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Marius Pieterse; Amanda Spies

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Urban Studies

Urban Studies
2025, Vol. 62(7) 1316–1333
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Corporations and cities under distress: Organised business and 'emergency' governance in Nelson Mandela Bay, South Africa

Marius Pieterse
University of the Witwatersrand, South Africa

Amanda Spies
Nelson Mandela University, South Africa

Abstract

This article considers private sector embroilment in urban governance under disaster/crisis conditions in cities of the developing world, paying particular attention to the role of law in structuring urban governance regimes. Through a case study detailing the changing relationship dynamics between organised business and the South African metropolitan municipality of Nelson Mandela Bay during a confluence of the Covid-19 pandemic and a debilitating drought, the article shows that crisis conditions can induce moments of civic solidarity between urban local governments and their non-state stakeholders, which might be leveraged to produce progressive 'everyday' urban governance arrangements. However, the incomplete consolidation of such an arrangement in Nelson Mandela Bay leads the article to consider the adequacy of the South African legal framework for urban governance, thereby highlighting how urban law may enable, stabilise and ensure accountability for 'emergency' urban governance.

Keywords

disaster management, local government, private sector, urban governance, urban law

Corresponding author:
Marius Pieterse, School of Law, University of the Witwatersrand, Private Bag X3, Wits, Johannesburg-Braamfontein 2050, South Africa.
Email: Marius.Pieterse@wits.ac.za

摘要

本文探讨了发展中国家的城市在灾难或危机条件下私营部门参与城市治理的情况，特别关注法律在构建城市治理制度中的作用。本文进行了案例研究，详细描述了在新冠疫情和严重干旱交织期间，有组织的企业与南非纳尔逊·曼德拉湾大都会自治市之间不断变化的关系动态。据此，本文表明，危机条件可以引发城市地方政府与其非国家的利益相关者之间的公民团结时刻，也许可以将其用于实施渐进的“日常”城市治理安排。然而，纳尔逊·曼德拉湾这种安排的不完全固结，促使本文考虑南非城市治理法律框架的充分性，从而强调城市法律可以如何实现、稳定和确保“紧急”城市治理的问责。

关键词

灾害管理、地方政府、私营部门、城市治理、城市法律

Received August 2023; accepted July 2024

Introduction

Private sector entanglement in urban governance is commonly explained by variations of ‘urban regime’ or ‘growth machine’ theories, in terms of which local governments are depicted as seeking to supplement their limited capacity to govern urban spaces and processes, by forging alliances with better resourced non-state actors and steering their joint efforts towards mutually beneficial outcomes (Harding et al., 2000; Pierre and Peters, 2012; Stone, 1993, 2015). Several scholars have expressed caution over the sacrifice of public interest, community participation, transparency and accountability that often accompanies the ‘outsourcing’ of urban governance functions and decisions to the profit-driven private sector through such alliances (e.g. Ablo, 2023; Anciano and Piper, 2019; Harding et al., 2000; Pierre and Peters, 2012; Pieterse, 2022a).

Whereas ‘urban regimes’ are often depicted as premeditated, continuously (re)negotiated and fairly stable partnerships (Stone, 2015), this is not always the case everywhere. For instance, studies in African cities, where the local state not uncommonly wields considerable legal power yet lacks the resources and capacity to deliver services or to decisively steer non-state stakeholders in pursuit of the common good, have revealed far more fragmented, piecemeal and spontaneous collaborations, often born out of necessity (Ablo, 2023; Anciano and Piper, 2019; Lindell, 2008; Neves Alves, 2021).

Moreover, the configuration and operation of urban (co)governance regimes are frequently altered by ‘crisis’ conditions. In an era of climate change, rising economic distress and political tension, cities appear increasingly to be faced with an interlocking barrage of natural, political, social and economic crises and disasters (Madden, 2023) that seemingly require urgent and exceptional governance responses. Especially since the 2008 global financial crisis, ‘disaster’ and ‘crisis’ discourse has frequently been invoked to justify the centralisation of power and the top-down imposition of austerity measures and neoliberal reforms, including the increased ‘outsourcing’ of essential urban service delivery to the private sector, in cities around the world (Bayırbağ et al., 2017; Madden, 2021; Nathan, 2023; Weaver, 2017). But crisis conditions can also induce moments of civic solidarity between urban local governments and their non-state stakeholders, which might be leveraged to produce more stable and progressive ‘everyday’ urban governance regimes (Bayırbağ et al., 2017; Truelove and Cornea, 2021).

In considering this latter possibility, this article looks into the shifting relationship

dynamics between an under-capacitated African municipal government and its private sector stakeholders during a time of overlapping crises. Our study is set in Nelson Mandela Bay (hereinafter 'NMB'), a municipality governing the South African coastal city of Gqeberha (formerly Port Elizabeth) and surrounds. Through a confluence of political instability, economic decline, the devastation of the Covid-19 pandemic and an unprecedented drought exacerbated by climate change, governance in NMB has become excessively strained, to the point where the municipality is struggling to fulfil its basic service delivery mandate. Amid this, the Nelson Mandela Bay Business Chamber (hereinafter 'NMBBC'), a non-profit organisation representing the interests of major corporations in NMB, has stepped up to assist the municipality in the fulfilment of basic urban governance functions, to the point where it is increasingly behaving like and perceived as a government agency.

The article traces this development, focusing on the NMBBC's involvement in the municipality's response to Covid-19 and the prevailing drought, and on its emerging leadership role in combating the effects of climate change in the city. It is based on a review of scholarly literature alongside press commentaries concerning the situation in NMB, supplemented by insights from NMB's recent strategic planning policies and from a small number of semi-structured interviews with local governance experts and business representatives in Gqeberha, conducted by the authors in May 2023.

Among the many social forces that have contributed to the state of affairs in NMB, we pay particular attention to how relationships have been shaped by the (often flawed) operation of South African constitutional and local government law. While typically operating in the background of cities and therefore often taken for granted or overlooked in urban studies, law is a powerful structuring force of urban governance (Baptista, 2013; Glasser and Berrisford, 2015; Layard, 2020; Pieterse, 2022a). Beyond the myriad of ways (beyond the scope of this article) in which different laws discipline nearly every aspect of day-to-day urban life (see e.g. Phillippopoulos-Mihalopoulos, 2007), public law's structuring of the powers, responsibilities and competencies of urban municipalities animates their power over the formation and operation of multi-actor urban governance regimes, and thereby also their ability to steer these regimes towards progressive ends (Anciano and Piper, 2019; Pieterse, 2022a). In addition, public law formalises the ongoing interactions and negotiations between local governments, communities and the various non-state stakeholders in urban governance, while ensuring transparency in governance arrangements and apportioning accountability (Glasser and Berrisford, 2015; Layard, 2020; Mousmouti and Crispi, 2015; Stapper, 2022).

To do all of this effectively, relevant legal frameworks must be simple, clear, context-appropriate and realistically implementable (Glasser and Berrisford, 2015; Mousmouti and Crispi, 2015). In times of upheaval, predictable and well-functioning legal frameworks can provide stability and ensure that accountability is maintained, that rights are upheld and that the interests of vulnerable groups are not sidelined in crisis responses (Humby, 2014; Matyas, 2021; van der Berg and Pieterse, 2024). At the same time, the rigidity and path dependencies inherent to legal frameworks and processes may hinder agile and responsive emergency governance, especially where there are gaps between the intentions of laws and the realities of their implementation (Arnold, 2014; Arnold and Gunderson, 2013; Cosens et al., 2020; Humby, 2014; van der Berg and Pieterse, 2024; van der Berg and Verschuuren, 2022).

Deficiencies in urban public law frameworks thus often contribute to the malfunctioning of urban governance regimes, perhaps especially in times of crisis (Glasser and Berrisford, 2015; van der Berg and Verschuuren, 2022). Below, we first set out the law regulating urban governance in South Africa and highlight some of its more egregious implementation failures. We then describe recent urban governance crises in NMB before detailing how these have catalysed the formation of a preponderantly progressive urban co-governance regime between the municipality and the NMBCC. In conclusion, we reflect on interactions between certain features of and driving forces behind this regime and faultlines in the content and implementation of the overarching public law framework.

South African urban governance in law and in practice

By international standards, South Africa's so-called 'metropolitan' municipalities (which govern the country's eight largest cities, including Gqeberha) enjoy a considerable degree of legal autonomy. They have a constitutionally enshrined 'right' to govern 'local government affairs' on their 'own initiative' (section 151(2) of the South African Constitution, 1996) and are granted executive authority over, the right to administer and the power to make bylaws for a range of functional areas crucial to urban form and functioning (sections 156(1)–(2) read with Schedules 4B and 5B of the Constitution). While these competencies are exercised subject to oversight and regulation by National and Provincial governments (section 155(7) of the Constitution), these spheres of government 'may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions' and must 'support and strengthen the capacities of municipalities to manage their own affairs, to exercise their powers and to perform their functions' (sections 151(4) and 154(1) of the Constitution).

The functional areas under municipalities' control include 'electricity and gas reticulation', 'municipal planning', 'municipal health services' and 'water and sanitation systems limited to potable water supply systems and domestic waste-water and sewage disposal systems' (Schedule 4B of the Constitution). In all these instances, municipalities' powers are limited, in practice, through their complex interaction with simultaneous and overlapping regulatory powers conferred upon national and provincial governments by sector-specific legislation. For instance, sections 3 and 109 of the National Water Act (1998) vest control over national water resources and supply in the national government. The Water Services Act (1997) then designates municipalities as water service authorities, tasked with providing and maintaining water supply infrastructure, and with delivering water to households, either themselves or by contracting out supply to a range of potential water service providers. In practice, municipalities typically procure bulk potable water from regionally established Water Boards (sections 28–34 of the Water Services Act) and then sell it on to residential and industrial consumers, after having supplied a free basic allocation for residential use (see Chamberlain and Potter, 2022: 3–7; Palmer, Mood et al., 2017: 166–171).

In exercising their competencies, municipalities are required:

> to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner; to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities and community organisations in the matters of local government. (Section 152 of the Constitution)

In operationalising this developmental mandate, the Municipal Systems Act (2003) provides for extensive community and stakeholder involvement in all municipal decision-making processes. Ostensibly embodying an 'all-of-society approach' to urban governance (South African Cities Network [SACN], 2021) and authorising urban governance regime formation, the Act defines a municipality as including community members such as local businesses, residents and civil society (section 1), determines that these stakeholders are entitled to 'contribute to the decision-making processes of the municipality' (section 5(1)(a)(i)) and empowers municipalities to establish a range of 'mechanisms, processes and procedures' to enable contributions by and consultations with communities and stakeholders (section 17; see Pieterse, 2022b). It further determines that stakeholders and communities must be consulted in the formulation and annual updating of municipal policies, budgets and service delivery plans (sections 5–6, 16–17, 29) as well as of municipal Integrated Development Plans (IDPs), which are five-year strategic plans assessing local development needs and formulating a plan for addressing these, that must be closely aligned with the municipal spatial development framework, performance monitoring system and budget (sections 23–36). The Act's chapter on essential service delivery (sections 76–84) further provides for community and stakeholder input into decisions on modes of service provision and allows the conclusion of public–private partnerships for involvement by non-state actors in service delivery. Under section 120 of the Municipal Finance Management Act (2003) and its accompanying regulations, such partnership agreements may only be concluded after extensive feasibility studies, detailed cost–benefit analyses, comprehensive guarantees and broad community buy-in.

A similar urban regime-friendly approach is reflected by the Disaster Management Act (2002) (DMA) which aims, inter alia, to enhance society's 'emergency preparedness' by facilitating collaboration between organs of state, the private sector, civil society and communities (section 1) in disaster prevention and response efforts. It provides for extraordinary governance arrangements pursuant to declarations of states of disaster at national, provincial or municipal levels, with control over disaster responses vesting in the executive leadership of the level of government corresponding to the scale of a declared disaster.

For disasters that remain local in their impact and reach, the DMA vests municipalities with by-law-making power to manage events (sections 55(2)–(3)) and requires the establishment and implementation of municipal disaster management frameworks and plans (sections 42 and 52–53) to ensure an 'integrated and uniform' response by a range of state and non-state actors (section 42(1)). Each municipality must establish a 'disaster management advisory forum', including representatives of organised business, labour unions, community-based organisations, the local insurance and agricultural industries, religious and welfare organisations, higher learning institutions and private and public healthcare institutions, for the coordination of disaster management efforts (section 51). Disaster management plans must be incorporated in municipal IDPs and must include risk assessments and response plans that coordinate and align actions by the various role players (section 53).

However, when disasters are declared at national or provincial levels, or reclassified as such given their radiating impact, local disaster management structures function only as implementing agents of their national or provincial counterparts, with which they must cooperate (sections 23(8) and 26 of the

DMA; for critical discussion see Steytler and De Visser, 2022; van Niekerk, 2014).

While the overall legal framework for urban governance in South Africa is certainly comprehensive, it has been criticised as convoluted and overly complex (SACN, 2021; Steytler, 2008). In particular, the constitutional schedules apportioning executive competencies between local, provincial and national governments contain several lacunae, contradictions and overlaps, with resulting confusion exacerbated by the plethora of devolution, oversight and regulatory arrangements under sector-specific legislation (SACN, 2021). Together with municipal skills shortages, uninspired municipal leadership and an institutional culture of top-down governance, this has been pinpointed as a likely reason why few South African municipalities have meaningfully asserted control over their constitutionally demarcated executive domain (Palmer et al., 2017; Pieterse, 2019; SACN, 2021). For instance, few municipalities have shown signs of initiative in the arena of disaster management, to the point that, prior to Covid-19, many had neither adopted disaster management plans nor integrated emergency preparedness into their IDPs (van Niekerk, 2014, 2021).

Similarly, while the law permits (and, in the case of disaster management, encourages) cooperation between municipalities and non-state actors, the intricate legal framework for the conclusion of public–private partnerships has been lambasted as unworkably onerous, to the point where it has been said to actively discourage partnership formation (Palmer et al., 2017; SACN, 2021, 2022; Steytler, 2008). There has also been no explicit articulation between this framework and the DMA, so that it is uncertain whether the Municipal Systems Act's process for concluding public–private partnerships can be used to establish agreements pertaining to emergency assistance by the private sector (Van der Berg, 2015).

Meanwhile, most municipalities have failed to establish functional platforms for stakeholder liaison, also in relation to disaster management (Palmer et al., 2017; Pieterse, 2022b; SACN, 2021), whereas legislated public participation structures in most South African municipalities have long been dysfunctional, for reasons beyond the scope of this article (see Palmer et al., 2017; Pieterse, 2022b; SACN, 2021). The upshot is that communication with both residents and stakeholders has been extremely poor, while relationships between municipalities and local business and civil society are typically characterised by mutual mistrust (Anciano and Piper, 2019; Palmer et al., 2017).

Partly symptomatic of all this, governance in most South African towns and cities has in recent years been at best strained, at worst collapsing (Everatt and Pieterse, 2022; SACN, 2021). Specifically, few municipalities have been coping financially, due to a mixture of economic stagnation, financial mismanagement, corruption and drastic declines in service charge-based municipal revenue (SACN, 2021, 2022). As a result, there has been disconcerting underinvestment in urban infrastructure, exacerbated by the limitations of a nationwide shortage of (especially engineering) skills (Palmer et al., 2017; SACN, 2021, 2022).

Matters have been made significantly worse by increasingly volatile and unsavoury local government politics sparked by the decline in electoral support of the erstwhile dominant African National Congress (ANC). In an era of governance by unstable multi-party coalitions, local governance has come to be fraught with intergovernmental strife, political factionalism and corruption, with municipal systems frequently reported to have been captured for corrupt means

(Everatt and Pieterse, 2022; Palmer et al., 2017; SACN, 2021).

Given the malfunctioning of 'official' state–citizen participation and communication channels, disaffected communities have in recent years increasingly bypassed dysfunctional municipalities in attempts to ensure continued access to essential services. Actions have ranged from local businesses negotiating directly with national/regional bulk water and electricity providers to stave off city-wide service disconnections brought about by municipalities' failure to pay for bulk water/electricity, to civic organisations themselves forcibly taking over the operation and repair of water and sanitation infrastructure, sometimes with the backing of court orders (see Everatt and Pieterse, 2022).

NMB: Governance failure through overlapping crises

Home to more than 1,250,000 people, NMB is the most populous municipality in South Africa's Eastern Cape Province and its cities function as a service epicentre for much of the province's rural hinterland (NMB Metropolitan Municipality, 2022/2023: 15). NMB's economy has long been heavily dominated by manufacturing, especially motor vehicle manufacturing, and has been sluggish for several decades (NMB Metropolitan Municipality, 2022; SACN, 2011: 16–17). Poverty, inequality, service backlogs, homelessness and informal settlements are among the city's underlying socio-economic crises (NMB Metropolitan Municipality, 2022/2023).

Politically, NMB is a posterchild of the dysfunctionality that has plagued South African cities. Corruption and state capture became rife in NMB from around 2011, to the point of being blamed for the collapse of municipal transport and housing departments (Olver, 2017; Steyn Kotze, 2018: 112–113). A partially successful 'clean-up' instigated by the national ANC (detailed in Olver, 2017) was disrupted when the party lost control of the Council after dipping below 50% support in 2016 local government elections. Since then, NMB has been governed by a series of alternating, unstable and ineffective, minority party- or ANC-led coalitions (see SACN, 2021; Steyn Kotze, 2018). There have been seven new mayors since 2016, with all but one having been ousted through motions of no confidence tabled by opposition parties (Gori, 2023). In addition to near-paralysing the executive leadership's ability to take and consistently implement decisions, tensions resulting from this turmoil have destabilised the municipal administration, with frequent turnover and increased vacancies in key positions complicating the implementation of ever-alternating political agendas (Steyn Kotze, 2018). Predictably, the city has seen sharp declines both in service delivery standards and in residents' trust in government (SACN, 2022).

As in other South African cities, the Covid-19 pandemic deepened the governance crisis in NMB (SACN, 2021). Having to implement emergency measures adopted under a national state of disaster in terms of the DMA, municipalities faced a sudden increase in environmental health responsibilities, especially pertaining to the delivery of water and sanitation services, amidst acute reductions in funding (Chamberlain and Potter, 2022; SACN, 2022; Steytler and De Visser, 2022), and lacked the skills, resources and capacity to respond to the pandemic at the required scale (SACN, 2021). NMB, which recorded the world's first-known cases of the Beta strain of the virus (Makoni, 2021), was hit harder than any other South African city. Several of Gqeberha's hospitals, which also had to serve much of the Eastern Cape's rural hinterland and simply could not deal with the influx of patients, closed amidst staff and supply shortages,

whilst harrowing scenes of death and suffering played off in others (Harris, 2021; Steytler and De Visser, 2022).

On top of this, since 2015 NMB has found itself in the grips of an ever-intensifying drought, symptomatic of prolonged drought cycles brought about by climate change. The municipality (which is both the water service authority and water service provider for its municipal area; Francis and Joubert, 2021) is no stranger to drought, due to its geographical location at the edge of the Karoo semi-desert and in a transition zone between summer and winter rainfall regions (Mahlalela et al., 2020). Various projects aimed at establishing a sustainable water supply have been initiated, and then stalled, over the years. Primary among these has been the Nooitgedacht Water Scheme (NWS), a national infrastructure project to pipe in water from outside NMB's catchment area into its water supply system (see Matthews, 2020). The municipality was initially responsible for the scheme's phased implementation, but in 2015 its failure to meet deadlines led the National Department of Water Services (NDWS) to remove it from the project and replace it with the Amatola Water Board, a regional bulk water service provider. Over the following years, the project was derailed by corruption and maladministration at Amatola Water Board, which persists despite various national government interventions (see Chamberlain and Potter, 2022). In 2021, contractors abandoned the project due to non-payment and the then-Mayor of NMB unsuccessfully initiated an intergovernmental dispute with the NDWS in an attempt to regain control over the scheme (Ellis, 2021). The project's third phase only began delivering water as from 2022. Outside of the NWS, both the municipality and the NDWS have intermittently announced private–public partnerships to construct desalination plants near Gqeberha over the past two decades (e.g. NMB Metropolitan Municipality, 2022: 158), but none of these have come to fruition.

The recent drought has been especially severe. The two largest dams in the area, Kouga and Impofu (supplying over half of NMB's residents), reached their lowest-ever recorded levels in 2023 (NMB, 2022/2023: 154–158). The municipality became unable to provide water to all the regions it serves, with intermittent water outages experienced in several areas (Ellis, 2023; NMB Metropolitan Municipality, 2022/2023: 158).

The drought was declared a state of disaster, at different levels, on several occasions. The Council declared a local state of disaster in May 2017, with subsequent declarations (each valid for a period of three months and thereafter renewable monthly) following in June 2018, November 2019, May 2020 and September 2020 (NMB Metropolitan Municipality, 2022). The Eastern Cape provincial government declared a provincial state of disaster in December 2017 and October 2019, with a national drought disaster declared in February 2018, February 2020 and July 2021 (NMB Metropolitan Municipality, 2022). These sporadic declarations at different levels had the effect that the command centre and primary responsibility for emergency drought response in NMB has continuously shifted between spheres of government and has only intermittently rested with the municipality.

Given its limited control over the water supply, the municipality predictably sought to manage the crisis by reducing demand. For this it has been well equipped, given that municipalities are legally empowered to make bylaws for the delivery, limitation and discontinuation of the water supply (section 21 of the Water Services Act). NMB's Water and Sanitation Services Bylaws (2010) accordingly provide for the imposition of domestic and industrial water consumption restrictions, and for their enforcement

through water pressure/flow restriction, the installation of water metres, punitive tariffs for excessive consumption and disconnection of services. The municipality hence entered into service agreements with private companies to formulate and implement a city-wide water pressure management plan, which has considerably reduced domestic demand (Francis and Joubert, 2021; Matthews, 2020). Furthermore, severe domestic water restrictions were put in place, limiting water use to 50 l per person per day.

Over and above the stalling of national government-led water supply initiatives, our interviewees ascribe the water crisis to municipal foot-dragging occasioned by a lack of dependable data and by prevailing political instability, with no political party initially wanting to be associated with unpopular water-rationing decisions for fear of upsetting coalition partners and losing political support. Municipal officials further often appeared to conceive of the drought as a matter beyond their control, going as far as to implore residents to pray for rain (Ellis, 2022a). Moreover, throughout its response the municipality has come under fire for poor water resource management, with critics alleging that up to 40% of water supplied had been lost due to leaks caused by defective infrastructure (van Huyssteen, 2022).

NMB and the NMBCC

Tracing its history back to the establishment of a Port Elizabeth chamber of Commerce in 1864, the NMBBC is one of the oldest business chambers in South Africa and its 650-plus membership includes a broad spectrum of businesses. The Chamber's vision, as per its website (https://www.nmbbusinesschamber.co.za), is to 'be the leading catalyst for Nelson Mandela Bay to retain and attract business', in pursuit of which its mission is to 'collaborate with key stakeholders to develop solutions which foster an enabling environment and promote sustainable economic development'. It engages in various lobbying and activism activities to further its members' interests and, in recent years has focused much of its energy on addressing members' concerns around the state of municipal service delivery in NMB.

Relationships between the NMB council and its corporate stakeholders had long been strained (see Olver, 2017; Pieterse, 2019: 60–61; Steyn Kotze, 2018: 16), with individual local businesses in the past having gone as far as litigating to compel the municipality to meaningfully consult them during its IDP and budget processes (*Borbet South Africa v. Nelson Mandela Bay Municipality*, 2014). When it was consulted during the Council's 2021/22 IDP-update process, the NMBBC expressed frustration at the political instability in the Council and its lack of responsiveness, lamenting that the municipality was loath to collaborate with it and 'in many respects [had] become a hindrance' to growth initiatives (NMB Metropolitan Municipality, 2021/2022: 92–95). Despite this, the NMBBC attempted to establish open and effective communication channels with the municipality and to assist with solving governance problems that impact on its members' interests.

Given the dysfunction of formal participatory governance structures, the Chamber has significantly enhanced its standing in the local community by being both proactive and responsive. It organised itself internally into 'task teams' focused on specific governance issues, including one concerning the performance of water and sanitation infrastructure, over which it actively and continuously engages the municipality's administration and political leadership. In the course of this, the NMBBC inadvertently positioned itself as an effective communication channel between the municipality and both the local business community and 'ordinary' residents:

> Because everybody comes to the Chamber wanting some direction or answers or just to understand what's going on in the city. Or people who don't get answers with the municipality end up coming to us. So, I think people always need somewhere to go to. And maybe the Business Chamber is that place right now. (NMBBC-affiliated interviewee, May 2023)

As essential service delivery deteriorated and amidst a national electricity supply crisis beyond the scope of this article, local businesses found themselves struggling to function whilst their management and workers were also personally impacted by water restrictions, power outages and sanitation failures. Amidst this, the NMBBC attempted to channel its members' frustrations into a more civic mindset:

> I think businesses have to re-evaluate their purpose as well … They probably have to become more socially responsible, socially aware … because it's affecting you and your business, and it's affecting you at home. When you go home and you use water and electricity. So I think it's definitely changing all our mindsets. (NMBCC-affiliated interviewee, May 2023)

Around the same time, the city was hit by the Covid-19 pandemic. As was the case elsewhere in South Africa (SACN, 2021; van Niekerk, 2021), the absence of functional local disaster management plans or advisory fora necessitated the urgent adoption of ad-hoc arrangements for coordinating responses, outside of legally established platforms, in NMB. A Covid-19 Coordinating Committee initiated and spearheaded by Nelson Mandela University (NMU) brought together external stakeholders, the private sector and provincial and local governments in responding to the crisis. Hastily concluded agreements allowed the Committee to assist with data modelling, analytics and contact tracing, as well as with several initiatives supporting vulnerable communities (NMU Covid-19 Coordinating Committee Annual Report, 2021).

The NMBBC played a prominent role in this ad-hoc private–public consortium, convening an internal joint operations committee that coordinated businesses' response to the pandemic (*Herald*, 2020). This included procurement and distribution of personal protective equipment and, most significantly, brokering of the establishment of a large field hospital operated as a joint venture between the Volkswagen corporation, the NMBBC, a German governmental development agency and the Eastern Cape Department of Health. The national government referred to the field hospital as the 'epitome of multi-sectoral collaboration between spheres of government and the private sector' (Republic of South Africa Government, 2020), and one of our interviewees stated that Gqeberha would certainly have faced 'even more of a humanitarian crisis' in its absence.

Interviewed insiders regard the Covid-19 crisis as a pivotal moment that made the NMB Council realise that it had to prioritise resilience and engage far more closely with other organs of state and non-state stakeholders (NMB Metropolitan Municipality, 2022/2023: 148), and that led it to admit weakness and accept outside help:

> there's actually been an honesty from their side you see more and more. I think officials are also starting to realize they need help. So, they're starting to soften towards business because they realize business has got expertise and resources. (NMBCC-affiliated interviewee, May 2023)

Accordingly, the Council's 2022/2023 IDP admits that the combined pressure exerted by the drought and Covid-19 has brought water and sanitation issues 'into sharp focus', that short-term drought and Covid-19 mitigation efforts have drained the water budget at the expense of long-term sustainability initiatives and that its ageing and breaking water infrastructure presents a

serious challenge (NMB Metropolitan Municipality, 2022/2023: 33, 152–154).

At the same time, the pandemic spurred the NMBCC into adopting a more action orientated, activist and collaborative approach. It embarked on several initiatives to enhance public service delivery, such as encouraging its members to 'adopt' public infrastructure (such as schools or electricity substations) and take responsibility for their management, maintenance, security or repair. The flagship, 'Adopt a Leak', was launched in June 2022. It involved the NMBBC's members availing funds and expertise to fix leaks in six identified impoverished areas, with the Chamber functioning as a 'middle man' to ensure that plumbers and engineers were appointed and deployed as required, in line with the Chamber's conviction that water shortages were mainly ascribable to poor governance and should in the first instance have been addressed through correcting infrastructure failure, rather than by way of demand-side water management (van Huyssteen, 2022). Implementation of the programme ran into opposition from trade unions hostile to private-sector involvement in public service delivery, and could only proceed in areas without strong trade union presence (interviewees, May 2023). Touted as yielding an approximate saving of 1.7 million litres of water per day, the project was discontinued in late 2022 upon depletion of its donor funding (interviewee, May 2023).

Formalised through ad hoc individual agreements with the municipality, the 'Adopt' initiatives have made a considerable contribution to alleviating the municipality's service delivery burden, despite typically being funding dependent and therefore difficult to sustain or roll out at scale. Perhaps their most important contribution, however, has been the establishment of a pragmatic, issue-dependent working relationship between the municipality and its corporate sector. Leveraging this, as well as the Covid-19-induced moment of solidarity, the NMBBC concluded an overarching memorandum of understanding (MOU) with the Municipality in early 2023, which enables the Chamber and its members to work with the municipality on various future projects geared towards rebuilding an enabling environment for business in the city (Ellis, 2023). NMBBC's CEO commented that the purpose of the MOU was not to 'take over' the work of the municipality but rather to 'complement their efforts wherever possible in a time of crisis', adding that:

> [t]he Business Chamber will not be considered an implementing agent of the municipality, nor is [the MOU] a formal public–private partnership. Participation is voluntary, in the form of businesses offering their time, expertise and resources such as labour, equipment or access to knowledge. (van Huyssteen, 2023)

While it is thus not an institutionalised vehicle for private-sector involvement in service delivery or disaster management in the sense envisaged by applicable legislation, the NMBBC regards the MOU as a platform from which to avail the expertise and resources of the Chamber and its members to the municipality on a voluntary basis. It hopes that the memorandum would allow for more efficiency, flexibility and stability than the sporadic conclusion of individual MOUs for specific projects, and that it would provide the Chamber's working relationship with the municipality a measure of insulation against political turbulence.

The increasingly close association of the NMBBC with governance in Gqeberha, and its frequent visibility alongside political leadership, has led to a public misconception that it is, in fact, a government agency (interviewee, May 2023). Its role as a major contributor to urban governance is also increasingly acknowledged by the NMB Council. While previous IDPs merely

referred to consultation with business in describing adherence to statutory community participation requirements, NMB's 2022/2023 IDP explicitly commits to strengthening relationships with stakeholders for the sake of economic development, water security and climate resilience (NMB Metropolitan Municipality, 2022/2023: 19–20, 253–254) and envisions the increased conclusion of formal private–public partnerships focused on essential service delivery infrastructure (NMB Metropolitan Municipality, 2022/2023: 236). Most tellingly, the IDP also includes a section authored (on the municipality's invitation) by the NMBBC, which commits to collaborating with the municipality and other stakeholders to 'get the city working again' (NMB Metropolitan Municipality, 2022/2023: 268).

Indeed, there are signs that the NMBCC is beginning to play a more prominent role in the establishment and maintenance of governance regimes in NMB, perhaps even to the point of eclipsing the municipality's efforts. This first became evident in June 2022, when Gift of the Givers, an NGO specialising in disaster relief, joined the drought-mitigation efforts by drilling boreholes to serve vulnerable communities and providing water tankers at key points such as schools and clinics. This project was the result of an 'unofficial partnership' between Gift of the Givers, the NMBBC and the municipality, in terms of which parties also committed to future co-operation and coordination of efforts to alleviate the water crisis (*PE Express*, 2022). A press release quoted the Gift of the Givers chairperson describing the NMBBC as its primary partner in future endeavours:

> Partnering with the Business Chamber is the best way to move forward, as we already work with many of the Chamber members, and we can ensure coordination of resources and efforts. We have identified immediate projects that will most benefit the metro and we stand ready to do whatever is needed with the Chamber – whether it is to act as implementing agent, interface with government or deploy funds into projects where they are needed.

Then, following its commissioning of an elaborate climate change impact assessment from a private firm (Ellis, 2022b), the NMBBC established an Eastern Cape Climate Change Coalition which included two prominent members associated with South Africa's national government: the National Planning Commission and the Presidential Climate Change Commission (PCCC). In January 2024, the Coalition's efforts resulted in the adoption of a pledge in which stakeholders (also including the municipality, the Civil Society Coalition and NMU) undertook to develop a Climate Change Resilient Development Strategy Framework that would guide future development, as well as climate change mitigation and adaptation initiatives, in NMB. The PCCC appointed a local service provider, led by the NMBBC's previous CEO, to spearhead the drafting of the framework (NMBBC, 2024). While the municipal council has indicated its support for the initiative and features as a partner therein, our interviewees point out that the other major stakeholders, including the national government agencies, apparently regard the NMBCC as the venture's institutional anchor and custodian.

Concluding reflections and recommendations

This article has recounted how essential service delivery failure, compounded by external crisis conditions, has catalysed the formation of a preponderantly civic-minded urban governance regime in NMB. This arguably happened not only because the

combined pressures of Covid-19 and drought forced the municipality to confront its own shortcomings and to accept help, but also because local corporate executives were made to appreciate the interdependencies between their commercial fortunes, their domestic quality of life and the broader communal welfare (as also observed in relation to urban regimes comprising suburban civic organisations by Stone, 1993).

Similar to what has been observed in other African cities (see Anciano and Piper, 2019; Everatt and Pieterse, 2022; Lindell, 2008; Pieterse, 2021), urban regime formation in NMB departed from conventional depictions in urban governance literature in that the local state lacked not only the skills and resources to govern the city by itself but also the capacity to initiate, steer and maintain productive alliances with non-state actors. Instead, a co-governance pact in NMB emerged mostly on the initiative of the NMBCC, motivated not so much by profit-maximising objectives as by concerns for its members' economic and social survival. Accordingly, as also observed in relation to everyday infrastructure governance in other African cities (Neves Alves, 2021), private-sector involvement in 'everyday emergency' governance in NMB seems to have been less an instance of hollowing out the state than one of an already hollow state's supplementation in order to keep lights on and taps running.

However, it also appears that NMB's progressive public–private governance pact has been incompletely consolidated and institutionalised, and remains in peril amidst political instability. Moreover, it has failed to capacitate the municipality, instead arguably causing it increasingly to be sidelined in an overarching compact between the NMBBC and other urban governance stakeholders. Despite on the face of it being more altruistic than the economic crisis-driven privatisation of urban spaces or processes observed in cities of the global north (see e.g. Bayırbağ et al., 2017; Weaver, 2017), collaborative governance regimes born out of necessity in African cities can in this manner further delegitimise the state (Neves Alves, 2021; Truelove and Cornea, 2021), contribute to the fragmentation of urban governance (Ablo, 2023; Lindell, 2008; Neves Alves, 2021), increase its democratic deficit (Anciano and Piper, 2019; Pieterse, 2022a) and complicate the collective pursuit of the common good, not least by infesting it with commercial concerns. Indeed, while the NMBBC's commitment to sound urban governance and sustainable service delivery has arguably been a saving grace for NMB, this has predictably manifested more clearly in areas of governance where the Chamber's members have a clear commercial stake.

In order for public–private collaboration in urban governance to render broader societal benefit, it needs to be steered by public entities that are both democratically legitimate and consistently accountable to higher-level norms, such as human rights (Pieterse, 2022a). Several features of urban municipalities (their 'closeness' to communities, their access to local knowledge and skills and their position as a locus for community participation) render them well-placed to fulfil this steering role (van der Berg and Verschuuren, 2022). But this holds true only when the municipalities are adequately empowered, capacitated and resourced.

Often, cities' legal powers and competencies over pressing issues are so restricted or fragmented that they are incapable of sufficiently 'owning their problems' (van der Berg and Verschuuren, 2022). We have recounted, for instance, how NMB lacks decisive say over its own water supply and how its attempts to take charge thereof (by controlling implementation of the NWS) have been thwarted in intergovernmental dispute resolution processes. Meanwhile, the continuous and inconsistent recasting of the

drought as respectively a local, regional and national 'disaster' under the DMA has precluded a consistent response embedded within the municipality's day-to-day operations, not least by frequently requiring it to surrender decision-making authority over the response to 'distant' spheres of government.

When local government is itself unclear over the extent and duration of its control over particular functions, it cannot credibly negotiate mutually beneficial governance pacts with stakeholders (Anciano and Piper, 2019; Pieterse, 2021). More encompassing and consistent legal devolution of powers over a range of urban and climate governance matters, also under emergency conditions, would arguably enable urban South African municipalities to themselves take control of solving the problems facing them and would strengthen their bargaining power in interactions with non-state stakeholders. By more clearly articulating municipal obligations, it would further bolster community efforts to hold municipalities accountable for the effectiveness of their responses.

But, however far-reaching, devolution of control over the levers for crisis management will only go so far when institutions lack the political stability to decisively conceptualise and consistently pursue the common good (Arnold, 2014; Arnold and Gunderson, 2013). Productively forming and steering relationships with non-state stakeholders requires stable, decisive, strategic and visionary leadership alongside 'institutional capability', which includes contract and human resource management skills, institutional memory, record keeping and technical proficiency (Palmer et al., 2017; Pierre and Peters, 2012). In NMB, all of these have been compromised by the municipality's frequent oscillation between different coalition governments, which has severely disrupted its administration and was pinpointed as a major cause of the haphazard drought response and a major hurdle to establishing a consistently productive working relationship with the NMBBC. For instance, while our interviewees all regarded the MOU between NMB and the NMBCC as a watershed for business–state collaboration in the city, they expressed uncertainty over the sustainability of the Municipality's commitment to its implementation given that, at the time, an (ultimately successful) motion of no confidence in the mayor – who signed and supported the agreement – was pending.

South Africa's legal framework for the political governance of municipalities was conceived in a one party-dominant political milieu and has adapted poorly to more contested and adversarial contexts (Pieterse, 2019; SACN, 2021). Mooted legislative amendments aimed at ensuring cross-regime continuity in municipalities' administrative and participatory structures, that would structure the formation and operation of proportionally representative multiparty coalition governments in cities where no political party attains an outright electoral majority (see Republic of South Africa Department Cooperative Governance and Traditional Affairs, 2024), should thus be welcomed.

The discussion above further bears out how legal frameworks that place an unrealistic compliance burden on their subjects encourage informality and thereby undermine accountability (Mousmouti and Crispi, 2015). South Africa's overly rigid and burdensome regulations governing public–private partnerships have led to them being eschewed by municipalities and non-state stakeholders alike, and the bulk of public–private interactions at the city level occur informally (Palmer et al., 2017; Pieterse, 2022b). In NMB, organised business and city leadership have, until recently, collaborated on a project-specific basis rather than through formalised and sustained partnerships, which has contributed to the limited shelf life of

initiatives such as 'Adopt a Leak'. The recent blanket MOU between NMB and the NMBBC might provide a more consistent basis for collaboration, but it nevertheless falls short of a formal public–private partnership and lacks institutional grounding within municipal systems and processes. This means, for instance, that joint projects might articulate poorly with the municipality's strategic or constitutional priorities and might sidestep the accountability inherent to legislated public participation processes (observed also in a study of European cities by Stapper, 2022).

There is a need for 'collaborative problem-solving processes among major stakeholders' (Arnold, 2014: 257) that are sufficiently institutionalised to enable the municipality to benefit from local knowledge and resources without surrendering the ability to insist that ventures serve the public interest (Pieterse, 2022a; Stapper, 2022). Apart from relaxing the legal framework for municipal public–private partnerships (urged by SACN, 2022 and Steytler, 2008, and mooted by Republic of South Africa National Treasury, 2024) and embedding it within the legal and institutional framework for local disaster management (Van der Berg, 2015), it appears necessary to reform legal structures for public participation in South African municipalities (Everatt and Pieterse, 2022; Palmer et al., 2017) and to connect these to formal processes for stakeholder engagement. As elaborated above, South African municipalities are legally empowered to constitute tailormade fora for collaborative decision making that includes both their private-sector and other stakeholders alongside their residents. Actually wielding this power could lend greater form, stability, predictability and permanence to collaborative endeavours, while narrowing their democratic deficit and aligning their objectives with community needs (Pieterse, 2022b; van der Berg and Verschuuren, 2022).

Finally, NMB's water crisis and its recent severe battering by the Covid-19 pandemic bears out that 'disasters', rather than being instantaneous and extraneous shocks, are typically co-constructed through years of everyday governance failure (Bayırbağ et al., 2017; Madden, 2021). Accordingly, urban resilience is arguably best pursued through sustainably strengthening 'everyday' urban regimes, systems and processes (Arnold, 2014; Arnold and Gunderson, 2013; Cosens et al., 2020; Madden, 2021, 2023; Matyas, 2021; van der Berg and Verschuuren, 2022), rather than by grasping at 'emergency' quick fixes. Periodic invocation of exceptional legal frames for emergency governance, such as that in South Africa's DMA, can disrupt and destabilise urban governance regimes and leave municipalities mired in conflict and scrambling for support (Baptista, 2013; Van der Berg, 2015). While different financial and executive arrangements in the immediate aftermath of calamities may be justifiable, it is important for the law to maintain continuity, predictability and stability in the relationships that constitute governance in the city.

Acknowledgements

An early version of this article was presented at the IGU Geography of Governance conference on 'Paradigm Shifts in Local and Urban Governance' held in Budapest, September 2023.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This research was enabled by the National Research Foundation of South Africa under grant number 141986.

ORCID iDs

Marius Pieterse https://orcid.org/0000-0001-5163-8846
Amanda Spies https://orcid.org/0000-0001-6955-2768

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