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POLICY ANALYSIS OF THE WATER CRISIS IN CAPE TOWN, SOUTH AFRICA

Alycia Kokos*

Following a three-year drought, the city of Cape Town, South Africa faces an unprecedented municipal crisis.¹ Residents are being asked to curb their daily municipal water use to thirteen gallons from their already restricted daily allowance of twenty-three gallons in order to avoid the impending “Day Zero” in which residential and commercial taps will be turned off for nearly four million residents.² Though water consumption has decreased since January 2018, most residents have not complied with the restriction.³ This creates a point of tension in the diverse city that contains both luxury homes and shanty towns.⁴

While the crisis appears to stem from one of the worst droughts in over a century that could be related to climate change,⁵ others blame the government’s lack of oversight in effectively foreseeing that such an event could occur and proactively implementing safeguards.⁶ By examining the roles that the National Government plays in the current Cape Town water crisis, options become apparent for the South African government going forward.

Section 24 of the Republic of South Africa’s 1996 Constitution sets forth the right of its citizens to a livable environment and requires that the government take legislative or other government actions to allow public access to natural resources, such as water, and promote conservation of such resources through an ecologically sustainable development.⁷ To this end, the National Environmental Management Act (NEMA or “Act”) was enacted to meet these public needs and provide “co-operative, environmental governance” through the establishment of institutes to promote the principles of the Act.⁸ The National Water Act of 1998 also empowers the national government to maintain and provide public access to the country’s water resources.⁹

South Africa’s Department of Water and Sanitation (DWS) has been criticized for misallocating water, including their failure to curtail the allocation of water for agricultural use, especially when the prospects of the drought became more apparent.¹⁰ As set forth in their Water Management Policy regarding groundwater, the Department states that their protection of the country’s groundwater will be based on a “precautionary approach,” meaning that all groundwater will be “assumed to be vulnerable to damage unless it can be shown otherwise.”¹¹ To accomplish this, the DWS will take “source-directed, resource-directed, and remedial management measures,” such as the determination of a “reserve” consistent of water used for basic human needs such as drinking, food preparation, and personal hygiene.¹² Therefore, it can be argued that it was the Department’s responsibility to act with “precaution” and avoid a low water level by actively

maintaining a reserve of water and looking to alternative sources or improvements far earlier.

In turn, DWS Minister Nomvula Mokonyane has accused government officials of dragging their feet on capital funding for infrastructure and maintenance, as well as withholding emergency disaster relief funds,¹³ and has thus blamed overconsumption of water as an underlying issue.¹⁴ Under the National Water Act of 1998, South Africa’s national government is considered the “trustee” of the country’s water resources, and therefore it retains the power to “regulate the flow and use of all water in the country.” Meanwhile, daily management of a city’s water falls within the immediate responsibility of the municipality.¹⁵ Section 27 of South Africa’s Constitution addresses health care, food, water, and social security and mandates that every citizen has the right to have access to sufficient food and water.¹⁶ The country’s large division of wealth puts a strain on this right to water access by allowing those with a larger income to install groundwater purification systems while those with smaller incomes must obtain water through public collection points that may be overcrowded or long distances away.¹⁷ The national government has a responsibility to provide funding to ensure that citizens have access to sufficient water through the use of appropriate infrastructure and maintenance, regardless of economic status.¹⁸

To ensure that the appropriate government entities take “reasonable legislative and other measures” to avoid infringing citizens’ rights to sufficient water access, the term “sufficient” should be more specific and quantitatively define at what time or resource level the national government should be held accountable, and thus compelled to take action.¹⁹ The Minister possesses the authority under the § 4(26) of the country’s National Water Act to promulgate regulations that limit water use, require water use be monitored, measured, and recorded by appropriate entities, and oversee water infrastructure systems from construction to operation and maintenance.²⁰ Therefore, it is imperative that the Minister exercise his or her authority by mandating and enforcing such regulations to avoid infringing citizens’ rights.


However, it is fair to assert that under the current language of the Constitution that the sustainability of water resources are expected to be prioritized in governmental actions, especially as lower than expected rainfall and water scarcity become common occurrences in parts of the country.²¹ To accomplish this, government officials should direct DWS to frequently review the country’s preparedness for water scarcity events and create

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a stricter framework for sustainable groundwater management in an effort to increase dam capacity and extend, upgrade, and maintain current water infrastructure in South Africa.²² Funding for such projects can be provided through municipal grants or other emergency funding.²³

Any increased investments in infrastructure need to be complemented by a change in water usage by citizens.²⁴ To reduce demand for water, there must be an improvement in water efficiency and water-using behaviors.²⁵ This can be done by installing efficient irrigation technology, replacing inefficient

appliances, taking shorter showers, or flushing toilets less often.²⁶ Alternatively, the national government can implement strategies to generate new water supplies, such as the restoration of watersheds, artificial enhancement of groundwater replenishment systems, and the implementation of wastewater treatment and reuse programs.²⁷

While Cape Town attempts to prevent this crisis, other countries can learn from their mistakes by actively updating and maintaining government-run water infrastructure systems in response to potential impacts of climate change. 

ENDNOTES

¹ William Saunderson-Meyer, *Commentary: In drought-hit South Africa, the politics of water*, REUTERS (Feb. 5, 2018, 11:09 AM), <https://www.reuters.com/article/us-saundersonmeyer-drought-commentary/commentary-in-drought-hit-south-africa-the-politics-of-water-idUSKBN1FP226>; Norimitsu Onishi & Somini Sengupta, *Dangerously Low on Water, Cape Town Now Faces 'Day Zero'*, N.Y. TIMES (Jan. 30, 2018), <https://www.nytimes.com/2018/01/30/world/africa/cape-town-day-zero.html>.

² Onishi & Sengupta, *supra* note 1; see also Helen Zille, *From the Inside: The Countdown to Day Zero*, DAILY MAVERICK (Jan. 22, 2018), <https://www.dailymaverick.co.za/opinionista/2018-01-22-from-the-inside-the-countdown-to-day-zero/#.WnRwM66nHcv> (stating that “Day Zero” is currently projected for July 19, 2018 and the current plan is that “one week before the six dams providing water to the Western Cape Water Supply System (WCWSS) are collectively projected to drop to 13.5 percent, the City will announce the date on which almost all the taps in Cape Town’s residential suburbs will be cut off.”); Lauren Said-Moorhouse & Gianluca Mezzofiore, *Cape Town cuts limit on water use by nearly half as ‘Day Zero’ looms*, CNN, <https://www.cnn.com/2018/02/01/africa/cape-town-water-crisis-intl/index.html> (last updated Feb. 1, 2018) (noting that the threat of fines and installation of water management meters attempt to keep residents compliant with the cut backs).

³ Richard Perez-Pena, *Cape Town Pushes Back ‘Day Zero’ as Resident Conserve Water*, N.Y. TIMES (Feb. 20, 2018), <https://www.nytimes.com/2018/02/20/world/africa/cape-town-water-day-zero.html>.

⁴ *Id.*; see also Said-Moorhouse & Mezzofiore, *supra* note 2 (stating that the city is now working to upgrade its water systems by building desalination, aquifer, and water-recycling projects, to help lengthen what water remains).

⁵ Onishi & Sengupta, *supra* note 1.

⁶ Zille, *supra* note 2.

⁷ See S. AFR. CONST. 1996, § 24; see also Warren Beech & Nicholas Veltman, *Environmental law and practice in South Africa: an overview*, WESTLAW PRACTICAL LAW, [https://uk.practicallaw.thomsonreuters.com/4-502-7865?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/4-502-7865?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1) (last updated Feb. 1, 2017).

⁸ See NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998 (S. Afr.); see also Beech & Veltman, *supra* note 7; NATIONAL WATER ACT (No. 36 OF 1998) § 1 (S. Afr.) (stating that three key regulating authorities, Department of Environmental Affairs (DEA), Department of Mineral Resources (DMR), and Department of Water and Sanitation (DWS) were created under this Act).

⁹ NATIONAL WATER ACT (No. 36 OF 1998) § 1 (S. Afr.) (indicating that it is under the authority of the national government to “fulfil obligations set out in the Act relating to the use, allocation and production of, and access to, water resources”).

¹⁰ Saunderson-Meyer, *supra* note 1.

¹¹ *Policy and Strategy for Groundwater Quality Management in South Africa*, DEP’T OF WATER AFFAIRS & FORESTRY ix (2000), <https://www.westerncape.gov.za/text/2003/groundwaterpol.pdf>.

¹² *Id.*

¹³ Saunderson-Meyer, *supra* note 1.

¹⁴ Richard Poplak, *What’s Actually Behind Cape Town’s Water Crisis*, THE ATLANTIC (Feb. 15, 2018), <https://www.theatlantic.com/international/archive/2018/02/cape-town-water-crisis/553076/>.

¹⁵ NATIONAL WATER ACT (No. 36 OF 1998) § 4(26); see also Amil Umraw, *Cape Town Water Crisis: DA Will be Judged Harshly Say Analysts*, HUFFINGTON POST (Feb. 19, 2018), http://www.huffingtonpost.co.za/2018/01/19/watercrisis-drought-or-national-government-failure_a_23337782/?utm_hp_ref=za-news.

¹⁶ S. AFR. CONST., 1996, § 27(1)(B).

¹⁷ Onishi & Sengupta, *supra* note 1.

¹⁸ See S. AFR. CONST., 1996, § 27(1)(B) (stating that “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of [the rights listed under section 27]”); Saunderson-Meyer, *supra* note 1.

¹⁹ See S. AFR. CONST., 1996, § 27(1)(B).

²⁰ NATIONAL WATER ACT (No. 36 OF 1998) § 4(26)(a)-(b), (d).

²¹ See Tamaryn Africa, *#Budget2018: R6 billion allocated for drought relief*, BUS. REPORT (Feb. 21, 2018 4:15 PM), <https://www.iol.co.za/business-report/budget/budget2018-r6-billion-allocated-for-drought-relief-13404218>; see also Onishi & Sengupta, *supra* note 1 (stating that for several years Cape Town had been warned by the Department of Water Affairs about the necessity of diversifying its water supply because its reliance on six rainfall dependent dams was hazardous with current climate change trends).

²² Africa, *supra* note 21.

²³ *Id.* (stating that “91.6 billion [rands] would be spent on extending, upgrading and maintain[ing] water infrastructure [in the 2018-2019 fiscal year]. Over the same period 34 billion [rands] would be invested in water services, largely through municipal grants”).

²⁴ *Id.*

²⁵ Peter Gleick, *Commentary: Cape Town is Running Out of Water. Could More Cities Be Next?*, FORTUNE (Feb. 20, 2018), <http://fortune.com/2018/02/07/water-shortage-cape-town-south-africa/> (noting that saltwater desalination can also provide a short-term solution).

²⁶ *Id.*

²⁷ *Id.*