



# Covid-19 putting Multi-Level Governance to the test:

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## Transgressions and Innovations in South Africa





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## 1. EXECUTIVE SUMMARY

The impact of the COVID-19 in South Africa placed enormous pressure on its governments, as it has done with governments around the world. However, what emerges from this analysis of South Africa COVID pandemic response is the highly centralized nature of South Africa's system of government.

South Africa's multi-level, quasi-federal system of government is distinguished by its three spheres of government (national, provincial and local), all of which have legislative and executive authority in their own spheres, defined in the South African Constitution (1996) as "distinctive, interdependent and interrelated".

In a similar vein to Nepal's, principles of cooperation, coexistence and coordination, South Africa's government's interrelationships are governed by a system of co-operative governance.

This paper puts forth the governance impact of the outbreak on the functioning of its quasi federal system.

In the first part the paper provides a background and the constitutional framework for the functioning of each sphere.

The second part analyses how the pandemic put the multilevel government system to the test and describes the power dynamics between spheres, as transgression against provinces, municipalities and how ultimately the disaster management rules transgressed devolved local democracy.

The third part of the paper focuses on three areas of multilevel government's innovation that took place during the course of managing this crisis.

- i. Intergovernmental resilience;
- ii. Importance of Cities;
- iii. E-governance and Oversight;

The paper illustrates that despite the transgression South Africa's multi-level system some municipalities did display impressive innovation in ensuring planning and budgeting remained participatory and people-centered. Covid-19 has also accelerated digital governance across all spheres and even in intergovernmental relations.



## 2. BACKGROUND AND CONSTITUTIONAL FRAMEWORK

The South African Constitution states that “government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated” (section 40(1)). The country is divided into nine provinces and 257 municipalities.<sup>1</sup> The “distinctive” element in section 40(1) reflects that each sphere exists in its own right (relative autonomy); it is the final decision-maker on defined functions and is accountable to its constituency for its decisions. The Constitution divides powers between national, provincial and local governments.

This arrangement is the product of the negotiations that were held in the early 1990ties, between liberation movements (most notably the African National Congress (ANC)) and the outgoing apartheid government, led by the National Party (NP). While the ANC favoured a unitary state, the NP and a regional movement in KwaZulu-Natal (the Inkatha Freedom Party), favoured federalism. The compromise, ultimately laid down in the 1996 Constitution, was a quasi-federal state with strong unitary elements, which allocates significant powers to local government. The question posed in this article is what effect the outbreak of covid-19 had on the functioning of this system.

At the centre of the constitutional division of powers is a list of powers (Schedule 4A) allocated to both national and provincial governments with authority to make and implement law on these matters. In case of conflict between a national and a provincial law, the Constitutional Court decides whose law prevails. The list of concurrent powers is extensive and includes matters such as environment, health, housing, welfare services, agriculture and, importantly, disaster management. However, the provision that regulates how the Constitutional Court decides which law prevails in case of conflict, weighs heavily towards national uniformity. It is very telling that, in 23 years since the adoption of the 1996 Constitution, the Constitutional Court has never been called upon to adjudicate on a conflict between national and provincial law on a Schedule 4 matter.

The Constitution also reserves some powers to provinces exclusively (Schedule 5). The national government may not make law on those matters except in special circumstances. Schedule 5 includes matters such as provincial sport, provincial cultural services and veterinary services, which are hardly of fundamental importance. The absence of meaningful exclusive provincial powers is an important feature of South Africa’s ‘centralised federalism’.

The Constitution also allocates powers exclusively to national government, namely any power not mentioned in Schedule 4 or Schedule 5. This includes major powers, such as the judiciary, mining, border control and (most parts of) policing.

Municipalities are responsible for the provision of basic services, such as water, electricity,

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<sup>1</sup> There are eight metropolitan municipalities, 44 district municipalities, and within them, 205 local municipalities. The number of local governments usually changes with every general local government election as a result of mergers and boundary changes.



refuse-removal, and municipal infrastructure. These functions are performed within nationally and provincially set regulatory frameworks.

Although provinces are “distinctive”, they exercise their powers and perform their functions within the regulatory framework set by the national government which is also responsible for monitoring compliance with that framework and, if need be, intervening when constitutional or statutory obligations are not fulfilled. Municipalities are likewise subject to both the national and provincial regulatory and supervisory powers. It is this relationship of regulation and supervision that defines how the three spheres are “interrelated” – provinces and municipalities exercise their distinctive powers within imposed frameworks and under supervision.

Within the regulatory frameworks and subject to supervision, provinces and municipalities enjoy relative autonomy, remaining accountable to their constituencies to reflect their policy preferences. However, they must still exercise their powers for the common good of the country as a whole by cooperating with the other spheres. In this sense the spheres are “interdependent”; only collectively and in cooperation with one another can they provide government that meets the needs of the country as whole.

In practice then it is an hourglass model of federalism: a strong and politically dominant centre, weak provinces (with very few revenue raising and law making powers) and strong local government (though many are hampered significantly by socio-economic realities and consequent financial constraints and challenges).

### This manifests in:

1. Provinces for the most part do not raise substantial revenue (apart from some licences and fees). They rely on a constitutionally guaranteed, ‘equitable’ portion of the national revenue pie (distributed according to a clear and transparent formula). In fact, provinces are generally reliant for 95% or more of their expenditure on fiscal transfers, so their scope for innovation or autonomy is constrained.
2. As a result, provinces also do not innovate and make law in concurrent areas (Schedule 4 functions). The practice is: national legislates and regulates and provinces implement. This is important for the Covid-19 response because ‘Disaster Management’ is a Schedule 4A competency and thus an area where both provinces and national government may legislate. There is (only) national legislation.

Technically, provinces could adopt their own disaster management legislation but, for the reasons set out above, no single province has done so. Even if a province would adopt its own disaster management legislation, there would be little scope to deviate from the national legislation as the national override in the Constitution favours national uniformity.

3. Local government does raise its own revenue and has more substantial exclusive powers under Schedule 4B and 5B. It also arguably enjoys greater protection in terms of the Constitution, with a number of favourable Constitutional Court rulings over the last two decades. However, its ability to exercise its powers and perform its functions are often incapacitated by its socio-economic and historic context as



well as financial capacities: out of 257 municipalities, less than 20% really generate significant (more than 50%) of own revenue, with most dependent on the equitable share (the unconditional fiscal allocation) and conditional grants.

This renders its right to govern 'on its own initiative' (autonomy) relatively docile. Add to this poor governance and outright dysfunctionality in quite a few cases. The strength of local government is generally to be found in the mostly powerful metros and larger cities, with only a few beacons of excellence and good governance among the smaller-sized municipalities.

Apart from the above institutional arrangements the multilevel government dynamic is critically influenced by the political reality that the African National Congress controls most levers of power throughout the system. Eight out of the nine provinces are governed by the same party as the one that governs nationally. The Western Cape Province is governed by the leading opposition party (the Democratic Alliance), which also controls the majority of the municipalities in that province, either directly or by coalition<sup>2</sup>.

This is so primarily because the 'indivisibility of the Republic' imperative stated in the Constitution renders such distinctions 'undesirable' and any attempt to stray too far from the national imperatives would inevitably be declared unconstitutional and labelled 'separatist'. It can thus be said that South Africa has a quasi-federal, but clearly decentralised governance system.

### 3. THE PRACTICE – COVID-19 PUTTING MULTI-LEVEL GOVERNANCE TO THE TEST

South Africa recorded its first Corona virus case on 5 March 2020 in the KwaZulu-Natal Province. In the days that followed, the number of infections (the outbreak, albeit not yet exponentially) spread across the provinces, which prompted national government to invoke and declare a national state of disaster (not emergency) on the 15th of March 2020. At the time, South Africa enforced one of the hardest lockdown regimes globally. The South African Police Service, municipal law enforcement officers and even the National Defense Force were deployed to enforce the lockdown rules. This was accompanied by a raft of national regulations, which determined detailed regimes per sectoral area such as in health, education (closing schools), transport (ban on inter-provincial travel), trade (including ban on alcohol and cigarette sales), home affairs (closure of borders) etc.

Driving this response was a newly established National Coronavirus Command Council (NCCC), which comprises of a selection of national ministers, their top civil servants and representatives of the police, army and intelligence community. It met almost daily and became the 'clearing house' for all matters related to the response – to the extent that all executive measures (including the lockdown regulations) passed through this structure before being official passed by Cabinet and the relevant ministries. In effect, a few weeks

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<sup>2</sup> The Western Cape is the only province with its own Constitution, for example, but it is of little consequence since provincial constitutions may not differ in any substantial way from the national Constitution. In reality, it creates no meaningful distinctions with any other province.



into the lockdown, it became obvious that the NCCC was effectively governing the country, despite having no constitutional or statutory basis. Its predominant role was challenged in court but the government batted the challenge away by arguing that the NCCC was nothing but an advisory structure to Cabinet. However, since the court challenge, government has been more deliberate in emphasising that, formally at least, decisions are still taken by the designated constitutional bodies.

After five weeks of the hard lockdown, government introduced a 'risk adjusted strategy' that was implemented from 1 May 2020. The strategy introduced differentiation in at least two important ways:

- Different alert levels that vary with risk levels, ranging from the most severe (hard lockdown) level 5 to the most relaxed level 1 (which the country moved to in August); and
- A place-based approach, in which variations (in the severity of restrictions) are possible (potentially at least), per geographical area between provinces and districts. In practice this never materialised.

From a governance point of view, the Covid-19 response can best be summarised as an (extremely) centralised response with decentralised implementation.

### 3.1. Statutory context

Government used disaster management legislation to invoke a national state of disaster. Interestingly, and questionably, it did not proclaim a state of emergency but a state of disaster. A state of disaster does not upend the Constitution, so the division of powers between national, provincial and local government should remain unaffected. In practice, as outlined in the previous section, national government usurped all powers to formulate a response to the pandemic and rendered sub-national governments 'implementing agents' merely following instruction. This is telling and unpacked further below.

The national Disaster Management Act contains an impressive framework of national, provincial and local institutions and mechanisms to manage disaster. Key features are a designated national Minister, a National Disaster Management Centre<sup>3</sup>, nine provincial disaster management centres and 52 municipal disaster management centres, 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 criteria for classification at a particular level deal with cross-border impact but also with the ability of a province or a municipality to "deal with [the disaster] effectively".

In other words, a localised disaster can be declared at a higher level if the relevant subnational unit is unable to deal with it. The designated national Minister is the Minister of Cooperative Governance and Traditional Affairs. This is the same Minister that oversees the functionality of the intergovernmental relations system. Nationally, the Minister may declare a disaster if existing legislation and contingencies do not adequately equip the national government to

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3 One for each district and metropolitan municipality.



deal with the disaster or other special circumstances warrant it. The declaration of a disaster then empowers the Minister to issue regulations on a vast array of matters, including the release of resources, emergency procurement procedures, evacuation, release of personnel and the regulation of the movement of persons and goods.

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. Government's response to the pandemic was almost entirely channelled through this arrangement with the Minister issuing a flurry of regulations which were amended with every alert level and also revisited in response to changing circumstances and insights. In addition, line Ministers received delegated authority to issue directions within their respective sectors. The result was a rapidly growing edifice of hundreds of laws, detailing South Africa's response to the pandemic.

On 18 March 2020, three days after the President declared a state of disaster and announced a raft of measures to contain the spread of the virus, the Minister of Cooperative Governance and Traditional Affairs ('the Minister', who is the custodian / minister responsible for disaster management) issued the COVID-19 Regulations, in terms of section 27(2) of the Disaster Management Act of 2002. Subsequently, the President announced a 21-Day National Lockdown.

On 25 March, the Minister issued the COVID-19 Disaster Response Directions of 25 March 2020 (the Directions) targeting provinces, municipalities and traditional leaders. They were amended on 30 March 2020. On the same day, the Minister of Finance also issued a notice that exempts municipalities and municipal entities from complying with certain provisions of the Municipal Finance Management Act of 2003 (MFMA) and its Regulations.

The responsibility to implement the Directions under the Disaster Management Act is placed on all premiers, members of executive councils (MECs) responsible for local government in the provinces, the President of the South African Local Government Association (SALGA), all mayors (whether executive or non-executive) and institutions of traditional leadership.

### 3.2. Transgressions

In order to deal adequately with transgressions of the constitutional order set out above, it is important to define the concept broadly. Therefore, the definition of transgression employed here is twofold: first, it contains infringements that are clearly unconstitutional and, second, instructions, arrangements and/ or actions that obviously, or subtly, erode the multilevel government order.

Ever since the first set of Regulations and Directions were issued there have been several changes to the Regulations and Directions. In the main these Directions instructed municipalities to:

- Ensure that water and sanitation services are available at public facilities and public transport points and to cleanse and sanitise public facilities.
- Identify hotspot areas for COVID-19 and implement relevant mitigation measures.



- Close all non-essential public facilities and places such as swimming pools, public parks, libraries, museums etc. They may also no longer issue permits for marches, protests and the handing over of petitions.
- Close all markets, including street vendors other than food markets. This provision was confusing and contradicted other Lockdown Regulations that allowed spaza shops and informal food traders to continue operating.
- Ensure consistent and wide-spread messaging and communication around hygiene education. Municipalities are instructed to monitor and control social distancing.
- Identify and manage areas suitable for the quarantine and isolation of people in high risk categories.

Municipalities are also required to develop and implement COVID-19 Response Plans and risk profiles. They must monitor progress and impact of interventions in their respective communities and submit weekly reports to the Minister.

Directions to provinces – each province must:

- Establish a Provincial Command Council and coordinating structures to support the national institutional arrangements. They are also required to support the establishment of joint operation centres in every metro and district municipality.
- Make resources available to these centres or to the district disaster management centres.
- Monitor the impact of interventions and submit weekly reports to the national disaster management structures.
- Provincial departments responsible for cooperative governance and offices of the premiers are required to develop and implement a COVID-19 Response Plan for their respective provinces.
- Lastly, they are required to monitor and report on the progress and impact of the interventions to the national Minister of COGTA once a week.

Suffice it to say that while these directions / instructions may have been necessary to respond to practicalities on the ground, the stability and predictability of the regulatory regime, and the legality and constitutionality of some of its instructions has become a major concern.



## Transgressions against provinces

As described above, in South Africa the nature of the provincial role is always one of implementation, so it is perhaps hard to argue about transgressions against this sphere when it does not enjoy much autonomy and is seen (also due to the political hegemony) as an extension of national government.

For example, while the health response (testing and treatment) was carried out at provincial level, it was carefully orchestrated with policy and funding by the central government. The same applied to the education response with most of the attention going to the closure and re-opening of schools. Schools were initially closed and later re-opened in phases. All of these decisions were made by the central government with provinces instructed to implement. It was only the Western Cape provincial government (governed by the opposition) that publicly registered protest against some of the decisions. However, ultimately all provinces went along with the centrally designed strategy.

However, was there adequate intergovernmental consultation on the design and implementation of the strategy? Particularly with respect to the gradual 'opening up' of the economy. The impression was created that the 'risk-adjusted strategy' would allow for place-based differentiation, but this was never done or allowed as an executable option, though it existed on paper. The whole country went from one alert level to the other, irrespective of the severity or otherwise of the outbreak and its economic impact. Is this fair to the provinces which have very different socio-economic characteristics and profiles?

For example, the ban on production and sale of alcohol had a very specific effect on the Western Cape which has a very expansive and world famous wine industry. The province made numerous submissions for the easing of the ban (at least to allow export, for example), but its cries were unheeded. There was some initial push back by the Western Cape which wanted to challenge the cigarette ban as well, but that fizzled out quite swiftly.

Importantly, intergovernmental consultation around the implementation of the state of disaster and its measures was not done via the dedicated structure in the Disaster Management Act. The Act provides for an Intergovernmental Committee on Disaster Management and positions it as the primary intergovernmental structure to oversee disaster management. It is established by the President and comprises of the Minister responsible for disaster management, all nine provincial Ministers with that portfolio and representatives of organised local government. The national Minister chairs the committee, which reports to the Cabinet.

However, the Intergovernmental Committee did not feature during the pandemic. Whatever role it played was entirely overshadowed by the National Coronavirus Command Council. The by-passing of the Committee is 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 comprising exclusively of national government functionaries. This constituted a major transgression of the 'cooperative governance' model in which spheres of government are



obliged to consult one another in good faith and not encroach on the geographical or functional terrain of another sphere.

In other words, nothing can be done that implicates or compels action from provincial and local government without consulting those spheres, but in this case that principle was clearly violated. The President's Coordinating Council, being the highest intergovernmental forum in the country, did meet more often than usual and at some point this peaked at weekly meetings. However, due to the nature of that structure, the heavy agenda and time constraints, provincial inputs are not really taken into consideration there.

Of course the context was: provincial health and education, as our examples, is legislated and funded nationally – national makes the rules so provinces don't really have a lot of space to argue. The panic and initial national commitment to come together and collaborate, also contributed to provinces tolerating the national dominance. Furthermore, there was a very strong, capable Minister of Health, reliance on science and, of course, the fact that 8 of the 9 provinces are ANC-governed. Finally, the fact that the one DA-controlled Western Cape province has a very flexible, under-the-radar, get-the-job-done kind of Premier, also helped the case for 'unity in action'.

There were some intergovernmental 'scuffles', particularly around the re-opening of schools, where the Western Cape deviated from the national norm, but in general, all the provinces appeared happy that they did not have to make the 'big decisions' on such potentially dire matters (in pandemic and economic terms) and toed the line with little question or fanfare. In some cases, like Gauteng appealing to the President for the re-introduction of harsher measures (after relaxation), provinces clamoured for even more national intervention.

## Transgressions against municipalities

Many of the existing mandates of local government were suddenly intensified and/or directed towards the Covid-19 response. For example:

1. Most municipalities have law enforcement officials, and some have municipal police services. These are normally focused on traffic and by-law enforcement. However, during the lockdown, they had to help the South African Police Service and the National Defence Force to enforce the restrictions on movements. In some cases, municipal officials were complicit in severe human rights violations.
2. During the 'hard lockdown', street trading was prohibited without a special permit. Municipalities were suddenly tasked with issuing thousands of permits to informal food traders. This presented a significant additional administrative burden.
3. Municipalities had to ensure that water and sanitation services are available at public facilities and public transport points and to cleanse and sanitise public facilities; and
4. Municipalities has to step up their provision of water – national government rushed water tanks into water-stressed areas to ensure people can sanitise, but



municipalities had to make sure the tanks remain filled. This added to its expenditure on free basic water services.

The above matters were not necessarily 'new' mandates, but rather constituted an intensification of existing mandates (often with significant additional and unplanned for expenditure). However, municipalities were also confronted with new mandates, outside of their constitutional mandates. Some examples follow below:

1. The lockdown caused economic hardship and pushed many more into absolute poverty, prompting government to distribute food parcels. Social welfare is not a local government function but municipalities were involved in varying ways. Some municipalities funded food parcels (which could potentially have been unauthorised expenditure since it was not budgeted for and falls outside of local government's core mandate). Others assisted the Department of Social Development with identifying beneficiaries. The sudden introduction of major food parcel scheme caused major governance challenges because municipalities were not prepared and there were many reports of councillors abusing the distribution of food parcels for political ends.
2. The hard lockdown made it necessary for municipalities to ensure that homeless people were accommodated so that they could adhere to the lockdown. Providing shelter for the homeless is arguably already a local government mandate, imposed by the Constitutional Court. However, this was intensified, because if a municipality forcibly accommodates homeless people, it then also needs to ensure basic nutrition. All of this of course in the context of already stretched and, in some cases, desperate municipal budgets prior to the Covid pandemic.

## Disaster management rules that arguably transgressed local democracy

There were a number of directions issued under the Disaster Management Act that directly affected local democracy and arguably unconstitutionally so. A few examples can be cited:

1. During the first phase of the lockdown, municipal councils were prohibited from meeting altogether. Against the backdrop of the fact that the Constitution protects the municipality's right to 'govern on its own initiative' and regulate its internal affairs, the question is whether this was constitutional. Does the Disaster Management Act permit the national government to suspend the convening of local legislatures? Almost certainly not, particularly given the fact that alternatives (i.e. meeting online) are available.
2. Realising that the outright ban on council meetings went too far, this was amended and municipal councils were all instructed to meet virtually. Again, this is constitutionally suspect because it was a one-size-fits-all rule. For example, even the smallest councils of no more than 10 members and with access to town halls were prohibited from convening properly distanced, or hybrid council meetings.
3. Throughout the state of disaster, municipal systems of delegations were effectively suspended insofar as decisions pertaining to the pandemic were concerned. The



regulations stated that the Mayor, Municipal Manager and Chief Financial Officer would take all decisions as long as they subsequently report it to the council. Again, the question is whether this was constitutional. Effectively, the Disaster Management Act was used to upend a municipality's internal governance arrangement and centralise all decision making in the Mayor's office. With reports of corruption in the awarding of PPE related tenders abound, this arrangement almost certainly made it easier for corruption to occur.

4. As mentioned above, the regulatory framework came with a very strict reporting regime for local government. These are also examples of transgressions against the spirit of cooperative governance. The utility of the submission of weekly reports to the Minister is very doubtful, but the administrative burden on municipalities is very real. The question is whether it is realistic to expect a municipality that is operating on a skeleton staff to submit a report every week to the national Minister. Furthermore, given that municipalities participate in district and provincial disaster management structures and that the provincial government reports (weekly) to the Minister, what does a weekly municipal report add? Furthermore, what will the national Department of Cooperative Governance and Traditional Affairs (CoGTA) do with 257 weekly municipal reports?

Overall the question is whether the Disaster Management Act empowers the Minister to tinker with the fundamental tenets of the multilevel government system, to the extent done here. In our view, it does not and many of these encroachments would not withstand judicial scrutiny.

The biggest impact was / is on municipal revenue:

- The sudden and dramatic drop in economic activity during the lockdown immediately impacted municipal revenue and collection levels.
- It dealt a crushing blow to an already ailing economy and a drastic drop in revenue collection (in a context of already decreasing collection levels due to rising unemployment and poverty).
- Municipalities had to find ways to cushion the impact of their taxes and levies. Some instituted property tax holidays, allowed late payments, forfeited interest etc.
- Municipalities will inevitably be faced with bigger demands on free basic services as more people are pushed into poverty.



### 3.3. Innovation

There are three areas of multi-level government innovation worth mentioning:

- i. **Intergovernmental resilience:** The pandemic tested the resilience of intergovernmental cooperation structures, particularly at the level of officials. There were furious weekly and even daily meetings of 'command councils' and 'command centres' in which provincial and local officials coordinated their responses. On the face of it, this worked very well.
  - a. Manifested, for example, in the rapid establishment (in a matter of days or weeks) of temporary facilities and conversion of certain centres and sports stadia into field hospitals, which were collaborative efforts between provinces and municipalities.
- ii. **Importance of Cities:** The constitutional configuration in which there are no separate city states means that cities sit awkwardly under provinces. For example, the City of Johannesburg technically 'reports' to the Gauteng Provincial Government despite the City commanding a more autonomous budget and arguably being more powerful. The result is that, while provinces have monitoring, supervision and intervention powers over municipalities, the big metros do not 'account' to provinces in any meaningful way, apart from submitting the standard legislative compliance information. Covid-19 brought innovation in this regard. With cities (metropolitan municipalities) bearing the brunt of the pandemic, the importance of City responses prompted Parliament to request Cities to report directly to it on a number of occasions.
- iii. **E-governance and Oversight:** Covid-19 has accelerated digital governance, with the sudden burst into virtual meetings of legislatures (from the National Assembly, the National Council of Provinces, to provincial legislatures and municipal councils). This has increased transparency. E-governance and oversight prompted these bodies to put in place (where it did not already exist) the necessary technological capabilities to ensure its readiness for virtual engagements.

Municipal councils, for example, were thrust into a new era of virtual council meetings and sittings with little time to adjust. They had to hastily amend their rules and orders governing council and committee meetings to cater for these virtual meetings and sittings. What does this new way of conducting council meetings mean for transparency and public participation? The long-term benefits associated with virtual meetings include saving on travel costs (especially for officials and politicians coming from remote and distant areas), time-efficiency, convenience and increased transparency.

Virtual meetings, or a combination of virtual and physical meetings, is likely to remain a key feature among all levels of government (including intergovernmental engagements), in the near future, if not permanently. It is therefore worth investing in the technological competences required to enable virtual governance.

A key element of this 'virtual governance' in a modern federal system is being connected to, and staying in touch with, the citizenry to ensure that participatory planning and



budgeting still anchors public policy and decision making, and does not fall by the way side of 'emergency responses' and digitalisation. As the sphere of government closest to engaging the citizen, Covid induced innovation in municipal planning, budgeting and public participation is therefore a good example (and may equally apply in provincial law-making, policy, planning and budgeting).

Municipal planning, budgeting and public participation: How did public participation and consultation in the current financial year take place in this new world where physical contact is limited and in some cases prohibited?

When the pandemic hit, municipalities were in the final phases of their 2020-2021 budget and integrated development planning review process, with April and May in particular being vital months for public consultation and participation. Many of the usual mechanisms for community participation could therefore not be used for consultation on the 2020-2021 budget. This caught some municipalities off guard as they were unable to comply with their legislative obligations. This posed a risk to the legality of some of the 2020-2021 municipal budgets.

However, it also prompted innovation. Special adjustments to their 2019-2020 budgets were allowed by the National Treasury to legalise expenditure related to Covid-19 that had not been catered for in the 2019-2020 budgets. The adjustments were only allowed to cover Covid-19 related expenditure. Ideally, such changes should be published for comment and opportunities provided for public input, before it is passed.

Various municipalities made a concerted effort, using community radio, newspapers and social media to communicate and inform the public about the budgets. Some municipalities also used dedicated email or messaging services (such as WhatsApp) to solicit inputs, or even developed dedicated apps to receive inputs. Moreover, Youtube videos were used to explain key aspects of the budget and to educate communities on how to provide input. Some municipalities, such as the City of Cape Town, devised an online system that enabled the public to provide input and comment on inputs provided by others (support, likes etc). There were a number of municipalities who made participation easier by simplifying technical budget documents into people-friendly versions.

Despite much effort going into designing alternative methods of consultation, many communities were not reached, particularly marginalised and remote communities. Technical and technological capability to engage virtually is of course a challenge in many low-capacity municipalities, particularly rural ones, where internet connectivity remains a pressing concern for both the municipal institution and its constituents. Thus, provinces and municipalities could investigate and invest in having their websites being zero-rated, so that the public can access information with limited or no data. Most certainly, new ways of thinking are required to foster community participation and transparency in the digital era.



## 4. CONCLUSION

Covid-19 certainly took the world by surprise and, the global panic and haste to 'respond and contain the virus' in essence showed the true colours of the nature of multi-level governance in South Africa – ie. 'Centralised command, and decentralised implementation'. As Steytler put it "The management of the pandemic has graphically illustrated the centralised nature of South Africa's system of multi-level government." South Africa has always hovered around the periphery of federal countries because of its strong centrist features, but the Covid-19 pandemic significantly enhanced and pronounced these centrist tendencies.

It is an accurate reflection of the quasi-federal model in which provinces have very little autonomy and mainly focus on implementation of their functional competencies, armed by national fiscal allocations to do so. Local government is significantly more empowered, but its ability to exercise that autonomy to meaningful effect is hamstrung by the socio-economic realities and context generally, and the further impact of Covid-19 on the already perilous governance and especially financial state of most municipalities. Nonetheless, some municipalities did display impressive innovation in ensuring planning and budgeting remained participatory and people-centered. Covid-19 has also accelerated digital governance across all spheres and even in intergovernmental relations.

These factors, together with large scale political hegemony in all but one province and a few municipalities, rendered the Covid-19 response exclusively a national command that was generally, with few exceptions, implemented hastily and with some vigour at sub-national level. Whether it has gently trickled away sub-national autonomy and created a new kind of normal for the way things are expected to work post Covid-19, remains to be seen. It has certainly trampled constitutionalism in the name of 'a unified government response', which can't bode well in a constitutional state.

Of course, the South African government will hasten to add that it was never a federal system in the first place, but a 'unitary state, with decentralised features' in which the spheres of government may be distinctive, but far more importantly, that they are interdependent and interrelated. That much, if it was not already clear, became so with the response to Covid-19 and the manner in which the state of disaster was administered, received and (in some cases surprisingly) embraced at sub-national levels, as well as implemented.

Has this experience weakened or strengthened decentralised governance in South Africa? In our view, it is much more the former, although it has shone up intergovernmental resilience and the cooperate governance nature of the South African state, which is, after all, the fundamental constitutional governance imperative.



## ABOUT THE FORUM OF FEDERATIONS

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The Forum's mandate is a straight-forward and practical one, sharing the experiences, challenges and lessons learnt of its partners - federal countries and their sub-national units. The importance of this is significant as it offers peer exchange and understanding to reform efforts to improve the values, policies and polity each nation provides its citizens. Whilst it is true that there is no one-size-fits-all approach to federal design, there are commonalities within federations which offer opportunities to learn from one another."

The Forum is supported by the following partner countries - Australia, Brazil, Canada, Ethiopia, Germany, India, Mexico, Nigeria, Pakistan and Switzerland.

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