

APPLICATION OF SECTION 139 OF THE CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA, 1996.

by

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## **ABSTRACT**

This research investigated the application of section 139 of the Constitution of Republic of South Africa, 1996. Koukamma, Sundays River Valley and Mngquma Local Municipalities are the case studies for this research as provincial interventions to these municipalities will be analysed.

The study was conducted within the legal and legislative framework of local government which clearly defines how municipalities should be governed. Furthermore, it explains the procedural and substantive requirements for intervention should a municipality fail to deliver on its constitutional mandate as stipulated in Section 152 of the Constitution.

A descriptive approach was used in the study, with data collection coming from primary and secondary sources such as textbooks, minutes of meetings of the Eastern Cape Department of Local Government and Traditional Affairs, National Council of Provinces and reports by administrators appointed by Member of the Executive Council (MEC) responsible for local government in the respective province.

Several recommendations were provided in the final chapter. Should these be implemented properly, it could result in effective local government, and thereby reduce or eliminate the need for the application of section 139 of the Constitution.

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Lastly, I thank the Almighty for the strength and wisdom He bestowed upon me.

## **DEDICATION**

This study is dedicated to my wife, Makatlego and my children, Katlego and Thato for their moral support. I had to compromise quality time in order to complete this research.

## **TABLE OF CONTENTS**

<b>DECLARATION .....</b>	<b>i</b>
<b>ABSTRACT .....</b>	<b>ii</b>
<b>ACKNOWLEDGEMENTS.....</b>	<b>iii</b>
<b>DEDICATION.....</b>	<b>iv</b>
<b>GLOSSARY (EXPLANATION OF TERMS).....</b>	<b>viii</b>
<b>DEFINITIONS AND EXPLANATION OF ACRONYMS .....</b>	<b>x</b>

### **CHAPTER 1**

#### **RATIONALE AND BACKGROUND TO THE STUDY**

1.1	INTRODUCTION.....	1
1.2	RESEARCH PROBLEM.....	3
1.3	RESEARCH AIMS AND OBJECTIVES.....	4
1.4	KEY QUESTIONS PERTAINING TO THE STUDY .....	4
1.5	RESEARCH METHODOLOGY .....	4
1.6	SCOPE OF THE RESEARCH.....	5
1.7	THEORETICAL FRAMEWORK .....	5

### **CHAPTER 2**

#### **LITERATURE REVIEW**

2.1	INTRODUCTION.....	6
2.2	CONSTITUTIONAL AND LEGISLATIVE FRAMEWORKS FOR PROMOTING GOOD GOVERNANCE IN LOCAL GOVERNMENT IN SOUTH AFRICA.....	6
2.2.1	Constitution of the Republic of South Africa, 1996 .....	6
2.2.2	White Paper on Local Government, 1998 .....	7
2.2.3	Local Government Municipal Finance Management Act 56 of 2003 .....	8
2.2.4	Local Government Municipal Systems Act 32 of 2000 .....	9
2.2.5	Municipal Performance Regulation (No 805 of 2006).....	9
2.2.6	Municipal Structures Act 117 of 1998.....	9

2.2.7	Intergovernmental Relations Framework Act 13 of 2005 .....	10
2.3	APPLICATION OF SECTION 139 OF THE CONSTITUTION OF 1996.....	10
2.4	SECTION 139 INTERVENTIONS .....	11
2.5	SUBSTANTIVE AND PROCEDURAL REQUIREMENTS FOR THE APPLICATION OF SECTION 139.....	12
2.6	IMPLEMENTATION OF SECTION 139 IN THE EASTERN CAPE: THE MNQUMA MUNICIPALITY, KOUKAMMA MUNICIPALITY AND SUNDAYS RIVER VALLEY MUNICIPALITY.....	13
2.6.1.	Status in the Koukamma and Sundays River Local Municipalities .....	13
2.6.2	Mnquma Local Municipality .....	15
2.6.3	Koukamma Local Municipality .....	16
2.6.4	Sundays River Valley Local Municipality .....	17
2.7	STRATEGIES EMPLOYED BY EASTERN CAPE GOVERNMENT TO IMPROVE SITUATION IN MUNICIPALITIES UNDER ADMINISTRATION ..	18
2.8	SUMMARY .....	19

## **CHAPTER 3**

### **RESEARCH METHODOLOGY**

3.1	INTRODUCTION.....	21
3.2	RESEARCH APPROACH .....	21
3.3	THE RESEARCH AREAS .....	22
3.4	DESCRIPTIVE RESEARCH METHOD.....	22
3.5	RESEARCH INSTRUMENTS .....	23
3.5.1	Secondary Sources.....	23
3.5.2	Primary Sources.....	24
3.6	DATA COLLECTION: CHALLENGES.....	25
3.7	DATA AND INTERPRETATION ANALYSIS .....	26
3.8	ETHICAL CONSIDERATION .....	27
3.9	VALIDITY AND RELIABILITY .....	28
3.10	METHODICAL CHALLENGES.....	29

3.11	LIMITATIONS OF STUDIES .....	29
3.12	SUMMARY .....	29

## **CHAPTER 4**

### **RECOMMENDATIONS FOR EFFECTIVE LOCAL GOVERNMENT**

4.1	INTRODUCTION.....	30
4.2	RECOMMENDATIONS .....	30
4.2.1	Turn-Around Strategy.....	30
4.2.2	Operation Clean Audit.....	31
4.2.3	The Role of the Audit Committee .....	32
4.2.4	Role of Development Agencies .....	32
4.2.5	Education and Training in Ethics of Good Governance.....	33
4.2.6	Innovative and Transformative Political and Executive Leadership.....	33
4.2.7	Human Resource Considerations .....	34
4.2.8	Cadre Deployment and Nepotism .....	34
4.2.9	Tenderpreneurship.....	35
4.2.10	Provincial Monitoring over Municipalities .....	35
4.2.11	Communication Media .....	35
4.2.12	Interaction of Councillors with Communities.....	36
4.2.13	Community Participation .....	37
4.3	SUMMARY .....	37

## **CHAPTER 5**

5.1	CONCLUDING REMARKS .....	38
	<b>BIBLIOGRAPHY .....</b>	<b>40</b>
	<b>APPENDIX I: ETHICS CLEARANCE .....</b>	<b>45</b>



## GLOSSARY (EXPLANATION OF CONCEPTS)

**APARTHEID-** a system of government, established by the then Nationalist Party in 1948, which dedicated itself to securing the social, economic, and political privileges of the white minority at the expense of Africans, Coloureds and Indians (Mandela,1995:45).

**ACCOUNTABILITY-** in ethics and governance, accountability is answerability, blameworthiness, liability and the expectation of account giving (<http://www.Dictionary.Reference.com/browse/accountability>).

**CADRE DEPLOYMENT-** when a party loyalist is placed in a position without considering its inherent requirements (<http://inside-politics.org/cadre-deployment>).

**CASE STUDY-** is a descriptive, explanatory or explanatory analysis of a person, group or event ([http://en.wikipedia.org/wiki/case\\_study](http://en.wikipedia.org/wiki/case_study)).

**COUNCILLOR-** is a member of local government council (<http://dictionary.referral.com/browse/councillor>).

**CONSTITUTION-** is a set of fundamental principles or established precedents according to which a state is governed (<http://www.gov.za/documents/constitution/1996/constitution.pdf>).

**EFFECTIVE-** to successful produces desired or intended results (<http://dictionary.reference.com/browse/effective>).

**EFFICIENT-** to achieve maximum productivity with minimum wasted effort or expense (<http://ductionary.reference.com/browse/efficient>).

**FUNCTIONAL-** having capable of serving the purpose for which it was designated.

**GOVERNMENT-** system by which a state or community is governed (<http://www.gov.za/documents/constitution/1996/constitution.pdf>).

**LEGISLATURE-** is a decision-making organisation, usually associated with national government (<http://www.gov.za/documents/constitution/1996/constitution.pdf>).

**LOCAL GOVERNMENT-** a form of public administration which in a majority of contexts, exists as the lowest tier of administration within a given state  
(<http://www.gov.za/documents/constitution/1996/constitution.pdf>).

**PROVINCIAL GOVERNMENT-** it forms the second layer of government between national government and municipalities  
(<http://www.gov.za/documents/constitution/1996/constitution.pdf>).

**NATIONAL GOVERNMENT-** is comprised of Parliament, Cabinet and various departments. These components carry out functions as outlined in the Constitution and in legislation enacted by parliament  
(<http://www.gov.za/documents/constitution/1996/constitution.pdf>).

**NEPOTISM-** favouritism granted in politics or business to relatives  
(<http://dictionary.reference.com/browse/nepotism>).

**NON-RACIALISM-** Universalist and conventional liberal demand for equality under law and in citizenship (Mandela, 1995:110).

**POLICY-** specifies the basic principles to be pursued in obtaining specific goals  
(<http://dictionary.reference.com/browse/policy>).

**TENDERPRENEURSHIP-** a term coined by the South African Communist Party meaning a government official or politician who uses their powers and influence to secure government tenders and contracts  
(<http://www.timeslive.co.za/sundaytimes/article318330.ece>) The Star. 2010-02-21.

## **EXPLANATION OF ACRONYMS**

**ANC-** African National Congress

**CIDA-** Canadian International Development Programme

**CoGTA -** Cooperative Governance and Traditional Affairs

**DBSA-** Development bank of South Africa

**DPLGTA-** Department of Local Government and Traditional Affairs

**IDP-** Integrated Development Plan

**IGRA-** Inter-Governmental Relations Act

**LGSETA-** Local Government Sector, Education and Training Authority

**LGTAS-** Local Government Turn Around Strategy

**MEC-** Member of Executive Council

**MFMA-** Municipal Finance Management Act

**NCOP-** National Council of Provinces

**NDA-** National Development Agency

**SACP-** South African Communist Party

**SALGA-** South African Local Government Association

**SDBIP-** Service Delivery and Budget Implementation Plan

**SRVM-** Sundays River Valley Municipality

**USAID-** United States Agency for International Development

## **CHAPTER 1**

### **RATIONALE AND BACKGROUND TO THE STUDY**

#### **1.1 INTRODUCTION**

According to Cloete (1993:27), before the transition to democracy in April 1994, local government in South Africa was based on the apartheid (white domination) policy. Apartheid local government had a number of key characteristics. Firstly, administrative structures were duplicated for each race group on the local, provincial and national spheres of government. This resulted in fragmentation in terms of legislation, policy, and programmes and led to ineffective and inefficient operations. Secondly, local government was unaccountable, with black South Africans having no elected representatives. Finally, service delivery was characterised by inequality in access between well-resourced white suburbs and severely under-resourced black townships.

The apartheid government imposed local government structures on disenfranchised communities throughout the country. These structures comprised black local authorities, white local authorities and Regional Services Councils. The councils as such were illegitimate and undemocratic (Cloete, 1993:28).

When a new dispensation was ushered in following the first democratic elections in South Africa on 27 April 1994, the new government led by the African National Congress (ANC) was committed to addressing the imbalances of the past and ensure effective and efficient governance through a complete overhaul of the system of local government. Several pieces of legislation were formulated based on the provisions of the Constitution of the Republic of South Africa, 1996, which bestowed a new mandate on the system of local government - that of a developmental local government (Mogale, 2003:229). The following pieces of legislation applicable to developmental local government include the following:

- The White Paper on Local Government, 1998
- The Municipal Finance Management Act 56 of 2003
- The Municipal Structures Act 117 Of 1998

- The Municipal Performance Regulation, 805 of 2006
- The Municipal Systems Act 32 of 2000

Whilst the Acts and policies mentioned above helped to provide a legislative framework to ensure good governance, implementation of these laws remains a challenge for municipalities (Cloete, 2006:3). Indeed local government is the focus of much of the, often violent, anti-government protest action that has become such a feature of South Africa 20 years into its democracy. The municipalities have to overcome numerous challenges as a result of historical, unethical and corrupt constraints. The result has been poor governance and failure by the municipalities to deliver on their constitutional mandate. Should the latter take place; the Department of Local Government and Traditional Affairs can take over the administration of the municipality by invoking section 139 of the Constitution. In terms of section 139, Local Government may intervene in a municipality where it does not or cannot fulfil an executive obligation in terms of the Constitution or legislation and the relevant provincial executive may intervene by taking appropriate steps to ensure fulfilment of their obligations. The fundamental aim of applying section 139 of the Constitution is to ensure that there is effective governance and the municipalities deliver on their constitutional mandate.

Section 139 of the Constitution refers to the strategic and focused role the Department of Local Government and Traditional Affairs should play with a view to providing support and resources to low - capacity municipalities. These Municipalities pose serious challenges to government. They are typically in serious financial trouble, with large debts and onerous responsibilities to provide basic services to large numbers poor households unable to cover the costs of the most basic services. Section 139 of the Constitution was applied by the Eastern Cape Government with specific reference to Mnquma, the Sundays River Valley and Koukamma Municipalities.

The aim of this study is to investigate the application of section 139 of the Constitution by the Eastern Cape Government and to investigate to what extent it succeeded in ensuring good governance and assist municipalities to deliver on their Constitutional mandate.

This study is further informed by the observation that the application of section 139 of the Constitution by the Eastern Cape Government took diverse forms with entirely diverse outcomes. The following serve as examples:

- The Koukamma Municipality cooperated with the application of section 139;
- The Sundays River Valley Municipality requested the application of section 139; and
- The Mquma Municipality resisted the application of section 139.

## **1.2 RESEARCH PROBLEM**

The research problem is to investigate the reason(s) why the application of section 139 of the Constitution has always produced good results in the Eastern Cape. Since the implementation of section 139 of the Constitution is determined at the political level, what control measures are in place to ensure that such application is free from political interference?

The problem is discernible through:

- Cadre deployment: The former National Party politicised bureaucracy during the apartheid regime when certain positions in the public service were reserved for party loyalists who ensured the continued existence of the apartheid policy. In post-apartheid South Africa, the same approach has been adopted under the guise: “Cadre Development”. This has resulted in incompetent and unqualified persons being employed in key strategic positions while qualified and competent individuals who pursue different political ideologies or support an opposition political party are overlooked.
- Chronic shortage of skilled personnel: In many municipalities the skills base remains limited. This concern has been raised in the reports of the Auditor General (AG) since 1994. The chronic shortage of skills explains the reason why in some municipalities section 139 of the Constitution 95 is applied by the provincial government.
- Development of political rival factions: The development of rival political groupings whose aim is to control state resources impacts negatively on governance in municipalities. One’s proximity to a person who is in power determines one’s

destiny. Powerful individuals within political parties appoint upcoming and unsuspecting “comrades” into powerful positions with the sole aim of controlling state resources.

### **1.3 RESEARCH AIMS AND OBJECTIVES**

The objective of the study is to establish how section 139 of the Constitution is implemented by the Department of Local Government and Traditional Affairs in the Eastern Cape. The aims are:

- To examine the authority of the Eastern Cape Government to intervene in a failing municipality;
- To examine the strategies formulated by the Eastern Cape Government which can be adopted to improve governance in ‘failing’ municipalities; and
- To investigate the challenges that negatively affect the implementation of section 139 in the following municipalities in the Eastern Cape: Mquma Municipality, Koukamma Municipality and Sundays River Valley Municipality.

### **1.4 KEY QUESTIONS PERTAINING TO THE STUDY**

The following key questions pertain to the study:

- What are the procedural requirements for the application of section 139 of the Constitution?
- What conditions should exist in municipalities that would necessitate the application of section 139 of the Constitution?
- What was the level of success of the implementation of section 139 of the Constitution by the Eastern Cape Government in Mquma Municipality, Koukamma Municipality and the Sundays River Valley Municipality?

### **1.5 RESEARCH METHODOLOGY**

The study will employ a descriptive research approach. A descriptive research approach is used to describe the characteristics of the population or phenomenon being studied. It does not answer questions about how, when, or why the characteristics occurred. Rather it addresses the “What” (Brewer, 2000:231). The characteristics used to describe the situation or population are usually some kind of

categorical scheme also known as descriptive categories. Research cannot describe what caused a situation. Thus, descriptive research cannot be used as the basis of causal relationship, where one variable affects another. In other words, descriptive research can be said to have a low requirement for internal validity (Bhattacharjee, 2012:105)

Another technique that can be employed is the selected normative criteria from literature. A normative criterion is a guide from the literature of the most probable way to deal with a problem. Usually, research problems have been researched from different perspectives, but those researchers may have proposed or recommended normative criteria to address such problems (Brewer, 2000:273).

For the purpose of this study, a number of normative criteria are selected from the literature. Furthermore, several recommendations proposed in the final chapter. Owing to the restricted extent of the research, no empirical survey will be conducted.

## **1.6 SCOPE OF THE RESEARCH**

The research will be limited to the Eastern Cape Department of Local Government and Traditional Affairs and will focus on the following municipalities:

- Koukamma;
- Sundays River Valley; and
- Mngquma.

## **1.7 THEORETICAL FRAMEWORK**

This study will encompass relevant available research and literature in books, journal articles, academic research papers, legislation, the municipal constitution and diagnostic review reports prepared by the administrators.

This research will cost approximately R4 000, 00. This amount will cover costs for photocopying, binding, sundry expenses and language editing.



## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 INTRODUCTION**

This chapter deals with five main areas peculiar to the study. Firstly, the constitutional and legislative frameworks that underpin good governance in local government were identified and explained. Secondly, procedural requirements for the application of Section 139 of the Constitution are expounded upon. Thirdly, the various Section 139 interventions as per the Constitution of 1996 are explored. Fourthly, conditions in municipalities that necessitated intervention were explored. Fifthly, the application of Section 139 of the Constitution by Eastern Cape Government in the Mquma Local Municipality, Koukamma Local Municipality and Sundays River Valley Local Municipality is discussed. The three local municipalities were selected as a case study because Section 139 was implemented in these municipalities. Finally, strategies employed by the Eastern Cape Government in municipalities under administration were also discussed.

#### **2.2 CONSTITUTIONAL AND LEGISLATIVE FRAMEWORKS FOR PROMOTING GOOD GOVERNANCE IN LOCAL GOVERNMENT IN SOUTH AFRICA**

This section focuses on constitutional and legislative frameworks for promoting good governance in the South African local government.

##### **2.2.1 Constitution of the Republic of South Africa, 1996**

The Constitution establishes the system of government in South Africa as a unitary state with decentralised characteristics consisting of the national, provincial and local government spheres. In Chapter 3 of the Constitution, the principles of intergovernmental relations and co-operative government are set out, requiring that each sphere of government performs the functions allocated to it and, in so doing, coordinates the execution of functions with other spheres so as to provide coherent government for the country as a whole. Within this context there is the implicit assumption that each sphere will provide whatever support necessary to ensure such coherence and coordinated governance. However, should any sphere of government

be unwilling or unable to meet its obligations, the Constitution provides for a system of interventions, in terms of which the national government may intervene in provinces and provinces may intervene in municipalities. Section 100 regulates national interventions in provinces while section 139 structures provincial interventions in municipalities

In 2003 a number of amendments were effected to Sections 100 and 139 by the Tenth Constitutional Amendment Act of 2003. With regard to Section 100, the supervisory role of National Council of Provinces (NCOP) was altered, while the new Section 139 empowers provinces to intervene in municipalities through dissolving municipal councils and taking remedial steps-in the case of a municipality failing to pass a budget or revenue-raising measures or experiencing a financial crisis.

The changes to Section 139 relating to the financial management of municipalities are detailed in the Municipal Finance Management Act (MFMA), Act 56 of 2003.

### **2.2.2 White Paper on Local Government, 1998**

After the 1994 democratic elections there was a policy shift in local government. The system of local government was no longer a mere administrative service or extension arm of government to implement apartheid policies. It was now professionalised through the introduction of a White Paper which requires the provision of services in a sustainable manner. This is prescribed in its developmental vision which means a commitment to work with citizens to find a sustainable ways to realise their social, economic and material needs to meet and improve the quality of their lives. The White Paper has four basic characteristics of which public participation is one (White Paper on Local Government: 1998:17). In fact the White Paper on Local Government complements Section 153 of the Constitution which requires that, a Municipality must:

“...structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community and promote the social and economic development of the community” (Constitution of the Republic of South Africa, 1996:84-85).

It would be expected that, when legislation requires municipalities to plan and work together with the people to intergrade and coordinate their activities and maximise their economic growth and social development, service delivery protests would be

something that belonged to the pre-1994 era. Unfortunately, as evidenced by the service delivery protests, some communities still feel left out in terms of being part of decision making process.

### **2.2.3 Local Government Municipal Finance Management Act 56 of 2003**

The above Act is one of the most important pieces of local government legislation in so far as ensuring good governance is concerned, especially on financial management matters. It deals with the management and control of municipal bank accounts, handling of withdrawals, budget preparation processes; and publication of annual budgets, auditing requirements, debt disclosure, and the use of a municipal website to publish information. In addition, it deals with financial governance matters (Sections 85-130) such as irregular, fruitless and wasteful expenditure, provision for the reporting of improper interference by councillors and, most importantly, barring of councillors from participation in the Tender Committees. The Act is aimed at securing sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith. The object of this Act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards.

The Act further provides very strict guidelines (in terms of Section 102) in so far as dealing with irregular, fruitless and wasteful expenditure by municipal staff is concerned, irrespective of the level they occupy within the municipality structure. The Act requires that if there is a way, such expenditure must be reported to the Mayor, Auditor General or even recovered where possible. In addition, the Act makes provision for the municipality to take steps to prevent the reoccurrence of irregular, wasteful and fruitless expenditure. The Act also stipulates a critical provision (in terms of Section 103 and 117) on reporting improper interference by councillors and barring them from participating in tender committees. Handling of tenders in local government is seen as corrupt because of councillors allocating tenders to companies of friends; wives or even those of their children. Section 117 of this Act is vital in preventing the corrupt conduct of councillors in as far as awarding of tenders in local government is concerned.

#### **2.2.4 Local Government Municipal Systems Act 32 of 2000**

This Act is aimed at providing for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and to ensure universal access to essential services that are affordable to all. Furthermore, Act further defines the legal nature of a municipality as including the local community within the municipality area, working in partnership with the municipality's political and administrative arm, to provide for the manner in which municipal powers and functions are exercised and performed, to provide community participation, and to provide a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of a developmental local government. Sections 16, 17 and 19 of Act 32 of 2000 provide for public participation to allow for transparency, involvement, openness, accountability, responsibility and participation. The municipality must encourage, and create conditions for, the local community to participate in the affairs of the municipality.

#### **2.2.5 Municipal Performance Regulation (No 805 of 2006)**

This regulation requires a strong partnership between the municipal budget, the Integrated Development Plan (IDP) and the Service Delivery Budget Implementation Plan (SDBIP). It requires that all the actions in the IDP is budgeted for and formulated into quarterly report quarterly reports (SDBIP) in which expenditure and progress reports on each project is explained.

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

The Municipal Structures Act 117 of 1998 is the second piece of legislation that is aimed at laying a foundation for local government in South Africa. The Act mainly deals with the demarcation of municipal boundaries and different categories of municipalities in the country. However, new boundaries and categorisation will not automatically solve the problems faced by the local sphere of government. Proper structures, systems, adequate and stable sources of income, and structures to encourage community participation are needed to ensure local government that is citizen friendly, accountable, developmental, financially sustainable, performance-orientated and committed to the improvement of the quality of lives of the people (Planact, 2000:37)

### **2.2.7 Intergovernmental Relations Framework Act 13 of 2005**

The Intergovernmental Relations Framework Act 13 of 2005 (IGRFA) was implemented to establish greater predictability in intergovernmental relations and to promote the alignment of national, provincial and local plans and expenditures. The Act addresses three local government concerns. Firstly, to overcome the haphazard way in which departments had been consulting with local government, statutory membership in all key intergovernmental forums was conferred on organised local government. Secondly, the Act provides for direct representation of district executive mayors in provincial intergovernmental forums, to promote effective executive-to-executive engagements between these two spheres. Thirdly, district intergovernmental forums were established to force cooperation between district and local executives, to overcome the tension and competition that typified relations between the two tiers. The impact of IGRFA is difficult to measure; however, the institutions have been established and are operational.

### **2.3 APPLICATION OF SECTION 139 OF THE CONSTITUTION OF 1996**

Intervention in local government in terms of section 139 of the Constitution is an integral part of the institutional framework for developmental local government. It is a necessary corrective when a municipality fails to govern and thus jeopardises the enterprise of development. It is also an aspect of intergovernmental relations and, as such, it must be exercised within the spirit of co-operative government as outlined in Chapter 3 of the Constitution. The commencement and the termination dates are always included when an intervention is effected (Steytler *et al.*, 2002:95).

There are a number of checks and balances that were created around the application of this legislative prescript. The aim was to ensure that its application is free from political interference as such decision is taken at political level and that intended results are achieved. Important questions to ask are when a province should intervene and what is the extent of intervention? If the overall performance of a municipality is good but only one department fails, does this mean the province must administer that municipality? What objective factors does the provincial government put forward as reasons for intervening in a municipality? Can the province intervene because the inhabitants have taken to the streets to expressing their dissatisfaction about some

municipal services? When a municipality has failed and the province decides to take over, who exactly has failed?

When the provincial government intervenes, it directs its attention on the municipal council. Why? The Municipal Systems Act states that it is the council of a municipality that has the right to “exercise the municipality’s executive and legislative authority and use the resource of the municipality in the best interest of local community” (Local Government Municipal Systems Act 32 of 2000).

This view is shared and reinforced by Section 151 (2) of the Constitution of 1996. Therefore, the municipal council is the highest authority and all the provincial efforts to restore order in the municipality should be channelled to the municipal council.

Local government only enters the local sphere when the municipal council cannot perform its executive obligation. The Act is clear as it provides guidance to move away from other obligations such as judicial and legislative imperatives. This executive obligation is clearly defined under Section 84 of the Municipal Structures Act where the roles of the municipality are spelled out clearly (Municipal Structures Act 117 of 1998). This view is reinforced by Section 156 of the constitution of 1996

## **2.4 SECTION 139 INTERVENTIONS**

In terms of the Constitution of 1996, the provincial Department of Local Government and Traditional affairs may intervene in a municipality as follows:

- a) Regular intervention in terms of Section 139 (1) of the Constitution wherein the provincial government will issue a directive that it will take over the running of the municipality. It will thereafter dissolve the municipality
- b) Intervention in view of serious financial problems in terms of MFMA. In this intervention the provincial government is expected to dissolve the municipality, take over all its responsibilities and formulate a financial recovery plan.
- c) Intervention when a municipality experiences budgetary challenges. Features of this particular intervention are the mandatory dissolution of the municipality as well as the adoption of temporary budget and revenue raising measures
- d) Intervention in response to a municipality experiencing a crisis in financial affairs, including: imposing a financial recovery plan; dissolving of the municipal council; and assuming responsibility (Steytler *et al.*, 1999: 75).

## **2.5 SUBSTANTIVE AND PROCEDURAL REQUIREMENTS FOR THE APPLICATION OF SECTION 139**

A distinction is made between substantive requirements and procedural requirements for interventions. Substantive requirements deal with the question as to when a particular type of intervention is permitted. Procedural requirements refers the intergovernmental checks and balances that the constitution prescribes for various types of interventions ([www.dplg.gov.za](http://www.dplg.gov.za))

It is important that proper procedures are followed by the provincial government before any intervention is embarked upon. This will help protect the integrity of both the provincial government and local government, foster the spirit of cooperation and friendly relations amongst the various spheres of government and ensure that the various spheres of government avoid settling disputes in the courts of law. The following are some of the important requirements to be met before a smooth and successful intervention is carried out.

In terms of Section 139 (1) (b) of the Constitution of 1996, when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including assuming responsibility for the relevant obligation. The provincial executive committee is the primary decision maker with regard to the assumption of responsibility in a municipality.

However, the National Council of Provinces (NCOP) must be notified within 14 days before the intervention which it is expected to approve within 180 days. However, if the NCOP does not approve within 180 days such intervention would lapse. In this way the NCOP provides the necessary checks and balances to ensure that any provincial intervention is within the confines of the law. The role of the NCOP can be regarded as one to ensure that no political meddling takes place when provincial government intervenes in a municipality.

Both the MEC in charge of local government and the NCOP must approve the intervention. The NCOP has a further role of reviewing the intervention subsequent to the approval. The review function of the NCOP in this instance ensures that provincial interventions are carried out within the appropriate IGR. The NCOP is specifically meant to ensure that the provincial intervention does not go beyond the constitutional

mandate of provinces. Where this happens, the NCOP has to engage with the province in order to ensure that such intervention remains within the constitutional confines. If the provincial government fails to render support and address the challenges experienced by a municipality the national government will intervene.

Furthermore, when other spheres of government intervene at the local government level, they should do so on the basis of improving the situation and respecting the institutional integrity and independence of the municipality as it enjoys its own constitutional right to exist as an independent sphere of government.

Intervention is concluded when conditions in a municipality have returned to normality. It is only lifted when the reasons for its introduction have been addressed. Lifting of the intervention comes after close monitoring, observation and recording of good progress by the provincial government. Also, the intervention is lifted when the municipality that is under administration is able to implement the recovery plan on its own without the outside assistance. Lastly, the application of Section 139 concludes upon notification of important stakeholders such as SALGA, provincial legislature, creditors and the municipality itself.

## **2.6 IMPLEMENTATION OF SECTION 139 IN THE EASTERN CAPE: THE MNQUMA MUNICIPALITY, KOUKAMMA MUNICIPALITY AND SUNDAYS RIVER VALLEY MUNICIPALITY**

It will be demonstrated that in these three municipalities the application of Section 139 took different forms. Before discussing the actual application, it is important that firstly, the conditions that existed in these three municipalities that necessitated the application of Section 139 are discussed in detail. Secondly, the overview of the three municipalities is provided.

### **2.6.1. Status in the Koukamma and Sundays River Local Municipalities**

With the exception of the Mngquma Local Municipality where the provincial government did not provide any detailed reasons for intending to place it under administration, conditions that existed in the Koukamma and Sundays River Local Municipalities were detailed ([www.cogta.gov.za](http://www.cogta.gov.za)). A discussion of these conditions follows.



#### **a) Political Instability**

- There were serious divisions in the Council that paralysed decision making.
- There was external pressure political pressure on the Council.
- The plenary system of the municipality complicated decision -making
- The mayor/speaker needed a full Council for all decisions
- The suspension and dismissal of the Municipal Manager exacerbated the divisions
- These divisions played themselves out at community level
- Council took varying decisions on the same matter at different times
- Serious community protests took place
- There was no clarity on who was the accounting officer of the municipality
- Ratepayers took the matter to the courts of law (Minutes: meeting of Parliamentary Monitoring Group, 05 October 2009).

#### **b) Administrative Instability**

- The suspension and subsequent dismissal of the Municipal Manager led to further divisions
  - between council and administration
  - between administration and labour unions
- The absence of a Municipal Manager left the administration with no leadership
- The lack of leadership resulted in the collapse of administrative and financial management and the deterioration of service delivery
- At one point all the senior managers took leave due to stress

#### **c) Financial Management Instability**

- Supply chain management processes were severely compromised by the administrative instability
- The Chief Financial Officer (CFO) was also suspended which further compromised management
- The Municipal Infrastructural Grant (MIG) “disappeared”
- There were cash flow problems which resulted in the inability to pay the creditors
- Income collection dropped (Minutes: meeting of Parliamentary Monitoring Group, 05 October 2009).

#### **d) Service Delivery**

The compromising of service delivery was characterised by:

- Housing delivery which was fraught with allegations of corruption and poor quality
- Infrastructural projects that never took off the ground despite funding being made available
- Violent protests resulting in municipal and councillor property being destroyed (Minutes: meeting of Parliamentary Monitoring Group, 05 October 2009).

### **2.6.2 Mquma Local Municipality**

#### **a) Overview of the Study Site**

Mquma Local Municipality is located in the South eastern part of the Eastern Cape Province. This category B municipality falls under the jurisdiction of Amathole District Municipality (ADM) and comprises of an amalgamation of the former Butterworth, Ngqamakhwe and Centane TRC's. Mquma Municipality shares borders with three other local municipalities, that is, Mbashe, Intsika Yethu and Great Kei Municipality. This also includes a number of previously administered rural areas which is approximately 32 995 240 square kilometres and consists of 31 wards.

Mquma Local Municipality has a total population of approximately 297663 inhabitants of which 99% are Xhosa speaking Africans. The remaining 1% of the population includes English, Afrikaans, Zulu and Sesotho speaking people (<http://www.mnquma.gov.za>).

#### **b) Application of Section 139**

In 2008 the MEC responsible for DPLGTA in the Eastern Cape wrote to the Mquma Local Municipality about possible maladministration in the Municipality. The municipality was instructed to halt all activities with financial implications until further notice. The MEC also informed the municipality that a special investigation unit had been appointed to undertake an investigation. No particulars of the nature of possible maladministration were offered (<http://www.ecprov.gov.za>).

This weakened the municipality's case in the court that ensued on 05th August 2009 in the Bisho High Court. The court ordered that "the decision of the third respondent

to intervene in the Mnquma Local Municipality in terms of Section 139 subsection 1 (c) of the Constitution and to dissolve the municipal council of the said municipality is declared invalid and set aside". The applicants who were members of the provincial government were ordered to pay the costs. They were then forced to go back to the drawing board and restart the process (Mnquma Local Municipality v. The Premier of the Eastern Cape, Case No. 231/2009. Eastern Cape division, Bisho).

This contestation of intervention by the Mnquma Local Municipality provided important lessons to all local government practitioners. This attested that local government system has important checks and balances that help to protect the application of Section 139 from political manipulation (Steytler *et al.*, 199: 122).

It is imperative that the spirit of cooperation between the two spheres of government be encouraged as the constitutional and other pieces of legislation require.

### **2.6.3 Koukamma Local Municipality**

#### **a) Overview of the Study Site**

Koukamma Municipality has its headquarters at the small town of Kareedouw which is situated 150 km from Port Elizabeth on the R62 on the inland side of the mountains that separate it from the coastal belt, and 8km off the N2 that runs along the coast to Cape Town. It lies close to the border of the Eastern Cape and Western Cape provinces. The area is characterised by two distinct regions, classified as coastal belt and inland. The coastal belt has tourism as its primary economic hub, while the inland has the agriculture sector as its primary hub. It is located south of the Baviaans Kloof Mega Reserve, east of Eden district, west of the Kouga and north of the Indian Ocean- which all represent the core elements of tourism and agriculture of Koukamma Municipality ([www.koukamma.gov.za](http://www.koukamma.gov.za)).

Koukamma Municipality serves a sparsely populated region in the Eastern Cape Province. The population is estimated at approximately 45 247. Geographically, the area spans 3 575, 17 km<sup>2</sup> and its population is composed of the following groups:

- Africans
- Whites
- Coloureds and
- Asians ([www.koukamma.gov.za](http://www.koukamma.gov.za))

## **b) Application of Section 139**

The Eastern Cape DPLGTA also applied Section 139 (1) (b) of the Constitution in Koukamma Municipality in 2009. The Municipality cooperated and agreed with the intervention.

As a test of the cooperation between the municipality and its provincial counterpart, when the intervention did not yield the expected results, the provincial government decided to intensify the intervention to include other areas of governance. When this happened, the municipality continued to cooperate with the provincial government. In the end this relationship paid off handsomely as the provincial parliament endorsed the lifting of the intervention recommendation (<http://www.cogta.gov.za>).

### **2.6.4 Sundays River Valley Local Municipality**

#### **a) Overview of the Study Site**

SRV LM is one of the developing local municipalities within the Cacadu District Municipality and is located approximately 80 kilometres from Port Elizabeth. The municipal area spans 3507.59 square kilometres (6% of Cacadu's total area). It can be accessed through the N10 and N2 national roads (<http://www.srvm.gov.za>).

Poor road conditions within the area impacts negatively on business, communities and visitors and influences access to social services and economic opportunities. Within this context, the tarring of roads has been prioritized in most wards (<http://www.srvm.gov.za>).

The municipality has significant eco-tourism and agricultural potential. The Addo Elephant National Park (AENP) is an important economic driver in the area, while the Sundays River Valley area is regarded as one of the key production areas for citrus and deciduous fruit farming in South Africa (<http://www.srvm.gov.za>).

The population is approximately 39 000m people of whom 80% are Africans, 16% coloured and 3% white. Major towns and settlements include Kirkwood, Addo, bersheba, Enon, Kinkelbos, Moses Mabida, Paterson and Sunlands (<http://www.srvm.gov.za>).

#### **b) Application of Section 139**

The Sundays River Valley Local Municipality, of its own volition, requested the provincial government to and intervene in its affairs. The national teams led by both

CoGTA and National Treasury, DPLGTA and SRV LM officials started work on the 23 February 2010 (<http://www.cogta.gov.za>).

Regarding the use of Section 139 (1) (b), the provincial government in the Eastern Cape, inspired by the spirit of cooperation between the two spheres of government that existed between SRVM and the provincial government, MEC for CoGTA stated: “The outcome of Section 139 intervention in the SRVM confirms our conviction that working together we can do more. This is so particularly because this provincial intervention was a response to an invitation by the then SRVM Mayor and Councillors, who on their own initiative, realised the need for external assistance within the context of cooperative governance as espoused by Constitutional, order. This gives us confidence and courage to forge ahead in the belief that the nascent arena of local government will indeed be turned around to become our common pride as a rudimentary organ of the people’s government (Sunday’s River Valley Municipality turnaround strategy (<http://www.cogta.gov.za>)).

The report of the MEC for Local Government and Traditional Affairs report further noted that “SRVM has a lot of potential to grow from where it is now however technical support is still further needed in Finance and Corporate Services”(<http://www.cogta.gov.za>).

## **2.7 STRATEGIES EMPLOYED BY EASTERN CAPE GOVERNMENT TO IMPROVE SITUATION IN MUNICIPALITIES UNDER ADMINISTRATION**

As indicated above the Eastern Cape provincial government lost the case in the court of law against the Mquma Local Municipality owing to flaws identified in the application of Section 139. In the Koukamma and Sunday River Valley Municipalities the following strategies were employed:

- In the Sundays River Valley Local Municipality earlier intervention by the MEC for DPLGTA to appoint the official from Cacadu District Municipality was suspended owing to tensions while in the Koukamma Local Municipality this option was not considered.
- Administrators were appointed.
- All stakeholders were consulted regarding the intervention as required.
- A cash injection was provided to kick start the intervention.

- A two- day strategic session was held with councillors, unions, management and the Department.
- A turnaround strategy and plan were adopted by councils.
- A Financial Recovery Plan was integrated into the Turnaround Plan.
- A social dialogue was held with community and other stakeholders including the Ratepayers Association, Unions and the ruling party (ANC).

## **2.8 SUMMARY**

This chapter discussed the literature review, as well as the constitutional and legislative framework that informs good governance in local government. In this chapter, the different interventions of Section 139 were discussed. The significance of the provincial government following the correct procedures in applying Section 139 was highlighted and emphasised.

This chapter also dealt with the substantive requirements for intervention. When can a province intervene and to what extent is it allowed to intervene? One important conclusion was that intervention is possible, only in the event of a failure to fulfil a pre-existing and specific statutory obligation. A failure of the province to support and strengthen in terms of Sections 154(1), 155(6) and 41(1)(h)(ii) cannot be the basis for the loss of the province's right to intervene. It was further argued that there is a need to objectify the discretion of the Provincial Executive to decide when, how and to what extent intervention is necessary.

The conditions that existed in the Koukamma and SRV Local Municipalities were explained in detail. No details were availed for the Mnquma Local Municipality by the Eastern Cape Government. The different forms of Section 139 application in the Eastern Cape were explained. The Mnquma Local Municipality challenged and resisted the application and the High Court ruled in its favour. The Sundays River Valley local Municipality requested intervention which produced positive results and the cooperated with intervention by Koukamma Local Municipality also produced good results. The strategies that were applied by the Eastern Cape government in terms of a turnaround situation were explored. In view of the foregoing discussion, it can be said that the Eastern Cape Government is committed to providing support in municipalities under its jurisdiction. However, the case of Mnquma Municipality serves

as a lesson that the correct procedure should be followed whenever Section 139 is applied.

## **CHAPTER 3**

### **RESEARCH METHODOLOGY**

#### **3.1 INTRODUCTION**

This chapter deals with the research methodology of the study, and explains the research methods used in collecting the data. The chapter further gives details on which methodological processes and procedures were followed in the collection of data, as well as giving reasons for selecting the research process and procedures. The aim of the data analysis was to throw light on elucidate the context, processes and institutions involved in the application of Section 139 of the constitution in local government.

#### **3.2 RESEARCH APPROACH**

A case study approach was used for this research. A case study approach allows the researcher to make an in-depth study of a single case or unit of study. According to Hartley (2004:325), a case study comprises of a “detailed investigation, with the aim of providing an analysis of the context and processes which illuminate the theoretical issues being studied”. This approach allows for an exploration and understanding of the issues of application of Section 139 by Eastern Cape Department of Local Government and Traditional Affairs. It further allowed for an extensive examination of data within a specific context or local government within the Eastern Cape Province.

A case study approach is one of the many ways of doing social science research as it includes experimentation, observation, surveys and the examination of archival information. This approach provides descriptive accounts of one or more cases yet can also be used in an intellectually rigorous manner to achieve experimental isolation of one or more social factors within real-life context of study. Using the Koukamma, Mquma and Sundays River Municipalities as a case study will give one an understanding of in-depth comprehensive issues of application of Section 139 of the Constitution by Eastern Cape Government. It also serves as one of the most flexible research designs allowing the researcher to retain the holistic characteristics of real-life situations while delivering a nuanced view of reality.



### **3.3 THE RESEARCH AREAS**

The research was undertaken in the Province of the Eastern Cape with the Koukamman, Mnguma and Sundays River Valley Municipalities as a case study. These three municipalities were selected as case studies because Section 139 was implemented in these municipalities and conclusions can therefore be drawn from them.

The Mnguma Local Municipality resisted the intention by Eastern Cape Government to be placed under administration and the court ruled in municipality's favour with costs. The Sundays River Valley municipality requested to be placed under administration and Koukamma cooperated with application of Section 139 and both situations produced good results.

### **3.4 DESCRIPTIVE RESEARCH METHOD**

The research will use descriptive research method to gather data in order to support the research. The reason is to obtain a detailed understanding of the application of section 139 of the Constitution by Department of Local Government and Traditional Affairs in the Eastern Cape. Descriptive method is suitable methodology to obtain information by using publications, such as text books, recognised journals, administrator's reports and industry related reports. According to Salkind (2000: 10-11), descriptive research method seeks to provide an accurate description of observations of phenomena. Descriptive research according to Salkind (2000:12), relates past events to each other and/or to current events. Researchers often accomplish descriptive research through the use of primary sources such as original documents and first-hand information as well as secondary sources that may originate from second-hand sources.

Salkind (2000:11) stresses that not only can descriptive research stand on its own, but it can serve as the basis for other types of research in that a group's characteristics often can be described from descriptive point of view in order to arrive at acceptable theoretical perspectives.

According to Salkind (2000:188), the descriptive researchers proceed in terms of four different steps, which correspond closely to those of other types of research. The four steps are explained in the paragraphs that follow.

- First, the descriptive researchers define a topic or a problem that they wish to investigate, in this instance, the application of section 139 of the Constitution of Republic of South Africa by Eastern Cape Department of Local Government and Traditional Affairs.
- Second, the researcher formulates a hypothesis (es), which is expressed as a question, or questions.
- Third, the researcher sets out to utilise a variety of sources to gather data. Salkind (2000:188) emphasises that while these sources may differ markedly from those in other research methodologies, the analysis of written documents are usually the domain of the descriptive researcher.
- Fourth, the evidence gathered needs to be evaluated both for its authenticity, as well as for its accuracy. The researcher therefore needs to establish the value of data from primary as well as secondary sources that underlie the salient arguments of the research. This requirement is concomitant to the researcher developing a critical and evaluative attitude towards the collected information. Salkind (2000:191) holds that the evaluation of primary and secondary data is accomplished through the application of two separate criteria: Authenticity (external criticism) and accuracy (internal criticism)

In light of the foregoing, the research methodology for this research will be of a descriptive nature which will focus on a theory search and literature review and which will entail examining of existing primary and secondary literary sources

### **3.5 RESEARCH INSTRUMENTS**

This section briefly discusses the use of each research tool and justification as to why the researcher felt most appropriate to use these research instruments, showing how they serve as advantageous for the purpose of this study.

#### **3.5.1 Secondary Sources**

Secondary sources can be described as the most widely used method for data collection. This process involves accessing information that is already gathered from either the originator or a distributor of primary research. Secondary research includes collecting information from third-party sources. It also includes any previously gathered information used by any internal and external source.

**a) Ease of Access**

There is a very easy access to many sources of secondary data. With the availability of online access, secondary research is more openly accessed. This offers convenience and generally standardised usage methods for all sources of secondary research

**b) Low Cost to Acquire**

The use of secondary data has allowed researchers access to valuable information for little or no cost to acquire. Therefore, this information is much less expensive than if the researchers had to carry out the research themselves.

**c) Clarification of Research Question**

The use of secondary research may help the researcher to clarify the research question. Secondary research is often used prior to primary research to help clarify the research focus.

**d) May Answer Research Question**

The use of secondary data collection is often used to help align the focus of large scale primary research. When focusing on secondary research, the researcher may realise that the exact information they were looking to uncover is already available through secondary sources. This would effectively eliminate the need and expense for them to undertake primary research.

**e) May Show Difficulties in Conducting Primary Research**

In many cases, the originators of secondary research include details of how the information was collected. This may include information detailing the procedures used in data collection and difficulties encountered in conducting the primary research. Therefore, the detailed difficulties may persuade the researcher to decide that the potential information obtained is not worth the potential difficulties in conducting the research.

### **3.5.2 Primary Sources**

Primary sources provide a window into the past-unfiltered access to the record of artistic, social, scientific and political thought and achievement during the specific period under study produced by people who lived during that period.

**a) Develop Critical Thinking Skills**

Industry related reports require a researcher to be both critical and analytical in reading and examining documents and objects. They are snippets of history. They require the researcher to examine sources thoughtfully, and to determine what else researcher need to know to make inferences from the material. Questions of creator bias, purpose, and point of view challenges researcher's assumptions.

**b) To Acquire Empathy for the Human Condition and Deeper Understanding**

They bring researcher into contact with the first-hand accounts of events. They help the researcher to relate in personal way to events of the past and promote a deeper understanding of history as a series of human events.

**c) To Consider Different Points of View in Analysis**

The researcher begins to understand that the book may only represent one of many historical interpretations. They expose the researcher to multiple perspectives on great issues of the past and present.

**d) Construct Knowledge**

Research is based on facts and observations which requires use of industry reports. Inquiry into industry reports encourages the researcher to wrestle with contradictions and compare multiple sources that represent differing points of view, confronting the complexity of the past. Researcher constructs knowledge as she/he form reasoned conclusions on evidence and connect industry reports to the context in which they were created, synthesising the information from different multiple sources.

**e) To Understand the Continuum of History**

By using industry reports, researcher comes to understand that we all participate in making history every day.

### **3.6 DATA COLLECTION: CHALLENGES**

According to Yin (1994: 94), the demands on the case study researcher are far greater than those adopting other research strategies. This is because the data collection process is not routinized. It needs an experienced researcher because of the

continuous interaction between the theoretical issues being addressed and the data being collected. A researcher is needed to take advantage of unexpected opportunities and to exercise sufficient care against potentially biased procedures. One challenge is that a researcher can miss certain learning if it is not documented from the beginning. Without processes and mechanisms in place for data collection it can be difficult to try and capture this accurately at a later stage.

Another challenge outlined is time limitation. Funding also plays a key challenge. The shortage of funding may not allow the researcher with all opportunities in capturing the information they need. Another challenge around data collection is the need to be aware of those whose voices may be marginalised or excluded. Power imbalances often exist and the researcher needs to be aware of this.

### **3.7 DATA AND INTERPRETATION ANALYSIS**

Data analysis is a process of extracting useful information from the given data series that will allow one to observe patterns and formulate explanations in trying to unlock the hypothetical problems of the research. According to Huberman, Mathew and Miles (2002:309), data analysis follows the collection of information and precedes its interpretation and application.

Data was collected and analysed to identify and explore the problems of the application of Section 139 of the Constitution by the Eastern Cape Provincial Government. This process of data analysis and interpretation involved classifying, coding, and tabulating the information which require performing quantitative or qualitative analyses in accordance with research design. Data analysis includes the tasks of defining, categorising, theorising, explaining and mapping the research data. According to Yin (1984:99), data analysis consists of “examining, categorising, tabulating or otherwise re-combining the evidence, to address the initial propositions of a study”.

Data analysis in this study was conducted according to the type of data available in the municipalities in question. Qualitative analysis techniques were used for assessing the data derived from primary (journals, industry reports and administrator’s reports) and secondary sources (textbooks). The purpose was to establish the effectiveness of application of Section 139 of the Constitution.

### 3.8 ETHICAL CONSIDERATION

When conducting research, ethical issues that be considered, to ensure that the end results of the research are credible, reliable, valid and without any bias or subjectivity. Ethical issues arise at various stages in business and management research (Bryman and Bell: 2007:86). Ethical issues can't be ignored, in that they relate directly to the integrity of a piece of research and of the disciplines that are involved (Bryman and Bell 2007:127). Bryman and Bell (2007:129) state that "discussions about the ethics of business and management research bring us into a realm in which the role of values in the research process becomes a topic of concern". It is important that the researcher keep the issue of ethics in mind when conducting the research, to ensure that the research cannot be challenged on ethical grounds, is reliable, credible and will not bring the name of researcher into disrepute. Underpinning the considerations for ethical behaviour "is the avoidance of harm to human subjects and institutions" (Berg, 2006:71). Sarantakos (2005: 19) contends "it is researcher's responsibility to ensure that the research will not entail any procedures that cause harm (whether physical, mental and legal harm) to respondents". Sarantakos (2005:101) further states that apart from preventing harm, researchers are responsible for ending research that has proved harmful to the respondents or their assistants.

Remeyi (1998) believes that there are three major ethical issues to consider when undertaking research, namely:

- How the information is collected;
- How the information is processed; and
- How the findings are used.

Remenyi *et al.* (1998: 200), state that when dealing with first consideration, it is necessary for the researcher to be open and honest, to ensure that he/she keeps the information confidential, and does not obtain information by means of threat. The three Municipalities were informed in advance about the research study to be conducted, and the reasons for the study of application of Section 139 of the Constitution, as well as how the findings will be used.

Lincoln and Guba (1985: 39) state that good qualitative research can be judged by the criteria of credibility, transferability, dependability and conformability. Credibility was maintained in this thesis through the usage of multiple methods, and ensuring that the

final draft report is made available to the three municipalities before its submission. In order to maintain the criterion of transferability, detailed information or thick description has been gathered as much about the chosen topic as possible (Lincoln and Guba, 1985:105), so that the findings can be applied in other contexts. This has been made possible through gathering information from relevant literature, legislation, websites and industry reports to gain an understanding regarding the chosen topic. The researcher also intended using the services of an external auditor or experienced lecturer in the field of local government, in order to uphold the criteria of dependability and conformability; however, financial resources and limited time prevented the researcher from pursuing that option.

Lastly, in further demonstrating the seriousness of ethics when conducting research, Nachmias and Nachmias (2000:80) state that “the major professional societies have developed codes of ethics to assist their members in ensuring that they consider ethical issues at all times when conducting a research”. Codes of ethics “help the individual researcher because they state and explain what is required and what is forbidden...” and sensitise researchers to their obligations and to those problematic areas where agreement exist over the proper ethical behaviour to be practiced” (Nachmias and Nachmias, 2000:80)

### **3.9 VALIDITY AND RELIABILITY**

These are two most important and fundamental characteristics of measurement procedure. According to Watling (in Winter, 2000:7), “Reliability and Validity are tools of an essentially positivist epistemology”. These two tools assist to determine the degree to which a researcher accurately reflects or assesses on the specific items that were researched

Various research methodologies were used and by means of triangulation and cross verification data was validated this methodological triangulation consisted of the use of more than one method in the investigation of the research question. This enhances confidence in the validity of the ensuing research findings. In this study, data triangulation was used, which encompassed the gathering of information by means of various different sampling methods. So that slices of data at different times and social situations, as well as from variety of respondents, were gathered. Different sources

were used as tools to get Section 139 application information by Eastern Cape Government in the Mquma, Sundays River Valley and Koukamma Municipalities.

### **3.10 METHODOLOGICAL CHALLENGES**

Few challenges were encountered while doing this research. The most common challenge was the reluctance by municipal managers to release the administrators report citing reasons of confidentiality and integrity of municipality. While information was easily accessible on CoGTA website but it appeared that it has been edited or censored and certain documents needed a special code to open.

### **3.11 LIMITATIONS OF THE STUDY**

The study was limited to Eastern Cape Department of Local Government and Traditional Affairs with Koukamma, Sundays River Valley and Mquma Local Municipalities as a case study. The research was underpinned by legislative framework guiding application of Section 139 of the Constitution and the findings may not be generalizable to the broader South African context. The findings and recommendations of this research are therefore applicable to the Eastern Cape Province in general and Mquma, Sundays River Valley and Koukamma municipalities in particular.

### **3.12 SUMMARY**

The purposes of this chapter was describe the research methodology of the study, explain sample section, describe the procedure used in designing the tools of collecting the data, and provide an explanation of the statistical procedure used to analyse the data. The discussion in the chapter has laid foundation for understanding how researcher is formally conducted, and different methods of conducting research. The question of ethical behaviour in the process of conducting research is quite important and must be considered at all times when conducting research.

The following chapter will present the findings and recommendations of this thesis, detailing the information gathered from secondary and primary resources, minutes of meetings of DPLG and NCOP and administrators reports appointed by MEC.



## **CHAPTER 4**

### **RECOMMENDATIONS FOR EFFECTIVE LOCAL GOVERNMENT**

#### **4.1 INTRODUCTION**

In this chapter recommendations are made in conjunction with the findings and relevant trends evident from local government. The study established that some municipalities are incapable of delivering on their mandate as stipulated in Section 152 of the Constitution. Section 159 expects the municipalities to perform the following functions:

- Ensure the provision of services to communities in a sustainable manner;
- Ensure the provision of service to communities in a sustainable manner;
- Promote social and economic development;
- Promote healthy and safe environment; and
- Encourage the involvement of communities and community organisation in the matters of local government.

#### **4.2 RECOMMENDATIONS**

The following recommendations were made with regard to effective and efficient governance in municipalities. After taking into account the reasons for the application of section 139 of the Constitution, 1996, in certain municipalities in the Eastern Cape Province, it is recommended that the municipalities follow the following strategic recommendations in order to be functional, responsive, accountable, efficient, effective and people-centred:

##### **4.2.1 Turn-Around Strategy**

Since the first democratic non-racial elections in 1994, there have been warring and undesirable trends in the local government system that resulted in the application of Section 139 in certain municipalities. This prompted CoGTA to undertake a country - wide assessment of each of the 283 municipalities. The purpose was to ascertain the root causes of poor performance, dysfunctionality and establish reasons why the general public had lost confidence in local government. Based on the results of the

above mentioned assessments, a strategy to deal with local government related challenges was formulated, called Local Government Turn- Around Strategy (LGTAS). The strategy is aimed at addressing the issues such as:

- Systematic factors
- Policy and legislation factors
- Political factors
- Weaknesses in the accountability system or capacity constraints
- Poor intergovernmental relations
- Support and oversight
- Intergovernmental fiscal system (<http://www.info.gov.za>).

Another interesting feature of the LGTAS is that it advances the notion of a single election for national, provincial and local government, one financial year, a single public service and a five- year medium term for planning. If the government is able to inject funding in some of the turnaround projects that are identified by the municipalities, the application of section 139 would be significantly reduced.

The Minister of CoGTA, in his speech during the debate on the State of the Nation address on 15 February 2012, elaborated on the objectives of the turnaround strategy. The Minister stated that “Through the LGTAS, we aim to build confidence between the people and the local government through strengthening the municipalities to be effective, efficient and developmental” (<http://www.anc.org.za/caucus/docs/sp/2012-sp-0215 f.htm>).

#### **4.2.2 Operation Clean Audit**

Operation Clean Audit is a bold government initiative to ensure clean audits, transparency and improved service delivery within the government across the country. The project is aimed at promoting good governance, strengthening financial management to achieve operational efficiency and encourage accountability within government. The ultimate goal is that by 2014; all the 283 municipalities and provincial departments within the nine provinces will achieve clean audits on their annual financial statements (<http://www.kpmg.com/za/en.../audit.../operation-clean -audit-2014>). This could result in fewer interventions by both Provincial and National government in their affairs through Section 139 (b).

The objective of the first audit 2014 operation was an attempt to ensure that no municipality has an adverse opinion or disclaimer by the end of 2010/11 financial year. There were 64 municipalities (23%) of the total number of municipalities with adverse opinions or disclaimers, and a further 37 failed to submit in timeously (<http://www.dailymaverick.co.za/...2012-07-24-municipal-audits-what-progress>).

#### **4.2.3 The Role of the Audit Committee**

In terms of Section 166 of the Municipal Finance Management Act 56 of 2003 (MFMA), each municipality must have an Audit Committee which is an independent advisory body. The Audit Committee advises the Municipal Council, the political office bearers, the Accounting Officer and management staff of the municipality on matters relating to:

- Internal financial control and internal audits;
- Risk management;
- Accounting policies;
- The adequacy, reliability and accuracy of financial reporting and information;
- Performance management;
- Effective governance;
- Compliance with the MFMA, the Annual division of revenue Act and any other applicable legislation;
- Performance evaluation; and
- Any other issue referred to the Municipal Council.

The Audit Committee further reviews the Municipal Council's annual financial statements; responds to issues raised by the Auditor- General's annual audit report; carries out certain investigations; and performs other functions commissioned by the Municipal Council.

#### **4.2.4 Role of Development Agencies**

A large number of development agencies in SA which are willing to assist local government in its developmental mission. Proper utilisation of the assistance offered by these agencies could improve the capacity, service delivery standard and the overall image of local government. These agencies include the following:

- National Youth Development Agency (NDA). Its main areas of activity are poverty eradication through funding to civil society;
- Development Bank of South Africa (DBSA) avails funds for capacity development; and supports municipalities in a number of areas including loans for major infrastructure development. It also deploys technical experts to assist municipalities ;
- United States Agency for International Development (USAID) avails funds for capacity development ; and
- Canadian International Development Agency (CIDA) has availed both human and material resources.

#### **4.2.5 Education and Training in Ethics of Good Governance**

Unethical practices in the SA local government are prevalent to such an extent that in 1994, the former State President called for a moral crusade to put an end to rampant corruption. Corruption results, in part, from a lack of appropriate ethics and accountability for the majority of municipal councillors and officials.

Appropriate education and training should be provided to senior municipal officials. The objective is not simply to establish which forms of illicit behaviour are most severe but also to deter political and administrative corruption. If municipal councillors and officials are aware that their corrupt practices will be detected (and punished), they will be less likely to participate in them. Training and education may also promote morale and enthusiasm deterring them from unethical actions.

#### **4.2.6 Innovative and Transformative Political and Executive Leadership**

Strong, coherent and transformative and executive leadership is needed to steer the implementation process in the right direction to achieve municipal objectives, supported and co-ordinated by committed administrative support services, the actions of which do not have contradictory results on service delivery (Meyer & Cloete, 2006:305). Municipal leaders should have a clear vision of what development they envisage for their towns and localities. Furthermore, effective and strategic leadership is needed to take bold and decisive actions against poor performance and a lack of accountability.

The political and administrative components of the municipality should have skills, competences and knowledge that benefit the imperatives of a developmental system of local government (Maserumule, 2008:441). Thus, skills and knowledge acquisition should top the agenda of municipalities in an attempt to achieve municipal strategic vision and objectives.

#### **4.2.7 Human Resource Considerations**

Staff appointments in the executive echelon of municipalities should be conducted in line with Section 72 of the Competency Guidelines for Municipal Managers and Managers directly accountable to Municipal Managers published as Notice 347 of 2007-in terms of the Municipal Systems Act 32 of 2000. The senior management competency framework provides generic managerial competences namely strategic capability and leadership programme and project management; financial management; change management; knowledge management, service delivery innovation, problem solving and analysis; people management; client orientation and customer focus; communication and accountability and ethical conduct.

The outsourcing of both the screening and interviewing functions (including competency-based assessment) to external recruitment agencies should also be considered in the recruitment of senior municipal executives. The administrative arm of municipalities cannot afford to be staffed by senior managers who fail to add value and deliver appropriately on their performance objectives. This is unacceptable as it hinders efforts to accelerate service delivery (Booyesen, 2009: 88)

High priority should be accorded to staff recruitment. This should be linked to training programmes to strengthen service delivery commitment and capacity. The South African Local Government Association (SALGA), Local Government Sector Education and Training Authority (LGSETA) and the Institution of Higher Learning should partner to provide executive leadership and management programmes relevant to local sphere of government (Jossel, 2005: 183)

#### **4.2.8 Cadre Deployment and Nepotism**

The culture of so- called cadre deployment and nepotism is contributing a great deal to municipalities' inability to service communities. Cadre deployment and nepotism is contributing a great deal to municipalities' inability to service communities. Cadre

deployment and nepotism are common in that skills and experience is not a requirement for one to be appointed. The sad reality is that beneficiaries of both 'nepotism and cadre deployment' are appointed to key strategic positions. It is a fact that majority of these people fail to perform. The study suggests that this may be one of the reasons why certain municipalities are unable to deliver goods and services as expected by the communities. The study recommends that the practice of cadre development should be immediately terminated because it undermines the requirements of the post and the capability and relevant skills required the particular post.

#### **4.2.9 Tenderpreneurship**

'Tenderpreneurship' is a term coined by South African Communist Party (SACP) meaning a government official or politician who uses their powers and influence to secure government tenders and contracts. The allocation of tenders is fuelling corruption within municipalities. There is limited transparency in the tendering processes as tenders are awarded to inexperienced companies under directorships of individuals with political connections. These are the companies that continue to build roads that are bumpy and full of potholes even before being exposed to heavy rains. The awarding of tenders to companies should be transparent and based on their ability to carry out the tender.

#### **4.2.10 Provincial Monitoring over Municipalities**

Provincial government should be pro-active, especially the departments of local government and provincial Treasury should assume a more strategic and focussed role with a view to providing support and resources to low capacity municipalities. This role should entail, amongst others, the provision of training programmes in areas such as supply chain management and financial management; as well as the setting up of performance systems to assist municipalities in the formulation of their integrated Development Plans (IDP's).

#### **4.2.11 Communication Media**

Pope (2000:119) argues that without information there is no accountability. Information is power, and the more people who possess it, the more power is distributed. Without

power, a municipality as a democratic structure cannot operate as it should and individuals are left unable to enforce their rights without being aware that their rights have been infringed upon. The main vehicle for taking information to members of the public is through an independent and free media. The media serves as a compelling force against corruption in public life. Reports by the communication media are used to safeguard ethics and accountability amongst public officials. This is undertaken by exposing scandals, mismanagement and corruption in the municipalities.

The media can perform an effective public watchdog function over the conduct of municipal councillors and officials. Just as the municipal council should keep the administration under day-to-day scrutiny, so the media should carefully monitor both the politicians and municipal officials. The media has a special role to play in combating corruption. Politicians and municipal officials may be more tempted to abuse their positions and state resources for personal gain if and when they are confident that there is no risk of public exposure and humiliation through the media. Most scandals of corruption are exposed in local government in South Africa through the media. The watchdog bodies, also called the anti-corruption agencies, use the media's information as the basis to investigate unlawful acts.

#### **4.2.12 Interaction of Councillors with Communities**

Councillors are elected to represent local communities on municipal councils. In fulfilling this role, the councillors are accountable to local communities' and are required to report back on a quarterly basis to constituencies on council matters, including the performance of municipality in terms of established indicators (De Visser *et al.*, 2010: 201).

In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in Section 9 of the Municipal Structures Act 117 of 1998, and councillors should have a personal schedule to visit communities they serve. During their visits, it is further recommended that they discuss general issues, such as the operational functions of the municipality. It is important that members of the communities know exactly how the municipality functions. This may reduce the service delivery protests that take place throughout the country.

#### **4.2.13 Community Participation**

According to Section (1) of the Municipal Systems Act 32 of 2000, a municipality must develop formal representative government with a system of participatory governance, and must for this purpose encourage, and create conditions for, the local community to participate in the affairs of the municipality. It is, therefore, imperative that municipalities adhere to this rule of community participation in order to establish healthy relations with their communities. The study recommends that community involvement in municipal activities should not only appear on paper, but be implemented practically and effectively. The members of the communities should be actively involved in all municipal activities so that they are kept abreast of what is happening in their municipalities.

#### **4.3 SUMMARY**

There are many recommendations on how municipalities could improve governance and thereby eliminate or reduce the need for the application of section 139 of the Constitution of South Africa, 1996. It is important to emphasise that effective and efficient governance in municipalities rely heavily on empowerment of the political, administrative arm and the communities they serve. The politicians and official's needs to make concerted effort to win the support of the communities they serve by engaging and informing them about all the happenings in municipalities.



## **CHAPTER 5**

### **5.1 CONCLUDING REMARKS**

The transformation of local government has probably been the largest undertaking within the entire democratic governance transformation process since 1994. Extensive progress has been made but much still needs to be achieved before municipalities are functional, responsive, accountable, efficient, and effective and people centred. In response to the numerous performance and viability failures amongst municipalities, and the deteriorating service delivery record, government has invoked Section 139 of the constitution. The intervention has had a positive impact on municipalities in the Eastern Cape.

Some key issues have emerged from this study in respect to governance. These may be variously identified politically as including a lack of political leadership, or political interference and patronage. There is a lack of policy coherence, multiple reporting demands and a weakening of institutional and organisational abilities in certain municipalities. Functional overreach and complexity are forcing many municipalities into distress mode, exacerbated by the poor leadership and support from the other spheres and from stakeholders

In instances where it was found that there was a lack of a genuine participation due to political instability, corruption and undue interference in the administration, this was owing to failure to provide democratic and accountable government. This failure is growing as evidenced by community protests and intense alienation towards local government.

Service failures by municipalities may be attributed to elements of uneven and unstable governance. There is evidence of high incidence of irregular or inappropriate appointments, coupled with poor capacity, inadequate skills development programmes and weak institutional management.

However, it is hoped that with government TAS and the application of section 139 of the Constitution, local government will become effective in delivering on its Constitutional mandate.

Before dealing with Chapter one, the study defined the concepts and acronyms used. Some of these concepts emanate from dictionaries while others from sources such as the Constitution and academic papers.

Chapter one was a prelude that provided the background and overview of the study. It also framed the research problems and outlined the objectives and aims of the study. In addition, key questions pertaining to the research were presented, the research design and methodology and the scope and scale of the research.

Chapter two identified and examined the Constitutional and legislative framework that underpin governance in local government sphere. In order to gain broader perspective towards understanding the application of section 139 of the Constitution 1996, other related issues such as substantive and procedural requirements for the application of Section 139 were also examined. In addition, the conditions that exist in Koukamma, Sundays River Valley and Mnquma local municipalities and the strategies employed by the Eastern Cape government to improve the situation in these municipalities, were examined. These dimensions like other related issues mentioned above, laid the foundation for further discussion, analysis, conceptualisation and broader understanding of local government.

Chapter three dealt with methodological approaches employed to collect data or gather information. It also explained the research approach, the methods used, and the area of study, the reliability and validity of the findings, the ethical and methodological challenges experienced during data collection.

Chapter four presented recommendations that if implemented properly, can result in effective local government and eliminate or reduce the need for the application of section 139 of the Constitution in municipalities.

## BIBLIOGRAPHY

- Bhattacharjee, A. 2012. Social Research: Principles, Methods, and Practices” (2012). USF Tampa Bay Open Access Textbooks Collections, Book 3.105.
- Booyesen, S. 2009. Beyond the Ballot and the Brick: Continuous dual Repertoires in Politics of Attaining Service delivery in South Africa. In the Politics of service deliver. Eds. Mc Lennon, A., Munslow, B. 2009. Wits University Press.
- Bozkurt, O. and Moniz, J.V. (eds.). 1999. La corruption et administrative/ political and *administrative corruption*. Brussels: International Institute of Administrative sciences.
- Brewer, M. 2000. Research Design and Issues of Validity. In Reis, H. and Judd, C. (Eds) Handbook of Research Methods in Social Personality Psychology. Cambridge: Cambridge University Press.
- Bryman, A. and Bell, E. 2007. Business research methods. 2<sup>nd</sup> ed. Oxford: Oxford University Press.
- Cloete, J.J.N. 1996. Accountable government and administration for the Republic of South Africa. Pretoria: J.L. van Schaik.
- Consolidated report on the Performance of the Northern Cape Municipalities 2007/08; Progress Report on Intervention in Alfred Nzo, Koukamma and Sunday’s River Valley Municipalities.
- Department of Cooperative Governance and Traditional Affairs (CoGTA). 2009a. *State of local government: overview report*. Pretoria: CoGTA.
- Department of Cooperative Governance and Traditional Affairs (CoGTA). 2009c. *Local government turnaround strategy: working together, turning the tide in local government*. Pretoria: CoGTA.
- Department of Cooperative Governance and Traditional Affairs (CoGTA) 2011b. Annual Performance Plan 2011/12. Pretoria: CoGTA.
- Department of Provincial and Local Government. 2001. Intergovernmental review of the local government transformation process: Local government in the final phase: trends and challenges. Pretoria: DPLG.

- De Visser, J., Steytler, N. & May, A. 2009. The Quality of Local Democracies: A Study into the Functionality of Municipal Governance Arrangements. Community Law Centre for SALGA and GTZ.
- Gay, L.R. and Airasian, P. 2000. Educational research: Competencies for analysis and application. Upper Saddle River, NJ: Prentice-Hall, Inc.
- Gillham, W. 2000. Case study: Research methods. London: Continuum
- Guba, E. G. and Lincoln, Y.S. 1994. Competing/Computing??? Paradigms in qualitative research. In N. K. Denzil and Y. S. and Lincoln (Eds), Handbook of qualitative research (pp. 105-117).
- Hartley, Jean. 2004. Case study research. In Catherine Cassell and Gillian Symon (Eds). Qualitative methods in organisational research, a practical guide (pp. 208-229). London: Sage.
- Hussey, J. and Hussey, R. 1997. Business research: A practical guide for undergraduate and post graduate Students. London. UCL Press.
- Jossel, L. 2005. Local Government. Fiscal Management and Accountability Handbook. Open Society Foundation for South Africa.
- Klitgaard, R. Maclean-Abaroa & Paris, H.L. 2000. Corrupt cities: a practical guide to cure prevention. USA: Institute for Contemporary Studies (ICS).
- Mafunisa, M.J. *The role of public administration in promoting ethical conduct in elected officials: overview of post-1994 South Africa*, in Journal of Public Administration (41) 3: pp 506-519.
- Maserumule, M.H. 2008. *Framework for strengthening the capacity of municipalities in South Africa: A developmental local government perspective*, in Journal of Public Administration, 43(3.2): pp. 440-450.
- Meyer, I. and Cloete, F. 2006. Policy dynamics: change, failure and success. In Cloete, F., Wissink, H. and De Coning, C. (Eds). 2<sup>nd</sup> edition. Pretoria: Van Schaik Publishers.
- Minutes of the meeting of Parliamentary Monitoring Group: 05 October 2009. Place: Publisher?

Mnquma Local Municipality v. The Premier of the Eastern Cape. Case No. 231/2009. Eastern Cape division. Bisho. (Unpublished).

Mogale, T.M. 2003. Developmental local government and decentralised service delivery in the democratic South Africa. In Mhone, G. and Edigheji, O. (Eds.) Governance in the new South Africa. Lansdowne: UCT Press.

Nachmias, C.V, and Nachmias, D. 2000. Research methods in Social Science. 07 (Ed.). New York: MacMillan Higher Education. Worth Publishers.

National Council of Provinces: Select Committee for Local Government and administration, 2005a. State of Eastern Cape Municipalities: Department and SALGA briefing. (13 September 2005).

National State of Local Government. Assessments, working documents, CoGTA 2009.

PMG, 2010. Consolidated Report on interventions in Alfred Nzo, Koukamma and Sunday's River Municipalities, 19 April. <http://www.pmg.org.za/report/20101019-consolidated-report-performance>. Retrieved on 17 November 2014.

Pope, J. 2000. Confronting corruption: the elements of national integrity system. London: Transparency International.

Remenyi, D., Williams, B., Money, A. and Swartz, E. 1998. Doing Research in business Management, London: Sage Publications.

Republic of South Africa. 1996. Constitution of the Republic of South Africa, 1996. Pretoria: Government Printers.

Republic of South Africa. 1998. White Paper on Local Government. Pretoria: Government Printers.

Republic of South Africa. Local Government: Municipal Structures Act 117 of 1998. Pretoria: Government Printers.

Republic of South Africa. 2000. Local Government: Municipal Systems Act 32 of 2000. Pretoria: Government Printers.

Republic of South Africa. 2003. Municipal Finance Management Act 56 of 2003. Pretoria: Government Printers.

- Republic of South Africa. Intergovernmental Relations Framework Act 13 of 2005. Pretoria: Government Printers.
- Republic of South Africa. 2006. Municipal Performance Regulation Act 805 of 2006. Pretoria: Government Printers.
- Salkind, N.J. 2000. Exploring Research. 4<sup>th</sup> edition. New Jersey: Prentice Hall.
- Sarantakos, S. 2005. Social Research. 3<sup>rd</sup> edition. Palgrave Macmillan, New York.
- Steytler, N. 2002. President's Co-ordinating Council sets agenda for local government. 4(1) Local Government Law Bulletin 1.
- Steytler, N. 2003. Interventions in municipalities: Amendment (Section 139 of the Constitution). 5(2). Local Government Bulletin. 5-7.
- Steytler, N., Metter, J. & De Visser, J. 1999. Provincial intervention. 4(3). Local Government Law.
- The Local Government Handbook. A complete guide to Municipalities in South Africa. Available from: <http://www.municipalities.co.za>. Retrieved 05 July 2014.
- Thornhill, C. 2008. The transformed local government system: some lessons, Journal of Public Administration, 43 (3.2).
- Van der Walddt, G. 2006. Managing local government performance: key considerations and challenges. Journal of Public Administration, 41(2).
- Winter, G. 2000. A Comparative discussion of the notion of validity in qualitative and quantitative research. The quantitative report, 4 (3 & 4). <http://www.nova.edu/SSSS/QR/OR 4-3/Winter.html>. Retrieved July 25 2014.
- Department of Cooperative Governance and Traditional Affairs. <http://www.cogta.gov.za>. Retrieved July 28 2014.
- Strategic and Annual Performance Plans 2009/10 for Department of Housing, Local government and Traditional Affairs. Available from: <http://www.ecprov.gov.za>. Retrieved 28 July 2014.

Koukamma Local Municipality Integrated Development Plan 2013-2014, Available from: <http://www.koukamma.gov.za>. Retrieved 20 June 2014. Retrieved 17 August 2014.

Mnquma Local Municipality Reviewed Integrated Development Plan 2013-2014. Available from: <http://www.mnquma.gov.za>. Retrieved 20 June 2014.

Sundays River Valley local Municipality Annual Report 2012-2013. Available from: <http://www.srvm.gov.za>. Retrieved 28 June 2014. Retrieved 10 September 2014.

Yin, R.K. 1994. Case Study Research. Design and methods. 2<sup>nd</sup> edition. Newbury Park, CA: SAGE Publications

## APPENDIX I: ETHICS CLEARANCE



FORM E

### ETHICS CLEARANCE FOR TREATISES/DISSERTATIONS/THESES

*Please type or complete in black ink*

**FACULTY:** Business and Economic Science

**SCHOOL/DEPARTMENT:** Development Studies

**I, (surname and initials of supervisor)** Raga K

The supervisor for (surname and initials of candidate) Moleli TE

\_\_\_\_\_ (student number) 212450263

A candidate for the degree of MA: Development Studies

With a treatise/dissertation/thesis entitled (full title of treatise/dissertation/thesis):

**Application of Section 139 of the Constitution of the Republic of South Africa, 1996.**

Considered the following ethics criteria (please tick the appropriate block):



	YES	NO
1. Is there any risk of harm, embarrassment of offence, however slight or temporary, to the participant, third parties or to the communities at large?		X
2. Is the study based on a research population defined as 'vulnerable' in terms of age, physical characteristics and/or disease status?		X
2.1 Are subjects/participants/respondents of your study:		X
(a) Children under the age of 18?		X
(b) NMMU staff?		X
(c) NMMU students?		X
(d) The elderly/persons over the age of 60?		X
(e) A sample from an Institution (e.g. hospital/school)?		X
(f) Handicapped (e.g. mentally or physically)?		X
3. Does the data that will be collected require consent of an institutional authority for this study? (An institutional authority refers to an		X




organisation that is established by government to protect vulnerable people)		
3.1 Are you intending to access participant data from an existing, stored repository (e.g. school, institutional or university records)?		X
4. Will the participant's privacy, anonymity or confidentiality be compromised?		X
4.1 Are you administering a questionnaire/survey that:		X
(a) Collects sensitive/identifiable data from participants?		X
(b) Does not guarantee the anonymity of the participant?		X
(c) Does not guarantee the confidentiality of the participant and the data?		X
(d) Will offer an incentive to respondents to participate, i.e. a lucky draw or any other prize?		X
(e) Will create doubt whether sample control measures are in place?		X
(f) Will be distributed electronically via email (and requesting an email response)?		
<p>Note:</p> <ul style="list-style-type: none"> <li>• If your questionnaire <b>DOES NOT</b> request respondents' identification, is distributed electronically and you request respondents to return it <i>manually</i> (print out and deliver/mail); <b>AND</b> respondent anonymity can be guaranteed, your answer will be NO.</li> <li>• If your questionnaire <b>DOES NOT</b> request respondents' identification, is <i>distributed via an email link and works through a web response system (e.g. the university survey system)</i>; <b>AND</b> respondent anonymity can be guaranteed, your answer will be NO.</li> </ul>		

Please note that if **ANY** of the questions above have been answered in the affirmative (**YES**) the student will need to complete the full ethics clearance form (REC-H application) and submit it with the relevant documentation to the Faculty RECH (Ethics) representative.

and hereby certify that the student has given his/her research ethical consideration and full ethics approval is not required.

  
 \_\_\_\_\_  
 SUPERVISOR(S)  
  
 \_\_\_\_\_  
 HEAD OF DEPARTMENT

Thanduxolo Molell   
 \_\_\_\_\_  
 STUDENT(S)

October 23 2014

DATE

28/10/2014

DATE

23 October 2014

DATE