



Wes-Kaapse Provinsiale Parlement Western Cape Provincial Parliament IPalamente yePhondo leNtshona Koloni

Ref Number: 657

Report 3/ 2020

Ref: Citizen Engagement/Health Update/Legal Advisory Note (De Beer vs Minister of Cooperative Governance and Traditional Affairs)

Report of the Ad Hoc Committee on COVID-19, in performing oversight over the work of the provincial executive authority as it responds to the COVID-19 pandemic, including oversight over any part of the provincial executive authority, any provincial department, any organ of state and any provincial entity involved in activities dealing with the pandemic, on the themes/meetings covered for June 2020, as follows:

The Ad Hoc Committee on COVID-19 consists of the following members:

Mr R Allen (DA)
Mr D America (DA)
Ms D Baartman (DA)
Mr G Bosman (DA)
Mr F Christians (ACDP)
Mr C Dugmore (ANC)
Mr B Herron (GOOD)
Ms P Lekker (ANC)
Mr P Marais (FFP)
Mr D Mitchell (DA)
Ms W Philander (DA)
Mr A van der Westhuizen (DA)
Ms M Wenger (DA)(Chairperson)
Ms R Windvogel (ANC)
Mr M Xego (EFF)

Alternative Members:

Ms L Botha (DA)
Mr R MacKenzie (DA)
Ms M Maseko (DA)
Ms N Nkondlo (ANC)
Mr K Sayed (ANC)
Mr D Smith (ANC)

Procedural Staff:

Ms Z Adams, Procedural Officer
Ms L Cloete, Senior Procedural Officer

1. Introduction and Background

The Ad Hoc Committee on COVID-19 (the Committee) was established by the Speaker of the Western Cape Provincial Parliament on 14 April 2020 in accordance with Standing Rule 119(1)(b) of the Standing Rules of Western Cape Provincial Parliament. The Committee was tasked with the responsibility to perform oversight over the work of the provincial executive authority as it responds to the COVID-19 pandemic, including oversight over any part of the provincial executive authority, any provincial department, any organ of state and any provincial entity involved in activities dealing with the pandemic.

The meetings have been held virtually, so as to comply with COVID-19 lockdown regulations issued by National Government, as well as a decision of the Programming Authority, to enforce social distancing rules.

2. Election of Chairperson, Adopted Themes and the Rules of Engagement

On 17 April 2020, Member M Wenger (DA) was elected to serve as the Chairperson of the Committee in accordance with Standing Rules 82(1) and 85. The Committee adopted 12 themes around which it would address the COVID-19 pandemic, also agreeing to hold two meetings per week, given the urgency of the matter. Each meeting would primarily focus on one theme. The 12 adopted themes were as follows:

1. Health Department Responses and Preparations
2. Policing, Security and Police Brutality
3. Food Security
4. Protection of the Vulnerable
5. Disaster Management and Local Government Oversight
6. Economic Recovery, Support and Livelihoods
7. Transport and Infrastructure
8. Schooling and Education
9. Human Settlements
10. Citizen Surveillance
11. Intergovernmental Relations and Community Cooperation
12. Government Finance and Budgets

Additionally, the Rules of Engagement during virtual meetings were indicated as follows:

1. All meetings would be open to members of the public and media via livestreaming;
2. All Members microphones must be muted at the beginning of the meeting to avoid background noise;
3. Members are to flag Points of Order in the Chat Function of Microsoft Teams (the application through which virtual meetings are held);
4. All videos and audio must be switched off to improve the quality of the connection; however, if a Member/Minister/HOD/Official is speaking, they may put on their audio and video;
5. Participants must switch off their microphones once they are finished speaking;
6. In terms of maintenance of order, in accordance with the “Directives for Sitzings of the House and Meetings of Committees by Electronic Means”, ATC’d on Friday, 17 April 2020, Section 8 states that “when a Member is considered to be out of order by the presiding officer, the presiding officer may mute the microphone of such a Member and call such a Member to order”; and
7. Section 10 of the Directives ATC’d on 17 April 2020 speaks to the application of Standing Rules. Section 10 states that “in instances where these directives are not clear or do not cover a particular eventuality in respect of sittings of the House or meetings of the committees by means of videoconferencing, the Standing Rules must apply as far as this is reasonably and practically

possible and, in instances where they cannot be applied, the ruling by the presiding officer must be final”.

The themes/meetings covered in June 2020 included:

- Discussion on the Committee’s citizen engagement/public participation process – 3 June 2020
- Update by the Provincial Minister of Health and the Western Cape Department of Health on the COVID-19 pandemic in the process – 10 June 2020
- Deliberations on the legal advisory note provided by the Western Cape Provincial Parliament’s Legal Support unit on the Gauteng High Court judgment in respect of De Beer vs the Minister of Cooperative Governance and Traditional Affairs; and Citizen Engagement programme update – 18 June 2020

3. The Committee’s Citizen Engagement/Public Participation Process

Overview

The Committee discussed public participation in respect of its Citizen Engagement process to be undertaken on COVID-19 related matters on 3 June 2020. As per Section 118 1(a) of the Constitution of the Republic read with Section 28(3) of the Constitution of the Western Cape, the Provincial Parliament must facilitate public participation in its activities and those of its committees. The Citizen Engagement programme would include discussions with various stakeholders that the Committee had not had a chance to engage with yet from the private sector and civil society.

The Committee agreed that that invitations would be issued to umbrella bodies/formations/federations that represent many voices in that particular area of interest in order to gain a broad understanding of the subject matter and the lived experiences of the pandemic and government’s management thereof.

The public participation process would be two-fold. The first process would be through a series of engagements in the Committee, based on the themes explored by the Committee in April and May 2020 from umbrella bodies and organisations. The second process would be a call for submissions from the public on the public’s view of government’s responses during the COVID-19 pandemic. This process would be rolled out via a series of questions published on social media through infographics and an advert to be published in mainstream and community media. Interested stakeholders will be encouraged to submit their comments via an email address and/or WhatsApp voice notes and messages.

On 18 June 2020, following the initial proposals on public participation agreed to on 3 June 2020, the Committee agreed to the content of the infographics and the advertisements in mainstream and community newspapers. The advertisements would include primary questions to assist members of the public to have their say, while the infographics for social media would contain primary questions with additional sub-questions listed below. The questions, as agreed to by the Committee, were as follows:

What has been your experience of the Government’s reaction to the COVID-19 pandemic?

- Have you or a family member been exposed to the coronavirus? Share the experience you had of the health system.
- Were you able to access food support when you needed it?

- Do you understand why you need to wear a mask?
- Do you know how to access COVID-19 grants/ support for small businesses?
- Did you feel safe when you went back to work?
- Does the public transport you use have sanitisers available?
- Is your child's school practising social distancing and conducting temperature checks every day?
- What are your thoughts about the reopening of early childhood development (ECD) centres?

4. THEME: Health Update & Responses

4.1 Overview and background

The Committee requested a briefing from the Provincial Minister of Health and the Western Cape Department of Health for an update on the COVID-19 pandemic in the Western Cape, on 10 June 2020.

The purpose of the meeting was to receive information on health indicators and preparedness in relation to COVID-19, collaboration with the private sector, information on contact tracing and its efficacy and the new COVID-19 testing regime.

4.2 Observations and challenges

- 4.2.1 The Head of Department, Dr Keith Cloete, informed the Committee that as at Sunday, 7 June 2020, the cumulative number of confirmed cases of COVID-19 in the Western Cape is 30 249. The total COVID-19 related deaths is 757 and 18 101 recoveries. 198 449 tests have been completed. COVID-19 related deaths in relation to the age breakdown were reported to be more prevalent for the age groups 51-60 and 61-70. Hypertension and diabetes were reported to be the big associated figures for the highest comorbidities and risk for COVID-19 disease and deaths.
- 4.2.2 The number of cases since 1 May 2020 is peaking at 1 200 cases per day and an average of 40 deaths per day.
- 4.2.3 In terms of forecasting for the COVID demand towards the peak in August 2020, the Department projected that they would require 6 000 beds but they backtracked this to the requirement of peak being end of June. The Department identified the need to establish field hospitals to make up for the additional beds required since there will be a shortfall of between 750 and 1 000 beds and capacity for the healthcare system to cope.
- 4.2.4 The Department assesses the needs of the Province by using the internally validated data of the Western Cape and calibrated this against the National COVID-19 Epi-Model (NCEM) data to measure whether the data of the NCEM is validated against the actual needs of the Western Cape. The Department then adjusted the projected figures of the Western Cape with a revised provisioning scenario based on the Modelling and Simulation Hub, Africa (MASHA) projections since this specific model is the official modelling scenario that the National Department of Health will use across the country. The data reflects hospital bed requirements, when active cases will peak, cumulative deaths, cumulative detected cases and cumulative admissions.
- 4.2.5 As at Tuesday 26 May 2020, the Department of Health had spent R251,259 million on COVID related expenditures in the current financial year, and had made additional commitments of R542,4078 million. The Department exceeded their planned expenditure by R336 million in April 2020 alone. It is currently projected that a net R3,416 billion is required in the current financial year to respond to COVID-19 by the Department of Health (R2,774 billion) and Transport and

Public Works (R642 million) alone. The Department of Transport and Public Works has spent R121,133 million and has made additional commitments of R54,253 million.

- 4.2.6 Contact tracing teams are decentralised units and are operational in every geographic area. The Department is looking into using an innovative system that will provide test results via telephone and make use of a Trace and Track system.
- 4.2.7 Research and proven interventions conducted proved that using high-flow nasal oxygen to treat patients ensured greater recoveries from the disease in place of ventilators. This can be used for both high care environments and acute environments.
- 4.2.8 Existing Primary Health Care (PHC) capacity, with PHC facilities are all being prepared to be able to manage large numbers of the milder cases. These will largely require assessment and triaging for self-management at home. A key consideration will be to fast-track clinical assessments of high-risk individuals, who may require hospitalisation.
- 4.2.9 Temporary Structures have been designed for Triage and Testing at prioritised health facilities. These structures are designed in line with Infection, Prevention and Control (IPC) strategies for COVID-19.
- 4.2.10 Temporary or “Field hospitals” for use as intermediate care beds for mild cases have been planned. The following temporary hospitals are either completed or in the process of being completed, Cape Town International Convention Centre (CTICC) = 862 beds, Brakengate R300 = 338 beds, Thusong Centre in Khayelitsha = 60 beds, Cape Winelands Sonstraal Hospital = 150 beds and a possible CTICC 2 = 800 beds.
- 4.2.11 The Department of Transport and Public Works (DTPW) is actively exploring and bringing on line the expansion of quarantine and isolation facilities in the Cape Metro and across Rural Districts.
- 4.2.12 Minister Mkhize has designated Dr Nicholas Crisp to assist the Western Cape health team with finalisation of plans to address the challenges. His primary task is to assist with the implementation of a hotspot containment strategy, hence his involvement with scaling up of the quarantine and isolation capacity.
- 4.2.13 Health care workers infections as at Sunday 7 June 2020 had an accumulative number of 1 832 cases. 652 are currently active which means that of the 1 832 cases 1 180 health care workers have recovered and the number of deaths is 15.
- 4.2.14 The purpose of the Hotspot Strategy in the Department is to reduce community transmission of COVID-19 and reduce the morbidity and mortality of vulnerable people.
- 4.2.15 Testing backlog has grown to 27 000 across the NHLS laboratories by Friday 29 May 2020 and test kits are being redirected to the Western Cape. The backlog has been reduced to 10 000 by Friday 5 June 2020. The Department is changing the testing policy to prioritise patients under investigation in hospitals, health care workers and symptomatic vulnerable persons.
- 4.2.16 The Cuban health care workers deployed in South Africa are trained medical professionals with experience in working in various community settings and community hospitals. Most of these doctors are family physicians and they will be deployed to assist at the CTICC, Karl Bremer Hospital and Tygerberg Hospital. Some of these healthcare workers will assist in epidemiology work and the health care technology experts will provide technical assistance in health technology.
- 4.2.17 A compliance system is in place for employers who do not adhere to the COVID-19 health and safety precautions in the workplace. The Department of Labour and Environmental Health Officers addresses these non-compliant employers and their companies may be closed down if they do not follow strict health and safety guidelines to prevent the spread of COVID-19 in workplaces.

5. Discussion on the Legal Advisory Note – De Beer vs the Minister of Cooperative Governance and Traditional Affairs

5.1 Overview and background

The purpose of the engagement on Thursday 18 June 2020 was to discuss the legal advisory note provided by Adv R Maasdorp, the Western Cape Provincial Parliament's (WCPP) Legal Adviser, to the Committee. The Committee resolved, at its meeting on Wednesday 3 June 2020, to request a legal advisory note from the WCPP's Legal Support unit on the Gauteng High Court (the Court) judgment in respect of De Beers versus the Minister of Cooperative Governance and Traditional Affairs (COGTA) concerning the Disaster Management Act Regulations governing activities during the lockdown(s). The Committee was interested to understand the consequences of the judgement for their constituents and the work of government. The judgment, stated the following:

- (i) The lockdown regulations promulgated by the Minister of COGTA were declared unconstitutional and invalid;
- (ii) The Declaration of Invalidity was suspended until such time as the Minister reviewed, amended and republished the regulations; and
- (iii) The Minister was directed to comply with the Court Order within 14 business days from the date of Order, or such longer time as the Court may, on good grounds shown, allow the Minister to report on the compliance. The Court provided the Minister the opportunity to apply for an extension of the period of suspension. There is also allowance for an appeal or an application for a review of the judgment.

5.2 Observations and challenges

- 5.2.1 It is believed that the Minister has lodged an appeal against the judgment. This legal action by Government will culminate in the suspension of the Court Order. As a result, the legal status quo, in respect of the lockdown regulations, will remain until after the appeal has been heard.
- 5.2.2 It was advised that, pending the appeal, there are no immediate legal implications for the institution or the Committee itself.
- 5.2.3 The timeframe for the matter to be heard was subject to the Court's roll. It was possible that the officials and relevant presiding officers would give due consideration to the urgency and need for legal clarity.
- 5.2.4 In terms of arrests made during the period where the regulations were enforced, if someone was arrested for having contravened particular regulations, then the arrest would stand. However, if the regulations were found to be unconstitutional then the person would have recourse.
- 5.2.5 The role of the National Council of Provinces (NCOP), in respect of the issuing of Regulations during the national lockdown, was also addressed in the judgment. The Court referred to Section 27(2) of the Disaster Management Act (Act 57 of 2002) (the Act), which provides that if a national state of disaster is declared, the Minister may, after consulting the responsible Cabinet member, make regulations or issue directions or authorise the issue of directions in respect of a number of "functional areas" as listed in that Section. The Court found that these "functional areas" fell within the areas of provincial legislative competence. Section 146(6) of the Constitution provides that a law made in terms of an Act of Parliament or a Provincial Act can prevail only if that law has been approved by the NCOP. However, Section 27(2) of the Disaster Management Act does not enjoin the Minister to first seek NCOP approval when making regulations in terms of this Section. Hence, the Court found that the provinces need not give prior approval for the regulations.

6. Acknowledgements

The Chairperson thanked the Provincial Department of Health for its hard work in the sector so far during the COVID-19 pandemic. The Chairperson also thanked the Members for their participation in the meetings held so far.

A handwritten signature in black ink, appearing to read 'M Wenger', is positioned above a horizontal line.

MS M WENGER (MPP)

CHAIRPERSON OF THE AD HOC COMMITTEE ON COVID-19

DATE: 15 July 2020