

UNIVERSITY OF THE WESTERN CAPE



UNIVERSITY *of the*  
WESTERN CAPE

FACULTY OF LAW

**A mini-thesis submitted in partial fulfilment of the requirements for the LL.M degree  
in Law, State and Multi-level Government  
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**Topic: An analysis of the expanded mandate of local government under COVID-19.**

**Keywords:** Covid-19, local government, state of national disaster, powers and functions, expanded mandates, Disaster Management Act, regulations, directions, challenges

## Declaration

I, Buchule Tanale, do hereby declare that '*An analysis of the expanded mandate of local government under Covid-19*' is my own work, that it has not been submitted before for any degree or examination in any other university or institution of higher learning, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

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Date:



## **Dedication**

*To my parents, and in memory of my late best friend.*

*To all students who come from previously disadvantaged backgrounds and have made it  
against all odds.*

*Finally, to my cousin, Dr Lwando Tanale, for your generosity, support and love.*



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## Abbreviations and acronyms

<b>Cogta</b>	<b>Cooperative Governance and Traditional Affairs</b>
<b>CNDC</b>	Community Nutrition and Development Centres
<b>DMA</b>	Disaster Management Act
<b>DWS</b>	Department of Water and Sanitation
<b>EMPD</b>	Ekurhuleni Metropolitan Police Department
<b>EPWP</b>	Expanded Public Works Programme
<b>ICDM</b>	Intergovernmental Committee on Disaster Management
<b>IDP</b>	Integrated Development Plan
<b>IPID</b>	Independent Police Investigative Directorate
<b>JMPD</b>	Johannesburg Metropolitan Police Department
<b>LEAP</b>	Law Enforcement Assistance Programme
<b>MDMC</b>	Municipal Disaster Management Centre
<b>MDMP</b>	Municipal Disaster Management Plan
<b>MEC</b>	Member of Executive Council
<b>MMC</b>	Member of Municipal Council
<b>MSA</b>	Municipal Systems Act
<b>MSF</b>	Medecins Sans Frontieres
<b>NCCC</b>	National Coronavirus Command Council
<b>NDMF</b>	National Disaster Management Framework
<b>NDMC</b>	National Disaster Management Centre
<b>NSNP</b>	National School Nutrition Programme
<b>NHA</b>	National Health Act
<b>NHC</b>	National Health Council
<b>NICD</b>	National Institute for Communicable Diseases
<b>NWA</b>	National Water Act
<b>NWSMP</b>	National Water and Sanitation Master Plan
<b>PPE</b>	Personal Protective Equipment
<b>SALGA</b>	South African Local Government Association
<b>SANDF</b>	South African National Defence Force
<b>SAPS</b>	South African Police Service
<b>SASSA</b>	South African Social Security Agency

<b>SAHRC</b>	South African Human Rights Commission
<b>SIU</b>	Special Investigative Unit
<b>SRD</b>	Social Relief of Distress
<b>USDG</b>	Urban Settlement Development Grant
<b>WHO</b>	World Health Organisation
<b>WSA</b>	Water Services Act



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## CHAPTER ONE: INTRODUCTION

### 1.1 Problem statement

The Constitution places municipalities at the forefront of service delivery in South Africa. This can be discovered from a perusal of section 152(1)(b) of the Constitution, which provides that one of the objects of local government is to ensure the provision of services to communities in a sustainable manner.<sup>1</sup> The Constitution further envisages local government as a driver of development at the local level. This is evident when reading section 153(a) of the Constitution, which states that, over and above the prioritisation of the basic needs of communities, municipalities must promote social and economic development of the community.<sup>2</sup>

The developmental role of local government is given further content in the 1998 White Paper on Local Government. The White Paper defines a developmental local government as one that is committed to working with the community to find sustainable ways of meeting its social, economic and material needs and improving the quality of life.<sup>3</sup> In order to breathe life into the service delivery and developmental mandate of local government, the Constitution gives local government powers and functions necessary to deliver this mandate. Schedules 4B and 5B list the functions over which local government has legislative and executive authority.<sup>4</sup>

Furthermore, section 229 of the Constitution provides local government with the resource-raising measures necessary to give meaning to its powers in terms of Schedules 4B and 5B. In this respect, the Constitution authorises municipalities to impose rates on property and surcharges on fees for services provided by a municipality.<sup>5</sup> Despite having significant powers and functions, local government has a poor track record when it comes to fulfilling its various

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<sup>1</sup> The Constitution of the Republic of South Africa, 1996.

<sup>2</sup> Constitution, 1996.

<sup>3</sup> White Paper on Local Government, 1998.

<sup>4</sup> Section 156 (1)(a) of the Constitution, 1996.

<sup>5</sup> Section 229 (1)(a) of the Constitution.

mandates. While great progress has been made in increasing access to basic services such as water and sanitation over the last 26 years of democracy, major challenges persist in local government.

In his 2018 budget statement, the Cooperative Governance and Traditional Affairs (Cogta) Minister at the time, Dr Zweli Mkhize, indicated that, of the 257 municipalities in the country, only 7 per cent were functioning well.<sup>6</sup> The remaining 93 per cent were either reasonably functional, almost dysfunctional or completely dysfunctional.<sup>7</sup> In her 2019/2020 budget vote speech, the Cogta Minister, Dr Nkosazana Zuma, noted that of the 257 municipalities, there were 40 municipalities under section 139 intervention and many more that were dysfunctional or struggling.<sup>8</sup> The poor state of local government has a direct impact on citizens, who often show their dissatisfaction with inadequate or non-existent service delivery through violent protests. In its 2018/2019 annual report, Cogta noted that service-delivery related protests had increased from 1,366 in the 2016/17 financial year to 1,531 in 2017/18, while violent protests had increased from 587 to 680 in the same period.<sup>9</sup>

The coronavirus (otherwise known as Covid-19), which was declared a pandemic by the World Health Organization (WHO) on 11 March 2020, has added a new dimension to the local government crisis. On 15 March 2020, President Cyril Ramaphosa announced that a national state of disaster in terms of the Disaster Management Act (DMA) had been declared by Minister Nkosazana Zuma to mobilise the state's response to Covid-19.<sup>10</sup> Because of the rapid

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<sup>6</sup> Cogta 'Budget Vote Speech by Minister Zweli Mkhize to the National Council of Provinces' 21 June 2018 available at <http://www.cogta.gov.za/?p=4474> (accessed on 13 August 2020).

<sup>7</sup> Cogta budget vote speech (2018).

<sup>8</sup> Cogta 'The 2019/20 CoGTA Budget Vote Speech Delivered by Dr Nkosazana Dlamini Zuma' available at <http://www.cogta.gov.za/?p=688> 10 July 2019 (accessed 13 August 2020).

<sup>9</sup> Cogta '2018/19 annual report' available at [http://www.cogta.gov.za/cgta\\_2016/wp-content/uploads/2018/11/CoGTA-2019-Annual-Report-Approved-1-compressed-1.pdf](http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2018/11/CoGTA-2019-Annual-Report-Approved-1-compressed-1.pdf) (accessed 13 August 2020).

<sup>10</sup> Daily Maverick 'COVID-19: Ramaphosa declares national state of disaster, imposes travel bans' 15 March 2020 available at <https://www.dailymaverick.co.za/article/2020-03-15-covid-19-ramaphosa-declares-national-state-of-disaster-imposes-travel-bans/> (accessed 14 August 2020).

rise in the number of infections, the President announced an initial 21-day lockdown on 23 March 2020. However, due to the continued rise in infections, it was extended by two weeks and thereafter extended on a month-to-month basis.

As the sphere of government closest to the people, local government plays a key role during disasters as it is responsible for the provision of essential services.<sup>11</sup> The DMA anticipates the role of municipalities in the management of disasters, as it instructs metropolitan and district municipalities to establish disaster management centres.<sup>12</sup> The declaration of a state of national disaster is uncharted territory for local government, and has brought with it novel challenges which necessitate new ways of doing things and greater efficiency at delivering essential services. As the sphere of government whose primary responsibility is the provision of basic service, local government has inevitably been at the forefront of implementing measures to mitigate against the pandemic.

Over and above the functions of local government in Schedules 4B and 5B, the role of local government has expanded over the years, and has seen municipalities performing functions that fall outside of their constitutional mandate. This expansion resulted from the assignment of functions by other spheres of government, court decisions and the operation of the Bill of Rights. These expanded and new mandates include the provision of housing, museums, libraries, roadworks and health-care services.<sup>13</sup> Many of these mandates are unfunded and have, over the years, put a strain on municipal finances.

The declaration of a state of national disaster has expanded the role of local government and also resulted in the performance of new functions. The Cogta minister issued the first set of

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<sup>11</sup> Maziwisa MR 'eThekweni Metropolitan Municipality vs COVID-19: 90 days into the lockdown' (2020) 15 *Local Government Bulletin* 2.

<sup>12</sup> Section 43(1) Disaster Management Act 57 of 2002.

<sup>13</sup> Financial and Fiscal Commission 2012/13 *Submission for the division of revenue: The impact of unfunded mandates in South African intergovernmental fiscal relations* (2011) 83.

Regulations on 18 March 2020 containing measures aimed at managing the spread of Covid-19.<sup>14</sup> Following the issuing of the Regulations, Directions were also issued listing measures that municipalities were instructed to implement to manage Covid-19 at the local level.<sup>15</sup>

There have been constant changes to the Covid-19 regulatory framework. These changes are informed by new developments in the epidemiological trend of the virus. This has resulted in a plethora of Regulations and Directions which are at times difficult to keep up with. The three spheres of government have hence had to adjust their response to the pandemic in accordance with the constant changes in the regulatory framework. The overall response to the pandemic has been centralised in the national sphere through a structure called the National Coronavirus Command Council (NCCC).

This is an extra-legislative structure that was established by the President to manage and coordinate the country's Covid-19 response measures.<sup>16</sup> Consisting of cabinet ministers and various other stakeholders, the NCCC developed what it called a risk-adjusted strategy to manage the pandemic.<sup>17</sup> This strategy consisted of five levels of lockdown, with alert level 5 (the so called 'hard lockdown') being the most stringent and level 1, the most relaxed. These alert levels are informed by the Covid-19 epidemiological trend, meaning that, in general, when infection rates are high, a higher-level lockdown is imposed.

When the country first went into lockdown on 26 March 2020, it was placed on alert level 5, which ended on 1 May when the country was placed on alert level 4. During a peak in infections in winter, the country went into alert level 3 on 1 June 2020, which ended on 18 August when

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<sup>14</sup> Disaster Management Act Regulations in GN 318 GG 43107 of 18 March 2020.

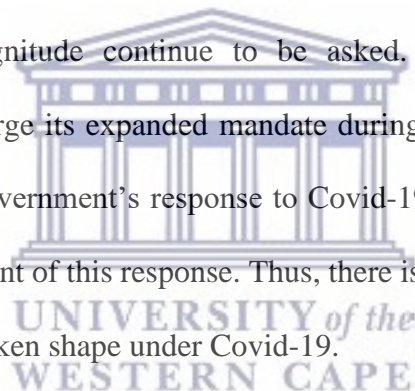
<sup>15</sup> Disaster Management Act Directions in GN 399 GG 43147 of 25 March 2020.

<sup>16</sup> Steytler N, de Visser J & Chigwata T 'South Africa: Surfing towards Centralisation on the Covid-19 Wave' in Steytler N (ed) *Comparative Federalism and Covid-19: Combatting the Pandemic* (2021) 8.

<sup>17</sup> South African Government 'About alert system' available at *About alert system | South African Government* ([www.gov.za](http://www.gov.za)) (accessed 28 October 2021).

alert level 2 was imposed. Around this time infection rates had waned and life had a semblance of normality. Further relaxation of the restrictions took place on 21 September 2020 when the country went into level 1 which continued until 28 December 2020. In December 2020 the country entered a second wave of infections, and this prompted a move to alert level 3 on 29 December 2020.<sup>18</sup>

The issuing of the Regulations, and in particular the directions, meant that municipalities had to intensify the provision of services such as water in communities that did not have access to sufficient potable water before the state of national disaster.<sup>19</sup> It also meant that municipalities had to fulfil new functions such as the monitoring of social distancing and the provision of food parcels.<sup>20</sup> The pandemic is bringing into sharp focus the challenges experienced at local government level. Questions about whether municipalities have the skills and capacity to manage a crisis of this magnitude continue to be asked. Any shortcomings in local government's ability to discharge its expanded mandate during the state of national disaster have a direct impact on the government's response to Covid-19, given that, as stated above, municipalities are at the forefront of this response. Thus, there is a need to investigate how the role of local government has taken shape under Covid-19.



## **1.2 Significance of the problem**

The Covid-19 pandemic necessitated the imposition of new mandates on local government, such as the provision of food parcels and an expansion of services such as the provision of water. The significance of this is that local government has been thrust into the spotlight due

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<sup>18</sup> South African Government 'About alert system' (2021).

to a nationwide health crisis. This is happening against the backdrop of a crisis in local government that has seen many municipalities unable to discharge their constitutional mandate. Added to this, the implementation of the lockdown significantly decreased economic activity, which had a negative impact on municipal finances.

While the positioning of local government at the centre of the response to Covid-19 was perhaps inevitable, given that municipalities are at the forefront of service delivery, the general crisis in local government was easily transferred to the Covid-19 response. So the failure by some of the municipalities to effectively undertake their existing mandate has had an impact on the management of the crisis. There are also concerns about the sustainability of the new and expanded services beyond the national state of disaster. The problem which this thesis seeks to investigate is therefore significant in many ways.

### **1.3 Research question**

The declaration of the national state of disaster in response to the coronavirus pandemic has impacted on the role of local government. Against this background, the main research question of this study is: How did Covid-19 and the subsequent declaration of a national state of disaster change the role of local government?

In arriving at an answer to the main question, the following sub-questions will be answered:

- What is the role of local government in South Africa?
- How did the role of local government change under Covid-19?
- How did this changed role arise?
- What are the key challenges that municipalities experienced in delivering on their changed role under Covid-19?
- Are there any post-Covid-19 implications for this changed role?



## 1.4 Argument

The argument of this paper is that the declaration of a national state of disaster has changed the role of local government. The scope of delivering existing municipal functions has been expanded, while new functions have been imposed on local government. This has resulted in, among other things, local government performing tasks that fall outside of its normal functions under Schedules 4B and 5B of the Constitution. Furthermore, it is argued that, while the changed role of local government has primarily happened in terms of an executive assignment, other functions have been necessitated by the duty of the state in terms of the Bill of Rights, while others have been necessitated by the unique circumstances that have prevailed due to the outbreak of the virus. Lastly, it is argued that some of the problems that local government was grappling with before the lockdown, such as lack of capacity, have affected the management of the pandemic.

## 1.5 Literature review

There is extensive literature on the powers and functions of local government in South Africa and how these have been changing through the expansion of existing functions and the addition of new ones. This may be so, but the provision of basic services, as contained in Schedules 4B and 5B of the Constitution, remains the core function of local government. These powers largely relate to the provision of basic services such as electricity, fire-fighting, municipal health services, municipal roads, refuse removal and water supply.<sup>21</sup>

According to Steytler and De Visser, a municipality is not at liberty to provide services outside the areas contained in Schedule 4B and 5B and may only provide such services in terms of assignment, delegation, or agency agreement.<sup>22</sup> It has been argued that, in practice, delegation

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<sup>21</sup> De Visser J 'The enforcement of socioeconomic rights against local governments in South Africa' in Bosire CM & Gikonyo W (eds) *Animating devolution in Kenya – the role of the judiciary* (2015) 196.

<sup>22</sup> Steytler N & De Visser J *Local government law of South Africa* (2018) ch 9 6.



and agency are the most commonly used methods of transferring functions to local government by the national and provincial spheres.<sup>23</sup> Because delegation and agency lack the constitutional and legislative safeguards to guard against the transfer of unfunded mandates, these two methods have the effect of reducing the role of local government to that of a mere implementation arm of the national and provincial spheres.

Steytler and De Visser further argue that the intersection of the functions in Schedules 4B and 5B with socioeconomic rights imposes a duty on municipalities to provide services.<sup>24</sup> In this case, a right may directly intersect with a functional area or only partially. This means that where there is a direct intersection, a municipality would be responsible for the full spectrum of responsibilities to implement the particular right. The nature and scope of the right may also add or expand the functional areas in Schedules 4B and 5B. Where, for example, the right to sufficient food is defined as including access to clean water, access to sufficient food then becomes a municipal function.

De Visser makes similar arguments when he states that the Constitutional Court has ‘devolved’ additional functions to local government through the operation of the Bill of Rights.<sup>25</sup> Through the decisions of the court (see *Grootbom* and *Moonlight* cases in particular), municipalities have taken on the added responsibility of providing certain components of the housing function, even though this is a function that falls outside of Schedule 4B and 5B matters.<sup>26</sup>

In the *Moonlight* case, the court ruled that the City of Johannesburg was obliged to find temporary emergency accommodation for a community that had been left destitute following an eviction.<sup>27</sup> This was despite the fact that housing is not listed under municipal functions in

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<sup>23</sup> Christmas A and De Visser J ‘Reviewing the powers and functions local government in South Africa’ (2009) *CJLG* 2 113.

<sup>24</sup> Steytler N & De Visser J (2018) ch 9 14.

<sup>25</sup> De Visser J (2015) 200.

<sup>26</sup> De Visser J (2015) 200.

<sup>27</sup> *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) BCLR 150 (CC) para 104.

Schedules 4B and 5B. Similarly, in the *Grootboom* matter the court ruled in favour of a community from the Oostenberg Municipality in the Western Cape that had sued the state for violating its right to access to housing after being left homeless following an eviction.<sup>28</sup> These two cases are instances of a judicial expansion of the powers of local government through the operation of the Bill of Rights as they require local government to play a bigger role in the provision of housing.

De Visser argues, moreover, that such expansion has resulted in the formulation of a new right to basic municipal services and the creation of rights-based service delivery standards.<sup>29</sup> The right to basic municipal services refers to services that are necessary to ensure an acceptable and reasonable quality of life, and which, if not provided, would endanger public health, safety or the environment.<sup>30</sup> In addition to the capacity and governance challenges referred to above, the burgeoning role of local government creates the challenge of unfunded mandates. Not only does this put a strain on finances, but it also undercuts the key constitutional notion of the different spheres of government being accountable to the public, because it leaves the public confused about who does what.<sup>31</sup>

With that said, there is a scarcity of literature that relates to the role of local government in the context of a national disaster such as the Covid-19 pandemic. Most of the local literature on disasters focuses on weather-related disasters and the pre-disaster measures those different stakeholders, including local governments, can take to better deal with disasters.<sup>32</sup> A survey of international literature reveals a similar trend in that most of it focuses on natural disasters and

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<sup>28</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

<sup>29</sup> De Visser (2015) 196.

<sup>30</sup> De Visser J (2015) 201.

<sup>31</sup> Basdeo M 'The impact and dilemma of unfunded mandates confronting local government in South Africa: a comparative analysis' (2012) 1 *APSDPR* 2 64.

<sup>32</sup> Uys F 'Coordination in disaster management' (2006) 25 *Politeia* 60.

those resulting from human activity such bush fires. There is, however, a wide body of literature focusing on the management of pandemics at the local level.

French, for instance, acknowledges the primacy of the role of local government in response to a pandemic, and mentions key responsibilities that local government should discharge, such as disease surveillance, infection control and public health communication.<sup>33</sup> These are measures similar to some of those that have been taken up by local government in response to the coronavirus in South Africa. However, being a novel virus, there is currently a gap in the literature regarding the expanded and new role of local government in managing the coronavirus.

The only real attempt that has been made so far to examine the role of local government in South Africa during Covid-19 is that by Maziwisa.<sup>34</sup> Her study is a cursory look at some of the functions that local government has been performing as part of the mitigation measures to curb the spread of Covid-19. Her study is, however, very limited in scope as it focuses only on the measures being implemented by the eThekweni Metropolitan Municipality in managing the coronavirus. This paper, therefore, will be the first study to conduct an extensive analysis of the role of local government in South Africa under Covid-19. Among other things, it will provide an in-depth study of how the mandate of local government has expanded and what challenges the execution of this expanded and new mandate has brought to the fore.

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<sup>33</sup> French EP 'Enhancing the legitimacy of local government pandemic influenza planning through transparency and public engagement' (2011) 71 *Public Administration Review* 254.

<sup>34</sup> Maziwisa MR (2020).

## 1.6 Chapter outline

This paper is divided into four chapters.

**Chapter One** contains the introduction, which comprises the problem statement, significance of the problem and the research question. This chapter also contains the chapter outline, the argument of the paper, literature review, and the methodology employed in this study.

**Chapter Two** provides the constitutional and legislative framework for disaster management in South Africa. This entails an analysis of the constitutional and legislative provisions relevant to the management of disasters, particularly as they relate to local government. The chapter also discusses how the functions and powers of local government inevitably place it front and centre in the management of disasters such as Covid-19.

**Chapter Three** discusses the changed mandate of local government under Covid-19. It also analyses the source of the new and expanded functions of local government by studying different instruments such as the Regulations and Directions issued in terms of the DMA.

**Chapter Four** provides the key findings of this paper and its conclusion.

## 1.7 Research methodology

This study is based mainly on desktop research. Primary sources in the form of the 1996 Constitution of South Africa, relevant original and subordinate legislation, policy papers, reports from organs of state, case law and official government documents will be used. The secondary sources that will be used include journal articles, newspaper articles and relevant internet sources, including media releases, government notices, various Non-Governmental Organisation sources and discussion materials from relevant webinars. The scope of this study will be limited to the role of local government during this period, with a particular focus on

alert levels 5 to 3. This is because during this period the changed role of local government was more pronounced.



## **CHAPTER TWO: THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR DISASTER MANAGEMENT AT LOCAL GOVERNMENT LEVEL**

### **2.1 Introduction**

This chapter will analyse the legal framework that governs disaster management in South Africa. Disaster management is listed in Part A of Schedule 4 of the Constitution.<sup>35</sup> This makes it a concurrent competence between the national and provincial spheres of government. However, in terms of the powers and functions of local government listed in Parts B of Schedules 4 and 5 of the Constitution, local government plays a central role in the management of disasters. This is because the functions allocated to municipalities in terms of the Constitution are central to the management of disasters. In light of this, this chapter will argue that, while disaster management is a shared competence between the national and provincial spheres of government, local government is indispensable in the proper and effective management of disasters such as Covid-19 due to its place and role in South Africa.

The centrality of local government to disaster management is acknowledged in Chapter 5 of the Disaster Management Act 57 of 2007 (DMA).<sup>36</sup> The DMA governs the management of disasters nationally, while Chapter 5 provides for the management of disasters at a municipal level.<sup>37</sup> It provides a framework for disaster management and the establishment of institutions, functions and plans for the management of disasters at a municipal level. Covid-19 was declared a national disaster in terms of the DMA.

However, as mentioned, local government has been central in the prevention and mitigation measures that have been implemented to deal with Covid-19. Against this background, this chapter will discuss the legislative process followed in declaring Covid-19 a national disaster.

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<sup>35</sup> Constitution of the Republic of South Africa, 1996.

<sup>36</sup> Disaster Management Act 57 of 2002.

<sup>37</sup> Act 57 of 2002.

This will be done to show the general legal context of the measures that have been implemented to manage Covid-19.

Next, the general constitutional and legislative framework for disaster management will be discussed, including provisions relating to local government. Lastly, the chapter will discuss how the functions of local government, as provided in the Constitution, place municipalities in the forefront when it comes to responding to disasters.

## **2.2 Declaration of Covid-19 as a disaster**

The DMA defines a disaster as a progressive or sudden, widespread or localised, natural or human-caused occurrence which causes or threatens to cause death, injury or disease, damage to property, infrastructure or the environment or disruption of the life of a community.<sup>38</sup>

Furthermore, it is of such a magnitude that it exceeds the ability of those affected by the disaster to cope with its effects using only their own resources.<sup>39</sup>

In terms of the guidelines on the classification and declaration of disasters, a four-step process is followed before a disaster is declared.<sup>40</sup> The first step is to determine the nature of the occurrence to determine whether it is an event that can be dealt with in terms of the DMA.<sup>41</sup>

Section 2 of the DMA excludes the application of the Act to certain events which fall within the definition of a disaster in terms of the DMA as provided above. The excluded events are states of emergency and those that can be dealt with in terms of other legislation.<sup>42</sup>

The second step entails conducting an onsite initial assessment to determine the magnitude and severity or potential magnitude and severity of the occurrence to determine if it can be regarded

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<sup>38</sup> Section 1 of Act 57 of 2002.

<sup>39</sup> Section 1 of Act 57 of 2002.

<sup>40</sup> National Disaster Management Centre *Guideline: classification of a disaster and the declaration of a state of disaster* (2019) 11.

<sup>41</sup> National Disaster Management Centre (2019) 12.

<sup>42</sup> Section 2 of Act 57 of 2002.



as a disaster.<sup>43</sup> The determination of the occurrence as a disaster is done by applying the definition provided in section 1 of the DMA to the initial assessment. Once the event is determined to comply with the definition of a disaster in section 1, the disaster management centre of the relevant municipality or province in terms of sections 49(1) and 35(1) respectively must inform the National Disaster Management Centre (NDMC) of its initial assessment.<sup>44</sup>

The relevant disaster management centre may recommend whether the disaster should be classified as a national, provincial or local disaster, as the case may be, when informing the NDMC of its initial assessment.<sup>45</sup> It is the NDMC, through its head, which makes a final determination as to whether a disaster is national, provincial or local in magnitude and severity. This is in terms of section 23 of the DMA, which also provides that, until a disaster is classified by the NDMC in terms of section 23, it is deemed to be a local disaster.<sup>46</sup> The classification of Covid-19 as a national disaster followed this process for it to be in compliance with the law.

The purpose of classifying a disaster is to acknowledge the existence of a disaster, assign primary responsibility for the disaster to a sphere of government to facilitate accountability, and allow other spheres to assist in the management of the disaster.<sup>47</sup> With regard to national disasters, they are classified as such if they affect more than one province or a single province which is unable to deal effectively with the disaster on its own.<sup>48</sup> This broadly is the legislative route that government would have had to follow when Covid-19 was declared a national disaster on 15 March 2020.

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<sup>43</sup> National Disaster Management Centre (2019) 14.

<sup>44</sup> National Disaster Management Centre (2019) 16.

<sup>45</sup> National Disaster Management Centre (2019) 16.

<sup>46</sup> Act 57 of 2002.

<sup>47</sup> National Disaster Management Centre (2019) 17.

<sup>48</sup> Section 23(3) of Act 57 of 2002.



The first case of Covid-19 in South Africa, detected and confirmed in Durban on 5 March 2020, was from a man who had travelled to Italy.<sup>49</sup> Subsequently the virus spread quickly across the country, mainly to the provinces of the Western Cape, Gauteng and the Eastern Cape.<sup>50</sup> While the early cases of the virus were detected in people who had travelled abroad, the first case of local transmission was reported on 13 March 2020.

On 15 March 2020, the Minister of Cooperative Governance and Traditional Affairs (Cogta) declared a national state of disaster in terms of section 27(1) of the DMA.<sup>51</sup> Immediately thereafter President Ramaphosa announced a number of measures that would be taken by Cabinet to manage the spread of Covid-19.<sup>52</sup> This declaration, it is said, was made to allow for an integrated and coordinated disaster management mechanism that would focus on preventing and reducing the outbreak of Covid-19.<sup>53</sup> In terms of section 27(1) of the DMA, in the event that a national disaster is declared, the Cogta Minister may declare the disaster by notice in the government gazette. The reason this is not couched in peremptory terms may be to do with section 26 (1) of the DMA.

According to that section, the responsibility for national disasters lies primarily with the national executive, regardless of whether a national state of disaster has been declared.<sup>54</sup> So, in essence the declaration of a disaster in terms of section 27(1) is discretionary and has no bearing

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<sup>49</sup> National Institute for Communicable Diseases 'First case of Covid-19 corona virus reported in South Africa' 05 March 2020 available at <https://www.nicd.ac.za/first-case-of-covid-19-coronavirus-reported-in-sa/> (accessed 18 February 2021).

<sup>50</sup> Giandhari J, Pillay Section & Wilkinso E 'Early transmission of SARS-CoV-2 in South Africa: An epidemiological and phylogenetic report' (2020) *PubMed Central* 4.

<sup>51</sup> GN 313 GG 43096 of 15 March 2020.

<sup>52</sup> Ramaphosa C 'Covid-19: Ramaphosa declares national state of disaster, imposes travel bans' *Daily Maverick* 15 March 2020 available at <https://www.dailymaverick.co.za/article/2020-03-15-covid-19-ramaphosa-declares-national-state-of-disaster-imposes-travel-bans/> (accessed 11 February 2021).

<sup>53</sup> Ramaphosa C 'Covid-19: Ramaphosa declares national state of disaster, imposes travel bans' (2020).

<sup>54</sup> Act 57 of 2002.

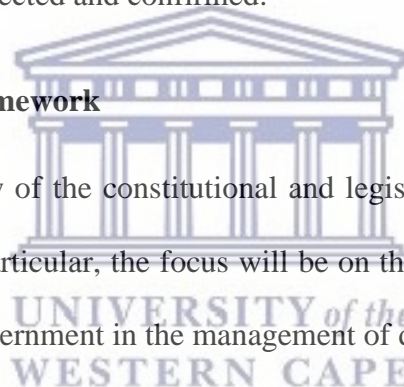
on the management of disasters. Nevertheless, the Minister of Cogta did comply with section 27(1) by declaring a national state of disaster on 15 March 2020.<sup>55</sup>

This declaration appeared in the same Gazette in which the classification of Covid-19 as a national disaster by the head of the NDMC was published.<sup>56</sup> The Minister cited several factors that led to Covid-19's being declared a national disaster. These include the magnitude and scale of Covid-19, which had been declared a global pandemic by the WHO, and the classification by the NDMC.<sup>57</sup>

It is not disputable that the magnitude and severity of Covid-19 warranted that Covid-19 be classified as a national disaster. This is due to how quickly it spread throughout the world. On reaching South African shores, it quickly spread beyond the province of KwaZulu-Natal where the first local case had been detected and confirmed.

### **2.3 Disaster management framework**

This section gives an overview of the constitutional and legislative framework that governs disasters in South Africa. In particular, the focus will be on the constitutional and legislative provisions relevant to local government in the management of disasters.



#### **2.3.1 Constitutional framework**

As indicated in the introduction above, disaster management is a function shared between the national and provincial spheres of government. While this means that both national and provincial government may legislate on disaster management, the existence of only the DMA, a national piece of legislation, means that provinces are left solely with the task of implementing such legislation. This is so because section 125(2)(b) of the Constitution

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<sup>55</sup> Disaster Management Act in GN 313 GG 43096 of 15 March 2020.

<sup>56</sup> Disaster Management Act in GN 312 GG 43096 of 15 March 2020.

<sup>57</sup> GN 313 GG 43096 of 15 March 2020.

provides that the executive authority of provinces includes the implementation of all national legislation within the functional areas listed in Schedule 4 or 5, except where it is provided otherwise by the Constitution or an Act of Parliament.

As stated above, municipalities perform various functions that are relevant to the management of disasters.<sup>58</sup> These include functions such as fire-fighting services, electricity, water provision, sanitation, and municipal health services, to mention a few. These services are almost always needed during disasters as part of prevention and mitigation measures. The centrality of local government to disaster management is also acknowledged in section 23(7) of the DMA.<sup>59</sup> Section 23(7) acknowledges the fact that disastrous events almost invariably originate within the jurisdiction of a particular municipality and hence that local government is likely to be the first sphere of government to respond when a disaster occurs.

### **2.3.2 Legislative framework**

There are various pieces of legislation that deal with disaster management in South Africa.<sup>60</sup> While these pieces of legislation deal with specific types of disasters and the management of disasters in specific sectors, the DMA is the primary piece of legislation that regulates disasters in the Republic. The DMA has four major areas of focus. The first is that it establishes an elaborate institutional framework for disaster management. In this regard, the Act requires that the President establish structures and institutions, key among which are the Intergovernmental Committee on Disaster Management (ICDM), made up of cabinet members, Members of

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<sup>58</sup> See introduction.

<sup>59</sup> See introduction.

<sup>60</sup> These include the Fire Brigade Services Act 99 of 1987; National Veld and Forest Fire Act 101 of 1998 and the Safety at Sports and Recreational Events Act 2 of 2010. Other Acts regulating specific aspects of disaster management in specific sectors include the National Environmental Management Act 107 of 1998; Conservation of Agricultural Resources Act 43 of 1983; Mineral and Petroleum Resources Development Act 28 of 2002; Building Regulations and Building Standards Act; Spatial Planning and Land Use Management Act 16 of 2013 and the National Climate Change Bill, 2018.

Executive Councils (MECs) and Members of Municipal Councils (MMCs) selected by the South African Local Government Association (SALGA).<sup>61</sup>

The DMA also provides for a detailed policy development and strategic planning framework for disaster management. In this regard, the Act requires that all organs of state prepare disaster management plans and that the responsible Minister prescribe a National Disaster Management Framework (NDMF).<sup>62</sup> The last two main areas of the Act deal with the classification and declaration of disasters and the funding of post-disaster recovery and rehabilitation.<sup>63</sup> While the Constitution provides for an indirect role for local government in the management of disasters, the DMA provides for a more direct role for municipalities in the management of disasters. Chapter 5 of this Act sets out a scheme for how local government should manage disaster situations, which includes the setting up of institutions, plans and the functions of local government during disasters.

However, this scheme only covers disasters that occur in specific municipalities and does not necessarily envisage national disasters. This scheme is nevertheless capable of being applied to disasters that occur nationally, such as the Covid-19 pandemic. This is because the institutional and policy mechanisms that Chapter 5 establishes mirror those established at the provincial and national levels. Therefore, during national disasters, the institutional and policy framework established in Chapter 5 becomes the vehicle through which local response measures are implemented even when dealing with a national disaster like Covid-19. The only difference is that the national sphere would have primary responsibility in the coordination and management of the disaster in terms of section 26(1) of the DMA.<sup>64</sup>

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<sup>61</sup> Section 4 of Act 57 of 2002.

<sup>62</sup> Section 25(1) and Section 6(1) of Act 57 of 2002.

<sup>63</sup> Sections 23(1); 27(1) and 56(1) of Act 57 of 2002.

<sup>64</sup> Section 26(1) of Act 57 of 2002.

The DMA further provides in section 26(3) that the national executive must act in close cooperation with the other spheres of government when exercising its primary responsibility during a national disaster.<sup>65</sup> Not only is this a practical way in which to manage national disasters, but it is also informed by the principle of cooperative government in the Constitution. Section 41 of the Constitution provides that all spheres of government and organs of state must secure the well-being of the Republic, provide coherent government for the Republic as a whole, and cooperate on matters of mutual interest, among other things. Against this background, the following subsection will outline the contents of the DMA that relate specifically to the role of local government in disaster management.

### **2.3.3 Local government within the legal framework of disaster management**

Municipal Disaster Management Centres (MDMC) serve as the primary functional units for disaster management in metropolitan and district municipalities.<sup>66</sup> The DMA provides that a municipal council must appoint a person as the head of its MDMC.<sup>67</sup> The head of the MDMC is responsible for exercising its powers and the performance of its functions and takes all of its decisions, except those taken in terms of delegated authority.<sup>68</sup> The Act is silent on the rest of the composition of the Centre. However, in terms of the Disaster Management Amendment Act 16 of 2015, the staff of the MDMC includes suitably qualified individuals appointed in the administration of the municipality.<sup>69</sup> The National Disaster Management Framework (NDMF) further states that the MDMC is neither a line function nor an emergency service; instead, it must be seen as a management function within a municipality.<sup>70</sup>

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<sup>65</sup> Section 26(3) of Act 57 of 2002.

<sup>66</sup> National Disaster Management Framework in General Notice 654 GG 27534 of 29 April 2005 para 1.2.5.

<sup>67</sup> Section 45(1) of Act 57 of 2002.

<sup>68</sup> Section 45(2) of Act 57 of 2002.

<sup>69</sup> Section 45A of the Disaster Management Amendment Act 16 of 2015

<sup>70</sup> General Notice 654 GG 27534 of 2005 para 1.2.1.

Furthermore, the NDMF recommends that MDMCs be located in the Office of the Mayor or Executive Mayor so that they can fulfil their responsibilities fully and effectively.<sup>71</sup> The MDMC also provides direction for the implementation of disaster risk management policy and legislation, and must ensure coherence in municipal disaster risk management activities and priorities in order to ensure that national and provincial objectives are met.<sup>72</sup> Furthermore, these centres are required to give guidance to various stakeholders, including organs of state and communities, in assessing, preventing or reducing the risk of disasters, and promoting initiatives that encourage risk-avoidance behaviour.<sup>73</sup>

A key function of the MDMC is to provide support to disaster management centres at the provincial and national levels.<sup>74</sup> During a disaster or the threat of a disaster occurring, the MDCM is required to provide support and guidance to the relevant sub-administrative units in the case of metropolitan municipalities, and to local municipalities in the case of district municipalities.<sup>75</sup> The MDMC is also required to mobilise municipal infrastructure and all other available resources to support disaster management efforts.<sup>76</sup> The DMA provides guidance regarding the sequence of steps that must be followed by the MDMC in the event of a disaster or threat of a disaster happening in its locality.<sup>77</sup> This process mirrors the same four-step process outlined above with regard to the declaration of national disasters.<sup>78</sup>

The DMA further requires that all spheres of government develop disaster management frameworks and disaster management plans. These frameworks act as policy that guides disaster management across the three spheres, while the disaster management plans translate

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<sup>71</sup> General Notice 654 GG 27534 of 2005 para 1.2.1.

<sup>72</sup> General Notice 654 GG 27534 of 2005 para 1.2.5.

<sup>73</sup> International Federation of Red Cross and Red Crescent Society (2012) 'Analysis of legislation related to disaster risk reduction in South Africa' available at [https://www.ifrc.org/PageFiles/86599/1213900-IDRL\\_Analysis\\_South%20Africa-EN-LR.pdf](https://www.ifrc.org/PageFiles/86599/1213900-IDRL_Analysis_South%20Africa-EN-LR.pdf) (accessed 22 September 2020) 29.

<sup>74</sup> General Notice 654 GG 27534 of 2005 para 1.2.5.1.

<sup>75</sup> General Notice 654 GG 27534 of 2005 para 1.2.5.

<sup>76</sup> General Notice 654 GG 27534 of 2005 para 1.2.5.1.

<sup>77</sup> Section 49 of Act 57 of 2002.

<sup>78</sup> See section 2.2.



that policy into an implementation strategy.<sup>79</sup> In essence, these frameworks ensure an integrated and uniform approach to disaster risk management by all organs of state and other institutional stakeholders.<sup>80</sup> The disaster management centres in each sphere of government are responsible for facilitating the development of the frameworks in their area of jurisdiction, in consultation with other relevant stakeholders.<sup>81</sup> At the local level, only the metropolitan and district municipalities are required to develop and implement a disaster management framework.<sup>82</sup>

As mentioned above, the DMA also requires municipalities (including local municipalities) to prepare Municipal Disaster Management Plans (MDMP) that serve as the implementation strategy for disaster management.<sup>83</sup> In terms of section 52(1) of the DMA, each municipal entity indicated in the national or relevant provincial or municipal disaster management framework must prepare a disaster management plan.<sup>84</sup> The DMA lists several features that a MDMP must have. Among other things, it must anticipate the types of disasters that are likely to occur in the municipal area and their possible effects; place emphasis on measures to reduce the vulnerability of disaster-prone areas; and facilitate maximum emergency preparedness.<sup>85</sup>

The Act provides that a MDMP must form an integral part of a municipality's Integrated Development Plan (IDP). Section 26(g) of the Local Government: Municipal Systems Act (MSA) requires that IDPs reflect applicable disaster management plans.<sup>86</sup> Furthermore, the DMA requires that municipalities consult the community in the preparation and amendment of

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<sup>79</sup> International Federation of Red Cross and Red Crescent Society (2012) 29.

<sup>80</sup> General Notice 654 GG 27534 of 2005 para 3.1.1.1.

<sup>81</sup> General Notice 654 GG 27534 of 2005 para 3.1.1.1.

<sup>82</sup> Section 42(1) of Act 57 of 2002.

<sup>83</sup> Van der Berg A 'Public-private partnerships in local disaster management: a panacea to all local disaster management ills?' (2015) 18 *PER* 4 1001.

<sup>84</sup> Act 57 of 2002.

<sup>85</sup> Section 53(2) of Act 57 of 2002.

<sup>86</sup> Local Government: Municipal Systems Act 32 of 2000.

MDMP through the mechanisms, processes and procedures established in terms of Chapter 4 of the MSA.<sup>87</sup>

## **2.4 Local government functions in the context of disaster management**

This section will provide an overview of the constitutional scheme that relates to local government powers and functions, with the focus placed on original and ‘additional’ powers of local government. This will be done to demonstrate that, while disaster management is not a local government function in terms of the Constitution, the nature of the functions of local government place municipalities front and centre in most if not all disasters that occur in the Republic. This is also to demonstrate that local government has a constitutional mandate to play a role in the prevention and management of disasters, even if this role is not explicitly provided for.

Therefore, this section will commence with a discussion on the position of local government within South Africa’s system of multilevel government, followed by a discussion on the overview of its powers and functions in terms of the Constitution. It will be argued that, since local government is the level of government closest to the people, disaster response happens at this level and hence, even during national disasters, municipalities play a pivotal role in implementing response measures.

### **2.4.1 Position of local government within the three-sphere system of government**

Local government exists within a multilevel system of government consisting of three spheres, the national, provincial and local spheres. The Constitution describes the relationship between the three spheres as one characterised by distinctiveness, interdependence and interrelatedness.<sup>88</sup> This speaks to the fact that, while local government is entrenched in the

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<sup>87</sup> Section 53(1)(d) of Act 57 of 2002.

<sup>88</sup> Section 40 (1) of the Constitution, 1996.



Constitution and enjoys autonomy, this autonomy is not absolute, as the three spheres have to work together. Chapter 3 of the Constitution provides how the three spheres of government ought to work together, while each sphere's autonomy is respected.

As mentioned above, section 41 of the Constitution affirms the autonomy of the three spheres, while at the same time recognising the need for them to work together. One of the principles of cooperative government listed in Chapter 3 provides that no sphere shall encroach geographically, institutionally or functionally on another sphere when exercising its powers. In addition, all three spheres are required to respect the constitutional status, institutions, powers and functions of government in other spheres.<sup>89</sup> The position of local government within this multilevel system becomes clearer when one looks at the powers of local government and how they are circumscribed by the Constitution, as is discussed in the following section.

#### **2.4.2 Functions of local government: A constitutional overview**

This section discusses the local government powers that are sourced from the Constitution. These powers enable local government to deliver on its service delivery mandate as provided in Schedules 4B and 5B of the Constitution. Due to the nature of the functions listed under Schedule 4B and 5B, local government is integral to the management of most disasters, even though disaster management is not a local government function in terms of the Constitution.

##### **2.4.2.1 Original functions**

In terms of section 156(1)(a) of the Constitution, a municipality has executive authority in respect of, and the right to administer, the local government matters listed in Part B of Schedules 4 and 5. Section 156(2) of the Constitution also gives municipalities legislative

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<sup>89</sup> Constitution, 1996.

powers over the matters in Schedules 4B and 5B. These are original functions as they derive directly from the Constitution and are not legislatively assigned, as was the case before 1994.

However, local government does not enjoy total exclusivity regarding its legislative and executive authority over the functions listed in Schedule 4B and 5B. Various provisions in the Constitution limit the autonomy of local government over the functions listed in Schedules 4B and 5B. In this regard, section 151(3) of the Constitution provides that a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.<sup>90</sup> This means that when municipalities exercise their legislative powers over the matters in Schedule 4B and 5B, such legislative powers may not be in conflict with national or provincial legislation over the same matters.

There is, however, a proviso in section 151(4) which provides that the national and provincial spheres of government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.<sup>91</sup> This means that in exercising their regulatory and supervisory powers over local government, the national and provincial spheres of government are required to respect the powers of municipalities to govern their affairs. Section 155(7) of the Constitution gives the national and provincial governments regulatory powers over the exercise of municipal powers.<sup>92</sup>

It provides that both spheres of government have the legislative and executive authority to see to the effective performance by municipalities of their powers provided in section 156(1) of the Constitution by regulating the exercise of those powers.<sup>93</sup> In addition, provincial governments are entrusted with the duty to support and strengthen the capacity of

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<sup>90</sup> Constitution, 1996.

<sup>91</sup> Constitution, 1996.

<sup>92</sup> Constitution, 1996.

<sup>93</sup> Section 155 (7) of the Constitution, 1996.

municipalities in their respective provinces so that they are able to perform their functions.<sup>94</sup> Various court decisions have pronounced on the correct interpretation of the limits of the oversight powers of the national and provincial spheres in relation to the exercise of local government powers in the Constitution.<sup>95</sup>

#### **2.4.2.2 Assigned functions**

The Constitution and legislation allow for the assignment of functions that fall outside of Schedule 4B and 5B to local government. In this regard, section 156(1)(b) provides that a municipality has the executive authority and the right to administer matters assigned to it by national or provincial legislation.<sup>96</sup> Assignments may be discretionary or mandatory. Section 99 of the Constitution provides a discretionary power of assignment to a member of Cabinet.

In terms of this section, a Cabinet member may assign any power or function in terms of an Act of Parliament to a Municipal Council, and such assignment must be in terms of an agreement between the relevant Cabinet member and the Municipal Council.<sup>97</sup> Similarly, section 126 of the Constitution confers the same discretionary powers of assignment on Members of Executive Councils (MECs). The assignment of powers may also be mandatory where certain functions are better suited to be performed at the local government level. This is provided for in section 156(4) of the Constitution.<sup>98</sup>

The assignment of additional functions which fall outside the competence of a municipality often has cost implications. This is because these are additional functions which a municipality may not have budgeted for or have the financial resources to carry out. The Municipal Systems

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<sup>94</sup> Section 155 (6) of the Constitution, 1996.

<sup>95</sup> See for example *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* [2010] ZACC 1; *Maccsand v City of Cape Town and Others* [2012] ZACC 7; *Minister of Local Government Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others* [2014] ZACC 9.

<sup>96</sup> Constitution, 1996.

<sup>97</sup> Constitution, 1996.

<sup>98</sup> Constitution, 1996

Act 32 of 2000 (MSA) has provisions which are aimed at ensuring that the assignment of functions and powers to municipalities is done only after proper consideration of the financial implications for municipalities.<sup>99</sup> In this regard, the Act provides for two forms of assignment, the first a general assignment to all municipalities or categories of municipalities in terms of national or provincial legislation, and the second an assignment to specific municipalities in terms of executive acts or agreements.

Section 9 of the MSA deals with the former type of assignment, while section 10 deals with the latter. In essence, these sections require, among others things, that an assessment will be conducted of the financial implications of the assignment for municipalities, and that the manner provided in which additional expenditure as a result of the assignment will be funded. Section 10A further provides that the Minister or organ of state initiating the assignment must take appropriate measures to ensure that there is sufficient funding and conduct any capacity-building initiatives that may be required for the performance of the assigned function or power by the municipality.

While, strictly speaking, local government may not perform functions outside those listed under Schedules 4B and 5B of the Constitution, the assignment provisions in the Constitution and other legislation have seen local government powers being expanded and in some cases added to, thus resulting in the creation of new mandates. For example, the housing function has been expanded over the years mainly through assignment arrangements, while museums and libraries, both exclusively provincial competencies, continue being administered by municipalities even without formal assignment arrangements.<sup>100</sup>

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<sup>99</sup> Mettler, G 'Guarding against unfunded mandates: The Municipal Systems Amendment Bill' (2003) 4 *Local Government Bulletin* 1 1.

<sup>100</sup> Financial and Fiscal Commission '2012/13 Submission for the division of revenue' (2011) 84.

The role of local government under Covid-19 changed within this constitutional and legislative scheme which allows for the transfer of functions from other spheres to local government. The national government made additional funds available to municipalities to assist them in performing their mandates under Covid-19.<sup>101</sup> This is in line with the requirements for assignment discussed above, which are there to protect against the assignment of unfunded mandates to local government.

#### **2.4.2.3 Delegated functions**

Functions may also be conferred on a municipality by way of a delegation. Section 238(a) of the Constitution provides that an executive organ of state from any sphere of government may delegate any power or function to any other executive organ of state. Furthermore, the section provides that such a delegation must be consistent with the legislation in terms of which the power is exercised or the function is performed. Unlike assignment, delegations do not confer the full set of powers that come with the function that is delegated. Delegations are said to be generally used to perform ‘service provider’ roles, that is, they are concerned with delivery to end-users and with implementation.<sup>102</sup>

In essence, municipalities either derive their powers directly from the Constitution, or these may be transferred to municipalities through assignment or delegation. In other instances, powers may be conferred on municipalities through agency agreements. These take the form of the normal principal-agency agreements and are largely similar to delegations. As already indicated, disaster management is not an original municipal function. However, it has been transferred to municipalities by the national sphere by way of an assignment.

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<sup>101</sup> See Chapter 3.

<sup>102</sup> Community Law Centre University of the Western Cape *Developmental local government: determining appropriate functions and powers* (2007) 7.

#### **2.4.2.4 Incidental powers**

Section 156(5) of the Constitution confers incidental powers on local government. These are powers that are said to be necessary for or incidental to the effective performance of municipal functions. These powers refer to those municipal functions that are not listed under Schedule 4B and 5B but are nonetheless inextricably linked to the performance of Schedule 4B and 5B matters. An example is the power to make by-laws and attach penalties for their transgressions, which are enforceable in a court of law. While this falls under the ambit of criminal law, which is a national competence, the power to attach penalties to by-laws is necessary for the effective exercise of that power.

#### **2.4.3 Local government functions and disaster management**

Due to the proximity between citizens and local government, disaster management is mostly implemented at the local government level even though it is not listed under Schedule 4B and 5B of the Constitution.<sup>103</sup> Furthermore, the nature of the services that local government provides places it at the centre of managing disasters such as the Covid-19 pandemic, as alluded to in the preceding paragraphs.<sup>104</sup> During the Covid-19 disaster, municipal services such as law enforcement, water and health were expanded as they are integral to preventing the further spread of the virus.

Therefore, it can be argued that the Constitution establishes an indirect mandate for local government in the management of disasters. This mandate is derived from the nature of functions and powers that the Constitution gives to municipalities. Importantly, section 156 of the Constitution states that local government has executive and legislative authority over these functions.<sup>105</sup> This power allows municipalities to enact and implement by-laws and policies for

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<sup>103</sup> Van der Berg A (2015) 995.

<sup>104</sup> Constitution, 1996.

<sup>105</sup> Constitution, 1996.

any of the functional areas that directly relate to the management of disasters in their area of jurisdiction.<sup>106</sup>

## 2.5 Conclusion

This chapter has discussed the constitutional and legislative framework for disaster management in South Africa. The focus has been on the roles allocated to local government within this framework. Since disaster management falls outside of the local government mandate provided in the Constitution, this chapter also discussed how the assignment provisions in the Constitution enable additional functions to be allocated to local government. In addition, the nature of local government functions, which inevitably place local government at the centre of any or most disasters, were discussed.

In terms of the constitutional framework, municipalities have an indirect role when it comes to disaster management. Instead of disaster management being given directly to local government, the nature of the functions under Schedule 4B and 5B nonetheless mandate municipalities to play a central role in disaster management. This is because services such as water, sanitation, health and fire-fighting are almost always involved when it comes to the prevention, mitigation and general management of disasters. The proximity of local government to communities also makes it inevitable that, during disasters, it is the sphere of government that is likely to be the first respondent to disasters and the primary implementing agent of response measures. This has been illustrated in the implementation of response measures undertaken to manage Covid-19, as discussed in detail in the following chapter.

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<sup>106</sup> Van der Berg (2015) 997.



## **CHAPTER 3: THE EXPANDED AND NEW MANDATE OF LOCAL GOVERNMENT UNDER COVID-19**

### **3.1 Introduction**

Covid-19 resulted in the expansion of the mandate of local government. Local government also saw its powers expanded in respect of functions that fall outside of its original powers. Therefore, this chapter will also examine the performance of new mandates by municipalities during the national state of disaster. The functions that are to be examined are, in the main, the provision of water, health services (including the provision of quarantine and isolation sites), sanitation, law enforcement, and, lastly, the issuing of Covid-19 trading permits. In respect of the new mandates, this chapter will discuss the provision of food parcels and shelters for the homeless as part of local government functions during the national state of disaster. This chapter will focus only on functions that had a major impact on the service delivery mandate of local government, and will therefore not discuss all services provided during the national state of disaster.

This chapter will follow a systematic approach in analysing each of these functions. Hence for each function, the following questions will be answered:

- Which sphere of government is ordinarily responsible for the relevant function?
- How did the expansion of the function arise?
- How did local government deliver on this mandate in practice?
- Are there any post-Covid-19 implications with regard to the expansion of the function?

### **3.2 Water provision**

#### **3.2.1 Responsible sphere in terms of the constitutional division of powers**

The supply of potable water is the responsibility of local government in terms of Schedule 4B of the Constitution. Water is also listed as a right in section 24 of the Bill of Rights, which



provides that everyone has a right to sufficient access to water.<sup>107</sup> Being part of the state, local government is duty-bound to respect, protect, promote and fulfil the rights in the Constitution, including the right to sufficient access to water.<sup>108</sup> Furthermore, the Water Services Act 108 of 1997 (WSA) reiterates this by providing that every water services authority (municipality) must provide for measures to realise section 24 in the Bill of Rights.<sup>109</sup>

The Regulations to the WSA (Regulations Relating to Compulsory National Standards and Measures to Conserve Water) contain standards for the provision of water to ensure minimum access.<sup>110</sup> Regulation 3 of these standards provides that the minimum standard for basic water provision is 25 litres per person per day, or six kilolitres per household per month.<sup>111</sup> The Regulations also state that no consumer should be without a supply of water for more than seven full days in any year.<sup>112</sup>

Despite these provisions, access to water remains a big challenge in South Africa, even though many more households have access to clean drinking water today than in 1994. For instance, water access in general is commendable, as revealed in the 2018 General Household Survey. The three provinces with the highest rates of access to water are the Western Cape (98.7%), Gauteng (97.1%), and Northern Cape (95.3%), while those with the least access are the Eastern Cape (75.1%) and Limpopo (74.1%).<sup>113</sup> However, in terms of the number of households with access to piped water inside the house, the statistics are not as impressive. The survey revealed that less than half (46.3 %) of South African households have access to piped water inside the

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<sup>107</sup> Section 27(1)(b) of the Constitution, 1996.

<sup>108</sup> Section 7(2) of the Constitution, 1996.

<sup>109</sup> Sections 3(1) and (3) of Water Services Act 108 of 1997.

<sup>110</sup> Water Services Act Regulations in GN 509 GG 22355 of 08 June 2001.

<sup>111</sup> GN 509 GG 22355 of 08 June 2001.

<sup>112</sup> GN 509 GG 22355 of 08 June 2001.

<sup>113</sup> Statistics South Africa (2018) 'General Household Survey 2018' available at <http://www.statssa.gov.za/publications/P0318/P03182018.pdf> (accessed 07 October 2020).

house. This shows that the rest of the households have access to onsite or offsite water sources, meaning that they access water on their properties or through communal sources.

The pandemic has further highlighted disparities in access to water. The challenge of adequate access to water is felt mostly in rural areas and informal settlements. This is because of challenges that include difficulties in installing water infrastructure in these areas, and often corruption and incapacity, which hamper service delivery. In municipalities such as the City of Cape Town, which has one of the largest numbers of informal settlements in the country, the challenge of adequate access to water is most acute. In its 2017–2022 Integrated Development Plan (IDP), the City of Cape Town states its commitment to provide one tap per 25 families within 200m.<sup>114</sup> However the reality on the ground often reveals a very different picture. Between 2016 and 2017, the relatively new informal settlement of Marikana in Cape Town had been provided with fewer than 50 communal standpipes, which meant that there was one tap for every 250 households.<sup>115</sup>

This has implications in terms of the measures that were put in place to contain the spread of Covid-19. The maintenance of good hygiene, social distancing and frequent hand-washing with soap and water are some of the measures that are recommended to prevent the spread of Covid-19.<sup>116</sup> Ideally, for these measures to work, people should have access to piped water inside their houses, or at least on site, to limit large numbers of people gathering around communal taps to access water. However, this is clearly not possible for people whose only access to water is

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<sup>114</sup> City of Cape Town ‘2017-2020 Integrated Development Plan –Informal settlement services project’ available at [http://resource.capetown.gov.za/documentcentre/Documents/City%20strategies%2c%20plans%20and%20frameworks/IDP2017-22\\_Review\\_and\\_Amendments\\_2020-21.pdf](http://resource.capetown.gov.za/documentcentre/Documents/City%20strategies%2c%20plans%20and%20frameworks/IDP2017-22_Review_and_Amendments_2020-21.pdf) (accessed 09 October 2020) 122.

<sup>115</sup> Socio-Economic Rights Institute of South Africa (2019) ‘Our Land to Keep: Marikana informal settlement’ available at [http://www.seri-sa.org/images/SERI\\_Marikana\\_FINAL\\_WEB\\_READY.pdf](http://www.seri-sa.org/images/SERI_Marikana_FINAL_WEB_READY.pdf) (accessed 09 October 2020) 13.

<sup>116</sup> SACoronavirus ‘About Covid-19’ available at <https://sacoronavirus.co.za/information-about-the-virus-2/> (accessed 08 October 2020).

through communal taps (or even rivers in some cases). This makes people in these communities more vulnerable to the virus.

### **3.2.2 Regulations and Directions on the provision of water during Covid-19**

As a response to Covid-19, municipalities were directed to expand the provision of water. Section 6.2 (6.1.2)(b) of the Directions issued on 25 March 2020 states that municipalities should provide potable water and sanitation services to high-population-density settlements, rural communities and informal settlements.<sup>117</sup> In terms of section 6.2 (6.1.2)(c) of these Directions, municipalities were further required to make water available through other means such as water tankers, boreholes and storage tanks in water-constrained communities that have limited access to municipal water supplies.<sup>118</sup> Furthermore, municipalities were instructed to make water available at public facilities and public transport points, as provided in terms of section 6.2 (6.1.2)(d) of the Directions.<sup>119</sup>

On a simple reading of these Directions, it is evident that municipalities were required to take extraordinary measures to ensure the provision of water as a response measure to Covid-19.<sup>120</sup> These measures resulted in the expansion of normal water provision because they entailed making water available in places that had had little or no provision before the pandemic struck.

### **3.2.3 The expansion of water provision by municipalities in practice**

In its presentation to the Cogta Portfolio Committee on 28 April 2020, the South African Local Government Association (SALGA) reported that municipalities had provided 2,138 water tanks and 243 water tankers as part of efforts to ensure that water is accessible to vulnerable

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<sup>117</sup> Direction 6.2 (6.1.2)(b) in Disaster Management Act directions in GN 399 GG 43147 of 25 March 2020.

<sup>118</sup> Direction 6.2 (6.1.2)(c) in GN 399 GG 43147 of 25 March 2020.

<sup>119</sup> Direction 6.2 (6.1.2)(d) in GN 399 GG 43147 of 25 March 2020.

<sup>120</sup> 'Extraordinary measures' refers to the increased rate at which services such as water are being provided under covid-19. Covid-19 has required municipalities to increase the level of their service provision, which, for example, has seen water tanks deliver water to areas that had no such service before the pandemic.

communities.<sup>121</sup> It was estimated then that it would cost local government in the region of R100 million per month to operate these tanks and water tankers.

It is also important to note that the provision of the additional water supplies through tanks is a function that was carried out by both local government and the Department of Water and Sanitation (DWS). The department indicated in a report dated 19 May 2020 that 17,962 tanks had been delivered across the country, with 11,978 of these already installed. The report also indicated that 1,299 tankers had been delivered to ensure that the tanks remained in use.

The DWS identified 2,000 communities across the country that either had no water provision or the provision of which was inadequate.<sup>122</sup> However, what is clear is that many vulnerable communities did not benefit from the expanded water provision and, in some instances, the expanded water provision failed to achieve the intended results. These shortcomings have to be understood within the context of endemic capacity issues in local government which predate Covid-19.

*Spotlight* compiled a report on the dire situation in the OR Tambo District Municipality in the Eastern Cape where residents were still collecting water from rivers and dams when the country had moved to alert level 2 of the lockdown.<sup>123</sup> This was five months after the country had gone into lockdown and is a clear indication that the expanded services had not reached all the communities that needed them. It is said that more than half of the residents in the OR Tambo District Municipality do not have access to water within 200 metres of their dwelling.<sup>124</sup> This

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<sup>121</sup> SALGA 'Local Government's response to Covid-19 Portfolio Committee: Cooperative Government and Traditional Affairs' 28 April 2020 available at *SALGA PEC INDUCTION NOVEMBER 2016* (accessed 01 August 2020).

<sup>122</sup> PreventionWeb 'How business is responding to COVID-19 in South Africa's poorest urban communities' online available at *FEATURE: How business is responding to COVID-19 in South Africa's poorest urban communities | PreventionWeb.net* (accessed on 01 June 2021).

<sup>123</sup> Spotlight 'The making of a public health time bomb: Just (don't) add water' 01 September 2020 available at <https://www.spotlightsp.co.za/2020/09/01/in-pictures-the-making-of-a-public-health-time-bomb-just-dont-add-water/> (accessed 17 October 2020).

<sup>124</sup> Spotlight 'The making of a public health time bomb: Just (don't) add water' (2020).

is despite claims by the Mayor of this municipality to Parliament that it had spent R5.8 million to appoint 26 service providers to ferry water to communities with little or no access to water as part of the District's Covid-19 relief efforts.<sup>125</sup>

In other parts of the country, reports revealed similar stories of a lack of access to water months into the lockdown, despite the fact that R20 billion had been set aside for municipalities to expand service provision during Covid-19. For instance, three months into the lockdown, Ga-Kobe and Ga-Mphakani villages in Limpopo were still without potable water, let alone sanitation and hygiene infrastructure.<sup>126</sup> Some residents in these communities still purchased water from people with boreholes, while those without the means to pay were compelled to source their drinking water from unprotected and potentially hazardous sources such as pools and streams.<sup>127</sup>

Such shortcomings in the delivery of services during a public health disaster exposed long-standing capacity issues that have plagued local government. During a public health crisis such inefficiencies pose an immediate danger to the health and well-being of residents. Ensuring a continued and uninterrupted supply of water during the pandemic certainly proved to be a challenge that municipalities were ill-equipped to address in such a short turnaround time.

In the community of Mbizana in the Eastern Cape, it was reported that water tanks remained dry as they were last filled up on delivery.<sup>128</sup> Similarly, *GroundUp* reported that water tanks in the Ramaphosa informal settlement in the township of Motherwell in Port Elizabeth

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<sup>125</sup> Spotlight 'The making of a public health time bomb: Just (don't) add water' (2020).

<sup>126</sup> Helen Suzman Foundation 'COVID-19: Opportunities and challenges for the water, sanitation and hygiene sector' 28 May 2020 available at <https://hsf.org.za/publications/hsf-briefs/covid-19-challenges-and-opportunities-for-the-water-sanitation-and-hygiene-sector> (accessed 09 October 2020).

<sup>127</sup> Helen Suzman Foundation (2020).

<sup>128</sup> ENCA 'Covid-19 in SA: Eastern Cape's dry emergency water tanks' available at *COVID-19 in SA: Eastern Cape's dry emergency water tanks* | eNCA (accessed 11 June 2021).

periodically ran dry.<sup>129</sup> During a time of a public health crisis, many communities were left to fend for themselves. The extent to which the provision of water reached water-stressed communities, especially during the so-called hard lockdown, is however not clear due to limited information available in the public domain.

The DWS set up a National Water and Sanitation Command Centre at the head offices of Rand Water, the mandate of which was to monitor the implementation of these interventions. Despite this, there is no information regarding the impact of the interventions, as mentioned above. In the end, it remains difficult to assess whether the expanded service provision achieved the intended effect of extending services to previously unserved or under-served communities, and to what extent the expanded services helped mitigate the impact of Covid-19. However, what is clear is that, while water is a function of local government in terms of the Constitution, the national sphere was heavily involved in the provision of water as part of measures to contain Covid-19.

It did this through the actual provision of additional water, as mentioned above, and by providing grant funding to municipalities to help them meet the additional water demands brought on by Covid-19. Many smaller municipalities hence took the role of being, in the main, the implementing agents, as opposed to being the primary service providers. In the bigger metros such as the City of Cape Town, additional water was provided by the municipality itself, while in some instances this was done with assistance from the DWS.<sup>130</sup>

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<sup>129</sup> GroundUp ‘Water tanks run dry in Motherwell informal settlements’ 19 May 2020 available at <https://www.groundup.org.za/article/water-tanks-run-dry-motherwell-informal-settlements/> (accessed 06 November 2020).

<sup>130</sup> City of Cape Town ‘More than 100 million litres of water provided to informal settlements during lockdown’ online available at [https://www.capetown.gov.za/Media-and-news/More than 100 million litres of water provided to informal settlements during lockdown](https://www.capetown.gov.za/Media-and-news/More%20than%20100%20million%20litres%20of%20water%20provided%20to%20informal%20settlements%20during%20lockdown) (accessed on 01 June 2021).



### 3.2.4 The implications for post-Covid-19

The expansion of water provision during the Covid-19 pandemic created the inevitable challenge of raised expectations about the continuation of water provision beyond the pandemic. There is the possibility that the discontinuation of the service in water scarce areas might spark community unrest and lead to the vandalism of infrastructure.<sup>131</sup> In this regard, municipalities will have to tread carefully by trying to manage these expectations through clearly communicating with communities. However, clear communication may not be enough to quell community unrest should municipalities not be able to sustain the provision of water beyond the pandemic.

This perhaps presents an opportunity for local government to leverage the Covid-19-related infrastructure beyond the pandemic. Furthermore, the pandemic forced all spheres to work together to greater effect in delivering additional services to meet the demands of the pandemic. As mentioned above, the DWS played a leading role in many of the smaller municipalities in ramping up water supply during the pandemic. The department assisted in the delivery of water to many residents whose municipalities may have not had the additional capacity to increase water supply, especially under lockdown conditions.

These collaborative endeavours between different spheres of government should be used as templates to improve access to water in the long run and thereby realise the right to access to water as enshrined in the Constitution. The national and provincial spheres of government should continue to support municipalities beyond the pandemic in delivering on their water mandate in compliance with their duty of support in terms section 154(1) of the Constitution.

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<sup>131</sup> SALGA (2020) 36.



### 3.3 Health

#### 3.3.1 Responsible sphere in terms of the constitutional division of powers

Section 27 of the Constitution provides that ‘everyone has the right to have access to health-care services, including reproductive health care’. Section 27 further provides that everyone has the right to an environment that is not harmful to one’s health or well-being. The Constitution allocates different powers to the three spheres of government in respect of the right to health. ‘Health services’ is a concurrent competence between the national and provincial spheres of government, as it is listed under Schedule 4A of the Constitution. However, local government also has competence over ‘municipal health services’ in terms of Schedule 4B of the Constitution.

The Constitution does not, however, provide definitions for the functional areas belonging to each sphere of government in terms of the overlaps between matters listed under Schedules 4A and 5A and those under Schedules 4B and 5B.<sup>132</sup> Guidance in terms of the cut-off point between ‘health services’ and ‘municipal health services’ is provided in the definitions in section 1 of the National Health Act 61 of 2003 (NHA). In the Act, ‘health services’ are defined to include reproductive health care and emergency medical treatment; basic nutrition and health-care services; medical treatment; and municipal health. In contrast, ‘municipal health services’ are defined to include ‘water quality monitoring; food control; waste management; health surveillance of premises; surveillance and prevention of communicable diseases, excluding immunisations; vector and environmental pollution control, disposal of the dead; and chemical safety’.<sup>133</sup>

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<sup>133</sup> Section 1 of Act 61 of 2003.

This definition makes it clear that local government is primarily responsible for those functions that relate to environmental health, whereas those functions relating to personal health care are the responsibility of the national and provincial spheres, the former being responsible for setting policies and framework legislation and the latter for the implementation thereof. Furthermore, section 31(1) of the NHA provides that every metropolitan and district municipality must ensure that appropriate municipal health services are effectively and equitably provided in their respective areas.<sup>134</sup>

Section 32(2) further provides that the relevant Member of the Executive Council (MEC) must assign such health services in their province as are contemplated in section 156(4) of the Constitution by way of service level agreements.<sup>135</sup> Despite the definition of ‘municipal health services’, which limits health services at local government level to environmental matters, and the decision by the National Health Council (NHC) to ‘provincialise’ primary health care in the mid-2000s, metropolitan and district municipalities have continued to provide primary health-care services as they did before the promulgation of the NHA.

The court in *Allied Workers Union v President of the RSA* held that the definition of ‘municipal health services’ in the NHA was capable of a construction that incorporates such primary health-care services as municipalities provided before the Act.<sup>136</sup> The implication of this decision is that municipalities have an original power emanating from the Constitution that gives them competence over personal primary health care. As such, local government has a crucial role to play in ensuring that the health facilities under the management of metropolitan and district municipalities are up to the task of dealing with public health disasters such Covid-19.

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<sup>134</sup> Act 61 of 2003.

<sup>135</sup> Act 61 of 2003.

<sup>136</sup> *Independent Municipal and Allied Workers Union and Others v President of the RSA and Others* unreported case no 3298/2006 (16 April 2008) para 51.

Furthermore, as part of the health measures that were put in place to manage Covid-19, quarantine and isolation sites had to be made available for people who were either infected by the virus or had been exposed to it. As already stated in Chapter 2, local government plays a key role in disaster management, even though disaster management is a shared competence between the national and provincial spheres of government in terms of the Constitution.<sup>137</sup> While the Constitution does not have a specific provision that allocates powers in respect of quarantining and isolating people, this function is incidental to the management of disasters such as Covid-19. As part of government, local government is therefore also constitutionally bound to make provisions for the evacuation of people during disaster events and accommodating them in safe spaces.

This is given effect to by the DMA, which provides that all spheres of government have the authority to evacuate people from disaster-stricken or threatened areas if such action is necessary for the preservation of life.<sup>138</sup> Therefore, the Regulations and Directions requiring municipalities to provide quarantine and isolation sites are consistent with the Constitution and DMA. The provision of quarantine and isolation sites is part of both the disaster management and health functions shared between the national and provincial spheres of government. As discussed in the preceding paragraphs, these functions also involve local government due to its original powers and the provisions of the DMA.

### **3.3.2 Regulations and Directions on municipal health services during Covid-19**

The Directions issued by the Cogta Minister contain various functions that municipalities were expected to perform in order to prevent the spread of Covid-19. Many of these functions can be interpreted as falling within the ambit of ‘surveillance and prevention of communicable diseases’ in terms of the definition of ‘municipal health services’ in the NHA provided above.

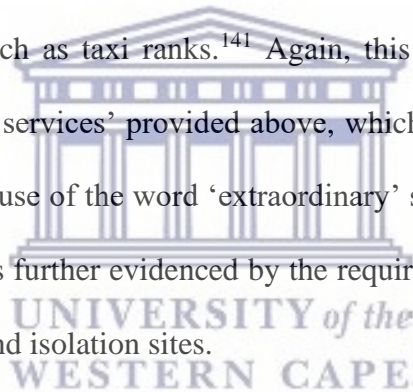
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<sup>137</sup> See section 2.3.1.

<sup>138</sup> See ss 27, 41 and 55 of the Act 57 of 2002.

Section 63 (6.3.2)(d) of the Directions instructed municipalities to provide soaps, sanitisers, latex gloves and other materials or equipment to prevent person-to-person transmission in areas where councillors and municipal staff have direct contact at public service centres and facilities such as clinics and municipal offices.<sup>139</sup>

It appears that this directive was intended to prevent the transmission of the virus at municipal facilities between municipal officials and members of the public. The Directions further provide in section 6.4 (6.4.1) that extraordinary cleansing and sanitisation of public facilities need to be carried out by municipalities in order to control the transmission of the virus.<sup>140</sup> To achieve this, section 6.4 (6.4.2)(b) of the Directions require municipalities, in collaboration with relevant health authorities to establish response teams to be deployed in hotspot areas. These teams would carry out extraordinary decontamination, disinfection, sanitising and cleaning of public facilities such as taxi ranks.<sup>141</sup> Again, this fits with both aspects of the definition of ‘municipal health services’ provided above, which contain elements of primary and environmental health. The use of the word ‘extraordinary’ suggests that municipal health services were expanded. This is further evidenced by the requirement that municipalities also needed to provide quarantine and isolation sites.



In order to contain the spread of Covid-19, municipalities were required to provide quarantine and isolation facilities for people who had been infected by or exposed to the virus. Because many people live in cramped conditions in the country’s sprawling townships, self-quarantine or isolation is a challenge. It thus became imperative for government to provide these facilities to prevent an uncontrollable transmission of the pandemic. In terms of section 6.6 of the Directions, municipalities, in collaboration with the relevant provincial departments were thus

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<sup>139</sup> Disaster Management Act directions in GN 399 GG 43147 of 25 March 2020.

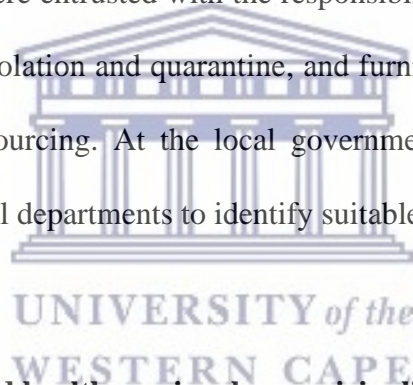
<sup>140</sup> Disaster Management Act directions in GN 399 GG 43147 of 25 March 2020.

<sup>141</sup> SALGA (2020) 23.

instructed to identify facilities, such as community halls, which could be used as quarantine and isolation sites.<sup>142</sup>

The Directions further stated that municipalities must be guided by the protocols and guidelines of the Department of Health in their identification and provision of quarantine and isolation sites.<sup>143</sup> While municipalities are usually required to provide temporary shelters for victims of disasters such as fires and floods, having to provide quarantine and isolation facilities as part of containing a highly infectious virus is uncharted territory. Unlike the other functions discussed in this paper, the Regulations in relation to quarantine and isolation sites explicitly placed the responsibility for the provision of these sites on all three spheres of government.<sup>144</sup>

To this end, the Cabinet member and MEC responsible for public works and municipal managers at municipal level were entrusted with the responsibility of identifying and making available sites to be used for isolation and quarantine, and furnishing such information to the Department of Health for resourcing. At the local government level, municipalities were directed to work with provincial departments to identify suitable quarantine and isolation sites within their jurisdictions.<sup>145</sup>



### **3.3.3 The delivery of expanded health services by municipalities in practice**

As part of its measures to manage the pandemic, South Africa implemented one of the most stringent lockdowns in the world.<sup>146</sup> It has been said that the stringent lockdown was implemented in order to buy the health system time for the expected upsurge in cases in the

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<sup>142</sup> GN 399 GG 43147 of 25 March 2020.

<sup>143</sup> GN 399 GG 43147 of 25 March 2020.

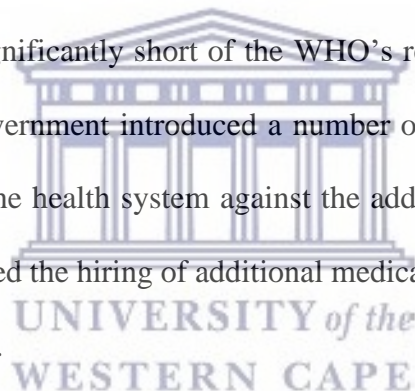
<sup>144</sup> Regulation 7(3) in GN 480 GG 43258 of 29 April 2020.

<sup>145</sup> Disaster Management Act directions in GN 399 GG 43147 of 25 March 2020.

<sup>146</sup> US News 'South Africa eases one of world's strictest: lockdowns: South Africa has begun easing one of the world's strictest lockdowns' 01 May 2020 available at <https://www.usnews.com/news/world/articles/2020-05-01/south-africans-walk-outside-as-country-eases-virus-lockdown> (accessed 19 November 2020).

winter months.<sup>147</sup> With a public health system that is beset by many challenges which impact negatively on service delivery, this was a logical and commendable thing to do. Some of the challenges faced by the public health system include the inability to deliver primary health care to outlying communities, failures in governance and management, and a severe shortage of skilled health-care workers.<sup>148</sup>

The lack of human resources, and the skewed distribution of health-care workers between rural and urban areas in favour of the latter, were of particular concern, as this would severely compromise the ability of the health system to effectively deal with an upsurge in infections. To paint a picture of the severity of the problem, while rural communities form 42 per cent of the public health system, only 15 per cent of doctors and 20 per cent of nurses are based in rural areas.<sup>149</sup> Furthermore, it is estimated that South Africa has 3.2 medical practitioners per 10,000 citizens, which falls significantly short of the WHO's recommendation of 30 doctors per 10,000 citizens.<sup>150</sup> The government introduced a number of measures to deal with these challenges in order to fortify the health system against the added burden of Covid-19 cases. Some of these measures included the hiring of additional medical practitioners, and increasing bed capacity in health facilities.



While provinces are the main sphere involved in the provision of health services, metros and district municipalities are also responsible for the provision of health services, as stated above. Furthermore, municipal clinics are the first point of call for many residents in townships,

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<sup>147</sup> Investec 'Is SA's healthcare system prepared for Covid-19?' 13 July 2020 available at [https://www.investec.com/en\\_za/focus/beyond-wealth/is-south-africas-healthcare-system-prepared-for-covid-19.html](https://www.investec.com/en_za/focus/beyond-wealth/is-south-africas-healthcare-system-prepared-for-covid-19.html) (accessed 14 October 2020).

<sup>148</sup> Investec 'Is SA's healthcare system prepared for Covid-19?' (2020).

<sup>149</sup> Spotlight 'COVID-19: How rural healthcare workers are preparing' 08 April 2020 available at <https://www.spotlightsp.co.za/2020/04/08/covid-19-how-rural-healthcare-workers-are-preparing/> (accessed 14 October 2020).

<sup>150</sup> Investec 'Is SA's healthcare system prepared for Covid-19?' (2020).



informal settlements and rural areas when seeking health services.<sup>151</sup> While it could be argued that the Directions issued in respect of the health measures to contain Covid-19 fall within the normal service provision mandate of local government, some have resulted in the expansion of its mandate.

For example, the eThekweni Metropolitan Municipality carried out health-related functions such as 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.<sup>152</sup> These clearly go beyond the scope of ‘municipal health services’ which include primary and environmental health.

One of the consequences of the expanded health mandate in municipal clinics was the disruption of other health-care programmes, in particular the management of HIV/AIDS. A study conducted in 65 primary health-care clinics in KwaZulu-Natal revealed that there was a 50 per cent decline in HIV-testing and ARV initiation.<sup>153</sup> This could have serious long-term implications for the management of HIV/AIDS and put further strain on the already fragile health system in the medium to long term.

The City of Cape Town also implemented various measures at its health facilities in response to Covid-19. One of these was the rolling out of mobile testing booths at 17 selected clinics across the city. In addition, the city erected temporary overflow facilities at selected clinics to ensure social distancing and continued provision of general primary health care alongside

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<sup>151</sup> News24 ‘Superheroes need help too: Health workers in plea for protective gear’ 22 May 2020 available at <https://www.news24.com/news24/SouthAfrica/News/superheroes-need-help-too-health-workers-in-plea-for-protective-gear-20200522> (accessed 14 October 2020).

<sup>152</sup> Maziwisa MR ‘eThekweni Metropolitan Municipality vs COVID-19: 90 days into the lockdown’ (2020) 15 *Local Government Bulletin* 2.

<sup>153</sup> Dorward J, Khubone T & Gate K et al ‘The impact of the COVID-19 lockdown on HIV care in 65 South African primary care clinics: an interrupted time series analysis’ (2021) 8 *THE LANCET* 163.



Covid-19 interventions.<sup>154</sup> These facilities were meant to make available an additional 153 examination and treatment rooms with access to all the necessary resources that are required to deliver health services.<sup>155</sup>

The city also deployed 490 Expanded Public Works Programme (EPWP) employees to help with education and awareness initiatives. In addition, these employees assisted with the provision of various services which include the tracing of close contacts of positive cases and addressing the importance of self-isolation and self-quarantine.<sup>156</sup> Education and awareness campaigns are in line with the Directions issued by the Cogta Minister, which provide, among other things, that municipalities should prepare and roll out awareness campaigns on Covid-19 to the public within their area of jurisdiction.

Municipalities were also directed to ensure that communication materials include details on prevention, identification, infection control, local reporting channels and emergency contacts, and raise public awareness about appropriate preventive behaviours and practices.<sup>157</sup> All these measures were aimed at preventing the spread of Covid-19, and so it could be argued that they are in line with the prevention of communicable diseases as stated in the definition of municipal health services in the NHA.

As part of fulfilling their municipal health-services mandate, municipalities run health and hygiene promotion projects on a regular basis. However, the intensity and scale with which this has been carried out in the context of Covid-19 goes beyond what would normally be anticipated of municipalities in terms of delivering on their health services mandate. This is to

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<sup>154</sup> City of Cape Town 'City clinics introduce COVID-19 mobile testing booths' 20 July 2020 available at <http://www.capetown.gov.za/Media-and-news/City%20clinics%20introduce%20COVID-19%20mobile%20testing%20booths> (accessed 17 October 2020).

<sup>155</sup> City of Cape Town (2020) 1.

<sup>156</sup> City of Cape Town 'More boots on the ground to amplify COVID-19 awareness efforts' 09 June 2020 available at <http://www.capetown.gov.za/Media-and-news/More%20boots%20on%20the%20ground%20to%20amplify%20COVID-19%20awareness%20efforts> (accessed 06 November 2020).

<sup>157</sup> Directions in GN 399 GG 43147 of 25 March 2020.

be expected in the context of a national state of disaster where the government, and the whole of society, are dealing with a novel public health emergency.

Being an unprecedented virus, Covid-19 has caused other forms of disruption to the normal provision of health services at municipal clinics. Some clinics in certain parts of the country had to close when one or more staff members tested positive for Covid-19. These closures were meant to allow for the decontamination, quarantine and isolation of positive cases, and close contact tracing, in accordance with guidelines established by the NICD.<sup>158</sup> In terms of these guidelines, the closure of an entire facility is an extreme measure that should be carefully considered and discussed with infectious diseases specialists or a Department of Health representative prior to implementation.<sup>159</sup> This is because closures disrupt service delivery and may lead to overcrowding at other facilities as residents seek medical care at alternative facilities; while those without the means to seek medical help elsewhere, mostly women, children and the elderly, may be left stranded.

Three clinics (Folang, Silverton and Rosslyn) in Tshwane were closed after one staff member in each of the facilities tested positive for Covid-19.<sup>160</sup> This may have been as a result of the early panic and lack of information during the early onset of the virus, given that it happened before the release of the guidelines for health facilities issued by the NICD. Nonetheless, such disruptions to the provision of health services threatened to cripple the country's already vulnerable health system. Furthermore, providing normal health care while trying to implement the Covid-19 Regulations resulted in further deterioration of service provision in many clinics

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<sup>158</sup> National Institute for Communicable Diseases (NICD) 'Covid-19 Outbreak investigation: A practical guide and manual for healthcare facilities' 27 July 2020 available at <https://www.nicd.ac.za/wp-content/uploads/2020/08/COVID-19-Outbreak-Investigation-Practical-Guide-and-Manual-for-Healthcare-Facilities.pdf> (accessed 19 October 2020) 30.

<sup>159</sup> National Institute for Communicable Diseases (NICD) 'Covid-19 Outbreak investigation: A practical guide and manual for healthcare facilities' (2020).

<sup>160</sup> IOL 'Covid-19: 3 more clinics closed in Tshwane' 19 June 2020 available at <https://www.iol.co.za/pretoria-news/covid-19-3-more-clinics-closed-in-tshwane-49604219> (accessed 19 October 2020).

across the country. This was evidenced by the long queues at many clinics, often stretching outside the facilities and exposing patients to harsh weather conditions.<sup>161</sup>

This is symptomatic of the long-standing problem of a lack of adequate resources in the public health system. Covid-19 has served as a reminder of the need for urgent improvement to the health system. Nonetheless, the pandemic did not lead to a total collapse of the public health system. Primary health-care facilities at municipal level were spared much of the ravages of the pandemic due to their limited role in the management and treatment of Covid-19 cases.

Municipalities were also required to provide quarantine and isolation sites. These were meant to accommodate people who had either been infected by Covid-19 or those who had been in close contact with people who had tested positive. According to a SALGA presentation to the Cogta Portfolio Committee, municipalities had identified 57 sites by 27 April 2020. Of those, 28 had already been activated, and 855 people had been placed in these facilities.<sup>162</sup> People admitted to these facilities were required to stay for a period of 14 days. This was later revised to 10 days by way of an amendment to the Regulations.<sup>163</sup>

While municipalities also provided quarantine and isolation sites, there has been very little information in the public domain on this, apart from the information provided by SALGA. It is hence difficult to establish the extent to which individual municipalities were able to provide quarantine and isolation sites, and the number of people that were admitted to these sites. Such

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<sup>161</sup> allAfrica 'South Africa: Covid-19 - Patients Complain of Long Clinic Queues but Officials Are Trying to Fix This' available at *South Africa: Covid-19 - Patients Complain of Long Clinic Queues but Officials Are Trying to Fix This - allAfrica.com* (accessed 29 August 2020).

<sup>162</sup> Parliamentary Monitoring Group 'Role of local government in combating spread of COVID-19 virus: SALGA briefing' 28 April 2020 available at *SALGA PEC INDUCTION NOVEMBER 2016* (accessed 08 December 2020).

<sup>163</sup> Department of Health 'Guidelines for quarantine and isolation in relation to covid-19 exposure and infection' 05 May 2020 available at <https://www.nicd.ac.za/wp-content/uploads/2020/05/Guidelines-for-Quarantine-and-Isolation-in-relation-to-COVID-19.pdf> (accessed 01 December 2020) 4.

information is only available for the sites that were provided by the Department of Public Works and Infrastructure, together with the Health Department.

The national Department of Public Works and Infrastructure had primary responsibility for identifying quarantine and isolation sites at the national level. In collaboration with the other spheres of government, the department was tasked with the responsibility of identifying these sites in the 44 district municipalities and eight metros across the country.<sup>164</sup> The provision of quarantine and isolation sites was therefore a largely centralised function that was delivered at the national level.

The provision of these facilities came with a unique set of problems when compared to the other functions discussed in this paper. As the infection rate picked up, it was expected that more people would need to be quarantined or isolated, especially given the living conditions of a significant portion of South Africa's population. To illustrate, the 2019 Statistics South Africa General Household Survey report indicated that 12.7 per cent of South Africans lived in informal dwellings.<sup>165</sup> This is a huge number of people, considering that the population estimate for the country in 2020 was 59.62 million people.<sup>166</sup> Because of the challenges of overcrowding and lack of adequate services, self-quarantine and self-isolation are impractical in these communities.

However, despite the spiralling rate of infections during the peak winter months the occupancy rates at these facilities remained very low. In an article published on 13 July 2020, it was reported that only 139 out of 438 government-approved quarantine sites had beds that were

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<sup>164</sup> South African Government 'Minister Patricia de Lille: Public Works and Infrastructure's state of readiness for Coronavirus COVID-19 Alert Level 3' 29 May 2020 online available at <https://www.gov.za/speeches/minister-patricia-de-lille-public-works-and-infrastructure%E2%80%99s-state-readiness-coronavirus> (accessed 04 December 2020).

<sup>165</sup> StatsSA 'General Household Survey 2019' available at *GHS 2019 (statssa.gov.za)* (accessed 09 April 2021).

<sup>166</sup> StatsSA 'Protecting South Africa's elderly' online available at *Protecting South Africa's elderly | Statistics South Africa (statssa.gov.za)* (accessed 09 April 2021).

occupied.<sup>167</sup> Some of the reasons that were given for this include the stigma associated with Covid-19, lack of information about the existence of these facilities and how to access them, fear of a lack of access to home comforts such as alcohol and family companionship once admitted, and a general mistrust of government-provided health services. Unlike the other functions discussed in this paper, there was an oversupply of quarantine and isolation sites which far outstripped the actual demand.

### **3.3.4 The implications for post-Covid-19**

During the post-peak months from late August 2020 onwards, the extra resources that some municipalities had put in place at their clinics were gradually wound down. However, there have been suggestions by some municipalities, such as the City of Cape Town, about the retention of some of these services beyond Covid-19. Whether this will happen, and the extent to which it will happen, remains to be seen. Given the dire economic climate that has been worsened by the pandemic, and the funding cuts to local government, retaining the extra capacity may be unfeasible without provincial and national government support.

Furthermore, the sites that were identified and made available to quarantine people were meant to be a measure to minimise Covid-19 transmission rates. As shown above, demand for these facilities failed to meet expectations, and this resulted in very low occupancy rates. There is hence unlikely to be pressure on local government to retain this service beyond Covid-19. Unlike services such as expanded water and sanitation, quarantine sites are unlikely to be at the core of possible public unrest if they are decommissioned once the state of national disaster comes to an end.

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<sup>167</sup> Karim AA 'South Africa has thousands of potential COVID-19 quarantine hotels. but they're empty' *Bhekisisa* 13 July 2020 available at <https://bhekisisa.org/health-news-south-africa/2020-07-13-south-africa-has-thousands-of-potential-covid-19-quarantine-hotels-but-theyre-empty/> (accessed 15 December 2020) (2020).

### 3.4 Sanitation

#### 3.4.1 Responsible sphere in terms of the constitutional division of powers

Sanitation is a Schedule 4B matter, which brings it under the suite of local government powers and functions under the Constitution. In terms of legislation, the National Water Act 36 of 1998 (NWA) and the Water Services Act 108 of 1997 (WSA) both regulate the provision of domestic water and sanitation services.<sup>168</sup> Section 3(1) of the WSA provides that everyone has the right to basic water and sanitation, while section 3(3) provides that, in their water services development plan, all municipalities must provide for measures to realise these rights.<sup>169</sup> Section 11(5) of the WSA places a duty on municipalities to supply basic water and sanitation to all residents in their area of jurisdiction in times of emergencies and may do so at the cost of the municipality.

Furthermore, in terms of the National Sanitation Policy, universal access to basic sanitation is one of the principles of sanitation service provision in the country.<sup>170</sup> However, according to the National Water and Sanitation Master Plan (NWSMP), access to sanitation services nationally is around 80 per cent.<sup>171</sup> The plan also states that the national targets for water supply and sanitation services are 90 per cent for the year 2020 and 100 per cent access in 2030. While these targets are commendable, the current reality is that millions of people continue to have inadequate access to sanitation and, in some cases, no access at all.

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<sup>168</sup> Department of Water and Sanitation 'National norms and standards for domestic water and sanitation services' 08 September 2017 available at <https://cer.org.za/wp-content/uploads/1997/12/National-norms-and-standards-for-domenstic-water-and-sanitation-services.pdf> (accessed 16 October 2020).

<sup>169</sup> Disaster Management Act Directions in GN 399 GG 43147 of 25 March 2020.

<sup>170</sup> Department of Water and Sanitation 'National Sanitation Policy 2016: Sanitation Policy Framework' available at [https://www.gov.za/sites/default/files/gcis\\_document/201706/national-sanitation-policy.pdf](https://www.gov.za/sites/default/files/gcis_document/201706/national-sanitation-policy.pdf) (accessed on 16 October 2020).

<sup>171</sup> Department of Water and Sanitation 'National Water and Sanitation Master Plan: managing effective water and sanitation services' available at [https://www.gov.za/sites/default/files/gcis\\_document/201911/national-water-and-sanitation-master-plandf.pdf](https://www.gov.za/sites/default/files/gcis_document/201911/national-water-and-sanitation-master-plandf.pdf) (accessed 16 October 2020) 19.



The skewed access to sanitation services in many municipalities is caused mostly by a lack of skilled and experienced technical staff, institutional capacity and funding sufficient to operate, maintain and manage water and waste water infrastructure assets properly.<sup>172</sup> As with access to water, inadequate access to sanitation services has deleterious implications for public health. During a public health crisis such as Covid-19, adequate sanitation becomes key to government efforts to manage and contain the spread of the pandemic.

### **3.4.2 Regulations and Directions on sanitation services during Covid-19**

In the Directions issued to municipalities, areas with limited or no access to sanitation services are defined as ‘hotspot’ areas.<sup>173</sup> This is because the lack of adequate sanitation services in these areas makes them high-risk for spreading Covid-19. These areas are mostly rural communities and densely populated informal settlements. As a measure to deal with inadequate sanitation in these areas and to avert a public health disaster, the Directions instructed municipalities to provide extraordinary sanitation facilities.<sup>174</sup> The Directions also provided that, in collaboration with other stakeholders, municipalities had to ensure the availability of water and sanitation at public facilities and public transport points.<sup>175</sup> A duty was thus placed on municipalities to develop and implement plans to improve the delivery of sanitation services during Covid-19.

### **3.4.3 The delivery of sanitation services in practice**

The Department of Water and Sanitation identified 2 000 communities across the country that needed urgent attention with regard to the provision of sanitation as part of government efforts

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<sup>172</sup> Department of Water and Sanitation National Water and Sanitation Master Plan: managing effective water and sanitation services’ 20.

<sup>173</sup> Direction 5 in GN 399 GG 43147 of 25 March 2020.

<sup>174</sup> Directions in GN 399 GG 43147 of 25 March 2020.

<sup>175</sup> Directions in GN 399 GG 43147 of 25 March 2020.



to manage the Covid-19 pandemic.<sup>176</sup> To deal with the sanitation challenge, the government resolved to supply interim containerised sanitation systems. These were to be provided in the targeted high-density areas and implemented by metropolitan municipalities using Urban Settlement Development Grant (USDG) funding.<sup>177</sup>

In meetings of the parliamentary portfolio committee for Cogta held between May and June 2020, discussions were held on the programmes that were under way or planned to mitigate Covid-19 in the metropolitan municipalities across the country.<sup>178</sup> In these meetings, most of the municipalities made little mention of the expansion of sanitation services in their areas of jurisdiction. Buffalo City Metro is one of the few municipalities that discussed additional sanitation services, in the form of 99 new toilets that had already been installed or were in the process of being installed.<sup>179</sup> Other metros, such as the City of Cape Town, only made mention of the maintenance and cleaning of existing sanitation facilities, while the City of Ekurhuleni and the City of Johannesburg made no mention of plans to expand or even improve existing sanitation services in hot spot areas.

Although little information was shared at these meetings, the City of Cape Town, through its Urban Management and Water and Waste Directorates, reported that it had delivered 20,240 care packs aimed at improving hygiene. Of these packs, 240 were a donation from the DWS.

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<sup>176</sup> Department of Human Settlements, Water and Sanitation 'Minister Lindiwe Sisulu on interventions to curb the spread of Coronavirus COVID-19' 25 March 2020 available at <https://www.rockblue.org/south-africas-response-to-covid-19/> (accessed on 16 October 2020).

<sup>177</sup> Department of Human Settlements, Water and Sanitation (2020).

<sup>178</sup> Budledner D 'Voices of informal settlement residents during the Covid-19 crisis - what the metros say they are doing about basic services in informal settlements in the light of the covid-19 pandemic' *ASIVIKELANE* 26 June 2020 available at <https://www.internationalbudget.org/wp-content/uploads/asivikelane-brief-4.pdf> (accessed 18 March 2021).

<sup>179</sup> Budledner D (2020) 1.

These care packs were distributed to targeted residents in various informal settlements and included soap, sanitisers, masks and gloves.<sup>180</sup>

The City of Cape Town also announced on its website that it had increased its janitorial and toilet services as part of its Covid-19 emergency response measures. After this, toilets would be serviced four times a week and janitorial services provided six days a week; this would continue until June 2021. A reported 2,297 chemical toilets would be issued in areas that were without sanitation due to legislative and land suitability issues.<sup>181</sup> It is reported that an amount of R30.7 million had also been set aside to expand cleansing of public housing complexes and hostels owned by the city.<sup>182</sup>

The *Asivikelane*<sup>183</sup> social audits on the provision of services in informal settlements around the country shed light on the lived experiences of residents in these communities with regard to service delivery under Covid-19. Part of complying with the Directions on sanitation services involves improving access to toilets and cleaning them frequently. This is to ensure that hygiene is kept at the required level to reduce the chances of spreading Covid-19, especially in so-called hotspot areas where sanitation facilities are usually shared. It is a critical intervention, as in some informal settlements a single toilet can be shared by up to 53 people.<sup>184</sup>

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<sup>180</sup> City of Cape Town ‘Care packs to help drive Covid-19 awareness’ available at [https://www.capetown.gov.za/Media-and-news/Care\\_packs\\_to\\_help\\_drive\\_COVID-19\\_awareness](https://www.capetown.gov.za/Media-and-news/Care_packs_to_help_drive_COVID-19_awareness) (accessed 03 June 2021).

<sup>181</sup> City of Cape Town ‘City continues COVID-19 temporary emergency services in informal settlements’ available at [https://www.capetown.gov.za/Media-and-news/City\\_continues\\_COVID-19\\_temporary\\_emergency\\_services\\_in\\_informal\\_settlements](https://www.capetown.gov.za/Media-and-news/City_continues_COVID-19_temporary_emergency_services_in_informal_settlements) (accessed 03 June 2021).

<sup>182</sup> City of Cape Town ‘R30, 7 million for enhanced COVID-19 cleansing in rental flats, hostels’ available at [https://www.capetown.gov.za/Media-and-news/R30\\_7\\_million\\_for\\_enhanced\\_COVID-19\\_cleansing\\_in\\_rental\\_flats\\_hostels](https://www.capetown.gov.za/Media-and-news/R30_7_million_for_enhanced_COVID-19_cleansing_in_rental_flats_hostels) (accessed 25 October 2021).

<sup>183</sup> The ASIVIKELANE initiative is a project that investigates the state of service provision in informal settlements situated in the metros during the Covid-19 pandemic. Residents are asked about their access to water, clean toilets and waster removal, and results are published bi-weekly on the International Budget Partnership website, *Home / International Budget Partnership*.

<sup>184</sup> PLAAS ‘Water and sanitation in the face of Covid-19 in Cape Town’s townships and informal settlements’ available at <https://www.plaas.org.za/water-and-sanitation-in-the-face-of-covid-19-in-cape-towns-townships-and-informal-settlements/> (accessed 03 June 2021).

Results from the *Asivikelane* social audits paint an uneven picture when it comes to the expansion of sanitation services in informal settlements across the country. While some residents reported improved services, others indicated that there were no changes at all. One case in point is the City of Cape Town. Some residents indicated that they had received soaps or hand sanitisers from the City. Others reported that their toilets were either cleaned more frequently than before the lockdown or every day since the beginning of the lockdown. This seems to be in line with the City's undertaking to improve sanitation services in informal settlements as part of its Covid-19 response measures.

Despite these interventions, many informal settlements remained without access to toilets, while many of those with access still needed to share them with other residents. The audits shed light on this situation as they revealed that there was no regular cleaning of the toilets in some areas, while in other areas it was reported that cleaners did not have chemicals to clean the toilets. Contrary to what the City of Cape Town reported, *Asivikelane* found that many residents in informal settlements indicated that toilets would go for weeks without being cleaned.

Some of the concerns mentioned by the residents are that there were not enough cleaners for the toilets, and where there were cleaners, chemicals were not available to clean the toilets. Another issue highlighted by residents were broken or blocked toilets which remained unrepaired under Covid-19 conditions. It should be noted that the responses highlighted above are from audits that were conducted during the peak period of infections. This means that many residents in informal settlements may have experienced little to no change in the delivery of sanitation services, and thus lived constantly in high-risk environments during an ongoing public health emergency.

Local government was expected to improve the provision of sanitation within a short space of time. While in some areas sanitation services did improve through regular servicing and the installation of new facilities, not all of the qualifying communities were reached. This again exposes the general shortcomings in local government and the backlogs in the provision of sanitation services, as is the case with other municipal services.

#### **3.4.4 The implications for post-Covid-19**

From the above discussion, it is unclear whether any additional sanitation services were made available by municipalities at a significant scale. Research by *Asivikelane* shows that many municipal budgets for the 2020/2021 period indicated a slowing down in the provision of services, while in some cases they showed a decline in service provision. For example, the City of Cape Town's planned tap and toilet delivery was the same for 2020 as it was for 2019. Moreover, the eThekweni Metro estimated that it would take up to 90 years to eradicate its toilet backlog, while the City of Johannesburg's budget is set to leave more than 92,000 households without basic sanitation by 2023.<sup>185</sup> What this indicates is that very little will change in the immediate future with regard to the expansion of sanitation services.

These figures are further proof that expanded sanitation services are likely to be discontinued after Covid-19. In terms of the state's service delivery obligations that are enshrined in the Constitution and its human rights obligations, it is untenable that local government should scale down its sanitation service provision when the state of disaster ends. Therefore, renewed efforts will need to be embarked upon to ensure that such an essential service continues to be expanded even beyond the national state of disaster.

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<sup>185</sup> ASIVIKELANE 'Metros could budget more for informal settlement services' available at <https://www.internationalbudget.org/wp-content/uploads/asivikelane-number-12-metro.pdf> (accessed 18 March 2021).

If things are to get worse after Covid-19 with regard to the provision of sanitation services, it is likely that more service delivery protests may erupt. What is clear is that local government needs to be proactive in coming up with ways to address service-delivery shortcomings beyond Covid-19. This is because it will bear the brunt of any protest action that may result from inadequate services.

### **3.5 Law enforcement**

#### **3.5.1 Responsible sphere in terms of the constitutional division of powers**

The Constitution provides municipalities with various powers related to law enforcement. Traffic and parking services are listed under Schedule 5B, which means that municipalities have the executive authority and a right to administer this function in terms of section 156(1) of the Constitution.<sup>186</sup> The Constitution further provides for the establishment of municipal police services in section 206(7), which states that national legislation must provide a framework for the establishment, powers, functions and control of municipal police services.<sup>187</sup> The South African Police Service (SAPS) Act 68 of 1995 gives effect to section 206(7) of the Constitution by providing for the establishment of municipal police services in terms of section 64A.<sup>188</sup> Furthermore, section 156(2) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters under Schedules 4B and 5B.<sup>189</sup> One of the primary functions of a municipal police service is therefore the enforcement of municipal by-laws.

Before the promulgation of Act 68 of 1995, the function of law enforcement at local government level mostly concerned the enforcement of traffic laws. The Act paved the way for

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<sup>186</sup> Constitution, 1996.

<sup>187</sup> Constitution, 1996.

<sup>188</sup> South African Police Service. Act 68 of 1995

<sup>189</sup> Constitution, 1996.

the establishment of a municipal police service to carry out crime prevention duties at the local level in addition to the policing of traffic laws.<sup>190</sup> In the Act, it is further provided that members of municipal police services are peace officers and may exercise the powers conferred on peace officers within their area of jurisdiction, and, in other cases, outside their area of jurisdiction.<sup>191</sup> This means that members of municipal police services may exercise powers given to peace officers in any other legislation, such as the Domestic Violence Act 116 of 1998 and Criminal Procedure Act 51 of 1977.<sup>192</sup> However, due to the requirements that need to be met before a municipality can establish a municipal police service, it is only the larger municipalities with the necessary financial resources that have been able to establish municipal police services.<sup>193</sup>

### **3.5.2 Regulations and Directions on law enforcement during Covid-19**

The Covid-19 pandemic resulted in changes to the ordinary mandate of law enforcement services at local government level. Regulations and Directions that were promulgated created several new offences relating to the contravention of Covid-19 laws.<sup>194</sup> Municipal law enforcement agencies in collaboration with SAPS and the South African National Defence Force (SANDF) were tasked with enforcing Covid-19 Regulations and Directions. In the Regulations, a law enforcement officer is defined as including SAPS and SANDF members, metro police, traffic officers, and immigration inspectors and a peace officer as defined in section 1 of the Criminal Procedure Act 51 of 1977.<sup>195</sup> This provides the legal basis for municipal law enforcement agencies to carry out tasks related to the enforcement of Covid-19 Regulations.

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<sup>190</sup> Section 64E of the South African Police Service Act 68 of 1995.

<sup>191</sup> Section 64F (3) Act 68 of 1995.

<sup>192</sup> Rauch J, Shaw M & Louw A 2001 'Municipal Policing in South Africa: Development and Challenges' available at <http://www.csvr.org.za/docs/policing/municipalpolicinginsouth.pdf> (accessed 06 November 2020).

<sup>193</sup> Section 64A of Act 68 of 1995.

<sup>194</sup> See table 1 below.

<sup>195</sup> Disaster Management Act Regulations in GN 480 GG 43258 of 29 April 2020



The Regulations further imposed several limitations, which include limitations on public gatherings and the sale and transportation of non-essential goods such as alcohol.<sup>196</sup> Furthermore, people were required to observe social distancing in public places, the wearing of masks became mandatory, and prohibitions on inter-provincial travel were imposed. Due to the dynamic nature of the pandemic, government implemented a risk-adjusted strategy, which effectively resulted in constant changes to these rules depending on the epidemiological trend of Covid-19.<sup>197</sup> The constant changes to the Regulations affected the role of law enforcement. Under the hard lockdown, during which virtually all economic activities had ground to a halt, there was more visibility of law enforcement officers.

However, as the country moved down the lockdown levels in terms of the risk-adjusted strategy, more restrictions were eased. This resulted in the winding down of the activities of law enforcement and marked a return to focusing on pre-pandemic activities. However, as stated above, during the hard lockdown the expanded mandate of law enforcement was pronounced. This can be gleaned from a perusal of the new offences and fines regime that was brought about by the Regulations.

The DMA in this regard provides that the Minister (Cogta) responsible for administering the Act may prescribe penalties for any contravention of the Regulations issued in terms of the Act.<sup>198</sup> These penalties may include imprisonment for a period not exceeding six months or a fine.<sup>199</sup> As such, the Regulations issued by the Cogta Minister contained several offences relating to the contravention of the said Regulations and the associated penalties.

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<sup>196</sup> South African Corona Virus ‘Consolidated Regulations’ 17 April 2020 available at <https://sacoronavirus.co.za/wp-content/uploads/2020/04/Consolidated-Regulations-DMA-17-April.pdf> (accessed 02 November 2020).

<sup>197</sup> South African Corona Virus ‘Covid-19 risk adjusted strategy’ available at <https://sacoronavirus.co.za/covid-19-risk-adjusted-strategy/> (accessed 02 November 2020).

<sup>198</sup> S27 (4) of the Disaster Management Act 57 of 2002.

<sup>199</sup> S59 (3) of Act 57 of 2002.



Law enforcement officers are authorised to issue fines and arrest or detain people guilty of contravening the Regulations.<sup>200</sup> The Judiciary published directives based on provincial and magisterial districts outlining admission of guilt fines that are attached to offences related to Covid-19 Regulations.<sup>201</sup> Each magisterial district set its own fines in relation to a contravention of Covid-19 Regulations and so the fines payable depended on the jurisdiction where the contravention occurred. The table below provides an illustration of the fines that applied in the magisterial district of Tshwane Central, North and South.<sup>202</sup>

**Table 1: Covid-19 offences and fines**

Regulation	Charge	Fine
14(1)	Misrepresentation that any person is infected with Covid-19.	R3000
14(2)(a)	Publishing of any statement to deceive any other person about Covid-19.	R2000
14(2)(b)	Publishing of any statement to deceive any other person about the infection status of any person.	R3000
14(2)(c)	Publishing of any statement to deceive any other person about any measure taken by Government to address Covid-19.	R1000
14(3)	Intentionally exposing another person to Covid-19.	R5000
14(4)(a)	Disclosing any information contained in the Covid-19 tracing database.	R1000
14(4)(a)	Failure by an accommodation establishment to transmit to the Director-General: Health, for inclusion in the Covid-19 tracing database, the required information regarding every person staying at the accommodation establishment for the duration of the lockdown.	R2000
31(1)(a)	Convening of a gathering.	R3000
31(1)(b)	Hinder/interfere or obstruct an enforcement officer in execution of his/her duties under the Disaster Management Act Regulations 2020.	R2000
31(2)	Failure to confine oneself in your place of residence other than in permitted circumstances.	R500
31(2)	Going to work without a permit.	R500
31(2)	Buying goods that are not permitted.	R500
31(2)	Illegally moving children.	R1000
31(2)	Illegally walk, run or cycle.	R500
31(2)	Breaching of curfew (between 20h00 and 05h00).	R500
31(2)	Illegally moving between provinces, metropolitan areas and districts.	R1000
31(2)	Illegal eviction of person(s).	R5000
31(2)	Visit places and premises closed to public.	R1000
31(2)	Sell, dispense or distribute liquor.	R2000
31(2)	Sell tobacco products-cigarettes and related products.	R1000
31(2)	Retail stores selling illegal products.	R1000

<sup>200</sup> Disaster Management Act Regulations in GN 480 GG 43258 of 29 April 2020.

<sup>201</sup> Determination of Admission of Guilt Fines: Disaster Management Act Regulations, 2020 available at <https://www.judiciary.org.za/index.php/judiciary/determinations-of-admission-of-guilt-fines/gauteng-province> (accessed 21 November 2020).

<sup>202</sup> Determination of Admission of Guilt Fines: Disaster Management Act Regulations (2020).

### 3.5.3 The enforcement of Covid-19 Regulations and directions in practice

In order to enforce compliance with Covid-19 Regulations, 24,389 law enforcement members made up of SAPS, SANDF and metro police units were deployed during the first week of the lockdown, which began on 27 March 2020.<sup>203</sup> In terms of local government, the Directions required municipalities to monitor and control social distancing in communities.<sup>204</sup> To achieve this, municipalities were directed to work in collaboration with SAPS and SANDF to stop social and other gatherings, except for funerals.<sup>205</sup> Municipalities heeded this call by deploying their municipal police units to enforce the various Regulations and Directions in collaboration with SAPS and the SANDF. Their role was to assist SAPS, and they were under the command of SAPS in carrying out activities related to the enforcement of Covid-19 Regulations.

Larger municipalities such as the City of Cape Town deployed extra units to meet the added demand of enforcing the Regulations.<sup>206</sup> The City reported that it provided an additional 500 officers from its Law Enforcement Assistance Programme (LEAP) to assist in the various measures implemented to ensure compliance with Covid-19 Regulations and Directions.<sup>207</sup> These measures included integrated roadblocks, vehicle checks and deployments in hotspot areas. The additional deployments started to yield results almost immediately. Within the first week of the lockdown, 2,289 people had been arrested for various Covid-19-related transgressions throughout the country.<sup>208</sup>

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<sup>203</sup> South African News Agency 'Over 2000 arrests for non-compliance with Covid-19 rules' available at *Over 2000 arrests for non-compliance with COVID-19 rules / SAnews* (accessed 04 June 2021).

<sup>204</sup> Direction 6.6 (6.6.2) (a) in GN 399 GG 43147 of 25 March 2020.

<sup>205</sup> Direction 6.6 (6.6.2) (b) in GN 399 GG 43147 of 25 March 2020.

<sup>206</sup> Western Cape Government 'WCG Covid-19 readiness' available at *COVID19 Readiness\_0.pdf* (*westerncape.gov.za*) (accessed 05 June 2021).

<sup>207</sup> Western Cape Government 'WCG Covid-19 readiness' (2020).

<sup>208</sup> South African News Agency 'Over 2000 arrests for non-compliance with COVID-19 rules' (2021).

By the time the country was moved to alert level 3 in August 2020, SAPS reported that 230,000 cases had been opened related to the contravention of Covid-19 lockdown Regulations.<sup>209</sup> While this may have been commendable from a law-enforcement viewpoint, in the context of worsening economic conditions it meant the lockdown was criminalising people at a high rate. This would in turn curtail people's ability to participate in economic activities such as seeking employment, due to their criminal records. This is but one of the unintended consequences that came with the implementation of the lockdown.

There are however reports that government has been working on a Bill that would result in admission of guilt fines not attracting criminal records.<sup>210</sup> This would also cover admission of guilt fines paid in respect of breaching lockdown related Regulations. However, as things stand, those who paid admission-of-guilt fines in respect of breaching lockdown Regulations are sitting with criminal records.

The enforcement of Covid-19 Regulations also highlighted longstanding problems within the country's law enforcement services. Within the first four days of the lockdown, reports emerged of three people who had died, allegedly at the hands of a Metro Police officer and at least two members of SAPS.<sup>211</sup> The first of these deaths happened in Cape Town on the first day of the lockdown (27 March 2020) where 55-year-old Petrus Miggels died shortly after he was allegedly assaulted by the police.

An Independent Police Investigative Directorate (IPID) investigation cleared the police of wrongdoing after an autopsy revealed the cause of death to have been a heart failure.

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<sup>209</sup> South African Police Service 'Minister of Police, Gen Cele gives an update on the levels of compliance and adherence to the Lockdown Regulations in the country' available at *Services / SAPS (South African Police Service)* (accessed on 29 December 2020).

<sup>210</sup> BUSINESSTECH 'Thousands of South Africans who broke lockdown rules could have criminal records' available at *Thousands of South Africans who broke lockdown rules could have criminal records (businessstech.co.za)* (accessed on 22 October 2022).

<sup>211</sup> News24 'Lockdown: Cops, metro cop face 3 counts of murder and other serious charges' 31 March 2020 available at <https://www.news24.com/news24/SouthAfrica/News/cops-face-3-counts-of-murder-and-other-serious-charges-amid-lockdown-20200331> (accessed 05 November 2020).

Eyewitness accounts revealed that Mr Miggels was on his way home after having gone out to purchase alcohol when the police stopped him and subsequently assaulted him for being in contravention of Covid-19 Regulations.<sup>212</sup> The second of these deaths was that of Mr Sibusiso Amos which is discussed below. The third victim died in police custody following an alleged assault and subsequent arrest by the police in Lenasia for violating Covid-19 lockdown Regulations.<sup>213</sup>

It was said that the pandemic would remind society of the inequalities that persist in South Africa as the poorer areas were expected to bear the brunt of the devastation brought about by Covid-19. Indeed, this proved to be the case, even in respect of law enforcement activities, as most of the human rights violations reported were meted out against people in poor communities.<sup>214</sup> While many human rights violations were reported in the first few days after the commencement of the lockdown, the case of *Khosa and Others v Minister of Defence and Military Veterans and Others* stole the headlines and shone the spotlight on the widespread human rights violations by law enforcement members in enforcing Covid-19 Regulations.<sup>215</sup>

Mr Collins Khosa succumbed to injuries sustained pursuant to an assault by members of the SANDF at his home, for allegedly contravening Covid-19 lockdown Regulations. The assault happened in the presence of Johannesburg Metropolitan Police Department (JMPD) members who failed to intervene.<sup>216</sup> Following the death of Mr Khosa, an application was brought by his

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<sup>212</sup> ViewFinder ‘Covid-19: Police watchdog investigation of first lockdown death reveals deep flaws’ available at *Covid-19: Police watchdog investigation of first lockdown death reveals deep flaws – Viewfinder* (accessed 08 November 2021).

<sup>213</sup> IPID ‘Joint meeting of the PCP and SCJS on police misconduct cases’ 29 April 2020 available at *PCP Lockdown Presentation (29 April 2020) Final - DocumentCloud* (accessed 08 November 2021).

<sup>214</sup> Atlantic Council ‘Pandemic policing: South Africa’s most vulnerable face a sharp increase in police-related brutality’ 24 June 2020 available at <https://www.atlanticcouncil.org/blogs/africasource/pandemic-policing-south-africas-most-vulnerable-face-a-sharp-increase-in-police-related-brutality/> (accessed 06 November 2020).

<sup>215</sup> *Khosa and Others v Minister of Defence and Military Veterans and Others* (21512/2020) [2020] ZAGPPHC para 147.

<sup>216</sup> TimesLive ‘JMPD says it will suspend officers who were at slain Collins Khosa's house’ 06 May 2020 available at <https://www.timeslive.co.za/news/south-africa/2020-05-06-jmpd-says-it-will-suspend-officers-who-were-at-slain-collins-khosas-house/> (accessed 05 November 2020).

family to the North Gauteng Division of the High Court seeking relief in the form of a draft order, which among other things sought a declaration of rights and the institution of disciplinary measures.<sup>217</sup>

In terms of the relief sought specifically against municipal police, the applicants requested the relevant authorities to command their municipal police units to refrain from acts of torture and cruel, inhumane, or degrading punishment and to apply only reasonable minimum force in enforcing the Regulations. The applicants also requested that the court declare that any failure by members of municipal police units to report, repress or prevent these acts could attract criminal, civil and/or disciplinary sanctions. Furthermore, the applicants requested that the Acting Chief of the JMPD place the two members of the JMPD, who had failed to act when Mr Khosa was assaulted, on suspension pending an investigation into charges of misconduct. The draft order also asked the court to order that the ministers of defence and police develop and publish guidelines on a code of conduct to regulate the conduct of law enforcement, including municipal police, in enforcing Covid-19 Regulations.

Lastly, the applicants sought an order instructing the relevant heads of the various enforcement units to establish an easily accessible mechanism for the public to report cases of alleged misconduct as they relate to the violation of people's rights during the enforcement of Covid-19 Regulations.<sup>218</sup> These and other reliefs sought in the draft order were granted and, where relevant, the relevant respondents were instructed to lodge affidavits with the court confirming compliance with its order within set time periods.<sup>219</sup>

The *Khosa* case was preceded by the death of Sibusiso Amos, who was allegedly shot dead by a private security official and members of the Ekurhuleni Metropolitan Police Department

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<sup>217</sup> *Khosa and Others v Minister of Defence and Military Veterans and Others* para 24.

<sup>218</sup> *Khosa and Others v Minister of Defence and Military Veterans and Others* para 23.

<sup>219</sup> *Khosa and Others v Minister of Defence and Military Veterans and Others* para 146.



(EMPD) at his home.<sup>220</sup> It is alleged that Sibusiso had been drinking at a tavern in contravention of lockdown rules. Officers who were patrolling in the area had shut down the tavern where Mr Amos had been drinking and were allegedly attacked by patrons as a result. The two accused then followed Mr Amos to his home where they shot him while he stood on his veranda.<sup>221</sup> The effect of the *Khosa* case was to reaffirm that the security services, which include municipal police, needed to carry out their activities during the lockdown within the bounds of the Constitution and the rule of law, failing which they would be held criminally and/or civilly liable for their conduct.

The vagueness of some of the Regulations and the mixed messages by some of the ministers may have also contributed to the abuses committed by law enforcement officials. The *Khosa* matter is a case in point as he was allegedly assaulted for consuming alcohol on his premises, an act not prohibited by the Regulations. There were also incidents where people were fined for being in possession of and smoking cigarettes, again conduct not proscribed by the Regulations.<sup>222</sup>

The police ministry, through the national commissioner, complied with the order of the court in the *Khosa* matter by publishing guidelines that would guide the conduct of security services in enforcing the state of disaster Regulations; these also bind municipal police services. These guidelines are not only applicable during the state of national disaster, but will also guide future conduct of municipal police and other security forces. They serve as a reminder and a reaffirmation that the conduct of security services must always be in compliance with the

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<sup>220</sup> Mail&Guardian ‘Police and military abuses raise concerns amid lockdown defiance’ available at <https://mg.co.za/coronavirus-essentials/2020-03-30-police-and-military-abuses-raise-concerns-amid-lockdown-defiance/> (accessed 21 November 2020).

<sup>221</sup> Mail & Guardian (2020).

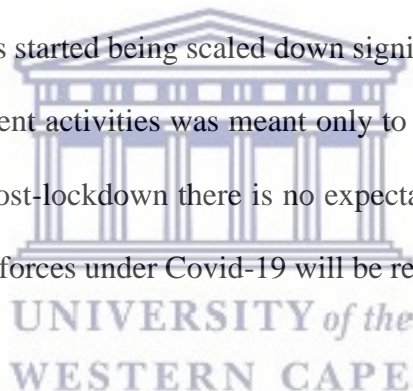
<sup>222</sup> PretoriaRekord (2020) ‘Covid-19: Paying an admission of guilt fine will give you a criminal record’.

Constitution and the rule of law, whether during a state of national disaster or under normal conditions.

### **3.5.4 The implications for post-Covid -19**

The *Khosa* case is one of the tragic legacies left behind by Covid-19's reign of terror and destruction. However, the case also provided an occasion where the courts had the opportunity to reaffirm citizen's rights and the duties of law enforcement in the context of a national state of disaster and under normal circumstances. As one of the outcomes of the *Khosa* case, SAPS was instructed to publish guidelines which would regulate the conduct of security services, including municipal police, for the duration of the lockdown and national state of disaster.

As the country started moving down the lockdown levels and life returned to a more familiar state, law enforcement activities started being scaled down significantly. This was expected as the scaling-up of law enforcement activities was meant only to be a temporary measure to be used as and when necessary. Post-lockdown there is no expectation that any of the functions performed by law enforcement forces under Covid-19 will be retained.



### **3.6 Covid-19 trading permits**

#### **3.6.1 Responsible sphere in terms of the constitutional division of powers**

The Constitution gives local government powers to regulate trade within municipal areas. However, this function is also given to the national and provincial spheres. Under Schedule 4A of the Constitution 'trade' is listed as a national and provincial government function.<sup>223</sup> Schedule 4B lists 'trading regulations' as a local government function. Furthermore, 'street trading' is listed under Schedule 5B of the Constitution, making it a local government competence. As with all the functions under Schedules 4 and 5, definitions are not provided.

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<sup>223</sup> Constitution, 1996.



This makes it difficult to establishment the cut off points between the various functions assigned to the different spheres of government.

The Business Act gives clarity in this regard by providing the categories of businesses that municipalities may regulate.<sup>224</sup> In terms of this Act, municipalities are empowered to make by-laws regarding the supervision and control of street vendors, pedlars or hawkers.<sup>225</sup> Section 6A(1)(c) empowers municipalities to provide for trading permits or licences to be issued in order for informal traders to trade at a specific location or stand.<sup>226</sup> In terms of the Business Act, local government has a mandate to regulate informal trade, which includes the issuing of trading permits.

### **3.6.2 DMA Regulations and Directions on Covid-19 trading permits**

Section 11B(b) of the Regulations state that all businesses and other entities shall cease operations during the lockdown, except for those involved in the manufacturing, supply or provision of essential goods or services.<sup>227</sup> Annexure B of the Regulations lists ‘any food product, including non-alcoholic beverages’ as essential goods, while ‘grocery stores, including spaza shops’ are listed under essential services.<sup>228</sup> These Regulations became applicable during the hard lockdown when the country was placed on alert level 5 between March and April of 2020.

As was the case with all other businesses, informal trading was restricted during the hard lockdown. The Directions issued by the Department of Small Business Development on 6 April 2020 required all informal food traders, including spazas, to have permits issued by their respective municipalities in terms of the Business Act in order to operate under alert levels 5

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<sup>224</sup> Business Act 71 of 1991.

<sup>225</sup> Business Amendment Act 186 of 1993.

<sup>226</sup> Act 186 of 1993.

<sup>227</sup> Reg 11B (b) of DMA Regulations in GN 398 GG 43148 of 25 March 2020.

<sup>228</sup> Annexure B of DMA Regulations in GN 398 GG 43148 of 25 March 2020.

and 4.<sup>229</sup> Those traders that did not have permits needed to apply for temporary permits in order to trade under the lockdown, the so called Covid-19 special permits.

On a reading of these Directions, those businesses that held trading permits before the lockdown could continue trading during the lockdown. However, some municipalities seemed to require even those traders with valid pre-Covid-19 permits to apply for the special Covid-19 trading permit.<sup>230</sup> Nonetheless, the Covid-19 trading permits represented an expansion of the mandate of local government with regard to the regulation of informal trading, especially in the context of trading licenses and permits.

It could also be argued that for some municipalities this may have seemed like a new function altogether, due to the fact that many informal businesses have over the years continued to operate without licences or permits, despite the provisions of the Business Act. For example, in a study conducted with 1,100 spaza shops across South Africa's townships, it was found that almost all of them were unregistered and traded exclusively in cash.<sup>231</sup> With more than 100,000 spaza shops operating in South Africa, this is obviously a small sample, but it is nonetheless a microcosm of a larger challenge of regulation in the informal economy.<sup>232</sup>

### **3.6.3 The provision of Covid-19 trading permits in practice**

While municipalities have the power to regulate informal trade in terms of the Business Act as stated above, many informal businesses still operate in a typically informal manner and hence trade outside of the regulatory environment. The Covid-19 trading permits presented a new function for some municipalities, even though technically it was an expansion of an existing

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<sup>229</sup> Direction 1.4.1 of the Disaster Management Act Directions in GN 450 GG 43208 of 06 April 2020.

<sup>230</sup> City of Cape Town 'Apply for an informal trading permit' available at <https://www.capetown.gov.za/City-Connect/Apply/Licences-and-permits/Business-and-trade/Apply-for-an-informal-trading-permit> (accessed 25 August 2021).

<sup>231</sup> The Conversation 'South Africa's spaza shops: how regulatory avoidance harms informal workers' available at *South Africa's spaza shops: how regulatory avoidance harms informal workers* ([theconversation.com](http://theconversation.com)) (accessed 25 August 2022).

<sup>232</sup> The Conversation 'South Africa's spaza shops: how regulatory avoidance harms informal workers' (2020).

local government mandate. Challenges were thus bound to be encountered with the introduction of a permit system for informal trading during the lockdown period.

A report, released by C19 People's Coalition on 25 May 2020, investigated the implementation of the Covid-19 permit system on informal traders across the country's three major metros, that is, eThekweni, Johannesburg, and Cape Town.<sup>233</sup> This covered the period of the hard lockdown (during level 5 and 4) between March and May 2020. According to this report, in all three metros vendors did not have to pay for the Covid-19 trading permits.

The City of Cape Town had issued just under 9,000 temporary trading permits by 12 May 2020, while the City of Johannesburg had issued around 8,000 by 11 May 2020, with eThekweni having only managed to issue 2,934 permits in the same period. Many vendors are also reported to have expressed dissatisfaction with the process involved in getting permits, which in some instances required having to travel into the city centre to apply for a permit. The city centre is often far from many vendor's homes and trading sites.<sup>234</sup> Furthermore, the City of Cape Town issued permits only to food vendors, a result of the initial mixed messaging by the Department of Small Businesses in the earlier Regulations about which categories of traders were allowed to trade under alert level 5 of the lockdown.

In its second round of issuing trading permits, between the 23 and 28 April 2020, the City of Johannesburg relaxed its rules, and traders not registered on the municipality's database became eligible to get permits.<sup>235</sup> Subsequently, the Department of Economic Development in the City of Johannesburg reported that the permit system had been scrapped and that traders could continue to trade as of 5 May 2020. This was the culmination of the effects of the

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<sup>233</sup> C19 People's Coalition 'Experience of Food Vendors during Lockdown: A Snapshot of the Cape Town, Johannesburg and eThekweni Municipalities' (2020).

<sup>234</sup> C19 People's Coalition (2020) 2.

<sup>235</sup> C19 People's Coalition (2020)

regulatory unclarity regarding the implementation of the trading permits provisions. The system was poorly designed and eventually became impractical to implement.

Because of the initial mixed messaging referred to above, some traders had their goods confiscated while others had to pay fines as they were deemed to be in breach of the Regulations by law enforcement.<sup>236</sup> The new red tape introduced by Covid-19 Regulations and Directions seemed to have not only introduced exclusionary barriers to trade in the informal sector, but also created opportunities for abuse of power by enforcement agencies.<sup>237</sup>

Reports of harassment by law enforcement agencies emerged in various municipalities across the country. In eThekweni, rules with regard to who could trade seemed to have been subject to constant change and the whims of law enforcement and municipal officials. This made compliance difficult to achieve and resulted in a situation where many traders operated without permits.<sup>238</sup>

The permit system in eThekweni was marked by haphazardness, as was the case in other municipalities. The confusion also resulted in conflict between traders trading without permits and those that had permits.<sup>239</sup> This shows the inefficient way in which this new system was implemented. It also points to its ineffectiveness; unsurprisingly so given that a new trading permit was introduced for municipalities to implement in the middle of an ongoing public health crisis.

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<sup>236</sup> C19 People's Coalition (2020) 4.

<sup>237</sup> GroundUp ' Covid-19: Police shut immigrant-owned spaza shops after Minister's xenophobic statement' available at *Covid-19: Police shut immigrant-owned spaza shops after Minister's xenophobic statement* | GroundUp (accessed 29 June 2021).

<sup>238</sup> C19 People's Coalition (2020) 6.

<sup>239</sup> C19 People's Coalition (2020) 3.

### **3.6.4 The implications for post-Covid-19**

The implementation of the Covid-19 trading permits system was meant to be a temporary measure forming part of the government's efforts to contain the spread Covid-19. By the time that the country moved to alert level 3, most municipalities had abandoned this system and informal traders were back to trading as before the national state of disaster. The Covid-19 trading permits did, however, highlight the difficulties that local government has had with regulating informal trade. This is a challenge that will persist well beyond the national state of disaster unless real efforts are made to address it.

## **3.7 Provision of food**

### **3.7.1 Responsible sphere in terms of the constitutional division of powers**

Section 27 of the Constitution provides that everyone has the right to access to sufficient food. As stated in Chapter 1, local government is involved in this right, as it is a part of the state. However, in terms of the local government functions under Schedules 4B and 5B, the provision of food is not listed as a local government competence. The only reference to food relates to the competence in respect of 'licensing and control of undertakings that sell food to the public'. Agriculture is another function that directly relates to food. However, it is listed under Schedule 4A and therefore falls under the concurrent competence of the national and provincial spheres of government

As the provision of food by the state is part of welfare services, food is a shared competence between the national and provincial spheres of government. This is because welfare services are listed in Part A of Schedule 4 of the Constitution.<sup>240</sup> This is given effect to by the Social Assistance Act 13 of 2004. The Minister of Social Development is responsible for the implementation of this Act, while the South African Social Security Agency (SASSA) is

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<sup>240</sup> Constitution, 1996.

responsible for the administration of social assistance, which includes social relief of distress (SRD).<sup>241</sup> An SRD is a grant that may be in the form of cash, food parcels or a voucher and is intended for persons who are not able to meet the most basic needs for a variety of reasons.<sup>242</sup>

It has been argued that, as with the housing function, some of the functions of local government intersect with the right to food and therefore place a duty, at least in part, on local government to realise the right to food. In this regard, De Visser uses the example of the provision of water and electricity as integral to access to food.<sup>243</sup> Other functions cited are municipal planning, trading regulations, markets and street trading. In essence, the argument made in respect of these functions is that each of them can be leveraged by local government in ways that contribute towards the improvement of food security.<sup>244</sup>

In practice, municipalities do support various initiatives and organisations that work towards alleviating hunger by sourcing and providing free food to those in need. They do this by supporting soup kitchens and various other organisations that provide free meals to those in need. Furthermore, larger municipalities also support NGOs that operate homeless shelters that also provide food to the homeless.<sup>245</sup> However, local government does not have a direct role or a constitutional mandate to provide food. Its role under the national state of disaster in respect of food parcels was therefore a new municipal function that arose as part of measures to mitigate the negative effects of Covid-19 and the lockdown imposed to contain its spread.

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<sup>241</sup> Sections 1 & 13 of the Social Assistance Act 13 of 2004. SRD are grants that can be in the form of food or cash.

<sup>242</sup> South African Government 'Social relief of distress' available at *Social relief of distress / South African Government* ([www.gov.za](http://www.gov.za)) (accessed 27 October 2021).

<sup>243</sup> De Visser J 'Multilevel government, municipalities and food security' (2019) *Centre of Excellence in Food Security* 10.

<sup>244</sup> De Visser J (2019) 24.

<sup>245</sup> Spotlight 'COVID-19: Staying safe on (and off) the streets' available at *Disaster Management Act: Regulations to address, prevent and combat the spread of Coronavirus COVID-19: Amendment / South African Government* ([www.gov.za](http://www.gov.za)) (accessed 15 June 2021).



### 3.7.2 DMA Regulations and Directions on the provision of food

Section 27(2) of the DMA gives the Minister of Cooperative Governance and Traditional Affairs the power to make Regulations and to issue Directions in respect of response measures to a disaster. The section provides a non-exhaustive list of such measures, and section 27(3) further provides that the powers under section 27(2) may be exercised only to the extent necessary for the purpose of providing relief to the public, among other measures.<sup>246</sup> The provision of food parcels could be interpreted as a relief measure as it is part of the emergency interventions that are aimed at mitigating the impact of Covid-19, particularly on the most vulnerable members of society.

In terms of the Regulations and Directions, there is no specific instruction in any of them to local government to provide food parcels to households in distress. When the President announced a R20 billion allocation to local government for Covid-19 response measures, he mentioned that the money would also go towards the provision of food.<sup>247</sup> This served as an implicit instruction from Cabinet that municipalities needed to provide food parcels as part of government relief measures.

However, according to SALGA, it is the Department of Social Development that was tasked with providing food parcels as part of government's Covid-19 relief measures.<sup>248</sup> The role of municipalities was said to be limited to the coordination and distribution of food on behalf of the Department of Social Development. Nonetheless, municipalities took it upon themselves to provide food parcels to citizens as a response to the growing demand for food which was one of the consequences of the Covid-19 lockdown. This may also have been to align their

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<sup>246</sup> Act of 57 of 2002.

<sup>247</sup> News24 'Covid-19 crisis will not last forever, but impact needs extraordinary budget-Ramaphosa' available at *FULL SPEECH | Covid-19 crisis will not last forever, but impact needs extraordinary budget - Ramaphosa | News24* (accessed 16 June 2021).

<sup>248</sup> SALGA 'Voice of local government – issue 32' available at [https://www.salga.org.za/Documents/Documents%20and%20Publications/Voice%20Magazine/SALGA%20The%20Voice%20of%20Local%20Government\\_32.pdf](https://www.salga.org.za/Documents/Documents%20and%20Publications/Voice%20Magazine/SALGA%20The%20Voice%20of%20Local%20Government_32.pdf) (accessed 17 January 2021) 11.



response measures to those of the national and provincial spheres who had the mandate to provide food parcels as part of their social welfare responsibilities.

As with the setting up of quarantine and isolation sites, the delivery of food was a multi-stakeholder undertaking, involving all three spheres of government and various other role-players.<sup>249</sup> Despite the absence of clarity in the Regulations regarding the sphere that is responsible for delivering food parcels during the national state of disaster, the Department of Social Development spearheaded efforts to deliver food to destitute households.

### **3.7.3 The provision of food in practice**

In a National Income Dynamics Study (NIDS), it was estimated that 3 million South Africans lost their jobs between February and April 2020 due to Covid-19.<sup>250</sup> The study found that the percentage of those without employment increased from 43 per cent to 53 per cent, 13.7 million and 16.7 million people, respectively, over the same period.<sup>251</sup> Such unemployment figures always pose a risk of food insecurity, and the logical measure to take under those circumstances is to ensure that people have as much access to food as possible. However, government seemed not to have considered this reality when it shut down the National School Nutrition Programme (NSNP) during the initial lockdown, when the country was placed on alert level 5.

The NSNP provides daily meals to 9 million school children annually with a budget of R1 billion per month, amounting to R7 billion for the school year, making it the biggest feeding scheme in Africa.<sup>252</sup> However, when schools were closed because of the lockdown, this programme was suspended. The Department of Social Development also closed its network of 235 Community Nutrition and Development Centres (CNDC) when the lockdown first

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<sup>249</sup> SALGA 'Voice of local government – issue 32' 11.

<sup>250</sup> Corona Virus Rapid Mobile Survey 2020 'National Income Dynamics Study Synthesis Report: Wave 2' (2020)1.

<sup>251</sup> Corona Virus Rapid Mobile Survey 2020 (2020) 1.

<sup>252</sup> Seekings J 'Feeding poor people: the national government has failed' *Feeding poor people: The national government has failed* / *GroundUp* (2020).

commenced.<sup>253</sup> The cumulative effect of all of this was that as the country faced an imminent hunger crisis, as less food was available to feed the millions who faced imminent starvation.

As that part of government closest to the people, municipalities are usually the first to respond to crises and do not have the luxury of picking and choosing roles based on whether they fall within their mandate. This inevitably results in municipalities being forced to go beyond their constitutional mandate when responding to challenges such the Covid-19 pandemic. This may lead to municipalities fulfilling new mandates, as was witnessed with the provision of food parcels during level 5 and 4 of the lockdown.

Municipalities fulfilled this function by adjusting their budgets to allocate funds to the provision of food parcels. The delivery of food parcels seems to have been both a response to similar interventions by the national and provincial spheres and a proactive social intervention by local government to the challenges of the times. The proactiveness of local government was in response to the food crisis caused by the Covid-19 and the lockdown imposed to contain its spread, one of the effects of which was to decrease the amount of food available to the most vulnerable.

The discussion on the delivery of food parcels by municipalities will be split into three parts: those municipalities that provided food directly to people using their own resources; those that distributed food purchased by other stakeholders; and those that assisted stakeholders with delivering food to distressed households.

### **3.7.3.1 Municipalities that purchased and distributed food using own funds**

Covid-19 forced municipalities across the country to provide food parcels to citizens to avert the hunger crisis caused by the pandemic and the lockdown. However, not all municipalities

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<sup>253</sup> Seekings J 'Feeding poor people: The national government has failed' (2020).

were able to fulfil this function. Instead, it was mostly the larger municipalities with bigger budgets that were able to heed the call from the national government to supply food parcels to those most affected by the pandemic. These municipalities provided food directly to residents, while others worked with NGOs and assisted the Department of Social Development to deliver food to residents in their respective municipalities.

Municipalities such as eThekweni set aside funds for their own food relief programmes. The eThekweni Municipality had a social relief plan with a budget of R66 million.<sup>254</sup> According to this plan, food parcels worth R600 each were to be delivered to needy households across the municipality's 110 wards.<sup>255</sup> The municipality indicated that municipal staff and volunteers were involved in delivering the food from the metro's distribution centres. This programme began on the 8 May 2020 and was meant to be completed by 22 May 2020. Various media reports emerged relating to corruption in the distribution of food parcels in the metro. According to these reports, councillors were accused of having distributed food parcels to friends or family members.<sup>256</sup>

This was a microcosm of a larger challenge with food-parcel related corruption in various municipalities across the country.<sup>257</sup> SALGA reported that on 28 April 2020 there were seven cases pending against councillors accused of food-parcel related corruption in municipalities across the country.<sup>258</sup> The charges or accusations levelled against these councillors include unfair distribution of food parcels and unclear criteria as to whom should get the parcels;

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<sup>254</sup> eThekweni Municipality 'Social relief programme to assist communities' available at *Social Relief Programme to assist communities (durban.gov.za)* (accessed 11 April 2021).

<sup>255</sup> eThekweni Municipality 'Social relief programme to assist communities' (2020).

<sup>256</sup> *DailyMaverick* 'Hunger and starvation in Durban' available at *Hunger and starvation in Durban (dailymaverick.co.za)* (accessed 11 April 2021).

<sup>257</sup> New Frame 'Covid-19 Roundup | Food parcels and water shortages' 15 May 2021 available at <https://www.newframe.com/covid-19-roundup-food-parcels-and-water-shortages/> (accessed on the 15 January 2021).

<sup>258</sup> Parliamentary Monitoring Group 'Role of local government in combating spread of COVID-19 virus: SALGA briefing' (2020) 55.

partisan distribution of food parcels; and bartering food parcels for data or cash.<sup>259</sup> Various acts of corruption related to food parcels and other matters prompted the President to refer allegations of impropriety across all spheres of government, involving contracts to the value of more than R13.3 billion, to the Special Investigative Unit (SIU).<sup>260</sup>

### **3.7.3.2 Municipalities that distributed food provided by other stakeholders**

Another group of municipalities distributed food provided by other stakeholders to communities. For instance, the City of Ekurhuleni in Gauteng established a food bank to which individuals and organisations could donate food to be distributed to qualifying residents, as part of the city's Covid-19 food relief programme.<sup>261</sup> By 20 April 2020, donations worth R3.8 million had been received and the food bank had distributed a total of 4,110 food parcels as of 18 April 2020. With the City of Ekurhuleni having a population estimated to be close to 4 million people in 2021,<sup>262</sup> and an unemployment rate of 29.7 per cent in 2015,<sup>263</sup> the number of these food parcels can hardly be said to have been adequate.

Furthermore, the municipality reports that all the food distributed came from donations and so no municipal finances were used to fund the programme.<sup>264</sup> Councillors in the City of Ekurhuleni were tasked with identifying recipients in their respective wards and submitting this information to the Department of Health and the Department of Social Development.

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<sup>259</sup> Parliamentary Monitoring Group 'Role of local government in combating spread of COVID-19 virus: SALGA briefing' (2020) 55.

<sup>260</sup> Proclamation R 23 of 2020 in GG 43546 of 23 July 2020.

<sup>261</sup> City of Ekurhuleni 'Update on City of Ekurhuleni Covid-19 food bank' 22 April 2020 available at <https://www.ekurhuleni.gov.za/business/tenders/open-tenders/29-press-releases/community-empowerment/5297-update-on-city-of-ekurhuleni-covid-19-food-bank.html> (accessed 15 January 2021).

<sup>262</sup> Macrotrends 'Ekurhuleni, South Africa Metro Area Population 1950-2021' available at <https://www.macrotrends.net/cities/22484/ekurhuleni/population> (accessed 15 January 2021).

<sup>263</sup> City of Ekurhuleni City of Ekurhuleni Integrated Development Plan 2016-2021: 2018/2019 Review (2019) 33.

<sup>264</sup> City of Ekurhuleni 'Update on City of Ekurhuleni Covid-19 food bank' (2020).

Councillors were also tasked with collecting and delivering the food in their respective wards every month.<sup>265</sup>

### **3.7.3.3 Municipalities that facilitated the delivery of food by other stakeholders**

There is another group of municipalities that facilitated the distribution of food parcels. The Drakenstein Municipality is one of those municipalities that made use of a network of NGOs to deliver food parcels as part of its measures to address the social impact of Covid-19. The main reasons proffered by the municipality seem to be twofold. The first is that food distribution falls outside the core mandate of the municipality and hence the municipality did not have the capacity required to undertake such a task.<sup>266</sup> The second reason was to avoid the politicisation of food parcels and possible corruption that might result should the municipality get involved directly in the distribution of food parcels. This reason stems from reports of councillors from various municipalities across the country who were using food parcels for their own political and personal ends, as already mentioned.<sup>267</sup>

The Drakenstein Municipality appointed a food security task team to investigate the provision of food parcels to those who faced starvation due to the lockdown. According to the municipality, this intervention would be over and above the existing food programmes that already existed in the municipality, which included 11 municipal food kitchens, the school feeding scheme, the Department of Social Development's food hamper project, SASSA's Relief of Distress Programme, three homeless shelters and various other programmes linked to churches and other community organisations.<sup>268</sup> In this regard, the municipality reports that its

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<sup>265</sup> City of Ekurhuleni 'Update on City of Ekurhuleni Covid-19 food bank' (2020).

<sup>266</sup> Drakenstein Municipality 'Coronavirus (COVID-19) information' available at <http://www.drakenstein.gov.za/coronavirus> (accessed 11 January 2021).

<sup>267</sup> Drakenstein Municipality 'Coronavirus (COVID-19) information'.

<sup>268</sup> Drakenstein Municipality 'Coronavirus (COVID-19) information'.

task team worked with close to 200 NGOs within its municipal area to deliver food hampers to more than 20,000 people per month.

However, these food hampers were provided by the Department of Social Development and the municipality merely played a supportive role by linking up with NGOs who were involved in the actual delivery of the hampers. Furthermore, the municipality is said to have contributed R1.8 million to Valcare, an NGO, for the provision of 7,200 monthly food parcels or essential grocery vouchers to approximately 28,800 vulnerable beneficiaries.<sup>269</sup>

This gives an indication of the additional humanitarian support that the municipality provided from its own funds. Valcare also assisted the municipality with providing food relief via an electronic food voucher system.<sup>270</sup> By the middle of May 2020, 2,381 such vouchers had been delivered to beneficiaries within the municipality.<sup>271</sup> These vouchers are worth R250 and were said to make the delivery of food easier, safer and more dignified, as beneficiaries did not have to queue to receive food parcels.

### **3.7.4 The implications for post-Covid-19**

The lockdown plunged millions of South Africans into poverty and increased food insecurity. Civil society, the private sector and local government had to step in to fill this gap. While the food provided through these collaborative efforts went a long way in addressing the food crisis, it could not be a substitute for the role played by the national food aid programmes run by the national and provincial spheres. Nonetheless, many positives could be gleaned from the way in which municipalities worked with civil society to provide food aid to destitute residents.

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<sup>269</sup> Valcare 'Drakenstein Municipality Partners with Valcare for Covid-19 Food Security' available at *Drakenstein Municipality Partners with Valcare for Covid-19 Food Security | Valcare* (accessed 11 April 2021).

<sup>270</sup> Democratic Alliance 'Drakenstein Municipality makes food support easy, issues over 2 000 food e-vouchers' DA 21 May 2020 available at <https://www.da.org.za/government/undefined/2020/05/drakenstein-municipality-makes-food-support-easy-issues-over-2-000-food-e-vouchers> (accessed 11 January 2021).

<sup>271</sup> Democratic Alliance 'Drakenstein Municipality makes food support easy, issues over 2 000 food e-vouchers' (2020).



When life returns to normal after the national state of disaster ends, the need for food will not suddenly disappear: millions of people have lost their jobs. The government does not have infinite resources. However, the partnerships formed with stakeholders need to be sustained beyond the pandemic to avert a hunger crisis whose consequences are unimaginable.

### **3.8 Shelters for the homeless**

#### **3.8.1 Responsible sphere in terms of the constitutional division of powers**

As with food relief programmes, the provision of shelter for the homeless is a welfare service which is listed under Schedule 4A and is therefore a concurrent competence of the national and provincial spheres of government.<sup>272</sup> The provinces are responsible for implementing most of the social welfare functions, except for the administration of social grants. Shelter is also a housing function and, like social welfare, it also falls outside of the original functions of local government in terms of the Constitution.

However, the right to access to adequate housing in section 26 of the Constitution implicates all spheres of government, including local government. The decision in *City of Johannesburg vs Blue Moonlight Properties 39 (Pty) Ltd and Another* referred to above confirmed the duty of local government in realising the right to housing, especially in the context of temporary emergency housing.<sup>273</sup> As a result, many municipalities have shelters for the homeless which offer various services such as donated food.<sup>274</sup>

#### **3.8.2 DMA Regulations and Directions on shelters for the homeless**

The DMA provides that during a national state of disaster the Minister of Cogta may make Regulations or issue Directions concerning, among other things, the evacuation to temporary

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<sup>272</sup> Constitution, 1996.

<sup>273</sup> See section 1.5.

<sup>274</sup> City of Cape 'Culemborg Safe Space' available at [https://www.capetown.gov.za/local\\_and\\_communities/community-health-and-safety/street-people/culemborg-safe-space](https://www.capetown.gov.za/local_and_communities/community-health-and-safety/street-people/culemborg-safe-space) (accessed 16 June 20210).



shelters of all or part of the population from the disaster-stricken or threatened area if such action is necessary for the preservation of life.<sup>275</sup> Accordingly, section 10(1) of the DMA Regulations promulgated on 29 April 2020 provides that the state shall identify temporary shelters for the homeless that comply with the necessary health protocols and adequate spacing standards, in line with guidelines published by the Director General of Health.<sup>276</sup>

However, in terms of the Directions specifically issued to municipalities, there is no mention of relief measures that municipalities ought to provide for the homeless. There also seemed to be a lack of clarity on who was responsible for the provision of shelter during the lockdown. In an answer to a parliamentary question on the 20 July 2020 about which sphere of government was responsible for accommodating the homeless, the Minister of Social Development indicated that ‘there is currently no clarity at national level in terms of the lead department dealing with homelessness’.<sup>277</sup>

However, section 6 (h)(iv) of the Directions issued by the Minister of Social Development on 30 March 2020 stated that SRD grants must be provided to shelters for the homeless already identified by local government.<sup>278</sup> This suggests that Cabinet had envisaged that local government would be responsible for providing shelters to the homeless, even though this was not clearly provided for in the Regulations and Directions.

This is also consistent with the pronouncements made by the President in his speech on the economic and social measures to address the effects of Covid-19. In the speech, the President stated that R20 billion had been allocated to municipalities to meet the increased demand for services. The provision of shelter and food for the homeless was mentioned as one of the

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<sup>275</sup> Disaster Management Act Regulations in GN 480 GG 43258 of 29 April 2020.

<sup>276</sup> Disaster Management Act Regulations in GN 480 GG 43258 of 29 April 2020.

<sup>277</sup> Parliamentary Monitoring Group ‘Question NW844 to the Minister of Social Development’ 20 July 2020 available at <https://pmg.org.za/committee-question/14090/> (accessed 20 October 2020).

<sup>278</sup> Disaster Management Act Regulations in GN 430 GG 43182 of 30 March 2020.

services earmarked to be covered by the R20 billion allocation.<sup>279</sup> As with all other services, the provision of shelter and food for the homeless was implemented to varying degrees by municipalities. It seems to have been only those municipalities with sufficient capacity and budgets that provided these services.

Smaller municipalities understandably could not take on such added responsibility. Even with the funds allocated, they could not provide additional services due to the lengthy process involved in transferring allocated funds to municipal accounts.

### **3.8.3 Delivery of shelters for the homeless in practice**

The lockdown imposed by the President on the 26 March 2020 resulted in the sudden criminalisation of homeless people living on the streets. This is because everyone was suddenly required to stay at home and only people performing essential work were allowed outside, with permits. Law enforcement officers were given powers to remove people from any place and place them in temporary shelters while the lockdown was still in force.<sup>280</sup> This resulted in mass removals of the homeless in some municipalities, where people were taken to sports fields to be housed in temporary shelters.<sup>+</sup>

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Medecins Sans Frontieres (MSF) assessed 12 shelters over a 14-day period in Cape Town, Johannesburg and Tshwane during the early stages of the lockdown. It discovered that many of the shelters that had initially been set up were breeding grounds for the spread of Covid-19 due to overcrowding, lack of sufficient water and sanitation, food scarcity, drug use and insufficient Covid-19-related services such as screening and educational materials.<sup>281</sup> The

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<sup>279</sup> News24 ‘Covid-19 crisis will not last forever, but impact needs extraordinary budget-Ramaphosa’ (2020).

<sup>280</sup> Regulation 11D in GN 398 GG 43148 of 25 March 2020.

<sup>281</sup> Medecins Sans Frontieres ‘South Africa: COVID-19 pandemic lockdown demands safer temporary shelters’ 15 April 2020 available at <https://www.msf.org.za/news-and-resources/press-release/south-africa-covid-19-pandemic-lockdown-demands-safer-temporary> (accessed 20 October 2020).

following paragraphs briefly paint a picture of the handling of homelessness in some of these municipalities.

### 3.8.3.1 eThekweni Municipality

The eThekweni Municipality opened 12 homeless shelters and had accommodated 1,704 homeless people, including women and children, by the end of April 2020 when the country was still under level 5.<sup>282</sup> The municipality went further to provide meals and psychosocial support to the homeless, including managing withdrawal symptoms for substance abuse.<sup>283</sup> Other services reported to have been provided included reuniting homeless people with their families, providing access to employment and business opportunities, drug rehabilitation, and access to health services, skills development, training and education.<sup>284</sup> These are functions that would ordinarily be carried out by the national Department of Social Development.

### 3.8.3.2 City of Cape Town

In contrast, the City of Cape Town claimed to have delivered South Africa's highest service reach to the homeless. The City also claimed to have provided shelter to more than double the number of homeless people provided for in Gauteng under levels 5 and 4 of the lockdown.<sup>285</sup> Some of the goods and services provided at these shelters between April and May of 2020 included provisions for chronic illnesses such as HIV, meals, 2 000 blankets, mattresses and psychosocial services for substance users as part of the rehabilitation process.<sup>286</sup> The provision

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<sup>282</sup> Maziwisa MR (2020).

<sup>283</sup> Maziwisa MR (2020).

<sup>284</sup> GroundUp 'Not everything that came out of this Covid-19 situation was bad' 12 October 2020 available at <https://www.groundup.org.za/article/homeless-reunited-their-families-after-lockdown/> (accessed 20 October 2020).

<sup>285</sup> GroundUp 'Councillor defends Cape Town's record on homeless people' 11 September 2020 available at <https://www.groundup.org.za/article/councillor-defends-cape-towns-record-homeless/> (accessed 20 October 2020).

<sup>286</sup> GroundUp (11 September 2020).

of shelter was not without criticism. Reports emerged of dire conditions in some of the shelters, such as the widely reported situation at the Strandfontein homeless shelter.

The City of Cape Town became embroiled in a spat with the South African Human Rights Commission (SAHRC) after refusing its monitors access to the Strandfontein shelter to conduct oversight work over the living conditions at the site. The report commissioned by the SAHRC cited many instances of inadequate health services such as lack of testing for Covid-19 and a lack of sanitisers and other hygiene-related supplies.<sup>287</sup> Following this report, the City was granted an interim interdict that prevented the SAHRC from entering the site to conduct further oversight work over the living conditions and human rights issues at the site. The interdict also sought to prevent the Commission from publishing its report on the living conditions on the site.<sup>288</sup> The Strandfontein site was eventually decommissioned in May 2020, and people were moved to different shelters in the city, while others reportedly opted to return to the streets.

### 3.8.3.3 City of Tshwane

In Tshwane, people were moved to the Caledonian Stadium, which was the city's main mass temporary shelter for the homeless. At its peak at the end of March 2020, the facility accommodated a little over 2,000 people, which had exceeded expectations.<sup>289</sup> This quickly caused problems because social distancing rules became difficult to implement. This earned the facility the moniker 'Corona City' due to overcrowding and lack of services such as sanitation.<sup>290</sup> This is ironic, of course, given that people had been moved to the facility as a

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<sup>287</sup> Jenkins T 'Final Draft Report Strandfontein SAHRC Independent Special Task Team' available at C19-Final-Draft-Report-Strandfontein-SAHRC-Independent-Specialist-Task-Team-Tauriq-Jenkins.pdf (obs.org.za) (accessed 18 June 2021).

<sup>288</sup> Legal Resource Centre '10 June 2020 – Press Release: City of Cape Town v SAHRC and others hearing' available at *10 June 2020 - Press Release: City of Cape Town v SAHRC and others hearing* / LRC (accessed on 19 August 2021).

<sup>289</sup> IOL 'SA lockdown: homeless more at ease with new temporary accommodation in Pretoria' available at *SA lockdown: Homeless more at ease with new temporary accommodation in Pretoria* (iol.co.za) (accessed 18 June 2021).

<sup>290</sup> IOL 'SA lockdown: homeless more at ease with new temporary accommodation in Pretoria' (2020).

measure to prevent the spread of Covid-19. People were eventually moved to other shelters that offered better services, while some went back to the streets after spending only a few days at the facility. Despite these efforts, many homeless people could be seen wandering in the streets during the hard lockdown (between March and April 2020), trying to eke out a living.<sup>291</sup> Similar challenges were experienced in other municipalities.

### **3.8.4 The implications for post-Covid-19**

Although shelter for the homeless is not a local government function, municipalities had been fulfilling parts of this function even before Covid-19. The arrival of the pandemic inevitably meant that municipalities needed to scale up the provision of emergency shelters for the homeless. This resulted in the further expansion of the mandate of local government in respect of the provision of housing in terms of temporary emergency shelters and social welfare services. As the country relaxed restrictions from May 2020 when level 3 kicked in and life returned to some semblance of normality, there was also a scaling-down of the provision of shelters, and many homeless people returned to their pre-Covid-19 lives. However, some municipalities like the City of Cape Town indicated that they planned to keep some of the shelters open beyond the national state of disaster as part of the long-term development of safe spaces across Cape Town.<sup>292</sup>

It remains to be seen whether the provision of emergency accommodation for the homeless will be sustained across all municipalities beyond the state of national disaster. This is because the pandemic battered the economy and local government was not spared. The economic effects of the pandemic will be felt well beyond the pandemic, and this will negatively affect the ability of municipalities to provide service delivery, including sustaining all the shelters for

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<sup>291</sup> The South African ‘South Africa forced to confront homelessness amid lockdown’ available at *South Africa forced to confront homelessness amid lockdown (thesouthafrican.com)* (accessed 18 June 2021).

<sup>292</sup> SABC ‘Cape Town is finalising the closure of a homeless shelter’ 12 May 2020 available at <https://www.sabcnews.com/sabcnews/cape-town-is-finalising-the-closure-of-a-homeless-shelter/> (accessed 20 October 2020).

the homeless. This will inevitably result in homeless people going back to the streets and sleeping outside, exposing them to the vulnerabilities they faced before the pandemic.

However, the pandemic forced local government and government at large to confront the issue of homelessness which has been neglected for a long time. The national and provincial spheres have the constitutional mandate with regard to providing shelter to the homeless. These spheres need to assist municipalities in tackling the issue of homelessness by providing the necessary resources. More meaningful collaborations between government, the private sector and civil society need to be fostered to deal with this challenge, especially given the tough economic times that lie ahead.

### **3.9 Conclusion**

The national state of disaster and the subsequent issuing of Regulations and Directions resulted in the expansion of the mandate of local government, and in some instances new mandates were created. The increased rate at which municipalities were directed to deliver services such as water and sanitation was necessitated by the urgent need to contain the rapid spread of Covid-19. The focus of this expansion was on hotspot areas such as informal settlements and rural areas where service delivery has traditionally been inadequate or, in some cases, non-existent.

While service provision increased in many areas throughout the country, and commendably so given the context in which these services were provided, challenges all too familiar were also encountered. As shown in Chapter 3, the expanded services did not reach all the hot-spot areas, meaning that these communities remained at high risk of contracting and spreading Covid-19. However, there were lessons to be learnt from the expansion of services that took place.

When all the spheres of government work in unison to deliver services, better outcomes may be achieved. The Constitution places a duty of support on the national and provincial spheres

to assist local government improve on its service delivery mandate. It also gives powers of intervention where there are persistent shortcomings in service delivery. Covid-19 may have provided practical and more effective ways in which these powers could be used to greater effect to resolve the longstanding service delivery challenges facing local government.



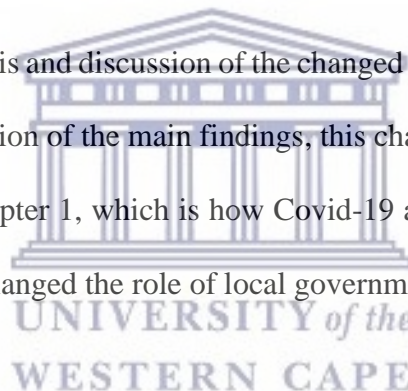


## **CHAPTER FOUR: CONCLUSION**

### **4.1 Introduction**

On 15 March 2020 President Cyril Ramaphosa declared a national state of disaster due to the rapid spread of Covid-19. Against this background, the main object of this paper has been to investigate how Covid-19, and the subsequent declaration of a national state of disaster, changed the role of local government. While disaster management is a concurrent competence between the national and provincial spheres of government, local government was central in the government's response to Covid-19. The pandemic was centrally managed through the NCCC which consisted of Cabinet ministers.

The mandate of local government was primarily impacted by the Regulations and Directions issued in terms of the DMA after discussions in the NCCC. This chapter provides the main findings arising from the analysis and discussion of the changed role of local government under Covid-19. Based on the discussion of the main findings, this chapter will also answer the main research question posed in Chapter 1, which is how Covid-19 and the subsequent declaration of a national state of disaster changed the role of local government. Lastly, a conclusion of the chapter will be provided.



### **4.2 Major findings**

#### **4.2.1 The expansion of the mandate of local government during Covid-19**

The major finding of this paper is that the declaration of a national state of disaster and the subsequent imposition of a lockdown resulted in the expansion of the mandate of local government. Some of the local government services such as water and sanitation were deemed to be essential and were scaled up as per the Directions and Regulations issued in terms of the DMA. These services are discussed in Chapter 3 and include water; municipal health; waste, cleansing and sanitation; law enforcement; trading permits; and quarantine and isolation sites.

As discussed in Chapter 3, an expansion in the delivery of water through water tanks to under-serviced and previously unserved areas took place as per the Directions.<sup>293</sup> Municipal clinics were refurbished to increase their capacity to deal with the added burden of Covid-19 cases. Municipal police and traffic officers were dispatched to assist SAPS and the SANDF in carrying out increased roadblocks and monitoring social gatherings as part of the enforcement of Covid-19 Regulations and Directions. There was also increased cleansing of public spaces and communal toilets as part of the measures to improve hygiene to contain the spread of Covid-19.

#### **4.2.2 The imposition of new mandates on local government**

Not only did Covid-19 result in the expansion of the mandate of local government, but it also established new mandates. Municipalities were involved in the distribution of food parcels and the provision of shelters for the homeless. These are functions that are part of the shared competence of the national and provincial spheres of government in terms of the Constitution. However, Covid-19 saw local government going beyond the bounds of its constitutional mandate by performing functions over which it does not have competence.

While food and shelters for the homeless are not the competencies of local government in terms of the Constitution, local government has traditionally played a role in the delivery of these services. However, they nonetheless still constituted a new role under Covid-19, especially given the scale at which they were performed, and the direct role played by municipalities in delivering these services. Due to the national government's policy on Covid-19 response measures, and the economic and social effects of the lockdown, municipalities found

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<sup>293</sup> See Section 3.2.2 under Chapter 3.

themselves directly and prominently involved in the provision of food parcels and temporary shelters for the homeless.

#### **4.2.3 The various ways in which the mandates of local government arose**

The major source of the changes on the role of local government were the Regulations, and in particular the Directions that were issued in terms of the DMA. However, the obligations of local government in terms of the Constitution, and its position as the sphere of government that is closest to the people, also contributed to its changed role under the national state of disaster.

##### **4.2.3.1 Regulations and Directions**

The expansion of the mandate of local government under Covid-19 emanated mainly from the Regulations and Directions issued in terms of the DMA. While this did not change the original mandate of local government, it nonetheless resulted in services being provided at an expanded and more frequent rate than before Covid-19. In contrast, the new mandate of local government, namely the provision of food parcels and shelters for the homeless, did not emanate from the Regulations and Directions. Instead, it was in response to the policy measures adopted by the national government to manage Covid-19. Furthermore, the obligations of local government in terms of the Constitution and the Bill of Rights inevitably placed municipalities front and centre in the management of Covid-19.

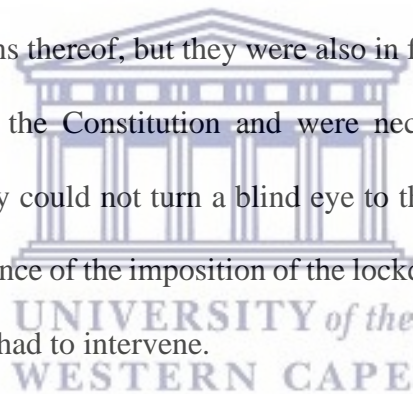
##### **4.2.3.2 Constitution and Bill of Rights**

The role played by municipalities during the Covid-19 pandemic was also in fulfilment of their obligations in terms of the Bill of Rights. In particular, the rights to health, food and sufficient water came under the spotlight, and municipalities had a duty to ensure the protection and fulfilment of these rights in the context of Covid-19. Furthermore, the position of local government within South Africa's three-tier system of government made it inevitable that local government would play a central role in the implementation of measures to manage Covid-19.

#### 4.2.3.3 Position of Local Government

As discussed in Chapter 2, due to its proximity to citizens, local government is always involved in the management of disasters.<sup>294</sup> This is because, in the case of a disastrous occurrence, municipalities are almost invariably the first respondents. The services they provide become even more essential during disasters. Covid-19 is no exception and the Regulations and Directions merely provided for the expansion of the normal role of local government under normal conditions. The national government promulgated the Regulations and Directions to provide a legal basis for the expanded role of local government during the national state of disaster. In addition, the President announced the availability of the necessary financial resources to assist municipalities in delivering on their expanded and new mandate.

The expanded and new mandates were not only a response to the national government's policy on Covid-19 and the Regulations thereof, but they were also in fulfilment of the obligations of local government in terms of the Constitution and were necessitated by its proximity to residents. Municipalities simply could not turn a blind eye to the rising demand for food, for instance, which was a consequence of the imposition of the lockdown. Being the closest sphere to government meant that they had to intervene.



The role of local government under Covid-19 was primarily determined by the Regulations and Directions issued in terms of the DMA, but its obligations in terms of the Constitution and its position as the lowest sphere of government also played a major role, especially in respect of the new mandates.

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<sup>294</sup> See section 2.4 in Chapter 2.

#### **4.2.4 Municipalities failed to deliver on their expanded and new mandate effectively**

Even with the expansion of services, many of the major challenges that are inherent in local government became apparent. This was the case even though national and provincial governments also played an active role in assisting municipalities deliver on their expanded and new mandates.<sup>295</sup> The expanded services and the delivery of new services did not reach everyone that needed them. This was most clearly visible with the provision of water. As discussed in Chapter 3, in some of the areas where water tanks were provided, they were filled up only on arrival and then remained empty for months into the lockdown, becoming targets of vandalism as a result.<sup>296</sup>

The service delivery challenges must also be understood in the context of how local government came to provide the expanded and new mandates, both in terms of the Regulations and Directions, and as a response to the overall government strategy to address Covid-19. The transfer of functions to local government under the national state of disaster happened in terms of the DMA rather than in terms of the assignment provisions provided for in the Constitution as discussed in Chapter 2.<sup>297</sup> One of the consequences of this was that municipalities financed the expansion and provision of new services under the national state of disaster from their own coffers.

While a budget of R20 billion was allocated to local government to finance its new role, these funds were not immediately available. So, in the first few months of the lockdown, municipalities provided expanded and new services without additional funding from the national government. Furthermore, this was happening in the context of dwindling municipal revenues caused by the imposition of the lockdown and the resultant economic effects.

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<sup>295</sup> See Chapter 3 and Chapter 4.

<sup>296</sup> See section 3.2.2.

<sup>297</sup> See discussion on assignments, delegations and incidental powers under Chapter 2, sub-section 2.4.2.

## **4.2.5 The impact of pre-Covid-19 challenges on local government**

### **4.2.5.1 Corruption, maladministration and incapacity**

While many municipalities rose to the occasion and fulfilled their new role, the pandemic also highlighted longstanding weaknesses within local government. As mentioned above, the pre-existing challenges of maladministration, corruption and incapacity reared their ugly heads even during a national public health emergency. Allegations of corruption involving contracts to the value of over R13.3 billion were referred to the Special Investigative Unit (SIU), as mentioned in the preceding chapter.<sup>298</sup> Matters referred for investigation included contracts related to PPEs (Personal Protective Equipment), hospital and quarantine sites, food parcels and disinfectant equipment. In total there were eight municipalities that were under investigation for Covid-19-related procurement corruption across the country.<sup>299</sup>

Municipalities were also implicated in instances of criminal conduct by members of municipal law enforcement as discussed in Chapter 3.<sup>300</sup> While these members were under the joint command of the SAPS in enforcing Covid-19 Regulations, they nonetheless remain accountable to their municipalities. Therefore, the instances of criminality and misconduct could be linked to the wider problems of poor service delivery within local government. These challenges point to the as yet unresolved capacity and corruption challenges that continue to cripple local government, and in turn hamper service delivery.

The combination of pre-existing challenges of service delivery in local government, and the performance of new functions during an ongoing public health emergency, was always going to be a recipe for disaster. No sooner had municipalities started distributing food parcels than allegations of corruption against councillors surfaced. Covid-19 was never going to be a cure for the pre-existing challenges in local government; if anything, it merely highlighted them and

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<sup>298</sup> Proclamation R 23 of 2020 in GG 43546 of 23 July 2020.

<sup>299</sup> Parliamentary Monitoring Group 'SIU on terms of reference for COVID-19 PPE procurement' (2020).

<sup>300</sup> See section 3.5.3 in Chapter 3.



presented new opportunities for wrongdoing to unscrupulous civil servants as was seen with the distribution of food parcels, and various other acts of corruption. These acts of corruption even prompted some municipalities, such as the Drakenstein Municipality, to prohibit councillors from getting involved in the distribution of food parcels.<sup>301</sup>

#### **4.2.5.2 Regulatory Uncertainty**

As mentioned above, municipalities were not instructed to provide food parcels and homeless shelters in any of the Regulations and Directions. There was no clear and explicit instruction giving primary responsibility to any sphere of government or department for the provision of these services. Nonetheless, some municipalities took it upon themselves to provide these services, while others only got involved in so far as they assisted the Department of Social Development with a database of people eligible to receive food parcels.

#### **4.2.5.3 Regulatory uncertainty and its impact on service delivery**

The Constitution and legislation allow for the assignment of functions to local government, and this inevitably results in the expansion of local government's mandates, and in some cases the creation of new mandates. As discussed in Chapter 2, there are legal requirements for such assignments.<sup>302</sup> Some of the most important reasons for these requirements is to guard against unfunded mandates, ensure that municipalities have the capacity to deliver on the assigned mandates and, in some cases, to obtain consent from municipalities before assignment can take effect.

Lack of regulatory clarity is one of the factors that hampers service delivery within local government. This usually takes place when the mandate of local government is expanded, or new mandates are given through assignments, but without the necessary funding being

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<sup>301</sup> See section 4.3.3 in Chapter 4.

<sup>302</sup> See section 2.4.2 in Chapter 2.

provided. This causes confusion as to which sphere of government is responsible for a function when municipalities push back on performing so called unfunded mandates. The lack of definitional clarity regarding the original mandate of local government also at times causes confusion as to the extent of responsibility over the functions of local government, as stipulated in the Constitution.

#### **4.2.6 Post-Covid-19 implications of the expanded and new mandate of local government**

Covid-19 and the subsequent imposition of a lockdown had major implications for local government as municipalities found themselves at the centre of providing essential services and enforcing lockdown Regulations and Directions. The lockdown Regulations and Directions forced municipalities to increase their service delivery levels, while at the same time providing some services at a more frequent rate. In other instances, municipalities were required to provide services at scale, and within a short period of time. Some of these services fell outside of their original mandate. This paper has found that all of this resulted in the expansion of the mandate of local government, and the creation of a new mandate with regard to services falling outside of local government's original powers. As a result of this, communities in various municipal areas across the country experienced improved levels of service delivery from their municipalities and, in some cases, residents experienced service delivery for the first time.

The expansion of services during the lockdown and the delivery of new services has the possibility of creating raised expectations about the continuation of such service levels beyond the national state of disaster. The lockdown provided valuable lessons that can be taken to improve service delivery in non-disaster conditions. One of the lessons is that local government, together with the other spheres of government, need to leverage some of the Covid-19-related infrastructure, such as the expansion of clinics, beyond the pandemic.

Furthermore, the pandemic forced all spheres of government to work together to greater effect in delivering additional services in order to meet the demands of the pandemic.

These collaborative endeavours should be used as templates for post-Covid-19 service delivery in order to improve access to services such as water and so realise the rights enshrined in the Constitution. Therefore, the national and provincial spheres of government should continue to support municipalities beyond the pandemic in delivering on their mandate in compliance with their duty of support in terms of section 154(1) of the Constitution.

Moreover, service delivery protests are a constant feature of local government politics, and the dire economic situation worsened by Covid-19 is likely to ignite more protest action when the additional services are discontinued and return to pre-Covid-19 levels. These communities were already ticking time bombs even before the Covid-19 pandemic, and therefore local government needs to be proactive in trying to come up with ways to address service delivery shortcomings beyond Covid-19. This is because municipalities will bear the brunt of any protest action that may result due to inadequate services. Signs of social unrest were already evident when people took to looting food trucks and tuck shops during the initial hard lockdown, when food parcels were slow to reach those in need and spaza shops and informal food traders had ceased operations.

This should therefore push local government to ensure that the links formed with civil society and businesses for the delivery of food parcels continue beyond the lockdown. With many businesses having closed shop and millions of people having lost their jobs because of Covid-19, when life returns to normal the need for food will not suddenly disappear. Some of these businesses may never open their doors again, meaning that people who lost their jobs during the lockdown are likely to remain unemployed. While government does not have infinite

resources, the partnerships formed with various stakeholders need to be sustained and nurtured well beyond the pandemic, to avert an imminent hunger crisis.

#### **4.3 Answering the research question**

This paper has investigated the role of local government during the national state of disaster that was declared to manage the spread of Covid-19. It sought to answer the question: How did Covid-19 and the subsequent declaration of a national state of disaster change the role of local government? The paper has established that the mandate of local government changed as a result of measures that were introduced to manage Covid-19. The original mandate of local government in respect of service delivery was expanded. This happened primarily as a result of the Regulations and Directions issued by the Cogta Minister in terms of section 23(7) of the DMA. These Regulations and Directions enjoined municipalities to expand their services, especially in hot-spot areas, in order to manage the spread of Covid-19. Furthermore, the national state of disaster established new mandates for local government. These new mandates refer to the functions that fall outside of the original mandate of local government. However, municipalities were central in performing these functions in order to manage the spread of Covid-19 and mitigate some of its effects.

#### **4.4 Conclusion**

While local government has been at the centre of service delivery during the national state of disaster, the national government has been the main driver of interventions to manage Covid-19. Provinces and municipalities have largely been the implementing agents of Regulations and Directions issued by the national government through the Department of Cooperative Governance and Traditional Affairs and various other organs of state. Nevertheless, the role of local government under Covid-19 undoubtedly changed to the extent that there was an expansion of its mandate and in some instances new mandates arose. Municipalities rendered

services at an extraordinary and more frequent rate than before the pandemic, and performed functions that they did not have competence over in terms of the Constitution.

This expanded mandate arose primarily through the issuing of Regulations and Directions. However, the Constitution, the position of local government in terms of its proximity to citizens and the overall policy adopted by the government to manage Covid-19 all gave rise to a new mandate for local government during the national state of disaster. The pandemic also highlighted pre-Covid-19 service-delivery challenges in local government that are often characterised by corruption, maladministration and incapacity.

The national state of disaster also exposed another challenge within local government which impacts service delivery. There was initially confusion regarding some of the services that needed to be delivered. There was a lack of clarity with regard to which sphere of government was responsible for the distribution of food parcels, for instance. The issuing of Covid-19 trading permits also faced similar challenges as there was a lack of consistency in communication from the national sphere. This affected the carrying out of this function at the local government level.

The lack of clarity in terms of the division of functions between the three spheres of government predates Covid-19. It has its roots in the lack of definitions for functions under Schedule 4 and 5 of the Constitution. It is also influenced by the phenomenon of unfunded mandates, briefly discussed in Chapter 2. Nevertheless, the national state of disaster saw greater collaboration between the three spheres of government in delivering essential services. It also displayed the importance of local government in responding to disaster situations. This is due to the position of local government and the original functions in the Constitution over which it enjoys competence.

If anything, the pandemic has reminded everyone that more needs to be done to increase capacity at local government. Part of the turnaround strategy for local government will have to be looking at service-delivery success stories during the pandemic. These might provide best-practice models that could be utilised to improve service delivery beyond the pandemic. Collaborative efforts across the different spheres of government should be used as the starting point towards improving service delivery.





## BIBLIOGRAPHY

### BOOKS

Maganlal M & Patrick J 'Review of the local government fiscal framework' in De Visser J & Steytler N (eds) *Local government discussion notes resources for councillors* (2016) South African Local Government Association.

Steytler N & De Visser J *Local government law of South Africa* (2018) LexisNexis: Durban.

De Visser J 'The enforcement of socioeconomic rights against local governments in South Africa' in Bosire CM & Gikonyo W (eds) *Animating devolution in Kenya – the role of the judiciary* (2015) International Development Law Organisation: Italy.

Steytler N, de Visser J & Chigwata T 'South Africa: Surfing towards Centralisation on the Covid-19 Wave' in Steytler N (ed) *Comparative Federalism and Covid-19: Combatting the Pandemic* (2021) 1 - 30.

### JOURNALS

Basdeo M 'The impact and dilemma of unfunded mandates confronting local government in South Africa: a comparative analysis' (2012) 1 *APSDPR* 2 51-66.

Christmas A and De Visser J 'Reviewing the powers and functions local government in South Africa' (2009) *CJLG* 2 107-119.

De Visser J 'Multilevel government, municipalities and food security' 2019 *Centre of Excellence in Food Security* 1 -27.

Dorward J, Khubone T & Gate K et al 'The impact of the COVID-19 lockdown on HIV care in 65 South African primary care clinics: an interrupted time series analysis' (2021) 8 *THE LANCET* 158 - 168.

French EP 'Enhancing the legitimacy of local government pandemic influenza planning through transparency and public engagement' (2011) 71 *Public Administration Review* 2 253-264.

Giandhari J, Pillay S & Wilkinso E 'Early transmission of SARS-CoV-2 in South Africa: An epidemiological and phylogenetic report' (2020) *PubMed Central* 1 - 17.

Maziwisa MR 'eThekweni Metropolitan Municipality vs COVID-19: 90 days into the lockdown' (2020) 15 *Local Government Bulletin* 2.

Uys F 'Coordination in disaster management' (2006) 25 *Politeia* 1 57-72.

Van der Berg A 'public-private partnerships in local disaster management: a panacea to all local disaster management ills?' (2015) 18 *PER* 4 994-1033.

## LEGISLATIVE INSTRUMENTS

Constitution of the Republic of South Africa, 1996.

Disaster Management Act 57 of 2002.

Disaster Management Amendment Act 16 of 2015.

Disaster Management Act regulations in GN 430 GG 43182 of 30 March 2020.

Disaster Management Act regulations in GN 480 GG 43258 of 29 April 2020.

Disaster Management Act directions in GN 399 GG 43147 of 25 March 2020.

Disaster Management Act regulations in GN 398 GG 43148 of 25 March 2020.

Disaster Management Act regulations in GN 318 GG 43107 of 18 March 2020.

National Health Act 61 of 2003.

Proclamation R 23 of 2020 in GG 43546 of 23 July 2020.

South African Police Service. Act 68 of 1995.

Social Assistance Act 13 of 2004.

Water Services Act 108 of 1997.

Water Services Act regulations in GN 509 GG 22355 of 08 June 2001.

White Paper on Local Government, 1998.



## CASELAW

*City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) BCLR 150 (CC).

*Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

*Independent Municipal and Allied Workers Union and Others v President of the RSA and Others* unreported case no 3298/2006.

*Khosa and Others v Minister of Defence and Military Veterans and Others* (21512/2020) [2020] ZAGPPHC.

## REPORTS

Auditor General South Africa *Consolidated general report on the local government audit outcomes: MFMA 2018-2019* (2020).

City of Ekurhuleni *City of Ekurhuleni Integrated Development Plan 2016-2021: 2018/2019 Review* (2019).

Corona Virus Rapid Mobile Survey 2020 *National Income Dynamics Study Synthesis Report: Wave 2* (2020).

Community Law Centre University of the Western Cape *Developmental local government: determining appropriate functions and powers* (2007).

Financial and Fiscal Commission *2012/13 Submission for the division of revenue: The impact of unfunded mandates in South African intergovernmental fiscal relations* (2011).

National Disaster Management Centre *Guideline: classification of a disaster and the declaration of a state of disaster* (2019).

## INTERNET SOURCES

allAfrica 'South Africa: Covid-19 - Patients Complain of Long Clinic Queues but Officials Are Trying to Fix This' available at *South Africa: Covid-19 - Patients Complain of Long Clinic Queues but Officials Are Trying to Fix This - allAfrica.com* (accessed 29 August 2020).

ASIVIKELANE 'Metros could budget more for informal settlement services' available at <https://www.internationalbudget.org/wp-content/uploads/asivikelane-number-12-metro.pdf> (accessed 18 March 2021).

Atlantic Council 'Pandemic policing: South Africa's most vulnerable face a sharp increase in police-related brutality' 24 June 2020 available at <https://www.atlanticcouncil.org/blogs/africasource/pandemic-policing-south-africas-most-vulnerable-face-a-sharp-increase-in-police-related-brutality/> (accessed 06 November 2020).

Budledner D 'Voices of informal settlement residents during the Covid-19 crisis - what the metros say they are doing about basic services in informal settlements in the light of the covid-19 pandemic' ASIVIKELANE 26 June 2020 available at <https://www.internationalbudget.org/wp-content/uploads/asivikelane-brief-4.pdf> (accessed 18 March 2021).

BUSINESSTECH 'Thousands of South Africans who broke lockdown rules could have criminal records' available at *Thousands of South Africans who broke lockdown rules could have criminal records (businessstech.co.za)* (accessed on 22 October 2022).

City of Cape Town 'R30, 7 million for enhanced COVID-19 cleansing in rental flats, hostels' available at <https://www.capetown.gov.za/Media-and-news/R30,7millionforenhancedCOVID-19cleansinginrentalflats,hostels> (accessed 25 October 2021).

City of Cape Town '2017-2020 Integrated Development Plan –Informal settlement services project' available at

[http://resource.capetown.gov.za/documentcentre/Documents/City%20strategies%2c%20plans%20and%20frameworks/IDP2017-22\\_Review\\_and\\_Amendments\\_2020-21.pdf](http://resource.capetown.gov.za/documentcentre/Documents/City%20strategies%2c%20plans%20and%20frameworks/IDP2017-22_Review_and_Amendments_2020-21.pdf) (accessed 09 October 2020).

City of Cape Town ‘City clinics introduce COVID-19 mobile testing booths’ 20 July 2020 available at <http://www.capetown.gov.za/Media-and-news/City%20clinics%20introduce%20COVID-19%20mobile%20testing%20booths> (accessed 17 October 2020).

City of Cape Town ‘More boots on the ground to amplify COVID-19 awareness efforts’ 09 June 2020 available at <http://www.capetown.gov.za/Media-and-news/More%20boots%20on%20the%20ground%20to%20amplify%20COVID-19%20awareness%20efforts> (accessed 06 November 2020).

City of Ekurhuleni ‘Update on City of Ekurhuleni Covid-19 food bank’ 22 April 2020 available at <https://www.ekurhuleni.gov.za/business/tenders/open-tenders/29-press-releases/community-empowerment/5297-update-on-city-of-ekurhuleni-covid-19-food-bank.html> (accessed 15 January 2021).

Cogta ‘2018/19 annual report’ available at [http://www.cogta.gov.za/cgta\\_2016/wp-content/uploads/2018/11/CoGTA-2019-Annual-Report-Approved-1-compressed-1.pdf](http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2018/11/CoGTA-2019-Annual-Report-Approved-1-compressed-1.pdf) (accessed 13 August 2020).

Cooperative Governance and Traditional Affairs ‘The 2019/20 Cogta Budget Vote Speech Delivered by Dr Nkosazana Dlamini Zuma’ available at <http://www.cogta.gov.za/?p=688> 10 July 2019 (accessed 13 August 2020).

Cooperative Governance and Traditional Affairs ‘Budget Vote Speech by Minister Zweli Mkhize to the National Council of Provinces’ 21 June 2018 available at <http://www.cogta.gov.za/?p=4474> (accessed on 13 August 2020).

Daily Maverick ‘Covid-19: Ramaphosa declares national state of disaster, imposes travel bans’ 15 March 2020 available at <https://www.dailymaverick.co.za/article/2020-03-15-covid-19-ramaphosa-declares-national-state-of-disaster-imposes-travel-bans/> (accessed 14 August 2020).

Democratic Alliance ‘Drakenstein Municipality makes food support easy, issues over 2 000 food e-vouchers’ DA 21 May 2020 available at <https://www.da.org.za/government/undefined/2020/05/drakenstein-municipality-makes-food-support-easy-issues-over-2-000-food-e-vouchers> (accessed 11 January 2021).

Department of Health ‘Guidelines for quarantine and isolation in relation to covid-19 exposure and infection’ 05 May 2020 available at <https://www.nicd.ac.za/wp-content/uploads/2020/05/Guidelines-for-Quarantine-and-Isolation-in-relation-to-COVID-19.pdf> (accessed 01 December 2020).

Department of Water and Sanitation ‘National norms and standards for domestic water and sanitation services’ 08 September 2017 available at <https://cer.org.za/wp-content/uploads/1997/12/National-norms-and-standards-for-domenstic-water-and-sanitation-services.pdf> (accessed 16 October 2020).

Department of Water and Sanitation ‘National Sanitation Policy 2016: Sanitation Policy Framework’ available at [https://www.gov.za/sites/default/files/gcis\\_document/201706/national-sanitation-policy.pdf](https://www.gov.za/sites/default/files/gcis_document/201706/national-sanitation-policy.pdf) (accessed on 16 October 2020).

Department of Water and Sanitation ‘National Water and Sanitation Master Plan: managing effective water and sanitation services’ available at [https://www.gov.za/sites/default/files/gcis\\_document/201911/national-water-and-sanitation-master-landf.pdf](https://www.gov.za/sites/default/files/gcis_document/201911/national-water-and-sanitation-master-landf.pdf) (accessed 16 October 2020).

Department of Human Settlements, Water and Sanitation ‘Minister Lindiwe Sisulu on interventions to curb the spread of Coronavirus COVID-19’ 25 March 2020 available at <https://www.rockblue.org/south-africas-response-to-covid-19/> (accessed on 16 October 2020).

Department of Basic Education ‘National School Nutrition Programme’ online available at <https://www.education.gov.za/Programmes/NationalSchoolNutritionProgramme.aspx> (accessed 10 December 2020).

De Visser J ‘The lockdown regulations are not a ban on all informal food traders’ Online available at <https://dullahomarinate.org.za/multilevel-govt/local-government-bulletin/volume-15-issue-1-march-2020/the-lockdown-regulations-are-not-a-ban-on-all-informal-food-traders> (accessed 04 January 2020).

Drakenstein Municipality ‘Coronavirus (COVID-19) information’ available at <http://www.drakenstein.gov.za/coronavirus> (accessed 11 January 2021).

Drakenstein Municipality ‘Drakenstein Municipality rolls out comprehensive food aid programme’ 23 April 2020 available at <http://www.drakenstein.gov.za/drakenstein-municipality-rolls-out-comprehensive-food-aid-programme> (accessed on the 11 January 2021).

Determination of Admission of Guilt Fines: Disaster Management Act Regulations, 2020 available at <https://www.judiciary.org.za/index.php/judiciary/determinations-of-admission-of-guilt-fines/gauteng-province> (accessed 21 November 2020).

eThekweni Municipality ‘Social relief programme to assist communities’ available at *Social Relief Programme to assist communities (durban.gov.za)* (accessed 11 April 2021).

GroundUp ‘Water tanks run dry in Motherwell informal settlements’ 19 May 2020 available at <https://www.groundup.org.za/article/water-tanks-run-dry-motherwell-informal-settlements/> (accessed 06 November 2020).

GroundUp ‘Covid-19: Police shut immigrant-owned spaza shops after Minister’s xenophobic statement’ available at *Covid-19: Police shut immigrant-owned spaza shops after Minister’s xenophobic statement | GroundUp* (accessed 29 June 2021).



GroundUp ‘Councillor defends Cape Town’s record on homeless people’ 11 September 2020 available at <https://www.groundup.org.za/article/councillor-defends-cape-towns-record-homeless/> (accessed 20 October 2020).

GroundUp ‘Not everything that came out of this Covid-19 situation was bad’ 12 October 2020 available at <https://www.groundup.org.za/article/homeless-reunited-their-families-after-lockdown/> (accessed 20 October 2020).

Helen Suzman Foundation ‘COVID-19: Opportunities and challenges for the water, sanitation and hygiene sector’ 28 May 2020 available at <https://hsf.org.za/publications/hsf-briefs/covid-19-challenges-and-opportunities-for-the-water-sanitation-and-hygiene-sector> (accessed 09 October 2020).

Institute for Security Studies ‘State abuses could match the threat of COVID-19 itself’ 02 April 2020 available at <https://issafrica.org/iss-today/state-abuses-could-match-the-threat-of-covid-19-itself> (accessed 05 November 2020).

International Federation of Red Cross and Red Crescent Society (IFRC) ‘Analysis of legislation related to disaster risk reduction in South Africa’ available at [https://www.ifrc.org/PageFiles/86599/1213900-IDRL\\_Analysis\\_South%20Africa-EN-LR.pdf](https://www.ifrc.org/PageFiles/86599/1213900-IDRL_Analysis_South%20Africa-EN-LR.pdf) (accessed 22 September 2020). Investec ‘Is SA’s healthcare system prepared for Covid-19?’ 13 July 2020 available at [https://www.investec.com/en\\_za/focus/beyond-wealth/is-south-africas-healthcare-system-prepared-for-covid-19.html](https://www.investec.com/en_za/focus/beyond-wealth/is-south-africas-healthcare-system-prepared-for-covid-19.html) (accessed 14 October 2020).

IOL ‘Covid-19: 3 more clinics closed in Tshwane’ 19 June 2020 available at <https://www.iol.co.za/pretoria-news/covid-19-3-more-clinics-closed-in-tshwane-49604219> (accessed 19 October 2020).

IPID ‘Joint meeting of the PCP and SCJS on police misconduct cases’ 29 April 2020 available at *PCP Lockdown Presentation (29 April 2020) Final - DocumentCloud* (accessed 08 November 2021).

Karim AA ‘South Africa has thousands of potential COVID-19 quarantine hotels. but they’re empty’ *Bhekisisa* 13 July 2020 available at <https://bhekisisa.org/health-news-south-africa/2020-07-13-south-africa-has-thousands-of-potential-covid-19-quarantine-hotels-but-theyre-empty/> (accessed 15 December 2020) (2020).

Legal Resource Centre ‘10 June 2020 – Press Release: City of Cape Town v SAHRC and others hearing’ available at *10 June 2020 - Press Release: City of Cape Town v SAHRC and others hearing | LRC* (accessed on 19 August 2021).

Mail&Guardian ‘Police and military abuses raise concerns amid lockdown defiance’ available at <https://mg.co.za/coronavirus-essentials/2020-03-30-police-and-military-abuses-raise-concerns-amid-lockdown-defiance/> (accessed 21 November 2020).

Macrotrends ‘Ekurhuleni, South Africa Metro Area Population 1950-2021’ available at <https://www.macrotrends.net/cities/22484/ekurhuleni/population> (accessed 15 January 2021).



National Institute for Communicable Diseases (NICD) ‘Covid-19 Outbreak investigation: A practical guide and manual for healthcare facilities’ 27 July 2020 available at <https://www.nicd.ac.za/wp-content/uploads/2020/08/COVID-19-Outbreak-Investigation-Practical-Guide-and-Manual-for-Healthcare-Facilities.pdf> (accessed 19 October 2020) 30.

News24 ‘Superheroes need help too: Health workers in plea for protective gear’ 22 May 2020 available at <https://www.news24.com/news24/SouthAfrica/News/superheroes-need-help-too-health-workers-in-plea-for-protective-gear-20200522> (accessed 14 October 2020).

News24 ‘Lockdown: Cops, metro cop face 3 counts of murder and other serious charges’ 31 March 2020 available at <https://www.news24.com/news24/SouthAfrica/News/cops-face-3-counts-of-murder-and-other-serious-charges-amid-lockdown-20200331> (accessed 05 November 2020).

New Frame ‘Covid-19 Roundup | Food parcels and water shortages’ 15 May 2021 available at <https://www.newframe.com/covid-19-roundup-food-parcels-and-water-shortages/> (accessed on the 15 January 2021).

New York Times ‘How can you social distance when you share a toilet with your neighbour’ 03 April 2020 available at <https://www.nytimes.com/2020/04/03/opinion/coronavirus-south-africa.html> (accessed 05 November 2020).

Parliamentary Monitoring Group ‘Role of local government in combating spread of COVID-19 virus: SALGA briefing’ 28 April 2020 available at <https://pmg.org.za/page/RoleoflocalgovernmentincombatingspreadofCOVID19virusSALGA%20briefing> (accessed 08 December 2020).

Parliamentary Monitoring Group ‘SIU on terms of reference for COVID-19 PPE procurement’ available at [SIU on terms of reference for COVID-19 PPE procurement | PMG](https://pmg.org.za/page/SIUontermsofreferenceforCOVID-19PPEprocurement) (accessed 10 August 2021).

Parliamentary Monitoring Group ‘Implementation of food distribution programmes: MECs and HODs briefing; Update on progress made to respond to Covid19 pandemic issues; with Minister’ 25 June 2020 available at <https://pmg.org.za/committee-meeting/30541/> (accessed 14 January 2021).

Rauch J, Shaw M & Louw A 2001 ‘Municipal Policing in South Africa: Development and Challenges’ available at <http://www.csvr.org.za/docs/policing/municipalpolicinginsouth.pdf> (accessed 06 November 2020).

SACoronavirus (2020) ‘About Covid-19’ available at <https://sacoronavirus.co.za/information-about-the-virus-2/> (accessed 08 October 2020).

SALGA ‘Local Government’s response to Covid-19 Portfolio Committee: Cooperative Government and Traditional Affairs’ 28 April 2020 available at <https://www.salga.org.za/Documents/Media%20Room/Presentation/PC%20COGTA%2028%20April%2020%20LG%20Response%20to%20COVID-19.pdf> (accessed 01 August 2020).

SALGA ‘Voice of local government – issue 32’ available at [https://www.salga.org.za/Documents/Documents%20and%20Publications/Voice%20Magazine/SALGA%20The%20Voice%20of%20Local%20Government\\_32.pdf](https://www.salga.org.za/Documents/Documents%20and%20Publications/Voice%20Magazine/SALGA%20The%20Voice%20of%20Local%20Government_32.pdf) (accessed 17 January 2021).

Seekings J ‘Feeding poor people: The national government has failed’ *Feeding poor people: The national government has failed* | *GroundUp* (2020).

Socio Economic Rights Institute ‘Khosha & Others v The Minister of Defence and Military Veterans and 10 Others (‘Khosha’)’ available at <http://www.seri-sa.org/index.php/19-litigation/case-entries/1013-khosha-v-the-minister-of-defence-and-military-veterans-and-others-khosha> (accessed 05 November 2020).

South African Corona Virus ‘Consolidated Regulations’ 17 April 2020 available at <https://sacoronavirus.co.za/wp-content/uploads/2020/04/Consolidated-Regulations-DMA-17-April.pdf> (accessed 02 November 2020).

South African Corona Virus ‘Covid-19 risk adjusted strategy’ available at <https://sacoronavirus.co.za/covid-19-risk-adjusted-strategy/> (accessed 02 November 2020).

South African Government ‘Minister Patricia de Lille: Public Works and Infrastructure’s state of readiness for Coronavirus COVID-19 Alert Level 3’ 29 May 2020 online available at <https://www.gov.za/speeches/minister-patricia-de-lille-public-works-and-infrastructure%E2%80%99s-state-readiness-coronavirus> (accessed 04 December 2020).

South African Police Service ‘Police Minister concerned about thousands arrested for violation of the Disaster Management Act’ available at *Services / SAPS (South African Police Service)* (accessed on 29 December 2020).

South African Government ‘Social relief of distress’ available at *Social relief of distress / South African Government (www.gov.za)* (accessed 27 October 2021).

South African Government ‘About alert system’ available at *About alert system / South African Government (www.gov.za)* (accessed 28 October 2021).

South African Police Service ‘Minister of Police, Gen Cele gives an update on the levels of compliance and adherence to the Lockdown Regulations in the country’ available at *Services / SAPS (South African Police Service)* (accessed on 29 December 2020).

Spotlight ‘The making of a public health time bomb: Just (don’t) add water’ 01 September 2020 available at <https://www.spotlightnsp.co.za/2020/09/01/in-pictures-the-making-of-a-public-health-time-bomb-just-dont-add-water/> (accessed 17 October 2020).

Spotlight ‘COVID-19: How rural healthcare workers are preparing’ 08 April 2020 available at <https://www.spotlightnsp.co.za/2020/04/08/covid-19-how-rural-healthcare-workers-are-preparing/> (accessed 14 October 2020).

StatsSA ‘General Household Survey 2019’ available at *GHS 2019 (statssa.gov.za)* (accessed 09 April 2021).

StatsSA ‘Key findings: P0318 - General Household Survey (GHS), 2019’ available at *Key Findings / Statistics South Africa (statssa.gov.za)* (accessed on 16 October 2020).

StatsSA ‘Protecting South Africa’s elderly’ online available at *Protecting South Africa’s elderly* | *Statistics South Africa* (*statssa.gov.za* (accessed 09 April 2021).

Statistics South Africa (2018) ‘General Household Survey 2018’ available at <http://www.statssa.gov.za/publications/P0318/P03182018.pdf> (accessed 07 October 2020).

The Conversation ‘Lockdown didn’t work in South Africa: why it shouldn’t happen again’ available at <https://theconversation.com/lockdown-didnt-work-in-south-africa-why-it-shouldnt-happen-again-147682> (accessed 21 November 2020).

TimesLive ‘JMPD says it will suspend officers who were at slain Collins Khosa's house’ 06 May 2020 available at <https://www.timeslive.co.za/news/south-africa/2020-05-06-jmpd-says-it-will-suspend-officers-who-were-at-slain-collins-khosas-house/> (accessed 05 November 2020).

US News ‘South Africa eases one of world's strictest: lockdowns: South Africa has begun easing one of the world’s strictest lockdowns’ 01 May 2020 available at <https://www.usnews.com/news/world/articles/2020-05-01/south-africans-walk-outside-as-country-eases-virus-lockdown> (accessed 19 November 2020).

ViewFinder ‘Covid-19: Police watchdog investigation of first lockdown death reveals deep flaws’ available at *Covid-19: Police watchdog investigation of first lockdown death reveals deep flaws – Viewfinder* (accessed 08 November 2021).

Western Cape Government ‘WCG Covid-19 readiness’ available at *COVID19 Readiness\_0.pdf* (*westerncape.gov.za*) (accessed 05 June 2021).

