

Water Crisis in Cape Town: Lessons to be Learnt

PART 2: THE RESPONSIBILITIES OF THE THREE SPHERES OF GOVERNMENT

In the South African Constitution, Bill of Rights, Chapter 2, Paragraph 27 on Health Care, Food, Water and Social Security, it states that "everyone has the right to have access to sufficient food and water". Furthermore, "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights", (South African Constitution, Bill of Rights, Chapter 2, Paragraph 27). Due to the current water crisis in the Western Cape, this right is threatened. This article seeks to explain the various responsibilities of national, provincial and local government in terms of water supply and water management. It further aims to elaborate on what lessons the three spheres of government can learn from the water crisis.

When comparing the South African Constitution to the constitutions of the BRICS-countries India and Brazil, it becomes apparent how special Paragraph 27 is. The South African Constitution is the only one, which states that access to water is a basic human right. When looking at South Africa's informal settlements, it becomes apparent how extensive this socio-economic right reaches. Inhabitants of informal settlements are getting access to water. One might argue that this is a major cause of Cape Town's water crisis, but informal settlements only consume 4.7 per cent of Cape Town's entire water usage (The Conversation, 2017). The right to access water is threatened at the moment as the Western Cape province is experiencing one of the worst droughts in history. 'Day Zero', known as the date when all

taps run dry, was expected in May 2018. It now has been pushed to the 9th of July 2018 due to consumers as well as the agricultural and business sector successfully saving water (EWN, 2018).

This article will explain the responsibilities of the three South African governmental spheres, namely the national, provincial and local government. Who is in charge and what each sphere has been doing to prevent 'Day Zero'. The article will conclude with a summary of the impact of the water crisis on the economic and constitutional system, the upcoming National Elections in 2019 and the chance to learn from the water crisis.

The National Government

The Ministry in charge of national water governance in South Africa is the Department of Water and Sanitation. Since the last national elections in 2014, the ANC government has appointed Nomvula Mokonyane as the Minister of this department. The responsibilities of Minister Mokonyane and the Department of Water and Sanitation are clearly described in the National Water Act, which was established in 1998.

Concerning the responsibilities of the national government, the act states that the minister has the responsibility "to manage and authorise the use of the nation's water resources". Examples for resources are the "water storage dams and water transfer schemes", (National Water Act, Chapter 11). Moreover, if other institutions, which

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are responsible for water management, are not functionally performing their task, the minister can "for as long as it is necessary deal with an urgent situation or emergency", (National Water Act, Chapter 6, Part 3). This gives the national government the power to act and establish plans for water supply during the current water crisis in the Western Cape. The interventions of limited water allocation are justified by the National Water Act, by declaring the "minister may make regulations limiting or restricting the purpose, manner or extent of water use; requiring that the use of water from a water resource be monitored, measured and recorded; regulating the design, construction, installation, operation and maintenance of any waterworks, where it is necessary or desirable to monitor any water use or to protect a water resource", (National Water Act, Chapter 4, Part 1). In establishing relevant measurements for monitoring, the ministry must "consult with the relevant organs of state, water management institutions, existing and potential water users to coordinate the monitoring of water resources", (National Water Act, Chapter 14, Part 1).

At a recent press event held by the Cape Town Press Club in January 2018, Minister Mokonyane explained that the Department of Water and Sanitation is following up on the tasks described by the National Water Act. Mokonyane said that in spite of the challenges faced by climate change, an increased water demand is emerging from a growth in domestic water requirements, agricultural consumption and industrial development in Saldanha Bay. In cooperation with the provincial and local government, restrictions on the limited water use by the industrial, agricultural and private sector were successfully executed. As a consequence of this, 'Day Zero' was rescheduled to the 9th of July 2018. She went on saying that a four-pronged strategy is in planning, including desalination, groundwater optimisation, water conservation and demand management as well as re-use optimisation (Cape Town Press Club, 2018). Concluding from this, the South African National Government is

following up on the duties described in the National Water Act.

Despite, the national government granting around 75 million Rand to the Western Cape province to cope with the water crisis in August 2017, the Western Cape provincial government criticised the national government for not declaring the drought a national disaster early enough. The Western Cape government asked for a disaster declaration already in 2015 (Business Day, 2018). On Friday the 9th of February 2018 the drought was declared a national disaster by an inter-ministerial task team due to the Free State, Eastern Cape, Northern Cape and the Western Cape suffering from overwhelming consequences. With this declaration financial and humanitarian aid became available from the government. The Minister of Finance Malusi Gigaba declared that whilst "in 2017 the provincial disaster fund granted 230 million Rand and 300 million Rand for municipal disaster grant for 2018; the provincial disaster grant this year stands at 130 million Rand due to budget cuts", (Business Day, 2018). The future will show whether the available budget will be sufficient to cover the cost of circumventing the threat of 'Day Zero' or whether the budget cut will imply severe consequences.

The Provincial Government

Since 2009 the Democratic Alliance (DA) with Premier Helen Zille governs the Western Cape. The task of the provincial government is to oversight, monitor and support the national and local government in their task of supplying water. The functions of the provincial and local government are described in detail in the Water Service Act of 1997. The Water Service Act states that the Minister of Provincial Affairs and Constitutional Development must be involved in the adoption and implementation of the development plan for water supply and sanitation. Moreover, "if a water service authority has not effectively performed any function imposed on it, the Minister [on the local level] may in consultation with the Minister of Provincial Affairs and Constitutional Development request the

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relevant provision to intervene [...] to maintain essential national standard and to meet established minimum standards for providing services", (Water Service Act, Chapter VIII, 1997).

The tasks of the provincial government are in so far essential as it has to spot a crisis and undertake the necessary measures – as has been done in 2015. The provincial government appealed to the national government to declare the drought a national disaster, which would have mobilised resources from crisis funds. According to Helen Zille this was declined due to the financial status of the national government and the inability to provide the necessary funds (Daily Maverick, 2017). The disaster declaration enables the provincial government to instruct municipalities to impose water restrictions. Zille replied to the question, why the province has not taken more responsibility in taking control of the drought, that the province has no legal right or mandate to allocate the spending of funds; the intervention by the provincial government could only happen if there is a legal document stating total failure to provide services to the community. Total failure in this case meant 'no water supply of any kind' (Daily Maverick, 2017).

According to Helen Zille this case eventuated. After conferring with the province's head of legal services end of January 2018, Zille wanted to take over control of the Western Cape water crisis and manage the provincial disaster. She got the reply, that "the legal test for provincial intervention in a local government mandate is when a municipality cannot or does not fulfil an executive obligation [...]. When it comes to the functions of the National Department of Water and Sanitation, the province has no powers at all". In summary, Helen Zille did not get the legal right to intervene. This decision shows how much emphasis is put on the constitutional divisions of power (Daily Maverick, 2018).

As the Western Cape's most important sources of income are the agricultural and tourism industry, Zille supported the set

emphasis on not cutting off water supply to these sectors. The two industries combined employ 600 000 employees, who support around 3 million people. Zille stated that the agricultural sector was able to cut its water consumption by 60 per cent and the hotel industry cut water usage by 50 per cent (Daily Maverick, 2018).

The Local Government

The South African Constitution clearly distinguishes between the responsibilities of the three governmental spheres. Concerning the allocation of water, it states, "local government is in charge of municipal water services", (South African Constitution, Act 108, 1996). Whilst the National Water Act concentrates on the duties of the national government, the Water Service Act of 1997 concentrates on the tasks of the local governmental sphere. The Water Service Act gives guidelines on the supply of potable water and sanitation services to municipalities by the local government. Municipalities are in charge of providing basic services and controlling the water supply to houses. Furthermore, cities have to educate the population on water saving methods and provide information on water resources, such as the weekly update on the water levels of dams. In the past Cape Town has invested a lot in improving the water supply system, leakages were eliminated and dam constructions were upgraded (Daily Maverick, 2017).

For Cape Town, DA-Mayor Patricia de Lille used to control water services. After surviving a vote of no confidence, which was initiated by her own party, the DA removed de Lille as head of the water crisis response team and named deputy mayor Ian Neilson new person in charge in January 2018 (Sunday Times, 2018). As the City of Cape Town and surrounding municipalities introduced water saving measures, the water crisis response team was successful in pushing 'Day Zero' back to the 9th of July 2018. Amongst the successful implemented measures are the augmentation plan of the Atlantis aquifer, ground water extraction and water pressure reduction.

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The South African Constitution, the Water Service Act and the National Water Act were asserted in 1996, 1997 and in 1998, respectively. The three documents clearly distinguish between the national, provincial and local governmental spheres. As could be seen by Helen Zille's attempt to intervene with the local government in taking control of the drought situation, the South African Constitution clearly states that the intervention of one government sphere with the other is prohibited. It will be a matter of future debates whether the legal framework is to remain this way and whether it makes sense to have such a clear-cut division of power. After the vote of no confidence on DA-Mayor Patricia de Lille, it became apparent that on a local level the DA as a political party is facing managerial difficulties. An intervention by the provincial government might have been positive in improving the public confidence towards governmental leadership.

Economic Implications

The water crisis has had a huge impact on the water consumption of private households, the agricultural and business sector as well as the tourism industry. Especially the huge number of tourists coming to the Western Cape during the dry summer season is an additional burden on the water system. According to the latest Tourism and Migration Survey around 3.5 million travellers visited South Africa in August 2017 (Stats SA, 2017). In 2016 the Western Cape attracted 1.5 million tourists who spent 18 billion Rand during their stay in the province (Business Report, 2017). Consequently, the tourism industry is one of the most important economic drivers of the Western Cape. A strong emphasis has been put on maintaining the functioning of this sector and not prohibiting tourists to visiting the Western Cape (Business Report, 2017).

The annual Cape Town Cycle Tour, the so called 'Cape Argus' which attracts around 60 000 professional athletes and sports

fanatics from around the globe, serves as an illustrative example of government putting a strong emphasis on economic stability in spite of environmental constraints caused by the drought. The 10-day cycle tour takes places from the 3rd to the 12th of March 2018. The organisers of the event estimated that an additional 2 million litres of water would be needed for visitors to the event. It was strongly debated whether the event should take place, which brings over 500 million Rand to the Western Cape economy. Cancelling the event would have caused heavy economic losses for the tourism and hospitality industry. After assuring that the Cape Town Cycle Tour will comply with water saving measures, such as using grey-water for portable toilets as well as monitoring and educating spectators and participants to limit water usage, the event will take place in March 2018 (Cape Town Cycle Tour, 2018).

Implications on the National Election 2019

As weather is being unpredictable for meteorologists, 'Day Zero' remains a threat to the Western Cape. Although scientists assured that the 3-year long drought period could not have been foreseen, the impression remains that the three governmental spheres share some sort of responsibility in not better managing the crisis. The fact that the local and provincial level of the Western Cape are governed by the opposition party DA, whilst the national level is governed by the ANC apparently does imply communication as well as party political issues which may have hindered the timely implementation of actions preventing the Western Cape from a precarious struggle against time. During previous elections, the DA gained votes by depicting themselves as "the party that takes action". This image has been tainted during the last couple of month. The vote of no confidence and the removal of mayor Patricia de Lille as head of the water crisis response team by her own party have highlighted some internal conflicts, which may have negative implications for the

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party's performance at next year's National Elections.

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Taking the Crisis as a Chance to Change

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The Western Cape water crisis has made it apparent that resources are scarce and that the improvident use of water cannot continue. There is no substitute for water. 'Day Zero' has been pushed back to the 9th of July 2018, so the Western Cape may have gotten away with just a fright. At a KAS funded seminar on 15th February 2018 Dr. Jakkie Cilliers from the Institute of Security Studies (ISS) said, that South Africans have been continuously overusing water in the past and if this behaviour would not change, the threat of Day Zero would re-emerge in 2019. He further stated that water scarcity in South Africa might be the biggest impediment to economic growth. The experience made in the last couple of months should be used as an opportunity to switch to a more sustainable trajectory in terms of how people live, consume and produce.

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