International Journal of Social Science Research and Review

ijssrr.com
editor@ijssrr.com
Volume 9, Issue 10
October 2026
pp. 306–312

REMEDIAL FACTORS THAT AFFECT THE PROMOTION OF GOOD GOVERNANCE IN A DYSFUNCTIONAL MUNICIPALITY: A CASE OF A SELECTED LOCAL MUNICIPALITY IN NORTH WEST PROVINCE, SOUTH AFRICA

Sipho K. Mokoena and Thembi P. Simelane

Turfloop Graduate School of Leadership, University of Limpopo, South Africa

Corresponding author E-Mail: sipho.mokoena@ul.ac.za

DOI: https://doi.org/10.47814/m5b96531

Abstract

There are three autonomous spheres of government in South Africa namely National, Provincial and Local. They all derive their status and powers from the Constitution and other pieces of legislation that have been put in place to ensure that they are developmental, interdependent and foster good governance. Local government is the closest to the communities and as such municipalities are constitutionally mandated to render and deliver sustainable basic services. If any municipality is failing in discharging its constitutional responsibility and functions, the law allows provincial government to intervene. Interventions could be in various forms such as support, monitoring, deployment of administrator or in extreme instances, a dissolution of the municipal council. Interventions should be introduced without prejudice or any bias. They must be justifiable and legal. Recent trends points to the fact that national and provincial intervention in the local sphere of government in South have become common. These trends can be seen, within the context of dysfunction. Theoretical body of knowledge related to the phenomenon of municipal dysfunction suggests that issues of poor service delivery and bad governance in municipalities are indicative of abnormal functioning at municipal level. This study explores the process, approach and impact of provincial government when placing a municipality under intervention. Furthermore, it interrogates if there are adequate systems and measures for support and appropriate monitoring systems with early detection, clear service delivery and financial targets and provision of regular reports to municipal council about progress of the intervention. Scholars agree that the local sphere must be promote good governance and accountability and be committed to working with and for citizens. If the opposite is true, the impact of services delivery is negative, governance systems collapses and municipal finances becomes unstable. A qualitative approach was used to conduct this study and a case study was selected as the most direct method to conduct the study and obtain insight. Interviews through purposive sampling were conducted. The study revealed that there is a need to examine provisions of the Constitution and other legislative frameworks in order to establish and outline a process and system for intervention.

Keywords: *Constitutional Responsibility; Good Governance; Basic Service Delivery*

INTRODUCTION

Section 139 of the Constitution of the Republic of South Africa (1996) (hereafter referred as Constitution) stipulates that when a municipality does not or cannot fulfil an executive obligation in terms of the outlined legislation, the provincial executive may intervene by taking appropriate steps to ensure that the bordered obligation is fulfilled. The abovementioned Section is referred to as provincial intervention in the provincial government. The Constitution also provides for five ways in which the provincial executive can request intervention in the municipality. The first method that may be followed by the Member of Executive Council (MEC) of Cooperative Governance and Traditional Affairs (COGTA) at a provincial sphere, is to issue a directive to the municipality concerned with the intent to assume responsibility for that municipality. This directive must indicate whether the MEC intends to investigate the status of the Municipality as per Section 106 which states that

to dissolve or take any appropriate measures and steps to assist the municipality as the prescripts of Section 154, placing the municipality under administration following Section 139.

There are various motives that COGTA uses to place municipalities under administration (Vhumbunu, Hlomuka, & Rudigi, 2020). As postulated by Twalo (2015), these may differ from one municipality to the other but in the main, these include finance, budget and revenue related-issues. Moreover, in responding to the directive issued by the MEC, the MEC must in the main be able to demonstrate its financial strength and sustainability. In some cases, the MEC may impose a financial recovery plan on the municipality to ensure that all matters of concern are handled by the municipality concerned. In this case, the municipality must report to the MEC every three months or according to the provisions of the directive. Literature indicates that when a municipality is placed under Section 139 administration, an administrator-led intervention team consisting of technical, financial, governance and administrative experts should be appointed whose main function should include: improved governance and administration, improved audit outcomes, infrastructure planning and implementation, legislative compliance and ensuring that administration is stable (Vhumbunu, Hlomuka, & Rudigi, 2020).

LITERATURE REVIEW

Historical background of the development of a local government

Globally, local governments have become centres for developmental agendas in the 21st century (Pieterse, 2021). European countries require local governments to go beyond the basics of service delivery. Fakuyama (2014) stipulate that the legacy of colonialism in Africa is unique as compared to other former colonies elsewhere. For example, the colonisers of Portugal and Spain successfully replaced indigenous systems of governance with authoritarian and mercantilist political systems, while in Africa colonial rulers succeeded in undermining traditional authorities (Odeku, 2018). As a result, African continent was left with weak political institutions that lacked capacity after decolonisation.

Scholars such as Twalo, (2015); Makoti, and Odeku, (2018) and Pieterse (2021) concur that development is a multidimensional concept that implies changes in social structures, attitudes of the people and national institutions, as well as accelerating economic growth, reducing inequality and eliminating absolute poverty. In addition, the researchers contends that development is commonly regarded as a process directed to change leading to economic growth, political independence and a broad foundation of social reconstruction. However, Vhumbunu, Hlomuka, and Rudigi (2020) state that the improvement of human conditions is held to be the underlying motivation for expansion, and it is evident that development is about people and for people.

A proper working municipality should begin with identifying human needs and be firm in prioritising its objectives to improve the standard of living for its people. Section 40 (1) of the Constitution outlines that government is constituted as national, provincial and local spheres of administration that are distinctive, interrelated and interdependent. The following are the roles of local government outlined as follows: To provide a democratic and accountable government for local communities; to promote a safe and healthy environment; to promote social and economic development and to encourage the involvement of communities and community organisations in matters of local government.

Conceptualisation of Developmental Local Government and Good Governance

The White Paper (1997:95) on the development of local government and good governance outlines that "developmental local government is that sphere of government that is committed to working with citizens, interest groups and communities to create sustainable human settlements that provide for a decent qualify of life and meet the social and economic needs of communities holistically". The Constitution of the Republic of South Africa (1996) in section 153 posits that in a developmental local sphere, the following should be considered by a municipality:

i) Should participate in both provincial and national development programmes. Therefore, it is clear that developmental local government entails democratising development through public involvement and consultation and delivering communities basic needs effectively and efficiently.

ii) Should manage and structure its administration and planning and budgeting processes to give priority to the needs of the community and promote the economic and social development of the community.

The researchers is of the view that governance can be understood as the ability of government to enforce rules and delivering services regardless of whether is democratic or not. Fakuyama (2013) describes governance as the exercise of political and administrative authority at all levels to achieve a country's affairs, processes and institutions through which its citizens and groups articulate their interests, exercise their legal rights, fulfil their

obligations and mediate their differences. Continentally, the concept of good governance has received increasing attention by the end of the 1980s in Africa, notwithstanding so, at government, private and civil society and sectors the concept of good governance refers to the exercise of authority through the political and institutional process that is transparent and accountable and encourage public administration (Makoti, & Odeku, 2018).

RESEARCH DESIGN

The article selected the qualitative methodology to guide the study. Creswell and Poth (2016) state that qualitative research methods are designed to help researchers gain a better understanding through direct experience, honest reports, and quotes from real conversations. This approach was chosen and considered suitable for this study because the researchers wanted to investigate the process of placing a municipality under administration using section 139 and other pieces of legislation. A case study approach was used to allow the authors the opportunity to collect data in the selected local municipality in the North-West Province. Yin (2014) explains that when a researchers chooses to use a case study, he or she can analyse the data in each situation and different situations. The population were the senior officials and middle management who gave consent to participate in the study from the selected local municipality. This made the sampling to be purposive in nature with 11 participants. The exclusion criteria excluded anyone who doesn't hold an executive or position of director or managerial position at the local municipality under study. The authors obtained primary data from interviews, and secondary data were obtained through literature studies which provided further information about this research. A semi-structured interview guide for face-to-face interactions with participants to collect data was used. The authors used the Thematic Content Analysis (TCA) to analyse data as outlined by Braun & Clark (2014). Raw data from interview transcripts, field notes and recordings were coded and themes developed so that meanings could be interpreted and conclusions drawn. Thematic Content Analysis (TCA) was chosen as a method to identify, analyse, and report patterns (themes) in the data (Braun & Clark, 2014).

FINDINGS

The demographic details of the sample of 11 participants who took part in the study ranged from 37 to 62 years old. From the eleven participants, seven were males and four were females. The majority of the participants' religious affiliation is Christianity. All the eleven participants were employed at the selected local municipality holding different positions as stipulated in the above introduction.

In terms of the Constitution, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of the obligation. The key word is may not. This presupposes that before any intervention; the provincial council must satisfy itself that intervening is the only remedy to rescue an ailing municipality. To this end, support and assistance to rescue the municipality must have failed or may be the municipality has been unresponsive to all support being given in order to rescue it from failing or outright collapse. Again, the Inter-governmental Relations Framework Act (IRFA) No. 13 of 2005 establishes structures and mechanisms such as mediation and consultative for resolving disputes, discussing matters of common interests but unfortunately Section 9 (1) and 22 (1) of the Framework Act also use the word 'may' when dealing with the formations of these forums. I think the procedure laid down in the IRFA must be compulsory.

This may lead to a situation where the spheres of government constantly consult one another, discuss and arrive as decisive decisions than can assist in unlocking bottlenecks and accelerate service delivery. The law must make resolutions taken at these structures as binding. The value and status of the "Directive" might need to be re-examined in terms of emphasis. The PEC in this instance, failed to invoke a lighter version of intervention in the form of Directive at an early stage in terms of Section 139(1)(a) of the Constitution for the purpose of directing Madibeng Local Municipality on what they should do and what they should not do before the situation could become worse in the municipalities.

The vagueness of Section 139(1) of the Constitution to failures to fulfil an "executive obligation" led to difficulties when the province interprets (a) what constitutes an "executive obligation"; and (b) and what powers and functions may not be usurped by the intervention processes. In accordance with Section 139(1) of the Constitution, a provincial executive is empowered to, inter alia, take any suitable measures to ensure accomplishment of the executive obligation of municipal government. The intervention by a provincial government may include several steps such as issuing of instructions to the affected municipality, performing the executive functions or dissolve a municipal council (section 139(1) –(a)-(b)-(c) of the Constitution).

While there is no doubt as to the question whether interventions constitutionally permitted, consideration of the timing for intervention is important. A decision to intervene should always be taken with due regard to the important tenants of cooperative government (Munzhedzi 2014). The Constitution currently does not prescribe the

time period within which a municipality could be subjected to an intervention, particularly in terms of Section 139(1)(b); this situation made it difficult for the PEC in North West to properly determine the duration of the intervention.

Furthermore, there is no prescribed type of recourse and/or interventions in instances where Municipal Council fails to constitute itself to elect office bearers after Local Government Elections; whether an intervention is uplifted after Local Government Elections. In this instance, because of the limitation in law, the NW PEC invoked separate interventions at Madibeng Local Municipality, some running for a period of six months, to a year or more, and later terminate it.

Then, after several months or a few years later, the same municipality is subjected to another intervention by the PEC for reasons similar to the previous intervention. The reasons for any of the withdrawals were not clear except for the two instances where the interventions were challenged by the Municipal Council. It would be ideal if COGTA can develop standard and uniform Terms of Reference for interventions which have specific targets that are time bound. This will assist in monitoring if the municipality meet the targets or whether further additional support by the province and national is necessary. In this way an extension or termination of intervention will justifiably be based on presented reports indicating progress or lack thereof.

Interpretation of Section 139 of the Constitution differs from one province to another, and such interpretation is subject to what the province think is right. However, the review of interventions in some provinces like KwaZulu Natal has led to a number of key success factors or principles that are considered to underpin the strategy on how to approach interventions. Amongst others these include, interventions being carried out with an 'intergovernmental approach' with the involvement of the district municipality (where applicable) as a key strategy; timely submission by the PEC of complete documentation to the my Department, NCOP and Provincial Legislature; the effective and immediate oversight over the actions of the PEC which is exercised by the Provincial Legislature; interventions are carried out with a strong focus on participation with the local community in the implementation of an intervention and the PEC ensure that there is a sound exit strategy after the intervention in terms of section 139(1) of the Constitution, with a role for the district municipality in the 'after care' (where applicable).

In addition, the interventions that have been invoked varies in their level of success from province to province. The interventions are affected by how they are invoked and structured. KwaZulu Natal province is one of the leading provinces in the invocation and "correct" application of procedures and processes on the interventions in terms of Section 139 of the Constitution. It is recommended that all provinces must put systems in place and establish Intervention Steering Committee (ISC) like KZN to monitor, coordinate and implement the interventions.

The Committee must meet monthly with all relevant stakeholders to review progress on implementation of interventions. As a result of this system, there are positive indicators of success in KZN because, most of the municipalities were able to address the majority of their challenges which had necessitated the invocations of Section 139 of the Constitution.

Within the constitutional context, Section 73 (1)-(C) of the Municipal Structures Act (MSA) imposes an obligation on municipalities to effectuate 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. On the one hand, the Constitution in terms of Section 156(1) obliges provinces to support municipalities to improve on the services being delivered to the people while also empowering provincial government to take over the executive function of a municipality that is failing to perform such executive obligations. Section 31(a) of the Municipal Structures Act gives authority through the relevant provincial MEC, through to monitor a municipality and to assist it with planning and the adoption of an integrated development plan that will enable a struggling or non-performing municipality to overcome the challenges and problems which constitute obstacles to the delivery of sustainable services to the people (Section 31(a) of the MSA).

With the new dispensation ushered in by the 1996 Constitution, local government in South Africa, for the first time, became a fully- fledged independent and autonomous sphere of government. With its current 205 local, 44 districts and 8 metropolitan municipalities became one of the three distinctive interrelated spheres of government within South Africa's system of cooperative governance and intergovernmental relations. Local government is thus an equal partner of the national and provincial government. However, since March 1998, fault lines in this integrated system of governance have appeared. COGTA has assumed full responsibility for administration in various municipalities. In the past 22 years, about 140 instances of provincial intervention in local government, as prescribed by Section139 of the Constitution, became a reality.

Numerous questions have arisen about Section 139 interventions by provincial executives. Scholars began to ponder what is the nature and scope of such interventions, under what circumstances can a province exercise this power, in other words, what substantive requirements merit an intervention, are there any procedural requirements for interventions and can interventions be utilised as a "smoke-screen", a mere instrument in the service of local and regional political power dynamics?

RECOMMENDATIONS

Undoubtedly, municipalities enjoy Section 156(1) of the Constitution obliges the provinces to support municipalities to improve on the services being delivered to the people while on the other hand in terms of Section 139(1) (a)-(c) of the Constitution empowers the provincial government to take over the executive functions of a municipality that is failing to perform such executive obligations that are imposed in terms of the Constitution and other legislation. By their very own nature, interventions are disruptive to municipal functionality and must be done as a last resort after all attempts have been made to support and assist the municipality to fulfil its mandate and executive obligations.

Firstly, to minimise the negative impact that these interventions may have on affected municipalities, legislation may help to determine how intervention may be undertaken. For example, Section 64N (2) -(3) and (4) of the South African Police Acts (PSA) provides that if the MEC for Safety and Security identifies a failure in the Municipal Police Service, he or she can request the municipality to comply within a specific time frame. If the municipality does not comply, the MEC can appoint a provincial administrator of the Municipal Police Service and also take such other steps as necessary. This intervention is only necessary when the MEC identifies a failure. There is no need to intervene if it is just a slight administrative setback in the municipality. In this event, the MEC can provide support instead of intervention. Constitutionally, intervention in a municipality is only allowed in circumstances where such a municipality is failing to perform the executive obligation imposed upon it by the Constitution or in terms of legislation (Steyler 2005).

Secondly, for interventions to be successful and impactful, it will be important that COGTA develops processes and guidelines that must be strictly complied with in order to ascertain whether there is a need to intervene or not. And what is deemed appropriate to enable intervention must be considered on the specific conditions or circumstances of each particular case. More importantly, all actions must be based on the legislation and on the principles of legality. Therefore, a municipality has to be given the right to be heard and be availed an opportunity to correct or improve before intervention.

Based on the findings of the study, the following ideas can serve as possible topics for future research:

- Interventions in Madibeng Local Municipality, make it very clear that the involvement of communities, local business and civil society may be crucial for the success of the intervention. Most, if not all, interventions are characterised by a complete breakdown in communication between the local citizens and the municipality. An incoming Administrator needs to regain the trust of the stakeholders and the community at large.

The powers and functions of an Administrator imposed by the provincial executive must be expanded in law. Currently, even under intervention, Municipal Council as mandated by the Municipal Structures retains all the powers and functions, even for the approval of recovery plans that must be adopted by Council for intervention.

CONCLUSION

In South Africa, the majority of municipalities have collapsed and cannot provide basic services to their people. Literature shows that Section 139 was first invoked in 1998 and from then to the present, 144 municipalities have been placed under administration on an average of seven municipalities per annum (Twalo, 2015; Makoti, Odeku, 2018 & Vhumbunu et al. 2020). Currently, the majority of the 40 municipalities placed under administration are facing challenges in dealing with financial provisions and these provisions are clearly stated in the provisions of the Public Finance Management Act (PFMA) 1 of 1999 (Ulfsdotter-Eriksson, Larsson, & Adolfsson, 2019).

Moreover, in some municipalities, tensions have escalated to a point whereby municipalities do not pass Integrated Development Plans (IDP) and thus being monitored by Cooperative Governance and Traditional Affairs (COGTA, 2020). There is a mounting body of evidence that suggests a growing, and severe conditions of dysfunctionality in South African municipalities. The annual audit outcomes of local government by the Auditor General highlight the problem of financial mismanagement, maladministration and lack of accountability. For example, the AG reported that out of 257 local government institutions audited during 2018/19 financial year, only 12 municipalities achieved an unqualified audit with no matters of emphasis (clean audit).

This is despite the numerous policy initiatives, turnaround programmes and special project that the department of Cooperative Governance and SALGA have conceived and implemented over the last twenty-two years. In North West alone, the following municipalities, Madibeng, Kgetleng Rivier, Moretele, Moses Kotane, Tswaing, Ramotshere Moiloa, Ratlou and Matlosana Local Municipality are currently being monitored by COGTA as a result of poor performance, not showing signs of improvement, showing risk of not performing and previous rollover applications not approved (COGTA, 2020). The provincial and national government interventions in the local sphere of government in South Africa are on the increase. Literature indicates that these trends can be seen within the broader context of municipal interventions (Makoti, Odeku, 2018; Jacobs, Rivett, & Chemisto, 2019; Pieterse, 2021).

Moreover, scholars such as Maleka, Motsima, Matang, and Lekgothoane (2016) posit pools of theoretical knowledge related to the phenomenon of state dysfunction. These authors generally suggest that the problems of a lack of basic services, maladministration and poor governance are not exclusively at stake, but may be related to hidden political factors that require intervention in the municipality to affect the balance of political power. For instance, the ruling party may secure their survival by preventing any one state from gaining enough military power to dominate all others. According to Mathenjwa (2014), there is sufficient evidence to conclude that interventions into affairs of municipalities are often marred by political party considerations instead of genuine reasons based on a municipality's failure to discharge its executive obligation.

In the instance of Madibeng Local Municipality, effectiveness of interventions is highly questionable. There was no evidence to support if these interventions were curative; or reactive; or were they simply temporary take-overs for purposes not provided for in the Constitution in terms of intervention criteria, thus used for political reasons. On two occasions the municipality challenged the application of provisions of Section 139(1). The Minister on both these occasions, vetoed the right of provincial government. Based on the above, it could be argued that municipal functionality can be seen as a situation when municipalities possess the necessary capacity to discharge their constitutional mandate and responsibilities, render basic services to the satisfaction of the community and where the community regard the municipal council to be legitimate, trustworthy and responsive to their needs. Municipal Council and administration should have the necessary competence to execute their functions.

It is however evident, that currently many municipalities are far removed from this ideal. State of Local Government Report by COGTA 2020 has developed indicators and performed an overview on the state of municipalities in the country. The assessment looks at five municipal key areas, political, governance, administrative, financial management and service delivery. Municipalities are then mirrored according to these five areas and ranked in either of the following categories, stable, low risk, medium risk and high risk/dysfunctional. These indicators may be helpful in developing clear guidelines for provinces on the process to be followed when placing a municipality on intervention.

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