



## An Exploration of the Relationship between Section 139 Administration and the Adverse Audit Opinions in South African Municipalities: The Case of uMzinyathi, Madibeng and Naledi Municipalities

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<http://dx.doi.org/10.47814/ijssrr.v7i12.2440>

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### **Abstract**

Collapse of governance as a process and of governance structures that take decisions and play an oversight role in the implementation of those decisions in municipalities has been identified as one of the reasons why many municipalities are dysfunctional. It should also be noted that there is also a contribution of maladministration and mismanagement especially financial mismanagement to the dysfunctionality of municipalities that have been put under section 139 of the Constitution. There is generally a feeling and perception that section 139 of the Constitution, popularly known as intervention or administration would not be necessary if government departments were effectively providing the support as provided for in section 154 of the Constitution. Linked to this debate is also a question whether section 139 itself is effective especially because there are municipalities that have been under administration for more than 8 years and there is no improvement hence, they never get out of administration. Since most of the dysfunctional municipalities under section 139 intervention or administration have financial management challenges, there is a need to explore if there is any relationship between section 139 intervention or administration with the bad audit outcomes. It is for this reason that this study explored the relationship between Section 139 administration and the adverse audit opinions in South African municipalities with specific focus on uMzinyathi, Madibeng and Naledi municipalities.

**Keywords:** *Intervention; Administration; Financial Crisis; Dysfunctional Municipalities; Mismanagement; Maladministration; Effectiveness; Accountability; Adverse Audit Opinion; Collapse; Perceptions*

## ***Introduction***

A large number of South African municipalities are dysfunctional, and this can be attributable to a number of reasons, however in most instances the collapse of governance is the main reason. When governance has collapsed, all or most of the structures (committees) follow suite, and the area that is mostly affected is financial management which may result into negative audit outcomes. Coincidentally municipalities that experience failures in governance have proliferation of corruption, malfeasance, and maladministration. The question though is whether the collapse of governance structures may be deliberately orchestrated to have corruption thriving in those municipalities.

Many provincial governments in South Africa have invoked section 139 of the Constitution to place dysfunctional municipalities under administration. There are two (2) main reasons why provincial governments intervene in dysfunctional municipalities. Firstly, the intention is to prevent the total collapse of the municipality and secondly to activate and mobilize resources to support the municipality to recover up to a state where it can fulfil its constitutional obligation. There is a growing concern from the public that some of these interventions have political motives, and these perceptions sometimes are validated by situations where a municipality which has a clean audit (there is one municipality in KwaZulu-Natal) is put under administration. Maybe it is time that the relationship between the section 139 administration and audit outcomes should be explored.

Whilst there are widespread interventions in municipalities (Greffrath and Van der Waldt, 2016), there is also a growing concern about their effectiveness (Chamberlain and Masiangoako, 2021). There are municipalities that have been under administration for more than 8 years which begs the question about their effectiveness. Infact Ledger and Rampedi (2019) did a study on the effectiveness of interventions and discovered that they are actually ineffective the reason being the fact that the underlying problems of dysfunctionality are either not adequately addressed or not addressed at all. In most cases municipalities under administration have political problems but during the time of administration there is hardly any political intervention or programme to deal with political challenges.

In many instances interventions are invoked against municipalities that are experiencing financial crises, persistent material breaches of financial obligations and commitments (Ledge and Rampedi, 2019). This has been confirmed by the Auditor-General of South Africa that there is a growing perspective that interventions are ineffective in strengthening municipal financial accountability as a perennial cause of dysfunctionality in municipalities under administration.

This article explored the relationship between the section 139 administration and the adverse audit opinions in South African municipalities with special reference to uMzinyathi District Municipality, Madibeng, and Naledi Local Municipalities. The reason why these municipalities have been chosen is because they have been under administration for a long time, at the same time they have been getting adverse audit opinions from the Auditor-General. The study is a comparative analysis of section 139 administration and adverse audit outcomes with an aim of establishing a relationship between the two actions.

## ***Aim and Objectives of the Study***

The aim of the study was to explore a relationship between the section 139 administration and the adverse audit opinions using a case study of uMzinyathi, Madibeng and Naledi municipalities.

The objectives of the study were to:

- Review legislative provisions for support, capacity building and interventions in municipalities.
- Review the legislative mandate of the Auditor-General of South Africa.
- Analyse and compare municipalities that are under section 139 and have also obtained adverse audit opinions from the Auditor-General.

## ***Literature Review***

### **Legislative Provision for the Support by National and Provincial Governments to Municipalities (Section 154 of the Constitution)**

Section 154 of the Constitution of the Republic of South Africa states 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. This section is very important because it marks the point at which support by government to municipalities begins. There is a very strong perception that if section 154 were effective and government was doing its work diligently in supporting municipalities, there would be no need for section 139 administration. Whilst municipalities are also blamed for dysfunctionality, government should equally shoulder the same blame and check if their section 154 support is working effectively.

### **Legislative Provision on Provincial Intervention in Local Government**

Constitution of the Republic of South Africa Act, 1996

Section 139(1) of the Constitution states that when 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 including-

- a) 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;
- b) Assuming responsibility for the relevant obligation in that municipality to the extent necessary to:
  - i) Maintain essential national standards or meet established minimum standards for the rendering of service;
  - ii) Prevent the Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality, or the province as a whole; or
  - iii) Maintain economic unity, or
- c) Dissolving the Municipal Council and appointing an administrator until newly elected Municipal Council has been declared elected if exceptional circumstances warrant such a step.

The spirit of section 139 is that the actions from 1a-c should follow a chronological order systematically. This means that before the relevant authority can intervene, he or she must issue a directive to the municipality or Municipal Council alerting them to the failure in terms of fulfilling its obligation. It is important as well to explain that the constitutional obligation of a municipality is to deliver services to its communities. The question then would be at what level of failure to fulfil an obligation will a municipality be deemed dysfunctional. This is a very important debate since there have been municipalities that have been put under administration but are still able to deliver almost all services though it may not be 100% to the satisfaction of its communities.

Section 139(1)(b), which should ordinarily be chronologically preceded by section 139(1)(a), states that the provincial authority should assume responsibility of the obligations of that municipality. What this means is that the Department of Cooperative Governance and Traditional Affairs, for example, should take over those functions that are failing in municipalities. Although the Constitution does not specify how the department should take over this obligation a simple logic will be that staff of the Department of Provincial Governance and Traditional Affairs should be physically at the municipality and take over those municipal functions that are failing. The question though will be whether the Department of Cooperative Governance and Traditional Affairs does have staff with relevant capacity, skills, and experience to perform those functions. Generally, the majority of municipalities are more capacitated than most if not all government departments of Cooperative Governance and Traditional Affairs in all provinces. Linked to this question is whether the provincial authority has done a thorough and proper diagnosis of the challenges that led to dysfunctionality of municipalities leading to administration. In

many cases the decision to put a municipality under administration is taken in haste based on hearsay or media reports or some opposition parties or sections of communities submitting complaints to the executive authority.

Section 139(1)(c), which should be a last resort involves the dissolution of the Municipal Council and appointing an administrator. Whilst the Department of Cooperative Governance and Traditional Affairs has generally avoided putting municipalities under section 139(1)(c), which is applauded, there seems to be a gap in terms of how the municipality is run during that time. The appointment of an administrator does not seem to be a solution because of a number of reasons. Firstly, to have a single person with both executive and legislative authority is equally a recipe for disaster. Let alone that in most cases most of the people who are appointed as administrators are neither Cooperative Governance and Traditional Affairs staff, nor people with experience of managing municipalities. Maybe this is another reason why administration fails. There are perceptions that some of these administrators do not even develop turn-around strategies or plans to deal with challenges facing municipalities under administration. Some people are even asking questions if these administrators are qualified to take up these responsibilities.

The deployment of an administrator can only be done when a Municipal Council has been dissolved. This therefore begs a question whether the provincial authorities are correct to appoint an administrator when the Municipal Council is not dissolved.

Municipal Finance Management Act, 2003

Provincial administration or intervention by the provincial executive is also elaborated on in the Municipal Finance Management Act (MFMA). Section 136(1) states that if the Member of the Executive Council (MEC) for local government in a province becomes aware that there is a serious financial problem in a municipality, the MEC must promptly-

- a) Consult the Mayor of the municipality to determine the facts;
- b) Assess the seriousness of the situation and the municipality's response to the situation; and
- c) Determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution.

(2) 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.

(3) If the municipality 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 which 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.

(4) If the municipality, as a result of a crisis in its financial affairs, has serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, 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 139.

Whilst the MFMA may not be specific about financial mismanagement which may result into intervention, it is clear that it includes failure to approve, spend and account for the budget; fraud and corruption that siphons the finances of the municipality; failure to meet financial obligations such as paying creditors, paying salaries and also failure to collect revenue due to the municipality. This explanation is also provided just to check if in terms of financial crises in municipalities, they are in such a level for them to be put under administration.

Whilst the Constitution of the Republic of South Africa is the supreme law of the country, the MFMA provides emphasis on dealing with financial challenges which result into administration and points out that the Financial Recovery Plan should be mandatory when the municipality is in a financial crisis. The question though will be whether administrators are able to diagnose the financial crises, develop, implement, and monitor the Financial Recovery Plan given the fact that many of these administrators are not necessarily qualified in finance.

Public Audit Act, 2004

Section 4 of the Public Audit Act of 2004 states (1) The Auditor-General must audit and report on the accounts, financial statements, and financial management of-

- a) All national and provincial state departments and administrations;
- b) All government institutions;
- c) The administration of Parliament and each provincial legislature;
- d) All municipalities;
- e) All municipal entities; and
- f) Any other institution.

The Auditor-General must audit and report on the consolidated financial statements of-

- a) the national government as required by section 8 of the Public Finance Management Act;
- b) all provincial governments as required by section 19 of the Public Finance Management Act;
- c) a parent municipality and all municipal entities under its sole or effective control as required by section 22(2) of the Municipal Finance Management Act.

The above-mentioned section accords the Auditor-General to independently audit municipalities and report on their financial management. The Auditor-General reports to National Parliament. The Report also specifies municipalities that have got disclaimers and adverse audit opinions. What is a disjuncture in terms of section 139 administration is that there is nowhere in the law where the Auditor-General should interact with the Provincial Executive before or after a decision to put the municipality under administration. The MFMA does compel the Executive Authority to develop a Financial Recovery Plan of a municipality that is put under administration because of financial crises. Ideally the Provincial Executive Authority should consult with the Auditor-General before administration especially if there are financial issues and also share the Financial Recovery Plan with the Auditor-General for audit purposes.

### ***Challenges of Audit Outcomes in Municipalities***

The Auditor-General of South Africa has released the General Report on the 2022/2023 audit outcomes and recently presented this Report in Parliament to the Standing Committee on the Auditor-General. She lamented the fact that there has been little change despite commitments made by the role players in the accountability ecosystem for improvement. Out of a total of 257 municipalities in South Africa, only 38(15%) had received clean audits in 2022/2023 financial year, 6 municipalities (2%) received adverse audit outcomes and 15 municipalities (6%) received disclaimers.

Amongst the concerns flagged by the Auditor-General are the inefficient use of external consultants; insufficient investment in infrastructure management and maintenance including for water treatment facilities; widespread financial distress; and poor financial planning. What is of high concern from the Auditor-General is the fact that 88% of the municipalities lacked effective compliance controls and 44% of municipalities had unfunded budgets. The concern here is that lack of compliance controls means decisions that are illegal can be taken by municipalities and that defines the reason why irregular expenditure is rising and is currently in billions of rands. Another implication is that when municipalities do not have funded budgets, firstly they are in breach of the MFMA, but secondly, they will not be able to

honour their financial obligations which then draws them further to negative audit outcomes. The Auditor-General aptly summarized all these as attributable to three root causes which are inadequate skills and capacity; governance failures; and lack of accountability and consequence management.

The Auditor-General has further made recommendations to obviate challenges impeding progress in audit outcomes and these are:

- Professionalizing and capacitating local government: Skills deficiencies can be addressed through the support of the current professionalization programme.
- Capable institutions with intergovernmental support: There should be improved and collaborative efforts by all government through the District Development Model and other capacity building initiatives to promote and enable stronger governance in municipalities.
- A culture of ethics and accountability: It is important that there is a shared vision of responsiveness, consequence management, accountability, and ethical behaviour.

### ***Comparative Analysis of Municipalities Under Administration and Have Adverse Audits***

The three selected municipalities (uMzinyathi, Madibeng and Naledi) are comparatively analysed from the intervention or administration point of view with an aim of establishing if there is correlation with their adverse audit outcomes.

#### **uMzinyathi District Municipality**

uMzinyathi is a district municipality with its headquarters in Dundee in the KwaZulu-Natal Province and is currently ruled by the Inkatha Freedom Party (IFP) and its local municipalities are Endumeni, Msinga, Nquthu and Umvoti. It has been under section 139(1)(b) administration or intervention by provincial authority 3 times since 2016 and is still under administration. The audit outcomes in the past five years are 2022/2023 adverse; 2021/2022 adverse; 2020/2021 qualified; 2019/2020 disclaimer; 2018/2019 disclaimer. The municipality was qualified on the following in terms of financial reporting:

- Property, infrastructure, plant and equipment
- Receivables
- Payables, accruals and borrowings
- Accounting policies, changes in estimates and errors
- Contingent liabilities and commitments
- Expenditure
- Employee costs
- Irregular expenditure
- Cash flow from operating activities

Their performance reporting was poor in the last 2 financial years. Findings on compliance with legislation include the following:

- Procurement and contract management legislation
- Expenditure management
- Effecting consequences
- Asset management
- Revenue management
- Material misstatement or limitations in submitted annual financial statements
- Unauthorised, irregular and/or fruitless and wasteful expenditure.



Findings on supply chain management include:

- Uncompetitive and unfair procurement
- Awards to other state officials
- Inadequate contract management

The unauthorised expenditure was R1,1 billion, fruitless and wasteful expenditure was R35 million, irregular expenditure was R1,7 billion in 2022/2023 and in 2021/2022 unauthorised expenditure was R875,3 million, fruitless and wasteful expenditure was R31,7 million and irregular expenditure was R1,8 billion. The municipality reported R24,5 million in water losses. There were two (2) material irregularities reported in the financial year.

### **Madibeng Local Municipality**

Madibeng Local Municipality has its headquarters in Brits in the North-West Province and is currently ruled by the African National Congress (ANC). It has been under section 139(5)(a)(c) administration or intervention by provincial authority 6 times and is still under administration. The audit outcomes in the past five years are 2022/2023 adverse; 2021/2022 disclaimer; 2020/2021 disclaimer; 2019/2020 disclaimer and 2018/2019 disclaimer. The municipality was qualified on the following in terms of financial reporting:

- Receivables
- Payables, accruals and borrowings
- Accounting policies, changes in estimates and errors
- Contingent liabilities and commitments
- Other disclosures
- Revenue from exchange transactions
- Unauthorised expenditure
- Irregular expenditure
- Cashflow from investing activities
- Cashflow from operating activities

Their performance reporting was also poor. Findings on compliance with legislation included:

- Procurement and contract management legislation
- Expenditure management
- Effecting consequences
- Strategic planning and performance management
- Revenue management
- Material misstatement or limitations in the submitted annual financial statements
- Unauthorised, irregular and/or fruitless and wasteful expenditure
- Utilisation of conditional grants
- HR management

Findings on supply chain management include:

- Uncompetitive and unfair procurement
- Inadequate contract management

The unauthorised expenditure was R4,6 billion; fruitless and wasteful expenditure was R18,6 million and irregular expenditure was R2,5 billion in 2022/2023 and in 2021/2022 the unauthorised expenditure was R2,5 billion; fruitless and wasteful expenditure was R118,4 million and irregular expenditure was R3,6 billion. The municipality was qualified on irregular, unauthorised or fruitless and wasteful expenditure. There were 5 material irregularities in the last financial year.

## Naledi Local Municipality

Naledi Local Municipality has its headquarters in Vryburg in the North-West Province and is currently ruled by the African National Congress (ANC). It has been under section 139(5)(a) and (c) 3 times since 2022 and is still under administration. The audit outcomes for the past 5 years are 2022/2023 adverse; 2021/2022 disclaimer; 2020/2021 disclaimer; 2019/2020 disclaimer; 2018/2019 disclaimer.

The municipality was qualified on the following in terms of reporting:

- Property, infrastructure, plant and equipment
- Cash and cash equivalents
- Receivables
- Other current financial instruments
- Payables, accruals and borrowings
- Taxes and Vat
- Capital and reserves
- Other disclosures
- Statement of comparison of budget and actual amounts
- Revenue from exchange transactions
- Revenue from non-exchange transactions
- Expenditure
- Unauthorised expenditure
- Irregular, fruitless and wasteful expenditure
- Aggregate misstatements
- Cash flow from financing activities
- Cash flow from investing activities
- Cash flow from operating activities

Their performance reporting for the last two financial years was poor. Findings on compliance with legislation included:

- Procurement and contract management legislation
- Expenditure management
- Effecting consequences
- Strategic planning and performance management
- Asset management
- Revenue management
- Material misstatement or limitations in submitted financial statements
- Unauthorised, irregular and/or fruitless and wasteful expenditure
- HR management

Findings on supply chain management included:

- Uncompetitive and unfair procurement
- Inadequate contract management

The unauthorised expenditure was R486,3 million; fruitless and wasteful expenditure was R282,9m; irregular expenditure was R413,3 million for 2022/2023 and for 2021/2022 financial year unauthorised expenditure was R413.6 million, fruitless and wasteful expenditure R241.7 million and irregular expenditure R287,8 million. There were 2 material irregularities in the last financial year.



## ***Research Methodology***

This study was comparative in nature and explored the relationship between section 139 administration and the adverse audit opinions in South African municipalities with special reference to uMzinyathi District Municipality, Madibeng and Naledi Local Municipalities. The study was a comparative analysis of section 139 administration and adverse audit outcomes with an aim of establishing a relationship between the two actions.

## ***Research Findings***

### **Findings on Section 139 Administration**

All three selected municipalities are currently under administration with both uMzinyathi and Naledi municipalities having been under administration three times respectively whereas Madibeng has been under administration 6 times. This is an indication of how difficult it can be for a municipality to get out of administration, and this somehow confirms the ongoing concern that section 139 administrations are not effective.

### **Findings on the Audit Outcomes**

Whilst uMzinyathi Municipality got 2 disclaimers in the last five financial years, both Madibeng and Naledi Municipalities each got 4 disclaimers and 1 adverse audit outcomes in the past five years respectively. Similarities between Madibeng and Naledi Municipalities in terms of audit outcomes are overwhelming, but not surprising because it confirms that municipalities that are under administration have financial management challenges hence, they receive bad audit outcomes. It is also noticeable that all three selected municipalities got adverse audit outcomes in the last financial year (2022/2023). Whilst the adverse audit opinion is regarded as better than the disclaimer and marks some minor improvement in the financial statements and in terms of submitted information, it does not present significant improvement from administration or intervention point of view.

### **Findings on the Areas of Qualification**

The following are the areas that were common in terms of qualification on financial reporting for all three selected municipalities:

- Receivables
- Payables, accruals and borrowings
- Irregular expenditure
- Revenue from exchange transactions
- Cashflow from operating activities

Irregular expenditure is one finding that cuts across municipalities that are under administration which emphasizes the relationship between administration and poor financial management. Whilst uMzinyathi and Madibeng Municipalities each had ten qualification areas, it is a serious concern that Naledi Municipality had twice the number of qualification areas totalling twenty (20). This raises very serious questions about Naledi Municipality which seems to be the worse performing municipality amongst the three.

### **Findings on Performance Information**

All three municipalities presented poor performance information, and this also means that they performed poorly which is expected since they are under administration. What is bad about poor

presentation of information is that it translates to poor service delivery which then suggests that communities suffer because of poor performance by a municipality.

### **Findings on Compliance with the Legislation**

The following are the areas that were the findings on (non)-compliance with the legislation for all three selected municipalities:

- Procurement and contract management
- Expenditure management
- Effecting consequences
- Revenue management
- Material misstatement or limitations in submitted annual financial statements
- Unauthorized, irregular and or fruitless expenditure.

It is not surprising that these areas are common findings in all three selected municipalities. Failures in procurement and contract management are very common in municipalities under administration because they reflect poor internal controls and sometimes controls intentionally compromised to allow proliferation of corruption. This is also linked to unauthorized, irregular and wasteful expenditure where most of the municipalities under administration have no or very little regard of the law, policies and procedures and it is not surprising that Madibeng Municipality surpassed all three selected municipalities with irregular expenditure of R4,6 billion in the last financial year.

### **Recommendations**

The following are the recommendations of the study:

- In addition to intervention in administration during section 139 there should also be a political programme to solve political challenges that engulf municipalities that are put under administration.
- A study should be undertaken to find out why most municipalities under administration are unable to get out of it.
- A proper framework should be developed to guide the whole process of administration including the decision-making process by the Provincial Executive Authority so that there is no abuse.
- There should be consultation between the Provincial Executive Authorities and the Auditor-General prior, during and post section 139 administration for synergies, especially in those municipalities with financial management challenges.

### **Conclusion**

This article explored the relationship between the section 139 administration and the adverse audit opinions in South African municipalities with special reference to uMzinyathi District Municipality, Madibeng and Naledi Local Municipalities. The reason why these municipalities have been chosen is because they have been under administration for a long time, at the same time they have been getting adverse audit opinions from the Auditor-General. The study was a comparative analysis of section 139 administration and adverse audit outcomes with an aim of establishing a relationship between the two actions.

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