

Section 139 Interventions:
**A Critical Reflection on its Application, Successes &
Challenges**
(The Role of the NCOP)

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Structure of Presentation

- 1. Introduction: a Model of Dying Organization**
- 2. Problem Tree Analysis & Genesis of Section 139**
- 3. Background: Constitutional Context**
- 4. Reasons for Intervention: Categories & Nature of Problems**
- 5. Key Observations: Generic Successes & Failures**
- 6. Conclusion & Way Forward.**



Placing Municipalities as Patients

If all Municipalities placed Section 139 of the Constitution were Patients, where would you place them?



How Organizations Die?

“Too often, companies die unnecessarily because most business leaders haven’t learn to recognize the symptoms of oncoming illness in their businesses. Leadership hasn’t had to deal with it in the past and is ill-equipped when troubles sets it. The obvious signs of business trouble are rarely its root causes. Losing money for example, isn’t the problem; losing money is the result of other problems.”

John M Collard, Deathbed Businesses: When a Business Stops Growing, it Starts to Die.



Research Indicates that like Sick Patients, not all Sick Organizations Survive

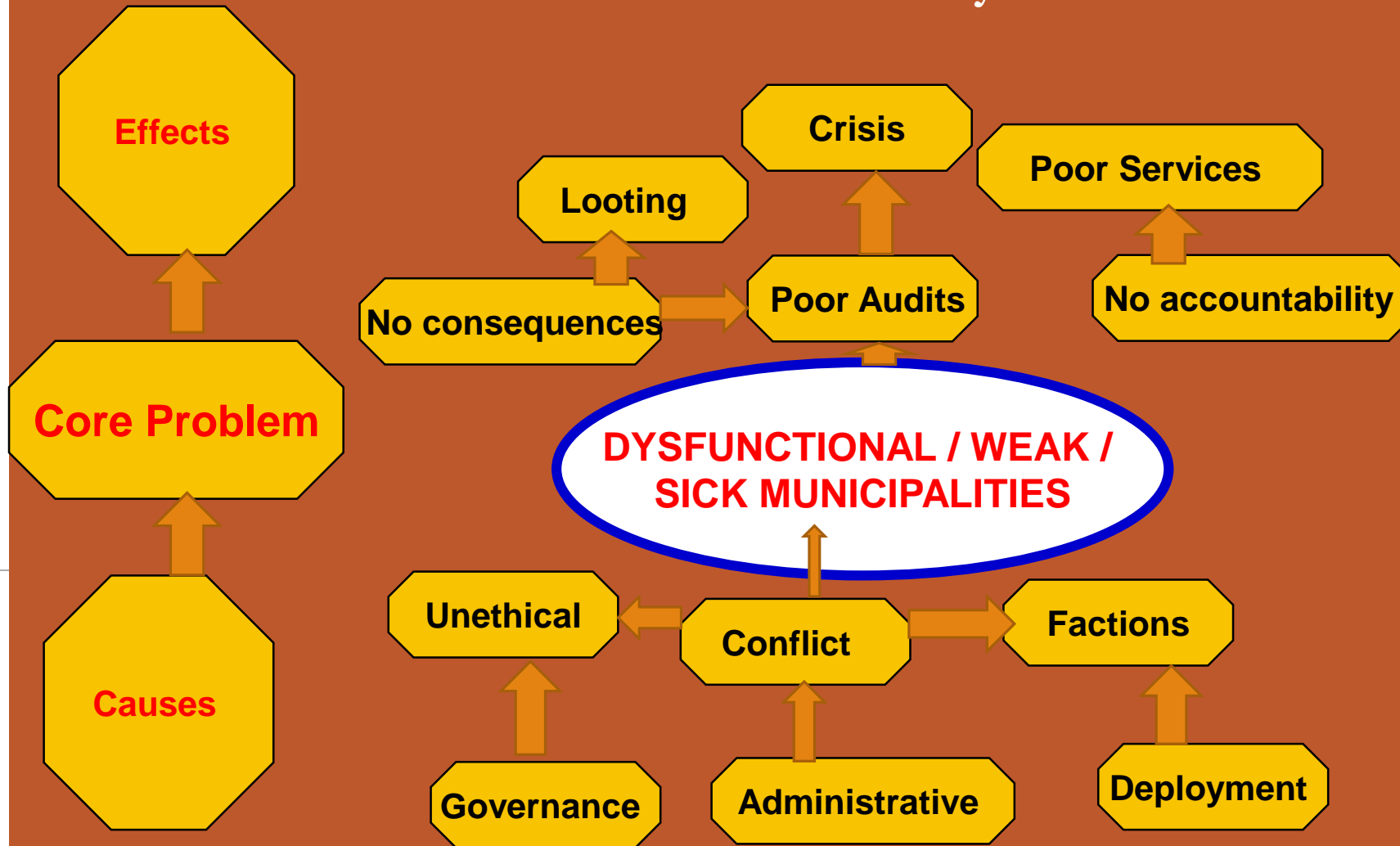
- About 20% of all distressed organizations recover
- At least 30% of all distressed organizations are immediately classified as hopeless where some of them don't survive and
- About 50% of organizations classified as salvageable are saved.

Based on my honest opinion, all municipalities can recover and are salvageable, but **TOUGH DECISIONS** must be taken to ensure their sustainable recovery.

Like during the COVID-19 Pandemic when government took **TOUGH DECISIONS** (Imposing Lockdown Regulations), such attitude is required to recover and salvage municipalities.



Problem – tree Analysis



Background: The Constitutional Context:

The Genesis of Intervention

When and How to Invoke Section 139?

- When a municipality cannot or doesn't fulfill an executive obligation in terms of the Constitution or executive obligation, the PEC may **INTERVENE** by taking any appropriate steps to ensure the fulfillment of that obligation (Sec139(1));
- Failure to approve budget & any revenue raising measures to give effect to the budget (Sec139(4));
- Crisis in municipal finance & serious and persistent problems to provide basic services or meet its financial obligations (Sec139(5)).



5 Methods & Instruments of Intervention

Issuing of a directive - Section 139(1)(a)

Assuming responsibility - Section 139(1)(b)

Dissolving the municipal council – Section 139(1)(c)

Appropriate steps to ensure budget adoption and revenue raising measures are approved – Section 139(4)

Imposing a recovery plan (and possible dissolution of municipal council) – Section 139(5)



Issuing of a Directive – Section 139(1)(a)

Describing the extent of a failure to fulfil the obligation;

Authoritative instruction to a municipality;

Involving the management and guidance of operation;

- A directive include what, why, when, where and how
- The principles of natural justice & the *audi alteram partem* rule



Assuming Responsibility – Section 139(1)(b)

PEC submit written intervention NOTICE to Minister of COGTA within 14 days;

PEC submit written intervention notice to the Provincial Legislature & NCOP within 14 days;

Minister to approve or disapprove within 28 days after receiving notice;

NCOP to approve or disapprove within 180 days after receiving notice;

If Minister (after 28 days) or NCOP (after 180 days) disapprove intervention, it ends immediately;

NCOP must review intervention regularly & make recommendation to PEC (Sec139(3)).



Dissolving Municipal Council – Sec 139(1)(c)

- PEC submit written notice of intervention to Minister of COGTA, Provincial Legislature & NCOP immediately;
- Dissolution takes place 14 days from the date the NCOP receive notice unless Minister or NCOP disapprove the expiry of 14 days;
- Appoint administrator until a newly council is elected.
- **THE PEC MUST PROVE THAT EXCEPTIONAL CIRCUMSTANCES EXIST WARRANTING THE DISSOLUTION OF THE MUNICIPALITY**



Appropriate Steps on Budget Adoption & Revenue Raising Measures - Section 139(4)

- Failure to approve budget & any revenue raising measures to give effect to the budget;
 - **30 days before the start of the financial year;**
 - **Unfunded budget.**
- Taking appropriate steps to ensure budget & revenue raising measures are approved including:
 - **appointing an administrator until a newly elected council is elected.**
 - **Approving temporary budget & revenue raising measures to ensure the functioning of the municipality.**
- **PEC must inform Minister & NCOP with in 7 days after the invocation.**

Imposing Recovery Plan (or Dissolution – Section 139(5))

- Crisis in the financial affairs of municipality;
- Serious & persistent of its obligations to provide basic services or meet its financial obligations (creditors & 3rd party agents);
- PEC to imposes financial recovery plan prepared according to national laws;
- Recovery plan binds council insofar as solving the crisis;
- If dissolving council, EXCO appoint administrator until new council is elected;
- Approve temporary budget & revenue raising measures to ensure municipal functionality;
- The PEC must inform Minister & NCOP within 7 days after its invocation.

Failure to intervene i.t.o Section 139(4)&(5)

- **If the PEC fails to intervene in terms of Sec 139(4)&(5) the national executive may intervene and do what the PEC failed to do.**

THE ROLE OF THE NCOP

- Once Chair of NCOP receive notice of intervention, assign it to the Select Committee;
- The Committee Conducts investigations within the prescribe period;
- Investigations entail oversight visits and engagement with internal and external stakeholders;
- Ensures that intervention complies with requirements:
 - **Constitution requirements: deadlines and constitution;**
 - **Procedural fairness: follow a certain procedure;**
 - **Substantive fairness: rationality.**
- Committee adopt report with recommendations for adoption by the house.

Governance

Financial

**Reasons for the
Invocation of
Section 139**

Service Delivery

Institutional



Key Observations: Challenges & Successes

Provinces have inadequate or weak monitoring systems: inability to monitor performance;

- **No evidence of Section 154;**
- **No effective provincial early warning system in place;**
- **Ill-equipped provincial department;**
- **Interventions are reactive.**

No adequate resource allocation for implementation of intervention;

Deployment of one administrator without concomitant experts per the diagnosis of challenges;

Relevant sector depts. are not coming on board during the intervention;

Interventions are used for political reasons? Simply take-overs?



Key Observations: Challenges & Successes

Resistance and obstructionist tendencies: scepticism & reluctance, no cooperation, destroying documents and issuing of illegal instructions;

Lack of sound **political-administrative interface: only one section of the municipality welcomes the intervention;**

Most provinces do not submit regular progress reports & at the end, final close-out reports;

Communities subjected to interventions in the municipalities are not often informed during & when the intervention is invoked.



Key Observations: Challenges & Successes

Some municipalities have worsened since the intervention: the calibre and intentions of the administrators as well as deploying “failers”;

Repeated interventions in municipalities for reasons similar to previous intervention;

Little indication that provincial legislatures exercised oversight over PEC actions;

28 day period for Minister to approve or disapprove is inadequate – Sec139(1)(b): no sufficient time to conduct own investigations;

14 day period for Minister & NCOP to approve or disapprove – Sec139(1)(c): Insufficient time too!



Key Observations: Challenges & Successes

Inconsistent interpretation of Sec.139 from one province to the other;

Many **governance failures** - vast majority of interventions are under were 139(1)(b);

Lack of regulatory framework or legislation to give effect to section 139 (and 100) creates a legislative vacuum;



Conclusion and Recommendations:

The Establishment of Early Warning System (Sec 152 of Constitution);

Proper Diagnosis of the Problem;

Strengthen the Monitoring and Support Functions of the Province;

Intervention must be Targeted – Identify the Areas of Concern;

The PEC adopt an incremental approach: from Section 139(1)(b);

Conclusion and Recommendations:

Timeous Submission of Complete Documents to Minister, Provincial Legislature & NCOP;

Interventions are Carried out with an Intergovernmental Way;

Establish the Forensic Unit;

Strong Focus on Participation of Local Communities;

Develop Exit strategy after Intervention - the “After Care”;

Speedy Facilitation of the IMSA Bill.

THANK YOU!

