



Local Government in South Africa

Responses to Urban-Rural Challenges

edited by

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with the support of SALGA - South African Local Government Association





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The H2020-MSCA-RISE-2018 project aims to provide solutions for local governments that address the fundamental challenges resulting from urbanisation. To address these complex issues, 18 partners from 17 countries and six continents share their expertise and knowledge in the realms of public law, political science, and public administration. LoGov identifies, evaluates, compares, and shares innovative practices that cope with the impact of changing urban-rural relations in major local government areas (WP 1-5).

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Local Responsibilities and Public Services



2.4. eThekweni Metropolitan Municipality: Expanded Public Services during the Covid-19 Emergency

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Relevance of the Practice

Since the declaration of the state of national disaster by the Minister of Cooperative Government on 18 March 2020, and the subsequent announcement of a lockdown by the President on 26 March, municipalities have implemented various measures in response to the Covid-19 pandemic. This practice note analyses some of the measures taken by eThekweni metropolitan municipality (metro) during the Covid-19 pandemic. The words ‘disaster’ and ‘emergency’ are used interchangeably. While disaster management is a shared national and provincial government competence (Schedule 4A of the Constitution), municipalities play a crucial role during emergencies in terms of their constitutional functions (listed under Schedule 4B and 5B) such as water, sanitation, and markets. In South Africa, it is common for the younger generation to seek employment in urban centres, especially in metropolitan municipalities, in order to work and raise money, which is transferred to parents, siblings, children or the extended family in rural areas. The economic impact of Covid-19 in metropolitan municipalities will therefore have some ripple effects on the rural economy. This practice note considers the question ‘what are the criteria for the allocation of responsibilities in the provision of public services during the Covid-19 pandemic’ and ‘how the eThekweni metropolitan municipality has adapted to the Covid-19 emergency’.

Description of the Practice

Municipal powers and functions are set out in Schedule 4B and Schedule 5B of the Constitution, where Schedule 4 consists of matters of concurrent national and provincial competence, and Schedule 5 consists of matters of exclusive provincial competence. During the Covid-19 pandemic, municipalities have had to perform a mixture of functions within their powers and assigned functions.

The Expanded Local Government Mandate under Covid-19

On 25 March 2020, the Minister of Cooperative Government and Traditional Affairs (COGTA) issued directions to municipalities, which required them to perform various functions, some falling within their existing mandate, and others being new or expanded mandates. This did not necessarily follow the normal procedure for assignments set out in Section 156(4) of the



Constitution, which allows the assignment (by agreement) of functions by national or provincial government to local government, in situations where the matter would be most effectively administered locally and that the local government in question had the capacity to administer it. However, the Minister of CoGTA imposed new obligations, some of which were unfunded mandates, and not necessarily agreed to by local governments.

Water

Municipalities are required to provide potable water to all communities in order to increase personal hygiene and thereby reduce transmission of Covid-19. It must be noted that while the supply of potable water is ordinarily a municipal function, prior to Covid-19 hitting the shores of South Africa, not all communities had access to water and sanitation. For example, although nationally, 92.5 per cent of households have access to improved drinking water sources, 4 per cent of households still practice open defecation, with higher figures (12.1 per cent) in traditional dwellings and (10.3 per cent) in informal dwellings, while 1.2 per cent use the bucket system.⁶⁰ The eThekweni metropolitan municipality (metro) has ramped up the provision of water and sanitation services to high population density settlements, rural communities, informal settlements, and public facilities. While this is a mammoth task, the metro has hastened its efforts by providing potable water sources, such as static tanks and standpipes, to help with sanitation efforts to underserved areas in eThekweni.

Food Distribution

The metro has tasked its ward councillors to distribute food parcels/vouchers to help the indigent in all its wards, with each ward receiving 1000 food parcels. However, the distribution programme is characterised by some challenges. There are allegations that the food parcels are being politicised, and are only being distributed to African National Congress (ANC) members (ANC is the ruling party) in eThekweni. Although the Mayor of eThekweni, Mxolisi Kaunda, vehemently rebutted these allegations when he accounted before the National Assembly,⁶¹ it may be difficult to determine what is actually happening on the ground. The second challenge is that while it is noble that the metro is providing food parcels to each of the wards, the wards do not have the same population sizes; therefore, giving each ward 1000 food parcels may not take into account the wards that have a larger number of households facing food insecurity. Last, the rolling out of the food assistance programme was delayed, leaving many households hungry. In addition to municipal ward councillors helping to identify the beneficiaries of food aid paid for by the Department of Social Development, eThekweni also paid for food aid from its own resources. The provision of food relief is generally not seen as a

⁶⁰ Statistics South Africa (StatsSA), 'GHS Series Volume VIII: Water and Sanitation, in-depth Analysis of the General Household Survey 2002–2015 and Community Survey 2016 Data' (StatsSA 2016) <<http://www.statssa.gov.za/?p=9145>> accessed 30 October 2020.

⁶¹ Mxolisi Kaunda in 'JM: PC on CoGTA and Select Committee on COGTA, Water and Sanitation and Human Settlements' (YouTube, 14 May 2020, at 1:32:50) <<https://www.youtube.com/watch?v=68Pcindzx5Y&t=5570s>>.



local government function. Social relief is rather something that can be categorised under ‘Social Welfare’ (Schedule 4A). However, quite a few municipalities provided food assistance in response to the need. This raises the question whether this amounts to exceeding the municipal mandate, or responding to a human rights need, but this is yet to be determined in the context of South African metropolitan municipalities.

Shelters for the Homeless

The metro has a responsibility to provide temporary shelter to the homeless at least insofar as it relates to evicted homeless persons, as decided by the Constitutional Court.⁶² During the lockdown, the metro has gone beyond this duty by providing meals and psychosocial support to the homeless, including managing withdrawal symptoms for substance abuse. The metro has also prioritised the protection of vulnerable groups having set up twelve shelters accommodating 1,704 homeless people, including women and children.

Health

Regarding health, it could be argued that eThekweni metro is exceeding its ‘municipal health’ mandate. On one hand, it can be argued that the sanitisation of public transportation facilities and local markets amounts to municipal health, as it constitutes ‘preventing communicable diseases’ as per the definition of municipal health in Section 1 of the National Health Act of 2003. It can also be argued that it forms part of the public transport and markets functions set out in Schedules 4B and 5B respectively, which are local government competencies. However, other health functions being performed by the metro exceed its municipal health mandate, for example, developing disease control systems, geo-mapping, working with epidemiologists, mobilising clinical expertise, and implementing National Institute for Communicable Diseases (NICD) guidelines through contact tracing and testing, community screening and mass testing.

Sanitation and Waste

The metro is also going beyond its regular functions of cleaning of public ablution facilities and refuse collection, and has taken on a new function of sanitising public facilities. It has increased its efforts to improve sanitation by sanitising and providing soap and sanitiser dispensers in informal settlements and public places, such as markets and taxi ranks. The metro has also distributed bar soaps and sanitisers to about 21,000 of its formal housing units.

⁶² *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC); Jaap De Visser, ‘The Enforcement of Socio-Economic Rights against Local Governments in South Africa’ in Conrad M Bosire and Wanjiru Gikonyo (eds), *Animating Devolution in Kenya: The Role of the Judiciary* (International Development Law Organization (IDLO), Judicial Training Institute (JTI) and Katiba Institute 2015) 193-207.



Economic Relief/Local Economic Development

Economic relief is one of the mechanisms for local economic development, which is one of the objects of local government stipulated in Section 152 of the Constitution. Section 229 of the Constitution gives municipalities the power to levy taxes. With that comes the power to have a policy on what to levy taxes on. This then allows municipalities to decide whether to give tax holidays or not. Municipalities are permitted to levy property rates and surcharges on user fees or allow tax holidays in terms of Section 229(1) of the Constitution. The closure of national borders and the lockdown restrictions on business operations have negatively affected businesses. Tourism has been one of the hardest-hit sectors in eThekweni, which is one of the top tourist destinations in South Africa. In order to assist this sector, the eThekweni metro has made provision for owners of Bed and Breakfasts and guesthouses to apply to pay residential property rates, which are lower than commercial rates, as from 18 May 2020. However, there seem to be no rates holidays for residential or other commercial property owners. For informal traders, the relief comes in the form of a six-month rental holiday and a zero cost of business licencing fees for 2020/2021 financial year. It is not yet clear how the rental holiday will apply to informal traders. The metro is also moving to collaborate with online platforms, through Innovate Durban, a special purpose vehicle (municipal agency) to help township businesses deliver goods to local consumers.

The metro had initially anticipated that it was going to provide economic relief for local communities during the lockdown by reconnecting consumers whose accounts were in arrears and whose services were disconnected for being long overdue during the lockdown. However, the protracted lockdown at different alert levels, the financial pressure on the municipality, and the long wait for national support forced the metro to reconsider its benevolence, and to introduce a cut-off date (30 June) for consumers to negotiate a payment plan under debt agreement.

Assessment of the Practice

The metro has taken bold, but necessary steps in its efforts to curb the further transmission of Covid-19. It is performing various functions that exceed its mandate, such as providing food to the indigent, and public health services (beyond municipal health) using its own resources. However, it is still to be seen how the national and provincial governments will assist municipalities, such as eThekweni, to cover shortfalls in their budgets attributed to the expanded municipal functions, and to deal with economic recovery and the loss of revenue due to reduced payment of user fees and property rates. Although financial support has been promised, it may take long for it to be realised, and the real impact is starting to be seen. For example, Amathole Local Municipality in the Eastern Cape declared in January 2020 that it is unable to pay its employees, and it has since been placed under administration in terms of an intervention under Section 139 of the Constitution. While bigger metropolitan cities are more



likely to weather the storm, the situation is dire for smaller local municipalities, and especially so for rural municipalities as national government is redirecting resources to other matters such as the procurement of Covid vaccines.

The Covid-19 pandemic has had an indelible impact on the revenue base of municipalities as most economic activities ground to a halt during level 5 and 4 lockdown, save for listed essential services. The closure of non-essential businesses and the restriction of movement of people, tied with job and wage losses, has tied the hands of businesses and individuals, making it difficult for municipalities to raise revenue from their own sources in order to provide municipal services. Local revenue from tourism-related activities (including from museums and art galleries) have also dried up, worsening the financial position of municipalities. According to the Mayor Kaunda's submission to National Assembly on 14 May 2020,⁶³ the lockdown had cost eThekweni R1.5 billion in lost revenue as of 30 April, and R565 million in unfunded mandates. Like other municipalities, the metro is performing additional functions without receiving concomitant financial resources from the national and provincial governments. For example, the metro has expended financial resources from its own pocket towards the provision of food parcels to community members, which ordinarily is not a municipal function. This illustrates the severe impact of the performance of such unfunded mandates, especially on urban local governments, which seem to be more affected by the pandemic financially. Moreover, it is clear that shouldering the costs of additional services during the height of the pandemic was easier for eThekweni metro because it has extensive resources, as well as a broad revenue base. The situation would be much different in many local municipalities, and especially rural municipalities as noted above.

References to Scientific and Non-Scientific Publications

Constitution of the Republic of South Africa

Disaster Management Act 57 of 2002

Regulations and Directions in terms of Section 27(2) of the Disaster Management Act of 2002

National Health Act 61 of 2003

City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC)

⁶³ Mxolisi Kaunda in 'JM: PC on CoGTA and Select Committee on CoGTA, Water and Sanitation and Human Settlements' (*YouTube*, 14 May 2020, at 21:00) <<https://www.youtube.com/watch?v=68Pcindzx5Y&t=1260s>>.



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