owed R121 million for bulk water, 42% for over 181 days, which indicated that payment agreements within the sector were not honoured.
- In terms of Eskom debt management, the municipality had a current account, which was an improvement (Select Committee on COGTA, 2019).

When the Risk Manager was interviewed about her views on the invocation of Section 139 and the implementation of the intervention, her response was mixed. First and foremost, she doubted the capacity of the intervention team. She emphasised the fact that some of the team members came into the municipality without the necessary experience. She said they literally knew nothing. She said they acknowledged that they knew nothing about the MFMA. Therefore, they did not bring anything new into the municipality. They could not do anything that the permanent employees of the municipality could not do. In fact, they learnt from the permanent staff. Consequently, after the intervention, the municipality experienced more problems than before.

The intervention team began to understand municipal functions only when the actual work was started by municipal employees. Only a few of them had the necessary experience and competence. A serious gap that she identified was that the members of the intervention team did not arrive all at once. The team leader, the 'administrator', was introduced first and the rest of the team members joined him later.

The current administrator had the same view as the Risk Manager. He said that the administrator was always appointed and introduced to the municipality first. Later, the appointments of the other team members were made. These are normally specialists or experts in various fields, such as finance, infrastructure and legal experts, depending on the needs of that particular municipality.

However, he criticised the manner in which the team members were appointed. His view was that the administrator should be given a chance to be part of the decision making as far as appointment of team members was concerned. In some instances, the Provincial Department of Local Government appoints people who have never worked in a municipality and sometimes without work experience, which is a serious weakness in the system. It is better when the administrator is part of the recruitment process when team members are appointed to give advice on relevant people based on their competency.

With regard to the close-out report, the Risk Manager said that it was not always presented to them, either verbally or in written form. Some administrators who were in charge of the municipality were withdrawn from their assignments in a way that did not necessarily allow them time to even consolidate a report and present it to council before they vacated office. In some instances, a decision was taken overnight and the municipality heard through various media platforms that the administrator was no longer with the municipality. In such instances, it was not clear whether the municipality would ever receive the report.

However, the Administrator stated that, in his past experience, he had drafted close-out reports for the provincial government and the municipality. In his close-out reports, Section 154 was emphasised for implementation by some municipal departments in which he felt that work still needed to be done. The difficult part, from his side, was that he could not confirm whether these close-out reports were being implemented or not. In some instances, he realised that after the intervention some municipalities collapsed again. The said Administrator had worked in a number of municipalities in the North West Province, namely Ramotshere and Naledi Local Municipalities, before he was brought into the Madibeng Local Municipality.

The Administrator also found during the interventions that the municipal politicians were factionalised and divided. They pursued factional interests or agendas, as opposed to those of the municipality. The municipal employees also started to take sides by aligning themselves with their favourite politicians and ignored lawful instructions from other factions. Consequently, the municipality became weaker and unable to provide service delivery in a sustainable manner.

He stated that the only remedy to deal with the situation was to stabilise the political atmosphere within the municipality first. This can be done by meeting with the municipal troika (Executive Mayor, Speaker and Chief Whip). In these meetings, relevant questions should be raised regarding the roles and responsibilities of each office. It is then that one can begin to see the gaps that need to be filled for each individual office to function properly. Once the troika is stabilised, it becomes easy to engage the rest of the councillors for support and buy-in. This has a positive spin-off in the rest of the municipality and unifies the employees to work towards a common goal.

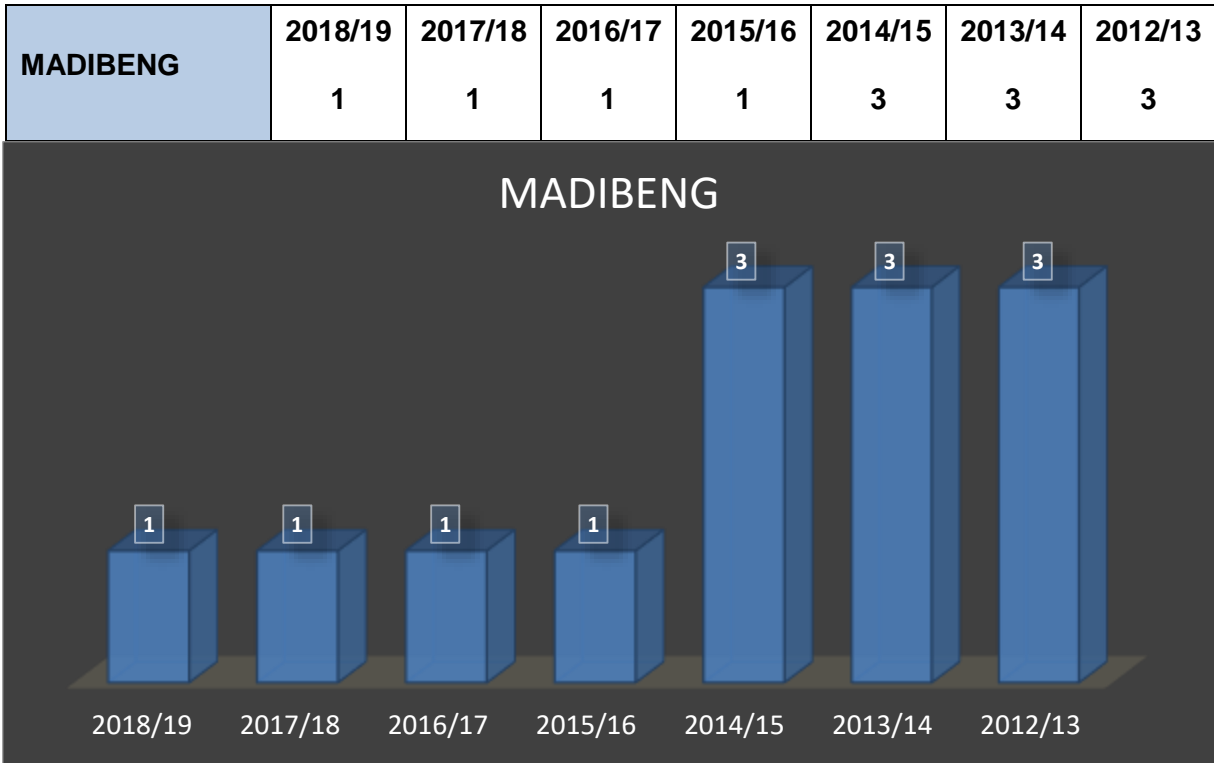
## **7.8 Conclusion**

The North West provincial government has frequently invoked Section 139(1)(b) for the Madibeng Local Municipality. The municipality was placed under administration five times. Many factors were identified as reasons for intervention. These included the provision of water supply to all communities around Madibeng, which caused service delivery protests; poor revenue and debt collection; and payment agreements not being honoured by the municipality and its creditors.

The critical areas were increasing unauthorised expenditure; huge amounts of irregular expenditure; and persistent fruitless and wasteful expenditure on a yearly basis. Moreover, municipal contracts were awarded in contravention of supply chain management regulations and there was a lack of supporting documentation regarding them. Contracts worth above R200,000 were not put out to tender, which contravened regulation 19(a) of the supply chain management framework.

The culprits were not held accountable and their misconduct therefore went unpunished. Section 32(2) (a) of the MFMA demands that officials be investigated and held accountable or liable for irregular expenditure incurred by the municipality as part of consequence management. This is a clear indication that those who were entrusted with authority abdicated their responsibilities, particularly the council and the executive management of the municipality.

**Graph 7-2: The audit outcomes of Madibeng Local Municipality for seven years**



**Source: Author’s own construct**

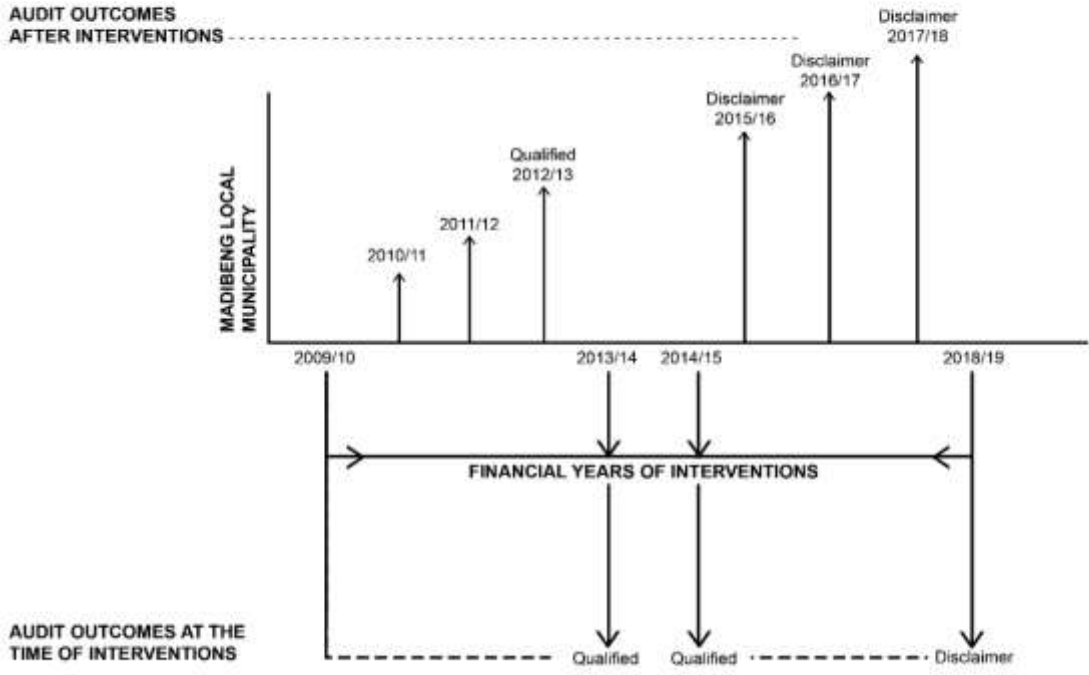
Graph 7-2 constitutes a summary of Madibeng Local Municipality’s audit outcomes for the seven years: 1 represents a Disclaimer; 2 Adverse; 3 Qualified and 4 Unqualified.

Based on the above, the municipality received a disclaimer audit opinion for four consecutive years, namely from 2015/2016 to 2018/2019 and a rating of Qualified for three consecutive financial years, namely 2012/2013 to 2014/2015. No clean audit was obtained by the municipality,

which demonstrates that financial management has been a problem. It indicates that the municipality will not get out of this situation unless drastic action is taken, which seems unlikely.

This chapter was about the invocation of Section 139(1)(b) in Madibeng Local Municipality and how was it implemented.

**SUMMARY OF MADIBENG SECTION 139 (1)(B) INTERVENTIONS AND AUDIT OUTCOMES**



Source: Author’s own construct

**Figure 7-3: Summary of the invocation of Section 139(1)(b) by the North West Provincial Government**

Figure 7-3 shows both the invocation of Section 139(1)(b) and the AGSA audit outcomes. It is a clear indication that the invocation of Section 139(1)(b) and its implementation has never had a positive effect; for instance, the municipality was placed under administration five times (2009/2010; 2013/2014; 2014/2015; 2018/2019; 2019/2020). During the intervention in 2009/2010, Madibeng was at audit outcomes. The year after the intervention, in 2012/2013, it received a qualified rating. In 2013/2014 and 2014/2015 it again received a qualified rating. Immediately after the intervention, it received Disclaimers for three consecutive years, namely 2015/2016 to 2017/2018. In the 2018/2019 financial year it received a disclaimer at the time of the intervention.

It would be expected that the situation would change for the better after every intervention. It is the same as if people are sick; they consult doctors and afterwards they become better, unless the medication is not working for them. In this case, it is a clear indication that the 'medication', in the form of an intervention, is not working. Instead, after the intervention the situation deteriorates, as demonstrated by the audit outcomes above.

From the above discussion it is clear that the chapter demonstrated that Section 139(1) intervention in Madibeng Local Municipality was not successful in terms of its implementation. The chapter has highlighted the fact that, after the North West Provincial Executive Council took a decision to place the municipality under administration, it would send one person first as an administrator. Thereafter, his or her team will follow. This demonstrates the poor management of Section 139(1) and shows that the Provincial Executive Council is not doing due diligence when it takes decision to invoke the intervention.

This is because it was supposed to have known the issues affecting the municipality beforehand so that it could identify the relevant intervention team all at once. As discussed in Chapter 4, Section 4.6 demonstrated that the courts had advised that there must always be evidence that demonstrates that there were no any covert intentions when Section 139(1) is invoked.

This chapter (Chapter 7) also highlighted the lack of necessary skills and competence of the intervention team. Some team members did not have the necessary local government experience. It is therefore inherent that the team would not have changed the situation. The close-out reports were not presented in council for post intervention to be addressed by council. Instead, the chapter showed that the administrator was withdrawn overnight without notice being given to the municipality. It is for these reasons that the Section 139(1) intervention never worked to improve the situation.

In all five interventions at the Madibeng Local Municipality, Section 139(1)(b) has been invoked. Unfortunately, in some instances, Madibeng Local Municipality was supposed to be helped on issues of finances, because it had been struggling to service its creditors, namely the Public Investment Corporation and Tshwane Metro. Therefore, financial intervention was necessary in terms of Section 139(5). It is against this backdrop that the intervention kept repeating itself in Madibeng Local Municipality with its failures.





In the next chapter (Chapter 8), the manner in which the invocation of Section 139(1)(b) was applied in the Matlosana Local Municipality is discussed.

## CHAPTER 8: THE CITY OF MATLOSANA LOCAL MUNICIPALITY (CMLM) – APPLICATION OF SECTION 139(1)(B)

### 8.1 Introduction

The implementation of Section 139(1)(b) and the assessment of the municipal performance of the Madibeng Local Municipality was explored in the previous chapter (Chapter 7). In this chapter, information generated from the interviews regarding the invocations of Section 139(1)(b) of the Constitution for the CMLM is presented and interpreted. The same meta-theoretical framework is applied to this chapter as that was utilised in the previous two chapters. Moreover, the same model presented in the introduction to Chapter 6, with its four core criteria, namely (1) governance, (2) administration, (3) financial management and (4) basic service delivery, is utilised to assess municipal performance and the application of Section 139 interventions in the CMLM. The assessment is limited to the 2009/2010 to 2019/2020 financial years. Types of audit opinions will also be applicable in this chapter. Table 8.1 summarises the core criteria with their corresponding operational criteria.

**Table 8-1: Summary of the core criteria with their corresponding operational criteria**

CORE CRITERIA		OPERATIONAL CRITERIA
Governance		Oversight Function
Administration		Human Capital and Skilled Staff
Financial Management		Procurement, unauthorised, irregular, fruitless and wasteful expenditure
Basic Service Delivery		Water and Sanitation

**Source: Author's own construct**

The following areas remain the primary focus:

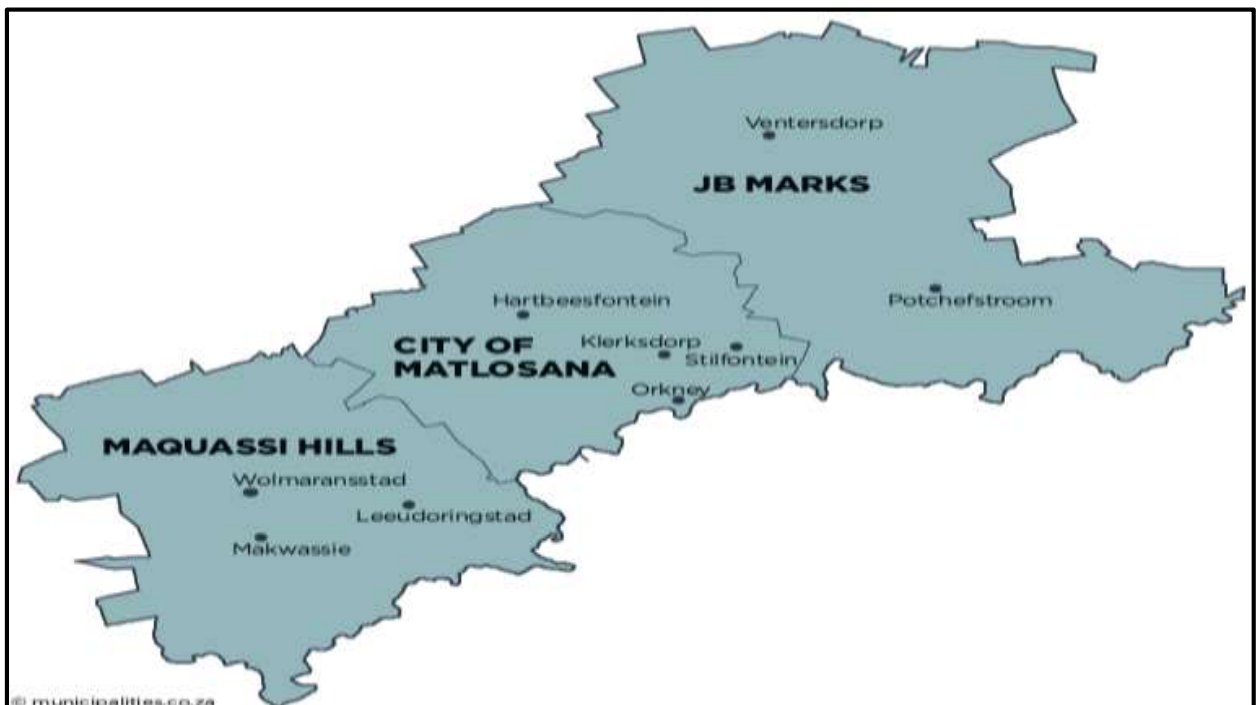
- Background information on the municipality
- Municipal population growth

- History of service delivery in the CMLM, with a special focus on governance, administration, financial management and basic service delivery
- Brief overview of the Section 139 intervention in the CMLM
- Conclusion.

## 8.2 Background

The City of Matlosana is positioned about 164 km south-west of Johannesburg on the N12, which is part of the Treasure Route. It was classified as a Category B municipality by the Municipal Demarcation Board in terms of Section 4 of *Municipal Structures Act*. The City of Matlosana is part of the Dr Kenneth Kaunda District. It was previously called *Klerksdorp Municipality* and the name was officially changed to *City of Matlosana* on 1 July 2005. The word *Matlosana* means 'people helping each other to move from one area to the other'. The CMLM includes Klerksdorp, Jouberton, Alabama, Orkney, Kanana, Stilfontein, Khuma, Tigane and Hartebeesfontein (City of Matlosana, 2017b:4).

The map in Figure 8.1 shows the three local municipalities that form part of the Dr Kenneth Kaunda District. The JB Marks Local Municipality comprises Ventersdorp and Potchefstroom. The City of Matlosana comprises Hartebeesfontein, Klerksdorp and Stilfontein, whereas the Maquassi Hills Municipality comprises Wolmaransstad, Leeudoringstad and Makwassie. The N12 Treasure Route runs through all these municipalities.



**Figure 8-1: Three municipalities within the Dr Kenneth Kaunda District**

### 8.3 Municipal population growth

The CMLM had a population of 438,486 people in 2012, according to the Matlosana Socio-Economic Report of that year. Out of this total, 103,407 (92%) were urbanised (including mining villages) and 35,079 (8%) were rural. The biggest portion of the population was in Jouberton (31%), whereas Kanana, Khuma and Tigane combined accounted for 67% of the total urban population (City of Matlosana, 2017b:5).

### 8.4 Service delivery in the City of Matlosana Local Municipality prior to the interventions

The provision of basic services by any institution is guided by its own vision, mission and core values. This basic service must have the ownership of the affected community. Essien (2015:55) simplifies this principle by saying that all the citizens must be provided with government services on an equal basis because they are entitled to them.

In the light of the above statement, the CMLM's execution of its mandate of provision of basic services must take place in accordance with the following vision, mission and core values:

**VISION:** An organisation with the primary responsibility of ensuring that the Matlosana area is able to realise its full potential in every respect.

**MISSION:** To render equitable, sustainable and high-quality basic services to the citizens of Matlosana.

The **CORE VALUES** are represented by the acronym 'RAPIT':

*Respect:* A humane manner of doing things with politeness and care. We will listen to the communities we serve. We are focused on our stakeholders

*Accountability:* We will take full responsibility for the actions we take and give citizens full value for money. We conduct our tasks in a responsible manner and continuously communicate with our beneficiaries and partners. We owe our accountability to each other, the community we serve and our stakeholders who partner with us. We are transparent in all our activities and subject ourselves to any form of scrutiny.

*Professionalism:* We execute our roles to the highest standards, in accordance with applicable norms and standards. We execute our tasks with unselfish regard for or devotion to the benefit of communities. We ensure that our initiatives have a direct impact on communities.

*Integrity:* We hold our offices with ethical integrity to the benefit of those we serve. We aim to have congruence between our actions and our pronouncements.

*Transparency:* We hold our offices with ethical integrity to the benefit of those we serve. We aim to have congruence between our actions and our pronouncements (City of Matlosana, 2017a:11).

The above is represented in Figure 8-2:



Source: Author's own construct

Figure 8-2: City of Matlosana Local Municipality vision and mission with core values

The vision, mission and core values outlined above influence areas such as the governance, administration, financial management and service delivery of the CMLM. In the following Section, implementation in these areas is analysed to determine how it resulted in the invocation of the Section 139(1)(b) intervention by the Executive Provincial Council of the North West Province.

#### **8.4.1 Governance (Oversight function)**

The governance structures of the CMLM have been weakened due to a lack of oversight by the Municipal Council. According to Serote (2015:14), the Internal Audit Unit does not always seek the involvement of management in an open and transparent manner. This has created tension between the two parties and resulted in technical disagreements. This happened because of the council's lack of effective oversight over the municipal administration (p. 14). This is contrary to the commitment CMLM has made, which is espoused in its municipal core values of professionalism. This value mandates the CMLM to execute its role to the highest standard, in accordance with applicable norms and standards.

Furthermore, the effectiveness of the Audit Committee and Internal Audit's role as an assurance provider was compromised by management's failure to adequately act on the internal audit findings and recommendations. This demonstrates a lack of capacity at senior management level within the municipality (City of Matlosana, 2017a:279).

In addition, in terms of issues raised by AGSA in previous years, the council took a resolution that such issues would be included in the action plans and be addressed by management to avoid recurrence. Unfortunately, the council itself failed to monitor the full implementation of such plans. Instead the implementation was done mostly by a consultant with limited skills, who therefore could not transfer the required skills to the municipalities (City of Matlosana, 2017a:279).

The risk manager at the municipality corroborated the above. He stated that the municipality did have policies, laws and structures in place to deal with the recurrence of issues raised by the AGSA. The biggest problem is the monitoring and implementation of such policies to strengthen good governance.

This is an ANC-led municipality. Therefore, senior management positions are a product of cadre deployment. The situation described above demonstrates the failure of cadre deployment to produce people who have the necessary capacity to do what they are employed to do.

The conduct of the administration and council in this instance demonstrates a lack of commitment to adhere to the CMLM Vision and Mission. The Mission commands everybody within the

municipality to render equitable, sustainable and high-quality basic services to the citizens of Matlosana. It seems that this is not the case.

The two bodies (administration and council) are the leadership of the institution, which requires them to exercise the values of leadership, namely honesty, integrity, respect, accountability, professionalism and transparency, as enshrined in the CMLM Core Values. Over and above that, the administration and council should be truthful, sincere and beyond reproach.

This state of affairs raises questions about the commitment of the administration to carry out its administrative duties, which are briefly discussed in the next Section.

#### **8.4.2 Administration (Human capital, skilled staffing)**

Section 67(1) (d) of the *Municipal Systems Act* mandates the accounting officer, through the council, to effect the necessary systems and procedures in order to monitor, measure and assess the performance of staff in a municipality. This has not been the case in the CMLM. Such systems and procedures have not been developed, which contributed to the poor performance of staff. In addition, no effective organogram has been established for placing relevant skilled personnel. There has also been a lack of continuity in strategic management positions as a result of resignations, with positions being filled by acting officials (City of Matlosana, 2017a:278-279).

The above-mentioned situation is in contravention of Section 195(1)(a) of the *Constitution*, which requires a high standard of professional ethics to be promoted and maintained in the public administration.

In addition, Section 195(1)(h) of the *Constitution* stipulates that public administration requires that proficient human resource management and career development practices should be in place to maximise human potential, which must be cultivated. The fact that the municipality did not have an established organogram of placing the necessary skilled personnel in the appropriate positions is a clear indication that there was no way in which the municipality can provide basic services in a sustained manner.

This suggests that the municipal administration failed to facilitate a culture of public service that rendered it accountable and responsive to the needs of the local community, as enshrined in Section 6 of the *Municipal Systems Act*.

When there are no systems in place to monitor the performance of staff, the latter cannot be motivated and low staff morale is experienced, which contributes to negative audit outcomes.

This is in accord with the response of the Risk Manager, who emphasised that some of the appointments were historical in the sense that some officials who did not even have Matric or other necessary qualifications were appointed prior to 1994, especially at the lower level. Some of them came to occupy middle management positions due to their experience at the municipality. With regard to the strategic senior management positions, not all of them were suitable or qualified to occupy such senior positions. This constitutes poor implementation of the cadre deployment policy because this municipality is governed by the ANC.

## **Financial management (Procurement and unauthorised, irregular, fruitless and wasteful expenditure)**

### **8.4.2.1 Procurement**

With regard to procurement in the CMLM, Serote (2015:12) found suspected that had been committed by some service providers. The financial intervention team confirmed that the municipality did not receive value for money because goods or services were procured at a higher price than the market price. Prices were escalated above the SLA, which is tantamount to corruption (Serote, 2015:12).

It is a requirement, in terms of Section 217(1) of the *Constitution*, that 'when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective'. In this instance, goods or services were not procured in accordance with the requirement of the latter Section.

Furthermore, Supply Chain Management Regulation 17(a) and (c) requires that goods and services below a value of R200,000 be procured after requesting three quotations from service providers, which was not the case in the CMLM. Moreover, some of the contracts and quotations were obtained from bidders without them declaring whether they were employed by the state or whether they knew someone working for the state to avoid a conflict of interest, which is in contravention of supply chain management regulation 13(c) (City of Matlosana, 2017a:277). This situation constitutes unethical conduct, which is contrary to the core business values of the municipality, which require transparency and ethical integrity to serve the community.

Furthermore, 'sufficient appropriate audit evidence could not be obtained that invitations for competitive bidding had been advertised for a required minimum period of days, as required by supply chain management regulation 22(1) and 22(2). Competitive bids were adjudicated by a bid adjudication committee that was not composed in accordance with supply chain management regulation 29(2). This non-compliance was also identified in the procurement processes for the

construction of water supply infrastructure from the Midvaal endpoint to Jouberton and Alabama. Some of the contracts were given to bidders other than those recommended by the City of Matlosana evaluation committee without ratification by the accounting officer, as required by supply chain management regulation 29(5)(b)', (City of Matlosana, 2017a:277-278). This state of affairs often results in unauthorised, irregular, fruitless and wasteful expenditure.

Furthermore, the MIG could not be spent as expected according to its conditions. In the 2013/2014 financial year, the CMLM grant was reduced by an amount of R40 million. In the following financial year, 2014/2015, it was reduced further, by about R36 million.

The reduction of R40 million was due to the late start of capital projects, which resulted in a low implementation rate at the time of the assessment by the COGTA. The reason for the R36 million reduction was the past accounting practices, which resulted in the annual financial statements reflecting unspent conditional grants as unfunded. The impact of the situation above is that council was left to complete the projects using council funds, which had not been budgeted for. This contributed further to the cash flow strain on the municipality (Serote, 2015:8). In addition, money owed by the municipality was not always paid within 30 days, as required by Section 65(2)(e) of the MFMA (City of Matlosana, 2017a:276).

In line with the above, the Risk Manager stated that the intervention was not a success at the municipality with regard to procurement, even if it might have reduced the municipal debt with Eskom. However, the Executive Mayor argued that the intervention actually increased the debt. She asserted that the municipality was contracted into long-term contracts that were not beneficial to the municipality. This happened during the intervention and such contracts went beyond the intervention period itself (e.g., a fleet management contract).

She further argued that the municipality's irregular expenditure was caused by the intervention, when many contracts were entered into through regulation 32 of the supply chain management which emanated from Circular no 96 of the MFMA to procure goods or services under contract secured by another organ of state.

The above clearly shows that there was a disregard of the laws regulating procurement processes. Hence, collusion between municipal officials and service providers cannot be ruled out. The fact that prices were escalated beyond the service level agreement demonstrates that the municipal officials were compromised. In contrast, Ntonzima (2011:1011) states that financial management is the application of effective and efficient public financial controls to ensure that spending is incurred according to prior plans and must be conducted in accordance with the stipulated rules. Such conduct often leads to unauthorised expenditure.

#### **8.4.2.2 Unauthorised expenditure**

The CMLM had incurred unauthorised expenditure of R184,080,291 and R1,498,231,982 in previous years, which had not been dealt with in terms of Section 32 of the MFMA (City of Matlosana, 2017a:273). These unauthorised expenditures were a result of exceeding the budget due to inadequate budgeting for the damage to the consumer and other debtors, (City of Matlosana, 2017a:276).

During the provincial intervention on financial matters in the CMLM, in terms of Section 139(5), as explained in Section 4.3 in Chapter 4, the intervention team confirmed overpayments to service providers, which was investigated and later recovered to the value of R5,7 million (Serote, 2015:12).

The Risk Manager agreed with the AGSA that unauthorised expenditure was sometimes caused by inadequate budgeting; for instance, the municipality budgeted to spend R10 million on a particular project, but for reasons beyond the municipality's control and as a result of unforeseen circumstances, the expenditure ended up being R11 million. The extra R1 million could be regarded as unauthorised expenditure, but it needed to be investigated before the conclusion could be drawn that it was due to corruption.

According to the former President of the South African Constitutional Court, Justice Arthur Chaskalson (2000), '[c]orruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished, they pose a serious threat to our democratic state.'

He argued that a municipality could not be seen inconsistent and undermining the rule of law. The municipality keeps on explaining this to the auditors every financial year. Unfortunately, the AGSA keeps on giving them a qualified review.

The fact that the service providers were overpaid indicates weak financial systems and poor financial management in the CMLM. The municipality continued to spend money beyond the budgeted amount. This overspending occurred due to a vote that was not made in accordance with the purpose of the main division, as explained in the introduction to Chapter 6. The officials who were responsible for this conduct were not dealt with in accordance with Section 32 of the MFMA. This indicates a lack of commitment on the part of the leadership of the Municipal Council to play an effective oversight role.

### **8.4.2.3 Irregular expenditure**

The CMLM had no systems in place to manage the occurrence of irregular expenditure or instances of financial misconduct. The irregular expenditure was identified as a result of lack of evidence on tax clearance certificates, such as no evidence that three quotations had been sought and that there were no supporting documents for the bids awarded (Serote, 2015:12). The CMLM made payments of R22, 005,571 (2016: R40, 744,985) in contravention of the supply chain management regulations. The municipality could not quantify the full extent of the irregular expenditure (City of Matlosana, 2017a:272).

There was unwillingness to prevent irregular expenditure, as required by Section 62(1)(d) of the MFMA. Most of the disclosed irregular expenditure was caused by deviation and not following the correct competitive bidding process. The irregular expenditure of R12, 394,261 was incurred on the key projects for the construction of water supply infrastructure from the Midvaal endpoint to Jouberton and Alabama (City of Matlosana, 2017a:277).

The Risk Manager argued that the irregular expenditure might be seen in a negative light. At times it was not as bad as it looked; it just needed to be accounted for with a full explanation of why the municipality incurred irregular expenditure. Among other reasons, it could be that the municipality had a contract that had expired. At the same time, it still needed to be paid and an explanation provided, according to the regulations.

In contrast, the finance administrator, Mr Serote, argued that 'the irregular expenditure was identified as a result of lack of evidence of tax clearance certificates, no evidence of three quotations being sought and no supporting documents'. This is critical, because contracts cannot be issued to service providers who do not have tax clearance certificates. This constitutes the abrogation of the stipulated procurement processes and clear noncompliance with supply chain management regulations.

### **8.4.2.4 Fruitless and wasteful expenditure**

The CMLM incurred fruitless and wasteful expenditure of R37,420,124 and R114,486,490 of previous years debt had not yet been dealt with in accordance with Section 32 of the MFMA, (City of Matlosana, 2017a:273). Effective steps were not taken to prevent fruitless and wasteful expenditure. The majority of fruitless and wasteful expenditure was caused by interest and penalties charged on late payment to creditors (City of Matlosana, 2017a:277).

The Risk Manager concurred that fruitless and wasteful expenditure was basically caused by interest charged on late payments to the municipality's creditors. He referred to Eskom, saying

that if it was not paid on time, it would charge the municipality interest and that that the AGSA would regard that extra charge as fruitless and wasteful expenditure. This situation demonstrates the incompetence of both the administration and the ANC-led council. This means that the ANC is responsible for this due to its cadre deployment policy, because it deployed incompetent people to take care of the public purse.

#### **8.4.2.5 Consequence management**

Financial misconduct occurred without any action being taken against the culprits. Unauthorised, irregular, and fruitless and wasteful expenditure incurred by the CMLM was not investigated to determine if any person was liable, as required by Section 32(2)(a) and (b) of the MFMA. 32. Allegations of financial misconduct against the municipality's accounting officer were not always investigated, as required by Section 171(4) of MFMA (City of Matlosana, 2017a:276).

However, in some instances, identified cases of suspected criminality were reported to the Hawks. The internal disciplinary processes were not effective, resulting in the municipality being unable to follow through when employees were suspected of having committed financial misconduct (Serote, 2015:12). It can be concluded that no convictions were secured. The suspected officials and service providers remained free, without any form of punishment being imposed on them for financial misconduct.

There was a justification for financial intervention in terms of Section 139(5) of the Constitution by North West provincial government. Unauthorised expenditure to the value of R184, 080,291 and R1, 498,231,982 in previous years are rather large amounts. *Unauthorised expenditure* means that these monies were spent outside the original municipal budget. Irregular expenditure amounted to R22, 005,571 (2016: R40, 744,985) in 2014/2015 and R12, 394,261 on key projects in the 2016/2017 financial year. These were monies spent in contravention of supply chain management legislation. The fruitless and wasteful expenditure of R37, 420,124 and R114, 486,490 occurred in previous years. These were erroneous payments made by municipal officials who were not held accountable. This demonstrates a lack of oversight over the administration. Thus, the municipality received a qualified audit opinion for the 2016/2017 financial year. It is against this backdrop that this municipality was placed under administration at least three times, namely in the 1999/2000, 2012/2013 and 2014/2015 financial years. City of Matlosana, 2017a:276).

### **8.4.3 Basic service delivery (water and sanitation)**

Basic service delivery means the provision of basic social services and facilities to communities in such a way that their expectations are met (Essien, 2015:55). The CMLM found it difficult to implement certain capital projects due to labour unrest and other disruptions that caused delays in terms of implementation.

The construction of the infrastructure for bulk water supply, which was intended to improve the water pressure from the tower in Alabama/Manzilpark (Phase 3B), was delayed due to community unrest. Poor performance on the part of the contractor added to delay, (2018/2019 Matlosana Annual Report, p160).

Internal services infrastructure that was planned to be delivered in Jouberton and Alabama precinct was affected by community disruptions. There were also budget constraints; hence, the contractor could not purchase adequate resources. However, additional funds were received later in the year, (City of Matlosana, 2019:63).

Furthermore, the CMLM continually underspent on capital projects. In the 2018/2019 financial year report, the municipality underspent on capital expenditure by R97,572,079 and on repairs and maintenance by R50,491,709 due to cash flow shortages. As a result, the municipality found it difficult to adequately fulfil its service delivery mandate, (City of Matlosana, 2019:307).

The Risk Manager acknowledged that service delivery had deteriorated because the CMLM could not afford to budget enough for the maintenance of roads and so on. It was against this backdrop that the unauthorised expenditure was perpetuated in the CMLM, because monies were rerouted to complete other projects.

With regard to the provision of clean water, it remains available to the residents of the CMLM. The most worrying factor is that it sometimes becomes contaminated due to the theft of pipes, which causes a health hazard.

The above demonstrates a lack of project management and implementation by the municipality. In some instances, the CMLM failed to spend its budget according to predetermined plans and budget items, sometimes by huge amounts. At the same time, budgets fell short during the implementation of projects. The labour unrest that affected the smooth implementation of projects was a result of a failure on the part of the municipality to conduct social facilitation, which would have enabled smooth implementation of capital projects because the community would know what to expect. Thus, a lack of adequate communication was the reason for the labour unrest.

## **8.5 Brief history of Section 139 in the City of Matlosana Local Municipality (CMLM)**

The CMLM was placed under Section 139(1)(b) interventions by the North West provincial government at least three times, namely for the 1999/2000; 2012/2013 and 2014/2015 financial years.

On 19 March 2013 the EXCO of the North West province took a decision to place the Matlosana Local Municipality under administration in terms of Section 139(1)(b) of the *Constitution* due to maladministration and poor governance. Specific issues were identified by the provincial government as reasons for the intervention:

- The non-payment of the bulk electricity and bulk water accounts to Eskom and the Midvaal Water Board.
- The municipality was not collecting what was due for services rendered to consumers, and the debtors' book was standing at about R960 million.
- There was non-enforcement of the debt collection and credit control policies adopted by the council.
- The municipality was using the revenue from the sale of electricity to subsidise other services for which consumers were not paying.
- The municipality had numerous contractual obligations with consultants for services such as debt collection, meter reading and other services that could be done internally.

There was a lack of management and leadership capacity in the Budget and Treasury Office, which resulted in poor financial management and administration of the municipality's finances. In addition, the MEC made a presentation before the Select Committee and emphasised the fact that the municipality had been experiencing serious financial problems for the previous two years, to the extent that it failed to honour its statutory financial obligations. As a result, it had incurred a long-standing debt with Eskom and the Midvaal Water Board, which resulted in the two bulk services accounts being in arrears in an excess of R100 million. In March 2013, the Eskom arrears were standing at about R68 million, (Select Committee on Co-Operative Governance and Traditional Affairs, 2013). The above-mentioned issues cut across the history and reasons for intervention in subsequent years, namely in 2012/2013 and 2014/2015. Table 8-2 contains a summary of the invocation of Section 139(1)(b) in the City of Matlosana Local Municipality within the North West Province.

**Table 8-2: Summary of the invocation of Section 139(1)(b) in the City of Matlosana Local Municipality in the North West Province**

CITY OF MATLOSANA LOCAL MUNICIPALITY PLACED UNDER ADMINISTRATION BY NORTH WEST EXCO		
YEAR	INTERVENTION	
	Section 139 (1)(b)	Section 139 (1)(c)
1999/2000		
2012/2013		
2014/2015		

**Source: Author’s own construct**

When the late former Executive Mayor was interviewed about her experience of the Section 139 intervention and whether it yielded any positive results, she argued that she did not remember receiving the EXCO-issued directives before the actual intervention, as was envisaged in Section 139(1)(a) of the *Constitution*.

She acknowledged that the administrator arrived with the whole team all at once and members of the team were deployed in various directorates of the municipality. Some team members did not demonstrate the necessary local government expertise. They were deployed in various municipal directorates to assist and share their expertise with municipal officials. Unfortunately, they failed to demonstrate local government expertise, as they were expected to do. Instead, the municipal officials had to orientate them and lead the process to do the work on their behalf. Moreover, legal opinions were sought outside the municipality, while there was a legal person who was part of the intervention team, resulting in unnecessary costs. The only person she remembered with the necessary skills and experience was the administrator.

- *In my view, the intervention worsened the situation at the municipality; for instance, we started our new term in 2016 after the local government elections. We had to deal with the municipal problems created by the intervention team. Debts were not regularly serviced during the intervention period. The council entered into an agreement with Eskom and Midvaal to service municipal debts on a monthly basis. We realised later that the agreement was not honoured by the intervention team and it created more problems for the municipality. The debts to Eskom and Midvaal were cited as some of the reasons for the intervention, but were not prioritised. (Contradiction: payments were made to Midvaal and Eskom during the intervention period).*

Furthermore, she argued that the intervention team refused to attend strategic meetings such as mayoral committee meetings (MAYCOMs), where they were needed most to answer some critical questions, such as finance. There would be only our officials at those meetings. The intervention team would always say they were not accountable to the municipal executive; they accounted directly to the MEC.

She says the administrator made it very clear to them as councillors that he would not say anything to them except in council meetings. At the very same council meetings, the administrator was not cooperative. He would not answer some of the questions raised by councillors who demanded answers for certain decisions.

- *For instance, service providers were appointed on the basis of regulation 32. The council saw a lot of such appointments which did not go through the normal supply chain management processes and we were surprised. When clarity was sought from the administrator and his team, they always refused to respond to the councillors, saying they accounted only to the MEC. The council realised that the situation had become worse as a result of intervention team. What made it even worse was the fact that they had enormous power over the council. As a result, there was nothing that we could do as the council.*

However, the administrator who came to deal with the finances prior to full-blown intervention was much better because he was very cooperative. He was always willing and available to provide answers when requested to do so by the council or any committee meeting of the council, such as MAYCOM.

- *The ideal situation for us as the council would be for the administrator to at least sit down with us on his/her arrival and say, 'This is the current state of municipal governance in your municipality. Therefore, we are moving from this lower point with you to a higher point.' This approach would help the municipality to measure performance from the beginning and assess the progress of intervention at the end.*
- *With regard to the close-out report, its findings were never shared with council, which would have allowed us, as the council, to address them. We had to request MEC intervention to get them to share the report with us. Unfortunately, it did not happen. Instead, some officials were left behind in the municipality to work and be paid their salary from municipal coffers, and we had to fight for their termination.'*

The former Municipal Manager of the CMLM and the Administrator in Ngaka Modiri Molema District Municipality argued that the provincial government had over the years implemented Section 139(1)(b) incorrectly; for instance, during the implementation of Section 139(1)(b) in the CMLM, the team leader of the intervention was titled 'Administrator', which was wrong. At the same time, the same person was given absolute power, which usurped the power of the elected politicians. This is inconsistent with the Constitution, which only makes reference to an administrator when Section 139(1)(c) is invoked. Therefore, there is a need to redefine and give a proper title to a person who acts on behalf of the EXCO to assume executive obligations during the invocation of Section 139(1)(b).

His view was that the weakness in the municipality should have been identified through the implementation of Section 154 of the *Constitution*. This Section makes a provision for provincial and national governments to support municipalities to meet their fundamental objectives, as enshrined in Section 152 of the *Constitution*. Thus, while supporting the municipality through Section 154, specific weakness should have been identified in one of the municipal departments. This would then have made it possible for the intervention to focus only on that weakness, rather than on whole departments, which is sometimes unnecessary.

What is more concerning being that a person who is called an 'administrator' during a Section 139(1)(b) intervention is given powers to make appointments when there are vacant positions. In particular, he or she takes decisions on the appointments of municipal managers, which is unlawful. The law stipulates that the position of municipal manager should be filled through a council resolution, not by an individual who has been sent as part of an intervention in terms of Section 139(1)(b).

Furthermore, the law gives powers to the council for the adoption of the IDP, budget, administering of byelaws, raising of loans and the appointment of municipal managers. However, in most instances of the Section 139(1)(b) interventions, only three were mentioned, namely the adoption of a budget, IDP and administering byelaws. The rest of the functions were given to the 'administrator'. This practice is not stipulated anywhere in the *Constitution*, which makes it unlawful.

The former Municipal Manager concurs with the Executive Manager that financial intervention through Mr Serote helped the municipality to improve its finances, because the finance department had been identified as a weakness that required intervention. Immediately after he had left the municipality, the Provincial Executive Council placed the municipality under Section 139(1)(b), which did not help the municipality to improve on service delivery. Instead, the

municipality experienced the raising of procurements through regulation 32, which became a worry to the council.

He further argued that a person called an 'administrator' could not be given a blanket approach during the implementation of Section 139(1)(b). It was unnecessary and it did not help the municipality. Specific weaknesses must be identified in the municipality for the intervention to focus on that will bring about the improvements. In general terms, the Section 139 intervention did not help municipalities in any way due to the manner in which it is implemented.

## **8.6 Conclusion**

This chapter comprised a description of why and how Section 139(1)(b) was applied in the CMLM, and whether or not it was successful. This was done utilising the model with four core criteria, namely (1) governance, (2) administration, (3) financial management and (4) service delivery.

It became evident that governance structures were weakened by the council's lack of oversight over the administration. It meant that officials were not held accountable for their poor performance. Moreover, no performance management systems were in place to assess the performance of employees, which contributed to the low staff morale in the municipality.

In the finance department, there were no systems in place to combat increasing unauthorised, irregular, fruitless and wasteful expenditure. No systems were in place to avoid the recurrence of fruitless and wasteful expenditure. The result was that service providers were overpaid, although an amount of R5,7 million was later recovered. This incident indicates collusion between municipal officials and service providers.

The CMLM had no proper system in place to implement projects, resulting in a lack of project management and implementation. It is against this backdrop that budgets were not spent according to pre-determined plans.

Upon the finalisation of an AGSA audit, it is expected that the affected institution would draw up post-audit action plans for implementation to avoid a reoccurrence of the issues raised for the previous financial years. In this case, it became clear that this was not the case in the CMLM. There was no commitment to implementing post-audit action plans, as directed by the AGSA. The municipality would have been able to avoid reoccurrence of non-compliance if it had put the necessary systems in place.

It is against this backdrop that the CMLM experienced the invocation of Section 139(1)(b) and its implementation three times, namely in the 1999/2000; 2012/2013 and 2014/2015 financial years.

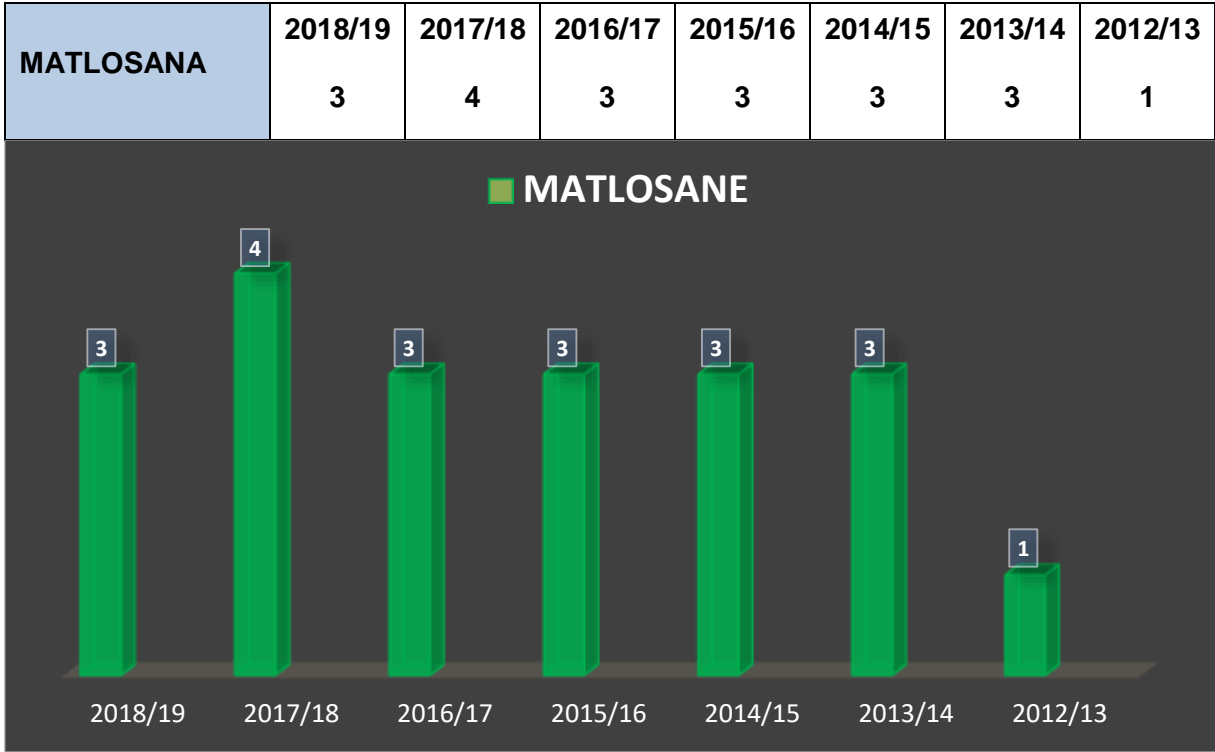
During the implementation of Section 139(1)(b) in 2014/2015 in particular, there was a lack of cooperation between the then administrator and the council. There was a strong view that the intervention made the situation worse, except for the financial intervention, which resulted in progress being made.

The indications were that, during the intervention, procurement through regulation 32 of supply chain management increased exponentially. The council was not happy with the situation and was not always taken into full confidence.

When the administrator was asked to brief the council, he indicated that he did not report to the council but only to the provincial MEC. This conduct angered many councillors, because they felt they were being undermined.

This indicates a lack of clarity in terms of what the relationship between an administrator and councillors or the council should be during an intervention period. The *Constitution* does not provide such clarity, except to indicate the assumption of executive obligation by the province when Section 139(1)(b) is invoked.

Graph 8-3 shows the audit outcomes of the CMLM for seven years:

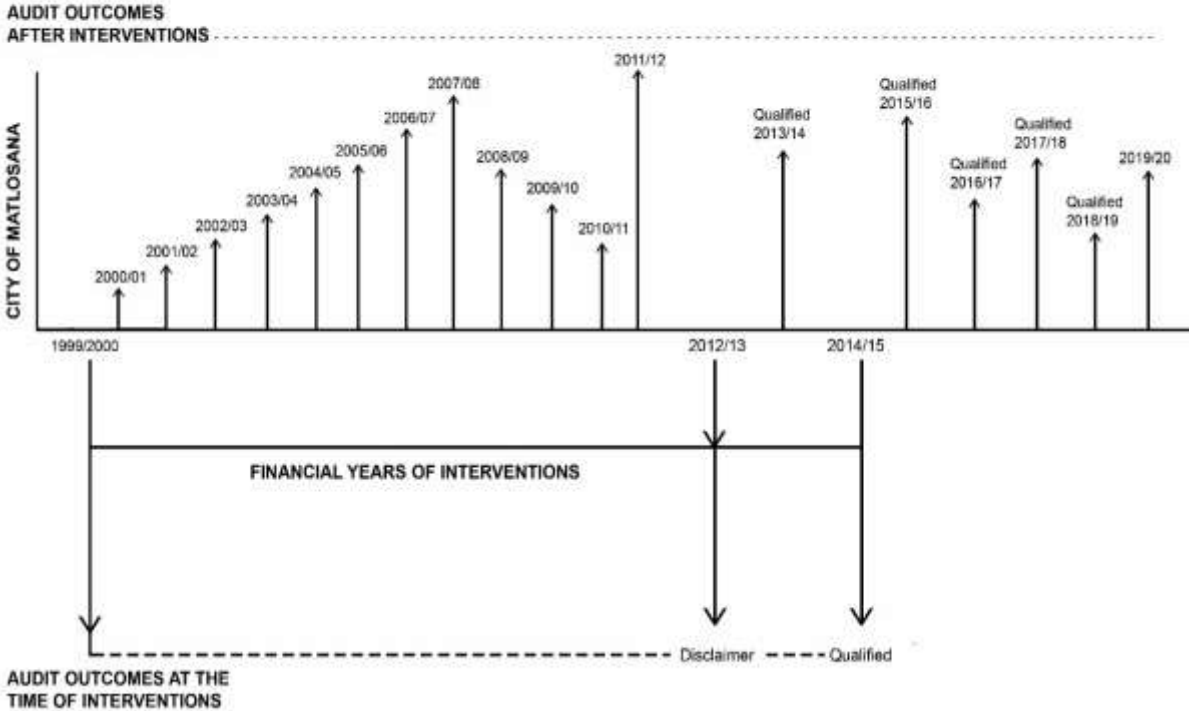


Source: Author’s own construct

**Graph 8-3: Summary of Matlosana LM’s audit outcomes for the past seven years  
(1 = Disclaimer; 2 = Adverse; 3 = Qualified; 4 = Unqualified)**

The CMLM registered one unqualified audit opinion in 2017/18 and one Disclaimer in 2012/13. For the other five financial years it received a rating of Qualified. This demonstrates that there was poor financial management of the CMLM for at least seven years, except for a slight improvement in 2017/2018. After that it regressed immediately to qualified status in 2018/2019.

**SUMMARY OF CITY OF MATLOSANA SECTION 139(1)(B) INTERVENTIONS AND AUDIT OUTCOMES**



Source: Author’s own construct

**Figure 8-3: Invocations of Section 139(1)(b) interventions and audit outcomes of the CMLM over a 20-year period**

As can be seen in Figure 8.5, the CMLM was placed under administration three times: in 1999/2000, 2012/13 and 2014/15. During the intervention in 2012/2013, the municipality received a disclaimer audit opinion. Immediately after the intervention it went on to receive a qualified rating in 2013/2014. In 2014/15 it again received a qualified audit opinion during a period of intervention. After the intervention, received a qualified audit report for four consecutive years (2015/16 to 2018/19).

The graph demonstrates that the intervention never had a positive effect. A situation is expected to improve after an intervention. However, in CMLM everything remained as it was and even became worse.

The chapter demonstrated that the intervention team never had the necessary experience of local government, except the person who was the leader of intervention called the 'administrator'. As a result, a new term of council, which started in 2016 after the local government elections, had to deal with the problems that were caused by the intervention team. It is evident that the intervention failed to yield the positive results. The chapter depicted the fact that the intervention team appointed service providers without following the normal processes of the supply chain management which contributed to the irregular expenditure. This conduct strengthened the position that the invocation of Section 139(1) by the North West Provincial Executive Council had failed dismally. The fact that the close-out reports were never presented before the council based on the attitude of the intervention team towards the municipal Council was its own recipe for disaster. Therefore, the invocation of Section 139(1)(b) failed in the CMLM. The next chapter (Chapter 9) provides strategic interventions in terms of the success or failures of invocation of Section 139(1) interventions.

## **CHAPTER 9: THE STRATEGIC INTERVENTIONS – SUCCESSES OR FAILURES**

### **9.1 Introduction**

The three previous chapters (Chapter 6, 7 and 8) contained descriptions of how the invocations of Section 139(1) intervention were applied and implemented in the NMMDM, Madibeng Local Municipality and the CMLM. The findings were assessed by means of performance analysis, with a specific focus on four criteria, as identified in the above-mentioned chapters. The AGSA's annual reports and the feedback provided by the respondents during the semi-structured interviews were also used to assess the performance of the said municipalities.

It became clear that prior to the implementations of Section 139(1) in all three municipalities, the AGSA audit outcomes reflected poor municipal performance, which continued during and after the interventions. The latter was confirmed by the respondents. They emphasised that the intervention team could not rescue the situation because some of their members were inexperienced. Thus, the intervention did not yield any positive results in the three municipalities.

Therefore, the aim of this chapter is to provide a strategic framework to assist the relevant role players in the local government environment to manage and sustain Section 139 interventions. This will be done by taking into account previous chapters in order to highlight the successes or the failures of Section 139 implementation.

The starting point will be to consider the meta-theoretical framework outlined in Chapter 2, the legal context/regulatory frameworks noted in Chapters 3 and 4; and how Section 139(1) was found to be applied in three case studies described in Chapters 6, 7 and 8. The various role players' input also play a critical role in determining the successes or failures of invocations of Section 139(1). These role players were identified in Chapter 1. Because this study is founded on the disciplines of Political Science and Public Administration, politicians and officials in municipalities were interviewed with respect to how Section 139(1) was applied in the above-mentioned municipalities.

In a similar vein, the success of any scientific research is based on the scientific theories upon which it is based, as explained in detail in Section 2.1 above. In this case, it means there will be a greater transition from theory to practice, which will influence the formulation of the strategic framework on how to manage and sustain a Section 139(1) intervention. This is because this study is about practical realities that influence the development of the knowledge,

thinking and attitudes of an individual from a worldview perspective, as explained by Karl Marx in his Marxist theory.

Therefore, this chapter is confined to the following features:

- The legal implications of the implementations of Section 139(1) interventions in three municipalities.
- A comparative critical analysis of the three case studies.
- The implementation of Section 139(1).
- A proposed strategic framework to assist the relevant role players to manage and sustain Section 139(1) interventions.
- Conclusion.

## **9.2 The legal implications of the implementations of Section 139(1) interventions three municipalities**

For emphasis, according to Ababio and Mahlatsi (2008:344), '[i]n the case of the *City of Cape Town and Another v. Robertson, and another* case CCT 19/04, the Constitutional Court held that Section 40(1) of the *Constitution* entrenches the institutions of local government as a sphere of government and pronounces all spheres of government to be distinctive, interdependent and interrelated.'

As explained in the first paragraph of Section 1.1 above, the Constitution sets out the rules of how each sphere of government should function and relate to each other. They are all expected to operate according to the *Constitution*, laws and policies determined by the National Parliament and must not be seen a hierarchical because they are autonomous.

There is no doubt that the autonomy of local government is guaranteed by the *Constitution*. It is against this backdrop that the *Constitution* provides guidance when national and provincial governments intervene in issues of local government. In this case, the study is about the invocations of Section 139(1) interventions by a provincial government on the affairs of local government. The legal implications, in this instance, are drawn out in reference to the case studies in Chapters 6, 7 and 8, starting with NMMDM. This will help to demonstrate how Section 139 was applied in these three municipalities.

### **9.2.1 Ngaka Modiri Molema District Municipality**

During the interviews, the council Speaker confirmed that when the municipality was placed under administration, it simply received a correspondence from the EXCO saying that the

municipality was going to be placed under administration in terms of Section 139(1). Thereafter, the administrator was sent alone and the rest of the team later joined him at the municipality. Thus, directives prior to the intervention in the municipality, as per the requirements of the *Constitution* in terms of Section 139(1)(a) was not applied.

In the case of *Magalakwena Local Municipality v the Provincial Executive of Limpopo and Others*, Mr Justice Tuchten stated that a directive must precede an intervention to allow the municipality an opportunity to answer to the allegation against it or to state if it had been negligent in the fulfilment of an executive obligation. This was intended to promote 'the constitutional values of democracy and separation of powers'.

A similar view was expressed by the former Administrator during his intervention period in terms Section 139(1)(b), although he added that there were other frustrations, namely that he did not receive the required support from the Provincial Executive or the MEC during the intervention. He was not even given a preliminary brief of the status of the municipality prior to the intervention so that he could prioritise issues that needed immediate attention.

He added that no platform was created to provide regular reports, to the extent that the close-out report was not even entertained. He had expected that the MEC, as the executive authority, would convene a meeting to present the close-out report to the council, but this did not happen. The Administrator was of the view that this had become a culture, whereby close-out reports were not presented at the end of the intervention periods at municipalities. This would have probably helped the municipality to sustain the successes of the Section 139 intervention. The close-out report was requested from him only three months after the end of intervention, which was necessitated by the portfolio committee's visit in the province. He was convinced that the report would have otherwise remained in his drawer gathering dust.

Furthermore, during the dissolution of the council in terms of Section 139(1)(c), the administrator who had been sent by the EXCO refused to work with the administration. Instead, he became a law unto himself and caused the municipality to deteriorate further. That is why after the new council was inaugurated; the municipality was immediately placed under Section 139(1)(b), which was concerning.

This was contrary to correct procedure because, for example, in the case of *Magalakwena Local Municipality v the PEC of Limpopo*, the judge found that 'Section 139 interventions are not designed to be punitive in nature'. They should rather be progressive and positive in nature

to rescue the municipality from poor performance and enable it to provide service delivery, as enshrined in Section 152 of the Constitution.

### **9.2.2 Madibeng Local Municipality**

It was established that during the implementation of Section 139(1)(b) in Madibeng Local Municipality, some of the team members did not have the necessary experience. They knew nothing about local government legislation, in particular the MFMA. They brought nothing new to the municipality. They could not do anything that the permanent municipal staff could not do but, instead, learnt from the latter. The intervention team only got to understand municipal functions when the actual work was started by municipal employees.

It is clear that such a state of affairs will not yield any positive outcomes or change the poor state of service delivery in the municipality. Therefore, the intended outcome of the intervention will not be achieved.

This is the direct opposite of what the judge pronounced in the matter between the *DA Councillors of the City of Tshwane Metro Municipality v the PEC of Gauteng and Others*, as noted in Section 4.5.4. The judge was of the view that there had to be a direct link between the exercise of power, for instance, the decision to dissolve a council, and the objective that was intended to be achieved. The inexperienced team obviously could not deliver the intended outcome of raising the municipality's performance level.

The fact that the intervention team in Madibeng did not come all at once, but that the administrator was introduced first and the rest of the team members came later, is a clear indication that the list of team members had not been finalised when a decision was taken by the EXCO to place the municipality under administration.

It also indicates that there was no prior engagement between the municipality and the EXCO before the actual intervention took place. Section 139(1)(a) was not correctly implemented because the municipality was not given the opportunity to speak for itself based on the directives and agree on the intervention, which would have given the province time to select the members of the intervention team and bring them in all at once. This contravened what the judge advised in a matter between the Mogalakwena Local Municipality and Provincial Executive Council of Limpopo, namely that 'a directive must precede the intervention'.

### **9.2.3 City of Matlosana Local Municipality**

The same argument raised above in respect of the Madibeng Local Municipality can be advanced in this case because the CMLM also found itself at the mercy of inexperienced

intervention team members who were deployed at the municipality. The intervention team failed to demonstrate local government expertise, as they were expected to do. Therefore, the municipal officials had to orientate the intervention team and lead the process to do the work on their behalf. By way of analogy, the doctor who came to see a sick person did not have the medical skills to heal the patient. The sick person had to show the doctor how to do his work, which is abnormal. As a result, the intervention team worsened the situation at the municipality.

There was no direct link between the exercise of power and the objective that was supposed to be achieved, as mentioned by the judge in a matter between the DA Councillors of the City of Tshwane Metro Municipality and the Provincial Executive Council of Gauteng Province. Furthermore, the intervention team would not cooperate with the councillors and refused to attend strategic meetings, such as MAYCOMs, where they were needed most to answer critical questions on finance. This attitude clearly demonstrates that the intervention team members saw themselves as above everybody at the municipality. This is contrary to what the judge had said in the matter between Mogalakwena Local Municipality and the Provincial Executive Council of Limpopo, namely that Section 139 interventions were not designed to be punitive in nature. Thus, similarities in all three municipalities can be identified in terms of the implementations of Section 139 interventions. Therefore, critical comparative analysis is necessary for all three municipalities. The intention is to showcase the patterns of audit outcomes by AGSA for the past seven years, which are also linked to the interventions in between.

### **9.3 Comparative critical analysis of the three case studies**

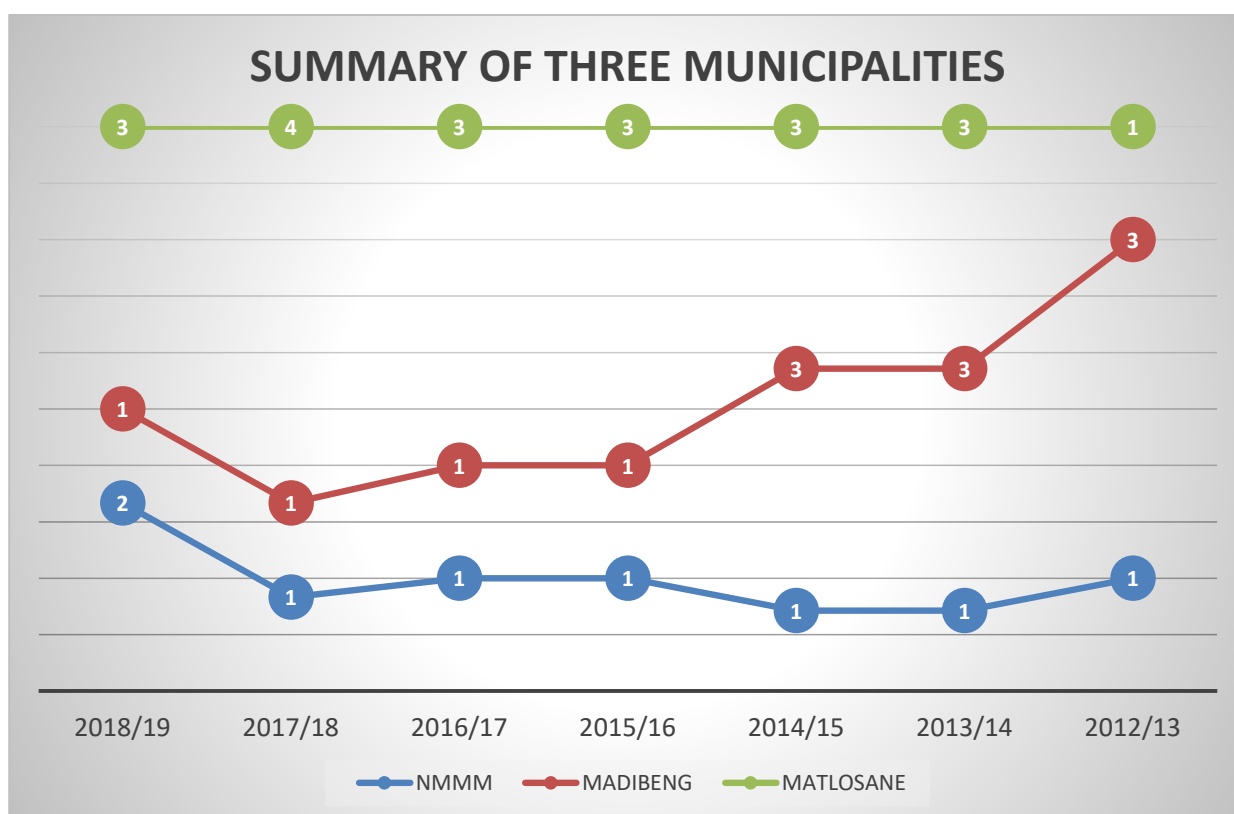
For seven financial years, the three municipalities mentioned below had a common denominator in terms of poor performance. This state of affairs constituted the justification for these municipalities to be placed under administration in terms of Section 139(1).

**Table 9-1: Summary of the three municipalities' audit outcomes**

	2018/19	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13
<b>NMMDM</b>	2	1	1	1	1	1	1
<b>MADIBENG</b>	1	1	1	1	3	3	3
<b>MATLOSANA</b>	3	4	3	3	3	3	1

Source: Author's own construct

**Graph 9-1: Summary of the audit outcomes for the past seven years for three municipalities within the North West Province**



Source: Author's own construct

**(1 = Disclaimer; 2 = Adverse; 3 = Qualified; 4 = Unqualified)**

Table 9-1 and Graph 9-1 demonstrate that the NMMDM and the Madibeng Local Municipality received disclaimer audit outcomes for three consecutive financial years, namely 2015/2016 to 2017/2018, while CMLM and Madibeng Local Municipality received qualified audit opinions

for two consecutive financial years, namely 2013/2014 and 2014/2015. The NMMDM and CMLM received disclaimer audit outcomes for the 2012/2013 financial year.

Common issues can be identified with regard to the invocation and the implementation of the Section 139(1) interventions. The overriding issue is that the interventions did not yield any positive results in any of the three municipalities, as noted in Chapters 6, 7 and 8. More specifically, the participants noted common problems regarding the implementation of the Section 139(1) interventions, which should be taken into account if they are to be averted in future:

- Lack of experience and capacity on the part of the intervention teams.
- Close-out reports were not properly handled to assist the municipalities to sustain Section 139(1) interventions.
- Instead of yielding positive results, the situation became worse. The municipalities were therefore placed under administration again.
- Specific or relevant executive obligations were not identified for intervention. Instead, all the powers of the municipalities were taken away, which was unlawful in terms of Section 40(1) of the Constitution.
- The intervention team leader was defined as an 'administrator' during Section 139(1)(b) interventions, which is unlawful. This title 'administrator' applies only when Section 139(1)(c) is invoked.

#### **9.4 The implementation of Section 139(1)**

It is evident that in all three case studies described in Chapters 6, 7 and 8 that there were blanket approaches to the application of Section 139(1) interventions. The EXCO was supposed to identify specific executive obligations to be dealt with by the intervention team that the municipality had failed to execute.

In all three case studies financial management appeared to be a problem which needed a specific interventions in terms of Section 139(4)(5) of the Constitution and Section 137(1) of the MFMA. Furthermore, the directives in terms of Section 139(1) were not optimally applied in all three case studies.

In a matter between three DA Councillors in the City of Tshwane and the Provincial Executive Council of Gauteng and others. Outdated issues were brought before the EXCO as a motivation for intervention. The judge ruled that, historical issues could not be cited as a reason for the invocation of a Section 139 intervention.

What compounded the situation was the fact that the administrator took over the responsibility of the Municipal Manager, who is the accounting officer, which is unlawful. The Municipal Manager is appointed by the council in terms of Section 54(A) (1) of the *Municipal Systems Act*. The invocations of Section 139(1) were due to a failure to execute 'executive obligations', which had to do with the work of council; therefore, the administrator was the implementing agent. This was identified in the terms of a reference document drafted by the Department of Local Government in the North West Province of administrators and the intervention team, which are outlined in appendix A.

If the North West provincial terms of reference for the intervention team are used, it is clear that some parts of it contravene the *Municipal Systems Act* in terms of the powers of the Municipal Manager; for instance, Section 9.4.4.2 (Mandates of an appointed administrator) Section 139(1)(b)) above Section (b) reads that the administrator 'assumes all the powers and mandates of the municipal manager, as contained in Section 55 of the *Municipal Systems Act*, 2000'. There is no basis or legal justification for giving the administrator the responsibilities of the Municipal Manager, who was appointed by the Municipal Council. This calls into question the legality of the terms of reference of the intervention team. The issue of the powers of the administrator versus the Municipal Manager and council requires future guidance. Against this backdrop, it is important to identify the existing constitutional gaps regarding the application of Section 139 and what the current Bill, which was issued in February 2021, seeks to achieve. Surely the Bill was enacted as a result of the absence of a regulation to control the application of Section 139 intervention by provinces?

#### **9.4.1 Observations**

The following general observations can be made regarding how invocation of Section 139 was implemented:

The start and end dates of interventions were not recorded properly. In most cases, it was difficult to determine the end dates of the interventions.

The references of the intervention team were questioned by municipalities in some instances:

- There was no evidence of effective oversight by the NCOP, legislature or minister responsible for local government. These are structures that must be notified when Section 139(1) is invoked in terms of Section 139(2)(3).
- A lack of cooperation between the Municipal Council, municipal personnel and the intervention team;

- The correct approach to the invocation of Section 139 was not applied to affected municipalities in a uniform manner.
- The general observations mentioned above were in all likelihood necessitated by the fact that the Constitution has gaps due to the absence of regulations with regard to the implementation of Section 139. The said constitutional gaps are listed below.

### **Current constitutional gaps on the application of Section 139(1)**

- The *Constitution* does not provide timeframes for intervention periods after the invocation of a Section 139(1) intervention.
- It does not provide terms of reference for intervention teams during Section 139(1)(b) intervention.
- It does not make provision for the appointment of an administrator during Section 139(1)(b) interventions, except when Section 139(1)(c) is invoked.
- It does not outline the roles and responsibilities of the administrator and council during Section 139(1)(b) interventions, except when someone assumes the municipal executive obligation on behalf of the province.
- It does not prescribe which structure(s) should be furnished with regular reports by the intervention team, except to say that the structures that must be notified when Section 139 is invoked are the relevant provincial legislatures, the minister and the NCOP.
- It does not prescribe a minimum qualification requirement for an intervention team member.

However, the *Constitution* does make provision in terms of Section 139(8) for initiating national legislation to regulate the implementation of Section 139, taking into consideration the processes established in this Section.

Thus, the South African Parliament has taken this opportunity to issue a Bill for public consultation. The Bill is informed by Section 100(3) and 139(8) of the Constitution to initiate national legislation to regulate Section 139 and 100 interventions, as explained in Section 3.9 above. In this case, the focus is on Section 139, which is the topic of this study. The Bill is analysed below in relation to current practice. The reason for this analysis is to indicate the gaps that tend to cause tensions between the provincial intervention teams, the municipality and the stakeholders.

### 9.4.1.1 Current practice versus proposed Bill on Section 139 interventions

CURRENT PRACTICE	BILL
<b>CLOSE-OUT REPORT</b>	
<p>It is not clear how the close-out report should be presented and handled after the intervention. Sometimes it is not presented at all. This was evident in the NMMDM and Madibeng Local Municipality case studies.</p>	<p>Section 90(1), stipulates that when an intervention in terms of Section 100 or 139(1) of the Constitution ends, the administrator deployed for the intervention must, within 14 days, submit to the national executive, or the provincial executive, as the case may be, a report on the intervention.</p>
<b>DEPLOYMENT OF ADMINISTRATORS</b>	
<p>The Department of Local Government advertises for an intervention team with an intention to develop a database. These names are not gazetted. Sometimes the department engages in head-hunting and walk ins to drop off curriculum vitae. The appointment of the administrator and the team is finalised by the MEC for local government and the premier of the province.</p>	<p><b>Section 85(1):</b> Stipulates that no person may, for the purposes of an intervention in a province or a municipality, be deployed as an administrator unless the name of that person appears on a list of persons approved for deployment as an administrator, issued from time to time by notice in the <i>Gazette</i> by the national coordinating committee acting with the concurrence of the national executive member responsible for the concurrent portfolio.</p>
<b>SKILLS</b>	
<p>Although skills and competence are considered by the Department of Local Government for the deployment, this process is not regulated.</p>	<p>No person may be included in the list referred to in this subsection (1) unless that person has the minimum requirements relating to skills, expertise, competence and qualifications, as may be prescribed by regulation; or, otherwise, a fit and proper person for deployment as an administrator, in terms of any criteria prescribed by regulation.</p>

CURRENT PRACTICE	BILL
<b>NOTICE OF INTERVENTION</b>	
<p>The Department of Local Government, on behalf of the EXCO, issues a notice of intervention, which is sometimes vague and not guided by any authority.</p>	<p><b>Section 69(2)(a):</b> Stipulates that, in the case of an intervention in terms of Section 139(1) of the <i>Constitution</i>, a statement must be prepared stating that the provincial executive is intervening in the municipality, in terms of Section 139(1) of the <i>Constitution</i>, because of a failure by the municipality to fulfil an executive obligation. The statement should contain:</p> <ul style="list-style-type: none"> <li>– A short description of the executive obligation that the municipality failed to fulfil;</li> <li>– A description of the extent to which the municipality failed to fulfil the obligation;</li> <li>○ The intervention steps the provincial executive is imposing, including the extent to which the specific executive obligation will be taken over;</li> <li>– Particulars of the intervention steps, including any prescribed particulars required for the relevant intervention step;</li> <li>– The date on which the intervention will commence;</li> <li>– The period for which the intervention step is expected to be in force; and</li> <li>– The action the provincial executive may take should the intervention step not secure fulfilment of the obligation.</li> </ul> <p><b>Section 69(2)(b):</b> In the case of an intervention in terms of Section 139(4) of the <i>Constitution</i> requires that a statement should be issued that the provincial executive is intervening in the municipality in terms of Section 139(4) of the <i>Constitution</i>, read with Sections 26 and 136(3) of the <i>Municipal Finance Management Act</i>, because of a failure by the municipality to approve a budget or revenue-raising measures to give effect to the budget. The statement should stipulate:</p> <ul style="list-style-type: none"> <li>– The date from which the Municipal Council of the municipality is dissolved, and the administrator is deployed in terms of Section 26 of the <i>Municipal Finance Management Act</i>.</li> </ul> <p><b>Section 69(2)(c):</b> In the case of an intervention in terms of Section 139(5) of the <i>Constitution</i>, a statement must be prepared communicating that the provincial executive is intervening in the municipality in terms of Section 139(5) of the <i>Constitution</i>, read with Section 139 of the <i>Municipal Finance Management Act</i>, as a result of a crisis in its financial affairs, as contemplated in that Section. It should state:</p> <ul style="list-style-type: none"> <li>– particulars of any serious or persistent material breach by the municipality of its obligations to provide basic services, or to meet its financial commitments;</li> <li>– or any admission by the municipality that it is unable to meet its obligations or financial commitments.</li> </ul> <p>A statement must also be prepared that states that the provincial executive has, in terms of Section 139 of the <i>Municipal Finance Management Act</i>, requested the preparation of a financial recovery plan for the municipality that will bind the municipality in the exercise of both its legislative and executive authority to the extent necessary to achieve the objectives of the plan. The statement should detail:</p>

CURRENT PRACTICE	BILL
	<ul style="list-style-type: none"> <li>– The date on which the intervention will commence;</li> <li>– The date from which the Municipal Council of the municipality will be dissolved, if the provincial executive decided to dissolve the Municipal Council, and on which the administrator will be deployed; and</li> </ul> <p>The period for which the intervention is expected to be in force.</p>
STRUCTURES TO BE NOTIFIED	
<p>The relevant provincial legislatures; NCOP, and the minister responsible for local government have been notified.</p>	<p><b>Section 69(3)</b>The provincial executive must submit a copy of the notice of intervention, together with any attachments required by this Act, to:</p> <ul style="list-style-type: none"> <li>– the Minister;</li> <li>– the National Council of Provinces;</li> <li>– the relevant Provincial Legislature;</li> <li>– the district municipality of the area in which the municipality falls, if a local municipality is the subject of the intervention;</li> <li>– each local municipality in the area of the municipality, if a district municipality is the subject of the intervention;</li> <li>– organised local government nationally and in the relevant province;</li> <li>– the National Treasury; and</li> <li>– any national department responsible for implementing sectoral legislation affected by the intervention.</li> </ul>

**Source: Author's own construct**

The above Bill will also be taken into consideration when the primary research objective is achieved, as presented in Section 1.21 above, namely 'To develop guidelines that can be used by provincial and local governments as a strategic framework to sustain Section 139(1) interventions in the North West Province, and be used as a model that can be replicated throughout the Republic of South Africa'.

### **9.5 Strategic guidelines to manage and sustain Section 139 interventions**

First of all, it cannot be stressed enough that there must be genuine political will to deal with the incapacity of the municipalities to discharge their constitutional functions. Therefore the following must be taken into account:

- There must be a constant monitoring of municipalities by the MEC for local government in the province in terms of Section 105(1) of the *Municipal Systems Act* and 155(6) of the Constitution. This monitoring should include ensuring that municipalities manage their own affairs appropriately; monitoring the development of local government capacity in the province; and assessing the support needed by municipalities to strengthen their capacity, exercise their powers and perform their functions.
- A consolidated performance report must be completed each financial year that reflects each municipality's performance and notes measures to be taken to improve such

performance. Performance must be taken into account and consolidated with the intention of identifying the municipality's capacity gaps that require support.

- Once the Section 46 report is completed, it will inform Section 47 of the *Municipal Systems Act*.
- The above reports will then inform Section 48 of the *Municipal Systems Act* reports by the minister when compiling the annual report, which consolidates the MECs' annual reports to Parliament reflecting general key performance indicators. This report must be published in the *Government Gazette*.
- Once the performance reports of all the municipalities have been published in the *Gazette*, the capacity gaps can be identified and the relevant state organs, private sector representatives, state entities and government departments can mobilise the resources within their means to help the municipalities.
- This will be done through the identification of relevant personnel with the necessary skills for intervention, such as engineers. This will come before the invocation of Section 139 interventions and will minimise such interventions.
- Alternatively, when the Provincial Executive Council of any province invokes a Section 139 intervention, the information about the poorly performing municipalities will already be available.
- The above processes will be in line with what the national government has initiated, namely the District Development Model (DDM). The DDM deals with integrated governance in all spheres of government to coordinate and integrate plans and budgets, as well as to mobilise the capacity and resources of government and civil society, including business, labour and the community, in pursuit of inclusive growth and job creation (Parliament Research Unit, 2020:2).
- The performance contracts of the intervention team must contain some kind of incentives, so that if somebody can actually do the work within two to three months that they would ordinarily do in six or twelve months, they are given the motivation to unleash their potential. This will also prevent a situation in which some teams' members become part of the problem, such as looting the municipality by granting irregular tenders.
- There must be a specific budget that needs to be reinforced by the EXCO to deal with specific problems identified in municipalities when invocations of Section 139 are executed because, in most cases, municipalities are financially constrained due to contextual factors. Some municipalities are small and rural, which makes it difficult for them to raise revenue. The current practice of resourcing only the intervention team has proven to be unhelpful.

### **9.5.1 Strategic recommendations to manage and sustain Section 139(1) interventions in relation to the case laws**

- The Provincial Executive Council must at least be specific and identify specific problems in the municipality in its notice of intervention.
- Such notice should identify the areas in which the municipality is failing. Example: In municipality 'X', about 200 households do not have access to water. Therefore, there needs to be an extension of your water reticulation.
- It must describe the extent of the municipality's failure.
- It should also indicate the intention of the Provincial Executive to start a Section 139 process.
- The important part is to create an opportunity for the municipality to make written representations and afford them a reasonable period in which to make such representations.
- Furthermore, a directive by the EXCO in terms of Section 139(1)(a) must precede an intervention.
- It becomes the responsibility of the EXCO to provide evidence that a municipality has failed in its duty to provide basic services to the community.
- It is of the utmost importance that the EXCO relies only on the current state affairs of the municipality to intervene, not the history of the municipality.
- In addition, non-fulfilment of the executive obligation must be clearly identified as an objective fact and be substantiated.
- The intervention should end its course when the municipality, through the intervention, has solved the specified problems. Therefore, the intervention in terms of Section 139(1)(b) ends when the municipality is able to: maintain the essential services or meet the minimum established standard of services; not prejudice the interests of other municipalities; and maintain economic unity.
- Section 139(1)(c) ends when the newly elected council takes control of the executive and legislative functions of the municipality.
- The appointment of the administrator thus ends when the Municipal Council once again takes control of the municipality.
- Upon ending the intervention, all interested parties, such as the municipality, minister of finance, minister of local government, any creditors with pending litigation, the provincial legislature and organised local government have to be informed by the MEC for finance of the termination of the intervention, (November, 2015:30).

## 9.6 Conclusion

In this chapter, the information presented in previous chapters was drawn on to make recommendations to successfully implement strategic Section 139(1) interventions. This was done by analysing the successes and failures of the implementations of Section 139 interventions in three municipalities and operationalising the theory and models conceptualised in this study.

Legal interpretations and data derived from semi-structural interviews were utilised to determine how Section 139 was applied in the three municipalities dealt with in Chapters 6, 7 and 8. The former was done by making references to three landmark judgments in the provinces of Gauteng, Limpopo and Eastern Cape, which were dealt with thoroughly in Chapter 4.

It became extremely clear that the invocations and implementations of Section 139(1) interventions were unsuccessful in all three the case studies. The indications were that in each municipality the approach and implementation of Section 139(1) was contrary to what the Constitution envisaged and what the judges pronounced.

Furthermore, in all three municipalities, interventions occurred when their AGSA audit outcomes were poor. It is a common expectation that municipalities should receive better audit outcomes after the interventions. Unfortunately, in this instance, these municipalities maintained their bad audit outcomes. On this basis, a conclusion can be drawn that the interventions neither succeeded nor yielded any positive outcomes.

It was also demonstrated in the comparative analysis of the three case study municipalities that two of them (NMMDM and Madibeng) received disclaimers audit outcomes for three consecutive financial years. Moreover, none of the three received any clean audit and it is unlikely that this will occur in the near future.

The terms of reference for the intervention team was also analysed in this chapter in relation to the Constitution and were found to have some illegal elements. The role of the Municipal Manager was seen to be swallowed up by the responsibilities of the administrator, which calls into question the legality of the terms of reference of the intervention team as a whole. The word *administrator* was also used incorrectly in the invocation of Section 139(1)(b). The Constitution allows the use of the title 'administrator' only in the case of a Section 139(1)(c) intervention.

Gaps in the *Constitution* with respect to the implementation of a Section 139(1) intervention were also identified, which caused problems for some stakeholders. This difficulty seems to be one of the reasons for proposing the introduction of a new Bill. Hence, current practice was compared with that contained in the proposed Bill on Section 139 and 100, although the focus was on Section 139 for the obvious reason that this is the topic of this study.

The primary research objective was achieved in this chapter, namely to develop guidelines that provincial and local governments could utilise as a strategic framework to conduct successful Section 139(1) interventions in the North West Province and be used a model that can be replicated throughout the Republic of South Africa. This was done through the development of strategic intervention framework, taking a cue from the interviews, the Bill and case laws, to manage and sustain 139 interventions. Table 9-2 provides a summary of the recommendations within the context of the model applied in the study.

**Table 9-2: Recommendations within the research model**

<b>GOVERNANCE</b>	<b>ADMINISTRATION</b>	<b>FINANCIAL MANAGEMENT</b>	<b>SERVICE DELIVERY</b>
Focus of intervention should be on the municipal failed obligation	Competent staff with necessary qualifications must be appointed at the municipal level.	AGSA staff member should become part of the intervention team to assist with post audit action plans of the municipality	Provincial government should ring fence specific budget to unblock service delivery challenges during intervention.
Intervention team must work closely with the municipal administration for purposes of continuity in addressing its problems	The intervention team must have necessary qualifications and experience in local government environment	Provincial Treasury should second one to become part of the intervention team to assist with financial management	The said budget should be spent on addressing municipal infrastructure, particularly water, sanitation and sewer spillages.
Close-out report of the intervention team must be presented to council when the intervention ends	Consequence management in terms of Section 32((2)(a) and (b) of the MFMA for non-compliance with municipal compliance	Section 139(5) of the <i>Constitution</i> be effected to deal with municipal financial recovery plan when it was evident that municipal finances had collapsed	
Post-intervention plan must be drawn up based on the close-out report for implementation by council			

GOVERNANCE	ADMINISTRATION	FINANCIAL MANAGEMENT	SERVICE DELIVERY
Section 105(1) of <i>Municipal Systems Act</i> and 154 of the Constitution must be intensified after intervention			

**Source: Author's own construct**

What follows is a summary of three ideal intervention approaches, with reference to the role of provincial and local government, to conduct Section 139(1) interventions.

**Table 9-3: The three ideal intervention approach phases**

PRE-INTERVENTION PHASE	INTERVENTION PHASE	POST-INTERVENTION PHASE
<p>Analyse Section 46, 47 and 48 <i>Municipal Systems Act</i> reports to identify early signs of poor performance. In identifying such signs, the focus should be on the core categories identified in the study, namely governance, administration, financial management and service delivery.</p>	<p>The intervention team should focus on non-fulfilment of executive obligations.</p>	<p>When the intervention ends, the team should brief the council on progress made so far. The council will be expected to take the process forward. After the intervention, the team can still be consulted to seek clarity on certain matters for which it needs additional information.</p>
<p>Identify specific problems facing municipalities within a province.</p>	<p>Draft a programme of action based on the non-fulfilment of the executive obligations for implementation.</p>	<p>Post-intervention, a consolidated plan should be drafted by the intervention team and be implemented by the municipality to sustain the Section 139(1) intervention. This will prevent a repeat.</p>
<p>Based on the problems identified, adjust Section 154(1), 155(6) of the <i>Constitution</i> and Section 105(1) of the <i>Municipal Systems Act</i> to specifically deal with the identified problems.</p> <p>The above-mentioned Sections are in line with Section 45(1), (2) and (3) of the current proposed Bill, which makes a provision for provincial support of municipalities facing possible, impending or actual non-fulfilment of executive obligations.</p>	<p>The Internal Audit Committee and the Municipal Public Accounts Committee should assist the Department of Local Government.</p>	<p>The municipality should intensify its internal and external stakeholder engagements to sustain progress made by intervention team.</p>
<p>If the above actions fail to strengthen the performance of municipalities, the process of invoking a Section 139 intervention can begin.</p> <p>If the preconditions for an intervention in terms of Section 139(4) or (5) of the <i>Constitution</i> are realised, the EXCO can invoke intervention in terms of the MFMA.</p>		<p>Monitoring and support from the provincial department of local government and the provincial Treasury should be ongoing within the context of Section 154 of the <i>Constitution</i>.</p> <p>Section 155(6) of the <i>Constitution</i> and Section 105(1) of the <i>Municipal Systems Act</i> should also be intensified.</p>
<p>Start with Section 139(1)(a) by issuing a directive with a clear description of the problem/s facing the municipality in</p>	<p>During this process, cooperation is expected between the affected municipality and provincial government.</p>	

PRE-INTERVENTION PHASE	INTERVENTION PHASE	POST-INTERVENTION PHASE
terms of fulfilling the executive obligation and action to be taken to fulfil such.		
Opportunity should be given to the municipality to respond to the directive. A programme of action should be drawn up and agreed upon by the Department of Local Government on behalf of EXCO and the municipality to address identified executive obligations.	The affected municipality is expected to respond to the directives and cooperate.	
<p>If the above programme fails despite clear evidence that there was indeed a commitment to help, then Section 139(1)(b) can be invoked and implemented by the EXCO by assuming the relevant obligation.</p> <p>The assumption of a relevant obligation must come with a specific budget to deal with the identified non-fulfilment of the executive obligations.</p> <p>Furthermore, the assumption of the relevant obligation must be specific in terms of the extent to which the executive obligation will be taken over and the period of intervention must be specified, as the Bill prescribes.</p>	<p>The intervention team leader and the entire team must work with internal and external stakeholders.</p> <p>Although the intervention team is expected to report to the MEC and EXCO, it is important that it also report to the municipal troika and council.</p> <p>This will strengthen the working relationship between the intervention team and the municipality to avoid the unnecessary tensions that often hamper progress.</p>	
If the above fails, the municipality can be dissolved in terms of Section 139(1)(c). The EXCO appoints the administrator until the newly-elected Municipal Council has been declared.	The administrator will have to work with municipal personnel and the relevant stakeholders to run the affairs of the municipality and prepare for the election of a new council.	The administrator and his or her team should present and hand over the report to the newly inaugurated council with clear recommendations

Source: Author's own construct

## **CHAPTER 10: SUMMARY AND CONCLUDING PERSPECTIVES**

### **10.1 Introduction**

This study demonstrates that a high number of municipalities in the North West Province have been subject to Section 139 interventions since the dawn of democracy in South Africa in 1994. Section 139 interventions are conducted on the assumption that responsibility is taken for the 'relevant executive obligation' to maintain essential national standards for the rendering of services. This simply means that the executive obligations that the municipality is failing to fulfil must be identified and become areas of focus for provincial government intervention. It is particularly alarming that more than 50% of the total number of municipalities were placed under Section 139 within a period of 12 months. This was unprecedented in the history of the country's democracy.

In some municipalities, the invocation of Section 139 interventions were repeated more than twice. Chapters 6, 7 and 8 show how the invocations of Section 139 intervention were repeated in the NMMDM, Madibeng Local Municipality and CMLM. Clear evidence was provided to explain how these interventions were executed and its related failures.

A model comprising governance, administration, financial management and service delivery was utilised to assess all three cases. Respondents provided input for these case studies. It became clear that in all the above-mentioned cases, inexperienced people were sent as part of the intervention team to help municipalities, which did not yield any positive results. Moreover, the EXCOs' application was inconsistent in that, in some instances, the intervention team members were not sent all at once. In most instances, the administrator arrived first and the rest of the team followed later. This indicates that the EXCO did not apply their minds fully to the invocation and implementation of Section 139 interventions.

The meta-theoretical framework presented in Chapter 2 was utilised to construct the conceptual framework that made it possible to assess the invocation of Section 139 interventions in local government. Social science research dimensions were applied within the context of these interventions in line with the researcher's worldview. In addition, the study discipline that assisted in keeping the study focused was examined. The history of the subject under investigation, as well its paradigm and concepts, was also outlined.

In all three case studies dealt with in this study, it became clear that the North West Provincial Government applied a blanket approach to the execution of Section 139 interventions. Their conduct defeated the purpose for which this provision was made in the South African Constitution.

Moreover, the same approach is likely to continue due to the absence of regulations to regulate the implementation of Section 139 interventions. In some instances, the diagnosed symptoms were treated with the wrong medicine, namely invoking Section 139(1)(b) instead of Section 139(4) and (5) of the Constitution to rescue the finances of municipalities.

The Intergovernmental Monitoring, Support and Intervention Bill provides for municipalities to request intervention when they realise that they have collapsed. Municipalities will not adhere to this provision. This study has demonstrated, through litigation between provincial governments and affected municipalities that this provision will come to nothing. Many municipalities resisted being placed under Section 139 intervention by appealing to the courts, such as Mquma Local Municipality, Mogalakwena Local Municipality and Tshwane Metro, as indicated in Chapter 4.

In addition, this study has shown that it is difficult for the intervention team to work together with the Municipal Council and administration. Some intervention teams insisted on reporting directly to provincial government. This conduct is not helpful. It is impossible to assist a person to do better, when that person does not provide regular reports about his or her performance. It is against this backdrop that many interventions have failed and the same situation kept on repeating itself in many municipalities in the North West Province and in other parts of South Africa.

It is important for the intervention team to work closely with the leadership and administration of the municipalities concerned because when the intervention ends, the leadership and administration are the ones who are left behind to sustain the Section 139 intervention. They would have an advantage because they were part of the process.

However, the constitutional Court's judgments in *Premier of Gauteng and Others v Democratic Alliance and Others*; *All Tshwane Councillors who are Members of the Economic Freedom Fighters and Another v Democratic Alliance and Others*; *African National Congress v Democratic Alliance and Others* [2021] ZACC 34 (*Democratic Alliance and Others*), which was handed down at the time of this study and discussed in Chapter 4 was concerned with the interpretation of Section 139(1) of the Constitution (para 55).

## **10.2 Constitutional and legal framework as set out by the courts**

The Constitutional Court recognised that Section 139 regulated intervention by provincial governments into the affairs of local governments. According to the court, this Section is to be understood against the backdrop of the rule of law, principles of co-operative governance and inter-governmental relations (paras 55 and 64). The court viewed the Section as being corrective

in nature, that is, as seeking 'to address the problems in the municipality and restore service delivery' (para 57).

The court pointed out that the right to intervene was not absolute; meaning that it is subject to Sections 154(1) and 41(1)(h) of the Constitution respectively: 'the national government and provincial government, by legislative and other measures, must support and strengthen the capacity of the municipalities' and 'co-operate with one another in mutual trust and good faith'. Essentially, these provisions describe the principles of co-operative governance and inter-governmental relations.

In addition, the court highlighted the relevance of additional legislation in regulating the interplay between the provincial and local government spheres; in particular, the court cited Sections 105 and 106 of the Systems Act.

### **10.2.1 Analysis by the court**

In its analysis of the applicable legal principles, the Constitutional Court considered the principles of legality, lawfulness and procedures that must be followed (jurisdictional facts) prior to the exercise of public power in connection with Section 139(1) of the Constitution.

In respect of the legality principle and relying on settled law, the court confirmed that '[i]n terms of the principle of legality, the exercise of public power will only be legitimate where lawful. Thus, to exercise more power than what is conferred in terms of the law would be *ultra vires*.'

In view of 'the rider of Section 139(1)' and the wording thereof, the court identified four jurisdictional requirements for which the jurisdictional facts must be established, namely (1) failure to fulfil an executive obligation; (2) taking any appropriate steps; (3) the existence of exceptional circumstances; and that (4) the exceptional circumstances must warrant the dissolution. The court's expansion on these requirements is as follows:

#### **10.2.1.1 Failure to fulfil an executive obligation**

In respect of the first jurisdictional requirement, the court was of the view that Section 139(1) of the Constitution required the provincial executive to 'sufficiently identify the unfulfilled executive obligations' in order to empower the municipality to fulfil them (para 70). Regarding the definition of 'executive obligations', the court correctly identified that these executive obligations were not defined in the Constitution and referred to the *Mnquma* judgment for an enunciation:

*The term must . . . be given a meaning consistent with the ordinary meaning attributed to it in a democratic dispensation and the executive authority of the national and provincial*

*executives in terms of the Constitution. The obligation of local government is to provide government at a local level and to discharge the functions associated therewith. This obligation is exercised within the functional areas referred to above and extends to the obligation to, within those functional areas, implement and administer legislation in relation thereto, provide the services associated therewith, provide an administration to do so, develop policy in relation thereto and initiating by-laws to effectively govern within those functional areas. (Para 64 of the Mquma case and para 71 of the judgment under analysis).*

The court indicated that the word 'executive' was to have use in view of the constitutionally and legislatively imposed obligation on the municipality. Accordingly, the Constitution and the relevant legislation are to serve as reference points in determining what constitute an executive obligation. The court highlighted Section 11(3) of the Systems Act as explaining the manner in which a municipality exercised its executive and legislative authority. The court gave a non-exhaustive list of what were considered to be executive obligations: 'developing and adopting policies; promoting and undertaking development; administering and regulating its and local government's affairs; implementing legislation and by-laws; providing municipal services to local communities; preparing, approving and implementing budgets; and making laws' (para 73). Consequently, the court settled for the following understanding of executive obligations:

*Legal provisions that instruct (most often with the word 'must') the municipality to perform a certain task. They are instructions, located in law, to do something. (e.g., to meet, produce monthly budget statements) or to put something in place (e.g., a system of delegations, a policy). These include instructions that the municipality has given itself in a bylaw (a bylaw constitutes 'legislation'). For example, a municipality's failure to adhere to its own rules of order bylaw can constitute the failure to fulfil an executive obligation . . . Inherent to the obligation to do something or to put something in place is that the law pertaining to that activity or instrument is adhered to. (Para 74)*

Further, the court referred to *Mogalakwena Local Municipality* as highlighting how important it was for the provincial executive to set out the alleged unfulfilled executive obligation in clear terms. This is so in order to allow the municipality to remedy its shortcomings and challenge intervention by the provincial executive (para 75).

#### **10.2.1.2 Any appropriate steps**

When treating the second jurisdictional requirement, the court viewed Section 139(1)(a), (b) and (c) of the Constitution as providing a non-exhaustive list of possible appropriate steps such as the issuing of directives, assumption of responsibilities or dissolution. The court considered

dissolution as ‘the most drastic form of intervention’ because in this instance, the administrator assumes the role of the Municipal Council until the by-elections.

Regarding the meaning of ‘appropriate steps’, the court turned to *Mnquma* and worded appropriate steps as ‘those that are fitting or reasonably capable of resolving the issue of non-fulfilment of the executive obligation, or suitable in the sense that they fit the situation.’ Of course, the court did indicate that an appropriate step is one that accords with Chapter three of the Constitution, that is, it promotes co-operative governance and inter-governmental relations.

On the authority of the court, appropriateness is to be regarded in the light of the nature and extent of the failure and the factual matrix in which the intervention decision was made. Dissolution may be inappropriate where there was another step that could have been taken which was reasonably capable of resolving the issue and would have been less invasive of local government autonomy.

#### **10.2.1.3 Exceptional circumstances**

The court ultimately dealt with the fourth jurisdictional requirement, namely ‘exceptional circumstances’, which the court said were not defined in Section 139(1) of the Constitution and must be interpreted in the context of the Constitution. The Court confirmed what was enunciated in *Mnquma* concerning the existence of exceptional circumstances before dissolving a municipality: ‘the purpose of requiring exceptional circumstances where intervention takes the form of the dissolution of the Municipal Council is to ensure that no inroads are made without good reason into the autonomy of another sphere of government’ (para 92).

Ultimately, exceptional circumstances are determined on the merits of each case in terms of Section 139(1)(c) of the Constitution.

#### **10.2.1.4 Warrant such a step**

On the treatment of the last jurisdictional requirement, namely ‘warrant such a step’, the court said that exceptional circumstances must not only exist, but must justify this most drastic form of intervention, being the dissolution of the Municipal Council. Thus, a proper and thorough evaluation of all the facts is called for.

#### **10.2.2 The court’s findings**

The court found that the decision to dissolve the municipality was not appropriate in view of the facts of this case. It found that none of the nine key observations by the Executive Government

met all the peremptory requirements as envisaged in Section 139(1)(c). Consequently, none of the observations could be relied on to justify the dissolution.

In respect of one of the observations, the water crisis and on the facts of this case, the court found that the crisis received the attention it deserved. What, according to the court, caused the Municipal Council's inability to fulfil its executive obligations were councillors' walkouts from meetings. The court went further to say, even where the facts indicated exceptional circumstances, exceptional alone was not sufficient to warrant dissolution where dissolution was, contextually, not justified. Thus, the provincial government misconstrued its powers and failed to apply itself to the issues faced by the municipality.

Ultimately, the court was of the view that Section 139(1)(c) must be invoked in rare circumstances; more so when there are other options of intervention at the disposal of the provincial executive. To allow the provincial executive to intervene in the most extreme sense where circumstances did not necessitate such a step would go against 'the spirit of co-operation' between the provincial and local government spheres. Further, the core principle of autonomy of local government would be impaired. What the Constitution requires is cooperation between the spheres of government concerned to ensure fulfilment of executive obligations.

With regard to the municipal audit outcomes, for the seven years prior to conducting this study, in the 2012/13 to 2018/2019 financial years, all 22 municipalities in the North West Province failed to obtain clean audits. The NMMDM and Mamusa Local Municipality experienced the worst audit outcomes of them all by receiving disclaimers for consecutive years during the said period.

This is a clear indication that financial management has been a serious problem in all the municipalities in the North West Province. The case studies demonstrated that there were huge amounts of unauthorised, irregular fruitless and wasteful expenditure.

In the NMMDM, the fruitless and wasteful expenditure continued without any effort to bring it to a halt. In the 2013/2014 financial year, the municipality made a wasteful payment of R9, 816,889. The situation continued in the 2014/2015 with a payment of R15, 581,811. The latest was in the 2018/2019 financial year, in which a wasteful amount of R7, 673,712 was spent in vain.

In Madibeng Local Municipality, the AGSA report of 2018/2019 revealed that the municipality had made a wasteful payment of R28, 713,837. In CMLM, the AGSA report for the 2016/2017 financial year revealed that the municipality had incurred fruitless and wasteful expenditure of R37, 420,124. In addition, procurement processes were being flouted, which demonstrated a lack of commitment to good governance. This indicates poor leadership in both the Municipal Councils and the administrations.

In all instances, there is no evidence that those who were responsible for the fruitless and wasteful expenditure were dealt with in accordance with Section 32(1)(d) of the MFMA. This provision requires that 'any political office-bearer or official of a municipality who deliberately or negligently made or authorised fruitless and wasteful expenditure is liable for that expenditure'. Furthermore, Section 32(2) of the MFMA stipulates that the municipality should recoup monies from the individuals responsible: 'A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure.'

This situation demonstrates financial mismanagement, either as a result of a lack of skills or due to deliberate acts of corruption. The ANC has been governing the above-mentioned municipalities since the dawn of democracy. It therefore needs to take full responsibility. Moreover, this situation demonstrates that the party's policy of cadre deployment is not working because the credibility and the ability of deployed cadres of the ANC in local government has been extremely low.

ANC President Cyril Ramaphosa acknowledged on 27 September 2021 in his address during the ANC's manifesto launch in Tshwane on Church Square prior to the local government elections, which were set to take place on 01 November 2021, that the party had not previously deployed competent people in positions of responsibility in government (Ramaphosa, 2021).

He made a commitment to choosing the best people to run municipalities to improve the quality of leadership in local government by doing the following, among other things: 'ensuring that municipal staff that are appointed have the necessary competence, experience and support; strengthening monitoring capacity in provincial and national government to intervene early in municipalities when problems occur; and finalising the Intergovernmental Monitoring, Support and Intervention Bill to deal effectively and promptly with ailing municipalities'.

The above-mentioned is a clear admission on the President's part that the cadre deployment policy has failed. However, these pronouncements are not new; in fact, the ANC has promised in its manifestos prior to every election that it will deploy competent people in government. When the time comes for such deployment, trade-offs start happening and factionalism overrides the process of deploying competent people.

Thus, what the President alluded to was no surprise; the ANC has noted this problem in many of its strategic documents for at least the past 20 years, namely that factionalism and corruption are the primary source of municipal problems but, unfortunately, they have failed to take decisive action to deal with the issue.

The best solution, in this instance, is to strengthen the political leadership at the municipal level. Once the political leadership has been strengthened to exercise effective oversight over municipal administrations, competent people can be appointed to strategic positions.

What is more concerning is the recent political killings in at least three provinces, namely Gauteng, Eastern Cape and KwaZulu-Natal. It was reported on SAFM, a South African Broadcasting Corporation (SABC) radio station, on 15 September 2021 between 15:40 and 15:50, that two officials from Mnquma Local Municipality in the Eastern Cape Province who were presiding over a corruption disciplinary case received two bullets each in an envelope containing the message 'you are next' (Director of Corporate Services and Director Technical Services) (SAFM, 2021). It was also reported in the media that 13 officials were arrested in the ANC-led Mogalakwena Local Municipality on 30 August 2021 for alleged fraud and corruption.

In KwaZulu-Natal, three women were shot and killed in Inanda Township during an ANC general branch meeting. The latest was Tshepo Motaung in Mabopane, Tshwane, who was shot and killed mysteriously on 26 September 2021 after being voted in as the nominee for ward councillor in the 01 November 2021 elections. This indicates the failure of the ANC to manage its own processes. Such events continue after the elections of Municipal Councils, which ultimately become dysfunctional and invocations of Section 139 become prevalent.

Furthermore, ANC councillors are deployed and cannot read or write in some instances, which has been an embarrassment to all South Africans. The current ANC selection of candidates, which involves community participation to make a decision on who should become councillors, has dire consequences, namely that it produces weak councillors because someone's popularity in a community does not translate into competency. A community can select someone who shows community commitment but does not necessarily understand the local government environment.

South Africa needs to standardise the requirements for people who want to stand for election in local government in terms of minimum qualifications. Local government cannot be seen as a dumping site for people with no minimum qualification or integrity.

It is important that the political parties in South Africa move away from cadre deployment. Best international practice must be employed but this does not seem to be working in South Africa under the ANC-led government.

It is against this backdrop that the ANC has called for the organisational renewal of the cadre and leadership policy, and of its core values to safeguard its reputation. This is a direct admission that weak councils are the product of cadre deployment.

South Africa needs men and women across the colour line who have the necessary skills, integrity, ethics and high moral fibre, and who are competent to run and transform local government. This will direct South African local government towards a new and better future (Utopia) (Duvenhage, 2007:383-387).

Government needs to adopt models that are utilised in the private sector to run local government. Issues of local government are extremely complex, with a plethora of regulations to govern it. The municipalities must be seen as local law-making institutions by the residents under its jurisdiction. Therefore, it needs men and women who are competent to read, analyse and interpret documents because the decisions they take as councillors have a direct bearing on service delivery.

It is worth mentioning that local government is an important sphere of government and is positioned to deal with the problems facing South Africans, such as poverty, inequality and unemployment. The success of South Africa is dependent on the capacity of local government. All government programmes, whether provincial or national, have direct bearing on local government. National and provincial government does not have a constituency to serve except through local government.

It is on the basis of the above-mentioned reasoning that the District Development Model (DDM) was introduced and is being advocated by the current administration led by President Cyril Ramaphosa. It might be the solution to the technical problems facing local government. This model has created an opportunity for municipalities to seek help from national and provincial government and, most importantly, for the three spheres of government to centralise their resources for the benefit of local government. The model can also be read with the current Bill that regulates Sections 139 and 100. It has a provision for municipalities to seek help from both the province and national government.

Former President Thabo Mbeki once said that the problem with the ANC was that it reserved its best cadres for national and provincial government, and the least were deployed in local government. It should, in fact, be the other way around because service delivery happens at the local government level.

With regard to service delivery, former MEC Nono Maloyi, who was responsible for the Department of Public Safety and Human Settlements in the North West Province, once said, 'The source of protests across the North West Province is not the community, but rather the government officials who take a long time to get the job done. Therefore, communities are not counter-revolutionary; it is, in fact, the government officials themselves who are counter-revolutionary.'

He believed that if government officials had a hands-on approach to implementing political decisions, protests by communities would be something of the past. This seems to be correct because communities always raise tangible issues in service delivery protests, such as a lack of water provision, potholes, waste removal and human settlement issues that are not being attended to.

It has been demonstrated in this research that Section 139 interventions are rife in all ANC-led provinces due to cadre deployment. The Western Cape Province is the only exception. It must be understood that the Constitution envisaged an ideal implementation of Section 139. Unfortunately, it has been given a bad name due to its practical application.

In future, it is imperative that intervention teams have the necessary qualifications and local government experience. At the same time, there must be systems and mechanisms in place to monitor and assess the performance of intervention teams. It is of no use to assess the intervention team when the intervention has come to an end. This study has revealed that intervention teams lack the necessary knowledge of the local government environment. That is why interventions keep failing.

In fact, for provincial government to be progressive, the MEC for local government needs to strengthen the establishment of a mechanism, processes and procedures to monitor local municipalities. This responsibility is enshrined in Section 105(1)(a) to (c) of the *Municipal Systems Act*. This is in accord with Section 155(6)(a) to (b) of the Constitution, which mandates the provincial government to provide monitoring support and promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs. This seems to be lacking; the effective implementation of the above-mentioned responsibilities would help municipalities a great deal and it would minimise the invocation of Section 139 interventions.

When the above-mentioned legislative requirements are implemented correctly, local government will be in a position to provide services impartially, fairly and equally without discrimination or bias. Section 6 of the *Municipal Systems Act* gives the municipal administration the authority to put measures in place to prevent corruption, to be responsible for the community's needs and to facilitate accountability among the staff.

Section 106 of the *Municipal Systems Act* mandates the MEC the power to initiate an investigation if he or she has reason to believe that the municipality is failing to fulfil its statutory obligations, which are binding on the municipality. If the application of this provision were consistent,

consequence management would take place. In the three case studies, it was found that there were no consequences for the mismanagement of funds.

Section 4(2) of the *Municipal Systems Act* imposes the responsibility on council to ensure that the resources of the municipality are used effectively and in the best interests of the local community. In most instances, the councils under study failed to safeguard the resources of the municipality by playing an oversight function.

South Africans are currently beginning to create parallel states for themselves due to the failure of local governments to provide services. A case in point is in JB Marks Local Municipality in Tlokwe (Potchefstroom), where people with high incomes and businesses no longer rely on the municipality and the South African Police Services. They rather provide their own services and security. This situation has the potential to become widespread in South African municipalities if nothing is done to change the face of local government. It can also have dire consequences for the South African economy.

This study has also revealed that the visions and missions of local municipalities are meaningless. They are formulated for compliance purposes, but the municipal employees are doing the opposite of what is professed in such documents. This has played itself out in all three municipalities under study, namely the NMMDM, Madibeng Local Municipality and CMLM. No core business values, namely accountability, accessibility, and communication, and professionalism, value for money, integrity and discipline are practised.

In the final analysis, the following broad recommendations can be given to all South African municipalities:

First, it is important that the municipal *administration* establishes sound governance controls and systems; ensures a culture of adherence to legislation, regulations and policies; creates a culture of adherence to good corporate governance; creates an environment that promotes sound work ethics; and speeds up the introduction of the document management system.

Second, with regard to *governance* issues, oversight committees, that is, Sections 79 and 80 structures, need to be empowered; the mayor needs to be resolute in managing his or her MAYCOM; and the municipal manager, as the head of the administration, must tighten controls and systems to ensure the municipality becomes responsive.

Third, as far as *financial management* is concerned, municipal credit control measures must be enforced; the municipalities must strive for better audit outcomes by enforcing financial

compliance procedures, policies, and consequence management; and establish sound financial management.

Fourth, in term of *service delivery*, the focus should be on the upgrading of the ageing infrastructure in the municipalities. Reference can be made to Madibeng Local Municipality and NMMDM, which are currently struggling to provide water and sanitation in a sustainable manner.

Fifth, it is recommended that the strategy to manage and sustain Section 139 interventions, as outlined in Section 9.5.1, be applied by both local and provincial governments. The development of the strategy was informed by the case laws discussed in Chapter 4. Most importantly, the implementation of the Bill, as discussed in the last Section of Chapter 3, needs to be finalised and implemented as soon as possible after the completion of all public participation processes.

Finally, to get service delivery right in the local government environment, politics must be removed completely from this sphere. Skilled and qualified people with the necessary experience must be employed in local government sphere. Local government must be run like the private sector. The model of the private sector must be employed. Special dispensation in terms of salary which is competitive to those in the private sector to attract serious engineers must be implemented.

Provincial governments in South Africa must ensure due diligence to help municipalities to achieve their fundamental mandates before the invocation and implementation of Section 139 interventions, taking into consideration Sections 154 and 155 of the Constitution and Sections 105 and 46 to 48 of the *Municipal Systems Act*. Legislation that is intended to support local municipalities is summarised in Table 10-1. If these pieces of legislation are adhered to, invocations of Section 139 interventions will be reduced.

**Table 10-1: Summary of the legislation to support municipalities by provincial and national governments to fulfil their role**

LEGISLATION	SECTION	MANDATE
The Constitution	154(1)	National and provincial governments by legislation and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise power and to perform their functions
	155(6)	Each provincial government must establish municipalities in its province in a manner consistent with legislation to: (a) provide for the monitoring and support to local government in a province. (b) Promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs'
<i>The Municipal Systems Act</i>	105(1)	The MEC for local government in a province to establish mechanisms processes and procedures in terms of Section 155(6) of the Constitution to (a) Monitor municipalities in the province to manage their own affairs; (b) Monitor the development of local government capacity in the province; and (c) Assess the support needed by municipalities to strengthen their capacity.
	46(1)	The municipalities to prepare the annual performance reports for each financial year. Such reports must reflect (a) the performance of the municipality and of each external service provide during that financial year; (b) a comparison of the performances referred to in paragraph (a) with targets set for and performances in the previous financial year; and (c) measure must be taken to improve performance.
	47	The MEC for local government to annually compile and submit a report to the provincial legislatures and the Minister a consolidated report on the performance of municipalities in the province. The report must identify the following: (a) Municipalities that under-performed during the year; (b) Propose remedial action to be taken; and; (c) Be published in the provincial gazette and the copy of the report be submitted to the National Council of Provinces.
	48(1) (2)	The Minister must annually compile and submit to Parliament and the MECs for local government a consolidated report of local government performance in terms of general key performance indicators (2) the report must be published in the gazette.

**Source: Author's own construct**

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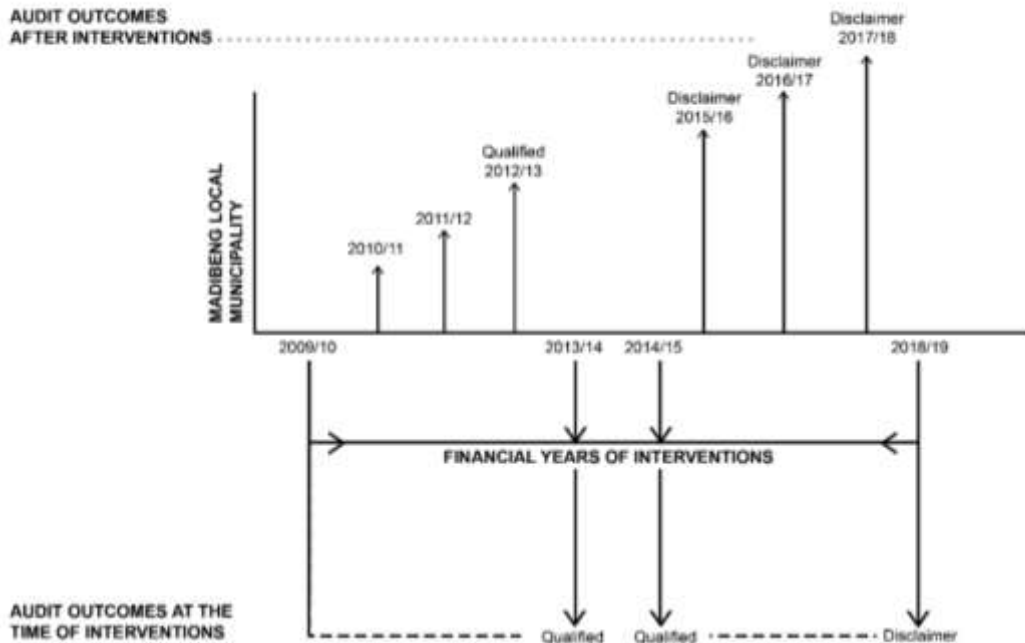
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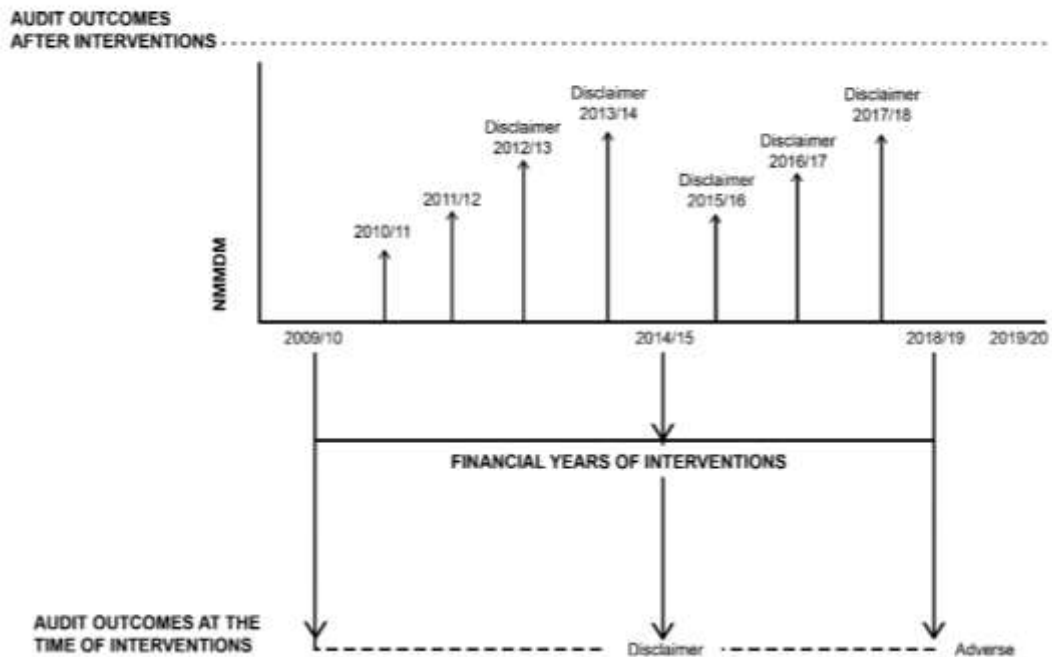
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# ANNEXURE A: AUDIT OUTCOMES DURING AND AFTER THE INTERVENTIONS

## SUMMARY OF MADIBENG SECTION 139 (1)(B) INTERVENTIONS AND AUDIT OUTCOMES

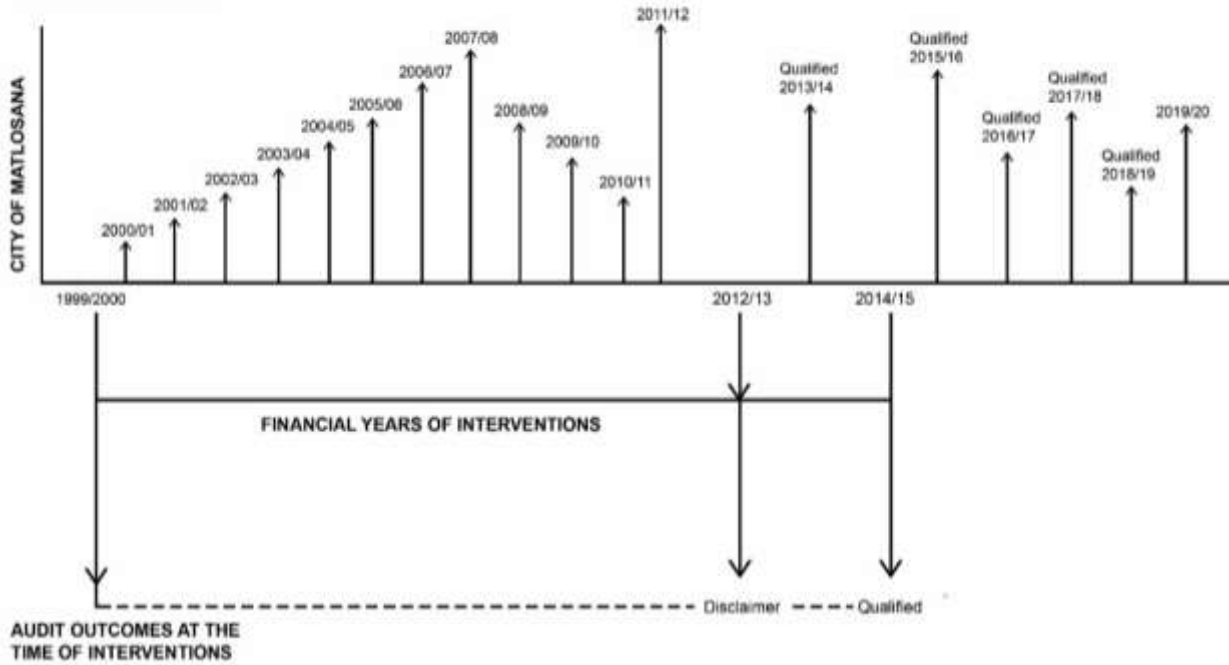


## SUMMARY OF NMMDM INTERVENTIONS AND AUDIT OUTCOMES



## SUMMARY OF CITY OF MATLOSANA SECTION 139(1)(B) INTERVENTIONS AND AUDIT OUTCOMES

AUDIT OUTCOMES  
AFTER INTERVENTIONS



# ANNEXURE B: RESEARCH QUESTIONNAIRE

## QUESTIONNAIRE

- Which form of support did the Executive Committee in the Province (EXCO) give to the municipality when it was evident that the municipality could no longer meet its constitutional objectives?

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- Did the Provincial Executive Council (EXCO) issued any **specific** directives to the municipality in this regard?

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- Did the EXCO gave the municipality any opportunity to respond to the directives issued?

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- After a decision was taken by EXCO to invoke section 139 intervention, did it notified the Provincial Legislature, NCOP and the Minister of CoGTA timeously? If not, what was reason?

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- After the invocation of section 139 intervention, did the EXCO sent the Administrator with her or his team having necessary local government skills and experience to turn around the situation? If not, what was the reason?

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- Did the intervention team provided close-out report to both EXCO, the municipality after the intervention and was it implemented to sustain progress made by the team? If not, what was the reason?

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- Is the municipality creating an enabling environment to facilitate an oversight function for political office bearers? (GOVERNANCE)

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- Does the municipality have the relevant systems in place to enhance compliance and to ensure-administrative certainty? (ADMINISTRATION)

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- Does the municipality have equipped relevant employees with the necessary skills in strategic positions? (ADMINISTRATION)

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- Does the municipality have financial systems in place to ensure a transparent, accountable and sustainable financial environment? (FINANCIAL MANAGEMENT)

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- Does the community have access to clean water? (SERVICE DELIVERY)

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-THE END-

## **ANNEXURE C: TERMS OF REFERENCE OF PROVINCIAL INTERVENTION IN TERMS OF SECTION 139(1)(B) OF THE CONSTITUTION**

**The roles of an administrator and intervention team in the municipality are, among others,  
to:**

- a) Facilitate the improvement of governance within the Municipal Council (Council oversight role, relations between the council and administration);
- b) Manage the overall administration of the municipality;
- c) Stabilise and improve governance and administration within the municipality (council and administration);
- d) Facilitate the recruitment of senior managers, including municipal managers, where applicable;
- e) Improve the financial controls in the municipality regarding expenditure management, procurement processes, revenue enhancement and debt collection, and address the AGSA's reports (MFMA compliance);
- f) Take corrective action on irregular expenditure incurred;
- g) Improve service delivery through the facilitation of new projects, unblocking of old projects, maintenance of infrastructure, cleansing, and so on;
- h) Attend to: labour and legal matters, including investigating and taking corrective action on irregular appointments of staff and restoring labour stability; outstanding disciplinary cases, if any; labour disputes; and the functionality of the local labour forum. Moreover, instil a culture of work and the discipline of workers;
- i) Investigate all awarded contracts to establish the validity and legitimacy thereof, and terminate those that are not legitimate in terms of applicable regulations;
- j) Improve service delivery prioritisation on water and sanitation services; disaster management
- k) Improve the financial controls, expenditure management, procurement processes and AGSA reports in these municipalities;
- l) Analyse and implement past and current investigations, commissions of enquiry and forensic audits; and
- m) Implement the support packages per municipality.

## **2. Mandates of an appointed Section 139(1)(b) administrator**

- a) Assumes all powers conferred in terms of Part 3 of Chapter 10 of the MFMA
- b) Assumes all the powers and mandates of the municipal manager, as contained in Section 55 of the *Municipal Systems Act*, 2000;
- c) Assumes all the executive obligations in terms of the Constitution or legislation, except legislative obligation, as listed in Section 160(2) of the Constitution;
- d) Together with an identified Section 57 manager in the municipality, if any, be the main signatory to the bank account of the municipality for the duration of the intervention;
- e) May delegate certain functions and mandates, as may be deemed fit, to the municipal manager to carry out during the implementation of the intervention;
- f) May deal with any uncooperative and destructive municipal official within the labour relations regulatory frameworks, including suspending such officials from duty and undertaking disciplinary measures, where appropriate;
- g) Chair all the work streams in the municipality, or delegate such to any other person working on the intervention;
- h) Implement the intervention;
- i) The administrator shall report to the Provincial Executive Council through the MEC responsible for cooperative governance, human settlements and traditional affairs; and
- j) The administrator must develop an engagement or consultative matrix to ensure communication flow and consistent consultation with the management team.

## **3. Institutional arrangements between the administrator and municipal officials (administration and the Municipal Council)**

- a) The administrator takes over all the executive obligations or functions of the municipality, as contained in and referred to by the Constitution or any national or provincial legislation, or any by-law of the municipality;
- b) The municipal manager and his or her entire personnel must report to the administrator, and any administrative decision taken by the said officials must be made in consultation with the administrator before implementation;
- c) The Municipal Council and all its functionaries, including such structures as the MAYCOM and the municipal public accounts committee, must obligatorily continue to function as normal, and the decisions and resolutions thereof must all be made in consultation with the administrator before their implementation;
- d) Except for the legislative obligations listed in Section 160(2) of the Constitution, the Municipal Council, when exercising its constitutional and legislative obligations, must

request approval for its decisions from the administrator before the implementation of such resolutions; and

- e) The administrator must develop an engagement or consultative matrix to ensure communication flow and consistent consultation with TROIKA, EXCO and council.

#### **4. Roles and responsibilities of experts or intervention teams**

##### **Technical Expert: Service Delivery and Infrastructure**

- a) Assess the level of water and sanitation provision in all wards and develop a plan to address the gaps;
- b) Provide technical and project management support in the implementation of MIG- and PIG-funded projects;
- c) Guide and support procurement processes for services related to MIG- and PIG-funded projects in an efficient and effective manner within the existing legal provisions and policies of the municipality;
- d) Provide support for the management of service providers in MIG- and PIG-funded projects to ensure delivery;
- e) Oversee and support contract management processes, ensuring the delivery of the specified quality and quantity of products, infrastructure and services within the approved budget and contract periods;
- f) Guide and support infrastructure project closing and commissioning processes;
- g) Take a leading role in the project management cycle of MIG and PIG projects to ensure expenditure of the allocated funds within the existing legal and policy framework;
- h) Streamline systems and procedures for the project management of all infrastructure projects;
- i) Facilitate the quality of services [water quality, sewer overflow, sanitation services, internal roads and storm water drainage];
- j) Assist in the successful implementation of the municipal capital programme;
- k) Manage and provide technical support for SMME development and EPWP implementation;
- l) Develop infrastructure operation and maintenance strategies;
- m) Assess the state of housing delivery and facilitate interventions with relevant parties [e.g., the human settlements department]; and
- n) Provide the municipality with strategic advice on various other issues, particularly relating to service delivery aspects.

## **5. Finance Expert: Financial Management**

- a) Assess the seriousness of the financial problem in the municipality;
- b) Oversee and facilitate the development and implementation of the Financial Recovery Plan, as drafted with the assistance of National Treasury;
- c) Improve internal control environment;
- d) Assist with the reorganisation of the budget of the municipality to address the financial challenges and prepare a plan for the funding of the budget;
- e) Ensure all monthly reconciliations are done and cleared timeously;
- f) Assist municipalities to identify the causes of and potential solutions to any financial problems;
- g) Review and analyse yearly reports, annual financial statements, budgets, audit and management reports, and other financial reports to detect problems;
- h) Recommend appropriate changes to the municipality's operations, structure, processes, policies, bylaws, budget, expenditure and revenue-raising measures;
- i) Assess and monitor the state of the municipality's finances;
- j) Assist in contributing to the financial viability and sustainability of municipalities;
- k) Improve overall compliance with the MFMA;
- l) Improve overall financial management performance;
- m) Facilitate and oversee the debtor review process;
- n) Assist with the compilation of a GRAP compliant asset register;
- o) Assist with capacitating staff in the finance department;
- p) Implement measures to monitor, reduce and eliminate unauthorised, irregular and fruitless expenditure;
- q) Ensure effective implementation of controls for contract and supply chain management;
- r) Support the budget and Treasury office during the audit process to effectively address the AGSA's findings; and
- s) Perform functions such as budgeting; accounting; analysis; financial reporting; cash, debt, credit, supply chain and financial management and review; and other responsibilities as may be assigned by the financial administrator.

## **6. Governance and Administration**

- a) Advise on the role of the Municipal Council vis-à-vis the administrator [the intervention team] during the intervention [decision-making processes, public participation, etc.];

- b) Advise on the role of the municipal manager and the administrator [with the intervention team] during the intervention [delegation of authority and administrative decision-making processes];
- c) Develop a programme of action for the intervention team;
- d) Coordinate the strategic operations of the intervention team;
- e) Guide the mayor and Municipal Council to understand and interpret all local governance legislation for proper application and implementation to ensure effective and efficient governance and service delivery [their role during the intervention];
- f) Monitor and support the functionality of the Municipal Council [status of council resolutions; establishment and functionality of Municipal Council committees; cohesion between councillors; roles of the various office bearers and structures; relationship of the troika];
- g) Monitor and advise the administrator on the extent of politicised administration and recommend action [including close relations between councillors and officials];
- h) Assess the relationship between the Local Municipality and the DM [support by DM] and advise on the improvement of IGR at both political and administrative levels;
- i) Assess the relations between the council and communities [e.g., community concerns regarding alleged corruption, maladministration, poor service delivery];
- j) Effectiveness and capability of [senior, middle and junior] management;
- k) Supervise personnel and monitor municipal programmes;
- l) Reporting systems [legislated and government priorities];
- m) Ensure compliance with policies and regulations [e.g., recruitment policies, employment equity];
- n) Determine status of recruitment [structure, filling of posts, etc.];
- o) Ensure functionality of the LLF; and
- p) Determine the status of disciplinary processes [number of cases, status of suspensions].

**7. The legal expert will be expected to support the administrator and team on provision of legal advice on:**

- a) All legal-related matters of the municipality [litigations, court orders, disciplinary cases, etc.];
- b) The relations between the administration and council [e.g., advice given to council, council agenda, council resolutions taken];
- c) Outcome of the forensic investigations conducted [report and action taken];
- d) Status of council oversight of the municipality [e.g., MPAC, PAC, Internal audit];
- e) Functionality of the LLF;
- f) Status of disciplinary processes [number of cases, status of suspensions etc.];
- g) Processes related to the disposal and sale of municipal land. (Rosho, 2019b)

## ANNEXURE D: PERMISSIONS REQUESTS AND PERMISSIONS GRANTED TO ACCESS MUNICIPAL INFORMATION

Mr. Mokotedi Samuel Bole  
Governance and Political Transformation  
North West University  
Potchefstroom Campus  
2520  
Date: 15 March 2021

The Head of Department  
Dept. of Cooperative Governance and Traditional Affairs, NW  
Garona Building  
Mmabatho  
2735

Dear Sir/Madam

### **PhD RESEARCH: SUSTAINING SECTION 139 INTERVENTION IN LOCAL GOVERNMENT, CASE STUDIES IN THE NORTH WEST PROVINCE**

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The above matter has a bearing;

Mr. Mokotedi Samuel Bole is a PhD candidate at the North West University Potchefstroom Campus. He is pursuing his research study on the application of section 139 of the constitution by the North West Provincial Government. Particularly on the following three municipalities: Ngaka Modiri Molema District Municipality, Madibeng and Matlosana local municipalities.

The purpose of this research is to develop guidelines which can be used as a strategic framework by Provincial and Local Government. The strategic framework is intended to help Provincial Government and affected municipalities to sustain section 139 post intervention. Meaning, the implementation of strategic framework will help the municipalities not to regress to the extent that intervention repeats itself.

We therefore request your permission to have access to any relevant documentation or reports which might assist the study to reach its objectives. We guarantee confidentiality and anonymity of any official/s who might help in this exercise. The



information is only required for our record purposes in order to ease the process of data analysis to reach study objectives.

Kind regards



Mr. MS Bole  
PhD Researcher  
Student no: 12412589  
Ethics Number: NWU- 00769-18-A7  
Email: [bensbole@gmail.com](mailto:bensbole@gmail.com); Cell: 0823869508



Prof. A Duvenhage  
Promoter

Permitted /not-permitted

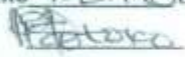
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Comments:

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Initials and Surname P.E. Motoko  
Signature:   
Position : HOD  
Date : 14/04/2021  
Contacts: 08 388 2510



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15 March 2021

Mr Mokotedi Samuel Bole  
Governance and Political  
Transformation  
North West University  
Potchefstroom Campus  
2520

Madibeng Local Municipality  
PO Box 106  
Brits  
0250

Dear Sir/Madam

**PHD RESEARCH QUESTIONNAIRES: APPLICATION OF SECTION 139(1) (B) IN MADIBENG LOCAL MUNICIPALITY BY THE NORTH WEST PROVINCIAL GOVERNMENT**

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The above matter has a bearing:

Mr. Mokotedi Samuel Bole is a PhD candidate at the North West University Potchefstroom Campus. He is pursuing his research study on how section 139(1) (b) was applied in Madibeng local municipality by the North West Provincial Government.

The purpose of this research is to develop guidelines which can be used as a strategic framework by Provincial and Local Government to sustain section 139 intervention in the North West Province. The said framework can be used as a model to be replicated throughout the Republic of South Africa.

We therefore request your permission to ask assistance to complete questionnaires through semi structural interviews of the Executive Mayor, Speaker, Municipal Manager, current or Former Administrator, Chairpersons of Risk and Audit committees to share experiences. This structural interviews will be conducted by our PhD candidate and will take approximately 30-40 minutes. ***See the attached questionnaires.***

We guarantee confidentiality and anonymity of your participation. Your specific positions are only required for our record purposes in order to ease the process of data analysis. Your input and commitment in this process will immensely improve the application of section 139 intervention and avoid the repeat of intervention from time to time.

Kind regards



**Mr. MS Bole**  
PhD Researcher  
Student no: 12412589  
Ethics Number: NWU- 00769-18-A7  
Email: [bensbole@gmail.com](mailto:bensbole@gmail.com); Cell: 0823869508



**Prof. A Duvenhage**  
Promoter

Permitted  ~~not permitted~~

Please circle the correct choice

Comments:

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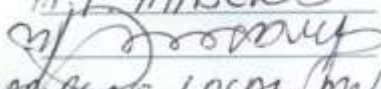
Initials and Surname:

Signature:

Position:

Date:

Contacts:

M. P. MASEKO  
  
MADIBENG LOCAL MUNICIPALITY ADMINISTRATOR  
14 JUNE 2021  
082 618 2090

*TSR Nkhumise/dn (89)*

22 April 2021

Mr M.S Bole  
Governance and Political Transformation  
North West University  
Potchefstroom Campus  
2520

Dear Sir

**RE: PERMISSION TO CONDUCT RESEARCH- NWU**

Your request as letterl on 15 March 2021 with regard to the above mentioned matter bears reference.

Permission is hereby granted to interview officials within the jurisdiction of City of Matlosana Local Municipality with the sole purpose of collection of data for your academic research.

You are reminded to adhere to confidentiality and anonymity at all times.

The municipality wishes you all the best and success in your studies and hope you will share your knowledge for the betterment of our community.

Trust you will find the above to be in order.

Yours faithfully,



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**MR TSR NKHUMISE  
MUNICIPAL MANAGER**

Mr. Mokotedi Samuel Bole  
Governance and Political Transformation  
North West University  
Potchefstroom Campus  
2520  
Date: 15 March 2021

The Municipal Manager  
Ngaka Modiri Molema District Municipality  
Private Bag X 2167  
Mahikeng  
2745

Dear Sir/Madam

**PHD RESEARCH QUESTIONNAIRES: APPLICATION OF SECTION 139(1) (C) IN  
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY BY THE NORTH WEST  
PROVINCIAL GOVERNMENT**

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The above matter has a bearing;

Mr. Mokotedi Samuel Bole is a PhD candidate at the North West University Potchefstroom Campus. He is pursuing his research study on how section 139(1) (c) was applied in Ngaka Modiri Molema District Municipality by the North West Provincial Government.

The purpose of this research is to develop guidelines which can be used as a strategic framework by Provincial and Local Government to sustain section 139 intervention in the North West Province. The said framework can be used as a model to be replicated throughout the Republic of South Africa.

We therefore request your permission to ask assistance to complete questionnaires through semi structural interviews of the Executive Mayor, Speaker, Municipal Manager, current or Former Administrator, Chairpersons of Risk and Audit committees to share experiences. This structural interviews will be conducted by our PhD candidate and will take approximately 30-40 minutes. **See the attached questionnaires.**

We guarantee confidentiality and anonymity of your participation. Your specific positions are only required for our record purposes in order to ease the process of data analysis. Your input and commitment in this process will immensely improve the application of section 139 intervention and avoid the repeat of intervention from time to time.

Kind regards



**Mr. MS Bole**  
**PhD Researcher**  
**Student no: 12412589**  
**Ethics Number: NWU- 00769-18-A7**  
**Email: [bensbole@gmail.com](mailto:bensbole@gmail.com): Cell: 0823869508**



**Prof. A Duvenhage**  
**Promoter**

**Permitted /not permitted**

**Please circle the correct choice**

**Comments:**

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**Initials and Surname** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Position :** \_\_\_\_\_

**Date :** \_\_\_\_\_

**Contacts:** \_\_\_\_\_