

Public Participation in South Africa: Is Intervention by the Courts the Answer?

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ABSTRACT This paper examines the implications on public participation of the Supreme Court's ruling against eThekweni Municipality for not following procedures in renaming streets in South Africa, reviews other similar cases, and highlights the need to adhere to legislative and policy provisions in nurturing public participation relating to decisions affecting the citizens. A brief historical background on participation is provided, and Arnstein's pioneering analysis of levels of participation, is drawn into the discussion. Public participation is discussed by referring to relevant legislation and policies, whilst reflecting on participation processes, opportunities and challenges. The problem investigated is the increasing involvement of the courts in enforcing correct public participation procedures, which are well known. The methodology is based on a reflection on two the Matatiele and Merafong demarcation cases that the courts upheld. While the salience of legislation and the courts in cultivating a public participation ethos seems relevant, it is concluded that the courts need not enforce public participation – because such enforcement denigrates the notion of communal and collaborative effort in decision-making. It is recommended that community participation practices be cultivated through concerted promotion of democratic processes which are commensurate with existing policy and legislation – rather than resorting to the courts.

INTRODUCTION

As an element of participatory democracy, public deliberation by citizens is a topical issue within and outside academia, and has a long history traceable back to ancient Greek city-states (Carpini et al. 2004: 315) and colonial New England. Participation was furthermore institutionalised in the mid-1960s during Lyndon Johnson's Great Society programmes (Carballo n.d.: 4). While the Aristotlean ideal of deliberation involving all citizens is admirable, in modern democracies full public participation is, it would seem, impossible (Abelson et al. 2003: 242). Authors such as King et al. (1998), Putnam (1995) and Arnstein (1969), stress that an engaged citizenry is better than a passive citizenry. Irvin and Stansbury (2004: 56) highlight some benefits of participation in decision-making – to both public participants and government. Gains by citizen participants include educating, persuading and enlightening government. At the same time, education, the ability to persuade citizens, building trust and allaying anxiety or hostility, building strategic alliances, and gaining legitimacy of decisions, accrue to government. Indeed this is what South Africa needs if it is to guard its democracy, and “promote governance and development encapsulated in the form of service delivery” (Amtaika 2014: 105).

‘Community’, ‘citizen’, ‘popular’ and ‘public’ are often interchangeably used with the concept of participation. Gaventa (2004: 17) notes the existence of a ‘democratic deficit’, to which strengthening of participation processes is one response. Participation “refers to a range of scales of social and political interaction from micro to the macro” (McGee et al. 2003: 11), and has three dimensions: mode of participation, mode of communication and decision, and extent of authority (Fung 2006: 66).

Arnstein (1969) initiated an enlightened dialogue on public participation by using the analogy of public participation in an eight-rung ladder – from manipulation at the base, through therapy, informing, consultation, placation, partnership, delegated power, to citizen control at the apex. The ‘ladder of participation’ is organised into three levels: ‘non-participation’, ‘degrees of tokenism’ and ‘degrees of citizen power’. The eight rungs represent the extent of involvement and level of power citizens have in influencing decisions affecting their wellbeing. Arnstein's ladder of participation also helps explain conceptual difficulties associated with participation, which is a contested concept referring “to a range of different actions by different people” (Roberts 2003: 6). It includes and involves mere provision of information, consult-

ing participants, and disparity of power relations. Since Arnstein's landmark 'ladder of participation' analysis, the analogy has been used as a guide by academics and practitioners advocating for greater involvement of communities in policy formulation, programme planning, and project implementation.

Public participation is a means of enhancing development and service delivery, improving governance, and deepening democracy (Buccus et al. 2007: 5). According to Buccus et al. (2007: 6-7), the main factor behind the salience of public participation in liberal-democratic states, is the 'democratic deficit' – that is, failure of elections to improve government accountability and performance. This is exacerbated by growing poverty and inequality, public scepticism, distrust of government, and declining participation in political life. The 'democratic deficit' has given participation national, continental and international significance – associated with development, state-building and the deepening of democracy.

This paper discusses public participation in the South African context against the background of a court case initiated (and won) by the Democratic Alliance (DA) against the eThekweni Municipality (*DA vs eThekweni Municipality* Case No: 887/2010). The DA holds 43 of the 205 seats in the Municipality. It advances the argument that resorting to the courts to address public participation issues is adversarial, does not promote good working relations between municipal officials and communities, and suggests adoption of measures that would obviate court processes. The paper is divided into seven sections. The introduction provides a brief historical background on public participation – highlighting Arnstein's (1969) ladder of participation because it constitutes the theoretical basis of public participation. Section two deals with the understanding and purposes of public participation. In section three, facets of participation are discussed, while legal and policy frameworks governing public participation level are the focus of section four. The core of the paper lies in sections five and six – the former discusses key features of the *Democratic Alliance vs eThekweni Municipality* case, while the latter reinforces the discussion with three further cases highlighting apparent disregard of public participation processes. Section seven provides conclusions and recommendations.

Objectives

To understand the increasing involvement of the courts in enforcing correct public participation procedures and the long term impact on public participation and governance as expressed in public service provision.

METHODOLOGY

The methodology is descriptive, drawing from existing secondary sources involving cases of disputed participation processes such as the forced inclusion of Matatiele Local Municipality in KwaZulu-Natal province without the required consultation and the case of Merafong, in the West Rand District Municipality, a cross-border municipality between North West into Gauteng. These cases highlight the issue of non-conformity with laid-down participation processes and constitute the methodological basis of this paper.

OBSERVATIONS AND DISCUSSION

Understandings and Purposes of Public Participation

Participation is a buzzword in the discourse of development. In the 1980s, participation was perceived as engaging intended beneficiaries of development projects in cost-sharing and consultation, without involving them in defining their own development (Cornwall and Brock 2005: 7). This is the community or social dimension of participation. At the time, participation helped defuse grassroots' resistance to international financial institutions' reform initiatives. Cornwall and Gaventa (2000: 50-62) state that the discourse of participation in development has shifted to political and rights-based participation, with citizens moving from being "users or choosers" of public services' policies made by other people – to being "makers and shapers" of the policies themselves. Although participation is an old practice, it is politically ambivalent and definitively vague (Cornwall and Brock 2005: 5).

D'Aquino (2007: 2) offers four perspectives on what participation means to local actors and intervening authorities. Firstly, participation means sharing views; this is the awareness-raising

ing angle. Secondly, it is understood as building a common vision; the participatory-appraisal perspective. Thirdly, participation is viewed as sharing tasks and responsibilities in managing resources or territory; the collaborative-management position. Finally, is the participative-democracy stance of participation, which is perceived as “a shared pre-arrangement decision-making process concerned with prioritizing values and goals to be dealt with subsequently” (d’Aquino 2007: 4). These diverse perspectives imply a disjuncture in understanding between bottom-up participatory dynamics, and institutional top-down aspects (d’Aquino 2007: 4). Participation is widely used as an intervention in the social and political domains (d’Aquino 2007: 5). However, while acknowledging the usefulness of participatory approaches in ensuring citizens and stakeholders’ involvement, d’Aquino (2007) notes that participatory methods can be used to facilitate the real empowerment of citizens.

In Africa, according to Buccus et al. (2007: 7), participation is seen as playing a capacity-building role in development, but depending on the approach used, it highlights one of three objectives: distributing power in social groups, improving decision-making in complex situations, and developing skills in targeted groups. The idea that the participation approach used determines the objective of those employing it raises a fundamental question: does it have to take a court of law to ensure citizens’ rights to participate in local governance processes enshrined in the Constitution of 1996 is respected? This question is vital given the ruling in *The Democratic Alliance v eThekweni Municipality*, where the plaintiff’s assertion that the defendant did not follow participatory processes properly, was upheld by The Supreme Court of Appeal (SCA). Against the background to this ruling – is the South African government’s ostensible commitment to promote effective participation of citizens in local governance, enshrined in the Constitution and the Municipal Systems Act 32 of 2000 – a departure from the apartheid era when most South Africans were denied both representative and participatory democracy? Section 16(1) of the Municipal Systems Act requires municipalities “to develop a culture of municipal governance that complements formal representative government with a system of participatory governance”. This requirement has seen the election of ward councillors on both party-proportional and ward-representation

bases throughout South Africa. This is to ensure public involvement in decision-making processes, especially annual municipal budgets, integrated development plans (IDPs), and all by-laws (Piper and von Lieres 2008).

The democratic ethos of South Africa’s constitution entrenches public participation – the aim of which is to encourage citizens to make their concerns known through formal institutional structures within representative local democracies. Public participation requires the development of new relationships between ordinary citizens and state institutions responsible for their wellbeing (Gaventa 2004: 16). At local government level, it requires knowledge of national and local policies, services and issues, as well as awareness of rights and responsibilities written into law (Esau 2007: 17) which many ordinary citizens are not aware of. Citizens’ rights are exercised through political participation, which extends to matters of local governance and access to sustainable livelihoods (Mubangizi 2008: 5). Against this background, the theoretical ideals of public participation are now discussed.

Legal and Policy Framework on Public Participation

In post-apartheid South Africa, public participation is provided for and highlighted in a range of legislation, policies and guidelines – with particular emphasis on legislation and policies relating to decentralisation and local government. Although several legislative and policy instruments provide for public participation at local government level, three legal instruments are significant: the Constitution, the Local Government Municipal Structures Act 117 of 1998 (hereafter Municipal Structures Act), and the Local Government Municipal Systems Act 32 of 2000 (hereafter Municipal Systems Act). Requirements of the Municipal Structures Act and Municipal Systems Act are the most important concerning public participation in municipalities (Buccus et al. 2007: 9).

Legislative Framework

The Constitution

Chapter 3 of the Constitution advocates recognition of local government as the level of government closest to the people, and one through which citizen involvement should be cultivated.

Further, Chapter 7 espouses the ideals of local government, one of which is to nurture public participation, and prescribes involvement of citizens in local government in matters affecting their lives. It prescribes the establishment of municipalities, and mandates all three categories of municipalities (A, B and C) to provide democratic and accountable government for local communities and, in this way, to:

- ♦ ensure the provision of services in a sustainable manner;
- ♦ promote social and economic development;
- ♦ promote a safe and healthy environment; and
- ♦ encourage the community and community organisations to participate in matters of local government.

Section 118 (1) (a) requires provinces to facilitate public involvement in legislative and other processes, while Section 152(1) (e) enjoins local government to encourage communities and community organisations in the matters of local government. In particular, Sections 152 (a) and (e) mandate local government, through municipal councillors to, respectively, “provide democratic and accountable government for local communities” and “to encourage the involvement of communities and community organisations in matters of local government”. In addition, Section 195 (1) (e) in Chapter 10, which espouses the values of public administration, prescribes that in the delivery of public services, “people’s needs must be responded to, and the public must be encouraged to participate in decision-making processes.” Furthermore, Section 195 (1) (g) states that “transparency must be fostered by providing the public with timely, accessible and accurate information”.

Municipal Systems Act

Nowhere are South Africa’s ideals on public participation more clearly stated than in the Municipal Systems Act. Chapter 4 is dedicated to public participation, and details guidelines on how this should be done. Section 16 mandates municipalities to develop a “culture of municipal governance that complements formal representative government with a system of participatory governance”. In this regard, municipalities are expected to not only create conditions for public participation, but also to con-

tribute to building the capacity of local communities to participate in governance affairs, and to annually allocate funds to this effect. Section 16 states that municipalities must “develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must ... (a) encourage, and create conditions for the local community to participate in the affairs of the municipality, including in (i) the Integrated Development Plan; (ii) the performance management system; (iii) performance, (iv) the budget, and (v) strategic decisions relating to services”.

Section 17 pronounces on the mechanisms, processes and procedures for community participation. In particular, it prescribes that councillors – who are elected to represent citizens at municipal councils – should be the vanguards of public participation, and should, through the structures of ward committees and other committees legislated under the Municipal Structures Act, nurture and promote public participation in matters of local government. A key aspect of public participation in the Municipal Systems Act, is that it is mindful of marginalised members of society who could, by virtue of their position in society, be left out of decision-making processes. In this regard, Section 17 (3) stipulates that “a municipality must take into account the special needs of people who cannot read or write; people with disabilities; and other disadvantaged groups”.

Municipal Structures Act

The Municipal Structures Act makes it mandatory for municipalities to consult communities on key municipal processes, and establishes ward committees – which are an essential element in the participation process. These committees serve as a conduit of communication between municipalities and local communities. Section 72 (3) states that the essence of ward committees is to enhance participatory democracy in government. The functions of a ward committee includes: (a) making recommendations on matters affecting its ward to the ward councillor or through the ward councillor to a metropolitan or local council, executive committee, executive mayor, or metropolitan subcouncil; and (2) carrying out duties and powers delegated to it by the metropolitan or local council in line with section 32. In electing members, there

is a requirement to ensure equitable representation of women and diversity of interests. Section 73 (4) requires councils to "make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively".

Policy Framework

The policy framework is typified by White Papers enunciating government's policy intentions, whilst providing guidelines for effective mechanisms to ensure extensive consultation and public participation in various facets of public-service actions. Policies dealing with public participation include: the White Paper on Transforming Public Service Delivery - *Batho Pele* (1997), the White Paper on Local Government (1998), Guidelines on Operation of Ward Committees (2005), and the Draft National Framework for Public Participation (2005). The 1997 and 1998 White Papers are particularly relevant. The former stipulates that in delivering public services, citizens should be consulted about the level and quality of services they receive, while the latter is more elaborate and further stipulates the processes and strategies of community participation, outlined by Arnstein (1969). It also lays down guidelines on citizen involvement and how municipalities should go about encouraging community participation. Although the *Batho Pele* Policy does not provide for direct public participation in deciding what services are to be delivered, it allows citizens to hold public servants accountable for the quality of services delivered.

Although there is no final national policy on public participation (Buccus et al. 2007: 10), two policy guidelines are noteworthy. The first – the Draft National Policy Framework for Public Participation (2005) – gives insight into the Department of Provincial and Local Government Affairs' (DPLG) thinking on public participation. This includes assumptions underpinning participation, levels of participation, initiatives requiring participation, and key principles of public participation. The central role of ward committees in developing community-based plans, and their relationship to community development workers, is also indicated in the draft policy framework. The second policy guideline – the Community Participation Framework Document (2007) – was issued by the DPLG and pilot-

ed by the KwaZulu-Natal Department of Local Government and Traditional Affairs in 2008 (Buccus et al. 2007: 11). The eThekweni Municipality's policy, called the Citizen Participation Policy, proposes 'active participation' and includes a citizens' charter – but lacks concrete mechanisms to ensure meaningful public participation.

In total – at the legislative and policy levels – public participation in South Africa is held in high regard and given much prominence. The problem, however, is how to operationalise the implementation process and, in this way, make community participation central to local government activities. In fact, the existence of legislative and policy frameworks on public participation in South Africa is not necessarily an indication that all is well with participatory practices. It appears that legislation and policies have been deliberately designed not to imbue public participation with any genuine power. For example, absent from both the legislative and policy frameworks is any formal empowerment of citizens for political decision-making or implementation (Buccus et al. 2007: 10). Ward committees and public meetings only have a consultative or deliberative role. This means that civil society and local communities are not afforded an opportunity to take part in decision-making or implementation processes. Rather, these powers reside in municipal councillors and officials, respectively.

In spite of a plethora of legislation, policies and guidelines, public participation in South Africa generally – but specifically in local government matters – remains a concern. Will it remain so? Following the Supreme Court ruling against the eThekweni Municipality (Case No: 887/2010), involving the renaming of streets within its central business district, municipalities need to take public participation seriously, and aim at the higher levels of Arnstein's ladder. The ruling followed an objection by the DA to procedures followed by the municipality in renaming some streets (See Surburn 2011).

While the Supreme Court judgment is a victory for communities battling for the attention of service providers, this paper highlights opportunities municipalities can utilise in promoting participatory processes – that benefit communities and themselves. Resorting to the courts is adversarial and does not promote good working relations between councillors, municipal officials, and communities. Resorting to the courts

to enforce participation, which is enshrined as a constitutional right to attaining social justice, is unnecessary. On the contrary, and as Amtaika (2014) has extensively discussed, the expectation is that councillors, municipal officials and communities work hand-in-hand to further the goals of participation. Further, and as Ghai and Vivian (2014: xiv) have noted, development plans that do not have the support of those affected rarely succeed.

Salient Features of the Court Case

In the matter between *The Democratic Alliance v eThekweni Municipality* (2010), the plaintiff submitted that the decision by the municipality to change some street names was not in line with good administrative action. The DA's objections were that the procedure involved in renaming streets within the eThekweni Municipality, was not entirely participatory, in that:

- ♦ no proper public consultation process preceded the decisions taken in the various phases of the renaming process;
- ♦ no proper deliberative process took place in any of the committees or the council itself, with reference to these decisions; and
- ♦ the council had failed to comply with its own street-naming policy, and with the guidelines set by the South African Geographical Names Council Act (118 of 1998).

The KwaZulu-Natal High Court ruled in favour of the DA, as did the SCA. According to the judgement (case No 887/2012), the SCA ruled that while municipal councils are constrained to facilitate public participation in the performance of their executive and legislative functions, there is a general constitutional obligation on municipal councils to "provide democratic and accountable government for local communities" – which, by implication, requires public involvement. In addition, provisions of the Municipal Systems Act impose an obligation on municipalities to establish appropriate mechanisms, in order to enable local communities to participate in municipal affairs (case No. 887/2012).

What is at issue in this case, is not whether the street names should have been changed or not, nor is it that the new names reflect the names of veterans previously involved in the anti-apartheid struggle – rather, the issue is about the process embarked upon in deciding to change the names. By changing the street names almost

unilaterally, the eThekweni Municipality not only failed to abide by statutory obligations of the Constitution and the Municipal Systems Act, but it also failed to comply with its own internal street-naming policy, which provided that changing of street names should, in all circumstances, be "subject to prior consultation with addressees and all other affected parties having taken place" (RSA 2000). In this regard, the SCA further ruled that the eThekweni Municipality's decision to change the names of some streets did not satisfy the legal obligation imposed on it to engage in a reasonable public participation process.

Emerging Pattern of Disregard for Citizens' Right to Participatory Democracy

The Democratic Alliance v eThekweni Municipality concerns public participation in a street-naming process – but other cases relating to public participation in determining municipal boundaries and health exist. They seem to indicate an emerging pattern of disregard for citizens' right to participatory democracy – specifically the right to have their voices heard and to be taken seriously through proper consultation. Naidu and Narsiah (2009: 17-30) cite two prominent cases involving lack of public participation relating to municipalities, spanning different provinces in the country.

In the first, according to Naidu and Narsiah (2009: 17) – during the 1999 national and provincial elections and the 2000 local government elections – Matatiele was part of the KwaZulu-Natal Province, under the Sisonke District Municipality. However, in 2002, the national government decided to do away with all cross-border municipalities altogether, mainly because of administrative and logistical difficulties. Consequently, in August 2005, the Municipal Demarcations Board recommended inclusion of Matatiele in the Alfred Nzo District Municipality in the Eastern Cape Province. A constitutional amendment to effect the change was made in October 2005, with a two-thirds majority. The Matatiele Local Municipality, however, refused to comply with a request to endorse the demarcation – thus necessitating public hearings to be conducted by the Municipal Demarcation Board. Overwhelming support for Matatiele and Maluti remaining part of KwaZulu-Natal Province led to a re-demarcation of the Sisonke District Municipality

and the scrapping of Alfred Nzo District Municipality – which was officially gazetted in the Eastern Cape Province. However, the Municipal Demarcation Board's new proposals were not included in the amendment alongside cross-boundary repeal bills, which cabinet and parliament and the provincial legislatures of the Eastern Cape and KwaZulu-Natal had approved (Naidu and Narsiah 2009: 17-30). The Matatiele/Maluti Mass Action Committee then filed an urgent suit with the Constitutional Court against the President and Minister of Provincial and Local Government, arguing that the wishes of the community had been ignored. In its 2006 ruling, the Court found in favour of the respondents. However, it ruled that the people of Matatiele had not been consulted by the KwaZulu-Natal provincial government, and indicated a need for rectification. In spite of the Constitutional Court ruling, Matatiele was transferred to the Eastern Cape in 2007. Following the recall of Thabo Mbeki from the Presidency in September 2008, the new Minister of Provincial and Local Government in the Zuma administration, however assured Matatiele and Merafong residents that their wishes would be respected (Naidu and Narsiah 2009: 28).

The second case concerns Merafong – which was part of the West Rand District Municipality, a cross-boundary municipality between the provinces of North West and Gauteng in 2000. Public hearings held by both the Gauteng and North West provincial legislatures and the Municipal Demarcation Boards, indicated residents wanted the municipality to be wholly re-demarcated into Gauteng. The Gauteng legislature and Municipal Demarcation Board made preparations for Merafong to be included in the West Rand District Municipality. However, when the Constitution Twelfth Amendment Bill and the Repeals Bill were published, Merafong had been included in the Southern District Municipality of North West Province. Residents responded with violent protests. It later emerged that the Minister of Provincial and Local Government had asked the Municipal Demarcation Board to place Merafong in the North West Province, and that the Gauteng legislature had withdrawn its support for including Merafong in the province. In spite of the protests, the Twelfth Amendment Bill and the Repeals Bill were passed in November 2005. In February 2009, however, legislation

was passed for the reintegration of Merafong into Gauteng (Naidu and Narsiah 2009: 28).

Finally, in *Doctors for Life International v The Speaker of the National Assembly* (2010), Nyathi (2010) highlights a different kind of case that deals with public participation, and lends credence to its salience and the courts' support for it. In this instance, *Doctors for Life* contended that parliament had failed to fulfil its constitutional obligation in facilitating public involvement, when it passed four Bills relating to health issues: the Sterilisation Amendment Bill, the Traditional Health Practitioners Bill, the Choice on Termination of Pregnancy Amendment Bill, and the Dental Technicians Amendment Bill. Nyathi (2010: 104) provides an analysis of what the Constitutional Court did for public participation in reviewing the *Doctors for Life* case. The issues before the Court in this case, were:

- ♦ what the nature of the duty to facilitate public participation is;
- ♦ whether the legislature had discharged its duty to facilitate public involvement in the legislative process of certain health-related legislation; and
- ♦ what the impact was on the validity of such legislation, if the facilitation of public involvement was flawed.

Regarding these issues, the Court focused on whether the legislature had acted reasonably in discharging the duty to facilitate public involvement. According to Nyathi (2010: 103), Judge Sachs J, in concurring with the majority judgment, emphasised the 'special meaning' of public participation within South Africa's democracy, and said the effect of public participation should be that:

All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful fashion. The objective is both symbolical and practical: the persons concerned must be manifestly shown the respect due to them as concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws.

Doctors for Life established a benchmark in terms of the constitutional commitment to further public participation. Nyathi (2010: 104) con-

cludes that the case creates an impression that the Constitutional Court is serious about addressing injustices of the past, and highlights the need for members of the legislature to be accountable to the electorate.

CONCLUSION

The *Democratic Alliance v eThekweni Municipality* and the three other illustrative cases dealing with issues of public participation discussed in this paper – suggest that participation processes are sensitive issues in South Africa. The courts' decisions highlight the need for local government authorities to follow laid-down procedures, particularly concerning public consultation. Three issues are relevant. Firstly, although Section 152 (e) of the Constitution provides for municipalities to encourage public participation in matters of local government, effective participation remains difficult to attain. As the *Matatiele* and *Merafong* cases demonstrate, sufficient attention is not given to the views of grassroots' citizens. Secondly, in spite of the Constitution providing for both representative and participatory forms of democracy, representative democracy tends to be given precedence. However, given South Africa's history of marginalisation, the principles of participatory democracy should be taken more seriously than we have seen so far. Thirdly, from the primary and illustrative cases cited here, South Africans' insistence on the right to have their views heard and respected in decisions affecting them – is now firmly established. This conclusion underlines the fact that the process of participation is as important as its outcome and that participation is not only a means to an end, but an end in itself. Further, development plans that do not have the support of those affected rarely succeed.

The decisions of the courts in the cases cited above are on the one hand a failure, and on the other hand a triumph of democracy and good governance in South Africa. They are a failure because it appears that a pattern of higher spheres of governance over-determining lower spheres and disregarding citizens' rights is emerging – in spite of constitutional provisions to promote public participation. The discussion confirms those new institutional arrangements and processes for citizen involvement do not necessarily present opportunities for engage-

ment between the governed and those in government. Consequently, the institutional gaps are not owing to a lack of structures and systems, but a result of the thinking patterns of individuals in the institutions. In this context, much depends on the strength of the courts, but also on citizens' confidence to find their voice through the courts. A lesson in all of this is that provincial and local authorities need to listen more to the voices of grassroots' citizens, through open and genuine consultation – rather than through providing political solutions to matters of concern to citizens. Decisions of the courts are a triumph for democracy and good governance, because the courts are generally supportive of the tenets of participatory democracy, and have shown readiness to intervene – often in favour of the citizenry – where public participation processes have not been followed. What South African society should avoid, is the process of the courts becoming the established conduit through which key administrative processes are dealt with – as was seen in the *Matatiele* and *Merafong* cross-border municipality court cases.

RECOMMENDATIONS

Grassroots' citizens need to take participation in local affairs seriously, and utilise the abundant democratic and participatory spaces in day-to-day public administration processes – in order to obviate the need to resort to the courts. The following could be useful guidelines in this regard:

Efficient, Comprehensible Outreach Strategies

When government arranges community meetings and other such fora to involve citizens, care should be taken to reduce to a minimum all barriers to participation – including gender (and other) biases, geographical location, and physical, financial and human resources. In particular, care should be taken to involve the voices that lack influence – for example those not organised into community or civic organisations, like women, the handicapped and the indisposed. This can be done through targeted participation processes that seek to involve such groups through their established structures – like mothers' unions, stokvel organisations, women farmers' youth groups – to mention but a few.

Greater Visibility of Councillors and Parliamentarians in Communities

A lack of communication between political representatives and citizens is often blamed for the lack of communication and participation by citizens. In this regard, politicians should be encouraged to publicise their constituency work to the public. This would help create a closer working relationship with citizens and with local media and community groupings.

Community Mobilisation for Citizenship

South Africa is a country with a history of mass mobilisation. Since the days of apartheid, communities and community groupings have often galvanised their efforts to deal with commonly perceived problems. This has happened through spontaneous engagements, or through organised and planned methods of mass action. Unfortunately, this tendency has continued into the new democracy. We still see spontaneous actions of protests against poor service delivery, low wages, and other issues that perturb communities. It is, however, an untenable situation to build a society by relying on spontaneous actions or emotional responses, since such strategies often lead to destruction of life and property.

Starting with existing legislation and the participatory processes that flow from them, community leaders should start by talking to the people concerned and working to build community structures with them. Awareness-raising is an important aspect to consider in building citizenship. Within communities it will best be achieved through explanation of goals and clarifying the potential benefits of public participation.

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