



## LOCAL GOVERNMENT'S RESPONSE TO 10 YEARS OF SUSTAINED ACTIVISM

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The Cape Town drought and the possibility of Day Zero - the day the majority of taps could/will run dry in the City of Cape Town – means that all residents across the city can no longer take water and sanitation for granted. These events have put water and sanitation, and access to water and sanitation on the agenda and have afforded communities greater insight into how inequitable access to water and sanitation is, and how water use levels differ across communities.



THE data on water use across Cape Town (City of Cape Town 2018), made available for the first time, reveals, unsurprisingly, that residents in informal settlements are using much less water than residents in formal housing.

This difference is because people in informal settlements across the City of Cape Town have already been living through and continue to live through Day Zero – they are collecting water from shared communal taps and they are largely reliant on non-flush sanitation.

Under the shadow of Day Zero, poor access to dignified and safe sanitation and water services persists. Access, or more precisely a lack of access

to water and sanitation have long been a barometer of the state of local government.

The apartheid government ignored the voices of the black majority and seldom entertained criticism. Although progress has been made in the first 24 years of democracy, the consensus is that more work, with greater urgency, is required. Many of the fora for public participation around policy, legislation and budgetary allocation are still incapable of meaningfully engaging with the most marginalised. The result of this is diminished policy formulation, ineffective legislation and poor service delivery, which is evident in local government's unwillingness to engage and be responsive to

the sanitation challenges communities are confronting.

This case study aims to reveal these shortcomings of local government by pointing to campaigns aimed at addressing them over the last decade. Additional insight is given on how local government has responded and how these campaigns have shifted, intensified or have been resolved over time.

## HISTORY OF THE SOCIAL JUSTICE COALITION (SJC)

The SJC emerged in 2008 from a coalition of progressive civil society organisations, based in part in Cape Town, that jointly responded to a wave of xenophobic violence that had erupted in informal settlements across South Africa and that had left over 60 people dead.

Having supported and assisted those displaced by the violence and after the violence had subsided, the loose coalition of organisations took time to reflect on the socio-economic drivers that might have contributed to the violence. In engaging with residents in informal settlements in Khayelitsha (the community in Cape Town most impacted), poverty, high-density, informality, poor basic service delivery and the consequent contestation over limited resources were identified as key contributing factors. The voices in the room conceded that the organisations they represented in the coalition weren't directly addressing these challenges at a local government level. As a result, the SJC emerged from the coalition as a social movement aimed at fighting spatial inequality, challenging state resource inequity, and building real power in poor and working-class areas.

The SJC achieves the objectives listed above by employing a variety of tactics including advocacy, litigation, negotiation, public protest, branch building

and education. Founded in the same year as partner organisation Equal Education (EE), and with ties to the Treatment Action Campaign (TAC) the SJC similarly emerged as a membership-based social movement enlisting similar tactics and advocacy strategies to those developed by TAC and furthered by EE.

While organising was, and is, often messy and unpredictable, the organisation challenged power from the outset, with committed leadership and purposeful and sustained advocacy. This situation is possible because, as a grassroots, community-based organisation, SJC works closely with and is mandated by community members. The campaigns over the last decade have forced the political agenda of poor and working-class people into spaces of power.

## TAKING GUIDANCE FROM IMPACTED MEMBERS ON FAILURES OF LOCAL GOVERNMENT TO DELIVER SERVICES

SJC members, residents of informal settlements in Cape Town, immediately highlighted a lack of safety as a major issue that impacted their daily lives. Importantly, members highlighted how inadequate delivery of basic services to informal settlements, and of sanitation in particular, contributed to the erosion of their right to life, to dignity, to equality, safety and bodily integrity. Testimonies emerged of residents who had been assaulted, raped, or whose family members had been murdered while making use of either shared communal flush toilets, 'temporary' chemical toilets (outside of the home) or clearings to relieve themselves – these experiences persist. On 2 March 2016, Sinxolo Mafevuka's body was found naked in a communal flush toilet on the edge of Town Two in Khayelitsha. The communal toilet was located about 100 metres away from where Sinxolo

lived. Residents believed she was dragged there after having been strangled.

The drivers of violence in communities are complex and varied and require a comprehensive response addressing these multiple sources of risk. Over the last few years, development and human rights organisations have highlighted how the absence of adequate local sanitation facilities have contributed to the likelihood of physical or sexual assault against women and children, where travel to and from toilets renders them vulnerable to attack (Gonsalves et al. 2015). As a result, the SJC's major campaigns over the last decade have focused on the interconnected issues of inadequate delivery of sanitation services to informal settlements and the lack of safety and security of informal settlement residents in Cape Town.

### UNDERSTANDING THAT RIGHTS ARE INDIVISIBLE AND INTERCONNECTED

The South African Constitution guarantees all people the right to life, to health, to safety, to water and to a clean and safe environment. These rights are indivisible. These rights are interconnected. The rights to life, to equality, to dignity, to health, to safety and to a clean and safe environment can only be meaningfully met if the right to water and basic sanitation are substantively met. The Constitution requires the state to progressively realise the right to water and basic sanitation.

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The National Water Act (Act no. 36 of 1998) recognises 'that while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water, and use of water resources'. Drawing on the preamble to the Constitution, the Act lists, as one of its purposes, the need to redress this racial and gender discrimination, in law and practice, of the past.

The Strategic Framework for Water (2003) lists the requirements of what basic sanitation constitutes. These requirements include safety, privacy and measures aimed at ensuring a clean environment.

Section 73 of the Municipal Systems Act further requires municipalities to deliver basic services 'in a manner that is conducive to the improvement of standards of quality over time'. In other words, not only is the state required to progressively realise access, an additional onus is placed on local government to improve the standards of quality of basic services provided over time. In short, the provision of temporary solutions as permanent fixtures indefinitely falls foul of the Municipal Systems Act.

### HISTORY OF THE SJC'S CLEAN AND SAFE SANITATION CAMPAIGN

On 30 March 1983, an Apartheid Minister for Cooperation and Development, Dr Piet Koornhof, announced plans for a new settlement for Black African people in Cape Town, to be located on land to the east of Mitchell's Plain.

The first phase of the township development was to consist of 1000 plots of 170 square metres each on which a 'fletcraft' tin hut costing R1 010 would be erected for each family, *with one tap supplied for every four plots, one bucket toilet per family, high-mast street lighting, and a rubbish removal service* (Commission of Inquiry into Allegations of

Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha 2014: 33). This township development would become Khayelitsha.

In contrast to the services provided by the apartheid government, the City of Cape Town has now set its minimum level of services to be provided to informal settlements, like those in Khayelitsha, at one tap for every 25 families, one toilet for every five families, and a weekly refuse removal service (Socio-Economic Rights Institute of South Africa 2018).

Today, Khayelitsha is home to more than 400 000 people. 65 000+ households in Khayelitsha are living in informality, while 50 000+ households live in a brick or concrete house on an individual stand. The 65 000+ households that are living in informal structures are living in 80 informal settlements or informal settlement pockets identified by the City of Cape Town. Khayelitsha is home to just under a third of all informal settlement households in Cape Town.

A lack of access to sanitation continues to be a major concern in Khayelitsha and other informal settlements and presents a serious challenge to municipalities across the country.

The immensity of the challenge has led to many municipalities resorting to the provision of short-term, and what should be temporary, measures to address the sanitation needs of many informal settlement residents. These short-term measures have now become de facto permanent measures, despite them being wholly ill-suited to long-term use and despite them failing to meet the requirement set out in the Municipal Systems Act which requires municipalities to deliver basic services 'in a manner that is conducive to the improvement of standards of quality over time'.

Given this context, the SJC launched its Clean and Safe Sanitation campaign in 2009. The history of the campaign is well placed to give insight into the

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state of local governance by revealing the tension between civil society and local government structures around the provision of basic services to informal settlements.

## JANITORIAL SERVICE

On 27 April 2011, approximately 2500 SJC supporters marched to the Cape Town Civic Centre where a petition entitled *Memorandum on Access to Clean and Safe Sanitation Services in the City of Cape Town* (SJC 2011), signed by more than 10 000 people, was handed over to a representative from the mayor's office. The memorandum articulated the SJC's concerns with regards to sanitation provision in the City's informal settlements, and called for a two-pronged approach to improving access to and quality of services.

Firstly, the SJC asserted that more must to be done by the City to ensure that existing facilities are adequately maintained, monitored and coordinated as a matter of urgency. The SJC argued that this could be done relatively quickly and cost-effectively, as it would not require the installation of additional infrastructure or acquisition of new land, but would greatly improve the level of service and quality of life for those using toilets and water facilities in informal settlements.

Secondly, the memorandum called on the City to initiate broad-based, meaningful engagement with communities and civil society to plan for the delivery of additional clean and safe sanitation and water facilities in line with national basic sanitation norms and standards within a reasonable timeframe.

Soon after taking office, Cape Town's Executive Mayor Patricia de Lille met with the SJC on two separate occasions to discuss the memorandum. Following these meetings, Mayor de Lille released a public statement indicating a willingness from the City to work with SJC to advance the provision of 'the highest level of (sanitation) service possible'. The mayor also stated that the City wants 'the SJC to be our partners in service delivery' and that 'partnerships are models of the type of collaborative engagement we want to create between government and interested stakeholders' (De Lille 2011).

The memorandum was later discussed by approximately one hundred attendees – representing more than sixty community organisations, social movements, research institutions, religious denominations and government departments – that participated in the inaugural Cape Town Sanitation Summit hosted by the SJC on 15 September 2011. Mayor de Lille opened the Summit.

During a speech to Council on 28 September 2011, Mayor de Lille announced the planned Mayoral Special Jobs Creation Project that would include 'cleaning, maintenance of services in informal settlements, maintenance of storm water systems, and more' (SJC 2011). In subsequent correspondence, the SJC enquired whether this Jobs Creation Project would include janitorial services. The then Mayoral Chief of Staff, Mr Paul Bogey, responded to the query and confirmed that they would – the SJC welcomed this. The SJC, in response to this confirmation that a janitorial service would be rolled out, argued that in order for a janitorial service to be a success, broad-based consultation with communities

and key stakeholders, at the inception stage and throughout the process, would be necessary.

The SJC publicly undertook to be an active, engaged and constructive partner of the janitorial service. The organisation pointedly undertook to supply ongoing input and advice and to encourage communities and partner organisations and other key stakeholders to participate. The SJC also stated that it would extend its ongoing monitoring of sanitation service provision, which included equipping communities with the tools to track delivery of the new service.

In a major success for the SJC, and to the City of Cape Town's credit, a janitorial service was established in 2012.

The window of productive engagement and participation between the City and the SJC was however short-lived. After the janitorial service had been initiated, the SJC asked the City to produce an implementation plan for the janitorial service while highlighting that the absence of a plan undermined the health, dignity, and safety of janitors and communities. In a memorandum handed to the City of 25 June 2013, the SJC detailed the litany of commitments made by the mayor in relation to the service, which included a commitment to develop an implementation plan, that had not been met.

In an attempt to meet with the mayor to discuss the lack of an implementation plan for the janitorial service along with other issues in the delivery of sanitation services to residents of informal settlements across the city, 21 members of the SJC took part in an act of peaceful and organised civil disobedience outside the Civic Centre in September 2013. Ten of those SJC members have since been criminalised for having contravened the Regulation of Gatherings Act of 1993 (RGA).<sup>1</sup>

Despite all these attempts at engagement and despite some new concessions from the City by July

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2014, the SJC felt it necessary to make good on its undertaking to extend its ongoing monitoring of sanitation service provision to the janitorial service. The findings of the SJC's social audit into the service revealed that the implementation of the service was inconsistent and hazardous and suffered from a severe lack of planning and consistency (SJC 2014).

Many toilets were found to be in a state of disrepair for months. Janitors, it was found, were being exposed to illnesses because not all of them had received the necessary inoculations. The social audit also found that the distribution of janitors across areas was unequal. The overall assessment was that residents were left with diminished access to toilets because many of the toilets delivered were now in a state of disrepair and posed life-threatening risks to the poorest and most vulnerable communities in the city (SJC 2014).

## MSHENGU CHEMICAL TOILET SOCIAL AUDIT

On 27 April 2014, 150 people gathered in Khayelitsha to assert their fundamental and hard-fought right to hold their leaders accountable in advancing the basic rights of all people, but particularly those in historically disenfranchised communities. The purpose of the gathering was to discuss the communal toilets intended to serve thousands of households in informal settlements across the City of Cape Town.

Pointedly, those attending the gathering were asking the question: Why has the City of Cape Town paid a private service provider R126 million for a service that is not being fully delivered? The Freedom Day community meeting followed a week-long social audit in which affected residents worked in partnership with trained practitioners to assess whether Mshengu Services – a provider of more than 5000 communal toilets – was delivering on

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their obligations outlined in their contract with the City.

During the social audit, over 60 participants interviewed 270 residents of 4 informal settlements - RR-Section, Taiwan/CT, Green Point, and eMsindweni. The participants inspected all chemical toilets found across these 4 areas. The audit found that the City had paid Mshengu Services more than R126 million to provide and maintain short-term sanitation solutions, the chemical toilets, over a sustained period. On inspection, only 256 toilets intended for the 4 areas audited were found, which left 90 toilets, which were required in the service level agreement (SLA), unaccounted for. In addition, the distribution of the 256 toilets in the 4 areas audited appeared random and meant that a ratio of one toilet to every five households wasn't uniformly realised. In many cases, more than 10 families were sharing a single toilet and in one area, 26 families were sharing one toilet. Of the toilets inspected, only 68% had been serviced by a Honey Sucker in the last week, even though the SLA required this service to be undertaken three times a week. 54% of toilets were in an unusable state and 66% of toilets were damaged. None of the toilets inspected were secured to the ground and residents complained about the dangers of using a toilet that could easily topple or be pushed over. The SLA required that all toilets be safely secured to the ground, including those in sandy areas. Lastly no Community Liaison Officers (CLOs) were found on site and residents also reported that they did not know of any CLOs employed for this service. CLOs are meant to ensure

the smooth running of the service and to facilitate communication.

Overall, the findings of the social audit found that the City was failing to monitor Mshengu Services and other contractors. This lack of monitoring and enforcement of the service level agreements entered into, lead to wasteful expenditure and human rights violations (SJC 2013).

The City of Cape Town responded to the social audit results as follows (Nicholson 2013):

Our records show that the City did not always verify each toilet serviced against the invoice and delivery note.

The City acknowledges that we need to improve the monitoring of service providers for toilets to ensure that residents access the highest level possible of basic services at all times.

We have taken remedial action to address this. To this end, we have appointed 266 staff members to improve our efforts to monitor the provision and maintenance of toilets services across the City.

In addition to this, I will later this month visit different communities, including informal settlements, to engage them about the contents of our Service Level Agreements (SLAs) with different contractors.

### BUDGET AND PARTICIPATION WORK

One of the biggest challenges the SJC faced in trying to improve access to sanitation was that the state treated informal settlements as 'permanently temporary' and as a result, provided short-term sanitation measures permanently. These

measures rely on a continuous operating budget for maintenance and near weekly servicing and cleaning. This situation has meant that the City's operating budget overshadows its capital budget when providing sanitation services to informal settlements.

Two issues led to the SJC's initial interest in the City's budget. First, clarity was needed regarding how much money was actually being spent on sanitation in informal settlements and to unpack the 'pro-poor' budget claims made by local government. Secondly, more information was required regarding the City's prioritisation of temporary services in lieu of long-term planning.

Towards the end of 2014, the SJC in partnership with Ndifuna Ukwazi (NU) and the International Budget Partnership (IBP) undertook an analysis of the budget documents with a specific focus on sanitation.

The analysis revealed that the capital spending on sanitation in informal settlements was extremely low – less than 2% of the water and sanitation capital spending. These numbers revealed the magnitude of the injustice and its permanence.

A twofold strategy emerged: first, was to help SJC staff members and others to understand the budget and make submissions during the budget cycle; second, to build a public campaign around the budget injustice before the budget process reached the City Council. This project called for intimate knowledge of budget systems and the public participation in this process. What became clear was that the City was ill-equipped to give substance to the processes of public participation in relation to budgets. This means that in practice it is hard for communities to hold local government accountable.

After two months of workshops and a budget camp, where 60 SJC members spent three days studying the budget, over 500 informal settlement residents from Khayelitsha wrote individual submissions, while the SJC and NU made a joint

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submission. All these submissions were hand delivered to the City, by 150 people, on 22 April 2015. The group was met with confusion and hostility by city officials. A representative from the mayor's office argued and refused to accept the submissions. The official insisted that he would only accept a memorandum. After a tense standoff, the official capitulated and begrudgingly accepted each submission.

The SJC/NU organisational submission argued that the City was spending a disproportionately small share of the water and sanitation capital budget on informal settlements, while prioritising temporary services. The SJC demanded that the City increase the capital budget allocation to facilitate the delivery of permanent safe and dignified toilets to informal settlements (SJC and NU 2015).

When Mayor de Lille tabled her final budget on 26 May 2015, a considerable part of her speech was committed to attacking the SJC. She painted the SJC as an organisation driven by nefarious political agendas and self-enrichment. She also mocked SJC members stating that they couldn't read a budget.

By 2016, SJC staff and members had a much deeper understanding of how to engage with the budget and facilitate submissions. Through a process of education and organising, similar to that in 2015, 3 000 residents in Khayelitsha and Gugulethu wrote submissions. After threatening legal action, the City acknowledged, in writing, that the submissions would be treated individually.

From 23 public submissions in 2014, the number of submissions in 2016 had risen to over 4 000. The SJC clearly had a hand in entrenching participatory process and allowing citizens to engage meaningfully with government processes that impact their lives.

The increase in the number of submissions ultimately pushed the City to reconsider its participatory mechanisms.

## SUCCESSES AND FRUSTRATIONS ENCOUNTERED

Over the last decade, the SJC has, through sustained and principled advocacy, compelled the City of Cape Town to adopt a janitorial service for all communal full-flush toilets in informal settlements across the City. The organisation has also successfully highlighted a blind spot in the City's outsourcing of the delivery of some basic services and has revealed the need for greater monitoring and evaluation of service level agreements. Lastly, the SJC has ensured much greater meaningful participation in the budgetary processes in the City.

The SJC's social audits and budget work has revealed how citizens can work alongside government in monitoring service provision and that communities themselves can participate directly in affecting change in both monitoring service delivery and holding leaders accountable.

Despite the SJC's relative successes, the main demand of its Clean and Safe Sanitation Campaign has not been met, which was for the City to develop and implement a city-wide sanitation plan that moved away from costly temporary (now de facto permanent) sanitation services and to move decisively towards the provision of safer, more dignified long-term solutions. As a result, after several years of campaigning, the SJC, represented by the Ndifuna Ukwazi Law Centre, filed a court application in the Equality Court in July 2016 to ensure that the City of Cape Town delivers.

The court case is challenging the provision of temporary sanitation solutions in Cape Town's informal settlements, seeking an order, in the form of a structural interdict, which will compel the City of Cape Town to develop a reasonable plan and adequately budget for the provision of improved access to sanitation in the city's informal settlements. The case aims to affirm the right to equal access

to quality sanitation, and basic services in general, of Cape Town residents who reside in informal settlements.

### RESPONSIVENESS TO LOCAL GOVERNMENT'S RESPONSES

In a social audit undertaken by the SJC earlier this year (a final report is forthcoming), 478 communal taps and standpipes in seven informal settlements in Khayelitsha were inspected. Of these 478 taps and standpipes inspected, only 77% were working. For 20% of the standpipes and taps inspected, all that remained was a pipe, bent and tied shut with a wire. Of the total, 72% had no drains and as a result 67% were deemed dirty or very dirty. These results indicate that in some informal settlements' access to water has been limited due to poor maintenance, a lack of additional infrastructure delivery and a lack of will to improve on existing infrastructure by allocating appropriate budgets and connecting existing taps and standpipes to proper drains. The results also underscore that the janitorial service and the 266 staff members appointed by the City, in response to SJC campaigns, are not fulfilling their mandate to monitor, fix and/or report any sanitation-related faults or poor service delivery.

While public advocacy around sanitation and public participation continues, the SJC continues to work on bolstering the existing campaigns and developing new strategies moving forward. Advocacy campaigns need to be not only responsive to the state of local government, but also to the responses of local government to advocacy campaigns.

During the ongoing litigation between the SJC and the City, the City submitted its Informal Settlement Project Pipeline (ISPP) in response to the SJC's allegation that the City has failed to develop a

plan outlining how the provision of sanitation services in Cape Town will be improved over time. The ISPP had never been made public before, and despite the City's attempt to have the ISPP pass for a sanitation plan, it doesn't. The ISPP contains no plan for the provision of sanitation for the overwhelming majority of the informal settlements in Cape Town. What has become clear, and is confirmed by the ISPP, is that the City does not have a comprehensive plan, and does not intend to develop such a plan for improved access to sanitation for the overwhelming majority of the people who live in informal settlements. The residents of 346 settlements in the City's area of jurisdiction only have the statement 'basic service delivery' next to their name. If the number of households remains the same (a highly optimistic assumption), at the current average rate of provision, it will take the City 91 years to upgrade all existing informal settlements under the Upgrading of Informal Settlements Programme (UISP).

In short, the City has essentially responded to the Clean and Safe Sanitation Campaign's biggest demand by pointing to their limited UISP, and downplaying the issue of sanitation in informal settlements. This plan is not reasonable and does not provide a comprehensive enough strategy to ensure temporary and permanent access to sanitation for all informal settlements. This response by the City has served to open another front in the SJC's work in informal settlements. Not only will the organisation continue to advocate for improved sanitation, as long as poor working class residents of informal settlements continue to live through Day Zero, but it will also now work to ensure that the City's UISP substantively confronts the housing crisis by engaging meaningfully and budgeting accordingly.

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## NOTES

- <sup>1</sup> On 11 September 2013, 21 SJC members and supporters were arrested and criminally charged with contravening the RGA after having staged a peaceful and organised act of civil disobedience outside the offices of Cape Town Mayor Patricia de Lille, chaining themselves to the railings of the Civic Centre. The decision to organise and attend the protest outside the offices of Mayor de Lille was not taken lightly. In February 2015, the 10 elected leaders who were identified as the convenors of the protest were convicted in the Cape Town Magistrates Court, while the other 11 participants were acquitted. The SJC and those found guilty lodged an appeal. On 24 January 2018, in the Western Cape High Court, Judge T.C. Ndita delivered a judgment. The judgment expunged the criminal charges and found Section 12 (1)(a) of the RGA unconstitutional. The South African Police Service is now appealing Judge Ndita's judgment and as a result, the criminal charges against the 10 SJC members remain in place.