

Federalism and the COVID-19 crisis: A perspective on South Africa



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South Africa has always hovered around the periphery of federal states because of its strong centrist features. With the management of the COVID-19 pandemic these centrist characteristics have become more pronounced. Not only has the national government assumed the leadership role, but one of the casualties has been constitutionalism, both with reference to the multilevel government but also the rule of law. While the current lockdown measures (regarded as some of the strictest in the world) have ensured that the infection rate and mortalities have remained very low (7,500 infections and 148 deaths by 6 May 2020), the secondary impact of the lockdown on job losses and hunger has been horrendous, with predictions that the number of deaths due to the social and economic consequences will far outstrip those caused directly by the disease. The harsh implementation of the clampdown by the security forces has also seen numerous human rights violations.

Disaster management is a concurrent functional area shared by the national government and provinces, as are health care services and schooling. The National Government has declared a national state of disaster, with the national Department of Cooperative Governance - which is tasked with overseeing the provinces and local government - issuing most of the regulations that must be implemented by people, provinces, and municipalities. A constitutional problem is emerging; national decisions being made by a National Command Council, comprising the President, a few cabinet ministers, top bureaucrats, and experts on health management. If the Council, which has no constitutional or statutory basis, is sidelining the full cabinet, its decisions can be challenged.

As provinces are responsible for all hospitals, they have been at the forefront of preparations for the expected deluge of

COVID patients needing hospitalisation. Given they are also responsible for primary and secondary education, they had to deal additionally with the forced closure of schools. Furthermore, sharing the responsibility for social development with the other levels, the obligation to provide food for the hungry also landed on their table. Despite these crucial responsibilities, provinces are not represented in the National Command Council. However, the Presidential Coordinating Council, comprising the President, key ministers, the premiers of the nine provinces, and the chairperson of organised local government, has been meeting every week, as opposed once or twice a year before the outbreak of COVID-19.

After the first five weeks of total lockdown, the national government adopted a new system of 'risk adjusted strategy' whereby restrictions are to be eased in accordance with the prevalence of infections in specific provinces and district municipalities. Given the wide disparities between rural and urban provinces, for example, a differentiated approach of easing of restrictions would be possible. This affords the provinces more of an active decision-making role in the assessment of risk and implementation of restrictions.

From the outset of the pandemic, bi-partisan support for President Ramaphosa was forthcoming. As eight of the nine provinces are under the control of the ANC, differences in approach are likely only from the opposition-held Western Cape provincial government. As the initial support for the national





lockdown is now waning in the face of the nightmare of social and economic deprivation, the Western Cape government is seeking new ways of dealing with the pandemic, including a much more vigorous testing, screening, tracing, and treatment regime. However, as this province is, along with the other eight provinces, almost entirely transfer-dependent (97-95% of revenue comes from transfers), the scope for innovation is very constrained.

As a constitutionally recognized sphere of government, local government is mandated to provide basic services essential for preventing the spread of the pandemic: clean water, sanitation, waste removal, and electricity. Local government also has responsibility for control of trading. The large metropolitan councils have under their jurisdiction metropolitan police forces as well as other law enforcement agencies which assist the national police service and the South African Defence Force in enforcing the lockdown.

The national disaster management regulations instructed municipalities to undertake a range of tasks, although the constitutional basis for such directives is unclear. In providing the usual and new services municipalities, whose own revenue base has shrunk dramatically due to the lockdown, will find it

hard to make ends meet. Sufficient compensatory transfers will be hard to come by as the national government is becoming hopelessly indebted.

The management of the pandemic has illustrated graphically the centralised nature of South Africa's system of multilevel government. A top-down approach may have been the appropriate response in the initial period of curtailing the spread of the virus. Now, however, a more differentiated approach is needed to deal with the deadly social and economic aftermath of the restrictions, and provinces and municipalities should play a vital role. As the country proceeds to deal with the crisis in the months to come, firm action is needed, but not at the expense of the larger project of constitutionalism.

