

"The Challenges of Deepening Democracy in Post-Apartheid South Africa"

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A Paper Presented to a LORC Seminar
Ryukoku University, Kyoto
7 July 2006

Introduction

Unlike many other countries in sub-Saharan Africa, post-apartheid South Africa has move beyond political rhetoric in its efforts to decentralise administrative responsibilities to the local level. In a marked departure from the apartheid era, where local authorities operated under an *ultra vires* doctrine, the new Constitution of 1996 elevated the status of municipalities significantly. Local authorities are now recognised as a distinct sphere of government with their own originating powers. Affirming that a "municipality has the right to govern on its own initiative, the local government affairs of its community, subject to national and provincial legislation", the Constitution further states that national and provincial governments "may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions." (RSA; 1996) Underlying this formulation, was the conviction that local government constitutes the foundation stone of democracy and represents the first line of service to local communities.

In giving effect to these provisions, the national government has, over the past twelve years, advanced a succession of legislative instruments and policy measures aimed at transferring key administrative functions to local government. In so doing, it has conformed to the best practices advocated by international funding agencies and by donor governments in the west. However, whilst the state's efforts to devolve meaningful power to lower echelons of the administrative hierarchy have received plaudits in many quarters, it will be argued in this paper that the preconditions for the effect decentralisation of government are not yet in place in all parts of the country and that the policy has, in the short run at least, set many local authorities up for failure. In so doing, it may ultimately lead to reversals in efforts to deepen democracy and to take government to the people. This is because the failure of municipal governments to deliver basic services and to create conditions conducive to local economic development will, it is maintained, create political pressures to re-centralise administration and control in provincial and national government. It has also given rise to wide spread protest amongst communities, frustrated with the slow pace of service delivery. As a point of departure, it is of interest to consider the origins of the state structure in South Africa, as a means to contextualise current events.

The Structure of the State During the Apartheid Era.

The origins of the South African state during the apartheid era, can be traced back to the South African Constitution Act of 1909. This Act, which came into effect in 1910, served to unite the Boer republics and the British colonies into one sovereign state. In the process, it also set in motion a train of legislation which effectively excluded blacks from the legislative process and culminated in the racial separatism of Apartheid. In order to accommodate the political identities of these four disparate entities, the Act departed from the two-tiered Westminster system and interposed a tier of provincial government (comprising four provinces) between national and local government.

The Provincial Councils derived their legislative power from the South Africa Act and although they were subordinate to the national legislature, they also possessed originating powers in the promulgation of laws and ordinances. That is to say, although there was no question of legislative competition between central government and the provinces, decisions of a provincial government, in theory, could not be repealed unless they were repugnant to something either expressed or implied in an Act of parliament. (De van Winsen, et al; 1953: 32) However, the real locus of power within provincial government lay in the office of the Administrator, who was appointed by the prime minister (and subsequently the state president) as the chief executive of the provincial council. A partisan of the party in office, the Administrator was appointed for a period of five years and was, in effect, an agent of the central government with the rank of deputy minister. (Vosloo, Kotze, and Jeppe; 1974).

Because the provincial administrators were political appointees of the ruling party, and because they wielded such extensive power and influence both over the provincial council and the administration, there was little if any tension between central and provincial government. Provincial governments, to all intents and purposes, represented regional branches of the central government. Inter-governmental relations under these circumstances became largely a technocratic issue, concerned with the co-ordination of activities and the integration of concurrent responsibilities such as health, education, roads, etc.

The relationship between provincial and local tiers of government, however, was of an entirely different nature and was the source of frequent conflict. In the first instance, municipalities derived their power from provincial ordinances and not from the central legislature. Operating under the doctrine of "ultra vires", local authorities had no originating powers and were prohibited from carrying out any activity that was not specifically defined by central or provincial ordinances. (De van Winsen, L., et al; 1972:2) The powers of the Provincial Administrator over local authorities was extensive, and over and above the promulgation of ordinances, he (there were at no time women administrators) had the right to repeal as ultra vires, and at his discretion, any regulation made by local government, to call for municipal elections and to enforce by-laws and other legislation.

Despite these wide ranging powers, relationships between the central government and several of the larger local governments were often conflictual. This was because these municipal councils were dominated by individuals who opposed the ruling party politically and, in a number of well publicised incidents, contested the implementation of certain of the

more abhorrent apartheid policies.¹ In the face of this intransigence and in an effort to facilitate the implementation of apartheid policy, the central government further proscribed local responsibilities and de-concentrated its own authority through regional offices. In this context, local government wielded minimal power and was seen by the public largely as a service agency, rather than as a tier of government. This was reflected in the extremely low participation in what was supposed to be grass roots democracy. In any event, African, Indian and Coloured voters had been removed from the voters roll.

In terms of the constitution, responsibility for the provision of basic services fell to local government. In practice, however, local authorities were seldom permitted to perform these functions solely on their own. This was, as indicated, due to the fact government power under the apartheid regime was de-concentrated rather than decentralised. That is to say, instead of a devolution of authority, there was a dispersion of control through agencies which derived their power either from provincial councils or, in most cases, directly from the central legislature. The implications of this practice were several. In the first instance, the disempowerment of local government reduced democratic processes at this level (such as they existed) to a meaningless exercise. In the second instance, the authority of municipalities was severely undermined, while in the third, the excessive fragmentation of authority made coordinated planning in urban areas impossible.

The absence of a unified administrative structure, as well as the differential allocation of resources to the different racial groups, ensured wide spread variations in the quality and quantity of services delivered to communities across the country. The extent of civic engagement was confined to Management Committees, on the part of the Coloured and Indian Communities, and to Advisory Boards, on the part of the African community. Although the representatives of these structures were ostensibly elected (some were appointed by provincial officials), they lacked all deliberative powers and merely advised the municipality or the central government departments on matters pertaining to their communities. These advisory boards, moreover, lacked any legitimacy and their members became the targets of violent attacks in the latter stages of apartheid.

As a consequence of this state of affairs, the concept of citizenship in South Africa at large, was limited to white South Africans. The African population, under the grand scheme of apartheid, were supposed to realise their citizenship in the ethnic homelands. The Coloured and Indian communities occupied a more ambivalent political space. Although not as closely regulated as the African population, they nevertheless were deprived of the privileges of citizenship associated with democracies throughout the world. In the absence of any compact between citizens and the state, there was little prospect that communities could be mobilised to participate in programmes of socio-economic development. Indeed, during the latter stages of the anti-apartheid struggle both African and Coloured communities were successfully mobilised to achieve the opposite goal, namely to make the state ungovernable.

¹ This was the case in Cape Town, where the City Council overtly resisted the removal of the population of Cape Town during the 1970s and 1980s.

The Structure of the State in the Post-Apartheid Era

The adoption of an interim constitution in 1994 and a final constitution in late 1996 represented the formal and final repudiation of apartheid rule. Significantly, the new constitution also specified the configuration of the state and stipulated that there will be "national, provincial, and local spheres of government" and that these will be "distinctive, interdependent and interrelated".² The decision to describe the different levels of government as "spheres" rather than "tiers" was a conscious attempt to move away from the notion of a hierarchy with all the connotations of subordination. In practice, however, this has not generally proven to be the case, as the essence of hierarchy remains prevalent in inter-governmental relations.

The advent of democracy was accompanied by a massive programme of reform, aimed at making the state more legitimate and accountable to the South African population as a whole. In an attempt to overcome the racial and ethnic divisions of the apartheid order, all existing administrative and political boundaries were abolished, the ten ethnic homelands were reintegrated into the administrative system and nine new provinces were established. In addition to the establishment of new provinces, an extensive programme to delimit new municipalities was embarked upon. This was because, hitherto, all local authorities had been racially segregated regardless of the geographic or economic integrity of an area. In addition, a large proportion of the black population (particular those in the rural areas) had been excluded from the system of local government and had had no opportunity to participate in local political institutions.

Responsibility for the establishment of municipalities, according to the constitution, rests with provincial governments, which are also responsible for promoting the capacity of local governments to perform their functions and to manage their own affairs. The powers and competencies assigned to municipal governments are narrowly prescribed, but they have "the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions." (RSA; 1996:para.156.5)

Further to this, national and provincial governments must, delegate to municipalities the administration of matters "that would most effectively be administered locally; and (if) the municipality has the capacity to administer it."(para. 156.4) Where a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by issuing a directive to the municipal council, or by assuming responsibility for the relevant obligation. The conditions under which such an intervention might take place, would include instances where essential national standards for the rendering of services are not being maintained, where economic unity is threatened, or where a municipal council's actions are prejudicial to another municipality or to the province as a whole.

2 Constitutional Assembly, "The Constitution of the Republic of South Africa, 1996", para. 40.1.

The Municipal Structures Act of 1998 provides for three categories of municipality, these are: Category A municipalities, which have exclusive municipal executive and legislative authority in their area and which are associated with metropolitan government; Category B municipalities, which share municipal executive and legislative authority in their area with a Category C municipality within whose area they fall - typically, these comprise Local Municipalities; Category C municipalities, which have municipal executive and legislative authority in an area which includes more than one municipality – these are District Councils. The new district local government system thus combines one big and several small municipalities operating in a single space. The district council provides district wide planning and co-ordination as well as direct service provision in a District Management Area, whilst local councils ensure deliver services within the context of a district development plan.

Transition and Crisis

A feature of local government in South Africa since 1994 has been the fact that it has been in a constant state of transition. In the first instance, as indicated, an extensive re-delimitation programme was embarked upon, both to reconfigure the racially segregated constituencies of the past and to extend municipal government to a the black population (particularly those in the rural areas) hitherto denied participation in local government. The outcome of this exercise was the establishment of more than eight hundred municipalities across the country. A substantial proportion of these municipalities, however, existed in little more than name. In attempting to redress these shortcomings, and to establish more operationally functional entities, a further re-delimitation was undertaken in the late 1990s, reducing the number of municipalities to 283. This programme served to aggregate the many small municipalities into a series of larger structures, on the understanding that greater economies of scale (in terms of human resources, revenue and infrastructure) would promote a more effective system of administration. The evidence from the central government's own reports reveal that the process of amalgamation has done little to enhance the overall performance of municipal government, and may, in certain instances, have contributed to its deterioration.

Despite the obvious importance of municipal government to the system of governance, considered in its totality, local government in South Africa is in crisis.³ This is a reality recognised in the 1998 government White Paper on Local Government, which states: “Combined with service backlogs, collapsed or deteriorating infrastructure, and deteriorating credit worthiness and borrowing capacity, municipalities are experiencing financial stress, and in some instances crisis.”(DPACD: 1998:8) In many areas municipal authority can not be considered operationally functional, whilst only a small proportion of municipalities may be considered administratively effective.

³ It is important to note that by no means all municipalities in South Africa are in crises. The larger municipalities tend to have a long institutional memory to draw upon, while the communities they serve have a better understanding of their expected roles as citizens.

Administrative Incapacity

Amongst the most pressing challenges confronting the ANC government on its ascension to power in April 1994, was the transformation and reform of the apartheid state. This transformation was necessary both to ensure the legitimacy of the state (hitherto white male dominated and autocratic) and to create a bureaucracy capable of delivering services to all of the countries citizens in an efficient and effective manner. The challenge was formidable, not only was the state inherited by the new government essential racist in orientation, but it had undergone little adaptation over the preceding three decades and was eminently unsuited to drive the development of a democratic South African society.

Not only has the state been charged with responsibility for the rapid delivery of social services to a majority hitherto deprived, for stimulating an economy which had suffered severe reversals in the latter years of apartheid, and for promoting a non-racial and democratic ethos, but it has also been expected to do so in the context of a administrative system in flux and staffed, for the most part, by officials who had either had little experience of a developmental state or who had had little prior administrative experience.

In perhaps not surprising that the refrain 'strong on policy weak on implementation' has frequently been uttered when describing the performance of the new government. In reality, the policies introduced are, in many instances, completely incompatible with the administrative capacities of implementing agencies; here reference is to the knowledge and skills of public officials (particularly at middle management levels), to poor job definitions, to ill-formed administrative systems, and to the prevailing culture and ethos of the public sector. It would be no exaggeration to state that the prevailing ethos of many rural municipalities is one of indolence and lethargy.

With regard to the latter, a major thrust of the early transformation programme, was on the training of senior managers in the public sector. Those individuals who underwent training, were introduced to the techniques of policy formulation, strategic planning, budgeting and human resource management. Relatively little attention, however, was paid to the context in which this training was introduced, and few programmes addressed the need to systematically transform work environments. Equally problematic, was the fact that little or no attention was paid to the strengthening of basic administrative skills and the reform of the systems which they supported. In the drive to establish a more proactive and flexible system of public management, the need to strengthen routine administrative functions was frequently neglected.

The outcome of this state of affairs has been a bureaucracy which has been only partially transformed. However, public services, like nature, abhor vacuums. In the absence of new work routines, of new procedures and a new work ethos, the practice of the public sector, in many instances, has returned to its default position. In that respect, the enduring institutional memory of many government agencies (whether at national, provincial or local level) is that of the apartheid administration. This administrative order was

characterised by a lack of transparency, by arrogance and by a disregard for individual integrity, which, as might be expected, gave rise to a strong degree of generalised distrust. It is this context, partially, that we can understand the tyranny of petty bureaucrats at the local level and their seeming disinterest in effective service delivery.

The lack of administrative capacity has given rise to a crisis of popular expectations. At the most basic level, citizens vote a political party into office and pay their taxes in the expectation that the government will serve their needs, whether this be the creation of jobs, the provision of services or merely the retention of the status quo. Where governments are persistently incapable to fulfil the commitments made to their constituencies, disillusionment inevitably ensues. This state of affairs has been a characteristic of many local governments in South Africa.

For the majority of the population who benefited little from the apartheid state, there are high expectations that the new government will assist them in the development of their livelihoods. This expectation extends to the local level, where municipalities have been presented as the first line of government. The ability of local governments to deliver basic needs, is some times seen as a further instance of the government's disinterest in the poor. The incapacity of local governments, as indicated above, is partly attributable to the misdirection of training, but it is also due to the fact that many new and small municipalities simply do not have staff who are sufficiently trained and experienced to undertake the increasingly complex tasks assigned to municipalities. This is due the fact that more skilled and experienced staff are drawn to the larger urban centres and to higher echelons of government, where salaries are higher.

Historically, as intimated, local governments in South Africa played a limited developmental role and their responsibilities in the apartheid era, for the most part, were confined to basic service delivery. Under the new political dispensation, local governments have been thrust to the centre stage in the struggle to address poverty and improve livelihoods. Thus, the 1998 White Paper on Local Government states that "The powers and functions of local government should be exercised in such a way that has a maximum impact on the social development of communities – in particular meeting the basic needs of the poor – and on the growth of the local economy." (Ministry for Provincial Affairs and Constitutional Development; 1998:18) The White Paper also states that while "local government is not directly responsible for creating jobs, it is responsible for taking active steps to ensure that the overall economic and social conditions of the locality are conducive to the creation of employment opportunities".

In its efforts to ensure the even transformation of South African society and to avoid residual enclaves of racism, the government has pursued a uniform 'one-size-fits-all' approach in its system of devolution at both provincial and local levels. Thus, while the Municipal Structures Act of 1998, makes provision for three categories of municipal government (metropolitan, district and local), these are determined largely by geographical area and demography rather than by any consideration of the administrative capacity of these structures. Under this system, a newly established municipality in a predominantly poor former homeland is assigned the same responsibilities as a formerly white urban

municipality, with an established administrative regimen and effective financial management. The development demands placed on these municipalities, nevertheless, is the same.

District councils, in particular, are expected to play a central developmental role and their duties include the preparation of district-wide Integrated Development Plans (IDPs), including land use, development and transport planning, and the provision and co-ordination of bulk infrastructure that serves local municipalities. In addition, district councils are also responsible for the provision of such new facilities as fire fighting services, cemeteries, markets and abattoirs, health services etc. They will also be responsible for such economic roles as the promotion of tourism, transport and public works. (Department of Constitutional Development; 1999:11)

The Municipal Systems Bill, published in August 1999, established a framework for planning, for performance management, and for the effective use of resources, as well as for organizational change in a business context. Following the dictates of the Bill, each newly elected council must, within a prescribed period, prepare and adopt an inclusive plan which aligns the projects, programmes, budgets and other council resources with the sustainable development priorities of the community. (DBSA; 2000:5) This Integrated Development Plan (IDP) is a management tool, which will facilitate the establishment of a policy framework against which annual budgets must be drawn up. It is intended that the IDP will reflect a council's vision for the long-term development of its municipality with emphasis on socio-economic and internal transformation. The Bill also regulates public-private partnerships and allows municipalities significant powers to corporatize their services, establish utilities for service delivery or enter into partnerships with other service providers.

Recent experience has shown that the majority of local governments are incapable of meeting the challenges outlined above. Local governments which hitherto have struggle to provide such basic services as refuse removal, sewerage, and water, are assigned a central role in local economic development and job creation. A further constraint relates to the fact that the changes imposed on local authorities have not been introduced progressively, and they have been expected to fulfil their new obligations, virtually, with immediate effect. In that respect, the approach runs the risk, inadvertently, of reproducing the relations of power and the patterns of poverty which it is seeking to overcome. This is because, the more established municipalities, located in more affluent urban areas, are likely to be the ones which will be able to avail themselves of available support grants and to succeed under the new dispensation. For the rest, widespread disillusionment with the performance of municipalities has been a consequence, as the population lose trust in the institution of local government and appeal to higher levels of government for assistance.

Local Politics and Limited Local Trust

From the above, it is clear that weaknesses in the performance of local government may be ascribed to a variety of factors, including limited administrative capacity, a lack of

skilled personnel, inadequate infrastructure, and a shortage of financial resources amongst others. However, whilst it is certain that these factors do, individually and collectively, influence the performance of municipal government, they do not, in themselves, provide adequate explanation for the shortcomings of a substantive number of local authorities in South Africa. In particular, they fail to explain why, despite the existence of a democratically elected and politically legitimate national government, so many citizens appear to have so little faith in the workings of local government. A study conducted in 1997, for example, found that just 31% of the population trusted their local councils to do what was right “all” or “most of the time”, as opposed to 48% for the national government.(Taylor and Mattes; 1998:4). In similar vein, a Washington Post survey found that while 41% of respondents in national survey rated the performance of the national government as being either good or excellent, only 30% reported the same for local government (The Washington Post, et al; 2004:Table 2.8). In a seeming perversion of the ideals of local democracy, the more removed the level of government, the greater was the degree of confidence expressed in its role and performance.

It is evident that part of the explanation for the failings of municipal government is to be found in the fact that many South Africans, and particularly the poor, have little or no faith in the workings of local government, either as a first tier of democracy or as a key provider of services. Along with this lack of trust, is a general unwillingness to pay taxes or tariffs into municipal coffers or to participate in the process of local governance. The outcome of this state of affairs is that local councils lack popular support and legitimacy. At the same time, they are also able to operate with limited public accountability. In this context, corruption is endemic, public funds are misappropriated and service delivery is poor or non-existent. This, in turn, leads to further public disillusionment and further withdrawal from the process of local government, as the local citizenry look to provincial government and, increasingly, to central government for administrative services.

The lack of social capital and trust at the local level manifests itself, in the first instance, in low municipal polls. Under these circumstances, many of the local government councillors assuming office do so without a broad popular mandate. However, whilst they might lack popular support and legitimacy, they are also free from constant local scrutiny and hence are not accountable for their actions. In the model of local government practiced in the former white municipalities, and derived from the liberal Westminster model, the stipend (some \$600 per month) paid to local councillors was intended to cover incidental expenses. The payment of this same stipend to office bearers in poor communities represents a significant income. Under these circumstances, the pressure to stay in office is as much about the maintenance of a livelihood as it is about retention of political influence.

The combination of low polls and limited accountability, frequently encourages the development of both corruption and clientelism. Since office bearers need only depend on the support of a small proportion of the community for re-election, a tendency emerges for some councillors to address the needs of this select group (for example, in the allocation of municipal housing, jobs etc.) at the expense of the community as a whole. A further manifestation of this tendency is the direct intervention of politicians in the administrative affairs of a municipality. This process, moreover, has tended to be self-perpetuating. The

more local politicians service their client networks, the less they are able to address welfare needs equitably, the more the community at large loses faith in the system of local democracy, the less the accountability of elected officials, and so forth. This iterative process further constrains the development of social capital. It also serves to limit the extent to which local populations feel motivated to participate in local democratic processes.

At the local level, the objectives of municipal government, as set out by the Constitution, include providing “democratic and accountable government for local communities” and encouraging “the involvement of communities and community organisations in the matters of local government”. (RSA; 1996: para. 152). However, a number of other provisions in the Constitution, together with their enabling legislation, it is argued, serve to limit democratic accountability and undermine public trust in local politicians and, indeed, in the system of local government in its entirety. In the first instance, the Constitution makes provision for a hybrid electoral system which sees half of the councillors in a municipal council elected according to a system of proportional representation and the rest according to ward representation. In both instances, the accountability of the elected officials to their constituencies is questionable, in that all candidates are selected by the party political leadership. In the case of candidates elected on the proportional representation list, their accountability, not unexpectedly, is typically to the party leadership who supported their candidature rather than to ward communities to which they are subsequently assigned. The sense that councillors view their constituents in purely instrumental terms is aptly captured in the words of a resident of Khayalitsha, protesting against the inadequacy of municipal services. “Local councillors”, he asserts, “only use us as a ladder to higher positions. During election time, they canvass for our support and promise us everything, but once that is over they desert us.”⁴ This view is supported by the findings of an Afrobarometer survey conducted in 2005, which found that, nationally, only 14% of community members knew the name of their elected local government councillor. (Logan et al.; 2006:11)

It is also evident that local politicians frequently do not communicate effectively with their constituencies and most citizens in the rural areas have little understandings of the workings of local government, and few actively participate in the process of local governance. A study conducted by Roefs and Liebenberg in 1999, for example, found that 91% of those interviewed in the then Northern Province had no understanding of local councils, 86% were not well informed about Parliament and 89% had no knowledge of the policy-making process (Roefs and Liebenberg; 1999) In a similar vein, a survey conducted by Henston and Humphries found that 72% of respondents living in former rural homelands, never or seldom presented opinions to politicians in local councils. (Henston and Humphries; 1999)

A further factor which serves to limit public confidence in the commitment of local political representatives, is the constitutional provision for floor-crossing of elected

⁴ Khayalitsha protester Xolile Mlumbi, quoted in Maposa, S., “It’s the only language they understand”, *Cape Argus*, 12 July 2005

councillors⁵. Under this provision, twice in each term of office the elected representatives of political parties may cross the floor to another party during for a limited duration of time. This process not only betrays the mandate given to councillors by their constituencies, but it can also change the balance of power in closely contested municipalities, where a defection can tip the balance of power in favour of the opposition. The response of the electorate towards this practice has generally been one of cynicism at the self-serving political expediency of elected office bearers (nicknamed “crosstitutes”) leading, in turn, to an alienation from the political process.⁶ Thus, a survey conducted in 2004 by the Washington Post, the Kaiser Family Foundation and Harvard University found that 63% of respondents felt “some” or “strong” disapproval of floor crossing.⁷

The Formalistic Dimensions of Participatory Democracy

Formalistically, the constitutional and legislative framework for the realisation of citizenship through popular participation in decision-making, is well established in South Africa. In 1993, on the eve of the transition to democracy, the ANC (then a government in waiting) signalled its commitment to participatory governance in the publication of its Reconstruction and Development Programme (RDP), which espoused both the principal of popular participation in decision making and that of public sector accountability. The RDP, according to its founding tenets, committed itself to “grassroots, bottom up development which is owned and driven by communities and their representative organisation.” (ANC; 1994: para. 2.2.3) This ideal was give effect in the 1996 Constitution, which stipulates that “(p)eoples’ needs must be responded to and the public must be encouraged to participate in policy making” and asserts that “(p)ublic administration must be accountable’ (RSA; 1996: sections 195 (1) e and f.). The Constitution also stipulates that national legislation must ensure that these values and principles are promoted. To that end, a plethora of legislation has been enacted which explicitly charges different state structures with responsibility for the promotion of citizens’ participation.

The 1997 White Paper on Transforming Public Service Delivery, known as the Batho Pele (SeSotho for ‘People First’) White Paper, aimed to establish “a framework for the delivery of public services which treats citizens more as customers and enables the citizens to hold public servants to account for the services which they receive.” (DPSA; 1997: section 1.2.12) Treating citizens as customers, according to the Act, implied “listening to their views and taking account of them in making decisions about what services should be provided ... (as well as) treating them with consideration and respect.” (DPSA; 1997: section 1.3.3)

⁵ Floor Crossing provisions exist in the Constitution of South Africa Amendment Act 18 of 2002 (Item 4(2) of Schedule 6A) and in the Local Government: Municipal Structures Act 20 of 2002.

⁶ Faull, J., “Floor-crossing alienates voters”, *Cape Times*, 17 September 2004; Merten, M., “Defections deflect Voters”, *Mail and Guardian*, 17-22 September 2004.

⁷ The Washington Post/Kaiser Family Foundation/Harvard University, (2004) “Survey of South African at Ten Years of Democracy”

<http://www.kff.org/kaiserpolls/upload/Survey-of-South-Africans-at-Ten-Years-of-Democracy-Toplines.pdf>

Building on this theme, the 1998 White Paper on Local Government espoused the need for what it termed ‘developmental local government’, an approach which commits municipalities “to work together with local communities to find sustainable ways to meet their needs and improve the quality of their lives.” (DCD: 1998: Section B) Implicit in this approach, is the need for local government to actively promote the participation of their citizens, and, particularly those from marginalised sections of the community:

“Municipalities need to be aware of the divisions within local communities, and seek to promote the participation of marginalised and excluded groups in community processes. For example, there are many obstacles to the equal and effective participation of women, such as social values and norms, as well as practical issues such as the lack of transport, household responsibilities, personal safety, etc. Municipalities must adopt inclusive approaches to fostering community participation, including strategies aimed at removing obstacles to, and actively encouraging, the participation of marginalised groups in the local community. At the same time, the participatory processes must not become an obstacle to development, and narrow interest groups must not be allowed to ‘capture’ the development process. It is important for municipalities to find ways of structuring participation which enhance, rather than impede, the delivery process.” (DCD; 1998: section 1.3)

The idea of grass roots participation in local systems of governance was given further expression in the Local Government Municipal Services Act of 2000, which explicitly instructed municipalities to “establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality.” (RSAb; 2000: section 17.2) According to the Act:

“A municipality must develop a culture of municipal government that compliments formal representative government with a system of participatory governance, and must for this purpose.. encourage and create conditions for the local community to participate in the affairs of the municipality (and) contribute to building the capacity of (i) the local community to enable it to participate in the affairs of the municipality and (ii) councillors and staff to foster community participation.”(RSAb; 2000: section 16.1)

Despite the best intentions of legislators and policy makers, however, it is evident that the majority of municipalities have, thus far, failed to give effect to the principles of Batho Pele and participatory democracy. Indeed, public frustration with what are perceived to be meaningless exercises in participation through ward committees, public meetings (known in the vernacular as *imbizos*) and the like, are steadily growing.

Rejection of the Participatory Model

Widespread disillusionment with the performance of municipalities has become increasingly apparent, as the population lose trust in the institution of local government

and appeal to higher levels of government for assistance. The recent nationwide protests against poor service delivery at local government level, reflect the concerns of a citizenry which is growing tired with the rhetoric of participation and empowerment without any material gain.⁸ In this context, citizens have created their own popular spaces for participation which entail mass protest, with sometimes violent overtones. In that respect, it is evident that many communities have reverted to the forms of engagement with the state which characterised the struggle against apartheid. Commenting on widespread protest in her province, the chairperson of a provincial legislature portfolio committee on local government, stated that:

*“Residents told us that for them to be heard they had to toyi-toyi (demonstrate) to receive attention from the provincial and national government. It appeared that the ward committees were not working or that those who were protesting were not involved in committees.”*⁹

Throughout the countrywide protests, over a lack of housing, poor service delivery and unemployment, there is a sense of disappointment that communities have been compelled to seek alternative channels to be heard, since the participatory fora in place have failed to yield results. This perspective is perhaps best captured in the words of a individual from Khayalitsha, who justifies protest action as follows:

*““People who live in shacks that are made of zinc material get shocked by the electricity, and that’s very dangerous. We can get burnt at any time in this place. The city seems unconcerned by all our problems. Our children are also at risk of getting cholera. We live in a low lying area with no essential services. When it rains the water just sits there in small pools for days and ends up getting filthy. Children play with this water and get skin problems. There are no toilets. People relieve themselves anywhere. This exposes people, especially small children, to health risks. Nothing seems to happen from the city’s side. We are not protesting because we like it; we protest because we’ve been living in appalling conditions for years. It also seems that protest is the only language that is understood by government officials.”*¹⁰

Aggravating this situation, has been a refusal on the part of some government officials to recognise the legitimacy of these alternative forms of participation as evident in the following quote:

“We’ve waited for too long, and nothing has happened. We have been protesting for housing in the past two months and nothing has been done about that. We are

⁸ These protests have taken place in most of South Africa’s nine provinces. ‘We toyi-toyi to get attention’ As townships turn to violent protests over service delivery, heat turns on councillors”, Tabane, R., *Mail and Guardian*, 1 to 7 October 2004

⁹ Anna Buthelezi, Chair of the Free State legislature portfolio committee on local government, quoted in Tabane, R., (2004) “‘We toyi-toyi to get attention’ As townships turn to violent protests over service delivery, heat turns on councillors”, *Mail and Guardian*, 1 to 7 October 2004

¹⁰ Khayalitsha protester, Nolusindiso Nqola, quoted in Maposa, S. (2005), “It’s the only language they understand”, *Cape Argus*, 12 July.

being ignored by our leaders and by the government. The mayor, Nomaindia Mfeketo, even told us that she won't speak to protesting people."¹¹

These manifestations of popular dissatisfaction, however, have tended to be diffuse and episodic. In part this has to do with the new forms of social organisation which appear to be emerging at both national and local levels. These differ from the massed based movements of the past, in the extent to which they are non-linear, discontinuous, fragmented and differentiated. This is evidenced, for example, in the distinct disconnect between communities engagement with the system of representative democracy and their simultaneous rejection of participatory democracy. Thus, despite widespread dissatisfaction with the performance of local government in the months leading up to the 2006 municipal elections, the percentage poll of 48% was the same as it had been in the 2000 local elections. Similarly, the ruling ANC increased its majority from 60% in 2000 to 66% in 2006. (Independent Electoral Commission; 2006). This trend, counter-intuitive as it might be, is reflective of the fact that many communities still retain a strong affiliation to the ruling party, as the party of liberation, whilst condemning its local leaders. Thus the Washington Post survey found that while 41% of respondents in national survey rated the performance of the national government as being either good or excellent, only 30% reported the same for local government (The Washington Post, et al; 2004:Table 2.8).

Conclusion

Whilst it is still too soon to pronounce South Africa's experiment in devolution a failure, a number of emerging trends, detailed above, are of concern for the future development of local democratic structures. If these trends persist, and if corrective measures are not introduced, it seems likely that few local governments in South Africa will be able to meet the developmental challenges set for them. This is in part due to the fact that policy formulators have placed expectations on local governments which are beyond their administrative capacity to deliver, but is also due to the fact the South African social formation is, to a considerable extent, path-determined, and the legacy of distrust, with all its destructive effects, is deeply embedded. While the development of a more trustful society is a process which will take a considerable period of time (perhaps necessitating a generational change), it is also certain that the institutional structure of the state as currently configured, and in this instance reference is to the institutional structure of local government, is likely to retard this process.

In that regard, the lessons currently being learnt in South Africa might be of relevance to other states on the continent embarking on the road to decentralised government. The first is that while the decentralisation of administrative responsibility and resources is a necessary condition in taking democracy to the people, it is no guarantor that local

¹¹ Khayalitsha protester Xolile Mlumbi, quoted in Maposa, S., (2005) "It's the only language they understand", *Cape Argus*, 12 July.

governments themselves will be able to meet the challenge of effective governance, in the short run at least. The second is that in pursuing a course of decentralisation, necessary as it is to the deepening of democracy, national governments need to take cognisance of the differential capacities of local governments, and to adjust their policies accordingly. That is to say, the uneven nature of development in most countries is such that there is considerable variance in the capacities of municipalities in different parts of country. In that context, a more asymmetrical devolution of administrative authority is likely to yield more success in the longer run. Linked to this, a progressive, rather than precipitous, transfer of responsibility is likely to place less stress on under-resourced municipalities, and will allow them the opportunity to develop capacity in a more systematic fashion.

The extent to which communities embrace the notion of local governance is likely to be conditioned by the degree to which local authorities have the capacity to fulfil the responsibilities assigned to them. Where they are incapable of delivering necessary services and (in the case of South Africa) of creating the conditions for economic growth, then widespread and generalised distrust is likely to ensue. A lack of trust, in turn, will promote non-compliance with the by-laws of the municipality and a break down of confidence in and communication between the local polity and its constituency. This process runs the risk of developing into a vicious cycle which defeats the very ideals of local democracy and local development.

In many respects the deepening of democracy in South Africa is a work in progress. In that respect, much of writing on the consolidation and deepening of democracy in this country, and elsewhere in the developing world, has tended to be a-historical in the extent to which it largely overlooks the length of time taken to achieve stable democracies in the western world. Whilst it might be expected, in an increasingly global world, with a concomitant rapid transmission of ideas, that the processes of democratisation in developing states would take place at a more rapid pace, projections on the rate of this change generally appear to be based on hope rather than any objective reading of the social and political economies of transforming societies. This is because the processes of socio-economic development and the deepening of democracy seldom, if ever, fit neatly into the time frames assigned by international donors or even by national governments. As a consequence of this, readings of the progress made (and rendered in so many indexes of democratic advancement¹²) are often misleading. More problematically, such readings influence the attitudes of international lending agencies and investors and also lead to frequent and erratic changes of policy towards and within developing states. In that respect, the transformation of South African society and the deepening of democracy is likely to be a multi-generational one, and the process is likely to be both uneven and discontinuous.

¹² Amongst these may be included the Vanhanen's "Index of Democracy", the Freedom House "Level of Freedom and Civil Liberties", and The Bertelsmann "Transformation Index".

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