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The implementation of Section 139(1) of the Constitution

in the

Ngaka Modiri Molema District Municipality

By

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Submitted in fulfilment of the requirements for the degree of Masters in Management (in the field of Public and Development Management) in the Faculty of Commerce, Law and Management University of Witwatersrand, Johannesburg

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Supervisor: Prof. P Kibuuka

Declaration

I, Zoliswa Kampi, hereby declare that the research work reported in this dissertation is my own, except where otherwise indicated and acknowledged. It is submitted to fulfil the requirements for the Masters of Management degree (Public and Development Management) at the Wits School of Governance, University of the Witwatersrand. This thesis has not, either in whole or in part, been submitted for a degree or diploma to any other institution or university for a similar qualification.

Signature

Date submitted

994068

Student No.

Abstract

The Ngaka Modiri Molema District Municipality (NMMDM) is situated in the North West Province, South Africa. It has persistently been placed under provincial administration (s139 (1) of the Constitution) and continuously resisted the interventions including taking legal actions against the North West Provincial Executive. The objectives of the research study were to explore and provide insights into the factors that informed and impacted the planning and implementation of s139(1) interventions in the NMMDM, and to explain how these factors either promoted or undermined the success of these interventions.

From the literature review undertaken, the researcher drew critical themes and concepts that underpin the research study. The leadership and governance theories provided the theoretical perspectives and the principal-agent theory underscored the conceptual framework. In line with the exploratory nature of the research study, the qualitative research method was preferred and the NMMDM was adopted as a single case study to get a deeper understanding of the intricacies involved in the planning and implementation of s139(1) interventions. The researcher obtained the primary data through semi-structured interviews with the municipal leadership and used document analysis to gather secondary data.

The research findings revealed the richness and complexity of the local government discourses. Through analysing the results of these discourses, a number of critical aspects that informed and impacted these interventions in the NMMDM emerged. These aspects range from the nature of to the quality of support provided to the NMMDM prior to the interventions. These include the communication of the directives and notices to assume responsibility, details given on the rationale for the interventions, political dynamics and their influence on reactions to the interventions, capacity of the province to plan and implement the interventions, and perceptions of the impacts of the interventions. Nevertheless, it is not the intention of the research study to generalise the findings but to present them as they manifested in the NMMDM.

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I dedicate this thesis to:

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Table of Contents

DECLARATION ..... **II**
ABSTRACT ..... **III**
ACKNOWLEDGEMENTS ..... **IV**
LIST OF FIGURES ..... **VII**
ACRONYMS ..... **VIII**
CHAPTER ONE **1**
1. INTRODUCTION AND ORIENTATION 1
1.1 Introduction 1
1.2 Background information 2
1.3 Problem statement 6
1.4 Objectives of the study 7
1.5 Research questions 8
1.6 Significance of the study 8
1.7 Delineation and assumptions 8
1.8 Brief overview of the NMMDM 9
1.9 Outline of the chapters 10
CHAPTER TWO **12**
2. LITERATURE REVIEW 12
2.1 Introduction 12
2.2 Literature review 12
2.3 Legislative and regulatory frameworks 13
2.4 The efficacy of s139(1) interventions 23
2.5 Law reforms 30
2.6 Case studies of regional and international experiences 32
2.7 Conclusion 35
CHAPTER THREE **36**
3. THEORETICAL AND CONCEPTUAL FRAMEWORK 36
3.1 Introduction 36
3.2 Theoretical framework 36
3.3 Conceptual framework 41
3.4 Conclusion 52
CHAPTER FOUR **53**
4. RESEARCH METHODOLOGY 53
4.1 Introduction 53
4.2 Philosophical foundations 53

4.3 Qualitative research design 54
4.4 Case study approach 55
4.5 Data collection techniques 56
4.6 Data analysis methods 62
4.7 Measures to ensure reliability and validity of the study 62
4.8 Limitations and delineation of the research study 63
4.9 Ethical considerations 63
4.10 Assumptions 65
4.11 Conclusion 65
CHAPTER FIVE 66
5. DATA PRESENTATION 66
5.1 Introduction 66
5.2 Presentation of the results 66
5.3 Conclusion 79
CHAPTER SIX 80
6. ANALYSIS AND INTERPRETATION OF RESEARCH FINDINGS 80
6.1 Introduction 80
6.2 Analysis and interpretation of findings 80
6.3 Conclusion 115
CHAPTER SEVEN 116
7. CONCLUDING REMARKS & RECOMMENDATIONS 116
7.1 Introduction 116
7.2 Summary of the impact of Section s139 interventions on NMMDM 116
7.3 Conclusion 119
7.4 Recommendations 119
7.5 Proposals regarding further study 120
7.6 Limitations of the Study 121
7.7 Summary 122
REFERENCES 123
ANNEXURE "A" 131
ANNEXURE "B" 132
ANNEXURE "C" 134

List of Figures

Figure Description **Page**

Figure 1: Main themes and concepts…….67

Figure 2: Pre-intervention support ……...67

Figure 3: Communication of the interventions …….68

Figure 4: Triggers of the interventions …….70

Figure 5: Reception of the interventions ……..71

Figure 6: Assumption of duties ……73

Figure 7(a): Positive impacts ……...75

Figure 7(b): Negative impacts …….76

Acronyms

B2B	Back to Basics Strategy
CFO	Chief Financial Officer
CoGTA	Department of Cooperative Governance & Traditional Affairs
DBSA	Development Bank of Southern Africa
DCoG	Department of Cooperative Governance
DLG&HS	Department of Local Government & Human Settlements
DLG&TA	Department of Local Government & Traditional Affairs
DoRA	Division of Revenue Act of 2013
DWS	Department of Water & Sanitation
IDP	Integrated Development Plan
IGR	Intergovernmental Relations Act of 2005
LGTA	Local Government Transition Act No.209 of 1993
LGTAS	Local Government Turnaround Strategies
NDP	National Development Plan
MEC	Member of Executive Council
MFMA	Municipal Finance Management Act of 2003
MIG	Municipal Infrastructure Grant
MISA	Municipal Infrastructure Support Agent
MM	Municipal Manager
MSA	Municipal Systems Act of 2000
MSCOA	Municipal Regulations on Standard Chart of Accounts
MSI	Intergovernmental Monitoring, Support & Intervention Bill
NCOP	National Council of Provinces
NMMDM	Ngaka Modiri Molema District Municipality
NWPEC	North West Provincial Executive Council
NWPG	North West provincial government
PMU	Project Management Unit
SALGA	South African Local Government Association
SLAs	Service Level Agreements
S139	Section 139 provincial intervention
TORs	Terms of Reference
WSA	Water Services Authority
WSPs	Water Services Providers

Chapter One

==========

1. Introduction and Orientation

1.1 Introduction

Prior to the first democratic government elections in 1994, the South African government system was disjointed and racially segregated. The then apartheid government enacted several laws to institutionalise racial exclusion. Amongst these laws were the Natives Administration Act of 1927, Group Areas Act of 1950 (re-enacted in 1957 and 1966), Bantu Authorities Act of 1951, Reservation of Separate Amenities Act of 1953, Urban Bantu Councils Act of 1961, Bantu Homelands Citizens Act of 1970, and the Black Local Authorities Act of 1982. The adverse impact of racial segregation was most apparent at local government level and resulted in the disparities including the concomitant unbalanced development along colour lines.

Significant changes marked the pre-interim phase and laid the basis for the imminent new democratic rule. Some of the key developments that emerged in 1993 were the Interim Constitution of the Republic of South Africa Act No.200 of 1993 and the Local Government Transition Act No.209 of 1993 (LGTA). These laws provided for interim measures that would change the landscape of the South African local government system. In particular, the LGTA provided for the establishment of provincial committees for local government, appointment of transitional councils, issuing of proclamations by the administrators of provinces, establishment of the Local Government Demarcation Boards in the provinces, and the repeal of certain apartheid laws.

The engine of transformation gained momentum with the development of the democratic government in 1994. The adoption and promulgation of the final Constitution of the Republic of South Africa Act No.108 of 1996 (the Constitution) denote an important milestone in the transformation process. Quite rightly, Roux (2002:419) contends "Transformation is a much larger entity than the concept of change". The transformation process brought major changes in terms of the structure, culture and functioning of the new government system. Schedules 4 and 5 of the Constitution stipulate the competences of the national, provincial and local government spheres. Section 155 (1) of the Constitution

makes provision for the establishment of three categories of municipalities, namely, Categories 'A' (metropolitan municipalities), 'B' (local municipalities) and 'C' (district municipalities). The Ngaka Modiri Molema District Municipality (the NMMDM) is a Category C municipality, which this Section defines as "a municipality that has municipal executive and legislative authority in an area that includes more than one municipality".

In line with the evolutionary processes, the model of the South African local government has continued to evolve. In recent years, the overall functioning of municipalities has for various reasons, been at the centre of political and public debates. Amongst a number of challenges that confront local government is political instability, supply chain management contraventions, capacity constraints, financial maladministration, poor audit outcomes, poor service delivery, and the ongoing trend of violent service delivery protests across the country.

In its Report (2009:3), the Department of Cooperative Governance and Traditional Affairs (CoGTA) confirms the unsatisfactory status of local government. It affirms "Notwithstanding the valuable role that municipalities have played in the new democracy, key elements of the local government systems are showing signs of distress". Even so, there are pockets of excellence (success stories) in local government with some municipalities that are performing exceptionally well under challenging circumstances.

In response to the unsatisfactory performance of municipalities, the provincial government exercises its constitutional and legislative mandates to intervene in the affairs of local government. As legislated, it utilises various corrective instruments including the application of Section 139 (s139) of the Constitution. Despite the legal basis, s139(1) interventions are often met with mixed reactions from the affected municipalities and a number of questions have been raised particularly relating to their appropriateness and sometimes their legitimacy.

1.2 Background information

To provide a comprehensive framework and an enabling environment for the functioning of local government, the South African government has constructed various constitutional and legislative provisions as well as support programmes. It is important to refer to

Sections 152 and 153 of the Constitution as they talk directly to the operations of the local government system. Succinctly, these provisions put the delivery of services to the community and the active participation of civil society in municipal decision-making processes at the crux of the newly transformed local government system.

Section 152 of the Constitution stipulates the objects of local government as follows:

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organizations in the matters of local government.

In Section 153, the Constitution specifies the developmental duties assigned to local government as follows:

A municipality must –

(a) structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and

(b) participate in national and provincial development programmes.

Given the historical background of local government in the apartheid era and in line with the democratic principles of the current political dispensation, various pieces of legation exist to enhance the performance of local government. In the midst of applicable legislation are the White Paper on Local Government of 1998, Municipal Demarcation Act of 1998, Municipal Structures Act of 1998, Municipal Systems Act of 2000 (MSA), Municipal Finance Management Act of 2003 (MFMA), Municipal Property Rates Act of 2004, Intergovernmental Relations Act of 2005 (IGR), and the Division of Revenue Act of 2013 (DoRA).

Furthermore, there are a number of key initiatives, support programmes and regulations. These include the Local Government Turnaround Strategy, Operation Clean Audit, Municipal Infrastructure Support Agent (MISA), Minimum Competency Regulations,

hearings by the Parliamentary Ad Hoc Committee on Service Delivery, Municipal Budget and Reporting Regulations, Back to Basics Strategy (B2B) and the Municipal Regulations on Standard Chart of Accounts (Mscoa). Legal reforms have also been mandatory. Of particular significance are the constitutional amendments in 2003 with respect to the application of Sections 100 and 139 of the Constitution as well as the drafting of the Intergovernmental Monitoring, Support and Intervention (MSI) Bill.

Despite the fact that municipalities function within extensive legislative and policy frameworks, the public perceives its performance as being inadequate. In its Report (June 2014:22), the Department of Cooperative Governance (DCoG) underscores the enormity of the poor performance of municipalities and indicates that 23 interventions had been invoked over the past three years by the Members of Executive Council (MECs) responsible for Local Government and Finance. In his speech to the National Assembly on 14th May 2015, the then Minister of CoGTA (Pravin Gordhan) revealed that 16 municipalities in four provinces were or had been placed under s139 interventions in the period between October 2014 and May 2015. Of particular significance is that the NMMDM is one of these municipalities.

In the context of the research study, it is important to indicate the constitutional provisions regarding s139 interventions. The Constitution specifies three provincial interventions in terms of s139 namely s139(1), s139(4) and s139(5).

- Section 139(1) stipulates 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 obligations, 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 minimum standards for the rendering of a service;

(ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or the province *as a* while; or

(iii) maintain economic unity;

(c) 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.

- Section 139(4) specifies that if a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligations, including –

(a) appointing an administrator until a newly elected Municipal Council has been declared elected; and

(b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

- Section 139(5) instructs that if a municipality as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must –

(a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which

(i) is to be prepared in accordance with national legislation; and

(ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and

(b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and –

(i) appoint an administrator until a newly elected Municipal Council has been declared elected; and

(ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or

(c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.

Notably, these provisos define the limitations within which the provincial executives ought to carry out s139 interventions. The stipulations also clearly show the three fundamental triggers for s139(1), namely, governance, financial management and administration, and service delivery capacity. Yet, the power to intervene in municipalities in distress is discretionary and lies with the provincial executives. This raises basic questions as to what the real extent of municipal failings should be to warrant a provincial intervention. The literature review revealed that of the three s139 interventions mentioned above, s139(1) is the most commonly applied and contested. Hence, the focus of this research study is on the application of s139(1) interventions in the NMMDM.

1.3 Problem statement

While the provincial government has a clearly defined constitutional and legislative mandate to intervene in the affairs of local government, the literature shows that some municipalities have contested the application of s139(1) interventions. Some municipalities have resorted to taking legal actions against their respective provincial executives, and some have been under provincial administration more than once. Against this background, it could be argued that s139(1) interventions encounter hurdles with the potential to undermine their successful implementation.

The literature further shows that scholars of public administration have conducted research on the general performance of local government and put forward various paradigms and concepts that aim to explain the challenges that municipalities are grappling with. However, there is limited empirical research conducted on the key factors that inform and impact the planning and implementation of s139(1) interventions. With limited researched evidence in the body of existing literature, these aspects have largely remained speculative. This research study aimed to unearth these issues as they manifested in the NMMDM.

The researcher's choice of a single case study approach was most appropriate to document the incidents and experiences that occurred in the NMMDM over a number of years.

- The NMMDM was initially placed under s139(1)(b) in 2009 which prolonged until after the local government elections in 2011.
- In 2014, the North West Provincial Executive Council (the NWPEC) tried to invoke s139(1)(b) once more. The NMMDM contested the intervention and took the matter before the North West High Court in Mafikeng, which repudiated the intervention on substantive procedural grounds.
- In September 2014, the NWPEC applied s139(1)(c) and dissolved the Municipal Council and the intervention lasted until December 2014.
- Last, in May 2015, the NWPEC invoked s139(1)(b) once more at the request of the newly elected Municipal Council. The intervention was underway at the time of the research study.

Such experiences reflect the validity and motivation for adopting the NMMDM to provide key lessons of experience in the planning and implementation of s139(1) interventions. The researcher conducted the research in June 2016, approximately two months before the local government elections in August 2016.

1.4 Objectives of the study

The primary purpose of this study was twofold as follows:

- To explore and provide insights into the intricacies in the planning and implementation of s139(1) interventions in the NMMDM. Owing to the limited empirical data on the dynamics surrounding the planning and application of s139(1) interventions, the exploration approach is best suited for the planned research study; and
- To explain how these aspects either promoted or undermined the planning and application of s139(1) interventions in the NMMDM. The explanation will build on exploration and specifically address the "why" question that is, why s139(1) interventions did or did not produce the desired objectives in the case of the NMMDM.

1.5 Research questions

The researcher developed the following core research questions to illuminate the research problem, achieve the objectives of the proposed research study, and define the scope of the research interviews:

- What are the substantive factors that inform and impact the planning and implementation of s139 interventions in the case of the NMMDM?
- How did these elements undermine or promote the successful application of s139(1) interventions in the case of the NMMDM?
- To what extent were the relations between the NWPG and the NMMDM affected (positively or negatively) by the application of s139(1) interventions?

These broad questions will only be utilised to guide the research process. Badenhorst (2007:25) states, "The research questions are not a re-statement of the research problem but rather they unpack the research problem". From the main research questions, the researcher developed a list of questions to interview the targeted research participants. Annexure "A" provides a list of the interview questions.

1.6 Significance of the study

Through the publication of the research findings, the researcher intends to:

- Contribute to the expansion of the limited body of existing knowledge about the dynamics in the planning and implementation of s139(1) interventions by presenting the experiences of the NMMDM;
- Propose specific recommendations to assist towards the promotion of successful planning and implementation of s139(1) interventions or reduction of negative factors that weaken the application of s139(1) interventions; and
- Provide input to the current law reforms relating to the aspects in the planning and implementation of s139(1) interventions.

1.7 Delineation and assumptions

1.7.1 Delineation

The study focuses on the NMMDM as a single case study. Based on the experiences of the NMMDM as reflected in subheading 1.3 above, the objective of a single case study was to get a deeper understanding of the phenomenon under study. However, it is not the intention of the study to generalise the findings of the research study to apply to the rest of the municipalities that are or have been placed under s139(1) interventions but merely to present the findings as they pertain to the NMMDM.

1.7.2 Assumptions

The following assumptions underpin the research study:

- That the adopted research methodology is adequate to gather the necessary data for the planned research study; and
- Based on their strategic duties, the municipal leadership targeted for the research study will impart the necessary information needed to respond to the research questions.

1.8 Brief overview of the NMMDM

1. Map of the NMMDM



The NMMDM is one of the four district municipalities in the North West Province and shares an international border with neighbouring Botswana. The other district municipalities in the province are Bojanala Platinum, Dr Kenneth Kaunda and Dr Ruth

Segomotsi Mompati. The NMMDM is located in the Mahikeng Municipality, which also houses the Legislature and Provincial Government of the North West Province. The district covers a geographical area of about 28 206km² and comprises five Category B local municipalities namely, Mahikeng, Ratlou, Tswaing, Ramotshere Moiloa, and Ditsobotla.

According to the Stats SA 2011 Census statistics, the population of NMMDM was estimated at 842 699; 227 001 households; and population growth rate at 0.97% per annum. Households earned an average income below R1 601 per month, the rate of unemployment was 33.70% with youth unemployment rate at 44.10%, and the dependency ratio (15-64 years) was at 60.50%.

The NMMDM derives its mandate from Section 152(b) of the Constitution, Section 76 of the Municipal Systems Act, and Chapter 3 of the Water Services Act No. 108 of 1997. It is the designated Water Services Authority (WSA) within its area of jurisdiction and delivers basic water and sanitation services in the rural areas. Through Service Level Agreements (SLAs), the NMMDM has contracted its constituent local municipalities as the Water Services Providers (WSPs). Through Service Level Agreements, the NMMDM has appointed the WSPs for the operation and maintenance of sewer treatment works and the water reticulation systems in the urban areas.

In terms of political governance, the NMMDM has a Municipal Council comprising 41 councillors, the Speaker who chairs the Council, the Executive Mayor who chairs the Mayoral Committee, the Council Whip, and the Sections 79 and 80 committees fully established. At the time of the research, the administrative governance structure comprised the Office of the Municipal Manager, and seven departments namely, Financial Services; Technical Services; Project Management Unit; Business Support; Corporate Resource Support; Growth and Economic Development; and Municipal Health, Fire and Emergency.

1.9 Outline of the chapters

The outline of the chapters is as follows:

- **Chapter One** introduces the research study. It provides a brief historical evolution of the South African local government system and the current status of local

government; the background which contains the constitutional and legislative provisions assigned to local government; the legal basis for the s139(1) provincial interventions; the problem statement; the study objectives; the significance of the study; and the delineation of study and assumptions.

- **Chapter Two** presents the literature review which draws pertinent opinions on the performance of local government from a wide range of sources and the gaps in the existing literature regarding the research topic; the legislative and regulatory frameworks; the complexities and paradoxes in local government including the application of s139(1) provincial interventions; and the law reforms.
- **Chapter Three** contains the theoretical and conceptual framework. It considers four governance and leadership theoretical perspectives, namely, the institutional choice theory, transformational leadership theory, transactional theory and principal-agent theory; and the conceptual framework that adopts the principal-agent theory.
- **Chapter Four** presents the research methodology and details the philosophical foundations; qualitative research design; case study approach; data collection techniques; data analysis methods; measures to ensure reliability and validity of the study; limitations and delineation of the study; ethical considerations; and assumptions.
- **Chapter Five** displays the data as obtained from the research participants through the in-depth semi-structured interviews, including the themes and paradigms that emerged from the interviews.
- **Chapter Six** contains the analysis and interpretation of the research findings in the context of the main themes and concepts highlighted in the literature review.
- **Chapter Seven** provides concluding remarks as well as policy recommendations.

Chapter Two

==========

2. Literature Review

2.1 Introduction

In order to position the inquiry in the context of discussions with other researchers and relevant discourses, the researcher adopted a comprehensive theoretical literature review. This chapter presents the literature review that draws pertinent opinions on the performance of local government from a wide range of sources. The presentation is divided into three subheadings, namely, the legislative and regulatory frameworks, the efficacy of s139(1) interventions, and law reforms.

2.2 Literature review

Neuman (2011:125) defines the theoretical literature review as "a specialized review in which the author presents several theories or concepts focused on the same topic and compare them on the basis of assumptions, logical consistency, and scope of explanation". In order to gain a deeper understanding of the phenomenon under study, the researcher undertook an extensive literature review. Baskarada (2014:2) underscores the substance of this approach and argues "For any qualitative case study justification to be persuasive, it has to rely on arguments rooted in the methodological literature".

In line with the exploratory nature of the research study, the researcher explored a wide range of evidence from critical sources. The process entailed a critical analysis of relevant scholarly journals; research reports; government reports including the Constitution, relevant legislation, regulations, policy documents, working papers, parliamentary monitoring group reports, and presentations; the NMMDM's internal documents such as the audit reports, annual reports, Integrated Development Plans (IDPs); and other relevant sources of information.

The review process revealed the extensive contributions to the body of existing knowledge made by scholars of public administration and other parties interested in the affairs of local government. Notably, such contributions mainly relate to the constitutional foundations of local government and its overall performance, and to a lesser extent the implementation of

s139(1) interventions. The literature affirms that scholars locate the performance of local government and s139(1) interventions from different perspectives. The broad paradigms and themes that emerge from the literature review are described below.

2.3 Legislative and regulatory frameworks

The South African local government operates within an extremely legislated environment. Against this background, discussions regarding the performance of local government and its failings call for an assessment of the configuration of the legislative and regulatory frameworks that prescribe the functioning of municipalities and provide the road map. The premise of the discussion is on how the stipulations either create a conducive environment for local government to function optimally or limit its functioning resulting in challenges including the invocation of s139(1) interventions.

De Villiers (2012:681) cautions "The implementation of the Constitution was a complex task that brought with it challenges that were completely new to South Africa". In the context of the research study, the assertion could be interpreted to suggest that the application of s139(1) interventions and the tensions associated with it are challenges associated with the complex process of the actual implementation of the Constitution. It would seem that such experiences are inevitable as the process of transformation progresses.

Koma (2010:118) raises a related viewpoint and asserts "The practicalities and modalities related to the implementation of a differentiated system of local government should be considered in line with the international and continental best practices and the unique context within which South African municipalities are located". Indeed, the apartheid historical background of the South African local government system has largely determined the environment under which the municipalities operate and contributed to the challenges of infrastructure service backlogs that the current system is grappling with.

2.3.1 Multi-level government arrangements

Section 40(1) of the Constitution pronounces "In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated". Given this constitutional background, the South African

government system is by its very design fundamentally grounded on multiple layers of authority.

By giving each of the three spheres of government a distinctive status, the Constitution firmly entrenches the individuality of each sphere and the authority to exercise its power. De Villiers (2012:678) elucidates the aspect of individualism and declares "The Constitution used the word 'sphere' rather than 'tier' or 'level' to refer to the respective national, provincial and local government so as to demonstrate the equality and respect between them, rather than a hierarchical arrangement where one sphere is the senior of another". Conversely, the nature of s139(1) interventions is such that it gives the impression of hierarchical arrangements with the provincial government assuming a superior role over the functioning of local government.

Quite rightly, Freedman (2014:578) raises an important aspect and maintains "The distinctiveness lies in the level at which a particular power is exercised". In the context of the research topic, this refers to the extent to which local government exercises the constitutionally conferred powers in matters of local governance and the level at which the provincial government exercises the powers granted by the same Constitution to intervene in municipalities.

While the Constitution recognises the distinctiveness of each sphere of government, similarly, it also proclaims interdependence and interrelatedness among the three spheres of government. By so doing, the Constitution places an obligation on the spheres of government to find ways to function, collaborate, and complement each other within the multi-level governance arrangements. York and Reddy (2003:43) bring out the notion of interdependence and argue "Interdependence means the degree to which each sphere depends on the other to carry out its constitutional mandate".

The aspect of interdependence and interrelatedness amongst the three spheres of government is a complex phenomenon. First, the Constitution bestows power on the provincial government to intervene in the affairs of local government and react on discernible municipal underperformance and malfunctioning. Second, the duties of the local government sphere are such that local government is largely dependent on the support

from the other two spheres of government to deliver on its service delivery mandate effectively.

Scholars of public administration postulate a number of views regarding the challenges that emanate from multi-level governance arrangements. Some scholars trace these challenges within the very design of the government system and/or the expression of the Constitution. Mathenjwa (2014:141) contends "The structure of government in terms of which powers are distributed and shared simultaneously by different spheres of government poses challenges in respect of potential disputes between the spheres of government". Heydenrich (2008:701) concurs and asserts "The South African local government system has a number of shortcomings, two of which relate to the role of local government in the deepening of participatory democracy and the position of local government in a system of multi-level governance". These contentions seem to suggest that there are inherent challenges within the multi-level government arrangements.

Other arguments are based on the actual implementation of the multi-level government arrangements. For instance, the conferring of power on one sphere of government to intervene in the affairs of another sphere of government equally recognised by the same Constitution seems to be an area of potential conflict. The Budget Review (National Treasury 2014:94) raises an important aspect, "In practice the lines of responsibility and accountability are often blurred and such challenges can be overcome through institutional frameworks that allow for greater coordination". Hence, the IGR Framework seeks to address issues of coordination among other potential encounters.

Although outside the scope of this research, it is worth noting that the establishment of district municipalities like the NMMDM alongside local municipalities in the year 2000 resulted in the two-tier local government system. This transformation culminated in the shared authority (legislative and administrative powers) between district and local municipalities. There are potential challenges that might stem from the fact that the districts and their constituent local municipalities operate within one space.

2.3.2 Local government autonomy

As indicated in section 2.3.1, the Constitution recognises the three spheres of government as uniquely autonomous. Section 140(1)(g) of the Constitution further dictates that "all spheres of government and all organs of state within each sphere must exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere".

Given the constitutionally bestowed power on provincial government to intervene in the affairs of local government, critical questions come to the fore. In practice, do provincial interventions pose a real danger to the institutional autonomy of local government and/or freedom to govern as an independent entity? Is there an inherent conflict created by the multi-level government arrangements? The Local Government Bulletin (2005) raises an important aspect that the interpretation of s139 should be premised on a balance between protecting the autonomy of municipalities granted by the Constitution, and the need for effective oversight over municipalities by provincial governments. The source further cautions that such provincial intervention has serious consequences for the municipal council's authority to govern.

Unavoidably, discussions about the autonomy of local government in the context of provincial interventions lead to politically charged notions of the 'subordination' of local government (perceived or real). It is the very nature of s139(1) interventions that has the potential to convey the view of the subordination of local government. Murray and Simeon (2010:238) seem to agree and argue that, "Municipalities are subject to substantial regulation by the national and provincial governments with the provinces having strong powers to intervene in failing municipalities". The perceived undue exercise of power is often intense in cases where the affected municipalities are contesting such provincial interventions.

The academic literature also documents the merits and risks to conceding to local government autonomy. Quite rightly, Akpan and Ekanem (2013:197) maintain "The kind of autonomy the central or regional government entrust to the local units depends largely on the nature and character of state politics". Giving a British perspective, the House of Commons Communities and Local Government Committee Report (2009:20) makes an

important contribution to the discussion. The Report states that "there are a number of reasons why central government moves cautiously if at all to introduce greater autonomy for local government, and one of them is that the public has yet to be fully convinced of the merits of 'localism' particularly when it results in varying standards of service delivery, the so-called 'postcode lottery' ". These assumptions are so true in the South African milieu where the national and provincial governments also have the political responsibility in the service delivery function accorded to the local government sphere.

2.3.3 Duties of local government

As mentioned earlier, Sections 152 and 153 of the Constitution stipulate the objectives of local government and the developmental mandate assigned to it respectively. Unequivocally, these two requisites firmly place the delivery of services to improve the living conditions of the community at the nucleus of local government. Therefore, local government has the responsibility of redressing the imbalances of the past apartheid regime through equitable service delivery to the communities. Fiscal transfers such as the 'Equitable Shares' from the national government to municipalities to extend the delivery of basic services to the indigent households, best illustrate this political stance.

In spite of the noble objectives behind the duties of local government, from the academic literature emerge various perceptions regarding the complexity, ambiguity and impracticability of these duties. Such assertions apportion part of the blame for the imperfections of municipalities which ultimately result in the application of s139(1) interventions amongst other corrective measures, to the complexities of local government duties and the ill-defined competences assigned to this sphere of government.

In its 2010 Report, the South African Local Government Association (Salga) highlights the enormity of the functions. The Report cautions "Local government has been given a very broad and challenging set of responsibilities". There is merit in this statement in as far as it relates to the ability of municipalities to meet the high demands of the communities they serve. In the same vein, Christmas and De Visser (2009:115) emphasise the aspect of ambiguity. These writers argue "There is a strong case for redefining the existing competences listed in the Schedules and that while broadly defined competences are

appropriate for national and provincial government, they are inappropriate for local government".

Some scholars argue that the concurrency of functions between the three spheres are ill defined. Consequently, this has a negative impact on the functioning of local government. Steytler and Fessha (2007:3) elaborate on this aspect and state "The constitutional allocation of 'original powers' to local government produces at least two areas of concurrency. The first one is the supervisory concurrency where a provincial government has regulatory and monitoring powers over Schedule 4B and 5B matters in terms of sections 155(6)(a) and 155(7). The second one is the overlap between matters listed in Schedules 4A and 5A and those in Schedules 4B and 5B". The authors argue "Conflict arises as to the extent and ambit of the regulatory powers and that lack of clear definition of the functional areas belonging to each sphere of government result in a lack of clarity about the cut-off points between functional areas".

Finally, Freedman (2014:577) highlights the challenges relating to the position of local government in the multi-level government system. The writer contends "It is to be expected that the powers that are vested in government at national level will be described in the broadest of terms, that the powers that are vested in provincial government will be expressed in narrower terms, and that the powers that are vested in municipalities will be expressed in the narrowest terms of all". The affirmation seems to confirm the existence of hierarchy within the multi-level governance arrangements.

Arguably, the execution of the service delivery duties is an important performance indicator for the entire government system. Hence, upon a demonstration of failure by local government, provincial government intervenes to assist the failing municipality towards the fulfilment of the political agenda.

2.3.4 Cooperative government

Dabla-Norris (2006) makes a profound statement that a basic requirement for efficient multi-tier governments is the presence of intensive cooperation between the main stakeholders and that such co-operation must take place at the political as well as technical level. Section 41 of the Constitution stipulates the principles of cooperative government

and intergovernmental relations. Of particular significance to this discussion are the following provisions:

(1) All spheres of government and all organs of state within each sphere must-

(e) respect the constitutional status, institutional, powers and functions of government in the other spheres;

(f) not assume any power or function except those conferred on them in terms of the Constitution;

(g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere.

Powell and O'Donovan (2015:6) make an important contribution and assert "The resilience of local government cannot be determined only by looking at the capability and performance of the local government alone". The writers further maintain that under the Constitution, local government is one of the spheres of government bound together in a system of cooperative government. It is against this backdrop that both the national and provincial governments ought to share the blame for the inefficiencies of local government that result in the invocation of s139(1) interventions. In other words, the application of s139 interventions should reflect two scenarios. First, the failure by the local government to meet its constitutional service delivery obligations. Second, the nature and quality of support provided by the two spheres of government to ensure that the local government sphere functioned optimally.

2.3.5 Intergovernmental relations

De Villiers (2012:672) defines intergovernmental relations as "referring to the formal and informal processes, institutional arrangements, agreements, and structures for bilateral and multilateral cooperation between the respective levels of government". The IGR Act is aimed at establishing a framework for the three spheres of government to promote and facilitate intergovernmental relations, and to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes. Furthermore, Section 41 (1)(h)(vi) of the Constitution advocates for harmonious relations and states that all spheres of government and all organs of state must avoid legal proceedings against one another.

The premise of this subsection is the extent to which the intergovernmental relations are exercised and also impacted on during the application of s139(1) interventions. Of particular reference is when municipalities such as the NMMDM raise objections against s139(1) interventions and resort to legal actions for a resolution. Given the sensitivities associated with the implementation of s139(1) interventions especially s139(1)(c) which results in the dissolution of municipal councils, there is a real threat to the upholding of the principles of cooperative government and intergovernmental relations.

Despite the anticipated cooperation as advocated in the IGR Framework, scholars have reported on challenges associated with the ambiguity of legislation in the practice of the IGR principles. For instance, De Visser (2009:19) claims "Central to many of the problems besetting local government is the lack of clarity with regards to the intergovernmental framework". Malan (2005:227) highlights a related aspect and links these challenges to the inherent deficiencies within the multi-level government arrangements. The author insists that "a major challenge and recurring theme in the practice of intergovernmental relations is that the Constitution introduces a natural tension between the relative autonomy of a particular sphere of government on the one hand, and the pursuit of a coherent government for South Africa through intergovernmental relations and collaboration on the other". These assertions seem to convey the message that the very architecture of the law has inherent constraints that contribute to challenges in its practical application.

Some scholars raise concerns about the insufficiency of relevant pieces of legislation. De Villiers (2012:672) raises the issues relating to multi-tiered systems such as South Africa, Kenya, Iraq and Ethiopia. The writer contends "Often so much energy goes into the drafting of new constitutional arrangements that insufficient attention is given as to how in practice the respective levels of government would cooperate, coordinate and integrate in the discharge of their functions immediately after the Constitution takes effect". Despite these challenges, Kuye and Ile (2007:71) make a profound viewpoint and assert "Commitment is a critical element for the effective management of IGR". The same could be said with regard to the planning and implementation of s139(1) interventions from the perspectives of both the affected municipalities and provincial executives.

It could be argued that contestations against s139(1) interventions to a large extent portray unsound relations between the parties involved. Worth noting is the persistent resistance demonstrated by the NMMDM against the s139(1) interventions. In the State of Local Government Report (2009), CoGTA indicates that the NMMDM contested the application of the very first s139(1)(b) intervention in 2009. Again, the NMMDM contested the application of s139(1)(b) mid 2014 and took the matter before the High Court in Mafikeng, and this resulted in the withdrawal of the intervention on procedural grounds. Once more, the NMMDM contested the application of s139(1)(c) intervention in September 2014.

It is not clear from the available literature the extent to which the NMMDM explored all the other avenues to settle the disputes as dictated to by Section 41(3) of the Constitution prior to resorting to the court for resolution. What is clear though is that the disputes including legal actions against the application of s139(1) interventions as they happened in the NMMDM are in conflict with the fundamental IGR principles.

2.3.6 Monitoring and support over the performance of local government

This study sought to provide answers to the question whether the application of s139(1) interventions is suggestive of the failure by both the national and provincial government to fulfil their constitutional responsibility of monitoring and supporting the local government sphere and the scope of support provided to improve administrative efficiency.

In the South African perspective, the Constitution fundamentally stipulates the supervision and monitoring of municipalities. Section 154(1) provides that national and provincial government, by legislation and other measures must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their own powers and functions. In addition, Section 155(6) stipulates that each provincial government must, amongst others, provide for the monitoring and support to local government in the province; and promote the development of local government capacity to enable the municipalities to perform their functions and manage their own affairs. Furthermore, Chapter 10 of the MSA also provides for the national and provincial monitoring, and standard settings.

Scholars of public administration postulate relevant definitions of municipal monitoring, supervision and support, and how in practice the provincial and national government

achieve these roles. Malan (2005:239) maintains that "Provinces monitor municipalities in two ways: by determining whether a municipality meets its executive obligations in terms of legislation, and how well it performs its duties". The DCoG Report (2014) spells out the focus of the support programmes implemented by provinces as the following: legislative and regulatory compliance; financial management; governance; development planning; basic service delivery; infrastructure grant spending; bulk infrastructure planning; local economic development; public participation; and disaster management. The Report further indicates that the Municipal Infrastructure Support Agency (MISA) and Local Government Turnaround Strategy (LGTAS) assessments are the most common instruments used by provinces to inform the support offered to municipalities.

The relevant literature documents a number of structural flaws in the supervision and monitoring of local government. DCoG's Report (June 2014:9) concedes and states "There are a number of key challenges within the national and provincial spheres in terms of capacity to support, monitor, and intervene in municipalities; there is a need to develop an integrated, responsive, legislatively-compliant and effective monitoring system for municipal performance to ensure that early warning systems are in place; and also that there is a weak correlation between the number of financially-distressed or non-performing municipalities and the actual number of legislative interventions made".

Clearly, capacity constraints stand to adversely affect the quality of monitoring and support provided to municipalities prior, during and post the s139(1) interventions. Mettler (2000:3) raises an important angle to the discussion and strongly argues "It would be unfair and subversive to the idea of cooperative governance if a province would fail to fulfil its constitutional duty of providing the necessary support and subsequently assume responsibility for that municipality". The author further refers to the First *Certification* judgment 1996 (4) SA 744 (CC) where the Constitutional Court declared that provincial supervision of local government in terms of s139 has two components. These entail a process of provincial review of the actions of local government to measure the fulfilment by local government of executive obligations conferred by statute, and a process of implementing corrective measures should local government fall short of its obligations. In a similar vein, Peters and Niewenhuyzen's research for the 2013/14 Submission for the Division of Revenue reveals that most municipal interventions (s139) have been reactive

rather than part of ongoing cooperation and support. The statement suggests that s139 interventions react to municipal failings that provincial government could have prevented had it maintained proper monitoring.

2.4 The efficacy of s139(1) interventions

Like any other corrective instrument, s139(1) provincial interventions are aimed at turning around the situation of municipalities in distress. Yet, there exists very limited researched evidence that shows the translation to improved performance of municipalities. Hence, one of the aims mentioned in the subparagraph 1.6 is to contribute, through the publication of the research findings, to the expansion of the limited body of existing knowledge about the dynamics in the planning and implementation of s139(1) interventions.

While the repeat s139(1) interventions in municipalities as experienced in the NMMDM could be viewed as an indication of limited success of these interventions in the affected municipalities, it would be unwise to conclude that s139(1) interventions have largely been ineffective without giving context to such claims. In their Research Report (2012) for submission for the 2013/14 Division of Revenue, Peters and van Nieuwenhuyzen remarked that the apparent lack of capacity within local government has led to a number of interventions by a range of stakeholders but such interventions have treated only the symptoms and not the real cause of such shortcomings.

From the literature, a number of factors, conditions and inherent limitations that render the planning and implementation of s139(1) interventions less effective surface. Bolton (2010) refers to the court judgment in the case of *Reed v Master of High Court of SA (2005). In* this case, the court held that inherent in the concept of a remedy as used in a legal context, is the notion that in order for a procedure to qualify as a remedy, it must be capable of providing what the Constitution terms an 'effective remedy'. The relevant question is: How effective is s139(1) intervention in its current form?

2.4.1 Section 139(1) interventions as a last resort

In addition to the s139(1) interventions carried out within the ambit of cooperative government principles as a basic rule, the application of s1391) interventions ought to be applied as a last resort. The resolution to apply s139 interventions as a last resort gives rise

to two critical observations that relate to the provision of the necessary support by the other two spheres of government. Other corrective measures should have necessarily been applied and exhausted to improve the performance of struggling municipalities prior to resorting to the application of s139(1) interventions. In other words, s139 interventions can never be the first option to remedy municipal inefficiencies. Second, the unsatisfactory conditions that compelled for s139(1) interventions should have existed, been monitored, and acted upon using other means with limited or no success. Put differently, the application of s139(1) interventions should essentially demonstrate that efforts to improve the detected municipal underperformance using other remedial measures have failed.

Discussions on the last resort approach lead to a number of provocative questions such as: When exactly is provincial government intervention in a municipality most appropriate? What is the status of municipal failure that compels such an intervention? These questions are prompted by the fact that whilst any reflection of the key triggers for s139(1) interventions could possibly result in a municipality being placed under provincial administration, the decision to intervene and the level of dysfunctionality that warrants an intervention have remained highly discretionary. With discretion, the possibility of bias and political influence that result in undue exercise of power are real.

Scholars of public administration posit various perspectives that show difficulties in applying the s139 interventions as a last resort. First, some scholars argue about the disinclination of provincial government in resolving to intervene in the affairs of local government. Martin, Paget and Walliser (2011:32) provide an explanation for the reasons behind the reluctance to get involved and contend "The success of provincial governments which have exclusive jurisdiction over the systems of local government depends on balancing the need to act comprehensively and systematically while dealing thoughtfully with the unique situation of individual local governments". The House of Commons Communities and Local Government Committee Report (2009:43) highlights similar sentiments and cautions "Too early an intervention blurs local accountability and disincentives local government from solving its own problems". Murray and Hoffman-Wanders (2007:7) maintain "There are obvious impediments to using the intervention processes most importantly because an intervention is an admission of government

failure". The ability and capacity of the provincial government to acknowledge the autonomy of local government on one hand, and on the other hand react on noticeable areas of weakness in the local government cannot be an easy task to accomplish.

Second, other writers elaborate on issues relating to the expression of the Constitution. Malan (2005:240) asserts "S139 (as amended) of the Constitution states that municipalities should `maintain essential national standards or meet established minimum standards for the rendering of a service` with the implication that an intervention by a province can only occur when a municipality fails to meet the *minimum standards"*. The writer goes on to argue that it is difficult for provincial governments to determine when to intervene in the activities of municipalities because municipalities are not required to fulfil an obligation fully; hence the intervening provincial governments are faced with the challenge of indicating precisely which executive obligation was not fulfilled.

Last, some scholars emphasise the exercise of discretion that lies with the provincial government. The exercise of discretion raises suspicions regarding the process including questions as to why some municipalities in worse off situations have never been placed under provincial administration. The DCoG Report (June 2014:9) concedes the existence of challenges and states "There is a weak correlation between the numbers of financially-distressed or non-performing municipalities and the actual number of legislative interventions made". In contextualising this aspect to the research topic, the speed at which the NWPEC intervened in the affairs of the NMMDM and the level of dysfunctionality that prevailed are critical areas for consideration.

2.4.2 Interpretation of the law

Like with any other law, different interpretations of s139(1) interventions surface from the literature. Although the Constitution is supposedly explicit about the conditions that beckon for s139(1) interventions, the constitutional provision has become susceptible to different interpretations by both the affected municipalities and the provincial executives. The DCoG Report (2011:11) mentions "The limitation of s139(1) regarding failure to fulfil an executive obligation has led to difficulties in interpreting what constitutes this provision and when the intervention is permitted; and that there is uncertainty regarding the nature of, and required intensity of the intergovernmental checks and balances by the

Minister and the NCOP". The statement reiterates the dire consequences of inherent weaknesses in relevant legislation including the role supposedly accorded to the key role-players to enhance the performance of municipalities.

Hoffman-Wanderer and Murray (2007:141) highlight a related issue of legality and claim "S139 has raised difficult legal questions, many relating to what provincial action is authorised by it, and one of these questions was whether a provincial executive can dissolve a municipal council". Despite the constitutional provisions, the dissolution of a Municipal Council through the invocation of s139(1)(c) as it happened in the NMMDM is a contentious issue that results in serious contestations including legal actions taken against the provincial executives. Naturally, the interpretations of applicable legislation vary and are largely dependent on the perspectives of the affected parties.

The DCoG Report (2011:11) states "The intervention can also be used outside the scenario of total collapse". This statement relays the message that the application of s139 intervention does not necessarily mean a municipality is in a state of collapse but rather an attempt to improve on detected areas of weakness. During the Provincial Budget Vote 2013/14, the North West MEC for Local Government & Traditional Affairs (LG&TA) raised similar views and remarked that the interventions are measures by the department to rectify the situation but not a sign of a failure by the municipality.

2.4.3 Capacity of provincial government to implement s139(1) interventions

Evidently, the competency and capacity of provincial government is key to successful planning and implementation of s139(1) interventions. In its 2010 Report, Salga argues that provinces lack capacity to monitor and support local government in terms of personnel, funds, institutional knowledge and expertise. The Report mentions that some interventions could have been prevented if early warning systems (section 105 of the Municipal Systems Act mechanisms and processes) had been in place, and that mechanisms processes and procedures in terms of Section 105 are often overlooked in favour of Section 106 investigations and s139 interventions. Yet, the Report does not elaborate on the reasons for the preference of Sections 106 and s139 interventions over Section 105 of the MSA. Suffice to mention that Section 105 of the MSA places an

obligation on the MEC for Local Government to establish mechanisms, processes and procedures in terms of Section 155 (6) of the Constitution to monitor and assess the support needed by municipalities to strengthen their capacity.

Similarly, the Financial and Fiscal Commission Report (2012) shares related ideas and indicates that the effectiveness of provincial interventions encounters regulatory, structural, incentive and capacity related challenges. Referring to the application of Section 100(1)(b), the Report of the Portfolio Committee on Public Service and Administration (2012) mentions that for the intervention to be successfully completed in a reasonably short period of time, multidisciplinary capacity is needed in all section 100(1)(b) departments. The same could be said about s139(1) provincial interventions in municipalities. With these allegations levelled against the provincial government, the research study assessed the capacity of the NWPEC in the planning and execution of the s139(1) interventions in the NMMDM.

2.4.4 Breach of legal duty

The literature shows contraventions of the legislated provisions and/or breach of legal duty in the planning and application processes of s139(1) interventions. This aspect is closely linked to the capacity of the provincial government to effectively implement the s139(1) interventions. Inevitably, any contravention of law in the application of s139(1) interventions would not only compromise the successful invocation of s139(1) interventions but also result in unfounded suspicions and hostility between the parties involved.

Kirkby (2010:2) alleges "The national and provincial governments in Canada and South Africa have increasingly intervened in elected councils through administrative rather than constitutional means and sap the transformative promise of autonomous local governance". The extent of constitutional protection in cases of apparent breach of legal duty is an important aspect that the body of existing literature has underplayed. The literature shows two types of constitutional protection in cases of breach of legal duty, namely, the exercise of veto power by the Minister of CoGTA by withdrawing a directive, and court rulings. For instance, the directive to invoke s139(1)(b) in the NMMDM mid-2014 was overruled by the High Court on procedural grounds.

According to the DCoG Report (2013), some provincial executives appoint an administrator to assume the authority over the entire administration. This statement suggests the occurrence of an extreme and unfortunate scenario where an appointed administrator assumes both the political and administrative functions beyond what the law permits. Except to veto an intervention which was not procedural and in instances where Section 154 of the Constitution was still underway, it is not clear from the literature review the extent to which measures are taken to protect municipalities against the provincial interventions that go beyond what is constitutionally permitted.

2.4.5 Political dynamics

It could be argued that s139(1) interventions are political in nature, politically motivated, and also get entangled in party politics. As mentioned earlier, any intervention by one sphere of government in the affairs of another sphere is a politically charged transaction. In particular, the dissolution of a Municipal Council which is a constitutionally recognised structure of local government through the application of s139(1)(c) intervention is nothing but a politically motivated decision.

Inevitably, politics would feature prominently in the planning and execution of s139(1) interventions. Thornhill (2008:492) shares these views and contends that "politics and administration are like the two sides of a coin; an absolute separation is impossible". Of particular interest in the context of the research study, is the impact of the politicisation of the planning and implementation phases of these interventions on the achievement of the objectives of s139(1) interventions.

Mathenjwa (2014:200) brings up the aspect of party politics and declares "The interventions in municipalities are often marred by party-political considerations when municipalities are supervised by a provincial government led by a different political party than the one leading the municipality". The pronouncement seems to insinuate that undue interventions are possible based on party politics and that in such cases the interventions are likely to be turned into political weapons than corrective measures. Also, political infighting within the same political party could have a negative impact on the planning and implementation of s139(1) interventions. Murray and Hoffman-Wanderers (2007:27) sum

up this discussion and contend “Interventions in municipalities are seldom entirely free of political controversy as is evident from reports to the NCOP”.

2.4.6 Costs associated with s139(1) interventions

Owing to the nature of s139(1) interventions, there are costs associated with its planning and application. The DCoG Report (2014) indicates that some of the disincentives to provincial interventions are the financial burden placed on the provincial administrations, municipal resistance to interventions sometimes resulting in litigation, and lack of sustainable results emanating from the interventions. In addition, some interventions, especially the financially motivated interventions, require extensive financial injection from the provincial government. In such instances, the ability of the provincial government to provide financial assistance gets tested. The apparent unavoidable costs that provincial executives bear relate to the deployment of human resources. For instance, provincial executives often deploy administrators with provincial teams of experts to assist in turning around the situation of struggling municipalities.

On the side of local government, the costs implications of the s139(1) interventions are twofold as follows:

- Interventions often result in internal investigations (forensic and criminal) and ultimately lead to a number of litigations. Further, municipalities incur further costs when they challenge the litigations and engage in protracted legal battles.
- Municipalities incur exorbitant costs when they challenge the interventions in court as happened in the NMMDM. Moreover, the impact of the legal proceedings on financially distressed municipalities could be insurmountable and stand to worsen their financial situations. Overall, s139(1) interventions are costly.

2.4.7 Consultation and buy-in from key stakeholders

It is important to reiterate that provincial interventions are directives from the provincial government. For instance, upon resorting to intervene, the intervening organ of state is obligated to communicate its decisions to a number of stakeholders. The primary stakeholders include the national and provincial sector departments such as CoGTA, NCOP, Treasury, Salga, and the municipal personnel. Consultation with the national sector

departments such as CoGTA and the NCOP is particularly critical to solicit approval for the s139(1) interventions and also to mobilise the necessary resources for the implementation phases. From the literature review, what seems to be a challenge is getting the buy-in from the affected municipalities and/or internal stakeholders.

The relevant literature conveys the notion that consultation with the affected communities during the planning and implementation of s139(1) interventions is not clearly articulated. It seems that community consultation during the provincial administration process is not sufficiently backed by relevant legislation. As a result, community consultation in s139(1) interventions remains complex and a grey area. The noticeable form of public consultation is through the publication of the interventions in the government gazettes and radio announcements by provincial leadership in s139(1)(c) interventions.

Considering the nature of the s139(1) interventions, the impression created was that the municipalities as the structures accountable to the communities ought to maintain consultation with the communities during the intervention processes. In other words, the provincial administration does not absolve municipalities from their constitutional obligation of maintaining contact with the communities they serve.

2.5 Law reforms

Given the dynamic nature of local government, the current state of local government, and the challenges relating to the planning and application of s139 interventions, constitutional amendments and other law reforms have been unavoidable. In the context of the research topic, the law reforms signify the acknowledgement of the inherent weaknesses in the application of s139 interventions and the commitment to improve efficiency. In the context of the research study, the following two critical law reforms are worth mentioning.

2.5.1 Constitutional amendments

The Constitution was duly amended in 2003. The DCoG Report (2010) lists the major effects of the amendments as follows:

- Provincial Executive has a prerogative in terms of the amendment whether to issue a directive, assume responsibility or dissolve the Municipal Council.

- The Provincial Executive may now dissolve the Municipal Council and appoint an administrator if exceptional circumstances warrant such a step.
- The provisions empower the Provincial Executive to intervene in cases of financial crisis in a municipality within its jurisdiction.
- Dissolution of the Municipal Council if the municipality does not adopt a budget or revenue raising measures to give effect to the budget.
- The time frames within which the Minister and the NCOP to approve the intervention has been extended from 14 and 30 days to 28 and 180 days respectively.
- The national government may intervene instead of the provincial government only in the application of subsections 4 and 5.

Mathenjwa (2014:181) reflects on the 'value add' from the current law reforms and maintains "The scope of supervision of local government is broader than intervention in local government in the amended section 139 of the Constitution and includes the monitoring of, intervention in, and support of local government". The realisation of the desired improvements in the supervision of local government is depended on the commitment and capacity of the provincial government in giving effect to the amended constitutional provisions. After all, the efficacy of law reforms is as good as the institutions and/or structures assigned to give effect to them.

2.5.2 The Draft Monitoring, Support and Intervention Bill

During 2010, the government introduced the Monitoring, Support and Intervention Bill to give effect to both s100 and s139 of the Constitution. Of particular importance is that the DCoG Report (2013) states that the Bill was developed drawing from empirical data and lessons learned from experiences of interventions over the years. The Report further mentions that amongst others, the rationale for the Bill is to stabilize the intervention environment through clearer procedures and processes for undertaking the interventions. In addition, the Report indicates that the Bill seeks to ensure that interventions are used as a last resort to prevent conflict through providing pre-intervention measures for the provision of support, for early warning systems, and for comprehensive monitoring of performance across government.

Kirkby (2010) further highlights the benefits of the current reforms and argues that the Bill along with several constitutional amendments to s139 contemplates and seeks to clarify an increasing practice of provincial intervention in municipalities by setting out an 'early warning system' of municipal self-monitoring supported by the MEC to prevent intervention. Then again, the success of the envisaged self-monitoring system will depend on the existence of strong leadership and demonstrable commitment in promoting good governance and sound administration.

2.6 Case studies of regional and international experiences

The researcher briefly considered the federal systems of Brazil and Nigeria being upper middle-income countries with similar institutional and legal framework to South Africa. The focus is on the constitutional foundations and/or the legal basis for local government and the impact thereof on the functioning of local government including the interventions in reaction to areas of municipal underperformance. The common features that these countries share with South Africa is that their local governments enjoy constitutional status, are given significant responsibility to deliver public services at grassroots level, are grappling in achieving the service delivery obligations, and that the other two tiers of government are accorded supervisory role over the performance of local government. Included in the supervisory responsibility is the monitoring of municipal performance, provision of fiscal transfers to enhance the delivery of public services, and the responsibility to intervene and react on areas of municipal underperformance.

Wilson (2006:1) declares "Assessing the degree of relative autonomy can be determined through the analysis of intergovernmental relationships across multiple policy areas". In both these countries, the relevant literature does not relay the actual lessons of experience during the planning and application of the interventions but focuses on aspects with the potential to render the intervention processes less effective. As reflected in the discussions under this section, the struggle for local government autonomy, the provision and insufficiency of fiscal transfers, and the illegality and adverse impact of interventions, predominate in the relevant literature.

2.6.1 Nigeria

In terms of the Constitution of the Federal Republic of Nigeria (1999 as amended), the administrative structure has three tiers of government namely: the federal government, the state government and the local government. Section 7(1) of the Constitution guarantees the system of local government by democratically elected local government councils. The Fourth Schedule lists the main functions of local government council. In addition, local government has a shared responsibility with the state in the delivery of essential services such as education, health, infrastructure, agriculture and industry.

In relation to the performance of local government, scholars of public administration posit a range of perspectives. First, Akpan and Ekanem (2013:195) argue "The local government system in Nigeria is problematic and the problem expressed itself in the law establishing local government, its structure and the kind of autonomy both the federal and state governments devolve to the local government as the third tier of government". Ibietan and Ndukwe (2014:753) share similar viewpoints and state "The imperfections in the provisions of the 1999 Constitution, have made state governments see local governments as their sub-entities and therefore subjected them to various manipulations by the executive governments".

Second, Ikechukwu, Offor and Nweze (2016:158) affirm "The interference in the local government statutory allocations by the state governments reasonably accounts for the inability of the local governments to initiate and execute development programs or projects". Third, Ibok and Ntekim (2014:5) proclaim "The ambiguity of section 7(1) of the 1999 and 2011 as amended Constitution of Nigeria vests in states the supervisory powers over local government and one such subservience pertains to the legislation which empowers the governor to dissolve crisis ridden local council and also remove erring chairman/councilors if not satisfied with how such council is managed". The writers further claim that in the event of such dissolution, the governor can appoint an administrator or a caretaker committee to pilot the affairs of such council, and that this provision has been grossly abused by some state governors.

Finally, Oviasuyi and Isiraojie (2017:3) elaborate on the caretaker system and maintain "Caretaker committees in local government provides an avenue where that state

government solely or in tandem with his party guidelines handpicks few individuals viewed as loyalists to him or his party appointing them to run the affairs of local government areas". The authors further declare that the continued trend of this system in local governments is unconstitutional but has been left unchallenged in the court of law; that through the use of caretaker system good governance has been negatively affected as local communities are denied the opportunity of grassroots administration and participatory democracy; and that the encroachment of the state government into the statutory functions of the local government has retarded the much needed growth and development, and hindered transparency and accountability in that the appointed caretaker committees do not answer to the rural dwellers but the governors who appointed them.

2.6.2 Brazil

The Constitution of the Federative Republic of Brazil (1988) states "The political and administration of the Federal Republic of Brazil comprises the Union, the States, the Federal District and the Municipalities. Chapter IV of the Constitution is dedicated to municipalities and the Fourth Schedule (Article 30) specifies the powers and functions of municipalities.

Chapter VI of the Constitution refers to the 'interventions' in municipalities including the conditions that permit such interventions. Article 35 provides that 'the state shall not intervene in its municipalities, neither the Union in the municipalities located in the Federal Territory except when: i) the funded debt is not paid for two consecutive years, without reasons of force majeure; ii) the due accounts are not rendered, in the manner prescribed by laws; iii) the minimum required amount of the municipal revenues has not been applied in the maintenance and development of education; iv) the Court of Justice grants a petition to ensure observance of the principles indicated in the state Constitution or to provide for the enforcement of the law, judicial order to decision. Article 36 refers to the issuance of a decree of intervention and specifies the extent, the period and the conditions of enforcement as well as the appointment of the intervener if pertinent.

Wilson (2006:10) posits three viewpoints regarding the overall performance of Brazilian local governments. First, that the subordination of local governments to federal guidelines

has been interpreted as an indication of a managed decentralisation process, which violates the spirit of collaboration and cooperation. Second, that the action of the federal government can also be understood as an effort to coordinate the process, which otherwise would be highly fragmented and would incur risk. Finally, that the federal government and its bureaucracies attempted to maintain political and financial control over services, transferring responsibilities without a clear model of coordinated federalism. According to Anazodo and Igbokwe-Ibeto (2016:46), "In general, Brazil is highly rated in its fiscal intergovernmental relations and decentralization but that the Brazilian local governments' own sources of revenue are still less yielding.

Souza (2008) highlights issues relating to the causes of underperformance and a justification for governmental interventions. First, that the main problems Brazil faces today are due more to governmental difficulties in changing policy priorities and dealing with economic constraints not foreseen by constitutional makers than to deficiencies in the Constitution itself. Second, that the use of public policies to overcome a long history of inequality requires government interventions and resources at a time when many see governments more as a hindrance than a solution. Cavalcante (2011:2) asserts "Scholars of Latin American politics have given much emphasis on the causes and determinants of decentralization, but not much has been done toward understanding how this increased decentralization has affected policymakers behavior and policy outcomes, more generally.

2.7 Conclusion

From the literature review, one can conclude that the topic of local government is a complex subject that elicits political debates. Overall, the implementation of s139(1) interventions is affected by a multitude of internal and external factors ranging from the very system of local government to the capacity of local government to effectively plan and implement the interventions. In spite of the constitutional safeguards, the success and/or failure of s139(1) interventions is anchored in its planning and implementation.

Chapter Three

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3. Theoretical and Conceptual Framework

3.1 Introduction

This chapter presents the theoretical and conceptual framework. The presentation documents the main theories and concepts relevant to the research study. As Neuman (2011:56) suggests "Theory helps to understand the complexities of social life, explain why people do what they do, and also offers insights and suggests directions for inquiry". In this instance, the researcher adopts a deductive approach and will commence with abstract concepts that outline the logical connection amongst concepts and thereafter evaluate the concepts and propositions against concrete evidence.

3.2 Theoretical framework

Amidst various theoretical perspectives that were considered for the research study, the researcher adopted the governance and leadership theories as the most appropriate. Governance and leadership theories were preferred based on the following reasons.

- Governance and leadership are the cornerstones of local government;
- They are interrelated in that the promotion of governance in municipalities like in any institution primarily rests with leadership;
- They constitute the main triggers for the invocation of s139(1) interventions; and
- They also advance relevant concepts applicable to the research topic.

It is worth noting that the planning and implementation of s139(1) interventions not only directly talk to issues of governance and leadership at the local government level but also at provincial government level in terms of cooperative governance.

This section discusses four schools of thoughts, namely, the institutional choice theory, transformational theory, transaction theory, and the principal-agent theory. Notably, the discussions depict both the interconnectedness of the schools of thoughts and their differing understanding of the key determinants of municipal performance. Sa and Kanji (2003:132) caution that "One of the difficulties in analysing leadership in public

organisations and, in the local government in particular, concerns the coexistence of a political and a managerial leadership". In the context of this research study, both the political and administrative leadership share the blame for the municipal failings that result in the s139(1) interventions.

3.2.1 Institutional choice theory

According to Boone (2003), the underpinning of this theory is that growth and development are determined by institutional choices in terms of policy, technology and strategies a country or an institution makes, culture and historical context, as well as the relationship the state establishes with regional and international actors. Kloviene and Valanciene (2013:386) concur with this thinking and contend that "The performance of municipalities largely depends on the unique institutional, law governed and regulated operating characteristics". As mentioned in Chapter 1, municipalities in the South African context operate within a highly legislated environment with a stringent reporting regime.

In relation to the institutional choices in terms of policy and strategies, the South African national government sets the development agenda and the entire government is obligated to give effect to the achievement of the national development agenda. For instance, the attainment of the objectives of the National Development Plan 2030 (NDP) that aims to eliminate poverty and reduce inequality by 2030 is a mammoth task that is entirely reliant on collective efforts by different sectors of society.

In the context of this research study the Constitution, which is the supreme law of the country specifically gives the institution of local government the mandate to advance the transformation process by delivering services to the community. Therefore, local government is both an institution and agent of development. By virtue of this mandate, local government assumes a critical role of the service delivery arm of the entire government system. However, given the diverse challenges that the municipalities face, the achievement of the service delivery mandate seems to be a challenge. The weaknesses that call for the application of s139(1) interventions are testimony to the difficulties in achieving the mandate given to the institution of local government.

The other theoretical basis of the institutional choice theory relates to the cultural and historical context. Primarily, the foundation of the South African local government system is political and revolves around the creation of universal access to public services with the aim to redress the imbalances created by the previous apartheid regime. Shaw (2014:3) underscores the aspect of social legitimacy and argues "The institutional choice theory expands the perspective by including social legitimacy as a contributor to both the organisational development and transformation process". Hence, the failure by local government to fulfil the constitutional provision of service delivery compels for corrective remedies including the application of s139(1) interventions. In the case of the NMMDM, the NWPEC has over a period of time been compelled to invoke s139(1) interventions to realign the municipality to fulfil the constitutional obligations.

This theory raises a number of key aspects relevant to the research study at hand. Nevertheless, it does not explain the impact of the institutional choices and historical context on the performance of the institution of local government. In particular, the theory falls short of recognising the importance of municipal leadership expertise in realising local government objectives. It is indisputable that the dynamic nature of local government and the diverse challenges associated with it call for the existence of capacitated leadership to accelerate the fulfilment of the constitutional and legislative mandates. In fact, the calibre of municipal leadership is responsible for the conditions that result in provincial government resolving to intervene in the affairs of municipalities, including s139(1) interventions.

It is important to reflect briefly on this theory in terms of the changes in governance that emanated from the local government elections in August 2016. Of particular reference is the growing trend of coalition administrations most significantly in the highly contested metropolitan municipalities like the City of Johannesburg, City of Tshwane and the Nelson Mandela Metro and some secondary cities. While the motivations for the changes in the political landscape vary widely, one would argue that the persistent administrative challenges (perceived or real) in municipalities also contributed to these changes. The impact of the current changes in local governance and municipal administration in terms of improvements in governance are possible areas for future research.

3.2.2 Transformational leadership theory

According to Burns (1978), transformational leadership theory centres on three pillars, namely: the collaboration between a leader and the employees and/or the subordinates towards the realisation of the intended change; the development of appropriate mechanisms and environment that promote high performance; and the power vested in the leadership to reward good performance and punish underperformance. One would reason that the transformation of the South African local government is reliant on transformational leadership that sees and supports the objectives of the newly transformed government system. Therefore, the capacity and commitment of municipal leadership, especially political leadership, is critical in advancing the transformation agenda. Roux (2002:419) makes an insightful statement and proclaims "Change and transformation are also management issues that have and will become a way of life".

The theory places value on collaboration between the leader and follower. Closely linked to the aspect of collaboration is the assumption made of a relationship that exists between the leader and the follower. In the context of local government, this refers to the interactions and relations between municipal leadership and the entire municipal workforce, and between the local government and provincial government. The theory is also known as the 'relationship theory' as it stresses the importance of the interactions that happen amongst people. Worth noting is that the IGR Act provides the framework aimed at developing and maintaining sound relations amongst the spheres of government and other organs of state. The Act sets the rules of engagement and puts in place mechanisms and procedures to facilitate the settlement of intergovernmental disputes.

Ansell and Gash (2007:551) contend "Power imbalances between stakeholders are commonly noted in collaborative governance". The authors further maintain that when stakeholders are interdependent, a high level of conflict may actually create a powerful incentive for collaborative governance. The growing trend of coalition administrations in municipalities as reflected on earlier, stands to pose collaboration related challenges in the alliances. Potential conflict and/or misunderstanding is likely to result from the combination of political parties with different ideologies and understanding of the transformation agenda.

It is a fact that the tensions that accompany the application of s139(1) interventions as they happened in the NMMDM have the potential to put a strain on the collaborative arrangements. As a result, the nature and extent of collaboration that existed between the NMMDM and the NWPG prior to and during the s139(1) interventions over the years deserved exploration. Closely linked to this aspect is the extent to which the application of s139(1) interventions in the NMMDM resulted from the failure to collaborate between the NMMDM and the NWPEC.

The creation of a conducive environment that promotes high performance is a further important foundation of this theory. This places the onus on the leader to ensure that the right mechanisms are in place for the transformation process to take place. Hence, there is a number of pieces of legislation, regulations and support programmes aimed at creating a mutually supporting environment. Yet, s139(1) interventions signify the demonstrated failure by municipal leadership to effectively deliver services and transform and improve the living conditions of the communities.

While the theory touches on critical issues relevant in this research study, it fails to consider the potential difficulties that transformational leaders are likely to encounter in the transformation process.

3.2.3 Transactional theories

Transactional theories are premised on the concept of transactions between leaders and followers. In terms of this theory, the leader must find means to reward the follower for performing the assigned tasks or impose punishment for underperformance or failure (Burns, 1978). The role of supervision, organisation, and group performance are the core fundamentals of this theory. In pursuit of these objectives, the leader promotes compliance to law and relevant regulations.

Section 2.3.6 articulates how in practice the national/provincial government accomplish the role of supervision in enhancing the performance of local government. In terms of this theory, the leader is obligated to develop appropriate means to monitor and control the follower to ensure adherence to the leader's dictates. The study sought to provide answers

to the question about whether the application of s139(1) interventions is suggestive of the failure by both the national and provincial governments to fulfil their constitutional responsibility of monitoring and supporting the local government sphere and the scope of support provided to improve administrative efficiency.

3.2.4 Principal-agent theory

The theory emerged in the 1970s from the combined disciplines of economics and institutional theory. Caers, Du Bois, De Gieter, Schepers and Pepermans (2006:26) define a principal-agent relationship as, "A contract under which one or more persons (the principals) engage another person (the agent) to perform some service on their behalf which involves delegating some decision making authority to the agent".

In the context of the research topic, the theory refers to a contract wherein the local government as the agent performs work in the interest of the principal, namely, the national and provincial governments. In this instance, the contract emanates from the constitutional provisions, namely, the duties of local government and the power granted on provincial government to intercede in the affairs of local government. The Conceptual Framework section below discusses this theory in detail.

3.3 Conceptual framework

This section covers the key concepts that will be thoroughly analysed using empirical evidence. Furthermore, the researcher used the key concepts that emanated from the other three schools of thoughts to strengthen the arguments. Quite rightly, Badenhorst (2007:21) states "In conceptual framework, a researcher needs to show which interpretations of concepts and theories he/she believes to be most valid and supported by evidence".

3.3.1 Principal-agent theory

The researcher adopted the Principal Agent theory as the core theory to inform and underpin the development of the research study. This theory is preferred for two fundamental reasons.

- It advances a number of relevant concepts that enrich the discussions around the research topic.

- It succinctly portrays the position of local government in the multi-level governance arrangements and the factors that compel provincial government to intervene and realign the performance of local government.

Scholars of public administration have put forward arguments that support the choice of adopting this theory to inform the research study. Leruth and Paul (2006:6) accentuate such relevance and contend "A number of government operations can be assimilated to principal-agent relationships and one example is to model the central government as the principal, while the subnational governments are the agents". In contextualising this to the research topic, the NWPG is the principal and the NMMDM the agent. Further, Gailmard (2012:20) states "The principal-agent theory has proven to be a flexible and useful approach for interpreting the effects of institutional arrangements on accountability of public decision-makers and public policy".

The foundation of the principal-agent theory is that politicians as principals of state agents explicitly possess political power to elicit better performance and accountability from state agents. The statement reaffirms the critical role that the principals as politicians ought to play to ensure the achievement of the political agenda. The principals achieve this through the political appointment system or cadre deployment system, oversight research, and performance management.

Like any other theory, the principal-agent theory has inherent limitations. For instance, Gailmard (2012) argues that the principal-agent model suggests that agents need not in fact be perfect agents of their principals, and that the principals find it prohibitively costly to completely eliminate agency loss and that the mere existence of agency loss does not imply that accountability of the agent is suboptimal or defective from the principal's standpoint. Without discussing the ramifications of this stance, the statement could explain why the provincial executives sometimes take a while to invoke s139(1) interventions.

Amagoh (2009:7) criticises the theory and contends "The theory assumes that the principal and agent are engaged in cooperative behaviour but have differencing attitudes towards risk". The writer further asserts that central to this belief is that the agent does not share the

principal's goals and therefore will not accomplish them adequately if left to its own devices, a behaviour referred to as 'shirking'.

The principal-agent theory acknowledges the occurrence of a dilemma when the agents are not acting in the best interests of the principal. Namazi (2013:40) concurs and asserts "The objective of the principal and the agent may be incompatible, and therefore the agent may take actions which will jeopardize the principal's benefits". Moreover, the theory postulates that the principals may use various mechanisms to align the functioning of the agent. In terms of this research study, this happens when municipalities (the agents) are not fulfilling their mandated obligations compelling the provincial government (the principal) to invoke s139(1) interventions as mandated by the Constitution and relevant legislation.

3.3.1.1 Exercise of power

The theory is firmly rooted in the exercise of power vested in the principal to either reward the agent for good performance or punish the agent for underperformance. It makes sense to reason that with power and authority comes the responsibility to provide guidance and leadership. Jonassen (2015:92) makes an important assertion that "leadership is fundamentally more about participation and collectively creating a sense of direction than it is about control and exercise of authority".

In this instance, the invocation of s139(1) provincial interventions cannot be equated to some form of punishment but rather corrective measures prompted by significant and demonstrated underperformance by municipalities. Quite rightly, Malmir, Shirvani, Rashidpour and Soltani (2014:87) declare "The system of public administration requires clear separation between those who give orders and those who carry out the orders". In the context of the research study, the Constitution clearly articulates the role that the provincial government ought to play over the functioning of local government. By virtue of being interdependent spheres of the same government, the assumption is that the parties clearly understand the power vested in the principal to intercede in the affairs of the agent and the conditions that warrant such interventions.

In the context of the research study, there are two centres of power determined by applicable legislation to stimulate better performance and accountability.

- Sections 151(2) and (3) of the Constitution instruct that the executive and legislative authority of a municipality is vested in its Municipal Council. The latter has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. In as much as the Constitution gives the authority to Municipal Councils to govern their affairs, of critical importance in this provision is the reference, "subject to national and provincial legislation as provided for in the Constitution". In other words, in exercising their duties the municipal councils ought to act within the parameters of the law.

- The power that lies with provincial governments to intercede in the functioning of local government to invoke s139(1) interventions in reaction to the demonstrated failings of municipalities which is the subject of this research study. Despite the defined legislated powers, the practicalities of transferring the constitutionally granted executive obligations from municipal councils to appointed administrators on behalf of provincial government has the potential to put power relations in jeopardy. This is evidenced by the growing trend of resistance against the s139(1) interventions which are most profound in instances of s139(1)(c) that result in the dissolution of Municipal Councils.

Municipal resistance brings to the fore the discussions around three important constitutional provisions amongst others:

- The Founding Provisions as stipulated in Chapter 1 of the Constitution that relate to the supremacy of the Constitution and the invalidity of any conduct that is inconsistent with it.
- The principles of cooperative government as stated in Chapter 3 that stresses the importance of cooperative governance.
- The implications of the IGR Framework.

The study sought to establish the underlying reasons for resistance in the NMMDM, for instance, whether the constitutionality of the s139(1) interventions was being questioned or a reflection of the failure by other measures to resolve disputes. What is clear though is that

the s139(1) interventions cannot succeed unless the environment in which they are applied is conducive and the internal personnel embrace them.

3.3.1.2 Cadre deployment

'Cadre deployment' in the South African local government milieu is a highly contentious issue. Principals pursue the cadre deployment systems in the operations of municipalities at three levels:

- Political leadership and/or municipal councils are responsible for the appointment of administrative leadership comprising the Municipal Managers (MMs) and managers reporting directly to the MM and/or Section 57 managers.
- The provincial government deploys the MMs and Chief Financial Officers (CFOs) when municipalities have persistently underperformed and continued to experience vacancies in these strategic leadership positions.
- Cadre deployment occurs when the provincial executives deploy administrators and other experts during provincial interventions.

Scholars of public administration have voiced opposing views about the rationale behind the cadre deployment system and the impact thereof on the operations of municipalities. De Visser (2010:98) asserts "The rationale for making political appointments in local government in South Africa has been to seek synergy between the municipal council and the municipal administration". The attainment of synergy between the municipal council and municipal officials is vital in delivering services. However, the creation of a balance between synergy and the capabilities of those deployed to assume the leadership roles is equally important. Du Gay (2000:115) puts forward the issue of self-interests and declares "Political principals put the system in place to tame the power of agency officials and to enhance the politicians' own position within government". The impression from this assertion is that there is a potential conflict between the political and administrative leadership.

Critics of cadre deployment put forward a number of viewpoints against the system. Sa and Kanji (2003:133) contend "the fact that managerial leadership is often politically appointed creates additional problems in local government". The statement could be applicable in the South African local government situation where allegations are made of cadre

appointments having largely resulted in the appointment of people in key positions without the necessary skills to steer the municipalities towards achieving the mandated obligations. Whatever the causes, inadequate institutional capacity has largely contributed to the current unsatisfactory state of local government. Moreover, inadequate institutional capacity puts the sustainability of some municipalities at risk, and contributes to the application of s139(1) interventions. Given the repeat interventions over a number of years in the NMMDM, an assessment of the calibre of political and administrative leadership in the NMMDM deserves attention.

Notwithstanding the dilemmas that come with the cadre deployment system, one could reason that politicians utilise the system to appoint people with the same political ideologies to pursue the political agenda of the government. Given the leadership responsibility of appointing key municipal personnel with the right skills to lead the administration, one would argue that the political leadership is accountable for the administrative failings that result in the application of s139(1) interventions. Although the current practice has been heavily criticised, owing to the political nature of local government, the new leadership in the coalition administrations is likely to continue with this system.

3.3.1.3 Oversight

According to West (1995), oversight research includes oversight meetings, unannounced or announced site visits to the government development projects as well as requesting quarterly and annual performance reports of state institutions. Madue (2012:432) defines oversight as "an important legislative means of ensuring that the laws passed are implemented, the approved budgets are well spent and the executive is held accountable in accordance with democratic principles".

The SA Legislative Sector Report (2012:7) cites a vital aspect that "it is important to identify the key elements of legislative oversight, that is, the evaluation of the efficacy of public service programmes and the appropriateness of financial resource allocations and management, and the relationships between these key elements". The Report further mentions two critical aspects. First, that in terms of the provisions of the Constitution, Parliament and the Provincial Legislatures must maintain oversight of all organs of state,

including those at provincial and local government levels. Second, that the concept of oversight contains many aspects that include political, administrative, financial, ethical, legal, and strategic elements. It is important to note that the oversight that is performed by the NCOP prior to and during the course of s139(1) interventions to assess progress made amongst other objectives is moderated in the available literature.

Discussions regarding the oversight performed by the principals bring to the fore critical questions around the nature, intensity, frequency, and value of oversight performed by various stakeholders. In this instance, the frequency and nature of the pre-intervention visits and support including the oversight visits in terms of the MSA are areas of critical importance. Owing to the repeat interventions in the NMMDM and the conditions that called for such interventions, the question is whether such interventions emanated from the failure by the key stakeholders to provide sufficient oversight or that such repeats resulted from the intensity of the oversight performed.

3.3.1.4 Performance management

According to the principal-agent theory, the principal has an obligation to create a conducive environment for the agent to perform the assigned duties. At the centre of this responsibility is to ensure that the agent has adequate capacity to function optimally. The creation of such an environment takes different forms, including the drafting and application of relevant policies and the allocation of resources amongst many others.

Leruth and Paul (2007:5) raise an important aspect and declare "An important element of any principal-agent model is to specify an observable that will be the main element of the contract". Hence, the legislated reporting regime in municipalities aims to improve accountability and internal efficiency. For instance, Chapter 6 of the MSA makes provision for the establishment of a performance management system, its management, and monitoring and review of the system. In line with legislation, the performance management system including the current debates on the professionalisation of the local government system is prioritised with the ultimate objective to improve administrative efficiency and service delivery. Curristine, Lonti and Joumard (2007:17) caution "Performance measures do not explain the underlying causes of poor performance". The writers further maintain

that in any given year, performance can be influenced by a variety of factors, both internal and external, that may not be within the control of an agency.

For purposes of this discussion, municipal performance is assessed in terms of the three main triggers for s139(1) interventions, namely, governance, financial management and administration, and service delivery capacity. Kloviene and Valanciene (2013:383) elaborate further on this view. The writers pronounce "In literature many authors emphasise that the performance measurement is an essential foundation that municipalities can have based on the fact that performance measurement can be helpful in achieving local and national priorities and that the law and municipal regulatory authorities is the first operational controller for the performance of municipalities".

a) Governance

Governance is a broad concept commonly associated with a number of key basic tenets such as accountability, transparency, responsiveness, and inclusivity. Weiss (2000:795) maintains, "Governance entails structures and processes that support the creation of participatory, responsive and accountable polity". Eagle (2005:36) elucidates the element of participatory governance and asserts "Democratic governance, at the most basic level, concerns the linkage between the purpose of government and the preferences of the public". The author further argues that accountability concerns acting in accordance with the preferences of those to whom responsibility is owed. These assertions confirm the critical responsibility of municipal leadership in maintaining sound relations with the communities who elected them. In the local government milieu, governance and accountability are promoted through the delivery of basic services to the communities as enshrined in the Constitution.

The number and nature of persistent governance-related deficiencies in municipalities have compelled provincial government to intervene in municipalities and apply s139(1) interventions as a corrective measure. Quite often, these inefficiencies range from political instability in municipal councils, supply chain management contraventions, ineffective governance structures such as audit committees and municipal public accounts committees, failure to consult and engage with the community in the legislated IDP/Budget related processes, and a host of others. According to Leruth and Paul (2007) these challenges stem

from asymmetric information and interest divergence between those who perform tasks (the agents) and those on whose behalf tasks are performed (the principals). The study will establish the key governance challenges that forced the NWPEC to apply s139(1)(b) and s139(1)(c) interventions in the NMMDM over the years.

b) Financial management and administration

Sound financial health is critical for both the financial viability of municipalities and their ability to deliver services to the communities in a sustainable manner. Folscher and Cole (2006:30) assert "The South African experience shows that better financial management and improved service delivery do not occur simply through the passing of legislation and regulations and the provision of guidelines". The writers further contend that the implementation of performance-oriented reforms requires appropriate training of managers and recruitment of additional management skills into the public service.

Within the spirit of cooperative governance, the MFMA specifies the powers and functions of both National and Provincial Treasuries in relation to all the municipal finance management related aspects in municipalities. With this in mind, the nature and extent of financial support provided prior to, during and post the s139(1) intervention phase are critical areas for exploration.

District municipalities like the NMMDM are largely dependent on fiscal transfers for their operations in the form of conditional and unconditional grants. To a limited extent, district municipalities raise tariffs from the limited services they provide and levies from businesses in the district. For purposes of this research, there are two important allocations for the effective delivery of services worth noting. First, the Equitable Share which is an unconditional grant primarily for the provision of basic services. Second, the Municipal Infrastructure Grant (MIG) allocations that are conditional grants mainly to cover the capital cost of basic infrastructure for the poor.

The fiscal transfers by the principals (national and provincial governments) confirm the dependency of local government on the other two spheres of government to deliver its mandated obligations of service delivery effectively. Asaju (2010:111) highlights the aspect of interdependency and support and declares "The provisions in the Constitution

that dictate the power and financial relationships between various tiers of government, especially the state and the local government are deliberate to serve as checks and balances and to ensure transparency and accountability amongst others".

While the sufficiency of such financial resources is an important aspect in municipalities, equally important is the ability of municipalities to spend the allocations, for the purposes for which the allocations are intended. Both low spending and/or underspending talk to issues of capacity constraints, especially in the infrastructure service divisions. As a result, in each financial year, National Treasury recalls large sums of money allocated to local government owing to low expenditure. Overspending on conditional grants as well is a sign of inefficiencies in planning and managing the allocations.

Ncube (2014:296) underscores the consequences of underperformance. The author declares that "the performance gaps that manifest in the local government sphere remain a cause for concern and such gaps manifest in the high incidence of poor audit reports, under-spending/overspending, poorly maintained infrastructure, large and growing consumer debt problems, and billing challenges". The audit outcomes give an extensive feedback on how municipalities manage their financial affairs. The persistent negative outcomes such as adverse opinions and disclaimers provide sufficient motivation for the invocation of s139(1) interventions to address problems of financial management and accountability in municipalities. Although audit outcomes are critical indicators, Powell and O'Donovan (2014:9) bring an important dimension to the discussion and contend, "Audit outcomes should be seen as an indicator of the extent to which national/provincial government are fulfilling their obligations towards local government". The authors further suggest that after the intervention, audit data could be used to measure the effectiveness of national and provincial interventions under s139 of the Constitution.

It is important to refer briefly to the nature and conditions for the application of financial related interventions in municipalities as reflected under the subparagraph 1.2 above. For instance, s139(4) is applied when a Municipal Council has failed in its executive obligations to approve a budget or any revenue-raising measures. Section 139(5) is applied when a municipality because of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or meet its financial

commitments. Of significance is that Section 139(5) interventions are mandatory and applied together with Section 139 of the MFMA. At the time of the research study, the NMMDM was under s139(1)(b) intervention owing to persistent financial challenges.

The study sought to establish the financial situation that prevailed in the NMMDM and resulted in the application of the latest intervention. Linked to this is the extent to which the NMMDM's unsatisfactory status resulted from the failure by the NWPG (the principal) to execute its oversight responsibility over the financial matters of the NMMDM.

c) Service delivery

The Constitution, which is the foundation of democracy in South Africa, guarantees all citizens the right of access to basic infrastructure services. Of particular reference in this discussion is the provision of water and sanitation, which the NMMDM is responsible for within its jurisdiction. Given the insurmountable responsibility assigned to local government, it is highly dependent on financial, technical and other related support from the other spheres of government to deliver services as enshrined in the Constitution. Kloviene and Valanciene (2013:386) elaborate on this aspect and maintain, "The municipality's dependence on the central and regional authorities has a significant impact on its performance".

The ability to deliver services and meet the high demands of the community presents challenges for district municipalities like the NMMDM. This is so because district municipalities have no constituencies. The dilemma that comes with these arrangements is that when the district community is not satisfied with the quality of service delivery, the aggrieved community demonstrates its frustrations at local municipality and not at the district. However, district municipalities primarily maintain consultation with the district communities during the Integrated Development Plan (IDP)/Budget related processes.

As mentioned above, one of the challenges facing municipalities is the inability to spend the funds allocated to facilitate and extend the delivery of basic services to the communities. In fact, this tendency makes the association between the insufficiency of financial resources and the application of s139(1) interventions hard to comprehend. Failure to spend the allocated funding not only signifies municipal leadership deficiencies

but also contributes to the growing trend of violent service delivery protests and the resultant application of s139(1) interventions.

The literature review shows the existence of a possible cause and effect relationship between the application of s139(1) interventions and service delivery protests. Although the triggers for such mass actions vary widely, largely the protests are an indication of the failure by municipal leadership in their responsibility of maintaining sound relations with the communities and in promoting participatory governance in the delivery of public services. The study sought to establish whether there was a relationship between the invocation of s139(1) interventions in the NMMDM and the occurrence of violent service delivery protests across the district.

It is important to note that in the process of fulfilling the service delivery mandate, municipalities have to grapple with the huge burden of the unfunded mandates. The impact of the unfunded mandate on the financial standing of municipalities is most acute in the poorly resourced municipalities including districts such as the NMMDM. Discussions on this aspect fall outside the scope of the research study.

3.4 Conclusion

Governance and leadership concepts are the cornerstones of local government. Both are critical for managing local government and the delivery of public services. However, municipal leadership has to grapple with the dynamics of local government including the provision of the strategic direction and mobilization of commitment to facilitate the transformation process. From the discussions, it became apparent that the promotion of governance in municipalities is a complex phenomenon that hinges on a number of internal and external factors. Amongst these complexities are the political nature of the relationships between the provincial and local government and between the local government and the community.

Chapter Four

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4. Research Methodology

4.1 Introduction

This chapter describes the research methodology and provides a detailed account of the mechanisms used to collect the necessary data for the achievement of the research objectives. It covers the following critical aspects: philosophical foundations; qualitative research designs; case study approach; data collection techniques (interviews and document analysis); data analysis methods; measures to ensure reliability and validity of the study; limitations of the study; ethical considerations; and concluding remarks. Notably, the researcher provides explanations on the underlying principles behind the adopted designs and approaches.

4.2 Philosophical foundations

It is imperative to commence by providing a brief reflection of the philosophical foundations of the research process. Neuman (2011) asserts that research methodology rests on a foundation of ontological and epistemological assumptions and refers to three approaches associated with these assumptions, namely, the positivist social science, interpretative social science and critical social science. Neuman further argues that for the interpretive researchers, the goal of social research is to develop an understanding of social life and discover how people construct meanings in natural settings. Castellan (2010:6) raises similar notions and mentions "According to Shulman (1986), the interpretive perspective focuses on discovering the meanings constructed by the participants as they attempt to make sense of the circumstances they both encounter and create". Against this background and taking into account the disposition of the research topic, the foundations of this research study are firmly rooted in interpretative social science.

4.3 Qualitative research design

Quantitative and qualitative methods are the two predominant research approaches. Each of these approaches has its own advantages and disadvantages, and there are inherent similarities and differences between them. Sale, Lohfeld and Brazil (2002:44) draw important distinctions between the two approaches and maintain "Each of these methods is based on a particular paradigm, patterned set of assumptions concerning reality (ontology), knowledge of that reality (epistemology), and the particular ways of knowing that reality (methodology)". Neuman (2011:163) refers to triangulation and/or the mixed method approach and proposes "One can mix the features of quantitative and qualitative studies to build on their complementary strengths".

The researcher adopted the qualitative research method over the quantitative and mixed method research paradigms. The exploratory nature of the research topic, research objectives, and the limited existing empirical evidence on the research topic primarily determined the choice of the research design. The qualitative method was most suitable to unravel all the critical aspects that informed and impacted the application of s139(1) interventions in the NMMDM.

The relevant literature provided sufficient grounds for selecting the qualitative approach. The researcher considered the following critical aspects:

- That the research topic is by its very disposition politically sensitive. Fahie (2014:19) accentuates the relevance of the adopted approach and contends, "Qualitative research methods are particularly suitable for research into sensitive issues".
- That the nature of the research topic required an exploration of the behaviour of the parties involved. Salkind (2009:12) claims "The general purpose of the qualitative research method is to examine human behaviour in the social, cultural and political contexts in which they occur".
- The complexity of local government debates and their susceptibility to both internal and external factors. To this end, Leedy and Ormond (2001) maintain that qualitative research focuses on phenomena that occur in natural settings and that the phenomena are studied in all their complexity and multiple facets.

While the qualitative research design is preferred, the researcher is cognisant of its inherent shortcomings. Kohlbacher (2006:2) warns that "qualitative research methods have often faced acceptance problems and academic and disciplinary resistance which are partly due to the politics embedded in this field of discourse". The author further states that great efforts have been made to reconcile both sides and this has led to the invention of mixed method approaches and the use of triangulation. According to this perspective, triangulation is an option to address the limitations entrenched in the qualitative research methods. However, Neuman (2011:163) highlights the limitations of triangulation and maintains "Mixing approaches has advantages but adds complexity and is more time consuming".

4.4 Case study approach

Creswell (1994:4) refers to five approaches of inquiry in qualitative research methods, namely, biography, phenomenology, grounded theory, ethnography, and case study. Based on the following reasons, the researcher adopted the case study approach as the most appropriate strategy:

- The research objectives to explore and explain the intricacies relating to the research topic.
- The limited empirical evidence on the research topic.
- The aspiration to develop new philosophies.

Baskarada (2014:4) sums up the appropriateness of the case study approach. The writer affirms "Exploratory case studies are mainly used for theory building and are particularly well-suited for extensive and in-depth descriptions of complex social phenomena". In contextualising this to the research topic, the case study will demonstrate in detail the factors that informed and affected the application of s139(1) interventions in the NMMDM, and how such factors either promoted or undermined the application of these interventions.

In order to get a deeper comprehension of the phenomenon under study, the researcher chose the NMMDM as a single case study. Salkind (2011:214) cautions "Single case studies are susceptible to bias as what is seen is not always what is real". However, the benefits of choosing a single case study for the planned research far outweighed its

inherent shortcomings. Notably, the researcher based her preference of the single case study approach on pertinent incidents and experiences observed in the NMMDM. The following incidents and experiences provided sufficient rationale for adopting the single case study approach:

- In 2009, the NMMDM was for the first time placed under s139(1)(b) of the Constitution.
- In 2010, the NMMDM was under s139(1)(b) which was an extension from the s139(1)(b) invoked in 2009. The intervention was prolonged and lasted until after the local government elections in 2011.
- In July 2014, the NWPEC resolved to invoke s139(1)(b) once more. The NMMDM objected to the manner in which the NWPEC followed the processes and took the matter before the North West High Court in Mafikeng. The court ruled in favour of the NMMDM on procedural grounds. Subsequently, the NWPEC withdrew the intervention.
- In September 2014, the NWPEC resolved to intervene by invoking s139(1)(c) of the Constitution. Again, the NMMDM resisted the intervention and approached the High Court in Mafikeng for an interdict and the court dismissed the interdict. The NWPEC went ahead and dissolved the Municipal Council in September 2014. The intervention lasted until December 2014 after the appointment of the new Municipal Council.
- Finally, in March 2015, the new Municipal Council requested assistance from the NWPG upon realising the poor financial status of the municipality. The request resulted in the application of s139(1)(b).

4.5 Data collection techniques

Neuman (2011:9) defines data as referring to "forms of empirical evidence or information carefully collected according to the rules of procedures of science". The researcher considered a variety of data gathering methods applicable in qualitative research paradigms. According to Pretorius and Schurink (2007), qualitative researchers generally rely on four basic types of data sources, namely, interviews, observations, documents, and audio-visual materials. For purposes of this study, the researcher opted to utilize two data collection techniques, namely, interviews (primary sources of information) and document

analysis (secondary sources of information), which are normally grouped under the umbrella term "ethnographic methods".

The one distinct benefit of combining interviews and document analysis is that they complement each other. Baxter and Jack (2008:544) emphasise these benefits and contend "A hallmark of the case study research is the use of multiple data sources, a strategy which also enhances data credibility". In this instance, the researcher utilised the data obtained from reading and analysing relevant documentation to balance the data collected from the research participants.

4.5.1 Research interviews

Yin (2009) defines interviews as guided conversations that are usually one of the most important sources of case study evidence. The researcher carefully considered the three basic types of research interviews, namely, structured, semi-structured and unstructured. Ultimately, the semi-structured interviews were preferred as the primary source of information and the motivation for this choice was threefold:

- Interviews enabled the researcher to maintain dialogues and personal contact with the research participants.
- Interviews enabled the researcher to engage in in-depth discussions with the research participants and/or people directly affected, and allowed them to describe the phenomenon under study from their perspectives.
- Interviews enabled the researcher to have some leeway to steer cautiously the discussions without influencing the responses towards meeting the research objectives. This point was particularly useful to guard against the propensity of research participants to discuss the multitude of local government issues that had very little or of no bearing to the research topic.
- Finally, interviews enabled the researcher to have the flexibility that comes with the semi-structured interview type to pursue ideas, beliefs, perceptions, and non-verbal gestures demonstrated during the course of the discussions.

In order to get as much detailed information as possible, the interview questions were carefully structured and open-ended. Borrego, Douglas and Amelink (2009:55-56) maintain that "qualitative research is characterised by the collection and analysis of textual data (surveys, interviews, focus groups, conversational analysis, observation,

ethnographies), and by its emphasis on the context within which the study occurs". As indicated in Chapter 1 the researcher used the list of interview questions that she compiled for the interviews.

4.5.1.1 Timing for the research study

The researcher visited the offices of the NMMDM situated in Mafikeng on the 6th and 7th June 2016, approximately 2 months before the local government elections in August. The NMMDM suggested the dates after numerous attempts by the researcher to secure appointments for the research study. Attached hereto marked as Annexures "B' and "C" are copies of the letter that the researcher sent to the NMMDM requesting an opportunity to conduct the study and the letter of approval from the NMMDM.

4.5.1.2 Selection of research participants

In order to get different perspectives and enhance the soundness of the information collected, the researcher had planned to hold interviews with the municipal leadership and the representatives of key stakeholders from the national and provincial government including legislature/parliamentary leadership. The focus was to get people that are directly affected and/or involved in the planning and implementation of s139(1) interventions in the NMMDM and have strategic roles with decision-making powers.

Of particular interest to the researcher was unearthing differences in the interpretation of constitutional and legislative provisions from these participants depending on which government sphere they represented, and also to elicit participants' insights relating to the multiple factors that informed and impacted the application of s139(1) interventions in the NMMDM. The researcher planned to interview 20 research participants as follows:

a) Research participants from the NMMDM

The researcher planned to interview 15 research participants from the municipal leadership of the NMMDM. In order to acquire both the political and administrative perspectives on the research topic, the municipal leadership included both the political and administrative officials. From the political arm of the municipality, the researcher targeted the Mayor and four members of the Mayoral Committee. From the administration side, the researcher targeted 10 Executive Management officials. At the time of the research study, the executive management structure consisted of

the Municipal Manager and Sections 56 and 57 managers comprising the Chief Internal Audit and Directors for Financial Services (Chief Finance Officer), Infrastructure and Maintenance Services, Project Management Unit, Planning and Development, Community Services, Corporate Services, and Health and Safety Services.

Owing to circumstances beyond the control of the researcher, she could only manage to interview eleven research participants from the NMMDM against the target of fifteen as reflected above. The reasons for the variation in numbers are as reflected below:

- Upon arrival at the NMMDM offices, the researcher became aware that the Executive Management structure was almost entirely vacant. At the time, the NMMDM operated with only two substantive senior managers one of whom was not available to participate in the study. The unexpected situation compelled the researcher to look at alternative options and resorted to recruiting the available senior managers coupled with middle/line management.
- The researcher also noted that although she had the approval to conduct the study, the leadership did not communicate her request to the potential research participants. The continuation of the research study solely pivoted on the availability and willingness of the available personnel to partake in the research study. Ultimately, eleven participants comprising two executive managers (one substantive and one acting) and line managers participated in the study.
- Some of the potential research participants simply refused to participate in the research study and mentioned the fear of possible victimisation after the research study. Such reactions confirmed what the researcher had predicted in Chapter 3 more importantly, the political sensitivities of the research topic. In line with ethical considerations and also driven by the undertaking the researcher ensured that no one was to suffer unjustly as a direct or indirect result of the research study. In adherence to research ethics, she allowed those who declined to participate in the study to exercise their rights.
- The timing for the research study coincided with the campaigns for the pending

local government elections that were to be held on 3 August 2016. This made it difficult to secure appointments with some of the critical research participants from the political wing of the municipality as they were engaged in the campaigns in preparation for the elections. In the end, three participants from the political wing participated in the study.

b) Research participants from the key stakeholders

The researcher earmarked five officials to represent the key stakeholders involved in the local government sphere. The targeted stakeholders included the NCOP, DCoG, Provincial Department of Local Government & Traditional Affairs (DLG&TA), Provincial Treasury, and Salga. Against the goal of interviewing five officials, the researcher interviewed two officials, namely, the Acting Municipal Manager and the Acting CFO. The circumstances that called for these changes are as indicated below:

- The Acting Municipal Manager and the Acting CFO were deployees of the North West DLG&HS and the Provincial Treasury. Against this background, these officials were suitable to impart the perspectives of their respective departments. More importantly, the officials did not only give the overall policy remarks but their physical deployment in the NMMDM enabled them to share their experiences in the application of s139(1) interventions in the NMMDM from the perspective of the provincial government.

- The researcher's further attempts to interview other officials recommended during the interviews were unsuccessful. Such reaction served to corroborate the political sensitivities around the research topic.

Against this backdrop, the researcher concentrated on soliciting only the views of the internal stakeholders coupled with the views of the two officials directly involved in the implementation of s139(1) interventions in the NMMDM. Eventually, the researcher satisfied herself that the representation of the political, administrative and stakeholders' views was adequate and the information collected balanced. Given the experiences and the unexpected changes, the researcher resorted to concentrating on gathering quality information to compensate for not attaining the predetermined number of research

participants. Although the people that had resigned from the NMMDM could have supplied pertinent information, given the sensitivity of the research topic, the researcher did not pursue this option.

4.5.1.3 The researcher as an instrument of data collection

The researcher conducted the interviews in person unaided. She took down notes and observed the non-verbal gestures displayed by the research participants, which she followed through with questions for clarification. She took steps to ensure that her being the primary instrument for data collection did not result in unintended consequences. In cautioning against interview bias, Neuman (2011:339) asserts "The interviewer's appearance, tone of voice, question wording, and so forth may affect the respondent". Richards and Morse (2007:113) advise that "The interviewer should always be an active listener and has to be responsive and involved without interrupting the interviewees when responding".

On realising the uneasiness of the research participants, and to create a pleasant atmosphere within which to conduct the interviews the researcher decided against the use of audio recording. The audio recording was to aid the researcher with data capturing and to enable her to concentrate on the discussions and to note important gestures from the research participants. Merriam (2002:21) mentions "The researcher can expand his/her understanding through non-verbal as well as verbal communication, process information immediately, clarify and summarise material, check with the respondents for accuracy or interpretation, and explore unusual or unanticipated responses".

4.5.2 Document analysis

The researcher gathered secondary data through document analysis. As mentioned in Chapter Two, the researcher conducted an extensive literature review and this process entailed reading and analysing the following relevant documentation:

- Government documentation including the Constitution, various pieces of legislation such as the MFMA and MSA, regulations, policies, frameworks, parliamentary group monitoring reports, and the presentations;
- The NMMDM's documentation such as the municipal audit outcomes, annual reports, Integrated Development Plans (IDPs) and the newsletters; and
- Books, peer reviewed journals, research papers and media articles.

4.6 Data analysis methods

Neuman (2011:507) maintains "To analyse data means systematically to organise, integrate and examine, search for patterns and relationships amongst the specific details". The researcher engaged in an ongoing process of data analysis in varying degrees throughout the stages of the research process. Of significance is the data analysis that happened during the literature review. Punch (2005:41) highlights this perspective and argues "Literature itself becomes an input during the planning stage but also in the analysis phase".

From the interview transcripts, gestures noted, and analysis of relevant documentation, the researcher accumulated massive raw data. In order to assist to systematically deal with the collected data, the researcher planned to use the Computer Assisted/Aided Qualitative Data Analysis Software (CAQDAS). Amongst other benefits, CAQDAS offers a number of tools including content, coding, linking, mapping, query, writing, and annotation tools. Punch (2005:194) makes a valuable contribution to the discussion and maintains "There is no single methodological framework for analysing qualitative data due to the fact that much is dependent on the purpose of a project being researched". The researcher took note of this option.

4.7 Measures to ensure reliability and validity of the study

The researcher considered the critical aspects of reliability and validity of the research study. In order to enhance validity of the research study, the researcher carried out the following:

- The researcher utilised two data collection sources, namely, semi-structured interviews and document analysis, an approach known as data triangulation.
- The researcher targeted both the participants from the NMMDM and stakeholders involved in the local government sector. This allowed the researcher to corroborate the information obtained from both sides.
- The choice of leadership as research participants was preferred based on their knowledge of the research topic as decision-makers. The researcher was confident that based on their leadership roles the targeted participants were knowledgeable about the research topic and able to impart pertinent information on the research topic.

4.8 Limitations and delineation of the research study

Based on the nature of the research topic, the researcher predicted a number of limitations to the research study. The researcher's awareness of these weaknesses prompted her to mitigate their potential impact on the quality and sourcing of the required information for the research study as follows:

- Against the background that the NMMDM has repeatedly been placed under s139 (1) interventions over a number of years, there were potential difficulties in sourcing some critical internal documentation relating to these interventions. Included is documentation to show the prevailing municipal status at the time of the interventions.
- The chances were that some of the key personnel (political and administrative) had since left the institution through resignations, dismissals, and change of leadership. The potential impact of this was the void created in terms of the institutional memory needed to impart knowledge about the previous s139(1) interventions.
- The timing of the data collection process closer to the local government elections in August 2016 created possibilities of the unavailability of some of the targeted personnel.
- Last, because the research study is limited to the NMMDM's experiences as a single case study, it is not the intention of the study to provide information that could be generalised but to flag out critical issues as they transpired in the NMMDM. Also, the findings will not formulate common strategies for all municipalities.

4.9 Ethical considerations

The researcher acknowledged that the research topic is controversial in nature and could elicit unintended reactions from the research participants. This placed a huge moral and professional obligation on the researcher to ensure that ethical issues assumed the centre stage in the execution of the planned research study. In accentuating this point, Neuman (2011:123) argues "Ethical issues are more significant for controversial topics or areas that might violate a person's privacy or involve illegal behaviour than for 'safe topics' ".

The researcher considered the following critical ethical aspects:

- The researcher is an official of the DBSA. As a development finance institution and lender, the DBSA has an established business relationship with the NMMDM. It was incumbent on the researcher to act in an ethical manner and not to jeopardise the interests of the organisation she works for, the NMMDM and/or DBSA client relations, and those of the research participants.
- She recognised the possibility that the targeted research participants might feel pressurised or disinclined to participate in the study under the impression that the research study was a DBSA exercise and not the researcher's academic assignment.
- Linked to the second consideration, there was a possibility that some of the research participants were likely to alter their responses and provide information they thought was relevant for purposes of the DBSA.
- Last, owing to the sensitive nature of the research topic, there was likelihood that some prospective participants would be unwilling to participate in the study for fear of possible victimisation afterwards.

In reaction to these ethical issues, the researcher undertook the following precautionary measures:

- The researcher commenced by disclosing and thoroughly explaining her interests upfront and sought the approval from the leadership before commencing with any aspect of the research activity. It was only upon receipt of a formal letter of acceptance that the research study begun.
- She explained the rationale for the research study and drew a clear line between her academic interests and that of her employer (DBSA). Quite rightly, Neuman (2011:168) declares "Personal openness and integrity by the individual researcher are central to a qualitative study".
- She created opportunities for the prospective research participants to raise issues of concern upfront and to exercise their right to either participate or refuse to participate in the research study. The researcher allowed the potential research participants who refused to participate and cited fear of possible victimisation to exercise their rights.

- She guaranteed the basic ethical tenets such as confidentiality, privacy and anonymity to protect the identity of research participants. She assured the research participants of their anonymity by preserving their identity in the final write-up. She further made a commitment to share the research findings with the NMMDM to ensure the accuracy of findings prior to the publication of the information.
- Finally, she commenced with data collection only after she had established a rapport with the research participants, that there was free prior and informed consent, and that the research participants willingly and freely gave their voluntary consent to participate in the research study.

4.10 Assumptions

The following assumptions underlay the research:

- That the researcher has adequate expertise and experience in local government including the operations of the NMMDM and municipalities in general;
- That the selection of leadership as research participants was adequate to ensure the imparting of relevant strategic information and to elicit robust discussions on the research topic;
- That the adopted research methodology was best suited to gather the necessary data; and
- That the researcher had identified and sufficiently considered the ethical issues.

4.11 Conclusion

There were two important observations that emanated from the above discussions. First, the critical importance of research methodology was a crucial step to guide the research process scientifically. Second, it was essential to consider the nature of the research topic and research objectives in the determination of appropriate designs and strategies to collect data. Consequently, the adopted qualitative research design, case study methods, data collection techniques, and data analysis methods were appropriate for this research study.

Chapter Five

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5. Data Presentation

5.1 Introduction

It is important to reiterate that the primary objective of the study is to explore the factors that informed and impacted the planning and implementation of s139(1) interventions in the NMMDM. As indicated in Chapter 4, the researcher adopted a qualitative approach and utilised in-depth semi-structured interviews to gather the primary data from the research participants. The aim of this chapter is to present the raw data as obtained from the research participants.

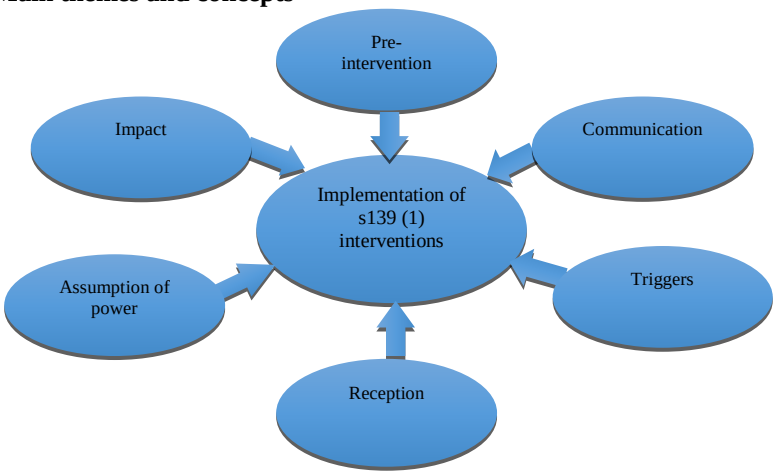
The presentation is divided into two sections, namely, the presentation of the results which are categorised into six subheadings that are aligned to the six interview questions, and the concluding remarks.

5.2 Presentation of the results

While the NMMDM has since 2009 been repeatedly placed under provincial interventions, for practical purposes the research interviews focused on lessons of experience from the planning and application of the last three s139(1) interventions. The s139(1) interventions under discussion relate to the planning of s139(1)(b) in mid-2014, and the planning and implementation of s139(1)(c) in September 2014 and the latest s139(1)(b) invoked in March 2015 to August 2016.

The researcher collected a large volume of raw data from the research participants documented in the interview transcripts. From the raw data, the researcher extracted the main themes and concepts that she aligned to both the study objectives and the research questions. As indicated in Figure 1 below, these themes and concepts clearly demonstrate interlinkages as well as their impact on the planning and application of s139(1) interventions.

Figure 1: Main themes and concepts

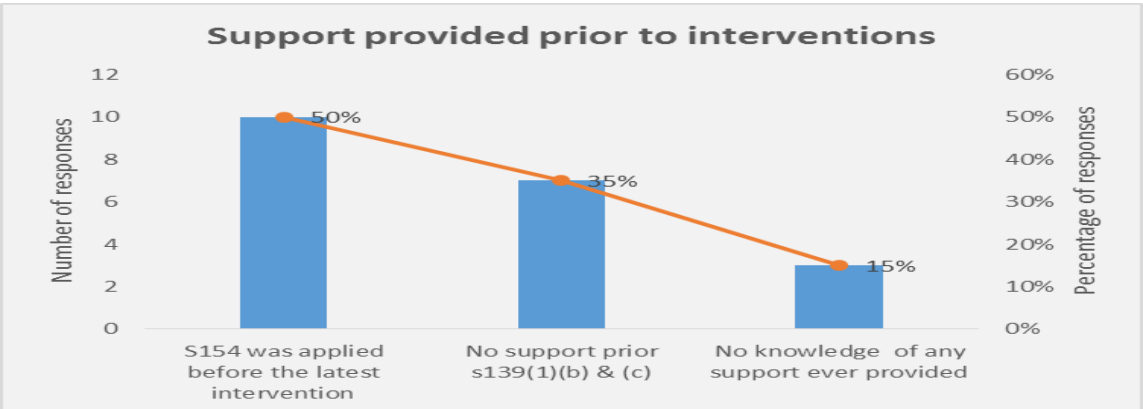


As anticipated, the interview questions elicited wide-ranging responses from the research participants. Below is the tabulation of the responses from the 13 research participants for each of the six interview questions. Notably, the researcher arranged the questions in accordance with the main themes and concepts to demonstrate their interconnectedness:

Question 1: ***Was there any support provided by the national and provincial governments prior to the s139(1) interventions? If yes, what was the nature and extent of such support?***

Taking into cognisance the wide-ranging support that the provincial government provides to municipalities as prescribed by the Constitution and relevant legislation it was necessary to consider the pre-intervention phase. The nature and extent of support that was provided to the NMMDM prior to the s139(1) interventions was an important aspect with which to commence the research interviews. The idea was to establish the nature of the challenges that prevailed within the NMMDM which the support (if any) aimed to resolve prior to the NWPEC resorting to invoke the s139(1) interventions.

Figure 2: Pre-intervention support



As indicated in figure 2, this question elicited 20 responses from the research participants. The responses revolved around three main perspectives.

- The prevalent view which constituted 50% of the responses was that the Section 154 intervention was applied after the dissolution of the Council through s139(1)(c) and before the latest s139(1)(b) intervention. There was noticeable emphasis on the short span of the Section 154 intervention. No mention was made of the reasons for the application of the Section 154 intervention thereby giving the impression that the intervention was viewed as an extension of the s139(1) intervention.

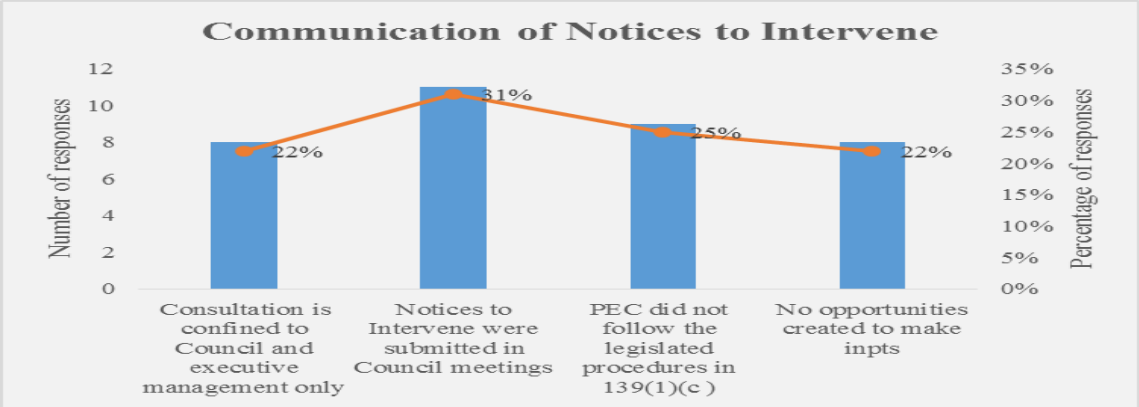
- Thirty five percent (35%) of the responses indicated that the national and provincial governments did not provide support to the NMMDM prior to the planning and application of the s139(1)(b) and s139(1)(c) interventions. Such contentions gave the impression that the two spheres of government failed in their duty to monitor the performance of the NMMDM and provide the necessary support as legislated.

- A few respondents (15% of the responses) claimed to have no knowledge of any support provided to the NMMDM by either the national or the NWPG.

Question 2: ***How were the Notices to Intervene in the affairs of the NMMDM communicated to the NMMDM?***

With this question, the researcher aimed to explore the extent to which the NWPEC followed the legislated procedures in communicating its intentions to intervene in the affairs of the NMMDM. The focus was on the manner in which the directives and 'Notices to Intervene' and any other related consultative approaches were presented, and to whom they were presented.

Figure 3: Communication of the interventions



As presented in Figure 3, the research participants gave twenty-eight responses to this question. The responses encompassed four key viewpoints as follows:

- There was a clear confirmation from 31% of the responses that the NWPEC duly followed the legislated procedures as far as the presentation of the 'Notices to Intervene' was concerned. Reportedly, the NWPEC presented the 'Notices to Intervene' in the Municipal Council meetings and in the presence of the key stakeholders such as the National Council of Provinces (NCOP) and Salga. Importantly, even when the NWPEC allegedly flouted the procedures with regard to the communication of the planned s139(1)(b) intervention in mid-2014, the Notice to Intervene in terms of that intervention was nevertheless presented before the Municipal Council.

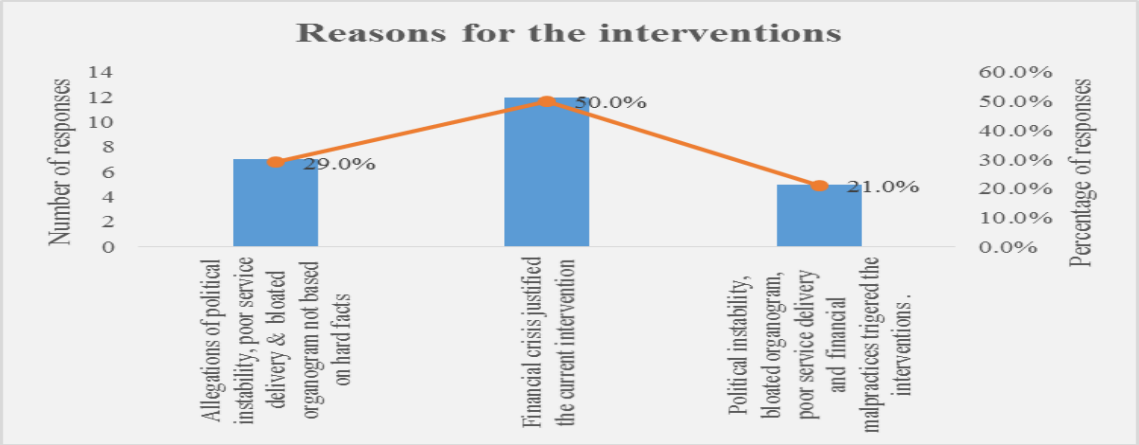
- Despite the NWPEC having presented the 'Notices to Intervene' in Municipal Council meetings, 69% of the responses raised three key weaknesses in the consultation process. First, 25% claimed that the NWPEC did not follow the legislated procedures when communicating its plans to intervene through the application of s139(1)(b) in mid-2014. Respondents made allegations of the unjustified involvement of the provincial political leadership in the process. Second, 22% alleged that the consultation process did not accord the internal stakeholders opportunities to make inputs on various accusations of malpractices purportedly detected by the NWPG. The respondents claimed that people posed questions in the consultative meetings but it transpired that the NWPEC had already made the decisions and such decisions were not to be reversed.

  Third, a further 22% maintained that the consultative process was plainly selective and sought the views of the Municipal Council and the Executive Management and excluded the rest of the municipal staff as well as the community. One respondent raised a startling question, "How do you expect to get the buy-in from the people that were not consulted about the intervention process?". The implication of this perspective was that the staff felt left out and unimportant in the intervention process.

Question 3: ***What were the triggers for the s139(1) interventions? Which executive and/or legislative obligations were not fulfilled by the NMMDM?***

With this question, the researcher attempted to get the views of the research participants as to how they understood the fundamental factors that prompted the NWPEC to invoke the three interventions in question. In particular, the researcher sought to determine which executive and/or legislative obligations the NMMDM failed to fulfil for each of the three interventions applied, and whether the reported failings of the NMMDM differed from one intervention to the other.

Figure 4: Triggers of the s139(1) interventions



In giving answers to this question, the research participants expressed 24 opinions as presented in Figure 4 above. Remarkably, the research participants drew a distinction between the triggers for the first two interventions and the latest intervention. While the question endeavoured to ascertain the reasons behind the application of these interventions as communicated by the NWPEC, the respondents opted to provide views about the validity of these triggers.

- Fifty percent of the answers given conceded that the latest s139(1)(b) intervention was justifiably triggered by the financial crisis within the NMMDM. Allegedly, upon realising the financial status of the NMMDM and the concomitant inability to fulfil the executive obligations, the new Municipal Council was compelled to request for provincial support. Hence, the latest s139(1)(b) intervention was invoked in March 2015.

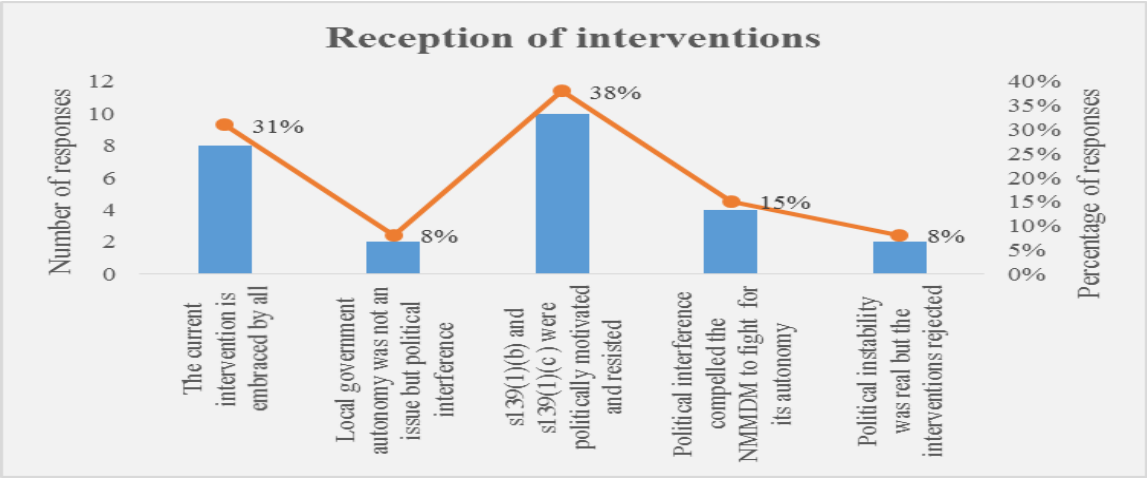
- The other half of the responses presented two opposing arguments regarding the rationality of the triggers as communicated by the NWPEC. The dominant view

(29% of the responses) asserted that the claims of political instability, poor service delivery, and bloated organogram were unjustified as they were baseless and politically motivated. The respondents questioned the timing for the dissolution of the Municipal Council which was hardly two months after the failed attempt to invoke s139(1)(b) in mid-2014 which in their view was confirmation of the abuse of power by the NWPEC. The remaining 21% of the answers shared the view that these challenges were prevalent to the extent that there was sufficient justification for the provincial interventions.

Question 4: ***How were the interventions received by the internal stakeholders? What motivated such reactions?***

Like any other intervention, the success of the s139(1) interventions is reliant on the state of the environment in which they are implemented. Against this background, the researcher solicited the views of the research participants on how the internal stakeholders received the s139(1) interventions and what inspired such reactions. Figure 5 below presents the results.

Figure 5: Reception of the interventions



This question provoked 26 varied reactions from the research participants as follows:

- The first viewpoint shared by thirty-eight percent of the responses indicated that the s139(1)(b) and s139(1)(c) interventions were fiercely contested by the NMMDM. Suspicions of political interference in the provincial intervention process that saw the NMMDM on two occasions resorting to the judiciary for resolutions prompted these contentions.

- Second, 31% of the responses indicated that the latest s139(1)(b) intervention was embraced by all. One respondent made a comment that: "The intervention was not imposed on us". Gestures from the respondents clearly conveyed the message that the fact that the intervention was motivated internally, primarily induced the utmost support for it.

- The third viewpoint (15% of the responses) contended that the political interference in the planning of s139(109b) in mid-2014 forced the NMMDM to approach the courts to register its dissatisfaction and more importantly, fight for the self-rule of local government.

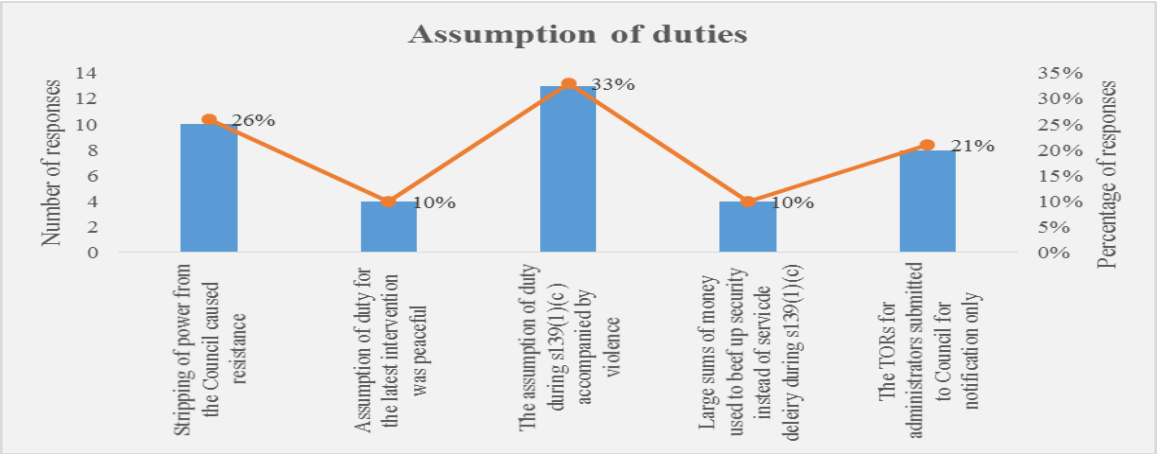
- Contrary to the latter view, 8% of the responses claimed that the autonomy of local government was not an issue. The proponents of this view argued that politicians fully understood the position of local government in the multi-level government arrangements including the powers vested in the NWPG to intervene in the affairs of the NMMDM where necessary within the parameters set by the Constitution.

- Last, a further 8% of the responses admitted that political instability prevailed but the Municipal Council opted to oppose the intervention and declared that it was baseless. As one respondent put it: "People don't want the process that exposes the irregularities within the organisation".

Question 5: ***What transpired during the assumption of duties?***

Owing to the nature of the s139(1) interventions, the assumption of power from the Municipal Council that is equally recognised by the Constitution is an important element in the intervention process with the potential to elicit resistance. Given the sensitivities around this process, the researcher's interest was on the conditions under which the NWPEC took over the control of the NMMDM. Linked to this point was how the NWPEC handled the takeover from the Council, and how the internal stakeholders received the assumption of duties. It became clear from the interviews that the assumption of duties, mostly characterised by the actual deployment of an administrator, was viewed as the most apparent takeover by the provincial government.

Figure 6: Assumption of duties



The question generated 39 wide-ranging reactions from the research participants as presented in figure 6. Such reactions were categorised into five key perspectives as depicted below:

- Thirty-three percent of the responses indicated that the assumption of duties during the s139(1)(c) intervention was accompanied by violent reactions from the internal stakeholders. Reportedly, the intervention was characterised by violent workers' strikes led by the labour unions. Reportedly, the situation became so volatile that a heavy police guard (Provincial Disaster Unit) accompanied the deployment of the first administrator. Thereafter, the municipal premises were barricaded and all of the municipal personnel including councillors were locked out. Three of the respondents strongly argued that with all the municipal personnel locked out, the administrator was left alone to assume various roles beyond what is permitted by applicable legislation such as being the Acting Municipal Manager, Acting CFO, Acting Executive Mayor, and an acting general worker.

- Twenty six percent of the responses expressed the viewpoint that the usurping of power from the Municipal Council by the administrator was the main cause of resistance during the assumption of duty. Although this was not the majority view of the respondents, in essence the opinion encapsulates the sentiments that were raised under this subheading.

- Twenty-one responses confirmed that the administrators presented their Terms of Reference (ToRs) before the Municipal Council. However, according to the

respondents the submissions were for notification purposes only with no opportunities created for the internal stakeholders to make inputs.

- Ten percent of the answers was that the assumption of duty for the latest intervention was peaceful. There was a clear correlation made between the maximum support for the intervention and the peacefulness that characterised the assumption of duty.

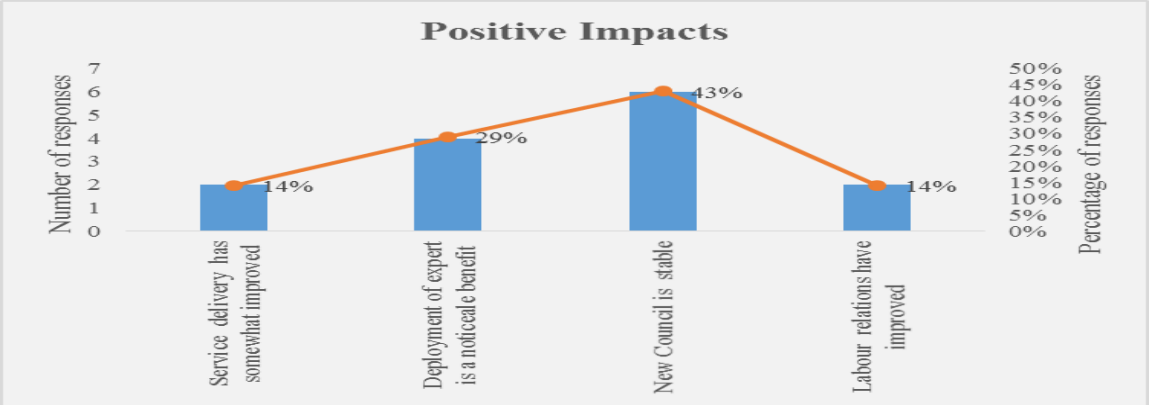
- Last, a further ten percent raised concerns that large sums of money were spent during the s139(1)(c) intervention to beef up security. The argument was that such funding could have been better utilised to deliver the much-needed services to the community than it was spent on.

Question 6: ***What has been the impact of the interventions?***

At the centre of this last question was how the research participants perceived the impact of the s139(1) interventions. Inevitably, this included an update on progress made in terms of reversing the situations that called for these interventions. Therefore, improvements relating to the four main triggers, namely, political instability, poor service delivery, bloated organogram, and financial maladministration were considered. The discussions automatically provided perspectives on the perceived strengths and weaknesses of the s139(1) interventions as applied in the NMMDM.

This question generated the most heated and politically charged arguments resulting in 58 responses. Owing to the volume of the responses, for practical purposes it became necessary to divide the presentation of the responses into two sections. Figures 7(a) and 7(b) below present the positive and the negative impacts.

Figure 7 (a): Positive Impacts



From the 14 perspectives raised, the respondents communicated four main positive impacts of the s139(1) interventions in the NMMDM.

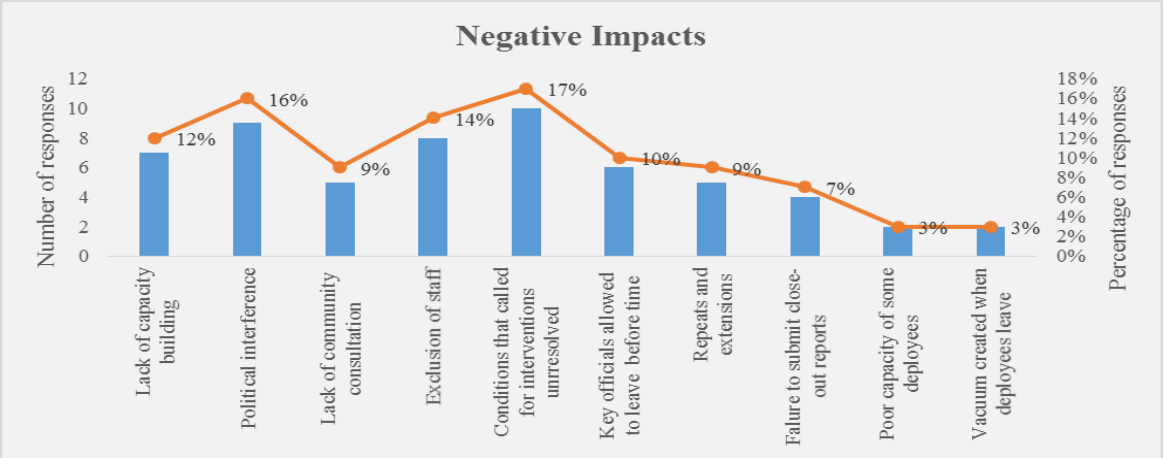
- Forty-three percent reported that the new Municipal Council was politically stable. A politically loaded statement accompanied this perspective, ”Municipal Council tows the lines of the principals”. The inference drawn from this reaction was that the dissolution of the previous Municipal Council yielded positive results in terms of improved relations with the NWPG.

- Twenty-nine percent felt that the deployment of various experts to turn around the situation of the NMMDM was a noticeable benefit. The provincial teams normally consisted of a group comprising the Administrator, Acting Municipal Manager, Acting CFO, and various other experts covering a range of disciplines such as finance, human resources, change management, and engineering. These skills provided a diversified and integrated turn-around solution.

- Fourteen percent argued that service delivery had somewhat improved. The collaboration with the Sedibeng Water Board that the Minister of Water and Sanitation (DWS) engaged as part of the latest intervention to execute the Water Services Authority (WSA) function was responsible for the limited improvement. Reportedly, there had been noticeable improvements such as the rehabilitation of ageing infrastructure assets such as boreholes, and the priority given to water provision. Allegedly, the collaboration had challenges but that the leadership from both the NMMDM and the Sedibeng Water Board met to resolve the issues.

- The last fourteen percent indicated that labour relations had since improved. With the Local Labour Forum resuscitated, there were no more worker strikes. One respondent made a remarkable statement that: "the labour environment is stable primarily because the salaries are paid despite the financial challenges being experienced". The impression gained was that any signs of inability to pay the salaries was likely to take the municipality back to the state of anarchy that prevailed during the s139(1)(c) intervention phase.

Figure 7 (b): Negative Impacts



Below is the presentation of these viewpoints ranked from the highest (17%) to the lowest (3%) responses.

- The largest response (17%) believed that the conditions that called for these interventions have largely remained unresolved. Respondents provided a strong indication that the municipality performed far better before the interventions. Some respondents referred to the current state of the NMMDM as a 'state of paralysis'. The respondents provided the progress made in terms of the three main triggers for the interventions to substantiate the perceived poor state of the municipality. First, that the financial health of the municipality was dire and the NMMDM was technically insolvent, the budget was unfunded, the NMMDM was paying salaries using the Municipal Infrastructure Grant (MIG) allocations, litigations had grown excessively, accruals were higher than the allocations, and the municipality continued spending more money on water transportation to communities.

Second, people with no requisite skills and experiences largely populated the organisational structure. It was reported that the new Municipal Council commissioned forensic investigations on these allegations and the report on the findings was presented before the Municipal Council but no actions had been yet taken on the findings. In addition, the Executive Management structure was largely vacant with only two substantive executive managers. Furthermore, the NMMDM was unable to fill the strategic positions because there was no money to pay the salaries, and there were no acting incumbents in these vacant positions.

Third, service delivery challenges persisted. The respondents gave a number of reasons for their perspectives. First, the NMMDM was continuing with water transportation that was not sustainable. Second, the expenditure on MIG was low. Third, critical management positions such as the Senior Managers Technical Services and the PMU, Managers Water Quality, Roads and Bulk Water and Sanitation were vacant. Fourth, the Treasury withheld the equitable share in November 2015 because there was no justification for the expenditure. Last, service delivery protests were ongoing in some parts of the district continued.

- Sixteen percent of the respondents argued that political interference in the provincial administration process was the biggest challenge that came with these interventions. Moreover, it remained the major contributor to the objections against the interventions. The respondents made strong reservations that the interventions were politically motivated and used as a weapon to settle political scores. Reference was made to the unwarranted involvement of the provincial political leadership during the planned s139(1)(b) mid-2014 which resulted in renunciation on substantive procedural grounds by the court of law. The respondents cited that the usurping of power from the Municipal Council to the administrators was the most fiercely contested action by the provincial government.

- Fourteen percentage of the respondents raised the issue of the exclusion of staff from the consultative sessions. This exclusion resulted in the lack of formal feedback to the staff on progress made and motivations for extensions and repeat

s139(1) interventions which was a huge weakness in the provincial administration process.

- The s139(1) interventions have no capacity building built into them (12%). As a result, there was no transfer of skills to the staff to ensure that people were sufficiently capacitated, prepared and ready to function optimally post the intervention phase.

- Ten percent raised concerns about the failings of the NWPEC in managing the administration process. Allegedly, the NWPEC allowed the key officials including the first and second administrators to leave the NMMDM before the end of their terms of office. Reportedly, when the first administrator left, the NWPEC appointed the former Councillor to act for two months. Thereafter, the NWPEC appointed the second administrator who left in March 2016. The latest administrator assumed duties in April 2016 and expected to stay until after the local government elections in August 2016. There had also been various Acting CFOs deployed over short periods.

- Some respondents (9%) viewed the lack of structured community consultation from the planning through to the implementation of the interventions as a huge flaw in the provincial administration process.

- Some respondents strongly maintained that the repeat interventions and extensions of the interventions in the NMMDM (9%) were a clear sign that the interventions were unsuccessful in improving the alleged dysfunctionality of the NMMDM as purportedly detected by the NWPEC. The respondents were adamant that the prolonging of the interventions had a negative impact on the workers and the environment in general. The NWPEC had extended the latest intervention twice and this was to last until after the local government elections in August 2016. Notably, the latest s139(1)(b) intervention is the sixth in the NMMDM.

- Seven percent of the respondents claimed that the administrators were not submitting their closeout reports when they leave. One related question posed was

that: “How can one expect a successful application if every now and then the newly appointed administrator has to start from a clean slate?”.

- Respondents alleged that some of the deployed officials did not have the requisite skills to handle the turnaround process (3%). The incompetency of some of the deployees was said to have resulted in the termination of their terms of office.

- Finally, 3% claimed that when the key deployees left, there were often periods where there was no one taking the lead. In particular, it was alleged that from the 1st to the 6th April 2016, there was no administrator, no Acting Municipal Manager and no acting CFO.

5.3 Conclusion

The research findings as depicted above clearly convey the message that the planning and application of s139(1) interventions in the NMMDM was a complex process. A multitude of factors that informed and had a direct bearing on the planning and application of the s139(1) interventions in the NMMDM were highlighted. These factors range from the pre-intervention phase, consultative sessions, communicated triggers for the interventions, reception of the interventions, assumption of duties, to the perceived impact of the interventions. From the diverse factors mentioned above, clearly there are no quick fixes to putting the NMMDM back on its feet again.

Chapter Six

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6. Analysis and Interpretation of Research Findings

6.1 Introduction

This chapter presents the analysis and interpretation of the research findings in the context of the main themes and concepts highlighted in the literature review. Chapter 2 drew evidence from a wide range of critical sources and provided a detailed account of the main themes and concepts that underpin this research study. The Theoretical & Conceptual Framework also provided a number of relevant concepts used to strengthen the analysis and interpretation of the findings. The chapter comprises two sections, namely, the analysis and interpretation of the research findings, and the concluding remarks.

6.2 Analysis and interpretation of findings

The researcher adopted the *ideal type* data analysis strategy to reduce the amount of the amassed raw information, analyse, and present it in a systematic and logical manner. Neuman (2011) asserts that Max Weber's ideal type strategy can be used in two ways, namely, contrast contexts and analogy, and use it to interpret data in a way that is sensitive to the context and cultural meanings of members, to bring out the specifics of each case, and to emphasize the impact of the unique context. The adopted strategy provided a leeway for the researcher to objectively formulate and define concepts based on the collected information to gain a better understanding of the factors that informed and impacted on the application of s139(1) interventions in the NMMDM.

The analysis here covers five main themes and concepts, namely, the monitoring of local government performance, multi-level government arrangements, duties of local government, cooperative government (including the intergovernmental relations and local government autonomy) and the impact of the s139(1) interventions. Accordingly, the researcher duly aligned the research questions to these themes and concepts.

6.2.1 Monitoring of local government performance

In the South African context, the monitoring of the service delivery function assigned to local government is legislated to enhance the realisation of the political agenda. As mentioned in Chapter 1, Section 154(1) of the Constitution prescribes that the national 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.

Of particular significance in the context of this research study, is the execution of the monitoring and support function bestowed on the provincial government over the performance of the local government. Section 105 of the Municipal Systems Act orders the Member of Executive Committee (MEC) for Local Government to develop mechanisms to monitor municipalities in managing their own affairs, exercising their powers and performing their functions; to develop local government capacity; and to assess the support needed by municipalities to strengthen their capacity. With respect to financial management, Section 5(4) of the MFMA obligates the Provincial Treasury to monitor municipal compliance; the preparation and outcome of budgets; submission of reports; and to take appropriate steps if a municipality commits a breach of this Act. One could argue that the legislation has created a basis for a strong control environment with stringent reporting systems.

Evidently, the oversight duties accorded to the provincial government over the performance of municipalities entail two distinct activities, namely, monitoring and support. Against this background, the first research question, *Was there any support provided by the national or provincial prior the s139(1) interventions? If yes, what was the nature and extent of such support?* sought to assess the nature and extent of the monitoring and support that preceded the interventions.

6.2.1.1 Pre-intervention support

The literature review states that as a basic rule, the s139 interventions ought to be invoked as a last resort. The implication of this instruction is that provincial executives must make extensive and demonstrable efforts to avoid resorting to these interventions. As a rule, the NWPG should have, through the monitoring and support function exhausted various other

corrective measures at its disposal before resolving to intervene in the affairs of the NMMDM. Fittingly, De Visser, Steytler and Machingauta (2010) define an intervention as the next step when all the other monitoring mechanisms show a serious failure to fulfil statutory obligations or where other monitoring mechanisms have failed to bring about the desired result. In the context of the study, such a definition is centred only on the monitoring function that the NWPG ought to have rendered and excludes the failure by the NMMDM in fulfilling its mandated obligations which then prompted the NWPEC to intervene in its affairs.

The research participants expressed two notable perspectives. First, the dominant view held by seven research participants (53%) was that no support was provided to the NMMDM before the planned s139(1)(b) in mid-2014 and the s139(1)(c) invoked in September 2014. This perspective implies that the NWPG did not successfully fulfil its duty to support and strengthen the capacity of the NMMDM to exercise its powers and perform its functions. In the Theoretical and Conceptual Framework, Mettler (2000) raises a related notion and warns that it would be unfair and subversive to the idea of cooperative governance if a province failed to fulfil its constitutional duty of providing the necessary support and subsequently assume responsibility for that municipality. Indeed, the failure to provide support as legislated cannot be a qualification for an intervention. Second, three research participants (23%) claimed to have no knowledge of any support provided by the other two spheres of government to the NMMDM.

While recognising the contentions advanced by the research participants, it would be reckless to conclude that the national and provincial government did not render the monitoring and support to the NMMDM. The following reasons provide the basis for this thinking:

- Through the reporting regime as reflected above, municipalities are compelled to report on key performance areas at regular intervals to both the national and provincial governments. The assumption is that in the process of reporting on key performance areas including the level of compliance to legislation, the NWPG became aware of the general performance of the NMMDM including the areas of weaknesses.

- Municipal support comes in different configurations such as financial and human resources, technical expertise, structured, and less structured. More so, the nature of some of the support provided is such that it could have been provided with the knowledge of the leadership and unnoticeable to the rest of the municipal personnel.
- A distinction has to be drawn between the fulfilment of a function and the quality of the service provided through the function. Therefore, at the centre of the debate should be the quality of the monitoring and support function that the national and provincial government rendered to the NMMDM prior to the s139(1) interventions.

In the presentation to the Select Committee on Cooperative Governance and Traditional Affairs (15 September 2014), the North West Member of Executive Council (MEC) for Local Government reported that the department held numerous engagements with the NMMDM since 2012 at both administrative and political levels. This statement implies that in line with relevant legislation the NWPG had made efforts to collaborate with the NMMDM towards addressing the detected areas of weakness but without success. What did not come out of the research interviews were the demonstrable efforts by the NMMDM leadership towards addressing the inefficiencies that the NWPG identified.

6.2.1.2 Section 154 intervention

By focusing on support and strengthening the capacity of local government, Section 154 goes beyond the mere monitoring function and endeavours to be action-orientated. Mathenjwa (2014:1) brings up an important related notion that draws the distinction between the monitoring and support function. The author contends "the failure to link monitoring and support of local government may have led to provincial government dissolving municipal councils under the guise of monitoring instead of supporting the municipalities".

Ten research participants (77%) shared the overwhelming position that a brief Section 154 support applied after the dissolution of the Municipal Council in September 2014 and before the application of the latest intervention. Remarkably, the research participants emphasised the short duration of Section 154. In addition, the respondents referred to Section 154 as 'support' thereby confirming its soft approach that is unlike the invasive

s139 interventions. Despite the lack of legislation regarding the timing for the application of Section 154 interventions, the impression gained was that the perceived failure to apply Section 154 prior the first two interventions fuelled the belief that such interventions were not implemented as a last resort. Yet, Section 154 is but one of various legislated instruments that the national and provincial governments could have possibly provided to the NMMDM.

The following impressions regarding Section 154 as applied in the NMMDM are worth noting:

- The Constitution does not dictate a particular sequence that would require that Section 154 should be applied either before or after the application of s139(1) interventions. In the case of the NMMDM, Section 154 distinctively played a dual role. It served as a post-implementation support after the dissolution of the Municipal Council, and a precursor to the latest s139(1)(b) intervention. The question whether this was a coincidence or planned approach could not be determined from the research process.

- Furthermore, the Constitution does not prescribe a timeframe for Section 154. Consequently, Section 154 could possibly last as long as the conditions that called for it remained unresolved. Given the challenges that the NWPG had detected in the NMMDM over time, the short span Section 154 in the NMMDM of three months raises legitimate questions of what the objectives were and the impact that it made given the short period it lasted. It was not clear from the research interviews whether Section 154 also dealt with the financial challenges that the NMMDM faced which led to the application of the latest s139(1)(b) intervention.

  Although outside the scope of this research study, what happened in Madibeng Local Municipality in 2014 is worth mentioning. In this instance, the Minister of CoGTA turned down the decision by the NWPEC to intervene in Madibeng and argued that the Section 154 was still in operation. The inference from this decision is that no two interventions could run parallel with each other. The question that remains is what is the nature of the conditions that Section 154 is expected to tackle against those dealt with through s139 interventions?

6.2.2 Multi-level government arrangements

The literature clearly shows that the model of the South African government is grounded on multiple layers of authority. Likewise, the Brazilian and Nigerian governments are also founded on multiple layers of authority. Section 40(1) of the Constitution pronounces that, "The government is constituted as national, provincial and local spheres of government, which are distinct, interdependent and interrelated". While the Constitution recognises the three spheres of government as distinctive, it also gives powers to the provincial government to intervene in the affairs of the local government to react on identified flaws. Research Questions 2 to 5 talk directly to the practical application of the multi-level government arrangements.

Arguably, any material intervention by one sphere of government to another sphere equally recognised by the same Constitution is a politically sensitive process. As a result, the handling of such a process requires great caution. The research findings confirmed these sentiments. Ten research participants (77%) argued that the first two s139(1) interventions were resisted because they were politically motivated. Consequently, four research participants (31%) argued that political interference compelled the NMMDM to fight for its autonomy.

6.2.2.1 Adherence to the legislated procedures

In giving effect to the principles of cooperative government and the IGR, the Constitution provides the framework within which the s139 interventions ought to be undertaken including the conditions that should warrant such interventions. The Guidelines for the Application of Sections 100 & 139 of the Constitution further provide the manual on the application of both interventions. As reflected in section 2.6.2, Chapter IV of the Federative Republic of Brazil specifically refers to the interventions in municipalities including the conditions that permit such interventions, and Article 35 refers to the issuance of a decree of intervention and extent, the period and conditions of enforcement, as well as the appointment of the intervener if appropriate.

The North West Department of Local Government and Human Settlements has taken a step further and developed its own Provincial Policy Guidelines on the implementation of s139 interventions and Section 154 support. The stated objectives are as follows:

- To provide guidance on the implementation of s139 and 154 interventions in the province; and provide a framework for the appointment of administrators of s139 interventions;
- To regulate the appointment of officials and/or individuals seconded to municipalities in terms of s139 and 154;
- To stipulate the remuneration of administrators and local government experts; and
- To provide a framework for the terms and conditions of administrators and officials/individuals seconded to municipalities.

As constitutionally mandated, the NWPG identified flaws in the operations of the NMMDM. In order to realign the NMMDM towards meeting its constitutional obligations, the NWPEC took the decision to intercede through the application of the three s139(1) interventions in question. In ensuring the fulfilment of the executive obligations, the NWPEC applied all the three decisions in terms of s139(1) interventions, namely, the issuing of directives, the assumption of responsibility, and the dissolution of the Municipal Council.

The three main subheadings below provide discussions about the NWPEC's adherence to the three options of s139 interventions. The focus under the subheadings is three fold: First, the NWPEC's capacity and level of adherence to procedures in terms of the submission of the directives and the presentation of the notices of assumption of duty; second, the NWPEC's adherence to the substantive requirements as far as this relates to the submission of the rationales for the interventions; and last, an assessment of the interactive process that unfolded between the two parties. Hence, the second research question '*How were the Notices to Intervene communicated to the NMMDM?*'

a) Submission of the directives

Section 139(1)(a) of the Constitution stipulates three responsibilities in relation to the submission of the directives, namely that the NWPEC was to submit the directives in terms of the interventions at the Municipal Council, invite written representations from the

Municipal Council, and to consider such written responses. Of critical importance about the submission of the directives is the particular role that the Municipal Council had to play in responding to the issues raised. Such provision not only demonstrates the commitment in giving effect to cooperative governance but is also confirmation of the acknowledgement of the authority and powers vested on the Municipal Council in influencing the provincial administration process. The Guidelines for the application of s139 stress the point that the NWPEC could only have proceeded to the next level that is the assumption of responsibility, after the Municipal Council had failed to respond to the directives. The timing that the NWPEC gave to the Municipal Council to respond to the identified issues and the political commitment and capacity that existed within the NMMDM to respond to the issues sufficiently are critical areas that could have influenced the achievement of these objectives.

Evidently, the submission of the directives and the Municipal Council response to the information requested was a critical first formal step in the intervention process. The directives presented two critical opportunities for the Municipal Council. The first was to respond to the allegations made by the NWPEC through the provision of adequate information and to collaborate with the NWPEC in addressing the identified flaws. The second was the quality of information provided to the NWPEC to prevent the process from going to the next step, that is, the notice of assumption of responsibility.

b) Presentation of the notices of assumption of responsibility

The fact that the NWPEC proceeded to the next step is confirmation that either the Municipal Council failed to respond to the directives sufficiently or the information supplied was inadequate. Ironically, the research participants did not provide conclusive evidence about the extent to which the NMMDM responded to the requirements of the NWPEC.

Upon resolving to intervene in terms of 139(1)(b), the NWPEC was expected to formally present the notices of assumption of responsibility before the Municipal Council, invite written representations from the Municipal Council, and to consider such written representations. There was overwhelming consensus from 11 research participants (85%) that the NWPEC adhered to the legislated procedures in terms of the submission of the

directives and the presentation of the notices of assumption of responsibility in Council sittings. Reportedly, the key stakeholders such as the NCOP and Salga were present in the meetings.

As it transpired later in the interviews, maximum adherence to the procedures in terms of the submission of the directives and the notices to intervene did not automatically translate into maximum support for the interventions. As mentioned above, the deciding factor was the level of acceptance of the allegations of weaknesses and the commitment to address such issues to the satisfaction of the NWPEC.

c) Provision of substantive reasons for the interventions

In terms of the Constitution, both the directives as well as the notices of assumption of responsibility ought to contain thorough information on the reasons behind the interventions. Therefore, the NWPEC needed to clearly specify and describe the extent to which the NMMDM had failed in fulfilling the obligations including steps required to meet its obligations. Premised on the principles of cooperative governance, a well-defined identification of the detected malpractices is a crucial element in the provincial administration process. Section 6.2.3 provides a detailed discussion on the extent to which the NWPEC provided a detailed account of the failings of the NMMDM.

The dominant view expressed by nine research participants (69%) was that the NWPEC did not fully adhere to the substantive requirements with regard to the s139(1)(b) in mid-2014. While the responsibility to specify the failings that called for the intervention rested with the NWPEC, the provincial political leadership which had no jurisdiction in the process allegedly got involved. Such unjustified interference not only rendered the process unlawful, but also served to confirm the widely held suspicions of political interference in the provincial administration process. It was further reported that due processes were followed in terms of s139(1)(c) and the latest s139(1)(b) intervention. Arguably, the failed attempt to apply s139(1)(b) in mid-2014 could have provided key lessons of experience to the NWPEC.

d) Creation of opportunities to make inputs

The Constitution allows for a number of safety measures to give the Municipal Council the voice to influence the decision-making processes.

- In both the submission of the directives and the notices to assumption of responsibility, the Municipal Council gets invited to make representations. In other words, the Municipal Council has the opportunity to give its perspectives on a number of allegations made by the provincial executive.
- The intervention is to end unless the Municipal Council approved it within 30 days of its first sitting after the intervention began. This is a critical window of opportunity to enable the Municipal Council to exercise its right to object if it wished to do so. Most importantly, the Municipal Council was to submit such compelling reasons in writing.
- While the interventions continued, the Municipal Council was to review the interventions regularly and make any appropriate recommendations to the provincial executive. This provision compels the Municipal Council to actively monitor the intervention process and make appropriate recommendations as the processes progress. Yet, the extent to which the NWPEC reacted to such presentations (if any) was an important aspect that the research interviews could not ascertain.

Notwithstanding the above constitutional safety nets, 62% of the research participants alleged that the NWPEC did not create opportunities in the presentations and/or consultative sessions for the internal stakeholders to make inputs. One research participant made the comment "It transpired in the meetings that the decisions had been made and were not to be reversed". Given the demonstrated objections against the s139(1) interventions, indications were that verbal objections were made. With the internal stakeholders denied opportunities to make inputs, the research participants viewed the consultation process as merely a compliance exercise.

6.2.2.2 Stakeholder Engagement

Stakeholder engagement including the attainment of the necessary buy-in from the key stakeholders is an integral element of the provincial administration process. By the very

nature and objectives of the s139(1) interventions, the key sector departments such as the national CoGTA, national Department of Water and Sanitation, NWDLG&HS, North West Provincial Treasury, NCOP and Salga were active role-players in the provincial intervention process. As demonstrated in the discussions, the level of engagement and the role played by these key stakeholders varied.

From the NMMDM side, the research participants confirmed that the NWPEC engaged the municipal leadership (political and administrative) through the Municipal Council, which is the highest authority in the municipality. Worth noting is that the research participants did not elaborate on how such engagements were sustained throughout the intervention processes.

a) Staff consultation

Eight research participants (62%) expressed concerns about the exclusion of municipal personnel from the consultative sessions. The research participants saw this approach as a deliberate attempt to supress the views of the larger segment of the internal stakeholders. The research participants viewed the term 'internal stakeholders' as an umbrella term that not only refers to municipal leadership but the entire municipal personnel. One respondent put it as follows: "How do you expect to get the buy-in from the people that were not consulted about the intervention process?"

The following few interpretations of the staff consultation process deserve noting.

- Relevant legislation clearly refers to submissions and presentations to the Municipal Council. One could argue that with the municipal leadership consulted and participating in the provincial administration process, the assumption is that the leadership has the primary responsibility to disseminate relevant information to the rest of the organisation. Given the demonstrated instability within the municipality including the suspensions and resignation of key personnel, the practicalities of ensuring that the municipal leadership kept the staff abreast of developments could not have been an easy task to accomplish.
- It would seem from the interviews that public hearings within the municipality could only have worked in terms of ensuring that the NWPEC consulted and recognised the entire workforce in the intervention process. The reality is that lack

of support from the municipal personnel has a negative impact on successful application of the s139(1) interventions.

- Unfounded misconceptions developed owing to limited information about the underlying objectives of these interventions, progress made, and the challenges encountered in the change process.

b) Community consultation

Five research participants (38%) argued that lack of community consultation in the planning stages was a huge flaw in the s139(1) intervention process. The research participants particularly referred to the instance of the dissolution of the Municipal Council. The feeling was that the dissolution of the Municipal Council elected by the community to represent its interests was a drastic action that required the NWPEC to have properly consulted the district community through the democratic processes. The interpretation of this perspective is that the district community was let down and denied opportunities to influence the decision-making process. Most importantly, participatory governance suffered. As cited in Oviasuyi and Isiraojie (2017:2), Callanan and Keogan made an important remark that the strength of local government as a democratic instrument is its closeness to the population, its elected status, its accessibility and the opportunities it provides for public participation in the democratic process.

The respondents indicated that it was only after the dissolution of the Municipal Council that the newly elected Municipal Council made efforts to consult widely about the intervention process. It transpired later in the discussions that one of the objectives of the Rapid Response team developed during the s139(1)(c) intervention was to engage with the communities and other stakeholders. However, at this stage the NWPEC had already dissolved the Municipal Council.

Once more, there is no specific legislation regarding public consultation during the s139(1) intervention process. The Guidelines for the application of s139 interventions mentions that the dissolution of a Municipal Council takes place by means of a notice in the provincial gazette. The researcher's experience elsewhere has shown that the media is used to reach out to the broader public in cases of the dissolution of the Municipal Council. Yet,

the question is how accessible are these measures to effectively reach out to the entire community about the municipal failings that have a direct impact on their lives.

6.2.3 Duties of local government

As indicated in the literature review chapter, the Constitution of the Republic of South Africa confers the service delivery function of the government to the local sphere of government. As indicated in Chapter 1, Sections 152 and 153 of the Constitution stipulate the objectives of local government and the developmental mandate assigned to it respectively. Accordingly, municipalities like the NMMDM are established with the sole purpose of delivering services to the community and to do so in the manner so dictated to by the Constitution. Quite rightly, Oviasuyi and Isiraojie (2017:2) declare "The importance of local government administration cannot be overemphasized as it is altruistic to assert that countries all over the world adopted this tier of government to ensure that democratic dividends gets to the grass root. The third research question is, "*What were the triggers for the s139 interventions? Which executive obligations were not fulfilled?"* It sought to depict the extent to which the NMMDM had failed in fulfilling its service delivery obligations to the district community.

As part of adhering to the substantive requirements under the subheading 6.2.2.1 above, the NWPEC was obligated to specify the obligations that the NMMDM had failed to fulfil. According to the research participants, the NWPEC communicated four main triggers for the interventions, namely, poor service delivery, financial maladministration, bloated organogram, and political instability. Interestingly, the research participants not only shared the information as communicated by the NWPEC, but also concentrated on debating the validity of these claims.

The research participants made three perspectives in response to the research question. Twelve participants (92%) unanimously agreed that the latest intervention was justified and triggered by the financial crisis. Seven participants (54%) felt that the claims by the NWPEC on political instability and maladministration were baseless. In contrast to the latter viewpoint, five participants (38%) argued that these claims were justified. The following subheadings that discusses each of the main triggers for the interventions exclude these percentages.

6.2.3.1 Poor service delivery

The NMMDM is a designated Water Services Authority (WSA) with the core mandate to deliver basic water and sanitation services in the rural areas. It has contracted the constituent local municipalities as Water Service Providers in the urban areas. According to the NWPEC, poor service delivery had resulted in service delivery protests across the district. Taking its cue from the Constitution, poor service delivery is the overarching motivation for the application of s139(1) interventions. In particular, poor service delivery is the consequence of the failings in the other three stated causes for the s139(1) interventions, namely, political instability, financial maladministration, and bloated organogram with people with no requisite skills and experience.

a) State of service delivery before the s139(1) interventions

The views of the research participants regarding the status of service delivery that stimulated the application of s139(1) interventions differed. The research participants expressed two divergent opinions. The majority viewpoint disputed the allegations of poor service delivery and claimed that they were unsubstantiated and politically motivated. The opposing opinion was that the motivations for the interventions were valid because service delivery had indeed collapsed and resulted in violent service delivery protests across the district.

One participant raised an important dimension and stated, "The NMMDM had its fair share of challenges but there were no compelling reasons for the s139(1) interventions". The statement brings up relevant debates about what the state of dysfunctionality should be to warrant an intervention, and the extent of discretionary powers exercised by the NWPEC in the determination of municipal dysfunctionality. In the literature review, Malan (2005) raises a relevant statement that municipalities are not required to fulfil an obligation fully. Hence, the intervening provincial executive faces the huge challenge of indicating precisely which executive obligation the municipality failed to fulfil. Inevitably, the expectation of 'not to fully fulfil an obligation' renders the identification of failings a highly subjective process that is prone to cause conflict including resistance against the s139(1) interventions.

b) Grant allocations and expenditure

It is important to reflect on the NMMDM's performance during the two financial years within which the s139(1) interventions in question were planned and applied. This is necessary to provide an indication of the extent of service delivery performed through the allocated grants. Like most rural municipalities, the NMMDM is reliant on fiscal transfers from the national government to render its service delivery obligations. The two main sources of revenue for the NMMDM are the Municipal Infrastructure Grant (MIG) allocations used to deliver capital infrastructure projects and the Equitable Share to extend basic services to poor households. There was a view from some respondents that the amount allocated for the Equitable Share was insufficient to enable the NMMDM to cater to the huge demand for basic service delivery in the district. In line with the requirements of section 216 of the Constitution, in November 2015 the National Treasury withheld a huge portion of the Equitable Share (±R515m) resulting from inefficiencies within the municipality. Likewise, Ibietan and Ndukwe (2014:759) declare "The level social infrastructural development in the rural areas does not match the huge amount of money available to local government administrators nationwide".

In the 2014/15 Annual Report, the NMMDM conceded to having experienced service delivery challenges during that period. It is stated in the report that capital projects suffered greatly as a result of poor spending which resulted in the suspension of services where service providers abandoned sites. During the financial years 2014/15 and 2015/16, the NMMDM underspent on MIG allocations and spent only R146m (25.6%) of the allocated R568.8m and R106.4m (15.3%) of the allocated R688.3m respectively. The under expenditure on these allocations meant the NMMDM did not meet the targets set in the Integrated Development Plans (IDPs). Failure to meet the expressed and prioritised needs of the community as reflected in the IDP might have also contributed to the alleged service delivery protests in the district.

6.2.3.2 Financial maladministration

Municipal financial management and administration is an important factor for the achievement of the service delivery mandate. Hence, a number of relevant laws such as the MFMA, assist municipalities with all financial management-related functions including

compliance. Likewise, in Nigeria the state and federal governments are constitutionally mandated to have control over the finance of local government. All the research participants shared the opinion that the financial crisis had an adverse impact on service delivery and triggered the latest intervention. The feeling was that the application of the latest intervention was valid. The research participants overemphasised the word 'crisis' to describe the gravity of the financial situation of the NMMDM.

a) Financial resources

The research participants alleged that soon after the new Municipal Council took office, the Council realised that the NMMDM was in a dire financial situation that required urgent attention. The lack of financial resources was said to have posed a huge obstacle that prevented the Municipal Council from delivering basic infrastructure services, meet the expressed community demands, address the service delivery needs, and restore the credibility of the NMMDM. In response to this demanding situation, the Council approached the NWPG for assistance. The request resulted in the application of the latest intervention to deal decisively with the financial situation and related challenges.

The research findings strongly suggest that the delivery of services in the NMMDM centred on the availability of financial resources. The issue is the capacity of the NMMDM to manage the fiscal allocations as well as the limited revenue generated from the sale of water and revenue from property tax. However, the under-expenditure of the allocations reflected in section 6.2.3.1 above refuted this assertion. The fact of the matter is that both the availability and sufficiency of financial resources in municipalities do not necessarily translate into improved service delivery. The key ingredients to improved service delivery are a combination of a competent and stable leadership (political and administrative), adequate financial resources, and a sound control environment. According to Anazodo & Igbokwe-Ibeto (2016) Brazil is highly rated in its fiscal intergovernmental relations and with significant portion of local government's expendable revenues coming from the transfers of the higher level governments especially the federal government.

b) Financial management capacity

According to the research participants, the directives and the notifications to intervene showed that the challenges of corruption and financial malpractices had compounded the

poor financial situation of the NMMDM. It is important to refer to the performance of the NMMDM in terms of audit outcomes as one of the measures of its financial management capacity. The Auditor-General (AG) has, for the financial years 2011/12 to 2015/16, repeatedly issued disclaimed audit opinions with repeat findings.

Some of the audit queries highlighted in the 2015/16 Audit Report as the basis for the disclaimed audit opinion and which the NMMDM disclosed in the financial statements relate to the following:

- The NMMDM incurred fruitless and wasteful expenditure in the amounts of R3.3m and R20.4m in the previous financial years. The MFMA defines 'fruitless and wasteful expenditure' as expenditure that was made in vain and would have been avoided had reasonable care been exercised.
- It incurred irregular expenditure to the tune of R22.2m. The Act defines 'irregular expenditure' as expenditure incurred by a municipality in contravention of the requirements of this Act, the MSA, Public office-Bearers Act No. 20 of 1998, and the Supply Chain Management policy of the municipality and related bylaws.
- It incurred unauthorised expenditure amounting to R725.6m. The MFMA describes unauthorised expenditure as follows: first, an expenditure incurred by a municipality other than in accordance with this Act including overspending of the total amount appropriated in the IDP and a vote in the approved Budget; second, expenditure of money appropriated for a specific purposes other than for that specific purpose; third, spending of an allocation other than in accordance with any conditions of the allocation; and last, a grant spent other than in accordance with this Act.

As indicated in the Theoretical and Conceptual Framework, Powell and O'Donovan (2014) bring an important aspect to the discussion. The writers declare that audit outcomes should be seen as an indicator of the extent to which national and provincial government are fulfilling their obligations towards local government. Rightfully so, this assertion is made in the context of the national and provincial government executing their monitoring and support roles over the financial matters of municipalities. Of particular importance is the role that the MEC for Finance played as mandated by the MFMA.

6.2.3.3 Bloated organogram

The NWPEC had reported that the organogram was bloated; the majority of the employees did not have the requisite skills and experience; and most importantly, that they were recruited through irregular processes. The apparent ramifications of the personnel with no prerequisite skills and experience translated into the inability to deliver services and fulfil administrative duties. The audit report raises a related aspect, that during 2015, the AG was unable to obtain sufficient appropriate evidence for employee-related costs as the NMMDM did not have adequate systems in place to reconcile, account for and maintain records of its employee-related costs. The majority of the research participants opposed these claims and maintained that the allegations were baseless. However, a few respondents conceded that the organogram was indeed bloated with excess staff and that nepotism within the municipality was rife.

It is worth noting that the application of s139(1)(c) intervention saw the suspension and resignation of most of the executive managers. One could argue that such suspensions and resignations were an indication that the provincial intervention process was dealing with the irregularities that it detected within the organisation. Closely associated with the suspensions and resignations, was the high turnover at this decision-making level. The situation that prevailed created a huge vacuum and rendered the administration unstable. For instance, without the Executive Management structure, the implementation and enforcement of the resolutions made by the newly elected Municipal Council suffered.

6.2.3.4 Governance and political instability

The assessment conducted by the NWPG revealed that the NMMDM experienced serious political instability. The latter manifested itself in political infighting that had an adverse impact on both the delivery of services to the district community and the efficacy of the political oversight over the performance of the administration. The alleged ongoing political instability became the primary motivation for the dissolution of the Municipal Council through the application of the s139(1)(c) intervention in September 2014. The research participants expressed two arguments regarding the claims of political instability. The main argument opposed the claims of political instability and argued that such claims

were politically motivated and invalid. Some participants further argued that the Municipal Council was stable and that Council meetings were sitting.

The opposing opinion was that the dissolution of the Municipal Council was justified. The proponents of this view contended that the application of s139(1)(c) was appropriate and was in response to serious governance challenges that prevailed which included political infighting, corruption, nepotism, cash flow challenges, and poor service delivery. Some participants referred to the incidents that occurred during 2013. The participants reported that the NMMDM at the time experienced serious political tensions that resulted in parallel structures, namely, two municipal managers and two executive mayors. Reportedly, in January 2014 the High Court in Mafikeng decided on the stalemate and the Executive Mayor was reinstated.

Given the consecutive disclaimers including the nature and extent of compliance and governance related audit queries, indications are that the governance structures were not effective in their oversight responsibility. In fact, poor political oversight is intricately associated with political instability in the Municipal Councils. Furthermore, the alleged ongoing service delivery protests in the district could indicate the persistence of governance challenges especially issues of accountability to the community. Quite rightly, Eagle (2005) mentions in the Theoretical and Conceptual Framework that accountability entails acting in accordance with the preferences of those to whom responsibility is owed.

6.2.4 Cooperative government

Section 41 of the Constitution elaborates on the principles of cooperative government and intergovernmental relations. The thrust of this section is on the relationships between the three spheres of government during the provincial intervention process. It is an indisputable fact that the nature and the extent of s139(1) interventions call for strong cooperation between the intervening provincial executives and the affected municipalities. Hence, the aim of the Research Question 4 "*How were the interventions received by the internal stakeholders? What motivated such reactions*? was to assess the levels of reaction and cooperation during the planning and application of s139(1) interventions.

6.2.4.1 Reactions to the interventions

The findings revealed the defining effects of municipal reactions on the planning and execution of s139(1) interventions in the NMMDM. Undeniably, a bad reaction to an intervention becomes a barrier to its successful implementation. Therefore, how the NMMDM reacted to the s139(1) interventions became the key determinant of the outcome of the provincial administration process. In addition, the findings showed that the NMMDM's levels of response varied from one intervention to the other depending on the dynamics that prevailed within the institution. The differing levels of response are contained in the following subsections.

a) Section 139(1)(b)

The plans to invoke this intervention met with resistance from the NMMDM. As reported earlier (section 6.2.2.1), the NWPEC allegedly failed to adhere to the substantive requirements. The undue involvement of the provincial political leadership in the process only served to fuel these objections against the planning of the intervention. The NMMDM approached the High Court in Mafikeng and sought a restraining order against the NWPEC. Eventually, the legal process culminated in the renunciation of this intervention on procedural grounds (substantive requirements). The court ruling was purely on the NWPEC's failure to adhere to the legislated procedures and not the legitimacy of the rationale for the intervention.

The impression gained from the interviews was that the intervention could have proceeded had the NMMDM not approached the High Court for a restraining order. It became clear from the discussions that the NMMDM considered the withdrawal of the planned s139(1)(b) intervention due to inefficiencies on the side of the NWPEC as a huge victory for the municipality. It seemed it was a victory with the potential to instil a sense of resistance against other interventions.

b) Section 139(1)(c)

Taking into cognisance the stipulation that the s139(1)(c) intervention has to be warranted by exceptional circumstances, one would imagine that the political instability had reached such proportions that compelled the NWPEC to take the resolution to intercede. As indicated in Chapter 1, Section 139(4) of the Constitution specifies that if a municipality

cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures to give effect to the budget, the relevant provincial executive must intervene. The intervention could be applied by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved including dissolving the Municipal Council. By clearly defining the conditions that call for possible dissolution of a Municipal Council, the stipulation takes away the discretionary powers of the provincial government and the subjectivity associated with it.

Ten research participants (77%) reported that the dissolution of the Municipal Council was the most fiercely contested s139(1) intervention. The notion conveyed was that the dissolution of a Council was one drastic action that the NWPEC could have taken against the Municipal Council and one that elicited the most politically charged resistance. In line with this thinking, violent protests accompanied the planning and execution of this intervention. With the support of the labour unions, the municipal workers mobilised and staged violent mass actions against the intervention. It transpired from the interviews that the rumours that workers were to be dismissed as part of addressing the challenge of excess staff further served to intensify the strikes.

Once again, the NMMDM took the matter before court for two kinds of relief. The first was temporary relief to prevent the first administrator from interfering in its municipal affairs, and the suspension of the decision to dissolve the Municipal Council pending the finalisation of the relief sought. The second was the review and setting aside of the decision to dissolve the Council. The court case brought before the High Court (Case No. CCT 186/14) was between the NMMDM and eight respondents including the Chairperson of the North West PEC; Premier of the North West Province; MEC DLG&HS, North West Province; Minister, CoGTA; Chairperson, NCOP; Speaker, Provincial Legislature of the North West Province; Kuli Nair (administrator); and the Independent Electoral Commission.

The arguments that the leadership stated in the court document included the following. First, it was entitled to remain in office and not to be dissolved or replaced by an administrator because the communities elected the municipal Councillors. Second, the decision to dissolve the Council had infuriated the officials who resisted the intervention

and such conduct caused turmoil and instability in the administration that seriously prejudiced the municipality in the execution of its functions and powers. Last, the granting of the interim relief would be enforced and thereby address the resistance. Ultimately, the NWPEC went ahead with the intervention and dissolved the Municipal Council on 3rd September 2014. Following the by-elections held in November, the new Municipal Council was established.

c) Section 139(1)(b)

Eight research participants (62%) reported that the latest intervention was well received and embraced by all. According to the participants, the intervention was most appropriate to respond decisively to the financial crisis. Given the demonstrated violent reactions against the first two interventions, the change of attitude towards this intervention leads to two interpretations:

- That the NMMDM supported the intervention because it was internally motivated. Given the demonstrated trend of resistance against the application of s139(1) interventions, the chances are that despite the financial situation the NMMDM could have easily viewed the intervention as an imposition and opposed it had the NWPEC initiated it.
- The support for the intervention confirms the critical role played by the newly elected political leadership. Most importantly, the achievement of the executive obligations, the failure of which called for provincial administration, was not possible without giving due attention to the financial crisis that the institution faced.
- The maximum support for this intervention clearly signified the unpredictability of the political dynamics and their persuasive impact on the provincial administration process. With maximum support including the political buy-in, the prospect of this intervention succeeding seemed high.

6.2.4.2 Political dynamics

The literature review demonstrates that s139 interventions are highly political in nature. As predicted, politics dominated the discussions in the interviews to the extent that the response to every question had a political connotation to it. The research participants

referred to a number of factors that in their opinion confirmed that the allegation of political instability within the NMMDM had no basis and was politically motivated.

- The NWPEC failed to provide a clear justification for the planned s139(1)(b) intervention in mid-2014. The inference from this statement was there were no appealing conditions that warranted the application of this intervention.
- There was undue involvement of the provincial political leadership which had no jurisdiction during the planning of the aforementioned s139(1)(b) intervention in mid-2014. The alleged indiscretion simply confirmed the exercise of political power that rests with the provincial government.
- The timing for the s139(1)(c) intervention which was hardly two months after the failed attempt to invoke s139(1)(b) intervention mid-2014 rendered the process highly suspicious. The argument was that the situation could not have deteriorated within such a short period to merit the dissolution of the Municipal Council.
- The political relations between the then troika (Executive Mayor, Speaker and Whip) and the provincial political leadership had always remained unsound. This, according to the research participants, resulted in the interventions being used as political weapons to settle political scores rather than as corrective measures.

It is important to note that both the NWPG and the NMMDM are located in Mafikeng. Mafikeng is the capital and the seat of the provincial government. It could be that the repeated s139(1) interventions in the NMMDM emanate from the sharing of one locality. One could further argue that such proximity has allowed the NWPG to monitor the performance of the NMMDM closely and to react promptly on identified areas of weakness. An important topic that falls outside the scope of this research study is whether municipalities that share the vicinity with the provincial governments are more likely to be under constant scrutiny than those situated far away.

6.2.4.3 Assumption of duties

In the context of the study, the term ‘assumption of duties’ was used to refer to the actual takeover by the NWPEC through the physical deployment of the administrators. This marked the beginning of the implementation phase of the intervention process. Owing to the fact that the s139(1)(b) in mid-2014 was later abandoned and the latest intervention

was fully embraced, the focus under this subheading was on the planning and implementation of s139(1)(c) intervention. The research question five is as follows: *"What transpired during the assumption of power?"*. The question sought to depict the circumstances under which the first administrator was deployed.

a) Deployment of the administrator

Owing to the hostile environment that prevailed, the first administrator during the s139(1)(c) intervention was deployed under heavy police guard and accompanied by the Provincial Disaster Unit. Soon thereafter, the municipal premises were locked, barricaded, and all the municipal staff, including Municipal Councillors, were barred from entering the municipal premises. It is important to note that with the entire staff locked out, the administrator was left alone within the premises without support. Some research participants expressed suspicions that with the municipal personnel locked out, by implication the administrator assumed the roles such as being the acting Municipal Manager, Acting Chief Financial Officer, Executive Mayor, and an employee beyond what relevant legislation permits.

The respondents made a number of allegations regarding the unintended ramifications of this period. Most importantly, service delivery came to a halt during this period. The NMMDM stated in the court documents that in October 2014, the municipal services of water and sanitation came to a standstill because staff members responsible for emergency services, and water and sanitation, were locked outside the municipality's premises to the detriment of service delivery and the community. In defence, the first administrator insisted that some communities in the Dinokana, Madibogo and Setlagole villages had not had water for years even though the NMMDM received funding for water and sanitation. Furthermore, the administrator contended that there were water quality problems to the extent that the national government issued a warning about drinking of water in the municipality; and that the communities were protesting owing to the interruptions in services.

b) Dissolution of the Municipal Council

Reportedly, while the court process was underway, mass actions continued. After the court process, the NWPEC went ahead with the implementation of the s139(1)(c) intervention.

The impression gained from the interviews was that the respondents viewed the outcome of the court process as a big defeat for the municipality in its efforts to challenge what they believed to be an injustice. Notwithstanding the demonstrated resistance, the NWPEC exercised its duties and dissolved the Municipal Council on 3rd September 2014.

In November, by-elections were held and the new Municipal Council was elected. Given the state of affairs, the newly elected Council faced the huge task of working towards improving the functionality and stability of the municipality and the fulfilment of the executive obligations. As expected, the Council felt the urgency to commence with the stabilisation process and put things right. This included the establishment of the Council structures including the oversight committees to enhance the political oversight function.

c) Executive obligations

During both the s139(1)(c) intervention and the latest intervention, the administrators only assumed the executive obligations as permitted by relevant legislation. As legislated, the Municipal Council retained the responsibility for the legislative functions, namely, the approval of the Budget and the IDP, passing of the bylaws, and the imposition of taxes, rates and levies. The research participants did not raise any allegations of contravention of law in relation to the fulfilment of the executive obligations thereby confirming that the NWPEC acted within the parameters of the law.

6.2.4.4 Local Government autonomy

The literature review documented challenges associated with the local government autonomy. For instance, the s139 interventions create an impression of hierarchical arrangements with the provincial government assuming a superior role over the local government. It is also important to reiterate that Sections 151(2) and (3) of the Constitution stipulate that the executive and legislative authority of a municipality is vested in its Municipal Council. The latter has the right to govern on its own initiative the local government affairs of its community subject to national and provincial legislation as provided for in the Constitution. Therefore, the powers vested on a Municipal Council are subject to regulation. With reference to Nigeria, Anazodo & Igbokwe-Ibeto (2016) raises an important aspect and declare "The guaranteeing of local government autonomy

apparently rests in the manner of power allocation in the constitution and respect for those provisions by stakeholders".

Interestingly, the research participants did not raise many issues relating to challenges associated with local government autonomy. Of the six research participants (46%) that expressed a viewpoint about local government autonomy, four argued that the NMMDM approached the courts to fight for the preservation of its self-rule against the political interference in the process. However, in the aforementioned court documents, the NMMDM leadership raised issues of local government autonomy and stated that it had the right to remain in the office and not be dissolved or replaced by an administrator because the communities elected the Municipal Councillors. This statement clearly questioned the validity of the intervention that is a constitutional provision. An interesting comment made in the interviews that confirmed the struggle for power was, "The usurping of power from the Municipal Council which is a structure protected by the Constitution to an administrator which is merely a function is cause for concern".

The other related opinion expressed by two research participants (15%) was that the autonomy of local government was never an issue in the contestations against the interventions. According to this viewpoint, legal processes were purely in reaction to the apparent flaws in the intervention process because politicians fully understand the dictates of the Constitution. This includes the powers vested in the NWPEC to intercede in its affairs. Considering the low reference (46%) to this theme, one could argue that despite the demonstrated politically motivated resistance against the interventions, there was a clear understanding of the legal mandate that resides with the NWPEC to intervene in the affairs of the NMMDM. For instance, the NMMDM did not object to the transfer of power from the Municipal Council to the appointed administrator in terms of the latest intervention.

6.2.4.5 Intergovernmental Relations

Undeniably, the nature of the s139(1) interventions is such that it affects intergovernmental relations either positively or negatively. On the positive side, the allocation of resources upon which the success of the s139(1) interventions depends, is executed within the spirit of the IGR Act. On the other hand, the violent contestations especially in s139(1)(c)

interventions and the legal processes as they happened in the NMMDM clearly demonstrate strained intergovernmental relations.

Section 40(1) (a) and (b) of the IGR Framework Act stipulate that all organs of state must make every reasonable effort to avoid intergovernmental disputes when exercising their statutory powers and to settle intergovernmental disputes without resorting to judicial proceedings. However, the expectation of 'reasonable' effort could be subject to different interpretations. The research participants could not verify the extent to which the NMMDM exhausted all possible avenues at its disposal to settle the disputes as dictated to by Section 41 (3) of the Constitution prior to resorting to the court for resolution. What is clear though is that the disputes, including legal actions against the application of s139(1) interventions, as they happened in the NMMDM, are in conflict with the fundamental IGR principles. For instance, there are structures that the NMMDM could have engaged to find amicable solutions such as the NCOP and the national IGR forums.

Section 39(1)(b) of the same IGR Act states that the Act does not apply to a dispute concerning an intervention in terms of Section 100 and 139 of the Constitution. Given the huge potential for conflict in the application of s139 interventions, the lack of legislation seems to have created a gap. Inadvertently, this gap has allowed municipalities to opt for legal processes as the solution. In the light of this, De Visser (2009) makes a profound statement that central to many of the problems besetting local government is the lack of clarity concerning the intergovernmental framework.

6.2.5 Impact of the s139(1) interventions

The sixth research question is as follows: "*What has been the overall impact of the interventions in the NMMDM?"*. The question was meant to reveal the impact of the interventions from the perspective of the research participants. As cited in the literature review, Bolton (2010) expresses an insightful opinion that for a procedure to qualify as a remedy, it must be capable of providing what the Constitution terms an effective remedy. A distinction was drawn in the interviews between the factors that were in the control of the NWPEC as an institution, and those outside its control but had a direct impact on the planning and application of the s139(1) interventions. The perceived weaknesses and strengths of the interventions automatically emerged from the discussions.

6.2.5.1 Capacity of the provincial government

The literature review indicates that the capacity of the provincial government is often inadequate to manage the s139 interventions effectively. For instance, the Financial and Fiscal Commission Report (2012) indicates that the effectiveness of provincial intervention faces regulatory, structural, incentive, and capacity-related challenges. Clearly, the capacity of the provincial government to plan and implement the s139(1) interventions is one of the key determinants of the success and/or failure of these interventions.

a) Capacity building

Seven research participants (54%) raised the issue that there was no capacity building provided as part of the intervention process. The respondents saw the lack of capacity building built into the intervention process as one huge flaw. The feeling was that the NWPEC could have done more with the transfer of skills from the pool of the deployed experts to the municipal personnel. The respondents regarded skills development as critical to ensure that the staff functioned optimally after the intervention phase.

The issue raised brings up two key interpretations. First, the expectation of capacity building during the intervention process is a legitimate concern that is in line with the constitutional responsibility of the NWPG to render the necessary support and build the capacity of the NMMDM. Second, the s139 provincial intervention is a short-term solution. Therefore, the capacity that was likely to remain after the intervention process should ideally have been an important aspect for consideration during the course of the provincial administration process.

b) Extensions and repeat interventions

Five research participants (38%) expressed concerns about the tendency demonstrated by the NWPEC to prolong the intervention periods beyond the legislated timeframe. The participants referred to the first s139(1)(b) intervention in 2009 which was extended, and only lifted after the local government elections in 2011. It was reported that the latest s139(1)(b) intervention had been extended twice and was to last until after the local government elections in August 2016. The respondents felt that the extensions had a negative effect on staff morale. With the morale of the staff low, there was a possibility of

silent resistance against the changes that the provincial administration introduced within the organisation.

In terms of legislation, the intervention has to run for a period of six months and can be extended for a further period of six months if need be. According to the Guidelines on the application of s139 interventions, the Provincial Executive decides when the intervention ends, upon the approval of the NCOP and the Minister and that it should end when the purpose of the intervention has been achieved. The reading from this requirement is that the duration of the s139(1) intervention is dependent on the progress made in terms of turning around the situation in question. The history of extensions and repeat interventions in the NMMDM seem to suggest the obstinacy of the conditions that called for these interventions and a struggle to improve the functioning of the NMMDM as expected. It is worth noting that the latest s139(1)(b) intervention is the sixth intervention in the NMMDM.

c) Deployment of provincial teams

Four research participants (31%) regarded the deployment of the provincial teams with high levels of expertise as one noticeable strength of the intervention process. At the time of the research study, the provincial teams comprised the administrator, Acting Municipal Manager, Acting CFO, and various other experts. The deployed experts covered a wide range of critical areas of expertise required to change the institution such as financial, engineering, human resources practitioners, and change management. The identified needs within the NMMDM determined the magnitude and nature of the skills deployed. Referring to Nigeria, Oviasuyi and Isiraojie (2017) highlight the political interference in the appointment of caretaker committees and assert that they were appointed as cronies or party loyalists and were individuals who fought hard for the election of the state governors.

Owing to the seriousness and urgency to address the financial crisis in terms of the latest intervention, the NWPEC deployed additional experts to assist with the implementation of the Financial Recovery Plan. As a collective, the team effected positive changes in the day-to-day operations of the NMMDM. The impression gained was that the allocation of such human resources demonstrated the NWPEC's commitment towards improving the situations that called for the s139(1) interventions.

d) Close-out reports

Four research participants (31%) highlighted issues regarding the failure by all the administrators to submit their closeout reports to the Municipal Council when they left. Reportedly, the first administrator did not submit his closeout report after he left. At the time of the research study, the second administrator had also not submitted her closeout report. The argument was that the closeout reports were required to provide the Municipal Council with an indication of the overall impact of the interventions, especially the progress made as well as the challenges encountered. The overall reading from the arguments was that the significance of submitting the closeout reports to the Municipal Council had been continuously underplayed.

An important dimension to the submission of closeout reports is that administrators are accountable to the province. As a result, the administrators submit such closeout reports to the Municipal Council only for notification purposes. The pertinent question as to whether the administrators did submit such reports to the NWPG was beyond the scope of the research study.

e) Change of key officials

Three research participants (23%) raised concerns that various key officials were appointed within a short period. It was reported that after the first administrator left in January 2015, the NWPEC appointed a former municipal councillor to act. In April 2015, the Acting Administrator and the Acting Municipal Manager swopped positions and the incumbents stayed until they left in April 2016. The third administrator took over in May 2016 and was to stay until after the local government elections in August 2016. Without discussing the reasons behind these changes, the impression gained was that such changes resulted in a lack of continuity. A closely related concern raised by six research participants (46%) was that the NWPG allowed the two administrators to leave before the end of their terms of office. All these changes were said to have presented challenges to the turnaround process.

From April 2016, the NWPEC appointed the latest Acting Municipal Manager who was formerly part of the provincial team and responsible for organisational development. The incumbent was to stay until such a time that a new Municipal Manager was appointed. In

addition, there had been three Acting CFOs in a period of three months. This also posed serious challenges to the financial recovery efforts. The latest Acting CFO was to stay until December 2016.

f) Capacity of the deployees

Although the deployment of provincial teams with sound expertise was highly appreciated, two research participants (15%) expressed concerns about the capacity, experience and personalities of some of the key deployees. The research participants referred to one key official whose services was terminated before the end of the term of office due to incompetency. Furthermore, one other key official had serious personality issues and simply undermined the Municipal Council and worked alone. The implications of the accusation of a key official undermining the Municipal Council could be far reaching for the intervention process. This not only has the potential to retard the stabilisation process, but could also be construed as a reflection of the attitude of the NWPEC towards the NMMDM, and serve to perpetuate animosity between the parties.

The research participants argued that these negative attributes had an undesirable impact on the stabilisation process and in maintaining sound relations and collaboration towards a common goal. Overall, the expressed perspectives stress the critical importance of proper screening of key officials before deployment. This is of critical importance to ensure that the expertise of the deployed officials matched the challenges they were appointed to address. Taking into account the fact that the intervention process relies on collaborations and relationships, the reported personality challenges served to compromise the change process.

g) Management gaps

Two research participants (15%) expressed reservations about the unintended gaps that were often created when key officials left. The feeling was that in the process of changing employees, often there was no deployee responsible for the provincial administration process within the NMMDM. For instance, at the end of March 2016, both the Acting Municipal Manager and the administrator left. From 1st to 6th April 2016, there was no Acting Municipal Manager and no administrator within the municipality. Undeniably, the period without leadership had an adverse impact on the turnaround process.

6.2.5.2 Changes in terms of the main triggers for the interventions

The theme elicited heated debates amongst the research participants. Strong arguments were made by the research participants that the NMMDM's performance before the interventions was adequate and was in a worse off situation as direct result of the interventions. As reflected below, the majority of the research participants expressed the view that the conditions that called for the s139(1) interventions in the NMMDM had remained unchanged and was cause for concern. Oviasuyi and Isiraojie (2017:9) argue "The encroachment of the state government into the statutory functions of the local government listed in the 4th schedule of the 1999 constitution of Nigeria has retarded the much needed growth and development and has also hindered transparency and accountability.

a) Political governance and stability

There was consensus from six research participants (46%) that the new Municipal Council was stable. The Council was reportedly supportive of the latest intervention and was fully aware of the precarious situation of the municipality. One research participant remarked, "After all, the intervention was at the request of the Municipal Council". The municipal leadership further acknowledges the positive impact of the intervention in the 2014/15 Annual Report. It is stated in the Report that by being placed under s139(1)(b), the NMMDM experienced a paradigm shift in terms of governance.

One participant made a further loaded statement and contended that "the Municipal Council is more inclined to towing the line of the principals". By implication, the assertion meant that the political relations between the new Municipal Council and the NWPG were sound. However, with the financial crisis unresolved, the fulfilment of the executive obligations by the newly elected Municipal Council is likely to be negatively affected. For instance, without funding the implementation of the key strategies such as the Recovery Plan, which would demonstrate the capacity of the new Municipal Council to deliver services, would be a difficult task to accomplish.

b) Service Delivery

The research participants expressed a view regarding the impact of the interventions on service delivery. The majority view held by 10 research participants (77%) was that the conditions that called for the interventions including poor service delivery remained unresolved. Ongoing service delivery protests in some parts of the district were cited as an apparent reflection of the general community discontent about the quality of service provision in the district. The participants raised concerns that the NMMDM was spending large sums of money on transporting water, which was not a sustainable solution to the service delivery challenges. Given the huge infrastructure service backlogs and the growing demand, the huge challenge of water scarcity in the district, and the capacity constraints within the NMMDM, the pressure exerted to accelerate the delivery of services is likely to continue even after the intervention phase.

The opposing view expressed by two research participants (15%) was that improvements had been made although it was work in progress. Through the s139(1)(c), the NWPEC intervened on all service delivery issues and gave priority to the provision of water to the community. Three key intervention strategies were developed to accelerate the turnaround process. First, the Intervention Plan specified the short, medium and long-term objectives to resolve the service delivery crisis. Second, the Rapid Response Team needs to respond promptly to the critical service delivery problems including the identification of hotspots and engagement with the communities and other stakeholders. Last, the collaboration with the Sedibeng Water Board needs to be established. The research participants reported that through this collaboration, the old infrastructure assets and boreholes had been refurbished. As one respondent put it, "It does not matter who delivers services, what matters is that services are delivered to the community and the community is satisfied".

Although outside the scope of the research study, it is important to refer briefly to the implications of the amendments made during the year 2000. Through these amendments, the district municipalities were established and accorded direct service delivery responsibilities. The arrangements resulted in the development of challenges peculiar to the district municipalities such as lack of constituencies. Steytler (2003:239) asserts "The shift has important implications for district municipalities' intergovernmental relations with both local municipalities as well as with provincial government".

c) Financial management and administration

An overwhelming majority of the research participants (77%) claimed that the financial situation had not improved. The participants strongly believed that the poor financial situation had turned into a crisis and that the municipality was technically insolvent. A number of key factors were raised and included a huge debt estimated in billions of rand, budget that was not cash-backed, litigations that had grown extensively, salaries that were paid using MIG allocations, and large sums of money spent on transporting water to the community, a term commonly referred to as 'water tankering'. Of further concern was that the implementation of the Financial Recovery Plan was adversely affected because the NMMDM does not generate revenue.

The participants concluded that the NMMDM was in dire need of a financial bailout. At the time of the research study, the NMMDM was preparing a Bailout Plan for financial assistance. Owing to the fact that the NMMDM is a non-delegated municipality, such a request was to be submitted to the NWPEC which would in turn take it to the National Treasury. It could be argued that the provisioning of a financial bailout to an institution that had persistently demonstrated challenges in managing its financial assets might not be an easy decision to make. Then again, without financial support it seemed not much could be done to salvage the financial situation of the NMMDM given the situation.

It is important to note that despite the reported challenges associated with financial management capacity, the NMMDM does not generate much revenue from the sale of water. As reflected in section 1.8, the majority of the households had an average income below R1 601 per month and eligible for classification as indigent. Consequently, the NMMDM finds it difficult to recover the cost of funding spent on infrastructure assets. With limited internally generated revenue, the NMMDM relies heavily on grant funding for capital programmes.

d) Staffing issues

The research participants reported that the problem of a bloated organogram was still unresolved and had an impact on the huge salary bill. It is important to note that in reaction to the allegations of the bloated organogram and nepotism, the new Municipal Council

commissioned forensic investigations. The findings of the investigations were tabled before the Municipal Council in January 2016. At the time of the research study, no actions had yet been taken on the findings. The impression gained from the gestures was that this was a sensitive matter, and that it was unlikely to be resolved before the pending local government elections in August 2016.

The Executive Management structure which became largely vacant upon the implementation of the s139(1)(c) intervention remained unfilled. The NMMDM operated with only two substantive executive managers with the rest of the positions vacant**.** What compounded the situation further was that not only were these critical positions vacant but there were no acting incumbents in these positions owing to the fact that the NMMDM could not afford to pay the salaries. Inevitably, such a high turnover rate at the strategic level continued to compromise the efforts to stabilise the administration and improve service delivery.

In order to facilitate institutional transformation, a number of key turnaround strategies were developed. These included improving financial viability, namely, the financial recovery plan, service delivery capacity, audit outcomes, and the institutional recovery plan. However, without the backing of a full Executive Management structure to instil a sense of responsibility throughout the directorates, such strategies were likely to remain just 'plans to turnaround' the institution without much impact.

e) Labour Relations

As part of the intervention process, it became necessary to improve labour relations. This process included the resuscitation of the Local Labour Forum. The aim was to ensure that the structure was meaningfully engaged on labour related matters.

Two research participants (15%) reported that the labour relations had improved and that the labour environment is relatively stable. For instance, no worker strikes had been experienced since the violent mass actions that accompanied the s139(1)(c) intervention towards the end of 2014. What seemed to have further contributed to the relative stability was that despite the financial woes, salaries were paid. Taking into account the unresolved issue of excess staff coupled with the financial crisis, indications were that any action that

could be taken and have a negative impact on the workers, was likely to be resisted thereby taking the NMMDM back to the state of anarchy.

6.3 Conclusion

Three main interpretations emerged from the analysis and interpretation of the research findings. First, the complexity of the provincial administration process and its susceptibility to a number of factors influence the planning and execution processes. Second, there is a strong correlation between political dynamics and reactions to the s139(1) interventions. Largely, the political dynamics controlled the overall reactions to the interventions. In turn, such underlying forces tainted the environment under which the NWPEC implemented the interventions, thereby making the realisation of the intended objectives hard to achieve. Last, the determination of the grounds for the dissolution of a Municipal Council is a highly contentious process that is predisposed to political manipulation. Then again, both the provincial and local governments are political institutions.

Chapter Seven

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7. Concluding Remarks & Recommendations

7.1 Introduction

As indicated in Chapter One, the aims of the research study were to explore and provide insights into the intricacies of the planning and implementation of s139(1) provincial interventions in the NMMDM. In addition, the study sought to explain how these aspects either promoted or undermined the planning and application of the interventions. This chapter summarises the salient aspects and concluding remarks based on the knowledge obtained from the literature review, and the research findings.

7.2 Summary of the impact of Section s139 interventions on NMMDM

The research study exposed a number of critical factors that informed and affected the planning and implementation of s139(1) interventions in the NMMDM. Inevitably, the dynamism of these aspects were such that they became the primary determinants of the outcomes and/or the impact of the provincial administration process. Due to the multidimensional nature of s139(1) interventions, it became clear from the research findings that no legislation on its own could guarantee the success of these interventions.

- The study revealed the complexity of the local government discourses. It clearly emerges from the research study that the transformation of the South African local government system is continuous. In fact, it could be said that the diverse challenges that the local sphere of government is currently faced with could not have been predicted from the inception stages of the new government system, including the sort of municipal response to the application of remedial actions such as the s139(1) interventions.

- The nature and intensity of the oversight supposedly performed by the two spheres of government over the performance of local government elicited politically heated debates. These discussions largely centred on the pre-intervention phase. The research participants made strong allegations that the NWPG did not provide support to the NMMDM prior to resorting to the s139(1)interventions. Ironically,

these claims were not about the sufficiency of the monitoring and support that was provided thereby confirming that these were politically motivated sentiments.

- The findings demonstrate the overpowering and persuasive role of political dynamics embedded in the provincial administration process. Suspicions of political interference were so intense that the NMMDM was somewhat compelled to approach the court for protection. The politics influenced the acceptance and rejection of the monitoring and support that was rendered to the NMMDM prior to the s139(1) interventions, the intervention consultation process, the validity of the communicated rationales for the interventions, the reactions to the interventions including the legal processes and the determination of the impact of the interventions. The discussions clearly confirmed that local government is indeed a political terrain, municipalities are political institutions, and the s139(1) interventions could partly have had a political motive.
- The findings reveal the value of coordination and collaboration in responding to the challenges of local government. The findings revealed that the provincial interventions present avenues for the demonstration of the IGR principles in practice. The complexity of the challenges that the NMMDM grappled with were such that they required addressing with collaborative efforts. Such collaboration was demonstrated by the active roles played by the national DWS, Provincial Treasury, Provincial DL&HS, and the Sedibeng Water Board, to address the service delivery, institutional, and finance-related matters. Ideally, the success of the s139(1) interventions rests on leveraging support and resources from various sources.
- The findings show the importance of adequate resource allocation. Essentially, resource allocation is critical to the success of any intervention. While the nature of s139 interventions calls for the deployment of an administrator and the provincial teams, the allocation of financial resources is as critical. Without financial resources especially in cases where the primary motivation for the s139(1) interventions was financial constraints, the interventions are bound to fail. In particular, the success of the latest s139(1)(c) intervention which was motivated by

the financial crisis of the NMMDM is largely dependent on adequate financial support.

- The NMMDM has persistently demonstrated utmost resistance against the s139(1) interventions except for the latest intervention. Based on the enormity of the contestations, one would have imagined that the main issue was the fight for the self-governing of local government. Surprisingly, the research participants expressed very limited views about the struggle for the autonomy of local government. The implication of this reaction could be that there was reasonable acceptance and acknowledgement of the power vested in the provincial government to intercede in the affairs of the NMMDM as stipulated in the Constitution and relevant legislation. Therefore, to a large extent the demonstrated resistance was for political control as was clearly demonstrated by the intensity of conflict during the s139(1)(c) intervention.

- The respondents raised strong reservations about the efficacy of the s139(1) interventions to improve the functioning of the NMMDM. The respondents qualified this stance by citing the repeat interventions in the NMMDM. Owing to the repeat s139(1) interventions and the conditions that called for such interventions, a few questions still remain. Are the repeat interventions indicative of the inadequate support rendered by the provincial government to the NMMDM prior to resorting to intercede? Are the repeat interventions a demonstration of constant oversight and commitment by the NWPG to ensure that the NMMDM functioned optimally? Are the repeat interventions a clear confirmation of continuous failure by the NMMDM to fulfil its service delivery obligations?

- Last, while the Constitution places a huge responsibility on the provincial executives to intervene and improve the situation in a municipality, the outcome of the intervention cannot be looked at solely from the provincial government side. The s139(1) intervention process is a multifaceted process. The findings revealed that the impact of the s139(1) interventions ought to be looked at from two perspectives. First, the capacity of the provincial executive to plan and execute the interventions and turn-around the situations that called for provincial

administration. Second, the role played by the affected municipality in creating a conducive environment for the s139(1) interventions to succeed and achieve the desired objectives. For instance, continuous resistance against the interventions as it happened in the NMMDM makes the stabilisation process a difficult task to accomplish.

7.3 Conclusion

The study exposed the intricacies in the planning and implementation of s139(1) interventions. Equally, the research study clearly articulated the impact of the factors that informed and affected the s139(1) interventions in the NMMDM. Of particular reference is the impact of the political dynamics in the intervention process. The summary of pertinent issues that came up from the research findings including policy recommendations are also provided.

7.4 Recommendations

Based on the research findings and in an effort to contribute towards improving the success rate of s139 interventions, the researcher recommends the following:

7.4.1 Law reforms

Given the ongoing transformation of local government and the challenges associated with it, law reforms are inevitable to keep pace with the evolving local government system. As the system develops, so is the need to re-evaluate the efficacy of the instruments that were developed to improve the functioning of local government to align them with the dynamism of local government. The report of the National Treasury (2014) makes an important contribution to the value of law reforms. The report states that institutional reforms promote accountability and oversight, focusing on structures and processes. On the other hand, technical reforms promote transfer of skills and knowledge to municipal officials and focus on systems, procedures and actions.

Yet, as demonstrated by the experiences of the NMMDM, the nature of s139(1) interventions is such that no amount of legislation can completely avert the potential resistance against the interventions given that:

- Section 139 intervention is a short-term solution. In order to make a sustainable impact, a capacity-building programme ought to accompany s139 interventions. The programme should be tailor made to suit the unique circumstances of the affected municipality and the detected weaknesses. Without any transfer of skills to the municipal staff, the municipality is likely to regress as soon as the provincial team leaves. Hence, the repeat interventions.

- Given the huge potential for conflict in s139 interventions as it happened several times in the NMMDM, there is need for legislation that specifies processes to deal with such disputes. The IGR Framework Act falls short of dispute mechanisms for s139 interventions. In the absence of an enforceable legal provision, municipalities are likely to resort to processes that are in conflict with the principles of the IGR Act. Given the persistence of resistance against the interventions, conflict resolution is paramount.

- It was revealed during the interviews that the latest s139(1) intervention was the sixth in the NMMDM. Moreover, the NWPEC have tended to extend the periods of the interventions longer. Therefore, there is need for a targeted support programme (over and above the regular support) for municipalities such as the NMMDM that have repeatedly been placed under provincial administration. The programme could run immediately after the lifting of an intervention to guard against the possibilities of a relapse. The experiences of the NMMDM clearly confirmed two scenarios that the 'one size fits all' approach has not yielded the desired outcomes, and keeping the municipality longer under administration has also proven less effective. The reality is that there has to be a model that works.

7.5 Proposals regarding further study

To contribute to the body of knowledge on the functioning of local government in South Africa, the researcher proposes three research studies.

- A research study on the implementation of s139(1) interventions targeting the provincial government needs to be conducted. The study will serve as a balancing

act. It will verify the allegations made and provide a different perspective on the subject matter.

- A research study to explore and evaluate the impact of the coalition administrations on governance and overall institutional performance. Given the unsatisfactory performance of local government and the political promises of 'corruption free' administrations, the study would provide key lessons of experience for local government. The information will be particularly critical in shaping the future of local government, especially if the trend continues to grow in future elections.
- An exploratory research study on whether municipalities that share the locality with their provincial governments are prone to experience provincial administration could be conducted. The proximity of a municipality to the provincial government could be both a positive and a negative factor.

7.6 Limitations of the Study

Owing to the highly political nature of the research topic, unintended modifications to the pre-planned research plans were unavoidable.

- Some of the targeted research participants declined to partake in the study and cited fear of possible victimisation afterward. Consequently, it was not possible to obtain the number of research participants that the researcher planned for the study.
- Based on the nature of the research topic, politically charged responses were inevitable. Overall, politically sensitive research topics like this one are bound to result in unintended modifications to the pre-planned research plans.
- Owing to the adoption of the NMMDM as a single case study, the findings cannot be generalised to apply to other municipalities as the findings relate specifically to the experiences of the NMMDM and its relations with the NWPG.

The research study became an appraisal of the relationships between the principal (provincial government) and the agent (the NMMDM). However, both the provincial and local governments are political structures established to achieve political outcomes.

7.7 Summary

Despite the unintended modifications to the plans, the overall objectives of the research study were met. In fact, the amendments made to the research plan clearly affirmed the fluidity of political dynamics and the role they play in the operations of municipalities, as well as the dynamism of local government. The study created a platform for the research participants to reflect on what happened within the NMMDM and why things happened the way they did.

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Annexures

A: List of interview questions

B: Letter received from the NMMDM accepting the request for the research study

C: Letter of acceptance from the NMMDM

Cases:

Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Committee and Others, [2014] ZACC 31

Legislation:

Constitution of the Federal Republic of Brazil (1988)

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Constitution of the Republic of South Africa, Act 108 of 1996

Division of Revenue Act of 2013

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Intergovernmental Relations Act of 2005

Local Government: Municipal Structures Act of 1998

Local Government: Municipal Systems Act of 2000

Local Government: Municipal Finance Management Act of 2003

Local Government Transitional Act of 209 of 1993

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Intergovernmental Relations Act of 2005

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Annual Report: 2013/14

Annual Report: 2014/15

Annual Report: 2015/16

Audit Report: 2012/13

Audit Report: 2013/14

Audit Report: 2014/15

Audit Report: 2015/16

Speeches:

Speech by Minister P Gordhan Budget Vote 4: Cooperative Governance and Traditional Affairs, National Assembly, May 2015

Annexure “A”

INTERVIEW QUESTIONS

No.	Question
1.	Was there any support rendered to the NMMDM by the national or provincial governments prior to the invocation of the s139(1) interventions? If yes, what was the nature of such support?
2.	How were the Notices to Intervene communicated to the internal stakeholders?
3.	What were the reasons for the s139(1) interventions as communicated by the PEC?
4.	How were the interventions received by the internal stakeholders? What motivated such reactions?
5.	What transpired during the assumption of duties?
6.	What have been the overall impacts of the interventions in the NMMDM?

Annexure "B"

Ms Z Kampi
DBSA
P.O. Box 1234
Halfway House
1685

23rd May 2016

The Municipal Manager
Ngaka Modiri Molema District Municipality
Private Bag X2165
Mafikeng
2745

Dear Madam

Re: Request to conduct a research

My name is Zola Kampi and I am studying at the Wits University (School of Governance) doing a Master's Degree in Management. The focus of my thesis is on the implementation of Section 139(1) of the Constitution in municipalities. Although I am an official of the DBSA, this is my academic exercise and not that of the DBSA.

Purpose of the request:

Based on the application of both Sections 139(1)(b) and (c) of the Constitution in your municipality, I humbly request your approval to use your municipality as a single case study for the research. The intention is to gain a deeper insight on the factors that encompass the planning and implementation of Section 139(1) in municipalities, and through the publication of the research findings to contribute to the expansion of knowledge about the research topic including input into the current law reforms relating to the application of Section 139(1) in municipalities. If at all possible, I am planning to finalize the research before the end of June and I will be entirely amenable to any possible dates suitable to yourselves.

People to interview:

In order to get a balanced perspective, I would be grateful to get an opportunity to interview the leadership of the municipality. I am expected to interview at least 15 research participants as follows:

- Political Leadership: The Executive Mayor, and the MMCs for Finance, Infrastructure, PMU, and the Speaker.
- Administrative Leadership: The Administrator, Municipal Manager, and the Section 57 managers.

Ethical Considerations:

I guarantee the basic ethical tenets such as confidentiality, privacy and anonymity to protect the identity of the research participants. I also undertake to share the research findings with your municipality to ensure the accuracy of the information and that no information will be published without your knowledge.

I thank you in anticipation and hope to hear from you at your earliest convenience.

Kind regards



Zola Kampi (Ms)
Tel. (011) 313 3523
Cell. 0828848123

Approval: Human Resources Manager **Date:**

Approval: Municipal Manager **Date:**

Approval: Administrator **Date:**

Annexure "C"



NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

Cnr. Carrington Str and 1st Avenue, Industrial Site, Mahikeng, 2745 | Tel: (018) 381 9400|Fax (018) 381 4300
Private Bag X2167, Mahikeng, 2745| www.nmmdm.gov.za

OFFICE OF THE MUNICIPAL MANAGER

Our ref. Ms B Mahape
Tel. ext. 018-3819422

Ms Z Kampi
DBSA
P O Box 1234
HALFWAY HOUSE
1685

Dear Madam

RE: REQUEST TO CONDUCT RESEARCH

This communique serves to accept your request to conduct a research on the implementation of Section 139(1) of the Constitution in this Municipality for your Master's Degree in Management.

We believe that the research undertaken will benefit not only the institution, but the country at large.

We will appreciate a copy of your research document.

Regards

28/5/2016
J. BRANDER
ACTING MUNICIPAL MANAGER

30/05/2016
P MOIPOLAI
ADMINISTRATOR

"Leaders in integrated municipal governance"