

The Crisis of Democratic Representation in Local Government

By

Dr. Zwelethu Jolobe

Chapter 7 of the South African Constitution states that the objective of local government is to “to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner... and to encourage the involvement of communities and community organisations in the matters of local government.”¹ What is envisaged is a cooperative approach with national and provincial government where local authorities provide leadership for their communities, and local structures enhance opportunities for public participation. These are necessary for inclusive and active citizenship, and for an all-inclusive form of national government. Local government structures in the post-apartheid society were thus designed to be the essence of participatory democracy. Further, the mixed electoral system (Ward + Proportional Representation) is a formal way of acknowledging that the Closed List Proportional Representation (PR) System, used for the national and provincial elections, on its own is insufficient. Through local government structures, citizens would come into contact with their elected government, power would flow from national to local government, and democracy would be extended to the larger citizenry. This task was given to local government alongside that of service delivery and local economic development.

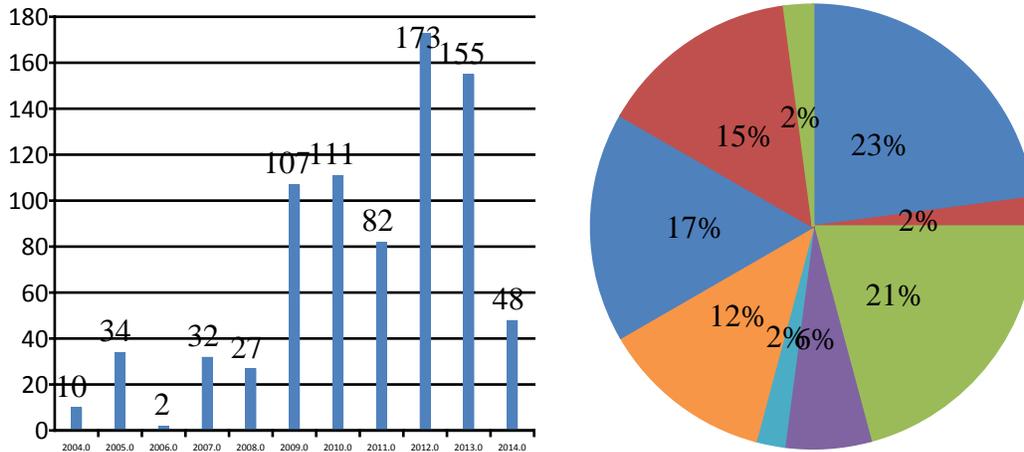
However, despite the transformation of the local government regime in South Africa, with the de-racialisation of municipal jurisdictions, the introduction of developmental local government, and the substantial allocation of financial resources to municipal level, the new local government, system implemented in 2000, has failed to live up to its expectations. The community protests that began in the townships of Harrismith in 2004 (sometimes referred to as ‘service delivery protests’), and spread to all corners of South Africa, have not only become a permanent feature of the post-apartheid society; more importantly, they represent a crisis of this new local government regime. I define these community protests as “locally-organised protests

that place demands on people who hold or benefit from political power which includes, but is not limited to, local politicians.”² These have emanated from very poor neighbourhoods (townships and shack settlements) and have involved a range of protest actions such as mass meetings, the drafting of memoranda, petitions, toyi-toying, stay-aways, election boycotts, the blockading of roads, the construction of barricades, burning of tyres, looting of shops, destruction of buildings, the chasing of unpopular individuals out of townships, and confrontations with police.³

These community protests have been very direct and antagonistic, and have conveyed an unambiguous message of popular discontent with elected office-bearers, and those who benefit from, and are related to, political power. They have also manifested as intra-ANC factional fights for the spoils of the local state, and very gruesome forms of xenophobic violence.

The frequency with which community protests have occurred across South Africa has increased substantially over the last ten years. Figures 1 and 2 below show major service delivery protests by year (2004 – 2014), and % by province (2014) as of 31 March 2014, and as reported by Municipal IQ.⁴

Figures 1 & 2: Major service delivery protests, by year (2004 – 2014*) and % by province (2014)



In 2005, there were inconsistencies in the number of recorded protests. This was largely due to politicians grappling with the new phenomenon and how to quantify them. For example, then provincial and local government minister, Sydney Mufamadi, stated that protests were recorded in 90% of the 136 municipalities identified as needing urgent assistance.⁵ Charles Nqakula, then minister of safety and security, reported higher figures for the 2004/2005 year; 5085 legal protests and 881 illegal protests.⁶

In 2007, the country saw 32 major community protests. Approximately 41.66% of these were violent, with particularly high levels of violence in the 3rd quarter (48%) and lower percentage in the 4th quarter (23.08%).⁷ In 2008, the figure declined modestly to 27. In this year, approximately 38% of protests were violent, with a high of 45.45% in the 2nd quarter and a low of 34.28% in the 4th quarter.⁸ In 2009, however, the number more than doubled to 107. Approximately 43.60 were violent, with a high of 50.65% in the 3rd quarter and a low of 21.95% in the 1st quarter.⁹ The number of protests rose to 111 in 2010. In the second quarter of 2010, however, the number did begin to decline, with no other protests other than the ongoing ‘toilet war’ in Khayelitsha.¹⁰ They remained a frequent occurrence in the 1st quarter averaging 16.33 per month, but the escalation ended abruptly with only 6.14 protests a month. Approximately

54.08% were violent, as 64.06% in the 1st quarter and 35.02% in the 2nd quarter were violent.¹¹ 2011 registered fewer protests, with an important drop over May's local government elections.¹²

Municipal IQ researchers, however, pointed out that notwithstanding the slight drop in 2011 protests, the phenomenon had now become a fixed element of the South African socio-political landscape. The lull in during the local elections suggests that there was mitigation of protest activity due to increased consultation with communities.¹³ In this light, Susan Booysen points out that elections offered an alternative way to articulate interests, with protests and voting seen as complimentary methods of achieving community objectives.¹⁴

In 2012, community protests accounted for 30% of protests recorded since 2004, with the second quarter of 2012 recording more protests than any other quarter since 2004.¹⁵ The Western Cape was the most protest-afflicted followed by the Eastern Cape and Gauteng. In 2013, protests remained high, occurring at a rate of almost one every second day, with Gauteng and the Eastern Cape remaining the most protest-ridden provinces.¹⁶

In 2014, there were 48 major community protests between January and the end of March, also occurring at a rate of roughly a protest every second day. Gauteng and the Eastern Cape continue to be the most affected, with the Eastern Cape slightly ahead in March. Municipal IQ researchers point out that at the current annual rate, protests in 2014 may set a new record, but that given protest activity fell immediately before and during elections in 2009 and 2011, community engagement could slow the rate for 2014.¹⁷

Given the intentions of South Africa's new local government regime, what explains the crisis faced by this new system? To answer this question, it is important to locate the South African local government regime in terms of the historical development of local governance in South Africa. This paper will show that while there have been some notable changes since the end

of apartheid, one of the most salient features of the system has been the underlying continuity of top-down structures that have developed since Union, especially with regard to the local governance of black Africans.

Background: Local Government from Union to Democracy

The most important local government legislation after Union that lay the foundation for the evolution of local government in South Africa was the 1923 Native Urban Areas Act, which provided a framework for a uniform national system of Native Administration, in which municipalities would play a key role as the local agents of the central state.¹⁸ Central to the Urban Areas Act was the principle that “urban areas were a ‘European’ preserve and that Africans were temporary residents, there to serve the economy as long as they were needed.”¹⁹ Residential segregation was enforced by municipal authorities, who were also delegated to build and administer ‘native locations’, to control African housing, and to regulate entry into urban areas.²⁰

When the apartheid state was introduced in the late 1950s, this system was restructured; central government took greater powers and exercised detailed supervision at the local level. The development of grand apartheid meant that African urban administration was linked to the Bantustan strategy.²¹ Consequently, fewer resources were available for African administration, especially the provision of housing. Urban Bantu Councils (UBCs) replaced the ‘Advisory Boards’ of the Urban Areas Act as vehicles for local consultation, “in a move which linked the selection of representatives closely to the Bantustans.”²²

After 1961, the Department of Bantu Administration and Development further advanced the process of centralisation. By 1971, municipalities lost all control over local administration. The creation of Bantu Affairs Administration Boards (a branch of the Department of Bantu

Administration) was geared towards urban control rather than the provision of services, tightening central control over almost all aspects of the daily lives of township residents. For Africans, local government meant increasingly stringent influx control measures, inadequate and at times non-existent township services, and an effective freeze on family housing construction:

“Conditions of daily living in the townships deteriorated under the Administration Board regime as the housing shortage grew, rents increased, services remained uniformly poor and urban controls were tightened, all in the context of the diversion of state resources into developing the Bantustan programme in which the Boards played an important role.”²³

These were the preconditions for the Soweto Uprising. The violence that spread after the uprising targeted Administration Boards and liquor outlets (used to finance township administration) as the most visible symbols of state rule.

The states response to the revolt was the twin policies of ‘reform’ and ‘development’, and if these failed, coercion. Community Councils were created in 1977 to replace the moribund UBCs, and operate alongside the Bantu Affairs Administrative Boards. The councils were aimed at coopting the black middle class in townships as agents for the state at the local level through extension of a limited range of concessions. Community Councils were designed to take over some of the responsibility for the provision and management of housing “at a time when the state was looking for ways of shifting the burden of costs or provision of services” to township residents.²⁴

The councillors who were elected as representatives were not regarded as ‘real’ leaders of the communities they represented; when elections were held, polls were generally low and councillors had acquired a reputation for corruption and using their positions for self-enrichment. Thus, when community councils became responsible for implementing unpopular increases in rents and service charges, community-based organisations were created which mobilised

against the Community Council system.²⁵ By 1982, the Community Council system had all but collapsed.

In order to resolve the continuing crisis of legitimacy of the local state, new legislation was introduced to give effect to the state's strategy of gradual withdrawal of central state authority over townships "and its replacement with a decentralised structure of black local authorities (BLAs).²⁶ While the Black Local Authorities Act did confer certain powers directly on the new local authorities, a large degree of control remained in the hands of the central government.

When elections were held in November and December 1983 for the first 26 councils to be upgraded under the new BLA, communities rejected these in the most widespread popular uprising in South Africa. The uprising, beginning in the townships of the Vaal, led to successive states of emergency and the eventual negotiation process to end apartheid.

Two issues stand out in the evolution of local government in South Africa. First, the local state was the chief instrument of central state control over black Africans, and enforcing their subordination into a racist political system. Second, when black Africans resisted racial domination, through community based protest, the state reformed the local government system in a way that made provision for local level political representation, but in a system where the central state retained control. This top-down reform was simply unworkable.

The New Local Government Regime

The transformation of local government after 1990 occurred in three phases. The first, interim phase, commenced with the coming into operation of the Local Government Transition Act 209 of 1993 (LGTA) and the establishment of negotiating forums in local authorities pending

the first local government election. The LGTA provided a framework for transforming local government in preparation for a democratic South Africa. The LGTA outlined a three-phased transition of local government into the post-apartheid society. The first phase was the period from the publication of the LGTA to the election of transitional councils. The second phase was the period from the elected transitional councils in 1995/1996, establishing integrated municipalities (although not fully democratically elected), to the legislation and implementation of final agreements for local government. And the third phase commenced with the first local government election under the new legislation on 5 December 2000, establishing the current municipalities. Underpinning the transitional process was the 1993 Interim Constitution and 1996 Final Constitution.

In this process, four items of legislation, enacted during the first and second phases, form the basis of the new local government regime. The first was the 1998 White Paper on Local Government. The White Paper established “a new developmental local government system, ... committed to working with citizens, groups, and communities to create sustainable human settlements which provide for decent quality of life and meet the social, economic and material needs of communities in a holistic way.”²⁷ The second was the Local Government Municipal Demarcation Act (27 of 1998). This Act made provision for the “demarcation of municipal boundaries and establishment of the Municipal Demarcation Board (MDB) tasked with demarcating municipal boundaries in accordance with a set of factors in the act.”²⁸ The demarcation process led to the reduction of municipalities in South Africa from 843 to 284 units to ensure manageability and functionality, among other things.²⁹

The third was the Local Government Municipal Structures Act (117 of 1998) which provided for the establishment of municipalities in accordance with the requirements relating to categories and types of municipalities, the appropriate division of functions and powers between categories of municipalities, the structures and office-bearers, and the appropriate electoral systems.³⁰ The fourth was the Local Government Municipal Systems Act (32 of 2000) which provided for the “core principles, mechanisms, and processes that are necessary to enable municipalities

to move progressively towards the social and economic upliftment of local communities and ensure universal access to essential services that are affordable for all. The act also provides for community participation as a means to bring about service delivery. To this end, the ward committee system was the most important innovation under the Systems Act to promote community participation.

The objectives of the legislative framework are thus twofold: 1) to bring about service delivery i.e. a developmental approach to overcoming the apartheid inheritance; and 2) participation. On both counts however, the local government system has not lived up to its expectations. It has continued to be top-down in its implementation, been characterised by sluggishness in service delivery, and failed to absorb the interests in communities in its ranks. The result is that communities have responded the very same ways witnessed during the period of racial domination; through a popular uprising in the local state. What explains this crisis that has led to these community protests?

Existing Explanations of Community Protests

There is very little writing on the causes of community protests in South Africa, particularly attempts that link this phenomenon to the crisis of local government. One can group the existing explanations in this regard into two categories: academic analyses and case studies commissioned by civil society organisations.

Academic Analyses

Three academic analyses are important: Doreen Atkinson's contribution to the 'State of the Nation in 2007'³¹; Susan Booyesen's contributions to 'Progress in Development Studies'³² and 'The Politics of Service Delivery'³³; and Richard Pithouse's case study of Abahlali baseMjondolo³⁴.

Atkinson focuses on the community protests that wracked South African townships between 2005 and 2006. She argues that the community protests are largely a result of people's frustration with the state of South Africa's municipalities under the new local government regime. Atkinson divides these frustrations into three main categories.

The first sources of people's frustrations are technical issues i.e. municipalities are not providing services or are providing shoddy services.³⁵ In 2005 for example, of the 284 new municipalities, "203 could not provide sanitation to 60 per cent of their residents; 182 were unable to provide refuse removal to 60 per cent of their residents; 155 could not provide water for 60 per cent of properties; 122 could not provide electricity to 60 per cent of homes; and 42 were unable to execute 50 per cent of their functions."³⁶

The second is that decision-making at local government is unresponsive and undemocratic, thereby undermining people's livelihoods and interests. Protesters frequently complain about the unresponsiveness of officials and councillors, and that channels of communication between municipal mayors, councillors and communities were broken.³⁷ The Harrismith community protest, for example, "took place after community leaders gave the municipality ten days to respond to their grievances, to no avail."³⁸ The same dynamics played out in Frankfort (Mafube Municipality), Excelsior (Mantsopa Municipality) and Welkom.

The third is that protesters are frustrated against perceived corruption, sudden enrichment and conspicuous consumption by municipal councillors and staff.

Booyesen's accounts largely confirm that of Atkinson, but introduce another dimension. Booyesen's 2007 contribution draws on national survey data and case studies conducted in five

municipalities where community protests has occurred in the two years preceding the second local government election in 2006. Booysen argues that contrary to public expectations that protests were signals of systematic revolts against the ruling ANC in the local state, surveys indicated that protesting and voting were rated equally as mechanisms to attain improved levels of service delivery.³⁹ Booysen thus proposes that “the South African local electorate thus appears to believe that ‘voting helps and protest works’ when it comes to deciding on a repertoire of action to optimise service delivery in communities.”⁴⁰ Despite dissatisfaction with councillors, the ANC remains the party that is best equipped to take care of service delivery.

In an update to this research, Booysen later suggests that while community protests continued to be ‘grassroots actions’, the triggers were increasingly national-level responsibilities such as housing, land and jobs.⁴¹ Booysen also points out that service delivery continued to be uneven and insufficient, and that municipal and ward committee members were virtually invisible to 80 per cent of South Africa’s metropolitan and urban population.⁴²

Pithouse takes this point further and argues that where councillors are present they “most often function as a means of top-down social control aiming to subordinate popular politics to the party.”⁴³ Moreover, where councillors are absent, or operate in a top-down or corrupt manner, “space is opened up for new leaders to fill the void.”⁴⁴

Commissioned Case Studies

Important case studies have been conducted by three organisations: the Centre for Development and Enterprise (CDE)⁴⁵, the Centre for Development Support (CDS)⁴⁶, and the Centre for the Study of Violence and Reconciliation (CSVR)⁴⁷.

The CDE undertook two case studies: Khutsong, located within the Merafong Municipality, and Phumelela Municipality in the Free State. The Khutsong protest was a five-year rebellion against a decision to place Merafong in the North West, rather than Gauteng (as the community demanded), a decision that followed the eradication of cross-border municipalities. This struggle, which included considerable violence, a lengthy school stay-away, a successful election boycott, and a legal battle, continued until victory for the community was secured in 2009.⁴⁸ The violent protests in Phumelela (which includes the three small towns of Memel, Vrede and Warden) were primarily about poor services (roads, dirty water supply, and insufficient sports facilities) and pitiable local government (nepotism, lack of transparency and indifferent, incompetent, and contemptuous officials).⁴⁹ CDE research points out that in both cases, leadership was provided by “unemployed people and youths of school-going age” calling themselves “Concerned Youth Groups”.⁵⁰

The studies carried out by CDS covered Phomolong in the Matjhabeng Municipality (in the Free State), and the Nelson Mandela Bay Metro. In the violent protest in Phomolong, protesters brandished toilet buckets and banners, sang protest songs and blocked streets. People employed outside the area were prevented from going to work, schools were closed for a month, and there was an enormous amount of looting and pillaging. The major concerns of the community were an unpopular ANC councillor, the continuation of the bucket system, and complaints around housing delivery.⁵¹ The Nelson Mandela Bay protests once again highlight the importance of service delivery (notably around housing) and unresponsive local government (including unfulfilled promises). Unemployed youth and school students were again at the fore front, and the authors suggest factionalism within the ANC may have also stimulated the protests.

CSVSR undertook eight case studies in a mix of communities (small rural towns, urban formal townships, urban informal settlements and rural informal settlements). In all their case studies, violent community protests were associated with xenophobic attacks, with community protests being primary and xenophobic attacks being secondary.⁵² The study argued that “rapid processes of class formation – through which on the one hand a new elite is emerging and, on the other, a

large underclass of unemployed and precariously employed, together with the dislocations of the transition from apartheid to democracy – is generating fierce struggles over inclusion and exclusion both within the elite, between elites and subalterns, and within the subaltern classes themselves. These struggles are in part marked by contestation over the meaning and content of citizenship.”⁵³

The dynamics of community protest and xenophobic violence in the case studies followed a discernible pattern. The repertoires of protest in Kungcatsha included mass meetings in the stadium, marches in support of a petitions, work stay-aways, the barricading of streets, street battles with police, the burning of councillors houses and council buildings, and the looting of foreign-owned shops.⁵⁴ In Azania, participants “referred to a long history of protests dating back to 1996.” In response to the growing frustration about the indifference of the mayor and town council, “the township library was burnt down, computers were stolen and foreign owned shops were looted.”⁵⁵ The case studies also involved the targeting of ANC councillors, allegedly involved in corruption. They were all similar in the role played by ANC leaders in the protests, particularly members of the ANC Youth League.

In all cases, communities initially used local government structures first. The Harrismith protests in 2004 took place after community leaders gave the municipality ten days to respond to their grievances but to no avail.⁵⁶ In Frankfurt (Mafube Municipality), violence broke out in August 2005 because the council did not respond to a petition. In Excelsior, in Mantsopa Municipality, angry residents threatened to take the municipality by storm if the municipal manager ignored their grievances.⁵⁷ This lack of responsiveness fuels the levels of discontent.

The case studies thus substantiate the notion that the protests were principally about the lack of basic services and inadequate local administration. The role played by unemployed youth and school students is important, and so is the relationship of the protests to power struggles within the ANC. But given the repertoires of the protests, they can also be understood separately

from issues of service delivery. Jeremy Seekings' analysis of anti-apartheid protests at local government level, especially with regards the relationship between service delivery and political mobilisation, is illustrative: "heightened grievances do not automatically lead to political mobilisation, which is not simply a response to material conditions of life, but also to perceptions of what is just and what is possible."⁵⁸ From this perspective, there are important continuities from the previous order. These protests were thus simultaneously about the need for residents to secure control over the decision-making processes that effect their material conditions. Poor service delivery and the failure to provide basic amenities are symbols of a dysfunctional system, sparking resentment and anger. As a result, the survival of the local government system depends as much on service delivery as it does on citizen's perceptions of the system, particularly with regards to their participation and ownership of that system.

Local government thus has to be governed in a way that encourages citizen participation, so that communities can have a sense of belonging and affinity their direct interface with the state, beyond merely seeing it as an engine of service delivery. Participatory democracy in the local state is thus essential; communities have to be active participants in the process. The lack of service delivery is thus in part a function of a disconnect and lack of trust between communities and the local state, and this perhaps is the important legacy of apartheid.

¹ The Constitution of the Republic of South Africa, Act 108 1996: Chapter 7

² Peter Alexander, "Rebellion of the Poor: South Africa's service delivery protests – a preliminary analysis", *Review of African Political Economy*, 37 (2010), 26

³ Ibid.

⁴ This graph was sourced from the statistic reports of Municipal IQ (particularly its hotspots monitor), an organisation that monitors and collates major protests by community members (identified to a particular ward) against a municipality. Municipal IQ defines major municipal service delivery protests as those protests where communities oppose the pace or quality of service delivery by their municipality. Municipal IQ does not deal with issues falling outside of local government's service delivery mandate such as demarcation, inter or intra-political issues, and the inadequacy of housing. This paper expands the definition of community protests to include all of these phenomena. This is important; it will assist in comprehensively capturing the phenomenon of civil unrest in South Africa, as in as much as it is mostly about locally specific issues, it is simultaneously about national and party political issues.

⁵ Doreen Atkinson, "Has Developmental Local Government Failed in South Africa?", in Sakhela Buhlungu, John Daniel, and Roger Southall (eds.) *The State of the Nation: South Africa 2007* (Pretoria: Human Sciences Research Council, 2007)

⁶ SAIRR (South African Institute of Race Relations), *2004/2005 Survey* (Johannesburg: SAIRR, 2006), 551

- ⁷ Hirsh Jain, “Community Protests in South Africa: Trends, Analysis, Explanations”, Local Government Working Paper Series No.1, August 2010, Community Law Centre
- ¹¹ Hirsh Jain, “Community Protests in South Africa: Trends, Analysis, Explanations”, Local Government Working Paper Series No.1, August 2010, Community Law Centre
- ¹⁴ Susan Booysen, “With the ballot and the brick: the politics of attaining service delivery”, *Progress in Development Studies*, 7 (1), 26
- ¹⁸ Jeremy Grest, “The Crisis of Local Government in South Africa”, in Philip Frankel et al, *State, Resistance and Change in South Africa* (Johannesburg: Southern Book Publishers, 1988), 87
- ³¹ Doreen Atkinson, “Has Developmental Local Government Failed in South Africa?”, in Sakhela Buhlungu, John Daniel, and Roger Southall (eds.) *The State of the Nation: South Africa 2007* (Pretoria: Human Sciences Research Council, 2007)
- ³² Susan Booysen, “With the ballot and the brick: the politics of attaining service delivery”, *Progress in Development Studies*, 7 (1), 21-31
- ³³ Susan Booysen, “Beyond the ballot and the brick: continuous and dual repertoires in the politics of attaining service delivery in South Africa”, in A. McLennan and B. Munslow, eds. *The Politics of Service Delivery* (Johannesburg: Wits University Press, 2009)
- ³⁴ Richard Pithouse, “The University of Abahlali baseMjondolo”, *Voices of resistance from occupied London*, 2 (October), 17-20
- ³⁹ Susan Booysen, “With the ballot and the brick: the politics of attaining service delivery”, *Progress in Development Studies*, 7 (1), 21-31
- ⁴⁴ Peter Alexander, “Rebellion of the Poor: South Africa’s service delivery protests – a preliminary analysis”, *Review of African Political Economy*, 37 (2010), 29
- ⁴⁵ Centre for Development and Enterprise (CDE), *Voices of Anger: Protest and Conflict in Two Municipalities* (Johannesburg: Centre for Development and Enterprise, 2007)
- ⁴⁶ L Botes et al, *The New Struggle: Service Delivery Related Unrest in South Africa* (Bloemfontein: Centre for Development Support, 2007)
- ⁴⁷ Karl von Holdt et al, *The Smoke that Calls: Insurgent Citizenship, Collective Violence and the Struggle for a Place in the New South Africa* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2011)