



30 December 2021

Dear Mayors, Municipal Managers, and local law-enforcement decision-makers

Shielding towns and local economies from lockdown harms

You can neither institute nor repeal national legislation or the current state of disaster. However, as people of authority in your towns and local economies you can greatly influence what National Government's lockdown policies mean in practice.

The purpose of this letter is to suggest ways in which your authority can shield your community from many of the harms of National Government's irrational and harmful lockdown restrictions.

For almost two years now, it has been illegal to leave one's home in South Africa after midnight. At times, it was generally illegal to leave your house at all. These and other unjustified and irrational restrictions, from tobacco to warm chicken to beach masking to restaurant closures, have been foisted upon the people and businesses in your town, as if it deserved your and their highest priority.

As mayors, municipal managers, and other local law enforcement decision-makers, you often have had to redirect resources away from real crime and other challenges toward managing National Government's lockdown. You have been expected to summarily enforce what President Ramaphosa saw fit to instruct everyone in your town to do "with immediate effect" during his late-night broadcasts. You have been bombarded with voluminous and confusing proclamations in the Government Gazette on travel, chicken, clothing, and more by Dr Nkosazana Dlamini-Zuma, Mr Ebrahim Patel, and others.

But their agenda is not and should not be your highest priority. You are not agents of the central government. You are custodians of the public good and – if properly so – ultimately draw your authority not simply from statute but from standing, from that great array of sources including the support of your town, custom, and your commitment to wisely serve. You are under no obligation to make the agenda of Dr Dlamini-Zuma, or for that matter, President Ramaphosa, your agenda. On the contrary, you have the moral obligation to serve the common good, beginning in your own community with its specific circumstances and requirements. The stated agenda of National Government may very well overlap with yours, but in the first place your own agenda and not theirs should determine your local priorities.

We all know our communities are threatened by many looming disasters – from energy to economy to public order to education. Much in the country is falling apart. I completely agree with Professor Shabir Madhi and many others that there is today no justification for maintaining a state of disaster regarding Covid-19.



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Given the unjustified and unsustainable nature of National Government's state of disaster, the continuing harms that spring from it, and the very real problems your communities face, I appeal to you to do everything legitimately within your power to restore normality.

In practice, exercising your discretion with regard to municipal policing is arguably one of the most effective ways in which you can restore normality. I list three forms it might take, for your consideration:

1. Insist upon sticking to your existing policing plan and the priorities defined in it, as determined by the executive head of the municipal services. This plan is unlikely to have adopted any lockdown policies, and even if it did, would be balanced by other priorities. (According to Section 64C(2)(g) of the SAPS Act, municipal police services determine their own policing priorities.)
2. Ensure that law-enforcement officers refrain from policing lockdown "infringements" in the absence of a co-operative agreement having been reached with the SAPS. Focus instead on enforcing bylaws, traffic policing, and policing real crime affecting your community in co-operation with the SAPS. (Section 64C(2)(g) of the SAPS Act stipulates that any policing of crime, i.e. national offences, requires co-operation with the SAPS and that prioritising any policing function requires an annually renewed co-operative agreement with the SAPS.)
3. Apply your authority and rightful discretion in determining your day-to-day activities, as executive head of the municipal police service implementing the policing plan, or as executive head of the municipality. Your day-to-day activities do not necessarily have to include policing National Government's lockdown instructions. Focus rather on constructive matters of pressing need in your community. (Section 64C(2) of the SAPS Act stipulates that day-to-day control of the municipal police service lies with the executive head of the municipal service, subject inter alia to certain directives of the CEO of the municipality.)

The state of disaster has highlighted how National Government is able to use its first-mover advantage in making national proclamations to suppress Parliamentary oversight and to act illegally or in legally dubious manners in the service of its own agenda. Sakeliga has won court cases opposing such action, and many others have tried to do so too, sometimes successfully.

But National Government is not the only one with a first-mover advantage. You too, as local authorities, have a first-mover advantage in the form of prioritising your own agenda locally. Your day-to-day activities can either implement National Government's agenda or be exercised in the service of the agendas fit for your towns, your economies, and your circumstances.

Sincerely,
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