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SOUTH AFRICA

Surfing towards centralisation on the Covid-19 wave

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18.1 Introduction

When the Covid-19 pandemic reached its shores between February and March 2020, South Africa was already in a vulnerable situation – socially, economically, and politically. Although the country's population, estimated at 59.6 million in 2020, is two-thirds urban, thus facilitating the spread of the virus, its age cohorts mitigated against Covid-19's devastating impact – 28.6 per cent of the population is below 15 years old, and only 9.1 per cent is 60 years and older. Nevertheless, other factors placed the country at heightened risk.

More than half of the population is poor, and the unemployment rate stands at 42 per cent (Statistics South Africa 2020); in South Africa, one of the most unequal countries in the world, the poor and unemployed are predominantly black. In 2018, social grants were, after salaries, the second main source of income for 45.2 per cent of households, with about 13.1 per cent of households living in informal dwellings. Most households with no or limited access to basic services, such as water, are found in townships, informal settlements, and rural areas – places which are inhabited mainly by black South Africans and where poverty tends to be extreme. In 2019, the public health system, which has been neglected for years, served more than 71 per cent of households, while only 16.4 per cent of the population had medical insurance cover for private health care (Statistics South Africa 2019). Moving out of these severe socio-economic conditions has been difficult, given that the South African economy had been in a downward spiral and was in a technical recession in March 2020.

Facing the tidal wave rolling in from abroad was a multilevel system of government comprising a national government, nine provinces and 257 local governments, the latter two characterised by great diversity in territorial size, population, and, eventually, infection rates. The two provinces with the highest

level of urbanisation – Gauteng and the Western Cape – became infection hot-spots, although two more rural provinces – KwaZulu-Natal and the Eastern Cape – followed close on their heels. The Northern Cape, the province with the largest territory and lowest population, sported the lowest infection rate. As for South Africa’s municipalities, these range from large urban conglomerates – such as Johannesburg Metropolitan Municipality (population 5.7 million) in Gauteng and the City of Cape Town (3.4 million) in the Western Cape – to sparsely populated rural local municipalities.

These state institutions were governed largely by the African National Congress (ANC), which experienced deep in-fighting between the country’s president, Cyril Ramaphosa, and a faction supportive of former president Jacob Zuma. In the 2016 local government elections, the party lost its majority in key metropolitan municipalities such as Johannesburg, Tshwane, and Nelson Mandela Bay and shed some electoral support to opposition political parties, namely, the official opposition, the Democratic Alliance (DA), representing mainly white and coloured voters, and the Economic Freedom Fighters (EFF), a split-off from the ANC with a radical Africanist and economic agenda. However, after the 2019 national and provincial elections, the ANC was firmly back in the saddle, remaining in control of both houses of Parliament, eight of the nine provinces and most of the 257 municipalities (including seven of the eight metropolitan councils). At the start of 2020, the ANC was therefore still the country’s main political actor and facilitated coordination efforts when the pandemic broke out domestically.

South Africa recorded its first confirmed case of Covid-19 on 5 March 2020 and first Covid-19-related death on 27 March. By the end of May, it was in the top five in the world in terms of confirmed infections, with a total of 493,183, but in terms of Covid-19-related fatalities, the number was significantly low, at 8,005 (Department of Health 2020). After reaching a peak during June and July, case numbers dropped substantially, only to rise again in October when a second wave of infection gained momentum. By 31 October 2020, 725,452 infections had been recorded and 19,276 deaths (John Hopkins University 2020). These were much underreported figures: the number of natural deaths between 5 May and 10 November 2020 in excess of the anticipated number (so-called excess deaths) was 51,473, and in all probability linked to Covid-19 (Bradsaw et al. 2020).

The response to Covid-19 by South Africa’s system of multilevel government entailed a centralisation of power that made the subnational governments’ implementers rather than partners within the constitutional framework of cooperative government. The majority of provinces and municipalities were ill suited to manage the pandemic adequately due to incapacity, incompetence, and corruption. The possible benefits of a differentiated approach to decentralisation, in terms of which the well-functioning provinces and municipalities could have shown more initiative, were provided for but never explored. Unity, and not diversity, was the key word.

18.2 The federal constitutional and legislative framework

South Africa's Constitution of 1996 establishes a multilevel system of governance that may be described as a hybrid federal system (Steytler 2013). The provinces have exclusive powers over a short list of peripheral responsibilities (including ambulance services) but concurrent powers over a long list of significant ones, among them disaster management, education excluding tertiary education, health services, trade, and welfare services (Constitution, schedules 4 and 5). As both the national parliament and provincial legislatures have complete legislative powers over the concurrent responsibilities, conflicts are readily resolved in favour of national legislation on the basis of a qualified override clause. Local government's constitutionally protected set of responsibilities includes municipal health services, trading regulations, water and sanitation services, cemeteries, public places, refuse removal, and solid waste disposal (Constitution, schedules 4B and 5B). These functions may be regulated, however, by both the national and provincial governments. Any functional area not listed – such as international travel, policing, and the judiciary – falls under the residual powers of the national government.

An emergency such as the Covid-19 pandemic cuts across the listed responsibilities and involves all three levels of government, necessitating coordination and cooperation. The Constitution indeed instructs all three levels of government to adhere to the principles of intergovernmental relations and strive towards cooperative governance (sections 40 and 41). A formal and rule-bound system of intergovernmental relations (IGR) has been developed to support this. The Intergovernmental Relations Framework Act 13 of 2005 establishes the President's Coordinating Council (PCC), a forum for matters of national interest that comprises the President, deputy president, four national ministers, the premiers of the nine provinces, and a representative of organised local government (South African Local Government Association (Salga)). A national minister of a line department with a mandate falling within the list of concurrent functional areas may establish an IGR forum comprising the minister (Min) and members of the provincial executive council (MEC) responsible for that functional area – hence the forum's name of MinMEC. A representative of Salga must also be included if a matter affects local government.

The law also provides for two statutory MinMECs that are pivotal in the management of pandemics. The first is the Intergovernmental Committee on Disaster Management (discussed below). The second, comprising the national minister and the MECs for education, is the Council of Education Ministers, which is mandated to 'co-ordinate action on matters of mutual interest to the national and provincial governments' (National Education Policy Act 27 of 1996, section 9).

Given that states of emergency were used for political repression in the apartheid past, restrictions on such declarations were imposed by the 1996 Constitution. It provides that '[a] state of emergency may be declared only in

terms of an Act of Parliament and only when ... the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency'; furthermore, the declaration has to be 'necessary to restore peace and order' (section 37(1)). It is subject to strict constitutional guarantees and is valid only for 21 days, unless the National Assembly approves its extension by a majority and then for not more than three months at a time.

The national executive decided not to use its emergency powers under the Constitution to manage the Covid-19 pandemic. Instead, it opted for using the framework of the Disaster Management Act 57 of 2002, which obviates the need for parliamentary approval.

18.3 Preparedness for a national disaster: The institutional framework

When measured in terms of the availability of law, policy, and plans, South Africa ought to have been well-prepared for Covid-19. The Disaster Management Act contains an impressive framework of national, provincial, and local institutions and mechanisms to manage disasters. Key features are a designated national minister, a National Disaster Management Centre, nine provincial disaster management centres, and 52 municipal disaster management centres (one for each district and metropolitan municipality), a dedicated intergovernmental committee, and an array of advisory forums, plans, and frameworks. The Act contains rules for the declaration of local, provincial, and/or national disasters.

The designated national minister is the Minister of Cooperative Governance and Traditional Affairs, the very same minister who oversees the functioning of the IGR system. Nationally, the Minister may declare a disaster if existing legislation and contingencies do not adequately equip the national government to deal with the disaster or other special circumstances warrant it. This then empowers the Minister to issue regulations on a vast array of matters. The overall purpose of the regulations must be to assist and protect the republic, provide relief, protect property, combat corruption, or deal with the destructive and other effects of the disaster.

The Act also provides for an Intergovernmental Committee on Disaster Management (mentioned above), which is the primary intergovernmental structure to oversee disaster management. When it was eventually established in 2016, it was a top-heavy forum comprising 20 national ministers, nine MECs and two Salga representatives (Presidency 2016).

18.4 Rolling out measures to contain the pandemic

When President Ramaphosa announced South Africa's lockdown regulations in March 2020, political parties across the board showed their solidarity with his strong stance, a sentiment shared by the broad public and various civil society formations. Nevertheless, as the first three weeks of lockdown turned into five

weeks and another month of lockdown was announced until the end of May, and the impact of the regulations began hitting home in a dramatic rise in unemployment and poverty, the public's mood rose against the lockdown. The official opposition party, the Democratic Alliance (DA), also changed position, challenging the constitutionality of the Disaster Management Act and the regulations made thereunder; however, its approach to the Constitutional Court for direct access to that Court was denied (Mailovich 2020).

The crisis painfully revealed the deep schisms that run through South African society. In what is one of the most unequal countries in the world, the poor (largely synonymous with the black majority) felt the effects of the pandemic in two vital areas: access to health services and increased unemployment and poverty. Moreover, compliance with severe lockdown regulations highlighted the two different worlds in South Africa. Orders to observe social distancing and stay at home could be complied with (and was readily done so) in suburbia, but it was far less possible to heed them in the cramped living conditions in townships and informal settlements.

18.4.1 Taking the initiative

The first and main response to the coronavirus came from the national government when it declared a national state of disaster on 15 March 2020. The initial measures, promulgated on 18 March, included a travel ban on foreign nationals from high-risk countries, the prohibition of non-essential travel by government officials outside the country, the closure of all borders, and the screening of travellers. On 23 March, the President announced further, more drastic, measures centred on a national lockdown, which became effective on 27 March. In support of the national measures, particularly the call for social distancing, the City of Cape Town took the initiative to close its beaches from 24 March, three days before the lockdown came into effect. South Africa's lockdown was seen as one of the harshest in the world which included a ban on the sale of tobacco and alcohol, and the security forces enforced its regulations in a heavy-handed fashion.

From the outset, the national government adopted a centralised approach despite the fact that provinces have a concurrent responsibility for disaster management. The usual IGR structures were sidelined, in one fell swoop, by the announcement of a specialised disaster management structure at national level – the National Coronavirus Command Council (NCCC), an informal council established by the President and comprising, at first, a select number of cabinet ministers and, later, the entire cabinet. The NCCC's functioning was shrouded in secrecy.

18.4.2 National government action

The national government managed the pandemic chiefly by issuing regulations and directions under the Disaster Management Act after approval by the NCCC.

The first set of regulations, those of 18 March 2020, sought to (1) isolate South Africa from contagion by closing its international borders, (2) prevent the spread of the virus internally, and (3) manage the infected. Measures included the identification of places of quarantine and isolation by all three spheres of government, restriction of gatherings, closure of schools, restrictions on the sale and movement of alcohol and tobacco, and emergency procurement.

The second set of regulations, issued on 23 March 2020, ordered a 21-day national lockdown, effective from 27 March, that entailed severe prohibitions on freedom of movement and assembly. The regulations corralled, top-down, all subnational government structures into becoming facilitators and implementers of the national effort:

For the duration of the state of disaster for Covid-19, all Premiers, Members of Executive Councils responsible for local government in the provinces, the President of the South African Local Government Association, all Executive Mayors/Mayors and institutions of Traditional Leadership shall take all reasonable measures to facilitate and implement the measures [against Covid-19].

(Direction 6(1) Disaster Management Act, 25 March 2020)

In addition, all spheres of government and their agencies were directed to implement precautionary measures to mitigate employee health and safety risks. There were also directions aimed specifically at provincial and local governments. For instance, provinces were directed to work with municipalities in identifying quarantine and isolation facilities, to avail resources to disaster coordinative or management structures at the local level, to establish a special disaster management structure, to adopt Covid-19 response plans, to monitor the impact of the national government's Covid-19 interventions, and to report regularly to the national government.

The economic bite of the lockdown was felt immediately, and so a third set of measures focused on ameliorating the lockdown's economic and social impact (National Treasury 2020). On 21 April 2020, President Ramaphosa announced a ZAR 500 billion economic package providing for, among other things, the extension of lines of credit to small businesses. Food relief programmes, grants for the unemployed, funds for the health sector, and financial support for municipalities were also announced.

Shortly afterwards, on 23 April, came the exit plan from the lockdown – a 'risk-adjusted strategy' for managing the pandemic by means of five levels of lockdown, with alert level 5 the most stringent (imposing 'hard lockdown') and 1 the most relaxed. The country moved to alert level 4 on 1 May with a slight relaxation of the restrictions on movement. The strategy made provision for the possible imposition of different alert levels for different provinces and municipalities depending on infection rates. However, this differentiated approach was never adopted during the period under review.

After South Africa's infection numbers peaked in June and July 2020, the government moved to alert level 2 from 18 August to 30 September, a change that saw, inter alia, the lifting of restrictions on interprovincial travel and tourism-related activities. On 1 October, the country was on alert level 1, with the economy having been reopened fully and nearly all restrictions lifted, barring those on gatherings, sports events, and international travel, among other things.

Given the immediacy of the threat the pandemic posed, there was a strong shift to executive rule during the initial stages of the lockdown. Decisions taken by the NCCC and ratified by the cabinet were implemented without oversight from the legislature. Indeed, parliamentary proceedings were temporarily suspended, in line with lockdown regulations that prohibited in person sessions, but returned partially in May (Waterhouse 2020).

In the absence of a robust parliament holding the executive to account, civil society and political parties turned, as they had done before, to the courts to vindicate their rights and demands for good governance. The courts were, on the whole, not inclined to upset the apple-cart by invalidating regulations. As noted, the Constitutional Court gave the DA the cold shoulder when it contested the constitutionality of the Disaster Management Act itself. An attack on the legality of the regulations because of the 'unconstitutional' role of the NCCC was also rejected (*Esau and Others v. Minister of Co-operative Governance and Traditional Affairs and Others* [2020] ZAWCHC 56 (26 June 2020)). More successful was a civil society attack on the constitutionality of the declaration of a National State of Disaster and regulations made under it; a High Court found that while the declaration was constitutional, a number of regulations (the ban not allowing people to visit those dying of Covid-19, the ban on the operation of fisheries, hairdressers etc., and the restricted hours in which people could exercise) were irrational and thus invalid (*De Beer and Others v. Minister of Cooperative Governance and Traditional Affairs* [2020] ZAGPPHC 184 (2 June 2020)), a decision that became moot when these regulations fell away. The attack on the ban on the sale of tobacco also floundered as the High Court found that this regulation was rational as there was a link between the measure (tobacco ban) and its purpose (saving lives) (*Fair-Trade Independent Tobacco Association v. President of the Republic of South Africa and Another* [2020] ZAGPPHC 246 (26 June 2020)).

Unlike the European Union, the Africa Union (AU) in practice has a limited legal impact on South Africa in general and on combating Covid-19 in particular. However, South Africa played a part in formulating a comprehensive continent-wide strategy against the pandemic. Soon after the World Health Organization (WHO) declared Covid-19 a pandemic, the AU adopted its Africa Joint Continental Strategy for Covid-19 Outbreak which provided for the coordination of anti-Covid-19 efforts on the continent by AU member states, AU agencies, the WHO and other international agencies (AU and Africa CDC 2020).

As a member of the AU, South Africa was expected to implement the strategy and other measures of the AU, all the more so since President Ramaphosa, the

incumbent chairperson of the AU, was leading the coordination of the continent-wide response to Covid-19, including the establishment of supply chains for shared resources, such as personal protective equipment (PPE).

18.4.3 Provincial action

With the response to Covid-19 being driven by the national government, provinces acted as supporting and implementing structures. To begin with, prior to the pandemic, no province had adopted provincial legislation on disaster management, despite it being a concurrent competency. Furthermore, during the pandemic, they did not take any legislative measures, with their policies and actions falling largely within the broader national Covid-19 strategy.

Within the scope of that strategy, provinces played an important role in three concurrent areas – health, education, and social welfare. First, provinces are responsible for both primary and secondary health care (i.e. for all hospitals and clinics). From the start, given that the objective of the lockdown was to flatten the curve of infections, provinces had to upgrade their health systems in preparation for the surge. This involved equipping existing hospitals and constructing field hospitals. They also conducted testing and contact tracing, monitored infection rates, and ran campaigns raising awareness about Covid-19.

Secondly, provinces implemented the national strategy with respect to the closure and opening of schools. For instance, when the national government announced the decision to reopen schools under level 3 (from 8 June 2020), provinces had to ensure that the schools were Covid-safe and educators and learners had the necessary PPE. Thirdly, within the broader strategy of minimising the harsh impact of the pandemic and the lockdown on livelihoods, provincial governments had to administer food relief programmes.

The provincial response to Covid-19, as prescribed by the national government, had to be uniform, but the actual performance was highly uneven. The Eastern Cape is the extreme example, but not the only case of incompetence mixed with corruption. Even several weeks into the lockdown, the provincial administration, in particular its health department, had not put adequate measures in place to respond to the pandemic. As a result, it failed to treat Covid-19 patients effectively or undertake testing and contact tracing, a situation that contributed to a high rate of viral transmission for a rural province. The national government was forced to provide support and oversight of the province in a manner that resembled a national-level intervention in a province, with the national Minister of Health bringing in a team of managers to assist the province in revamping its health system; medical personnel from the defence force were also deployed to augment the provincial health personnel. Less prominent but equally poor were health services in Mpumalanga and Limpopo.

Another common problem was poor recording of cases and deaths by provincial authorities. For example, for a period of 19 days an Eastern Cape health district that coincides with the Nelson Mandela Bay Metropolitan Municipality

(Port Elizabeth) reported no mortalities – notwithstanding that the metro managed 76 Covid-related burials in the same period (*Legal Brief* 2020a).

By contrast, the provincial governments of Gauteng and the Western Cape fared well in addressing the country's two main zones of infection. The Western Cape adopted innovative health measures. It put together a team of experts who produced large datasets to inform the province's response to Covid-19 in matters such as testing in hotspots and contact tracing. The Western Cape also established the country's first set of field hospitals for treating Covid-19 patients, for which it received accolades from the national Minister of Health.

Doing something contrary to national policy met with national disapproval. KwaZulu-Natal's attempt to impose a stricter lockdown regime by making quarantining in state institutions compulsory did not get far (*Legal Brief* 2020a). Being less restrictive than the national government was also frowned upon, but the Western Cape's MEC for education persisted in not toeing the line. In the initial lockdown, all government schools were closed, as were their school nutrition schemes. The Western Cape, however, continued to operate the scheme, though without meeting much central opposition.

The second skirmish evoked more reaction. The national Minister of Education gave a directive that schools should open on 1 June for Grade 7 and 12 learners, based on the condition that the schools would be Covid-safe. After petitions by most of the provincial departments of education for a delay because their schools were not yet ready, the Minister informally announced the postponement of the opening date by a week. The Western Cape MEC for education refused to comply, arguing that there was no need for the delay as 98 per cent of the schools in her province were Covid-safe; she instructed that schools reopen as originally scheduled by the Minister.

Condemnation came from several quarters. The Gauteng MEC for education, instead of supporting a provincial colleague, lashed out:

The *misbehaviour* and the attitude of the Western Cape Government to think that they're a federal state or they're a government on their own and they can defy national government and open schools when we are told not to open schools must be rejected.

(*Nicolson 2020, emphasis added*)

The MEC berated the Western Cape government further by saying '[they] don't support the need to ensure that all children are treated equally', and claiming the action would benefit the rich and prejudice the poor (Nicolson 2020). The same sentiment was shared by the South African Human Rights Commission and teachers' unions, who said that 'the Western Cape going alone undermined the unitary nature of our education system' (Nicolson 2020).

There was thus no space for a better-performing province to advance education: the overriding notion was that of solidarity where the pace is set by the slowest provinces. However, this reaction may only be partially concerned with

federal politics; underlying it is antagonism towards the DA and the history of racial inequality in education. Representing mainly minority groups and, after the 2019 national and provincial elections, alienating and shedding most of its African leadership, the DA is perceived as promoting largely white interests.

Provinces cooperated in a number of areas, such as the management of inter-provincial traffic, movement of people between provinces, and the transportation of deceased persons across provincial boundaries. For instance, the Western Cape and Eastern Cape, which share a provincial boundary, entered into cooperative agreements to manage the movement of seasonal farm workers and deceased persons between the two provinces during the lockdown period.

Like the national parliament, provincial legislatures were not active in the early stages of the lockdown, seeing as their proceedings were temporarily suspended in line with national regulations prohibiting in-person sessions. The provincial response to Covid-19 was thus led and driven during this period by provincial executives operating without oversight by legislatures.

Overall, given their limited constitutional space, provinces in general did not push the boundaries of their autonomy but willingly accepted their role as implementers acting under national direction. They became in effect administrative agents of the national government, which funded their response to the pandemic. Few of them, however, excelled in their administrative role.

18.4.4 Local government action

The role played by local government was principally reactive. Municipalities generally positioned themselves as loyal partners in the national government's response; although they were closely monitored by provincial governments, they were ultimately left to their own devices to absorb the cost of the crisis.

The declaration of a national disaster was followed immediately by a range of detailed directions for local government. Among other things, municipalities were instructed to ban all public meetings, close public amenities and markets, sanitise public places, raise awareness, and increase water delivery to informal settlements. They were instructed as well to develop response plans, report regularly to their provincial governments, and set up and participate in the new district 'command councils' tasked to coordinate the government's response. The national government also ordered municipalities to ban all council and committee meetings, an instruction later amended to a blanket command to meet virtually. Municipalities were directed, furthermore, to abandon their internal delegations and allow the mayor, in consultation with the municipal manager and chief financial officer, to conduct emergency procurement to respond to the crisis (De Visser and Chigwata 2020a).

The impact of pandemic response on municipalities was threefold. First, a range of existing local government responsibilities was suddenly intensified and redirected. Municipal police and law enforcement were tasked with helping the South African Police Service and the army to enforce the lockdown (Beukes

2020). Water tanks needed to be delivered to settlements without access to water; street traders had to be furnished with special permits, public transport facilities, sanitised, and the like. Municipalities were also tasked with identifying infection hotspots and assisting in the identification of quarantine sites.

Secondly, a number of new responsibilities emerged, the most controversial one being the delivery of food parcels. Food assistance falls within the remit of the national and provincial departments of social development and education, which manage these two concurrent functions. However, in the chaos of the government's initial response to the hardship of the lockdown, municipalities became involved in the identification of recipients and even the funding of food parcels. This led to reports of councillors abusing the intervention for political ends and municipalities incurring unauthorised expenditure (Payne 2020a).

Thirdly, the lockdown had an immediate and devastating impact on municipal revenue, with collection of property rates dropping almost instantly. They were facing the prospect of fewer paying utility users and a reduction in inter-governmental funding (Davis 2020). For instance, although the national government promised them assistance to the value of ZAR 20 billion (National Treasury 2020: 7), this was woefully inadequate.

The fact that municipalities adopt their own budgets enabled them to pass adjustment budgets and redirect funds. Similarly, because they have considerable policy discretion to determine, and collect taxes and service fees, some were able to ameliorate the impact of the lockdown. For example, Stellenbosch Local Municipality introduced relief from property rates for individuals and companies that suffered losses as a result of the lockdown (Stellenbosch Local Municipality 2020). This was not a widespread practice, as most municipalities were too cash-strapped to follow suit. Other municipalities at least eased off on their debt collection and reconnected households whose services had been discontinued. There was innovation, too. Municipalities were thrust into a practice of holding online council meetings and experimenting in forms of public engagement that avoided the somewhat tired town-hall approach (De Visser and Chigwata 2020b).

Although the regulations provided for differentiated responses to the pandemic, local deviation from the national norms was not tolerated. The request of Ethekewini Metropolitan council to remain at level 5 when the rest of the country moved to level 4 found no national support (OFM 2020). By all accounts, the national government, unwavering in its initial response to the pandemic, centralised power in respect of local government and in the process also meddled in the provinces' oversight role.

First, it conscripted local government through measures that upended the constitutional status of local government. The initial blanket prohibition of all municipal council meetings was almost certainly unconstitutional; as for the subsequent instruction to all of them to meet virtually, this may have been overbroad, ignoring differences in size and ability to have responsible physical, or hybrid, meetings. The instruction to abolish internal checks and balances and centralise procurement in the mayor's office may not only have been constitutionally

impermissible but also may have contributed to the corruption in PPE contracts that later engulfed the country.

Secondly, further centralised planning emerged through the ‘command councils’ that were set up to coordinate at each district and metropolitan level. These coincided with the roll-out of a new national government programme to improve intergovernmental alignment, the so-called District Development Model (DDM). The DDM is predicated on positioning the eight metropolitan municipalities and 44 district municipalities as the pivots for all intergovernmental planning (Department of Cooperative Governance and Traditional Affairs 2019). The DDM provides nothing that has not been tried before. However, bolstered by the momentum of district-led coordination of the Covid-19 response, it may end speculation about abolishing the much-maligned district municipality, the ‘upper tier’ of local government.

Thirdly, a similar trend emerged when national politicians assumed the role of mentoring local government. The President initiated an informal scheme of deploying senior ministers and their deputy ministers (also elected politicians) as ‘mentors’ to metros and key district municipalities. For example, the Minister of Trade and Industry, Pravin Gordhan, was sent to Tshwane Metropolitan Municipality (Pretoria) to assist a highly unstable council (Pijoo 2020). The significance of this initiative is that a national minister leapfrogged over the province that bears the primary responsibility of monitoring and support.

18.4.5 Intergovernmental relations

Throughout the pandemic, a strong centralised system and ethos prevailed, coming to the fore as well in the sidelining of pre-existing IGR forums and processes. The President’s Coordinating Council (PCC) could have played a pivotal role in coordinating a whole-of-government approach. Instead, the PCC was pushed to the margins, with dictates coming mainly from the informal NCCC, on which there was no provincial and local representation.

There was some consultation with the provinces, however. When President Ramaphosa announced the first lockdown, he noted, after referring to the decision of the NCCC to that effect, that the decision was made after consulting the provincial premiers. Although the NCCC was the driving force in the country’s pandemic response, in the initial phase of the lockdown the PCC did meet weekly, in contrast to its previous twice-yearly get-togethers. Anecdotal evidence suggests, though, that these meetings were a conduit for information and instructions rather than a platform for negotiation. Before the move to level 3 on 1 June 2020, it was reported that the President had a virtual meeting with the premiers and mayors *following* his announcement of the easing of restrictions (*Daily Maverick* 20 May 2020), which suggested that no *prior* consultation had taken place.

Although a top-heavy Intergovernmental Committee on Disaster Management had been established in 2016, it faded into obscurity and did not

re-emerge during the lockdown. This by-passing of the Committee is in a sense a transgression of the spirit, if not the letter, of the Disaster Management Act: a dedicated, intergovernmental structure bringing together all three spheres of government to advise the cabinet, was replaced by an ad hoc structure consisting exclusively of national government ministers.

The Council of Education Ministers (CEM) fared better, emerging as a cooperative institution making joint decisions on key issues on schooling during the lockdown. In March 2020, prior to the lockdown, it reached agreements on matters such as the timetable for final-year examinations and the school calendar for 2021 (Motshekga 2020a). After the lockdown and closure of schools, the CEM held frequent meetings in an effort to save the school year. The national Minister, Angie Motshekga, also couched major decisions as those of the CEM (see Motshekga 2020c). However, such decisions were funnelled to the NCCC, which then affirmed even the school opening calendar (Motshekga 2020b).

The role of formal IGR forums also receded, with IGR consultations becoming more informal and direct. Ahead of a move to a level 4 lockdown, the Minister of Cooperative Government asked for input from the provinces (Meyer 2020), yet without using the Intergovernmental Committee on Disaster Management for that purpose. As the decision-making process at the national level was murky, it is not clear whether such inputs had any impact and whether the regulations were ever the product of agreements. Also, it would appear that provinces (and municipalities) preferred to direct specific requests directly to the President rather than work through IGR forums which did not allow space for individual provinces.

For example, after restrictions on liquor sales were eased for the first time in three months, the Eastern Cape premier asked for the reinstatement of the ban because of an increase in violence-related casualties at hospitals (Dayimani 2020). With the support of the Minister of Police, the President sprung a surprise on the country by re-imposing the liquor ban after a mere three weeks. By contrast, few of the requests from the Western Cape and the City of Cape Town seemed to find a receptive ear.

18.4.6 Intergovernmental fiscal relations

At the beginning of 2020, the South African economy was already in a technical recession. Moody's, the last of the rating agencies to do so, downgraded South Africa in March 2020 to junk status, making borrowing costlier. This was bad news, as the February 2020 national budget deficit as a percentage of gross domestic product (GDP) was 8.1. The biggest contributors to the problem were the major state-owned enterprises, which, thanks to years of maladministration and corruption, were deeply mired in debt. Moreover, due to past maladministration of the country's tax authority the revenue collection forecast for the 2020–2021 financial year fell substantially short of target. Consequently, the

Division of Revenue Bill of February 2020 contained cuts in the transfers to both the provinces and municipalities.

The lockdown, having closed most economic activities in the second quarter of 2020, brought further destruction to this ailing economy, which contracted in that period by 51 per cent; the official prediction for the year as a whole was that it would contract by 8.1 per cent. By the time the national Special Adjustments Budget was tabled at the end of June 2020, the budget deficit had nearly doubled to 15 per cent of GDP. Thus, while the economy was delivering less taxes, demands on government services and support escalated dramatically.

The provinces' increased responsibilities were not covered by transfers determined in February 2020 – transfers upon which provinces are almost totally dependent, given that only 3 per cent of their revenue is own revenue. Municipalities' own revenue fell by 60 per cent on average, and in the case of metros, by 30 per cent. The poor performance prompted Moody's to push two metros deeper into junk status in September 2020. By the end of June, more than half of the municipalities owed more to creditors than they had cash in the bank.

The National Treasury responded with a number of measures that provinces and local government had to adopt. First, provinces had to reprioritise their expenditure to meet pandemic-related needs. In the main, the reprioritised funds came from infrastructure spend on public works, roads, and transport. Secondly, spending cuts were sought, including breaching a three-year wage agreement that in 2020 would have given above-inflation wage increases to the civil service (including provincial officials) – a move vehemently opposed by labour unions.

Thirdly, equalisation transfers (i.e. each province and municipality's equitable share of the revenue raised nationally) were slightly reduced for provinces, but slightly increased for local government. Conditional grants for infrastructure development were suspended or reprioritised for Covid-19 spending.

Fourth, the shortfall in revenue drove the national government to take the politically contested step of borrowing money from the International Monetary Fund (IMF); the ANC's alliance partners – the trade union COSATU and the South African Communist Party – saw the spectre of losing national sovereignty to IMF structural adjustment programmes.

Despite these measures to save money, the national government did not hesitate to shoot itself in the foot by banning the sale of tobacco, thereby forsaking billions of rands in excise duties in exchange for a possibly marginal reduction in the pressure on hospitals. The ban on alcohol sales also contributed generously to the loss of 'sin taxes'.

The patrimonial state is firmly embedded in the fabric of the ANC and the governments they control, notwithstanding Ramaphosa's ascendancy as president of the ANC and the country on an anti-corruption ticket and his subsequent actions in this regard. Financial accountability to Parliament, provincial legislatures and municipal councils is weak overall, a state of affairs not helped by the clampdown on oversight by provincial legislatures and municipal councils.

Indeed, the pandemic merely provided new feeding opportunities for the patrimonial state.

The saddest evidence was the looting by officials, politicians and their cronies of funds earmarked for Covid-19 relief, including for buying PPE using procurement procedures that had been relaxed given the urgency of the situation. In the Eastern Cape, for example, the number of provincial employees doing business with the provincial government jumped from 29 prior to the lockdown to 565 during it (*Legal Brief* 2020b). The shamelessness of the feeding frenzy was heightened by the fact that the Zondo Commission into State Capture was holding hearings at the same time on the financial depravity that characterised the Zuma presidency; moreover, in November 2020 the Secretary-General of the ANC was arrested on corruption and racketeering charges stemming from the Zuma years.

As far as national oversight of local finances was concerned, the Budget Forum, an IGR forum comprising the Minister of Finance and the nine MECs for finance, resolved that the National Treasury would take the lead in municipal financial matters while the Department of Cooperative Governance would keep an eye on governance and service delivery (Mkentane 2020). This clarification of roles in an area notorious for messy oversight overlaps may be one of the few financial positives to have come out of the lockdown.

18.5 Findings and policy implications

The Covid-19 pandemic and response to it touched the constitutional core of the multilevel government system – namely, the concurrent functions of disaster management, health services, social welfare and education – and thereby also brought the need for cooperative government to the fore. The national government, leading the charge against the pandemic, could have declared a state of emergency, but chose the unencumbered powers that the Disaster Management Act provides. Despite the existence of a system of cooperative government erected by the Constitution and legislation, powers were sucked up not only to the centre but also within the national government, in the form of the NCCC. Even where IGR forums worked cooperatively, such as with the CEM, their decisions had to be sanctioned by the NCCC. The end result was that the measures taken to combat the Covid-19 pandemic emphasised and enhanced the centralised nature of the South African system of multilevel government.

Provinces and municipalities were in effect corralled into being implementers of nationally determined measures. They did so willingly, but often not competently. The majority were mired in maladministration and corruption, although some provinces, notably Gauteng and the Western Cape, which contended with the two largest hotspots of infections, were capable of being efficient and even of developing innovative measures. Generally, the inhabitants of the Eastern Cape, for instance, fared poorly under their provincial government.

In the face of this unevenness, the question of whether subnational governments helped or hindered pandemic management cannot be answered with an unequivocal yes or no. To add to this equivocation, it is hard to speculate if the national government might have done better in their stead, since it is scarcely a paragon of good governance either.

Both provinces and local government lost some of their autonomy during the lockdown. Will this surge in centralisation have long-term implications for the current system of multilevel government? The great tidal wave of the Covid-19 pandemic, it is argued, may well send a state already tottering atop an upheaval of problems seemingly beyond its capacity to quell, towards centralisation.

First, one of the perennial reasons for centralisation is the poor performance of the majority of provinces and municipalities. The poor performance of most of the provinces during the pandemic deepened the pre-pandemic trend of incapacity, maladministration, and corruption. Although capacity is not in abundance in the national government, popular faith still rests at that level. The good performance of Gauteng and the Western Cape in dealing effectively with the highest rates of Covid-19 infections in the country is not likely to steer the national ship towards differentiated decentralisation. The same applies to municipalities: a steady decline in their performance prior to the pandemic was exacerbated by the lockdown.

The second reason for the further drift towards centralisation is the absence of a ‘federal spirit’ in the body politic. The federal spirit espoused by Michael Burgess (2012) refers both to tolerance of diversity among constituent units as well as to the celebration of innovative measures for better governance. The absence of this spirit within the ruling party and sections within society became glaringly conspicuous in the *contretemps* over a trifling practical but policy-laden decision by the Western Cape government to start schooling a week before the rest of the country. Doing something different from the rest of the provinces was attacked by the other well-performing province, Gauteng, as ‘misbehaviour’, on the ground that all provinces had to obey the national direction even though it was not couched in binding law.

The third reason for the continuing drift towards centralisation relates to the country’s dire financial situation, acutely felt by subnational governments. In a context in which there is less public money, where provinces perform poorly and municipalities go bankrupt, expenditure controls will intensify in order to ensure better use of dwindling resources. Unlike the 2008 financial crisis – which did not much affect multilevel government in South Africa, a country that at the time had enjoyed a period of economic growth (Steytler and Powell 2010) – the Covid-19 crisis was far more severe in impact and afflicted an already-ailing economy. The national purse strings are thus likely to reign in autonomy.

Is it all bad news for decentralisation? Perhaps not. As the economic crisis, deepened by the lockdown, came to dwarf the fading Covid-19 health challenge, the national government’s focus shifted to stimulating economic growth through infrastructure spending. Differentiated decentralisation, so argued the Gauteng

and Western Cape governments, could be a further measure towards enhancing economic growth (Payne 2020b). Gauteng, the economic and financial hub of the country, argued that it should be allowed to raise its own revenue and to attract investments, while the Western Cape sought a much broader empowerment deal to provide a better governance infrastructure necessary for economic growth, including powers over policing, rail, and energy supply. The same arguments could be made by the main metropolitan governments.

Out of sheer desperation, the national government may well consider empowering the two provinces and the key metros to facilitate economic growth. A careful step in this direction was taken in 2020 when electricity laws were amended to enable municipalities to develop their own power generation projects, thus reducing their dependence on Eskom, the troubled national electricity utility. While anti-federal mindsets and political complexities tell against it, the prospect of differentiated decentralisation, though slight, is not remote.

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