Section 139 of the South African Constitution Explained

Section 139 of the South African Constitution (1996) deals with **provincial intervention in local government**. In simple terms, it is the rulebook for what happens when a local municipality fails to do its job, and the provincial government has to step in to fix the problem [1].

The Basic Idea

Think of a municipality as a local branch of a company, and the provincial government as the regional head office. If the local branch is failing to provide essential services (like water, electricity, or refuse collection) or is going bankrupt, the regional head office cannot just watch it collapse. Section 139 gives the provincial government the power—and the duty—to intervene and take over certain responsibilities to get things back on track [1].

When Can the Province Intervene?

The Constitution outlines specific situations where the provincial government can step in:

1. **Failure to Perform Executive Obligations (Section 139(1)):** If a municipality is not doing what the law requires it to do (for example, failing to deliver basic services), the province can:
    - Issue a strict instruction (directive) telling the municipality exactly what it must do to fix the problem.
    - Take over the specific job the municipality is failing at, just long enough to restore minimum standards or prevent the municipality from harming the wider region.
    - In extreme cases, dissolve the municipal council (fire the local politicians) and appoint an administrator to run things until new elections are held [2].
2. **Failure to Pass a Budget (Section 139(4)):** A municipality cannot function without a budget. If the local council fails to approve a budget or the taxes/rates needed to fund it, the province *must* intervene. They will dissolve the council, appoint an administrator, and approve a temporary budget so that basic services do not stop [2].
3. **Financial Crisis (Section 139(5)):** If a municipality is in a severe financial crisis and cannot pay its bills or provide basic services, the province *must* step in. They will impose a strict financial recovery plan. If the municipal council refuses to

approve the measures needed for this recovery plan, the province can dissolve the council and appoint an administrator to force the plan through [2].

Checks and Balances

To prevent the provincial government from abusing this power and taking over municipalities unnecessarily, there are strict rules:

- **Notification:** The province must immediately notify the national government (specifically the Cabinet member responsible for local government) and the National Council of Provinces (NCOP) [2].
- **Approval and Review:** The national government or the NCOP can disapprove the intervention and force the province to back out. The intervention must also be reviewed regularly [2].

Summary

In layman's terms, Section 139 is a safety net. It ensures that when local politicians or municipal managers fail so badly that citizens are deprived of basic services or the local economy is threatened, the higher levels of government have the legal authority to step in, take control, and clean up the mess until the municipality can stand on its own feet again.

References

[1] Provincial Intervention In Local Government In Terms Of Section 139 of the Constitution and the Municipal Finance Management Act as of January 2023 - Department of Cooperative Governance [2] Constitution of the Republic of South Africa, 1996 - Section 139