

EVENT

Human rights and Governance Implications of the Water Crisis in the City of Cape Town: Roundtable Discussion (6 March 2018)

Gladys Mirugi-Mukundi

The Dullah Omar Institute (DOI) at the University of the Western Cape, in conjunction with the Konrad-Adenauer-Stiftung (KAS), hosted a roundtable discussion on the human rights and governance implications of the water crisis in the City of Cape Town, on 6 March 2018 at the Pepper Club Hotel, Cape Town.

The City of Cape Town might have to turn off the taps come what is controversially known as 'Day Zero' – the day water runs out and residents begin queuing for water. Debate is centred increasingly on when rather than if water dries up completely. The City gradually pushed back the expected Day Zero from 16 April to 9 July 2018 when city water-users managed to save water and relief came from farmers who reduced consumption or reached their capped allocation.

Against a backdrop of nationwide drought, the roundtable discussion was organised as a contribution to policy debate about the water crisis in Cape Town and South Africa. A recurring question in the public domain is whether local government is handling the crisis effectively.

Accordingly, the aim of the roundtable discussion was to interrogate the legal and human rights implications of the water crisis and, in particular, a possible Day Zero. Such debate was timely and necessary for making politicians and policymakers aware that, in crafting strategies to avert crisis, all efforts should be taken to uphold the Bill of Rights and prevent the violation of human rights.

The roundtable discussion brought together a variety of stakeholders, including academic, activists, human

rights lawyers and representatives of civil society organisations involved in the water crisis affecting the City of Cape Town. About 30 people attended the event.

After Christina Teichmann, Project Manager at KAS Cape Town, delivered a goodwill message from KAS, Gladys Mirugi-Mukundi of the DOI introduced the proceedings by setting out the background to the roundtable discussion and the governance challenges posed by the water crisis.

How did the City find itself in such an unprecedented predicament? This is a key question for policy-makers, citizens, and global observers. The answers ranged from climate change and the effects of population growth to the fact that southern Africa at large has often endured prolonged drought. However, claims have also been made that poor governmental planning, mismanagement and even negligence are to blame (Davis 2018; Zille 2018).

Prof. Jaap de Visser, Director of DOI, anchored the panel discussion session, the aim of which was to consider the water crisis from a human rights perspective. He began by asking an overarching question: What do we have to do in the water crisis, and what do we need to do to make sure human rights standards are maintained?

Prof. De Visser noted that while households in affluent suburbs adjust to the water crisis by buying bottled water or drilling boreholes, those in townships and informal settlements and townships struggle to cope. How the City manages the water crisis is a reflection of how it is tackling inequality and water scarcity for its residents.

Dr Khulekani Moyo of the Mandela Institute, University of the Witwatersrand, highlighted the human rights implications of the water crisis, saying that the right of access to water as guaranteed in section 27 of the Constitution implies that water is a basic human right.

He said the Constitutional Court, in *Mazibuko v City of Johannesburg* (2009), shied away from pronouncing the normative content of the right to water. The Court ruled that the right of access to sufficient water does not require that the state provide every person upon demand and with more than sufficient water – nor does the obligation confer on any person a right to claim ‘sufficient water’ from the state immediately.

Dr Moyo intimated that this was a missed opportunity to develop jurisprudence on the state’s obligations regarding the right of access to sufficient water, but noted that in spite of legislation that had been passed, the implementation of free basic water services is uneven across the country.

Alderman Ian Neilson, Deputy Mayor of Cape Town, looked at the crisis from a different perspective, saying that supply and demand are the two major issues. He said that Cape Town faced serious water shortages due to poor rainfall in the winters of 2015, 2016 and 2017 and that although Day Zero might be postponed to 2019, the drought’s threat to the water supply remains a reality. The City has a contingency plan in place, in the form of a critical water shortages disaster plan, along with accompanying measures to mitigate the impact of drought.

From a supply perspective, he said, dam levels are critical for Cape Town’s water supply. To avert the crisis, the City has been investing in augmentation projects such as large-scale desalination plants to help increase water supply. Cape Town has also invested in water filtration plants and drilling for underground water.

Turning to issues of demand, Alderman Neilson said demand for water is steadily increasing every year due to climate change and the Western Cape’s rapidly growing population and economy. He pointed out, however, that significant gains had been made through water restrictions, public communication, advanced pressure management,

and the installation of almost 37,500 water management devices at the properties of high-volume water-users to curb household water use.

Water restrictions are a key part of the City’s water-demand management strategy. In February 2018, tighter restrictions were introduced, decreasing the previous limit of 87 litres per person per day to 50 litres, with households facing substantial fines if this quota were exceeded.



The water crisis had become a political football

Alderman Neilson said that, through these initiatives, Cape Town had seen a reduction in water demand. He believed the City and wider Western Cape could avert Day Zero in 2018 by means of these initiatives, though he acknowledged that the situation changes daily depending on the consumption of water.

Despite these gains, the City had been criticised for its stricter water restrictions to reduce consumption. Alderman Neilson said at the time that the City of Cape Town needed the national government to declare a national state of disaster as a result of the drought.

In response, participants at the panel discussion expressed appreciation for the City’s efforts to manage the crisis, but criticised its roll-out of water management devices in poor communities, saying the process had not been transparent and that those affected were not properly consulted.

Prof. Nico Steytler, NRF SARChI Chair in Multilevel Government, Law and Policy at the DOI, highlighted the blame-game that had been played during the crisis and interrogated the division of responsibilities between national, provincial and municipal government.

He pointed out that the handling of the water crisis had been turned into a political football, revealing serious problems in Cape Town’s governance, and said the blame-shifting between different spheres of government had prevented the City from finding a solution. He referred to an apparent feud between

the Western Cape premier, Helen Zille, and the Minister of Water Affairs, Nomvula Mokonyane, concerning the water crisis generally and, more particularly, the point at which the province's water problems would be declared a disaster. who had been forced out of their ancestral lands and were living in deplorable conditions, the Court said the state had failed to adopt the positive measures that were necessary to ensure the community lived under dignified conditions while its was without its land. The Court concluded that the state has the obligation to adopt positive measures promotive of a dignified life; this is particularly so when high-risk, vulnerable groups are at stake – their protection then becomes a priority.

Prof. Steytler said the governance crisis in Cape Town was aggravated by uncertainty about leadership. It was unclear, in other words, who was in charge of the City's response to the water crisis. Different actors often made conflicting statements about how the water crisis was to be addressed, as happened, for instance, when the national leader of the Democratic Alliance (DA), Mmusi Maimane, relieved the City's mayor, Patricia de Lille, of her water-related responsibilities.

Moreover, there had been political infighting in the Cape Town Metropolitan Council, as a result of which Mayor De Lille was removed from the City's response to the water crisis.

The situation revealed confusion and inconsistency in policy direction, with some of the solutions proposed to the water crisis having astronomical cost implications. Water desalination and drilling into aquifers, for example, have significant costs, to which city residents would have to contribute. Other proposals would create logistical and security challenges at communal water-collection points.

It emerged, furthermore, that there were overlaps between national, provincial and local government – these ambiguously defined mandates were impeding decision-making on Cape Town's water management.

Prof. Steytler observed in conclusion that the blame-game as to who was responsible for the water crisis would persist for the foreseeable future unless the governance crisis in the City were resolved.

During the open discussion, some participants

suggested that Cape Town's water crisis is driven more by politics than drought. They agreed nevertheless that drought conditions had profoundly negative consequences for the economy, particularly so for tourism, one of Cape Town's major industries.

Representing Chapter 9 institutions, Advocate Lloyd Lotz, the Western Cape Provincial Manager of the South African Human Rights Commission (SAHRC), highlighted the Commission's role in ensuring accountability for the realisation of the right to water. He said that it had received complaints from individuals and organisations regarding the water crisis in Cape Town and that it was continuing to monitor the situation. Of particular concern was the amount of conflicting information that was in circulation.

Participants expressed fears that a lack of water means a lack of sanitation, which in turn creates a breeding ground for horrendous diseases. They wanted to know how the SAHRC and City would manage risks to public health.

Prof. Ebenezer Durojaye concluded the roundtable discussion by noting that the water crisis was not unique to the Western Cape – other provinces, such as the Northern Cape and Eastern Cape, were also showing signs of severe water shortage. He said that measures to address these shortages had to be grounded in respect for the right to dignity of the people concerned.

Gladys Mirugi-Mukundi is a researcher at the Dullah Omar Institute, where she focuses on socio-economic rights.

References

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