



# DIAGNOSTIC REVIEW OF SECTION 139 INTERVENTIONS

DR TRACY LEDGER & MAHLATSE RAMPEDI

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# BACKGROUND

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- Analysis and assessment of 125 ‘active’ S139 interventions
- Did they sustainably improve the municipality’s performance?
- Overwhelmingly, the answer is “no”
- In theory, S 139 offers an excellent solution to municipal problems, whether these are related to poor service delivery (“failure to fulfil an executive obligation”) or deep financial problems.
- Recognises the importance of effectively functioning local government and the need to ensure that
- So – what has gone wrong?

# INTERVENTIONS COME TOO LATE

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- The evidence is overwhelming that a municipality that is allowed to fall into complete collapse will find it extremely difficult to recover
- Municipalities are functionally bankrupt, municipal infrastructure is falling apart, etc
- There are no financial bail outs, and recovery can take up to 7 – 10 years.
- Interventions should be happening much sooner (and the legislation provides a wide range of early warning signs)
- Why aren't they?
- Misguided notion of local government “independence” means interventions are incorrectly seen as the last-ditch option after collapse, instead of a pro-active approach to **prevent** collapse as the Constitution intended
- The reality is that the Constitutional rights of residents are the priority, not municipal ‘independence

# THE WRONG SECTIONS ARE BEING USED

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- S 139 offers different remedies for different problems, so correct diagnosis is key
- S 139 (1): failure to fulfil an executive obligation = service delivery
- S 139 (4): failure to pass a budget
- S 139 (5): serious financial problems
- Research indicates that most municipalities meet the requirements for S 139 (5), but S 139 (1) is being incorrectly applied as an “intervention for any and all problems”
- As a result, the underlying problems are not being addressed

# INTERVENTIONS ARE INCORRECTLY AND POORLY IMPLEMENTED

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- There is no provision in S 139 for the appointment of an administrator to take over all the functions of council **while the council is still sitting**
- The legislation says that the province can take over responsibility for the particular executive obligation, or appoint an administrator if the council is dissolved
- Appointing an administrator to take over all functions indefinitely while council is still in place (a) has no basis in law and (b) is making things much worse by effectively putting one person in charge of an extremely complex set of problems
- There are usually no clear terms of reference setting out exactly what the intervention hopes to achieve, and the indicators by which this will be measured
- There is thus usually no objective assessment of whether an intervention should be terminated or its impact

# WHAT NEEDS TO BE DONE?

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- S 139 interventions concern both COGTA and Treasury
- Clear guidelines for when and what kind of intervention will be implemented (thresholds for service delivery and finances)
- Interventions must be managed as the legislation intended
- Clear terms of reference for interventions and regular reporting against progress



**THANK YOU**

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