



# (RE)CLAIMING LOCAL DEMOCRATIC SPACE



PERSPECTIVES FROM CIVIL SOCIETY ON  
LOCAL GOVERNANCE IN SOUTH AFRICA

### ***The State of Local Governance Publication***

Since 2008, the GGLN produces regular commentaries on the state of local governance in South Africa. The purpose of The State of Local Governance (SoLG) publication is to present a civil society based assessment of the key challenges, debates and areas of progress with regard to governance and development at the local level in South Africa. It also aims to provide local government policy-makers and practitioners with practical recommendations to improve policy, guidelines, systems and interventions where necessary, based on a sound analysis of the context and an assessment of the challenges and opportunities for improvements. The publication has also been used to build awareness of, and mobilize support within civil society and appropriate government institutions for the key advocacy positions of the network.

The following editions of the State of Local Governance are published: In Pursuit of Responsible and Responsive Local Government (2015), Community Resilience and Vulnerability in South Africa (2014), Active Citizenship Matters (2013), Putting participation at the heart of development//Putting development at the heart of participation (2012), Recognising Community Voice and Dissatisfaction (2011), Ethical Leadership and Political Culture in Local Government (2010), and Local Democracy in Action: A Civil Society Perspective on Local Governance in South Africa (2008).



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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 a national initiative to bring together civil society organisations working in the field of local governance. The network offers a platform to facilitate knowledge production and sharing, peer learning, and advocacy towards the goal of strengthening participatory, democratic and developmental local governance in South Africa.

## VISION

The creation of a strong civil society network that harnesses and builds the collective expertise and energy of its members to contribute meaningfully to building and sustaining 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 municipalities and communities;
- ✦ 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; and
- ✦ 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 interest of achieving the network's objectives
- ✦ Sharing the benefits of membership of the network amongst active members
- ✦ Building the capacity of the member organisations of the network

## MEMBERS

### Full Members:

- ✚ Afesis-corplan
- ✚ Black Sash
- ✚ Built Environment Support Group
- ✚ Community Law Centre
- ✚ Community Organisation Resource Centre
- ✚ Democracy Development Programme
- ✚ Development Action Group
- ✚ Eastern Cape Communication Forum
- ✚ Eastern Cape NGO Coalition
- ✚ Habitat for Humanity South Africa
- ✚ Ikhayalami Development Services
- ✚ Isandla Institute
- ✚ Khanya-aicdd
- ✚ Parliamentary Monitoring Group
- ✚ People's Environmental Planning
- ✚ Planact
- ✚ Project for Conflict Resolution and Development
- ✚ Socio-Economic Rights Institute of South Africa
- ✚ Trust for Community Outreach and Education

### Associate Members:

- ✚ Community Development Resource Association
- ✚ Geodgedacht Forum
- ✚ Mbumba Development Services
- ✚ Ndifuna Ukwazi
- ✚ Open Democracy Advice Centre
- ✚ SACBC Justice and Peace Commission
- ✚ University of Western Cape Department of Political Sciences

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## FOREWORD

The theme for this year's publication, (Re)Claiming local democratic space, suggests that somewhere along the line, something has gotten lost. After all, to reclaim means to get something back or to return it to its former state. Few of us would argue that we have seen and experienced an ideal state of participatory local democracy in South Africa. But at the same time, few of us would disagree that the character and quality of local democratic space leaves much to be desired.

While we may not be looking back on a golden era of participatory local democracy, there are worrying signs of an erosion of democratic values and principles. Notwithstanding recent improvements, the Auditor-General's annual reports on local government audit outcomes consistently paint a picture of non-compliance, unauthorized and/or wasteful expenditure and supply chain management transgressions. The often heavy-handed and repressive police response to community mobilisation and (often peaceful) demonstrations is another indication of this. And most recently, as we gear up for municipal elections later this year, the silencing and even killing of political activists and party representatives shows how fragile local democracy can be.

At the same time, we witness a greater assertion from below as communities, students and civic activists stand up in defiance of the status quo, which they experience as exclusionary, unresponsive and dismissive. Their demands for recognition are claims on local democratic space – first and foremost, to have a political voice, but equally, to see a significant improvement in their lives. As their claims for recognition sound louder (because those in power don't seem to be listening), their tactics sometimes become more forceful too.

Local democratic space is not a neutral space, nor is it an egalitarian space. There will always be different claims on power and resources, and different (even opposing) perspectives on how to achieve certain outcomes (where even consensus on these outcomes cannot be assumed). There will always be actors with greater prospects of wielding influence compared to others, with systemic factors predisposing some to marginal positions in society. Local democratic space is not even necessarily a progressive space, as conservative and exclusionary forces and interests equally vie for space and may well become dominant (as the growth of nationalist sentiments in many parts of the world shows).

(Re)Claiming local democratic space is largely about coming to terms with this paradox and making sure that progressive, inclusive and just imperatives shape the character and outcomes of local democratic space.

The Good Governance Learning Network (GGLN) and its member organisations offer this publication in the interest of deepening dialogue and practice towards inclusive, just and vibrant local democratic space.

### **Mirjam van Donk**

Isandla Institute / Chairperson of the GGLN Reference Group

Cape Town, June 2016

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### **The GGLN Secretariat**

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## EXECUTIVE SUMMARY

The 2016 “The State of Local Governance” Publication places emphasis on (re)claiming local democratic space as a means of engaging/realising the significance of enabling inclusive democratic practices, which offer value and legitimacy to community realities. Otherwise, these spaces tend to become places of exclusion and narrowness.

With the 2016 municipal elections looming, the theme of (re)claiming local democratic space is critical in cultivating a relationship between local citizenries and elected representatives. The papers in this publication share experiences of the manifestations of institutionalized and to a large extent passive local democratic spaces in South Africa, which have often lead to mistrust between different interest groups. Furthermore, the papers advocate for (re)claiming local democratic space through meaningful partnerships, participation, and active citizenry as well as the use of different modalities and technologies to encourage and support the voices of local communities. A recurring theme in the publication is the need for meaningful citizen-state engagement that is cultivated by the role of intermediaries in an attempt to achieve the true nature of democracy.

The introduction by the GGLN Secretariat sets out to define what is meant by local democratic space, and considers the ways in which it emerges in the South African context. It argues that local democratic space is a space where power, resources and influences are negotiated, and that the inclusivity of such a space is contingent on the recognition of difference and diversity. In South Africa however, state-driven processes of governance remain largely unresponsive to the needs of the people. This has resulted in a significant decline in public trust in the state, and in independent efforts to reclaim local democratic space. The introduction also considers the roles that various stakeholders play, and some the tactics they use, in processes of claiming and reclaiming. It concludes by summarising the papers and *In Profiles* presented in this year’s State of Local Governance publication.

The Parliamentary Monitoring Group (PMG) *In Profile*, places emphasis on the potential of civil technology to expand participation in civic and democratic space. This paper draws on PMG’s experience with regards to the creation of People’s Assembly website and its usage. This case study is meant to demonstrate that technology has the ability to make citizens feel more engaged within democratic space as well as able to connect with political representatives, with the ultimate goal of making elected officials more visible and accountable.

Open Democracy Advice Centre’s (ODAC) paper investigates the role of Access to Information (ATI) in democratic space, how it is negotiated and the instruments that are able to equalize the imbalances of sharing and utilizing information, whilst highlighting the key challenges facing ATI in South Africa. The purpose of this paper is to develop best practices within this context that are flexible to the ever-changing atmosphere of democratic space and that encourage real dialogue. This will notably contribute to enhancing effective voices in democratic space.

The *In Profile* by The Eastern Cape Communication Forum (ECCF) focuses on how Media Literacy Training (MLT) is able to improve citizen access to reliable information that can shape communication around

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important developmental challenges in an innovative manner. ECCF profiles the implementation of MLT in Helenvale in Port Elizabeth, an area characterised by poverty and various other socio-political complexities. The implementation of MLT has proven to be valuable in improving citizen perceptions about the capacity to engage with challenges that are emerging within their local democratic space.

Afesis-corplan highlights their experience in the development of upgrading plans for 32 informal settlements in Buffalo City Metropolitan Municipality (BCMM). BCMM is used as a case study to demonstrate a useful model that was adopted in developing upgrading plans for informal settlements, which identifies the role of residents in formulating and implementing these upgrading plans as a critical component. The paper argues for a participatory planning process that is both supported by social facilitation and by local government, in order to allow for the creation of democratic spaces that foster accountability as well as community involvement.

The Development Action Group's (DAG) *In Profile* examines the potential role that civil society intermediaries can play in fostering and protecting democratic accountability and receptiveness in urban governance arrangements and socio-economic dialogue. The paper particularly hones in on DAG's piloted Development Facilitation/Active Citizenship internship programme, which is intended to strengthen the capacity of youth from disadvantaged communities in leadership and community-based change agent skills.

The Community Organisation Resource Centre (CORC) argues that the City of Cape Town's inadequate capacity to engage in meaningful participation as well as the inappropriate understanding and utilisation of the Upgrading of Informal Settlements Programme (UISP) contribute to the narrowing of democratic space. The paper demonstrates that innovative forms of co-finance can be significant enablers of inclusionary practice and collaborative platforms between the urban poor, intermediaries, and local government. The paper also examines how co-finance in the form of a City Fund as a model and tool can enable deliberation and local democratic space.

In the face of an acute housing crisis and the recent sale of the former Tafelberg Remedial School in Sea Point, Cape Town sparked the Reclaiming the City (RtC) campaign. The RtC is an endeavour that strives to bring about urban justice in Cape Town, in order to prevent the disposal of well-located public land. Therefore, Ndifuna Ukwazi's *In Profile* describes the motivation for the campaign and its strategy, successes and challenges.

The Socio-Economic Rights Institute of South Africa (SERI) analyses recent examples of state responses to dissent, whereby communities use provisions in the Constitutions to express their concerns. The paper highlights the systemic problem whereby South Africa's current political atmosphere allows for the South African Police Service (SAPS) to respond to protests through arbitrary action, discrimination and persecution without appropriate grounds or the concern for accountability. Therefore, democratic space is consistently and increasingly being narrowed and undermined. The paper argues that in this context, litigation has proven to be a significant and effective tool in defending both civil and political rights of citizens/communities across South Africa.

The *In Profile* by Planact focuses on the organisation's Participatory Governance Programme in small mining town communities in the Mpumalanga Province, which are often characterised by hopelessness and a

tendency to retreat from local democratic spaces. The programme's intention was to enable communities to play an active role in engaging with local mining companies and to encourage the participation of communities in the formation of Social and Labour Plans, in order to safeguard corporate social investment and responsibility, and empower communities' democratic rights.

Local democratic space is characterised by state and citizen interaction that shapes public debates, politics, and opinions, which is often marked by the encounter of difference. Therefore, local democratic spaces have a tendency of inviting contestation. Isandla Institute's paper argues that in order to have a functioning and effective local democratic space, tolerance is vital. The paper also examines recent manifestations of intolerance in South Africa, and suggests that the underlying factors and these manifestations need to be curbed to enable local democratic space.



## (RE)CLAIMING LOCAL DEMOCRATIC SPACE

Mirjam van Donk and Annuschka Williams, GGLN Secretariat

Local democratic space is the arena where civic actors and the state negotiate for influence (over ideology and development choices), resources and power. As such, local democratic space needs to enable inclusive democratic practices, i.e. practices which acknowledge difference, diversity, power imbalances and contestation. Unless local democratic space offers value and legitimacy to community realities and concerns, and unless engagement in local democratic space leads to substantial outcomes, citizens<sup>1</sup> will deem those spaces ineffective, if not exclusionary. In such instances, they are likely to become despondent toward state-driven processes and/or may opt for alternative strategies, including actions that are seen as hostile towards the state.



PHOTO: SHAUN SWINGLER/SANDLA INSTITUTE

IT IS WIDELY acknowledged that institutionalised spaces for state-citizen interaction in South Africa are by and large not vibrant local democratic spaces. Increasingly, local and/or political elites are encroaching these spaces (Van Vuuren 2014). This is one of the factors that has led to a growing disillusionment with government, Parliament and South Africa's political leadership at the highest office.<sup>2</sup> The inadequacy of public participation spaces is a

critical factor in the erosion of public trust in local government:

There has been a decline in public trust in municipalities, which have sometimes failed to manage resources efficiently, maintain basic municipal services and collect revenue. Causes include weak leadership or political interference in operations, vacancies in critical posts, poor financial management, lack of transparency and

accountability, and weak and ineffective platforms for public participation and communication with communities. (The Presidency 2014: 27)

A decline in public trust does not necessarily imply greater passivity on the part of citizens and civic groups. In fact, there is clear evidence in South Africa of the opposite: community protests, petitioning, public marches and public interest litigation are but some examples of tactics used by civic groups engaging in (sometimes assertive) modes of claims-making.<sup>3</sup> This suggests a strong desire on the part of civic actors to claim, or reclaim, space for political expression and democratic engagement and to gain recognition for their concerns.

Municipal elections represent a particular moment in shaping the nature and quality of local democratic space. With municipal elections due in August 2016, political contestation has intensified over the past few months. According to media reports, the councillor candidate selection process has led to a jostling for nominations and a raft of complaints by party members and/or party hopefuls against the candidates put forward by their political party. It has also led to defections and, in the most serious expression of political intolerance, killings of party representatives.<sup>4</sup> As the candidate selection process has drawn to a close, it is too early to say whether the candidates put forward represent a positive change in the governance of municipalities after the elections.

Regardless, the municipal elections also represent a particularly important moment for the electorate to hold incumbent representatives to account and to shape the relationship between elected representatives and local constituencies for the next five years. With an increase of over 2.6 million voters on the voters' role, indications are that a record number of people may turn up to vote in the municipal elections.<sup>5</sup> This suggests that the electorate

sees the forthcoming elections as an important moment in potentially (re)claiming local democratic space. Actual voter turnout and voting results will signal the electorate's views and expectations to the new municipal leadership.

This paper offers an interpretation of what local democratic space is and looks like – or ought to look like. It further argues that where local democratic space does not enable deliberation, difference and negotiation (in a manner that overcomes underlying power imbalances and systemic exclusion) towards clear outcomes and actions, disillusionment and lack of recognition may breed violence. At the same time, an inability (or unwillingness) to appreciate dissent may fuel state-sanctioned violence. The paper concludes with a reflection on local democratic space in South Africa and different perspectives and tactics on (re)claiming local democratic space, as reflected in subsequent contributions to this volume.

## DEFINING LOCAL DEMOCRATIC SPACE

Democratic space is broadly defined as 'the arena between the state and the individual in which people interact to hold the state accountable, shape public debate, participate in politics and express their needs and opinions' (Horner and Puddephatt 2011:3). While democratic space may take different forms, depending on context and the nature of political regimes, 'it can only be deemed to be democratic when it is underpinned by the values of liberal democracy such as individual autonomy, political freedom, representative leadership, accountable governance and respect for human rights' (Horner and Puddephatt 2011: 3).

Horner and Puddephatt (2011) suggest that democratic space has two dimensions: a procedural and a metaphorical one. Parkinson (in Barnett 2013) adds a third dimension, namely a physical one<sup>6</sup>:

Localism – the devolution of decision-making, resources and power to the local level, where community knowledge is embedded and where users of public services reside – is a critical feature of democratic space (Ercana and Hendricks 2013).

- ✦ The **procedural** dimension refers to the formal institutions, structures, procedures and processes that civic actors can access or employ to express their voice and hold the state to account. In other words, these are formally sanctioned avenues of engagement and political expression (or claims-making by civic actors on the state).
- ✦ The **metaphorical** dimension refers to the ideals, values and interactions which give life and meaning to the procedural dimension. In addition to the values highlighted above, the metaphorical dimension would include values such as inclusion, participation, openness, transparency and local empowerment/ownership.
- ✦ The **physical** dimension refers to the actual space and setting where social and political imaginaries find expression – through statues, memorials and street names, for example. Beyond these more obvious examples, the physical dimension of democratic space is also about the value ascribed to public space and how public space is used by local residents. It makes visible whether core values such as inclusion and respect are borne out in the physical realm. As such, it is the setting where democratic practice is lived out/enacted, where civic organisation takes shape and identities are formed.

Taken together, these dimensions determine the nature and quality of interaction between state and society. A society may have established structures, procedures and processes for political expression and interaction, but if these are not operating in accordance with

core democratic values they will most likely become contested, if not meaningless in the eyes of segments of society. Likewise, a society may have adopted progressive measures to advance participatory democracy in line with core democratic values, but these will mean little if the physical environment continues to represent exclusion and hostility towards certain social groups.

Localism – the devolution of decision-making, resources and power to the local level, where community knowledge is embedded and where users of public services reside – is a critical feature of democratic space (Ercana and Hendricks 2013). Localism is also concerned with strengthening the capacity of citizens/civic actors to promote development and governance from below. Ultimately, the aim is to create a democratic space where citizens and leaders have positive and constructive relationships and are closely connected, and where citizens are part of policy development and implementation processes, including the provision of services. In summation, localism as a feature of democratic space promotes citizen ownership, trust, the development of social capital, empowered citizens and a transparent and accountable government.

### CHARACTER OF LOCAL DEMOCRATIC SPACE

Taking into account the three dimensions of local democratic space (i.e. concerned with procedures, values and physical/visible manifestations where people live and move), we can paraphrase Scott's definition of democratic space as 'the values, rights, procedures *and settings* that constitute democracy with the inclusion of socio-political space for deliberation and differencing' (Scott 2008: 301, emphasis added). The definition highlights two critical features of democratic space: deliberation (i.e. the process of discussion, consideration and negotiation

to arrive at a judgement about what action to take) and difference (i.e. recognition given to the state or relation of being different).

According to the Deliberative Democracy Consortium, *deliberation* refers to ‘an approach to decision-making that involves an informed public, thinking critically together and discussing options from multiple points of view. It encourages enlarged perspectives, opinions, and understandings and can result in better decisions and policies’.<sup>7</sup> As such, deliberation is distinguished from both representation (through elections and exercising one’s right to vote) and consultation. The underpinning argument is that representative democracy cannot replace the importance of civic actors influencing public debate, debating options and trade-offs for development, and holding the state to account. Also, in a democratic dispensation consultation without real influence on the development trajectory of one’s neighbourhood, municipality, or even the country is deemed inadequate.

However, inclusion in deliberation processes does not guarantee that citizens will be treated equally or with the same consideration (Young 2000). Hence, democratic space needs to take into account and accommodate *difference*. Democratic procedures inherently give rise to, and should allow for, differences – in experiences, expectations, cultural and/or political expression, perspectives, levels of influence, and so forth. All of these, although different, need to be accepted as being valid.<sup>8</sup> However, in a deeply unequal society such as South Africa, it is critical to move beyond a liberal notion of difference and plurality and recognise the asymmetry of knowledge, power and influence that often determines how citizens are treated and to what extent their issues and concerns are taken up. Furthermore, it is important to heed Benhabib’s word of caution against a romantic notion of difference

and differentiate clearly between ‘forms of difference which foster democracy and forms of difference which reflect anti-democratic aspirations’ (Benhabib 1994: 3), such as nationalist, xenophobic or tribalist interpretations.

Both deliberation and differentiation suggest that *contestation* is a reality. This is a third key feature of democratic space. Society embodies many different ideologies, opinions, aspirations and experiences, all of which are brought to bear in democratic space. This reality, as well as the fact that different groupings in society have different levels of power and influence, can manifest in contestation and dissent. In fact, the potential for conflict and violence is inherent to democracy, but can paradoxically be overcome by allowing conflict and contestation to play an integrative role (Springer 2011: 531) – assuming that such processes are well-facilitated to avoid papering over pre-existing inequalities. Unfortunately, even in democratic societies, dissent is often demoted or repressed (Webster 2015). When contestation is not managed well and there is no room for dissent in democratic space, it leads to a frustrated citizenry, which may well resort to transgressive and seemingly undemocratic strategies and tactics in an effort to gain recognition.

In essence then, local democratic space represents the institutional (procedural), symbolic and physical space where the state and civic actors (including communities, political parties and other interest groups) deliberate on local challenges and priorities, where difference and contestation is made evident and fairly managed, and where citizens organise themselves around key issues, make claims on the state and hold their local representatives (elected and appointed) to account. Put simply, it is the space where local democracy is practiced and enacted.

### (RE)CLAIMING DEMOCRATIC SPACE THROUGH VIOLENT AND NON-VIOLENT MEANS

The nature of local democratic space is important in ensuring a sense of recognition of community issues. Where democratic space is unable to do this, citizens are disempowered and may turn to alternative and transgressive measures to elevate their struggles, as experiences in South Africa and elsewhere have shown. The majority of these tactics are nonviolent and within legal and democratic parameters, such as peaceful demonstrations, pickets and petitioning. But in some instances where communities feel ignored, misunderstood or disrespected somehow, violence is sometimes used as a tool to challenge the status quo, to make their voices heard and to legitimise community issues. Springer (2011) refers to these popular outbursts of violence as violence 'from below' (Springer 2011: 526). In those instances, violence is a mechanism for citizen expression and to gain political meaning – even if the outcome could be detrimental to the community in the short and long run.<sup>9</sup>

But communities and popular movements are not the only ones resorting to violent action in an attempt to claim democratic space. Springer (2011: 526) also identifies state-sanctioned violence, referred to as violence 'from above'. While violence from below is an expression of anger and resentment toward existing structures or the state of affairs, violence from above is used to maintain the status quo and quell dissent. More often than not, violence from below is a tool of frustration, rather than a preferred tactic to pursue certain democratic outcomes (Von Holdt et al. 2011). Violence from above is clearly antithetical to democratic practice founded on respect for human rights.

The use of violence is an extreme (and thus far, minority) response to a sense of failing of democratic space – or, in the case of state-sanctioned violence,

an extreme response to dissent, perceived agitation and, in some instances, the use of extra-procedural or unlawful tactics by civic actors. In other instances, the recognition of a 'democratic deficit' has given rise to the creation of new democratic spaces, aimed at deepening local democracy (Shankland et al. 2006: 1). For those concerned with the shortcomings of democratic space, these new initiatives are very exciting as these hold the promise of revitalising ineffective platforms, diffusing power imbalances and/or bringing about substantive results in people's lives. Examples are participatory budgeting, citizen oversight committees, community-based planning and social audits, to mention but a few. However, Shankland et al. (2006) caution against a wholesale uptake of such initiatives, without fully appreciating relevant contextual factors and institutional design considerations. For example, while some initiatives are aimed at enhancing public accountability, others seek to embed more inclusive and effective deliberation. The effectiveness of new democratic spaces also depends on contextual factors, such as the legal, historical and cultural setting, the extent of conflict, the role of political parties and civil society organisations, and the availability of human and financial resources (Shankland et al. 2006: 1).

Furthermore, these new democratic spaces are not without challenges, such as disputes over assertions of representation and competition with existing participatory spaces, amongst others. Ironically, new democratic spaces may not actually be effective in overcoming the democratic deficit, as Shankland et al. describe 'In settings where there is deep-rooted mistrust between state and citizens, groups may refuse to enter new democratic spaces even when these are designed to be inclusive and transparent' (Shankland et al. 2006: 3).

New democratic spaces can be initiated, or supported, by the state, but they can also originate

and remain outside of the state. The remainder of this paper will review local democratic space in South Africa, the role-players involved, and methodologies and tactics used to (re)claim local democratic space. Rather than presenting a comprehensive overview and analysis, it will do this by signposting other contributions from GGLN member organisations in this volume, which deal with different aspects, traits, shortcomings and possibilities of local democratic space. These contributions are concerned with the essence of local democracy, and with the need to reclaim space for civic actors in the realm of local democracy in South Africa.

## (RE)CLAIMING LOCAL DEMOCRATIC SPACE IN SOUTH AFRICA

Much has been written about the state of local governance in South Africa, and in particular about the state-citizen/community interface.<sup>10</sup> It could be argued that in South Africa the procedural dimension of local democratic space is well developed and institutionalised (albeit not always functioning optimally), but that the metaphorical dimension is particularly weak. As mentioned before, the metaphorical refers to the ideals, values and interactions that give life and meaning to the procedural dimension. Because in many instances, structures and procedures aimed at enabling public participation in local governance (such as ward committees, Integrated Development Plan forums, etc.) operate without truly reflecting the democratic values that gave rise to them and that they were meant to embody and express, these platforms are often experienced as ineffective, exclusionary and even illegitimate by those intended to make active use of them. Furthermore, if one looks at the key features of local democratic space – i.e. deliberation, recognising difference and contestation – it is

Because in many instances, structures and procedures aimed at enabling public participation in local governance (such as ward committees, Integrated Development Plan forums, etc.) operate without truly reflecting the democratic values that gave rise to them and that they were meant to embody and express, these platforms are often experienced as ineffective, exclusionary and even illegitimate by those intended to make active use of them.

clear that these are not characteristic of most of the institutionalised spaces for state-citizen interaction.

In as far as the physical dimension of local democratic space is concerned, the pervasive spatial segregation across the South African landscape and the bleakness of many townships and low income settlements show that there is still a long way to go before it truly reflects the democratic values enshrined in the Constitution (see, amongst others, NPC 2012).

While government has identified these challenges for some time now, there is little evidence that this realisation is fuelling the revitalisation of local democratic space in a manner that expands the scope for popular influence and advances community-driven local development. This appears to be a key driver in fuelling various modes of claims-making, as evidenced in the burgeoning of community mobilisation, public interest litigation, petitioning and protests, amongst others.<sup>11</sup>

Unfortunately, the state is not always appreciative of community-led processes to (re)claim democratic space. In fact, sometimes the state adopts a harsh stance, even resorting to repressive tactics to gain control over the situation (SERI undated; Van Vuuren 2014). It goes without saying that such an approach goes against the grain of what local democratic space is about and seeks to achieve.

Conflict and violence, both at a community level and state-sanctioned violence, are worrying signs of

democratic space being eroded, or at least being under duress. As highlighted in the introduction, levels of trust – a critical ingredient of, and prerequisite for, a vibrant local democratic space – within the political system (between government, political parties and citizens/communities) seem to be at an all-time low.

Given the performance of many municipalities, the persistent inadequacies in service provision and deepening challenges of unemployment and inequality (all of which are made more intractable as the economy continues to perform weakly), we can anticipate more such efforts to (re)claim local democratic space by/for civic actors and local communities in the foreseeable future. While the vast majority of these will undoubtedly remain within the confines of law and adhere to democratic principles (as is currently the case), not all of these modes are necessarily constructive or democratic – which is not to suggest that the underlying concerns may not be valid and should not be responded to. Also, as Budlender et al. (2014) alert us, not all underlying interests are progressive; conservative and narrow-minded interests will equally seek to stake their claim and broaden the scope for political influence.

### STAKEHOLDERS, ACTORS AND INTERESTS

The contributions to this volume focus on different stakeholders and actors in local democratic space, ranging from municipalities, community groups, social movements, civil society organisations and the media. While trade unions, organised business, traditional leaders and academic institutions can also be significant role players in local democratic space, depending on the local context, their role is not given much attention here, although the *In Profile* contribution by Planact begins to reflect on the role of the mining sector in this regard. The role of political

parties and their representatives in local democratic space is given some consideration (see the *In Profile* contribution by the Parliamentary Monitoring Group and the paper by Isandla Institute), although one could argue that their role in shaping and potentially usurping local democratic space warrants greater attention. Each of these role players represents particular interests – and may in fact represent a variety of voices and interests. These interests can be as varied (and at times as diametrically opposed) as meeting basic needs and addressing poverty versus profit and market expansion, or building/supporting a constituency versus pursuing equality, amongst others. Interests held by actors in the local democratic space can guide their processes and activities toward expanding or foreclosing the democratic space.

The state is a key actor in enabling and upholding local democratic space. As mentioned before, by adopting a legal framework for citizen engagement and establishing democratic structures the state can provide an enabling environment. But it also requires sustained support for such structures and reciprocity on the part of the state. The contribution by Afesis-corplan draws attention to the importance of local government support for community oversight and management structures in the context of informal settlement upgrading. The paper shows that the allocation of municipal resources for project implementation is critical to the effectiveness and legitimacy of such structures; it also reveals that where the municipality is slow to respond to community plans (in terms of service delivery and infrastructure development) residents feel disillusioned, apathetic and frustrated.

As noted before, the state can also be a disruptive or eroding force, particularly when it engages in state-sanctioned violence. The contribution by SERI describes a worrying trend of

violence “from above”, where the state responds to dissent through police harassment, intimidation, excessive use of force and persecution without grounds. This desire to crush dissent narrows democratic space, which propels organisations such as SERI to use another arm of the state (the judiciary) to safeguard civil and political rights through litigation. The *In Profile* contribution by Ndifuna Ukwazi similarly highlights the importance of strategic litigation to compel government to adhere to democratic principles (in this case, the right to public input regarding the intended disposal of public land).

Communities, civic groups and social movements are critical actors in claims-making and seeking to influence the political agenda and decisions regarding resource allocations. The way they organise themselves and manage internal differences and dissent is an important reflection on the nature of local democratic space. The contribution by the Community Organisation Resource Centre makes a strong case for community-based saving as a lever for co-financing and an enabler of inclusionary practice in informal settlements. The contribution by Isandla Institute includes a critical take on the deep-rooted levels of intolerance in society, which can also manifest within local communities and among activist organisations.

Civil society organisations such as NGOs can play an important role in safeguarding and deepening local democratic space, through supporting community mobilisation, capacity development, acting as bridges and translators of sorts between communities and government (Cornwall and Coelho 2007), and even taking government to court when local democratic space is perceived to be under threat, amongst others. Every contribution in this volume brings out the important roles that NGOs can – and do – play in nurturing, safeguarding and deepening local democratic space. These roles

include social facilitation, mobilisation, technical support (including legal/litigation support), capacity building and training, and public awareness raising. The contribution by the Open Democracy Advice Centre (ODAC) serves as an important warning that NGOs can foreclose local democratic space by acting as a conduit of information, which means that they can determine what information to share (or hold back) and how to share it with local communities.

The media can also be a strong force in the democratic space as it has a very broad reach and can play a vital role in sharing information, exposing non-transparent and/or exclusionary practices and holding government to account. Furthermore, the media has a strong influencing role in shaping public opinion and by enabling/stifling the representation of a multiplicity of ideas and experiences. The *In Profile* contribution by the Eastern Cape Communication Forum (ECCF) shows how media literacy can enable youth in marginal communities to use communication as a tool to bring their issues to bear on local democratic space. It also underscores the powerful (and negative) role media can play in portraying marginal communities. The *In Profile* contribution by Ndifuna Ukwazi shows how the effective use of media and communication can be a powerful tactic in advocacy and garnering public support.

Last but not least, the role of political parties in local democratic space needs to be fully appreciated. One could argue that it is in the nature of political parties to seek to usurp political power, to strengthen

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the local (constituency) base and to use their influence to direct state development and public resources (either from within or from the outside). This may come with an intolerance towards other forms of political (yet non-partisan) activism, as is evident in South Africa. The worrying trend of intolerance is further discussed in the paper by Isandla Institute. The *In Profile* contribution by the Parliamentary Monitoring Group (PMG) makes a case for the importance of making contact details of elected representatives available to the electorate in the interest of improving public accountability and overcoming the social distance between elected leadership and local constituencies/residents.

In conclusion, different role players can bring different insights, competencies, experiences and expectations to bear that may support and uphold (or otherwise threaten and undermine) the democratic space. The manner in which relationships and alliances are formed, and the particular interests promoted and reinforced, all plays out in the democratic space and determines the (im)balance of power.

### METHODOLOGIES AND TACTICS FOR (RE)CLAIMING LOCAL DEMOCRATIC SPACE FROM BELOW

Local democratic space is a delicate arrangement of institutions, procedures, values, interests, deliberation and contestation among a variety of stakeholders. In contexts where democratic space is being minimised and the dominant actor (the state) is dismissive of local communities and their attempts to make their voices heard, these communities in turn tend to look for alternative modes of expression and claims-making.

Popular mechanisms used by non-state actors to (re)claim local democratic space in South Africa

include petitions, submissions and demonstrations, amongst others. The paper by ODAC shows how access to information, through the use of relevant legislation and administrative recourse, is an important strategy as well.

Public interest litigation is becoming a more popular approach to support and legitimise citizen issues through the legal system and gaining legally binding outcomes, often after lengthy legal processes and a breakdown of relationships, as shown in the paper by SERI and the *In Profile* contribution by Ndifuna Ukwazi.

Similarly, media, social media and communication technology hold the potential for mass mobilisation and to garner external support for local struggles. Information technology and Apps development has been gaining momentum in popular struggles, including the Arab Spring and more localised struggles for change. As mentioned previously, the *In Profile* contributions by the ECCF, Ndifuna Ukwazi and PMG offer examples in this regard.

Community mobilisation and organisation is another key strategy adopted by local communities and supportive organisations. In support of community struggles, social movements have been able to create inclusive spaces, encourage effective citizen engagement, promote citizen ownership and influence policy changes (Benequista and Gaventa 2011). In different ways, the contributions by Afesis-corporan, CORC, DAG and Planact show how NGOs can fulfil similar supportive and enabling roles.

In recent years, social accountability has become a stronger focus in governance and development, with methodologies like social audits utilised to (re)claim democratic space and empower citizens to challenge the status quo. The paper by Isandla Institute briefly reflects on one such example, namely the case of the Social Justice Coalition (SJC).

This is by no means an extensive list of methodologies and tactics used to (re)claim local democratic space in South Africa. Each of these can hold significant value for local struggles, as well as possible limitations. Both need to be properly understood to determine which tactic, or combination of tactics, will be most effective under specific conditions.

## CONCLUSION

Local democratic space is the terrain of political expression and agency, where alliances are forged and recast or dissolved, where interaction between citizens/communities and the state takes place, where options and priorities are weighed up, where differences in perspectives and tactics are expressed, and where fundamentally divergent interests are negotiated – all within a human rights framework that actively seeks to overcome inequality and systemic bias. It is also the space of transgressive claims-making by civic actors, outside the prescribed confines of procedures and processes. As such it cannot, and should not be, a space that is dominated by one or a few actors or interests. In South Africa, the extent to which party political interests have, in

many respects, been able to commandeer the space is a reason for concern. This is a case of weakened or eroded democratic space, where citizens either become compliant or passive/disengaged, or turn to more assertive – and potentially extreme – measures to expand the democratic space.

(Re)claiming local democratic space is not about taking back power from powerful elites for exclusive control. Rather, it is about rebalancing the space towards more inclusive, collaborative and engaging relationships and practices that appreciate (and successfully manage) difference and contestation in a manner that enables integrative and positive outcomes. Local democratic space will always have to contend with contestation and power imbalances, however, if rooted in strong democratic values and ideals, these can be successfully navigated.

South Africa seems to have reached a tipping point of sorts: continue to erode local democratic space in the interest of order and control (with long-term harmful consequences), or use the occasion of the upcoming municipal elections (and the installation of a new municipal administration) to reinvigorate the values, practices and lived experiences of local democracy.

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## NOTES

- <sup>1</sup> Throughout the paper the notion of citizens is used to refer to all inhabitants of the country, irrespective of their place of origin or legal status.
- <sup>2</sup> The Challenging Face of South Africa, Presentation by Jos Kuper (Futurefact) at The South African Regional Strategic Forecast hosted by The Economist Corporate Network in Johannesburg on 31 March 2016 (available on [www.futurefact.co.za](http://www.futurefact.co.za)).
- <sup>3</sup> According to Lindekilde (2013), 'Claims-making refers to the process of performing or articulating claims that bear on someone else's interests. In its simplest form an instance of claims-making includes two actors—a subject (claimant) and an object (addressee)—and a verbal or physical action (demanding, protesting, criticizing, blaming etc.). In the context of social movement studies and contentious politics, claims-making has most often referred to the conscious articulation of political demands in the public sphere...'
- <sup>4</sup> See, amongst others, "Candidates tell ANC: Pick us or face revolt", Sunday Times, 29 May 2016; "ANC members dissatisfied with candidate list for local government elections", Mail & Guardian, 2 June 2016; "ANC risks losing votes in candidates list dilemma", News24, 9 June 2016; "ANC members who stand as independents 'will expel themselves'", News24, 10 June 2016; "DA in KZN whisper sweet nothings to candidates", Mail & Guardian, 10-16 June 2016, p4; "No one should die to be a councilor – Cosatu", News24, 12 June 2016.
- <sup>5</sup> This is compared to previous municipal elections. According to the Independent Electoral Commission ([www.elections.org.za](http://www.elections.org.za)), 58% of a total of 23,65 million eligible voters turned out to cast their vote in the 2011 municipal elections. Recent voter registration drives have resulted in a total of 26,3 million registered voters, an increase of 11% compared to 2011.
- <sup>6</sup> One could argue that the media comprises a fourth dimension, given its role as a conduit to disseminate information and views, a determinant of public opinion as well as a market place for contending ideological forces (adapted from Opuamie-Ngoa 2010: 133). This is not further explored in this paper.
- <sup>7</sup> The definition is taken from the website of the DDC (<http://www.deliberative-democracy.net>).
- <sup>8</sup> Benhabib (1994: 3) cautions against a romantic notion of difference and argues for a clear distinction between 'forms of difference which foster democracy and forms of difference which reflect anti-democratic aspirations', such as nationalist, xenophobic or tribalist interpretations.
- <sup>9</sup> The burning down of over 20 schools in Vuwani in the Makhado municipality, Limpopo, in May 2016 by angry residents who disagree with the redemarcation of their area into the newly established Malamulele municipality is clearly detrimental to the community itself as it undermines the prospect of improved developmental outcomes for a younger generation.
- <sup>10</sup> See, amongst others, the annual 'The State of Local Governance' publications of the GGLN, CoGTA's Turnaround Strategy (2009) and its Back to Basics Programme (2014), as well as the 2012 National Development Plan.
- <sup>11</sup> In as far as public interest litigation is concerned, Budlender, Marcus and Ferreira (2014) show a growing trend in public interest litigation since the apartheid era. In fact, they argue that in the post-2010 period it has become an appealing tactic for conservative interests as well and caution against a backlash. On the issue of protests, Municipal IQ (2016) recorded 70 protests during the first quarter of 2016, which is already 43% of the total number of protests in the whole of 2015. In terms of submissions, in May 2016 the Social Justice Coalition supported residents of Khayelitsha in making public submissions on the City of Cape Town's 2016/17 budget, whereas in June 2016 Ndifuna Ukwazi led a public submission process directed at the Western Cape government in support of the 'Reclaim the city' campaign.



## IN PROFILE: USING CIVIC TECHNOLOGY TOOLS TO RECLAIM LOCAL DEMOCRATIC SPACE

Gaile Fullard and Rashaad Alli, Parliamentary Monitoring Group

Civic technology tools have been touted as a means to expand participation in the civic and democratic space; however, this assertion needs to be backed by facts, especially in the South African context. This case study reveals that technology has the potential for citizens to feel more engaged in the democratic space but raises questions about its reach.

### BACKGROUND TO CIVIC TECHNOLOGY TOOLS IN SOUTH AFRICA

The internet is increasingly accessed by South Africans due to the rise in the use of smartphones. The Minister of Telecommunications announced plans to double the mobile broadband<sup>1</sup> coverage to 80% of the population by 2019. The cost to communicate is however inhibiting nation-wide growth. As ICT platforms can be more interactive than traditional media, once the reach of ICT platforms is assured and the cost to communicate is lowered, one can deploy tools that will allow more voices to engage and interact. South African civic technology tools that aim to promote political participation therefore have to be viewed as prototypes – pioneering the way to come.

### CASE STUDY: THE PEOPLE'S ASSEMBLY

The Parliamentary Monitoring Group (PMG) works towards developing an active citizenry to ensure a responsive, accountable government. Our experience has, however, shown that engaging directly with one's political representatives is seldom seen as the means to a solution for South Africans who were historically denied access to political representatives.

The People's Assembly was set up to encourage this engagement in 2014. As a civic technology tool,

it aims to make South Africa's elected representatives less invisible and more available, and thus more accountable, while simultaneously helping people to connect with their national and provincial political representatives. A year after the website was launched, an online survey was conducted, and focus groups held to assess if the objectives were being met. A key recommendation was to accelerate the inclusion of local government, which was achieved in 2016.

The website has a sophisticated profile on each Member of Parliament (MP) that includes when and what an MP comments on inparliamentary meetings; how often MPs attend these meetings; as well as what their assets and business involvements are. Most importantly, it provides details of their assigned constituency office for individuals who want to engage with the MP directly.

When adding local government to People's Assembly, PMG found that a comprehensive list of ward councillor contact details does not exist. The Independent Electoral Commission provides only the contact details of the party provincial office or local municipal office, and despite government ensuring that each municipality has its own website (where such contact details could be included)<sup>1</sup>, in total, it took six months of cajoling municipalities to release this information.

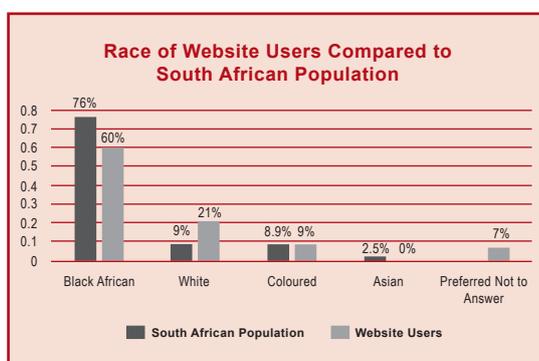
## WHO BENEFITS FROM CIVIC TECHNOLOGY?

The online survey, investigating the impact of the People’s Assembly website, was conducted by the developers of the website, mySociety<sup>2</sup>. Simultaneously, similar sites in developed countries (United Kingdom/United States) and in another developing country (Kenya) were surveyed. The findings from this research were presented at the Open Government Partnership Global Summit, in October 2015, under the title “Who benefits from civic technology?”.

The following results were shown from the 94 People’s Assembly users surveyed:

1. Demographics
2. User attitudes

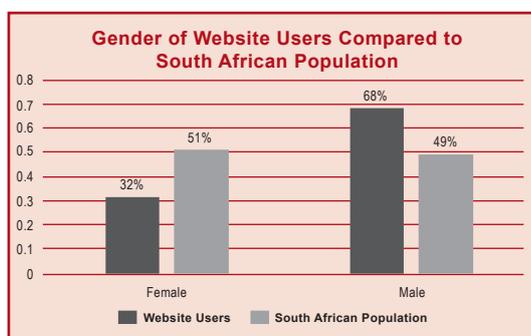
### Race



In terms of race, the reach of the civic technology tool is called into question as the survey demographics do not reflect South African society<sup>3</sup>.

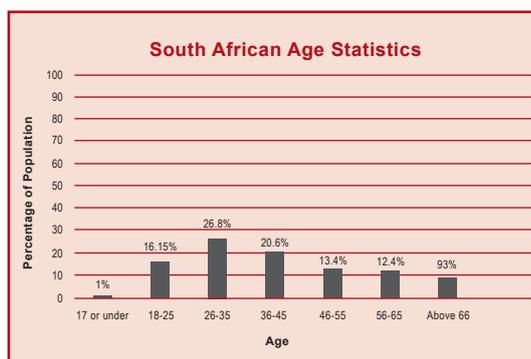
### Gender

68% male and 32% female users, compared to 49% male and 51% female in the general population<sup>3</sup>.



Gender imbalance of users in South Africa is highly significant. This is also evident in the survey conducted in Kenya (72% male) and the UK (64% male), though not in the US (52% male).

### Age

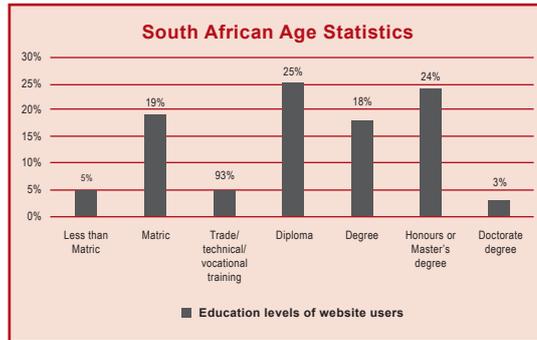


In South Africa, 65% of people using civic technology platforms are typically 45 or younger, and 44% are under 35.

The huge difference between developed and developing countries in this survey was age: 72% of users in developed countries are over the age of 45. In Kenya and South Africa, only 14% and 34% respectively were over the age of 45 which shows that civic technology is being embraced by the youth in developing countries.

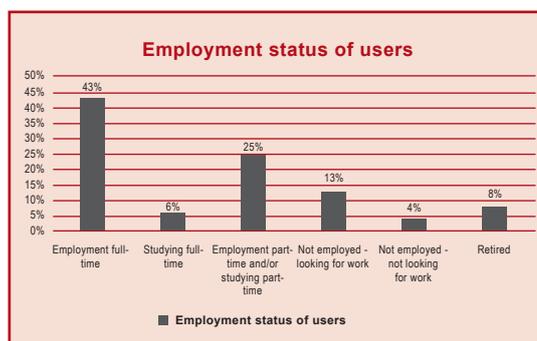
This has interesting implications for its future application to engage South African youth in active citizenship.

### Educational attainment



Reach is a challenge for civic technology tools if only the well-educated are accessing them. The results show 55% of users are not university educated. The results on the surface appear positive, reflecting a broad spectrum of users with varying levels of educational attainment. However, South African 2011 census data<sup>3</sup> shows only 12% of the population hold a degree-level qualification or above—this differs substantially from the 45% of People’s Assembly users with degrees. There is thus a significant lack of reach to people with a lower level of educational attainment.

### Employment



In the fourth quarter of 2015, Statistics South Africa pegged the unemployment rate at 24.5% and the employment rate at 44.2%. This does approximate the demographics in the survey of users.

### LOCATION: RURAL/URBAN

Respondents in urban areas represented 79% of the sample. The current urban-rural population ratio<sup>4</sup> in South Africa is urban 63.6% and rural 36.4%. This result is the most telling about the reach of civic technology tools as the rural demographic, as in so many other arenas, is left disempowered without access.

### USER ATTITUDES

Political engagement:

The majority of users are very interested in politics. Over 80% confirm they consume political news at least once per day.

User perceptions about the benefit of the tool:

- ✦ 97% of users said they would use this website again.
- ✦ In response to the question “Before today, have you ever contacted a Member of Parliament?”:
  - 60% said that they had not contacted a politician.
  - 24% said they had to ask for information.
  - 7% had made contact to make a complaint.
  - 17% had made contact for another reason.

This was an interesting finding when compared to the three other countries. In South Africa, 60% of respondents had never contacted a Member of Parliament, whereas politically engaged users in the other three countries had significantly made more contact with their representatives. South Africa’s electoral system at the provincial and national level is one of proportional representation, so representatives are not elected from geographic areas. There is a great deal of anonymity on the part of our political representatives. The lack of contact information for ward councillors perpetuates this at a local level. It encourages civic passivity in citizens who should

be accessing these representatives for mobilising support for specific interventions.

Of the people surveyed:

- ✦ 92% said seeing this information about their Members of Parliament enables them to hold MPs to account. Only 8% said it did not.
- ✦ 37% said that using the People's Assembly website made them more empowered (i.e. engaged/active) to a significant degree, and 48% said it made them more empowered in part.
- ✦ 20% indicated that after leaving the website, they would visit their constituency office
- ✦ 19% said they would contact a Member of Parliament about the issue that brought them to the website.

These responses show highly positive attitudes towards this tool and the potential for positive action from its use.

## GOING FORWARD: LESSONS FROM THE SURVEY

A criticism of civic technology tools, especially in developing countries, has been that they often end up empowering the already empowered. So an important positive survey outcome has been the use of the tool by civil society networks, which play a key role in taking the information and packaging it suitably for their audiences, especially those without digital

access. Nonetheless, the demographic information revealed by the survey indicate that civic technology tools in South Africa have a long way to go in achieving equitable reach and usage.

The survey reflected that the users of the website do not represent South African society in its full diversity, however, it is hoped that including the local tier of representatives on the People's Assembly website in 2016 will extend its reach. Municipalities represent the sphere of government closest to the people, with basic services delivered by them. Ward councillors are the political representatives closest to communities. It is thus more likely that people will engage with civic technology if it is able to directly deal with community issues.

Going forward, it is important to remember that civic technology is still relatively new for many communities, and the digital divide needs to be overcome to fully unlock the potential of civic technology for developing countries so that it can be utilised as a tool to create spaces to engage duty-bearers in more inclusive democratic practices. This survey on the impact of the People's Assembly website revealed high confidence levels in civic technology websites, with the majority of users indicating that they would use the website again in future and believing that such tools help them to hold government to account; this indicates the potential for citizens to feel like, and thus become, empowered, engaged and active citizens.

## REFERENCES

- 1 Minister of Telecommunications Budget Vote Speech 10 May 2016 <https://pmg.org.za/briefing/22492>
- 2 Who Benefits From Civic Technology? Rebecca Rumbul, my Society, October 2015 <https://www.mysociety.org/research/who-benefits-from-civic-technology>
- 3 Statistics South Africa Census 2011 [http://www.statssa.gov.za/?page\\_id=3839](http://www.statssa.gov.za/?page_id=3839)
- 4 Minister of Human Settlements Budget Vote Speech 3 May 2016 <https://pmg.org.za/briefing/22463>

## NOTES

- <sup>1</sup> There were a few remarkable cases of ward councillor contact details on these websites



## (RE)CLAIMING THROUGH (RE)FRAMING: INTERROGATING POWER, INFORMATION AND DISTORTION FROM CIVIL SOCIETY

Gabriella Razzano, Open Democracy Advice Centre

The democratic space is, at its core, about dialogue. It is about fostering conversation. And so, when we think about democratic spaces, we have to think about *who* is having a conversation and *how* they are having it. Access to information (ATI), and how it is negotiated, is of vital importance for fostering real dialogue, not least of all as a mechanism to equalise imbalances in using and sharing information (and power) between participants. However, work on access to information at the Open Democracy Advice Centre has forced us to interrogate *how* the *who* behave when seeking to promote information. This has led us to an important discussion point: we should critically interrogate the role non-governmental organisations play in *translating* and transmitting information.



PHOTO: OPEN DEMOCRACY ADVICE CENTRE

FIRST WE WILL consider the role of ATI in democratic spaces, which will allow us an opportunity to address the key challenges to this role in the South African context. This forces us to consider transparency in a broader sense for ATI to be made effective, which has led ODAC to critically assess the traditional role of non-governmental organisations in the field. In this critique, we will first consider the *problem* of power, and describe the examples of how power can corrupt information.

Finally, we will discuss the role empathy and listening have to play in resolving some of the problems described.

### THE ROLE OF ATI IN DEMOCRATIC SPACES

Access to information is integral for creating real and informed dialogue in democratic spaces: we can't participate in a process when we are not fully informed. The responsiveness of government

is meant to ensure true democracy in a country marred by a history of violent and autocratic rule. The Constitution of the Republic of South Africa, 1996, expressly recognises the importance of public participation through enlivened democratic spaces such as National Assembly, and the importance of access to information (particularly through section 32). Meaningful participation is one of the key ways in which socio-economic rights can be advanced in contexts where there are limited resources. Access to information helps to give you a way to participate in state processes that may eventually result in these rights becoming real, but it is more than just *passing on information*, as the Constitutional Court noted in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others [2011] ZACC 8*:

The evidence suggests the frequent employment of a top-down approach where the purpose of reporting back to the community was seen as being to pass on information about decisions already taken rather than to involve the residents as partners in the process of decision-making itself. As this Court has made clear, meaningful engagement between the authorities and those who may become homeless as a result of government activity is vital to the reasonableness of the government activity.

Real participation can have real results, and information facilitates the equalisation of power relations in different conversations in a way that improves the authenticity of that conversation so it avoids a top-down distribution of power. As Michel Foucault notes: '[P]ower is tolerable only on condition that it masks a substantial part of itself. Its success is proportional to an ability to hide its own mechanisms' (Foucault 1976: 48). Power relies on secrecy to exert itself. So, information that can have, as its end, the capacity to create balance in power between the actors

In 2006, in Sunder Nagri, New Delhi, an Indian businessman, Noshe Ali, used the Indian freedom of information law to find out the real infrastructure plans for the district, and the records revealed no sewers were to be dug, in spite of political promises that had been made.

concerned is profoundly valuable. This does not mean that information that merely informs has no value (there is an inherent value to information), it is just not the type to ensure public participation in the way the Constitution envisions.

In 2006, in Sunder Nagri, New Delhi, an Indian businessman, Noshe Ali, used the Indian freedom of information law to find out the real infrastructure plans for the district, and the records revealed no sewers were to be dug, in spite of political promises that had been made. He then used the information to lobby the Chief Minister to allocate budget to dig the sewers, thus having a real effect on the decision-making process in his region (Dummett 2006). In this case, real participation in political processes could only be effective with this information. The story also reflects how we typically see the traditional roles of actors in this environment: civil society as champions of ATI, and government as implementers of ATI laws and policy.

## PROBLEMS IN THE ATI SPACE

As a vital component not only of participatory democracy, but also accountability and governance more broadly, we'd presume the implementation and encouragement of access to information would be a priority for the government of South Africa, however, actual practice appears to indicate otherwise. We can consider first the implementation of South Africa's main access to information law: The Promotion of Access to Information Act, 2000 (PAIA). In 2012, the South African Human Rights Commission (SAHRC)

High profile corruption cases mar the top echelons of South African politics – from the president’s complicit involvement in the mis-expenditure of public funds in the redevelopment of his family estate in Nkandla, to revelations that the South African government paid bribes to FIFA officials to ensure we were awarded the 2010 Soccer World Cup (Smyth 2016).

reported that fewer than 15% of audited institutions had specifically budgeted for PAIA implementation and compliance requirements since 2008 (South African Human Rights Commission 2015). This lack of prioritisation is reflected in the state’s subsequent performance in relation to PAIA: in the 2012 reporting period, the PAIA Civil Society Network noted that only 16% of requests resulted in the release of requested information, and more disturbingly, 54% of requests simply remained unanswered (PAIA Civil Society Network 2015).

In 2014, a statistics paper was completed on PAIA compliance, exploring the response rates to requests made to all local municipal offices (Van Der Mey and Eyal 2015). The object was to assess whether the language used in a request affected the response rates. This meant a neutral request was sent to half of the sample, and an aggressive request (so defined because of the use of highly assertive and legally based language) was sent to the other half. This method was conducive to assessing the experience of the everyday PAIA user, as the researcher was not a consistent requester to the municipalities before the project had been initiated. Her results were telling: across both request types, the number of deemed refusals, or ignored requests, was a staggering 86%. This means the most likely response for a request by a member of the public is no response at all. Even more worryingly, legalistic requests demonstrated a faster response time, indicating the particularly negative response environment for non-legally trained citizens.

When we look to broader transparency indicators as well, things are not promising. On the Perceptions of Corruption Index 2015 (Transparency International 2015) South Africa ranked a pitiful 61 out of 168 countries. Our neighbours do far better: Namibia ranks almost 20 places above us and Botswana almost 40. Not only are South Africans perceived as corrupt, we feel the direct costs of corruption too. Corruption and fraud in South Africa is estimated to cost citizens in excess of R100 billion a year (Shulz-Herzenberg 2009). Further, high profile corruption cases mar the top echelons of South African politics – from the president’s complicit involvement in the mis-expenditure of public funds in the redevelopment of his family estate in Nkandla, to revelations that the South African government paid bribes to FIFA officials to ensure we were awarded the 2010 Soccer World Cup (Smyth 2016). This has severely negative impacts on the transparency of the South African environment. For one, legitimacy in the state is eroded by high perceptions of corruption. While the Open Government Index ranked South Africa as the 27<sup>th</sup> most open government out of the 102 countries evaluated, it noted that South Africa performed worse at the level of sanctioning officials for misconduct than in other areas (Razzano 2015). This failure to hold corrupt actors to account threatens legitimacy, and expresses a lack of political will toward authentic transparent practices. It has worrying implications, too, for trying to reclaim our democratic spaces.

### CONSIDERING ATI MORE BROADLY

Trying to pursue transparency merely through the implementation of PAIA is not enough, not only because of shortcoming in implementation, but also because there are other mechanisms for advancing a transparent environment. An emerging trend for advancing access to information is through improving South Africa’s proactive disclosure with open data.

Open data portals of public sector information are emerging as a vital new avenue for access. However, South Africa is ranked at 54 in the world for availability of open data in the 2015 Global Open Data Index with a score of 34%, but with a disappointing drop in scoring from its previous index score of 48% in the previous year (Open Knowledge Foundation 2014).

Whistleblowing is also an ATI concern.

Whistleblowers access and distribute information in the public interest. In South Africa, forms of labour protection are offered to whistleblowers through the Protected Disclosures Act, 2000, but there have been renewed efforts to reform the law for better protections, which provide a significant advocacy opportunity. The PDA Amendment Bill B40-2015 is currently within the National Assembly for consideration. Perhaps most noticeable within the Bill is a tiny little paragraph, which extends protections to civil and criminal liability. This is actually hugely significant – whistleblowers are often threatened with civil claims (like defamation), which presents a significant chilling effect on information access.

Another important opportunity for broadening the advancement of transparency in South Africa is the establishment of an Information Regulator through the Protection of Personal Information Act, 2013. The Regulator will not only have oversight of that Act, but of PAIA as well. As an institution, it will have a potentially significant role to play in the advancement of open data. However, in its simplest, having a form of ombudsman for information issues will be a significant boon for the information activist community, given prohibitive costs of litigation.

We thus begin to understand some of the broader opportunities and problems within the South African information and transparency environment, which need to be considered when reflecting on how to engage in the democratic space.

## THE TRADITIONAL ROLE OF CIVIL SOCIETY

It was demonstrated in the examples of ATI facilitating participation that civil society actors typically stand as the agents of holding government, and other powerful figures, to account (Avle and Adunbi 2015). The government typically stands as resisting the release of information – either through keeping secrets, or disseminating misinformation. A recent article, for instance, espoused eloquently, and humorously, how politicians distort statistics and data to serve their political agendas, rather than prioritising truth (Harford 2016).

In some sense though, a naïve perspective of the influence of civil society still dominates. The role of civil society is a *prerequisite* for public participation processes – think for instance of the Open Government Partnership, which not only encourages civil society engagement, but in fact embeds civil society representation within its governance structures. So significant can such organisations be, that civil society and its organisations are in some senses more equivalent to public institutions than private institutions (Tandon 1991).

Many different types of actors constitute civil society: trade unions, international non-governmental organisations, and community and faith-based organisation, amongst others. All of these actors have a significant influence on their environments, and with their constituents. Trade unions in South Africa, for instance, have a very direct form of political power given the historical tripartite alliance between the Congress of Trade Unions, the South African Communist Party and the African National Congress. This paper will consider, in particular, the role of non-governmental organisations as an important agent of information in democratic spaces in South Africa and, when we refer to civil society, are considering in particular the role of non-governmental organisations.

## THE PROBLEM OF POWER

Reframing our perspectives to consider the power wielded by non-governmental organisations is important, because power imbalances can have a profound affect both on accessing, and interpreting, information. Power distorts in both the physical and political world, and we have to be cognisant of this in considering how we engage within democratic space.

Civil society organisations have traditionally been considered well placed to act as translators of information obtained by government that might be difficult to otherwise process by the public at large. The developments in open data, described above, have renewed the importance this role, as complicated data sets require translation into formats and messages that are easy to understand. Civil society has not, however, interrogated its own capacity to distort the information that is being disseminated to communities; this capacity is exaggerated by the significant power they have, but also by how perceptions of power *changes* our behaviours.

Increased levels of power bestowed upon human beings, examined through experimentation, have demonstrated direct increases in egocentric behaviour and a lack of empathy in the empowered participants (Robertson 2013). This cognitive perception increases the likelihood that the powerful will view others as a means to an end, and be less able to empathetically consider the needs of others (Robertson 2013).

It is worth considering too that non-governmental organisations are not accountable directly to the communities they are trying to serve, instead are accountable to their donors (and to government to varying degrees depending on the legislative framework of the country concerned), and thus the ability to truly align to the needs of their communities may be reduced.

## HOW POWER CAN CORRUPT INFORMATION

Being a translator of information renders civil society groups as proxies to the groups they are communicating to. And we cannot simply assume that, as translators, you will always be able to prioritise the most important aspects of information that the public you are communicating to require – either wilfully for want of a specific agenda, or through inattentiveness.

The organisation I work for, the Open Democracy Advice Centre, has experienced first-hand examples of this problem. In 2013 I tried to assist in a housing project with the Red Hill Community in Cape Town with a simple goal: help the community gain access to easy and simple information about the housing development being developed as the Dido Valley Project. There were many difficulties with the project, but one of the greatest issues that meant no significant gains were achieved was due to translation and power.

As is fairly typical, my first approach was to begin communicating with an organisation already working in the area. While the relationship started amicably enough, working through a proxy soon created issues. Even though the individual worked for a non-profit, she had various assumptions about how the community should be engaged and effectively shut down direct access to them, which meant tailoring solutions and information packets was impossible. All communication eventually broke down. Why did this happen? Because, unwittingly, and under the vestiges of *best interest*, the power that she yielded over that community distorted her ability to relay information reliably. When we think about the cognitive influence described earlier, the power she held as a communicator weakened her ability to promote other people's agendas and interests over her own.

This proxy problem is not unique. In a lengthy account of the success and failures of anti-corruption interventions in Afghanistan, covered by the New Yorker, Sarah Chyves noted how her work was significantly impeded by her initial quixotic attempts to begin her work through the use of proxies (Keefe, 2015). Not only did this result in a form of corrupt relationship developing, but also the power held by the proxy distorted her ability to communicate with the population whose needs she was hoping to serve. Without an authentic relationship to those communities, considered anti-corruption campaigns were impossible: you can't design solutions for people you do not understand.

Another way of thinking about it is in terms of prioritisation. When we receive vast quantities of information, but want to communicate a message about it, we prioritise parts of that information. How we prioritise, though, can be overly affected by our interests, rather than the interests of those we communicate to. It can also affect the information we seek to access in the first place. Traditional ATI laws, like PAIA, demand we ask for a specific type of record – if non-governmental organisations are using PAIA on behalf of communities, as they so often do in their traditional roles, the potential that their agendas will come first is significant. Look for example at the PAIA requests made through the Request Tracker<sup>1</sup>, hosted by a local non-governmental organisation in South Africa. Often, information is sought that is aligned with a specific focus: the South African History Archive naturally seeks historical documents; the Centre for Environment, environmental records. This is not a criticism, but it is a significant issue to be alerted to. If we know PAIA is not accessible to the public (as seen earlier), naturally non-governmental organisations will continue to take the dominant role of requester. Yet, if a significant number of requests that are being made are questionably not aligned to the broader priorities

of the populous, how can we ensure that PAIA can be more broadly significant moving forward?

## EMPATHY AND THE AUDIENCE

Positions of power, and the mere act of translating information affect what is communicated (we need only think of, for instance, the children's game of Broken Telephone). If non-governmental organisations hold positions of power, can information that they disseminate ever be useful? The answer is of course. And the utility of this information is significantly advanced when non-governmental organisations can be self-aware of their role, and empathetic to their audience.

If organisations can more authentically attune themselves to their audiences, their innovations and interventions will be profoundly stronger for it (Nemeth 2010). Developing hyper-local and specific solutions for those you are seeking to help is a concept borrowed from technology development that all non-governmental organisations would do well to learn by (Hobbes 2014). If we try and be more objective in considering what our audience might need to know, we will be better able to help them engage in democratic spaces.

A second tactic to assist is to try and relay information as simply as possible – which is different from selectively transmitting information. In order to understand what is simple and useful, organisations must engage directly with the needs of the groups they are hoping to assist, being careful not to automatically equate the organisation's interests with that of the public they are hoping to serve.

Developing hyper-local and specific solutions for those you are seeking to help is a concept borrowed from technology development that all non-governmental organisations would do well to learn by (Hobbes 2014).

## RECOMMENDATIONS

- ✦ The advancement of ATI for informed participation in democratic spaces must be insisted upon in any forum in which we engage.
- ✦ Civil society can actively promote transparency not just through utilising the ATI law, but also by promoting the use of open data and promoting information as a central component in participation exercises.
- ✦ For advancing traditional ATI concerns, parliamentary lobbying should focus on the establishment of the Information Commission and the amendments to the Protected Disclosures Act.
- ✦ Civil society should focus on the manner in which information is translated and disseminated to communities to ensure authenticity, and to properly contribute to the benefits ATI can provide to democratic spaces.
- ✦ Civil society should try and disseminate information as simply as possible, with a considered and authentic reflection on the needs of the audience they are seeking to engage.

## CONCLUSION

We have seen how ATI serves democratic spaces, but also described the key challenges for ATI that activists must be aware of if democracy is to be advanced. Emerging trends in ATI have also alerted us to new nuances in the ATI field for discussion and interrogation. We need to interrogate the role of all the actors in advancing ATI, if we want to truly advance ATI practice. When we seek to re-engage democratic spaces, we should do so in a considered and critical manner. This is necessary both to develop best practice, and also to adjust to a changing environment, increasingly influenced by technology and the changing role for civil society. The traditional role of non-governmental organisations as those that access and translate information requires them to be more critical of the power they wield in this role, and the manner in which they chose to communicate. Remaining empathetic to their audience will significantly contribute to advancing effective voices in democratic spaces.

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## NOTES

- <sup>1</sup> These can be viewed here [http://foip.saha.org.za/request\\_tracker/search](http://foip.saha.org.za/request_tracker/search).



## IN PROFILE: (RE)CLAIMING LOCAL DEMOCRATIC SPACE THROUGH MEDIA LITERACY TRAINING IN HELENVALE, PORT ELIZABETH

Chengetai Chikadaya, The Eastern Cape Communication Forum

The Eastern Cape Communication Forum (ECCF) works towards improving citizens' access to credible information so that they may creatively shape communication on key development issues in the province. One of the tools used to achieve this goal is Media Literacy Training (MLT). This *In Profile* summarises the implementation of two MLTs in the township of Helenvale in Port Elizabeth in 2014 and 2015. The MLT process proved to be beneficial to improving citizens' perceptions about their own capacity to engage with issues emerging within their local democratic space, and has the potential to provide key insights to local government and civil society organisations.

### BACKGROUND

Helenvale is characterised by poverty, gangsterism and other socio-political complexities, found in varying degrees in other South African communities. A coloured township, Helenvale is located approximately 30 minutes' drive from the Nelson Mandela Bay Metropole (NMBM) city centre. It is also a historic site of displacement, with many of its residents having been forcibly removed from other areas in the NMBM.

Developed to accommodate 6000 people, the area now provides tenancy for 20 000 – 69% of which are below the age of 35 – and is critically underdeveloped. Only 12% of the population have completed general education (grade 9 or higher) and 4% have no schooling at all; 29.9% of households earn less than R800 a month (significantly less than the national average income of R8 800); 46% of inhabitants claim to have no income; and 49% are unemployed (significantly more than the national average of 37%) (StatsSA 2011).

Not much has changed since the onset of democracy, and Helenvale has remained socio-economically marginalised. As a coloured area in a metro dominated by black-majority areas,

Helenvale residents mainly elect councillors not from the ruling party, consequently antagonising the metro and neighbouring communities. Aside from the historical displacement and the fierce socio-economic constraints gripping the area, media representation/reportage on Helenvale reinforces and reproduces the existing high degree of political antagonism. Further, in 2013 the rate of crime was six times the national rate, and the township remains the poorest within the NMBM. Through the regional and tabloid press of *Die Burger* and *Die Son*, the area receives a great deal of attention with coverage on shootings, gang activities and public protests. As a result, representations of Helenvale in the mainstream news paint a very bleak picture.

### THE ECCF AND MLTS

The socio-political nexus in which the ECCF operates consists of the following dominant actors: citizens; CSOs; community/commercial media; and the state, as represented through local government communicators. Through its work with these actors, the ECCF has found that 'the relationship between media and good governance is most pressing in transitional democracies [like South Africa], where the role,

expectations and norms that guide this relationship are still disputed amongst the actors involved in the public communication of politics' (Votmer in Norris 2010: 138). The ECCF has established that if residents already feel marginalised and/or neglected by state actors, this impacts negatively on how they experience public communication through media/state.

Media literacy is defined as 'the ability to access the media, to understand and to critically evaluate different aspects of the media and media contents and to create communication in a variety of contexts. The aim of media literacy is to increase people's awareness of the many forms of media messages encountered in their everyday lives' (Livingstone, 2011:4). Most implementation of MLTs takes place in schools, however the ECCF employs media literacy tools informed by citizenship theory, thus taking the value of the tool beyond the classroom and into the community.

The ECCFs approach is founded on an understanding of the value of a multi-stakeholder approach in 'completing the circuits of democratic communication' (Dreher 2012: 159), eliciting debate and fostering democratic sensibility amongst citizens. The organisation therefore makes use of a different, more collaborative, community and context-driven model when implementing its MLTs and thus defines an MLT as:

Capacity building that works with citizens on the ground to improve their knowledge on community media; the importance, role and impact of media on their daily lives as well as an understanding of tools and methods that can be used for media engagement while developing or further enhancing the relationship between citizens and local media available in their area. In all trainings, participants also gain an understanding of their rights and responsibilities as citizens with regards to media consumption and participation. (ECCF 2014)

The ECCFs approach is founded on an understanding of the value of a multi-stakeholder approach in 'completing the circuits of democratic communication' (Dreher 2012: 159), eliciting debate and fostering democratic sensibility amongst citizens.

The first step in the model was to listen to the needs of the community through conducting a needs assessment. In this case, the needs assessment revealed limited knowledge on the functioning and use of media, and tensions between citizens and media, emanating from longstanding resentment about negative media representations of the community. It was thus important to take cognisance of unequal power distributions in the area and amplify marginalised voices by engaging as many contextual actors as possible. For this reason, the first MLT included community journalists, field experts, and local government and CSO actors.

The second step was stakeholder mapping and collaboration. This led to the identification of the Safety and Peace through Urban Upgrading (SPUU) initiative at the Mandela Bay Development Agency (MBDA) as a suitable partner. The SPUU focuses on violence and crime prevention in Helenvale through urban upgrading and the implementation of social initiatives. Some of these initiatives focus on the use of media and communication tools to provide skills and empowerment to marginalised community members and youth.

For MLTs to succeed, participant-led goals must be incorporated into the intervention. The MBDA expressed that the envisioned outcome of the SPUU project would be supporting a youth group in developing a Helenvale-centric newsletter and draft business plan for the media production. For this reason, they were eager for a deepened media

literacy and media management training geared towards preparing the MLT group to achieve this.

### MEDIA LITERACY TRAINING

ECCF has conducted two media literacy training sessions, in 2014 and 2015. The most recent of these included some participants from the preceding year, six of whom have since started their own media forum to keep the momentum going. During the training sessions, the following was explored:

- ✦ Awareness of media consumption.
- ✦ Theory around media and society.
- ✦ Communication skills.
- ✦ Interpretation of media messages.
- ✦ Media management.
- ✦ Media production.
- ✦ Media business plan development.

Discussion involved debate about the tension between citizens and the media, and how participants had experienced strongly negative reporting about their community that had made them hesitant to engage with the media. In the form of an action theatre, participants were asked to engage in role play and acting as both journalist and community member, thus expanding their perspectives on the process involved in media production. Participants also had a strong interest in the field of social media and the ethics of its use, and were engaged in exercises aimed at deconstructing ideas around media representation and what it means to be an active citizen.

Participants also had a strong interest in the field of social media and the ethics of its use, and were engaged in exercises aimed at deconstructing ideas around media representation and what it means to be an active citizen.

These interventions revealed that while youth in Helenvale have a basic awareness of media, they also lack knowledge of community media and information on how to participate or engage with it in an effort to become active citizens and claim deliberative democratic spaces. As such, the MLT also focused on practical aspects of media literacy such as:

- ✦ Visiting local media houses where, through interactions with community journalists, participants were able to acquire first-hand insight into the practices of local media.
- ✦ Producing various forms of media content, with the assistance of community journalists; this included opinion pieces on community matters, photography relating to the topic of their community and radio interviews.
- ✦ Preparing feedback to give to their respective plenums to allow for a transfer of learned skills. In this way, participants had the opportunity to *listen* as well as be *listened to* in an open and encouraging environment.

### RECOMMENDATIONS AND CONCLUSION

The MLT sessions revealed that despite many youth spending a great deal of time engaging with media, they are not aware of the gravitas of this. Even though young people are often deeply embedded in a culture of media consumption, there is a lack of critical engagement and questioning of the value and relevance of media in a broader sense. As such, the bottom-up approach adopted by the Eastern Cape Communication Forum is significant for bringing to the fore the experiences and context of the group of participants, as this encouraged them not only to claim discursive space, but also interrogate questions around the role of media in democracy, and in turn, the role of active citizens when using media.

Since the first MLT in 2014, the ECCF has continued to strengthen relations with students from the Rhodes School of Journalism and Media Studies (JMS), integrating them into the MLT as mentors. While this has been a positive development, it is recommended that direct involvement of local government and civil society actors in such trainings can further enhance critical engagement on democratic issues by making participants feel part of a broader community. For example, in previous MLT sessions in Mdantsane, East London, the ECCF successfully engaged the

Buffalo City Metropolitan Municipality and the civil society organisation Ground Up.

The ECCF thus continues to pilot innovative aspects within their MLTs, however, it is acknowledged that in order to successfully facilitate the reclamation of democratic space by citizens, deeper engagements with civil society organisations and local government as well as further practice-led research is recommended to build a firmer framework for context-driven MLTs in the province and South Africa as a whole.

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# HOW PARTICIPATORY PLANNING AND MONITORING DRIVES MEANINGFUL PARTICIPATION IN DEMOCRATIC SPACES: EXPERIENCES FROM THE UPGRADING OF INFORMAL SETTLEMENTS IN THE BUFFALO CITY METROPOLITAN MUNICIPALITY

Ronald Eglin, Afesis-corplan

In 2014, the National Department of Human Settlements<sup>1</sup> appointed a consortium of planners, engineers, social facilitators and environmentalists<sup>2</sup> to develop upgrading of informal settlement plans for 32 informal settlements in the Buffalo City Metropolitan Municipality (BCMM).<sup>3</sup>



PHOTO: AFESIS-CORPLAN

THE PLANS WERE developed using participatory planning methodologies.<sup>4</sup> Afesis-corplan, as the social facilitator on this project, was responsible for managing the participatory planning process, in particular conceptualising, organising and facilitating the community workshoping process, as well as providing an overall supportive role to informal

settlement committees involved in the planning process.

This paper shows that participatory planning processes that are supported by social facilitation partners like Afesis-corplan, and as was followed in the development of upgrading plans for informal settlements in BCMM, provide a useful model that

can be used by other municipalities planning for the upgrading of informal settlements. Informal settlement committees, elected by residents of informal settlements, are identified as a vehicle through which residents can play a central role in influencing and formulating upgrading of informal settlement plans so as to claim their areas as collective democratic spaces.

The paper also argues that residents of informal settlements that are being upgraded also need to be involved in monitoring and holding to account those responsible for the implementation of these plans. Informal settlement committees can, in future, also play a central role in monitoring the implementation of projects emerging from these upgrading plans.

In short, informal settlement committees provide valuable democratic spaces through which participation and accountability can be channelled. However, practice shows that committees are not always able, on their own, to successfully fulfil their mandate to monitor implementation or to hold municipalities to account. On this basis, this paper calls on government to continue to allocate sufficient funds for social facilitators to be involved, alongside town planners, engineers, environmentalists, and other technical specialists, in the development of upgrading plans for informal settlements, and importantly, motivates for government to allocate additional funds for social facilitators to support informal settlement committees in monitoring the implementation of the plans that are developed. In this way, the plans that get developed can better reflect the needs and aspirations of the residents concerned, and those responsible for the implementation of these plans can be held to account.

The paper starts by defining participatory planning and participatory monitoring, and then summarises how informal settlement committees working with other stakeholders, through a series

The next section notes that informal settlement residents are worried that the municipality will not implement the plans they have helped to develop, and cautions that, given progress to date in implementing the plans, these concerns need to be taken seriously.

of facilitated workshops, were able, in the Buffalo City experience, to develop upgrading of informal settlement plans that were relevant to their local circumstances. The discussion then turns to explain how the informal settlement committees planned to monitor the implementation of the plans they had developed. The next section notes that informal settlement residents are worried that the municipality will not implement the plans they have helped to develop, and cautions that, given progress to date in implementing the plans, these concerns need to be taken seriously.

Recommendations are then made for how social facilitators, working with informal settlement committees, need to be involved, beyond just the stage of planning for informal settlement upgrading, and also need to be involved in supporting informal settlement committees in monitoring the implementation of projects that are identified through the planning process. The paper concludes by calling on government to help fund and support this comprehensive social facilitation process so as to collectively claim informal settlements as democratic spaces.

## THE PARTICIPATORY PLANNING AND MONITORING PROCESS

According to the Institute of Development Studies (undated), the process of participatory planning, monitoring and evaluation 'aims to shift power from development professionals to the intended beneficiaries of the intervention. With participatory

Participatory monitoring is where members of local communities monitor those things that have been identified in the planning phase to ensure that these are implemented as per the agreed plans.

approaches, it is these people who set the direction for change, plan their priorities, and decide whether the intervention has made progress and delivered relevant change’.

In participatory *planning*, members of local communities discuss and prioritise their development needs, and external actors draw on this information to inform plans and projects. Participatory *monitoring* is where members of local communities monitor those things that have been identified in the planning phase to ensure that these are implemented as per the agreed plans.

The participatory planning methodology used in the development of informal settlement upgrading plans in BCMM involved a series of three workshops:

- ✦ Workshop 1 introduced the upgrading process; developed asset maps of local natural, physical, economic, social and human assets; and developed a draft vision statement per informal settlement.
- ✦ Workshop 2 provided a more detailed introduction to the incremental upgrading process and developed preliminary draft upgrading plans per informal settlement, building on the various asset maps that were identified in workshop 1.
- ✦ Workshop 3 reviewed the draft upgrading plans and discussed and developed action plans for implementation.

The 32 pre-selected informal settlements were divided into eight geographical clusters.<sup>5</sup> The above mentioned series of workshops were organised for each cluster. Each informal settlement elected a delegation of between five and ten representatives

(with larger informal settlements electing more participants) to participate in these workshops. This delegation is referred to as the informal settlement committee. Additionally, in principle at least, two representatives from the relevant ward committees, the local Community Development Worker as well as relevant ward councillors were also invited to these workshops.<sup>6</sup> Officials from the Municipal Planning and Human Settlements Departments were also invited to participate. A Community Liaison Officer (CLO), drawn from the community in consultation with the ward councillor, was appointed for each cluster to assist in organising these participatory workshops and to ensure that there was adequate pre- and post-consultation between the workshop participants and the community.

Throughout this process, the participatory planning methodology emphasised the importance of informal settlement residents using their own organised community leadership structures (their social assets), and dedicated community members who want to see development occur in their area (their human assets), to help drive and steer development in the community. By the end of the participatory planning process, the workshop participants appreciated that they could not rely on the social facilitators, CLOs, the ward committee, or anyone else to ensure that these plans were implemented. Responsibility for monitoring and driving development in their areas rested with them.

The participatory planning process was well received by the workshop participants. Participant evaluation exercises after each workshop scored good to very good in terms of participant satisfaction with the workshop process and outcome of the workshoping exercise.<sup>7</sup> One of the CLOs, at the end of the participatory planning process, summarised community satisfaction with the planning process as follows:

When communities started participating in the upgrading workshop series they did not really understand what upgrading was all about. As they followed the workshops they started to appreciate more what upgrading could achieve. Light has been brought to people who attended the workshops. They now know how their community can be developed. They know what they have to do to get development happening. They know they must not just rely on the ward councillor and committee but they need to also take responsibility for seeing that development happens in their communities. Communities don't trust anyone these days who tells them that some development is going to happen as they have been lied to too often in the past where promises were not kept. (Afesis-corporation, 2014:2)

The informal settlement committees that participated in the participatory planning process, agreed during workshop 3, to work as clusters with other informal settlement committees to monitor that the projects identified in the planning process would be implemented. A two-pronged approach of engaging with the municipality was agreed to by these committees:

- ✦ Informal settlement committees, as clusters of informal settlements (and where possible as a network of clusters), agreed to regularly arrange follow up meetings with municipal officials involved in the upgrading process to find out what progress was being made in implementing the plans.
- ✦ Through their ward committees, and through the municipal Integrated Development Planning (IDP) process, informal settlement committees would monitor progress in the implementation of upgrading plans. In this way, the informal settlement committees would make sure that their

plans would get picked up in the municipal IDP process, were reflected in Built Environmental Performance Plans and in Service Delivery and Budget Implementation Plans and in municipal sector department plans and budgets.

In the BCMM planning for upgrading informal settlement project, informal settlement committees decided that they needed to continue to play a monitoring role as they felt they could not hand over the monitoring responsibility toward committees or any other structure. Ward committees, in the context of upgrading, were regarded as ineffective for two main reasons. Firstly, ward committee structures operate at a larger scale than informal settlement committees. In contrast, it has been shown through many international and local examples of informal settlement upgrading, that dedicated participatory planning structures, like informal settlement committees, at the scale of each informal settlement, ensure that upgrading plans truly reflect the needs and aspirations of informal settlements residents, and that the residents feel that they are part of the process of plan formulation. (See, for example, the following articles in previous State of Local Government publications: Tissington 2012; Bolnick 2012; Fieuw 2013; Matanyaire 2014; Tshabalala and Mwau 2014; Webster 2015; Fieuw 2015 – and also see: Bosworth 2016; NUSP (undated); The HDA 2015; and UN Habitat (undated).)

Secondly, ward committees do not offer residents an effective project monitoring tool. Relying on the ward committee system to monitor the implementation

The informal settlement committees that participated in the participatory planning process, agreed during workshop 3, to work as clusters with other informal settlement committees to monitor that the projects identified in the planning process would be implemented.

of informal settlement upgrading plans shifts the impetus for monitoring the implementation of the upgrading plans to a higher scale that is more removed from the residents themselves. Siphokazi from Jevon informal settlement near Scenery Park in East London noted (as reflected in Corplan Development Services [CDS] 2015: 58) that it is hard to work with ward committees 'because on numerous occasions, when the tap breaks down we report to the ward committee to pass the information to the councillor but when we call the councillor, we realise that the information was never reported to him'.

Furthermore, residents of informal settlements felt that they, rather than ward committees, would be more likely to be consistent in monitoring and checking progress in the implementation of plans, as failure to implement the plans directly affects them. The people closest to what is being implemented are able to provide rapid and valuable feedback to those implementing the plans when these plans run into challenges, and they are able to assist in finding the necessary steering measures to ensure that implementation moves back on track. The community is more likely to help resolve challenges in implementing the upgrading process - like dealing with relocation and boundary disputes between residents in informal settlements - if they are involved in monitoring this implementation.

Informal settlement committees create valuable democratic spaces, at a scale close to where people are residing, in which residents of informal settlements are able to ensure that upgrading of

informal settlement plans reflect the needs and aspirations of the residents concerned, and they are able to hold to account those responsible for implementing these plans.

## CONVERTING PLANS INTO PROJECTS

The participatory planning process facilitated by Afesis-corplan in the BCMM upgrading project offers a useful participatory model for informal settlement upgrading. However, if these plans are not converted into projects that are timeously implemented, then the participatory planning process would, at best, be a waste of time and, at worst, discourage the community to engage meaningfully with government in future planning and development processes.

The informal settlement residents in the BCMM upgrading project identified this potential problem of plans not being converted into completed projects at the outset of the participatory planning process. Participants complained in the first set of workshops that they were tired of engaging with the municipality in ward meetings and IDP road shows and repeatedly finding that very little ever gets done thereafter.

The following statements from workshop participants, who participated in an evaluation exercise at the end of the participatory planning process reiterate these sentiments:

- ✦ Nozuko, a resident of Barcelona informal settlement in Mdantsane, said that some groups of people in her community did not trust that anything positive would come out of the upgrading project as 'they have long been promised and nothing has ever been done'. (CDS 2015: 22)
- ✦ Phendulwa from Daluxolo informal settlement in Mdanstane said that 'nothing gets done when they [government] make promises'. She noted that she and other community members had been going to the BCMM since 2000 demanding

The people closest to what is being implemented are able to provide rapid and valuable feedback to those implementing the plans when these plans run into challenges, and they are able to assist in finding the necessary steering measures to ensure that implementation moves back on track.

houses, and after years of waiting, they have given up. (CDS 2015: 31)

- \* Ncumisa from Endlovini informal settlement near King Williams Town also noted that her community had, on numerous occasions, complained to BCMM about their water problem, electricity and lack of employment. She said that 'they [government] know how to promise, but they do not know how to fulfil their promises'. (CDS 2015: 13)

These voices highlight a strong view, felt by many of the informal settlement residents, that consultation and participation in development planning processes can be a waste of time if these plans are not translated into projects that change the lives of people on the ground. Residents become discouraged, disillusioned and apathetic if the projects that they helped identify and plan are not implemented. It is therefore vital that mechanisms be found that support informal settlement residents in holding those responsible for implementation of plans and projects to account.

More than one year after the participatory upgrading plans were submitted to the BCCM, these plans have not yet been officially adopted by the municipality.<sup>8</sup> A few informal settlements are having communal toilets installed, and pre-paid electricity is being provided to others, but unbeknown to the residents, these activities are actually happening not because they were on the upgrading plans they helped to develop, but rather because the respective municipal sector departments were actually already planning to do these projects independently of anything that was discussed in the participatory planning process. There are some attempts, however, to use the upgrading plans to inform sector departmental initiatives. Afesis-corplan is aware, for example, that the planning department within the

BCMM has given the upgrading plans to the electrical department to inform future electrical interventions.

To the best of Afesis-corplan's knowledge<sup>9</sup>, the informal settlement committees have struggled to make good on their pledges to collaborate and monitor the implementation of their plans. A possible reason for this is that informal settlement committees have found it difficult to coordinate follow-up activities with other informal settlement committees and find the time to come together and meet with officials involved in the planning process to find out what is happening with implementing the plans.

What the above shows is that the involvement of informal settlement committees, through a facilitated process of developing upgrading of informal settlement plans, is just one half of what is required for residents of informal settlement committees to materially benefit from projects being implemented as part of upgrading of informal settlement processes. Consideration also needs to be given to involving informal settlement committees, in a facilitated manner, in monitoring the second half of the process of implementing projects that emerge from the upgrading of informal settlements process.

The involvement of informal settlement committees in planning for the upgrading of informal settlements, as well as in monitoring the implementation of projects emerging from these planning processes is important, but this involvement is most likely not to be enough to ensure that informal settlements are successfully upgraded. Informal settlement committees are likely to lack the capacity and insights that are necessary to navigate the complex processes of budgeting for and implementing

To the best of Afesis-corplan's knowledge , the informal settlement committees have struggled to make good on their pledges to collaborate and monitor the implementation of their plans.

the various projects that get identified in the planning process; social facilitators like Afesis-corplan are able to provide the necessary skill to navigate this process.

### RECOMMENDATIONS

The commitment of government to participatory approaches in the planning process for informal settlement upgrading<sup>10</sup> needs to be extended to commitment from government to make use of participatory approaches to monitor the implementation of identified plans and projects. In the same way that government has funded social facilitators to work with informal settlement committees in the development of upgrading of informal settlement plans, government needs to also fund social facilitators to work with informal settlement committees to monitor the implementation of the projects that are identified in these planning processes. This participatory monitoring can be organised in a similar manner as to how the participatory planning process was organised in BCMM, where informal settlement committees, organised in clusters, can come together in a further series of workshops to monitor the implementation process.

The participation of communities in the upgrading of informal settlements needs to be viewed as a long-term process, starting from when settlements are identified for upgrading and continuing into the future when projects are being implemented and evaluated after completion. The participation of the community in the upgrading process needs to be facilitated in the following ways:

✦ Once an area has been identified by the municipality for upgrading, the community needs to participate, through their informal settlement committees, in the development of upgrading plans for their community.<sup>11</sup>

- ✦ Once plans are developed, the informal settlement committee needs to monitor that these plans get formally approved and adopted by the municipality as a whole and that all the relevant municipal and other appropriate government departments budget for the various projects identified in these plans.<sup>12</sup>
- ✦ Once the necessary funding is secured for project implementation, the informal settlement committee needs to monitor that identified projects are being implemented according to approved project business plans, and steer and modify implementation activities as the various upgrading projects are being implemented.
- ✦ Once various projects identified in the upgrading plans are complete and the budget has been spent, the informal settlement committee needs to be involved in evaluating the extent to which these projects achieved what they set out to achieve and what can be learnt from these projects so as to improve the way the subsequent projects are implemented in the same or other communities.

Organisations like the National Upgrading Support Programme (NUSP) and the Housing Development Agency (HDA) have played a very important role in championing participatory approaches to planning for informal settlement upgrading. Such organisations need to continue to advocate for the participation of informal settlement communities in the remaining upgrading phases as outlined above. In future, once municipalities have internalised how to facilitate these participatory processes, organisations like NUSP and the HDA will no longer have to fund and drive the whole participatory upgrading process, as municipalities will be familiar with how to facilitate participatory planning and monitoring processes. Municipalities will, however, need to budget for the resourcing and funding of these processes themselves.

## CONCLUSION

The participatory planning process that Afesicorplan was involved with in the development of upgrading plans for 32 informal settlements in the BCMM was well received by participants of the planning workshops. The informal settlement committees involved felt that they were able to engage in the planning process and help influence the outcome of these plans. This and similar participatory planning processes need to be replicated and further rolled out in informal settlements in Buffalo City and in other municipalities. This replication needs to be funded and supported by government, as it is very difficult for informal settlement residents to plan for the upgrading of their informal settlements without the involvement of social facilitators who are funded by government as part of a socio-technical upgrading of informal settlement planning team.<sup>13</sup>

The informal settlement committees involved in the BCMM upgrading process, despite their best intentions as expressed during the planning phase, are struggling to monitor and hold government to account for the implementation of the plans they

have jointly developed with government. Social facilitators need to be appointed, as part of a socio-technical team, to support informal settlement committees to monitor that projects that have been identified in the planning process are funded and implemented. The National Department of Human Settlements (working with NUSP and the HDA) should undertake pilot projects in municipalities they have already worked with (in the planning for upgrading of informal settlements phase) to demonstrate how social facilitators can support informal settlement committees in monitoring the implementation of the plans that have been developed.

Government has opened the door for informal settlement committees, working on behalf of their communities, to participate in the facilitated process of planning for the upgrading of informal settlements. Government now needs to keep these doors open to inclusive democratic practices so that informal settlement committees, continuing to work on behalf of their communities, are able to expand this democratic space, and participate in a facilitated process of monitoring the implementation of projects that have been identified in the planning process.

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## NOTES

- <sup>1</sup> Working through the National Upgrading Support Programme (NUSP). For more information on NUSP see: <http://www.upgradingsupport.org/>
- <sup>2</sup> The following partners made up the consortium: lead consultant - SC Consulting; social facilitator - Afesis-corplan; Engineers - Bigen Africa; Environmentalists - Environmental Impact Management Services; Legal advice - Jonathan Clark Attorneys; and Socio-economic surveyors - Fort Hare Institute of Social and Economic Research.
- <sup>3</sup> Information relating to the upgrading plans can be found on the following website: [http://www.incrementalsettlement.org.za/wiki/index.php?title=BCMM\\_Upgrading\\_of\\_Informal\\_Settlements\\_Policy\\_and\\_Strategy](http://www.incrementalsettlement.org.za/wiki/index.php?title=BCMM_Upgrading_of_Informal_Settlements_Policy_and_Strategy)
- <sup>4</sup> The methodology on which the participatory planning process was based was the Asset Based Community Development (ABCD) methodology. For more on ABCD see for example <http://www.abcdinstitute.org/>, <http://www.ikhala.org.za/abcd-mobilising-assets/>, and <http://coady.stfx.ca/themes/abcd/>
- <sup>5</sup> The clustering of informal settlements reduced the number of workshops that needed to be organised by the social facilitators thereby reducing the time that needed to be spent in workshops.
- <sup>6</sup> In reality, however, despite being invited, many ward councillors and community development workers did not attend the workshops.
- <sup>7</sup> Drawn from workshop reports which are available from Afesis-corplan on request.
- <sup>8</sup> Afesis-corplan has not had a chance to investigate the reasons for why these plans have not been formally adopted as we are no longer involved with this upgrading project. However, it would appear that one reason for this lack of progress in implementation is due to the fact that there is no single department to take responsibility for the overall coordination and implementation of the upgrading plans. Furthermore, the municipal organogram has an upgrading informal settlements coordinator in the Municipal Human Settlements department but this position has, as of April 2016, not been filled.
- <sup>9</sup> Noting that Afesis-corplan is no longer involved with the upgrading of informal settlements project in BCMM subsequent to the development of upgrading of informal settlement plans.
- <sup>10</sup> Government commitment to the upgrading of informal settlements is demonstrated, for example, in the various NUSP supported upgrading of informal settlement planning projects being undertaken around the country.
- <sup>11</sup> This is as far as the participatory planning, monitoring and evaluation process has proceeded in the case of the upgrading of informal settlements in BCMM.
- <sup>12</sup> This is where the participatory planning, monitoring and evaluation process in BCMM appears to be running into difficulty. As explained elsewhere in this report, the informal settlement committees are struggling, without the necessary social facilitation support, to monitor the implementation of this budgeting process.
- <sup>13</sup> It could be argued that the participation of informal settlement committees in the planning for the upgrading of their informal settlements could be classified as next to impossible, unless these informal settlements committees are able to secure participatory planning facilitation support from an NGO or some other structure.



## IN PROFILE: THE ROLE OF INTERMEDIARIES IN NURTURING AND SAFEGUARDING LOCAL DEMOCRATIC SPACES

Willard Matiashe, Development Action Group

This paper explores how the Development Action Group's (DAG) experimental capacity-building projects demonstrate the potential of civil society intermediaries to play a vital role in nurturing and safeguarding democratic accountability and responsiveness in urban governance arrangements.

### BACKGROUND

In the post-apartheid era, the development of urban areas in South Africa continues to be characterised by urban poverty, urban sprawl, fragmentation, a lack of service delivery, inequity in resource allocation and continued racial segregation. The government has made progress in embracing democracy and produced sufficient, appropriate legislation for democratic urban governance to occur. However, the current nature of participatory processes reveals uneven results, depending on the expertise of those who apply it, amongst other factors. Civic leadership is considerably weakened and spaces for public accountability and policy engagement are underutilised. The sporadic protests witnessed over the past three years or so, attest to the disconnect between the institutional arrangements introduced by the state in post-apartheid South Africa to foster participation on one hand, and the ability of the poor and marginalised to engage with the state through these formal mechanisms, on the other.

Successful democratic urban governance requires that government designs and employs participatory approaches to developing and implementing policy, thus relinquishing some decision-making authority while retaining responsibility. Simultaneously, it requires that citizens take up their rights and become more engaged with the state by holding it accountable and influencing policy. The South African experience, thus far, has demonstrated that both groups lack the skills to do

this without capacity enhancement and support from intermediaries. A few well-resourced and established NGOs currently benefit from the opportunities to participate, while the rest of organised civil society only benefit when access to processes and information has been mediated by specialist NGOs. The general public, usually not part of any association, find it near impossible to influence state decisions. Very few interest groups are actively pursuing opportunities and creating new ones.

DAG recognises that intermediaries in the form of NGOs have an important role to play in capacitating community-based leadership and change agents to actively engage in socio-economic dialogue within the urban environment. The Re-imagining Cape Town sub-programme and urban transformation agenda, within human settlements and across the city, requires active, mobilised, and knowledgeable citizens, working at a range of levels (local and systemic) around common issues.

### DAG ACTIVE CITIZENS AND DEVELOPMENT FACILITATOR INTERNSHIP

Following an evaluation of DAG's former Community Leadership Program (CLP), the organisation conceptualised a settlement-based action-learning programme to empower already active citizens – largely young community-based organisation (CBO) leaders/activists – to engage more meaningfully in processes geared to improve challenges within

their respective communities. During 2014, a capacity-building project evolved into a Development Facilitation/Active Citizenship (DFAC) internship process, launched as a pilot project in Khayelitsha in August 2015, mainly because of DAG's well-established Re-imagining Khayelitsha initiative and wide support from a range of local stakeholder groups.

The aim of the internship was to build and strengthen the existing knowledge, skills, and capacity of active citizens, particularly women and youth, already working on social and economic justice, civic activities or community-based development issues and projects in their communities and neighbourhoods. This project was thought to be essential for building the basis for informed citizen participation and leadership skills to resolve current and future urban challenges, in partnership with civil society organisations (CSOs) such as DAG and others.

## WORKING WITH YOUTH IN KHAYELITSHA

DAG embarked on an eight-month experimental project designed to capacitate youths in leadership and community-based change agent skills. The DFAC internship programme started with twenty-five CBO leaders/activists drawn from across Khayelitsha and was primarily an action-learning training programme, closely aligned with DAG's Re-imagining Khayelitsha project. The selected participants were active members of community-based campaign movements, CBOs and leadership structures demonstrating a strong interest in making change happen across Khayelitsha.

DAG worked with a number of project partners to implement various aspects of the internship project, including Training for Transformation at The Grail Centre and the Adult Education Department

This project was thought to be essential for building the basis for informed citizen participation and leadership skills to resolve current and future urban challenges, in partnership with civil society organisations (CSOs) such as DAG and others.

and Global Citizenship Programme at the University of Cape Town, together with various contracted specialists. These core partners assisted DAG in rolling out various aspects of the training linked to the six outcome areas of the Re-imagining Khayelitsha project:

- ✦ Access to basic services.
- ✦ Affordable housing.
- ✦ Tenure security.
- ✦ Improved livelihoods/job creation.
- ✦ Environmental awareness and sustainability.
- ✦ Strengthening social capital/networks.

The internship involved a range of formal and informal learning and knowledge-building methods and activities.

The second phase of the internship entailed the placement of the interns into active projects and initiatives in various communities where they would be mentored and supervised. The interns worked alongside DAG and partners to apply their new skills and knowledge in the collaborative effort to re- imagine, co-design, and facilitate the implementation of innovative projects aiming to inspire and improve the daily lives and experiences of Khayelitsha's residents. The trainees were assigned to projects and initiatives in six different wards and this offered a mix of challenges and opportunities for them to work on.

## LESSONS LEARNT

DAG piloted the DFAC internship project to strengthen the capacity of youth in Khayelitsha with the hope

Reflections to date from course facilitators, the trainee interns and DAG staff indicate that while the pilot of the internship seems to have been a successful and innovative attempt to build and empower already active citizens, it still needs to be fully evaluated, reviewed and, no doubt refined, before being replicated.

that they would actively facilitate development in disadvantaged communities. This was based on the identification of the following challenges: the disconnect between formal institutional arrangements for participatory governance introduced by the state and the ability of the poor and marginalised to engage with the state through these, as well as the tendency of many young people to revert to either passivity or protest action because of this disconnect.

Reflections to date from course facilitators, the trainee interns and DAG staff indicate that while the pilot of the internship seems to have been a successful and innovative attempt to build and empower already active citizens, it still needs to be fully evaluated, reviewed and, no doubt refined, before being replicated. Participants most valued inputs related to social history, cultural diversity, and self-mastery, all of which challenged them individually and collectively to see themselves, and their local and wider context, from new angles and perspectives. While this is difficult to accurately measure, DAG staff saw exponential growth in each trainee's self-confidence as a result of their exposure to a range of learning opportunities and cross-cultural exchanges across the city, as well as within their own local context.

The project was also strategic in terms of facilitating a participatory action planning process: the pilot project demonstrated alternative practices at a community and/or ward level, and there is potential to replicate the project in a way that will

focus on providing training to non-politically aligned community-based change agents and or capacitating elected ward committee members.

### CONCLUSION

As far as DAG is aware, there are no similar internship programmes offering young people with an interest in urban or community development the unique opportunity to learn and apply their skills in community-based projects and activities. To date, youth participation in democratic urban governance and development planning in South Africa has been fairly limited. In platforms where youth do engage, activities are often triggered or facilitated by intermediaries (i.e. youth associations, community councils and civil society organisations). Considering this reliance, it can be argued that South African youth still need additional support to strengthen their capacity, courage and active participation in local democratic spaces. This calls for capacity-building orientated interventions from intermediaries.

The action learning internship was directly linked to the objectives and anticipated outcomes of DAG's Re-imagining Cape Town programme and, in particular, the partnership-based "Mayenzeke eKhayelitsha", Re-imagining Khayalitsha, project. Although the legislative and policy framework for interaction between government and citizens is extensive, it is insufficient to enable inclusive participation without enhancing the capacity of citizens and state actors (officials and politicians). This project successfully demonstrated how DAG, as an intermediary, can nurture and safeguard local democratic space through capacitating development facilitators that have the potential to collectively create and utilise participatory opportunities enabled by the existing democratic urban governance frameworks.



## CO(MMUNITY)-FINANCE AS A TOOL FOR LOCAL DEMOCRATIC SPACE: THE CAPE TOWN CITY FUND

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There is a popular song that urban poor communities sing across South Africa. It is called Izwe Lakhiti (Our Country), the anthem of the Federation of the Urban Poor (FEDUP) and the Informal Settlement Network (ISN)<sup>1</sup>:

*Our country is full of shacks and toilets. Some are in Natal, Some are in Gauteng, Some are in Free State province, Our country is full of shacks. Everyone listen: the developers are building toilets for us, But what do we want? We want houses, we want schools. We don't want toilets. It is painful living in an informal settlement.<sup>2</sup>*



PHOTO: COMMUNITY ORGANISATIONS RESOURCE CENTRE

*IZWE LAKHITI* GIVES expression to the lived reality of poverty in South African informal settlements and critiques development approaches that exclude poor people from decision-making and priority setting. Exclusionary practice is often evident in local government spending on projects that are not deemed appropriate by informal settlement dwellers. Disproportionate spending on temporary toilets, for

example, depicts the failure of local government in Cape Town to address basic sanitation requirements in a sustainable manner (Social Justice Coalition 2016). Yet exclusion also relates to a broader concern, namely the right to participate in local democratic space, 'the arena between the state and the individual in which people interact to hold the state accountable, shape public debate, participate in

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politics and express their needs and opinions' (Horner and Puddephatt 2011: 3). The concept of local democratic space is reminiscent of Lefebvre's *Right to the City*, which similarly refers to the inclusion of citizens in decision-making around, and appropriating of, urban space (Lefebvre 1996: 150; Isandla et al. 2011: 4).

In the context of informal settlement upgrading, the National Department of Human Settlements (NDHS) introduced the Upgrading of Informal Settlements Programme (UISP) in 2004 as a new policy and finance instrument that emphasises the integral value of community participation (NDHS 2015:). In reality, however, there has been a notable lack of community participation and in-situ practice in UISP projects (NDHS 2015; Fieuw 2015). This is largely due to inadequate municipal capacity for meaningful community engagement and inappropriate understanding and usage of UISP as a financial mechanism (NDHS 2015)<sup>3</sup>.

Based on robust experiences of community-based saving as a lever for co-finance and an enabler of inclusionary practice, this paper suggests the need for an innovative co-finance instrument that enables a collaborative platform between urban poor communities, intermediary organisations and local governments to co-navigate in-situ informal settlement upgrading projects. If local democratic space presents an arena for multiple actors to deliberate options and priorities for development, this paper investigates how co-finance in the form of the

Cape Town City Fund presents a model and tool for enabling such deliberation.

## WHY CO-FINANCE?

The value of co-finance is premised on the assumption that the central participation of poor people in planning and implementing their own development projects brings about more sustainable and locally nuanced projects (SA Shack/Slum Dwellers International 2012; SDI 2015). More significantly, meaningful participation contributes to building more resilient and socially cohesive communities, qualities that are echoed in the department's Breaking New Ground Approach (NDHS 2004). Where aspirations between communities and government are similar, 'innovative and responsive interventions by the urban poor have the ability to recast state-civil society relationships' (Fieuw and Ritchie 2013: 3). Co-finance, therefore, falls under a broader approach of co-production: a collaborative strategy that sees communities and local government jointly identifying outcomes.

## SA SHACK/SLUM DWELLERS INTERNATIONAL (SDI) ALLIANCE EXPERIENCES IN CO-FINANCE

Co-finance and community-based saving is a tool<sup>4</sup> used by FEDUP, ISN and SDI federations across the globe to mobilise and organise communities in order to build inclusive cities, namely ensuring engaged participation by informal settlement dwellers at local government level. Poor communities use saving as a tool to build trust and cohesion between members of a savings group, to accumulate their own resources and to leverage external contributions from the state or other organisations (SA SDI 2015).

On an individual level, FEDUP members deposit savings in a bank account shared with the savings group. On a movement level, each FEDUP member

contributes a once off membership fee of R750 into a national Urban Poor Fund (UPF) that, at December 2015, amounted to R2 660 583. By combining group or UPF savings with external contributions, FEDUP has geared up capital for large-scale construction and infrastructure development in the People's Housing Process.

With regard to informal settlement upgrading, the SA SDI Alliance established the Community Upgrading Finance Facility (CUFF) as an alternative to state finance mechanisms for communities who are intent on improving basic services. Combined with a community's 20% savings contribution to the project's total cost, the fund provides seed capital for community prioritised upgrading projects (SA SDI 2015). Savings contributions play an essential part in project preparation as they indicate a community's willingness to take ownership of the project and co-produce its outcomes. Nkokheli Ncambele, Western Cape ISN Coordinator explains saying, "When people don't contribute savings to their projects, they often don't care about them. This is why you will find that many government toilets are vandalised. But if you contribute something you feel like it belongs to you" (Ncambele interview 2016)<sup>5</sup>.

The CUFF offered an opportunity for communities to experiment, learn and collaborate with local authorities in the upgrading process. As an advocacy tool, it demonstrated a range of viable upgrading projects premised on the Alliance's tools for community organisation including community-centred planning and community leadership. It also presented a model for citywide finance facilities with the potential for institutionalisation (Fieuw and Ritchie 2013).

In both FEDUP and CUFF projects, communities used savings contributions to leverage partnerships. FEDUP, for example, signed an agreement with the NDHS in 2006 that pledged 1 000 housing subsidies

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per province to FEDUP members (Hendler 2015). Following a joint reblocking and upgrading initiative in Mtshini Wam informal settlement in Cape Town, the City of Cape Town signed a partnership agreement with the Alliance in 2012, followed by joint upgrading projects from 2013-2015 (Fieuw 2013). After a site visit to one of these projects, the Western Cape Minister of Human Settlements in 2015 pledged R10m to the Alliance for further upgrading in the City of Cape Town (Madikizela 2016). This is how saving becomes a tool that enables communities to initiate projects because they have 'something with which they call [engage] government. When poor people save[,] government pays attention' (Ncambele interview 2016)<sup>6</sup>.

#### EXISTING MODELS BUILT ON CO-FINANCE

The principle of co-finance is reflected in a number of international institutions that promote community-based savings, credit and grant-making alongside community mobilisation and capacity building.

The Rashtriya Mahila Kosh, Women's Poor Fund in India, makes bulk loans to community-based organisations that are used to provide microcredit resources to affiliated community-based savings and credit schemes. The Orangi Pilot Project in Karachi, Pakistan, integrates innovative funding mechanisms with poor people's organisations to provide adequate low cost sanitation, health, housing and microfinance facilities (Fieuw and Ritchie 2013). The Community Organisations Development Institute (CODI) is a finance facility in the Thai government that provides

micro credit to autonomous urban and rural poor communities who organise independent cooperatives and savings schemes. With loans geared at informal settlement upgrading, housing and resettlement projects, CODI emphasises the core role of community organisations in the development process, savings systems that enable self-reliance and loan systems as a tool for development (Boonyabancha 2004). CODI is noteworthy for institutionalising community-centred development finance that has led to informal settlement upgrading projects in more than 226 towns and cities in Thailand (CODI 2008).

The effectiveness of these programmes can be attributed to their focus on strengthening urban poor community movements, *collaborating* with poor communities (as they are best positioned to design their own solutions), *engaging* the resources of poor communities and *pioneering new partnerships* between communities and professional agencies to better direct and manage development resources by the state and other agencies (Fieuw and Ritchie 2013).

Notably, these success factors reflect two aspects of local democratic space as suggested by Horner and Puddephatt (2011): the procedural and the metaphorical dimension. The procedural dimension refers to formally sanctioned avenues of engagement while the metaphorical refers to the ideals, values and interactions that underpin the procedural dimension. These co-finance facilities are premised on the values of collaboration, engagement and co-production, which in turn are reflected in formal partnerships or institutionalised practices and policy. However, the presence of these values does not necessarily indicate seamless cooperation. On the contrary, such spaces of engagement enable actors to navigate differing and at times conflicting views. For Scott (2008), the act of deliberating and navigating differences is a critical feature of local

democratic space and, as this paper suggests, of navigating development priorities through a co-finance approach.

### GRANT MECHANISMS IN THE DEPARTMENT OF HUMAN SETTLEMENTS

A brief overview of existing finance mechanisms for informal settlement upgrading in South Africa indicates the absence of institutionalised and meaningfully participatory practice.

As the primary financial mechanism for the in-situ upgrading of informal settlements, the UISP provides grants to municipalities to fast track the provision of tenure security, basic municipal services and social and economic amenities. Significantly, UISP grants are only valid for the duration of an allocated financial year (NDHS 2000). UISP is premised on 'the empowerment of residents in informal settlements to take control of housing development directly applicable to them' (NDHS 2000: 9). To this end, 3% of the total project cost is reserved for social facilitation that, in reality, is rarely allocated sufficiently (Fieuw 2015: 63).

Given the specific conditions for using UISP funds, the Urban Settlements Development Grant (USDG) acts as a capital and supplementary grant available to metropolitan municipalities. It is often used by cities to finance upgrading projects, can be applied to various projects aimed at realising sustainable human settlements and is thus a more flexible tool than UISP (Fieuw 2015). While the Built Environment Performance Plan was intended as a tool for implementing and reporting on the USDG, it is now a strategic planning tool to coordinate capital spending and coordinates infrastructure grants related to the built environment such as the Integrated City Development Grant, USDG and Human Settlements Development Grant (Fieuw 2015).

## CHALLENGES IN FINANCING COMMUNITY-LED INFORMAL SETTLEMENT UPGRADING

Although the value of community participation is expressed throughout the UISP (NDHS 2000), challenges relate to the minimal success of implementing in-situ upgrading and deep-rooted community participation (Fieuw 2015, NDHS 2015). The National Development Plan refers to ‘an ambivalence across government towards how to address the upgrading of informal settlements’ and the need to ‘develop appropriate regulations, in a participatory and empowering way’ (NDP 2012:271). In Southern African cities, “Governance challenges revolve around integrating bottom-up and top-down priorities of development at city and local scales. The challenges also require governance to embrace more inclusive and supportive approaches towards informal sector activities rather than focusing purely on their regulation” (UN Habitat 2014: 241).

Once again, the tension between the ideals of inclusion/participation and the lacking implementation thereof becomes evident. Similar tensions transpire in recent policy expressions in the Draft White Paper on Human Settlements (2016). Where section 5.9 of the Draft White Paper acknowledges ‘there has been an inability for communities and civil society to meaningfully and effectively participate in all facets of human settlements development’ the paper does not offer a robust alternative for community involvement. Instead it is ‘largely concerned with a “culture of entitlement”’ (CORC et al. 2016: 1). With implementation remaining largely technocratic and local knowledge remaining side-lined, this paper questions the efficacy of current finance instruments for in-situ upgrading.

## THE CITY FUND MODEL: A TOOL FOR CO-FINANCING INFORMAL SETTLEMENT UPGRADING

How, then, can community/co-finance models enable community-led informal settlement upgrading?

The Cape Town City Fund set up by the SA SDI Alliance serves as an example. As a people-centred finance facility for Cape Town, the City Fund enables communities to apply for funding of small to medium scale interventions. The fund responds to the challenge of 1) building community capacity<sup>7</sup> and 2) developing mechanisms and models for partnership-based informal settlement upgrading. Its rationale was based on an external review of the CUFF in 2012, which suggested the possibility for greater impact by devolving authority to city governments (CORC and uTshani 2014).

The City Fund concept therefore focuses on metropolitan governments such as the City of Cape Town (current initiative), Johannesburg and municipalities of Ekurhuleni, eThekweni and Nelson Mandela Bay. Its strategic principles are 1) demonstrating a diverse portfolio of effective upgrading and livelihood support projects and 2) influencing policy change through evidence-based advocacy (drawn from a pipeline of projects) which would present a viable model for institutionalisation (CORC and uTshani 2014).

In the Cape Town context, City Fund applications fall into three funding categories. *Informal Settlement Upgrading Projects* can be large scale/area based projects or smaller scale projects. Large scale

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projects look beyond the needs of a singular settlement, demonstrate an understanding of regional developmental agendas and present a first step towards a potential partnership with government, the private sector or non-state actors. Smaller scale projects respond to an immediate need including reblocking, drainage, and water and sanitation facilities. *Livelihood Projects* are seeded by the City Fund and require innovative models such as social enterprises. *Proposals from the general public* provide an opportunity to build partnerships beyond the confines of a single organisation or entity (CORC and uTshani 2014).

By April 2015, the City Fund had approved 16 applications, installed 1 420 fire detection devices in 10 informal settlements in Cape Town, informed plans for 80 toilets in five informal settlements with the Department of Water and Sanitation and secured project approval for an area-wide urban park in Khayelitsha. These projects were preceded by deep community mobilisation which included over 32 facilitated partnership meetings between communities and city departments, over 40 learning exchanges, and 75 community-based planning initiatives facilitated by CORC planners and architects (SA SDI 2015)

Although the City Fund is yet to be institutionalised, it presents an opportunity for communities to creatively think about and incrementally work towards the future of their settlements. Communities affiliated to ISN and FEDUP, for example, have used City Fund grants

to plan the upgrading of eight informal settlements in 2016/2017 within the alliance's partnership with the City of Cape Town. Regarding advocacy, the model has been used by urban sector NGOs in Cape Town to make an input into the city's BEPP (SA SDI 2015).

### UPGRADING MASILUNGE INFORMAL SETTLEMENT THROUGH THE CAPE TOWN CITY FUND

Based on the work of the SA SDI Alliance, Masilunge informal settlement in Gugulethu Cape Town serves as a case study that indicates the shortfalls of current funding approaches to informal settlement upgrading and the potential of an institutionalised City Fund model. The settlement was established on an open space in Gugulethu by nearby backyarder families who erected informal structures to maximise living space. Located on a hilly slope, a number of Masilunge's residents experience regular floods during winter rains and a rising rate of related illnesses.

In 2011, the City of Cape Town identified Masilunge as one of 23 people-led, pilot projects for informal settlement upgrading as part of the city's commitment to furthering its evolving partnership with the SA SDI Alliance (Fieuw 2013). The plans for reblocking Masilunge were confirmed in April 2012 when the Cape Town Mayor signed a memorandum of understanding with the SA SDI Alliance, and in November 2013 when an official policy on reblocking was released by the city (WC Province 2013; City of Cape Town 2013).

Since Masilunge was first identified as a reblocking project, five years have passed without any changes in the settlement. Why is this the case? At the time of implementation, the city found that community readiness was low, namely that the community was not sufficiently mobilised (low buy-in) or organised to proceed with participatory implementation (Hendricks

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interview, 2016)<sup>8</sup>. The apparent lack of community readiness needs to be understood in a context that requires high levels of community facilitation to achieve convincing buy-in from residents, especially in a settlement that is as dense as Masilunge. Such facilitation requires detailed household-level engagement that requires far more time than half-day community workshops, which are often conducted by contracting companies. Delayed community readiness was also linked to disunity among residents caused by tensions linked to a nearby government subsidised housing project which rendered the prospect of upgrading an undesirable alternative to attaining a house. Locked to the financial year, the budget for Masilunge's upgrading was allocated to a different project.

After Masilunge's community leadership and SA SDI Alliance members intensely engaged with the city, Masilunge was finally allocated funding on the city's upgrading budget in 2015 and comprised one of the communities the SA SDI Alliance would prepare for upgrading. When the time for implementation drew near, the community was ready – equipped with a detailed enumeration survey, reblocking plans and a percentage of required savings deposited which indicated community buy-in. However, bureaucratic delays in the municipality meant that it took close to one year to procure and appoint contractors. With starting dates constantly shifting, community members grew doubtful and began pressurising and accusing their leaders of relaying false information about the start of the project. The community's uncertainties continued to grow amidst pre-election politicking between various groups within and outside the settlement. When the city eventually indicated its readiness to implement, it once again encountered a seemingly divided community. The project is currently on hold while the SA SDI Alliance mediates the situation with a disillusioned and fractured community.

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## IMPACT, VALUE AND CHALLENGES EXPERIENCED IN MASILUNGE

As it stands, the upgrading of Masilunge was planned and prepared within the Cape Town City Fund framework, which in its current iteration, operates outside of city structures. The disjuncture between city processes and the pace of community preparation in Masilunge is evident. It indicates the inadequacy of current finance instruments for upgrading which are not flexible enough to adapt to the processes of project preparation and social facilitation in informal settlement communities, thereby disengaging from a local space of deliberation and negotiation around projects. While tools such as the UISP intend to support community-led action, their rigidity can have the opposite effect.

The case of Masilunge illustrates particular and general challenges related to upgrading:

- ✦ Party political frictions during election years often extend the time required to mobilise an entire community for upgrading.
- ✦ The time for sufficiently mobilising a community may extend beyond annually allocated project budgets. This is particularly the case when party political frictions arise (e.g. upgrading versus housing), or more innovation around housing typologies is required (e.g. due to high density in urban and infill settlements).
- ✦ At times, city preparation and procurement processes stretch project timeframes beyond the designated one year allocation period.

For municipalities, a central concern relates to finding avenues to increasing capacity to deliver at scale and to consider how multi-year funding can be made available for project implementation.

- ✦ When a project is delayed (due to, for example, transcending budget time frames) it is twice as difficult to restart and remobilise the community.

Household level engagement is critical for community buy-in and mobilisation, which enable meaningful participation to take root. How can a co-finance facility then activate people-led in situ informal settlement upgrading?

- ✦ Community saving is a valuable mobilising tool and enabler for meaningful participation.
- ✦ Saving is an indicator of household buy-in at settlement level.
- ✦ A co-finance mechanism that is institutionalised in local government but not subject to its bureaucratic process can enable flexible timeframes for project budget allocations that are not constrained by annual provincial or municipal allocations
- ✦ Ring-fencing budgets or categorising them in multi-year allocations (as currently occurs with contractor procurement approaches) enables greater synergy between city and community processes.
- ✦ Similarly to CODI, a co-finance facility has the potential to locate poor people at the heart of upgrading interventions. Where urban poor communities shift from beneficiaries to activated citizens that identify, plan and implement development priorities, informal settlement upgrading becomes more nuanced, responsive and participatory.

## RECOMMENDATIONS FOR REPLICATING AND EXPANDING UPGRADING

While the practice of co-finance is not new, the institutionalisation of co-finance facilities in government structures is rare. In South African metros, an institutionalised City Fund would need to be underscored by the values of participation and meaningful citizen engagement and by their meaningful implementation in formal avenues of engagement such as partnership settings, collaborative planning, project preparation and implementation. Due to its collaborative character, a City Fund would be highly responsive to co-decided outcomes. This means that it would need to be established under the auspices of local government but operate beyond the constraints of municipal bureaucracy while maintaining high levels of financial accountability. Such a scenario would contribute towards enhancing the space between informal settlement communities, intermediaries, local government and other relevant parties to discuss, deliberate and negotiate priorities. While particulars around implementation, legalities and administration require further expansion and research on best-practice, the following presents closing remarks for a variety of actors in the upgrading space.

For municipalities, a central concern relates to finding avenues to increasing capacity to deliver at scale and to consider how multi-year funding can be made available for project implementation. For National Government and Treasury, a key question relates to how USDG funding can be extended to community facilities and amenities as well as medium or high density incremental informal settlement upgrading. Furthermore, the discourse around participation needs to be interrogated and reassembled in a manner that reorients the understanding of informal settlement upgrading from

an infrastructure driven approach, to a responsive, people-led approach.

## CONCLUSION

The experience outlined in this paper is that innovation and meaningful participation occurs only when community members become significant actors in the upgrading process. For social movements such as ISN and FEDUP, as well as intermediary NGOs like CORC, the building of strong and well-organised social movements is imperative to upscale co-finance approaches to upgrading. As such, participating communities require accessible, user-friendly information about funding mechanisms and a dedicated capacity building component that includes the development of savings and data collection to build an organised community movement.

In a country that is full of shacks and toilets, in which developers and government do not seem to be listening and in a country in which the pain of living in an informal settlement is echoed in the voices of those who sing *Izwe Lakhiti*, it seems the concept and practice of local democratic space is rarely attainable. This is reflected in the disparity between the ideal of *participation* and municipal inability to implement *participatory* informal settlement upgrading. The shortfall in implementing the community-centred UISP is partially due to official finance tools and systems that are unable to establish a space of commonality, negotiation and joint prioritisation between government and community processes. The value of a co-finance facility for informal settlement upgrading, then, lies in the tangible possibility of co-production between local government and strongly organised urban poor communities.

## (RE)CLAIMING LOCAL DEMOCRATIC SPACE

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## NOTES

- <sup>1</sup> FEDUP and ISN are two poor people's movements that together with the Community Organisation Resource Centre (CORC) and uTshani Fund form the South African Alliance of Shack/Slum Dwellers International (SA SDI Alliance).
- <sup>2</sup> Original in isiZulu: Izwe Lakhiti, wemadoda seligcwele imijondolo. Natal koloni, eminye se Natal, eminy'ise koloni seligcwele imijondolo. Izwe Lakhiti wemadoda seligcwele imijondolo. Gauteng, Free Stata, eminye se Gauteng, eminye se Free Stata, seligcwele imijondolo. Ama developa Ama developa madoda asakela amatoileti. Sifunani ke tina. Sifuna izindlu sifuna izikolo asiwafuni amatoileti. Kubuhlungu ukuhlalemjondolo. See CORC (2014).
- <sup>3</sup> For example, it is common that municipal officials inappropriately report relocations to Greenfield sites as UISP projects (Fieuw 2015)
- <sup>4</sup> Other tools include Community-Based Data Collection, Horizontal Learning Exchanges, Women-led initiatives, Partnership Building across different tiers of government and incremental approaches to housing, upgrading and livelihoods (SDI 2015)
- <sup>5</sup> Interview with Nkokheli Ncambele, ISN Coordinator for the Western Cape, 4 May 2016, Cape Town
- <sup>6</sup> Interview with Nkokheli Ncambele, ISN Coordinator for the Western Cape, 4 May 2016, Cape Town
- <sup>7</sup> Capacitation includes introducing the network and its core activities to new communities (mobilisation), building saving schemes, profiling and enumerations (settlement-specific data collection), spatial mapping, community-based planning and learning exchanges (CORC and uTshani 2014: 24)
- <sup>8</sup> Interview with Moegsien Hendricks, CORC Technical and City Fund Manager, 24 April 2016, Cape Town



## IN PROFILE: TOWARDS RECLAIMING THE CITY

Tyronne McCrindle and Hopolang Selebalo, Ndifuna Ukwazi

Ndifuna Ukwazi (NU), a non-profit organisation that strives to advance urban land justice in Cape Town, and Reclaim the City (RtC), a campaign to prevent the regressive disposal of well-located public land, have adopted a three-pronged strategy to reclaim local democratic space in Cape Town. The strategy includes strategic litigation, legitimised by a popular mandate, and communicated through an intense media push. This *In Profile* examines the reasoning behind the strategy, and the successes and challenges encountered.

### BACKGROUND

South Africa faces an acute housing crisis.<sup>1</sup> In Cape Town, almost 400 000 households are in need of housing.<sup>2</sup> Local and provincial governments have the responsibility to progressively realise the right to housing for citizens living within their boundaries. A wealth of academic literature describes the spatial mismatch between employment opportunities and housing location in Cape Town; this is also recognised in both the City and Provincial Spatial Development Frameworks (SDFs) that call for urban densification and integrated, well-located housing developments.

Public land that could be used for such housing is scarce. The Mayor of Cape Town, Patricia de Lille, has repeatedly called on National Government to release nationally-owned land for development due to the 'shortage of suitable available land for housing'.<sup>3</sup> Scarcity, however, does not mean that appropriate land does not exist; the Western Cape Provincial Government (WCPG), for example, owns a number of land parcels within the inner city with great potential for housing development, some of which were in fact advertised as possible investment opportunities.<sup>4</sup> Yet despite progressive policies and rhetoric, the WCPG has elected to dispose of its valuable land assets with a seeming disregard for the long-term social and economic costs.<sup>5</sup> The sale of one particular piece of

land in early 2016, the former Tafelberg Remedial School in Sea Point, fuelled the birth of the Reclaim the City campaign (RtC), to prevent the regressive disposal of well-located public land.

### STRATEGIC LITIGATION

As far back as 2014, an attempt was made to engage with the WCPG, with regard to the proposed disposal of four well-located parcels of land.<sup>6</sup> In April of that year, NU, together with two of its partner non-governmental organisations, Equal Education (EE) and the Social Justice Coalition (SJC), made a joint submission to the Provincial Minister of Transport and Public Works objecting to his department's proposed disposal of these land parcels on the basis that those properties should be used to develop mixed-income housing.<sup>7</sup>

Almost two years later, when the Tafelberg property was sold, NU offered its legal services to RtC. This was preceded by correspondence between NU and the WCPG, a few months earlier. NU sought clarity from the department about the rationale behind the sale of the site, in the midst of a housing crisis, and when there is a need to address apartheid spatial planning. The WCPG was dismissive in its response, and suggested NU make a Promotion to Access to Information Act (PAIA) request.<sup>8</sup>

Below are the motivations for, and outcomes of, the resultant strategic decisions taken by RtC and NU:

1. Seek court intervention to urgently interdict the transfer of Tafelberg to ensure that there would be time for a review of the province's decision to sell the land before the property moved out of the state's possession. The threat of litigation prompted an offer from the province to initiate a mediation process.<sup>9</sup>
2. NU, representing supporters of RtC, proposed that information exchanged during mediation should be released, if not during, then at least at the conclusion of the process, to ensure an open and transparent negotiation process. The WCPG withdrew from negotiations around the terms of mediation.
3. The WCPG then offered a settlement to avoid going to court, the terms of which effectively rewound the clock, going back to the point where it gave notice of the intention to dispose of Tafelberg. The province offered to re-send the notices of disposal, this time including a notice in an isiXhosa newspaper as required by law and allowing for public submissions of any objections to the proposed sale.
4. An emergency meeting of RtC constituents was held to discuss the terms. It was decided that the settlement should be accepted with the following amendments. The WCPG should:
  - ✦ Release the record of reasons for the decision to sell the property in the first place.
  - ✦ Commit to hold a public hearing to discuss the sale with concerned citizens.
  - ✦ Identify land that it owns in Cape Town upon which it will commit to building affordable housing.
5. The WCPG rejected all three amendments.
6. After the proposed mediation and amended settlement was unsuccessful, RtC lawyers accepted an offer from the WCPG in May 2016.<sup>10</sup>

Diversity of voices and a focus on the experiences of those most affected by the housing crisis have been important in building solidarity between different communities and sites of struggle.

7. Following the court order, a collective decision was made giving the public an opportunity to protest the disposal and preventing the sale of Tafelberg was vital (even without the amendments to the settlement) and a major victory for the campaign.

## BUILDING SUPPORT AND ESTABLISHING A MANDATE

Key to the campaign building momentum and its success has been the bringing together of a wide range of supporters and constituents. In mobilising supporters from as disparate a background as a middle-aged mother working as a domestic worker in Sea Point, to a middle-class young person studying at UCT, RtC has established a diverse support base.

Diversity of voices and a focus on the experiences of those most affected by the housing crisis have been important in building solidarity between different communities and sites of struggle. RtC organised regular weekend forums, where supporters could give testimony to how spatial exclusion affected them personally. These same forums provided a space for campaign updates, discussion and debate, and collective decision-making on certain campaign issues.

Despite having faced, and are still facing, difficulties when attempting democratic, *legitimate* and *inclusive* decision-making in the absence of defined campaign structures, these forums have been crucial to building the legitimacy of RtC. Supporters of the campaign were able to provide NU with a mandate to represent their interests through strategic litigation. Further, the founding affidavit and four

The dissemination of this content has not been without its challenges: the main difficulty has been tailoring a particular topic to a particular constituency.

supporting affidavits submitted as part of the court action were authored by forum attendees.

### POPULAR EDUCATION AND THE MEDIA

In addition to legal representation, NU has been able to offer RtC research and communication support. An important aspect of the overall campaign strategy has been to provide supporters with solid facts regarding the realities and costs of the housing crisis, South African housing policy and law, and international examples of alternatives to the apartheid city. Armed with this knowledge, myths and misconceptions about an inclusive Cape Town can be dispelled.

The dissemination of this content has not been without its challenges: the main difficulty has been tailoring a particular topic to a particular constituency. For example, residents of Sea Point may be interested in a different subject matter to the Young Mobilisers, a group comprised of youth from different backgrounds – some are students, some are young professionals. NU has tried to overcome this hurdle by hosting fortnightly reading groups. The manner in which these have been executed has been rather sporadic and participation inconsistent. Working

towards a more consistent, effective manner in relaying internally produced content is currently a key objective of both RtC and NU.

Another tactic has been providing information to journalists, and the media at large – a critical tactic for capturing public imagination. Updates of campaign progress through social, print and broadcast media have placed immense pressure on the WCPG. Front page newspaper articles, high profile radio interviews, and consistent social media attention have forced responses, engagement, and ultimately – in combination with strategic litigation – a major concession in the form of the court-sanctioned settlement.

### CONCLUSION

The three-pronged campaigning explored in this paper – strategic litigation, legitimised by a popular mandate, and communicated through an intense media push – has proven to be very effective for NU and RtC. The formation of the campaign was not a difficult process, as issues around land use, access to housing and spatial integration are important to many. The challenge has however been in creating and sustaining meaningful participation and inclusion in decision-making with supporters and campaign constituencies in an environment where decisions have had to be made at an incredibly fast pace. As we move forward, this is a challenge we attempt to overcome in order to really reclaim local democratic spaces in Cape Town.

## NOTES

- <sup>1</sup> Approximately 1.9 million households are living in shacks or informal dwellings country-wide. Statistics South Africa, 2011. Census 2011- Fact Sheet, pg. 9. [http://www.statssa.gov.za/census/census\\_2011/census\\_products/Census\\_2011\\_Fact\\_sheet.pdf](http://www.statssa.gov.za/census/census_2011/census_products/Census_2011_Fact_sheet.pdf)
- <sup>2</sup> City of Cape Town. *Built Environment Performance Plan 2015/2016*, pg.33. [http://www.capetown.gov.za/en/Housing/Documents/CCT\\_BEPP\\_2015\\_16\\_June.pdf%20Accessed%20%20February%202016](http://www.capetown.gov.za/en/Housing/Documents/CCT_BEPP_2015_16_June.pdf%20Accessed%20%20February%202016)
- <sup>3</sup> City of Cape Town. Media Release, 06 February 2014. *Open Letter to president Jacob Zuma from Executive Mayor of Cape Town, Alderman Patricia De Lille*. <https://www.capetown.gov.za/en/MediaReleases/Pages/Open-ettertoPresidentJacobZumafromtheExecutiveMayorofCapeTownAldermanPatriciadeLille.aspx>
- <sup>4</sup> Western Cape Government, Department of Transport and Public Works, March 2014. *Request for Expressions of Interest: Property Development Investment Opportunities in the Cape Town Central City Regeneration Programme*. <https://www.westerncape.gov.za/text/2014/March/expression-of-interest-regeneration-programme.pdf>
- <sup>5</sup> Ibid. (Helen Bowden Nurses Home, Main Road Sea Point, Top Yard and Alfred Street Complex. Collectively known as the Four Sites).
- <sup>6</sup> The Alfred Street complex, which is bordered by Prestwich, Chiappini and Alfred Streets in the CBD; Helen Bowden Nurses Home in Green Point; Top Yard on Buitenkant Street; and the former Tafelberg Remedial School site in Sea Point.
- <sup>7</sup> Joint Submission to the Ministry of Transport and Public Works; Social Justice Coalition, Ndifuna Ukwazi and Equal Education, April 2014. *Provincial Government Must Halt Sale and/or Lease of Four Properties Showcased at Investors Conference*. [http://reclaimthecity.org.za/wp-content/uploads/2016/03/9.-Joint-Submission-to-Ministry-of-Transport-and-Public-Works\\_17-April-2014.pdf](http://reclaimthecity.org.za/wp-content/uploads/2016/03/9.-Joint-Submission-to-Ministry-of-Transport-and-Public-Works_17-April-2014.pdf)
- <sup>8</sup> Minister letter to NU, <http://reclaimthecity.org.za/wp-content/uploads/2016/03/15.-Minister-Grant-letter-to-NU-19-February-2016.pdf>
- <sup>9</sup> Mediation normally entails a neutral third party facilitating a discussion between two sides during a disagreement, and throughout there is an understanding that information exchanged is strictly confidential.
- <sup>10</sup> In effect, the WCPG admitted that it failed to comply with legal requirements in the sale of state land. The settlement, made an order of court, states that the WCPG must reopen the 21 day period for public comment and objection. The Provincial Cabinet, and indeed Premier Helen Zille herself, will review the objections and make a final decision as to whether to go ahead or to cancel the proposed sale.



## CLAMP DOWNS ON DEMOCRATIC SPACE: THE ROLE OF THE POLICE AND LITIGATION

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Participation in formal mechanisms of local government process is increasingly being constrained through poor implementation of policies and the influence of party politics. Local municipalities often do not have the resources, and lack political will to attend to community needs, whilst corruption frustrates communities when promises are made but never materialise.



PHOTO: SOCIO-ECONOMIC RIGHTS INSTITUTE

THE INADEQUACY OF local government to respond to community grievances and demands through formal channels of participation leads to further frustration and marginalisation of communities (Clark 2014; Webster 2015). Examples of such communities include Slovo Park and Thembelihle communities, which have engaged with the state for over 20 and 15 years respectively (SERI 2014b; SERI 2014c). The result is the exclusion of communities from formal

participatory mechanisms, and the lack of delivery of services. This has led to communities turning to engagement outside of the formal participatory channels through local issue-based CBOs, social movements and community forums, as well as protest action and litigation through rights-based legal strategies.

The Constitution protects and creates the space for dissent and opposition. Section 17 of the Bill of

Rights states: 'everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions'. The legislation which governs the right of assembly is the Regulation of Gatherings Act, 205 of 1993. The act is intended to be permissive and facilitative of public gatherings, marches and protests, and outlines a notification process to be followed by convenors of protests, the respective municipality and importantly, the South African Police Service (SAPS).

This paper begins by analysing the Regulation of Gatherings Act followed by an overview of public order policing in South Africa. Policing is essential to the maintaining of public order whilst remaining inclusive and tolerant of dissenting voices. Instead of policing with restraint, there has been a narrowing of democratic space through deliberate discrimination and persecution, without grounds, of community leaders and protestors by the SAPS. Litigation in this context has proven an important and effective tool in defending civil and political rights.

The paper demonstrates, through legal cases from the Socio-Economic Rights Institute of South Africa (SERI), the effectiveness of litigation to counter the manner in which the SAPS respond to protest action. Litigation has ensured that where protestors have been charged, their rights are protected and proper procedure is adhered to by the SAPS. The paper concludes with efforts undertaken by civil society to reclaim democratic space, and recommendations to protect democratic engagement outside of formal channels of participation.

## THE LEGAL FRAMEWORK GOVERNING PROTEST

In February of 1991, a National Peace Accord, signed by the main political parties, recognised that protest forms part of a legitimate exercise of political expression and democratic participation, which

needed to be protected in the post-apartheid state (Brown 2015). As part of its work, the Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation, better known as the Goldstone Commission, was mandated to develop regulations that would govern such forms of political expression (Brown 2015). The Goldstone Commission tasked an international panel of experts to draft a set of laws in line with the Accord and international practice. This draft gave rise to the Regulation of Gatherings Act.

The genesis of the Act was to enable political expression, including protest action. It governs a set of rights, as guaranteed by the South African Constitution. Enabling constitutional rights include freedom of expression; freedom of association; freedom of movement; right to assemble, demonstrate, picket and present petitions; just administrative action; and access to justice. In democratic South Africa, the Constitution is the supreme law, and governs economic, social and political life. The protection of civil and political liberties in law and in the Constitution is an important feature of a democratic state and governance, which allows for protected democratic participation and engagement.

The purpose of the Act is to facilitate peacefully and with due regard to the rights of others:

1. The right to assemble with other persons;
2. To express views on any matter freely in public; and
3. To enjoy the protection of the State while doing so.<sup>1</sup>

The Act distinguishes between a demonstration and a gathering. A demonstration is defined as a group of 15 or less people demonstrating 'for or against any person, cause, action or failure to take action' (The Regulation of Gatherings Act [No. 205 of 1993]). There is no notification required for convening a demonstration. A gathering is defined as:

An *authorised member* is a representative of the SAPS who is consulted and practically ensures that a gathering proceeds as intended. Where notification is provided for an intended gathering, a responsible officer may convene a meeting in terms of section 4 of the Act.

[A]ny assembly, concourse or procession of more than 15 persons in or on any public road as defined in the Road Traffic Act, 1989 (Act No.29 of 1989), or any other public place or premises wholly or partly open to the air, (a) At which the principles, policy, actions or failure to act of any government, political party or political organization, whether or not that party or organization is registered in terms of any applicable law, are discussed, attacked, criticized, promoted or propagated; or (b) Held to form pressure groups, to hand over petitions to any person, or to mobilize or demonstrate support for or opposition to the views, principles, policy, actions or omissions of any person or body of persons or institution including any government, administration or governmental institution. (The Regulation of Gatherings Act [No. 205 of 1993])

There are three main actors identified in the Act, dubbed the *golden triangle*. A *convenor* is the person organising the intended gathering. The *responsible officer* is the local authority (municipality) within whose area of jurisdiction a gathering is to take place. Powers are given to a magistrate where a municipality does not exist or is not functioning. An *authorised member* is a representative of the SAPS who is consulted and practically ensures that a gathering proceeds as intended. Where notification is provided for an intended gathering, a responsible officer may convene a meeting in terms of section 4 of the Act. At section 4 meetings, concerns are raised

and addressed to ensure the gathering proceeds in accordance with the Act.

Through examining the implementation of the Regulation of Gatherings Act below, the paper demonstrates how municipalities and the SAPS often misinterpret and abuse their power to stop or place additional conditions on gatherings. Despite the problems with the implementation of the Act, it remains an important piece of legislation that protects the right to assembly.

#### IMPLEMENTATION THE REGULATION OF GATHERINGS ACT

The Act delegates powers and duties to members of the golden triangle. Yet increasingly, municipalities and police stations are sites of protest, which was not envisaged by the drafters of the act. Local power dynamics between communities, the SAPS, and local councillors are a cause for concern (van Holdt et al. 2012). The independence of municipalities is questionable due to unwarranted political interference. When local councillors are invited into Section 4 meetings, tensions often increase and gatherings are not allowed to proceed. Differences between community organisations and their relations to the ruling alliance may result in the suppression of their right to protest as demonstrated below in the case of Makause. However, this may not always be the case. For example in Rustenburg Municipality, COSATU and SANCO-led marches have not always been approved (Duncan and Royappen 2013).<sup>2</sup>

It is the SAPS's responsibility to ensure that a gathering proceeds without disruption. Often, the SAPS exceed their mandate by hindering the process of section 4 meetings or prohibiting a protest. Authorities also delay by not calling a section 4 meeting, or calling for a meeting within hours of the planned gathering (FXI 2003; SERI 2014a).

Some municipalities have placed additional requirements for convenors to comply with which are not required by the Act. The level of restrictive measures that municipalities put in place differ, and generally, protests are the most prohibited form of gathering. For example the Rustenburg Municipality, disapproved protests for the following reasons:

- ✦ There was no recipient available to receive the memorandum.
- ✦ The list of marshals was missing.
- ✦ The confirmation of the use of the venue was missing.
- ✦ The application not made within the required time.
- ✦ No map of the route was provided.
- ✦ No letter of approval from the magistrate's court was provided when protests took place outside the court.
- ✦ The police were unable to provide assistance for the gathering. (Duncan and Royeppen 2014)<sup>3</sup>

In 2012, the Department of Co-operative Governance and Traditional Affairs (COGTA) sent a memo advising municipalities about how to bring down the rate of protests. A proactive measure municipalities could take was: '[working] with the office of the speaker [and] public participation units to ensure ongoing engagement between councillors and communities and residents' (Duncan and Royeppen 2014). This was interpreted to mean that convenors must show that they made all possible attempts to engage before being allowed to gather. In Mbombela, not approving allegedly troublesome gatherings has led to an increase in unrest-related protests taking place outside of the Act, and therefore more vulnerable to forceful intervention by the SAPS (Duncan and Royeppen 2014).<sup>4</sup> The increase of such protests has been attributed to municipalities making it increasingly difficult to protest in accordance with

the Act. When protests do proceed, protestors are at risk of being criminalised under the Act.<sup>5</sup>

Despite the challenges of the Act, from an international comparative perspective, the Act is viewed as largely being in compliance with international human rights law. Various countries, including Swaziland and Northern Ireland, have used parts of the Act (and the South African model of the golden triangle meeting) as a basis to draft new law and develop a system of notification for assemblies. The Act has been cited as an example of good practice on the international level. In a context where the state is increasingly intolerant to dissent, a challenge to the Act in its entirety is strategically unwise. An opportunity to further bureaucratise the notification process may result in the further narrowing of democratic space, and, as demonstrated above, in protest action taking place outside of the Act.

A key challenge in South Africa is finding a way to bridge the gap between the rights and values of the Constitution, the obligations of the state to protect the right to assemble and freedom of expression, and the practices that unfold on the ground. The existing legislation is meaningless when state institutions do not value or uphold the principles of the Constitution. A tension exists between the legislation and the actions of the SAPS. The SAPS have found ways of using the criminal justice system to deliberately punish and harass protestors. As demonstrated below, community leaders and activists are targeted and caught up in drawn out legal action. It is therefore not enough for laws such as the Regulation of Gatherings Act to exist in isolation. Municipalities and the SAPS need to understand and buy into the existing legislation and the principles that inform them so that the gap between law and practice is bridged. The next section focuses on the SAPS and their response to protest action.

## POLICING OF PROTESTS IN DEMOCRATIC SOUTH AFRICA

### PUBLIC ORDER POLICING

The SAPS's conduct of the policing of gatherings is essential to understanding local democratic space. The SAPS's actions demonstrate the unwillingness of the state to tolerate dissent in the form of protest action. Of particular relevance is the history of public order police in South Africa.

Since the transition to a democratic South Africa, there have been a number of changes made to the SAPS to train police officers in public order policing and restructure the apartheid riot police units. Restructuring took place in 1992 and again in 1996 to what became known as Public Order Policing Units (POPU) (Omar 2007). POPU were designed to be more community orientated and its philosophy shifted from crowd control to crowd management which brings together the police and organisers to ensure that crowds remain peaceful. In 2002 and 2006, POPU were further restructured to decentralised units as the need for public order policing declined. Trained POP members decreased from approximately 11 000 in 1992, to a mere 2595 in 2006 (Alexander et al. 2015). As the number of protest began to increase, in particular the rise of service delivery protests, SAPS's ability to conduct crowd management had decreased.

Between 1997 and 2013, 156 230 crowd incidents were recorded, of which 90% were classified as crowd peaceful and 10% classified as crowd unrest (Alexander et al. 2015). The classification of incidents as crowd peaceful or crowd unrest is determined on the character of police intervention. Where an incident requires some form of intervention by POP members, such as arrests, dispersals, push-backs or the opening of criminal cases, it is classified as unrest. Whilst further analysis is required, these statistics point to the far lower number of violent protests than is popularly believed to be the case (Right2Know 2012; Alexander et al. 2015).

### THE SAPS RESPONSE TO PROTEST

With the decline in specialised POP units, the number of people killed during protest action has increased (CASAC 2013).<sup>6</sup> This is attributed to the re-establishment of Operational Response Services (ORS) as a full SAPS division which include paramilitary units such as the Special Task Force (STF), National Intervention Unit (NIU) and Tactical Response Team (TRT).<sup>7</sup> These specialised units carry lethal weapons and have been called to assist in public order policing. The rise in police killing is also attributed to SAPS training, lack of accountability and a culture which is permissive of brutality.<sup>8</sup>

The culmination of the use of force by the police was the killing of 37 mineworkers during a labour strike for a living wage at Lonmin Mine, in Marikana, North West in August 2012. Marikana is significant because it demonstrates the SAPS failure to conduct effective public order policing, the consequences of militarised SAPS units policing public order incidents, and the impact of political interference on policing. The SAPS foresaw that there would be deaths when they requested 4 mortuary vehicles and 4000 rounds of live ammunition on the morning of the 16<sup>th</sup> of August 2012 (Report of Marikana Commission of Inquiry 2015). The SAPS units present on the day included the TRT, STF, NIU, K-9 (dog units) and POPU. The TRT were responsible for the use of semi-automatic R5 combat rifles which killed 17 people at scene one of the killings, and TRT and other units killed 17 workers at scene two. The police then arrested 270 mineworkers, charging them under the Doctrine of Common Purpose.<sup>9</sup> The legal doctrine is notorious for being used by the apartheid state to avoid police accountability and to arrest anti-apartheid activists.

Following Marikana, there were calls for the army to assist the November 2012 farm workers strike at De Doorns, Western Cape. The strike claimed the

lives of at least two people by the SAPS.<sup>10</sup> Most recently, the state response to the student protests against increases in university fees have again brought into question the excessive use of force by the SAPS. Whilst the SAPS have largely exercised caution in using live ammunition, they have not been restrained in their use of stun grenades, rubber bullets, tear gas, and general show of force with armoured vehicles and physical presence. The 2015, student uprising was accompanied by hundreds of student arrests around the country.

The attitude of the state towards protest has been concerning. The state has demonstrated a willingness to use force to fight crime, and with protest action increasingly being criminalised, this use of force is extended towards stopping protest action (CASAC 2013). President Jacob Zuma, whilst addressing students at Tshwane University of Technology, said 'do not use violence to express yourselves, or I might be forced to relook at the apartheid laws that used violence to suppress people'.<sup>11</sup>

Of great concern is the rising intimidation and harassment to crush dissent. Activists and leaders of protests increasingly face criminal charges of public violence and malicious damage to property. Once arrested and charged, activists enter into the criminal justice system, which is an intimidating and lengthy process. As demonstrated through the examples in the sections below, charges are sometimes dropped, or the accused are acquitted as the SAPS fail to produce evidence linking the accused to a crime. The politicisation of the criminal justice system undermines the intentions of the Regulation of Gatherings Act founding principles and premise that people are rational agents who consciously use protest action to voice their discontent (Brown 2016).

Litigation has been necessary to mitigate some of these abuses. When activists are arrested and

With the increasing suppression of dissent, criminal defence services, including bail applications are needed to protect civil and political rights of citizens raising discontent.

charged during protest action, legal representation is important to ensure their rights are protected, and they are not unlawfully detained without charge or access to bail.

## LITIGATION AS A MEANS OF RECLAIMING DEMOCRATIC SPACE

Public legal interest services are an important political tool to achieve social change (SERI 2015). Despite its limitations, litigation, when used strategically and in conjunction with other political and social strategies, has proven effective in challenging established institutional power, contributing to the building of social movements and making positive interventions in key sectors of society. This includes addressing the social needs of people to access social goods such as healthcare, education and housing, addressing the needs of vulnerable groups, and holding the state to account (SERI 2015).

With the increasing suppression of dissent, criminal defence services, including bail applications are needed to protect civil and political rights of citizens raising discontent. As a result, organisations like SERI have responded by developing skills in criminal law in order to provide criminal defence services, in addition to defending socio-economic rights. The silencing of dissent has heralded a new moment in the democratic era in South Africa, one in which classic human rights defence work is again on the agenda. This kind of litigation is critical for protecting democracy and socio-economic rights realisation and can no longer easily be separated

## (RE)CLAIMING LOCAL DEMOCRATIC SPACE

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from civil and political rights (SERI 2015). In this sense, opening up democratic space is a significant site of impact for litigation strategies.

SERI's clients live in the inner city of Johannesburg, as well as in numerous townships across the country, and often include community organisations and local activists. Their engagement and participation with local government has taken on numerous forms. Predominantly, this has been formal engagement through ward councillors, the speaker's office, engagements with the city, and through litigation. Protest action has been one informal means of engagement and has been a tool employed by movements at specific moments in their struggle. SERI's client-led representation of activists who are arrested in protest action is due to the recognition that the state has begun to use the criminal justice system as a means of silencing dissent. The provision of criminal defence services means that lawyers are present to ensure that the lawful processes are followed to access bail and prevent unlawful detentions. The issues that arise from the case studies include wrongful arrest, targeted harassment and intimidation of activists and the abuse of the criminal justice system. Below are three examples of this.

### AB AHLALI BASE MJONDOLO (AB AHLALI)

✦ On 12 September, 2006, Abahlali's chairperson Sbu Zikode was travelling with Philani Zungu when their vehicle was stopped and searched by the police. They were assaulted, arrested and charged with *crimen injuria*, assaulting a police officer and resisting arrest. The prosecutor did not deem the charges worthy of prosecution. In response, residents of Kennedy Road informal settlement gathered at a local community hall and were preparing to march to the police station when they were dispersed by the SAPS with live

ammunition, tear gas and rubber bullets. SERI pursued a civil claim on behalf of the accused which resulted in the state paying damages.

- ✦ On 27 and 28 September, 2009, an armed mob at Kennedy Road informal settlement attacked and evicted a number of Abahlali members from the Kennedy Road informal settlement. The SAPS knowingly arrested 12 Abahlali members instead of the mob, and charged them with a range of charges from public violence to murder. The trial was concluded on 18 July, 2011, with all charges against the accused dropped. Once again, the SAPS failed to provide evidence.
- ✦ On 30 September, 2013, Bandile Mdlalose, then General Secretary of Abahlali, was arrested and charged with public violence in Durban. Her arrest occurred after she arrived at Cato Crest informal settlement to show support to the family of Nqobile Nzuzo, who was shot and killed following a protest against illegal evictions at the settlement. She was held for a week at the Westville police station before being granted bail of R5000 on condition that she did not enter the Cato Manor area until the finalisation of her trial, and she reported to the station every Monday and Friday. On the 7 August 2014, she was acquitted of all charges as the SAPS failed to produce any evidence linking her to a crime.

### THEMBELIHLE

- ✦ SERI represented 14 residents, including 3 minors, of the Thembelihle informal settlement in Johannesburg who were arrested from the 5<sup>th</sup> to the 9<sup>th</sup> of September, 2011, following protests against the lack of services such as electricity and water. The MEC for Local Government and Housing addressed the community on the second day of the protest, but refused to address the grievances saying residents would

be relocated (SERI 2014c). After seven months and nine postponements to prepare its case, the state could not produce an adequate charge sheet with details of the offences of which the residents stood accused. Instead, the SAPS kept postponing, preventing the residents from engaging in political action. The case was struck from the roll on the 10<sup>th</sup> of April 2012 at the Protea Regional Court.

- ✦ One of the 14 people arrested was the Chairperson of the Thembelihle Crisis Committee, Bhayi Bhayi Miya. The state delayed his bail proceedings by adding charges of malicious damage to property and arson against him. They also argued that Miya owned no assets, lived in an informal settlement and therefore was likely to evade trial, and should be held in preventative detention. He was denied bail by the Magistrate Court. Well over a month after his arrest, the South Gauteng High Court granted Miya bail after the state conceded that there was little evidence to link Miya to any crime, and in fact he had tried to ensure that the protests remained peaceful.
- ✦ On the 26<sup>th</sup> of February, 2015, the SAPS arbitrarily arrested 32 residents from Thembelihle informal settlement following a protest where residents expressed anger towards the MEC for Traditional Affairs and Human Settlements. Public violence charges were brought against 27 residents who were detained for four nights because the police failed to charge them timeously.<sup>12</sup> The magistrate set bail for the residents despite the state arguing it needed seven days to verify residential addresses because the accused lived in allegedly un navigable informal settlements. Although they were granted bail, the residents spent a fifth night in jail because the cashier's office was closed. Despite the lack of credible evidence, 13 residents made a deal with the prosecution for

diversion<sup>13</sup>, and the remainder who continued with the trial had their charges withdrawn.

- ✦ During the week of the 25<sup>th</sup> of January, 2016, 28 residents of Precast and Thembelihle were arrested following a two day protest in the area. Bail was granted almost three weeks after their arrest. Some of the residents lost their jobs, and many families lost income, during this extended and unwarranted detention. The state continued to oppose bail despite providing no evidence to link the accused to an offence. The magistrate granted bail of R500 per person.

The above cases demonstrate the deliberate detention and discrimination against communities and their leaders by the SAPS. The protests are focused around local service delivery issues yet the SAPS have often responded with violence, arrests and criminal charges. The SAPS know the community leaders, and when protests occur, they are obvious targets for arrest (Knoetze 2014).<sup>14</sup> Many of these charges have been difficult to uphold in court, as demonstrated above. Legal representation has been crucial to ensure community activists were granted bail and to mitigate the consequences of arrest where possible. With increasing numbers of political arrests, the number of people held in extended preventative detention without charge is of grave concern. In the case of Makause below, tensions that existed between the local ANC branch, the police station and the community impacted on how the SAPS responded to the intended protest action, even when the community complied with the Act.

The protests are focused around local service delivery issues yet the SAPS have often responded with violence, arrests and criminal charges.

## MAKAUSE

- ✦ In September, 2012, Makause Community Development Forum (Macodefo) gave notice in terms of the Regulation of Gatherings Act 205 of 1993 to the Ekurhuleni Metropolitan Police Department (EMPD), notifying them of a planned protest march on the 5th of October, 2012. The purpose of the march was, among others, to protest against police brutality by the Primrose SAPS, the police's alleged refusal to investigate the Makause residents' cases, and the lack of police action in investigating the attack on the Macodefo offices and homes in August 2012. The march was refused by the station commander who threatened that if it proceeded there would be 'another Marikana' (SERI 2014a).
- ✦ The Macodefo re-applied for the march to be held on 19 October 2012. Despite it being telephonically approved, a day before the march, a meeting in terms of section 4 of the Act was convened inappropriately and obscurely at the Primrose police station which was the very station that the Macodefo was planning to march against. The SAPS officers invited the local ANC members who by then had set up an alternative structure in Makause to challenge Macodefo's legitimacy (SERI 2014a). The police refused to allow the march to proceed.
- ✦ The following day Makause residents convened a mass meeting to decide on a way forward. The SAPS arrived in numbers, dispersed the peaceful crowd, and arrested the Chairperson General Alfred Moyo. Three further arrests took place at the police station, and bail of R1 000 was eventually granted. After several unreasonable delays and postponements, the state dropped the all charges except a charge of "intimidation" in terms of the Intimidation Act 72 of 1982 against Moyo. A complete charge sheet and a docket in

connection with his trial were not provided to him until a full year after his arrest. The case was provisionally withdrawn pending the outcome of a constitutional challenge to the Intimidation Act.<sup>15</sup>

Moyo argues that the charges were an attempt to frustrate the Macodefo's legitimate rights to protest against and criticise what they see as biased policing practices sanctioned by the local police station. Even when communities try to engage in the established processes set out in the Act, they are frustrated and denied the right to assemble. It was clear that the SAPS were protecting their own interest, as well as the local political interests of the councillors. Further, the arrest and charges against Moyo were a deliberate attempt to intimidate a well-known community activist and leader.

## CONCLUSION

This paper has demonstrated that claims of police harassment, intimidation, excessive use of force, and deliberate discrimination and persecution without grounds are not unfounded. The problem is systemic, and some of the most significant implications are that the SAPS need to rebuild their capacity to conduct public order policing whilst training needs to emphasis restraint. The current political climate in which the SAPS operate allows them to make arbitrary arrests, delay charging people, and hold people in prolonged detention without fear of accountability. Litigation in this context has been effective in ensuring that basic citizens' rights have been protected, and legal process following an arrest have been adhered to.

The arrests of known community leaders and activists are neither coincidental nor non-partisan. Trusting, accountable and effective relations between local government, communities and the police force must be built and maintained. Protest actions needs to be respected and protected as both legitimate

and rational democratic action in the light of the failure of the state to provide adequate services, and its inability to address community concerns. By respecting citizens' rights to gather, and by respecting leadership structures outside formal institutions, political leaders and the SAPS can ensure that local government remains a democratic yet contested space. Rather than being inimical to democracy, community based organisations and social movements are legitimate vehicles for democratic participation, including holding power accountable. Instead of silencing dissent, protest should be treated as an opportunity for local government to remain consultative, transparent and accountable in an effort to maintain effective democratic governance. After all, contestation is a central feature of democracy.

Litigation has proved an important tool in ensuring that when arrests have been made, the arrested are able to get bail as soon as possible. It has also made it difficult for the state to demobilise community organising, especially when charges are dropped or the accused are acquitted. But litigation has also been necessary in challenging the legislation. There are two important cases reported previously before the courts which are challenging the criminalisation of protest under the Regulation of Gatherings Act; and the "illegality" of protest. Both are being run by NGO's in the public interest legal sector.<sup>16</sup>

Civil society therefore needs to continue to build a coordinated effort to challenge and document the closing down of political space. This includes strengthening its effort to provide legal representation for communities and activists engaged in protest action. There are lessons to be drawn from the

student uprising, including how to be responsive to the needs on the ground and supporting those who have been targeted and harassed. More importantly, civil society needs respond to the daily abuses against poor people who engage in protest activity across South Africa, in an effort to access basic services. Advocacy strategies to engage with municipalities, government departments and the SAPS both on legislation governing protest and on the policing of protest are urgently required.

Training for municipal officials on the purpose and procedure outlined in the Regulation of Gatherings Act is needed. Officials need to be more informed on the procedure of holding section 4 meetings, their purpose, and their responsibility, despite conflicting political interests. Training for municipalities could be headed by SALGA.

Following the recommendations of the Farlam Commission, the Ministerial task team set up to investigate POP provides an opportunity for related departments within the police service and local government to conduct police training on the Act, and importantly training on building trusting and meaningful relationships with communities.

The spirit in which the Regulation of Gatherings Act was drafted must be revived. It saw protest as an integral part of democratic participation that needs to be protected. The right to assembly must be respected by government – especially the national political leadership, COGTA, and local government, including ward councillors. Protest reveals community frustrations, needs, desires and directs government to improve. Rather than posing a threat to local government, protest must be treated as an integral aspect of democratic engagement.

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## NOTES

- <sup>1</sup> This section draws heavily on the Regulation of Gatherings Act, 205 of 1993
- <sup>2</sup> Duncan J and Royeppen A, Inside Rustenburg's banned protests, *Daily Maverick*, URL: <http://www.dailymaverick.co.za/article/2013-03-07-inside-rustenbergs-banned-protests/>, 7 March 2013.
- <sup>3</sup> Duncan J and Royeppen A, People's protest is being criminalised, *Mail and Guardian Online*, URL: <http://mg.co.za/article/2014-05-01-peoples-protest-is-being-criminalised>, 2 May 2014.
- <sup>4</sup> J Duncan & A Royeppen, People's protest is being criminalised, *Mail and Guardian Online*, URL: <http://mg.co.za/article/2014-05-01-peoples-protest-is-being-criminalised>, 2 May 2014.
- <sup>5</sup> There are two cases currently before court. In *The State vs Phumeza Mlungwana and 20 Others*, 21 protestors were initially arrested for holding an unlawful gathering. In *Tsoaeli and 93 others v State*, 94 Community Health Workers were arrested for being part of an "illegal gathering". The possibility of conviction under the Act may act as deterrence for people wanting to gather.
- <sup>6</sup> Bruce D, The Road to Marikana: Abuses of Force during Public Order Policing Operations, *The South African Civil Society Information Service*, URL: <http://sacsis.org.za/site/article/1455>, 12 Oct 2012.
- <sup>7</sup> Bruce D, The Road to Marikana: Abuses of Force during Public Order Policing Operations, *The South African Civil Society Information Service*, URL: <http://sacsis.org.za/site/article/1455>, 12 Oct 2012.
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- <sup>9</sup> Mail and Guardian Online, *Lonmin miners charged with murder*, *Mail and Guardian Online*, URL: <http://mg.co.za/article/2012-08-30-18-lonmin-miners-charged-with-murder>, 30 August 2012.

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- <sup>12</sup> They were charged 24 hours after their arrest, on a Friday and therefore not in time to be heard in court before the next Monday.
- <sup>13</sup> By accepting a diversion, the accused do not go to trial. This is often an easier option as SERI clients have lost jobs after missing work during their arrest, and often do not have the luxury of following staying through to the end of the trial. Had they not taken diversion, it likely the charges against them would have been drawn for lack of evidence.
- <sup>14</sup> Knoetze D, Criminalising protest and dissent in South Africa, *Mail and Guardian Online*, URL: <http://mg.co.za/article/2014-09-18-criminalising-protest-and-dissent-in-south-africa>, 18 September 2014.
- <sup>15</sup> The case was heard by the North Gauteng High Court on 1 September 2015. At the time of print, judgement was still pending.
- <sup>16</sup> See note 6 above: The Legal Resources Centre is representing the Social Justice Coalition in *The State vs Phumeza Mlungwana and 20 Others*. Section 27 is representing the TAC and Community Health Workers in *Tsoaeli and 93 others v State*.
- <sup>17</sup> Civil Society organisations, including those in the Public Interest Legal Sector, have formalised the Right to Protest Project to respond to the growing need for legal representation, and advocacy work in relation to protest action. The project aims to provide legal representation for protest-related cases, conduct research, and provide information and practical assistance to convenors of gatherings, in line with the Regulation of Gatherings Act.



## IN PROFILE:

# THE INTERSECTION OF PARTICIPATORY GOVERNANCE AND SOCIAL LABOUR PLANS IN COMMUNITIES WITHIN MINING TOWNS: THE EXPERIENCES OF SIKHULULIWE VILLAGE IN MPUMALANGA

Rafiqua Mosaval, Mike Makwela and Hloniphile Simelane, Planact

Planact's underpinning values of equity, accountability, the promotion of social justice and inclusivity have significantly shaped its work in facilitating community development processes in low-income communities. Central to this work is Planact's Participatory Governance Programme which promotes participatory processes at local government level to improve people's habitable environment and alleviate poverty. In 2015, Planact extended its Participatory Governance Programme to small mining towns in Mpumalanga Province – Sikhululiwe Village and Rockdale in Steve Tshwete Local Municipality and Breyten and Chrissiesmeer in Msukaligwa Local Municipality. Planact's decision was prompted by the realisation that, despite the economic importance of the mining industry, communities in mining towns struggle to make their voices heard in decision-making processes, particularly so in the case of Sikhululiwe Village, which will be the focus of this paper.

THIS INABILITY OF mining communities to claim this space results in disengagement from local governance processes, which ultimately leads to the communities' failure to exercise their constitutional rights in socio-economic development processes. Some of the affected communities in the mining towns relinquish their right to contest and refrain from voicing their needs and dissent publicly – a situation leading to 'deflated' spaces. These communities are often characterised by a sense of hopelessness and people retreat from the public space and tend not to challenge the status quo (Curtis 2008).

Planact's Participatory Governance Programme is based on the premise that communities in mining towns need to play an active role in engaging mining companies to ensure corporate social responsibility and social investment. For this reason, communities need to be well equipped and organised to adequately engage mining corporations. Capacity building in communities enhances their understanding about their rights, roles and responsibilities in holding

the mining company, municipalities and themselves responsible for sustainable development. On this basis, the programme has three objectives, namely, a) capacity building focussing on empowering communities on their democratic rights in relation to Social and Labour Plans, tax policy and legislation, b) training communities to be active citizens and beneficiaries of improved information flow between the mines, the municipality and the community, and c) engaging mines on the processes followed in the development of the Corporate Social Investment/ Implementation Plan.

## LEGISLATION GUIDING COMMUNITY PARTICIPATION IN MINING TOWNS

The Constitution of South Africa, 2006 (sections 44(2), 155 (6)(a) and 155 (7)), stipulates that all legislative process should follow a participatory democratic framework for the active involvement and participation of its citizens. Likewise, the legislation

governing mining also emphasises community participation and includes the Minerals, Petroleum Resource Development Act (2008), The Broad Based Black Economic Empowerment Mining Charter (2010), and Social and Labour Plans.

The main objective of SLPs is to promote economic growth and employment and advance social welfare through ensuring that mining companies contribute towards the socio-economic development of the communities. SLPs are developed in a five year cycle to coincide with Integrated Development Plans (IDPs) for the local municipality, and are binding.

In theory, the SLP is developed in consultation with the affected mining community, mine workers and the local municipality. Mining corporations also have to work closely with communities to identify Local Economic Development initiatives. In terms of housing relocation and design, an SLP stipulates how it will

- a) address the influx of people from the surrounding areas who move to mining towns looking for work,
- b) provide housing for migrant mine-workers and
- c) provide infrastructural support for housing.

However, Planact has observed that, in practice, the SLP guidelines are violated by some mining corporations who may even outsource the formulation of SLPs to consultants. Consultation and community participation is minimal and weak and communities increasingly withdraw from this democratic space.

## SOCIAL AUDIT: FORMULATION OF SLPs IN SIKHULULIWE VILLAGE

Sikhululiwe is a village of approximately 250 households, located 56 kilometres from Middelburg in Mpumalanga Province. These households were relocated from farms to make way for the mining industry. Sikhululiwe is characterised by low levels of economic activity and a high rate of unemployment. The village lacks basic services such as water and proper sanitation.

To understand the relationship between the community, the mine and the local municipality and to be able to determine SLPs' impact on the community, Planact conducted a social audit (January-February 2016) in Sikhululiwe Village, where the local mine, Exxaro, was involved in a housing project that involved 83 houses being built for the aged, the disabled and child-headed households. This housing project became the focus of the social audit.

In the beginning of the social audit, Exxaro did not trust the intentions of Planact and were not keen to engage with Planact regarding their SLPs. The reluctance to participate in the social audit prompted Planact to change its focus and explore the relationship between Exxaro and the Sikhululiwe Village instead, focussing on the democratic practices as experienced by the community during the development and identification of projects in the SLP.

To fulfil the purpose of the social audit, data regarding participation between the mine and the community on designing, construction and allocation of housing was collected. The following issues were investigated:

- a) The engagement between the mine and the community in the identification of beneficiaries, consultation on the design of houses and prioritisation of needs (physical verification)<sup>1</sup>.
- b) The community's experience relating to engagement with the mines.
- c) The perceptions of the community regarding the mine's contribution to local economic development.

Fifty of the 83 beneficiaries of Exxaro houses were interviewed. Out of the 250 households in the general community, 89 additional households participated in the interviews. A focus group discussion<sup>2</sup> was also held with 10 community members. To gain a better understanding of the relationship between Exxaro

and the community, the social audit team further interviewed the Local Economic Development (LED) Officers from Exxaro who were responsible for the implementation of the SLP.

### SOCIAL AUDIT FINDINGS

The findings demonstrate an inability of communities to effectively participate in decisions regarding their needs. They also reveal a lack of consultation with the community during the development of SLPs by the mining corporations. Below are some of the findings:

- ✦ Exxaro did not meet with the community to discuss the SLP and the housing project. Instead, it communicated with the ward councillor, Johannes Matshiane, on all issues relating to community needs, thus, frustrating the community.
- ✦ Exxaro confirmed that the Sikhululiwe Village community was excluded on the list of stakeholders that were consulted when it developed the SLP.
- ✦ Both the municipality and Exxaro do not promote the engagement and participation of communities in SLPs.
- ✦ The LED department reinforced the allegations by the community that access to Exxaro was only through the ward councillor.
- ✦ The absence of participatory engagement in the development of SLPs results in frustrated and hopeless communities which withdraw from the democratic space.
- ✦ Despite the community's exclusion from the design and development processes, most community members were happy that they now had a house with electricity.

The social audit revealed that the lack of clarity regarding participation and engagement reinforces power imbalances between the community and mining corporations, and between the ward councillor and

the community. It also illustrates the politicisation of the mining industry, resulting in a situation where those in power are consulted and speak on behalf of those who hold little or no power. The Centre for Applied Legal Studies observes a tendency by mining companies to consult a “narrow range of local stakeholders who are typically the most powerful in the community” (CALs 2016: 96), thus excluding the greater community.

In the absence of clear guidelines on participatory engagement in the SLPs, it is essential that NGOs such as Planact enable communities to take advantage of participatory processes. The facilitation process might improve joint working between the mines and the local municipality, leading to their effective engagement in the SLP and IDP processes. Since SLPs are embedded in the IDPs of municipalities in mining areas, municipalities should promote opportunities for communities to engage and negotiate with the SLPs and configure prioritised projects.

### CONCLUSION

Participatory processes and practices are imperative for communities in mining towns to promote active engagement with mining corporations and municipalities on their needs and priorities. A culture of genuine participation, involving community input in the decision-making processes, needs to be nurtured by both mining corporations and the government to ensure democracy and illuminate the concerns, perspectives and priorities of communities. Genuine participation can positively benefit communities and replace long entrenched patterns of non-participation. As demonstrated by the experiences of Sikhululiwe Village, communities' involvement in the development of SLPs and the prioritising and inclusion of their needs are of paramount importance to the residents' socio-economic development.

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## NOTES

<sup>1</sup> Community (2016, Jan-Feb). Physical Verification (social audit).

<sup>2</sup> Focus group (2016, February 2). Do the mines impact on your livelihoods?



## DIFFERENCE AND DEMOCRACY: RECOGNISING THE VALUE OF TOLERANCE FOR LOCAL GOVERNANCE

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Local democratic space – where citizens and the state ‘interact to hold the state accountable, shape public debate, participate in politics and express their needs and opinions’ (Horner and Puddephatt 2011: 3) – is necessarily marked by encounters with difference and with the expression of disagreement. Stakeholders engaged in processes of local governance hold diverse, often conflicting, views about how development priorities should be determined, resources allocated and responsibility assigned. As such, local democratic space invites contestation over how things should be done.



PHOTO: SHAUN SWINGLER/ISANDLA INSTITUTE

IN A HEALTHY democracy, contestation is encouraged and mechanisms that allow for its productive negotiation and mediation are put in place. In South Africa, however, this is not the case. Here, difference and disagreement are considered to be threatening. Both citizens and the state respond negatively – often violently – to attitudes and behaviours that are not in line with their own.

These responses emerge out of a context where patterns of systematic discrimination and exclusion continue to limit the space for democratic

engagement. Indeed, Dodson argues that the ‘supposed “rainbow nation” has in reality been a strongly exclusionary space’ (2010: 4). Negative responses to difference and disagreement significantly impact on local democratic space – which can only function effectively (that is, lead to meaningful outcomes) if difference is acknowledged as central to the process of governance.

In this paper we therefore argue that tolerance is required for the effective functioning of local democratic space in South Africa. We begin by

exploring various definitions of tolerance in order to highlight both the shortcomings and possibilities of the term. Through engagement with the literature, we arrive at an understanding of tolerance that foregrounds three aspects, including mutual recognition; the acknowledgement of disagreement or contestation as an integral part of the political process; and the value of tolerance as a practice rather than an abstract value. We then briefly consider prominent, relatively current, instances of intolerance in South Africa and use these to make five key observations about the state of tolerance in the country. The paper concludes by recommending practical ways in which tolerance can be enhanced in local democratic space.

## DEFINING TOLERANCE

The notion of tolerance refers to the capacity of citizens to 'put up with' disliked others (Sullivan and Transue 1999: 630). According to Crocker, 'a tolerant person has a negative attitude toward an attitude, idea, or action and yet restrains herself in acting on this attitude. The notion of tolerance makes explicit that citizens, while strongly disapproving of the beliefs, proposals, and conduct of their fellow citizens, try to accommodate their fellow citizens – within the limits set by the intolerable – with respect to what should be done' (2004: 5). In the realm of politics, tolerance points to the willingness of citizens to extend rights to those with whom they do not agree. Tolerance is therefore crucial to the functioning of democracy – a system of governance premised on the recognition of the inherent validity of diverse, often conflicting, ways of being and doing (Crocker 2004; Habermas 2003; Mouffe 1999; Sullivan and Transue 1999). Gibson (2011: 411) uses the concept of the 'marketplace of ideas' to discuss the importance of tolerance for democracy and notes that democracy is 'a system in which institutionalised

respect for the rights of political minorities to try to become a majority must exist' (Gibson 2011: 410-411). The 'marketplace of ideas' allows for diverse, often conflicting, ways of being and doing – enacted by both political majorities and minorities – to be put forward and to vie for power. The 'marketplace of ideas' can only function, however, if all political ideas are tolerated – that is, granted the same access to the marketplace as those ideas currently dominating the system (Gibson 2011: 411).

The notion of tolerance is, of course, not without its shortcomings. Indeed, Gill, Johnstone and Williams note that 'some types of tolerance are little more than barely concealed contempt' (2012: 511). So too, Wilson shows that tolerance is often rejected because of 'its entanglement with disdain, contempt, and hierarchical conceptions of belonging' (2014: 852). Tolerance – simply imagined as the capacity to 'put up with' disliked others – is construed as permissive or condescending (Gill et al. 2012; Gray 2011). As Thomassen notes, '[tolerance], traditionally conceived, involves an asymmetrical, paternalistic relationship between a sovereign party unilaterally bestowing tolerance on the tolerated party as an act of benevolence (to be tolerant is also to have the power to be intolerant)' (2006: 440). In the South African context – where a long history of prejudice has resulted in deeply ingrained patterns of discrimination, and where struggles for equal access to rights continue – permissive or condescending tolerance is extremely dangerous, as it perpetuates a shallow form of democracy that fails to address inherent inequalities.

Given the shortcomings of tolerance, we may opt to do away with the notion altogether, focussing our attention instead on the need for respect and equality. And yet Gill et al. recognise that tolerance, if productively reframed, can 'be powerful in creating and expanding a dual space of recognition and

It is through mutual recognition then that the condescending nature of tolerance is overcome, as an equal – rather than hierarchical – relationship between citizens is emphasised.

disagreement which is a necessary condition for the functioning of politics' (2012: 511). Following this line of thinking, we may argue that the intention of tolerance is to ground expressions of disagreement in the recognition that all citizens have a right to participate in politics. As Habermas argues, '[the] norm of equal inclusion of every citizen must be universally recognised within a political community before we can mutually expect tolerance from one another' (2003: 3). It is through mutual recognition then that the condescending nature of tolerance is overcome, as an equal – rather than hierarchical – relationship between citizens is emphasised. Gill et al.'s understanding of tolerance as both recognition and disagreement shies away from the 'equation of tolerance with a prohibition of opposing' (2012: 515) and acknowledges conflict as an integral part of the political process. Furthermore, Wilson argues the baby of tolerance need not be thrown out with the condescending water if it is reconceptualised as a practice rather than an abstract value (2014: 853). The author describes tolerance as a means to an end, and notes that it 'creates a space for exchange...in which people with apparent incompatible views have the opportunity to hear from the alternative position' (Wilson 2014: 861).

In what follows, we draw on the debates outlined above, and understand tolerance to be, firstly, rooted in relationships of mutual recognition between citizens (whether or not their views align with those of the mainstream). Secondly, the type of tolerance we promote does not require the smoothing over of difference, but rather engages difference head on. Finally, we think of tolerance as a practice, so that

its existence is not measured by citizens' claims of tolerance, but rather by the extent to which tolerance is evident in their actions.

## MANIFESTATIONS OF INTOLERANCE IN SOUTH AFRICA

The apartheid regime institutionalised exclusion in South Africa, and left the country scarred with memories of gross intolerance and injustice. With the advent of democracy, however, came the introduction of a new set of principles – captured in the country's Constitution – that would serve as the foundation for a more inclusive society. But while the dominant rhetoric in South Africa has shifted from that of exclusion to inclusion, these new principles have not yet become embedded in the attitudes and behaviours of the state, nor in that of the citizenry. Rather, intolerance remains pervasive. In this section, we briefly consider five types of intolerance that manifest in South Africa. These include:

### XENOPHOBIA

In 2008, and again in 2015, violence against foreign nationals – particularly those from the African continent – erupted across South Africa (van Holdt et al., 2011; Landau, 2012). These instances – during which both foreign nationals and marginal South Africans (Landau, Polzer and Kabwe-Segatti 2010) were robbed, beaten, murdered, displaced – bring into sharp focus the extent to which intolerance towards difference has permeated the South African imaginary. But while eruptions of violence on a large scale are deserving of our attention and outrage, it is also necessary to note that these instances do not occur in isolation. Rather, they point to an undercurrent of anger and hatred that boils continually beneath the surface. Every day, smaller scale expressions and experiences of xenophobia contribute to the making of a hostile environment

where foreign nationals suffer ongoing discrimination, exclusion and fear (Dodson, 2010: 4). As Dodson notes, 'more quotidian expressions and experiences of xenophobia demonstrate how deeply entrenched anti-immigrant feeling is in South Africa and how it is manifest in the everyday lives of Africans from countries to the north' (2010: 4). Indeed, Landau, Ramjathan-Keogh and Singh note that 'South Africa is a highly xenophobic society, which out of fear of foreigners, does not naturally value the human rights of non-nationals' (2005: 3). While countries across the African continent have come under fire for their treatment of foreign nationals, the Institute for Security Studies reports that South Africa seems to be at the epicentre of a xenophobic thunderstorm 'leaving death and destruction in its wake' (Louw-Vaudran 2016: no page number).

### PUBLIC EXPRESSIONS OF RACISM

Early in 2016, Penny Sparrow, Mabel Jansen and Matthew Theunissen each took to social media to express racist views. In a Facebook status update, Penny Sparrow – an estate agent from KwaZulu-Natal (Munusamy 2016) – referred to black beachgoers as 'monkeys' who litter, and stated that 'letting them loose' would cause discomfort to other holidaymakers (Wicks 2016: no page number). Sparrow also expressed disbelief at the fact that these same black beachgoers – whom she described as 'wild' and having no education – also participated in politics ('This lot of monkeys just don't want to try. But think they can voice opinions about statute and get their way...'). Mabel Jansen – a High Court judge – stated in a private Facebook message to her colleague Gillian Schutte that she believed rape to be part of the culture of black men (African News Agency 2016; BBC Africa 2016). In her messages, Jansen claimed that 'gang rapes of babies, daughter and mother [is] a pleasurable pastime [for black men]'

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(BBC Africa 2016). She also attacked the mothers of sexually abused children, stating that mothers are so brainwashed that they allow crimes to be perpetrated against their children. Public outrage has followed the revelation of Jansen's racist sentiments, and she is due to come under investigation for breaking to Code of Judicial Conduct (African News Agency 2016). Finally, Matthew Theunissen used an abhorred racial slur during a Twitter outburst in which he responds to Sports Minister Fikile Mbalula's decision to ban local associations from hosting international sporting events (Feltham 2016). As with xenophobia, these seemingly extreme expressions of racism are in fact ordinary in the South African context where discrimination remains entrenched in the attitudes and behaviours of citizens.

### VIOLENCE AGAINST THE LGBT+ COMMUNITY

The pervasiveness of intolerance in South Africa is also evident in the everyday experiences of members of the LGBT+ community. The practice of corrective rape, used to 'fix' the sexual orientation of lesbian women, has become prevalent in communities across the country (Gonker 2009; Fihlani 2009; Thirikwa 2013). Gonker, drawing on Kruger, argues that the practice of corrective rape 'is motivated by the belief that lesbian women "pretend" to be men and is designed to "prove" that they are women' (Kruger 2006 cited in Gonker 2009: 14). Recent media reports also detail the brutal murder of homosexual, bisexual

and transgender men and women (Davis 2012; Fihlani 2011). While the state's position on LGBT+ issues is apparently made clear in its progressive policy and legislation, its practice attests to ongoing intolerance. Rubin (2015) recounts an instance during which a transgender woman, who has been raped for being transgender, was humiliated by hospital staff who insisted on using her male name and told her to go home and take off her dress. Because the Alteration of Sex Description and Sex Status Act, No. 49 of 2003 is not properly implemented (Rubin 2015), marginalised citizens are unable to access the rights safeguarded by the Constitution and continue to struggle for recognition.

#### STATE INTOLERANCE TO CIVIC MOBILISATION

Over the last decade, South Africa has experienced an increase in community protest action (Kirsten and Von Holdt 2011; Right2Know 2015). While the specific nature of the grievances informing protest action differs from community to community, an overarching narrative of frustration with corruption and a lack of responsiveness on the part of the state is evident. According to Right2Know – a campaign aimed at promoting access to information in South Africa – the increase in community-led protests is often conflated with an increase in community-instigated violence while, in reality, these protests are largely peaceful (Right2Know 2015). Violence emerges, rather, as a key feature of the police's response to civic mobilisation (Burger 2014; Kirsten and Von Holdt 2011; Padayachee 2016; Right2Know 2015). According to Kirsten and Von Holdt, 'studies of community protests show that police actions [escalate] confrontation and tension which rapidly [take] the form of running street battles between protesters and police officers' (2011: 8). Actions taken by the police against community protestors often involve assault, torture and, in extreme cases, murder (Kirsten and Von Holdt 2011;

Right2Know 2015). Instead of engaging meaningfully with communities – acknowledging their grievances and initiating dialogue – the state increasingly meets dissent with force. This in turn, sparks further violence, as communities – provoked by the actions of the police – turn to violent tactics out of desperation (Padayachee 2016).

The state's intolerance towards civic mobilisation is also evident in instances where communities attempt to participate directly in state-driven processes. In 2015, for example, the Social Justice Coalition – working closely with Ndifuna Ukwazi and the International Budget Partnership – supported over five hundred Khayelitsha residents in developing individual submissions into the City of Cape Town's annual budget. These submissions took issue with the allocations made for water and sanitation provision in informal settlements (Notywala 2015). During her budget speech that year, the Mayor of the City of Cape Town addressed the submissions as follows:

They [the Social Justice Coalition] have spent some time constantly bringing up the same points again and again that the City was allegedly spending only R20 million on informal settlements. I can understand a mistake made once. But I cannot understand mistakes made again and again after being corrected. Indeed, we have repeatedly corrected the false claims by the SJC but they have persisted in their supposed ignorance. I can only assume some other motive or malicious intent and not an honest attempt to engage with the budget. (CoCT 2015: no page number)

While it is beyond the scope of this paper to assess the accuracy of the Social Justice Coalition's claims regarding the city's budget, we believe that the example again illustrates the state's unwillingness and inability to tolerate – that is, to recognise the validity of, and to engage in dialogue with – dissenting voices.

## INTOLERANCE WITHIN CIVIC MOBILISATION

Civic mobilisation – utilised as a means of ensuring access and accountability – is necessary in a healthy democracy. Through mobilisation processes, citizens bring their concerns to the fore, and assert their position as active participants in the political community. In some instances, however, processes of civic mobilisation also instigate – or serve as spaces for the enactment of – intolerance. In South Africa, such intolerance is evident in labour strikes during which non-strikers are harassed, intimidated or assaulted (IOL 2011; Mail & Guardian 2013; Qually 2011; Rycroft 2013; SEIFSA 2011). In these instances, violent tactics are used to silence dissenting views. The recent Rhodes Must Fall and Fees Must Fall movements have also been criticised for their intolerance towards difference. In March 2016, a collective representing the interests of transgender, gender non-conforming and intersex students disrupted an exhibition showcasing images related to the Rhodes Must Fall movement (Hendricks 2016). According to the Trans Collective, the disruption served the purpose of keeping the movement accountable to its commitment to intersectionality (Hendricks 2016). Early in 2016 – during a Fees Must Fall protest taking place at the University of Witwatersrand – feminist, queer and non-binary students also confronted leaders about misogyny within the movement (Pather 2016).

## THE STATE OF TOLERANCE IN SOUTH AFRICA

It is beyond the scope of this paper to engage in an in-depth analysis of each of the instances of intolerance set out in the previous section. We can, however, draw on these examples to make five observations about the state of tolerance in South Africa and to think about the practices that need to

shift in order for local democratic spaces to become more tolerant of difference. These observations include:

### PREJUDICE PERSISTS

While the country's Constitution guards against unfair discrimination with regards to 'race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth' (1997: 1247), the examples cited above suggest that prejudice persists in South African society. The exclusionary attitudes and practices described above limit the possibility for mutual recognition, since they do not allow for disliked others to be viewed as equal participants in the political community. If we consider then Habermas' (2003) assertion that the norm of equal inclusion forms the foundation of tolerance, it is clear that we still have a long way to go before we can consider our society truly tolerant. Before Mabel Jansen and the like can engage meaningfully with disliked others, they would first have to set aside their prejudices and acknowledge the basic rights of all citizens. As a first step towards greater tolerance, we must therefore address the persistence of prejudice and ensure that the principles set out in the Constitution permeate the behaviours of both citizens and the state.

### INTOLERANCE LEGITIMISES VIOLENCE

We have shown that, in South Africa, difference or disagreement are often taken to represent a threat to particular ways of being and doing. Homosexual or transgender individuals, for instance, challenge mainstream ideas about gender and sexuality, and should therefore – by the logic of intolerance – be punished. So too, disagreement over how state resources should be spent threaten to disrupt the existing order, and are therefore met with force. In

this way, intolerance legitimises violence against those who are disliked or disagreed with, as those who aim to uphold their own particular ways of being and doing do so by eradicating that which threatens it.

### LACK OF RECOGNITION FUELS VIOLENCE

In South Africa, violence occurs in many forms. The instances of intolerance considered above suggest that structural, cultural and physical violence feature prominently in the political and popular landscape. But while some expressions of violence are rooted in hatred, others erupt as the result of fear or frustration. Those who protest in response to discrimination and exclusion often turn to violence in desperation, and use it as a means through which to make their voices heard. Where the state fails to recognise the validity of community concerns, few other avenues offer recourse. With this statement, our intention is not to condone violence, but rather to bring attention to the fact that it emerges out of a complex set of relationships. In order to address its persistence in South Africa, it is therefore also necessary to address the significant power imbalances that have become so deeply embedded in our society.

### INTOLERANCE IS EVIDENT IN THE ACTIONS OF CITIZENS AND THE STATE

The examples of violence referred to in the previous section also show that, in South Africa, intolerance is enacted by a wide range of stakeholders. While xenophobic and homophobic attacks, racist outbursts and violent protests are undertaken by citizens, the state also continues to fuel a culture of intolerance in the country. In the case of xenophobia, the state's role in perpetuating negative stereotypes is evident in the way that it uses African foreign nationals as scapegoats for its own failure

to deliver on its promises (Landau et al. 2005). Restrictive policies and processes that diminish the safety and quality of life of migrants living in South Africa are also indicative of the intolerance enacted by the state. So too, transgender persons are discriminated against by state institutions who fail to implement the country's progressive legislation. We have also shown that state intolerance manifests as police brutality enacted against community protesters attempting to air their grievances and to see their concerns taken up by local government. Because intolerance is enacted by both citizens and the state, strategies aimed at promoting greater tolerance must take cognisance of the underlying drivers of intolerance for each of these stakeholders.

### DISSENT IS SILENCED RATHER THAN ENGAGED

The state's response to civic mobilisation, as well as the intolerance enacted by striking labourers and protesting students, indicates an alarming trend emerging in the communication between dissenting parties. By violently protecting their own interests, both citizens and the state silence those who disagree with them and, in the process, narrow the space for productive deliberation. In a Constitutional democracy, where all ideas – within the limits of the intolerable – are meant to enjoy equal validity, dissent should not be discouraged. Rather, it should form the basis for dialogue between dissenting, yet tolerant, parties who are able to recognise their own shortcomings as well as the validity of opposing views.

### RECOMMENDATIONS FOR LOCAL DEMOCRATIC SPACE

From the observations made above, we are able to draw a number of recommendations with reference to local government, political parties and community leaders. While these recommendations are by no

means comprehensive, they highlight examples of what a greater commitment to tolerance might mean in practice. As noted in the introduction, systematic exclusion has become deeply embedded within South African society. We therefore recognise that any calls for greater tolerance must be made against the backdrop of structural inequality, and must come to terms with the ongoing need to prioritise justice and transformation. Our recommendations include:

### LEAD BY EXAMPLE

If the principles of the Constitution are to become embedded in the attitudes and behaviours of all citizens, it is imperative that the state leads by example. With reference to local government, elected representatives and officials need to practice tolerance in both their institutional and personal capacity. This means that elected representatives and officials commit to inclusivity and accountability, not only as values espoused in policy and legislation, but as principles that guide their everyday practice. A commitment to tolerance also requires an ability to distance oneself from personal interests. Elected representatives and officials would therefore have to endeavour to overcome patronage politics in the interest of the public good. In a similar vein, political parties and civil society leaders are called upon to adhere to and proactively advocate the principles of the Constitution.

### ACKNOWLEDGE AND ADDRESS PREJUDICE

In the preceding sections of this paper we have shown that prejudice remains deeply embedded in South African society. While the rainbow nation discourse has offered a positive image of unity across diversity, it also represents a dangerous ignorance as it encourages a move away from difficult conversations about the root causes of intolerance and the impact of gross injustice in

the country. Rather than ignore the persistence of prejudice, citizens and the state must engage it head on. This means putting in place processes of dialogue and exchange through which prejudice may be counteracted. Visioning exercises, or other participatory planning processes, can be designed in ways that address prejudice by instigating deliberation about the makings of inclusive neighbourhoods and communities. This serves as a practical strategy for uncovering the impact of prejudice, and for exploring methods through which exclusionary attitudes and behaviours may be overcome. We also recommend that conversations about prejudice move beyond racism to consider other forms of prejudice – related to, among others, nationality, gender and sexuality – that persist in the country.

### BREAK THE CYCLE OF INTOLERANCE

We have shown that expressions of intolerance often incite further intolerance, creating a cycle of frustration, mistrust and violence. If, as recommended above, the state firmly embeds its actions in the principles set out in the Constitution, it will also take a step towards breaking this cycle and instead encouraging tolerance. In order to do this, local government must first acknowledge its own intolerance, and come to grips with its role in enacting exclusion and instigating violence. Then, it must incentivise and reward a willingness among its elected representatives and officials to engage with communities, to listen to the grievances of communities, and to negotiate outcomes that are in

We therefore recognise that any calls for greater tolerance must be made against the backdrop of structural inequality, and must come to terms with the ongoing need to prioritise justice and transformation.

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line with the needs of residents. Local government therefore takes responsibility for actively shifting its antagonistic relationship with communities towards relationships of mutual recognition.

### ENGAGE IN DELIBERATION

The shift from antagonism to mutual recognition also required deliberative processes through which difference and disagreement may be surfaced and negotiated. Along with Mouffe (1999), we acknowledge the dangers of deliberative processes that favour consensus over contestation as these run the risk of again silencing dissenting and historically excluded voices. What we promote instead is the uptake of a deliberative approach that recognises and harnesses the generative potential of contestation (see Kitching, Görgens, Masiko-Kambala and van Donk 2014) within the framework of justice and transformation. This requires a level of political maturity and personal humility that allows elected representative, officials, political parties and civil society leaders to view disagreement as a democratic imperative rather than a threat to institutional or individual interests. We therefore recommend, firstly, that existing processes for community engagement – such as Integrated Development Planning forums – be transformed into processes of meaningful engagement that enable communities to inform decision-making. Secondly, local government must facilitate and support community-based monitoring and other accountability initiatives.

### APPRECIATE TRANSGRESSIVE MODALITIES OF DEMOCRATIC ENGAGEMENT

While state-driven processes of engagement are crucial to the functioning of inclusive local democratic space, citizens must also be free to voice their concerns – whether with the actions of the state, institutions, or other citizens – through other

democratic means. Tolerance as mutual recognition is therefore enhanced when local government appreciates citizen-led processes of democratic engagement.

### ENCOURAGE STRONG COMMUNITY LEADERSHIP

While it is necessary for the state to promote greater tolerance through its actions, citizens also have a critical role to play in shifting antagonistic relationships. As mentioned above, political maturity and personal humility is essential if cycles of intolerance are to be broken. Along with a responsive state, communities therefore also need strong local leaders who encourage tolerance, guard against the employment of violent tactics, and are willing and able to engage with difference and disagreement. This means, on the one hand, that local government must recognise the role that political parties and non-governmental organisations play in cultivating community leadership. On the other hand, it also means that stakeholders who support communities through leadership training must promote tolerance as critical democratic practice.

### CONCLUSION

In this paper we have shown that tolerance is critical for the effective functioning of local democratic space, whether state-driven or citizen-led. In the South African context – where patterns of discrimination and marginalisation are perpetuated in the attitudes and actions of both citizens and the state – local democratic spaces that encourage greater tolerance hold significant potential for transformation. We have shown that tolerance need not be understood as paternalistic permissiveness, nor as an abstract value. Rather, tolerance is a productive term used to describe a practice of simultaneous recognition and disagreement. Such an understanding of tolerance

invites us to engage actively with difference and dissent, in a process of deliberation and negotiation. In light of the manifestations of intolerance explored in the paper, we have made a number of recommendations pertaining to the practice of stakeholders involved in local governance. While we have honed in on what a commitment to tolerance might mean for elected representatives and officials

in local government, political parties, and community leaders, we recognise that there are a range of other actors that also have a critical role to play in advancing tolerance in local democratic spaces. The recommendations made here are by no means comprehensive, instead, they begin to tease out what steps may be taken in attempts to give life to the principles espoused in the Constitution.

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