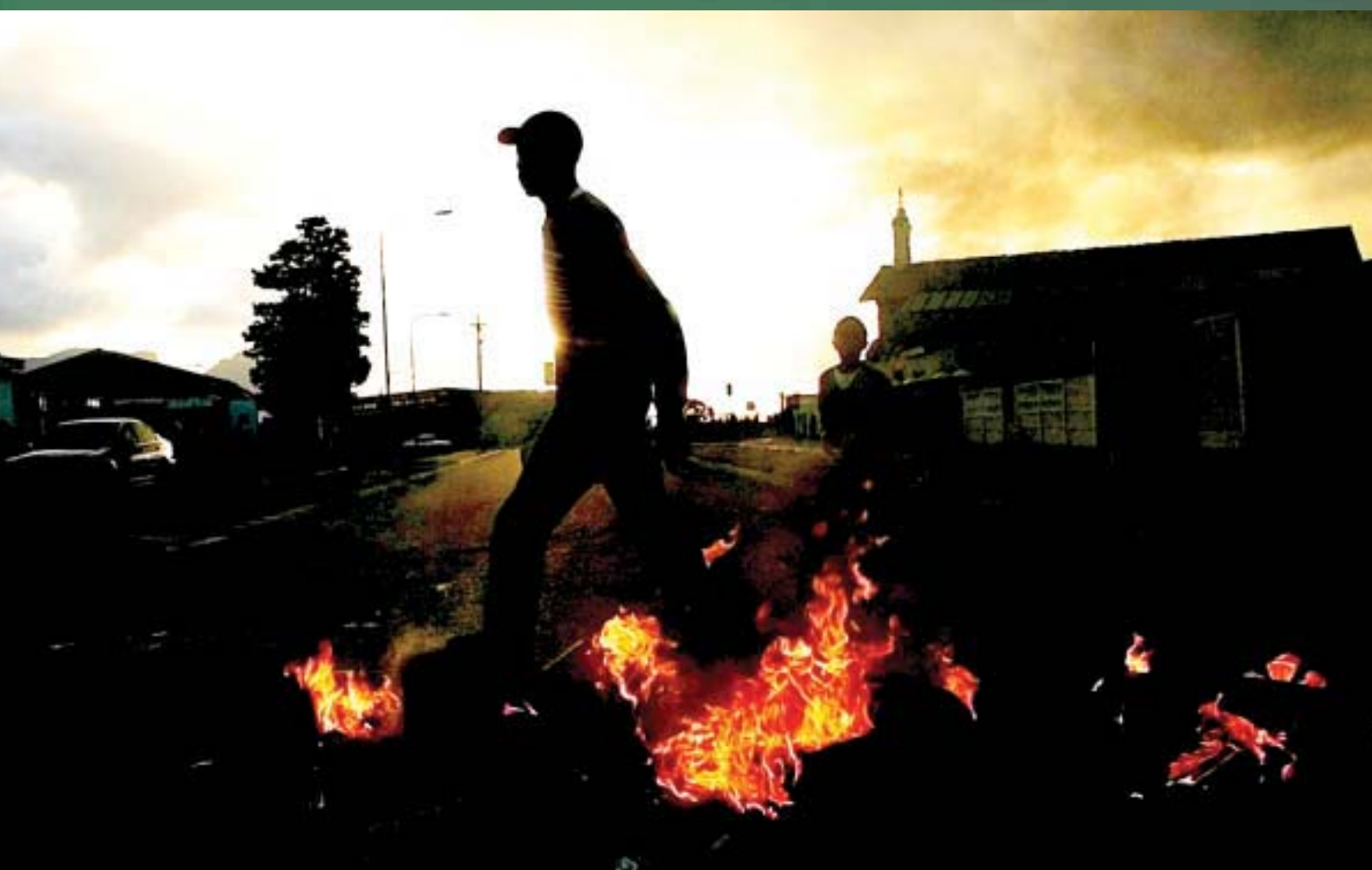




RECOGNISING COMMUNITY VOICE AND DISSATISFACTION



A CIVIL SOCIETY PERSPECTIVE ON
LOCAL GOVERNANCE IN SOUTH AFRICA



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The views expressed in this publication are those of the authors and do not necessarily represent the views of the GGLN

ABOUT THE GOOD GOVERNANCE LEARNING NETWORK

The GGLN was founded in 2003 as an initiative to bring civil society organisations working in the field of local governance in South Africa together to network and share information and lessons towards the goal of strengthening participatory democratic local governance. Now at the end of its first year of its third phase (April 2010 – March 2012), the network has taken on a more active focus on positively impacting on the local governance context in South Africa through collective learning, research, information dissemination and advocacy.

VISION

The GGLN's vision is to create a strong civil society network that harnesses and builds the collective expertise and energy of its members to contribute meaningfully to building a system of participatory and developmental local government in South Africa.

OBJECTIVES

The objectives of the network are to:

- * Share information and learning about local governance by creating an interface for organisations working in this arena;
- * Document and disseminate best practices as well as produce information and research outputs that are of benefit to various stakeholders involved in local governance processes, including communities and municipalities;
- * Advocate for changes in policy and practice to promote participatory local governance;
- * Promote the development and replication of innovative models for participatory local governance and pro-poor development at the local level;
- * Generate partnerships between civil society organisations, and between civil society and government at various levels, to strengthen local governance processes.

VALUES

The GGLN is underpinned by the following set of values, to which all members of the network commit themselves:

- * Participatory and pro-poor governance
- * Non-partisanship
- * Constructive engagement with government and other stakeholders
- * Working together in the interests of achieving the network's objectives
- * Sharing the benefits of membership of the network amongst active members
- * Building the capacity of member organisations of the network

MEMBERS

The full members of the GGLN are:

Afesis-Corplan

Black Sash

Built Environment Support Group (BESG)

Centre for Policy Studies (CPS)

Community Connections

Community Law Centre (CLC)

Democracy Development Programme (DDP)

Development Action Group (DAG)

Eastern Cape NGO Coalition (ECNGOC)

Electoral Institute for the Sustainability of Democracy in Africa (EISA)

Fair Share

Foundation for Contemporary Research (FCR)

Institute for Democracy in South Africa (IDASA)

Isandla Institute

Mvula Trust

Planact

Project for Conflict Resolution and Development (PCRD)

Socio-Economic Rights Institute of South Africa (SERI)

Trust for Community Outreach and Education (TCOE)

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FOREWORD AND ACKNOWLEDGEMENTS

The recurring community protests, especially as these intensified in 2009/10, exposed some uncomfortable truths about the state and wellbeing of local governance in South Africa. In particular, while one of the defining characteristics of developmental local government is to ‘democratise development’ and ‘to work together with local communities to find sustainable ways to meet their needs and improve the quality of their lives’, according to the 1998 White Paper on Local Government, a key driver of the protests was frustration with the lack of meaningful involvement in local decision making and lack of accountability on the part of local leaders. A more positive reading is that community protests are evidence that communities mobilise to assert their claims on the state, even if (or especially when) the formal spaces of engagement are inadequate and at times highly unsatisfactory. Yet, community protests are not without shortcomings (think, for example, about the public violence accompanying some of these protests, concerns of elite capture and manipulation of genuine concerns, and the sustainability of that modality of engagement) and as such need to be carefully investigated to inform a better response. Without a doubt, the anger, disenchantment and frustration that have driven these forms of mobilisation need to be recognised and more inclusive and respectful means of engagement need to be facilitated.

This publication is the result of a collective process of reflection on the meaning and implications of community protests for local governance by the Good Governance Learning Network (GGLN). The GGLN has produced two such reports before, *Ethical Leadership and Political Culture in Local Government* in 2010 and *Local Democracy in Action* in 2008. These reports are intended as a civil society assessment of the key challenges, debates and areas of progress with regard to governance and development at the local level in South Africa. A further aim is to provide local government policy makers and practitioners with insights and practical recommendations to improve policy, guidelines, systems and interventions, where necessary. These publications make valuable contributions to public debate but are not exhaustive – conceptual and practical gaps remain, highlighting the need for ongoing research and work in the field of local governance.

The GGLN-member contributions in this publication seek to critically enhance government and civil society’s understanding of the importance of recognising community voice and dissatisfaction as a legitimate alternative to pre-defined and state-sanctioned modalities of public participation. The underlying concern is with the technicist, procedural and instrumentalist approach that has (by and large) come to underpin public participation in South Africa. The plea, therefore, is for more dynamic, more meaningful and more varied modes of participation to be nurtured.

A report of this nature is reliant on the members of the GGLN to make it informative, insightful and useful. Our appreciation goes out to the following GGLN

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members and their representatives who submitted contributions to this report: Afesis-corplan (Nontlantla Skenjana and Peter Kimemia), Built Environment Support Group (BESG, Daniel Bailey), Community Law Centre (CLC, Annette May), Democracy Development Programme (DDP, Sagie Narsiah), Electoral Institute for the Sustainability of Democracy in Africa (EISA, Ebrahim Fakir and Maureen Moloi), Institute for Democracy in South Africa, (Idasa, Bongani Qwabe and Purity Mdaka), Isandla Institute (Tristan Görgens and Mirjam van Donk), Planact (Malachia Mathoho), Project for Conflict Resolution and Development (PCRD, Glenn Hollands) and Trust for Community Outreach and Education (TCOE, Siviwe Mdoda).

All the contributions in this report were subject to a rigorous peer review process. The reviewers were Imraan Buccus, Peter Kimemia, Annette May, Rama Naidu and Mirjam van Donk. Meera Ramjee and Chantelle de Nobrega were central to the editing process, with final text editing by Katharine McKenzie and Sarah Hetherington from String Communications.

The GGLN Reference Group played a pivotal role in choosing the theme for this report and in giving guidance to the Secretariat on relevant matters. The Secretariat would like to acknowledge the valuable contributions from Daniel Bailey, Annette May, Rama Naidu, Nontando Ngamlana, Gaynor Paradza (until July 2010) and Malachia Mathoho (from July 2010) in this regard. A word of thanks goes out to their organisations (BESG, CLC, DDP, Afesis-corplan and Planact) for allowing them to give of their time and effort.

This report and the processes leading up to its publication have been made possible by the Ford Foundation, the Charles Steward Mott Foundation and GIZ Strengthening Local Governance Programme. The GGLN sincerely appreciates their critical engagement and ongoing support for the network and its activities.

Last but certainly not least, our heartfelt thanks go out to Meera Ramjee, whose tenure as GGLN Coordinator was (too) short, yet she made a distinctive impact on the GGLN and its functioning. In addition to being responsible for managing the project that has culminated in the publication of this report management, she also guided the various contributions from members and co-authored the introduction to the publication.

Mirjam van Donk

Isandla Institute/Chairperson of the GGLN Reference Group
Cape Town, March 2011



EXECUTIVE SUMMARY

This report by the Good Governance Learning Network (GGLN) is the network's third publication providing a civil society perspective on the state of local governance. *Recognising Community Voice and Dissatisfaction* is broadly organised into three sections: 1) concepts of participation and democracy; 2) state-organised structures of participation ("invited spaces"); and 3) community-created spaces of participation, including protest action ("invented spaces").

The contributions are diverse and offer different ways to understand the challenges facing local government. They all, however, reflect an apprehension that technicist and state-centric approaches to democratic participation have become overly dominant and have served to delegitimise other expressions of community voice that fail to fit within these narrow modes of public participation, which ultimately subverts democratic participation. The ability and value of citizens' utilisation of pre-defined opportunities to voice dissatisfaction as well as the difficulty municipalities (and political parties) face when trying to engage with dissatisfied communities are considered using a number of theoretical approaches, research projects and case studies.

The contribution by the Project for Conflict Resolution and Development (PCRD) explores the underlying assumptions and ideas behind the concepts of democracy, equity and power. This paper seeks to go beyond stock critiques of poor service delivery that appeal to poor capacity and low public participation by considering the complexities of what is meant by equality, democracy and justice through the application of a historical analysis of these concepts. The author argues that government's steps to improve service delivery and promote equitable representation and participation have done little more than reduce equity considerations down to a set of procedures and indicators.

One way in which the government has tried to promote improved service delivery and respond to the frustrations of disgruntled citizens is through the creation and implementation of an intergovernmental relations (IGR) system. This system is assessed in the contribution by Planact (with a particular emphasis on housing and informal settlements) who argue that the weaknesses of the IGR have resulted in the voice of citizens being ignored or significantly watered down, despite government's intention that IGR would enhance the ability of communities to positively impact the delivery of effective services.

The second section broad theme (invented, state-sanctioned spaces) begins with a paper by Afesis-Corplan, which is a reflection on the ways in which the South African government has institutionalised public participation through legislation. This paper provides an overview of how marginalised communities continue to be

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excluded in formal spaces, such as ward committees and integrated development planning processes, using two case studies to argue that legislated forms of participation are inadequate in ensuring social citizenship partially due to the dysfunctional nature of these spaces.

The contribution by the Institute for Democracy in South Africa (Idasa) continues this theme with a close examination of the efficacy and value of ward committees, including a historical perspective, concluding that the serious challenges of these structures provide an opportunity to rethink the traditional approach to public participation and to consider alternate approaches that will harness participatory democracy and contribute to good governance at the local level. The Impendle case study by the Built Environment Support Group (BESG) provides an analysis of how cooperation between institutionalised structures, such as ward committees and community development workers, and community-based organisations can improve community participation and satisfaction.

The role of traditional leadership as one component of state-sanctioned spaces for public participation is the subject of the paper by the Trust for Community Outreach and Education (TCOE). This contribution examines the dual system of rural local government, providing a historical and current perspective on how the abuse of power by many traditional leaders and the conflict between traditional authorities and local municipalities hamper rural development and community participation. The TCOE concludes that existing power structures cannot remain the same as a new political order in rural communities is needed if communities are to exercise their constitutional and legal right to participate in local decision-making.

The final paper in this section is from the Democracy Development Programme (DDP), which argues the government can do more to widen the framework within which communities are invited to participate. This paper explores different theoretical models for promoting participatory democracy, considering their applicability to South Africa, and argues that the managerial, techno-bureaucratic approach to democracy will always attempt to limit the impact of substantial and meaningful public participation.

The final section of this publication, which focuses on “invented spaces”, begins with a paper by the Community Law Centre (CLC). The CLC paper moves away from narratives which depict community protests as only occurring on the streets led and driven by people from low-income neighbourhoods by examining how the withholding of rates by more affluent communities is emerging as a new modality through which dissatisfaction is being expressed. The legality of rates withholding and the perceptions of those who participate in this form of protests are considered, and the paper concludes with concrete recommendations on how disputes between ratepayers and municipalities can be resolved. A different kind of protest is assessed in the case study by the Electoral Institute for the Sustainability of Democracy in Africa (EISA), which considers community protests in Balfour and includes an assessment of the reasons for the protests. The authors conclude that violent protests are often a consequence of frustrated communities who feel they are not being heard, and this is often exacerbated by municipalities’ responses which usually consist of sending law enforcement into a volatile situation.

This section concludes with a paper by Isandla Institute which turns its gaze to the organised non-profit local governance sector. It reflects on how the traditional intermediary sector has responded to both the inadequacy of “invited spaces” and the emergence of (more radicalised) “invented spaces”. Locating these in a broader analysis of the context in which NGOs find themselves, this paper considers the implication for the NGO sector, concluding with recommendations to enhance sector-learning, strengthen collaboration between NGOs

and with government and ensure the sustainability of the sector through diversified funding.

This publication is a compilation of thought-provoking and challenging reflections on the limits and potential of public participation in South Africa. Because the institutional framework for public participation limits participation outside structured spaces and processes, citizens are turning more and more to creating their own spaces to express dissatisfaction and dissent. While the government has taken various steps

to remedy the serious problems facing local government and poor service delivery, its narrow commitment to institutionalised forms of participation and its rejection of informal (but potentially more inclusive) spaces of democratic expression of voice has resulted in missed opportunities to gain insights into the complex and varied reasons behind community protests. “Invented spaces”, however, are not democratic utopias and can still marginalise people already on the fringes, particularly if they include violence.

The contributions in this paper collectively serve as a call to government and civil society to reinvigorate the system of public participation by reimagining what is meant by this term, and encourages the state, in particular, to recognise that diverse forms of community expression should be welcomed. This recognition would offer the South African government an opportunity to find out what problems they may not be aware of or to develop solutions to problems they are familiar with. Importantly, it would also contribute to the revival of citizens’ waning belief in the commitment of government to hear and respond to their concerns and frustrations.

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INTRODUCTION: RECOGNISING COMMUNITY VOICE AND DISSATISFACTION

By Meera Ramjee and Mirjam van Donk, GGLN and Isandla Institute¹

The South African local government sphere is in a state of rapid flux. The municipal elections in 2011 add a further degree of change and uncertainty to this already challenged and complex context, notwithstanding what the call for a single election thereafter might hold for developmental local government.

Low fiscal reserves, poor management, service delivery backlogs, rising community protests and the pressures of a developmental local government are only some of the contestations that only just begin to scratch the surface in terms of what local government has to urgently address.



PHOTO: OBED ZILWA

The South African local government sphere is in a state of rapid flux. The municipal elections in 2011 add a further degree of change and uncertainty to this already challenged and complex context, notwithstanding what the call for a single election thereafter might hold for developmental local government. Low fiscal reserves, poor management, service delivery backlogs, rising community protests and the pressures of a developmental local government are only some of the contestations that only

just begin to scratch the surface in terms of what local government has to urgently address. These challenges are not new, as any observer of local government politics would assert. Local municipalities inherited many of these dilemmas and predicaments from an apartheid regime and these have continued to affect the form and shape of local governance to date. But the need to deal with these issues is perhaps becoming more urgent in the face of increasing public protests, in both number and

intensity. The recurring nature of these protests brings to the fore two interconnected and glaring facts. First, the state, including local government, has not responded to the needs repeatedly raised by communities during protests and, as a minimum, failed to communicate clearly as to why these needs and concerns have not been adequately addressed. Secondly, the structures and processes to express dissent, set in place by local government legislation, are inadequate and have failed to provide space for the fair and inclusive expression of voice, particularly for the poor and marginalised of South Africa.

The problems of service delivery experienced at the local government level and the complexities of public participation raise a multitude of inter-related questions. What is 'voice'? Whose voice is heard and how is it represented? Where is voice commonly expressed? What is the outcome of these expressions? Do regulated spaces appropriately channel excluded and/or marginalised voices or do institutionalised invitations to participate in the processes of governance reproduce and maintain the existing status quo? Where, why and how do 'organic' spaces of participation operate? The answers to these questions are not simple as they open up a wide-range of debates, and the contributions in this publication provide various answers and perspectives on these debates. They highlight the fact that any analysis of public participation needs to be nuanced, and emphasise that the focus should not merely be on how the institutional and legal system and/or the policy environment should be transformed, but on what needs to transpire in the space of governance to enhance the depth and breadth of public participation.

This paper begins with problematising current thinking and practices around public participation, first from the perspective of a state response, and second from a more theoretical positioning of public participation. This discussion will particularly address

the argument of representivity of voices in 'invited' and 'invented' spaces² as nodes for public participation. The discussion then turns to consider the institutional spaces of participation and examines some of the criticism that is levelled against state-sanctioned public participation processes, especially in relation to the implications of weak institutional mechanisms of participatory democracy for marginalised people in our society. Of course, the expression of voices transcends these institutional spaces of engagement, and South Africa is no stranger to a growing trend of public protests where communities of interest mobilise outside of state-sanctioned spaces for engagement. The last section of this introduction examines community-driven protests in the most recent past.

The GGLN-member contributions in this publication approach these debates from different angles and are intended to critically enhance government and civil society's understanding of the importance of recognising community voice and dissatisfaction as a legitimate alternative to pre-defined and state-sanctioned modalities of public participation. While the contributions vary in terms of focus, emphasis and proposed way forward, they share a common concern with the technicist, procedural and instrumentalist approach that has (by and large) come to underpin public participation in South Africa – a concern also recognised in the paper by the Project for Conflict Resolution and Development (PCRD) in this publication in relation to equity and local governance. As a result, the essence (and inherent 'messiness') of public participation (and, for that matter, equity) has for the most part evaporated. Embedded in this publication, therefore, is an urgent appeal to 'put the mess back in', so to speak, and ensure that public participation, in whatever shape or form, is meaningful, rather than ritualistic.

PROBLEMATISING CURRENT THINKING AND PRACTICE AROUND PUBLIC PARTICIPATION

THE STATE RESPONSE

It would be incorrect to suggest that the state has not recognised or is unwilling to address the litany of dilemmas in local government and local governance. Over the year, numerous – some more, others less successful – initiatives have been put in place, ranging from Project Consolidate, the Planning, Implementation and Management Support Programme (the deployment of technical expertise in district municipalities), and Project Viability, to mention but a few. Since 2007 there have also been a number of stop-go efforts to review local government with the intention of revisiting and revising the White Paper on Local Government, although to date this process has not been completed and seems to have been stalled indefinitely. In 2009 and 2010 especially, the state has taken measures to turn public perception of local government around. The catalyst has primarily been the growing spate of public protests, which at times have become violent in both form and consequence.

In December 2009, the Local Government Turnaround Strategy (LGTAS) was adopted by Cabinet with the broad aim of restoring the confidence of the majority of South Africans in municipal governance. Government's past failure to address problems raised by communities is explicitly recognised:

Most of the issues on which communities have resorted to protesting about, have been raised with leadership at mostly the local and to an extent, provincial spheres of government. Memoranda have been submitted, letters have been written and meetings have been held, but government has not been responsive. The LGTAS seeks to change this state of affairs on a long term and sustainable basis.³

With an overall objective of transforming the imagery of municipalities into one which drives the developmental state at the local level, the LGTAS is aimed at rebuilding and improving the basic requirements for a functional, accountable, responsive, effective and efficient developmental local government. The strategy is underpinned by objectives that include meeting basic needs of communities, improving municipal performance through professionalisation, enhancing national and provincial policy, oversight and support, and finally strengthening partnerships between local government, communities and civil society. Furthermore, one of the outputs embedded within these objectives is to 'deepen people-centred government through a refined Ward Committee Model' (LGTAS 2009:36). This includes a review of the legislative framework for ward committees to promote broader participation of various sectors and propose new responsibilities and institutional arrangements for ward committees. This was a priority for 2010, while for 2011 one of the deliverables is to improve the resourcing and funding of the work of ward committees. Finally, support measures for ensuring that at least 90 percent of all ward committees are functional by 2014 is also a key feature of the LGTAS.

Beyond the LGTAS, each municipality was tasked with developing its own Municipal Turnaround Strategy (MTAS) by March 2010, with the aim of isolating and identifying localised issues within each municipality. Combined, these strategies at localised and national level hold the alluring prospect of real change, not only in what local government does and how it does it, but ultimately in the lives of millions of people who find themselves at the margins of society.

Unfortunately, the resoluteness that characterised the launch of the LGTAS has not been matched with an equal determination to ensure its effective

LGTAS: 'These must be skilled and competent cadres capable of delivering. It must be cadres who are servants of the people and who work selflessly and diligently'.

implementation. While the strategy was accompanied by an implementation plan, this was not fully implemented (for example, the proposed Ministerial Advisory Committee and Civil Society Reference Group were never established). The LGTAS further lacked a monitoring framework, one that would assist municipalities in assessing progress made towards their MTAS. Also, municipalities were expected to develop their MTAS in a very short space of time, leaving little opportunity for meaningful reflection and broad-based engagement on the key levers that would be instrumental in the required 'turnaround'.

Despite being put into place over a year ago, it is not yet clear to what extent the LGTAS signals real change, or is simply more rhetoric. What is the likelihood of real transformation in the way that local government functions as a consequence of LGTAS? Does the strategy fundamentally address the root causes of problems affecting/stemming from the system of local government which ultimately result in widespread community protests, or is this simply another tool to appease a frustrated and disgruntled public into believing that real change is forthcoming? And to what extent are the promises of LGTAS different to what the White Paper envisioned for developmental local government as far back as 1998?

To a large extent, the successful implementation of LGTAS rests on a skilled and responsible human resource base within local government and the Department for Cooperative Governance and Traditional Affairs (Cogta) is undertaking a number of steps to meet this need. In September 2010, Minister

Sicelo Shiceka called for a local government cadre of 'a special type' to provide high quality services and implement LGTAS: 'These must be skilled and competent cadres capable of delivering. It must be cadres who are servants of the people and who work selflessly and diligently'.⁴ The Department is also enhancing its own internal capacity so that it is able to respond rapidly to communities that have or are about to embark on protest action by delving deeper into identifying and understanding the issues that underlie 'pressure points' in order to seek solutions before public protest is warranted.

Cogta is also engaging in a Legislative Review Programme (LRP). This is a process to identify provisions in laws that hinder service delivery and development. Through workshops held across all levels of government, the LRP has shown that there are provisions in a number of laws that either overlap or are contradictory. Some provisions are difficult to implement and may be inconsistent with the Constitution if passed before 1994, and there are also gaps.⁵ According to the Deputy Minister of Cogta, Yunus Carrim, 'Post 1994, many pieces of legislation have been passed and at times they do not talk to each other, which leads to duplications and possibly over regulation, which in turn affects a speedy service delivery decision making process'.⁶

Parallel to Cogta's initiatives, Parliament also set up an Ad Hoc Committee on Coordinated Oversight on Service Delivery in September 2009 which was tasked with the specific role of identifying the root causes underpinning increasingly violent service delivery protests. The committee had undertaken a comprehensive programme of visits to

While a number of initiatives have been taken to transform and strengthen local government and to rebuild the trust and confidence among the general public, the question remains: to what extent do these initiatives address the real issues on the ground? Do they deal with the actual causes of protest action? Is the state's attention accurately directed? Is it essentially about where and how money is spent on service provision, or is there something else that needs to be considered?

all communities affected by service delivery protests across the nine provinces. In September 2010, the committee released a report which highlighted the multi-faceted and interconnected challenges that aggravate tensions and fuel violent service delivery protests, and also made a number of recommendations in this regard. Some of the hindrances to service delivery are identified as a shortage of skills within municipalities, a lack of funding for infrastructure in particular housing projects, poor financial control, perceived corruption and poor communication. While the committee noted that failures in service delivery had made local government the obvious target of citizen protest, they were representative of failures in intergovernmental processes, such as disagreements between local, provincial and national government which negatively affected the quality of delivery (Parliament of RSA, 2010:5). Overall, the committee argued for the need to address the quality of governance which aggravates tensions between communities and municipalities, which in turn, incite service delivery protests. Critics, however, argue that the report is thin on identifying the *real* weaknesses that underlie the problems and that the true obstruction is instead about how and where money is spent. They argue that unless resources are redirected, no change in the service delivery landscape is likely.⁷

Further evidence that the state is cognisant of some of the inhibitors to effective and efficient service delivery in South Africa and that proactive measures are being taken to address some of these problem areas is the introduction of the Municipal Systems Amendment Bill. While community protests have brought wide-spread attention to the acute gaps in delivery on basic services, the protests have also highlighted other critical weaknesses in local government, including weak leadership, lack of accountability and transparency, poorly capacitated administrative systems and a blurring of boundaries between political and administrative structures. This Bill is an attempt to deal with issues internal to the municipal administration that at the end of the day impede service delivery and raise frustrations among communities. Notwithstanding some of the limitations in the Bill which particularly relate to the extent to which legislative provisions can address matters related to political culture, the fundamental shift towards the greater professionalisation of municipalities is necessary.⁸

While a number of initiatives have been taken to transform and strengthen local government and to rebuild the trust and confidence among the general public, the question remains: to what extent do these initiatives address the real issues on the ground? Do they deal with the actual causes of protest action? Is the state's attention accurately directed? Is it essentially about where and how money is spent on service provision, or is there something else that needs to be considered? While material and systemic grievances are key drivers of the protests, this increasingly common trend of expressing dissent suggests that the available mechanisms to interact and raise grievances with local leadership are hugely inadequate.⁹ As such, inventing new spaces to express their dissatisfaction may be the only effective recourse that communities have to capture the

attention of government. There is, however, little indication that the state has recognised and accepted the resilient and lasting nature of such protest activity. Instead, its focus has been on reforming the existing system of public participation – without necessarily expanding on the repertoire of existing fora and structures – rather than on constructively engaging within this alternative space. Calling for a reform of the ward committee system, for example, will not necessarily mean that the quality of interaction in this space fundamentally changes, thereby dissolving the need for public protests. The state's failure to recognise the importance and endurance of community-initiated spaces for expression of voice may be one of its most serious oversights.

PARTICIPATION, POWER AND VOICE

In its simplest sense, public participation is about giving ordinary people a meaningful opportunity to exercise voice in processes that shape the outcome of development that has a direct bearing on their daily lives. According to Buccus, Hemson, Hicks and Piper (2007:3), public participation is essential in any society as it enhances development and service delivery. Participation is also necessary because it deepens the process of democracy as well as makes government more effective. As Ballard (2008:170) notes, 'where citizens themselves are able to influence decisions, the imperative of addressing suffering becomes far stronger and more direct'. Raising complaints in institutional structures and participation in decision-making, organised protest action, lobbying, and participation in elections all constitute different expressions of voice.

Hemson et al. (2007:10) describes three levels of participation in local government. The first relates to formal electoral participation in the form of voting at national and municipal elections, which achieves the highest levels of participation. The second type of

participation is via official structures or invited spaces. Izimbizo, ward committees and participation in Integrated Development Plans (IDP) are forums where this participation could potentially take place. The third type of participation is of a more informal type characterised by 'marches, memoranda and the setting up of alternative community structures'. Any of these modalities for participation offer an opportunity to exercise citizens' rights¹⁰ by being part of the processes of governance (Cornwall 2002:23). Each kind of participation, however, yields varying degrees of citizen influence. Greenberg and Mathoho (2010:8), drawing on the work of Arnstein (1969), describe participation as something that ranges from manipulation and therapy (a form of tokenism which involves consultation and placation) to delegating full power and control to citizens. Somewhere in the middle of this spectrum are citizen-government partnerships which involve at least some degree of negotiation. According to the authors, in South Africa public participation vacillates between tokenism and partnership.

Cornwall (2002:3-4) argues that 'participation extends beyond making active use of invitations to participate, to autonomous forms of action through which citizens create their own opportunities and terms of action'. She adds that there are two kinds of spaces – 'invited' versus 'claimed' – which exist alongside each other and are both imbued with different sets of power relations. Drawing on the work of Lefebvre and Foucault, Cornwall (2002:8) posits that

spaces in which citizens are invited to participate, as well as those that they create for themselves, are never neutral. To make sense of participation in any given space, then, we need also to make sense of power relations that permeate and produce these and other spaces.

The paper by Afesis-Corplan in this publication elaborates further on how power dynamics infuse both formal/invited and invented/claimed spaces.

Participation within mainstream spaces, i.e. pre-determined structures and processes created by government, is often seen as a means of achieving efficiency and sustainability in development projects. This approach to public participation, however, is increasingly regarded as being constrained by a number of limitations (Sinwell, forthcoming). For example, this approach does not have the potential to transform power relations if participation is seen as only being legitimate when it is confined to parameters defined by the state. Sinwell (forthcoming) critically examines the argument put forward by Cooke and Kothari,¹¹ who advocate that participation in these terms should be abandoned altogether, mainly on the basis that mainstream participation legitimises the interests of those in power while leaving the economic and political structures largely intact because '[t]hose participating in invited spaces may have to do so within the parameters of those who have done the inviting' (Sinwell, forthcoming).

Cornwall (2002:18) concurs, noting that the structure and form of these 'bounded' spaces affects 'how issues are debated within them, how the perspectives of different kinds of participants are viewed, whose participation and contributions are regarded as legitimate, and indeed who gets to participate at all'. Cornwall adds that creating these spaces is an act of power in itself: 'The intervention of powerful actors in creating an ever-expanding number of spaces into which citizens are invited to participate may have the effect of neutralizing energy for engagement outside them and may render other spaces for voice illegitimate' (2002:8). Ballard (2008) echoes this view by suggesting that the 'danger' of formal participation spaces is that they can serve to delegitimise grassroots voices.

In contrast, 'invented' spaces

emerge more organically out of sets of common concerns or identifications . . . These may be 'sites of radical possibility' where those who are excluded find a place and a voice . . . What distinguishes them is that they are constituted by participants *themselves* rather than created for the participation of *others* (Cornwall 2002:17) (emphasis in original)

The potential of this kind of pressure should not be underestimated. A rich history of public participation through social movement activity in South Africa can be used to build an understanding of the importance of these invented spaces among citizens, civil society and government. As Friedman (2006) notes, mobilisation was critical in bringing about the democratic processes of change in the country. Cornwall (2002:20-21), however, warns that even 'alternative interfaces' are not free of power differentials. Because participating in these spaces involves some act of identification, those who do not share in the dominant identity can be further marginalised. Therefore, even though

such spaces can provide the terrain at the margins from which marginalised people can organise...[t]hey can also work to deepen the exclusion of minorities, by representing the voice of the majority or occupying space by asserting the right to speak about and for "the people" (2002:21).

One could argue that representation of voices in any space of participation is one of the key factors that drives the processes and outcomes of a particular type of engagement. This representation is further-

more embedded within unequal relations of power that serve to exclude some segments of a society; usually those who most require a fair expression of their voices.

INVITED SPACES: INEFFECTIVE AND INADEQUATE

Examining the extent of public participation in different spaces for engagement can provide an indication of the perceived expectations and consequences of yielding power in that context. Public participation, or more particularly the lack of it in state-provided spaces, could be regarded as a demonstration of the degree of trust and confidence that citizens have in their state and its democratic processes, including its institutions of participation as well as the propensity for people to vote in elections. A nationally representative survey conducted in 2005 shows that respondents who are satisfied with their government are more likely to vote in municipal elections (HSRC 2006:14). According to Greenberg and Mathoho (2010:14), if citizens

become increasingly sceptical and distrustful of political parties and institutions, and/or view them as corrupt, there is declining political participation. This widening gap between citizens and state institutions results in 'diminished democracy' (citing Hicks 2005).

The one form of public participation that engages the highest number of participants in any country is the casting of one's vote during elections. For Williams (2007:16), local government elections - albeit a formal and regulated type of public participation - is an important form of community participation as a way to influence development strategies and to give a voice to communities.

'The importance of such elections lies not merely in terms of the specific votes cast for particular parties, but also to the extent to which specific communities, albeit through regulated participatory spaces, are allowed to debate and consider issues germane to their everyday, lived experiences in their particular communities' (Williams 2007:16).

PATTERNS OF VOTER TURNOUT IN LOCAL ELECTIONS

Voter turnout in 2000 local government elections

PROVINCE	REGISTERED VOTERS	REGISTERED VOTERS X BALLOT TYPES	VOTES CAST FOR ALL BALLOTS	% VOTER TURNOUT
Eastern Cape	2,552,287	7,165,019	3,918,574	54.69%
Free State	1,227,578	3,682,588	1,807,228	49.07%
Gauteng	4,375,372	9,507,561	4,131,639	43.46%
KwaZulu-Natal	3,508,154	9,272,767	4,379,139	47.23%
Limpopo	1,758,593	5,272,668	2,219,643	42.10%
Mpumalanga	1,419,315	4,257,725	1,896,657	44.55%
North West	1,263,004	3,788,938	1,690,477	44.62%
Northern Cape	452,218	1,343,570	772,609	57.50%
Western Cape	1,955,454	4,576,297	2,663,008	58.19%
Total	18,511,975	48,867,153	23,478,974	48.05%

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RECOGNISING COMMUNITY VOICE AND DISSATISFACTION

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Voter turnout in 2006 local government elections

PROVINCE	REGISTERED VOTERS	REGISTERED VOTERS X BALLOT TYPES	VOTES CAST FOR ALL BALLOTS	% VOTER TURNOUT
Eastern Cape	2,903,106	8,185,243	4,588,790	56.06%
Free State	1,318,408	3,955,075	1,668,557	47.24%
Gauteng	4,785,955	10,310,355	4,379,383	42.48%
KwaZulu-Natal	3,964,817	10,498,327	5,308,650	50.57%
Limpopo	2,146,048	6,436,420	2,679,890	44.74%
Mpumalanga	1,546,728	4,637,692	2,149,802	46.35%
North West	1,554,864	4,664,592	2,128,449	45.63%
Northern Cape	528,657	1,572,467	841,485	53.51%
Western Cape	2,301,371	5,394,471	2,793,554	51.79%
Total	18,511,975	48,867,153	23,478,974	48.05%

Source: Independent Electoral Commission (IEC), www.elections.org.za, retrieved 28 March 2011

Participation in local government elections not only enhances development and service delivery through the election of suitably identified candidates for local office, but it also holds promise for a more effective government by holding elected representatives accountable for ensuring that the principles of good governance are adhered to. In this vein, the 2011 local municipal elections provide a critical opportunity to reinstate good governance by voting for leaders who emulate these principles and who are committed to transparency and accountability. Electoral trends serve as a sobering reality on this optimistic expectation, though, as they indicate that even in areas where service delivery protests have taken place there is a tendency to express party loyalty (Booyesen 2007). In actual fact, local elections in South Africa are generally dominated by national politics, as opposed to local issues and concerns, and the vast majority of local candidates are supported by, and ultimately accountable to, political parties and their centralising tendencies. As such, the recent call for a single election in South Africa from 2014 may simply reinforce what is already commonplace, yet it does raise profound questions

about the quality of local governance and possibly even the independence of the local government sphere in the future.

WARD COMMITTEES

The Municipal Structures Act (1998) and the Municipal Systems Act (2000) are key pieces of legislation in the local government realm that enshrine public participation. The formal system of participation in South Africa has been criticised from a number of perspectives. Overall, the analysis points out that participatory structures installed by the legal framework are ineffective and serve more as consultative forums rather than providing real opportunities for communities to express their voices, particularly for the poor. The forms of participation created by the acts mentioned above 'are overwhelmingly forms of public consultation rather than the actual participation of civil society or local communities in decision-making or implementation' (Buccus et al, 2007:10). Sinwell concurs that participation in these terms amounts to giving consent or being informed about potential interventions, and argues that participation 'may be used to speed up consultant or state driven

development projects, but never to encourage active agency outside of the preconceived government parameters' (Sinwell, forthcoming).

Furthermore, Friedman (2006) argues that formal participation mechanisms created within the institution of the state do not engender participatory governance, partly because the participation processes do not allow for policy to be influenced in a qualitative manner, and partly because the voices of the poor, who would benefit most significantly from participating in government decision-making, are not heard. He goes on to note that 'perhaps the most significant indictment of structured participatory governance mechanisms is that they have not enabled the authorities to understand the needs of the poor' (Friedman 2006:11).

This line of argument should, however, take cognisance of factors that can impede the participation of marginalised groups in processes of participation. For example, in terms of the involvement of women in formal invited spaces of engagement, Sithole, Todes and Williamson (2007) argue that while women's voices need to be heard and represented at all levels and in all types of development initiatives such as IDP processes and Local Economic Development (LED) projects, there are some considerations to take note of in terms of what influences their participation. In under-resourced municipalities, the struggle for bread-and-butter issues can often take precedence over the need to have equitable representation of women in the relevant structures. Water, fuel and food shortages are sometimes the more immediate concerns for poor women, after which participation and equal representation can follow at a distance in terms of priorities, which is an impediment to equitable representation and responsive governance.

Another impediment to qualitative participation by poor communities is the very technocratic nature of the key participatory instruments that municipali-

'perhaps the most significant indictment of structured participatory governance mechanisms is that they have not enabled the authorities to understand the needs of the poor'
(Friedman 2006:11)

ties use. Budgeting and IDP processes are often so technical in nature and are driven by such tight time constraints that poor communities are excluded from participating in these processes from the onset.

Arguably, the centrepiece of the current system of public participation is the ward committee system, which had a great deal of promise embedded within it when installed by the Municipal Structures Act (1998). The purpose of ward committees is to encourage participation from the community to inform council decisions, to effectively communicate between the local council and the community, and to assist the ward councillor with consultation and report backs to the community.

It has turned out, however, to be a highly contested space of public engagement mainly on the basis that it lacks decision-making clout. Smith and de Visser (2009) use six case studies to provide an account of where the problems lie within the ward committee system. They argue that ward councillors are often perceived as extensions of political parties and this is a major impediment to citizen participation in these structures. Similarly, Greenberg and Mathoho (2010: 14) point out that participation may be affected by the perceived manifestation of party politics in ward committees. The restrictions of the powers of these committees, a lack of clarity of their roles, as well as a lack of training and resources and limitations in skills and expertise of ward committee members, are also some of the obstacles to an effective system of participation in this context (Buccus et al 2007, Smith and de Visser 2009).

In practical terms, these committees are flawed in their functioning in terms of sustaining ward committee members' interest and participation, high turnover of members, no clear terms of reference, and poor working relationships between councillors and committees (Smith and de Visser 2009). A lack of access to information is also a problem that hinders the effective working of ward committees as does the limited perceived influence on decision-making within the municipal council (Smith and de Visser 2009:16-22). In the first *State of Local Governance Report* by the Good Governance Learning Network (GGLN 2008:30), the lack of clarity around the roles of ward committees, the lack of resources to conduct their activities, and poor representivity are similarly identified as problems within the ward committee system. The paper by Idasa in this publication elaborates more on this, adding concerns such as the politicisation of ward committees and the tensions between ward committees and Community Development Workers (CDWs), Councillors and traditional leaders respectively. In the context of these weaknesses and shortfalls in this formal space for public participation, there is indeed little incentive for people to participate in them.

Ballard also critically questions whose agendas and voices are represented at ward level meetings, reminding us of Cornwall's warning of the embeddedness of power dynamics in these spaces. It is not only the state that determines these agendas, but local civil society that acts as the representative voice may not adequately or accurately capture the concerns of their constituencies or access the most marginalised voices. The same argument may hold true for the representivity of voices in organically derived spaces.

Similar to Ballard, Smith and de Visser (2009:22) add that 'formally created, government sanctioned 'invited' spaces such as ward committees

crowd out other spaces through which citizens prefer to participate on their own terms'. They go on to note that 'most municipalities have come to rely solely on ward committees as the only legitimate conduit for engaging community members. Ward committees have thus been set up in competition with, or even to the detriment of, a range of other structures and processes through which citizens also participate in local governance' (Smith and de Visser 2009:21). An alternative, and more positive, scenario is presented in the case study on Impendle in KwaZulu/Natal from the Built Environment Support Group (BESG) which illustrates how existing community structures can serve to support ward committees that struggle to execute their mandate in widely dispersed areas.

TRADITIONAL AUTHORITIES

The public participation sphere recognises the importance of a parallel system of local governance in rural areas that creates a role for the co-existence and operation of both traditional authority and a democratically elected local government. Traditional leaders continue to have an influence over matters affecting their communities, such as the administration of land-related issues. As outlined in the White Paper on Local Government which sets the framework of the cooperative model for rural governance, traditional leaders are given formal representation in the Municipal Council. In this capacity, traditional leaders can potentially play an integral role in developing the local area and their communities through their influence in land allocation and the settling of land disputes, engaging with government on the development of their areas including advising Council on the needs of their communities, and promoting the participation of their communities in decisions that have a direct bearing on them.

The dualism in rural governance, however, is not without its own set of complexities and challenges.

Firstly, the overlap between the roles and responsibilities of traditional authority and municipalities can serve as a source of tension and negatively affect the momentum of service delivery. Secondly, unbalanced representivity and inequitable power relationships make it important to consider the extent to which traditional leaders fairly and equitably represent the voices of all members of their community. For example, traditional authorities can unfavourably skew the distribution of rights with respect to land access and service delivery at the expense of women in rural communities. In addition, the extent to which community voice is translated into practice in this dual system needs to be carefully examined, an issue that is further explored in the contribution from the Trust for Community Outreach and Education (TCOE) in this publication. Does it offer a real opportunity to exercise voice and agency or is it another forum that exists as a consensus-building and information sharing platform in which the balance of power in the dual rural system of governance is tipped in favour of one of its parties?

TRANSFORMING INVITED SPACES: RECOGNISING POWER

The weaknesses in formal, 'invited', spaces of participation noted above point to the need to transform these institutional structures of participation. Sinwell (2009 and forthcoming) cautions that simply reforming the system will not lead to a qualitative or fundamental shift in the way these structures operate and adds that reform is unlikely to change the development realities on the ground or transform the power dynamics that shape the nature and purpose of these spaces. Friedman (2006:3) similarly argues that '[c]itizen participation in government – and in particular that of the poor – is more likely, therefore, not when governments create formal mechanisms to ensure it but when they develop attitudes and institutions accessible to

citizen action'. The lack of participation of the poor in formal structures is not due to the inability of the poor to represent themselves in these platforms. Instead, the problem of the inability of the poor to participate lies

in the capacities expected of participants in structured participation exercises – the ability to engage, usually in English, with technical issues in settings where the degree of technical background expected, the ambience and the way in which meetings are run, combine to make these forums at which the voice of the poor cannot be heard, even if they happen to get to the table (Friedman 2006:14).

Importantly, the poor speak with multiple voices:

If policy is to reflect grassroots preferences, these voices need to be heard in conversation with each other in open, democratic processes in which multiple voices compete to win the argument and in which the voices of the poor engage in negotiation and compromise with each other and with those who command power and wealth (Friedman 2006:14).

While there is some level of consensus about the need to transform state-provided spaces of engagement to ensure more meaningful and inclusive public participation, there is less agreement about what exactly needs to be changed and how best to achieve that. Also, while the emphasis is largely on 'fixing' or strengthening existing spaces, such as the ward committee system, much less attention is given to the need to expand the repertoire of invited spaces, through initiatives such as participatory budgeting,

citizen scorecards and community based planning, for example. The paper from the Democracy Development Programme (DDP) in this publication makes a case for expanding the space for community engagement and oversight.

Perhaps more importantly, though, the debate about the weaknesses of the ‘invited spaces’ is largely silent on a critical point alluded to by Friedman in the quote above: that participatory governance involves prioritisation, negotiation, trade-offs and compromise. The temptation to remove or minimise these tricky and complex characteristics and sidestep contestation is perhaps understandable, but not particularly helpful if the intention is to strengthen local governance, (re)build trust in local government and facilitate the expression of voice, particularly by those who are marginalised.

COMMUNITY-INITIATED SPACES OF ENGAGEMENT

Given that the current state-provided spaces of engagement are riddled with limitations that do not allow for the effective channelling of voices or for a negotiated consensus to emerge, it is hardly surprising that communities have elected to engage the state in their own spaces and on their own terms. South Africa has a vibrant history of social mobilisation and communities draw on this legacy as they assert their claims on the (local) state.

There are a wide variety of community-initiated spaces of engagement with the state and two such examples are featured in this publication: the Community Law Centre’s contribution reviews the withholding of rates as an emerging form of protest, whereas the case study on Balfour from the Electoral Institute for the Sustainability of Democracy in Africa (EISA) shows how violence becomes a last resort for a community that perceives government as unresponsive. While some forms of community-initiated engagement are quiet and behind the scenes and

According to Municipal IQ’s Municipal Hotspot Monitor, protest action does not necessarily take place in the poorest municipalities of South Africa, nor do those municipalities with the worst service delivery records show the highest levels of protests. Instead, better performing municipalities tend to register higher levels of protest activity. Relative, rather than absolute, deprivation is regarded as one of the key drivers of the wave of protests.

others are more visible, what has captured the attention of both policy makers and the media in recent years is the rise in community protests. In particular, attention has focused on those protests that have been accompanied by public violence, although these are by far in the minority compared to other forms of expression of voice and dissatisfaction.

Importantly, the dissent that is directed at local government in these spaces can be misplaced. The Ad Hoc Committee on Co-ordinated Oversight on Service Delivery found that some of the issues raised in community protests are priorities of national and provincial government. However, since local government is the interface, this sphere of governance is an easy target to blame for inadequacies that may fall outside of its mandate. On this basis, the Committee argues that ‘municipal service delivery protests’ can therefore be a misnomer (Parliament of RSA 2010: 5). The paper by Planact in this publication picks up on this theme and explores how human settlements development involves all three spheres of government and that community dissent can be wrongly directed at one sphere, i.e. local government.

It is of interest to note where community protests have taken place and what drives them, beyond the often stated lack of service delivery. Some

of these drivers have been identified by the Ad Hoc Committee on Coordinated Oversight on Service Delivery, as highlighted earlier. According to Municipal IQ's Municipal Hotspot Monitor, protest action does not necessarily take place in the poorest municipalities of South Africa, nor do those municipalities with the worst service delivery records show the highest levels of protests. Instead, better performing municipalities tend to register higher levels of protest activity. Relative, rather than absolute, deprivation is regarded as one of the key drivers of the wave of protests. Municipalities that are perceived to have a better service delivery record also serve as attractive settlement options for migrants, who are eventually met with the stark reality of high levels of unemployment and competition for already scarce resources in mostly informal urban areas.¹² According to Municipal IQ, poor communication between municipalities and communities also adds fuel to the fire.¹³ In sum, where in-migration is high and expectations remain unmet, the propensity for community based protests is heightened:

The sense of relative deprivation, and inequality within an urban context, is key to understanding why protests take place... Add to this the marginalisation and exclusion felt by communities in informal settlements and the general desperation for services in these areas, and top it all up with a lack of information from the municipality. In this environment a fast spreading rumour of mismanagement or corruption or nepotism is all the spark needed to set off a violence fuelled protest (Allan and Heese Municipal IQ).

Xenophobia rears its ugly head in these resource-constrained contexts. Competition for land, housing and employment, dissatisfaction with service delivery, and feelings of being relatively deprived, conveniently

place foreign nationals, especially African foreign communities, as the targets of dissatisfaction.¹⁴ This has become particularly evident in the painful episodes of communal violence since 2008, targeted primarily at African foreign nationals. It is worth noting, though, that the warning signs had been there for quite some time, yet government had not taken those very seriously (Harris 2001, Palmary 2002). So while the violence of 2008 in particular thrust the issue of xenophobia into the spotlight, intolerance and prejudicial attitudes have been simmering under the surface of the rainbow nation and have not been adequately confronted.

The public violence that has come to accompany some, but by no means all, community based protests should be of concern to anyone concerned with the state of democracy in South Africa. While the underlying grievances and frustrations may be legitimate and public protest may be the only means to capture the attention of relevant stakeholders, the use of public violence is neither justifiable nor constructive. In any event, it is unlikely to yield a productive response from the leaders whose attention protestors are hoping to capture as their response will focus on the violence that ensues rather than the substantive issues that have set the scene for a call to protest in the first place. Also, while individuals and communities are negatively impacted by this type of engagement, other more symbolic casualties include the critical elements of social cohesion, the freedom of expression, and perhaps most unfortunately the democratic project in South Africa.

It is against this background that Deputy President Kgalema Motlanthe, commenting on violent protests, pleaded: 'In a democratic era, I urge you to use democratic institutions available to us to voice our grievances and demands'.¹⁵ Unfortunately, his plea fell short of a call to review whether the institutions made available for these purposes are sufficiently accessible and responsive.

Also, on its own, a change in institutions, policies, laws and procedures is unlikely to lead to greater participation in regulated spaces. Instead, the state needs to find ways of constructively engaging with communities in these spaces, which essentially means accepting that the terms and dynamics of interaction cannot be determined by the state alone. This is imperative to (re)build trust and confidence in the state and its democratic institutions.

Violent or not, the state's initial/main response to community based protests has primarily been one of intolerance, because these protests fall outside of the parameters of the formal regulated system of public participation. While more recently the state has been pursuing efforts to better understand and respond to the dynamics at play in these spaces (by professionalising the municipal administration, for example, and by reviewing the ward committee system), there does not seem to be an explicit recognition from the state that these organic spaces of voice expression are an important feature of a vibrant local democracy. While there are undoubtedly opportunities to better facilitate the expression of voice and dissatisfaction in formal spaces of public participation by strengthening and expanding both the culture and the practice of participatory local governance, it is important to recognise that community-initiated actions outside of these 'invited spaces' are legitimate expressions of voice and agency.

Also, on its own, a change in institutions, policies, laws and procedures is unlikely to lead to greater participation in regulated spaces. Instead, the state needs to find ways of constructively engaging with communities in these spaces, which essentially means accepting that the terms and dynamics of interaction cannot be determined by

the state alone. This is imperative to (re)build trust and confidence in the state and its democratic institutions. Accepting the expression of voice in this context can in and of itself build trust since participation is 'not just a means to achieve distributive ends, but also a means to alter processes and relationships themselves' (Ballard 2008:172). An equally critical element is to capacitate especially those on the fringes of society to equally and fairly exercise their democratic rights to shape the conditions that affect their lives.

Whereas the expression of community voice and dissatisfaction should be an issue of interest to the democratic state, it should equally arouse the interest of other stakeholders in the local governance sector, in particular organised civil society. While the determination of poor communities in particular to claim spaces of engagement with the state gives much cause for celebration, it is important not to be oblivious to inherent dynamics of power and inclusion/exclusion, the possibility of exploitation and questions of durability. The contribution from Isandla Institute in this publication reflects on the implications of the inadequacy of 'invited spaces' and the emergence of more radicalised 'invented spaces' for the traditional 'intermediary sector', i.e. NGOs.

CONCLUSION

The recurrence of community protests have brought into sharp focus the challenges pertaining to local government and, more specifically, the narrow base for meaningful and inclusive public participation in local governance and development. This paper has sought to surface a number of critical points. First, whereas the current focus on formalised spaces for public participation is both welcome and needed, more critical is the need to (re)instil a *culture of public participation*, which would find expression in a wide variety of institutional forms as well as attitudes

and relationships. Secondly, a vibrant local democracy is characterised by a combination of 'invited' and 'invented' spaces. The ability to provide inclusive 'invited' spaces is undoubtedly important in taking the edge off highly radicalised modes of social mobilisation that arise out of a deep-seated frustration with an inaccessible and unresponsive state. But ultimately, action and engagement by communities of interest on their own terms, as opposed to terms set by the state (or any other actor in local governance), is a positive trait of local governance. Thirdly, both 'invited' and 'invented'

spaces are permeated by power dynamics, which can serve to deepen exclusion of marginalised groups. Last, but by no means least, participatory local governance is ultimately a process of negotiation, deal-making, prioritisation and tradeoffs for all involved and affected. Shying away from these deeply political dimensions hollows out the essence of participatory governance, leaving in its place a formalistic and highly unsatisfactory edifice. At the dawn of the third term of democratic local government, the time has come to get real about public participation.

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ENDNOTES

¹ The authors would like to thank Chantelle de Nobrega and Annette May for their valuable feedback and inputs.

² A distinction is made between 'invited' spaces, which are formal opportunities for public participation that the state provides for, and 'invented' spaces, which originate from citizens and communities themselves, outside of the formal channels and forums of communication and engagement. While there are countless examples of communities organising themselves in 'invented' spaces, more recently community based protests have come to the fore as a key example of engaging the state outside of formal opportunities for public participation.

³ Cogta. 2010. 'Minister, MECs Present Multi-pronged Local Government Intervention to Turn the Tide on Service Delivery Protests.' 4 March. www.cogta. <http://www.cogta.gov.za/index.php/news/173-press-a-media-releases/116-minister-mecs-present-multi-pronged-local-government-intervention-to-turn-the-tide-on-service-delivery-protests.html>. Retrieved September 21, 2010.

⁴ Cogta. 2010. Minister Shiceka Calling for Skilled, Competent and Capable Cares for Local Government. 6 September. <http://www.cogta.gov.za/cgta/index.php/news/1-latest-news/143-minister-shiceka-calling-for-skilled-competent-and-capable-cadres-for-local-government.html>. Retrieved September 21, 2010.

⁵ Cogta. 2010. CoGTA Initiates Process to Identify Legislation That Impedes Service Delivery. 26 August. <http://www.dplg.gov.za/index.php/news/174-yunus-carrim/142-cogta-initiates-process-to-identify-legislation-that-impedes-service-delivery.html>. Retrieved September 21, 2010.

⁶ Cogta. 2010. Legislative Review Programme Key to Unlocking Service Delivery Impediments. 16 August. <http://www.cogta.gov.za/index.php/news/1-latest-news/140-legislative-review-programme-key-to-unlocking-service-delivery-impediments-.html>. Retrieved September 21, 2010.

⁷ Bond, P. 2010. Parliamentarians Stick Their Heads in the Sand When Digging into Service Delivery Protests. Accessed from <http://ccs.ukzn.ac.za/default.asp>. Retrieved September 23, 2010.

⁸ The GGLN submission on the Municipal Systems Amendment Bill to the Department of Cooperative Governance (14 June 2010) and to the Portfolio Committee on Cooperative Governance and Traditional Affairs (10 September 2010) elaborates further on the identified limitations and strengths of the proposed amendments.

⁹ In 2010 the GGLN produced the report 'Ethical Leadership and Political Culture in Local Government', which highlighted the challenges pertaining to local leadership, including lack of accountability, corruption and the blurring of the political-administrative interface, amongst others.

¹⁰ The notion of 'citizens' is not meant in the exclusionary sense of those holding South African citizenship, thereby excluding non-nationals who are making life and contributing to the local economy in South Africa. Rather, it is used in the broader sense of 'post-national citizenship', which involves the extension of rights to non-citizen immigrants.

¹¹ Cooke and Kothari. 2001. *Participation: The New Tyranny*. London: Zed Books.

¹² Municipal IQ. 2009. Reading the Figures in the Flames to Find the Future of Protests. *Business Day*. August 24.

¹³ Municipal IQ. 2009. Urgent Messages in the Clattering Stones of Delivery Protests. *Business Day*. July 16.

¹⁴ Municipal IQ. 2008. Service Delivery Failures and Xenophobic Attacks. *Business Day*. May 20.

¹⁵ Reuters. 2010. End Violent South African Protests – Deputy President. March 21.



EQUITY AND LOCAL GOVERNANCE

By Glenn Hollands, Project for Conflict Resolution and Development (PCRD)

...we are living in an age of hope and a government that cares. And there is a massive effort by all spheres of government to address the basic, social needs of our people. In particular we are pushing to achieve a number of sanitation targets-which will see us eradicating buckets in established areas by the end of this year...¹

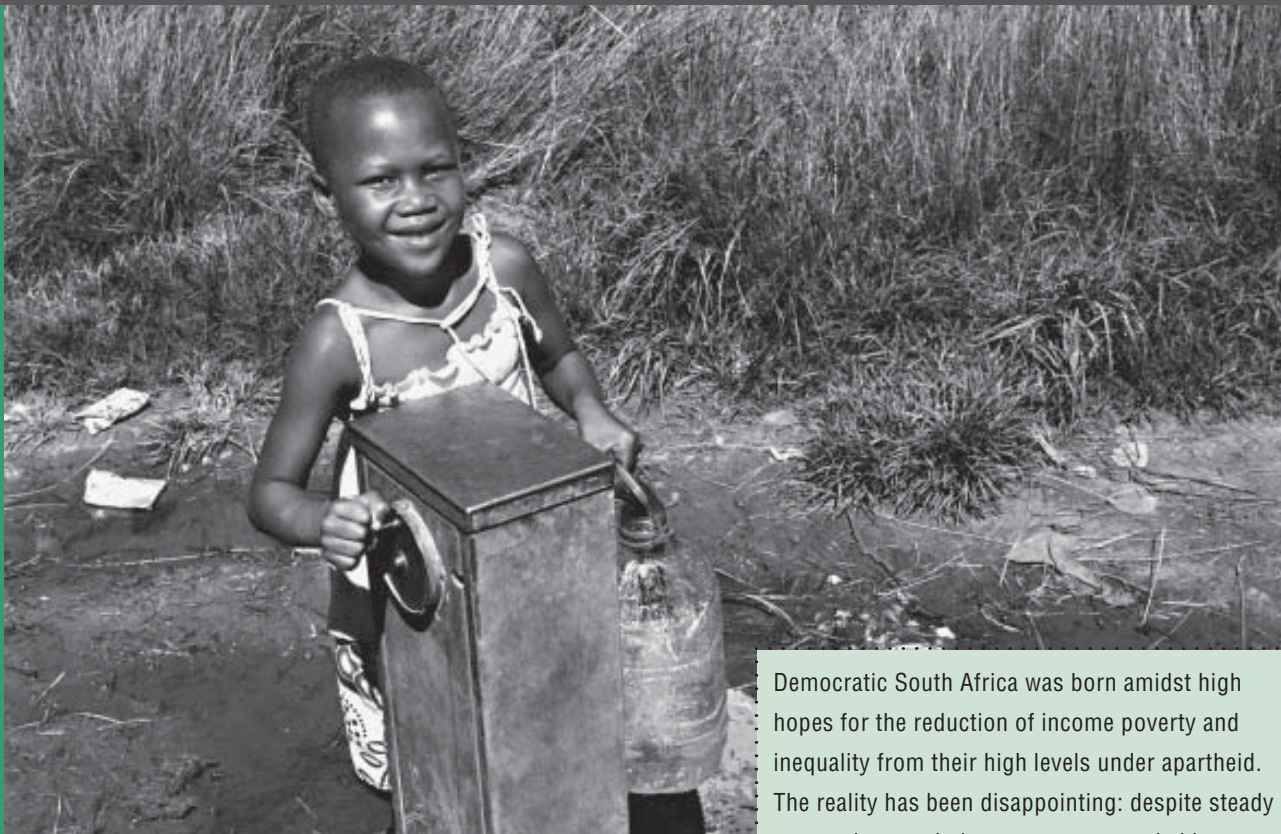


PHOTO: STRING COMMUNICATIONS

MUCH OF THE frustration that emanates from organised civil society, social movements and neighbourhood activist groups stems from the fact that South African local government and related organs of state continue to hold up visions of equality and prosperity, while, for ordinary citizens economic life is precarious indeed.

Democratic South Africa was born amidst high hopes for the reduction of income poverty and inequality from their high levels under apartheid. The reality has been disappointing: despite steady economic growth, income poverty probably rose in the late 1990s before a muted decline in the early 2000s, income inequality has probably grown, and life expectancy has declined. The proximate causes are clear: persistent unemployment and low demand for unskilled labour, strong demand for skilled labour, an unequal education system, and a social safety net that is unusually widespread but nonetheless has large holes (Seekings 2007: Abstract).

In 2009 the Department of Cooperative Governance and Traditional Affairs (Cogta) was forced to concede in its national municipal assessment report, that more than three million households out of about 13 million were receiving below a basic level of service and ‘...600 452 households need to be served with sanitation facilities per year until 2014 to eradicate the existing backlog’ (Cogta 2009:44).

As Borat and Khanbur note, the aggregate driver of inflation for poor urban households between 1998 and 2002 was the cost of water, electricity, sanitation and transport – the provision of better municipal services, whilst a first step out of poverty, also presented problems of deepening household debt (2006:8). The problem seems to lie not so much with the affordability of services but the management of the national fiscus in the longer term to ensure the services are sustained. Local economies and municipal financial management are increasingly de-linked from these responsibilities:

At 22.4% of total operating revenue in 2007/08, government grants are the second largest source of revenue for municipalities. The increasing reliance of municipalities on local government transfers is largely due to the rapid growth in the local government Equitable Share and in national conditional grants to local government, as well as the abolition of the RSC levies (Cogta, 2009:58).

Why do governments ‘set themselves up for failure’ in this manner? Much has to do with the powerful notion of equality and the understanding that the state can and must extend its influence in society by taking up this complex social cause. The obvious reason why states concern themselves with equality, beyond the ambit of public services and administration and into the difficult arena of economic rights, is

stability. Growing inequality, as Fakir (2009:7) points out, signals the instability of the state and, when accompanied by deepening poverty, a crisis of governance is imminent.

This paper tries to show why government undertakings to advance equality need to be understood in terms of the state’s obligation to rule and ensure homogeneity and stability. Further it examines the feasibility of reducing equity considerations down to a set of procedures and indicators that can be applied within local governance. The use of the term in the context of local public administration also requires a re-examination of the origins of the concept of equality and its meaning beyond the confines of bureaucracy. This paper tries to use the term equity or equality in a cautious manner that recognises both its meaning in broad political discourse and its usage in very specific governance settings (public management approaches currently in use in South African local government.) It looks at the possibility that notions of equality have been distorted through the efforts of the state to ‘measure equity’ in public management and administration systems operated by local government.

RECENT POLICY INTERPRETATIONS OF EQUALITY

Analysts and consultants are invariably anxious to recognise that principles of equality are strongly entrenched in the South African constitution and the resulting framework of legislation and policy.

The particular values that inform the meaning of ‘equity’ in South Africa are provided for within the Constitution and speak to the attainment of human dignity, equality and the advancement of human rights and freedoms. The strongest provisions for equality relate to the principles of non-racialism and non-sexism. Within the Constitution, the Bill of Rights obliges the state to recognise and protect human rights and to interpret equality in such a way that all are equal before the law and that the state >>

>> does not discriminate on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (Mbumba Development Services 2009:9)

These acknowledgements are invariably a precursor to a conclusion that despite this strong policy framework, inequality persists in South African society. The dominant argument to explain this gap between policy and economic reality has been the critique that neoliberal forces have subverted what are generally sound policy principles. 'Successive administrations since 1994, for example, have been criticised by the labour movement and other elements of civil society of pursuing a neoliberal agenda where citizens needs are overruled by conservative public spending policy that focuses primarily on limiting public spending and keeping inflation indicators in check' (ibid).

A different emphasis is found in the explanation that government simply lacks the institutional capacity, operational efficiency, resources and appropriately designed programmes to deliver on its equality pledge. Van Donk (2007:2) encapsulated this view:

There are many factors that may have contributed to this, including ongoing institutional reform, capacity and financial challenges, the overwhelming scale of service needs, and weak social mobilisation on these issues. In addition, the progressive ideals of the White Paper have not (yet) been sufficiently translated into clear programmes and assigned responsibilities that can be implemented by municipalities of varying sizes, with clear indicators for monitoring progress and enforcement.

The measures of equality suggested by Van Donk have gone further than others in resolving definitional issues. Generally, however Van Donk, Mbumba and other researchers² assisting government programmes, and the Department of Provincial and Local Government (DPLG)³ Equity Programme in particular, have had to restrict their focus to conceptual parameters already defined in South African policy frameworks and the government originated terms of reference. Essentially this looks at issues of equality in terms of groups defined by gender, HIV/ Aids status, age and disability and relative vulnerability and marginalisation. The question of whether local government, as an organ of state, is best placed to address problems of inequity was not deeply explored – instead much of the research simply linked the imperative for greater equity to local government's service delivery and development mandate.

Much of the research work on equity and equality conducted between 2006 and 2008 for the Department of Provincial and Local Government was advocacy orientated. It was suggested that equity measures relating to gender, HIV/Aids, disability, youth, children etc, were best understood as 'cross-cutting issues', in that they occurred within different government functions i.e. poverty reduction, staff development, planning etc (Van Donk, M. 2007: 3) A further strategic tool was the idea of mainstreaming, defined by Van Donk '...as a process towards the achievement of transformation and development goals, more specifically equity, empowerment and representivity' (ibid). Van Donk developed a comprehensive analysis of policy and legislation relevant to equity considerations in local government while government produced a set of framework documents using the same equity categories. These resource manuals provided guidelines to municipalities on how to implement policies, plans, programmes and

actions that protect and promote the rights of persons within the respective equity categories.

Examples include:

- Office on the Status of Disabled Person's 2006 Guide for Municipalities in the Implementation of Policies, Plans, Programmes and Actions that Protect and Promote the Rights of Persons with Disabilities.
- Framework for an Integrated Local Government Response to HIV and Aids (DPLG 2007)
- The Framework for Youth Development at Local Government (DPLG 2008)
- The Gender Policy Framework for Local Government (DPLG 2007)

In its attempt to translate 'equity' into a practical set of criteria against which the performance of local government can be assessed, the DPLG established a chief directorate for equity and development. This unit began commissioning research into relevant indicators and systems for measuring equity in local government. The department also commissioned a handbook entitled *Guidebook for Mainstreaming Equity Considerations in Local Government (2008)*⁴. The guidebook, was never finalised however it framed some of the core principles that seem to underpin the sector-specific framework documents already described.

Definitions of 'equality' and 'equity' in the literature related to the work of the equity and development unit are never fully clarified, perhaps understandably, given the complexity of these terms and their use in different contexts. The incomplete Guidebook already referred to cannot be regarded as an 'official instrument of policy' but it does offer a rare glimpse of the conceptual foundations of other policies related to equity:

The term '**equality**' means different people (e.g. women, men, able-bodied people, people with disability, younger and older people and people living with HIV and Aids) have equal conditions for realising their full human rights and potential, and are able to contribute equally to development efforts and benefit equally from the results. It entails that the underlying causes of discrimination are systematically identified and removed in order to ensure equal opportunities and a society based on non-discrimination. Working towards equality does not necessarily imply treating the various designated groups in exactly the same way. This is where 'equity' comes in.⁵

'**Equity**' refers to the process of being fair to the various designated groups and looks beyond equality of opportunity as it requires 'transformative change'. Equity recognises that different measures might be needed for the various designated groups where they reflect different needs and priorities or where their existing situation means that some groups need special or additional supportive measures to ensure that all are on a 'level playing field'. This could mean that specific actions are necessary to enable equality of opportunity between people (e.g. women, men, able bodied people, people with disability, younger and older people and people living with HIV and AIDS). As the theoretical literature notes, ensuring real equality of opportunity often means treating certain groups differently.⁶

The use of the term 'equity' poses particular problems of definition since it has very distinct meanings in relation to economics, accounting and finance, law, behavioural science etc. A widely accepted

A well-established convention, for example is that in societies that subscribe to equality, all have equal access to advantages and opportunities

usage relates to the imperative to ensure that welfare or other state benefits are fairly distributed.⁷

One useful distinction suggests that equity refers to the institutions that promote equality and how these institutions are viewed – whereas equality can be measured by comparing households or individuals in quantitative terms (relative wealth, Gini coefficients etc), equity is more about how institutional fairness is perceived. This begins to make sense in a context where equity is used as an alternative to fairness in relation to a specific institutional practise.⁸

In October 2007 the Department of Provincial and Local Government reported to Parliament's Joint Monitoring Committee on the Status of Women that equity and development programmes categorised as Youth, HIV and Aids, Gender and Disability were being 'mainstreamed' within local government with a focus on information management and special projects. Mainstreaming, it was explained, would ensure recognition of all groups, and ideally programmes should be incorporated into Integrated Development Plans of municipalities.⁹

This programmatic approach to the advancement of equity and equality may have seemed sound at the time but it was constrained by important conceptual limitations and logistical constraints. For one, it paid little heed to the broader political traditions that have shaped the meaning of equality. A well-established convention, for example is that in societies that subscribe to equality, all have equal access to advantages and opportunities. However as legal scholar Jewel Amoah (2004:8) notes, 'This does not mean that everyone will arrive at the same place – for that is completely counter-intuitive to the

notion of diversity that equality seeks to protect. But rather, it means that people will not be arbitrarily or unfairly denied access to opportunity.' But equality of outcome is very much a component of the equity discourse in government – the most significant equity measures look not just at opportunity but who finally got the tender, was appointed to the job or received the promotion. This complexity is explored further in the theoretical section of this paper.

Secondly, the rationale of 'designated groups' is taken for granted and the complexity created by intersecting identities is noted but not resolved.

...the contextual realities and intersection of various forms of inequality require an analysis of the various designated groups i.e., women, children, the youth, the elderly, people with disability and people living with HIV and AIDS, not as isolated but as overlapping and intersecting. The challenges of HIV and AIDS, gender inequality, unemployment and underdevelopment impact in multiple forms on individuals who exist on a continuum of forms of exclusion and inequality.¹⁰

This is the main focus of Amoah's (2004:10) concern with the difficulty of regarding equality as something that be understood in terms of group rights, 'Individuals are grouped together on the basis of race, religion, age, gender, economic status, etc. And so at any given time, individuals are members of several groups – depending on the nature of the comparison and social context at play.' For local government, a notion of equality based on group rights, is difficult to action in terms of its service and facilities mandate since its services and core functions relate mostly to households and individual service consumers. It may be more realisable in relation to development programmes and projects that focus on groups of beneficiaries.

The idea that broad social equality can be advanced through the affairs of local government is also questionable, especially when the broader political economy is given only cursory attention. As Amoah notes, equality is a fluid and changeable concept whose, ‘...meaning and content also necessarily change with time and circumstance’ (2004:9). Bound by particular circumstances, time and the nature of the public service in question, equality safeguards seem to have more practical value in relation to a specific line function or service – rather than the idea of a complex bundle of mixed social, human and economic rights. If the current political economy in South Africa and indeed the global capitalist economy, explicitly entrenches inequality, strategies to combat this through organs of state should reflect a realistic assessment for the scope of impact. Municipal government, particularly at its current level of performance, has little prospect of meaningful impacting on broader inequity within society. At best it can restructure service patterns and other practises that reinforce inequality and make modest provision for counteracting the worst inequities of the market. Many role-players in municipal government would argue that this is exactly what the South African local government system has set out to do.

Tackling inequality issues via local government functions is therefore at risk on two fronts; firstly a tendency to overestimate what can be achieved within the specific parameters of municipal functions and secondly adopting a limited understanding of equality. As Mbumba noted in its *Mainstreaming of Equity Issues within Local Government: Report on Pilot Survey* (2009: 9), ‘... successive theorists have struggled to apply a very rich intellectual discourse around equity and equality to the practicalities of government and governance.’

BASIC THEORIES OF EQUALITY

The idea that democracy is at the very least conducive to more equality is inherent in the South African constitution and many of the laws and policies that shape our political system. The notion however of a causal link between democracy and reduced inequality needs to be approached with caution. Classic political thinking, Plato and Aristotle in particular, suggests that democratic justice is achieved when numeric equality ensures that a majority of citizens approve of the mechanisms and substance of their rule – justice and what is right, is therefore determined not by a complex examination of principles and values but simply by the endorsement of the majority (Ebenstein, W. 1969:102). Ancient Greek notions of democracy did not preclude differences of wealth or stature between citizens and equality was more of a hypothetical notion of the administration of justice than one that applied directly to persons and their social and economic circumstances.

Faced with an intractable reality that successive government reforms all replicated some degree of inequality, many societies have reconciled to the view that the ultimate source of sovereignty or legitimacy derives from the will of the majority, expressed through an elected people’s assembly (ibid, 267). Modern political reforms, however, inevitably driven by new elites, were confronted by the reality that the largely poor and uneducated masses would hold sway under true democracies. Equality was therefore held in check by reservations about who was fit to govern (ibid). Lummis notes that in the medieval times ‘the common people’, particularly during rebellious periods, were forced to invoke a religious rationale in their opposition to a class-based society (1992: 40).

States that espouse equality are cognisant not just of social justice but that equality is a key element of stable rule. Thomas Hobbes drew from the classic

Greek discourse which postulated that humankind has a natural propensity for 'dominion' i.e. to seek power over others. Without accepting equality, humankind was likely to exist in a constant state of conflict. Hobbes thus framed a notion of equality that included a homogenising element – people as uniform elements and 'constituent parts of the great machine of the state...' (ibid). Drawing from Alexis de Tocqueville, Lummis describes how the concept of democracy became synonymous not simply with a particular system of government but a way of life (in this case early America) dominated by the drive for material gain and thus requiring the legitimating principle of equality of opportunity – 'a system which generates homogeneity and economic inequality, and pronounces the consequence just' (ibid).

Tocqueville however also warned of the advent of a notion of equality and popular government that would ostracise competition and dissent and give rise to nations that were little more than 'a flock of timid and industrious animals of which the government is the shepherd' (Ebenstein 1969:536). Such concerns heightened with economic modernity and John Stuart Mill's views on the risks of conformity under industrialisation (ibid: 544).

The idea that equality mainly relates to 'equality of opportunity' remains pervasive in liberal democracies (Lummis 1992:43). This does not require that all citizens be on an equal footing but simply that everyone be subject to the same 'rules of the game'. As Lummis notes, this pre-supposes an outcome where there are winners and losers i.e. inequality. The system assumes competition but also generates some degree of homogeneity – the economic inequality that it produces is regarded as just

because every citizen has the same opportunity to succeed or fail (ibid). Seymour Martin Lipset, building on the work of Tocqueville, showed that America, after adopting these principles, remained a deeply unequal society despite its commitment to constitutional equality and equal opportunity. (Lipset 1991: 4) Lipset shows that successive administrations in the United States attempted to implement equality of opportunity however conservative groups within civil society, including labour and business, conspired to defeat the policy (ibid). Furthermore, US citizens tend to support compensatory measures to ensure that people enter a competitive society on an equal footing e.g. targeted training, financial aid and relaxing job entry criteria for certain groups. They do not support efforts to pre-determine the outcome of such competition (ibid). This cannot be entirely dismissed as evidence of conservatism or prejudice. Lipset draws on Shelby Steele in outlining the contention that some affirmative policies are seen as attempts to by-pass the obligation to develop formerly oppressed people to a point where they secure their own rights and representation – a surprising degree of resistance has therefore emanated from the intended beneficiaries of such policy (Lipset, 1991: 5).

Development strategies in South Africa whether driven by national or sub-national government have been positioned to be ambitiously transformative. More consideration could have been given to Lummis' warning that 'It is a fraud to hold up the image of the world's rich as a condition available to all. Yet this is what the economic development mythology of "catching up" does. It pretends to offer to all, a form of affluence that presupposes the relative poverty of some.' (1992:47) Lipset further notes that even social democratic governments in Sweden and Australia have generally limited wage growth, increased privatisation, reduced income tax and cut-back on welfare measures (1999:11).

'economic development mythology of "catching up", pretends to offer to all, a form of affluence that presupposes the relative poverty of some.'

EQUALITY AND THE PUBLIC SERVICE

If inequality is an inherent aspect of the political economy in liberal democracies, to what extent can the machinery of government and the public service ameliorate this? There is a vast body of literature devoted to the manner in which public management systems have attempted to tackle inequality. This paper can trace only a few broad trends.

PLANNING

Norman Krumholz, a former director of planning in Cleveland USA, examined urban redevelopment and local economic development strategies for the regeneration of down town areas. He found that this often occurred at the expense of the poor in nearby residential neighbourhoods and in some instances worsened their plight or resulted in their relocation (2003: 224) In a series of case studies, Krumholz found that these strategies were supported by public subsidies but were often unplanned, and were led by private developers or real estate entrepreneurs whose objectives were private. Some of Krumholz's findings suggest that equity issues are best defined in relation to very specific local neighbourhoods and very particular urban development issues and that a case study approach rather than broad surveying may be the best manner of identifying the marginalised and incorporating their concerns into projects and urban design options (ibid).

Paul Davidoff focuses on the different interests to be represented through planning and urges that, 'Planning must be so structured and so practised as to account for this unavoidable bifurcation of the public interest.' Davidoff argues for pluralism in planning and more space for independent and critically minded planners to make their input into the process on behalf of minority or marginalised groups. Planners should be capable of developing

advocate-type relationships with particular clients (who could be designated marginalised groups) and helping clients to think through and shape their views before bringing these to an inclusive planning process characterised by debate and consideration of competing proposals (2003: 212).

Richard E Foglesong perceives a dilemma for urban planning in what he refers to as the 'capitalist-democracy contradiction'. Foglesong's Marxist critique suggests that capital faces the problem of retaining control over urban spaces and infrastructure that are necessary to reproduce labour and maintain capitalism, whilst appearing to democratise the control of urban land. In Foglesong's view, planners are caught between the democratic imperative to reduce inequality and respond to the needs of the vulnerable and capital's need to retain control of land and the built environment as important commodities in the means of production (Foglesong 2003: 103).

PUBLIC ADMINISTRATION

H G Frederickson an American theorist on public administration provides a useful outline of the origins of equity as a concept within public administration literature. Equity, explains Frederickson, was initially treated purely as a matter of fair or equitable treatment of public administration employees i.e. a concern of business organisation. (undated: 1) Frederickson argues that the notion that public administrators act simply as the neutral implementers of law and policy is not only outdated but inherently flawed. Grappling with matters of fairness, justice and equality, administrators are forced to confront the notion of social equity. (ibid: 2) The concept was further explored by Shafritz, and Russell who offer the following definition of social equity:

...fairness in the delivery of public services; it is egalitarianism in action - the principle that each citizen, regardless of economic resources or personal traits, deserves and has a right to be given equal treatment by the political system (2005: 434).

Frederickson and others make a case for social equity being achieved by professional bureaucrats exercising broader discretion in decision-making than would normally be accepted within the conventional versions of the political-administrative model.¹¹ The need for checks and balances between professional staff and elected political leadership has recently come back into the South African discourse on local government.¹²

Of direct relevance to the South African programme of equity indicator development for local government, is Frederickson's blunt assessment of such technicist interventions, 'I respect those who are working on social equity indicators, social equity benchmarks and other forms of statistics, but the prospects of such labours for success seem to me to be limited. Furthermore, statistics and data lack passion and smother indignation' (undated:11).

By contrast, in his essay *Social Equity and Social Service* Stephen R Chitwood argues that social equity is not misplaced as an element of productivity measurement in government and therefore should be integrated into such systems (1974: 172). Whilst productivity measures look at quantity and quality of government services, social equity looks at the distribution of these services and their effect. Chitwood shows that issues of local government service distribution can be measured according to proportionality as determined by client needs and other determinants that go beyond the rule of 'willingness and ability to pay.' In the case of

the latter, it could be argued that many of Chitwood's principles are already reflected in the policy of free basic services.

TESTING EQUITY INDICATORS

As discussed the new public administration paradigm links the idea of 'social equity' to systems for service efficiency. The result is that equity is regarded as a value that must now also be capable of being measured and benchmarked. However reducing complex notions of equity to a set of public management indicators is no easy task. Furthermore the idea that this may be undertaken in order to allow a national government department to monitor the equity performance of another sphere of government, makes the task even more challenging.

The DPLG's Equity and Development Unit set out in 2008 to test an instrument for measuring equity within municipal functions for improved monitoring and reporting by local government. The point of departure for framing the indicators for measuring equity were the six designated groups, namely, gender, HIV and Aids, youth, children, disability, and the aged. Using the groups as the template for analysis, Mbumba Development Services, the service provider, commissioned by the GTZ-Strengthening Local Governance Programme, (GTZ-SLGP) on behalf of the department, was required to examine the institutional capacity of municipalities to address equity issues both within its ranks and in terms of the local community. Equity evaluation would cover patterns in internal employment policy and practise, council and managerial leadership, programme design, IDP, planning, budgets, law-making, service partnerships with civil society and performance management.

Indicators were developed for all the designated groups and formed the basis of a pilot survey in order to test the instrument and reflect generally on

municipal capacity for any form of equity reporting. A set of 10 to 16 indicators was refined for each of the designated groups. The indicators were structured according to the local government functions, described above. The structuring of the indicators was similar but not uniform for each designated group, for example. only the disability sub-set included 'buildings, equipment and facilities.' The following is an example of an indicator related to disability: % of sports, recreational and cultural facilities operated by the municipality that accommodate disabled usage or operate programmes that target disabled people

The sample for the pilot survey was 32 municipalities (roughly 11%) spread evenly over provinces and stratified by category (metropolitan, district and local) and further stratified within these categories according to capacity as assessed by the Municipal Demarcation Board (low, medium and high.) The rate of return of questionnaires was poor at 14 out of 32 (approximately 44%) and none of the district and metro municipalities responded.¹³ The survey was supplemented by focus groups with equity oversight structures at provincial level.

FINDINGS

Given that this was a very limited pilot survey, the findings related more to the feasibility of using the respective indicators and basic assessments of municipal reporting capability and understanding the theoretical framework for equity measurements. Any comments on actual equity practices are tentative and illustrative only in the broad sense.

- Across the designated groups (i.e. youth, gender, disability etc.), many of the questions were found to be impractical for future studies of a similar nature due to the unreliability of the returned data. Many of the questions are only feasible if supplemented by a process for verification.
- The majority of respondent municipalities for example claim that up to 50% of their goods and services are procured from youth owned enterprises – the opportunity to verify this theoretically exists in supply chain management records.
- There is limited capacity within local government to effectively engage with equity issues involving its interactions and transactions with civil society. Reporting on issues of internal equity e.g. the percentage of senior managers who are women, appears to be more feasible as it is underpinned by legislated employment equity reporting requirements.
- Information management capability is weak and the ability to disaggregate existing data bases such as indigent registers by gender, age, HIV and Aids status etc is rare.
 - Claims in respect of the percentage of women headed households receiving basic services fell in the ranges of 26% to 50% and 76% to 100% but there was little clear evidence that municipalities had reliable data for such claims.
 - Most also claim that HIV and AIDS related targets are part of their IDP but none can provide examples.
- A significant degree of equity regulation already occurs through policy and legislation e.g. the Employment Equity Act and associated statutory reporting frameworks – duplication of this through additional reporting obligations should be avoided
- In the majority of respondent municipalities, women were reported to constitute 25% or less of the senior management.
- Equity intent is strong - all municipalities except one claimed to have a policy dealing specifically with youth and all except two claimed to have

some form of capacity building intervention to enhance youth participation in governance and civic affairs

- Most respondent municipalities were confident that some budgetary provision is made for facilities specifically for children and that organisations representing children's interests participate in IDP forums.
- The ability to direct basic services on a preferential basis or determine what percentage of any of the designated vulnerable groups access such services does not seem to exist.
- Nearly 75% of respondent municipalities claimed that the needs of the disabled were factored into skills development plans – such claims could, in theory, be verified through employment equity reports and the workplace skills plans.
- Equity considerations tend to be taken up once they are formalised in policy and legislation e.g. few municipalities claimed to have policies dealing with older persons and even those that did, noted that the policies were still being developed. This is because the group 'older persons' was a relatively recent addition to the ranks of those designated vulnerable.

The evidence revealed by the pilot survey does not allow for any sweeping conclusions on the manner in which equity is understood and applied in local governance. Tick-box surveys, standardised reporting formats and performance reporting generally conceal the critical inter-linkages and multiple forms of vulnerability that exist across the designated groups in relation to local government services.

Although municipalities seem to be generally sensitised to equity concepts and can readily engage in the discourse, there is less indication that they are able to apply this to their service and development obligations as a set of well formulated strategies or performance measures.

Many of the indicators framed in the test exercise were clearly too broad ranging in terms of trying to measure, for example, actual economic impact for vulnerable groups. More feasible were the indicators that looked at opportunity and access. Reporting on technical indicator sets that purport to measure equity across designated groups is unlikely to advance equality in relation to services and development opportunity. Alternative approaches which could be considered include:

- Case studies on particular scenarios where vulnerable groups have had to input into service or facility design, planning, budgeting or other municipal functions;
- The development of basic guiding templates for equity reporting in annual reports and engagement with vulnerable groups prior to such reporting – partnerships in doing equity audits could also be considered;
- Technical reporting i.e. equity in institutional patterns, budget allocation can frequently be derived from existing reports to National Treasury, Cogta and the Auditor General;
- Some level of monitoring is feasible from the statutory frameworks within which local government operates such as the Employment Equity Act and associated reporting; and
- Vulnerability profiling can be applied to customer satisfaction or quality of life surveys which may allow better understanding of individual experiences of vulnerability in different settings.

Rather than reducing equity down to yet another function of new public management methods, there is scope for a more realistic approach for tracking equity in basic institutional considerations of front-line service, gender balance in staffing and leadership, access to municipal amenities and facilities. More recognition also needs to be given to the equity

benefits of existing policy frameworks such as free basic services and employment equity provisions.

CONCLUSION

The purpose of this paper is not to suggest that the South African government's initiatives to advance equality in society and equity in the functioning of state organs are entirely disingenuous. These endeavours however are best viewed against the historical lessons that democratic systems do not necessarily advance equality even when they adopt the mantle of social democracy. Furthermore, while public administration systems can be geared towards increasing equity in the manner in which citizens use and experience government services and facilities, they have very limited impact on the fundamental economic and social inequality generated by the market. Any state initiative that ignores this and purports to advance significant changes in equality and equity through managerial tools like indicator sets and mandatory reporting formats needs to be viewed with great caution.

As Fakir and others have noted, persistent inequality gives rise to disquiet in society and lack of confidence in the state – for reasons of administrative and political stability therefore, government must be seen to redress inequality. Government programmes however tend to hold out a vision of equality based on non-realizable or unsustainable benchmarks – to paraphrase Lummis, the promise of affluence for all is premised on the disadvantage of some. Even with huge improvements in administrative efficiency and vastly improved integrity in resource deployment (which seem increasingly unlikely), government cannot deliver on such

promises. More importantly for the general thesis of this publication, citizens may begin to make unfavourable comparisons between what is promised and what is delivered. Coupled with a growing sense that the real imperative for such programmes are political imagery rather than material change, citizens disquiet and sense of being 'short-changed' is understandable even though the state has been a significant source of social benefits and services over the last decade and a half.

In many respects therefore, the dilemma of the South African state in confronting mounting dissatisfaction amongst citizens is unsurprising and unremarkable. Having committed to a political economy

These endeavours however are best viewed against the historical lessons that democratic systems do not necessarily advance equality even when they adopt the mantle of social democracy.

that guarantees inequality as an outcome, the state is forced to use the public service and local government to ameliorate the social consequences of gross economic inequality. Despite significant increases in social spending and fine-tuning the social safety net, the state is losing the battle and inequality, generated by the market, is rapidly widening the gap on government's compensatory measures. Manipulated measures of equality, largely technicist and designed to fulfil public management objectives, may help to obscure the reality of this dilemma but can never address the root causes. Corruption, incompetence, wastage and negligence in local government place these ameliorative strategies under further stress and hasten the prospect of increased social discord.

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ENDNOTES

- ¹ Minister of Water Affairs and Forestry Mrs LB Hendricks at a sanitation project handover speech at Elundini (Mount Fletcher Eastern Cape) in March 2007
- ² See for example Mbumba Development Services 2009: *Mainstreaming of Equity Issues within Local Government: Report on Pilot Survey*, commissioned by GTZ-SLGP / Cogta,
- ³ It should be noted that this department has undergone a series of name changes: in 2008 it was the Department of Provincial and Local Government. After the elections in 2009 it became CoGTA, and in mid 2010 it became the Department of Cooperative Governance (DCoG). The Ministry however is still referred to as CoGTA,
- ⁴ DPLG 2008: *Guidebook for Mainstreaming Equity Considerations in Local Government (2008)* prepared by Dynamic Development
- ⁵ Ibid, p9-10
- ⁶ Ibid

⁷ See for example Walster, E. Walster, William G. and Berscheid, E. (1978). *Equity: Theory and Research* Allyn and Bacon, Boston.

⁸ <http://www.thefreedictionary.com/equality>

⁹ Minutes of the Joint Monitoring Committee on Improvement Of Status Of Women 19 October 2007
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¹⁰ Mbumba Development Services 2009: *Mainstreaming of Equity Issues within Local Government: Report on Pilot Survey*, commissioned by GTZ-SLGP / Cogta, (Working Draft) p 5

¹¹ See for example See for example Rosenbloom, David H. and James D. Carroll. 1990. *Toward Constitutional Competence: A Casebook for Public Administrators* and Svara, J.H.and Brunet, J.R 2005. *Social Equity is a Pillar of Public Administration*, North Carolina State University

¹² See for example GGLN 2009 *Local Democracy in Action: A Civil Society Perspective on Local Governance in South Africa* p 39

¹³ This despite extensive telephonic follow-up and facilitation of the exercise via preparatory focus groups.



INTERGOVERNMENTAL RELATIONS AND THE VOICES OF THE MARGINALISED

By Malachia Mathoho, Planact

Despite a mandate by the Constitution to adhere to the principles of co-operative government, in practice intergovernmental relations continues to face challenges that often paralyse local government responses to the voices of many in South Africa.



PHOTO: STRING COMMUNICATIONS

Despite the new local government system, marginalised communities often resort to violent protests to express their service delivery concerns. Although government has responded, it is still a far way off from solving the real problems that underpin these protests. Government officials, particularly at local government level, claim that some are genuine service delivery protests motivated by real service delivery failures, while others are politically driven. Municipalities claim that some service delivery concerns do not fall within their local sphere of government and that they are simply the first door that disgruntled communities knock on. In many

instances, senior government officials who have great influence over policy change admit that IGR problems, particularly the co-ordination of service delivery amongst all three spheres of government, is often to be blamed for these problems.¹ However, communities waiting for service delivery do not care which sphere of government delivers what. All that they are concerned about is seeing services delivered effectively in their areas.

Despite their being channels of participation in 'invited' spaces, through which communities have a voice, failure by government to deliver has led communities to show their dissatisfaction through

protests in ‘invented’ spaces’. More often than not, these protests are directed at local government.

Poor IGR has two fundamental consequences – the voice of citizens as expressed in local processes is ignored or significantly watered down in IGR processes, and effective service delivery is hampered, contributing to the frustration of impoverished and vulnerable communities.

The powers and functions listed in Schedule 4 and 5 B of the Constitution. Section 156 (1), (2) and (5) of the Constitution equip municipalities with the necessary executive and legislative powers. Municipalities fulfil these duties within a regulatory and supervisory framework. The oversight powers of both national and provincial government outlined in sections 139 and 154 of the Constitution is a core component of this framework. The Presidency’s Ten Year Review Report (2003:8) provides that ‘municipalities are subject to both national and provincial regulatory and supervisory powers [and] they are responsible for the provision of basic services’².

In practice municipalities also play a facilitative role in assisting provinces to fulfil their mandate. Of concern is the extent to which municipalities are expected to fulfil aspects of concurrent national and provincial functions such as housing without being given the necessary authority or financial resources to fulfil these functions effectively. According to the Housing Act (1997), it is the duty of national, provincial and local government to give priority to the needs of the poor in respect of housing development and to consult meaningfully with individuals and communities affected by development.³

This paper focuses on IGR in relation to human settlements development with particular emphasis on the relations between provincial and local government. It explores the challenges related to IGR

and the impact through a range of case studies. The research methodology includes a qualitative case study approach including:

- Literature review (policy documentation, relevant government documents, theoretical studies, case study documentation etc),
- Interviews with government officials and site visit observations, and
- Qualitative analysis of data collected.

We anticipate that the findings will assist local, provincial, and national government, development practitioners and marginalised communities in advocating for better IGR and information about where to channel community concerns so they can be addressed more effectively. This will also assist communities and support organisations in identifying which levels of government and departments to directly interact with regarding a specific service delivery issue.

THE EVOLUTION AND DEFINITION OF IGR

South Africa’s newly elected democratic government in 1994 faced a mammoth task of transforming a racially segregated country as well as restructuring government systems. In December 2000, South Africa held local government elections which marked the end of the local government transitional phase and gave birth to 284 fully elected municipalities. The transformation resulted in local municipalities being the key site of service delivery and development.⁴ For effective service delivery at the local level, local government requires support from the national and provincial government through effective IGR.

As defined in the White Paper on Local Government (1998), ‘intergovernmental relations are the set of multiple formal and informal processes, channels, structures and institutional arrangements

for bilateral and multilateral interaction within and between spheres of government'. In South Africa a system of IGR is emerging to give expression to the concept of cooperative government contained in the Constitution.⁵ According to the IGR Framework Act Inaugural Report (2005/06-2006/07), 'the effectiveness of the IGR system may be measured by the extent to which it adds value in effective service delivery, development and good governance across the three spheres of government'.⁶

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The primary location of the IGR system is within the Department of Cooperative Governance and Traditional Affairs (Cogta) in conjunction with the Cabinet Governance and Administration Cluster. Cogta is responsible for various programmes and policy interventions geared towards predictability, stability and institutionalisation of the IGR system. The Intergovernmental Relations Framework Act, No.13 of 2005 was promulgated in response to this mandate.⁷

THE LEGAL FRAMEWORK

In addition to the Constitution,⁸ South Africa has various pieces of legislation that inform the IGR system, with common underlying goals to guide the interaction of different spheres of government. Although the three spheres of government are independent, the Constitution provides that they are also interrelated. In other words, they are dependent on each other to ensure the well-being of citizens. IGR legislation guides spheres to provide effective and efficient government, which must be achieved through mutual consultation on policy implementation, co-ordinated strategic planning, and

accountability – and ultimately to ensure that services are provided for all citizens of this country.

THE WHITE PAPER ON LOCAL GOVERNMENT

The White Paper (1998)⁹ directs all spheres of government to observe the principles of co-operative government as put forward in the Constitution. Co-operative government assumes the integrity of each sphere of government¹⁰, providing a system of IGR with the following strategic purposes:

- To promote and facilitate co-operative decision-making,
- To co-ordinate and align priorities, budgets, policies and activities across interrelated functions and sectors,
- To ensure a smooth flow of information within government, and between government and communities, with a view to enhancing the implementation of policy and programmes, and
- The prevention and resolution of conflicts and disputes.¹¹

These objectives indicate the importance of effective partnerships in co-operation between all government spheres.

IGR FRAMEWORK ACT

The Intergovernmental Relations Act (2005)¹² provides a framework for national, provincial and local governments to facilitate co-ordination in the implementation of policy and legislation, and to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes. In line with this, different spheres of government are required to establish IGR forums to assist them to conduct their affairs.¹³ These forums have been established at national, provincial and local level and are meant to deal with issues of alignment, integration and coherence. They are also to develop

systems and processes by which national, provincial and local governments pursue common objectives and engage in joint work and common projects to give effect to these objectives. The IGR forums include the President's Co-ordinating Council, National Intergovernmental Forums, Provincial Intergovernmental Forums, and Municipal Intergovernmental Forums.¹⁴ Although not participatory structures to be used by community members, their existence gives government spheres and departments an opportunity to evaluate the extent to which planning and service delivery processes reflect the priorities set at the local level, as expressed by local communities.¹⁵

The President's Ten Year Review (2003:22), prior to the establishment of the IGR forums, pointed to the fact that local government was not well represented in the IGR process. It recommended that the participation of local government in national and provincial intergovernmental forums and processes should, where appropriate, be institutionalised.¹⁶ While the forums by themselves cannot constitute co-operative government, it is the system and processes they produce and implement in the three spheres that give co-operative government life.

The Fifteen Year Review Report on IGR (2008: 62) has highlighted some crucial gaps in the functioning and efficacy of IGR forums, revealing a number of challenges that must be addressed to improve the system.¹⁷ IGR forums, particularly at the local level, tend to be extensions of council forums or meetings and are criticised for excluding the voices of marginalised communities. There is a perception that because representatives, such as councillors, mayors or other delegates, are included in the forums, community voices have enough representation. Others argue that these are just forums about marginalised people, without involving them in key decisions about how services will be

The Fifteen Year Review Report on IGR (2008: 62) has highlighted some crucial gaps in the functioning and efficacy of IGR forums, revealing a number of challenges that must be addressed to improve the system.

delivered and how expression will be given to the priorities set in IDP and budgeting processes.

MUNICIPAL SYSTEMS ACT

The Municipal Systems Act (2000) also responds to the directive in the Constitution to promote IGR. It gives local government the mandate to structure its operational systems in a way that joins forces with local communities. Section (5) allows the community an opportunity to participate in the activities of the local municipality. This includes participating in decision-making processes, ensuring that council meetings are open to the public, accessing council information and using and enjoying public facilities etc. Chapter 4 requires municipalities to include local communities in participation processes.¹⁸ Community participation at this level is of the utmost importance as this is the level where municipalities draft plans that assist national and provincial governments to align their planning and budgeting to meet community needs and demands. However, instead of bottom-up planning as intended by law, more often than not, municipalities align their planning with that of national and provincial government.

IGR AND HUMAN SETTLEMENTS

Human settlements development is one of the most important and controversial issues in South Africa. The democratic government inherited serious human settlements challenges, negatively affecting the poor majority. Human settlements development is guided and monitored by the national government as part of its process of housing development. Provincial

governments are required to promote, co-ordinate and implement housing programmes within the framework of the national housing policy. Development projects have brought many IGR tensions to the fore, amid perceptions of competition between the different spheres for recognition in housing delivery processes.

In a number of projects undertaken by Planact between 2005 and 2010, we have observed challenges with regards to IGR, particularly a lack of co-ordination resulting in blockages of projects aimed at community development. Examples include the People's Housing Process (PHP) and informal settlement regularisation and upgrading programmes.

While community members are urged to participate in local government processes as the direct government interface for development projects, local government activity and authority is often limited by national and provincial roles and actions, as well as by poor co-ordination and communication among the various levels. This results in community voices fading, without much attention paid to them by different spheres and departments of government. Community members often do not understand the respective roles and responsibilities of different

spheres of government in the implementation of projects and direct their frustrations to the closest and most accessible to them, local government and, more specifically, ward councillors.

These are some practical examples of IGR problems that created distress in key community projects.

PEOPLE'S HOUSING PROCESS (PHP) PROJECTS

The PHP is a form of housing delivery that depends heavily on community initiative and involvement by the beneficiaries of the government housing subsidy. Instead of an established developer building houses on behalf of the beneficiaries, the community drives the process, and local job creation and skills development is maximised. The PHP was officially launched in 1998 with a set of guidelines. According to Chapter 3, Part 4 of the National Housing Code, the PHP is meant to 'support specifically the poorest of the poor families who usually only have access to housing subsidies and who wish to enhance their subsidies by building or organising the building of their homes themselves'.¹⁹

VOSLOORUS

The Vosloorus Extension 28, PHP Phase II, produced approximately 404 units of low-cost government subsidised housing between 2005 and 2006. Planact was asked by the then-Boksburg Local Council (later Ekurhuleni Metropolitan Municipality) to work with the community on a plan for upgrading a 'site-and-service' scheme through the PHP programme. During the implementation of the project, Planact faced a number of complex challenges. For example, the municipality was slow to release funds, which meant that Planact had to use some of its resources upfront and wait for reimbursement from the municipality at a later stage. The IGR problems between local and provincial governments (poor co-ordination) were so bad that some beneficiaries were left with uncompleted houses. Evaluation done by Planact revealed that beneficiaries were dissatisfied and frustrated about the abrupt way in which the project ended.

The Gauteng Department of Housing took a decision that all PHP projects in the province should use a newly created institution, Xhasa Accounting and Technical Centre, to administer PHP funds. The impact of this >>

>> on the Vosloorus project was that the new institution disrupted a working financial arrangement had with Ekurhuleni Metro and the project collapsed in 2006.²⁰ There was no proper consultation and communication with the local municipality, Planact or community members. Beneficiaries failed to identify the source of the problem and blamed Planact for the incomplete houses. The way the provincial government handled this project showed that, in spite of existing IGR measures meant to empower communities and improve relations between government spheres, communities and in this case, civil society organisations like Planact, were forced to bear the brunt of poor IGR.

THINASONKE

In 2009 a new township, Thinasonke Ext. 4, was established adjacent to Tokoza in the Ekurhuleni Metropolitan Municipality. A community housing project was earmarked to benefit from R50 million promised by the Gauteng provincial government in line with a Memorandum of Understanding signed between the national government, the Federation of the Urban and Rural Poor and Shackdwellers' International as part of a co-operative effort to eradicate informal settlements. In terms of this agreement, each province made a commitment to provide 1000 subsidies for these kinds of projects. In Gauteng, the provincial government pledged R50 million and undertook to finance infrastructure and housing in Thinasonke.

The municipality needed to attend to the following – zoning, township establishment, registration of title deeds for allocated sites, approving housing plans, putting in infrastructure once the zoning plan was approved and delivering municipal services to the community.²¹

Despite commitments on paper, the project did not proceed. The community remained in the dark, with neither the province nor the municipality informing them about the discontinuation of the project. Planact attempted to get provincial and municipal views but met with no response. The following explanation was provided by an official from a private company appointed to do the zoning for the new township:

'The province told us the day we had the township approval [November, 2009] that they were ready to go. Gauteng province gave money to the Ekurhuleni municipality to buy the land from uTshani to develop houses for the Thinasonke Ext 4 community. Ekurhuleni municipality was involved throughout the process. In anticipation of the project being implemented, the Ekurhuleni municipality reserved funds from Ekurhuleni's budget for the implementation, but they were told by the provincial government not to put funds aside as the province would fund it because it was one of their priority projects. We have everybody up and ready, and then they told us that they have no budget. I was told later in December 2009 that the province doesn't actually have the money, there's no money left.' (Urban Dynamics Gauteng representative). (2009:30)²²

The municipality's failure to inform the local community about the project process goes against what the Municipal Systems Act (2000) promotes.²³ Municipalities are mandated by section 16(1)(a)(v) of the Systems Act to inform the local community about 'strategic decisions relating to the provision of >>

>> municipal services', which was not done in this case. This action by the provincial government shows the gaps in intergovernmental co-operation in practice, which undermines the principles of co-operative governance. It is again a clear indication of how the IGR measures in place are ineffective in addressing communities' demands.

INFORMAL SETTLEMENT UPGRADING PROJECTS

In 2004 the then Department of Housing (now National Department of Human Settlements) released an informal settlement upgrading programme to enable in situ upgrading without affecting residents negatively.²⁴ The ISU is a national programme which 'seeks to upgrade the living conditions of millions of poor people by providing secure tenure and access to basic services and housing'. It deals with the development of primary public, social and economic facilities within existing and new housing areas, as well as within informal settlement upgrading projects, in instances where municipalities are unable to provide such facilities. It also provides for extensive community consultation and participation, emergency basic services provision, permanent services provision and security of tenure.²⁵

Planact is implementing a project to enhance community participation in the informal settlement regularisation and upgrading programmes of various municipalities by promoting effective public participation in the planning and monitoring of the programme. The objectives include:

- Strengthening the capacity of community members (leaders of community-based organisations and ward committee members) to participate in the planning and monitoring processes, and
- Providing municipalities, community members and development practitioners with models and lessons for effective participatory development

in the informal settlement regularisation programme, which could also be used in other development initiatives.

To improve community participation in the ISU programme, Planact seeks to develop an effective working relationship with municipal departments and community members to ensure that everyone has a voice and participates in a process that will contribute to the successful implementation of the programme by improving co-ordination between local municipal plans and residents' expectations.

The site selection phase of the project revealed IGR challenges experienced by municipalities as they attempt to roll out the programme. These challenges relate to co-ordination, municipal accreditation and provincial funding channels.

Although human settlement development is not a local government competency area, a report tabled to the United Nations by the then Department of Housing (2004), indicated that local government is expected to take greater responsibility for the management of settlements within their jurisdiction, particularly in relation to service and infrastructure provision for the poor. The report emphasised that challenges should be expected in terms of implementation of development projects.²⁶

While some of the municipalities have indicated that they have plans for the implementation of the ISU programme, there is evidence that some beneficiary communities have not participated in the early planning stages and other major discussions concerning the details of the upgrading and relocation plans. Some communities do not know

through relocation. The community has been living in the area for almost ten years with approximately 1 500 households situated on private land without adequate basic services, except for water delivered by a truck at various intervals. The municipality is in the early process of relocating the community to a new low-cost housing development. On the site is a primary school run by the provincial department of education in a building donated by a local church. At the time of a site visit, it was clear that the school was being renovated. The municipality's planning officials were confused as to why the provincial departments of education and public works were constructing more classroom structures given the fact that the community is to be relocated in a few months. Furthermore, the fact that the province was renovating a school located on private land that the

Not only is there is a communication problem between the municipality and the different provincial sector departments, but no proper communication is taking place with community members either.

community is unlawfully occupying simply did not make sense.³¹ A senior municipal official indicated that a meeting was scheduled to take place between the relevant provincial departments and the local municipality to discuss the matter.³² Not only is there is a communication problem between the municipality and the different provincial sector departments, but no proper communication is taking place with community members either.

To avoid such situations, the draft Provincial Framework for Public Participation in Gauteng (2009) recommends that all provincial governments interact with local communities through municipal structures and processes, whether it is consultation around new projects or efforts to engage the public more generally.³³ This will ensure that the municipal

structures are adequately informed and engaged in provincial plans affecting their areas.

PROVINCES, THE WEAK LINK?

Provincial government failure to effectively allocate and transfer resources required for municipalities to implement projects ultimately means municipalities fail communities. Provinces are often blamed for promising to fund municipal projects, which leads to municipalities making promises to communities, even implementing projects using other funds, in the expectation that provinces will fulfil their commitments and refund them.

Lesedi municipal officials in Gauteng indicated that informal settlement upgrading plans were negatively affected by experiences with provincial funding. For instance, in previous housing development projects in the municipality, the Gauteng department of housing promised funds to build low-cost housing and the municipality used bridging finance to start the process while waiting for the promised funds, which were not forthcoming. This created additional financial problems for the municipality. This poor IGR has affected local communities as the municipality vowed not to repeat the mistake, waiting instead for funds to be transferred in advance of project implementation.³⁴ Hence it is difficult for municipalities to plan with communities when funding to implement projects is not a certainty.

MUNICIPAL ACCREDITATION, THE ANSWER?

The municipal accreditation process presents a new IGR challenge. The process managed by the provincial government, whereby 'any municipality may apply in writing to the MEC of its province to be accredited for the purposes of administering one or more national housing programmes'.³⁵ Its objectives are described as follows:

‘The accreditation of municipalities seeks to achieve two inter-linked objectives;

- Co-ordinated development, which also involves the relocation of decision-making authority with regards to the implementation of National Housing Programmes to the local sphere; and
- Accelerated delivery, as the efficiencies associated with creating certainty in respect of funding allocation and devolving delivery authority to the local sphere should lead to accelerated delivery and improved expenditure patterns.¹³⁶

The municipal accreditation process frustrates local municipalities, which see it as delaying effective incremental settlement development, with a complex application process, long waiting periods and unlikely accreditation. This is in the context of high housing demands from local people who do not want to know who is responsible for housing delivery but simply want to see visible progress in terms of delivery. An official from Emalahleni municipal planning department commented that accreditation process is a frustrating aspect in a municipality with a major housing backlog. He argued that it is the ordinary community members who suffer as a result of this bureaucratic process.

‘Housing-wise we are still struggling on the accreditation process that is holding us back. We don’t get to choose where we want to have housing and who we want to give it to. It sort of comes down from Province, they own us. It’s a heavy-handed approach that’s not working too well for council. We are getting behind on our housing backlog, we are not catching up and we are losing.’

The officials from Emalahleni indicate that, although they are accredited for the lowest level of housing delivery, they have the capacity for higher levels of accreditation, which would speed up the implementation of ISU and other housing programmes.

Municipal officials blame the province for delays in the accreditation process. Although the system was introduced to ensure that there is accountability in housing delivery, municipalities view the process as yet another obstacle to the delivery process. On the basis of experience, municipalities argue that when provinces are solely responsible for overseeing the housing delivery processes, long, complex bureaucratic processes cause communities to lose patience as they wait for government to deliver.

CONCLUSION AND RECOMMENDATIONS

Despite local government reform and an extensive IGR system designed to provide efficient service delivery to communities, it is evident that marginalised communities are the casualties of the failures of this system. While government and community structures were created to give communities more power and ensure government deliver effective services, practice reveals that these structures are working against these objectives. In some instances, the lack of clarity in respect of the roles to be played by government spheres with regards to service delivery have rendered structures such as IGR forums ineffective. Structures at national, provincial and local governments often do not foster good working relations as they fight to claim influence in communities to remain politically powerful and relevant. Without healthy IGR the voices of the marginalised will remain silent, despite the gamut of legislation and other measures created for effective service delivery. There is a need to co-ordinate the implementation of IGR at different levels of govern-

ment, but also to ensure that poor IGR does not halt delivery processes as it does currently.

This paper argues that communities' expectations are failing to be addressed as a result of limited co-operation and poor communication by provincial governments, to the extent that some community projects were abandoned. Others were never started due to the failure of provincial governments to honour agreements made with local governments. Some actions by provincial governments have confused local municipalities and communities. The housing accreditation process was also highlighted as a challenge as municipalities believe that it negatively affects the pace of delivery.

In light of the above challenges and to maintain the principles of co-operative governance and intergovernmental relations this paper recommends the following:

- Legislation has been put in place to support the IGR processes. These result in scheduled interactions between government spheres which may not always alleviate problems. Government spheres should therefore consider creating interactions whenever necessary on an ad hoc basis to address specific problems as they occur in order to improve service delivery.
- There is a need to improve IGR practice and reform current IGR forums to allow the

marginalised to have representatives from the community speak directly for themselves instead of always being represented by councillors. This is particularly true in specific projects that have a localised impact on certain communities.

- Provincial government should recognise the independence of and role played by local government. If provinces need to directly interact with local communities they should allow municipalities to organise the process as the sphere closest to communities.
- Although some municipalities are considered to have insufficient skills in handling housing development and large amounts of development funding, provinces have to find a strategy to improve the distribution of funds aimed for bigger projects at community level for the benefit of the poor.
- Even though there is a need for quality control in human settlements development projects, accreditation of municipalities is highlighted as a complicated process which requires municipalities to fulfil certain requirements to be accredited for certain aspects of delivery. There is a need for provinces to speed up the accreditation process to better support municipalities, as is mandated by the Constitution.

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⁸ Chapter 3 of the Constitution declares that government comprised national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Section 41 (2) says an Act of Parliament must establish or provide structures and institutions to promote and facilitate IGR. Section 41 (1) (b) and (h) shows that good relations amongst all government spheres is extremely important in order to address people's needs, expectations and ensure their satisfaction. Section (139) upholds the necessity of IGR by giving provincial governments a supervision role in relation to the local governments, while Section (154), mandates the national and provincial governments to give support and strengthen capacity of the local governments to run their own affairs.

RECOGNISING COMMUNITY VOICE AND DISSATISFACTION

⁹ Republic of South Africa. 1998. The White Paper on Local Government. 1998. Pretoria: Government Printer

¹⁰ Ibid.

¹¹ Ibid.

¹² As set out in Chapter 3 of the National Constitution

¹³ Republic of South Africa. 2005. IGR Framework Act. Act No 13 2005. Cape Town, Government Gazette.

¹⁴ The Presidency. 2003. Intergovernmental Relations and Service Delivery in South Africa: A ten year Review.

¹⁵ These forums are not participatory structures, but are rather aimed at ensuring the priorities set at the local level (as expressed by communities) are met in an efficient manner

¹⁶ The Presidency. 2003. Intergovernmental Relations and Service Delivery in South Africa: A ten year Review.

¹⁷ Department of Provincial and Local Government. 2008. Fifteen Year Review Report on the State of Intergovernmental Relations in South Africa. Pretoria. Government Printer

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EXISTING MECHANISMS FOR PUBLIC PARTICIPATION AT LOCAL GOVERNMENT LEVEL



By Nontlantla Skenjana and Peter Kimemia, Afesis-corplan

This research examines the nature of the current public participation discourse at the local level in the rural municipalities of Amahlathi and Great Kei respectively. It also discusses the level of participatory democracy and involvement of communities in processes towards implementation of service delivery programmes and projects at the local level.



PHOTO: STRING COMMUNICATIONS

Among the questions that this study grapples with, therefore, are; to what extent do formal, invented or invited spaces of public participation represent voices fairly and equitably on service delivery? And, what is the current status of the institutional mechanisms for participatory democracy in South Africa's local government and how inclusive and effective are they in the promotion of social citizenship?

POSITIONING SOUTH AFRICA'S PUBLIC PARTICIPATION DISCOURSE

South Africa's public participation discourse draws mainly on two ingredients: the anti-apartheid struggle and the new Constitution. The struggle against apartheid forged a highly participatory notion of democratic citizenship. Popular organisations such as trade unions and civic organisations

established models of debate, consultation and accountability that remain influential. A vision of social citizenship, reflected especially in the 1980s in mass mobilisation against the old order, was later extended in the early nineties to the consultation process which the Constitutional Assembly tried to follow in the writing of the 1996 Constitution (Republic of South Africa, 1996). Drawing on this idea of the active citizen, the Constitution provides a framework for a transformed citizen who will embrace and actively seek to sustain democratic governance. Being actively engaged in development and governance processes is what gives meaning to social citizenship. The latter concept is used as an inclusive term to capture what the South African Constitution contemplates when it defines citizenship. Moreover, in the South African context, the constitution deliberately provides for public participation in governance and development processes both in invited as well as invented spaces. The Municipal Systems Act 32 of 2000 institutionalises community participation as a core function in all the activities of the municipality. Furthermore, it specifically gives a mandate to the local council to ‘determine mechanisms, processes and procedures for interaction’ (Section 56(6) between municipal management, councillors, ward committees and the local community. More specifically, the Municipal Structures Act promulgates delegation to ward committees (Section 32) and their establishment (Section 73). However, in

practice, the hurdles that are inadvertently and sometimes deliberately erected tend to undermine public participation and in effect weaken social citizenship.

CITIZENSHIP AND PARTICIPATION

As a key concept in the context of development, citizenship is always connected to rights to space and place. Through participation, citizens connect to imaginary communities through space, particularly when engaging in the language of rights to ground desires for social betterment. Also, citizenship remains a mechanism by which people can make claims on space and place. Focusing on the relationships between individuals and the institutions of state and civil society, citizenship offers a framework for dealing with the complex issues associated with citizen rights in the city. This entails that everyone in the community is entitled to live under conditions necessary for his/her social, political, economic, cultural, and environmental fulfilment. Community participation in development processes entails the involvement of citizens, especially the disadvantaged groups, in influencing policies at the local level.

The dominant democratic discourse in the new South Africa is still premised on an active citizen who freely participates in the voting processes. The assumption is that elected officials (presumably) representing the citizenry declare the noble ideals of an inclusive society by representing their specific constituencies in all spheres of government, as opposed to the electorate participating directly at all levels of decision-making in all spheres of government. Secondly, citizenship as captured in the Constitution is based on the premise that all humans have equal access to rights. This is in contrast to the prevailing reality where only those with financial wherewithal can have their rights enforced. There are

The assumption is that elected officials (presumably) representing the citizenry declare the noble ideals of an inclusive society by representing their specific constituencies in all spheres of government, as opposed to the electorate participating directly at all levels of decision-making in all spheres of government.

cases such as the Grootboom vs. SA State (1999) where socio-economic rights have been successfully defended in a Court of Law. However, this judgement was not able to ensure that the rights of the poor were enforced (Wickeri 2004). In this instance rights to adequate service delivery were not followed through by compelling local authorities to provide quality, sustainable services to affected communities in whose favour the Court ruled. This means, amongst other things, that institutional defiance militates against social citizenship and also thwarts attempts to create a meaningful everyday life for 'ordinary' people at grassroots level.

Mattes (2002) argues that there have been declining levels of political and community participation as well as lukewarm support for democratic rule over the years. This led him to argue that the constitutional commitment to a multi-party system and to inclusive rights is threatened by limited executive accountability. In spite of being internationally admired, the Constitution provides a framework that is flawed in the interaction it allows between political representatives and the social citizen. Most crucially, the system of proportional representation based on party lists, while achieving representation of all the diverse groups in the electorate, provides no direct means for the voters to communicate with, let alone exert ultimate control over, their elected representatives. Mattes refers to a set of public opinion indicators that suggest that the present political culture is insufficiently mature to ensure the consolidation of democratic practices (Mattes 2002). South Africans' support for democracy is lukewarm and has not grown in any substantial way over the past years since the advent of democracy. With increasingly tenuous connections between the voters and the government and increasing policy disaffection, trust in government and satisfaction with economic policy and political performance are declining sharply.

With increasingly tenuous connections between the voters and the government and increasing policy disaffection, trust in government and satisfaction with economic policy and political performance are declining sharply.

If Mattes is right, indications of a weak democratic culture accompanied by an assumption that citizenship is a matter of access to socio-economic goods suggests that this popular conception is in tension with the official interpretation of active citizenship. What are the implications of this tension? The elite accommodation of the negotiated transition and of the process of framing the Constitution may be remote from the concerns of the poor. It is possible that their understanding of citizenship may be in serious tension with the official version of the poor, and that the two may lie at the extremes of the maximal–minimal continuum.

This should be a cause for concern, especially if a popular preoccupation with entitlement to goods erodes willingness to engage in active participation for the common good.

PARTICIPATION OF MARGINALISED COMMUNITIES IN THE INVITED SPACES

Findings from a research conducted by the Department of Cooperative Governance and Traditional Affairs (Cogta) on the state of local government are reported to be highlighting interference by political parties to be a major cause of instable and dysfunctional local government (Cogta 2009). It is therefore argued that invited spaces for public participation are too politically constrained to truly allow for robust and uninhibited discourse on development and governance at the local level. As a result, the promotion of social citizenship defined in terms of shared commitment to

democracy and functional municipal governments is severely compromised. Under the circumstances, although civil society needs to continue engaging with the state and to persuade the latter to create a more conducive environment for effective, apolitical ward committees, there is also need to confront the challenges that are constraining participation in the invented spaces where most civil society organisations operate.

Ward committees as the formal forums for public participation are mainly established in local municipalities to enhance participatory democracy and to serve as advisory bodies to councillors. The main functions of the ward committee member include advising the ward councillor on policy matters that affect the ward; identifying the needs and challenges that face the wards; and communicating information to communities living in those wards. Although the system is not the only mechanism for community participation at local government level, it exists as the most broadly applied and accepted model for community participation in South Africa. According to the then National Department of Provincial and Local Government (DPLG), now Cogta, more than ninety percent of the designated ward committees in the provinces of Gauteng, Eastern Cape, Free State, Mpumalanga, and Western Cape had been established by the end of 2003.

To ensure inclusive community participation through the ward committee system, the Municipal Structures Act requires that the formation of the ward committees should reflect the diversity of local interests and gender equity (Republic of South Africa 1998a). The local Government policy framework requires processes, mechanisms and procedures of public participation to take into consideration the special needs of the disadvantaged groups in society. However, the national, provincial and municipal guidelines fail to recognise marginalised members of communities in the formation of the ward committees

Political affiliation and the desire to maintain control over ward committees take precedence over concerns of fair representation and the pursuit of the set developmental objectives.

despite their political vulnerability and socio-economic deprivation. Political affiliation and the desire to maintain control over ward committees take precedence over concerns of fair representation and the pursuit of the set developmental objectives. The downside to this approach is the fact that conditions that would favour the emergence of truly strong and effective ward committees are almost non-existent in the rural municipalities. The failure to adequately cater for the broad spectrum of the populace and to appreciate the various societal dynamics has resulted in the exclusion of sizable segments of the population from the invited spaces.

South African social formation and structural articulation between the politics of identity/participation and the substance of social change constitutes a problem vis-à-vis the constitutional right to equal citizenship at least for two reasons: First, whereas unequal relations of power were inherited from the past, there has not been a clean and lasting break with that past (Bond 2000). Secondly, though there had been a political rupture with the past, there has not necessarily been an institutional compliance with the new policies of the current regime. Accordingly, the structural inequities of the past continue in the present through the dominance and practices of functionaries from the (apartheid order). Those involved in promoting participatory democracy would do well to heed Ramphele's (2001:4) warning that 'for the majority of South Africans the social rights of all citizens as entrenched in the new National Constitution remains a far-off dream. The egalitarian and integrative

potential of modern citizenship as Marshall defined it remains unrealised.’

A credible vindication of this observation resides in the levels of public participation in development planning processes at the local level. For instance, the introduction of the integrated development planning system in 2001 required that all municipal councils develop strategies for community involvement. These strategies include: the Integrated Development Planning (IDP) communication strategy; the community outreach programme; and the stakeholder involvement strategy. These strategies would supposedly lead to a significant improvement in the level of community involvement in general, and in getting away from a consultant-driven approach of planning and policy-making. Cornwall (2002:38) observes that ‘achieving more public participation in municipal planning than ever before in the history of the country seems to be one of the most valuable outcomes of the IDP process’. However, Parnell, Pieterse, Swilling and Wooldridge (2002:5) argue that the current policy framework suggests that resources and capability to use them effectively will ensure that democratic practices have meaning. Furthermore, Friedman, Hlela, and Thulare (2003) relate that critics argue that the IDP processes are still far from achieving full community involvement in policy-making as stipulated in the legislation - they remain very much top-down, and communities are merely allowed to comment on proposals developed by municipal officials rather than being invited to contribute to the content before its drafting.

The community involvement strategies developed in these municipalities seek to solicit public inputs at three key points: identification of development priorities; development of strategies; and the final approval of the IDP. However, the extent of the actual community involvement in these key points is debatable. A study by Friedman et al., (2003) into

public participation found that communities do attend these mass meetings in big numbers. The limitation, however, is the lack of discussion and deliberation. The researchers found that ward meetings are usually dominated by questions about the promises that are not realised and perhaps making a list of demands for the municipality. Ward committees that represent the poor sectors of municipality face huge challenges while trying to participate fully in municipal structures. They encounter logistical and transport problems due to lack of resources, they quite often lack the ability to make sense of the legal and technical languages of the proposals; and also the capacity to compile written submissions as required (Idasa and Afesis-corplan: 2005).

These challenges tend to limit the degree to which ward committees and indeed the wider community can participate in IDP and other municipal processes. The problem as noted above is more severe in poorer communities whose ward committees are invariably disadvantaged by low levels of education and the powerlessness this can imbue in them as they try to engage with, at times, more knowledgeable councillors and even council officials. The alienation of the already dysfunctional ward committees is extended to the residents and the social citizenship project turns into an untenable dream. In many cases, the violent protests that quite often erupt in poor neighbourhoods are a function of feelings of exclusion which render social citizenship meaningless in the minds of the aggrieved. Seemingly, it starts with the failure of the local state to facilitate real participation, attempts to forge ahead with the implementation of projects in total disregard of people’s legitimate grievances, disengagement on the part of communities and eventually the devising of alternative mechanisms to make their voices heard.

THE CASES OF THE GREAT KEI AND AMAHLATHI LOCAL MUNICIPALITIES

Over the past two years prior to this study, researchers from Afesis-corplan had been working in the two municipalities. They had been involved in ward committees trainings and mentoring using a ward key performance indicators (WKPI) matrix made by Afesis-corplan. They had also been involved in the mobilisation and training of civil society formations to complement the ward committees whose success has understandably been stunted by systemic political constraints. The aim of these interventions was to promote public participation in municipal processes and contribute to the improvement of governance practices in the two local municipalities.

Great Kei and Amahlathi local municipalities are both in the Amathole District Municipality of the Eastern Cape Province. They are both rural and poor. However, in terms of governance conditions differ quite significantly. While neither of the two can stand out as pace-makers on matters of good governance, the Great Kei Local Municipality has increasingly made efforts to open up and be responsive to the resident's grievances. The municipality has demonstrated a willingness to engage with ward committees and civil society groups on issues of public participation. However, instability in management has had an adverse impact in service delivery. On the other hand, Amahlathi Local Municipality has largely been mired in political infighting resulting in an instable council. As a result, few people are privy to the council meetings timetable and when such meetings do happen, deliberate efforts are made to exclude the public. Even ward committees, the formal forum for public participation, complain about similar exclusion. Therefore, the two municipalities provide different scenarios under which social citizenship can either thrive or be constrained.

The majority of the respondents in Amahlathi reported to never attend council meetings and it was quite evident that such meetings do register very low attendance by members of the general public. This dismal attendance levels also reflect poor public participation which quite often leads to skewed decision-making on the part of the municipality particularly in the implementation of projects and prioritisation of community needs. However, in Great Kei respondents indicated that over the past two years the municipality had had a concerted drive in creating conditions conducive for effective participation through ward forums where interest groups such as women, youth, community based organisations (CBOs), ward councillor, ward committees, community development workers (CDWs) and the municipality have come together on a monthly basis to discuss and agree on issues affecting their development. Respondents felt that participation in these invited spaces had helped bridge the gap between them and the municipal leadership and also enabled them to make some contribution to municipal processes. This was also attributed to Afesis-corplan's interventions on local governance as well as the revived commitment of the municipality through a new mayor.

Among the reasons cited for the generally low levels of public participation in the two municipalities were limited finances, staff shortages as well as lack of political will by the municipalities to facilitate such participation. Where improvement has occurred, as is the case with the Great Kei, it has been slow, patchy and limited to council meetings and a few ward-based activities. An interesting finding was the observation that those public meetings that were convened by Amahlathi municipality were mainly about discussions of political infighting rather than development. While these could ordinarily attract a few curious members of the public, the more serious

ones hoping to engage on issues of service-delivery understandably opt to stay away. This disengagement from the local state undermines democratic governance and dilutes the value of social citizenship. It leads to feelings of alienation and helplessness.

Another notable development in the two local municipalities is the establishment of Civil Society Action Groups (CSAGs). These are groups constituted from numerous civil society formations with the aim of engaging with their respective municipalities in more or less the same fashion as was contemplated by legislation that provided for ward committees. As noted in numerous other works around public participation, ward committees face some unique constraints including the fact that they are so highly politicised that it would be foolhardy to suppose that they would operate as apolitical outfits that execute their mandates objectively. Owing to such constraints in this formal space, it becomes necessary for civil society to invent other mechanisms that would allow for uninhibited participation in municipal processes. Afesis-corplan helped to mobilise these groups, train them and eventually persuaded the respective municipalities to register them on their databases of key stakeholders. As a result, they are able to participate in municipal processes and engage municipal leaderships in a manner that reflects greater freedom than is possible for their counterparts in the ward committees.

Although this invented space is already showing positive signs of shoring up social citizenship in the two municipalities, there are still enormous challenges. Firstly, these two municipalities are rural and quite poor. The majority of the people are unemployed and civil society formations in these areas are very weak. Unlike in wealthier urban municipalities that have a better-educated population and stronger civil society organisations including

An interesting finding was the observation that those public meetings that were convened by Amahlathi municipality were mainly about discussions of political infighting rather than development.

rate-payers associations, rural municipalities have a serious dearth of such and the threat to democracy is so much greater. The relatively small bureaucratic and political elite in such rural municipalities is able to hold captive the majority of less informed residents and quite easily restrict their participation in municipal processes. They also, as is evident in the case of Amahlathi, are able to arrogantly ignore the more serious service-delivery backlogs that they sit with and rather focus on endless political infighting which results in frequent leadership turnovers. In the Great Kei, the regular, allegedly outright theft of public money by key officials may also be a function of not only weak oversight institutions but also inadequate public participation in development planning and the budgeting process. Under the circumstances, the non-transparent manner in which the municipality operates tempts officials into acts of impropriety in the ill-advised comfort of the belief that they are unlikely to be caught.

Secondly, closely related to the issue of weak civil society groups in poor, rural municipalities is the lack of resources to sustain robust engagement with the municipalities in the long-term. Interventions by non-governmental organisations (NGOs) such as Afesis-corplan are time-bound due to funding cycles. Therefore, whereas during the project implementation and the mentoring phases the CSAGs would work fairly well, there are concerns that their continued operation beyond the project implementation period may suffer significant setbacks associated with financial constraints. It is

unlikely that a poor civil society activist will opt to use the only R10 they may be having for taxi fare to attend a civic engagement and forgo buying a loaf of bread for his or her family. Under the circumstances, there is still need for ways to be devised through which the state facilitates the participation of such groups without necessarily trying to muzzle their freedom.

CONCLUSION

In many ways, the government has moved towards an institutionalised and legislated form of participation in which provincial and local governments must demonstrate their efforts to attract public participation, particularly from marginalised and formerly disadvantaged communities. Although this shift is commendable, it is evidently inadequate in bolstering social citizenship especially in rural municipalities. Although political constraints are in part to blame for the dysfunctional nature of the invited spaces for public participation across South Africa, the constraints are particularly severe in poor neighbourhoods whether rural or urban. In the latter areas, options are limited and in many cases participation in invented spaces almost inevitably degenerates into violent confrontations as the local state attempts to ignore voices that they perceive to be politically weak and illegitimate. Yet in many cases such voices are an expression of legitimate grievances.

As indicated above, the legacy of exclusion for the vast majority in municipal participatory discourse in particular for those in invented spaces, still exists in many municipalities and it is especially severe in those that are under-resourced. Since 1994, a holistic approach by municipalities on public

participation has been lacking. And there still exists marginalisation for many of the previously disadvantaged communities in municipal processes. There is need for a revised and more robust participatory system in both the invited and invented spaces in order to allow for real meaningful participation and imbue a sense of ownership and social citizenship. A suggestion that has variously been offered is the need for the state to allow for the emergence of truly apolitical ward committees through an electoral process that attracts persons not directly affiliated to political parties. Is it possible to achieve that? If society credibly presumes that bureaucrats across the three spheres of government are politically neutral, it is not farfetched to contemplate the emergence of ward committees and other development forums that are apolitical.

In addition, and more importantly, the state needs to give life to the constitutional imperative for the promotion of public participation in the invented spaces. Civil society formations currently face funding challenges that necessitate the states' intervention in facilitating their participation. The strengthening and acceptance of invented spaces will ensure that the participation of stakeholders and interest groups is broadened in all municipal and developmental processes in accordance with Output 5 of Outcome 9.

It is in the interest of service delivery that local government is responsive and accountable to the local communities. Shoring-up public participation in invited and invented spaces should enhance cooperation between the local state and the residents and contribute to the improvement of governance and the delivery of services as envisaged by the Municipal Systems Act.

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ARE WARD COMMITTEES THE “VOICE” OF COMMUNITIES?

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South Africa's local government legislation, promulgated in the democratic era, introduced a system which entrenched an enormous focus on participatory democracy and governance. This calls for a high level of public participation in the political processes of municipal councils through a wide range of institutional channels. Ward committees are one of the participatory mechanisms, that have been established to achieve this objective.



PHOTO: STRING COMMUNICATIONS

While the establishment of ward committees has been a positive move intended to contribute towards bringing about people-centred, participatory, democratic local governance, the system has had several challenges. These prompted the Institute for Democracy in South Africa (Idasa) to undertake two critical studies to evaluate local communities' perception of and experience of participatory processes at the local level. The Citizen Report Card study (CRC) and the Local Government Barometer project (LGB) have yielded important results that form the basis of this paper. The CRC evaluated citizens' perceptions of the overall performance of municipalities while the LGB measured the state of governance from the perspective of the key role-

players in local government including traditional authorities, civil society, municipal officials, the business sector and councillors. The efficacy of ward committees therefore formed an integral part of both of these studies. Notwithstanding the challenges impeding the effectiveness and operation of ward committees, this paper proposes an inclusive approach to participatory democracy and governance and the vehicles needed to achieve this. On this basis, an enabling environment for effective participation and a process to refine the ward committee model is recommended. These efforts should culminate in a policy paper as envisaged by the Department of Cooperative Governance and Traditional Affairs (Cogta), aimed at deepening local democracy.

THE WARD COMMITTEE SYSTEM IN SOUTH AFRICA

The involvement of citizens in governance matters at local government level is gaining prominence internationally. In India, the Constitution (74th Amendment Act, 1992) provides for the establishment of ward committees to ensure citizen participation in local governance matters (section 243[S]). In South Africa, a plethora of legislative frameworks and policies which entrench the notion of participatory democracy and governance has been promulgated since the end of apartheid. These include the Constitution of the Republic of South Africa (108 of 1996), the Municipal Structures Act (117 of 1998) and the Municipal Systems Act (32 of 2000). Legally, municipalities are obliged to involve communities in the formulation of developmental priorities.

The Constitution compels local government to involve local communities in local governance matters with participatory democracy enshrined in sections 151(1)(e) and 151 (2) which requires local government to ‘strive within its financial and administrative capacity to achieve this objective’.

The Municipal Structures Act, hereafter referred to as the Structures Act, is also unequivocal in its requirement that local government must ‘develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers’ (section 19(3)). To give this effect to this the act provides for the establishment of ward committees to enhance participatory democracy at the local level.

The Municipal Systems Act, hereafter referred to as the Systems Act, similarly demands the involvement of citizens in matters affecting local government. Section 16(1) requires the municipality to develop a culture of municipal governance that complements formal representative government with ‘a system of participatory governance’.

Based on the Constitution and the White Paper on Local Government (Department of Provincial and Local Government: 1998), a new vision for local government was created. The concept of ‘developmental local government’ runs through all local government legislation and is defined as ‘local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives’. Houston, et al (2000:77) note two consistent themes in local government legislation: the developmental role of local authorities – planning, implementing and monitoring, and the obligation imposed on local government to consult with the public in the performance of their tasks.

PARTICIPATORY GOVERNANCE AND LOCAL GOVERNMENT

Wampler in Shah (2007:21) asserts that citizen participation in governance matters is indispensable because it improves municipal performance and development and enhances the quality of democracy. Fox and Meyer in Kakumba and Nsongo (2008:109) define citizen or community participation as:

The involvement of citizens in a wide range of administrative policy-making activities, including the determination of level of services, budget priorities, and the acceptability of physical construction projects in order to orient government programmes toward community needs, building support, and encouraging a sense of cohesiveness within society.

Brynard in Kakumba and Nsongo (2008:109) outlines the following as the objectives of citizen participation:

- providing information to citizens;

- getting information from the citizens;
- improving public decisions, programmes, projects, and services; and
- protecting individual and minority group rights and interests.

Southall in Nyalunga (2006:1) argues that participatory democracy entails a high level of citizen participation in political processes through a wide variety of institutional channels which in turn broadens the knowledge that citizens have of public affairs.

Buccus and Hicks in von Donk, Swilling, Pieterse and Parnell (2008:527) succinctly argue that citizen participation in governance processes at the local level has the potential to 'reduce poverty and social injustice by strengthening citizen rights and voice, influencing policy-making, enhancing local governance and improving the accountability and responsiveness of institutions'. Furthermore, this ensures community support for policy making and creates a sense of ownership of the government's products. Similarly, Folscher in Shah (2007:244) argues that meaningful and effective citizen participation in public choices improves trust in government and commitment to the tradeoffs made. Moreover, citizens have the best knowledge of their needs, their preferences and local conditions and this encourages a sense of social cohesion (Fox and Meyer in Kakumba and Nsingo 2008:109).

Steytler and Mettler (2001:2) reiterate the principle set out in section 16(2) of the Systems Act that 'participatory governance should not interfere with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality.' They argue therefore, that formal representative structures, such as ward committees, should complement the politically legitimate and legally responsible structures.

Resulting from the legislative framework, the ward committee system emerged in 2001 as a key institutional mechanism through which communities can participate in municipal affairs. Mettler (2003:12) argued that ward committees are pivotal for the monitoring of municipal performance as this enables communities to set performance measures. This strengthens accountability measures and provides for oversight over municipal council performance. Furthermore, ward committee structures were meant to create a formal unbiased communication channel as well as a co-operative partnership between the community and the council and serve as a mobilising agent for community action, in particular through Integrated Development Planning (IDP) processes as well as the municipality's budgetary process (DPLG 2005:7). In the same vein the report on the State of Local Government in South Africa emphatically argues that representative government should be complemented by the citizens' rights to participate in local government affairs and in decision-making processes (Cogta 2009:13).

DEBATES AND CHALLENGES

While the establishment of ward committees has been a positive move intended to contribute towards bringing about people-centred, participatory, democratic local governance, the system encounters several challenges.

The question often asked is 'how effective are these ward committees?'

Nyalunga (2006:45) argues that ward committees are largely perceived as ineffective in advancing citizen participation. The State of Local Government Report in South Africa¹ highlights similar perceptions by arguing that the functionality and effectiveness of ward committees remains an immense challenge. Some of the challenges highlighted in the State of Local Government Report include:

The question often asked is 'how effective are these ward committees?' Nyalunga (2006:45) argues that ward committees are largely perceived as ineffective in advancing citizen participation.

- poor attendance of ward committee meetings by ward councillors;
- poorly resourced ward committees failing to comply with articulated expectations;
- ward committee issues not being prioritised in council meetings;
- poor working relationships between traditional leaders and ward committees; and
- tensions between ward committees, community development workers (CDWs) and councils.

These are critical challenges which not only impact on the functioning and effectiveness of ward committees but weaken the entire local government system, creating a situation which, we argue, requires immediate intervention. To this effect, Cogta has adopted key strategic objectives that will guide the Local Government Turnaround Strategy (LGTAS). The LGTAS is a strategy aimed at addressing the most crucial impediments to local government fulfilling its developmental role, which includes the weaknesses in the ward committee system. The LGTAS includes mechanisms for strengthening partnerships between local government, communities and civil society. Furthermore, municipalities are required to reflect in their own strategies how they will improve public participation and communication including effective complaints management and feedback systems as a means to enhance local government performance and service delivery (Cogta 2009: 21).

PROVINCIAL WARD COMMITTEE EXPERIENCES

CITIZEN REPORT CARD (CRC)

Idasa recently conducted a Citizen Report Card (CRC) exercise in 22 municipalities located across the four provinces of KwaZulu-Natal, Mpumalanga, Limpopo and the North West. The CRC is a simple tool that measures the level of satisfaction of citizens regarding the performance of their municipal council and the quality of the services provided. Emphasis is also placed on the efficacy of participatory processes at the local level. Citizens were asked a range of questions with an interview sample of 2 400 adults proportionately stratified across four provinces and 22 municipalities taking into account urban-rural divides. Due to this stratification, there is a 95% confidence in the research, with an allowance of 3% for a margin of error. This tool was designed by Idasa in close consultation with the various provincial ministries of local government.

The Citizen Report Card exercise revealed a number of challenges which impact on the functionality and effectiveness of ward committees. These challenges include:

- **Skills shortage:** the effectiveness of ward committees is severely constrained by the tremendous lack of skills amongst ward committee members. This is true in respect of even the most basic understanding of local government needed to make ward committees function. For instance, the survey found that the installation of ward committees has not contributed to meaningful engagement nor has it improved information supply to communities. In this regard, 38% which is an average score, thought the ward committees contributed to meaningful engagement. Limpopo scored the same as the average, Mpumalanga scored 44%, KwaZulu-Natal scored 37% and North West had the lowest score of

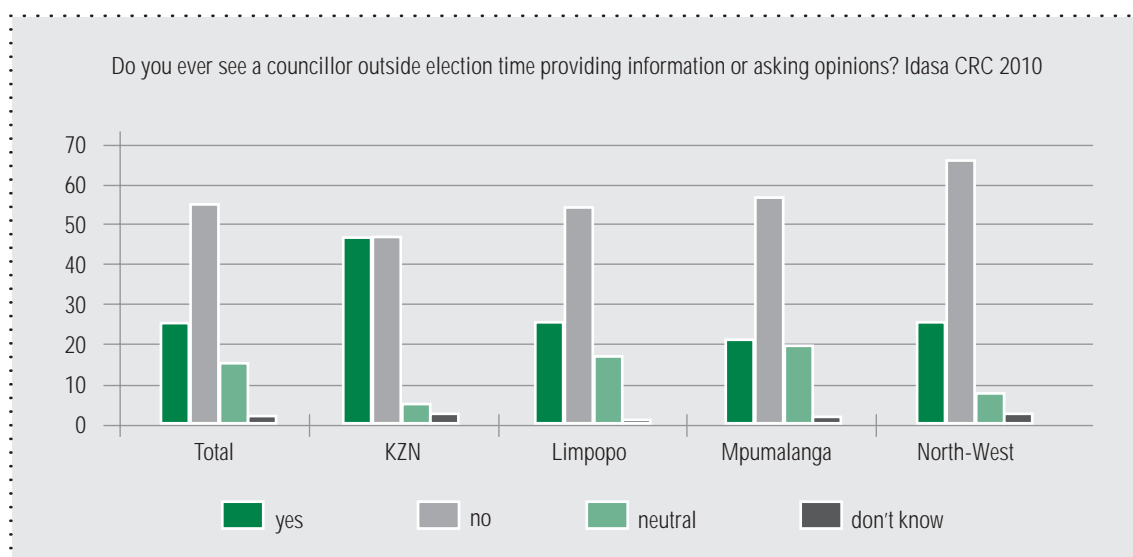
28%. Smith (2008:15) has argued that, ‘a significant impediment to capacity building of ward committees appears to be a lack of funding at municipal level.’

- **Existence of Community Development Workers (CDWs):** tension between CDWs and ward committees was reported during the Citizen Report Card exercise. The key point of contention relates to the payment that CDWs receive for their work. Whereas as ward committee members only receive a stipend for out-of-pocket-expenses, they believe that they should also be paid for the contribution that they make to the community. Overlaps in terms of the work that both CDWs and ward committees perform also contributes to tension. Furthermore, in most municipalities where the study was conducted it was clear that communities often receive conflicting information from CDWs, ward committees and councillors concerning

municipal affairs including service delivery options available to the community.

- **Visibility of councillors:** according to the legislative framework, ward councillors are required to chair ward committees. The Citizen Report Card found that councillors as chairpersons of the ward committees are not visible to communities and they do not maintain the required contact and communication with the local people except prior to elections. If ward councillors do not convene regular meetings it paralyses the functioning of the ward committee. Consequently, this affects community development which is the ultimate objective of the ward committee structure. Perhaps there is some merit in the proposal to amend section 73(2) and 74(a) of the Structures Act to allow people other than ward councillors to chair ward committees. The low visibility of councillors outside of election time is depicted in **Figure 1** below:

Figure 1

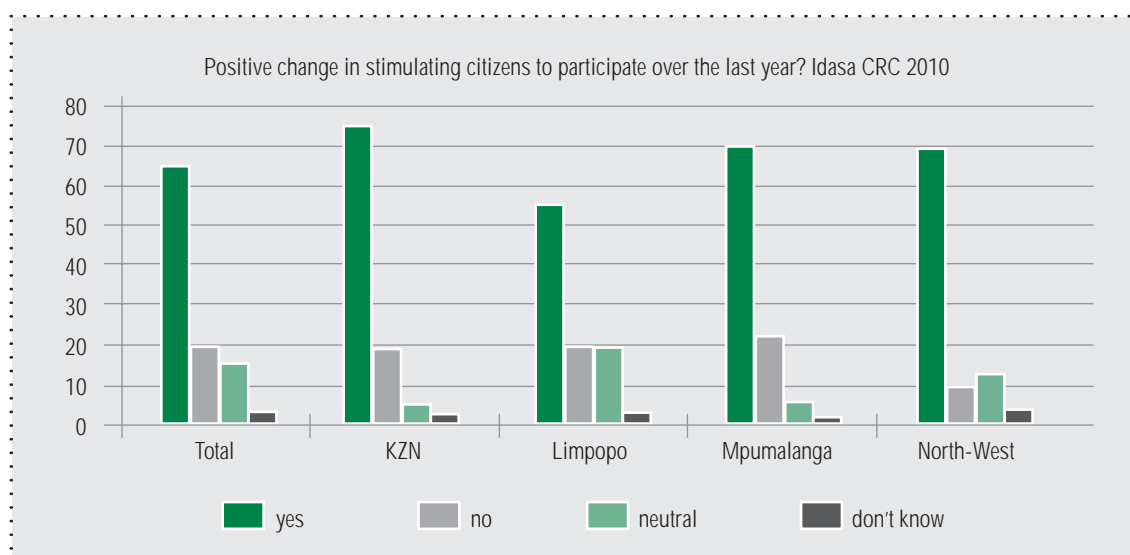


Source: Idasa, 2010

- Citizens' input and poor participation:** it is critical that citizens' inputs are conveyed to the council and incorporated in final decisions taken. 57% of the respondents stated that consultation processes do not have any impact on decision-making processes and ward councillors do not recognise public inputs hence these are not conveyed to the councils. Consequently the public feels there is no need to attend public meetings.

The perception is that it is a useless exercise. 40% of the respondents from all provinces indicated that they have not attended any public meetings in the past 12 months. The respondents in all four provinces further indicated that there has not been any effort in the past year to stimulate improved citizen engagement in governance matters. This is depicted in **Figure 2** below.

Figure 2



Source: Idasa, 2010

- Working relationships between ward councillors and the committees:** a weak relationship between ward councillors and ward committees as well as a lack of appreciation for the potential role that the different stakeholders represented on the ward committee can play in the development of the municipality, hampers good cooperation and slows down the development process. The survey showed that there is a certain degree of tension between ward councillors and the committees,

with ward councillors sometimes feeling threatened by committee members. Smith (2008:12) has argued that 'where there are good relationships between ward committee members and where ward councillors are motivated and involved the performance of the committees is greatly enhanced'. An example of best practice emerged in the Local Government Barometer project. In certain wards it was observed that when ward committees raise developmental

issues with their ward councillors such issues are promptly taken to the council. In these instances ward committees feel recognised and valued.

- **Lack of resources:** across all municipalities in all four provinces, a lack of access to resources such as office space and equipment has been detrimental to the effectiveness of ward committees.

These challenges have a significant and adverse impact on municipal performance. The Citizen Report Card further solicited citizens' perceptions on service delivery. Overall, the results indicated high levels of dissatisfaction with the quality of services provided by local government with 49.9% of respondents indicating that there has been no significant improvement in service delivery over the past four years. Furthermore, corruption and failure by government to listen to people's voices were two key factors cited in interviews and were often linked to the deteriora-

tion of service delivery. A key recommendation of this paper is that these governance issues should be debated in public participation forums including ward committees in order to effect service delivery improvements.

LOCAL GOVERNANCE BAROMETER

The second study conducted by Idasa is the Local Governance Barometer (LGB). Similar to the CRC the LGB was focused on the efficacy of participatory mechanisms at the local level. The LGB measures the state of governance from the perspective of six key municipal stakeholders of which ward committees are a key element. Councillors, civil society organisations, the business sector, traditional councils and municipal officials comprise the other five stakeholders.

Case study evidence (see Box 1 below) from the Local Governance Barometer (LGB) exercise conducted by Idasa reveals that across all provinces the functionality of ward committees is weak.

BOX 1: WARD COMMITTEE CHALLENGES

During the implementation of the Local Governance Barometer¹ (LGB) in Limpopo province, focus groups were held to identify pertinent governance issues in municipalities in relation to the functionality of the 'invited spaces'. Invited spaces are those official spaces that are designated for public participation by the state. It is revealing that the trends are very similar from one municipality to the other.

The local structures that are meant to create spaces for dialogue and the relationships between individuals that make up these structures are weak. This results in power struggles within these structures. Lack of skills and resources, amongst others, is a major challenge for ward committees which in turn impacts on their performance. The introduction of stipends by government to ward committee members to finance the expenses incurred in fulfilling their activities did not appear to increase the efficacy of the ward committees.

On a political level ward committee members need to be conversant with political issues and the legislative framework underpinning the functioning of local government. This will potentially play a significant role in socio-economic development at the local level. In this regard the general feeling is that a minimum criterion for the selection of ward committee members needs to be set to ensure that candidates who are best able to simultaneously articulate community needs and interests as well as advocate for these needs are nominated to serve on ward committees. >>

>> The LGB further noted that the working relationship between ward committees and councillors is not healthy. Political competition between councillors and ward committee members is often present. As a result they do not share information actively and compete for the favour of community members.

There is no genuine public participation in decision-making processes. Too often consultation processes are merely meetings in which the community is told what has been decided upon.

Source: Idasa 2010

While ward committee meetings remain the most popular form of public engagement other forms of community engagement also exist, as set out in Table 2

Table 2: Meetings attended in the past 12 months

Type of meetings	(%)
Ward Committee	30.1%
Sector Committee	20.3%
Izimbizo	18.7%
Municipal Council	13.4%
Budget	5.6%
IDP	3.5%
Other	8.3%

Source: Idasa 2010

Although ward committee meetings still remain the most popular form of the 'invited space' for public engagement, 40% of the total respondents indicated that they did not attend any form of public participation meetings. During the LGB focus groups it was also clear that ward committees in their present form do not respond to any of the needs of communities. Ward committees also indicated that they are not able to respond to community development issues as they should.

Nyalunga (2006:2-3) also notes the usefulness of other forms of public participation. These include 'izimbizo' sector forums created by civil society

organisations (CSOs) and most importantly the work of CDWs as well as IDP forums. These forms of participation need to be acknowledged and valued as equal contributors to development initiatives and decision-making processes.

Smith (2008:11-12) notes that there are allegations that ward councillors have a direct influence in picking ward committees in line with political affiliation. This has given rise to the charge that ward committees are often merely extensions of political party structures and do not encompass the full range of interests within communities. Ward committees are supposed to be apolitical structures. However, it is evident from the LGB exercise that ward committees drive the political agenda of political parties. One civil society member commented that 'when you raise a critical issue in your ward during a ward committee meeting you will be asked to show a political membership card.'

Piper and Deacon in Smith (2008:12) also observed that in some cases there is a close relationship between ward committees and branches of political parties.

The proposed review of legislation, with proposals to expand ward committee beyond ten members is therefore critical. This may go some way towards promoting maximum community participation and representation. It may even be helpful for the number of ward committee members to be determined by the constituency of interest groups within the ward.

On the basis of the research two questions emerge: first, how can a mechanism that enhances effective community engagement in governance matters be developed? Secondly, should ward committees be replaced with a new model? This article contends that an inclusive approach to community participation is desirable instead of doing away with the ward committee system.

AN INCLUSIVE APPROACH TO PUBLIC PARTICIPATION

Folsher in Shar (2007:244) argues that participatory democracy presupposes decision-making processes that are not dictated by interest group politics but by rationality. He further argues that participation in public decision-making is a form of direct democracy that allows for a more meaningful democratic relationship between citizens and government than representative democracy. Therefore participative practices are to deliver on the promise of improving the quality of democratic governance, enabling conditions for good-quality deliberation processes. Notwithstanding the challenges impeding the effectiveness and operation of ward committees, an inclusive approach to participatory democracy and governance to improve and contribute to local development is strongly recommended. This is in view of the time and effort that has been invested in the ward committee system. Despite its challenges, the ward committee system appears to be the most widely recognised vehicle for participation at the local level. As such, the ability of the current participatory system to cope with a complete overhaul may not be feasible.

As the country transforms its local government system, the existing ward committee system as participatory mechanisms should be strengthened by other mechanisms and structures. Rueben in Shah (2007:243-244) warns that while participatory

systems have the potential to incorporate local knowledge at all levels of decision-making, which results in better public policy and implementation thereof, increased accountability and improved trust in government should not be reduced to the elite including the collective forms of political and social organisations such as political parties and civil society organisations. In essence, participatory processes for a refined ward committee model, which Cogta envisages, should also include the non-organised segments of the broader community.

The critical question that needs to be asked is – do ‘invited spaces’, through directly elected representatives, result in improved municipal performance? Contrary to this notion or belief, it is evident from the results of the Citizen Report Card exercise that ward committees on their own do not appear to be the only or absolute mechanism to help sustain and facilitate community engagement in governance affairs. Therefore civil society groupings and non-organised segments also need to actively claim spaces instead of depending on spaces being created or provided for them. Mothekga and Buccus in Smith (2008:17) noted that South Africa’s local government system has failed to draw on the richness of the participatory culture and the host of structures which the new political era has given rise to. They further note that ‘ward committees have been set up in competition with, or even to the detriment of, a range of other structures and processes through which citizens also participate in local governance.’

Nyalunga (2006: 2) argues that the functions of ward committees have been restricted mainly to making recommendations to the ward councillor instead of playing an active participative role in decision-making processes. Therefore, a policy framework that institutionalises broad, substantive participation at the local level is desirable. This should afford an engagement of, for instance, CSOs

in decision-making processes instead of seeing their involvement on an ad hoc basis. McGee in Shah (2007: 251) argued that 'a supportive legal framework is an enabling, even necessary, condition for citizens to participate in and contribute to processes in the public space'. Within the South African context, such a framework should regulate the terms of actors' engagement and the scope they have for influencing decision-making processes.

CONCLUSION

Developmental local government requires institutional arrangements that embrace democracy and participatory governance in order to enhance municipal performance. This includes, as envisaged in various regulatory frameworks, the establishment of ward committees. However, as various studies

including the recent CRC and LGB survey by Idasa indicate, ward committees are largely perceived as ineffective in advancing citizen participation at the local level. Their inefficiency is caused by several factors including, among other things, lack of skills and resources, poor working relations between ward councillors and committee members, and difficulties in putting ward communities concerns on the broader council agenda. In view of these challenges, this paper argues that a wide range of participatory mechanisms with different role players should be encouraged and valued. A more detailed and explicit regulatory framework that is more embracing of the forms of participation that exist outside of ward committees is recommended to improve the quality of participation at the local level.

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ENHANCING CITIZEN VOICE: THE CASE OF IMPENDLE

By Daniel Bailey, Built Environment Support Group (BESG)

Impendle is a large rural area in the western highlands of KwaZulu-Natal. The Impendle Municipality, bound in the west by the uKhahlamba Drakensberg Park and in the east by Msunduzi Municipality, falls within the uMgungundlovu District.



PHOTO: STRING COMMUNICATIONS

Traditional dwellings are common in this sparsely populated mountainous landscape, with a population of about 40 000 people. With unemployment as high as 60%, there is a great dependency on pensions and social grants.

There is no industrial activity and most people derive their livelihood through agricultural pursuits.

Infrastructure is poor and, in many cases, water is still collected from natural sources. However, there is increasing access to communal standpipes and treated water in dwellings. The sanitation backlog is about 58% and most sanitation services are VIP

latrines. The official refuse backlog is estimated to be about 97.5%, with collection provided only to a small number of rate-paying properties near the municipal offices. However, there is relatively high access to electricity. In 2007, 5 750 households had access compared to 1 142 households in 2006, out of an estimated 7 342 households.

Of the 1 500 km of road network in Impendle, only 16 km is all-weather road, which means that even main roads become impassable in wet weather. The majority of the roads servicing communities are in a bad condition, especially in summer. The poor

state of Impendle’s infrastructure is attributed to lack of funding, technical capacity and a proper maintenance programme¹.

HIV and Aids prevalence in the district is one of the highest in the country, about 45%, and health services are under severe pressure with an average of 1 500 people per nurse².

HOW CITIZENS PARTICIPATE

There are only four wards in Impendle municipality, with great distances between communities and limited access to transport. Public participation comprises integrated development planning and budget road shows, with a free meal, and token public meetings. However, due to the physical constraints imposed by the terrain, information on issues of public interest has not been adequately communicated to all constituencies within the municipality.

What has emerged is a synergy between ward committees and established community-based organisations (CBOs). The large wards and poor levels of accessibility mean that ward committees are reliant on community structures for communication, holding meetings and providing feedback on their behalf. Importantly, it establishes a mutually beneficial relationship between CBOs and ward committees, as CBOs support ward committee functions and ward committees directly with CBOs on issues of ward development.

The CBOs are helping us, we know each other, so we call meetings if there is something to report. Some [people] don’t talk with ward committees. They use the CBOs first. If you need something, you can talk to them, you can complain.’

There has been a history of active CBOs in the Impendle community, with the role they have played in community development being assimilated into the ward committee processes. As one housing committee member says, ‘The CBOs are helping us, we know each other, so we call meetings if there is something to report. Some [people] don’t talk with ward committees. They use the CBOs first. If you need something, you can talk to them, you can complain.’³

The status and role played by CBOs in the Impendle community means that CBOs and their membership feel that they can approach councillors and municipal officials and, due to the topography and size of the wards at Impendle, they are sometimes better located and informed to do so than the ward committees.

As two members relate, ‘We talk with CBOs and then talk with the councillor.’⁴ ‘I feel proud because I’ve got a voice now to the municipality and others have a voice through me.’⁵

ROLE OF DEVELOPMENT ORGANISATIONS

The role of development organisations in facilitating CBO engagement on issues affecting communities cannot be overlooked. For example, the Built Environment Support Group (BESG) assists CBOs to participate in local governance. In Impendle, many of those interviewed indicated that they hadn’t realised how they could participate in public meetings or that ward committees needed support from the community to be effective. Many CBO members went to a municipal meeting for the first time and began to understand municipal development processes. ‘It was my first time to the IDP forum and I see what the municipality is doing,’ commented one member.⁶

Another says, ‘Our CBO did report on orphans and vulnerable children to the municipality through the ward committee. The municipality gave the

children school uniforms. BESG has helped us to read and think about what we didn't know. I can make recommendations to the councillor and I have confidence to talk to the councillor in meetings. Next year the IDP will be in isiZulu too!⁷

Further personal development is often encouraged through the work of development organisations. 'Through BESG we have learnt a lot. We can get knowledge and report to the community. I am doing ABET three days a week now.'⁸

SUPPORTING WARD SYSTEMS

National perspectives on ward committees conclude that they have been largely unsuccessful in their mandate. Key sectors of the community have been left out of the participation process as a result of geography, superficial consultation and a lack of training of ward committees to engage with different sectors of the community. With the influence of ward committees lacking, it becomes a token process.⁹ Ward committees in Impendle have faced similar challenges. As a ward councillor relates, 'Some ward committee members don't work, so we need active CBOs to fill these gaps.'¹⁰

In addition to growing cooperation between CBOs and ward committees, the municipality has established a system of ward support to councillors and ward committees through the appointment of a ward administrator. Each of the four wards has been assigned an administrator to take minutes of meetings and provide ward reports to council. Ward administrators must have matric, basic computer skills and proficiency in English. According to Impendle IDP manager, Khulekani Zulu, 'We now have records of the minutes of ward meetings and it is easier for council to consider proposals that are on paper.' This step has also enabled a few

Impendle matriculants an opportunity to work for the municipality.

Support to ward systems has also been provided by the provincial government in the form of Community Development Workers (CDWs), who have been deployed to assist the municipality. However, as this respondent says, 'There is not much happening between ward committees and CDWs formally. The Provincial Department of Cooperative Governance and Traditional Affairs asked council to use CDWs and they must be present at ward committee meetings. The province wants them to be more integrated into municipal processes and the municipality is in the process of drafting a programme for CDWs in the municipality.'¹¹

PARTICIPATION OF TRADITIONAL AUTHORITY

The integration of traditional and municipal structures is not in evidence at Impendle. Historically, traditional leadership structures are well established in Impendle but are not fully active within the municipal council, as Mayor Sizakele Makhaye explains. 'Amakhosi are supposed to be part of council but it is complicated by the fact that their lands cross municipal boundaries and they may only attend council meetings in a particular municipality.'¹²

Another reason for a lack of visibility of traditional leaders at council meetings is that they are not compensated for their time or transport to council meetings. Lack of funding is also a reason for the lack of engagement around development issues. There are also the party political issues that affect co-operation, as the majority of the councillors are ANC and the traditional leaders are historically IFP although this is changing.

CONCLUSION

The lack of traditional leadership participation in municipal structures and the poor functioning of some ward committees means that there is much space for CBOs at Impendle to function as conduits for public participation in local governance.

Furthermore, as Mayor Makhaye confirms, the CBO culture of volunteerism in a historically close-knit community and the fact that these community structures are constituted mainly of women has had a positive role in the growing relationship between CBOs and ward committees.

In the past, public participation at Impendle has been a formality delivered by the municipality to passive citizens. What is evident is the beginning of a shift in attitude on the part of civil society towards participation in municipal governance and a greater willingness on the part of the municipality to accommodate a more substantive and meaningful participation process. CBOs and ward committees are working together to find a more representative voice in order to participate more effectively in local governance and the development of their communities.

Impendle is one of eight local and district municipalities in the KwaZulu-Natal Midlands that is the location of BESG's 'Deepening Democracy Project'. The project aims to deepen citizen participation in local government decision-making and improve transparency and accountability in service delivery to indigent communities.

ENDNOTE

¹ Impendle Municipality. 2010. Integrated Development Plan Review 2009/2010. June 2009.

² Impendle Municipality. 2010. Integrated Development Plan Review 2009/2010. June 2009.

³ Mrs Qaphelisile Mkhize, Nzinga Housing Committee Member.

⁴ Ms Buhle Lushaba, Ward 4 committee member.

⁵ Mrs Qaphelisile Mkhize, Nzinga Housing Committee Member.

⁶ Mrs Gabisile Mazeka, caregiver/volunteer at the Nzinga drop in centre.

⁷ Mrs Sbongile Mbelu, caregiver/volunteer at the NIP Site.

⁸ Mrs Lindiwe Mvelase, caregiver/volunteer at Infudomalo (CBO).

⁹ Bailey, D. and Mdlalose, M. 2009. Mainstreaming HIV/AIDS through community participation structures and mobilisation of ward committees.

http://www.halogen.org.za/documents/Input%20Paper_Community_Participation_and_HIV_AIDS.pdf

¹⁰ Councillor Sizakele Makhaye, Mayor of Impendle Municipality.

¹¹ Councillor Sizwe Ndlela, Ward Councillor (ward 4), Impendle Municipality.

¹² Councillor Sizakele Makhaye, Mayor of Impendle Municipality.



TRADITIONAL LEADERSHIP AND THE DYNAMICS OF PUBLIC PARTICIPATION: IMPLICATIONS FOR RURAL DEVELOPMENT

By Siviwe Mdoda, Trust for Community Outreach and Education¹ (TCOE)

'The basis of democracy stems from all citizens having a potential influence in the political process and thus, the centrality of power and authoritarian nature of most traditional leaderships in South Africa, casts doubt on whether the citizens do, in fact have a political voice.' (Campbell et al 2007).



PHOTO: STRING COMMUNICATIONS

This paper argues that that the current efforts aimed at rural development will be constrained by three critical factors. Firstly, the power struggle between democratically constituted structures and traditional authority over roles in the processes and activities that emanate from the rural development programme. Secondly, the manner in which the state responds to the emergence of alternative platforms for expression or organisation. These formations are not only critical of both councillors and traditional leaders but also articulate the interests of marginalised sectors of 'traditional communities'.

Thirdly, the position held by traditional authorities within a democratic system where they are entitled to salaries, as public officer-bearers, but are unwilling to be subject to accountability requirements similar to those that apply to other public servants in general.

Arguably, without the active participation of rural people in the political processes that aim to plan, implement and monitor rural development, such a programme will not be sustainable. The main issue the paper raises is that without strong, democratic organisations of the rural and marginalised, able to

contest political spaces and articulate the interests of the historically excluded, participation will remain weak and devoid of the desired impact. Through the voices, actions and vision of the existing popular formations in four selected districts, the discussion draws lessons and recommends alternative approaches to the challenges of exclusion facing the rural poor. The experiences of Ilizwi LamaFama, Mopani Farmers Union, Rural People's Movement and Siyazakha Land and Development Forum provide evidence of not only how weak rural municipalities are in the face of draconian tendencies of the traditional authorities but also what perceptions of public participation are held by the existing structures of governance.

Our conclusions are based on the debates that are underway within the popular formations. As organisations who articulate the interests of land-users, a group that is often on a collision course with the traditional authorities due to the control they have over land administration, they are strategically located to provide on the ground experience and sentiments regarding the issue of traditional leadership and the impediments of public participation. The discussions in this paper attempt to interrogate the current trends in public participation and weigh these against the aspirations of the rural poor in communal areas, as articulated in the policy submissions of the rural organisations mentioned above.

METHODOLOGY

The information used in this paper was sourced through a desk-top study that covered policies on rural governance. This included critical texts on the subject of traditional authorities and public participation. Submissions from Ilizwi Lamafama, Rural People's Movement and Siyazakha Land and Development Forum to Parliament's Portfolio

Committee on Rural Development and Land Reform during the public hearings on the repeal of Black Authorities Act also provided valuable information.

Reports from meetings of the above-mentioned organisations were also used as was the report of the TCOE 25th Anniversary Conference (TCOE 2009), which included discussions on traditional leadership. Interviews with leaders of grassroots organisations also contributed to the body of knowledge consulted. Lastly, observations of the debates taking place in the platforms of the rural organisations are also used as evidence of the views these rural collectives have on the issue of participation and traditional authority.

CONTEXT

Traditional authorities have to be viewed in the historical context of their evolution through the pre-colonial, colonial, apartheid and post-apartheid years. Historical evidence suggests that the chiefs who resisted the expansion of the colonial authority into lands occupied by natives were dealt with ruthlessly. The racist governments of the past enacted a series of laws that not only distorted the institution but also used it to advance a discriminatory agenda. The institution was used by the apartheid government to create reserves for tribal units to govern themselves, within apartheid law. In the creation of Transkei, Khonou (2009) points out:

'The architects of the independence of Transkei sought to justify their political legitimacy by producing a mixture of both democratic and tribal policies . . . The Status of Transkei Act endorsed the status, roles and functions of traditional leaders in the Legislative Assembly of the Transkei as constituted in terms of the Transkei Constitution Act . . . These traditional leaders were given seats in the legislature to give the homeland system a flavour of democratic mandate.' (Khonou 2009: 90-91)

Similar reserves were created in Bophuthatswana, Venda and Ciskei. This, however, does not suggest that all traditional leaders collaborated with apartheid divide and rule. The advent of democracy in South Africa brought to the fore the question of the legitimacy of the institution of traditional leadership and their status alongside democratic structures. Ntsebeza (2006) argues that these structures cannot complement one another, as the ANC strives to make it so, because they are fundamentally contradictory. He further argues that the co-existence of traditional authorities alongside democratic structures is reflective of the ambiguity of the position of the ANC with regard to rural governance (Ntsebeza 2006: 15-16 and 258-262). The enactment of the Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA) and the Communal Land Rights Act of 2004, particularly the circumstances around which the latter was made into law, demonstrate that democratic governance in communal areas is far from being achieved. Currently, the Traditional Courts Bill is also under discussion, with serious opposition from civil society and the organisations that represent communities who will be affected by this proposed law.

The Congress of Traditional Leaders of South Africa (Contralesa) has also been vocal about its policy positions. Contralesa has strongly opposed the introduction of democratic municipalities in areas deemed as traditional communities by the provisions of the TLGFA. Moreover, its president, Chief Pathekile Holomisa has lambasted the colonial practice of distorting the source of their legitimacy, namely customary law (Holomisa 2007a). Contralesa has called for more powers to be accorded to the institution of traditional leadership, with particular emphasis on the need to transfer local government powers to chiefs. Under the current legislation, chiefs wield considerable power with regard to land

administration and this has been a bone of contention not only with elected municipal councils but with communities as well. One of the interviewees in Ntsebeza's research, Mr Jama highlights the fact that residents of communal areas rely largely on traditional leaders to access land. Our research suggests that many organisations of residents of communal areas are strongly opposed to the concentration of land administration powers in this institution.

Opposition to the legitimisation of traditional leadership is based, among other things, on the experience these communities have had under the rule of chiefs for decades. This experience is reflected in the testimonies made to Parliament, which are littered with cases of abuse of power, intimidation, illegal tax collection and harassment by the traditional authorities. Rural organisations have been challenging both traditional authorities and municipalities for the right to participate in the decision-making processes, a right enshrined in the Constitution. The experiences reflected in their submissions clearly indicate that the current legislative framework locates them more as subjects of traditional authorities rather than citizens of a democratic country.²

FROM CEREMONIAL TO MEANINGFUL: NOTIONS OF PUBLIC PARTICIPATION

The second president of the democratic South Africa, Thabo Mbeki introduced an imbizo model where high-ranking government officials directly interact with communities to listen to development needs, service delivery challenges and provide answers to questions posed. This proved to be effective initially, as communities felt that they would have the ears of their leaders but again this initiative appears to have not yielded the desired results. Communities appear

to have noted the limitations of the *imbizos* and realise that this level of participation can be merely ceremonial.³ This sentiment has been echoed by organisations in the Eastern Cape and point to the fact that rural people expect tangible results from platforms where the development challenges are discussed.

National government's policy framework on public participation provides a series of useful guidelines that aim to deepen democracy.⁴ These guidelines prescribe clear interventions for democratically constituted organs of governance, but falls short of providing the same level of clarity for communities under traditional authorities. The official definition of public participation as set out by national government is:

'an open, accountable process through which individuals and groups within selected communities can exchange views and influence decision-making. It is further defined as a democratic process of engaging people in deciding, planning, and playing an active part in the development and operation of services that affect their lives' (DPLG 2005, p1).

The right of citizens to participate in issues of governance is enshrined in the constitution and this is supported by a range of legislations that give weight to the provisions of the Constitution. For example, the White Paper on Local Government outlines the aims of public participation as follows:

- To ensure political leaders remain accountable and work within their mandate;
- To allow citizens (as individuals or interest groups) to have continuous input into local politics;
- To allow consumers to have input on the way services are delivered;

- To afford organised civil society the opportunity to enter into partnerships and contracts with local government in order to mobilise additional resources (DPLG 1998).

The Local Government: Municipal Structures Act of 1998 and the Local Government: Municipal Systems Act of 2000 give more detail to the constitutional commitment to public participation. The provisions are not restricted to municipalities but bind all public offices, including the institution of traditional leadership in principle. However, it has been the experience of rural communities in particular that what is on paper does not necessarily mean that these are automatically realisable rights. On the contrary, public officials are repeatedly reported to have violated the right of communities to participate in decision-making. Ilizwi Lamafama told Parliament the following:

*'(the) March Traditional Council election was fraudulent in the sense that communities were not consulted and we tried to pursue the MEC concerned about our dissatisfaction but were disappointed to hear from him that he will be judged as a "stupid MEC" by the President if he can put an election on hold.'*⁵

The submissions made by Siyazakha Land and Development Forum to Parliament in 2010 also reflect similar experiences.

Decisions that affect the prospects of development in communal areas take place in a variety of platforms. Firstly, there are official platforms where government discusses administrative issues of service delivery, like the council meetings where members of the public have a right to observe. In council chambers, members of the public are allowed to sit in the gallery and

witness the debates but cannot intervene in the discussions. Secondly, the traditional council also calls meetings where villagers are allowed to voice their views. Thirdly, there are public meetings that councillors are bound by law to hold at least four times a year to discuss local development affairs with the residents of a ward. These meetings are open to all members of the community, who are entitled to raise their concerns or provide recommendations. There are also meetings that community structures hold on their own to plan their participation and submissions to official platforms or create a platform for addressing development or social challenges. At these platforms they can also invite relevant public officials to provide clarity on questions of significance to the residents. Therefore, there is actually no shortage of platforms or forums where communities can either observe or take an active part in the discussions that would influence the decisions taken. Therefore, the main challenge seems to be about what happens within the existing structures and processes in terms of the inclusiveness of the participation and most importantly, what the outcome of such an engagement is.

The chairperson of Siyazakha, Douglas Ntamo, had the following to say regarding the level of participation in existing platforms:

*'People are not consistently interested in meetings. They will attend in numbers when there is something to be gained from meetings, like information on a project that will create job opportunities or help them ease the pressure of the chronic poverty they face daily. Even when the headman calls a meeting, for people to attend he must have news of something that would benefit people materially. Meetings like IDP are often well-attended because people get the chance to voice their development needs, which are often tied to the creation of jobs or provision of service they badly need.'*⁶

Communities have asserted their opposition to participation in flawed processes. For instance, the Rural Peoples Movement (RPM), refused to participate in the election of traditional councils. The RPM raised awareness of the residents about the problematic nature of the process but also mobilised them to boycott the election and to pursue the matter further by engaging structures that can provide solutions to challenges. This intervention indicates that for this organisation the notion of participation goes beyond consultation or being present in a forum that takes particular decisions. It is rather an ongoing process of democratising the interaction between role-players in a development process.

DUALITY OF LOCAL GOVERNANCE

The assertion by traditional leaders, as articulated by Contralesa that the current policy on rural governance limits the powers they should be having according to customary law is based on the notion that traditional authorities are true representatives of the interests of residents of communal areas. In the current democratic dispensation municipalities are mandated by law to manage the development processes by providing basic services and improving the conditions of rural people which are characterised by poverty, lack of infrastructure and general marginalisation. The resultant tensions between the two sets of leadership only work to defer the delivery of services and recognition of the right of communities to participate in the development of their areas.

In the case of traditional leadership, there exists an assumption that traditional leaders possess knowledge of the needs of the communities without necessarily having to consult them. This gives rise to the abuse of power and lack of accountability. In

extreme cases, it breeds a culture of harassment directed at individuals and groups that hold dissenting views and may amount to the perversion of policy and a blatant disregard for common law, as the case involving King Buyelekhaya Dalindyebo illustrates. King Dalindyebo is reported to have terrorised his subjects for not complying with a judgment he had handed down to subjects over alleged crimes (Mnisi 2010). Among the victims was an elderly man who was fined 15 cows for what his son, who had been lynched by the community, had allegedly done. The Rural Peoples' Movement also reported a case of corporal punishment meted out to a pregnant woman in full view of the public in the Dabi traditional court in Prodoe village⁷. The president of RPM herself reported that her life had been threatened by representatives of a traditional authority for raising awareness about traditional council elections.

This brings to the surface two issues; some traditional authorities have demonstrated, contrary to claims by Chief Holomisa, hostility towards women and elders. The case of Miriam Mateza, a farmer from Cala, attests to the mistreatment of women by traditional courts. In her testimony to Parliament, she told of how she was dispossessed of the land she owned because the court believed that no woman has a right to own land.⁸ In his presentation, Chief Holomisa disputed this assertion and claimed that in African culture no individual owns land.

'Land is owned collectively by the tribe and the administration of the institution of traditional leadership i.e. the traditional leaders and councillors . . . A married man is entitled to apply for a piece of land to provide necessities of the life of the family' (Holomisa 2007b).

In her testimony to Parliament, she told of how she was dispossessed of the land she owned because the court believed that no woman has a right to own land.⁸

The issue of land, a resource of vital importance to rural households, is highly contested in the debate on rural governance. Ilizwi Lamafama told Parliament that a villager who is not supportive of the traditional institutions is less likely to be allocated a piece of land. As Sindiso Mnisi notes writing in the Mail & Guardian, *'control over land forms the linchpin of traditional authority'*. Improved access to land, for residents of the communal areas and rural residents in general, is one of the reasons they participate in development processes, given the state of poverty that exists in the countryside. The power that traditional leadership has over the land provides them with a measure of control over the communities and thus limits prospects and spaces for meaningful participation where they can be held accountable by the villagers.

When villagers have a need to access land, due to the lack of clarity in policy, they find democratically elected structures ineffective and they rely on the chief to access land. The case of councillors in communal areas is loaded with challenges as they have to deal with traditional authorities who hold the view that councillors have been put in place by the government to substitute them.

IN PURSUIT OF A NEW MODEL: ALTERNATIVES FROM BELOW

It is possible for sustainable solutions to development and governance to be achieved if the broader sections of the population living in communal areas are rightfully viewed as citizens under a democratic constitution that recognises their role as key participants and not merely as subjects of

traditional authorities and passive recipients or consumers of services.

There are historical examples of communities that thrived under a traditional but fairly democratic system. For instance, in his research, Ntsebeza (2006) reports that as early as 1883 residents of Cala used to choose their own headman. Mr Ntamo attests to this as he recounts the tension that emerged when this practice was overlooked when a headman passed away and his successor was instituted without consultation with the community, as had been the case for over 100 years.⁹ The community of Xhalanga (Cala) had for over a century practiced the right to choose a traditional leader of their choice. They did so because a headman is an appointed member of the institution, unlike the chief whose assumption of leadership is hereditary. This model guaranteed them a right to participate, make inputs in the management of village affairs and remove a traditional leader if he failed to serve the community as agreed.

The experiences of RPM and Ilizwi Lamafama reflect a situation where relations are marked by hostility and exclusion. Claassens (2008) argues that the debate on the Traditional Courts Bill is based on a top-down interpretation of customary law, in which there is no participation by ordinary people. This view is echoed by Sindiso Mnisi who criticised government for consulting only traditional leaders on the bill and excluding ordinary people.¹⁰ Organisations such as Ilizwi and RPM need to be strengthened to more effectively contest for space to influence policy and decision-making at the local level. In general, rural movements feel that they are on their own and need to rely on themselves to fight for political space.

The case of Siyazakha is not entirely different from that of other organisations. This is signified by Douglas Ntamo who told parliamentarians, that '*Mayiphume ihagu namantshonthso ayo egadini*

azokwazi ukukhula amakhaphetshu am'¹¹. Researchers and affected communities appear to be in agreement over the critical need for a new political order in the communal areas.¹²

CONCLUSION

Three critical points emerge from the discussion above. Firstly, the present system, especially the traditional councils that assume the status of public officials have their salaries paid by the state. This virtually makes traditional authorities civil servants. Therefore they should answer for their decisions and activities in the same as other civil servants. This is necessitated by the experience that rural communities have under leaders who are not bound by democratic principles but they are given policy authority to administer land and justice in their villages. Secondly, policy has to clarify the position of women in communal areas. While rural women are entitled to the equality rights set out in the Bill of Rights, the experiences of women, as reflected in the testimonies to Parliament, show the continued practice of suppressing the rights of women in terms of land access and in terms of representation in the traditional court. A gender sensitive political culture should be the basis of policy and law-making. Lastly and most importantly, the organisations whose experiences are set out in this paper are active because they are organised. They are able to articulate their common interest, develop common positions and mount challenges for change because they work as a collective for the improved quality of life, not only for members that are active in their structures, but for the villages in which they live and work. Participation will therefore be meaningful and have impact if the communities in communal areas are organised.

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Douglas Ntamo, 10 October, 2010, Port Elizabeth.

ENDNOTES

¹ This paper was written by the Trust for Community Outreach and Education (TCOE) a rural development organisation that works in over 200 villages in the Eastern Cape, Western Cape and Limpopo. TCOE is a collective of six development organisations whose primary focus is to facilitate the building of rural organisations as platforms to unite small-scale farmers, landless collectives and artisanal fishers. These grassroots organisations, some of which are featured in this paper, are mobilising the rural poor to lobby for access to natural resources like the land and the sea. TCOE, as an umbrella body, oversees consolidating the growth of these organisations through capacity building, policy education and opening avenues for these structures to interact and build relationships with similar organisations in the country, in the region and in other parts of the world.

² Submissions to the public hearings on the Repeal of the Black Authorities Act held in Parliament on 21 July 2010.

³ From the minutes of a meeting of Mawubuye Land Rights Forum, a land rights organisation working in the Winelands and Overberg district, that took place in April 2007. In this meeting, the report on the visit of former President Mbeki to Swellendam report that the imbizo was like the president was passing through, as farmers’ concerns about lack of land reform in the Western Cape were not answered as the President had to leave for another engagement. This report was given by Henry Michaels, the forum’s chairperson.

RECOGNISING COMMUNITY VOICE AND DISSATISFACTION

⁴ Constitution of the Republic of South Africa 108 of 1996, White Paper on Local Government (1998), Local Government: Municipal Systems Act 32 of 2000, Draft Policy on Public Participation 2005)

⁵ Submission by Ilizwi Lamafama to Parliament for the public hearings on the Repeal of the Black Authorities Act, 21 July 2010.

⁶ Interview with Douglas Ntamo, Port Elizabeth, 1 October 2010 (translated from isiXhosa).

⁷ Submission of Rural Peoples Movement to the public hearings on the Repeal of Black Authorities Act on 21 July 2010

⁸ Submission of Miriam Mateza to public hearings on the Repeal of Black Authorities Act on 21 July 2010.

⁹ Interview with Mr. Douglas Ntamo, Port Elizabeth, 1 October 2010 (translated from isiXhosa)

¹⁰ Anninka Claassens, guest speaker at the 25th Anniversary TCOE conference in December 2008.

¹¹ Translation – “The pig must be driven out of the garden, together with its piglets, so that my cabbages can grow”.

¹² Ntsebeza (2006) and submissions by rural organisations like Ilizwi LamaFama, Rural People’s Movement and Siyazakha Land and Development Forum at the parliamentary hearings for the Repeal of Black Authorities Act.



CREATING AN ALTERNATIVE SPACE FOR PUBLIC PARTICIPATION

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'As soon as public business ceases to be the citizens' principal business, and they prefer to serve with their purse rather than with their person, the state is already close to ruin' (J Rousseau, The Social Contract, Book III, chapter 15).



PHOTO: STRING COMMUNICATIONS

Introduction

South Africa is rightly celebrated globally as a leading democracy in the developing world. The country enjoys a privileged status on a number of global platforms. Its political institutions and government are lauded for upholding universally held civil liberties. Indeed, the current democratic dispensation is a far cry from older formations in the developing world. Yet, when one applies a more expansive definition of democracy the picture changes somewhat.

While the struggle for liberation has ensured a supreme constitution; universal franchise; and democratic government, the entrenchment or to use a more conventional term the 'deepening' of democracy has remained far more elusive. There has been

something of a disjuncture between government and governance on the one hand and the practice of public participation on the other. This undermines not only democracy but also development.

A critical question is: what is the nature of government engagement with communities? Section 152(1)(e) of the constitution states that the objects of local government are 'to encourage the involvement of communities and community organisations in the matters of local government'. Furthermore, section 195(1)(e) states that people's needs must be responded to and the public must be encouraged to participate in policy-making. Yet these provisions in the constitution have for all intents and purposes been hollowed out and the spirit of citizenship violated.

THEORETICAL APPROACHES TO PUBLIC PARTICIPATION

Approaches to public participation range from decentralisation to a host of empowerment perspectives. These are briefly discussed below:

DECENTRALISATION

Decentralisation has been used as a key tool to evoke visions of democratic participation and as an argument against centralised bureaucratic control. Heller (2001:132) argues that 'strengthening and empowering local government has been justified not only on the grounds of making local government more efficient but also on the grounds of increasing accountability and participation.'

There is a strong link between decentralisation as a form of institutional governance and community engagement and participation. The popular perception is that decentralisation increases public participation and by implication, accountability by bringing government closer to the people. There are various ways in which this can be realised the main vehicle being local government. Local government is usually the vehicle also used to implement central government programs. However, participation of ordinary citizens in South Africa appears to be merely consultative, making it a rubber-stamping exercise.

Furthermore, community engagement is emptied of decision making content. Quite clearly, decentralisation does not necessarily suppose enhanced participation, but may in fact facilitate what James Ferguson (1994) following Michel Foucault refers to as a better system of (political) control. So, sub-structures such as ward committees facilitate tighter political control. Moreover, this may ensure political control by elite groupings and may even be a conduit for patronage. What becomes apparent is that the local citizenry have little control over developmental decisions and the development process as a whole.

Decentralisation may also be subject to elite capture in that the developmental imperatives may reflect the interests of local elites. To 'govern is to exercise power, and there are no *a priori* reasons why more localised forms of governance are more democratic' (Heller, 2001:132). The key issue that needs to be addressed when considering decentralisation approaches is how are spaces configured enabling control of the development process at the local scale? There is a need for a level of institutional engineering that would inform, if not facilitate, enhanced participatory governance.

What this means in effect is decentralisation infused with participatory democratic content – a 'filling-in' of the local state rather than the 'hollowing-out' of the same.

RADICAL DEMOCRACY

Radical democracy questions the regulative capacity of national governments and their role in harnessing the energies of ordinary citizens in governance (Cohen and Fung, 2004). The radical democracy approach seeks to make ordinary people active participants in the process of governance, by promoting 'broader participation in public decision-making' (Cohen and Fung, 2004: 23). The realisation of radical democracy sees citizens having 'greater direct roles in public choices or at least engaging more deeply with substantive political issues and being assured that officials will be responsive to their concerns and judgments. Furthermore, radical democrats emphasise deliberation. Instead of a politics of power and interest, radical democrats favour a more deliberative democracy in which citizens address public problems by reasoning together about how best to solve them. Radical democracy shifts from bargaining, interest aggregation, and power to the common reason of equal citizens as a dominant force in democratic life'.

Radical democracy apports an integral role to citizens in the production and reproduction of a progressive citizenship where ordinary people make a qualitative contribution to decision-making particularly when it comes to issues which affect them directly. It therefore has a distinct scalar geographical resonance. Here the local scale is privileged, but not exclusively so. The potential for success at this scale exists 'because of advantages in identifying problems, collaborating in their resolution, testing solutions to see if they are well-tailored to local circumstance, and disciplining solutions by reference to solutions adopted elsewhere' (Cohen and Fung, 2004:24). There is potential for other scales such as the regional and national scales to be infused with content that to an extent claims these spaces as participatory democratic rather than as purely representative. In effect there is a potential for participatory democracy to play an over-determining role.

For this to happen, the power of elites has to be curtailed. In other words, scale needs to be 'protected' against elite capture. Yet, this is difficult because there are always special or vested interests which in many cases are entrenched because of historical circumstances; institutional engineering or a combination of the two. For Avritzer (2002) 'in newly-democratised countries with long histories of authoritarian government and hierarchical public culture, the new electoral vestments may merely reproduce and reauthorise the authoritarian past' (cited in Cohen and Fung, 2004:25). This possibility notwithstanding, the influence that elites exert may to an extent be curtailed by 'the radical democratic movement'. There is, therefore, a vital role for civil society and particularly social movements to help communities realise a qualitative participatory democracy.

EMPOWERED PARTICIPATORY GOVERNANCE

Empowered Participatory Governance (EPG) is a recent approach formulated by Fung and Wright (2003). It is an approach based on concrete, empirical experience. For Fung and Wright (2003:5) EPG is 'participatory because it relies upon the commitment and capacities of ordinary people to make sensible decisions through reasoned deliberation and empowered because they attempt to tie action to discussion'. For EPG deliberation and discussion – the act of speech and argument – is central. For adherents to EPG, the approach is particularly attractive because of its emphasis on broad civic participation; deliberation, and community empowerment. The concept of deliberation is key to this approach and contrasts with consultation; information; and negotiation. The difference between deliberation and the other approaches is that decisions have already been taken and communities are merely consulted; informed or engaged in some form of negotiation around those decisions.

Communities, therefore, act as the proverbial rubberstamp. This approach is peculiar to the techno-bureaucratic state. A techno-bureaucratic state refers to a system that utilises managerialism; organisation and technical solutions to effect transformation. It is a system which depends on rule by the expert and the potential of science and reason to promote 'good governance'. With deliberation, communities are empowered to take qualitative decisions. With deliberation, decisions and the decision-making process as a whole is infused with democratic content. Yet, having said that due recognition must be given to the fact that the process may be open to elite capture by vested interests and the better resourced. But, deliberation supposes a commitment to openness and transparency.

Those engaged in deliberation must be willing to listen to different points of view; weigh the evidence presented and in a dispassionate way chart the direction to be taken.

The EPG model proposed by Fung and Wright rests on three principles:

1. A focus on specific, tangible problems;
2. Involvement of ordinary people affected by these problems and officials close to them; and
3. The deliberative development of solutions to them.

Furthermore, they propose institutional design principles to give a structure to these principles:

1. The devolution of public decision authority to empowered local units
2. The creation of formal linkages of responsibility, resource distribution, and communication that

connect these units to each other and to super ordinate, centralised authorities; and

3. The use and generation of new state institutions to support and guide these problem-solving efforts.

For those adhering to Empowered Participatory Governance it is practically orientated. In other words there are concrete situations at which the approach is targeted (Gaventa, 2006). Here the development process is driven from the grassroots by those in most need. The major problem associated with regimes that are techno-bureaucratic

is that decisions about development projects and the process itself is governed by the state apparatus with incidental input from affected communities. The focus on specific issues means that collective energies can be directed at achieving that which is tangible and relevant.

The involvement of the local community gives substance to the concept of bottom-up participation. Here local human resources are focused on solving local problems. Fung and Wright suggest that local problems may be more effectively solved by local citizens living and experiencing local conditions than by experts narrowly trained in providing technical solutions to problems. Local control of development projects also means that accountability is immediate rather than at a distance. It is an effective way of dealing with the issue of corruption. There is also a role for the expert as facilitator and not as the ultimate decision-maker.

The process is deliberative as both expert and local community members share knowledge and decide on the basis of the evidence presented what is in the best interests of the community. 'The important feature of genuine deliberation is that participants find reasons that they can accept in collective actions, not necessarily ones that they completely endorse or find maximally advantageous' (Fung and Wright, 2003:17). A key feature of deliberative decision-making is that vested interests and pre-conceived plans and power interests are all jettisoned in favour of reasoned argument and persuasion by the most convincing evidence and argument. Deliberative decision-making is more progressive than the techno-bureaucratic structure of control via administrators and managers who are not directly elected by the public and who are not directly accountable to communities but to their (also) unelected superiors. With the deliberative democracy approach experts and bureaucrats are obliged to

interact with local citizens with the aim of finding the best solution to local problems.

For Fung and Wright (2003) the Empowered Participatory Governance approach is governed by a peculiar form of institutional design. Devolution of state power 'downwards' to the local scale is a necessary feature. This devolution entails both conceptualising and the implementation of locally based solutions and accountability. Specifically, these local structures do not act in an advisory capacity but have substantial authority and capacity. This approach is clearly distinct from centralised development approaches – here identification and execution of development projects occurs at the local scale. Also, local accountability serves a monitoring function as well.

In contrast to the top-down techno-bureaucratic approach, the bottom up EPG approach does not assume total autonomy at the local level; rather the local is linked vertically to other scales through to the national scale. For proponents of EPG, higher levels of government may play an important role in terms of 'coordinating and distributing resources, solving problems that local units cannot solve themselves' (Fung and Wright 2003: 21), intervening in areas of chronic failure, and playing an important didactic role. This didactic role is very important because it serves to increase and build capacity in governance.

One of the most radical features of the institutional design of the EPG approach is its potential to transform the nature of governance. This rests in its potential to transform governance through participation and deliberation. Government institutions may in this way be re-made such that substantial decisions and decision-making are no longer the preserve of central state institutions but also fall within the ambit of the local sphere. Here structures are transformed by local practice. What is

important is that although the *raison d'être* of EPG is in the first instance project orientated it is an ongoing process, and it is this process which leads to the transformation of governance. Here the community acts as an agency to transform the structure of governance.

There are of course various criticisms of this approach key of which relates to its effectiveness at preventing elite capture. Of course any such initiative may be open to abuse, but the more empowered local communities are the less opportunity there is for this to happen. Greater participation by local communities coupled with state support reduces the scope for elite capture.

'We have reported this before, I don't think things will change'
(Township resident)

SOUTH AFRICA

The quick dissipation of the euphoria of liberation has brought into stark relief the realities and the enormity of the development enterprise in South Africa. Content-less slogans have been used to shore-up a system that has become increasingly centralised, technocratic and managerialist. Crudely put, one could rightfully accuse the South African state of being patronising and paternalistic. Moreover, what is patently clear is that democratic modes of accountability have quickly been subsumed by market governmentality. Here, the market becomes the ultimate arbiter of life in society particularly in the delivery of basic services. So, water, for example, which is basic to life, assumes the commodity form. And, one's access to water (and life) is governed by one's ability to pay for it. Moreover, one's quality of life is defined in those terms. And, it is the poor who are worse-off than

before. There are huge backlogs in services even though some progress has been made. In terms of development, it is the poor who still wait for liberation.

The techno-bureaucratic approach used in countries like Brazil and India has met with failure precisely because the 'target' of development is viewed as passive and lacking in agency. The rule by the expert (consultants) has failed. In many ways the concept of participation has been conflated with information, consultation and negotiation. Here, decisions and positions have already been entrenched and communities are merely informed; 'consulted' to fulfill legislation (as in community meetings) or a process of negotiation takes place about how best to implement bureaucratic decisions. The upshot here is that the community has no way of owning the process. In consequence development fails. Yet, the stock response of the government is not that policy has failed rather the reluctance of communities to 'participate' in the process is blamed. But, this is the key characteristic of the technocratic state – the mistaken 'belief that increased participation can be engineered through appropriate policy design' (Heller 2001:137). And, this is informed by the belief that policy is not meant to be reflexive. Yet there are examples – in Latin America and Asia where there have been high levels of success with processes which are reflexive and failure with those policies which are top-down.

South Africa inherited far greater capacities, and its planning and managerial capabilities are far better developed than its peers elsewhere like India and Brazil. South Africa has a vibrant local democracy informed by the struggle against apartheid. Moreover, 'the township-based civics movement of the 1980s not only cultivated democratic politics of opposition but also in the dying years of apartheid

Service delivery is controlled and managed by unelected, unresponsive and unaccountable bureaucrats, technocrats and administrators. It is hardly surprising therefore that service delivery is very much a moribund backwater in South Africa.

provided a range of community services' (Heller, 2001:143). Also, the strength of South African social movements has been well documented. Additionally, there are a myriad of NGOs and CBOs and the like which have strong connections to communities. However, these resources have not been sufficiently harnessed to address the challenges of the post-apartheid state.

Clearly, planning in South Africa has been stripped of its democratic participatory content. For example, the Integrated Development Plan (IDP) process has 'served largely as instruments for exerting political and bureaucratic control and as vehicles for marketisation, rather than as institutional spaces for democratic participation' (Heller, 2001:144). Not surprisingly there are low levels of public participation in IDPs, which in many cases are simply outsourced to consultants.

Service delivery is controlled and managed by unelected, unresponsive and unaccountable bureaucrats, technocrats and administrators. It is hardly surprising therefore that service delivery is very much a moribund backwater in South Africa.

But, what has been responsible for this type of approach, where citizenship has been stripped of its content and people are not seen as active participants in governance as the constitution encourages but as incidental to the process? The African National Congress as the governing party has to take responsibility. The ANC has a national parliamentary majority in addition to governing eight of the nine provinces. It has an entrenched tradition of centralist governance. It also is the dominant

partner in the alliance with the Congress of South African Trade Unions (Cosatu); the South African Communist Party (SACP) and the defunct South African National Civic Organisation (SANCO). The distinction between state and party is academic. Social movements such as the TAC and the Anti-Privatisation Forum are generally viewed in an antagonistic light by the ANC. Ward committees are politically controlled and are hand-picked by councillors. Institutional structures are not avenues for public participation but rather have morphed into conduits for dispensing patronage. Social movements rather than being viewed as active agents are in the main viewed as opponents: counter-revolutionaries whose views are not to be countenanced. Party structures act to quickly discipline those stepping out of line. Community representatives therefore are viewed as deployees of the party ensuring that the will of the party is done. Perhaps it is time for us to look to new forms of political representation.

Those subscribing to the Empowered Participatory Governance approach highlight social mobilisation. In this regard social movements play a vital role. The EPG approach assumes that social movements mobilise around resources and indeed are resources themselves. Social movements have certain demands and generally have a good idea about how to realise those demands. In South Africa, during the post-apartheid era there have been thousands of protests around services delivery. It is fairly easy therefore to engage social movements creating a forum for dialogue and deliberation.

Protests around services delivery are locality based. In effect 'projects' have already been identified. What needs to happen therefore is a conversation around how the project needs to be delivered, the role of the community; the role of the local state and bureaucracy and the allocation of resources for the realisation of the project. Clearly, state officials will need to be responsive to the demands of the community rather than adopting an aloof, distanced stance. Furthermore, policy now becomes more flexible as local conditions take on a more significant role. This creates the potential for the transformation of policy and policy-making.

However, can an EPG approach work in South Africa? How effective can it be for community engagement? Certainly, the EPG approach can work in South Africa. It needs political will and a move away from market inspired modes of services delivery, and the resources for such an approach exist. Also, the memory of struggle still exists and is fairly recent – we are after all only 16 years old as a democracy. This is evident in the social protests around the country where tactics used to fight apartheid are now being employed against the post-apartheid state. The community needs to be brought on board as equal partners in the process. The didactic nature of the process cannot be over-emphasised. Government needs to use this opportunity as a means of capacity building. For example in Porto Allegre, Brazil and Kerala, India an empowered participatory governance approach has equipped far more people with planning skills than any government program would have been able to do.

The EPG approach has great potential for success. In terms of getting people to participate in the process, evidence suggests that large numbers of the poor and marginalised will take an active part in such a process. The space that has been colonised

by the techno-bureaucratic state turning citizens into 'customers' and 'clients' needs to be reclaimed for citizenship. The structures which exist as conduits for citizens to voice their concerns are clearly not working as Hemson (2007:12) says: 'the ward committee system is not strengthening confidence in local government since these are not working as they should'. But, does this mean there is no hope? Hemson shows that among the poor there is a high level of knowledge about ward committees. This would assume therefore the potential for higher levels of participation by the poor. In Porto Allegre and Kerala it was the poor who had the highest levels of participation in participatory budgeting and the revised panchayat system, respectively.

Yet, according to Hemson, analysing a Human Sciences attitudinal survey, 'there are not high levels of participation in local government and South Africans have a generally low level of political discussion, declining with levels of income and education. Despite this, poor people have, surprisingly, higher levels of knowledge of ward committees and of their councilors. The indicators of income and location in informal settlements and tribal areas, for instance, show that the poor have a closer relationship with these structures.'

What is to be done? Clearly, a lot needs to be done. There needs to be a concerted effort to address issues of decentralisation to counter the techno-bureaucratic approach favoured by the neoliberal regime. Devolution needs to be meaningful rather than cosmetic. It needs to include resource allocation and the transfer of funds directly to the local level. Tangible problems need to be addressed such as the provision of basic infrastructure and meaningful oversight must be exercised by the community in partnership with government. Technical support needs to be provided to the community in the formulation, implementation and monitoring of

projects. The process needs to be guided by deliberation instead of the processes of information, consultation and negotiation where decisions have already been taken and the community merely plays a passive role. Quite clearly the approach adopted by the post-apartheid state has resulted in something of a development impasse. Community engagement based on deliberation, the essence of the Empowered Participatory Governance approach, offers a key opportunity for deepening democracy in South Africa.

CONCLUSION

There are various factors which have impacted or rather militated against effective community engagement and local participation. Firstly, a centralised, techno-bureaucratic state by definition acts to attenuate public participation. In South Africa it is clear that we have a techno-bureaucratic state where political democracy over-determines citizenship. It is also clear that this type of approach to governance fails in services delivery.

In proposing another approach to community engagement, it was clear that there are viable alternatives to the techno-bureaucratic state and its incarnation as representative democracy. Empowered participatory governance approaches have worked elsewhere in the world under less favourable conditions than we have here in South Africa. The examples of Porto Alegre in Brazil and Kerala in India are of singular importance to South Africa.

Institutional structures need to be modified to allow for local decision-making, local control of decision-making, technical assistance and oversight of resources and capacity building in local communities. There needs to be active engagement with community organisations and social movements. The space for NGOs to fulfill their various mandates needs to be created rather than turning them into corporatised entities in the service of government. Otherwise liberation and democracy may just turn out to be an empty shell.

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THE WITHHOLDING OF RATES IN FIVE LOCAL MUNICIPALITIES

By Annette May, Community Law Centre (CLC)

'It doesn't matter if you open a tap here...or in the informal settlement – the water that comes out is black. If you don't have water and you don't have sewerage services, even with all of your money, you cannot solve the problem. This is a human rights issue, a quality of life issue.' Ratepayer

Introduction

In South Africa, participation in 'invented' spaces has almost become synonymous with service delivery protests – the mass protest action by marginalised and vulnerable communities who take to the streets in order to have their voices heard. Since 2004 there has been a significant increase in the frequency and number of violent incidents that have marred these protests. Service delivery protests are, however, not the only form of protest to emerge in 'invented' spaces. During the same period, but perhaps less visibly, we have seen an emerging form of protest in the practice of withholding rates. This, as the name suggests, is the practice whereby ratepayers withhold their property rates and, in certain instances, fees for services such as electricity and water on the basis that municipalities are not fulfilling their duties.

An evaluation of these two forms of protest action reveals that many of the reasons that drive service delivery protests are also the imperatives for rates withholding (Atkinson 2007: 58). These include, but are not limited to, poor quality or no service delivery by municipalities; failed attempts to engage municipalities to remedy the status quo; a sense of frustration and futility with regard to

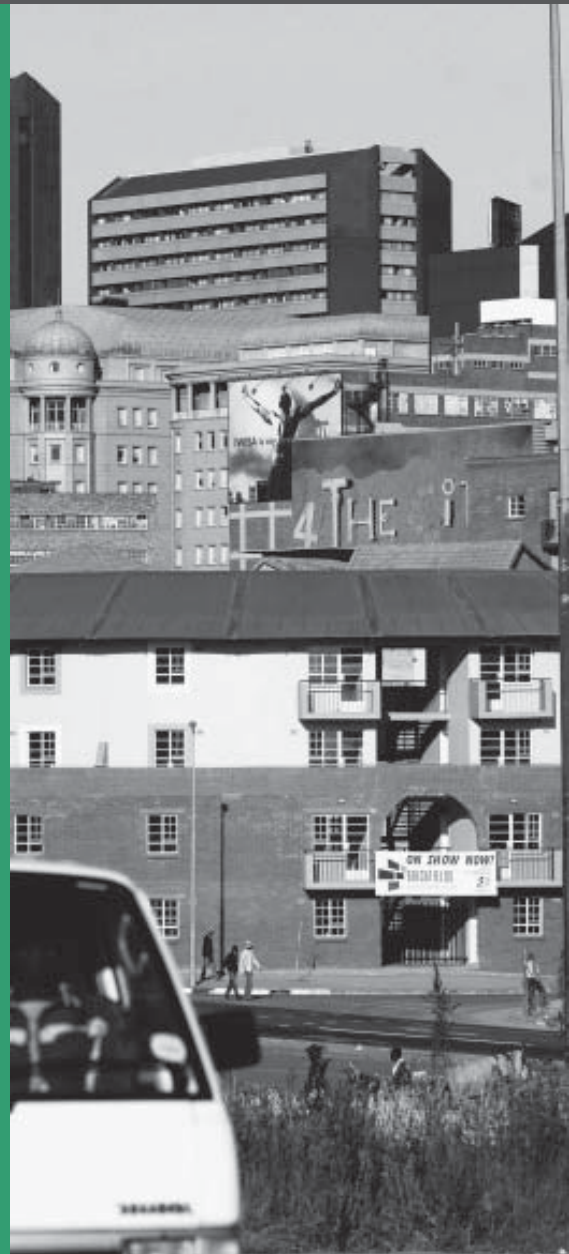


PHOTO: STRING COMMUNICATIONS

accessing and influencing key decision-making processes within municipal councils, and allegations of incapacity, mismanagement and corruption at the municipal level (Powell, May and Ntliziywana 2010: 5-9).

The practice of rates withholding, while motivated by the same imperatives that drive service delivery protests, is a 'new' form of protest action emanating from a different quarter within South African society. Ratepayers who withhold and the ratepayers' associations to which they belong are largely comprised of white, professional people from traditionally 'well-off' communities. This is in contrast to the perception that middle-income to rich citizens demonstrate apathy to municipal participatory processes because they are able to rely on their financial resources to meet their needs (Tshabala and Lombard 2009:40). However, as the opening quote to this article indicates, there are certain municipal failures that affect all citizens regardless of financial status. Withholding rates is, therefore, indicative of a new form of citizen vulnerability, and a new modality in terms of which dissatisfaction is expressed.

While the practice of rates withholding may not be associated with the physical violence and structural damage associated with other forms of protest, its consequences can be just as detrimental. Firstly, it has the potential to exacerbate historical racial and class divisions in our society, to the detriment of nation building. Secondly, the standoff between ratepayers and their municipal council can damage public trust and effective government within the particular municipality. Thirdly, if there is no basis in law for withholding rates it undermines the rule of law and the constitutional authority of the state. Lastly, withholding the payment of rates to municipalities

reduces the municipal revenue base, which in turn can reduce expenditure on services to the broader local community. It was for these reasons that the Community Law Centre (CLC) in partnership with GTZ-SLGP and SALGA embarked on a research project to examine and gain a perspective on the practice of rates withholding in five municipalities located across three provinces in South Africa.

The Department of Cooperative Governance and Traditional Affairs (Cogta) has acknowledged that 'much of local government is indeed in distress' (Cogta 2009: 8). There is no doubt that, in practice, the imperatives that drive protest action coincide with many of the factors that cause municipal distress. It was, however, not the aim of this research to evaluate the veracity of ratepayers' claims or even find immediate solutions to these deeply embedded problems. Rather, the objectives of the project were to understand the dispute from the perspective of the local actors and other interested parties; to examine the implications of these disputes for local democratic government and cooperative governance; and to recommend ways to help resolve the stand-off and strengthen local government. In so-doing, a number of stakeholders with an interest in these disputes, ranging from local ratepayers' associations, municipal leadership, councillors from opposition parties, provincial departments responsible for local government, Cogta and the National Taxpayer's Union were interviewed to get their perspective on the issue.

This is a synopsis of the key findings of our research and recommendations. It begins by defining the key elements of rates withholding, evaluating the legal basis for this practice, and finally, listing some practical recommendations on how to end these disputes and strengthen local democracy.

DEFINING RATES WITHHOLDING

The majority of ratepayers who withhold their property rates and/or fees for services have formed ratepayers' associations to represent their interests. These associations exist in the majority of the country's municipalities. Many of these local ratepayers' associations are members of a national umbrella body called the National Taxpayers Union. The Union provides advice, information and support to its local member associations. According to its policy, it does not intercede in the dealings between its member associations and their municipalities. Individual associations are solely responsible for taking the decision to withhold rates and taxes from their municipalities. One of the key findings of our research relates to the fact that, while similar processes are adopted by ratepayers' associations in the lead-up to a declaration of dispute, there is no uniformity in rates withholding across municipalities. The nature and form of any dispute with a municipality is determined by local conditions. So, for example, it is possible that not all ratepayers in a ratepayers' association are withholding rates. The reasons for withholding also vary from municipality to municipality and can range from disputes concerning property rate tariffs to service delivery failures in respect of key services such as water and electricity.

Despite these differences it is possible to identify an emerging pattern in the steps that precipitate a formal declaration of dispute by ratepayers' associations:

1. A service delivery failure is identified. In identifying the service delivery failure, ratepayers usually disaggregate the municipal bill and continue to pay for services actually received – usually this is for the trading services such as electricity and water. In most cases, ratepayers

withhold property rates taxes on the basis that the 'broader' municipal services (for which no identifiable service fee is charged), such as sewerage removal or road maintenance has not been fulfilled.

- 2. Engaging the municipality.** Ratepayers' associations seek to resolve the problem by engaging with the municipality. These efforts are well documented in order to ensure a proper 'paper trail' of the dispute and the attempts made to resolve it.
- 3. Declaring a dispute in terms of section 102(2) of the Municipal Systems Act.** If these efforts fail to resolve the problem, the ratepayers' association declare a dispute with the municipality in terms of section 102(2) of the Municipal Systems Act. As will be discussed later, section 102(2) provides that where there is a dispute about any specific amount owed to the municipality the declaration of a dispute can suspend the credit control and debt collection processes of the municipality until it is resolved.
- 4. Withholding payments.** If the declaration of a dispute does not remedy the problem, ratepayers withhold the payments of rates, depositing the money into a private interest-bearing account.
- 5. Providing the municipality with regular accounts of money withheld.** Ratepayers' associations provide a meticulous account to the municipality on a monthly basis detailing:
 - Amounts paid for services (e.g. water and electricity) received; and
 - Amounts withheld and deposited into the trust account.
- 6. Delivering services.** Only in instances of extreme service delivery failure, do ratepayers use the interest of the capital amount invested to deliver services themselves.

PERCEPTIONS AND RESPONSES TO RATES WITHHOLDING

PERCEPTIONS

Generally the actions of the ratepayers have been seen as unlawful and a breach of the rule of law. Ratepayers who are providing services are accused of illegally running a parallel municipality of their own. Explicitly or by inference, some politicians see a sinister agenda at work. Public claims have been made that either a racist, political or anti-developmental agenda is behind the actions of ratepayers. One inference drawn is that the majority of ratepayers are white and well off and want their money to be spent only on service delivery in their residential areas. Another inference is that some white ratepayers are resisting the democratic changes in the country and want to undermine government's legitimacy.

Similarly, ratepayers' views are also informed by certain perceptions about their municipalities. These perceptions relate to rampant maladministration, corruption and incapacity in their local municipalities.

Ratepayers also see the failure to engage by the municipality as an attempt to enforce political dominance by the majority party and to keep ratepayers at an arms-length of municipal affairs.

RESPONSES

The response from political leaders and government officials has varied between condemnation and seeking pragmatic ways to resolve the problem. Cogta has reportedly questioned the legality of ratepayers' actions but taken a pragmatic approach to finding a solution. The Ministry has acknowledged that some grievances may be genuine and are due to systemic fragilities in service delivery, financial management, billing and communication with citizens. The Ministry has sought to mediate by bringing municipalities, ratepayers and the broader community to the table to agree on a solution. Its approach encourages local parties to work together to solve problems of service delivery in their own areas.

THE LEGAL BASIS FOR WITHHOLDING VERSUS THE RIGHT TO DISCONNECT

Ratepayers' associations justify withholding rates on a number of legal grounds. Municipalities, however, contest the legality of their actions. Several municipalities have used aggressive strategies to coerce defaulting ratepayers to pay outstanding rates and/or service charges. The most commonly used mechanism is the disconnection of the electricity

supply to individual ratepayers. In turn, ratepayers' associations argue that municipalities do not have the legal right to disconnect electricity for the non-payment of rates, on the grounds that they are not withholding payments for electricity.

In evaluating the legality of rates withholding we are, therefore, faced with two key questions:

- Is there a legal basis for withholding rates? and
- Are municipalities entitled to disconnect services in response to withholding?

A LEGAL BASIS FOR WITHHOLDING RATES

Rates boycotts versus the withholding of rates: Is there a difference?

The first argument raised by ratepayers is the distinction between rates boycotts and rates withholding. Rates boycotts are not a new phenomenon in South Africa. Fjeldstad (2004: 540) observes that the non-payment of rates and user charges were used as weapons by non-white communities to protest against the apartheid regime. This practice of non-payment of rates and service charges has, however, continued to persist in many townships and informal settlements in post-apartheid South Africa. Ratepayers argue that whereas rates boycotts is linked to the 'culture of non-payment', or, as Fjeldstad states, an 'entitlement culture', the withholding of rates is only a temporary measure forced upon them by municipal failure (Fjeldstad 2004:540). Once the municipality performs, ratepayers claim that they are willing to withdraw the money deposited in the private trust account and pay for the services received.

The Constitutional Court in *City Council of Pretoria v Walker* 1998 (3) BCLR 257 (CC) makes it clear, however, that this distinction has no basis in law. The court held that it is the role and function of the courts to make a declaration of rights and grant appropriate relief, in that:

If every person who has a grievance about the conduct of a public official or a governmental structure were to take the law into his or her own hands or resort to self-help by withholding payment for services rendered...it carries with it the potential for chaos and anarchy and can therefore not be appropriate.

The court went further to say that:

A culture of self-help in which people refuse to pay for services that they have received is not acceptable. It is pre-eminently for the courts to grant appropriate relief against any public official, institution or government when there are grievances. It is not for the disgruntled individual to decide what the appropriate relief should be and to combine with others to take it upon himself or herself to punish the government structure by withholding payment which is due.¹

It is, therefore, unlikely that any court would condone the distinction between rates boycotts and withholding as having any basis in law.

Is the relationship between ratepayers and municipalities a contractual one?

The second basis for rates withholding relates to the argument that the relationship between ratepayers and municipalities is a contractual one. In other words, if ratepayers pay for the services they receive, municipalities must deliver. The duty to perform in such a contractual relationship, therefore, only arises where both parties to the contract perform.

The Constitutional Court in *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30, 2010) firmly located the relationship between municipalities and citizens within the domain of public law. >>

>> The court referred to:

...the special cluster of relationships that exist between a municipality and citizens, which is fundamentally cemented by the public responsibilities that a municipality bears in terms of the Constitution and legislation in respect of persons living in its jurisdiction.²

The court has therefore confirmed that the relationship between ratepayers and municipalities is not a *quid pro quo* relationship. The failure to perform by either the municipality or ratepayers can therefore never result in the *automatic* termination of the public duties owed to each other.

Is the “dispute clause” in section 102(2) of the Municipal Systems Act a valid basis for withholding payments?

As discussed above, the declaration of a dispute in terms of section 102(2) of the Municipal Systems Act will have the effect of suspending the credit control and debt collection processes of the municipality until such time that the dispute is resolved. The Systems Act is clear, however, that any dispute must relate to a ‘specific amount claimed by the municipality’. A dispute on the basis of ‘general dissatisfaction’ with municipal services does not qualify. ‘Blanket withholding’ on general grounds such as failure of the municipality to maintain municipal roads or public places will not have the effect of suspending the credit control and debt collection processes of the municipality.

CAN PROPERTY RATES AND TRADING SERVICES BE DISAGGREGATED?

A popular perception that has informed ratepayer’s actions is that income from property rates is used to fund communal services rendered to communities such as road building and maintenance or storm water drainage. Income from trading services, on the other hand, such as water and electricity, are generally thought to fund the delivery of these specific services.

The key difference between property rates and service charges (as discussed by Steytler and de Visser: 2009) lies in the fact that the right to levy property rates is derived from the Constitution itself and is as such a municipal tax.³ As a tax, it can be used to finance a number of activities from the running of the council and municipal administration, to the costs of delivering trading services to the

public. The courts have therefore made it clear that property rates and service charges are not mutually exclusive. Whereas service charges are defined narrowly, property rates are defined broadly and may include service charges in its ambit.⁴ It is therefore clear that no watertight distinction exists between property rates and fees and service charges for trading services.

Section 102(1)(a) of the Systems Act furthermore makes provision for municipalities to consolidate municipal accounts and suspend any service by a municipality as a means of enforcing the payment of any unsettled account. So, for example, where the payment of the “electricity portion” of a municipal account is up to date, as is the case with many ratepayers, it does not preclude the municipality from allocating the payment of electricity to any other outstanding portion of the municipal account, such as property rates or water.

LEGALITY OF DISCONNECTIONS IN RESPONSE TO RATES WITHHOLDING

THE DUTY TO COLLECT DEBTS

Section 96(a) of the Municipal Systems Act provides that a municipality ‘*must* collect all money that is due and payable to it subject to this Act and any other applicable legislation’. Case law has confirmed the peremptory nature of this duty. In *Mkontwana v Nelson Mandela Metropolitan Municipality*, the Constitutional Court held that municipalities have the duty to;

“...send out regular accounts, develop a culture of payment, disconnect the supply of electricity and water in appropriate circumstances and take appropriate steps for the collection of amounts due.”

The credit control and debt collection processes pursued by the municipality must, however, take place within the stringent framework as outlined by the Systems Act. Section 97 of the Systems Act outlines the content and salient features that every credit control and debt collection policy must contain. Importantly, by specifying the details to be included in the credit control and debt collection policy, the Act strives to ensure legal certainty, in that citizens are fully aware of what is expected of them, as well as the recourse that is available in the context of the termination of services. Importantly, section 97 directs municipalities to make specific provision for indigent and vulnerable debtors.

FAIR ADMINISTRATIVE ACTION

Beyond appropriate credit control and debt collection policies, the termination of a municipal service is also subject to the requirements of fair administrative action. This is not only an entrenched right in section 33 of the Constitution, but is also contained in the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

In the landmark decision of *Joseph and Others v City of Johannesburg and Others*⁵ the Constitutional Court condemned the municipality for relying on the necessity of debt collection as a means of justifying its non-compliance with PAJA. In that case, the automatic disconnection of electricity without notice or consideration of the context fell short of the requirements of fair administrative action. Similarly, even in the context of rates withholding, ratepayers are entitled to fair administrative action, including notification of the impending termination of services.

The right to fair administrative action goes hand in hand with the warning given by the court in *City Council of Pretoria v Walker*, which guarded against the selective recovery of debts or use of the credit control and debt collection processes of a municipality to pursue any agenda. The court held that:

*No members of a racial group should be made to feel that they are not deserving of equal “concern, respect and consideration” and that the law is likely to be used against them more harshly than others who belong to other race groups.*⁶ >>

>> Without undermining the importance of legal clarity in these disputes, a legal declaration of rights will not result in sustainable solutions to resolve these disputes. It will not help the parties to get along in future as partners rather than adversaries, as they must. It will not result in the *relational* aspects of community envisioned in the *White Paper on Local Government* (1998). It is the parties themselves – namely the municipalities and the ratepayers associations – who must solve these disputes, with the assistance of others to facilitate the way.

KEY FINDINGS

LIMITED FINANCIAL IMPACT, BUT SUBSTANTIAL POLITICAL IMPACT

About R10 million is currently being withheld by ratepayers associations in 35 towns across the country with more than half of that amount withheld by just three municipalities. There was general agreement amongst the interviewees that the financial impact was negligible. The political impact of the disputes is much more pronounced. This relates to the cost involved in the loss of trust in the relationship between the municipality and a sector of its citizenry. More particularly, a divide or vacuum has opened between public authority and people who are geographically, politically and economically intertwined. Accommodation and cooperation, not adversity and protest, are necessary for peaceful co-existence and the development of these areas. As one municipal official intimated, a loss of confidence in the municipality benefits no one.

DISPUTES RELATE TO SPECIFIC SERVICE DELIVERY PROBLEMS

In all cases, the grievances giving rise to the declaration of a dispute were linked to concrete service delivery problems. In most cases, municipal and provincial officials confirmed that there were genuine service delivery problems at issue, indicating a high degree of convergence amongst the parties on the factual basis underpinning the dispute. As one provincial official put it, there may be politics at play, but at the end of the day they [ratepayers] wouldn't have a space if the municipality had done what it was supposed to do. The important consideration here was that failures in service delivery had provided the space within which to mobilise discontent. This being said, agreement on the factual problems provides a strong basis for resolving the dispute, irrespective of the perceptions the parties may hold about each other's motives.

CONNECTIONS MADE BETWEEN GRIEVANCE AND REAL OR PERCEIVED INCAPACITY, MAL-ADMINISTRATION AND CORRUPTION

In all cases, ratepayers saw the service delivery problems as nested within systemic failures of governance and administration. Many municipal and provincial officials also alluded to broader institutional problems. From the Auditor-General's reports it is clear that actual problems of this kind are prevalent in these five municipalities. The high probability that actual problems of governance are involved in the disputes again provides a factual basis for resolving the disputes, and suggests the need to reform certain aspects of governance and administration to prevent their recurrence in future. >>

MUNICIPALITIES RESPOND TO THE DECLARATION OF DISPUTES IN A VARIETY OF WAYS

Municipal responses ranged from disengaging entirely, while employing aggressive legal strategies (such as cutting off electricity) to compel payment, to engaging the ratepayers' associations with a view to finding a solution. The principal points of contact between ratepayers' associations and municipalities were the offices of either the mayor or manager. The two chief forms of contact at these levels were formal correspondence and meetings. In all five municipalities, there was evidence of these kinds of contact, even in municipalities where there is presently little or no contact between the parties. The fact that there was some evidence of engagement even in cases where the parties were locked in legal battles is a further indication that there is firm ground to resolve these disputes.

A BREAKDOWN IN COMMUNICATION A COMMON THEME

Poor communication emerged as one of the most important factors in the disputes. In all five municipalities, a breakdown in communication had precipitated the disputes and hampered efforts to find a solution. Across the groups, many interviewees agreed that open and frank engagement between the parties was essential, and conversely that poor communication had bred discontent and misunderstanding. A strong message was that communication did not mean simply talking about the problem. It meant taking practical action to resolve the problem and following through on those actions in a responsible and reliable manner.

Had communication and engagement been effective to begin with, some of these disputes could have been avoided altogether. Most ratepayers and officials from municipalities and provinces were explicit on this point. The absence of dialogue, engagement, and follow-through had frustrated and alienated the ratepayers and undermined trust between the parties.

REPRESENTATIVE ORGANS OF COUNCILS APPEAR NOT TO PLAY A SIGNIFICANT ROLE

A fundamental question of the research was what part, if any, the democratic structures of council played to address or resolve the grievances. Where were the grievances registered and discussed with a view to resolving them?

When asked whether they participate in ward committee, IDP and budgeting processes, most ratepayers indicated that they did. However, most seemed to be discontented over the way these processes were organised and run. One ratepayer indicated that their association had submitted a list of issues via these processes but that they were never addressed. Another explained that their items were never carried over from one meeting to the next because meetings were 'not properly minuted'. A councillor felt that ward committee meetings were dominated by 'members of the mayoral executive committee'. The implication in this statement was that the presence of executive officials undermined the role of ordinary councillors in public participation. Several ratepayers expressed concern that budget and planning meetings 'were not properly advertised' and they had to find out about meetings 'from each other via sms'. >>

>> Some municipal officials confirmed that ratepayers' associations participated in participatory structures, while others denied it. Ratepayers, however, generally expressed discontent about the accessibility and efficacy of these participatory mechanisms, and neither party could offer any positive examples of progress being made in these structures. This is an interesting finding when contrasted with positive examples that both parties cited of ad hoc meetings between them, given that it is the participatory structures in municipalities which are designed to be the main avenues through which community needs and concerns are discussed and addressed. The inference was that these structures were not addressing the ratepayers concerns and, due to poor administration, may even have added to their discontent.

How did the dispute play out in the council itself? No standout examples were provided to suggest that these disputes were debated and discussed in the council itself. Some councillors appeared unsure about whether the matter had been discussed in council at all. It was not clear how the dispute was registered or discussed inside the executive and legislative organs of the five municipal councils.

A strong message from the councillors was that part of the problem is that council structures are generally organised along political party lines, which elevates the party caucus and offers few incentives for deliberative politics to emerge across party interests. One of our main conclusions is that the executive mayoral committee system is neither suited to conditions in our country nor is it an effective instrument for local nation building. It leads to executive-centeredness and carries the risk of the party caucus replacing council.

Nation building in our context requires that we actively build local political community for the long term. That goal will only come when leading sectors of a local community have incentives to deliberate and find common ground on the matters that separate and unite them. This cannot happen solely through ward committees and other structures without decision-making authority, it must also take place through the representative structures of local government where decisions are taken. This is in keeping with the argument by Tshishonga and Mbambo (2008: 771) that 'participation has no meaning unless the people involved have significant control over the decisions concerning the organisation to which they belong'. All local representation should have a proportional stake and influence in decision-making if we want to build local unity and overcome division. For these reasons we recommend reviewing the effectiveness of executive types from the point of view of local nation building, if possible with a view to abolishing the executive mayoral committee system and establishing executive committees.

RECOMMENDATIONS

RESOLVING THE STANDOFF IS NECESSARY AND POSSIBLE

Several opportunities exist to resolve disputes before they escalate to the point of breakdown. These do not necessarily have to take the form of formal mediation measures but rather substantive engagement on the part of both parties to find a sustainable solution. As the elected authority the municipality must take the lead in opening the engagement. Local government has a constitutional duty to provide services and responsible government in local areas. Ratepayers for their part must dispel any perception that they are holding municipalities to ransom.

Importantly, issues need to be localised and viewed in the current context. Local disputes should not be linked to national politics or traditional divides. The effect of this is that the local problem or issue is clouded by perceptions that have no bearing on the problem itself or the solution. It is, arguably, more difficult to focus on fixing a water pump stopping the water supply to a town when the emphasis has shifted to the motives of the parties who want it fixed or have not fixed it.

PRACTICAL LEADERSHIP AND OPEN COMMUNICATION FROM ALL PARTIES ARE ESSENTIAL

Open and frank dialogue is the only basis on which a sustainable solution to rates withholding can be built. However, effective communication must translate into tangible action in order for it to yield results. Personal and institutional reliability must be developed, which means following through on decisions and practical actions like returning phone calls, honouring commitments and scheduling, and showing up for meetings. Working together and finding the balance will require communication and understanding from all parties.

IMPROVEMENTS TO STRENGTHEN GOVERNANCE AND ADMINISTRATION ARE NEEDED

Engagement will be a fruitless exercise if there are no simultaneous improvements to strengthen governance and administration to ensure that there is no recurrence of the problems. In most of these municipalities the disputes were clearly rooted in a set of broader institutional weaknesses. Some of these were reflected in the Auditor-General's reports. Many of the grievances were consistent with government's own findings in its report on the state of local government.

Officials, councillors and ratepayers suggested several areas where improvement was needed:

- The Auditor-General should be given statutory powers to take action against persistent non-compliance by municipalities.
- Participation of ordinary residents in the formal participatory structures of council must improve in respect of both formal participation and substantive outcomes. This relates to oversight over budget preparation and transparency, IDP processes, ward committee meetings, and ward-specific processes and projects. >>

>>

- Engagement outside of these formal structures must be robust. Petitions and complaints mechanisms as well as report-back processes to communities need to be regularised and better managed, and direct engagement with ratepayers on specific issues must be facilitated.
- A fair portion of rates should go back to the paying ward for routine maintenance. Grant funding should go to communities too poor to pay.
- Municipalities should routinely undertake visits to each ward to ascertain first hand the state of projects.
- Council executive structures should be made more transparent and inclusive.

OMBUDSMAN FOR SERVICE DELIVERY

An important finding of our research is that short of litigation, there are no other administrative checks and balances or remedies available to ratepayers to hold municipalities to account for service delivery failures. In addition to strengthening oversight over municipalities and instituting mechanisms that will alert national and provincial government to municipal distress, it is recommended that consideration could be given to the creation of a statutory ombudsman to investigate complaints about municipal administration.

CONCLUSION

While many of these recommendations may pave the way to resolving these disputes, it is the local actors who must live together and must ultimately resolve their own problems. This is in part what the White Paper on Local Government (1998) envisioned when defining developmental local government as ‘local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives’.

Rates withholding, however, highlights the real, daily challenges that affect citizen engagement in the public participatory processes designed to achieve this vision. While rates withholding represents a ‘new’ form of protest action emanating from a different quarter within South African society, there is clear evidence of common problems and vulnerability experienced by those communities who participate in service delivery protests.

As such, our research highlights the need for new forms of collaboration and consensus seeking amongst communities in the context of a history of divided communities in South Africa. It highlights the need for an active citizenry that cuts across traditional divides to address the consequences of the institutional failures of municipalities and the failures of political representatives to exercise oversight over municipal affairs and represent communities’ interests.

Importantly, a community where all voices are not given an opportunity to be heard will be a community that is continually at war. Energy that could be devoted to building community and seeking development gains that can benefit *all* citizens will be wasted on the struggle to be heard. For local nation building, municipalities must not only breathe new life into existing participatory structures but must induce new forms of collaboration and consensus seeking amongst groups and parties.

This article is a summary of a larger research project conducted by the Community Law Centre in partnership with GTZ and SALGA. The research paper “Withholding rates and taxes within five local municipalities’ was authored by Derek Powell (principle author), Annette May and Phindile Ntliziywana. The full report can be accessed at: <http://www.ldphs.org.za/publications/publications-by-theme/local-government-in-south-africa/withholding-of-rates/Withholding%20of%20rates%2015Nov010.pdf/view>

UPDATE

On 14 December 2010, the Department of Cooperative Governance and Traditional Affairs (Cogta) hosted a Stakeholder’s Forum in the Delareyville town hall. As part of its on-going work in the area of rates withholding, the Community Law Centre (CLC) was invited to make a presentation at the meeting. The Stakeholder’s Forum, which was hosted by Deputy Minister for Cogta, Yunus Carrim, brought together all of the key stakeholders who have an interest in resolving the ongoing disputes pertaining to rates withholding. The significance of this meeting is that the towns of Sannieshof, Ottosdal and Delareyville have active ratepayers’ associations that have been at the forefront of rates withholding in South Africa because of severe municipal service delivery failures.

The meeting provided community members from every sector of Tswaing with the opportunity to directly address the key political and administrative decision-makers who have the authority to substantively shape development in the region. The choice of Tswaing to facilitate discussions was therefore crucial to not only ensure that the standoff between communities and municipalities can be effectively addressed in the municipal area, but also with a view to extracting

best practice that can be applied to other towns experiencing similar problems.

The key outcome of the meeting was the establishment of a Stakeholder’s Forum comprised of ratepayer representatives, municipal management, civil society stakeholders as well as representatives of the national and provincial departments of Cogta and other key sector departments. This forum is tasked with overseeing the municipal turnaround strategy which aims to remedy many of the municipal failures that precipitated the practice of rates withholding. The forum holds great potential for similar partnerships to be established between municipalities and the communities they serve. However, given the history of mistrust and the high level of tension that has characterised the relationship between the community, ratepayers’ associations and the municipality, the CLC recommended some practical steps to ensure the accountability of all stakeholders and integrity of the process.

Practical leadership and open communication from all parties are essential for any solution:

- **Open and frank dialogue**
The importance of open and frank dialogue cannot be overstated.
Focusing on facts and actual problems not perceptions.
- **Managing expectations**
State expectations clearly and set realistic objectives.
Taking firm but fair positions.
- **Effective communication must translate into tangible action and results**
Take concrete action, not simply talking.
Following through on actions and agreements.

- **Develop personal and institutional reliability**
Respond to letters.
Keep meetings and start them on time.
Deal with complaints before they are problems.
- **Forging new partnerships**
Use available social capital and experience wisely.
Work as partners to fix *actual* problems.
Be clear on the boundaries between the parties.
Bring other sectors of the community into the solution.
- **For these principles to change the status quo and build trust -**
They must be reduced to concrete terms and be clearly defined, for example, in an agreement or memorandum of understanding. (Uncertainty and confusion will create the risk of misunderstanding and will result in regression).
Clear deadlines and processes need to be in place, including deadlines for activities and how potential disputes will be dealt with.
Operating within the agreed framework must become the norm.

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ENDNOTES

¹ *City Council of Pretoria v Walker* 1998 (3) BCLR 257 (CC) at para 92.

² *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30 at para 24.

³ S 229(1) Constitution- 'a municipality may impose(a) rates on a property and surcharges for fees for services by or on behalf of the municipality'. See: *Fedsure Life Assurance Limited and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC), at para 39.

⁴ *Rates Action Group v City of Cape Town* 2004 (12) BCLR 1328 (C), at para 76 , the court noted that:

[t]here is nothing in the Constitution or in any of the other statutes which says that a municipality may not recover parts of its costs by one method, and another part by another method. The City is entitled to impose property rates to recover its costs in relation to services which it provides, and is also entitled to impose user charges. There is no reason why it may not do both.⁴

⁵ *Joseph and Others v City of Johannesburg and*, at paras 53-54.

⁶ *City Council of Pretoria v Walker* at para 81.



WHY BALFOUR WAS BURNT: ANGER OVER NON-RESPONSIVE GOVERNMENT

By Ebrahim Fakir and Maureen Moloji, Electoral Institute for the Sustainability of Democracy in Africa (EISA)

Since the local government elections of 2006 there have been an unprecedented number of social protests in various South African municipalities. Siyathemba, and the town of Balfour¹, in the Dipaleseng Municipality is one such case in point.



PHOTOZ: OBED ZILWA

Through different means and strategies, citizens have exercised their constitutional rights to association and free expression, the political right to protest and direct action, as well as the associated right to question and hold elected local government representatives to account. In many instances this resulted in protest action. However, it is unclear to what extent the protests are an attempt to demand and extract accountability, or are rather reflections of popular frustration. Or indeed, whether these

frustrations are related to government service delivery, to the state of democracy and governance in general, or simply to the increasing levels of social, economic and political powerlessness and inequality that ordinary citizens (largely black) experience in the post-apartheid era.

The residents of Siyathemba undertook their first major direct protest action in July 2009, which arose outside of any formal community or political structure or organisation. Government investigated

and discovered that, amongst other issues, residents were unhappy about a decision to include Siyathemba, in Dipaleseng Municipality, in the Mpumalanga Province rather than to leave it within the Gauteng Province.

Through interviews conducted by EISA, it emerged that this decision, which appears to have been an executive administrative decision, has had a direct impact on people's perceptions of the costs, scale and quality of service delivery, their experience of citizenship and power, and the manner in which they relate to government. People viewed themselves as powerless objects and subjects of government, rather than as citizens whose voice was taken seriously in government decision-making. As well as demanding that Siyathemba be reincorporated into Gauteng Province, people highlighted issues of unemployment, deteriorating infrastructure, unresponsive and unaccountable ward councillors and a mayor who appeared to ignore their grievances, as key sources of frustration.

“people highlighted issues of unemployment, deteriorating infrastructure, unresponsive and unaccountable ward councillors and a mayor who appeared to ignore their grievances, as key sources of frustration. “

In response to the ongoing protest, national government dispatched a high-powered delegation to conduct an initial round of fact-finding consultations, which was followed by a visit from President Jacob Zuma in August 2009. The presidential visit brought a sense of hope to residents that their grievances would be seriously considered and attended to. But in February 2010, the township erupted in violence once more, illustrating a continuing sense of frustration.

FANNING THE FIRES OF FRUSTRATION

On 7 February 2010, the residents of Siyathemba took to the streets in a wave of violence that culminated in the burning of a public library and municipal office in Siyathemba, and the vandalising of a community hall. Starting on Sunday morning, the protests continued throughout the day into Monday – two days before the significant 2010 State of the Nation Address in Parliament by President Zuma.

Prior to the outbreak of violent protest, youth leaders from the Dipaleseng Youth Forum called various community meetings to discuss development in Siyathemba and to evaluate to what extent President Zuma, the Minister for Cooperative Governance and Traditional Affairs (Cogta), Sicelo Shiceka, and other members of the task team, Mayor Mabalane Tsotetsi and the municipality had delivered on commitments made to the community in 2009. A majority of the forum's executive committee members belonged to the ANC Youth League and a few to the Pan-Africanist Youth Congress (Payco). It was generally agreed that there was little or no development and delivery between July 2009 and February 2010, and worse, no tangible response from the high-level task team on the issues that had been raised by the community.

A respondent reported that he knew of two visits that had been made to the area by the team but that on both occasions they had held discussions only with councillors and municipal officials, and appeared to have sidelined community structures, political organisations and members of the general public. Community members reacted in anger to what was perceived as a snub and took a decision to stage a peaceful protest march from Siyathemba to the Dipaleseng municipality offices in Balfour.

The reasons for the protest were thus mainly the failure of national government, the province and the

Dipaleseng Municipality, and especially the mayor, to respond to the concerns raised by the residents. The minimum expectation of the community was that “even if issues were not directly addressed at least channels of constructive engagement with the community ought to have been opened”. Some of the issues were cited to be of a “democratic nature”, where government officials, particularly elected ones, appeared unresponsive and unaccountable. However, levels of frustration among the community were fuelled by actual service outputs that residents had demanded. Community members cite government’s unresponsiveness and the lack of attention of the relevant institutions of state and authorities in government to the service delivery issues they raise as the primary reason for their frustrations – which constitute almost a shopping list. Service issues include the following:

- **Water and sanitation:** Drinking water is clearly in a poor state, appearing visibly brown, muddy and unclean. Yet the municipality claims that the water has been certified as safe to drink by the national Department of Water Affairs (DWA). At the same time, the municipality acknowledges that the ageing water infrastructure needs replacement. No movement on this issue is in evidence.
- **Infrastructure:** Much of it appears not to be maintained and is visibly crumbling and deteriorating. Roads, including newly tarred ones, have huge potholes. School buildings are in a state of disrepair. Government offices have crumbling walls and are dirty and unkempt.
- **High-mast streetlights.** Installed after the 2009 protests, these lights have never been operational and, as a result of poor lighting, crime remains rampant.
- **Housing.** The few low-cost houses that have been built have structural problems. In most

cases, projects that were reported to the community as being underway are virtually nonexistent. The establishment of a fully functional Home Affairs office, which was promised, has not occurred and the area is still serviced by an office that opens only twice a week.

- **Policing.** There is no police station in Siyathemba. As an example of the need for a permanent police presence in the township is the case of a woman who was raped and then told to come to the police station in Balfour to make a statement, as there were no police vehicles to fetch her. On her way she was attacked and raped for a second time.
- **Emergency services.** The nearest hospital is in Standerton, 75 kms from Siyathemba. As a temporary measure, secured through a memorandum of understanding between the Gauteng and Mpumalanga departments of health, residents of Dipaleseng municipality can now have access to the Heidelberg Provincial Hospital, which is 30 kms away.
- **Sports and recreation.** The community is demanding a multi-purpose community centre to improve access to sports and recreation facilities.
- **Unemployment.** Joblessness is extremely high. Respondents question the role of the full-time local economic development (LED) coordinator at the municipality, given the almost non-existent economic activity in the area and the lack of difference being made by this person. According to community members, local people are not considered for jobs. Large private-sector companies with local operations, such as the Burnstone gold mine, which was a target of protests on two occasions, and Karan Beef, as well as parastatals such as Eskom, appear to hire labour from elsewhere rather than drawing on the pool of available labour in the community.

Despite repeated community calls for meetings with the large concerns to discuss increasing local investment and corporate social responsibility programmes in the area, no meetings have taken place and there is no evidence of such programmes.

- **Skills development.** There is also a demand for a Further Education and Training (FET) college/ skills training centre to be constructed in the area.

DEMANDING ACCESS TO SERVICES

Despite the importance of these issues to the residents' quality of life, the re-incorporation of Balfour into Gauteng remains among the primary concerns. Residents of Siyathemba have continued to rebel against being part of Mpumalanga. They feel that the Demarcation Board did not undertake a consultation process with them before the decision was taken. They believe that there would be a positive effect on service delivery and access to services, in particular in the Lesedi and Ekurhuleni municipalities, were the municipality to be re-incorporated into Gauteng. They argue that the Gauteng provincial departments and services based in Johannesburg, 95 kms away, are much closer and less costly to travel to than the Mpumalanga provincial capital in Nelspruit, some 220 kms away. Thus, the two main considerations are, firstly, the physical proximity and accessibility of the provincial government and its service offerings and secondly, the relatively better resources and technical capacity that the province appears to offer citizens.

However, there is another aspect to this. Proximity and service delivery are closely tied to citizens feeling that they are "heard" by those in power – the government, the mayor, local councillors and municipal officials. Satisfaction with democratic

governance at the local level is premised on two factors – perceptions of government's technical abilities and resources, and its willingness to hear and speak to citizens. People in Siyathemba appear to have negative perceptions of government on both of these counts, which help to fuel the underlying sense of frustration.

While the protests were precipitated by these twin factors of dissatisfaction and propelled by the youth of the Dipaleseng Youth Forum and their leaders, in both 2009 and 2010 there was support from the majority of residents. A senior citizen interviewed said that, as far as she was aware, most people in the community supported the youth in what they were doing. They were concerned and troubled by the destruction of property and the violence of the protest, but understood the high levels of frustration in the community about the municipality's performance and with government in general. While the 2009 protests had general community support, the second flare-up was to a greater extent driven and supported by the youth, with older members of the community distancing themselves as criminal elements appeared to have joined the fray. Youth leaders remain adamant that their expression of dissatisfaction and demands for accountability were appropriate.

Instead of engaging with the community, the municipality's response was to send in law enforcement agencies, which in turn served to inflame the volatile situation further. Some residents argue that the violence was deliberately used as a vehicle to draw attention to Siyathemba, which appeared to be ignored by everyone.

Adding a further dimension was the issue of xenophobia. The Siyathemba protests followed a widespread occurrence of "xenophobic violence" across South Africa in 2008. In the Siyathemba protests in 2009 foreign nationals living in the area

were affected, and in 2010 about 100 foreign nationals were displaced from the area. This created an impression that the violence in Siyathemba was “xenophobic”² and that foreign nationals were deliberately targeted, rather than being victims in the general maelstrom of the civil violence.

Interviews with a Somali shop owner in Siyathemba revealed that in 2009 and in 2010 there were no xenophobic sentiments amongst protesters. Criminal elements, however, took advantage of the unrest and looted shops, without distinguishing between those owned by locals and those owned by foreigners. In interviews, people were adamant that there were no “demands for foreigners to leave the community”. By contrast, there is a history of opposition to xenophobia in Siyathemba and an outbreak of violence against foreign nationals was not an issue in Siyathemba during the countrywide xenophobic violence of 2008.

According to Lifu Nhlapo from the Dipaleseng Youth Forum, “people want to turn around the situation so they can advance their own interests. The foreign nationals who are victims of the march were caught in the crossfire and not intentionally targeted.” (Pfafe, December 2009/January 2010:42)

A CLASH OF PERCEPTIONS

A question worth exploring is whether there is a mindset that the state will provide on behalf of communities as opposed to promoting, instilling and/or practicing active citizenship. “Officials view citizens as unwilling and unable to solve their own problems, while citizens perceive (politicians and) government (officials) as self-serving and lacking the political will to tackle the problems facing their localities and the country.” (Nemeroff 2005:11) This perception divide in Siyathemba is pronounced, and has deepened since the February 2010 protests.

“Research and experience has shown that there is a great deal of frustration with ward councillors and other representatives of local government, who are perceived by residents as incompetent and unresponsive to their needs. Moreover, the increased levels of violence and public brutality in the protests paint a picture of a repressive state rather than an accommodating and approachable one that is willing to listen to its citizens.” (Pfafe December 2009/January 2010:43)

Democratic governance at the local level, depending on the meaning one attaches to the term democracy, determines local government’s envisaged role and function. “Because democracy’s meaning is both contestable and unstable, propositions regarding the role and function of democratic public institutions in the architecture of democratic governance will, equally, be contested. But democratic local governance regimes, in designing and defining the relationship between those who govern and those who are governed, require precise and unambiguous definitions about the roles and functional limits of institutions and the rights and responsibilities of the citizens that they relate to. It is almost trite to say that vibrant democracies require citizens that have rights and the agency to exercise these rights. It is equally trite to suggest that substantive democracies require public institutions with designated powers and functions, bound by a set of rules defining their roles and responsibilities, and the modes through which public institutions exercise their mandates. A democratic culture, on the other hand is a product of the complex interplay between the (democratic) cultural norms and (openness) values of the society, with the institutional and systemic processes and procedural rules that govern it. Citizens without rights are merely subjects. The exercise of rights

The exercise of rights without limitation is a recipe for anarchy, and institutions unbounded by rules are a route to the abuse of power.”

without limitation is a recipe for anarchy, and institutions unbounded by rules are a route to the abuse of power.” (Fakir and Musuva 2010:14-15).

The construction of democracy as both a system of government and a culture by and through which citizens associate amongst themselves and relate to government institutions requires checks between the able agency of citizens to exercise and advance their rights, and institutions which must help them to do so. For this, an effective system of participation, checks and balances, oversight and accountability, responsiveness and consultation are required.

In the case of Siyathemba almost all of these elements appear to be absent, with citizens appearing to express frustrations through violence because of a government and private sector that is perceived to be unresponsive. A government and private sector that appears to be unresponsive and dislocated from the communities in which they are located may over time find that government may only be able to govern effectively, and private business may only be able to operate sagaciously, through coercion and repression rather than through deriving the consent of those who are governed and those who they need a degree of influence over.

CONCLUSION

It is clear that in Siyathemba the divide between the elected representatives and community members is deepening, despite the numerous attempts at engagement initiated by the youth culminating in the

widely publicised protests of 2009 and 2010. In this narration, the voice and role of locally elected politicians is silent and invisible.

“There must be efforts made by government and society to help citizens develop alternative approaches to local developmental problems that take them beyond protest. In addition councillors and officials should be supported, not only to deliver more effectively but also in learning how to engage with citizens.” (Nemeroff 2005:11)

The re-incorporation of the Dipaleseng municipality into Gauteng should be treated with the urgency that it deserves by all spheres of government as it is one of the main catalysts of protest and will be the reason why Siyathemba residents once again take to the streets. If we are to avoid another Khutsong, this issue should be prioritised and engagement processes undertaken with the community of Dipaleseng, specifically Siyathemba.

It also appears that the political legitimacy of locally elected leaders is low and declining further and the credibility of national government decisions are increasingly called into question. The ability of “facilitative” and “consultative” leadership, through deriving citizen consent for being governed, is in peril and increasingly it appears that government (the system of execution of policy, administration and management) and governance (the relationship between those who are meant to govern and those who are governed) can only be maintained through coercion. A simultaneous decline in the popular political legitimacy of the political leadership and the credibility of government management and decision-making may have deleterious consequences for enhanced democracy, development and continued political stability.

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¹ Until early 2009, the total number of incidences of direct action on the streets (including community protests, strikes and other industrial actions) numbered 5085 countrywide. These figures and some preliminary analysis of this phenomenon can be found in Fakir, E. 2009. *Politics, state and society in South Africa: Between leadership, trust and technocrats*. Development Planning Division Working Paper Series No.1, DBSA: Midrand.

² See 8th February 2010 press statement of the Consortium for Refugees and Migrants in South Africa (CoRMSA) "CoRMSA Calls for Effective Intervention in Xenophobic Violence in Siyathemba"



TAKING STOCK AT THE CROSSROADS: REFLECTING ON THE ROLE OF THE NGO SECTOR IN ENABLING AND SUPPORTING PARTICIPATORY LOCAL GOVERNANCE IN A TIME OF 'CRISIS'

By Tristan Görgens and Mirjam van Donk, Isandla Institute

The crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear

- Antonio Gramsci

'Never let a serious crisis go to waste. What I mean by that is it's an opportunity to do things you couldn't do before.' 'Things we had postponed for too long, that were long term, are now immediate and must be dealt with.'

- Rahm Emanuel, Obama Administration Chief of Staff



PHOTO: OBED ZILWA

Introduction

Reading the literature and speaking to members of the non-governmental organisation (NGO) community one is most likely to encounter the Gramscian description of the current state of civil society in South Africa. The sense is that local governance in South Africa, including NGOs who seek to promote better, more inclusive governance, has reached a 'crisis' point. This has most visibly been illustrated by the steady growth in expressions

of community unrest and dissatisfaction, a self-declared crisis in the state of local government that culminated in the formulation of a 'Local Government Turnaround Strategy', a difficult and ambiguous relationship between civil society, government (at all levels) and the ruling party, and the 'crunch' in funding flows brought about by the global financial crisis and drawn out recession. While this moment is truly an expression of a longer structural shift that has been occurring in civil

society since the early 1990s (Reitzes and Friedman, 2001; Kotzé, 2004), the dire state of funding and the shift in political dynamics within the ruling Alliance¹ have triggered the need for a relatively sudden repositioning by NGOs across the sector.

In the face of a financial crisis that analysts were warning may rival the Great Depression, however, the newly elected administration in the United States was able to look at crisis and see opportunity². They were able to recognise that crisis is often a sudden acceleration and intensification of long-term trends and, because it disrupts old patterns and compels organisations to reassess their priorities and modes of operation and seek new allies, can lead to positive structural change – if addressed strategically and reflexively (Kaplan, 1998).

Drawing on experiences in the sector, therefore, this paper seeks to understand the particular dimensions of this crisis, identify the various responses that are occurring, and reflect on some of the opportunities created by these trends. First, it will outline the changes to the socio-political, institutional and funding context that characterise the current moment. Second, the different roles and strategies employed by organisations in the sector will be differentiated and the dynamics currently being experienced in each of them will then be briefly sketched. Finally, the various repositionings occurring in the NGO sector in response to the ‘crisis’, and the opportunities presented by these repositionings, are explored.

RESEARCH QUESTIONS AND METHODOLOGY

As an active member of the sector, Isandla Institute has been grappling with the array of challenges that make this a crossroads moment. While most contributions to this report focus on either the weaknesses of formalised spaces for public participation (‘invited spaces’) or seek to shed light

on community protests and social mobilisation against or in the place of the state (‘invented spaces’), we have opted to focus on the implications of these and wider changes for NGOs. We believe this is an important focus because we consider NGOs to have a vital role in the local government sector and it is therefore essential that the other role players in the sector (e.g. government officials and its support structures) understand the dynamics shaping the practice and decision-making this part of the sector. Captured in a single question, then, we ask:

What opportunities does the current ‘crisis’ hold for innovative and effective (re)positionings of NGOs which reinforce the value and place of the sector in a vibrant local democratic dispensation?

The content of this paper is based on data collected from a focus group with key informants and seven additional interviews with the leadership of NGOs in the sector and key funders³. This has been supplemented with our own experience as an NGO participating in the sector and a reading of the secondary literature. We should emphasise that this research is focused on the ‘formal’ NGO sector working in the governance field and therefore does not necessarily speak to the experiences of other grouping such as social movements or community-based organisations (CBOs).

ANATOMY OF THE ‘CRISIS’

As was noted in the introduction, civil society has been undergoing an extended process of redefinition and repositioning since the advent of democracy. However, the last two years have seen some relatively dramatic changes in the environment in which NGOs work in South Africa. Drawing on our own analysis and themes emerging from the

interviews, we would like to focus on four trends that seem to have had significant effects.

First, the public expression of community dissatisfaction has become a more common occurrence in recent years. While these are sometimes erroneously referred to as 'service delivery protests', a report commissioned by Parliament on the protests emphasised that the

...term "service delivery protests" is a misnomer since, while dissatisfaction with poor service delivery has certainly been a factor in triggering some of the protests, the causes of the protests are far more varied and complex than this. It must therefore be acknowledged that there are a multiplicity of factors at the root of the current protests and that these can best be placed into three broad categories: systemic (such as maladministration, fraud, nepotism and corruption in housing lists); structural (such as healthcare, unemployment, and land issues); and governance (such as weak leadership and the erosion of public confidence in leadership) (Parliament of RSA, 2009: vi).

The interviewees echoed many of these themes but noted that the causes and levels of dissatisfaction and mobilisation vary significantly from community to community. They added that the dissatisfaction was also as a result of a growing awareness amongst individuals and communities about their rights, disappointment with the limited participatory potential of current 'invited' spaces, a lack of reaction by officials and politicians to less violent protests, the unresponsiveness and lack of visibility of local politicians⁴, a sense of deep frustration at the continued exclusion of these individuals and communities from the economy and the mainstream of society, the growth of 'relative deprivation' within and between communities (as some receive support and services while others are required to continue waiting), and that, at times, this dissatisfaction was being exploited for political or personal gains (for a

detailed case see Thompson and Nleya, 2010). The visibility (and violence) of some of these protests⁵ seems to have accelerated an already ongoing shift in funding trends away from NGOs in this sector towards, on the one hand, building the technical capacity of the state and, on the other, organisations with more explicit 'grassroots' connections.

Second, the interviewees confirmed that the current system of 'invited spaces' created by the state remain insufficient and, at times, ill-suited to facilitate meaningful community engagement in local planning, decision making, resource allocation, implementation and evaluation (see also Friedman, 2006). Oldfield (2008) argues that with the state's 'all-consuming attention [on] "deliverable" physical development, less tangible and measurable democratic processes to build inclusion have become side elements, narrow channels through which *society is directed to participate within government*' (p.488; added emphasis). This disempowering and technocratic trend has resulted in rising dissatisfaction and unrest, and inappropriate and opaque planning, decision-making and practices by local government officials and politicians. Putting it quite starkly, Pithouse (2009) argues that 'there is a considerable extent to which the technocratic agenda, with its inability to enable genuinely popular participation in planning and its inability to confront elite interests with popular counter power, is inherently undemocratic' (p. 2). While there is some general appreciation of the problems with these invited spaces in government, there seems to be little political will and a limited technocratic response to this challenge.

Third, the new African National Congress (ANC) leadership elected in Polokwane, the split resulting in the Congress of the People (Cope), the election of a new ANC administration in 2009 (resulting in a significant reshuffle of government departments and

programmes) and ongoing tensions between the Alliance partners have resulted in the state maintaining a deeply ambiguous posture towards civil society (see Reitzes, 2010). Despite an explicit shift in the discourse of the ANC and the new administration towards consultation and engagement with civil society and communities, the interviewees were unanimous that the dominant political and technocratic culture is still one of state-centrism and party-centrism (see also Heller, 2008; Oldfield, 2008). For example, the Local Government Turnaround Strategy enacted by the newly formed Department of Cooperative Governance and Traditional Affairs (Cogta) focuses on a range of technocratic ‘fixes’, while largely remaining silent about a range of political, institutional and social challenges of equal or greater importance in determining the efficacy of this level of government.

partnering with ‘progressive’ elements in government is becoming increasingly difficult due to the insecurity and volatility created by political infighting.

Fourth, the global economic recession has accelerated changes in the financial and funding environment, which has challenged NGOs in rather fundamental ways. James Peck (2010) describes the current period as ‘zombie neoliberalism’ in which the ideology is ‘dead but dominant’⁶. While the full import of this global trend cannot be examined here, it has had specific effects or patterns of international development funding and on the priorities and operation of the state and civil society in South Africa. The financial crisis has put international and local development agencies and private funds under increased pressure to ensure that the ‘right’ kinds of development interventions are supported and that

A clear theme emerging from the interviews was that there has been a growing awareness in the sector that understanding and responding appropriately to inter- and intra-party contestation and dynamics are essential to the efficacy of organisations working at and with the grassroots of the democratic system.

A clear theme emerging from the interviews was that there has been a growing awareness in the sector that understanding and responding appropriately to inter- and intra-party contestation and dynamics are essential to the efficacy of organisations working at and with the grassroots of the democratic system. That is, the increasingly frequent experience of blurred lines between the state and party at the ward (committee) level means that ignoring political dynamics or attempting to remain ‘neutral’ by engaging exclusively with state structures, as has often been the practice of organisations in the past, is counterproductive and adversely affects the prospects of projects. Some interviewees also noted that

their support is used efficiently to achieve the greatest possible impact.

Interviewees report that it has accelerated the long-term trend towards the ‘projectisation’ of international funding; that is, donors are increasingly moving away from the provision of ‘core funding’ for organisations (i.e. covering operational costs based on the organisation’s mission and track record) towards the funding of discrete projects with specific, easily identifiable outputs (Ewing and Guliwe, 2008; Lewis and Kanji, 2009). Funders argue that this enables greater accountability, increases efficiency and effectiveness, and encourages considered engagement with social problems, prioritising those which need to be most urgently

addressed. However, critics claim that it increases the insecurity and vulnerability of small organisations, encourages conservative decision-making, and reduces the ability of organisations to react fluidly and appropriately to shifting dynamics 'on the ground', pursue interventions which require long-term commitment to achieve success, or interventions that have impacts that are difficult to quantify (Honadle and Rosengard, 1983; Sampson, 1996). South African NGOs, particularly in this sector, have had a history of being highly dependent on international 'core' funding and, while we show there has been some recent innovation (see below), have generally struggled to engage proactively with this trend towards formalisation⁷ and projectisation.

The financial crisis also seems to have accelerated a shift in the focus of the state away from community development and empowerment towards state-centric welfarism. This is an ongoing trend in South Africa, often identified as a natural corollary to a neoliberal macroeconomic strategy, in which elements of the state and civil society are compelled to focus on 'bread and butter issues' of basic survival in order to mitigate the aggravated effects (growing inequality, unemployment and poverty) of the system (Habib, 2003; Kotzé, 2004). The heavy reliance on the Extended Public Works Programme in the government's approach to poverty is a good example of this – it amounts to a conditional resource transfer that is state controlled and directed (leaving little room for the genuine growth of participants, community control or creative engagement with local contexts or beneficiary needs) (McCord, 2005; Hart, 2006; HSRC, 2007) This is a significant trend because a number of the organisations interviewed claimed that, due to time pressures and the specificity of the types of support available from the state and funders, they feel unable to pursue advocacy or important developmental 'learnings' emerging from their experiences in poor communities.

SECTOR STRATEGIES AND TRENDS

Before turning to specific repositioning currently occurring in the sector, this paper will offer a differentiation of the roles and strategies employed by parts of the NGO sector. A key insight from the research has been the importance of acknowledging and valuing (on their own terms) the different parts of the sector. This diversity is particularly important to be aware of because the response of an organisation to the shifting external context is often significantly shaped by their conceptualisation of their role and strategy (as well as a variety of other more contextually immediate considerations). In addition, clarity about the value and nature of this diversity is also instructive for external stakeholders (the state, social movements, funders, and communities) in order to manage their expectations about the role and functioning of the sector within wider society. Drawing on insights gleaned from the focus group and interviews, therefore, we propose two ways of 'unpacking' the roles played by members of the sector. However, we would like to emphasise that these typologies are intended as useful sketches or mind maps of the sector rather than definitive accounts. They are intended to stimulate thought and discussion about the value and diversity of the sector.

The first is about the roles played by NGOs in facilitating good governance. Our exposition of these is motivated by the growing trend in academic and funding circles that narrowly links legitimacy to 'having a constituency'⁸. We argue that the NGO sector is by definition 'value-driven' rather than constituency based. That is, NGOs are formed and operate guided by foundational documents and principles (a vision and mission) and as well as a complicated set of accountabilities to boards, funders, communities and states structures (see



Figure 1: Continuum of Civile Society Organisations

Edwards and Hulme, 1996; Lewis and Kanji, 2009: 28). Organisations directly linked to specific constituencies (to which they are primarily accountable⁹) are social movements¹⁰. There are, however, important differences in how NGOs position themselves in relation to poor communities and the state. There are three primary positionings: ‘think tanks’, intermediaries and mediators¹¹. ‘Think tanks’¹² primarily act as knowledge producers and synthesisers, a role that often positions them between the state and the rest of civil society and requires them to act as analysts of wider trends, translators (between different discourses and knowledge systems) and facilitators. Intermediary organisations act as ‘go betweens’ connecting the state and poor communities in order to facilitate better service delivery. This conventionally involves building capacity within poor communities to understand policy and opportunities, while using these experiences to advocate for specific changes in the policies and modes of operation in the state. While they often address similar issues, mediators focus on supporting the self-organisation of communities, the cultivation of community-driven solutions to development challenges and facilitate deal making between these communities and the state.

Second, drawing on the results of the interviews, we have also identified seven strategies currently being employed by organisations in the sector (intertwined with and cutting across the positionings identified above) and begun to ‘map’ some of the general longer-term trends with regards to the viability of these strategies.

First, NGOs that employ **research as a tool for advocacy**, either by tracking and revealing trends being ignored by policy and decision-makers or creating an evidence base in support of particular reforms. NGOs that have historically played this role in the sector are increasingly under pressure as specialist units based at universities have begun to play a similar role. This has been the result of increased interest in universities to pursue more ‘relevant’ research, the ability of universities to provide internal sources of funding and greater institutional support, a ‘skills migration’ of experienced researchers from the NGO sector to these units and, as a result of these factors, their superior ability to attract government and international funding and research contracts. In addition, NGOs have struggled to compete for research ‘at scale’ and with the interdisciplinary skills available at universities, due to their small staff complements. A number of these organisations have, therefore, had to narrow their research focus or supplement this activity with some of the other strategies identified here.

Second, NGOs pursuing **‘innovation showcasing’ or ‘demonstration projects’ as an advocacy tool**. These organisations usually work in a few specific communities over a long period of time in order to pilot case studies of particular ideas, which then use the results to advocate for wider shifts in practice or policy reform. While there still seems to be an appetite for this amongst some international funders, this strategy has had mixed

success with providing replicable and generalisable results (the intensity of funding and attention that characterise these projects cannot be duplicated when they are rolled out at scale) and their limited impact (in terms of breadth, not depth) has meant that their efficacy is increasingly being called into question by government decision-makers and other members of the sector (and, sometimes, challenged by non-beneficiary communities). Nonetheless, its proponents argue that it remains the most effective strategy in 'converting' policy- and decision-makers in new ways of thinking. Interviewees argue that the self-funded and already-capacitated nature of these initiatives provides the necessary motivation to attract the political and technocratic support necessary to shift practice. However, this increasingly seems to be a strategy that needs to be pursued while engaged in other work, particularly the next strategy.

Third, NGOs engaged in **training, education and capacity building**. This strategy has been a prominent part of the sector; traditionally focusing on building the capacity of poor communities but, with the funding opportunities presented by local governments and international funders, has increasingly become focused on addressing the capacity problem shortfalls experienced by local government. However, the resulting influx of funding, and an understanding of the capacity problem as technocratic and technical in nature, have resulted in increased numbers of consultants and for-profit companies competing for work in this sector at a scale, and with specialised technical capacities, that NGOs find difficult to match. Interviewees also indicated that international funders have expressed dissatisfaction with the scale, efficacy, ad hoc nature of the work and the high staff turnover

rates at NGOs traditionally fulfilling this role. Nonetheless, a number of NGOs playing this role have emphasised the ongoing need to provide and promote the 'soft skills' necessary to make *participatory* democratic processes work – a need almost completely unacknowledged by local government officials or ignored by consultants.

Fourth, NGOs act as **resource centres and networking hubs**. The flow of information is vital to the health of civil society organisations and poor communities alike and so a number of NGOs focus on sharing information and making connections. While these organisations are often under pressure to remain as 'lean' as possible from funders, they, as well as government officials and communities, recognise the importance of this role. A number of the NGOs in the governance sector that have traditionally played this role in South Africa are using their experience and reputation to play a similar role across the region and continent.

Fifth, NGOs act as **watchdogs**, monitoring government performance and ensuring the accountability of public institutions. While a number of organisations fulfil this function in the sector, few employ it as their *raison d'être*, rather adopting it as one aspect of a constellation of activities.

Sixth, NGOs support **the mobilisation of impoverished communities**. Social movements and radical community based organisations often have close ties to members of the NGO community, relying on its stability, or ability to raise funds, or provide additional capacity or institutional support, or transfer organisational skills etc. This, however, does not mean that there are not significant differences, and potentially difficult power relations, between these two kinds

of organisations, particularly with regards to questions of legitimacy and speaking on the behalf of the poor. An important difference, however, that emerged from the research is that social movements tend to mobilise around *service delivery* issues, while NGOs may address similar issues as *governance* issues. This is a significant difference because, while social movements may be able to extract specific concessions from the political and technocratic authorities, addressing them as governance challenges positions NGOs as long-term, critical partners with the potential to address the deeper structural challenges affecting how planning and decision-making operate at this level of government. Acknowledging that the long term and technical nature of this form of engagement requires NGO-like institutional capacity *and* that it also requires the dynamic engagement of affected communities creates an opportunity for NGOs and social movements to recognise the need to form mutually supportive partnerships based on the legitimacy and indispensability of one another.

Seventh, connected to some of the previous strategies, an emerging strategy is **providing technical support to assist government** decision-making, policy development and project design. Given the ongoing capacity shortages in government and the experience NGOs have in engaging practically and critically with policy, organising processes and designing community-based service delivery interventions, officials are increasingly engaging NGOs as advisers and service providers. This presents an opportunity for organisations to raise revenue (cross-subsidising other work) and, if structured correctly, influence the design and practice of government (see below about some cautionary notes about these partnerships).

EMERGING (RE-)POSITIONINGS

As we have emphasised a number of times, the current ‘crisis’ is characterised more by a form of accelerated *continuity* rather than profound change. There is nothing distinctly *new* about the challenges facing the sector, besides their immediacy and the potential depth of their impact. Nonetheless, despite the fact that the ‘writing on the wall’ has been detectable (if not always easily legible) for some time, our general assessment is that the sector has remained slow to identify and react to these trends. The opportunities located in crisis require flexibility, reflexivity, vision and some entrepreneurial spirit¹³ to harness, and it seems as though many organisations were initially caught flat-footed. However, a range of interesting repositionings is now underway.

Relationships between NGOs and the state remain complex and multifaceted, although the general trend expressed in interviews was towards engaging with the state as brokers and service providers. This trend is driven both by the benefits to be gained from the pragmatic engagement with the state and the potential to diversify flows of funding. The most pronounced example of this is that a number of organisations are actively setting up training or consulting arms¹⁴. For some organisations this is simply a matter of emphasis, or charging for already established services, while others are relatively new to this terrain. While there are a number of potential dangers associated with this trend¹⁵, there are ongoing examples where the enforced ‘closeness’ of the state and NGOs in this kind of relationship has resulted in productive and creative collaborations and partnerships. The challenge for NGOs is to ensure that these are principled and strategic partnerships¹⁶ that do not blunt their critical voice. Furthermore, given the current near hegemony of state-centric development, the continued exposure of politicians and govern-

However, despite the fact that interviewees were able to identify political dynamics as potential roadblocks, few had practical suggestions for how to creatively engage with the complex blend of party and state at the local level (besides supporting political initiatives emerging beyond the party-political sphere, such as social movements).

ment officials to productive and pragmatic examples of the ‘co-production’ (Mitlin, 2008) of the public sphere and goods is vital. Unfortunately, these examples still largely remain restricted to the local sphere – the national political and technocratic mood still seems one of suspicion to the genuine decentralisation of planning and decision-making power outside of the state (and party).

As noted above, the growing awareness amongst NGOs about the inescapably political nature of supporting participatory governance is extremely positive. However, despite the fact that interviewees were able to identify political dynamics as potential roadblocks, few had practical suggestions for how to creatively engage with the complex blend of party and state at the local level (besides supporting political initiatives emerging beyond the party-political sphere, such as social movements). While supporting the emergence of a diversity of political expressions is undoubtedly positive (i.e. the creation of ‘invented’ spaces), NGOs will also have to find progressive and radical ways of engaging with the invited spaces created by the political and state systems (for example, getting non-ANC aligned civil society groups into NEDLAC, see Cebekhulue and Steyn, 2009).

The relationships between NGOs, social movements, CBOs, and the leadership of poor communities also remain complex terrain. The attitude of the state, the penetration of party politics into social mobilisation, the continued demobilising

effects of the current grant and service delivery model, and the dire financial realities and livelihoods dilemmas faced by poor families in South Africa challenge and stretch the building of cross-class and cross-issue alliances. Nevertheless, the significant shift that has occurred in the last year, reported by the majority of interviewees, is that international funders are increasingly interested in the links between NGOs and ‘the grassroots’ – driven, primarily, by the visibility of the protest described above. While social movements have often required the capacity and stability of NGO support, as outlined above, NGOs are now increasingly in need of formal ‘partnerships’ with community-based structures (including social movements) to bolster claims of legitimacy. This has raised the stakes and increases the incentives for collaboration these between these two aspects of the sector. It is, therefore, a chance to engage in frank dialogue about the opportunities and dilemmas raised by the need for these partnerships. However, raising the stakes also means raising the possibility of clashes between elements of the sector over claims to legitimacy – illustrated recently by the war of words between the Treatment Action Campaign (TAC) and Abahlali baseMjondolo over strategy and tactics. However, despite these opportunities to forge new partnerships and the need to proactively respond to the rise in dissatisfaction and protests, very few of the organisations interviewed reported repositioning themselves with these factors in mind.

It should also be noted that this general ‘shift to the grassroots’ has the potential to obscure the importance of the roles played by other aspects of the sector, particularly ‘think tanks’, in strengthening democratic practice. In detailed research on the impact of foreign aid in contributing to civil society’s promotion of democracy in Africa, Robinson and Friedman (2005: 44) conclude that building the

policy research, analysis and advocacy capacity of civil society is an important area for continued support. We must not make the mistake of reducing the complexity of the sector's contribution to a single role or strategy.

Finally, the crisis has undoubtedly created an opportunity to reflect on the role that local and international donors play in supporting and shaping this sector. The long-standing presumption of support based on a compelling enough *raison d'être* seems to have been shattered for good, and organisations in the sector are having to go through processes of reflection and strategic repositioning and diversification. There seemed to be four primary strategies being pursued by NGOs to attract international funding: (1) as noted above, the regionalisation of practice – building on the reputation, experience and institutional capabilities to expand their presence of the organisation into other countries in the region or on the continent; (2) identifying specific focal areas favoured by funders and/or pursuing niche funding; (3) attracting multiple streams of funding for a single project by framing social problems by using a variety of policy discourses (see the discussion about service delivery versus governance above); and (4) some of the NGOs indicated that finding international 'partner' organisations increases the possibility of attracting funding from the national development agency located in their 'partner's' country or continent (a phenomenon known as 'boomerang funding'¹⁷). However, the danger remains that the suddenness with which a number of organisations in the sector have found themselves in financial straits will result in their 'chasing the money' – resulting in inward-looking practice that reduces their ability to respond strategically to emergent dynamics, 'mission drift' and/or increased competition between organisations in the sector.

CONCLUSIONS, OPPORTUNITIES AND RECOMMENDATIONS

This paper has outlined the convergent economic, political, social and funding-related forces that made the current moment a crisis-induced crossroads for the sector and, after highlighting the diversity of the roles played by NGOs in the sector, has argued that the repositionings currently occurring in the sector, if pursued strategically and pragmatically, can result in a strengthened role for the NGO sector in supporting and democratising systems of governance. Drawing on a number of ideas from the interviews and the analysis presented above, we would also like to highlight the following opportunities and make some recommendations:

- The on-going capacity and financial constraints being experienced by the state at all levels creates the incentive and opportunity to begin to shift the state-centric nature of the current development discourse towards genuine forms of co-production. That is, it is in the interest of both government officials and poor communities to shift away from the current narrow, technocratic 'delivery' model of development to community-directed and driven development. This shift will require the NGO sector to play a more central role in forming and sustaining partnerships between these different stakeholders. These engagements are most likely to be productive in the local sphere until civil society is able to reassert a genuinely counter-hegemonic national presence in decision-making forums.
- Organisations in the sector need to more consciously acknowledge and grapple with the influence of party-politics on their prospects for effective interventions. Explicitly planning for these political currents creates an opportunity for these organisations support the evolution of the politics (with a small p) of communities without

becoming embroiled in factionalism or inter-party contestation.

- Challenges relating to the legitimacy of the representation of community voice, power imbalances, and the ability to attract and the uses of funding will remain a part of NGO/social movement relationships. However, the growth in community dissatisfaction represents rich terrain for new and exciting critical collaborations.
- Members of the sector need to become more aware of the potential for inter-sectoral partnerships to strengthen horizontal learning, improve the prospects for and impact of advocacy, and minimise contestation over resources. A vital aspect of this is recognising the importance and legitimacy of different roles in the sector and supporting the emergence of networks and broad-based partnerships.
- It is essential that NGOs undergo a process of strategically diversifying their funding sources. This includes the pursuit of different sources and models of funding, building productive local and international partnerships to improve the visibility, scale and efficacy of the organisation to compete for contracts, support and funding, and the use of profit-making ventures (such as consulting and training) to cross-subsidise initiatives that are needed but unpopular with funders. Given the ever-growing expectation amongst international funding agents that the South African state and private sector should be able to support local development¹⁸, a sector-wide campaign advocating for more appropriate and reliable funding from state development

agencies and corporate social investment funds¹⁹ is overdue. Improving governance and deepening democracy (in contrast to the current trend towards welfarism) is a natural point of the convergence between the interests of the state and the private sector. Finally, there is ample room for a more transparent and pragmatic exchange between NGOs in the sector and international funders about the effects of current reporting requirements, the possibility of partnering to improve the capacity of NGOs to attain financial sustainability²⁰, and the need to ensure that organisations are able to respond dynamically to emergent trends (rather than externally defined funding priorities)²¹ and can continue to play a critical and strategic role in providing a counter-hegemonic voice to the state and ruling party.

This paper re-emphasises the diversity of important ways that the NGO sector contributes to increasing the accountability and responsiveness of local government in South Africa. It is imperative that the repositionings occurring at the current moment enable the different role players in the sector, and NGOs across the spectrum of different roles and strategies identified above, to recognise and support the contributions of one another to building stronger local democracy. Building strong, pragmatic and critical partnerships between elements of the NGO sector (in spaces such as the Good Governance Learning Network) with the state, political parties, funders and poor communities are essential in order to leverage the opportunities located in this crisis.

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ENDNOTES

- ¹ The tripartite alliance consists of the ANC, the South African Communist Party and Congress of South African Trade Unions.
- ² Notwithstanding its recent trouncing in the mid-term elections, the Obama administration has been able to pass a raft of social and financial reforms unmatched by any administration over the last fifty years.
- ³ We would like to offer our grateful thanks to Hermine Engel (Planact), Peter Kimemia (Afeis-Corplan), Dudu Radebe (Eastern Cape NGO Coalition), Cameron Brisbane (Built Environment Support Group), Ebrahim Fakir (Electoral Institute for the Sustainability of Democracy in Africa), Vuyiswa Sidzumo (Mott Foundation), Russell Ally (Ford Foundation), Stefano Marmorato (Community Organisation Urban Resource Centre), Vernon Weitz (Community Development Resource Association) and Jane Coombe (Black Sash) for their time, contributions to and interest in this research.
- ⁴ The factors mentioned thus far have collectively been referred to as South Africa's "democratic deficit" by a number of commentators.
- ⁵ Some organisations reported that that dissatisfaction, and even protests, in a number of communities had gone unnoticed by national media (and political authorities) *until* they turned sufficiently violent.
- ⁶ He explains that the 'social interests that the neoliberal project was cobbled together to serve - corporate capital, financial elites, the shareholding classes, transnational investors - may have been flushed out into the open, but at the same time they have been reasserting their privileged interests with breathtaking audacity... the most urgent responses were focused on patching up the system of trickle-up economics, in order to insulate the financial regime from future blow-backs (perhaps *especially* from 'below')... Meanwhile, bearers of *social* risk are expected to continue to get by on their own. At all costs, though, they must keep shopping' (Peck, 2010: 108-9; original emphases).
- ⁷ In an interview, Gerry Salole, the Ford Foundation southern Africa representative until mid-2005, said: 'South Africa is phenomenal in its proportion of people who don't report well; we don't make new grants if they don't report or they are late. Often, people have done the work but seem to lose interest in reporting. The list of "expended but not closed" projects is longer in South Africa than anywhere else in the world' (in Ewing and Guliwe, 2008: 270).
- ⁸ This is a dangerous trend if the relationship between 'the poor' and organisations are taken at face value. Böhmke (2010) warns against easy dichotomies between elitist NGOs and 'truly radical' or 'more authentic' social movements: 'we have seen how romanticising [social] movements serves these movements far less well than it serves the romanticisers themselves.'

While the original impulses to help may have been noble, there has been a solidification of very real interests behind the way [social] movements... are represented... It may be presented as an ideological battle between principled servants of the poor on the one hand and vanguardist, authoritarian Leftists on the other but, in a sense, the contestation... is far more desperate than that. The professional, political and academic investment [in these movements] is a sort of intellectual Ponzi scheme. We want to believe in it. We are greedy for an example of a successful poor peoples' movement to use as a counterpoint, sound-bite or justification that ruling class hegemony is not as secure as it looks and that the ANC is losing its grip on the national political imagination. But it works only so long as no uncomfortable, pointed questions about returns are asked.' Walsh (2008) points out that the danger is that the 'contradiction between "speaking for themselves" and "speaking on behalf of other poor people", as long as it is done by poor people themselves, is uncritically accepted by the Left and those writing about [social] movement[s]... To insist upon a sacred space of oppression as the only one from which struggle can occur means that there is no genuine political will towards liberation... It is critical to not get caught up in stagnant identity politics and dialectical constructions of "us versus them". If we do, we might overlook the agency working horizontally between and across more obvious forms of resistance. We must begin to recognise the desiring subjectivities that actively subvert, contest and collaborate with the system to stake claims for better lives' (p. 263-4, 267). Different elements of civil society contribute to and intersect with the empowerment of these 'desiring subjectivities' in direct and indirect ways that cannot and should not be easily judged based solely on how close they are to the grassroots. Instead of searching for 'ideal' organisational types and positionings, perhaps our attention should be directed to understanding 'how "uncomfortable collaborations" can burst open geographic and identity-based alliances, de-territorialising groupings around commonalities of desire, struggle and event. These collaborations are not mini-utopias, but sites of friction in which diverse power struggles and contestation at the local and everyday level arise' (Walsh, 2008: 256).

⁹ Although, in practice, many of these organisations have evolved NGOesque structures and face similar dilemmas with regards to accountability.

¹⁰ Accurately differentiating social movements from the formal NGO sector is a difficult task. Barchiesi (2002; in Greenstein, 2003) describes the practice of social movements as 'forms of community self-management, construction[s] of grassroots discourse, direct action in ways that are so rich, plural and diversified to be totally at odds with the hierarchical organisational practices of the traditional Left' (p. 14). Following a similar line of thought, Heller and Ntlokankulu (2001) argue that 'the effectiveness of a social movement – unlike an interest group – cannot be assessed simply in terms of how it impacts on the state. Social movements often have their most lasting effects in civil society. They can create new identities and new solidarities, they can raise new issues, they can bring new actors into public life. They can, in other words, help constitute and politicise democratic citizens and create new spaces for participation' (p. 10). For a more detailed example see Swilling (2008).

¹¹ Based on the interviews and our own observations we would like to suggest that most organisations have a core or primary positioning but that this does not preclude them from responding to particular contexts by employing the 'mode of functioning' of one of the other positions.

¹² The label 'think tank' remains somewhat out of favour in South Africa (compared, for example, to the US). However, it is the most inclusive and accurate label we could think of for organisations in this part of the sector.

¹³ Although this should in no way be seen as an endorsement of 'philanthrocapitalism' – the belief that business thinking can strengthen philanthropy and the non-profit sector. We agree with Edwards (2009) when he emphasises that we are convinced that new pathways to social progress can be found in creative encounters between civil society, government, and the market, and ... we think this could and should be a genuinely emancipatory project. I share that view, but I also worry that this agenda is being overly-influenced by powerful interest groups in ways that divert attention away from the deeper changes that are required to transform society, screen out difficult but vital questions for research and policy-making, reduce decision-making to an inappropriate bottom line, and lead us to ignore the costs and trade-offs involved in extending market mechanisms into the social world (p. 76-7; added emphasis).

Instead, we use 'entrepreneurial spirit' here far more in the sense that it is used by Spinoza, Flores and Dreyfus (1997) who attempt to move beyond the current economic reductionism associated with the term to argue that entrepreneurship, citizen action and solidarity cultivation can be combined in forms of cultural innovation. For a specific description of the various aspects of this form of entrepreneurial activity see page 50 of their book.

¹⁴ There are, however, two sets of reasons to be cautious about pursuing this as a revenue-generating strategy. First, for a range of reasons including the financial crisis and the political and technocratic shifts and stresses that gave occurred after 2009, government departments have decreased the volume of work and payments to external consultants and service

providers. Second, as a result of this trend, the competition between consulting firms for available work has increased, rendering this terrain even more inhospitable to non-specialists who have other priorities and duties.

¹⁵ There are three interlinked sets of potential dangers associated with this strategy: (1) the state can become the focal point of the organisation's attention rather than 'target' communities (either when completing contracts or competing for future work); (2) the organisation's critical voice or advocacy function is 'blunted' by a desire to maintain favourable relationships with officials; and (3) the organisation experiences 'mission drift' as its practice becomes shaped by the needs and priorities of funders or government officials. However, these are not new problems, nor are they impossible to navigate – many of these tensions have been present in the practice of these organisations in one form or another for a number of years. Indeed, all of the interviewed organisations pursuing such a strategy were fully aware of these dangers.

¹⁶ Heller and Ntlokonkulu (2001) put their warning about non-reflexive partnerships with the state thus: 'If the idea of partnerships tends to underestimate the complexities of engaging the state, it also presumes an alignment of interests and perspectives that leaves little room for the contestation of state power' (p. 58).

¹⁷ Ewing and Guliwe (2008) report that, 'according to the *Reality of Aid* 2004 report, most beneficiaries of technical assistance were experts from donor countries rather than the stated ODA [Official Development Assistance] recipients... It has been estimated that nearly one-third of global ODA goes to consultants. The EU has challenged South Africa's preference for local people to provide the technical assistance on donor projects (p. 257-8; references removed).

¹⁸ A number of interviewees mentioned this trend and it is often repeated in the literature, for example see Ewing and Guliwe (2008: 272, 275).

¹⁹ Although, this needs to be informed by an awareness of the ongoing limitations of the corporate social investment system in South Africa (see Friedman, Hudson and Mackay, 2008).

²⁰ For more detail see Robinson and Friedman (2005: 43-4).

²¹ Ritchie (2010) argues that '[i]n an effort to disrupt the traditional money-based power relationships between 'givers' and 'receivers' in the world of grantmaking and nonprofit funding, donors can be positioned as value-based beneficiaries of organisational work and impact, rather than simply seeing grantseekers as beneficiaries of donor funding. From this perspective, funding is led by a social change agenda, rather than the more-often experienced relationship of 'social change' being led by a funding agenda.'

CONCLUSION

Municipalities are intended to be at the interface between government and citizens. However, as various contributions in this publication have highlighted, current institutional mechanisms to promote inclusivity and representivity are frequently weak and often (and perhaps inadvertently) undermine democratic participation rather than promote it. Weak capacity (both human and financial), weak leadership, mismanagement and corruption continue to be challenges. In addition, ongoing capacity and resource constraints of ward committees, and partisan politics that polarise these forums and frustrate attempts to take substantive decisions, have also meant that this forum intended to provide a voice for communities has functioned unevenly.

More fundamental is the critique that public participation has by and large become a technicist and procedural exercise, driven by the state on terms set by the state. The challenge, if not inability, of the state to give substantive meaning to participatory local democracy is echoed in its efforts to pursue equality. As noted by the PCRD, there is a difference between equality as lived reality versus equity as a procedural component of democratic institutions. The goal of achieving socio-economic equality has been reduced to a set of indicators that do not reflect any substantive realisation of this ambition, and which are difficult (in some cases impossible) to verify. Thus, both conceptually and logistically, bureaucratic attempts to make equity a cornerstone of democratic institutions fall short, ensuring citizen frustration with persistent socio-economic inequalities.

Poor coordination between the different spheres of government means that even where community participation is functioning well, the voice of communities can be ignored or have limited impact when decisions are made elsewhere, beyond the municipal sphere, with little to no communication to, or recourse for, affected communities. This issue is discussed by Planact, who suggest that government needs to start developing more organic, less rigid forms of interaction between the different spheres, rather than limiting themselves to scheduled interactions as defined by policy and legislation.

Over and above these weaknesses, there is the added factor of the bureaucratisation of democratic participation. The institutionalisation of public participation has resulted in a narrowing of what is considered a legitimate expression of community voice and dissent, with “invited spaces” becoming the primary (if not only) way in which the government is willing to engage with citizens. Within these pre-defined spaces, meaningful engagement is often non-existent, as citizens are framed as being “passive and lacking in agency... In many ways the concept of participation has been conflated with information, consultation and negotiation” (DDP: 90).

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The most broadly applied form of an “invited space” is the Ward Committee system – there are now more than 4 200 wards of which almost all have set up committees. Despite the popularity of this system, Afesis-Corplan and Idasa note that they frequently ignore marginalised members of communities despite legislative measures to ensure representivity, while weaknesses in capacity, political conflict and a lack of community involvement have plagued this forum. This does not mean that ward committees have no value – as the BESG case study reflects, with the right combination of circumstances, including good relationships with CDWs and CBOs, it is possible for them to become a meaningful part of citizen engagement.

Ward committees are not the only invited forum – the dual system of local government, particularly in rural areas, includes traditional authorities who are often heavily involved in decision-making at the local level. As noted by TCOE, however, these are often not representative of the concerns of the community and the “current legislative framework locates them more as subjects of traditional authorities rather than citizens of a democratic country” (TCOE: 80), which has increased the frustration of rural communities.

The reluctance of citizens to continue to be bound to processes and structures that function unevenly and that seem to have a minimal impact on substantive change in the socio-economic circumstances of communities is understandable, and part of the reason for the increased incidents of community protests as an expression of voice and dissatisfaction. There is little incentive for citizens (particularly those who are socially and/or economically marginalised) to try to work an unworkable system in the face of government’s “attempts to forge ahead with the implementation of projects in total disregard of people’s legitimate grievances”, resorting instead to the “devising of alternative mechanisms to make their voices heard” (Afesis-Corplan: 59).

In recent years, communities have resorted more frequently to such alternative mechanisms (or “invented spaces”), which at times are highly radicalised. As the Introduction to the report notes, community protests have tended to be concentrated in urban areas which have a relatively good record of service delivery when compared to other municipalities, but where levels of relative deprivation are significant. While the expression of voice and dissatisfaction may happen in the streets, as narrated in EISA’s reflection on protests in Balfour, they may also find form in other forms of expression, such as the withholding of rates in more affluent communities, as discussed by CLC.

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itself a reason for the South African government to reject any expression of voice outside of pre-defined modalities as inherently illegitimate. Indeed, there is an invaluable opportunity for the state to gain insights into what communities want and need.

Similarly, the emergence of (often more radicalised) modes of engagement from communities raises particular challenges to the NGO sector that acts as the intermediary sector between state and communities/citizens. As noted by Isandla Institute, this compels NGOs to reposition themselves to ensure that they remain a meaningful and influential role player in the local governance sector.

The contributions to this report, while not exhaustive, all reflect the reality that the current system of public participation in South Africa is not working in anyone's long-term interests. They point to the need for "invited spaces" to become more inclusive and less dominated by political interests, partisan politics and weak leadership. This means reaching out to marginalised communities in a meaningful, rather than nominal, way. Furthermore, a broader range of participation opportunities need to be made available by the state within "invited spaces", including citizen participation in budgetary and planning processes more widely, for example. This report, however, also highlights the need to fundamentally rethink what is meant by public participation by both government and society, and to move away from narrowly-defined interpretations of what justifiably constitutes democratic participation.

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