

MIND THE GAP

**SECTION 139 INTERVENTIONS
IN THEORY AND IN PRACTISE**





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TRACY LEDGER | MAHLATSE RAMPEDI

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This paper is based on research undertaken for National Treasury in 2018 to examine the efficacy of the section 139 intervention framework, for the period July 2004 to June 2017.



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CHAPTER 1: INTRODUCTION

1.1 The current state of local government

Local government has been identified as one of the most pressing problems that the new Ramaphosa administration has to address. All around the country people are up in arms (often literally¹) about shoddy or non-existent service delivery. Although there are multiple factors contributing to these service delivery outcomes, the poor – and deteriorating – state of municipal finances and financial management is a critical contributor. For the 2018/2019 financial year (i.e. for the 12-month period to 30 June 2019), 113 municipalities had adopted unfunded budgets, meaning that they were planning to spend money they did not have.²

According to the South African Municipal Workers Association (SAMWU) there are currently 30 municipalities unable to pay workers' salaries, and Eskom blames the billions (currently around R34 billion)³ that are owed to it by local government as a factor contributing to its own financial troubles. In March of this year, a court issued an order in favour of Eskom allowing the sheriff to attach the movable assets of the Maluti-a-Phofung Municipality in the Free State, as a result of its almost R3 billion debt to Eskom. The loss of these assets represents a further obstacle to delivering services.

The AGSAs 2017/18 audit findings in respect of local government indicated the following:

- Ten municipalities received an 'adverse' opinion;
- Twenty-seven municipalities received a 'disclaimer' opinion (which means that the auditor could not find enough paperwork to come to any conclusion about the accuracy of the financial statements); and
- Twenty-five municipalities had been unable to present a set of financial statements to be audited by the AGSA deadline (which is some six months after the end of the financial year). Of this last group, in the previous financial year fifteen of them had received either an adverse or disclaimer outcome, or had also failed to submit financial statements on time.

There are fifteen municipalities that for the last three consecutive years have received either a disclaimer or adverse audit outcome, or have failed to submit their financial statements on time, or a combination thereof. More than thirty municipalities have achieved that dubious distinction in the last two consecutive years. This group represents a complete breakdown in good governance and municipal management and, in many cases, the misappropriation of considerable amounts of public money. Most importantly, they indicate a deep-rooted and long-term serious problem that no one seems able (or willing) to address. These are places where the municipality struggles to deliver even the most basic services, a significant percentage of municipal infrastructure has disintegrated alarmingly (due mostly to a lack of maintenance), and the municipality can barely be considered a going concern. Often the causes of these problems can be traced to maladministration, corruption and theft of public assets. In many examples, the municipality has become the central site of local political battles, so that employment and contracts are traded as part of a wider jostling for political influence. There is little regard for even the most basic principles of good governance or the needs of the wider community.

Our research has shown very clearly that almost irreparable harm is done to a municipality that is permitted to remain in a state of operational and financial failure that could correctly be termed 'collapse' (a term that could probably be applied to at least 30 municipalities in South Africa) for any meaningful period of time. Infrastructure that has fallen into disrepair (particularly infrastructure that is necessary for municipal revenue generation, such as water and electricity meters) cannot be replaced or repaired, since there simply isn't any money available. The same applies to critical service delivery infrastructure, such

1 In February of this year, it was alleged that a Councillor had shot a community member in a protest in Abaqulusi, in KwaZulu Natal - <https://www.iol.co.za/mercury/news/kzn-municipality-placed-under-administration-for-mismanagement-19639723>

2 <https://www.gov.za/speeches/salga-questioned-passing-unfunded-budgets-municipalities-during-briefing-2018-division>

3 About half of this represents the debt of Soweto residents.

as sewerage works or water pipelines: once these have broken down, it takes many years before there are sufficient funds available to repair them adequately. Senior managers in municipalities where there has been a concerted effort to repair the institution after a long period of neglect (such as in Oudtshoorn) still estimate that it takes around five to seven years to get a municipality back on a sound financial and operational footing after as little as three years of serious neglect. During this recovery period, service delivery levels can remain under pressure, due to broken infrastructure and a lack of resources.

Deeply dysfunctional municipalities might only make up a minority of all local authorities, but the implications of their current state for the people unfortunate enough to live there are horrendous. Many households do not have access to even the most basic services on a reliable basis, and generally the municipal government is completely unresponsive to residents' demands. The irony is that in all of these municipalities there are multiple 'support' programmes in place, designed to address all of these issues and well-funded by a range of government departments and agencies. None of them seem to be having more than marginal impacts, despite the considerable amount of resources allocated to these programmes.⁴

1.2. A remedy does exist

Given the dire state of a small, but significant number of local municipalities, and the apparent inability of current support programmes to address the problems in a meaningful and sustainable manner, it may come as something of a surprise to learn that policymakers had come to the following conclusions some 20 years ago:

- a. Local government would occupy a key role in the new developmental state that aimed to address the injustices and inequalities of the past: South Africa would, for the first time, have wall-to-wall municipalities, and these would be tasked with a far greater list of development responsibilities than under the pre-1994 system of government. The implication was that almost every single service delivered would be delivered at the local level. It was thus of the utmost importance that local government functioned at (at least) a certain minimum level of financial and operational efficiency in order to support the wider developmental goals of post-apartheid South Africa.
- b. Since national government would not stand as guarantor of any municipal debt, and the ability of municipalities to access commercial and trade finance would be critical to financing development (particularly infrastructure), potential lenders and investors had to be reassured that no municipality would be permitted to reach a state of financial collapse, and thus potentially default on their financial obligations.⁵

There was thus a clear understanding that – in the interests of the greater good – there had to be some kind of constitutional 'override' mechanism in place to ensure that a minimum floor of service delivery and financial management in local government was never breached.

However, while it was deemed essential to have a mechanism to prevent serious operational and/or financial problems undermining the effective functioning of local government, this had to be done within the new inter-governmental relations (IGR) framework of post-apartheid South Africa, in which local government was no longer a subservient tier of government, but an independent and autonomous sphere (together with national and provincial). Prior to the new IGR framework, provinces had extensive authority over local municipalities, through the use of provincial ordinances that could regulate almost all local activities. The chief executive officer of each province was its *administrator* – 'in whose name all executive acts relating to provincial affairs therein shall be done.'⁶ The provincial administrator was thus vested with considerable powers in respect of the exercise of provincial authority over local municipalities. The following extract from the South Africa Act of 1909 highlights the extent of this authority:

85. Subject to the provisions of this Act and the assent of the Governor-General in Council

4 The question of exactly why and how national and provincial government manages to spend billions of Rands each year in apparently unhelpful municipal support programmes is the topic of another research project.

5 *Policy Framework for Municipal Borrowing and Financial Emergencies*, 2000.

6 South Africa Act (2 of 1909) par 68 (1)

as hereinafter provided, the provincial Council may make ordinances in relation to matters coming within the following classes of subjects (that is to say):

(vi) Municipal institutions, divisional Councils, and other local institutions of a similar nature

(xii) Generally all matters which, in the opinion of the Governor-General in Council, are of a merely local or private nature in the province

The policy challenge post-1994 was thus how to ensure the developmental imperative of properly functioning local government, but still respect the spirit of the new IGR and the autonomous role that it allocated local government. The key conclusions were:

- The ‘autonomy’ of local government was not limitless: specifically, it did not extend to any ‘right’ to extended failure to deliver services or to fail to meet financial obligations, and that the other spheres of government could (and should) intervene in the interests of the greater good to prevent that from happening.
- However, the *form* of the intervention had to respect the autonomy of local government’s legislative and executive authority, as far as that was possible and compatible with the goal of ensuring certain minimum standards of operational and financial management.

The result of these deliberations was section 139 of the Constitution. It is important to review the history of how the current version of section 139 came into existence, since that legislative process has, we believe, contributed in part to the current problems that we see with its implementation. The first version of section 139 (included in the 1996 version of the Constitution) only included one type of *discretionary* intervention (more on the details of each type of intervention in chapter 3 below) – an intervention that could be triggered by ‘*a failure to fulfil an executive obligation*’. This original version of section 139 (which is contained in paragraphs 139 (1) to (3) of the current version) did not include any specific remedies for *financial* problems in a municipality. These original paragraphs also only made provision for a discretionary intervention to be undertaken by a province, with no role for the national executive to intervene if they believed that the province should have acted. This legislation was ‘owned’ by the Department of Provincial and Local Government (predecessor of today’s Department of Cooperative Governance and Traditional Affairs (CoGTA)) and specifically by provinces. In implementing this legislation, provinces closely followed the old provincial administrator model, falling back on the known administrative practice of the all-powerful Provincial Administrator, as discussed in more detail below

Once the new local government structure was in place, however, there was growing concern within National Treasury that the section 139 framework was not sufficiently broad or powerful enough to ensure that municipalities could be prevented from falling into *financial* collapse. Specifically, Treasury was concerned that (i) there was no clear basis for intervention on the basis of financial problems (which it considered to be very different from the ‘failure to fulfil an executive obligation’); (ii) there was no clear process for how serious financial problems were to be addressed in the intervention; and (iii) they wanted to have an additional backstop mechanism to ensure that an intervention would take place, even if a province had decided not to intervene. That is, they wanted a clear mechanism for *mandatory* interventions in the event of serious financial problems in a municipality.⁷

The 2000 *Policy Framework for Municipal Borrowing and Financial Emergencies* makes clear Treasury’s rationale for wanting to expand the application of section 139: ‘*many municipalities have encountered increasing financial difficulties in recent years.*⁸ *For a number of reasons, it is important that government respond systemically to this situation. First, it is obviously critical that the delivery of essential services - which is threatened in some cases - is maintained. In acting here, however, central government cannot allow itself to get drawn into a succession of ad hoc responses it has neither the capacity nor the fiscal resource to sustain. In other words, central government needs*

⁷ *Policy Framework for Municipal Borrowing and Financial Emergencies*, 2000.

⁸ The policy was written in 2000, and thus refers to the situation at that time.

to respond in a manner which provides municipalities with the incentives to perform their functions effectively and manage their fiscal and financial affairs prudently. Third, in the absence of such a response it is unlikely that local government will be able to attract significant investment from the private sector.'

Treasury thus pushed for an amended version of section 139, which was approved by Parliament in 2003, adding paragraphs (4) to (7).⁹ (The current version of section 139 is attached as Annexure A.) These additional paragraphs in section 139 are regulated by Chapter 13 of the Municipal Finance Management Act (MFMA). (It should be noted that there is currently no similar form of detailed regulation of the original paragraphs, since COGTA's Bill in this respect has never been promulgated, as discussed in more detail in chapter 3.)

We believe that one outcome of this regulatory amendment was that the additional paragraphs 139 (4) to (7) together with the MFMA regulations effectively came to be seen as the 'Treasury' intervention framework, compared to the 'COGTA' intervention framework of section 139 (1) to (3). This perceived split in the legislation – which reflects long-term contestations between COGTA and National Treasury over who has ultimate oversight authority over local government – was never addressed in subsequent regulation, and continues today, exacerbated by the rise in inter-departmental rivalries (particularly in respect of Treasury) under the two Zuma administrations. We further believe that these contestations over oversight of local government have been a key factor supporting the extensive (and incorrect) use of section 139(1)(b) in interventions (discussed in more detail below).

The current version of section 139 describes a clear list of circumstances – financial and non-financial – in which provinces and/or national government may (or must) intervene in troubled local municipalities, and set out a clear method for how different kinds of problems are to be addressed. Unfortunately – as discussed in more detail in the remainder of this paper – the legislation has seldom been implemented as it was conceived, or is written. If all the implicated institutions had met their constitutional obligations in respect of section 139, it is highly unlikely that we would have even one municipality in the state that so many of them currently are.

Our research¹⁰ indicates in total, 140 section 139 interventions have been initiated since 1998, involving 143 municipalities. Fifteen of these were set aside in some manner, but 125 interventions proceeded. The full list of interventions is contained in Annexure B. As discussed in more detail in Section 2 below, very few of these have had a meaningful and sustained impact on municipal operations or financial health. In many instances, the municipality is in a *worse* position after the intervention than it was before. A notable number of municipalities have been the site of more than one intervention (some of them three, four or even five times) with little to show for it. As a result, there is a growing sentiment that the legislation is largely useless, something that we turn to when we have been forced to admit defeat on all other fronts, but still have to make a public display of 'doing something'. Many public sector officials voice this sentiment; that section 139 is a nice idea, but essentially has no relevance in the 'real world' of municipal failure.

The reality, however, is that the main reason for the dismal outcomes of section 139 – its 'failure' – is that the legislation has never been implemented as it was intended, and many of its provisions are either routinely ignored or incorrectly applied. An administrative hangover from pre-1994 municipal regulation (the provincial administrator), combined with a failure by all responsible parties to meet their legislated obligations and responsibilities and inter-governmental rivalries and hostilities has cut the heart out of the legislation.

In this paper we have presented a detailed review of the manner in which section 139 interventions have been undertaken, and the impact of these on longer-term municipal performance. This review represents a

⁹ Constitution Eleventh Amendment Act of 2003.

¹⁰ Annexure C discusses in more detail the methodology that was used to determine this.

summary of our research findings drawn from our extensive 2018 study,¹¹ updated with new interventions initiated since July 2017. We have compared the current administrative practices around interventions with what the legislation actually contains, highlighting the gaps between the two, and the implications of these gaps. In the last chapter of the paper we have proposed a number of policy actions that we believe are necessary to ensure that the section 139 framework delivers what it intended.

NOTE

The provincial and national support framework around local government includes many initiatives that are routinely referred to as ‘interventions’. The term ‘intervention’ in this paper is meant to refer *only* to interventions initiated in terms of section 139 of the Constitution, and not to any other programmes or support initiated in terms of any other legislation, such as section 154 of the Constitution and section 34 of the Municipal Finance Management Act.

¹¹ Ledger, T. and Rampedi, M. (2018). *Municipal financial emergencies regulatory framework review*. Research paper commissioned by National Treasury, South Africa.



Photograph: Delwyn Verasamy

CHAPTER 2: THE ADMINISTRATIVE PRACTISES OF SECTION 139 INTERVENTIONS

How have section 139 interventions been initiated and how did they proceed in implementation and termination? That is, what are the administrative practices adopted in respect of these interventions? What were the outcomes of these interventions on indicators of municipal performance, particularly financial performance? In this chapter we have presented a summary of our findings from our 2018 detailed investigation,¹² updated to include interventions initiated between July 2017 and June 2019. The methodology used in this 2018 study is contained in Annexure C.

2.1. How many interventions have taken place?

Annexure B sets out a summary of all the section 139 interventions attempted and implemented in local government from the beginning of the 1998 municipal financial year (which year runs from 01 July of one year to 30 June of the next) to the end of the 2019 financial year (i.e. 30 June 2019). This table indicates the start and end dates of interventions, as well as the relevant sections of the legislation in terms of which the intervention was initiated. As is made clear in the table, there are a number of interventions for which key information – such as the date when the intervention was terminated – is not available. This data gap exists despite our extensive desktop work, review of all the records of relevant NCOP meetings over the entire period, and engagements with national COGTA. These data gaps are an indication of the often poor record-keeping (and thus oversight) around section 139 interventions.

Annexure B lists all the interventions *attempted*, including those which were not approved or later set aside (these are clearly indicated). A total of 140 interventions, involving 143 municipalities, were attempted during that period, with 15 of these being set aside, either during the oversight process (see below), or by mutual agreement between province and the municipality, or by a court order. Forty-eight of the 140 interventions (more than a third) were in respect of repeat offenders – that is, municipalities where more than one intervention was initiated. At the time of writing this report, 40 municipalities were reportedly under administration, one third of them places where there had already been at least one prior intervention.¹³

The table below sets out the distribution of those 140 attempted interventions by province, and also indicates the interventions set aside in each province.

Table 1: Provincial distribution of interventions 1998–2019

PROVINCE	NUMBER OF INTERVENTIONS
Eastern Cape	15 (including 3 set aside)
Free State	14
Gauteng	3
KwaZulu-Natal	40 (including 2 set aside)
Limpopo	2 (including 1 set aside)
Mpumalanga	11
North West	43 (including 7 set aside)
Northern Cape	3
Western Cape	9 (including 2 set aside)

12 Ledger, T. and Rampedi, M. (2018). *Municipal financial emergencies regulatory framework review*. Research paper commissioned by National Treasury, South Africa

13 <https://www.iol.co.za/news/politics/parks-tau-says-municipalities-should-fall-under-cogta-29740561>

2.2. How are interventions initiated, approved and/or set aside?

The current administrative procedures around the initiation section 139 interventions are as follows:

- The primary responsibility for the initiation of an intervention under section 139 lies with provinces, and interventions can only be *initiated* under certain circumstances by national government if a province has failed to act. The Provincial Executive Committee (PEC) takes a decision that an intervention will be initiated, and issues a notice in that respect to the relevant municipality. In almost all cases (the exceptions are few and far between, particularly over the past five years), the intervention comes when the municipality is in – or very close to – a state of complete operational and financial collapse, and after many years of serious problems, including some or all of the following: poor audit outcomes, deteriorating finances, multiple allegations of corruption, severe political in-fighting that has paralysed the Council (as was the case in Oudtshoorn), long-term problems with paying suppliers (particularly bulk service providers) and staff, and an almost total breakdown in service delivery. Many of the provincial supporting documents submitted in respect of these interventions use the phrase ‘total collapse’ to refer to these municipalities, and it is generally no exaggeration. Almost all of the municipalities placed under section 139 interventions over the past five years have been in this position. They have thus well exceeded the level of dysfunctionality that the drafters of section 139 were so keen to avoid.

It is important to note that, apart from a few guidelines in section 139 itself, **there are no prescribed standardised administrative practises around the initiation of an intervention that cover the entire section 139 framework.** The MFMA covers how a financial recovery plan is to be drawn up in the instance of a section 139(5) intervention, and provides some guidelines for assessing financial problems in a municipality, but these are merely guidelines. There is no similar regulation in respect of section 139 (1) interventions, which is a serious gap given that most of the interventions are in fact initiated under this part of the legislation. As a result of this regulatory gap, a particular set of administrative practises – which have little in common with the actual content and spirit of the legislation – have become the norm.

Our review of available documentation¹⁴ showed a high variation among provinces¹⁵ in detailing the reasons behind an intervention, either as these were presented to the municipality in question or to the NCOP. Although there was always a general idea expressed around the overall state of the municipality prior to an intervention (‘very bad’), there wasn’t always a detailed analysis of the drivers of that state of affairs. There were usually a number of competing causal narratives as to exactly how and why the municipality has ended up in the state that had precipitated the intervention.

Despite the unarguably dire state of most of the municipalities when an intervention was initiated, there was often a specific trigger for an intervention: a series of violent protests or a threat by Eskom to cut off the power supply. It is usually this trigger that is the real reason for the intervention, rather than a careful review of the problems within the municipality. Without that trigger, it is not clear that all of the interventions would actually have taken place. The lack of a standardised way of determining whether or not an intervention should take place is emphasised by thinking about the places where an intervention has *not* taken place. Table 1 above has a couple of glaring omissions, notably in the Northern Cape and Limpopo: there are a number of extremely dysfunctional municipalities in both provinces which have failed to achieve even the most basic levels of compliance with basic service delivery standards and financial management regulations for an extended period of time. Yet over the past 21 years there have only been two interventions in Limpopo (one of which was set aside) and three in the Northern Cape – two of which occurred before 2000.

14 The most important source in this regard was the records of the NCOP committee meetings, together with additional documentation made available by COGTA. However, for a notable number of interventions no documentation could be obtained, from either of these sources.

15 It was noteworthy that the presentations by the KZN COGTA team to the NCOP almost always contained a much more detailed analysis of the problems in the municipality in question than any other province that had bothered to make a submission.

The variation in public explanations of why interventions are necessary – together with some of the omissions in implementation highlighted above – has resulted in multiple claims of provincial bias in deciding where an intervention should (or should not) take place. Many Councils that are the target of interventions claim that there are political factors behind the decision, while many communities who desperately want their municipality to be placed under a section 139 intervention levy the same charge at provincial officials when they do not intervene.

- Annexure B indicates that the vast majority of interventions were in terms of section 139(1) – which allows for intervention if the municipality cannot or does not fulfil ‘*an executive obligation in terms of the Constitution or legislation*’. Only 11 of the 140 interventions were initiated using one of the other parts of section 139, and in 4 of these instances, the other sections were used in combination with section 139(1). Of the 11 non-section 139(1) interventions, 6 were in terms of section 139(4) and 5 were in terms of section 139(5). The implications of these choices is discussed in more detail in chapter 3 below.
- Once the province has issued the notice of intervention to the municipality, it is required by section 139 to inform national COGTA. The latter then has 28 days to approve or disapprove the requested intervention, and our study indicated that all the proposed interventions were submitted to COGTA, as required. However, it also appears that the 28-day period is not really sufficient to make an informed judgement as to the merits of the intervention, or to make an assessment of whether the correct part of section 139 has been selected, or to evaluate the structure of the proposed intervention. National COGTA officials interviewed for our 2018 study indicated that by the time all the supporting paperwork had been received, there generally remained only a short period of time in which to make this decision. In practice, unless there are obvious and clear problems with the proposal, the national department generally takes the view that the province has made the correct decision, and approves the intervention. Very few interventions (our research suggested a total of three, but we were unable to confirm these) have been clearly refused by COGTA during that 28-day period.

There is an additional oversight mechanism provided for in section 139, but this has proven to be problematic (sometimes severely so): in terms of section 139(2) the PEC must also submit notice of the intervention to the National Council of Provinces (NCOP) within 14 days of issuing the notice to the municipality, and the NCOP then has 180 days to disapprove or approve the intervention. Our review of the notes of the relevant committee meetings of the NCOP from 2004 to 2019¹⁶ indicated that for a significant number of interventions the province in question has simply ignored this requirement (i.e. there is no record at all that it was presented to the NCOP). In other examples, provincial officials had reported on the matter to the NCOP for the first time literally years after the intervention had commenced.

Where provinces have complied with the requirement to notify the NCOP, the oversight process followed by the latter is very problematic. Most interventions start almost as soon as the province has issued a notice to the municipality, even though the NCOP may not make a decision on the matter until six months later. This means that an intervention can – and has been – halted because the NCOP decided against it many months after it had commenced. In the absence of clear guiding regulation, the NCOP has invented its own process to assess the merits of an intervention. This oversight process can have outcomes detrimental to the underlying aims of the intervention legislation: in 2013, the NCOP disapproved an intervention in Matlosana Local Municipality after a visit to the municipality,¹⁷ where they were told by officials that the situation had been exaggerated by the province, and that in fact all the reported problems had been resolved.

16 Accessed at www.pmg.org.za

17 These site visits (involving a group of NCOP delegates who meet with a seemingly random collection of ‘stakeholders’ and municipal officials) are an integral part of how the NCOP exercises its oversight mandate, and are the main reason for the long process.

In their official report on the matter, the NCOP further made recourse to this rather unusual argument: *'The committee recommended that the Council should not approve this intervention on the basis that the challenges we found there are like those found all over the whole country.'* (Reportedly the Committee had been met with automatic rifle wielding members of the community at a site visit at another municipality at much the same time as their 2013 visit to Matlosana, which no doubt supported their assessment that the situation at the latter was 'not that bad'.)

A few months later, however, it became clear that the Matlosana officials' account of events had been totally untrue and that the municipality was in fact on the brink of total financial collapse (as just one example, they had claimed that there was no money owing to Eskom, when in fact more than R100 million was owing). This one example highlights just how easy it is for municipal officials to mislead NCOP members, who generally have no local government financial forensic expertise, and do not spend enough time in a municipality to undertake such an investigation. In examples where municipalities have had disclaimer audit outcomes over an extended period of time there is, in any event, not enough paper with which to determine the actual situation. It also appears from a reading of site visit reports compiled by the NCOP that one of the goals of these visits is to try and determine whether or not the local community (labour, business, other community representatives) 'want' the intervention or not, with the NCOP seeming to give considerable weight to these subjective views. It should be noted that nowhere in section 139 is there a provision that interventions can only proceed if the local community thinks it is a good idea.

Although the NCOP's exercise of its oversight function clearly is problematic, the minutes of the relevant committee meetings are a public record of the intervention – which the COGTA deliberations are not – and there are opportunities for members of the NCOP to interrogate the reasoning behind the decisions, which does give some transparency to the process.

- A small number of interventions (two) have been put aside following a court decision, after the municipality in question had challenged the basis for the intervention.

The key point to make here is that *the administrative practices of initiating and approving section 139 interventions vary considerably, both in terms of what conditions within a municipality are deemed sufficient to justify an intervention, and the oversight process that is followed in terms of determining whether that intervention is 'justified'*. This lack of standardisation is reflected clearly in sharp differences among provinces as to when section 139 interventions are initiated. The result is that in some provinces, municipalities operate for many years in a state close to financial and operational collapse without any intervention, while in others the province is much quicker to respond.

There is thus considerable *unevenness* in the application of the legislation, determined in practice almost entirely at the discretion of the province, its incumbent political leadership, and the relationship between provincial political leadership and that in a particular municipality. It is highly likely that there are sometimes political motivations that contribute to the decision to intervene in a municipality (and particularly the decision *not* to intervene), and thereby undermine or support the local municipal power base. This political discretion is facilitated by the lack of standardised and objective criteria around intervention decision making and approval.

2.3. How are interventions implemented, overseen and terminated?

In almost all the interventions¹⁸ (which were under section 139(1)) the province appointed one person to be the *administrator* of the municipality and this person then assumed full responsibility for all of the executive functions of the municipality, including key areas such as finance, supply chain management and service delivery operations.¹⁹ The Council retains legislative power while the administrator is in office, unless the intervention has resulted in the dissolution of Council. The administrator is generally either an official seconded from the province, or an outside consultant appointed for this specific purpose. In some instances, the appointed administrator is an expert in a particular area which the province deems to be of critical importance to the municipality: for example, in the 2013 intervention in Bushbuckridge, the appointed administrator was a water engineering expert. Although the delivery of water was in a very bad state in Bushbuckridge, and certainly needed expert input, the same engineer was also responsible for all the other executive functions of the Council,²⁰ for which he appeared singularly unqualified, having never worked in local government.

In some interventions (Ditsobotla in North West is one current example) the administrator is refused access to the municipal offices by Councillors and/or officials who dispute the intervention. In Indaka in KwaZulu-Natal, the last person to be appointed as an administrator had to work from an office outside of the municipal boundaries because it was deemed too dangerous for her to be any closer,²¹ which greatly undermined her ability to do her job. In these examples, the province appears unable to enforce the intervention. Although (as discussed below) the sanction of dissolving the Council is available, it is used on an *ad hoc* basis, rather than according to a clear set of guidelines.

There are currently no guidelines to determine the minimum qualifications or experience of an administrator, nor is there any indication that either COGTA or the NCOP, during their review processes, have ever interrogated the appropriateness of a particular administrator for the specific problems of a specific municipality. The result is that spectacularly unqualified and incompetent people are routinely appointed as administrators: in eMalahleni in Mpumalanga – a large municipality with serious problems which was under administration from April 2013 to March 2015 – the province appointed a person who did not even meet the minimum legislated requirements for a municipal manager and did not demonstrate any ability to address the municipality's problems during his tenure as administrator. (More on the outcomes of that intervention is set out below).

Further, in the vast majority of interventions, there did not appear to be a detailed terms of reference supplied to the administrator. Instead, they generally seem to be appointed with a vague instruction to 'fix' the municipality. In many municipalities, the Council and municipal staff have little idea of exactly what it is that the administrator is there to do. The result is that administrators have enormous discretion with respect to what exactly they will do, and how they will do it, with very little oversight of their activities, since there is nothing detailed against which to evaluate these. In practice, most administrators will focus on the issues that have been the greatest cause of public concern, such as a threatened disconnection by Eskom. Once an administrator is in place, the province will usually make some limited funding available with which the most pressing problems (which are often around the payment of key suppliers) can be addressed. Such funding is generally a relatively small amount, and seldom addresses the municipality's long-term financial problems. National Treasury has taken the position that there will be no 'bail outs' for local municipalities that have gotten themselves into financial trouble, and that they have no recourse to national funds for items such as paying bulk service providers or staff, or to upgrade infrastructure that has been neglected.

18 There were fewer than 20 examples over the entire study period where there was no administrator appointed or the administrator was not allocated full responsibility for all executive functions while the Council remained in office.

19 In a limited number of interventions in larger municipalities, a team of experts was appointed together with the administrator.

20 This is essentially every single municipal function – financial and operational – outside of the legislative functions of Council such as passing new by-laws.

21 After many years of almost constant intervention, Indaka was dis-established after the August 2016 municipal elections.

Their position is 'you got yourselves into this mess, you can get yourselves out of it.'²²

The underlying assumption is that the administrator is there to offer technical input, and that once the most pressing problems around operations and governance have been addressed, the municipality will be able to return to long-term financial sustainability. The reality, however, is that there are generally much deeper structural problems in the municipality, of which visible outcomes such as the inability to pay Eskom are merely symptoms.

Most interventions appear to have been conceived as 6–12 month operations (in theory the province is required to disclose upfront how long the intervention will last), but in practise will last longer, usually around 18 months, although several have lasted much longer. Due to repeat interventions, some municipalities (highlighted in Annexure B as multiple sites of interventions) essentially remain under administration for much longer periods of time.

Section 139(2) requires the NCOP to 'review the intervention regularly', but in practise the NCOP relies on provinces to voluntarily report on progress and provincial reporting is highly variable. There is also considerable variance in terms of communication on the progress of the intervention within the municipality, with no legal requirement for report backs to communities from the administrator. Since there is almost never a detailed terms of reference for the administrator, objectively assessing whether the intervention is in fact progressing well is difficult to do.

At some point the intervention comes to an end, the administrator is withdrawn and the municipality reverts to its normal executive management structure. It is not always clear why an intervention has been terminated. Once again, there is no standardised set of criteria that determines when the intervention *should* be terminated. Publicly available reporting on the termination of interventions is even more patchy than that around the initiation of interventions.

It has become the norm to terminate any active intervention following scheduled national local government elections, presumably to give the new Council the opportunity to see if they can fix the municipality's problems. However, this approach is based on the tacit assumption that the most important factor contributing to deep structural problems within a municipality is political 'leadership'. Although we do not dispute that this is certainly *a* contributing factor in many municipal problems, it is certainly not the only one. In addition, a newly elected Council is often in a very poor position to be able immediately to grasp the details of all the problems facing the municipality. The decision to terminate an intervention because of an election seems, therefore, to have little solid foundation.

In other instances, the decision to terminate the intervention appears to be taken on a completely *ad hoc* basis. Although there is a regulatory requirement for progress on the intervention to be reported regularly to the NCOP, and 'progress' could reasonably be interpreted to include the decision to terminate an intervention, this requirement is adhered to in varying degrees. Some provinces present detailed reports to the NCOP setting out exactly why the intervention was terminated, others present much less detailed reports, and others fail to present at all. The result is that there is often no public record of why an intervention was terminated, or any indication of whether the intervention actually achieved its goals (and since there is usually no detailed terms of reference to guide the intervention, this task is rendered even more difficult).

Given that most municipalities that have been under administration are unable to show significant improvements in operational outcomes, financial management and/or governance two years after the intervention was terminated (and a notable number showed a deterioration) it is hard to avoid the conclusion that many of the decisions to terminate were not made on relevant criteria. The outcomes of interventions are discussed in more detail below.

22 In marked contrast, of course, to SOEs which regularly have recourse to bailouts even when there is little doubt that they got themselves into their current mess.

2.4. The outcomes

Our 2018 investigation into section 139 interventions showed conclusively that the majority of interventions reviewed could not be termed a long-term success. In the absence of clearly defined terms of reference for most interventions, against which success or failure could be determined, we developed a broad set of indicators against which outcomes could be measured. Many of the indicators reflected the financial position of the municipality, together with the audit outcome, comparing the position for the financial year before the intervention, during the intervention and for two years after the intervention (more details of the methodology utilised is set out in Annexure C). This analysis was not applied to municipalities that are still under an intervention, or where the intervention ended less than 12 months before the date of publication of this report, since the necessary comparative data sets were not yet available.

A significant number of interventions failed to record more than only marginal improvements in the selected indicators, and certainly the municipality could not be considered as having recovered to operational and financial good health. In some cases, the state of the municipality *deteriorated* during and after the intervention.

Another set of data which further suggests that many section 139 interventions have not succeeded is repeat interventions: 51 of the 140 interventions were in respect of municipalities where more than one intervention has been undertaken. Three municipalities (all in the North West) have attained the dubious achievement of being the site of *five* interventions over the past 11 years (albeit that one of those – in Ditsobotla – represented an intervention that was later set aside). Two municipalities (one in North West and one in KwaZulu-Natal) have been the site of four interventions over the past nine years. Repeat interventions are a very clear indication that an intervention has not been able to address the underlying causes of municipal failure. At the time of writing this report, 13 of the municipalities under administration were repeat offenders.

Our 2018 study indicated that the level of success of interventions is determined by three factors: the state of the municipality *prior* to the intervention, the ability of the *administrator* to address the underlying problems, and what happens when the intervention is *terminated*.

The worse the state of the municipality prior to the intervention – financial collapse, complete breakdown in governance structures, collapse of infrastructure, etc. – the less likely it is to be able to return to a stable financial and operating position. This is particularly true of smaller municipalities whose limited own revenue base means that they face the prospect of a period of not less than 7–10 years of extremely prudent fiscal management before they might be able to dig themselves out of their financial hole. The probability of recovery is reduced even further if creditors (notably Eskom) have been granted the right to seize municipal assets, or if the municipality cannot access funding to repair critical infrastructure (such as water and electricity meters) without which it cannot generate revenue. The municipality becomes trapped in a vicious circle: it cannot generate sufficient revenue to repair critical revenue-raising infrastructure, without which it cannot raise revenue. Thus, the longer the period of time during which a municipality operates in such a dire state before an intervention is initiated, the less likely it is that the intervention will have a meaningful impact.

In Thabazimbi, which was the site of an intervention from February 2016 to October 2016, our early 2018 site visit established that all the municipality's furniture and computers had been repossessed *twice* in the previous three years by creditors, along with many of its vehicles and other movable assets critical to service delivery. The municipality could not raise sufficient revenue to replace these, and was using equipment borrowed from a local mining company. At the time of our visit, most of the water meters in the municipality were not working, along with many of the electricity meters. No funds from provincial or national government had been made available to address this problem²³. Clearly this limited the municipality's ability to get itself back onto a sound financial footing, and this problem had not been

23 There was talk of a mining company subsidizing some costs in respect of water meters.

addressed during the intervention.

In contrast, our research showed that when interventions were initiated *before* the municipality reached a state of total collapse, they were more likely to be able to return to a sound operational and financial footing after the intervention.

In a significant number of municipalities, the administrator is unable to effect a significant improvement, and often makes things worse (by accident or by design). Some of our interviews in 2018 suggested that administrators may have questionable motives, and there are several reports of their benefitting from irregular contracts awarded during their tenure. Considerable damage can be done to a municipality during an intervention (when the appointed administrator is either highly incompetent or engages in corrupt activities or both). Emalahleni (Mpumalanga) provides a good example of how badly a section 139 intervention can go: the municipality received a disclaimer audit outcome during the entire period of the intervention – for the 2012/13, 2013/14 and 2014/15 financial years. Reticulation losses appeared to increase between the start of the intervention and the end (the quality of reporting in this area is very poor). Current liabilities exceeded current assets for the entire period of the intervention, casting doubt on the municipality's status as a going concern. At the start of the intervention, the municipality owed Eskom some R200m. At the end of the intervention in 2015 that amount was close to R700m (it is now some R3 billion). At the same time, the municipality's long-term debtors' book almost doubled, as they struggled to collect revenue.²⁴

There is little in the way of documented evidence to support allegations of outright corruption by administrators. However, even the best-intentioned and qualified of administrators is unlikely to be able to 'fix' a municipality that has reached a state of financial and operational collapse: the task is simply beyond one person who now has the responsibilities of seven or eight senior managers, and must try and address years of mismanagement and corruption, often in the face of considerable hostility and non-cooperation from those managers.

What happens *after* an intervention is also critical if the municipality is not simply to fall back into a state of crisis, which happens with depressing frequency. Our research has shown that two key factors that contribute to successful outcomes are the filling of section 56 posts with suitably skilled and experienced people, and the commitment of a cohesive Council to what is often a long period of fiscal austerity as the municipality struggles to regain financial equilibrium. Unfortunately, many interventions are unable to achieve these two basic outcomes, and to set the municipality up for recovery.

24 Notwithstanding this dismal performance, at the end of the intervention the administrator was appointed as the municipal manager, despite not meeting the statutory minimum qualifications for that post.



Photograph: Delwyn Verasamy

CHAPTER 3: THE LEGISLATION – WHAT IS ACTUALLY WRITTEN IN SECTION 139?

The previous chapter describes the administrative practises that have become the standard for initiating, implementing, overseeing and terminating interventions. In this section we take a closer look at exactly what the content of the applicable legislation is, something that very few of the key stakeholders in the implementation of section 139 interventions – provincial and national government officials, members of the NCOP, or municipal Councillors – appear ever to have done.

The most important pieces of legislation are section 139 itself, together with Chapter 13 of the Local Government: Municipal Financial Management Act of 2000 (the MFMA), which regulates interventions in terms of section 139(4) and (5).

As indicated above, the first iteration of section 139 focused on the failure of municipalities in respect of ‘executive obligations’, with later (2003) additions of paragraphs in respect of serious financial problems. The intentions of the section 139 framework are clear – to ensure a standardised and predictable response to both serious financial and operational problems in municipalities *before* they reach the point at which they threatened the delivery of services or prudent financial management. This *pre-emptive framework* was further intended to act as an ‘encouragement’ to local government to perform in a prudent and effective manner, because there would be some lower tolerance level below which municipal performance would not be permitted to fall. This ‘encouragement’ was underscored by the ultimate weapon in the arsenal of section 139 – the ability of province or national government to dissolve a Council which did not adhere to the remedial actions prescribed. The inclusion of this power in section 139 underscores the point that the ‘autonomy’ of local government was never considered to be infinite, but always subservient to the interests of residents and their Constitutional rights.

3.1. The content of the section 139 framework

The full text of section 139 is set out in Annexure A. It broadly sets out three sets of circumstances in which a province (or national government in some cases if a province fails to fulfil its obligations to do so) could intervene in a municipality. Section 139(1) deals with what is termed ‘failure to fulfil an executive obligation’, section 139(4) with failure to pass a budget or associated measures to give effect to a budget, and section 139(5) with serious financial problems. Each kind of problem has prescribed solutions to be implemented, with each set of solutions including the option for dissolution of the Council under certain circumstances (essentially if they do not act as required in respect of implementing remedial action). The full text of these three sections is set out below (all emphasis is our own):

139. (1) 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 —
- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
 - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to —
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) maintain economic unity; or
 - (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, *if exceptional circumstances* warrant such a step.

(4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive *must* intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and

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

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

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

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

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

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

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

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

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

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

A close reading of section 139 makes several issues very clear:

- i. There are different approaches to be adopted in respect of the underlying problem in the municipality: section 139(1) is intended to be invoked when a municipality fails to fulfil an executive obligation, section 139(4) when it fails to approve a budget and/or related issues, and section 139(5) is intended to be invoked when the municipality faces serious financial issues. **This means that the correct diagnosis of the problem is key to determining which part of section 139 should be invoked, since specific remedies have been legislated to address specific problems.**

Our research indicated that there appears to be a very serious problem with differentiating between circumstances that require a section 139(1) intervention and those that require a section 139(5) intervention (section 139(4) is generally used appropriately).²⁵ The current practise is that almost all interventions initiated are in respect of section 139(1) – the failure to fulfil an executive obligation. In turn, most of these opt for a section 139(1)(b) remedy – taking over responsibility for that obligation, which provinces have interpreted to mean sending in an administrator to take over all executive functions. But what exactly is the ‘executive obligation’ that the legislation is referring to? Most intervention documentation (where it is available) will generally present a long list of municipal failings (which usually includes many that are financial in nature, such as the inability to pay suppliers or severe cash flow problems) and lump these all under the heading ‘failure to fulfil an executive obligation’. This is not correct.

There is no detailed regulation associated with section 139(1) detailing exactly what an ‘executive obligation’ is in this respect, but could it be interpreted to mean ‘every executive function of the

²⁵ However, all municipalities have adopted unfunded budgets might have fulfilled the requirements for an intervention in terms of section 139 (4) since they have not passed regulation to ensure that their budget is funded.

municipality and its financial management' which is how it is currently (unofficially) defined? Probably not. In 2009, the Mquma judgement²⁶ dealt at length with the question of what an 'executive obligation' was in terms of section 139(1) and thus the meaning of a 'failure to fulfil an executive obligation'. The Court was clear (par 58) that "it does not include an obligation to approve a budget or any revenue raising measures, or a material breach of an obligation to provide basic services, or to meet its financial commitments which is 'as a result of a crisis in its financial affairs.'" These matters are specifically dealt with in sub-sections (4) and (5).²⁷ (This paragraph also implies that 'a material breach of an obligation to provide basic services' falls under section 139(5) if that breach is caused by a financial problem).

Instead, the court held that an 'executive obligation' had a fairly narrow definition, much narrower in fact than it is generally assumed to have in current practise (par 64): 'it is determined and limited by the functional areas assigned to municipalities by the Constitution and legislation as envisaged in section 156(1)(a) and (b)²⁷ of the Constitution, .. (and) there is no reason why it should be given a wider meaning than that applicable to the other two spheres of government.' Paragraph 66 specifically notes that 'The term "executive obligation" would also exclude obligations arising from other sources such as contract (our emphasis).'

That is, the court took the view that an 'executive obligation' means a function under the authority of a municipality, specifically the functions set out in Annexure 4, Part B and Annexure 5, Part B of the Constitution. We further believe that the fact that section 139 (1) makes specific reference to the need to 'maintain essential national standards or meet established minimum standards for the rendering of a service' is a clear indication that the legislation intended that it be applied in respect of serious problems with the delivery of a particular municipal service, rather than the entire executive authority of the municipality.

The Mquma judgement is not without its problems: Annexures 4 and 5 of the Constitution list all of the functions that fall under local government, but it seems unlikely that a provincial intervention is necessary in the case of a failure to execute one of the more minor functions, such as dog licensing. However, the judgement did not provide any insights into how the prioritisation of these functions for the purposes of section 139 interventions could be approached.

However, the clear implication is that section 139(1) is to be used *only* when a municipality is failing to deliver a specific municipal service, not when it is in a general state of financial collapse.

The analysis that we undertook in our 2018 study indicated very clearly that in the vast majority of interventions the municipality in question was not simply 'failing to fulfil an executive obligation' as defined by the Mquma judgement, but instead was facing a range of serious financial problems including all or some of the following: they could not raise sufficient revenue to cover their (inflated) costs; there was serious financial maladministration and corruption; they are not paying their service providers and/or their staff. The example of Thabazimbi outlined below is only one of many examples of municipalities in very similar circumstances which were then subjected to a section 139(1)(b) intervention. Almost all of the interventions currently in place are in terms of section 139(1)(b), when a brief document review of these municipalities indicates that they all face serious *financial* problems, in addition to poor service delivery.

The Mquma judgement was clear that the 'failure to fulfil an executive obligation' was not to be confused with a financial problem within a municipality that either was caused by or is the result of the failure to fulfil that executive obligation, insisting that if municipalities were failing in their service delivery obligations *because* of a financial crisis, then that financial crisis should be addressed by the application of section 139(5). That is, when a municipality faces problems that include both service delivery and financial crisis, addressing the financial crisis must either take priority, or – at least – be included alongside addressing the service delivery problem (in practise this would involve a combined section 139(1) and 139(5) intervention).

26 *Mquma Local Municipality and Another v Premier of the Eastern Cape and Others* (231/2009) [2009] ZAECBHC 14 (5 August 2009).

27 The sections cover a wide range of obligations, from water provision to road maintenance to dog licensing and waste management.

Our clear research finding from our 2018 study was that the appropriate part of section 139 that should have been applied in the vast majority of interventions was section 139(5) and NOT section 139(1) in isolation.

This is a critical issue, since the remedy prescribed under section 139(5) – and detailed in Chapter 13 of the MFMA - is completely different from that prescribed under section 139(1), and has been specifically designed to address serious financial problems in a municipality. The failure to use section 139(5) as it was intended also means that municipalities are not gaining access to particularly useful legislation: Part 3 of Chapter 13 of the MFMA – sections 151 to 156 – sets out a range of ways in which municipalities in severe financial distress can apply for relief to the courts (which relief includes the possibility of setting aside debts) and implement severe cost-cutting measures, including the retrenchment of non-essential staff.

The reason why provinces are selecting section 139(1) instead of section 139(5) probably reflects the history of the development of section 139, and the subsequent division of ‘ownership’ between COGTA and the provinces on one side, and National Treasury on the other, exacerbated and entrenched by the ongoing wrangling over who has ultimate authority over local government. The (theoretically) compulsory involvement of the Municipal Financial Recovery Service (MFRS), a unit within Treasury, in section 139(4) and section 139(5) interventions has probably further contributed to the avoidance of these parts of the legislation, as a result of that wrangling. This position was illustrated to us during our research by a provincial official who, when we asked why a particular municipality had not been placed under a section 139(5) intervention as it so obviously (to us) seemed to qualify for, and when that would involve Treasury’s MFRS unit, replied as follows: ‘We cannot be seen to be running to Treasury to solve problems that we are supposed to be solving ourselves. People expect that the province must take action, not pass responsibility to someone else.’

- ii. Section 139 differentiates between *discretionary* and *mandatory* interventions. In summary, section 139(1) interventions (which are intended to deal with problems around the delivery of a particular municipal service) are discretionary, but section 139(4) and section 139(5) interventions are mandatory. That is, if the municipality meets the criteria for these last two types of interventions, the province *must* intervene. There is clearly some kind of limited time period during which this intervention must take place, since section 139(7) sets out the following (our emphasis):

(7) If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5), the national executive²⁸ *must* intervene in terms of subsection (4) or (5) in the stead of the relevant provincial executive.

This mandatory and time limited intervention requirement reflects the underlying goal of the section 139 framework: **that problems in municipalities should be identified and addressed before they result in a collapse of the municipality’s finances.**

However, the majority of the municipal interventions carried out since 1998 – almost all of them implemented over the past ten years – have only taken place when the municipality has met all of the criteria to assess financial problems set out in Sections 138 and 140 of the MFMA *for an extended period of time* – many years in most examples. Consider Matlosana in North West (the municipality that had a 2013 intervention set aside by the NCOP because the situation ‘wasn’t that bad’). A section 139(1)(b) intervention was eventually implemented in 2015. In both the 2011/12 and 2012/13 financial years the municipality received a disclaimer audit opinion. In both of those years the AGSA also raised concerns around the municipality as a going concern: in 2011/2012 current liabilities exceeded current assets by R589 million (a current ratio of 0.5:1), and in 2012/13 current liabilities exceeded current assets by R263 million (and the current ratio had declined further, to 0.4:1).

²⁸ The ‘national executive’ is not specified, but the MFMA has been written to represent the national executive as National Treasury, and that appears to have become the general way in which the legislation is interpreted with respect to section 139(4) and 139(5).

In the 2011/2012 financial year the AGSA had estimated that irregular expenditure was some R800 million (and R257 million in 2012/13). In both years, councillors' remuneration exceeded what was legally permitted. The municipality owed large sums of money (no one seemed to be quite sure of the exact amounts) to Eskom and Midvaal Water Board. The municipality had also not paid the AGSA for outstanding audit fees, and had not been able to make its statutory payments to SALGA. The debtors' collection rate was under pressure, below 70 per cent and in 2013 the debtors book was standing at about R960 million (more or less equivalent to one year's billed revenue at the time). There were allegations of corruption and general maladministration by local residents.

In Thabazimbi (Limpopo), a section 139(1)(b) intervention was implemented in February 2016. The municipality had received a 'qualified with findings' audit outcome in the 2010/11 financial year and had then regressed to a disclaimer every year thereafter for the four years until the province decided to intervene – 2011/12, 2012/13, 2013/14 and 2014/15.

The 2013/14 audit report for Thabazimbi (i.e. two years *before* the intervention) stated that the municipality could not provide tender files and documentation for contracts awarded. In the same report, the AGSA raised the issue of Thabazimbi as a going concern, noting that current liabilities exceeded current assets by some R153 million and that there was '*significant doubt on the municipality's ability to operate as a going concern.*' The same audit report included the following note by the AGSA: '*Due to the limitation imposed on the scope of the audit by management, I have disclaimed my opinion on the financial statements. But for the legislated requirement to perform the audit of the municipality, I would have withdrawn from the engagement in terms of the ISAs.*' Clearly there were very serious financial management and governance problems in Thabazimbi years before the province took public note. At the same time, most creditors were not being paid and had approached the courts for judgements in their favour, seizing many of the municipality's assets. Their poor payment record meant that the municipality was unable to access trade finance, and most suppliers required an upfront payment before delivering goods or services.

The NCOP appears to be as ignorant of the mandatory nature of intervening in a municipality that meets the requirements of severe financial problems as COGTA: the official written reports of the NCOP in respect of Matlosana show that the relevant Committee had other objections to the intervention, all of which were – in our opinion – as problematic as '*it's just as bad as all the others.*' The first issue raised was that the Province had not consulted sufficiently with the municipality before making the decision to intervene, and had thus failed to observe 'the principle of respect for local governments (sic) autonomy'. This finding ignores the *statutory obligation* to intervene in terms of the legislation if certain conditions are met, and not on the basis of some mutual agreement with the municipality in question.

A 2017 NCOP – SALGA workshop on section 139 interventions resulted in '*NCOP House Chairperson, International Relations and Members Support, Ms Masefako Dikgale who facilitated the two-day workshop, welcom(ing) the proposal that section 139 interventions must be avoided at all costs.*'²⁹ The NCOP and SALGA has clearly misunderstood a critical principle of the section 139 framework – that municipal 'autonomy' is not infinite, but subservient to the greater goals of the developmental state. They also clearly missed the basic reason for the section 139 framework – that interventions should not be the last resort when the municipality had reached total collapse, but instead are a key tool to *prevent* such collapse.

One of municipal officials that we interviewed for our 2018 study put it like this: 'Section 139 interventions are a good idea in theory, but in reality they are just mopping up after the fact.'

The real problem, of course, is that the backstop that was specifically included in the legislation to prevent a situation where a province – for whatever reason – failed to fulfil its mandatory obligations has simply been ignored. Section 139(7) makes it crystal clear that if the province does

29 <https://www.parliament.gov.za/news/ncop-delegates-agree-section-139-interventions-must-be-avoided-all-costs>

not intervene in a set of circumstances that meet the requirements of a section 139(4) or section 139(5), the national executive must. To date, this has only ever happened once. In Emalahleni, a community group had to go to court in 2018 to force a section 139(5) intervention by the national executive, despite repeated requests, and despite the fact that their municipality had clearly met the criteria for such an intervention for more than two years.

A close reading of section 139 shows that the legislation **only intended for administrators to be appointed under very special circumstances** – when the municipal Council is dissolved for a reason prescribed in the legislation. *Only* in those circumstances – the dissolution of Council – an administrator is appointed, and only remains in place until the new Council is elected into office.

Section 139(1)(b) does state that a province may take responsibility for a particular executive obligation – which we believe was intended to refer only to a particular area of service delivery, such as water supply – *only* to the extent necessary to maintain essential or minimum standards for that particular executive obligation. Nowhere is the current situation – where one person is appointed by the province to take over all the management functions of the municipality *while the Council is still in office* – indicated in this legislation.

Similarly, section 139(4) and (5) also only make reference to the use of an administrator under very particular circumstances, if the Council has been dissolved and only until the new Council is elected. Section 139(5) does make provision for the provincial/national executive to assume responsibility for the implementation of the financial recovery plan if the Council refuses to do so, but not under an administrator model.

The use of an administrator to take over all the executive functions of the municipality while the Council is still in office is not a remedy included anywhere in section 139. This practise thus has no basis in law.

The (fundamentally illegal) use of administrators to assume responsibility for all a municipality's executive obligations – and the ensuing problems for which the municipality's residents inevitably carry the bill – represents an administrative hangover from the previous system of inter-governmental relations, where local government occupied a clear subservient position with respect to provinces and national government. Under that system, the *provincial administrator* had considerable power to dictate municipal policies and to overturn local Council decisions. This administrative tradition is clearly deeply entrenched, and has been strong enough to continue through the significant constitutional changes embodied in section 139. As a result, the provincial administrator zombie of administrations past has been kept alive, to devastating effect.

- iii. Even in the few examples where section 139(5) has been used as the basis for an intervention, it is not being implemented as the legislation states it should be. The section 139 framework clearly indicates that the intended remedy is the development of a financial recovery plan (and Chapter 13 of the MFMA in turn makes it clear that this plan can **only** be drafted by the Municipal Financial Recovery Service within National Treasury) and that the Council is obliged to adopt and implement this plan. Unless there is legal pressure exerted by the community (as in the case of Emalahleni) the (mandatory) involvement of the MFRS has been ignored. This is the situation in Kannaland in the Western Cape, where municipal officials told us that they had never seen one single representative of National Treasury, and were not even aware of the existence of the MFRS, despite being under an extended section 139(5) intervention.

The failure of the MFRS to fill its constitutional obligations appears to be the result of a number of factors. Firstly, there is clearly a political motivation for the province to exclude the MFRS, on the basis that *'people want to see that we are doing something, not running to national to fix our problems'*. The political imperative of appearing in control of the situation seems more important to provincial officials than actually fixing the municipality.

Secondly, recent experience in Emalahleni has suggested that the MFRS is in fact not capable of meeting its key mandate, due to capacity and resource constraints. In Emalahleni, the local community group that had pushed for a section 139(5) intervention specifically to obtain the (they assumed) superior skills of the MFRS involved in addressing their municipality's serious financial problems later threatened to return to court because they judged the financial recovery

plan produced by the MFRS to be of such poor quality. As evidence, they point to the municipality's outstanding account with Eskom, which has risen by some R800 million since the start of the intervention in late 2018, and is now close to R3 billion.

OUTA has registered similar complaints in respect of the financial recovery plan prepared by the MFRS for Emfuleni (Gauteng). In both municipalities, civil society groups alleged that the MFRS had ignored all the regulation requiring the public to have input into the financial recovery plan.

3.2. Summary: what underpins poor section 139 outcomes?

Section 139 of the Constitution represents an effort to put in place legislation that should ensure that no municipality ever reaches the state of operational and financial collapse that so many of them are currently in. The main reason why the legislation is deemed to be of little use is because none of the institutions responsible for its implementation have acted as the legislation intended. As a result, the actual practise of interventions reflects a continuation of deep rooted administrative traditions, together with selective (and usually incorrect) application of random bits of the actual legislation. Specifically:

- a. The section 139 framework clearly intended that interventions took place *before* a municipality reached a state of total collapse. Instead, interventions are largely being used as some kind of last-resort hopeless effort well after the municipality has collapsed, or being delayed as long as possible in order to 'respect the autonomy' of local government. Our research shows clearly that this approach has resulted in a huge social and fiscal cost that could have been avoided, as well as greatly increasing the likelihood that the municipality may never recover fully.
- b. None of the implementing or oversight authorities are applying their collective minds to the selection of the correct provision of section 139, and as a result are generally using the inappropriate sections, with serious negative consequences.
- c. Our research indicated that the current administrator deployment model generally either fails to address the underlying problems or even makes them worse. The bottom line is that *those administrators should never have been appointed in the first place.*
- d. Although the legislation is (mostly) very clear, there is huge variation being exercised in terms of whether or not an intervention will take place, as well as how they proceed. Specifically, the mandatory nature of section 139(5) interventions has simply been ignored. There is clearly a strong political motivation in the decision of whether or not to implement an intervention, and the selection of what kind of intervention to implement.
- e. The NCOP appears unable to effectively exercise its oversight obligations in the absence of clear regulated guidelines, and is probably making a bad situation even worse.
- f. There is a clear legislative obligation on provinces to initiate section 139(5) interventions when the criteria set out in the MFMA are met³⁰, and if they do not do so, there is a clear legislative obligation on National Treasury to do so. We should not have a situation where residents are forced to take government to court to enforce their clear constitutional obligations. While National Treasury's stance of 'you got yourselves into this mess, you get yourselves out of it' may seem to be a good example of tough fiscal discipline, it is fundamentally untrue: municipalities got into that mess as a result of a *combined effort* between their own poor management and National Treasury's avoidance (or ignorance) of its obligations in terms of section 139. It is inevitably the poorest residents in a municipality that will suffer because of years of financial mismanagement and corruption that could have been avoided. If we assume that most of the interventions over the past twenty years should have been in terms of mandatory interventions which did not materialise – in large part because of national government's failure to meet its mandatory obligations - the scale of the resources lost as a result of this failure becomes clear.
- g. The Municipal Financial Recovery Service (MFRS) is intended to play a key role in the

30 We do believe that the relevant sections of the MFMA need to be reviewed because in part they are conflicting, but the combined content of sections 138 and 140 still provide a very good basis on which to develop a set of comprehensive criteria with which to assess severe financial problems in municipalities.

implementation and management of section 139(5) interventions, but the unit appears unable to fulfil that mandate effectively. In the few examples where the MFRS has actually been involved in an intervention,³¹ there have been multiple and serious concerns raised about the quality and efficacy of its work. The inability of the MFRS to fulfil its key legislated mandate represents a significant gap in the implementation framework.

- h. Correct application of the MFMA in section 139(5) interventions would provide powerful tools to address mismanagement, and provide a disincentive to future mismanagement. Specifically, the legislation allows for application to the courts to retrench all non-essential staff (the excessive inflation of the organogram for political reasons is often a reason for financial collapse) and to set aside contracts if there is good reason to do so. These tools are not being taken advantage of, and it is not clear exactly why (although their application would probably create some political backlash, particularly the retrenchment of non-essential staff).

An effectively functioning municipal financial emergencies framework depends critically on the intervening authority being able to distinguish correctly the kind of intervention required, and then applying the appropriate legislation in the correct manner. We believe that all the serious problems that we have documented in this study can be traced back to this central issue.

31 Notably Emalahleni and Emfuleni.



Photograph: Delwyn Verasamy

CHAPTER 4: WHAT NEEDS TO BE DONE?

How could we go about addressing the current dismal state of affairs and ensuring that the section 139 framework actually delivers what was intended?

We believe that the problems around section 139 have been caused in part by a lack of clear guiding legislation that applies to the *entire* intervention framework. At present, we have Chapter 13 of the MFMA that provides clarity on certain parts of the framework with respect to section 139(4) and section 139(5), but does not cover the entire framework, and in part (see below) is actually contributing to the confusion around what paragraphs must be applied at what point.

In 2013, COGTA prepared the Intergovernmental Monitoring, Support and Intervention Bill (IMSI) which was intended in part to provide such clarity. The Bill was never passed by Parliament, which in hindsight is probably a good thing: although it clarified some important issues around the process of section 139 interventions, it failed to do so in respect of some critical issues. For example, it failed to provide a clear definition of exactly what constituted an ‘executive obligation’ for the purposes of section 139 interventions, simply stating that ‘executive obligation’ was to be defined as it is defined in section 139, when the problem is that section 139 does not contain such a definition. In addition, the Bill did not make it clear that administrators were *only* to be appointed if the Council had been dissolved, and was vague on the details of exactly how a province would take over responsibility for an executive obligation. Most importantly, IMSI focused almost entirely on section 139(1) interventions, with only a passing mention of the other options, reinforcing the idea that this section ‘belongs’ to COGTA. What is required is *one piece of over-arching legislation* – that can be ‘owned’ by both COGTA and Treasury and includes appropriate parts of existing legislation (including the MFMA) – that will guide the entire intervention framework.

This legislation needs to address the following key issues:

- It must ensure that section 139 is implemented as intended, keeping in mind both the spirit and the letter of the law. This implies that section 139 is no longer seen as an intervention of last resort when a municipality has collapsed, but as a framework to prevent such collapse.
- Standardised and clear regulation of the entire section 139 framework, including the provision of clear definitions, and the development of detailed threshold levels across a range of indicators. Contradictory regulation (such as certain paragraphs of Chapter 13 of the MFMA – see below) must be revised so that there is one clear and unambiguous framework.
- Standardised and transparent administrative practises must be introduced across all types of interventions.
- Supporting institutions must be strengthened.

All of these proposals are interlinked, and addressing these will result in a comprehensive ‘Section 139 Implementation Framework’. This needs to be developed and implemented across the responsible line departments as a matter of urgency. In the following sections we have discussed some of these issues in more detail.

4.1. The spirit of the legislation must be implemented as intended

The section 139 framework intended that interventions – which respected and worked within the IGR that included autonomous local government – would be implemented in order to *prevent* operational and financial collapse in municipalities. That intention must be reflected in administrative practise, which means that **the level of ‘allowable’ municipal failure before an intervention is initiated must be raised significantly**. Section 139 should no longer be seen as the ‘tool of last resort’ to be used when all else has failed and the municipality is at rock bottom. Instead, it needs to be seen as one of the tools³² that is available *before* the municipality reaches that position, within a broader policy approach which is based on a clear understanding that there is some kind of line which a municipality may not cross, in the interests of the greater social good and which overrides ‘autonomy’.³³

Residents and municipalities require clarity as to exactly when interventions will be initiated, and the potential to use (or not use) interventions for political reasons must be removed as far as possible. This means that we need a detailed list for each part of section 139 clearly detailing the point at which an intervention will be triggered, as well as which part of the legislation will be applied. In the case of executive obligations (as we have defined them) this would be something like minimum service delivery standards not being met for a prescribed period of time. In the case of section 139(5), it would be clear indicators of serious financial problems or mismanagement, and so on.

We thus require regulation that contains detailed thresholds across critical service delivery and financial management indicators, below which a municipality will automatically become a *potential* intervention site. The basis for the drafting of these thresholds could be a combination of the various minimum standards specified for particular municipal service delivery areas, together with details of how financial problems in municipalities are to be assessed, such as is currently contained in paragraphs 138 and 140 of the MFMA. Once a municipality has breached these thresholds, an immediate investigation should be initiated by the province, to be concluded within a limited period of time (say 90 days). The outcome of this investigation should be a detailed report clearly indicating the following:

- The nature and depth of the problems within the municipality, with specific reference to the threshold levels across all indicators referred to above.
- A recommendation for why an intervention is/is not required, with details of how that decision was made (particularly so that decisions not to intervene are made more transparent).

The various parts of section 139 must be applied correctly, and must match the intervention to the most pressing/underlying problems within the municipality. This means that the blanket use of section 139(1) (b) interventions must come to an end, as must the incorrect deployment of administrators. The various remedies for particular problems must be implemented as they are contained in both the spirit and the letter of section 139. If we apply the findings of the Mnquma judgement, this implies that serious financial problems must *always* be addressed by the use of section 139(5), and that provinces should no longer be permitted to apply section 139(1) in isolation in these instances. It also implies that National Treasury will have an obligation to intervene in a municipality that faces such problems even if the province has decided not to intervene after the initial assessment period referred to above.

32 The wider municipal support environment also requires close scrutiny: a considerable amount of money is expended each year by national and provincial government to ‘support’ local government and to improve operational and governance outcomes, but only achieves limited impact.

33 On the understanding that the constitutional provision of ‘autonomous’ local government was never intended to extend to the ability to undermine its constitutional obligations to residents or to good governance. That is, a municipality does not have the ‘right’ to be a badly managed and dysfunctional place just because it is ‘autonomous’.

4.2. Standardised and clear regulation of the entire section 139 framework is required

The misapplication of section 139(1)(b) has been caused in part by a lack of clarity on exactly what an ‘executive obligation’ is for the purposes of this legislation. The draft IMSI stated that an ‘executive obligation’ means an obligation placed on a municipality in terms of the Constitution or legislation as contemplated in section 139(1) when of course the problem is that there is no such detailed definition, or further clarity in section 139(1). This circular argument would not have addressed the problem.

We need final clarity (from the Constitutional Court if necessary) as to exactly how an ‘executive obligation’ is to be understood for the purposes of this legislation. Should it, for example, be limited to the definition offered in the Mngquma judgement? Should it be further limited to ‘critical’ service delivery areas? (Presumably no one believes that a provincial intervention should be initiated in the case of failure to fulfil an executive obligation in respect of dog licensing, even though it is a municipal obligation in terms of section 156).

It would also help to have clarity on exactly how long the national executive should reasonably wait for the provincial executive to act in the case of a mandatory intervention (section 139(4) and (5)) before stepping in (in terms of section 139(7)) since this is nowhere indicated in the existing legislation.

4.3. Contradictory regulation must be revised and brought into line

It should be noted that the MFMA is in part contributing to the confusion around what is a ‘failure to fulfil an executive obligation’ (i.e. what should result in a *discretionary* section 139(1)(b) intervention) and what is a serious financial problem (i.e. that should result in a *mandatory* section 139(5) intervention). Chapter 13 of the MFMA was intended to regulate the application of Sections 139(4) and 139(5) of the Constitution, *not* section 139(1). Section 139(1) specifically deals with the failure to fulfil an executive obligation. However, section 138 of the MFMA lists ‘less serious’ financial problems that can be invoked to justify a *discretionary* intervention in terms of section 139(1)(b), while Section 140 lists the more serious financial problems that can be invoked to justify a *mandatory* intervention in terms of section 139(5). By (erroneously) reducing the choice between the two very different kinds of interventions as one between ‘less serious’ and ‘more serious’ financial problems, instead of the correct differentiation between executive obligation and financial problems, the MFMA has merely succeeded in confusing the issue even more.

The situation is exacerbated further by paragraph 136 (2) of the MFMA which states:

(2) If the financial problem has been caused by or resulted in a failure by the municipality to comply with an executive obligation in terms of legislation or the Constitution, and the conditions for an intervention in terms of section 139(1) of the Constitution are met, the provincial executive must promptly decide whether or not to intervene in the municipality.

This further confuses the issue: serious financial problems (such as the inability to collect sufficient revenue to pay Eskom) inevitably result in service delivery problems (Eskom cuts the power). The Mngquma judgement suggests that in these circumstances, it is a section 139(5) intervention that must be implemented, since the failure to fulfil an executive obligation has been caused by a financial problem.

These sections of the MFMA support the (completely wrong) idea that discretionary interventions (i.e. section 139(1)) can be invoked to deal with financial problems, when the correct section is actually 139(5). These areas of confusion need clear resolution – it must be clearly specified under exactly what circumstances what kind of intervention is to be implemented.

4.4. We need much better, standardised and transparent approaches to interventions

All interventions should be accompanied by a detailed terms of reference as to what it aims to achieve, how and by when. The implementing authority must issue monthly reports on progress. The decision to terminate an intervention must have clear reference to the initial problem, as well as that terms of reference. In addition, all of the available legislation (such as the parts of the MFMA that allow for retrenchment of excess staff and the setting aside of contractual obligations) must be used as they are required. Not only will these be invaluable in getting municipalities back onto a sustainable footing, their use will provide an effective deterrent to those who use staffing and contracts as political currency, since these decisions can then be reversed.

Greater transparency and disclosure before and during an intervention will go a long way towards removing the opportunities to use interventions as political tools.

4.5. Supporting institutions must be strengthened

Our analysis indicates that there are two very problematic institutions within the current section 139 framework – the NCOP and the MFRS.

It is quite clear that the NCOP is unable to exercise any meaningful oversight over section 139 interventions, and their poor understanding of the legislation and resulting completely irrational decisions around the approval of interventions is doing considerable harm. In addition, the fact that the NCOP can take up to six months to decide to disapprove an intervention is extremely disruptive to a framework that needs to work as quickly as possible to prevent long-term damage to a municipality. At the same time, some oversight is required in order to ensure that the new regulations are adhered to, and we are reluctant to propose constitutional amendments if these can be avoided.

We have also noted that the current 28-day period granted to COGTA to approve or disapprove is problematic, but under our proposed new system, this should no longer be an issue, since COGTA will now have the detailed report of the preliminary investigation outlined above on which to make that assessment. We recommend that the oversight role of the NCOP is clarified in the proposed new legislation: an effective section 139 framework requires clear and relevant guidelines that the NCOP *must* be required to apply in coming to their conclusions, so that the process is no longer so *ad hoc*.

The MFRS is intended to fill a critical role in the section 139 framework, and in our proposed standardised approach that role will be even greater, since it is likely that the correct application of the legislation will result in significantly more section 139(5) interventions. The current form of the MFRS is clearly unable to cope with those increased obligations. The unit requires considerably more resources and an operating mandate that is better aligned with the goal of prioritising effective and efficient municipalities.

In addition, if the over-arching regulatory framework envisaged above is put in place, it will require *additional* institutions to effectively implement it. The institutional gaps identified at present (but which could change depending on the details contained in the required new legislative framework) are as follows:

1. A dedicated team to assess the situation in a municipality once the threshold levels referred to above have been breached: this would go a long way towards neutralising some of the political interference in these decisions, and would also make use of specialists across a variety of functional and financial management areas to undertake these assessments.
2. In addition to a better capacitated MFRS, an improved section 139 framework will require a similar entity (which may be a 'virtual' entity, only calling on resources as they are needed) to manage interventions in terms of section 139(1), which deal with service delivery failures. The successful implementation of these interventions requires access to experts in a variety of operational areas.

POST SCRIPT

As we concluded the drafting of this report, National Treasury released a briefing from its Budget Council held on 21st to 22nd August 2019. The following extract is relevant:

During its deliberations, members of the Council were inducted on key issues that affect the intergovernmental system, including as it relates to the financial oversight over municipalities. Some of the key resolutions from the meeting included:

- An endorsement of a new strategy to improve the financial sustainability of local government. Within this context, the Budget Council resolved, amongst other things, to strengthen the framework for intervention in municipalities that are in crisis.

The National Treasury will engage the Department of Cooperative Governance on the working relationship between the two departments on resolving challenges in municipalities. In this regard, the Budget Council agreed that a Memorandum of Understanding should be formalized between the Ministers of the two departments.

We are hopeful that this represents a step towards better (more correct) implementation of the section 139 framework, and that this will represent a joint effort between the two departments.



Photograph: Delwyn Verasamy

ANNEXURE A: SECTION 139

Provincial intervention in local government

139. (1) 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—

- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to

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- (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
- (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
- (iii) maintain economic unity; or
- (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

(2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b)—

- (a) it must submit a written notice of the intervention to—
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces, within 14 days after the intervention began;
- (b) the intervention must end if –
 - (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or
 - (ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.

(3) If a Municipal Council is dissolved in terms of subsection (1)(c)—

- (a) the provincial executive must immediately submit a written notice of the dissolution to—
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces; and
- (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.

(4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and—

- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
- (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

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

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

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

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

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

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

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

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

(6) If a provincial executive intervenes in a municipality in terms of subsection (4) or (5), it must submit a written notice of the intervention to—

(a) the Cabinet member responsible for local government affairs; and

(b) the relevant provincial legislature and the National Council of Provinces, within seven days after the intervention began.

(7) If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5), the national executive must intervene in terms of subsection (4) or (5) in the stead of the relevant provincial executive.

(8) National legislation may regulate the implementation of this section, including the processes established by this section.

ANNEXURE B: LIST OF MUNICIPALITIES UNDER SECTION 139 INTERVENTIONS

MUNICIPALITY	PROVINCE	SECTION(S)	START	END
1998/1998				
Warrenton/Magareng	N Cape	S 139 (1) (b)	Jan 98	Dec 2000
Butterworth-Mnquma	E Cape	S 139 (1) (b)	Mar 98	Court agree
Ogies/Emalahleni	Mpumalanga	S 139 (1) (b)	May 99	Dec 2000
1999/2000				
Wedela/Merafong	Gauteng	S 139 (1) (b)	Aug 99	Dec 2000
Viljoenskroon/Moqhaka	Free State	S 139 (1) (b)	Sep 99	Dec 2000
Tweeling	Free State	S 139 (1) (b)	Jul 99	Dec 2000
Stilfontein/Klerksdorp	NW	S 139 (1) (b)	Jul 99	Dec 2000
Noupoort/Umsobomvu	N Cape	S 139 (1) (b)	Aug 99	Dec 2000
2003/2004				
Mafikeng LM	NW	S 139 (1) (b)	Sept 03	Mar 04
Lekwa Teemane LM	NW	S 139 (1) (b)	Jan 04	May 04
2004/2005				
King Sabata Dalinyebo LM	E Cape	S 139 (1) (b) + S 139(4)	Jul 04	Oct 04
Elundini LM	E Cape	S 139 (1) (b)	Nov 04	Aug 05
Moqhaka LM	Free State	S 139 (1) (b)	Dec 04	Feb 05
Phumelela LM	Free State	S 139 (1) (b)	Dec 04	Jun 05
Ngqushwa LM	E Cape	S 139 (1) (b)	Dec 04	Jan 05
Thaba Chweu LM	Mpumalanga	S 139 (1) (b)	Jan 05	Jul 06
2005/2006				
Abaqulusi LM	KZN	S139 (1) (c)	Nov 05	Mar 06
2006/2007				
Oudtshoorn LM	W Cape	S 139 (1) (b)	Mar 07	Sep 07
2007/2008				
Beaufort West LM	W Cape	S 139 (1) (a)	Oct 07	Feb 08
Central Karoo DM	W Cape	S 139 (1) (a)	Oct 07	Feb 08
Utrecht (eMadlangeni) LM	KZN	S 139 (1) (b)	Aug 07	Jun 09
Amajuba DM	KZN	S 139 (1) (b)	Dec 07	Jun 09
Umzinyathi DM	KZN	S 139 (1) (b)	Dec 07	Jun 09
Newcastle LM	KZN	S 139 (1) (b)	Dec 07	Jun 09
Mbombela LM	Mpumalanga	S 139 (1) (b)	Dec 07	Sep 08
Distobotla LM	North West	S 139 (1) (b)	May 08	Apr 09
Amajuba DM	KZN	S 139 (1) (c)	Jun 08	Jun 08
Xhariep DM	Free State	S 139 (1) (b)	May 08	Jun 09
Mohokare LM	Free State	S 139 (1) (b)	May 08	Jun 09
2008/2009				
Mnquma LM	E Cape	S139 (1) (c)	Apr 09	Aug 09
Pixley Ka Seme LM	Mpumalanga	S139 (1) (b)	Feb 09	Apr 11
Alfred Nzo DM	E Cape	S 139 (1) (b)	Apr 09	Nov 09

MUNICIPALITY	PROVINCE	SECTION(S)	START	END
Koukamma LM	E Cape	S 139 (1) (b)	Apr 09	May 11
2009/2010				
Ngaka Modiri Molema DM	N West	S139 (1) (b)	Jul 09	Jul 10
Mkhondo LM	Mpumalanga	S 139 (1) (b)	Jul 09	Feb 11
Nokeng Tsa Taemane LM	Gauteng	S 139(5)	Jul 09	May 11
Lekwa LM	Mpumalanga	S 139 (1) (b)	Oct 09	Jun 11
Thaba Chweu LM	Mpumalanga	S 139 (1) (b)	Oct 09	Dec 10
Thabo Mafutsanyana DM	Free State	S 139 (1) (b)	Nov 09	Sep 10
Indaka LM	KZN	S 139 (1) (b)	Nov 09	Dec 13
Nala LM	Free State	S139 (1) (b)	Dec 09	May 11
Masilonyana LM	Free State	S 139 (1) (b)	Dec 09	May 11
Sundays River Valley LM	E Cape	S 139 (1) (b)	Feb 10	May 11
Okhahlamba LM	KZN	S 139 (1) (b)	Dec 09	Jul 12
Umlhlabuyalingana LM	KZN	S 139 (1) (b)	Dec 09	Jun 11
Thembisile Hani LM	Mpumalanga	S 139 (1) (b)	Apr 10	May 11
Stellenbosch LM	W Cape	S139 (1) (b)	Apr 10 (?)	?
Msunduzi LM	KZN	S 139 (1) (b)	Mar 10	May 11
Madibeng LM	North West	S 139 (1) (b)	Mar 10	May 11
Tswaing LM	North West	S 139 (1) (b)	Mar 10	May 11
Naledi LM	Free State	S139 (1) (c)	May 10	Jul 10
2010/2011				
Moses Kotane LM	North West	S 139 (1) (b)	Jul 10	May 11
Mafikeng LM	North West	S 139 (1) (b)	Jul 10	May 11
Overberg DM	W Cape	S139 (4)	Jul 10 (?)	??
2012/2013				
Swellendam	W Cape	S 139 (1) (b)	Oct 12	Oct 12
Mtubatuba LM	KZN	S 139 (1) (b)	Sep 12	Jan 15
Madibeng LM	North West	S 139 (1) (b)	Dec 12	Jan 13
Imbabazane LM	KZN	S 139 (1) (b)	Jan 13	Aug 16
Abaqulusi LM	KZN	S 139 (1) (b)	Mar 13	Mar 15
Maquassi Hills LM	North West	S 139 (1) (b)	Apr 13	Jun 14
Mnquma LM	E Cape	S 139 (1) (b)	Mar 13	Sep 13
Umzinyathi DM	KZN	S 139 (1) (b)	Apr 13	Dec 13
Ditsobotla LM	North West	S 139 (1) (b)	Apr 13	Aug 16
Matlosana LM	North West	S 139 (1) (b)	Apr 13	Jun 14
Bushbuckridge LM	Mpumalanga	S 139 (1) (b)	Apr 13	Dec 14
Emalahleni LM	Mpumalanga	S 139 (1) (b)	Apr 13	Mar 15
uThukela DM	KZN	S 139 (1) (b)	May 13	Dec 13
Ugu DM	KZN	S 139 (1) (b)	May 13	Dec 13
2013/2014				
Umvoti LM	KZN	S 139 (1) (b)	Jul 13	Jun 15
Oudtshoorn LM	W Cape	S 139(4)	Jul 13	Feb 14
Indaka LM	KZN	S 139 (1) (a)	Dec 13	Mar 15
Madibeng LM	North West	S 139 (1) (b)	Feb 14	Mar 14
Mogalakwena LM	Limpopo	S 139 (1) (b)	Mar 14	Jun 14

MUNICIPALITY	PROVINCE	SECTION(S)	START	END
2014/2015				
Ngaka Modiri Molema DM	North West	S 139 (1) (b)	Jul 14	Aug 14
Mpofana LM	KZN	S 139 (1) (c)	Sep 14	Dec 14
Inkwanca LM	E Cape	S 139 (1) (c)	Sep 14	Nov 14
Ngaka Modiri Molema DM	North West	S 139 (1) (c)	Sep 14	Dec 14
Makana LM	E Cape	S 139 (1) (b)	Sep 14	Feb 15
Mpofana LM	KZN	S 139 (1) (a)	??	?
Matlosana LM	North West	S 139 (1) (b)	Jan 15	Aug 16
Mtubatuba LM	KZN	S 139 (1) (c)	Jan 15	May 15
Makana LM	E Cape	S 139 (1) (b)	Mar 15	Jul 15
Madibeng LM	North West	S 139 (1) (b)	Mar 15	Aug 16
Ngaka Modiri Molema DM	North West	S 139 (1) (b)	Mar 15	Aug 16
Tswaing LM	North West	S 139 (1) (b)	May 15	Aug 16
Mtubatuba LM	KZN	S 139 (1) (a)	May 15	Aug 15
Ventersdorp LM	North West	S 139 (1) (b)	Mar 15	Aug 16
2015/2016				
Oudtshoorn LM	W Cape	S 139 (1) (b) + S 139(4)	Jul 15	Aug 16
Indaka LM	KZN	S 139 (1) (b)	Jul 15	Aug 16
Umkhanyakude DM	KZN	S 139 (1) (b)	Oct 15	Nov 17
Ditsobotla LM	North West	S 139 (1) (c)	Jan 16 (?)	
Tswaing LM	North West	S 139 (1) (c)	Jan 16 (?)	
Ventersdorp LM	North West	S 139 (1) (c)	Jan 16 (?)	
Thabazimbi LM	Limpopo	S 139 (1) (b)	Feb 16	Oct 16
Ingwe LM	KZN	S 139(4)	May 16	Aug 16
Mafikeng LM	North West	S 139 (1) (b)	Jun 16 (?)	Jun 17 (?)
Lekwa Teemane LM	North West	S 139 (1) (b)	Jan 16 (?)	Jun 17 (?)
Ditsobotla LM	North West	S 139 (1) (b)	Jan 16 (?)	Jun 17 (?)
2016/2017				
Mamusa LM	North West	S 139 (1) (b)	Jul 16 (?)	Aug 16 (?)
Jozini LM	KZN	S 139 (1) (b)	Jul 16 (?)	Jul 16 (?)
Nquthu LM	KZN	S 139 (1) (b)	Oct 16	Feb 17
Umzinyathi DM	KZN	S 139 (1) (b)	Oct 16 (?)	Current
Kannaland LM	W Cape	S 139(5)	Dec 16	Current
Emadlangeni LM	KZN	S 139 (1) (b)	Jan 17	Mar 19
Nquthu LM	KZN	S 139 (1) (c)	Feb 17	May 17
Mafube LM	Free State	S 139 (1) (b)	Mar 17	Current
Masilonyana LM	Free State	S 139 (1) (b)	Mar 17	Current
2017/2018				
Metsimaholo	Free State	S 139(4)	July 17	Current
eDumbe	KZN	S 139 (1) (b)	July 17	Current
Maluti-A-Phofung	Free State	S 139 (1) (b)	Feb 18	Current
Nkosasana Dlamini-Zuma	KZN	S 139 (1) (b)	Mar 18	Mar 19
Emfuleni	Gauteng	S 139 (1) (b)	June 18	Current
Great Kei	EC	S139 (1) (b)	June 18	Current
2018/2019				
Enoch Mgijima	EC	S 139 (1) (b) & S 139(5)	Aug 18	Current

MUNICIPALITY	PROVINCE	SECTION(S)	START	END
Mahikeng	NW	S 139 (1) (b)	Sept 18	Current
Kagisano-Molopo	NW	S 139 (1) (b)	Sept 18	Current
Ramotshere Moiloa	NW	S 139 (1) (b)	Sept 18	Current
Ditsobotla	NW	S 139 (1) (b)	Sept 18	Current
Kgetlengrivier	NW	S 139 (1) (b)	Sept 18	Current
Maquassi Hills	NW	S 139 (1) (b)	Sept 18	Current
Naledi	NW	S 139 (1) (b)	Sept 18	Current
Ngaka Modiri Molema DM	NW	S 139 (1) (b)	Sept 18	Current
uThukela DM	KZN	S 139 (1) (b)	Sept 18	Current
Emalahleni LM	Mpumalanga	S 139(5)	Oct 18	Current
Endumeni	KZN	S 139 (1) (b)	Dec 18	Current
Mpofana	KZN	S 139 (1) (b)	Dec 18	Current
Inkosi Langalibalele	KZN	S 139 (1) (b)	Dec 18	Current
Amahlathi	EC	S 139 (1) (b) & S 139 (5)	Feb 19	Current
AbaQulusi	KZN	S 139 (1) (b)	Mar 19	Current
Mtubatuba	KZN	S 139 (1) (b)	Mar 19	Current
Richmond	KZN	s 139 (1) (b)	Mar 19	Current
Msunduzi	KZN	S 139 (1) (b)	Apr 19	Current
Phokwane	N Cape	S 139 (1) (b)	Apr 19	Current
Mamusa	NW	S 139 (1) (b)	May 19	Current
Lekwa Teemane	NW	S 139 (1) (b)	May 19	Current
Ratlou	NW	S 139 (1) (b)	May 19	Current
JB Marks	NW	S 139 (1) (b)	May 19	Current
Tswaing LM	NW	S 139 (1) (b)	May 19	Current
Madibeng LM	NW	S 139 (1) (b)	May 19	Current
Dr Ruth Mompoti DM	NW	S 139 (1) (b)	May 19	Current

KEY

First of multiple interventions	25
Second intervention	14
Third intervention	7
Fourth intervention	2
Fifth Intervention	3

Intervention not approved/overtaken by court

Beaufort West and Central Karoo District were in a related intervention, arising from one event

Amajuba, Umzinyathi and Newcastle were under a joint intervention, related to Uthukela Water

ANNEXURE C: METHODOLOGY³⁴

1. Compilation of the inventory of interventions.

In order to compile the detailed inventory of interventions – given that no such official list exists – the following two-phase approach was adopted:

- i. An initial review of existing documentation and research on section 139 interventions. This review covered the following data sources:
 - A list of interventions up to 2017 supplied by COGTA: This list highlighted the start and end dates of the interventions and identified what part of section 139 had been invoked, but contained very limited information around the details of why the intervention had taken place, how it had been managed, or what the outcome of the intervention had been.
 - Publicly available documentation around section 139 interventions that had been submitted to the NCOP, in terms of the statutory obligation of provinces to inform the NCOP of these interventions. For some of the interventions, very detailed information was obtained from this source, but it was also clear that many provinces are simply ignoring these statutory obligations, and thus no information was available via the NCOP for a significant number of interventions.
 - Annual Reports of the various Provincial Departments of Co-operative Government: these reports generally contain very little detail about particular interventions, but they are a useful source to confirm the occurrence and dates of interventions.
 - Published research: We made use of published research that covered S139 interventions. Some of these research reports had focused on particular municipalities and these were a particularly useful source of information in this respect.
 - Media scan of official statements in respect of interventions and other news reports. This approach was used largely in respect of the most recent interventions, which have not yet been reported to the NCOP (if that is the process to be followed).
- ii. Interviews with government officials to fill the gaps in information remaining after this initial review of existing data. An interview with the relevant COGTA official was held on the 27th of February 2018. Some of the requested data was received, but other information remains outstanding and does not seem to be available through national COGTA. Given that the required data is not publicly available, COGTA is our only means of obtaining the data from one central place. If they do not make the data available, the inventory cannot be completed.

On the basis of the initial review of *existing* data, a draft list of all S139 interventions was drawn up. On the basis of the information collated during phase 1 of the inventory compilation process (i.e. the review of existing and publicly available data), a *credibility score* (out of 5) was allocated to each intervention, which reflects both how complete the information around the intervention is, as well as our ability to verify that information. Where low credibility scores were allocated (which represented a small set of municipalities) we requested additional information from CoGTA. We have a high level of confidence in the accuracy of our list of interventions.

³⁴ Drawn from Ledger, T. and Rampedi, M. (2018). *Municipal financial emergencies regulatory framework review*. Research paper commissioned by National Treasury, South Africa, updated to include the period from July 2017 to June 2019

2. Assessing the outcomes of interventions

For the purposes of the analysis of how successful the interventions were (which requires a detailed review of how the intervention unfolded and developments in the municipality post-intervention), and the assessment of the impact on municipal borrowing and borrowing capacity, the following approach was adopted:

1. The detailed analysis has not been undertaken for the interventions that were disapproved or overturned. They have been included on the master list of interventions, but no further analysis has been undertaken.
2. The detailed analysis was not undertaken in respect of municipalities where the intervention is still in place, since there is no post-intervention phase for comparative purposes.
3. On the basis of discussions within the project steering committee, it was decided that a total of five discrete interventions would be combined into two interventions for the purposes of the detailed analysis (as indicated in the summary table above by the green shading). The first was the intervention in respect of Beaufort West LM (WC053) and Central Karoo District (DC5) in October 2007, which related to the election of Councillors to the District. These two interventions have been combined under Central Karoo District, and the detailed analysis has been applied to this District, and not to Beaufort West. The second was in respect of the interventions applied to Amajuba District, Umzinyathi District and Newcastle Local Municipality in December 2007. These interventions related to problems at a municipal entity – Uthukela Water – which was jointly owned by these three municipalities. These three interventions have been combined into one analysis, for Uthukela Water.
4. Seven of the municipalities on the list were dis-established and merged with other municipalities at the end of the intervention period or – in one instance (Inkwanca – EC133) - 19 months after the end of the intervention period. For these municipalities no assessment can be made in terms of the impact of the intervention on their financial and governance status post-intervention, or if the intervention could be considered a success or a failure. However, it should be noted that in most cases the reasons for the municipality's dis-establishment coincide with the reasons for the intervention, which suggests that the municipality's dis-establishment in part reflects the failure of the intervention process.

For each intervention that was assessed, the following information was collected:

- The reasons for the intervention, focusing on which obligations the municipality had failed to execute, and the reasons that the province had put forward in support of the intervention (including the relevant legislation with which the municipality had allegedly failed to comply).
- An overview of how the intervention was implemented and managed: the appointment of an administrator, the responsibilities of the administrator, and the progress achieved during the intervention.
- The reasons given for the termination of the intervention, and general developments in the municipality after the termination of the intervention.

The period under review for each intervention for the purposes of the financial review discussed below was the financial year prior to the intervention, the period of the intervention, and the two financial years after the termination of the intervention. Since most of the intervention periods did not coincide perfectly with the start and end dates of the municipal financial calendar, the following approach was adopted with respect to setting these periods:

1. An intervention that commenced or ended within three months of the start or end of a particular financial year has been considered to fall under that financial year only. For this purpose, the effective date of the start of the intervention is the date on which the notice of the intervention was issued by the province, unless there is evidence that the intervention actually commenced much later. This reflects the fact that work on most of the interventions got underway very soon after the issuing of that notice, with provinces apparently operating on the assumption that approval would be granted.
2. Where multiple interventions in one municipality were separated by less than one full financial year, they have been considered as one intervention for the purposes of the financial analysis (they are still held separate for the purposes of recording the details of the intervention).

The assessment of how successful the intervention was is based on whether or not the goals of the intervention were achieved, using a combination of changes in the key financial indicators discussed below, together with other developments in the municipality, in the two financial years following the termination of the intervention.

In order to complete this assessment a set of financial indicators was drawn up, in consultation with the Steering Committee. Many of the indicators have been drawn from MFMA Circular 71 (which was issued in January 2014). The use of the Circular 71 ratios is in order to obtain uniformity across the interventions, and to facilitate *benchmarking* against existing Treasury data (both the norms set by Treasury and actual outcomes across similar municipalities), in order to derive conclusions as to the impact of the intervention on the municipality.

The list of indicators, together with their method of calculation and a short overview of why they were selected, is set out in the table below:

INDICATOR	DEFINITION/CALCULATION	RATIONALE
Capital expenditure: total expenditure	(Total Capital Expenditure/Total Expenditure) X 100. (Norm: 10% to 20%)	Gives an idea of the prioritization of capital expenditure in the municipality, for which long-term funding could be available.
Current Ratio	Current Assets/Current Liabilities (Norm is 1.51 to 2:1)	Liquidity is an important assessment criterion for commercial lenders
Actual debt servicing	Compare the provision for debt servicing in financial performance and repayment in the balance sheet against actuals in the cash flow statement	Gives an indication of difficulties that the municipality may be facing in meeting debt obligations from cash generated
Debt (Total Borrowings)/ Total Operating Revenue	Debt (Short Term Borrowing + Bank Overdraft + Short Term Lease + Long Term Borrowing + Long Term Lease) / Total Operating Revenue - Operating Conditional Grant (norm is 45%)	The Ratio indicates the extent of Total Borrowings in relation to Total Operating Revenue. It indicates short and long term debt financing relative to operating revenue of the municipality.
Total borrowings over time	As per the AFS: the growth in total long-term borrowing before, during and after the intervention.	Trends indicate the municipality's level of debt, distinguishing between short- and long-term debt
Capital Cost (Interest Paid and Redemption) as a % of Total Operating Expenditure	Capital Cost (Interest Paid and Redemption) / Total Operating Expenditure x 100 (norm is 6-8%)	It assesses the Borrowing or Payment obligation expressed as a percentage of Total Operating Expenditure.
Net operating surplus margin	(Total Operating Revenue - Total Operating Expenditure)/Total Operating Revenue X 100 (Norm >0)	The extent to which the municipality is able to generate operating surpluses before and after the intervention.
Cash/ Cost Coverage Ratio (Excluding Unspent Conditional Grants)	((Cash and Cash Equivalents - Unspent Conditional Grants - Overdraft) + Short Term Investment) / Monthly Fixed Operational Expenditure excluding (Depreciation, Amortisation, and Provision for Bad Debts, Impairment and Loss on Disposal of Assets) norm is 1 to 3 months	The Ratio indicates the Municipality's or Municipal Entity's ability to meet at least its monthly fixed operating commitments from cash and short-term investment
Revenue growth	Growth in total revenue year-on-year	Trends in revenue growth provide insights into a municipality's potential for servicing additional debt (subject to their debt collection rates).
Debtors Collection Ratio	(Gross Debtors Opening Balance + Billed Revenue - Gross Debtors Closing Balance - Bad Debts written off)/Billed Revenue X 100. (Norm = 95%)	This ratio - and particularly trends - tell us about the municipality's ability to collect income, and thus to service debt.
Electricity Distribution Losses (Percentage)	(Number of Electricity Units Purchased and / or Generated - Number of Electricity Units Sold) / Number of Electricity Units Purchased and / or Generated x 100 (norm is 7 to 10%)	The purpose is to measure the percentage loss of potential revenue from Electricity Services through electricity units purchased and generated but not sold as a result of losses incurred through theft (illegal connections), non or inaccurate metering or wastage.
Audit Outcome	As per the AGSA	The important issue is whether municipalities have moved into or out of disclaimer status.
Water Distribution Losses (Percentage)	(Number of Kiloliters Water Purchased or Purified - Number of Kiloliters Water Sold) / Number of Kiloliters Water Purchased or Purified x 100 (norm of 15 to 30%)	The purpose of this ratio is to determine the percentage loss of potential revenue from water service through kilolitres of water purchased but not sold as a result of losses incurred through theft (illegal connections), non- or incorrect metering or wastage as a result of deteriorating water infrastructure
Own Funded Capital Expenditure (Internally Generated Funds + Borrowings) to Total Capital Expenditure	Own Funded Capital Expenditure (Internally Generated Funds + Borrowings) / Total Capital Expenditure x 100	The Ratio measures the extent to which the municipality's Total Capital Expenditure is funded through Internally Generated Funds and Borrowings. In addition, it shows grant dependency
Own Funded Capital Expenditure (Internally Generated Funds) to Total Capital Expenditure	The Ratio measures the extent to which Total Capital Expenditure of the Municipality is funded through Internally Generated Funds.	The Ratio measures the extent to which Total Capital Expenditure of the Municipality is funded through Internally Generated Funds.
Capital Expenditure Budget Implementation Indicator	Actual Capital Expenditure / Budget Capital Expenditure x 100 (The norm range between 95% and 100%)	This ratio measures the extent to which Budgeted Capital Expenditure has been spent during the financial year, under review. Further, this ratio measures the municipality's ability to implement capital projects and monitor the risks associated with non-implementation.

The intention was that the indicators would be calculated for the financial year prior to the intervention, the financial year(s) during the intervention, and for the two financial years after the intervention. The performance of these indicators in the two years after the intervention is the basis on which we have determined whether or not the intervention was successful, in terms of its impact on the financial health of the municipality.

Data was obtained from the following sources:

- Treasury MFMA data, as submitted by municipalities, and which is available from Treasury in electronic format. Wherever possible, we have used audited data.
- COGTA
- The MFMA reports issued by the AGSA

A number of challenges were encountered in compiling a comprehensive set of indicators for all municipalities across all the required time periods:

- We experienced great difficulties in accessing any of the required data for periods prior to 2009/10. For the period between 2009/10 and 2012/13 the availability of data is improved, but many key sets are either not available, or must be approached with caution in respect of the quality of that data. There is no doubt that the overall quality of municipal financial reporting has improved over the past ten years, but it remains poor in certain municipalities. Unfortunately, there is a high degree of overlap between municipalities that report poorly, and those who are in such a bad state that they require intervention.
- Treasury has only required municipalities to submit the MBBR tables (our key data source) since 2009, and many municipalities did not report all the data sets required for the first few years under this reporting requirement.
- We have had to accept this MBBR data at face value, but it should be kept in mind that it may not all be correct. This is particularly likely with some of the intervention municipalities, which were under disclaimer audits. If the underlying information is incorrect, then the indicators calculated on the basis of that information will also be incorrect.
- Circular 71 (from which most of our key indicators have been drawn) was only issued in 2014, prior to which most municipalities did not report on all these ratios. However, even since that date many municipalities (and it appears that this group includes almost all of those that had S139 interventions) are not yet reporting comprehensively on all these ratios. In any event, they would not have reported these comprehensively prior to the issue of the circular. Treasury currently calculates the Circular 71 ratios in respect of municipal *budgets*, but not in respect of audited outcomes. It is therefore necessary for us to go through a process of collecting the underlying sets prior to the calculation of the ratios, which process has encountered the problems described above.
- COGTA has been able to supply us with some of the Circular 71 ratios, since these are submitted directly to them by the municipalities. However, there are still considerable gaps in these data sets, reflecting either that municipalities themselves do not have the underlying information required to calculate these indicators (which seems the most likely reason in many instances), or they are simply failing to meet their reporting obligations.

As a result of these issues, we have not been able to complete in full the financial analysis for the entire inventory of S139 interventions. Most of the missing data sets are concentrated in the period prior to 2009/10. The only way in which some of these missing data sets can be compiled is by manually working through the audited reports of each municipality. That work is beyond the scope of this Task 1, and we recommend that it be undertaken by a Treasury intern. In addition, there are some data sets that will probably never be compiled, simply because there is no base data with which to do this

Finally, for a number of the municipalities in the study the data that has been presented for the most recent financial years should be approached with caution, since it is likely to be subject to considerable

revision, in line with the trend of prior year revisions. The accurate calculation of debtors appears to be a particular problem in many of these municipalities, which implies that our calculation of ratios which makes use of debtors' data should be approached with caution.

However, we do have sufficient data sets to have a high level of confidence in our preliminary findings. In addition, the fact of missing data sets (and in particular which sets are missing) provides some useful insights into the factors that contribute to poor municipal performance in the first place. A good example of this is reticulation losses data, which municipalities are required to submit to COGTA, but there are enormous gaps in the data received. In addition, even where data has been submitted it is clear that some of it is incorrect (such as a 100 per cent water reticulation loss submitted by one municipality...). Accurate billing of services and an accurate calculation of the cost of providing those services is critical to municipal financial sustainability and stability. If a municipality is unable to calculate its reticulation losses accurately, then it is unlikely that it is able accurately to cost the provision of that service. This greatly undermines municipal financial viability. Thus, the fact that so many municipalities seem unable to calculate this indicator correctly provides insights into the underlying factors that contribute to financial viability.

3. Selection of municipalities for case studies

Task 2 of the 2018 municipal financial emergencies study involved 5 case studies, to investigate in more detail the findings of Task 1. The following approach (in line with the decisions of the project steering committee) was applied to the selection of municipalities for the case studies:

- The selection of municipalities was limited to those where the intervention ended not longer than five years prior to the start of the research (i.e. December 2012). This was to increase the likelihood that officials who were involved with the intervention would be available for interview.
- There was a clear sentiment within the steering committee municipal that, in terms of the overarching goal of the research to investigate the impact of interventions on borrowing, that district municipalities are of less interest than local municipalities. District municipalities were thus excluded from possible selection as case study sites.
- For much the same reasons, very small municipalities are of less interest than larger municipalities, which potentially could engage in meaningful levels of borrowing.
- It was decided to include in the study a municipality that had multiple interventions, as well as one where the intervention is still in place.
- The aim was to include a mix of municipalities between those where interventions had not been successful, and those where they were successful. (In the end we were unable to find a municipality where an intervention had been clearly successful, that met our other requirements.)

A proposed shortlist of candidate municipalities for the case studies was drawn up on the basis of these criteria, and the discussed in the steering committee meeting.

The inventory of interventions compiled in terms of Task 1 for the 2018 study covered 97 interventions (or proposed interventions) and 67 municipalities. Of those 67, seven were dis-established and merged with other municipalities at the end of the intervention period or, in one instance (Inkwanca – EC133), 19 months after the end of the intervention period. They thus no longer existed at the time of the research, which implied that the final number of municipalities from which the five case studies could selected was 60.

Based on the requirement of interventions not older than five years, and drawing from the list of interventions (after adjusting for the disapproved or over-turned interventions as well as municipalities that have since been dis-established), we then had the following list of interventions:

2012/13

Mtubatuba LM	KZN	KZN275	S 139 (1) (b)	Sep 12	Jan 15
Abaqulusi LM	KZN	KZN263	S 139 (1) (b)	Mar 13	Mar 15
Maquassi Hills LM	North West	NW404	S 139 (1) (b)	Apr 13	Jun 14
Mnquma LM	E Cape	EC122	S 139 (1) (b)	Mar 13	Sep 13
Umzinyathi DM	KZN	DC24	S 139 (1) (b)	Apr 13	Dec 13
Ditsobotla LM	North West	NW384	S 139 (1) (b)	Apr 13	Aug 16
Matlosana LM	North West	NW403	S 139 (1) (b)	Apr 13	Jun 14
Bushbuckridge LM	Mpumalanga	MP325	S 139 (1) (b)	Apr 13	Dec 14
Emalahleni LM	Mpumalanga	MP312	S 139 (1) (b)	Apr 13	Mar 15
Uthukela DM	KZN	DC23	S 139 (1) (b)	May 13	Dec 13
Ugu DM	KZN	DC21	S 139 (1) (b)	May 13	Dec 13

2013/14

Umvoti LM	KZN	KZN245	S 139 (1) (b)	Jul 13	Jun 15
Oudtshoorn LM	W Cape	WC045	S 139(4)	Jul 13	Feb 14

2014/15

Mpofana LM	KZN	KZN223	S 139 (1) (c)	Sep 14	Dec 14
Ngaka Modiri Molema DM	North West	DC38	S 139 (1) (c)	Sep 14	Dec 14
Mpofana LM	KZN	KZN223	S 139 (1) (a)	??	?
Matlosana LM	North West	NW403	S 139 (1) (b)	Jan 15	Aug 16
Mtubatuba LM	KZN	KZN275	S 139 (1) (c)	Jan 15	May 15
Makana LM	E Cape	EC104	S 139 (1) (b)	Mar 15	Jul 15
Madibeng LM	North West	NW372	S 139 (1) (b)	Mar 15	Aug 16
Ngaka Modiri Molema DM	North West	DC38	S 139 (1) (b)	Mar 15	Aug 16
Tswaing LM	North West	NW382	S 139 (1) (b)	May 15	Aug 16
Mtubatuba LM	KZN	KZN275	S 139 (1) (a)	May 15	Aug 15

2015/16

Oudtshoorn LM	W Cape	WC045	S 139 (1) (b) + S 139(4)	Jul 15	Aug 16
Umkhanyakude DM	KZN	DC27	S 139 (1) (b)	Oct 15	Nov 17
Thabazimbi LM	Limpopo	LIM361	S 139 (1) (b)	Feb 16	Oct 16
Mafikeng LM	North West	NW383	S 139 (1) (b)	Jun 16 (?)	Jun 17 (?)
Lekwa Teemane LM	North West	NW396	S 139 (1) (b)	Jan 16 (?)	Jun 17 (?)
Ditsobotla LM	North West	NW384	S 139 (1) (b)	Jan 16 (?)	Jun 17 (?)

2016/17

Mamusa LM	North West	NW393	S 139 (1) (b)	Jul 16 (?)	Aug 16 (?)
Nquthu LM	KZN	KZN242	S 139 (1) (b)	Oct 16	Feb 17
Umzinyathi DM	KZN	DC24	S 139 (1) (b)	Oct 16 (?)	Current (?)
Kannaland LM	W Cape	WC041	S 139(5)	Dec 16	Ongoing
Nquthu LM	KZN	KZN242	S 139 (1) (c)	Feb 17	May 17
Mafube LM	Free State	FS205	S 139 (1) (b)	Mar 17	Current
Masilonyana LM	Free State	FS181	S 139 (1) (b)	Mar 17	Current

We adjusted the list further for the repeat interventions, leaving a total of 27 municipalities (including five districts), as follows:

Mtubatuba LM	KZN	KZN275
Abaqulusi LM	KZN	KZN263
Maquassi Hills LM	North West	NW404
Mnquma LM	E Cape	EC122
Umzinyathi DM	KZN	DC24
Ditsobotla LM	North West	NW384
Matlosana LM	North West	NW403
Bushbuckridge LM	Mpumalanga	MP325
Emalahleni LM	Mpumalanga	MP312
Uthukela DM	KZN	DC23
Ugu DM	KZN	DC21
Umvoti LM	KZN	KZN245
Oudtshoorn LM	W Cape	WC045
Mpofana LM	KZN	KZN223
Ngaka Modiri Molema DM	North West	DC38
Makana LM	E Cape	EC104
Madibeng LM	North West	NW372
Tswaing LM	North West	NW382
Umkhanyakude DM	KZN	DC27
Thabazimbi LM	Limpopo	LIM361
Mafikeng LM	North West	NW383
Lekwa Teemane LM	North West	NW396
Mamusa LM	North West	NW393
Nquthu LM	KZN	KZN242
Kannaland LM	W Cape	WC041
Mafube LM	Free State	FS205
Masilonyana LM	Free State	FS181

Removing the Districts and the smallest municipalities on the list (we used revenue as an indicator here), left us with the list of 12 municipalities set out from which the steering committee selected the five case study municipalities. It should be noted, however, that this list did not contain a municipality where an intervention was either still in place, or that ended very near to the start date of the research. The steering committee decided that since possible municipalities to fill this requirement were small (Masilonya, Kannaland and Mafube (and thus relevant to the goals of the study, this initial requirement would be waived.

On this final list of 12, the municipalities that have been subjected to more than one intervention are highlighted in bold.

Abaqulusi LM	KZN	KZN263
Maquassi Hills LM	North West	NW404
Matlosana LM	North West	NW403
Bushbuckridge LM	Mpumalanga	MP325
Emalahleni LM	Mpumalanga	MP312
Oudtshoorn LM	W Cape	WC045
Mpofana LM	KZN	KZN223
Makana LM	E Cape	EC104
Madibeng LM	North West	NW372
Tswaing LM	North West	NW382
Thabazimbi LM	Limpopo	LIM361
Mafikeng LM	North West	NW383

The steering committee recommended that seven municipalities (rather than five) be selected for the case studies, in order to take account of the possibility of selected municipalities not being available for the interviews. Following discussion, the following seven municipalities were selected for the case studies:

Abaqulusi LM	KZN	KZN263
Matlosana LM	North West	NW403
Bushbuckridge LM	Mpumalanga	MP325
Emalahleni LM	Mpumalanga	MP312
Oudtshoorn LM	W Cape	WC045
Makana LM	E Cape	EC104
Thabazimbi LM	Limpopo	LIM361

We did struggle to arrange appointments with some of these, and final five case study municipalities were Matlosana, Bushbuckridge, Emalahleni, Oudtshoorn and Thabazimbi.

4. Process for collecting information in the case study municipalities

The aim of the case studies was to investigate in further detail the findings from Task 1. The work in respect of the case studies was divided into three phases:

Phase 1: Background data

Prior to the interviews, a detailed profile of each municipality was compiled. This background data provided both the context for the interviews, as well as additional information about factors that might have contributed to the financial health of the municipalities (such as the factors that impact on revenue collection). Data that was referenced included the following:

- Demographic overview of the municipality, focusing on economic growth, economic profile, household growth, household income data and key service delivery/infrastructure development issues.
- Financial data (including municipal borrowing): This was based on the financial analysis that was undertaken for each municipality as part of Task 1.
- Institutional overview: The research under Task 1 suggested that political upheaval and other factors that undermine the institutional stability of the municipality may be key factors in the supply of capital from external funders. In addition, the municipality's ability to effectively plan and implement infrastructure projects also appears to be an important factor in accessing funding. Vacant posts within a municipality is also a key institutional factor. Using the statutory reports of the municipality and StatsSA's census of non-financial data, together with a review of news feeds, we formulated an overview of these institutional challenges within each municipality.
- Details of the intervention: Using the source documents from Task 1, together with additional information supplied by national COGTA, we compiled a detailed review of the intervention. (It should be noted that detailed documentation was received from COGTA for four of the case study interventions, but NO documentation was received in respect of the Thabazimbi intervention.)

All of this background data was used to inform the interviews at each municipality.

Phase 2: Interviews

Interviews were planned to be conducted with the following officials in each municipality:

- The Executive Mayor
- The MMC for Finance
- The Municipal manager
- Chair of the Audit Committee
- The Chief Financial Officer
- The Internal Audit Manager

(It was suggested in the steering committee that it would be useful to interview the person who was the administrator in each intervention. However, discussions with COGTA indicated that generally no record was kept of who the administrator in each case had been, and so we could not be referred to them.)

Each official was interviewed separately, in an interview lasting between 60 and 90 minutes, which was conducted in most cases by two PARI researchers. The same researchers were used for all the interviews, an approach that we have found to create considerable 'economies of analytical scale'. The use of individual (rather than group) interviews enables us to capture alternative interpretations of the same events, as well as highlight institutional issues within each municipality. The form of the interview was semi-structured, rather than a rigidly defined questionnaire. This allowed us to standardize information collection across municipalities, and also allow to explore municipal-specific issues that may only become apparent once the interviews commence. Detailed notes were written up by the researchers as soon as possible after the interviews.

The key themes explored in the interviews with all officials were the following:

- Situation in the municipality prior to the intervention (overall financial position, political cohesion, existing support programmes)
- Perceived reasons for the intervention (why was the intervention put in place, were these 'good' reasons, what other courses of action could/should have been taken, whether the intervention could have been undertaken sooner)
- Perceptions of the intervention itself (range of activities included in the intervention, perceptions of the administrator, cooperation from municipal officials, length of the intervention, conditions under which it was terminated, success of the intervention)
- Municipal financial health after the intervention
- Municipal borrowing (what are the main reasons the municipality borrows/does not borrow, what are the main purposes of borrowing, what are the main funding sources for capital expenditure).

In addition, certain issues were discussed in more detail with relevant officials that have specific responsibility in these areas, such as audit outcomes, internal controls, debtor management, municipal income and political cohesion.

In order to facilitate the interviews, a letter was prepared for each municipality, setting out details of the research, and requesting the interviews. This letter was sent to the Executive Mayor and Municipal Manager at each of the seven municipalities. Thereafter, PARI was responsible for the liaison with the municipalities to set up the interviews. These were scheduled to take place over two adjacent days, in order to facilitate effective travel arrangements. Ideally, the interviews were intended to be completed by the third week in May, in order to ensure that the final deadline for this study – 30 June 2018 – could be met. It proved very difficult to organize all the required officials within such a tight timeframe, and in the end, the final interviews (at Emalahleni) were held on the 6th and 7th of June.

The main identified risk to this phase of work was that the required municipal officials would not be available for interviews during the required period. The selection of seven municipalities (in the hope of obtaining interviews with five of them) was in our estimation a reasonable way of managing this risk, and this proved to be the case. There is also a risk that not *all* of the required officials would be available on the same dates at a particular municipality, meaning that we would not be able to interview everyone on the list. For the most part we were able to interview almost all the required officials, save at one municipality (City of Matlosana) where a violent service delivery protest on the day called officials out of the office. However, we were able to interview the most critical officials there and also improvised on the spot by interviewing other senior officials who proved to have interesting insights. We were also able to interview additional officials at some of the other municipalities, and also to have some informal engagements with citizens. Our assessment is that the unavailability of a small number of officials was not material to our findings or our analysis.

A secondary identified risk was that the people being interviewed may not have been in service at the municipality at the time of the intervention, particularly in the period just before the intervention (which would allow them to make a personal assessment of how the intervention progressed, and its impact). High staff turnover at a senior manager level is common at poorly performing municipalities, and our research to date indicates that the removal of incumbent senior officials from office is often the first task of the appointed Administrator. Although *elected* officials are more likely to remain in place during the intervention, this is not always the case (Oudtshoorn is a good example) and local government elections were held in August 2016, which may have resulted in the removal entirely from the municipality of certain elected Councillors and senior managers.

The table below indicates the start and end dates of the interventions in each of the five selected municipalities:

Matlosana	First Intervention	April 2013 - Jun 2014
	Second Intervention	Jan 2015 - Aug 2016
Bushbuckridge	First Intervention	Apr 2013 - Dec 2014
Emalaheni	First Intervention	Apr 2013 - Mar 2015
Oudtshoorn	First Intervention	Mar 2007 - Sep 2007
	Second Intervention	Jul 2013 - Feb 2014
	Third Intervention	Jul 2015 - Aug 2016
Thabazimbi	First Intervention	Feb 2016 - Oct 2016

Once we were out in the field we found that, as expected, quite a lot of the interviewees had not been in service at the particular municipality before the intervention. However, a significant number had joined during or immediately after the intervention was terminated and were able to give us detailed information about the progress (or lack thereof) since the intervention. One unexpected benefit was that many of the case study municipalities had ended up employing extremely experienced and skilled people in senior section 56 posts (as part of the intervention process) and these officials were able to provide very useful insights into the reasons for municipal collapse, as well as a critical assessment of how and why certain recovery strategies either succeed or fail.

Phase 3: Data Collation and report writing

Once the interviews have been completed, all the interview notes were collated, and integrated with the background data and the financial analysis data. A detailed case study was written up for each municipality, and all the case studies collated into one report.

26 Rhodes Avenue, Parktown West
Johannesburg, 2193

<http://www.pari.org.za>

T +27 (0) 11 482 1739

F +27 (0) 86 759 6858