

DEMOCRATIC DEEPENING IN SOUTH AFRICA

The effect of public-private contracts on
local government service delivery and
local citizen participation

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A thesis submitted to the Faculty of Humanities, University of the Witwatersrand,
in fulfilment of the requirements for the degree of Doctor of Philosophy.

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ABSTRACT

LOCAL GOVERNMENT in South Africa is well positioned to meet some of the substantive challenges posed by the democratic deepening and development discourses in new democracies. It is responsible for the delivery of services to local citizens in a way that is 'equitable, accessible and financially sustainable'. It is also supposed to 'develop a culture of municipal governance that compliments formal representative government with a system of participatory governance'. Democratic decentralisation in South Africa does however have its limits in fiscal and institutional terms. Furthermore the course of developmental decentralisation is affected by levels of civil society activity and political will. Also, following the global trend towards New Public Management and national pressure on local government to be economically viable, various local authorities in South Africa have opted to enter into public – private partnerships for service delivery. These contract based arrangements significantly alter the way basic services are defined and destroy the relationship between local authorities and local citizens. Services become commodities as opposed to rights, local citizens become consumers and local authorities cease to be politically accountable. This thesis examines the effect contract based service delivery has on democratic deepening in terms of local citizens being afforded their rights to basic services and having meaningful opportunities to participate in the affairs of their local authorities.

DECLARATION

I hereby declare that this thesis is my own unaided work. It is being submitted for the degree of Doctor of Philosophy at the University of the Witwatersrand Johannesburg. It has not been submitted before for any other degree or examination at any other university.

_____ day of _____

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Chapter One

GREAT EXPECTATIONS: DEMOCRATIC LOCAL GOVERNMENT IN SOUTH AFRICA

'Local government holds the promise of being the crucial sphere of state action to extend democracy to all South Africans and to change the traditional relations of wealth and power.'¹

THIS VIEW underscores the expectations of local government in South Africa as an instrument for democratisation and, consequently, a way to empower ordinary citizens by enforcing their socioeconomic rights and extending them the ability to participate in public affairs. Access to socioeconomic rights has however proved rather contentious. Poor services and service cut offs for non payment have sparked protest across the country. These protests have given rise to a new breed of social movements questioning service policy on the basis of human rights. The rise of these social movements suggest that citizens cannot effect change through institutional structures for participation and are (in some instances) turning to other, albeit democratic means.

A number of theories have been advanced to explain why democratic local government in South Africa seems to be failing in expectations. One of these theories is that devolving democracy alone cannot sustain successful decentralisation – what is also needed is genuine financial and administrative decentralisation.² Another theory is that the national government's 'technocratic concern with getting the institutions right has all but obviated efforts to build local democracy and mobilise participation.' The commit-

¹ S Parnell and E Pieterse, Developmental local government, in S Parnell, E Pieterse, M Swilling and D Wooldridge (eds), *Democratising Local Government; The South African Experiment*, University of Cape Town Press, Cape Town, 2000, p 83.

² J Beall, O Crankshaw and S Parnell, *Uniting a Divided City; Governance and Social Exclusion in Johannesburg*, Earthscan Publications, London 2002, p 67 – drawing on James Manor's criteria for successful decentralisation.

ment to democratic local government therefore has given way to political centralisation, expanded technocratic and managerial authority and a shift from democratic to market modes of accountability.³ In this study I hope to contribute to the debate around these theories with specific regard to the effect on substantive democracy by current methods of local service delivery, specifically in the form of public private contracts and levels of local participation linked with the use of public private contracts. I acknowledge that while some local authorities in South Africa employ contracts for the delivery of services, it is by no means the norm – various other methods of service delivery also prevail.

Democratic local government in South Africa bears the hopes of the civics movement which before the advent of democracy, spoke more legitimately for local citizens than the apartheid ‘black local authorities’. The civics movement comprised local social movements which mobilised communities around the problems of daily township life. The civics advocated non-racialism, economic equality and ‘people’s power’.⁴ Given that political organisations had been banned and were unable to operate openly the civics of the 1980s began to pursue a more political role. They were at the forefront of mass mobilisation, protests and resistance campaigns. Many of their demands were of a political nature involving the unbanning of political organisations and the abolition of racial structures at the various levels of government. The civics strongly denounced the formal structures of apartheid local government on the basis of their being racist and existing to institutionalise secondary citizenship. During the 1980s several civics negotiated with some level of government or business about ongoing rent boycotts, services and socioeconomic needs. Apartheid authorities believed that civics were attempting to ‘make South Africa ungovernable’ and establish ‘alternative local government structures’. As a result many civics were banned or their

³ P Heller, Moving the state: the politics of democratic decentralisation in Kerala, South Africa and Porto Alegre, *Politics & Society*, 29 (1), 2001.

⁴ M Swilling, W Cobbett and R Hunter, Finance, electricity costs and the rent boycott, in M Swilling, R Humphries and K Shubane, *Apartheid City in Transition*, Oxford University Press, Cape Town, 1991.

leaders and participants detained.⁵ The civic movement resurged again however in the 1990s where there are examples of provincial authorities negotiating with civic movements in an effort to avert the collapse of defunct ‘black local authorities’. During these negotiations the civics articulated their demands as including; non racial municipalities based on one tax base, no cut offs for services, the upgrading of services and conditions in townships, affordable service charges, the right to organise and report back and the resignation of ‘illegitimate’ councillors.⁶ The civics therefore had already begun to articulate their vision of a new, legitimate local government which provided basic services in an equitable and affordable way and facilitated local participation. In 1992 the South African National Civic Organisation was launched and brought all the township based civic organisations together in a national civic structure. The Organisation played a central role in the negotiated reform of local government during 1992-1993 just before the passing of the interim democratic Constitution.⁷ The civics’ commitment to equitable local service delivery and local level participation is echoed in the Green and White Papers on Local Government, precursors to national legislation instituting democratic local government in South Africa.⁸

The final democratic Constitution of 1996 established local government as an autonomous sphere of government enjoined to act accountably and democratically, ensuring the provision of services in an equitable manner and encouraging the involvement of communities in its affairs.⁹ Democratic local government in South Africa was also touted as the ‘hands and feet’ of the African National Congress government’s Reconstruction and Develop-

⁵ C Heymans, Towards people’s development? Civic associations and development in South Africa, *Urban Forum*, 4 (1), 1993.

⁶ C Coovadia, The role of the civic movement, in Swilling et al, *Apartheid City in Transition*.

⁷ J Seekings, SANCO: strategic dilemmas in a democratic South Africa, *Transformation*, 34, 1997.

⁸ Ministry of Provincial Affairs and Constitutional Development, Green Paper on Local Government, October 1997; White Paper on Local Government, March 1998.

⁹ Constitution of the Republic of South Africa, Act 108 of 1996, sec 152 (1).

ment Programme drawn up to ‘meet the basic needs of people – jobs, land, housing, water, electricity, telecommunications, transport...health care and social welfare.’¹⁰ The role of local government in promoting substantive democracy and development was thus set. The ‘hands and feet’ metaphor however suggests that local government is simply some form of an extension of national government. Indeed it has been asked, ‘Why can’t we also have eyes, ears, a brain and a voice? (and maybe a chequebook would help.)’¹¹ This question highlights some of the constraints faced by local government in delivering its lofty mandate.

One of the obstacles faced by local government in South Africa is what has been labelled ‘unfunded mandates’ – where national development programmes have been passed down to local level for implementation without adequate funding.¹² Local government has also had various systems and structural difficulties given the mammoth task of amalgamating and restructuring at the local level.¹³ The finance and capacity constraints have therefore prompted local authorities to consider and implement alternative means of service delivery such as those provided by public-private partnerships. These initiatives are also given impetus by the African National Congress embracing a growth led strategy of macroeconomics in its 1996 Growth Employment and Redistribution Policy which dictates that local government be self financing. Market based service delivery initiatives however throw up doubts with regards constitutionality.¹⁴

¹⁰ ANC, *Reconstruction and Development Programme*, 1994, sec 1.4.2.

¹¹ M Swilling, quoted in P Bond, *Elite Transition: From Apartheid to Neoliberalism in South Africa*, University of Natal Press, Pietermaritzburg, 2000, p106

¹² D Atkinson, A passion to govern: third generation issues facing local government in South Africa, Centre for Development and Enterprise, Johannesburg, March 2003.

¹³ C Pycroft, Democracy and delivery: the rationalisation of local government in South Africa’, *International Review of Administrative Sciences*, 66, 2000.

¹⁴ P Bond, D McDonald and G Ruiters, Water privatization in SADC countries: the state of the debate, in P Bond, *Commodification of Public Goods: Critique and Alternatives*, Paper presented to the World Council of Churches Dialogue with the World Bank and the International Monetary Fund, Geneva, 14 February 2003; and A

Another obstacle faced at local government level pertains to local citizens and their ability to participate through local government structures. The Integrated Development Planning process, an integral means of eliciting local participation, has been described as ‘prescriptive and state led.’¹⁵ The advent of ward councillors and ward committees on the other hand – also important mechanisms for participation, seems to be suffering a lack of entrenchment.¹⁶ Actual citizen participation at local levels has been explained as ‘burn out’ in terms of activism (following apartheid resistance) or a sense of disillusionment with local politics and a feeling that local politicians are inefficient or unaccountable.¹⁷ A study on post apartheid civil society suggests that notwithstanding a rise in social movements mobilising pro-poor issues there are also many organisations that prefer to be more collaborative with government than adversarial.¹⁸ This affects the way in which local citizens can participate. The decentralisation process in South Africa has been described as ‘a largely top-down and bureaucratically driven process’.¹⁹ In effect this has meant that government has disengaged itself from civil society and developed various centralising tendencies. These tendencies have taken root at local government levels where councillors are seen as less representative of local citizens and more of local councils.²⁰

C Gillett, The impact of water and sanitation service privatisation on the poor, MA thesis, University of Witwatersrand, 2002.

¹⁵ Heller, Moving the state.

¹⁶ Atkinson, A passion to govern.

¹⁷ J Beall, O Crankshaw and S Parnell, Towards inclusive urban governance in Johannesburg, ESCOR Commissioned Research Paper, March 2001.

¹⁸ A Habib, State-civil society relations in post apartheid South Africa, in J Daniel, A Habib and R Southall, *South Africa: State of the Nation 2003*, Human Sciences Research Council, Cape Town, 2003.

¹⁹ Heller, Moving the state.

²⁰ *ibid.*

FOCUS OF THE THESIS: LOCAL GOVERNMENT SERVICE DELIVERY AND PARTICIPATION

In this thesis I focus on local government's mandate to deliver services to local citizens and facilitate their participation in local affairs. My point of interest is that this mandate can go some way to meeting the substantive demands of democracy where citizens are empowered with the socio-economic rights written into the Constitution²¹ and are reasonably able to influence public decision making.²² I explore how far local government can be said to be living up to the expectations of local government conceived by the civics movement subsequently entrenched in legislation – delivering services in a way that is 'equitable, accessible and financially sustainable',²³ and developing 'a culture of municipal governance that complements formal representative government with a system of participatory governance.'²⁴ As already mentioned this study is limited to an examination of service delivery through the use of public private contracts and the participation processes linked with them. For this reason the study's contribution will be specifically regarding various service delivery and participation trends that emerge during the use of contracts and their impact upon deepening democracy.

RESEARCH QUESTIONS AND ARGUMENT: DEEPENING DEMOCRACY THROUGH LOCAL GOVERNMENT

The research questions that I ask are: do current modes of local government service delivery, specifically public private partnerships, promote substantive democracy in South Africa? And, likewise, do current levels and types of local participation linked to public private partnerships promote substantive democracy in South Africa? I define 'substantive' as that which promotes development - the process of expanding the real freedoms that people

²¹ T Lodge, *Politics in South Africa: From Mandela to Mbeki*, David Phillip, Cape Town, 2002, p 153.

²² S Friedman, South Africa: entering the post-Mandela era, *Journal of Democracy*, 10 (4), 1999.

²³ Local Government Municipal Systems Act, no 32 of 2000, sec 73 (2).

²⁴ *ibid*, sec 16 (1).

enjoy and removing the sources of ‘unfreedom’ such as poverty, poor economic opportunities and social deprivation. The development state establishes social and economic goals with which to guide the process of development and social mobilisation. It manages the delicate balance between economic growth and social development.²⁵ Development therefore incorporates sustainability. Sustainable development essentially means moving beyond a concern with economic growth to considering the quality of growth. This includes ensuring that people’s basic needs are being met and that cross-sectoral concerns are integrated into decision making processes and that communities are empowered.²⁶

The notion of sustainable development was the central agenda of the Reconstruction and Development Programme and the White Paper on Local Government established the advent of ‘developmental local government’. Developmental local government is defined as ‘local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.’²⁷ In the light of the long standing patterns of inequity resultant of apartheid and the severe backlogs in meeting basic human needs, developmental local government was given the responsibility of protecting the human rights enshrined in the Constitution that ensure access to housing, healthcare, education, food, water and social security by meeting basic needs and ‘improving the quality of life’. Furthermore in the light of divisions among communities and their previous isolation from opportuni-

²⁵ E Fakir, Public service delivery in a democratic, developmental state, Centre for Policy Studies, *Policy Issues and Actors*, 20 (3), 2006, p 3 – drawing on the work of Chalmers Johnson, Patrick Heller, and Amartya Sen.

²⁶ P Fitzgerald, A Mclenan and B Munslow, (eds), *Managing Sustainable Development in South Africa*, Oxford University Press, Cape Town, 1995, p 5.

²⁷ Ministry of Provincial Affairs and Constitutional Development, White Paper on Local Government, March 1998, sec B, 1.

ties and services, developmental local government was made responsible for representing local citizens and communities.²⁸

The meeting of developmental objectives achieves substantive democracy as it involves the implementation of greater political, social and economic equality. According to Larry Diamond and Leonard Morlino indicators for successful substantive democracy, or that which indicates substantive quality are freedom gained through the enforcing of socioeconomic rights and equality resulting when every citizen or group are given equal rights, protections and access. Substantive quality is also indicated when political participation goes beyond extending the franchise and can influence the government decision making processes. Thus there is extensive citizen participation not only through voting but ‘in the life of political parties and civil society organisations, in the discussion of public policy issues, in communicating with and demanding accountability from elected representatives, in monitoring official conduct and in direct engagement with public issues *at the local level*.’²⁹ Diamond and Morlino distinguish substantive democracy from formal democracy whose quality can be gauged from the institutions of democracy such as inter alia the rule of law, elections, competition and accountability. ‘Consolidating’ democracy therefore refers to the legitimising of democratic processes and mechanisms while ‘deepening’ democracy suggests entrenching rights (including socioeconomic rights) and incorporating citizens into the political process by giving them voice.³⁰

Given the developmental role of local government in South Africa and its target to promote substantive goals and thus deepen democracy, I predicate

²⁸ *ibid.*

²⁹ L Diamond and L Morlino, The quality of democracy: an overview, *Journal of Democracy*, 15 (4), 2004 (author’s emphasis).

³⁰ L Diamond, Consolidation: Challenges of New Democracies, Seminar Paper, Centre for Policy Studies, 9 February 1994.

this thesis on the ‘localist’ theory³¹ of local government. Drawn from the pluralist position, this theory values local government. Localists defend local government for its opposition to centralisation. The local model argues firstly that local government is grounded in the theory that there is value in the spread of power and the involvement of many decision makers in many different localities. Diffusion of power is a fundamental value and local authorities as elected bodies can represent the dispersion of legitimate political power. Secondly, there is strength in diversity of response – needs vary from locality to locality as do wishes and concerns, local government allows these wishes to be accommodated. Thirdly local government is local. This facilitates greater accessibility and responsiveness because councillors and officers live close to the decisions they have to make, to the people whose lives they affect and to the areas whose environments they shape. Fourthly, local government has the capacity to win public loyalty. It can better meet local needs and win support for public service provision. It facilitates a matching of local resources and local needs. Local government makes government less remote and more manageable.

The localist theory contrasts with the new right and public choice theory.³² Public choice theorists argue that the optimal mechanism for allocating goods and making decisions is in the market. Public bureaucracies and representative democracy are both seen as flawed in comparison. Public sector expenditure is seen as inherently prone to excessive growth – there is a tendency to over supply on the part of public bureaucracies. Also party competition builds up public expectation about what the state can provide as self interested politicians seek to maximise their vote. Once in office they disguise the consequence of decisions with the true economic and fiscal situation being hidden from the voters. There is a tendency to slip into deficit

³¹ G Jones and J Stewart, *The Case for Local Government*, Allen and Unwin, London, 1983, as discussed in G Stoker, *The Politics of Local Government*, Macmillan, London, 1991, chapter 10.

³² J Buchanan and G Tullock, *The Calculus of Consent*, Ann Arbor, University of Michigan Press, 1962, as discussed by P Dunleavy and B O’Leary, *Theories of the state*, in G Stoker, *The Politics of Local Government*, MacMillan, London, 1991.

funding to spread the costs of current state expenditure. Also politicians and bureaucrats may seek to establish constituencies to support their levels of spending. Vocal and highly organised interest groups are formed which push for more and better provision to meet their special interests and the losers are the disorganised, silent majority who finance this expenditure. Public choice theorists argue that existing democratic arrangements are very poor predictors of citizen's preferences and demands. Elections every few years force people to decide on a whole range of issues simultaneously and are inadequate compared to the range of choices provided by the market mechanism. They argue that the structure of political markets and the arrangements for citizen participation and decision making are crude in liberal democracies and that alternative arrangements should be experimented with. They conclude that local government has become 'too big, too distant, too politicised, too subject to pressure from vested interests and too complicated for ordinary people to understand let alone control'.³³ Public choice theorists argue that two institutional reforms are needed to mitigate the local government crisis. The first is to contract out services as this would open competition with private contractors and force bureaucrats to reveal information about the costs of the services they provide. This would also challenge the monopoly of in house service provision. They also assume that the profit orientation of private contractors and the narrower focus of their operations would make them flexible and efficient. The second institutional reform is the fragmentation of existing bureaucracies. Bureaucracies are too large and lack efficiency incentives. There should be a large number of smaller bureaucracies. The disaggregation of large bureaucracies with a monopoly of goods and services creates 'exit options' for customers providing opportunities for comparison and choice. Fragmentation would also discourage the tendency to oversupply.

Local government in South Africa because of its decentralised status, its proportional / constituency method of election, its ability to provide services

³³ Stoker, *The Politics of Local Government*, p 240.

internally or externally and its institutional methods for public participation, is amply equipped to achieve the goals set forth by the localist theory. I argue however that the local level mandate for development is constrained by the nature of decentralisation and by national policies aligned with neoliberal traditions which, manifested through the contracting out of service delivery, results in the reduction of local government from provider of services and protector of participation to ‘enabler’ of these important tools for development and thus democratic deepening. These constraints bear out some of the contemporary critiques of the localist theory. These include romanticising the local by downplaying local social inequalities and power relations and viewing the local in isolation from broader economic and political structures.³⁴

RESEARCH DESIGN AND METHODOLOGY: THE NELSPRUIT WATER CONCESSION AND THE ESKOM SHELL SOLAR CONCESSION CASE STUDIES

My research takes the form of two case studies which illustrate local level service delivery initiatives, in the form of public-private partnerships, in post 1994 South Africa. I chose to use case studies with the aim of gaining qualitative insights from particular communities with regards their experiences with service delivery and their levels of participation locally. The case studies in question are from two separate provinces Mpumalanga and KwaZulu-Natal both of which are highly contested in terms of service delivery. The Mpumalanga case study, the Nelspruit Concession, is one of water service delivery and concerns an urban community in the form of a township, formerly classified under a ‘black local authority’. The KwaZulu-Natal case study, the Eskom Shell Concession, is one of electricity service delivery concerning a rural community formerly falling within the jurisdiction of a ‘black homeland’. I expect that varying the geographical location and the nature of the service will provide a more genuine reflection on the quality of services and the levels of public participation – even though I note

³⁴ G Mohan, K Stokke, Participatory development and empowerment: the dangers of localism, *Third World Quarterly*, 21, (2), 2000 and O Tornquist, K Stokke, Local politics and democratisation in developing countries, Proposal Paper, June 2001.

that reaching a general conclusion on this subject is beyond the scope of this study.

Most of the field work for the case studies was carried out between 2002 and 2004 during a local government service delivery project I was working on in my capacity as a researcher at the Centre for Policy Studies (CPS) – the project was funded by the Ford Foundation.³⁵ The CPS study had its focal point in alternative methods of service delivery i.e. alternative to public service provision currently being instituted by local authorities. Hence various other forms of service provision prevailing in South Africa were examined. These included privatisation, public-private partnerships, public-public partnerships, corporatisation and coproduction. My personal point of focus during the field work however, was *the effect these alternative forms of service provision had on the quality of substantive democracy*. In the light of local government's developmental mandate, I reasoned that this effect could, to a certain degree, be assessed according to the quality of service delivery and the quality of citizen participation. My use of the term 'quality' follows Larry Diamond's use of the term 'quality of democracy'. My criteria for determining quality of service delivery includes equity, effectiveness and affordability. My criteria for determining quality of participation includes levels of public participation in terms of civil society activity, communication between service providers and users, municipal overseeing of services and the extent of utilising participatory mechanisms such as public meetings, ward councillors and ward committees.

My criteria for determining the quality of service delivery is informed firstly by the constitutional principle that all citizens have equal access to basic

³⁵ I am grateful to Dr Chris Landsberg, director of the Centre for Policy Studies, for his permission to use my research findings from the CPS project in the compilation of this thesis – see L Smith, S Mottiar and F White, *Testing the Limits of Market-Based Solutions to the Delivery of Essential Services: The Nelspruit Water Concession*, Research Report no 99, Centre for Policy Studies, Johannesburg, September 2003; and S Mottiar, and S George, *Electrification of the Rural Poor: Lessons from an Interim Concession*, Research Report no 104, Centre for Policy Studies, Johannesburg, September 2003.

services. There is an obligation on local authorities therefore to ensure that services are made available to all citizens. Secondly, the delivery of services has to be administered in a way that is adequate, sustainable and bears a level of responsiveness to local variation in community needs and reactions to community defined problems and priorities. My argument is that this marks the cornerstone of democracy – giving citizens a voice. Thirdly, services are of no use to citizens if they are not affordable. Again, this point coincides with the second generation rights entrenched in the Bill of Rights and furthered by legislation. If citizens cannot afford basic services, they still have a constitutional right to them. My criteria for determining the quality of participation is informed firstly by the fact that entrenched democracies are composed of lively and active civil societies. Secondly, if citizens at the local level are entitled to participate in decisions concerning the delivery of their services then communication between service provider and user is essential. Likewise if the service is provided by an agency other than the municipality, the municipality as a legitimate representer /protector of local citizens should have a systematic oversight role in the provision of services. Thirdly, there are formal mechanisms in place to ensure and enhance citizen participation at the local level, these include the advent of ward councillors and ward committees. I believe that the level and rate at which these mechanisms are utilised is an indication of the quality of participation because successful decentralisation for developmental ends requires not just imposing democracy from the top, but building democracy from the bottom. The Integrated Development Planning process is a further formal and important participation mechanism existing at local level – I have however not included it as a criterion because the focus of my research was participation with regards the specific service delivery arrangement in question.

The research, as mentioned above, was conducted for the most part in a qualitative way. Service users, township residents in the Mpumalanga case study and rural dwellers in the KwaZulu-Natal case study, were interviewed using a survey form. There was an emphasis however on engaging the person being interviewed in order to gain as much insight as possible about lo-

cal government service delivery and participation in local government. With regards to the former I was hoping to draw some insight as to whether or not these local communities previously disadvantaged in terms of services were receiving a better standard of service provision and if so, on what basis. Regarding the latter I was hoping to uncover whether or not these local communities had adequate input in matters of service delivery and whether this input was utilised with any impact. Service providers were interviewed through in depth interviews. Depending on the case studies, service providers included public utilities, concessionaires, municipal officials and municipal politicians. This group was interviewed in order to uncover prevailing views on how services should be provided, how the gap between administrative and political is being interpreted and how this is impacted on by skills, capacity and financial constraints. In depth interviews were also carried out, where relevant, with various labour and community group representatives. The point of interviewing this group was to examine the level and extent of civil society input into local government service delivery initiatives. Arguably, these groups represent local citizens and therefore articulate their preferences and grievances. They are intrinsic in giving local citizens a voice and a vehicle for participation.

The Nelspruit Water Concession - Mpumalanga

The fieldwork for the Nelspruit water concession was carried out in early 2003. This was four years into the official 30 year concession contract which was signed in April 1999. In depth interviews were conducted with the concessionaire (Biwater) and officials and politicians at the Mbombela Municipality. Relevant labour and civil society organisations were also interviewed these included the South African Mine Workers Union and the Anti Privatisation Forum. Interviews were also conducted among service users in the townships of Matsulu and KaNyamanzane. These two townships were specifically chosen as they exhibit low income rates, high unemployment levels and are good examples of the incorporation into newly democratic municipalities of formerly 'black' urban areas where services are

lacking and form a contentious issue in the light of hopes of a new democratic promise to extend services to the poor. Other townships in the concession area display much the same or even worse conditions than the ones chosen but Matsulu and KaNyamanzane were selected for purposes of easier accessibility. Approximately 15 householders in each township were interviewed using a survey which included open ended options for maximum qualitative input (see annexure). The Nelspruit water concession was chosen as a case study because it is one of South Africa's first two long term concession contracts (The other 30 year concession contract for the provision of water and sanitation services is the Dolphin Coast water concession) and it illustrates the continuing challenge faced by democratic South African municipalities to extend equitable services to urban townships in the context of newly established / amalgamated local authorities, lack of capacity and restricted municipal budgets. It also highlights some of the trends that are being established around issues of participation at local levels and their impact on democratic deepening.

The Eskom Shell Solar Concession – KwaZulu - Natal

The fieldwork for the Eskom Shell solar concession was carried out during the project's review period after the completion of an 18 month interim concession which ran from June 2002 to December 2003. In depth interviews were conducted with the concessionaire (Eskom Shell), the National Electricity Regulator, the Department of Minerals and Energy and the national electricity utility Eskom. Relevant civil society organisations were also interviewed these included; the Mawleni Development Community, Boboyi Multipurpose and Ziphakhamiso. While the Eskom Shell company has concession areas in both the KwaZulu- Natal province and the Eastern Cape province, for logistical purposes field research for this case study was limited to one province only – KwaZulu-Natal, specifically the Ugu District Municipality where municipal officials as well as politicians were interviewed. Field research was also carried out in two rural areas of Ugu, Dweshula and Kwajali – here, twenty households were interviewed using a

survey form (see annexure). Dweshula and Kwajali were selected because they are good examples of rural areas to which the new democratic dispensation has promised to extend services. They also represent examples of areas which were previously unrepresented politically and had no chance of participation in the affairs of their local authority. Indeed Dweshula and Kwajali are geographically located so far off Eskom's electricity grid that other sources of energy such as solar had to be considered as an alternative way to provide electricity services. The Eskom Shell concession was selected for research because of all the non-grid concessions awarded for solar energy (Other solar concessions awarded by the Department of Minerals and Energy include; Solar Vision for rural areas in the Northern Province, Nuon RAPS and Electricite de France-Total for rural areas in KwaZulu-Natal, Renewable Energy Africa for rural areas in the Eastern Cape and Transenerge for rural areas in the Eastern Cape and the North West Province) it has been running the longest with some 5 000 systems having been installed. Furthermore with it having reached the end of its interim period it was perfectly positioned to highlight the challenges involved in providing services to previously un-serviced rural areas in a democratic way. It also illustrates how necessary the political element in providing services and facilitating participation is for democratic deepening.

OUTLINE OF CHAPTERS

Chapter One

In Chapter One I have introduced my research questions, argument and area of research. I have also outlined my research design and methodology.

Chapter Two

In Chapter Two I define the concept of local government and locate it within theoretical debates pertaining to democracy and decentralisation. The key issues I review are; what is the link between local government and democracy i.e. why is local government seen as a way to promote democracy

or achieve the goals of substantive democracy? How is this link affected by different forms of decentralisation? And, what is the effect on this link given the advent of 'New Public Administration' techniques of service delivery and participation.

Chapter Three

In Chapter Three I provide an historical context for the emergence of democratic, developmental local government in South Africa by presenting an overview of the main features of local government under apartheid. I address the following issues; the nature and role of apartheid local government, the effect of this on service delivery to local citizens, the effect of this on participation of local citizens, resistance to apartheid local government, the factors that led up to transition and the transition to democratic local government.

Chapter Four

In Chapter Four I outline the legislative and policy framework for post apartheid local government in South Africa. I show how the new local government dispensation satisfies the prescriptions for democracy through decentralisation and how it is mandated with development for substantive ends.

Chapter Five

In Chapter Five I deal with the challenges faced by democratic, developmental local government in South Africa notwithstanding its design. Aside from the financial and institutional challenges for decentralisation (from the top), I also discuss the challenges implicit in building local democracy (from the bottom) through civil society activity and political will.

Chapter Six

In Chapter Six I discuss the impact of national government neoliberal policy on local government and the subsequent preference for public-private contracts to deliver services. I examine the subsequent effects of a managerial vision of local government on the ways local services are conceived and delivered and the way local participation is developed. Chapter Five and Six set the scene for my two case studies which illustrate the difficulties of pursuing democratic, developmental goals at local levels in the light of centralising, finance and capacity constraints as well as through the use of contracts.

Chapter Seven and Chapter Eight

I present my two case studies on the Nelspruit water concession and the Eskom Shell solar concession in Chapters Seven and Eight respectively. I have structured the research material for each case study uniformly. First I provide a background and context for each case study which includes the legislative / policy frameworks within which they are situated. I then discuss the mode of service delivery and its level of quality based on equity, effectiveness and affordability. Finally I discuss the issue of participation with reference to quality based on levels of public consultation and information provision as well as community input via civil society and other participation mechanisms such as ward councillors and ward committees. The key issues addressed by the case studies are how the contracting out of services changes the nature of local level service delivery to one that is commodity rather than rights based and perceives local service users as consumers rather than citizens.

Chapter Nine

In Chapter Nine I conclude with a discussion on the impact of local service delivery arrangements and levels and types of local participation on substantive democracy as revealed by the case studies.

Chapter Two

LOCAL GOVERNMENT, DEMOCRACY AND DEVELOPMENT: THEORIES OF DECENTRALISATION AND THE 'NEW PUBLIC ADMINISTRATION'

AS ESTABLISHED in Chapter One, local government in South Africa carries significant expectations for democratisation and development. In this chapter I locate these expectations within broader debates linking the institution of local government with the notion of democracy. I then discuss how various forms and types of decentralisation impact on the democratic element of local government. I also examine how the advent of the New Public Administration impacts upon the workings of local government transforming its traditional role in service delivery and the way it facilitates participation.

I define local government, for the purposes of this study, as that which operates in a restricted geographical area within a nation or state, is constituted by local election, and enjoys a measure of autonomy including the power to impose rates, fees or taxes.³⁶ Local government is therefore decentralised from central government. I understand decentralisation as the meaningful transfer or devolution of either resources and responsibilities for public services or decision making power from higher (central) levels of government to lower (local) levels of government, dispersed central state agencies or to the private sector (businesses, NGOs etc.) I define decentralisation or devolution separately from deconcentration or delegation which refer to the mere redistribution of authority within the central bureaucracy from centrally located bureaucrats to locally based representatives of the centre.³⁷

³⁶ L J Sharpe, Theories and values of local government, *Political Studies*, xviii (2), 1970.

³⁷ J T Dickovick, The measure and mismeasure of decentralisation: subnational autonomy in Senegal and South Africa, *Journal of Modern African Studies*, 43 (2),

LOCAL GOVERNMENT AND DEMOCRACY

In *Considerations on Representative Government*, John Stuart Mill contends that

the legislative portion at least of the governing body busies itself far too much with local affairs, employing the supreme power of the state in cutting ‘small knots’ which there ought to be other and better means of untying.³⁸

The point being made is that no national government can cope with everything to do with all its citizens from issues of the greatest magnitude to issues of the minutest detail. For Mill the delivery of services is best carried out by local government. He contends that paving, lighting, water supply, drainage, port and market regulations would be best left to local authorities with an adequate extension of authority. The prevailing argument supporting the existence and function of local government is that local government is optimally equipped to manage the concerns of its specific locality because it is better placed to understand and interpret both the conditions and needs of local communities.

The object of having a local representation is in order that those who have any interest in common, which they do not share with the general body of their countrymen, may manage that joint interest by themselves: and the purpose is contradicted if the distribution of local representation follows any other rule than the grouping of those joint interests. There are local interests peculiar to every town, whether great or small and common to all its inhabitants: every town therefore without distinction of size ought to have its municipal council.³⁹

Mill also values local government as instrumental ‘to the nourishment of public spirit and the development of intelligence’. He argues that aside from the limited role as jurymen the mass of the population have very little op-

2005; and B Goldfrank, The fragile flower of local democracy: a case study of decentralisation / participation in Montevideo, *Politics and Society*, 30 (1), 2002.

³⁸ J S Mill, *On Liberty and Considerations on Representative Government*, Basil Blackwell, Oxford, 1948, p 278.

³⁹ Mill, *On Liberty*, p 282.

portunity of personally sharing in the conduct of the general affairs of the community but local government is an antidote to this.

Reading newspapers and perhaps writing to them, public meetings and solicitations addressed to the political authorities are the extent of the participation of private citizens in general politics during the interval between one parliamentary election and another.⁴⁰

Mill's emphasis on participation is premised on the public education of citizens. He argues that within local government, besides the function of electing, citizens may themselves fill the numerous local executive offices where they would be acting for public interests. This would require speaking and thinking and would culminate in the 'carrying down of political education to the lower grades in society'.⁴¹

A more modern interpretation of the role of local authorities is offered by L J Sharpe.⁴² He contends that if local government did not exist something very much like it would have to be created in order to render the provision of services. Local government is a more efficient agent for providing services than central government because it is more likely to know the inimitable characteristics of each locality and adjust the administration of the service accordingly. Sharpe points out that if local government did not exist it would be perfectly possible for central departments to organise field agencies manned by staff resident in the locality who could acquire all the local knowledge. The pitfall in this case however would be that field agencies would be unable to coordinate their activities with each other. And it is this factor together with the need to accommodate local opinion that constitutes the main functional case for local government. Sharpe argues that communities not only vary in the mixture of needs and therefore services but there is often disagreement within the community as to what this mixture ought to be. It is not enough to be able to define the characteristics of the locality ob-

⁴⁰ *ibid*, p 279.

⁴¹ *ibid*, p 278.

⁴² Sharpe, Theories and values of local government.

jectively; account must also be taken of subjective views within the community. Then there is the consideration of the relative priorities of each major service given the varying conditions in each locality. According to Sharpe central government does not have the scope to deal with the reconciliation of these tasks throughout the country and this justifies the existence of local government.

Sharpe also discusses local government's role in facilitating participation. He argues that representative government at the national level has effectively usurped real democracy owing to the relation between scale and democracy which impedes the ability of all people everywhere to participate in government. Local government is therefore superior to national government in this respect because it provides more opportunity for wider participation by the public. Sharpe argues that in terms of increasing the scope for public participation local government has a role to play as public educator. Estimating the number of local councillors in England and Wales as close on 40,000, he argues that even allowing for a percentage of non participation there is still an educative process in play where the message of democracy is carried to the wider public. Local government is also an effective training ground for democracy in that there is evidence of local government experience being relevant to central government practises.

While Mill and Sharpe both make compelling arguments of the practicality of local government, the link between local government and democracy is yet to be established. Georges Langrod argues that there is no inevitable tie of reciprocal dependence between local government and democracy.⁴³ Democracy does not come into being where local government appears and it is possible for local government to continue and to develop under a regime which is not democratic or only superficially democratic. Langrod concedes that historically the development of local government has corresponded to an anti authoritarian process in the state since in decentralising the administrative system, emphasis was laid on the importance of the periphery in rela-

⁴³ G Langrod, Local government and democracy, *Public Administration*, 31, 1953.

tion to the centre. By carrying into effect in practise and in law, 'centrifugal administrative trends, the centripetal trend, linked with absolutism, was being fatally weakened'.⁴⁴ This process corresponded with a parallel evolution towards democratisation on the political social level. Langrod also concedes that consequently, on an institutional level and on that of the general climate, the development, stabilisation and extension of local government contribute towards the democratisation of customs, to the education of the masses and to preparing them for an active participation in public life. Despite this Langrod goes on to argue that none of these statements justifies the identification of local government with democracy. He claims that:

In spite of its deceptive title, local government is but a technical arrangement within the mechanism of the administrative system – a structural and functional detail based on the adaptation of traditional forms of the management of local affairs to the varied needs of modern administration.⁴⁵

Langrod adds that in some cases, the nature of local government bureaucracy in terms of red tape and power wielding officials, can in fact act as a brake on the process of democratisation. For Langrod there is a fundamental contradiction between the notions 'democracy' and 'local government'. He contends that democracy is by definition an egalitarian, majority and unitarian system which creates a social whole, a community which is uniform, levelled and subject to rules. Democracy avoids any splitting up of the governing and the governed, any atomisation and any appearance of intermediaries between the whole and the individual. Local government on the other hand is a phenomenon of differentiation, of individualisation and of separation. It represents and strengthens separate social groups with relative independence and autonomy constituting parts of the public power. For Langrod local government furthers disintegration. It is a kind of local quasi parlia-

⁴⁴ *ibid.*

⁴⁵ *ibid.*

mentarianism, the multiplicity of local representative regimes within a national representative regime.⁴⁶

Keith Panter-Brick disagrees with Langrod.⁴⁷ He argues that local government makes a vast contribution to democracy by allowing for greater participation in the process of governing. It also helps to bring about a democratic climate of opinion. Panter-Brick contends that democracy is not the egalitarian uniformity assumed by Langrod, but demands that various points of views and interests be taken into account. For Panter-Brick, democracy means the free acceptance of restraints as well as the supremacy of the general interest. Central and local governments therefore form partnerships and not contradictions. Executive action, he argues, can be a constraining force, whether imposed centrally or locally, in the general or in the local interest. It is likely to be used better, understood better and hence more freely accepted if at least some policy is left to be determined locally.

Elaborating from Panter-Brick and drawing from both Mill and Sharpe the link between local government and democracy seems to lie in its potential to promote three criteria intrinsic to democracy: accountability, responsiveness and representivity. In terms of accountability, if local government is elected by local communities and entails a constituency element where local councillors directly represent communities, it follows that there should be closer accountability of political representatives to local citizens than could be expected at national or even provincial level. In terms of responsiveness, local government is perfectly situated to understand and capture the diversity of situations and needs of local citizens and communities. Its workings and outcomes e.g. service delivery, therefore, would ideally reflect these differences and concerns. This reflection would also mean that citizens are participating in the affairs of local government more closely than they could in the affairs of national government – political participation is more accessible therefore at local levels. In terms of representivity, local government is a

⁴⁶ *ibid.*

⁴⁷ K Panter-Brick, Local government and democracy: a rejoinder, *Public Administration*, 31, 1953.

way of ensuring that all the significant political forces of a country are represented at some level. A share of power at the local level mitigates the force of exclusion at the national level.⁴⁸

DECENTRALISATION AND DEVELOPMENT

Richard Crook and James Manor, tracing the progress of decentralisation initiatives in the developing world, argue that decentralisation attempts in the 1950s and 1960s in Asia and Africa premised on bringing government closer to the people and tapping into local resources for development were impaired by ‘distrust and interference from above and by infighting and shortages of resources and expertise in elected councils and local communities’.⁴⁹ Despite this however the interest in decentralisation has continued in terms of its potential to enhance participation, good governance and democratisation. Conflating decentralisation with democracy is dangerous because often, the ways in which decentralisation is manifested affects democratic outcomes.

Decentralisation meeting democratic objectives is significantly affected by what kind of decentralisation is in place fiscally, institutionally and politically.⁵⁰ Fiscal decentralisation comprises the assignment of own source revenues as well as national funds to local government. The level and reach of fiscal decentralisation will have an effect on available resources as well as local government legitimacy.⁵¹ Decentralisation is meaningless unless local governments have sufficient financial resources to exercise their functions. The most autonomous of local revenue is when local government has a substantial tax base and has wide discretion to vary the rate of tax col-

⁴⁸ D Beetham, *Theorising democracy and local government*, in D King and G Stoker, *Rethinking Local Democracy*, Palgrave Macmillan, Hampshire, 1996.

⁴⁹ R C Crook and J Manor, *Democracy and Decentralisation in South Asia and West Africa*, Cambridge University Press, Cambridge, 1998, p 1.

⁵⁰ P Smoke, *Decentralisation in Africa: goals, dimensions, myths and challenges*, *Public Administration and Development*, 23, 2003.

⁵¹ *ibid.*

lected. Grants from central government are less conducive to local autonomy because local government is dependent on another body for its revenue and is accordingly unable to vary the rate collected. The nature of grants is also important. General grants are more conducive to local autonomy in that while local government cannot determine the amount of revenue raised it can determine how it is spent. Specific grants on the other hand mean that central government money's earmarked for specific programmes leaving local government with very little say as to how it is spent. The conventional view of the relationship between central government grants and local government autonomy is that the greater the degree of central government subsidisation of local government the greater the degree of control.⁵²

Institutional decentralisation refers to the administrative bodies, systems and mechanisms which manage and support decentralisation. Decentralisation will be unable to realise its goals if interaction amongst government levels is not managed to facilitate service delivery but acts rather to hinder it. Likewise local administrators need to have good working relationships with politicians in order to facilitate decentralisation.⁵³ Successful decentralisation requires developing the necessary managerial, organisational and technical capacities to make local government work. This entails planning processes, coordination between levels and the provision of public goods (as not all governance functions are always decentralised), coordination between levels of government which result in a balance between central authority and local competence and a working bureaucracy translating input via participation into output.⁵⁴

Political decentralisation is an important component of decentralisation because no technical or organisational process is immune from power and politics. The practical aspects of decentralisation i.e. financial and institu-

⁵² R Cameron, Central-local financial relations in South Africa, *Local Government Studies*, 28 (4), 2002.

⁵³ Smoke, Decentralisation in Africa.

⁵⁴ Heller, Moving the state.

tional, are usually set in specific social, economic and political environments which ultimately have bearing on the success or failure of decentralisation initiatives in general. Political decentralisation implies a broadly inclusive local political process. This will support the efficiency factor linked with decentralisation as local government will be able to understand and act on the needs and preferences of local people better than central government. It will also support the accountability factor linked to decentralisation as local government is beholden to those it represents and not just itself or influential local elites.⁵⁵ Different governments however have different political purposes and motives for introducing decentralisation which are often reflected in the structure and form of decentralisation or revealed in how the system functions after it is introduced. Decentralisation is essentially about the distribution of power and resources, both amongst different levels and territorial areas of the state, and amongst different interests in their relationships to ruling elites.⁵⁶

Aside from political decentralisation there is also a need to decentralise power within society. Many newly democratised states remain 'heavily centralised' despite having officially decentralised power by setting up municipal and other local authorities. The main reason for this can be attributed to the fact that the political system of a single party or dominant party means that municipal councillors or mayors are chosen by the dominant party holding central power and are therefore 'hierarchical subordinates of government'. This leads to popular disaffection as people feel that they can have no influence on local affairs. Simply decentralising the structures of the state cannot achieve its objectives unless power is redistributed in society.⁵⁷ So there has to be a commitment to building local democracy from the 'bottom'

⁵⁵ Smoke, Decentralisation in Africa.

⁵⁶ R C Crook, Decentralisation and poverty reduction in Africa: The politics of local-central relations, Institute of Development Studies, University of Sussex, Brighton, UK, 2002.

⁵⁷ J M Nzouankeu, Decentralisation and democracy in Africa, in P Mawhood, *Local Government in the Third World: The Experience of Decentralisation in Tropical Africa*, Africa Institute, Pretoria, 1993.

as opposed to imposing it from the ‘top’. One of the ways in which this can be achieved is through a vibrant and participatory civil society which can mobilise previously marginalized actors and which is a way of tapping into the capacity of local actors to best know and express their interests.⁵⁸ This would also mitigate contemporary critiques of localism which warn of treating ‘the local’ as a harmonious community with largely consensual views, of setting ‘the poor’ against an unspecified ‘elite’ and of using the term ‘community’ in a way that determines needs within parameters set by outsiders.⁵⁹

As noted above, decentralisation is cited as an instrument for development because decentralised forms of government can be more responsive to the needs of the poor and more likely to enhance participation at the ‘community level’. Responsiveness is defined as the achievement of congruence between community preferences and public policies while participation is defined as not just an increase in the quantity of participation but also an increase in the scope of participation to include the poor and disadvantaged. Responsiveness however does not simply follow from increasing participation or representation of the poor. For responsiveness to occur, participation must be ‘effective’ i.e. participation must result in changes in organisational behaviour and accountability of relevant government structures. Accountability in this instance involves internal accountability i.e. of bureaucrats to elected representatives as well as external accountability i.e. fairness of elections and representativeness of elected councillors.⁶⁰

THE ‘NEW PUBLIC ADMINISTRATION’

Notwithstanding the financial, institutional and political prescriptions to successful decentralisation, the challenges involved in procuring development through decentralisation are further compounded by the advent of what

⁵⁸ Heller, *Moving the state*.

⁵⁹ Mohan, Stokke, *Participatory development and empowerment*.

⁶⁰ Crook, *Decentralisation and poverty reduction in Africa*.

is known as the ‘New Public Administration’ or ‘New Public Management’, which owing to globalisation and the subsequent embracing of neoliberal economics by developing countries, has become a growing trend within local government. Patrick Heller notes that:

Across the political spectrum, the disenchantment with centralised and bureaucratic states has made the call for decentralisation an article of faith. Strengthening and empowering local government has been justified not only on the grounds of making government more efficient but also on the grounds of increasing accountability and participation. But to govern is to exercise power, and there are no a priori reasons why localised forms of governance are more democratic. Indeed the history of colonial rule was largely a history of decentralised authority in which order was secured and revenues extracted through local despots. And in its contemporary incarnation, decentralisation in the developing world, especially when driven by international development agencies, has more often than not been associated with the rolling back of the state, the extension of bureaucratic control and the marketisation of social services.⁶¹

Techniques employed by the ‘New Public Administration’ change the nature of the way services are provided by local government in terms of an extension of actors and organisations involved. This transforms the dynamics of service delivery especially with regards to local government responsibility and accountability.

The ‘New Public Administration’ has its roots in critiques of the rational administrative model. The rational administrative model usually comprises inherited administrations based on regulatory frameworks and scientific management practices which assume that there is a correct or rational response to each organisational issue. This often results in an over reliance on rigid regulatory frameworks which centralise power in management. This effectively disempowers the frontline worker resulting in failure of the organisation to respond to user need.⁶² The rational administrative model is

⁶¹ Heller, Moving the state.

⁶² D Wooldridge, P Cranko, Transforming public sector institutions in P Fitzgerald, A McLennan, B Munslow (eds), *Managing sustainable development in South Africa*, Oxford University Press, Oxford, 1999.

also criticised for failing to respond to requirements of new and fluid circumstances. While liberal tradition has argued that consensus within society is possible, Marxist ideology has argued that capitalist society is unresolved and characterised by a contradiction between classes. Attempts therefore have been made to move beyond the rational model with governments representing diverse ideologies translating their political agendas into institutional strategies developed along political lines.⁶³ These attempts include the new right model which argues that the most effective way to increase consumer control is through the creating a competitive arena, that is, providing consumers with a choice of service providers. This is done through the simulation of market conditions in the bureaucracy paving the way for privatisation of services and the use of contracts to regulate relationships between service providers and purchasers. Another model instituted in response to the rational model is that of professionalisation which argues that rigid control mechanisms of the rational bureaucratic model can be partially replaced by professional discretion. Bureaucratic control is therefore subject to horizontal accountability by qualified and impartial experts. But while public sector skills are upgraded, there is still little room for civil society to participate in governance. This has led to the emergence of another model, that of the entrepreneurial state which focuses on loosening bureaucratic rigidities through democratisation of internal work procedures, devolution of decision making power and consultation with civil society bodies.⁶⁴

Phil Harrison⁶⁵ argues that there were in fact two waves of the ‘New Public Management’, the first occurred in the 1980s in the UK, USA, Australia and New Zealand where neoliberal administrations were in power. This wave extended to ‘third world’ countries promoted by development agencies and resulted in decentralisation, privatisation and the separation of policy making from operations in the bid to bring a corporate culture into public agencies. The second wave of the ‘New Public Management’ occurred in the

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ P Harrison, Integrated development plans and Third Way politics in U Pillay, R Tomlinson, J Du Toit (eds), *Democracy and Delivery: Urban Policy in South Africa*, HSRC Press, Cape Town, 2006.

1990s when the traditionally left leaning parties of Europe and elsewhere challenged conservative (neoliberal) politics emphasising community participation and poverty alleviation. There was a shift away from economic rationality to a more complex model which came to be known as the ‘Third Way’ and was embraced by the USA, the UK and also by other countries such as Brazil and South Africa. The ‘Third Way’ comprises three components the first is joined up government which refers to governance through partnerships and co-ordination amongst the agents involved in policy making and implementation. The second component of the ‘Third Way’ is performance management where budgets are linked to approved priorities and strategies. The third component is participatory governance which gives new attention to collaboration with citizens as partners. The development and manifestations of the ‘New Public Management’ are discussed more fully below.

Karin Hansen ⁶⁶ argues that since the 1980s there has been a significant attempt by the welfare states of Europe and the western world to modernise the political and administrative institutions of the public sector. These efforts to modernise and reorganise the public sector are that which are commonly referred to as the ‘New Public Management’ which has two dimensions, market oriented reorganisation and management oriented reorganisation. Market orientated reorganisation includes privatisation, contracting out, purchaser / provider models, free choice / exit opportunities and competitive and economic incentives. These mechanisms lead to the limitation of the scope and degree of collective, political and administrative decision making in favour of more self regulating and non political mechanisms of social coordination. Examples of management orientated reorganisation are decentralisation of decision making competence and responsibility, user influence, goal steering / management by objectives, joint forums of strategic leadership, efficiency monitoring, service and quality management systems. These measures innovate and restructure the organisation of political and

⁶⁶ K Hansen, Local councilors: between local ‘government’ and local ‘governance’, *Public Administration*, 79 (1), 2001.

administrative decision and policy making. Hansen argues that reorganisation results in a structural change from one formal and authoritative centre of public decision and policy making at the local level (i.e. local government) towards a multitude of more or less autonomous entities, public as well as private institutions, associations and actors networking within their respective domains of policymaking (i.e. local governance).

Mohan Kaul,⁶⁷ like Hansen shows that over the last two decades there have been fundamental changes in the workings of government which have led to innovations resulting in what he terms the 'New Public Administration'. He argues that these have been fuelled by a combination of economic crisis and geopolitical changes resulting in reduced financial resources for governments as well as the development of a set of new managerial strategies that promise to lever greater results from fewer resources. Also the changing role and responsibilities of governments have been driven by economic pressures. And a general collapse of centrally planned economic systems underscored the poor performance of government services worldwide. According to Kaul this collapse demonstrated that solutions to the problems of poor public services not only required a managerial overhaul but also a reassessment of the responsibilities of government in economic management and the delivery of public services. The upsurge in liberal market economic policies and in liberal democratic political philosophies led to a narrower definition of the role of government, the new institutional economics, combined with a wave of private business style management practise changed the structure and management of public services. Kaul argues that the role of government has been questioned and the overriding concern with economic growth has led to the re focusing and narrowing of government institutions and responsibilities. In both developed and developing economies many have sought new modes of administration that avoid the errors of central and corporate planning approaches popular in the 1960s. Consistently the preferred role of government has changed from acting as the principal vehicle for socioeco-

⁶⁷ M Kaul, *The New Public Administration: management innovations in government, Public Administration and Development*, 17, 1997.

conomic development to that of guiding and facilitating that development. Kaul points out that economic liberalisation, transfer of state owned enterprises to the private sector, reductions in the size of state bureaucracies and contracting out work have been placed higher on the states agenda. As government moves away from a 'concern to do towards a concern to ensure that things are done', the managerial focus has been directed away from the formal process towards results. Likewise citizens are being re-conceptualised as consumers of public services.

Ian Kirkpatrick and Miguel Lucio ⁶⁸ (using the UK as an example) argue that the New Public Management has emerged in response to the fundamental tensions which characterise the modern state – the tension between the state's role as a provider of welfare services and its role as a stabiliser of the economy. In the UK since the 1970s a state fiscal crisis imposed constraints on resources at a time when new politicised consumer demands and expectations were starting to emerge. These contradictory pressures forced government (both Labour and Conservative) to seek ways in which to re commodify non productive public services, increase their efficiency and reduce costs. This meant changing the internal organisation of the state to make it more compatible with political demands and the requirements of capital accumulation. This invariably included the use of contracting and market mechanisms throughout the 1980s and 1990s which saw the introduction of contract relations. Kilpatrick and Lucio contend that there are various problems and contradictions implicit in managing public services through contracts. The first is that the use of contract relations presents problems for governments in terms of how they maintain overall control and coordination. This may lead to a 'highly unstable centralised decentralisation' whereby the state retains overall control but allows different actors some degree of responsible autonomy. The second problem relates to the administrative problems arising from the use of contracts in practise. Contract rela-

⁶⁸ I Kirkpatrick and M M Lucio, The contract state and the future of public management, *Public Administration*, 74, Spring, 1996.

tions often lead to inflexible definitions of service and increasingly financially driven understandings of the purposes of public services.

Nicholas Deakin and Kieron Walsh⁶⁹ agree that contracts and markets have been crucial to the process of reinventing the public service (they use the UK as a reference point). They argue that this has transformed the state locally and centrally into an ‘enabling’ organisation responsible for ensuring that public services are delivered rather than producing them directly itself. The functions that the state no longer performs are entrusted to a variety of other agencies trading for profit or operating as voluntary bodies within a managed marketing where contract plays a key role. Deakin and Walsh argue that this approach has two assumptions: the first of which is that in the absence of market disciplines the state cannot deliver services efficiently and is vulnerable to producer capture and bureaucratic empire building. The second is that all activities involving the delivery of goods and services can be more efficiently and effectively undertaken through the market. Also the introduction of contracts as part of a broader form of change raises various political issues. Public reliance on private markets results in government sharing power which raises questions not only of how it manages but also how it governs. Deakin and Walsh conclude that issues of responsibility and accountability cannot simply be left to market logic to resolve.

Ian Harden in his work *The Contracting State*⁷⁰ deals further with the issue of contracts in the public sector. He argues that the use of contract in public services has two aspects. The first is in pursuit of political objectives. Contract connotes individual rights and freedom of choice. It is also essential to the functioning of the market system. Hence it is associated with consumer sovereignty in terms of decisions over what should be produced as well as with efficiency in the process of supply. The other aspect of the contractual approach is a potential for promoting constitutional values through

⁶⁹ N Deakin and K Walsh, The enabling state: the role of markets and contracts, *Public Administration*, 74, Spring, 1996.

⁷⁰ I Harden, *The Contracting State*, Open University Press, Buckingham, 1992.

an institutional separation of functions. Responsibility for deciding what services there should be is distinguished from responsibility for delivering these services. The separation of the roles of purchaser and provider offers the opportunity not only to pursue economy, efficiency and effectiveness but also to enhance both individual rights and the accountability of government for policy decisions.

According to Harden the classical liberal market economy is one of private economic actors. The role of government is not to be a player in the market but to provide a framework for it to function. A necessary element of the framework is the law of contract, which makes it possible for people to undertake legally binding obligations towards one another. In a market economy demand for goods and services and their supply are linked by flows of expenditure and income through voluntary contractual channels. Demand is the aggregate of individual spending decisions. Productive resources are allocated amongst suppliers on the basis of their efficiency and effectiveness in meeting demand. The basis of the system is the pursuit of self interest while the steering is provided by the price mechanism. Social goals, what to produce, how to produce and how to distribute are not the subject of authoritative decision but result from the market's aggregation of individual choices. Since market actors are assumed to operate in a rational self interested way, the key variable in the system is provided by the preferences of consumers. In other words consumers are sovereign. Harden argues that the market provides a model of economic efficiency in which no more 'wants' can be satisfied without some sacrifice of other 'wants'. It also embodies values of equality and freedom. Individuals are free to express their wishes through market choices. They can buy what they want and reject (exit from) what they do not. Consumer sovereignty thus amounts to a version of democratic equality in the process of determining economic outcomes; voice as well as exit. Harden argues that the law of contract has an overtly moral flavour the key principle being 'freedom of contract' – parties to a contract are free to reach what bargain they please. Individuals can create, vary and destroy legal rights and obligations through voluntary transactions with oth-

ers, the validity of which are not subject to the permission or approval of governments.

These important values however cannot be realised in the context of public services. Individuals relate to public services not just in one way, as consumers, but also as citizens and customers. These roles also do not correspond directly to the different ways in which public services may be financed. The way in which private services are funded (by payments from those who choose to receive them) resolves questions about who should be supplied and about who should receive what. Harden contends that the contract cannot work the same ‘magic’ for public services – the crucial issue is not how public services are paid for but whether there is an authoritative public decision that a service should exist. In the absence of consumer sovereignty the link between demand for services and their supply and the rights of individuals become complex and contingent. Although there may be scope for increasing the responsiveness of public services to various forms of expression of consumer demand, the public nature of public services means that they must be responsive not only to individuals as consumers but also to citizens and customers. Greater individual legal rights to public services are valuable in themselves and promote an effective supply of public services but they do not empower individuals in relation to decisions about the kind or level of public services that should be provided. A contract for public services does not result in consumer sovereignty when it is between the provider of a service and a public body. It makes no difference whether the body which provides the public service under contract is itself public or private. That demand is established by authoritative public decision is to a greater or lesser extent the case for all public services not just those where there is a contract for services. This is true whether or not the service is provided free. Charges may be levied on the consumers of public services but for there to be a market governed by consumer sovereignty, services must be priced. For Harden, consumer, citizen and customer represent three overlapping ways of expressing categories of legitimate interest in relation to public services. Customer refers to individuals and a variety of

corporate interests public and private. Consumer and citizen refer to individual interests but no clear difference between them appears. This confusion reflects deeper uncertainties about which services should be public and why, about how far they should be marketed or charged for, about the nature, scope and purpose of individual rights as regards public services and about the relationship between these different issues.

Michael Brereton and Michael Temple⁷¹ deal with how the introduction of private sector motivations and practises may have weakened the core ethos or public service within the public sector. They define public sector ethos as: the setting aside of personal interests, working altruistically for the public good; working with others collegially to promote that public good and integrity in dealing with the many and diverse problems which need solving if the public good is to be promoted. Sound ethos within the local bureaucracy would encompass accountability, honesty and impartiality, serving the community, altruistic motivation, a sense of loyalty to community profession and organisation. Brereton and Temple are quick to point out however that the public service ethos has not always been uniformly applied or accepted (the UK is their example). Brereton and Temple contend that the New Public Management emphasises lean and purposeful administrative structures where the bottom line for public officials has become the performance of their own cost centre to the detriment of traditional public service values. This also raises problems of accountability. Changing boundaries of the state has meant that divisions between public, private and voluntary sectors are shifting and opaque and that a number of different organisations are engaging in governance – and the majority of these agencies are unaccountable to the public for example there have been records of agencies who refuse to allow the public to examine their members interests. Brereton and Temple point out however that the growth in these agencies is not entirely undemocratic – marketisation has meant that public services have been made to take some notice of what the public really wants.

⁷¹ K Brereton and M Temple, The New Public Service ethos: an ethical environment for governance, *Public Administration*, 77 (3), 1999.

The transformations around modes of local government service delivery in terms of the increased use of contracts to provide services, the changing nature of the municipality from provider to enabler and the classification of service user as consumer rather than citizen has also had an effect on the nature and level of engagement between local government and the communities it is supposed to represent. This has an impact on participation at the local level.

Karin Hansen ⁷² argues that New Public Management significantly alters the traditional role of political councillors. For Hansen municipalities are democratic political institutions organising the common concerns of the public facilitated largely by political councillors. The role of political councillors includes comprehending subject matter from different points of view, considering it, compromising conflicting interests and judging what is most reasonable and appropriate in a given situation. As a result of the separation of politics and administration common in New Public Management, local councillors lose touch with communities and their interests. Hansen contends that this could be averted and democratic governance at local level restored in two ways. First, the various self governing institutions, entities and users must be recognised as political and governing entities and actors along with elected councillors. The political skills of elected representatives must be acquired by all actors and participants in local governance. The political and democratic dimension of public decision making should not be disregarded. Second elected councillors need a new governance role. Instead of being strengthened as central political leaders and decision makers, governing from above, elected councillors must become participant co-governors, contributing to public oriented interactions between the many institutions and actors in local governance.

⁷² Hansen, Local councilors.

Ronald Myers and Robert Lacey⁷³ deal further with the issue of service users being increasingly seen as consumers rather than citizens. They argue that quality of public services is now largely measured by customer satisfaction. Also current public sector reforms are premised on improving efficiency and responding to fiscal crisis. The reforms however do not reflect adequately on the role of government and may even culminate in government failing to fulfil its role adequately. This could lead to ill considered downsizing such as in the USA but it could, as it did in New Zealand, lead to a more efficient public sector as well as one that responds better to the policy aims of elected governments. In the UK public sector reforms have meant that a more professional civil service has been created which is more efficient but also a new objective has been added that of customer satisfaction.

Myers and Lacey argue that problems with public sector reform essentially centre around the principle/agent problem. There is a difficulty ensuring that the principle (the population represented by an elected executive) is faithfully served in situations where the agent's interests do not necessarily coincide with those of the principle and the principle has incomplete control over the agent. Also the ultimate principal, the taxpaying population is both the purchaser of public services as well as the owner of the provider of these services. As owner, the principal may expect greater efficiency and lower costs. The first agents will be the politicians elected to carry out the public's wishes. The outcome will however likely be resisted by the second agent, the bureaucracy, which politicians will have to take on based upon factors such as the degree to which they perceive these goals as a vote winning policy. As purchaser on the other hand, the principal is concerned with obtaining a high quality product and good personal service at the lowest possible price. In the private sector this would involve a purchaser and a seller where it would be easy to motivate the agent (seller) provide a high quality service through rewards linked to targets such as expanding the number of custom-

⁷³ R Myers and R Lacey, Consumer satisfaction, performance and accountability in the public sector, *International Review of Administrative Sciences*, 62, 1998.

ers or increasing branch profits. This allows the purchaser to determine price and quality either by negotiation or by taking business elsewhere. By contrast in the public sector, the incentives facing the bureaucrat immediately providing the service to the population are very different. Far from having a bottom line which would lead to wanting to satisfy the customer, the link to the customer is through a complex chain of multiple agencies which obscure rather than clarify accountability. According to Myers and Lacey, the key to addressing this problem is through incentives – how can agents be motivated to carry out principal's wishes? The UK and New Zealand both of whom have attempted to maximise market discipline and competition in the public service have introduced a variety of policy, institutional and procedural devices to reduce agency costs and to bring the ultimate principal into a more precisely defined and transparent relationship with the agent. These include; changing the relationship between ministers and departmental heads to make the latter more directly accountable to ministers, giving chief executives more discretion, opening positions in the civil service to outside competition, making clearer distinctions between governmental activities involving the provision of goods and services, those providing goods and services within government and those concerned with policy advice, defining as quantitatively as possible the outputs expected from government departments and establishing a system of financial accountability based on accounting of inputs and outputs.

Gerry Stoker, Lawrence Pratchett and Vivian Lowndes contend that the need for increased participation at the local level is being very clearly articulated by both municipalities and citizens alike. There are however some latent problems in this regard. Stoker et al draw their conclusions from a study on British local government which aims to elucidate current trends of participation at local levels. According to the study council members stressed the need for increased participation because council decisions were likely to be better informed and services likely to be improved with clear knowledge of needs. Both these benefits were reflective of the decision makers and service providers as opposed to citizens in terms of empowerment or raising

awareness. Views from within councils regarding participation were however enlightening. There was a prevalent feeling that the public was too apathetic to participate, that public participation efforts raised unrealistic public expectations, slowed down the decision making process, reflected views of particular groups who were not representative of the wider community and could result in relatively minor issues assuming greater importance than they warranted.⁷⁴ Views from local citizens were illustrative about participation exercises and are important given the scepticism about participation that exists among local politicians. The study revealed that citizens would participate on what they termed ‘issues that matter’. They also seemed unaware of the limits of local authority responsibility. Participation also seemed largely reactive as opposed to systematic and those who participated were mostly a few committed individuals or oppositely seen as those few who dominated. The study also shed some light on reasons for citizen non participation. Citizens claimed that councils ignored complaints and that local politicians made promises around election time but then failed to deliver on them. There was also a lack of awareness about opportunities to participate - very few people seemed to know about council meetings or activities or ways to influence council decisions.⁷⁵

The changes in the workings of local government have not culminated therefore in an eradication of the need for public participation. Rather the manner of public participation has changed. Lawrence Pratchett contends that in recent years traditional mechanisms for public engagement have been supplemented by a range of more innovative processes which seek to change the nature and impact of public participation. These innovations do more than provide additional means of public consultation, they add new dimensions to the democratic process by involving different groups and using different techniques to achieve different objectives. As part of a strategy

⁷⁴ V Lowndes, L Pratchett and G Stoker, Trends in public participation: part 1, local government perspectives, *Public Administration*, 79 (1), 2001.

⁷⁵ V Lowndes, L Pratchett and G Stoker, Trends in public participation: part 2, citizen’s perspectives, *Public Administration*, 79 (2), 2001.

for democratic renewal they are set to become as important to the practise of government as conventional features of modern democracy. Democracy is a form of government in which people rule. In so far as any innovation in government encourages or in any way provides opportunities for individuals to participate in its activities then it has a bearing upon the way in which democracy itself operates.

The international transformations in local government have had a distinct impact on local government systems in newly democratising African states. This impact is driven by the philosophy of economic liberalism as advocated by international financial institutions. Leonardo Villalon and Phillip Huxtable argue that 'Under neoliberalism, Africa is being urged to be more open, with less and limited participation by the state in the economy.'⁷⁶ Michael Bratton and Nicholas Van Der Walle contend that there is evidence that democratisation in Africa is driven primarily by international donor and financial agencies. These donor agencies demand political change either as a condition for further loans or as a foil to material sanctions.⁷⁷ In democratic South Africa the 'New Public Administration' has taken root within local government structures following national government's shift from a 'radical reforming path' to a more 'neoliberal path'.⁷⁸ The introduction of the Integrated Development Plan in 1996 operating at local level is indicative of the 'Third Way' influence but was preceded by various events which shaped the road to New Public Administration in South Africa. In the late 1970s the reformist wing of the apartheid state began searching for solutions to the growing political and economic crisis. It was hoped that some form of regional co-ordination would help mitigate the effects of apartheid planning.

⁷⁶ L A Villalon and P A Huxtable (eds), *The African State at a Critical Juncture: Between Disintegration and Reconfiguration*, Lynne Rienner Publishers, Boulder, London, 1998, p 33.

⁷⁷ M Bratton and N Van Der Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge University Press, Cambridge, 1997, p 33.

⁷⁸ M Szeftel, Two cheers? South African democracy's first decade, *Review of African Political Economy*, 100, 2004.

These initiatives took the form of rural development programmes which had limited impact. A more important influence in this regard were the struggles of the grass roots township based civics movement mobilising community activity around local issues. The African National Congress, under pressure from western governments, development agencies and private capital to adopt orthodox economic and development policies and in the light of the collapse of state socialism, turned to the developmental state model which was broadly acceptable to global capitalism and also to 'Third Way' discourse and as local government came more prominently onto the agenda the prominence of New Public Administration type thinking became more apparent.⁷⁹

Over the next three chapters I trace the development of local government in South Africa from its apartheid structure to its new democratic, developmental structure and the impact upon this structure of the nature of decentralisation in South Africa and of national government's neoliberal stance and the subsequent increased use of public-private partnerships for service delivery.

⁷⁹ Harrison, Integrated development plans and Third Way politics.

Chapter Three

APARTHEID LOCAL GOVERNMENT

IN THIS CHAPTER I provide an historical context for the emergence of democratic, developmental local government in South Africa. I do this through an overview of the main features of apartheid local government and the effect of these on service delivery and participation levels of local citizens. I also examine the resistance to apartheid local government, the factors that led up to transition and the transition to democratic local government.

RACIAL LOCAL GOVERNMENT

Before the advent of democracy in 1994, South Africa's system of local government was formulated according to colonial and then apartheid policy. This resulted in a local government system structured purely along racial lines where there were separate town and city councils for 'whites', 'blacks', 'coloureds' and 'Indians'.⁸⁰ White municipalities essentially followed the British model and enjoyed considerable autonomy within the limits of powers accorded them and subject to the control of provincial authorities and the central state.⁸¹ Black local authorities only came into being in response to increased black urbanisation and were initially constituted under the 'guardianship' of white local authorities and later, the central state through the Administration Boards. It was only in 1982 that black local authorities were granted full municipal status.⁸² Coloured and Indian local authorities were instituted as Management Committees or Local Affairs

⁸⁰ I am using the terms 'white', 'black', 'coloured' and 'Indian' purely for the purposes of clarity and not because I endorse them in any way.

⁸¹ S Bekker, Cities straddling homeland boundaries, in Swilling et al, *Apartheid City in Transition*.

⁸² C Heymans and R White, Playing politics without power: the state of black local government in the South Africa of the 1980s/1990s, *Politikon*, 18 (1), 1991.

Committees. They were essentially advisory bodies to the 'parent' white municipalities and had limited decision making powers.⁸³

'White' local government – 'agent of the state'

From 1910 until 1983 acts of parliament promulgated the powers of provincial councils and in turn, provincial ordinances created local authorities, defined the scope of their legal jurisdiction and generally regulated and controlled them. Local authorities could therefore only make laws within the parameters of this legislation. The doctrine of ultra vires was strictly applied (i.e. that local authorities may perform a statute only if it is specifically authorised by a higher tier of government). Thus local authorities were prevented from exceeding their powers and spending money without authority. No court of law was competent to pass judgement on the nature of powers that had been devolved to local government. The South African local government system had no constitutional safe guards either in the South Africa Act of 1909 or in the 1961 Constitution. When the National Party was elected to power in 1948 the implementation of their apartheid policy meant considerable interference in local affairs. Prime Minister Verwoerd commented that 'local authorities are the agents of the state with respect to the execution of such policy'.⁸⁴ In consequence a number of Acts were passed sealing central control over the local. These included; The Group Areas Act 1966 which lead to state control over residential patterns of local authorities, the Separate Amenities Act 1953 which forced local authorities to demarcate their recreational facilities on a racial basis and the Bantu Affairs Administration Act 1971 which removed the administration of blacks in urban areas from the control of white local authorities and placed it under the separate Administration Boards. This divesture was followed by tighter financial control over white local authorities. These included limits on rates

⁸³ Bekker, Cities straddling homeland boundaries.

⁸⁴ R Cameron, The institutional parameters of local government restructuring in South Africa, in C Heymans and G Totemeyer, *Government by the People: Politics of Local Government in South Africa*, Juta, Cape Town, 1988.

they were allowed to levy, they were not allowed to budget for deficits on the operating account and if the budget showed a deficit the provincial administrator had the power to force the local authority to levy an extraordinary rate. Local authorities could not exceed the estimated expenditure without the approval of the administrator who also controlled local authorities' ability to borrow money.⁸⁵

In 1982 a President's Council report recommended extensive devolution of power to local authorities and in 1983 the RSA Constitution made provision for a tricameral system where the state president had extensive executive powers and the white, coloured and Indian tiers of parliament decided on their 'own matters'. Local government was one of the matters termed 'own affairs' which was however subject to any existing general policy or general law. The 1983 Constitution did not enshrine the rights and status of local government. The Regional Services Council Act 1985 made provision for some 20 functions to be performed by multi racial metropolitan bodies. These functions included the bulk supply of water, electricity, sewage, land usage and transport planning as well as the upliftment of infrastructure (mainly to diffuse township unrest by uplifting the quality of life in these areas). Although the government argued that the Regional Services Councils were extensions of local authorities represented by local authorities and local bodies, it was still the provincial administrator appointed by the government who oversaw the Regional Services Councils. This administrator had vast discretion, casting doubt on the idea that power had actually been devolved to local levels. The provincial administrator could establish the Councils, decide which local bodies would participate in it, appoint and dismiss the chairman of the Council, transfer or second Council members, identify which CBDs and industrial areas could be excluded or included in the Council and make any regulations deemed necessary for the effective execution of Council duties. The government also argued that devolution of

⁸⁵ M Swilling, Building democratic local urban governance in Southern Africa, in M Swilling (ed), *Governing Africa's Cities*, Witwatersrand University Press, Johannesburg, 2001.

power had occurred in respect of finance. Provision was made in the Regional Council Services Act for two regional taxes raised from and allocated to local jurisdictions by local representatives. However the levels of these taxes (the regional services levy on salaries and wages paid by employers and the regional establishment levy on business's turnover) were set by the Minister of Finance making them a form of deconcentration rather than devolution.⁸⁶

'Black' local government – creating non-citizens

Mark Swilling, Richard Humphries and Khehla Shubane argue that the apartheid state created a system of differentiated labour power that reduced labour costs to a minimum and facilitated the organisation of industrial time. The system was supported by the racially based spatial structure of the city that apartheid formulated via urban regulations such as influx control and the Group Areas Act and resulted in a labour force made up of 'migrants' with their rural bases linked to urban hostels and the 'urban insiders' with their rented 'matchbox houses' and formal 'temporary' status. The urban system thus gave rise to, underpinned and was a necessary precondition for the formal disenfranchisement of the black majority from the nation state.⁸⁷

Historically in South Africa government policy treated urban blacks merely as appendices to the homelands. They were just sojourners in 'white South Africa' who exercised their political rights in the homelands. As early as 1922 the Stallard Commission directed that an African should only be allowed in urban areas to administer to the needs of whites and should depart when finished such administering. Until the 1980s the presence of blacks in areas outside the homelands remained linked to their function in the urban economy. In 1923 the Natives Urban Area Act legalised territorial segregation in urban areas enabling white local authorities to establish African locations and mechanisms to administer them. The Act provided for advisory

⁸⁶ Cameron, Institutional parameters.

⁸⁷ Swilling et al, Introduction, *Apartheid City in Transition*.

boards elected by male residents and chaired by location superintendents, the boards were supposed to advise white local authorities about the African locations. The Bantu Self Government Act of 1959 provided for self government of the homelands and effectively ended all direct representation for blacks in the South African parliament. For the next twenty five years the homeland policy remained based on the view that Africans would lose their South African citizenship and exercise their political rights through the homeland structures. Four homelands (Transkei, Bophuthatswana, Venda and Ciskei) became 'independent' and the rest were given self governing status. Black local government within the self governing homelands followed a different path from that devised for white designated local government in South Africa. It was far more centralised. Urban local authorities were established under Proclamation R293 of 1962 which provided for the establishment of township councils. Responsibility for the development and administration of the R293 areas passed to the homeland governments. Homeland governments however did not enjoy full autonomy over their areas – they were overseen by the Department of Development Aid which shared responsibility for service delivery functions to these areas and had wide ranging control over finance often setting uniform tariffs for municipal services. Homeland township councils were in short 'severely straight-jacketed regarding functions, powers and financial freedom'.⁸⁸ Outside proclaimed urban areas were tribal authorities which were supposed to reflect traditional forms of government as practised in that particular area, sometimes in the modified form of a community authority comprising tribal chiefs, elders and elected councillors. In those cases tribal authorities had little say over local affairs and were scarcely more than agents for their respective homeland governments.⁸⁹

Despite the advent of homelands however, the rural urban migration levels increased and in the 1960s the state was forced to devise various institu-

⁸⁸ Bekker, *Cities straddling homeland boundaries*.

⁸⁹ *ibid.*

tional mechanisms to deal with the urban black population growth. In 1961 Urban Bantu Councils were introduced to administer matters assigned to them by the Minister of Bantu Administration and Development. Constituting these councils was left to the discretion of white local authorities. Members of these councils were elected by residents of locations or were nominated by the white local authority together with the relevant minister, it included a chairperson. These councils increasingly came to be seen as unsatisfactory by government because they left sufficient discretion to liberal minded white municipalities to ignore central government instructions, it placed financial burdens on white municipalities and central government no longer had sufficient control to enforce influx control as it wished. Central government therefore introduced the Administration Boards in 1971 which enabled it to take control of the townships from white local authorities. The 22 Administration Boards (renamed Development Boards in 1984) were appointed by the Minister of Bantu Administration and Development and consisted mainly of white officials. The boards, advised by the Urban Bantu Councils effectively formed black local urban administration but were regarded by most blacks as organs for the administration of apartheid.⁹⁰

After the political uprisings of 1976 and the general political instability in black urban areas the government introduced community councils. All residents including homeland citizens could vote in these councils. This reflected an official acknowledgement of the prominence of blacks outside the homelands and the legitimacy of their need for political representation. This notwithstanding, the councils' powers were limited – The Minister of Cooperation and Development had final jurisdiction over their activities, they had little financial capacity and weak legitimacy based on the fact that their 'constituents' regarded them as apartheid instruments aimed at diverting demands for full participation. In 1982 the Black Local Authorities Act granted these local authorities full municipal status comparable to that of white local authorities. However these local authorities remained adminis-

⁹⁰ Heymans and White, *Playing politics without power*.

tratively constrained, financially weak and politically controversial. Indeed Administration / Development Boards continued to exercise considerable administrative control over black local authorities until 1986 when they were abolished but this did not deter top down control of black local authorities through Community Services Divisions of the provincial administrations. Also the low support afforded black local authorities was evident in the low percentage polls in the elections between 1983 and 1988 – the official national average in 1988 was 25.1%.⁹¹ There were also allegations of corruption within these councils adding to the controversies around them. Furthermore councillors and municipal property had become targets of physical attacks which led to the resignation of many councillors. This led to the appointment of government administrators to fill these growing gaps and ironically township groups and associations seemed more inclined to interact with these administrators who they could clearly identify as agents of the state than with black councillors whom they regarded as traitors of the political struggle. Black local authorities also never seemed able to overcome their fiscal predicament. This is despite having had new funds channelled to them through the National Security Management System, Regional Service Councils and ‘bridging finance’. This fiscal crisis is based on the fact that black local authorities never had adequate revenue bases and the prospect of their ever developing such bases were remote seeing as retail and industrial development was usually located outside of their jurisdiction despite the fact that blacks tended to spend a large portion of their money in white areas. Black local authorities revenue bases were also affected by the growing rent boycotts associated with the political atmosphere. Aside from the financial impediment black local authorities also had other resource deficiencies these included a lack of administrative and development skills. Councillors generally had very little knowledge or experience in local government affairs having only ever served on Urban Bantu Councils which were purely advisory also there were few senior black officials and black

⁹¹ Heymans and White, Playing politics without power.

local authorities had to rely on seconded white officials from white local authorities. Furthermore the transfer of duties from development boards to black local authorities occurred amidst confusion and friction which underlay the working ethic of the black local authorities.⁹²

'Coloured' and 'Indian' local government - establishing secondary citizens

Racially integrated local authorities were contrary to the National Party's apartheid policy of having separate political structures for different racial groups. The basis for separate local government structures was the Group Areas Act of 1950 which made provision for separate residential areas and for the eventual introduction of separate local government structures for coloured and Indian areas.⁹³ The Group Areas Act was followed by the Group Areas Amendment Act of 1962 which made provision for three phases of coloured and Indian local government. The first phase was a consultative committee with nominated members with only advisory powers. The second was a Management Committee, partly nominated and partly elected – intended to have slightly wider powers (in Natal Management Committees were called Local Affairs Committees). The third stage would be fully fledged municipal status. This evolution was overseen by the Minister of Community Development but its practical implementation was the responsibility of the provinces. The outcome was that only four Indian committees ever evolved into independent local authorities – they were all in Natal. No coloured committees evolved into independent local authorities. There were two main reasons for this. First coloured and Indian areas were characterised by little or no rate generating commercial or industrial areas as well as by low rateable low cost housing. Thus the lack of an effective tax base precluded these areas from becoming autonomous. Second, the committees' participants rejected the principle of separate municipalities

⁹² Heymans and White, playing politics without power.

⁹³ R Cameron, Managing the Coloured and Indian areas, in Swilling et al, *Apartheid City in Transition*.

defending their participation on the committees as merely the means to an end of achieving non racial representation.

In 1983 The Republic of South Africa Constitution Act made provision for a tricameral system with white (House of Assembly), coloured (House of Representatives) and Indian (House of Delegates) chambers deciding exclusively on matters of 'own affairs' and jointly on matters of 'general affairs'. Local government was deemed 'own affair' and a Department of Local Government was created in each chamber to constitutionally control 'ethnic' local authorities. (The Indian House of Delegates refused to accept the transfer of power to its chamber on the basis that the arrangement was an extension of apartheid.) Up to 1984 white local authorities consulted the coloured and Indian Management Committees but were not obliged to accept their advice. This led to a great deal of frustration within these committees. In 1984 the Promotion of Local Government Affairs Act made provision to improve communications between white councils and committees and to allow committees greater participation in their own affairs. The Act did not however confer decision making powers on the committees these were only made available later and had to be requested by each committee – these powers were limited to allocating business licences, allocating houses, evicting tenants, the approval and planning of new housing schemes and the final say in the leasing and utilisation of immovable property. Committees who went ahead and requested these powers however did not receive them because the powers promised had come under review for various reasons – the financial and legal consequences which could involve the white parent municipalities and the concerns over fragmentation of municipal services. Up to 1988 the coloured and Indian committees had generally been elected on low polls in populated metropolitan areas and higher polls in sparsely populated rural areas. This was generally interpreted as indicating a lack of legitimacy for apartheid bodies.⁹⁴

⁹⁴ Cameron, Managing the Coloured and Indian areas.

LOCAL SERVICE DELIVERY UNDER APARTHEID

Urban areas

Aside from the division of South African cities along racial grounds which was justified in terms of the need for separate development of different race groups, the economic relationship between the white, black, coloured and Indian race groups was similar to the colonial relationship of exploitation and unequal exchange – this was evident in the way the local government finance system was structured. According to apartheid zoning all major commercial and industrial areas were located in the jurisdictions of White Local Authorities. It has been shown that 50-70% of all revenue to white local authorities came from commercial and industrial areas in the form of property rates and service charges.⁹⁵ This revenue was used to cross subsidise the development of high level services in white suburbs – none of the revenue that accrued to white local authorities was expended in the black areas. The black townships on the other hand had virtually no commercial or industrial base, they were residential areas populated by people who worked in white areas. Revenue for their services came from service charges on the services they paid and from rentals paid on the largely state owned housing that they lived in. Some inter-governmental grants from the national government subsidised up to 30% of the costs of running the townships.⁹⁶ Effectively therefore the labour from the townships that worked in the white areas and the consumer spending in the white areas that was necessary in the absence of commercial services in black areas, built up the economic base of the white areas. This economic base built up a viable tax base for white local authorities enabling the cross subsidisation of white suburbia. This resulted in the systematic underdevelopment of black townships as a result of the net financial drain of resources from the poor black to rich white areas.⁹⁷

⁹⁵ Swilling, Building democratic local urban governance.

⁹⁶ *ibid.*

⁹⁷ *ibid.*

Although South Africa's unitary system of government in terms of the South African Act of 1909 approximated to the British system, local government did not provide large scale social services such as education and social welfare but rather trading services such as electricity and water. The major sources of revenue for local authorities were rates on fixed property and income derived from trading services such as electricity, water and gas. The principle of financial self sufficiency applied to white local government with grants only providing around 4% of total expenditure.⁹⁸ The principle of financial self sufficiency also applied to black townships. White local authorities, having established separate locations for black areas within their jurisdictions headed the by advisory boards, were required to keep a special account, the Native Revenue Account for black townships under their control. The major sources of revenue for this account were sorghum beer production and retailing, liquor sales in the townships, levies on white employers of black labour in certain areas and the payment by black township residents to local authorities for various services rendered, mainly rentals and fees. The amount these sources of revenues raised however was minimal. A fundamental problem was the 'dormitory town' status of black urban areas. Because of a lack of freehold (blacks were not allowed to own land in white South Africa) there could be no tax on property. Also most of the rented housing was low income owing to the large scale poverty of the black urban people. There were also minimal rates generating industrial and commercial activities in black areas exacerbated by government limitations on the ability of black businesses to trade in black areas. Government policy was that black entrepreneurs with sufficient capital to start businesses should do so in the homelands.⁹⁹

In the late 1980s, with the advent of the Regional Services Councils, there was a national drive to render more effective services on a regional basis across local authority boundary areas. A further objective of the Councils

⁹⁸ Swilling, Building democratic local urban governance.

⁹⁹ Ibid.

was to extend the political and constitutional principles of the 1983 Constitution, especially those of own and general affairs to the third tier of government and through new forms of taxation to provide additional sources of revenue for local authorities.¹⁰⁰ The initial spur to the acceptance by government of the need to consider establishing new forms of local authority cooperation in the provision of services in urban areas was a technical and financial one. From the 1960s the financial advantages to local authorities and municipal residents of providing municipal services on a structured bulk basis between autonomous local authorities had been recognised by various bodies. In the wake of the 1970s inflation levels and the relative absence of central state subsidisation of local authorities, white local authorities began to petition the central government to re examine the sources of finance for local authorities. The Browne Committee, which had been appointed to examine municipal financial issues urged that metropolitanisation of services be undertaken as a means of alleviating financial pressure. The Commission argued that the coloured and Indian Management Committees should receive larger grants or subsidisation from white local authorities via a system of transfer payments (with the advent of the tricameral parliament, the coloured and Indian Committees had more channels through which to obtain funds for services, but these too were inadequate given the housing and facilities backlogs in their areas.)¹⁰¹ The Commission recommended a single or united tax base for the South African city. A further committee of inquiry, the Croeser Committee recommended that joint services committees be formed as a means of facilitating service provision in urban areas. The Committee circumvented widespread municipal opposition to the notion of transfer payments by urging the introduction of new sources of taxation to provide additional funds for local authorities.¹⁰²

¹⁰⁰ R Humphries, Regional services councils: a preliminary evaluation, *Politikon*, 18 (1), 1991.

¹⁰¹ Cameron, Managing the Coloured and Indian areas.

¹⁰² *ibid.*

Another dynamic shaping the implementation of the Regional Services Councils was political and involved the backlash from the black community who were excluded from the tricameral parliament. It was officially noted that it was at the local level that the country was being rendered ungovernable and that Regional Services Councils would be able to bring together representatives of participating white, black, coloured and Indian local government structures to decide on the allocation of levy income and the establishment of regional services. A major goal of Regional Services Councils was to upgrade socioeconomic conditions particularly in the black townships. The idea in official quarters was that socioeconomic upgrading would not eliminate political demands but it would help to redirect demands to 'non-revolutionary' channels. Regional Services Councils were involved in socioeconomic upgrading through their allocation of the income generated by the two levies payable to all employers whether state or private sector. In terms of the Regional Services Councils Act priority in the allocation of this income had to be given to the areas of greatest need which effectively meant the financially strapped black local authorities.¹⁰³ Indeed black local authorities benefited greatly from the allocation of levy income in the 1987/88 financial year. Regional Services Councils in the Transvaal funded some R467m of which R320m (68%) went to black local authorities. Despite this however the Councils made less progress in their intended role of providing regional services than they made in improving infrastructure.¹⁰⁴

To dispel fears by white local authorities that Regional Services Councils would usurp their most important powers and functions government spokespersons characterised Regional Services Councils as 'horizontal extensions' of local governments and not as an additional tier of government superior to local authorities. Thus in the short term Regional Services Councils were seen by the government as leaving the existing system of apartheid local government intact. The Councils were also defended by government as de-

¹⁰³ R Humphries, Whither regional service councils?, in Swilling et al, *Apartheid City in Transition*.

¹⁰⁴ *ibid.*

volving political power to lower tiers of government and Regional Services Council levies were regarded as 'fiscal federalism'. There were however, ideas that the government viewed the introduction of Regional Services Councils in a longer term perspective against the unfolding of further reform measures. The Regional Services Councils Act of 1985 differs from the 1983 Constitution in that the statutory definition of population groups in the South Africa was not a prerequisite for the implementation of regional services councils. So it could be argued that the legislative framework which governed Regional Services Councils was intended to survive the demise of the apartheid government.¹⁰⁵

Robert Cameron argues that the Regional Services Councils failed in their task to diffuse township unrest by uplifting the quality of life. This was in part because they failed to establish financial viability in black local authorities and because they did not deal with the structural weaknesses of apartheid cities where black local authorities were deprived of firm industrial and commercial tax bases. Also although they were supposed to increase capital expenditure they spent more money on operating expenditure. This resulted in the crisis of local government finance continuing into the 1990s. Political opposition and capacity frailties weakened black local authorities significantly. Their need to self finance also meant that they were forced to increase rent and service charges which led to mass protests and the escalation of violence and boycotts. It also resulted in the collapse of many black local authorities. According to Cameron by 1992, black local authorities had run up deficits of R1,586 billion, and of the 264 Black Local Authorities nationwide 125 were inoperative. During the 1991/1992 financial year bridging finance and intergovernmental grants paid to black local authorities amounted to R903,7 million. Grants from central government accounted for over 60% of the revenue of black local authorities across the country. These grants were originally classified as bridging loans and were intended to finance capital expenditure in black communities, they were however con-

¹⁰⁵ Humphries, Whither regional services councils?

verted to explicit grants for current expenditure. The lack of finance in black local authorities was further compounded by the fact that residents from black areas contributed heavily to the growth of commercial and industrial areas in their capacity as workers and consumers yet did not receive concomitant financial benefits. For example it is estimated that in 1987 Sowetans spent about R1 billion in Johannesburg's CBD but as Soweto was a Black Local Authority segregated from the Johannesburg white local authority, Sowetans did not benefit from the economic tax base of Johannesburg.¹⁰⁶

Rural areas

With the partial exception of the Cape province there was no formal rural local government in the apartheid system even for whites.¹⁰⁷ Black rural areas constituted the independent or self governing homelands comprising a homeland government and tribal or community authorities. Services to these areas undertaken by homeland government departments were a constant source of frustration to tribal authorities responsible for various areas. Tribal authorities complained that they were consistently unable to obtain improvements in infrastructure or facilitate service delivery in their areas because, despite articulating needs such as the repair of dipping tanks, school sanitation, water reticulation, road repairs, new clinics etc. homeland government departments simply replied that there were no funds available.¹⁰⁸ Service delivery in homeland governments was described as 'largely centralised' within homeland departments owing to an absence of appropriate local structures to incorporate service delivery functions.¹⁰⁹ Service delivery was in cases also reported to have been used 'for political ends' in terms of

¹⁰⁶ Cameron, Central-local financial relations.

¹⁰⁷ Swilling, Building democratic local urban governance.

¹⁰⁸ A McIntosh, Rethinking chieftaincy and the future of rural government: a preliminary investigation, *Transformation*, 13, 1990. This study was carried out in KwaZulu-Natal and Mpumalanga.

¹⁰⁹ *ibid*

alliances between tribal authorities and homeland governments.¹¹⁰ A common example cited are traditional authorities in the KwaZulu homeland who promised land, housing and reference books to those who joined and supported the Inkatha Freedom Party thus recruiting followers for the political party headed by the homeland leader Chief Mangosuthu Buthelezi.¹¹¹

LOCAL PARTICIPATION DURING APARTHEID

Until the 1980s with the exception of limited coloured and Indian representation in the Cape province, only whites could vote and stand for election at local level.¹¹² Blacks were expected to exercise their rights as citizens in the homeland structures created for them through mostly appointed leadership.

The advent of the tricameral parliament in 1983 instituting coloured and Indian houses of parliament meant a greater potential for participation in local politics by non whites (local government having been deemed ‘own affairs’). This was affected however by the limited decision making powers conferred to coloured and Indian Committees and the belief held by its participants that the tricameral parliament was simply a way of extending apartheid and not participation. This trend was reflected in the way coloured and Indian committees had generally been elected on low polls in populated metropolitan areas though slightly higher polls in sparsely populated rural areas. This implied a lack of legitimacy for apartheid bodies.¹¹³ It also implied however that resistance to apartheid was manifesting at local levels through a wilful lack of participation. By 1988 however there was a considerable trend towards growing participation – the Indian area of Lenasia for example showed a rise in the percentage poll from 4,4% in previous years to

¹¹⁰ M Galvin, The impact of local government on rural development in South Africa, *Transformation*, 40, 1999.

¹¹¹ See G Mare and G Hamilton, *An Appetite for Power: Buthelezi's Inkatha and the Oolitics of Loyal Resistance*, Johannesburg, Ravan Press, 1987; and Mzala, *Gatsha Buthelezi; Chief with a Double Agenda*, London, Zed Books, 1988.

¹¹² Swilling, Building democratic local urban governance.

¹¹³ Ibid.

30,73% in 1988.¹¹⁴ Likewise the coloured area of Ennerdale recorded an increase from 16,14% to 47,33%.¹¹⁵ This has been explained as a consequence of white local authorities being more willing to address problems pointed out to them by the coloured and Indian committees – this has led to improved facilities and services in some areas. Also a number of coloured and Indian committees had powers delegated to them by the parent white local authorities such as the allocation of housing and business sites. This control of resources gave these bodies the ability to promote patronage and accordingly increase their electoral support.¹¹⁶

The advent of black local authorities in 1982, paving the way for the first black local authority elections in 1983 sealed increased local black participation in politics, not through formal participatory structures but through a movement campaigning for boycotts of the elections. Despite the boycotts, the elections continued but polls were low, in Soweto it was 10.7% of registered voters in wards which were contested, the figure for Everton in the Vaal Triangle was 5.9% and a 36.6% poll in Kagiso in the West Rand was the highest attained for any township in the election.¹¹⁷ The movement opposing the advent of black local authorities followed the election by calling for the resignation of the newly elected councillors. The first resignations occurred in Cradock owing to pressure from the Cradock's Resident's Association.¹¹⁸ Kehla Shubane argues that from 1984 the townships were fast becoming places in which normal government was impossible. State structures and the individuals serving in them were subjected to significant pressure in a campaign aimed to make apartheid unworkable. These campaigns also began to assume an increasingly violent nature. This violence was part

¹¹⁴ R Cameron, An analysis of the structure and functioning of Coloured and Indian local authorities since the introduction of the tricameral system, *Politikon*, 18 (1), 1991.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ K Shubane, Black local authorities: a contraption of control, in Swilling et al, *Apartheid City in Transition*.

¹¹⁸ *ibid.*

of the events that led to the imposition in 1985 of a state of emergency and deployment of security forces in the townships. By 1989 the effect of the state of emergency on organisations and movements opposing repression were visible and culminated in a revival of opposition in the form of the Soweto Civic Association.¹¹⁹

FACTORS LEADING UP TO THE TRANSITION

Resistance to black local authorities

Khehla Shubane argues that opposition to the apartheid regime was consolidated in the urban context in the form of opposition to the advent of black local authorities.¹²⁰ Indeed it was conceded by Minister of Constitutional Development and Planning Heunis in 1987 that ‘it was at the local level that the country was being rendered ungovernable; thus it was at this local level that the battle against ungovernability had to be fought’. Heunis thus firmly elevated events and dynamics at the local level to a position of critical importance for the apartheid government during this period.¹²¹

From the time of their emergence, black local authorities were the subject of opposition by the very people they were set up to ‘represent’. Township dwellers refused to participate in the affairs of black local authorities which they saw as puppets of the apartheid regime, their opposition included boycotting black local authority elections. From 1984 the townships were fast becoming the places in which governing was made impossible, indeed where South Africa was rendered ungovernable. This was also characterised by a rise in violence against those who were seen as collaborating with government structures. The rise in opposition to the state was significant as the numerous waves of urban protest in the 1920s, late 1930s, mid 1940s and throughout the 1950s had been crushed by the state and the demands of the

¹¹⁹ Shubane, Black local authorities.

¹²⁰ *ibid.*

¹²¹ Humphries, Whither regional services councils?

oppressed largely ignored.¹²² The fresh opposition was curtailed with a state of emergency in 1985 which entailed the deployment of security forces to crush radical anti apartheid opposition and secure tight control over the townships. This period also saw the spread of rent boycotts in more than 60 townships countrywide. The boycotts were initiated against burdensome increases levied by different black local authorities – they were aimed at forcing a decrease of rents to affordable levies. After the boycotts started however, many other demands were added by various communities, including the dissolution of black local authorities. The loss of revenue precipitated by the boycotts was contained by the government who by 1990 had poured some R1.1 billion into 49 townships to avert the collapse of black local authorities in an attempt to foil the collapse of one of the state's structures under popular pressure. The 1988 municipal elections were a dire failure with an average national poll of only 25%, despite the detaining of various leaders of community organisations to restrict the boycott and the providing of protected voting for those who felt intimidated by the political atmosphere.¹²³

The demise of black local authorities was contemporaneous with the demise of coloured and Indian management committees/ local affairs councils. These took place around 1990 with the unbanning of prohibited organisations which unleashed a new political dynamic in the country. A new assertiveness was evident in black townships, coloured areas and Indian areas fuelling demands for the resignation of management committees and local affairs councils and the creation of non racial municipalities.¹²⁴

¹²² M Swilling, Taking power from below: local government restructuring and the search for community participation, in Heymans and Totemeyer (eds), *Government by the People*.

¹²³ *ibid.*

¹²⁴ Cameron, Managing the Coloured and Indian areas.

The civics movement

Mark Swilling argues that despite the apartheid policymakers efforts to divide South African society up into racial categories, they had underestimated the nature of society – its capacity to think, associate and organise. Swilling contends that urban resistance to apartheid consolidated by the very means aimed at repressing it. He uses the 1983-5 bus boycott as an illustration where the black labour force commuting from the homeland town of Mdantsane Ciskei to East London would use the moving protected spaces (of the train carriage) to organise in social movements aimed at dismantling the apartheid state. Likewise the birth of the trade union movement in 1973 when Durban workers laid down their tools and took to the streets in protest. By 1979 the union had won the right to associate and by 1982 the unions had won a firm base of support on the factory floor bringing to an end the era of industrial time management controlled by white managers. The black working class had won industrial citizenship and as they were part of urban communities, the struggle over time grew to encapsulate the struggle over the nature and control of urban space. This industrial citizenship brought managers into direct contact with organised interests who wanted more ultimately than to bargain for better wages and working conditions. This contributed to the increasingly coherent organisation of business during the 1980s around major policy initiatives.

The state however, argues Swilling, did not make the link between industrial citizenship and urban citizenship in the same way that business did until 1986 at the National Party's Federal Congress where there was seen a need to premise industrial and urban citizenship on the same principle. This in effect heralded the end of apartheid with the principles of 'united South Africa' and 'universal suffrage' being touted. The state did however attempt a last effort during the 1986-90 state of emergency where the Winning Hearts and Minds Strategy was implemented to 'counter revolutionary warfare'. The strategy was premised on the assumption that the black majority was more interested in urban services than in democracy. The state misassumed that urban citizenship would be accepted in exchange for political citizen-

ship. Swilling argues that the failure of Winning Hearts and Minds Strategy prepared the way for a new approach by President de Klerk which was compounded by South Africa's isolated international position, the declining support for state strategy among black 'moderates', the deepening political differences between the state and capital, the politically over determined recession and the continued survival of social movements. Swilling contends that the eventual unbanning of the liberation movements on 2 February 1990 was premised on an acknowledgement that nothing would be achieved if the social movements – and their political expression in the liberation movements – remained excluded from the processes of reconstituting political citizenship.¹²⁵

Alongside the industrial movements came the reestablishment of the civics movements. After the 1985 state of emergency, organisations which had once been strong were reeling under the effects of the emergency regulations. A new way in which organisations could preserve themselves had to be found. Shubane contends that this new way was provided by the Soweto Civic Association formed to explore the possibility of ending the rent boycott in Soweto through negotiations with councillors. The state accepting that resolving rent issues needed community participation granted permission for the organisation to meet and consult its membership. Thus the Association was allowed to openly hold a meeting for the first time since 1988 when it had been declared a restricted organisation. The Association having regained its space to organise began once again to campaign for the resignation of black local authority councillors. At the same time a new civic organisation was formed The Civic Organisation of the Southern Transvaal. The Organisation was a leading voice in calling for the resignation of councillors and drove the campaign publicly. By the end of 1990 its campaigns had led to the collapse of 40% of the 262 black local authorities in the country. At this point a flurry of activity focused attention on developing policies for a post apartheid local government. It was also at this stage that national

¹²⁵ Swilling et al, Introduction, *Apartheid City in Transition*.

government acknowledged that the unification of South African cities was eminent. At a graduation ceremony at the University of Stellenbosch President de Klerk urged those advocating for the resignation of black local authorities to stop their campaign as their goal would soon be conceded by the government.¹²⁶

Shubane makes the point that civic organisations played a large role in shaping local opposition. Civic associations actually predated the advent of black local authorities having emerged in 1977 with the Committee of Ten in Soweto formed in the aftermath of the 1976 Soweto Uprisings. This was followed by the formation of the Cape Housing Action Committee and the Port Elizabeth Black Civic Organisation. It was not until 1983 however that the civic movement was transformed into a mass movement enlisting the vast majority of local township residents into street committees. Shubane contends that it was the transformation into mass organisations which empowered township communities to lead campaigns which played a critical role in transforming the course of South African politics during the 1980s facilitating campaigns such as consumer boycotts, stayaways and rent boycotts which made these structures powerful enough in the townships to emerge as drivers of national change. While the earlier protests involving civics included rent increases, bus fare increases, evictions, influx control, the housing shortage, inadequate township infrastructure, poor school conditions and unaccountable township councillors,¹²⁷ later protests began to take the form of resistance campaigns, mass mobilisation and demands that were overtly political in nature involving the release of political prisoners, the unbanning of political organisations, the lifting of the state of emergency and the abolition of racially based structures at various levels of government.¹²⁸ With the demise of the black local authorities, credited to the civics movement, the provincial authorities had no choice but to negotiate with the

¹²⁶ Shubane, Black local authorities.

¹²⁷ J Seekings, Township resistance in the 1980s, in Swilling et al, *Apartheid City in Transition*.

¹²⁸ Heymans, Towards People's Development.

civics organisations in matters pertaining to local levels of government in townships. The civics set forth their demands as including, no cut offs for services, the upgrading of services and conditions in the townships, the provision of more land and houses for low income groups, the transfer of rented houses to the people, the upgrading and conversion of hostels, affordable service charges, the writing off of arrears, non racial municipalities based on one tax base, the resignation of black local ‘councillors’ and the right to organise and report back.¹²⁹ Aside from a drive towards non racial forms of government and equality relating to tax spending, the civics movement had already begun to articulate their vision of a local government structure that provided affordable services and enhanced legitimate local participation. Mark Swilling stated that by the late 1980s trade unions and community organisations were putting forward a simple, basic truth that ‘the black majority are not just demanding solutions, but also the right to participate in the formulation of these solutions.’¹³⁰ Indeed the civics movement advocated that poor socioeconomic conditions and the lack of service delivery could only be genuinely addressed through political transformation, ‘Are we fighting for lower rents to stretch our poverty wages a bit further? Are we fighting for better looking houses to which we can invite our friends? Will we fight rents today, bus fares tomorrow and possibly electricity the day after? We must see the increasing rents, bus fares and electricity charges as being only the smoke. Our goal must be to eliminate from this society all the causes of our hardship.’¹³¹ Furthermore the civics movement viewed participation not just as the narrow and localised space above society which citizens can access only by casting a ballot but as the imprinting of equality and participation ‘ubiquitously across the social through various forms of

¹²⁹ Coovadia, The role of the civic movement.

¹³⁰ Swilling, Taking power from below.

¹³¹ J Seekings, The development of strategic thought in South Africa’s civic movements, 1977-1990, in Adler and Steinberg (eds), *From Comrades to Citizens: The South African Civics Movement and the Transition to Democracy*, Macmillan Press, Great Britain, 2000.

citizen action’.¹³² Indeed it was claimed that ‘we are opposed to the present parliament because we are excluded, but also because parliamentary – type representation in itself represents a narrow and limited idea of democracy.’¹³³ This view is represented in a common organisational form employed by civics movements. According to this form, township organisation was to assume three tiers; a township street committee, an area committee and a local structure of the civic. Glen Adler and Johnny Steinberg argue that the objective of this model of organisation was to disperse organisational functions to the point of ubiquity, immunising township structures against state repression by ‘weaving the mechanics of resistance into the fabric of township life’. Adler and Steinberg add however that aside from the tactical imperative, this organisational form reflected the civic in its role as the ‘receptacle of democratic sovereignty’.¹³⁴

Shubane contends that although the civic organisations had been formed to contest local issues it soon became impossible to separate local from national political issues. Owing to the pervasive nature of apartheid, opposition to what constitutes a local problem inevitably meant opposition of highly political issues which directly involve the national state. The political thaw by 1990 resulting in measures taken by the government to reform the apartheid state, created a situation where civic organisations began to focus on whether they were local structures concerned with local problems or whether they were national formations concerned with constitutional issues. The debate also widened to whether they were organisations located in civil society.¹³⁵ Either way the scene was set for a new political dispensation fa-

¹³² J Steinberg, A place for civics in a liberal democratic polity? The fate of local institutions of resistance after apartheid, in G Adler and J Steinberg (eds), *From Comrades to Citizens: The South African Civics Movement and the Transition to Democracy*, Macmillan Press, Great Britain, 2000.

¹³³ G Adler and J Steinberg, Introduction: from comrades to citizens, in Adler and Steinberg (eds), *From Comrades to Citizens*.

¹³⁴ *ibid.*

¹³⁵ Shubane, Black local authorities.

vouring democratisation – this would have an effect on the way local government was conceived.

LOCAL GOVERNMENT TRANSITION

Doreen Atkinson identifies some of the problems relating to the state of local government in South Africa at the outset of the transition to democracy. These included the existence of separate, racially defined local authorities, the lack of political legitimacy accorded to black local authorities by most black residents of townships, unstable, inexperienced, ineffective and financially deprived black municipalities, coloured and Indian management committees reluctant to accept autonomous municipal status but prevented from assimilating with near by white municipalities, white municipalities who faced the problem of popular apathy, financial difficulties and an inability to respond to political pressures emanating from nearby townships, vast disparities in wealth and standards of living between the different racially defined communities and a lack of communication, comprehension, co-ordination and cooperation within each town and city due to the existence of separate local institutions.¹³⁶

¹³⁶ Although apartheid did little to affect the process of urbanisation, it created the following settlement pattern:

Concentrations of people in the five metropolitan areas which are in turn dispersed and sprawling conurbations characterised by inefficient land use, long travel times, unequal access to service between richer and poorer areas and the distribution of the urban poor on the peripheries in both formal townships and sprawling squatter settlements that provide shelter for at least seven million people.

The distribution of the non metropolitan population in some 300 settlements outside the homelands.

Growing urban populations in 293 towns inside the former homelands, many of whom had economic bases supported by the government's industrial decentralisation policies.

The proliferation of semi and peri urban informal settlements located inside homeland boundaries, but located on the peripheries of metropolitan economies from where they derive some of their income.

Atkinson argues that a new system of local government had to prioritise political legitimacy and participation especially in the light of meeting the values of democracy. The experience of black local authorities amply demonstrated the difficulties caused by a lack of legitimacy, popular frustration and apathy. Furthermore local governments cannot satisfy the needs of citizens unless councillors and administrators know what the needs are – nor can local rulers actions be constrained unless they are accountable to their constituency. Satisfying local needs and ensuring accountability therefore require political stability, the decentralisation of political power and greater community participation in the shaping of local institutions and decision making as well as a redistribution of wealth to ensure a reasonable standard of living to underprivileged communities.¹³⁷

The need for changes within the public administration were officially acknowledged as early as 1987 three years prior to President de Klerk's speech on dismantling the apartheid system and releasing political prisoners. At an academic conference held at the University of Stellenbosch – the Winelands Conference of 1987 the importance of creating a new responsible public administration was discussed. It was suggested that public administrators should be groomed to respect valid and accepted community values and social equity and that public administrators should not be technocratic. In 1991 the New Public Administration Initiative met at Mount Grace in Cape Town to formulate a new set of values for the South African public administration. The Mount Grace resolution stated that the new public administration should promote a more democratic, inclusive and participatory government and public service at all levels of government, it should be just, equitable and non racial with an emphasis on equal access for all people to

The survival of a rural population that is expected to increase from 11,4 million to 15,3 million between 1985-2010. From Swilling, Building democratic local urban governance.

¹³⁷ D Atkinson, How do we get from here to there?, in Heymans and Totemeyer, *Government by the People*.

societal resources and it should promote values of efficiency, effectiveness, productivity, accountability, responsibility and responsiveness.¹³⁸

By 1991 government had officially engaged in negotiations with its unbanned opponents led by the African National Congress and designed the Interim Measures for Local Government Act 128 which was designed to allow local communities to negotiate from a range of options such as total amalgamation to various forms of resource sharing or the establishment of joint services bodies. By 1992 parallel with the Kempton Park negotiations (negotiations for a new democratic system of national government), a separate negotiating body called the Local Government Negotiating Forum was established.¹³⁹ The Forum was formally constituted in March 1993 as a two sided forum between representatives of central, provincial and organised local government (the statutory delegation) on the one hand and the South African National Civic Association the non statutory delegation) on the other hand. The terms of reference of the Forum were to compile and analyse data and to seek agreement between the two delegations on the process and content of local government restructuring in cooperation with and within the framework of agreements in the national negotiations process. The Local Government Negotiating Forum consisted of 60 delegates and most of the bargaining and negotiations were done in working groups and ad hoc task teams.

The findings and agreements of the Forum were eventually incorporated into the 1993 Interim Constitution Act 200 of 1993 and in the Local Government Transition Act 209 of 1993. Chapter 10 of the Interim Constitution laid out the framework for local government in the interim transformation process – these provisions however were only to come into play after the first democratic local government elections in 1995/6. These provisions included the following: Section 174 differentiated categories of autonomous

¹³⁸ F G Lungu, Towards a redefinition of administrative responsibility in democratic South Africa, *Administratio Publica*, 5 (2), 1994.

¹³⁹ D L Craythorne, *Municipal Administration: The Handbook*, 5th Edition, Juta, Cape Town, 2003, p 12.

local government for metropolitan, urban and rural areas with different structures, powers and functions according to the needs of those areas. The Interim Constitution also entrenched local government by specifying that national and provincial government could not encroach on local government to such an extent that it compromised the fundamental autonomous status, purpose and character of local government. Section 175 also gave elected local government wide statutory regulatory and executive powers, ward councils as forms of local bodies and submunicipal entities were also allowed certain powers or functions conferred by resolution and subject to keeping the accountability of local government intact. Section 178 accorded the interim elected local government the power to levy and recover property rates, levies, fees, taxes and tariffs on a uniform basis throughout its area of jurisdiction. It also accorded local government an equitable allocation of funding from provincial government. In terms of electoral arrangements, the Interim Constitution provided that local authorities be elected democratically every 3-5 years via a system including both ward and proportional representation. Section 245 provided that 40% of councillors be elected by proportional representation and the remaining 60% on a single member ward basis – half of these ward representatives would represent traditional white, coloured and Indian areas in the jurisdiction of the new local government while the other half would represent current black local authorities and other areas traditionally outside municipal boundaries but now falling in the jurisdiction of the new local government. This electoral formula was the result of a political compromise struck in the negotiations to protect the interest of minority communities in the first democratic election irrespective of their racial background. This would guarantee the minority a minimum of 30% representation while the majority could make up for this possible overrepresentation of minority groups by winning its fair share of the 40% proportional seats left. The result of this mechanism would be a de facto government of local unity for a period of 3-5 years analogous to the compromise at central level, resulting in a government of national unity until 1999.

The Local Government Transition Act was seen as an instrument for restructuring local government in the period directly before the first democratic local government elections after which the Interim Constitution would apply completely.¹⁴⁰ The Transition Act provided for the following; all sitting councillors would be replaced with appointed councillors on the basis of 50% statutory and 50% non statutory representation – these were the transitional councils, local and metropolitan negotiating forums would be set up as would provincial committees for local government in each province to ensure representation of local government stakeholders. Each forum had to negotiate on the establishment of transitional council and the form it would take, also each local government MEC (member of the executive for local government in the province) was required to appoint a provincial demarcation board which would advise the MEC on the demarcation or re-demarcation of transitional councils to prepare for elections. These boards would also make recommendations on the determination or re-determination of the powers and duties of local bodies and the transitional councils as well as the number of seats and the delimitation or re-delimitation of wards.

The final Constitution of 1996 took effect on 4 February 1997 (after the 1994 national and provincial elections) but the provisions of the Local Government Transition Act remained in force until the December 2000 local government elections which meant that section 151 (status of municipalities), section 155 (establishment of municipalities), section 156 (powers and functions of municipalities) and section 157 (composition and election of municipal councils) were suspended until a municipal council (replacing the interim phase municipal council) had been declared after the first general election (2000). In the meantime though changes were made to the Local Government Transition Act to include considerations of rural local government, finances and to terminate the enactment powers of MECs and terminate the provincial demarcation boards. Also the powers and duties of metropolitan councils, metropolitan local councils, district councils, local coun-

¹⁴⁰ F Cloete, Local government restructuring, *Politikon*, 21 (1), 1994.

cils, rural councils and representative councils were defined more narrowly. During this time two other acts were also passed: the Organised Local Government Act 52 1997 which provided that an organisation could only be recognised if it was non racial, this changed the face of racially based organisations set up for the political representatives of white, black, coloured and Indian local government bodies. Furthermore the Local Government Municipal Demarcation Act 27 1998 established the Municipal Demarcation Board as a juristic person independent and impartial in the delimitation of wards as according to constitutional principles.¹⁴¹

¹⁴¹ Craythorne, *Municipal Administration*. South Africa's constitution makers in the 1992/1993 negotiations divided the local government democratisation process into three phases. The pre-interim phase 1994-96 (no changes to the system) a holding phase until the first local government elections, the interim phase 1995/96-2000 introduced a quasi federal system where local government was characterised by a number of power sharing consociational measures entailing the rationalisation of local government structures to 843, the amalgamation of many (not all) black areas with surrounding white cities and towns, the creation of metropolitan government in the larger cities and the introduction of democratic two tier local government in some (not all) rural areas in the country, the hierarchical three tier system of local government remained but local government was subject to limitations given the constitutional right to levy property rates, fees, taxes and tariffs. The final phase was the certification of the final constitution in 1996.

Chapter Four

DEMOCRATIC LOCAL GOVERNMENT

After the transition to democracy and the advent of non racial local government equally representative of all local citizens, various pieces of legislation were passed forming a framework for local government that is decentralised in structure, responsible for service delivery, facilitative of public participation and developmental in nature. In this chapter I outline the legislative and policy framework for post apartheid local government in South Africa showing how the new local government dispensation could lend itself to the prescriptions for democracy through its decentralised status and how it is mandated with development for substantive purposes.

THE INSTITUTION OF LOCAL GOVERNMENT: CONSTITUTIONALLY DEFINED

The South African Constitution entrenches decentralisation and mandates local government as a vehicle of service delivery and a mechanism of participatory democracy. The constitutional principles of local government are further entrenched by two specific pieces of legislation, the Local Government Municipal Structures Act and the Local Government Municipal Systems Act. As a republic, South African government is constituted at national, provincial and local spheres. All these spheres are ‘distinctive, interdependent and interrelated’.¹⁴² The local sphere of government consists of three categories of municipality. Category A (metropolitan) characterised by high levels of population density, intense movements of people, goods and services, extensive development and multiple business districts and industrial areas; category B (local municipalities) smaller and less densely populated and category C (district management areas) which may contain a number of local municipalities in order to facilitate equity between better capacitated, resourced municipalities and weaker ones. In terms of the functions

¹⁴² Constitution of the Republic of South Africa, Act no 108 of 1996, sec 40 (1).

and powers of municipalities there is a difference between district and local municipalities within the area of a district municipality. A district municipality is supposed to ensure integrated development planning for the district as a whole, promoting bulk infrastructural development and services for the district as a whole, building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking and promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services.¹⁴³

The executive and legislative authority of a municipality is vested in its municipal council and a municipality has ‘the right to govern, on its own initiative, the local government affairs of its community’.¹⁴⁴ Municipal governance is facilitated through various systems or combinations of these systems depending on the type of municipality. These include a collective executive system where executive authority is exercised through a committee elected by all the councillors usually resulting in a multiparty executive; a mayoral executive system where executive authority is exercised through a mayor who appoints a mayoral committee normally resulting in a committee composed principally of one party; a plenary executive system in which all councillors embody an executive authority; a sub council participatory system which allows for delegated powers to be exercised by sub councils established for parts of the municipality and a ward participatory system where ward councillors may undertake their duties through elected ward committees drawn from up to ten members of their communities – these committees are merely advisory bodies.¹⁴⁵ The Constitution clearly conceives the local sphere of government as autonomous, ‘The national or pro-

¹⁴³ Local Government Municipal Structures Act, no 117 of 1998, ch 5, sec 83.

¹⁴⁴ Constitution, sec 151 (3).

¹⁴⁵ Local Government Municipal Structures Act, sec 7.

vincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.¹⁴⁶

The main objectives of local government as laid out in the Constitution are as follows:

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.¹⁴⁷

The Constitution also provides for local government's role in co-operative government:

- The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
- Draft national or provincial legislation that affects the status, institutions, powers or functions of local governments must be published for public comment before it is introduced in parliament or a provincial legislature, in a manner that allows organised local government,

¹⁴⁶ Constitution, sec 151 (4).

¹⁴⁷ *ibid*, sec 152 (1).

municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.¹⁴⁸

Municipalities are mandated by the Constitution to administer a series of local government matters¹⁴⁹ these are; air pollution, building regulations, child care facilities, electricity and gas reticulation, fire fighting services, local tourism, municipal planning, airports, health services, public transport, public works trading regulations, water and sanitation services,¹⁵⁰ beaches and amusement facilities, billboards, cemeteries, liquor sale undertakings, fencing, licensing of pets, local amenities and sale of food to the public, markets, municipal abattoirs, parks and recreation, roads, public places, refuse removal, refuse dumps, solid waste removal, street trading and lighting, traffic and parking and any other matter assigned to it by national or provincial legislation.¹⁵¹ In 2001 the Municipal Structures Amendment Act allocated 4 key local functions (water, sanitation, electricity and municipal health) to local government. A municipality is also given the authority to make and administer by laws for the effective administration of the matters which it has the right to administer – any by law that conflicts with national or provincial legislation is however, invalid. National and provincial government can also assign to a municipality the administration of any matter which would be most effectively administered locally if the municipality has the capacity to administer it.

The Local Government Municipal Systems Act gives voice to the constitutional principles of local government. The Act deems a municipality an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government Municipal Demarcation Act and consisting of the political structures and administration of the municipality and the community of the mu-

¹⁴⁸ Constitution, sec 154.

¹⁴⁹ *ibid*, sec 156.

¹⁵⁰ *ibid*, Schedule 4, Part B.

¹⁵¹ *ibid*, Schedule 5, Part B.

nicipality. It functions in its area in accordance with the political, statutory and other relationships between its political structures, political office bearers and administration and its community and has a separate legal personality.¹⁵² The Act directs that municipalities must exercise their authority within the constitutional system of co-operative government which means developing common approaches for local government as a distinct sphere of government and enhancing co-operation, mutual assistance and the sharing of resources among municipalities and finding solutions for problems relating to local government generally.¹⁵³ The Act also lays out the rights and duties of the municipal councils as well as that of members of the local community. In the former – the municipal council has a right to govern on its own initiative the local government affairs of the local community and exercise its legislative and executive authority without improper interference and finance the affairs of the municipality by charging fees for services and by imposing surcharges on fees, rates on property and to the extent authorised by national legislation other taxes, levies and duties. The council is also obliged to use the municipality's resources in the best interests of the community, provide democratic and accountable government, encourage the involvement of the local community, ensure that services are provided in an equitable and financially sustainable manner, consult the local community about the level, quality, range and impact of services whether provided directly or indirectly and the available options for service delivery, promote and undertake development and promote gender equity. In the latter – members of the local community have the right through mechanisms, processes and procedures to contribute to the decision making processes of the municipality and submit recommendations or complaints and to receive responses, to be informed of municipal decisions and to have disclosure of municipal activity including finances.¹⁵⁴ The Act outlines the scope of municipal executive and legislative authority. A municipality exercises this au-

¹⁵² Local Government Municipal Systems Act, sec 2.

¹⁵³ *ibid*, sec 3.

¹⁵⁴ *ibid*, sec 4, 5.

thority by developing policies, strategies and programmes, promoting and undertaking development, establishing and maintaining an administration, administering its internal affairs and the affairs of the local community, implementing applicable national and provincial legislation and its own by laws, providing municipal services or monitoring and regulating them, imposing and recovering rates, taxes, levies, duties, service fees and surcharges, monitoring the impact of its policies and implementing performance management systems.¹⁵⁵

THE MUNICIPAL SYSTEMS ACT AND MUNICIPAL STRUCTURES ACT:
ENTRENCING SERVICE DELIVERY AND LOCAL PARTICIPATION AS
THE DOMAIN OF LOCAL GOVERNMENT

The Local Government Municipal Systems Act mandates local government as the primary vehicle for the delivery of services. It directs that municipal services must be equitable, accessible and financially sustainable.¹⁵⁶ The Act also states that a municipality may provide services through internal or external means. Internal means would include a department or business unit of the municipality. External means would include another municipality, an organ of state (e.g. water / electricity committees or a licensed service provider), a CBO or NGO or any other institution, entity or person legally competent to carry out a service.¹⁵⁷ When deciding between internal or external mechanisms for service delivery local authorities are directed to consider the likely impact on development, job creation and employment patterns and the views of the local community and organised labour.¹⁵⁸ Before a municipality enters into a service delivery agreement for a basic municipal service it is required to establish a mechanism and programme for community consultation and information dissemination regarding the service deliv-

¹⁵⁵ Local Government Municipal Systems Act, sec 11.

¹⁵⁶ *ibid*, sec 73 (2).

¹⁵⁷ *ibid*, sec 76.

¹⁵⁸ *ibid*, sec 78 (1) (a), 78 (3) (b).

ery agreement.¹⁵⁹ When a municipality opts for the delivery of a service through external means it remains responsible for regulating the provision of the service, monitoring and assessing the implementation of the agreement, controlling and adjusting tariffs and ‘generally exercising its service authority so as to ensure uninterrupted delivery of the service in the best interest of the local community.’¹⁶⁰

The Act also lays out the way municipalities can carry out credit control and debt collection. It directs that a municipality must establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, establish mechanisms for service users to give feed back to the municipality or service provider regarding the quality of services and the performance of the service provider, take reasonable steps to ensure that service users are informed of the costs involved in providing services, the reasons for the fees and the manner in which the fees are utilised, and reasonable steps to ensure that meter reading is accurate, ensure that service users receive regular and accurate accounts, provide accessible mechanisms to query or verify accounts and dealing with complaints.¹⁶¹

The Local Government Municipal Systems Act also deals extensively with participation. It directs that ‘a municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance.’¹⁶² It therefore entrenches encouraging and creating conditions for the local community to participate in the affairs of the municipality. The Act lays out various mechanisms, processes and procedures for community participation. These include political structures such as ward councillors and ward committees, the consideration of petitions lodged by communities, notification and public comment proce-

¹⁵⁹ Local Government Municipal Systems Act, sec 80 (2).

¹⁶⁰ *ibid*, sec 81 (1).

¹⁶¹ *ibid*, sec 95.

¹⁶² *ibid*, sec 16 (1).

dures, public meetings and hearings by the municipal council, consultative sessions with local community organisations and report back to local communities.¹⁶³

The Local Government Municipal Structures Act lays the foundation for participatory mechanisms of local government providing that each municipality have a municipal council whose duty it is to annually review the needs of the community, its priorities to meet those needs, its processes for involving the community, its organisational and delivery mechanisms for meeting the needs of the community and its overall performance in meeting these objectives. A municipal council must also develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.¹⁶⁴ The Act also safeguards councillors as a means for this communicative relationship between council and community providing that there may not be fewer than three or more than 90 councillors in local or district municipalities and not more than 270 in a metropolitan municipality. The Act allows for the deviation from these numbers for increasing the number of councillors if extreme distances or a lack of effective communication exists in the municipality. Likewise there is room for decreasing the number of councillors in order to achieve the most effective size for active participation by all councillors at council meetings, good and timely executive and legislative decisions, responsiveness and accountability of councillors, taking into account the possible use of modern communication techniques and facilities and the optimal use of municipal funds.¹⁶⁵ The Act also provides for the establishment of ward committees by metropolitan or local municipalities the object of which is to enhance participatory democracy in local government. The objective of a ward committee is to make recommendations on any matter affecting its ward to the ward councillor or through the ward councillor to the metropolitan or local council, the executive committee, the executive mayor or the relevant metropoli-

¹⁶³ Local Government Municipal Systems Act, sec 17 (1) (2).

¹⁶⁴ Local Government Municipal Structures Act, sec 19.

¹⁶⁵ *ibid*, sec 20.

tan sub council. The ward committee has such duties and powers as may be delegated to it by the metropolitan or local council. A ward committee is constituted by a councillor representing that ward in the council and who is chairperson of the committee and not more than 10 other people who reflect the diversity of interests in the ward and is equitably represented by women.¹⁶⁶ There is no remuneration for members of ward committees.

The Systems and Structures Acts effectively make local government responsible for delivering services and enhancing participation of local communities. The Acts also set in place a variety of mechanisms and procedures by which local authorities can realise these tasks.

FORMS OF DECENTRALISATION

South Africa has a unitary but decentralised system of government. The Constitution assigns functions to the three spheres of government while national government determines policy, provincial governments are responsible for implementation and local government is responsible for the provision of public goods and user services. The constitutional principle of cooperative governance implies that all three spheres of government work together and resolve disputes by negotiation rather than by litigation.

The Constitution grants local government *original* powers¹⁶⁷ this is the primary source of power for local government and is significant because it cannot be removed or amended by ordinary statutes or provincial acts. There are however significant overlaps between the spheres of government in the allocations of powers over specific service areas e.g. road traffic regulation which is a functional area of concurrent provincial and national competence and that municipal public transport is a local government power within area of concurrent provincial and national legislative competence. The Constitu-

¹⁶⁶ Local Government Municipal Structures Act, sec 73, 74.

¹⁶⁷ Constitution, sec 156 (1) (a).

tion provides for the decentralisation of functions to municipalities¹⁶⁸ – it entrenches the principle of subsidiarity, which suggests that responsibilities be allocated to the lowest level of government possible.

The Constitution also provides for the *assignment* of administration to a municipality by national or provincial government if the matter would most effectively be administered locally and if the municipality has the capacity to administer it.¹⁶⁹ The Constitution also provides for assignments of powers and functions to individual municipalities by national or provincial government.¹⁷⁰ These provisions deal with individual assignment of executive powers – in this manner there can be an asymmetric assignment of powers and functions to the local sphere of government, in this case the possibilities for metropolitan municipalities assuming more responsibilities exist. There is also provision that a provincial legislature may assign any of its legislative powers to a municipal council in that province¹⁷¹ – this provision addresses itself to individual assignment of legislative powers this means that a national act of parliament would assign legislative power over a particular issue to an individual municipal council. There appears to be no limit to the matters that can be assigned to local government.¹⁷²

The Local Government Municipal Systems Act¹⁷³ provides for procedures to be followed in assigning functions to municipalities generally and individually. A cabinet member or deputy minister initiating the assignment of a function or a power by way of national legislation to municipalities must consult the minister responsible for local government, the minister of finance and organised local government representing local government nationally, consider any assessment by the financial and fiscal commission and

¹⁶⁸ Constitution, sec 156 (4).

¹⁶⁹ *ibid*, sec 156 (4).

¹⁷⁰ *ibid*, sec 99 (126).

¹⁷¹ *ibid*, sec 104 (1) (c).

¹⁷² *ibid*, sec 156 (1) (b).

¹⁷³ Sec 9, sec 10.

publish the draft legislation. In terms of this provision, procedural requirements are observed where national or provincial legislation is to assign a new power or function to municipalities. An injunction is also placed upon the relevant minister to ensure sufficient funding and capacity building initiatives as may be needed for the performance of the assigned function or power. Assignment takes place where existing powers and functions are re-allocated to another functionary in terms of a mechanism created for that purpose – this implies that a particular functionary is divested of a function that is transferred or allocated to another functionary. However, assignment is also referred to where a particular functionary creates new powers and functions for another functionary.¹⁷⁴

FINANCIAL DECENTRALISATION

The Constitution provides that legislation should prescribe the equitable division of revenue raised nationally among the national, provincial and local spheres of government.¹⁷⁵ It adds that local government (and each province) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it and may receive other allocations from national government revenue either conditionally or unconditionally.¹⁷⁶ A municipality may impose rates on property and surcharges on fees for services provided by or on behalf of the municipality and if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls. No municipality can impose income tax, value added tax, general sales tax or customs duty.¹⁷⁷ Furthermore the power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality or other taxes, levies or duties

¹⁷⁴ R J Mosiane, A critical analysis of South African decentralisation processes, MA thesis, University of the Witwatersrand, 2003, p 45.

¹⁷⁵ Constitution, sec 214.

¹⁷⁶ *ibid*, sec 227.

¹⁷⁷ *ibid*, sec 229.

may not be exercised in a way that materially or unreasonably prejudices national economic policies, economic activities across municipal boundaries or the national mobility of goods, services, capital or labour. The powers of municipalities in this regard may also be regulated by national legislation.

The final Constitution certified in 1996 and became fully effective for local government after the 2000 local government elections. The Constitution by its principle of co-operative government directs that all spheres of government must:

- Respect the constitutional status, institutions, powers and functions of government in these spheres
- Not assume any power or function except those conferred on them in terms of the constitution
- Exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere
- Co-operate with each other in mutual trust and good faith
- Avoid legal proceedings against one another¹⁷⁸

Theoretically this has uplifted local government from a subordinate level of government to a significant sphere in its own right. Local government was also given new development functions such as the promoting of social and economic development and meeting the basic needs of communities including the provision of water, sanitation, roads, storm water drainage, refuse removal and electricity reticulation – these are all entrenched in the Constitution. In practise different types of local governments have different responsibilities. In larger urban areas municipalities are responsible for a

¹⁷⁸ Constitution, sec 41.

range of functions and services while rural local governments generally provide fewer services.¹⁷⁹

The 1996 Constitution gives local government the right to impose rates on property and surcharges on fees for services provided. Although other sources may be assigned in legislation, local government may not impose income tax, value added tax, general sales tax or customs duties. The Constitution also gives government the right to a division of the equitable share of revenue raised nationally to enable it to provide services and perform the constitutional functions allocated to it. There is no obligation on national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base. Allocations to provinces are generally larger than to municipalities because municipalities have their own sources of revenue but provinces do not. Municipal own revenue is raised through property taxes, regional levies, service charges and fees. Own revenue covers more than 90% of the operating income of the local government as a whole. Total central transfers to local government in 2000/2001 amounted to R6.7 billion. R1.867 billion of this was its portion of the equitable share while the rest was in the form of conditional and unconditional grants. The largest conditional grant is the Consolidated Municipal Infrastructure Programme – for major infrastructure. Grants including the equitable share from national government comprised about 7% of the projected R58 billion local government budgets in the 1999-2000 fiscal year. Municipalities, according to the Constitution, can also raise loans for capital and operating expenditure – this provision is intended to enhance local government access to the capital market. There is also a socio economic rights context to local government finance in terms of the rights enshrined in the Bill of Rights which gives citizens the right to access to services such as housing, healthcare, food, water and social security. Local

¹⁷⁹ Cameron, Central-local financial relations.

government financing is intended to promote local government's capacity to provide such services.¹⁸⁰

DEVELOPMENTAL LOCAL GOVERNMENT, INTEGRATED DEVELOPMENT PLANNING,
AND BATHO PELE: IN RECOGNITION OF THE LOCAL CITIZEN

The Constitution conceives the local level of government as being developmental. Local government is responsible for structuring and managing its administration, budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community. The Constitution binds local government to 'participate in national and provincial development programmes'.¹⁸¹

The idea of developmental local government is outlined in the 1998 White Paper on Local Government. Developmental local government is defined as local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives. This is based on basic constitutional principles of ensuring that all South Africans have access to adequate housing, health care, education, food, water and social security. Developmental local government is explained by the White Paper as having four inter related characteristics:

1. Maximising social development and economic growth – the Paper argues that local governments have great influence over local economies especially with regards the rates, user charges and fees it collects, the amount of people it employs, its control over service tariffs and land development. Local government is therefore in a good position to maximise job creation and investment.
2. Integrating and coordinating – the Paper argues that within any local area many different agencies contribute to development, including

¹⁸⁰ Cameron, Central-local financial relations.

¹⁸¹ Constitution, sec 153.

national and provincial departments, parastatals, trade unions, community groups and private sector institutions. Local government is in a good position to provide direction and leadership for these interests in a way that achieves local prosperity.

3. Democratising development, empowering and redistributing – the Paper contends that in addition to promoting community interests within the council, municipal councillors should promote the involvement of citizens and community groups in the design and delivery of municipal programmes. Municipalities need however to be aware of the divisions within local communities and seek to promote the participation of marginalised and excluded groups in community processes.
4. Leading and learning – the Paper contends that rapid changes at global and national level are forcing local communities to rethink the way they are organised and governed. Local government needs to build political leadership that is able to bring together coalitions and networks of local interests that cooperate to realise a shared vision.¹⁸²

The White Paper argues that working together with local citizens and partners culminate in municipalities requiring active participation by citizens on four levels – as voters to ensure democratic accountability, as citizens who express their views towards policies affecting them, as consumers and end users who expect value for money affordable services and a courteous and responsive service and as organised partners involved in the mobilisation of resources for development via for profit businesses, non governmental organisations and community based organisations.¹⁸³

¹⁸² Ministry of Provincial Affairs and Constitutional Development, White Paper on Local Government, sec B (1).

¹⁸³ *ibid*, sec B (3).

Developmental local government directs that each municipality undertake developmentally oriented planning in the form of the adoption of a strategic plan known as an Integrated Development Plan. This will ultimately give voice to local government's constitutional and development obligations and facilitate its participation in national and provincial development programmes. The Integrated Development Plan must coordinate plans for the development of the municipality taking into consideration the municipality's resources and capacity with the inclusion of a financial plan or budget – the Integrated Development Plan must also be compatible with national and provincial development plans.¹⁸⁴ Municipalities are also required to establish a performance management system in line with the priorities, objectives, indicators and targets contained in its Integrated Development Plan. They are also required to establish mechanisms to monitor and review its performance management system.¹⁸⁵

The Integrated Development Plan is described as a mechanism through which the post apartheid objectives of restitution, development and growth can be achieved at the local level. This is because integrated development planning embodies the core purpose of local government and guides all aspects of revenue raising and service delivery, interaction with the citizenry and institutional organisation. The integrated development process serves as a process of interaction not just between tiers of government but also spheres of governance and is the process through which national constitutional obligations are matched with the autonomous prioritisation of locally generated development goals.¹⁸⁶ Integrated Development Plans enable a local authority to: assess the current reality in its area with regards economic and social trends as well as available resources, skills and capacities, assess the varied needs of the community and different interest groups, prioritise these needs, set frameworks and goals to meet these needs, set budgets ac-

¹⁸⁴ Ministry of Provincial Affairs and Constitutional Development, White Paper on Local Government, ch 5, sec 25

¹⁸⁵ Local Government Municipal Systems Act, sec 38, 40.

¹⁸⁶ Parnell and Pieterse, Developmental local government.

ording to these goals and regularly monitor and measure progress with regards these goals.¹⁸⁷

Developmental local government is to be supported by local public administrations that have a high standard of professional ethics, utilise resources efficiently, provide impartial, fair and equitable services, respond to citizens' needs, encourage public participation in policy making and are accountable and transparent through the provision of accessible information to citizens.¹⁸⁸ Municipal legislation directs that local public administrations be responsive to the needs of the local community and facilitative of accountability. This is accomplished through ensuring that political structures, office bearers, managers and staff align their roles and responsibilities according to their Integrated Development Plan principles and establish clear relationships, facilitate cooperation, coordination and communication among political structures, political office bearers, the administration and the local community.¹⁸⁹

In a recent examination of developmental local government Edgar Pieterse and Mirjam van Donk¹⁹⁰ argue that the efforts and achievements of most municipalities have fallen short of critical developmental ideals. This has resulted in a substantial refinement of local government policy over the last few years. Pieterse and van Donk add that while the new policy agenda has progressive and transformatory value, it does not offer an entirely sufficient path to developmental local government. An example of the policy shift includes an intervention by the Department of Provincial and Local Government known as Project Consolidate operating in at least 50 per cent of all municipalities. The Project aims to improve municipal performance by deploying professionals and specialists to focus on short term goals and ser-

¹⁸⁷ Parnell and Pieterse, Developmental local government.

¹⁸⁸ Constitution, sec 195.

¹⁸⁹ Local Government Municipal Systems Act, sec 51.

¹⁹⁰ E Pieterse, M van Donk, Developmental local government: Squaring the circle between policy intent and impact, in M van Donk, M Swilling, E Pieterse, S Parnell, *Consolidating developmental local government: Lessons from the South Africa experience*, UCT Press, Cape Town, 2008, p50.

vice backlogs. As regards substantive policy four themes are prioritised; sustainable human settlements to address spatial and economic distortions, robust local economies to address the disjuncture between formal and informal economies, access to a package of free basic services and meaningful opportunities for participation in municipal affairs.¹⁹¹ Based on these imperatives the Department of Provincial and Local Government lays out a specific agenda for the consolidation of developmental local government. These include dealing with institutional capacity in terms of management capacity and performance and accountability systems, dealing with service delivery in terms of backlogs and slow roll out and instituting good governance with regards instabilities between political and administrative domains, poor communication between council and communities and non-functioning ward committees.¹⁹² Pieterse and van Donk argue that the new substance of developmental local government however requires further consideration for the following reasons. Firstly there is a significant tension between ‘top down’ directives and ‘bottom up’ initiatives. This is borne out by difficulties reconciling Institutional Development Plans with programmes launched by national departments. Secondly there is tension between technical and political accountability. Setting hard targets to achieve substantive goals may well counteract a holistic programmatic approach as implied by a sustainable human settlements initiative. Thirdly a refined multidimensional development approach would require a qualitatively different class of municipal staff who possess high capacities for creativity and innovation. Fourthly there is a need to find balance between the horizontal and vertical integration of development plans and institutional priorities.¹⁹³

The White Paper on Transforming Public Service Delivery 1996 provides for the eight Batho Pele (‘people first’) principles. These include:

1. Consultation – citizens should be consulted on the quality of service delivery and wherever possible be given a choice of services on offer

¹⁹¹ *ibid*, p52.

¹⁹² *ibid* p56.

¹⁹³ *ibid*, p62.

2. Service Standards – citizens should be advised on the level and quality of service delivery so that they are aware of what to expect
3. Access – all citizens should have equal access to services to which they are entitled
4. Courtesy – citizens should be treated with courtesy and consideration
5. Information – citizens should be given full and accurate information on the service delivery to which they are entitled
6. Openness and Transparency – citizens should be advised on how departments are run, how much they cost and who is in charge
7. Redress – if the promised standards of service delivery is not met, citizens should be offered a full explanation and a speedy and effective remedy, and when complaints are made citizens should receive a sympathetic, positive response
8. Value for Money – public services should be delivered economically and efficiently in order to give citizens the best possible value for money

According to the Paper the principles are applicable to central and provincial government but also relevant to other areas of the public service such as local government and parastatals. The Paper aims to improve service delivery and set standards that reach international standards. The paper requires that the public service identify:

- a mission statement for service delivery and service guarantees
- what services be provided to what groups
- in line with the RDP the principles of affordability and of redirecting service delivery to areas and groups previously under resourced

- service delivery standards, defined outputs and targets and performance indicators, benchmarked against comparable international standards
- monitoring and evaluation mechanisms and structures designed to measure progress and to introduce corrective action
- plans for staffing, human resource development and organisational capacity building, tailored to service delivery needs
- redirection of resources from administrative tasks to service delivery, particularly to disadvantaged groups and areas
- financial plans that link budgets directly to services needs and personnel plans
- potential partnerships with the private sector, non government organisations and community based organisations that will provide more effective forms of service delivery
- development of a culture of customer care and approaches to service delivery that are sensitive to issues of race, gender and disability

The Paper also entrenches ‘new managerial tools’. These include assigning individual managers the responsibility of delivering specific results, delegating managerial responsibility and authority to the lowest level and promoting transparency about results achieved and resources expended. The Paper argues that the public sector is still seen as operating within over centralised, hierarchical and rule bound systems inherited from the previous dispensation which makes it difficult to hold individuals to account. This is largely because decision making is diffused, they are focused on inputs rather than outcomes, they do not encourage value for money, they do not reward innovation and creativity, they reward uniformity above efficiency and responsiveness and the encourage inward looking, inflexible attitudes at odds with a vision of a public service whose highest aim is optimum service delivery.

The Paper also introduces the concept of citizen as the ‘customer’ because it embraces principles as fundamental to service delivery as the provision of services for commercial gain. It involves listening to views of customers and taking them into account when making decisions, treating them with consideration and respect, making sure that the promised level and quality of service delivery are always of the highest standard and responding swiftly when standards of service fall.¹⁹⁴

LEGITIMISING LOCAL GOVERNMENT: THE LOCAL ELECTION

The Constitution makes provision for the establishment of municipalities and the composition and election of municipal councils which are taken further by legislation.¹⁹⁵

The local government electoral system differs from the national and provincial electoral system of pure proportional representation. In the elections of metropolitan councils and local councils (i.e. local councils with wards), half the councillors represent wards and half are chosen from party lists in the order in which their names appear on the lists.¹⁹⁶ Electoral representation is therefore through the mixed member representative system which combines the accountability of direct personal representation with the equity and representivity of proportional representation (PR). In the ward elections the ward councillor need not represent a party; he or she can be an independent. The candidate who obtains the most votes wins the seat. In addition to their elected members municipal councils may also include traditional leaders in their proceedings but the number of traditional leaders may not exceed 20%

¹⁹⁴ W Fox, Public goods and service delivery: Batho Pele revisited, *Adminstarto Publica*, 13 (1), 2005.

¹⁹⁵ Constitution, sec 155 and 157.

¹⁹⁶ Voters in metropolitan councils cast two ballots, one for the metro council (PR) and one for the ward elections. Voters in local councils with wards cast three ballots, one for the local council (PR), one for the ward elections and one for the district council. Voters in local councils without wards cast two ballots, one for the local council (PR) and one for the district council. Voters in district management areas cast two votes, one for the district council (PR) and one for the district management area (PR).

of elected councillors and traditional leaders sit on councils ex officio – they do not have voting rights.¹⁹⁷

After the first local government election of 2000 following the democratic (national and provincial) elections of 1994 there were 6 metropolitan councils, 231 local councils, 47 district councils and 14 district management areas.¹⁹⁸

The Local Government Municipal Structures Act also directs that every citizen who has the right to vote for a municipal council has a right to stand as candidate in an election of the council and to become a councillor of that council.¹⁹⁹ The councils of a metropolitan or local municipality consist of councillors elected by:

- Voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that municipality and
- Voters registered on that municipality's segment of the national common voters roll in the respective wards in that municipality, to directly represent the wards.²⁰⁰

The number of ward councillors must be equal to 50% of proportionally elected councillors. The council of a district municipality consists of:

- Councillors elected by voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that municipality

¹⁹⁷ T Lodge, L Olivier and A Venter, *Handbook on Legislation and Regulations for South Africa's Local Government Elections*, Electoral Institute of Southern Africa, 2000, p 6.

¹⁹⁸ Lodge et al, *Handbook on Legislation*, p 4.

¹⁹⁹ Local Government Municipal Structures Act, sec 21 and 22.

²⁰⁰ *ibid*, schedule 1 and 2.

- Councillors appointed by the councils of the respective local municipalities within that district municipality to directly represent those local municipalities
- If the district municipality has a district management area, councillors elected by voters registered on that district municipality's segment of the national common voters roll in that area are to proportionally represent the parties that contested the election in that area.²⁰¹

The number of councillors representing local municipalities and district management areas in the district council must be equal to 60% - the rest will be PR.

Local elections in 2000 finalised local government in South Africa. Voters, depending on where they lived, elected either metropolitan or local and district councils. Many voters were choosing representatives for newly created authorities under the 1998 Municipal Structures Act. The 6 metropolitan councils Cape Town, eThekweni (Durban), Nelson Mandela (Port Elizabeth), Johannesburg, Tshwane (Pretoria) and Ekurhuleni (the East Rand) embodied larger municipalities than the existing metropolitan councils – Tshwane for example would incorporate several commuter townships across the provincial border of the North West and the Nelson Mandela metropole would join Uitenhage and Port Elizabeth. Ten towns on the east rand would become one unicity. All elected councillors would hold their seats in a single metropolitan chamber. Half would represent wards and half would be elected through PR. The PR seats would be allocated to parties on the basis of the votes received both in the ward elections and in the PR list elections. Voters would complete separate ballot papers for each. Unlike in the 1995 / 1996 elections therefore the allocation of seats would be in full accordance with the PR principle. The wards were supposed to consist of roughly equal populations. The extension of PR and equal wards would bring to an end the transitional compromise in which people living in formal statutory areas

²⁰¹ Local Government Municipal Structures Act, sec 23.

(white, coloured, Indian) were overrepresented. Outside metropolitan areas voters elected local councils as well as district councils into which the local councils would be grouped – they would complete three ballot papers. In certain rural areas with no obvious concentrated settlement, voters would elect district management committees several of which would be contained in a district council. Powers and functions would be divided between local and district councils at the discretion of the MEC for Local Government after the election. District councils were intended to become key agencies in cross – subsidisation between different councils and to provide resources for local government in rural areas without significant tax bases. Within rural areas the 800 odd chiefs and some of the 10000 headman would sit on councils ex officio having no voting rights. Altogether instead of the 843 local councils elected in 1995/1996 there would be 6 metropolitan councils, 241 local councils and 52 district councils – 299 in total. The Local Government Municipal Structures Act provided for considerable diversity in the councils decision making arrangements varying from province to province at the discretion of the MEC for local government, councils could either be executives elected by the councillors – such executives may be multi party, elected mayors – normally from the majority party who would then select an advisory mayoral committee or through plenaries in which executive authority would reside in the whole council.

The 2000 elections were heralded as more democratic than the 1995/1996 elections having ended the over representation of minorities. They were also argued to have produced more efficiency as there would be less functional replication between different sites of representation in the metropolitan council and between different councils. Fewer councils and therefore fewer officials and councillors were viewed as paving the way for easier cross subsidisation between richer and poorer neighbourhoods.

Elected local government in South Africa embodying the constituency element through ward councillors has, aside from democratising local level politics, technically brought ‘government closer to the people’. The African

National Congress Local Government Election Manifesto 2000 entitled ‘Speeding Up Change’ emphasised ways in which local government would become more accountable and more committed to providing free basic amounts of water, electricity and other municipal services as well as undertaking to work with communities. The Manifesto added that ‘the public sector is the preferred option to provide services’.²⁰² As the next chapter shows however, these promises have been challenged by the nature of decentralisation in the light of financial and capacity constraints as well as the impact of national level ideology.

²⁰² African National Congress, *Speeding Up Change*, Local Government Election Manifesto, 2000, p 100.

LIMITS TO DECENTRALISED DEVELOPMENT

IN CHAPTER TWO I pointed out that successful decentralisation is dependent on both fiscal and institutional decentralisation but that even this ‘top down’ decentralisation is dependent on building democracy at the local level (from the ‘bottom up’) which requires civil society activity and political will. In this Chapter I turn to a discussion on how the developmental mandate of local government in South Africa is affected by ambiguities in its journey to decentralisation.

It is well enough known that most attempts to reform administrations in Africa have been challenged. Administrative reforms usually took place during transitions to independence and although approaches have been varied two broad themes are identifiable, the structural approach and the development administration approach.²⁰³ The structural approach, embedded in the World Bank approach to structural adjustment, places emphasis on the adoption of structural and organisational changes, techniques and methods throughout the administrative system, which deemed to have its own internal logic, would correct any malfunction. This model focuses more on efficiency and effectiveness and less on development practices and norms ensuring participative and accountable social interactions. The Development approach places the administrative system in a wider context consisting of many interdependent systems. There is recognition therefore that the public service is embedded in a political and economic system and that it is not possible to change administrative systems without adjusting the social, institutional balance. In South Africa the debates around administrative reform during the transition to democracy emerged largely as a consequence of debate facilitated by the ‘New Public Administration’ initiative which led to a paradigm

²⁰³ A McLennan, Into the future: Restructuring the public service in P Fitzgerald, A McLennan, B Munslow (eds), *Managing sustainable development in South Africa*, Oxford University Press, Oxford, 1999.

shift in the general approach to the practice of public administration which had been linked to apartheid and focused almost exclusively on the regulatory aspects of administration.²⁰⁴

LIMITS TO DECENTRALISATION FROM THE 'TOP'

Fiscal decentralisation

Robert Cameron²⁰⁵ argues that after the transition to democracy one of the reasons for the promotion of local government by the governing African National Congress was the prevailing view that cities are potential dynamic arenas for economic, social and cultural development. Cities are seen as economic competitors in a global market place. Indeed when listing the objectives of decentralisation Minister for Provincial and Local Government Sydney Mufamadi claimed that '(an) objective of decentralisation is to stress the need for increased mobilisation of local resources'²⁰⁶ At the same time however, local government was promoted as the 'hands and feet' of the African National Congress's Reconstruction and Development Programme formulated to eradicate the inequalities of apartheid through the rapid delivery of social goods. There is thus a contradiction between local government as self financing and income generating and local government as socially interventionist. This has led to two broad views on how to finance local government in South Africa. The first is that local government should be primarily self financing and the second is that local government requires substantial extra sources to fulfil its constitutional mandate. The former view is that local government generally has sufficient resources at its disposal to undertake its responsibilities while the latter view is that local government decentralisation is only meaningful if there are sufficient financial

²⁰⁴ *ibid.*

²⁰⁵ R Cameron, The history of devolution of powers to local authorities in South Africa: the shifting sands of state control, *Local Government Studies*, 21 (3), 1995.

²⁰⁶ Speech by Sydney Mufamadi, Minister of Provincial and Local Government, 5 April 2001, cited in Mosiane, A critical analysis of South African decentralisation processes, p 45.

resources for local authorities to undertake their functions. These views are substantiated by the contradictions between the African National Congress's Reconstruction and Development Programme and its later macroeconomic strategy, the Growth Employment and Redistribution policy – the latter of which emphasises financial and fiscal austerity, cutting government expenditure to reduce the budget deficit, while the former is a marshall plan type approach to development.

The Department of Finance is a major exponent of the viewpoint that local government should be largely self-financing. The Department sanctions its commitment to this viewpoint with the justification that in many other countries municipalities are responsible for major social services such as health, education, welfare and security. In South Africa most of these functions are the responsibility of national or provincial government and thus there is less need for transfers to local government. The Department's view is that many of the financial problems within municipalities are owing to their inefficiency and not a lack of finances. Indeed the Department has labelled local government budgetary systems 'archaic and based on unrealistic planning and inefficient revenue collection'. A study by the Municipal Demarcation Board in 2000 found that the lack of financial management skills is the biggest capacity problem facing municipalities (i.e. lack of capacity such as billing rate payers, keeping a proper credit control system etc.) A government initiative, Project Viability was instituted to restore the financial health of municipalities and centred on improving financial management, accounting and credit control within municipalities. Cameron argues that although there have been improvements in municipal finance management, local authority debt has increased owing to the unaffordability of rent and service charges for poorer residents, the culture of non payment and inadequate revenue collection systems. Capital expenditure has fallen as a result of deficit and liquidity problems in many municipalities and this for Cameron

is a reflection of the Department's position that municipalities put their houses in order before coming to the treasury for money.²⁰⁷

The South African Local Government Association is an exponent of the viewpoint that local government requires extra resources from central government to fulfil its mandate. It has accused the government of delegating functions to local government without the commensurate funds needed to finance them. They accuse the government of 'underfunded mandates'. The Association's position is that policies, norms and standards are set at national level without prior consultation as to their budgetary implications. Also there is very little funding for provinces to monitor and support local government. And there is doubt as to how the equitable share is determined in relation to local government's ability to provide basic services and perform its other functions. This view is shared by the South African Mine Workers Union which argues that the assumption that local government is self supporting and therefore requires a small portion of the equitable share is misleading as there are some municipalities without any tax base at all. The Financial and Fiscal Commission agrees that the current equitable share does not adequately address the obligations of local government to fulfil its mandate (in the metro areas the average municipal expenditure per person per annum for 2000/2001 was R2,525, in category B municipalities with disproportionately rural poor the equivalent amount was R82 per person). It is argued that the infrastructural backlog owing to apartheid is too great to be left to local government (the governments investment review team estimated the cost of the backlog to be R47-53 billion an amount which was nearly the total local government budgetary expenditure of R58 billion in 1999/2000). Also non payment for services is not just political but related to poverty. There are also concerns that new water and electricity legislation

²⁰⁷ Cameron, R. Central-local financial relations in South Africa. *Local Government Studies*, 28 (4), 2002.

will lead to local government losing these functions and therefore also a source of revenue to statutory single purpose bodies.²⁰⁸

Cameron argues that the tension within local government finance manifested itself in a major conflict around the demarcation of local government boundaries in 1999/2000. The Demarcation Board rationalised municipalities from 843 to 284. As the basis of its demarcation it used functional interdependence of communities and minimum sizes to achieve economies of scale. The aim was to create bigger municipalities with larger tax bases that would be able to promote services and development in a sustainable manner. To this end urban and rural authorities were combined into single municipalities. The Board used a socio-geographic approach to demarcation entailing ‘fiscal equivalence’, whereby consumers of services would be the same people who pay for them and the view that consolidation into larger units would lead to jurisdictions having richer and poorer areas which would facilitate a more equitable distribution of services and taxes. The Board’s proposals were vehemently opposed by the Department of Finance which argued that the proposed boundaries would weaken the fiscal position of non metropolitan cities and towns structurally and as a consequence constrain rather than enhance their ability to raise capital and develop infrastructure. The Board refused to change its demarcations arguing that the department had taken as its measure for boundaries, credit worthiness and financial viability. It added that it had never stated that all municipalities would be financially viable. It further recommended that extra sources of revenue could be extracted by introducing a surcharge on personal income tax and increasing the equitable share – these recommendations were not accepted by government but the Board’s boundary proposals were used in the 2000 elections as it is an independent body.²⁰⁹

Another controversy around local government finance is a constitutional amendment which would have allowed direct intervention by national gov-

²⁰⁸ Cameron, History of devolution of powers.

²⁰⁹ Cameron, Central local financial relations.

ernment in local governments that fail to manage their finances properly. Municipalities are permitted to borrow for capital and current expenditure²¹⁰ but the municipal debt market had stagnated due to the perception that local government was a bad risk. The Department of Finance argued that big municipalities should be borrowing at least R5 billion per annum in order to reduce grants from central fiscus. The banks however were not prepared to lend cheaply to municipalities as they perceived high risks in terms of non payment, default or delay. The Department of Finance therefore introduced draft legislation – The Municipal Finance Management Bill 2001 (enacted in 2005) which included a provision (Section 11) for the declaration of a Municipal Financial Emergency Authority to oversee the administration of municipalities which were declared a financial emergency with a view to normalising their affairs.²¹¹ This provision would come into effect if a municipality defaulted on the payment of the amount due, defaulted on an agreement providing security for a debt, the municipality's current expenditure had exceeded current revenue for at least 3 preceding financial years or the municipality had an operating deficit in excess of a prescribed percentage of actual operating revenues. The Emergency Authority would appoint an administrator who would be given any of the municipality's executive or legislative powers deemed fit to restore it to a sound financial and fiscal position. This would include temporary powers to increase taxes or charges or to cut expenditure. This provision could also be used where a local government had failed to pass its budget. There was major opposition from organised local government and provinces to this constitutional amendment Bill during the parliamentary hearings. It was argued that the Bill would diminish the powers of local government, would reduce the status of local government from being a district sphere of governance to being a 'step - child of the national treasury', and would encroach on the general sovereignty of local government. The Department of Finance eventually withdrew this amendment but added the Section 11 provision as an *annexure* to the Mu-

²¹⁰ Constitution, sec 230.

²¹¹ Municipal Finance Management Bill, 2001, sec 11.

municipal Finance Management Bill with a proviso saying that the section would be inserted upon the approval of the constitutional amendments. The Bill, in effect was aimed at making local government financial management more effective and efficient by modernising budgeting, financial reporting and financial management systems as well as providing a framework for municipal borrowing. Aside from Section 11 there are general concerns that the Bill authorises the national treasury to prescribe to municipalities through regulation, guidelines and instructions. This includes the powers to prescribe uniform treasury norms and standards, to review any system of financial management, to withhold funds to municipalities in breach of the provisions of the Bill and to intervene in the bank affairs of a municipality. Also while it regulates local government it does very little to build local government capacity and could weaken the powers of elected local governments. Cameron argues that this reflects a growing financial centralisation eroding the autonomy of local government.²¹²

Sophie Oldfield²¹³ argues that rather than local government suffering from an erosion of autonomy it presents as an embedded autonomy which is both constraining and enabling. This is reflected in the involvement of provincial government in boundary and fiscal definitions of local government – provinces have the right to legislate the devolution of political structure within metropolitan municipal types – specifically a metro with ward committees or a metro with sub structures (Municipal Structures Act 1998). With regards national government, the equitable share may be used as a form of leverage to allow national government to exert some authority or discretion over local government performance and the manner in which it addresses central issues such as redistribution and growth. Oldfield argues that the equitable share gives the government and Ministry of Finance a tool that may be used as an incentive carrot to be developmental or as a coercive stick to

²¹² Cameron, Central local financial relations.

²¹³ S Oldfield, Embedded autonomy and the challenges of developmental local government', in Parnell et al, *Democratising Local Government*, p 92.

exert pressure and consequence on recalcitrant localities – importantly this fiscal mechanism lies outside the intervention of the province.

Taking up this argument Doreen Atkinson²¹⁴ claims that the new local government system reflects ‘devolution by stealth’. This takes the form of informal assignments to local government which are not in effect unconstitutional as the involvement of municipalities in development programmes is in accord with the Constitution (sec 153 b which obliges municipalities to participate in national and provincial development programmes). However the Constitution (sec 154 (1)) also obliges national and provincial governments to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. Despite this however municipalities are increasingly expected to participate in national development programmes without adequate funding or specialist support. Atkinson uses as an example the Free Basic Water Policy emanating from the Department of Water Affairs and Forestry. She argues that this policy may be passed as partially funded because the use of indigents’ municipal services are meant to be covered by the Equitable Share subsidy. Some municipalities have simply equated the Free Water Policy with the indigent policy while others have defined the bottom block of the block tariff system as 6kl of ‘free water’ meaning that indigents receive free water in addition to indigent subsidies. Atkinson asserts that this is an expensive burden for cash strapped municipalities.

The introduction of democratic local government was accompanied by the arduous task of amalgamating diverse and distinct municipal administrations. There were also serious cost implications of the establishment phase. The amalgamation process was made more complex by the need to integrate administrative, financial and information technology systems staff, tariff structures, municipal rates, credit control policies and indigent policies. Furthermore although the total fiscal implication of the amalgamation was estimated at R1,7 billion, only R550 million was to made available to municipi-

²¹⁴ Atkinson, A passion to govern.

palties through the national fiscus in the form of the Transition Fund flowing over three years. This matter was compounded by the fact that due to amalgamation difficulties many municipalities had not submitted financial statements between 1998 and 2000. Various government programmes had also been launched to support the transition such as the Local Government Support Grant (from the Department of Provincial and Local Government) aimed at medium and small municipalities with financial problems, the Financial Management Grant made available by the national treasury to promote reforms to municipal financial management practises and the Restructuring Grant also from the national treasury aimed at modernising large municipalities. Doreen Atkinson argues that these amounts were insufficient to cover the real costs.²¹⁵

Cameron argues that formally local government meets most of the requirements of vertical autonomy. It has constitutionally protected powers and functions of its own, a tax base, and the right to hire and fire staff as well as locally elected councillors. Local government is however faced with a tremendous service backlog in black areas and a shortage of skills. This has been exacerbated by constraints on horizontal autonomy such as the local resistance to payments of services (and rents). Cameron argues that the transition from municipalities with small white tax bases to municipalities including impoverished black areas has hardly increased their tax bases – the crisis of non payment for rates, rent and service charges is the biggest challenge for local government. Cameron points out that in June 1996 the annual debt in rates and tariffs was running at R5.6 billion, 25% of the annual R22.2 billion local authority rates and tariffs turnover. In June 1997 outstanding debts amounted to R6.8 billion (Department of Constitutional Development Project Viability 1997). Cameron also points out that many municipalities had insufficient funds to pay a month's salary, were increasingly utilising their funds and reserves to finance non payment of debtor accounts

²¹⁵ Atkinson, *A passion to govern*.

(Department of Finance 1997 Project Viability). There was also an increase in the number of municipalities defaulting on the repayment of loans to creditors including banks and service suppliers. The Department of Finance 2000 Budget Review stated that ‘many municipalities face financial problems due to poor management and cumbersome administrative and budget systems, inefficient service delivery, disproportionate wage bills and high levels of poverty among residents’. A further and related problem according to Cameron is the lack of capacity – municipalities do not have the administrative capacity to deal with the constitutional and legislative requirements of municipal governance. (Municipal Demarcation Board 2000 Report on Financial Issues Facing Local Authorities Post Demarcation).²¹⁶

The above arguments show that the developmental mandate of local government in South Africa is somewhat affected by the nature of fiscal decentralisation. The fact that there seems to be a contradiction between cities as economic competitors in the global market place and local government as the ‘hands and feet’ of the Reconstruction and Development Program has led to two broad views on how to finance local government in South Africa the first advocates for local government as primarily self financing and the other advocates that local government requires substantial extra sources to fulfil its constitutional mandate. The way these conflicting views have played out suggest that developmental objectives occupy shaky ground.

Institutional decentralisation

The capacity inadequacies of local government identified by Cameron reflect some of the wider institutional challenges posed to South African local government which, influence the process of decentralisation. These were initially recognised during the transition phase. This phase was characterised by the intensities of unifying staff during amalgamations of former white and black municipalities, training staff, setting out job grades and re-

²¹⁶ R Cameron, The upliftment of South African local government?, *Local Government Studies*, 27 (3), 2001.

muneration packages, setting tariffs for services, collecting rents, rates and service charges and planning redistribution from rich to poor in the light of the creation of a single tax base for a municipality. This all had to be accomplished with new staff, under financial constraints, low cost recovery rates and bad books (many municipalities had been unable to enter monthly accounts and pursue defaulters).

Christopher Pycroft ²¹⁷ contends that local government suffers from both ‘systems’ weakness and ‘structural’ weakness. Systems weakness is related to problems with the capacity of the municipality to perform its tasks this includes personnel problems, inadequate disciplinary procedures and performance management systems and inadequate financial management. Systems weakness should be addressed through capacity building and training of staff and by implementing new and efficient systems. Structural weakness refers to the fundamental structure of the municipality such as the economic fundamentals of the municipality which enable it to provide a basis from which municipal viability can be assured. Structural weakness, regarding finances, can be addressed by re-examining the administrative structure to ensure that sufficient resources remain available to fund service delivery.

The systems and structures weakness identified by Pycroft have a distinct bearing on the ability of local government to achieve its development goals as laid out by developmental legislation. These include maximising social development and economic growth, drawing up Integrated Development Plans, democratising development and leading and learning. I deal with them in turn.

The ability of many municipalities to achieve economic growth and social development is constrained by a lack of finances and capacity to raise finances given its backlog in service delivery and its difficulty grappling with non payment for services, free services and cost recovery issues. This is tak-

²¹⁷ Pycroft, Democracy and delivery.

ing place in an environment in which government is advocating financial constraint and a reduction in government spending and borrowing.²¹⁸

The integrated development planning process has been fraught with difficulties. Atkinson argued that the new development role for municipalities implies a multisectoral involvement in infrastructural economic and social development the inherited organisational structures of municipalities however, may be inappropriate for this task e.g. technical departments would become responsible for development given the bias towards infrastructural projects so technical departments become responsible for managing and ensuring compliance without the requisite contract management skills. Also, the lack of skills and capacity within municipalities would affect the management, monitoring and evaluation of Integrated Development Plans while their actual formulation would probably be left to hired consultants. Furthermore, municipalities would have to grapple with some complex issues regarding credit control strategies i.e. whether to employ coercion in the form of cut offs or incentive and community models, how to build a municipality – consumer relationship i.e. whether to employ credit control officers or ward committee members and how to develop community participation most meaningfully.²¹⁹

Jo Beall, Owen Crankshaw and Sue Parnell, in their work on the city of Johannesburg discovered that the Integrated Development Plan did not provide an adequate framework for linking municipal organisational planning to real development outputs. Furthermore they argue that developing effective municipal Integrated Development Plans usually relied on inputs from numerous provincial and national departments.²²⁰ The integrated development planning process is also a way for local government to realise its target of democratising development through promoting the involvement of citizens and community groups in the design and delivery of municipal pro-

²¹⁸ *ibid.*

²¹⁹ Atkinson, *A passion to govern.*

²²⁰ Beall et al, *Uniting a Divided City*, p 81.

grammes. Beall et al argue however that although the integrated development planning process in Johannesburg involved the views of local citizens, the final outcome did not reflect these views adequately enough. Furthermore there was a sense that participation in the process was due more to local level democratic traditions ingrained by the civics movement than by local government efforts to initiate participatory planning.²²¹

Richard Ballard, Debby Bonnin, Jenny Robinson and Thokozani Xaba in a more recent work on the eThekweni municipality show how the Integrated Development Planning process in Durban played out.²²² It began with a Long Term Development Strategy before the formation of the unicity in 2000. The Strategy was however purely internal with a technical bias and failed to achieve string political support. After the unicity system was established a more participatory process of long term visioning was implemented which included ward and sector based consultation and input from politicians. The result was a vision for Durban which differed from other metropolitans like Johannesburg and Cape Town which were more strongly globally oriented than based, as was Durban, on a good 'quality of life'. The official Integrated Development Planning document in Durban was drawn up after a metro-wide process of participation of stakeholder forums in all 100 wards. This draft document was however revised by a new city manager who did not believe it to be strategic enough. The final document therefore while attempting to draw on the diversity of interests in the city, drew on a more consultative rather than participative process.²²³

Patrick Heller notes that some municipalities drew up their Integrated Development Plans with the help of private consultants while others viewed community participation as a once off perfunctory process.²²⁴ Another as-

²²¹ *ibid*, p 83.

²²² R Ballard, D Bonin, J Robinson, T Xaba, Development and new forms of democracy in eThekweni, *Urban Forum*, 18 (4), 2007.

²²³ *ibid*.

²²⁴ Heller, Moving the state.

pect of democratising development is representing community interests within the Council. The process by which this is done is through ward councillors. As Atkinson argues however the advent of democratic ward councillors was subject to confusion as to their roles and responsibilities making their functioning weak. Also the relationships between councillors and officials were not adequately clarified and institutionalised. This also applied to the advent of ward committees – another mechanism for more close representation of communities and citizens. Atkinson notes that many councillors were elected for the first time, and where re-elected the dynamics have changed politically, new staff appointments had also been made on the basis of affirmative action and there is an impression that appointments were based on political patronage by dominant political parties. Two factors that have a direct impact on councillors, according to Atkinson, are the relationship between full time executive councillors and part-time ordinary councillors. She argues that ordinary councillors receive most of their information through caucus structures and they find themselves serving on committees and structures without much purpose, mandates, links to the rest of the Council or any real powers. Committee meetings are seen as a waste of time in view of the fact that all decision making powers are effectively centralised at the executive level – ordinary councillors and officials feel disempowered and disconnected from meaningful debate and opportunity to influence decision making, council meetings have become caucus driven rubber stamps for a series of decisions taken by mayoral committees or executive committees without any real accountability. Ward committees represent a fertile opportunity for communities interests to be represented but they are faced with a host of practical problems – most ward councillors (part-time) as opposed to PR councillors (fulltime) do not have constituency offices or administrative staff and poorer municipalities cannot spare the funding for ward committees. The legislation also provides no more than a general framework for ward committees and there is a fear that councillors on ward

committees will cease to represent their communities and begin rather to become delegates for narrow ward mandates.²²⁵

The leading and learning objective of developmental local government is premised on local government seeking local solutions to local problems this would involve local government building local partnerships or coalitions and networks of local interests that cooperate to realise common visions. This has however been slow given the demise of the civics movement changing the way civil society operates and is perceived at local level.

The nature of institutional decentralisation in South Africa, as evidenced by the above discussions, suggest that developmental objectives are hindered by systems and structural weaknesses. This means that mechanisms and processes for successful decentralisation may not be running at an optimum which has significant bearing on developmental objectives.

CHALLENGES TO DECENTRALISATION FROM THE 'BOTTOM'

Civil society activity

As already discussed in Chapter Three the role of the civics movement in effecting change at local and indeed national level was significant. It was the civics that lobbied for citizen participation 'people's power' and gave voice to concerns regarding poor service infrastructure and affordable basic services which culminated in the initial idea of developmental local government. Since 1994 and the official transition to democracy in South Africa however, the national profile of the civics movement has declined. Although the South African National Civic Organisation played a substantial role in the Local Government Negotiating Forum leading up to the interim Constitution of 1993, its presence beyond that has waned. It has effectively been 'marginalised in key areas' and 'marginalised in developmental plan-

²²⁵ Atkinson, A passion to govern.

ning’.²²⁶ Various reasons have been set forth to explain this, among them is the view that the Organisation has become fragmented and lacking in coherence and a sense of direction and purpose.²²⁷ Another view however is that the Organisation fell to the dominance of African National Congress Party exiles in national politics who did not enjoy local power bases or constituencies. This was coupled with the exclusion of the Organisation in the tripartite alliance of governance formed between the African National Congress, the Congress of South African Trade Unions and the South African Communist Party.²²⁸

Owing to its newly weakened position within the national liberation movement the Organisation was unable to elevate the transition of a local government dispensation onto the main 1994 transition agenda. This resulted in the finalisation of local government as an autonomous sphere of government only taking place under the final Constitution of 1996 and not during the 1994 transition. The design and execution of the local government framework including the definition of powers and functions therefore only occurred well after 1994 and local government was left to function until that time under an interim local government framework.²²⁹ This framework has been criticised as being ‘heavily process orientated’ and, with regards urban local government, failing to prescribe a detailed system of metropolitan government which could support the concept of ‘one city one tax base’.²³⁰ The framework also overlooked rural areas which, unlike urban areas, did not have prominent community organisations to articulate and pursue their interests.²³¹ As a result rural areas were not included in the interim framework and had to be accommodated for through an amendment five months

²²⁶ Seekings, SANCO.

²²⁷ *ibid.*

²²⁸ Beall et al, *Towards inclusive urban governance*, p 71.

²²⁹ Beall et al, *Uniting a Divided City*, p 71.

²³⁰ D Wooldridge, *Introducing metropolitan government in South Africa*, in Parnell et al, *Democratising Local Government*.

²³¹ A McIntosh, *Towards a new rural local government system in South Africa: possible options*, *Transformation*, 23, 1994.

later giving provincial MECs wide ranging powers to determine the form of local government within their rural areas.²³² The civic's fight for equality and participation at the local level was thus already coming under threat. Alongside this a new vision of civil society began to emerge.

Adam Habib ²³³ argues that civil society is plural by its very nature, reflecting diverse and even contradictory political and social agendas. As such some relationships between civil society actors and state institutions will be adversarial and conflictual while others will be more collaborative and collegiate. Habib defines civil society as 'the organised expression of various interests and values operating in the triangular space between the family, state and the market'.²³⁴ His definition conceptualises civil society as an entity distinct from both the market and the state. He justifies excluding the market from the definition of civil society on the basis that 'actors of political and economic society control and manage state power and economic production imparting them to a different strategic purpose and function from civil society actors'. So civil society is distinct not only from political society (parties, political organisations, political publics, parliaments) but also from economic society (organisations of production and distribution usually firms, cooperatives and partnerships).

Habib argues that there are three groupings or 'blocks' of civil society activity in post apartheid South Africa. The first, comprising formal NGOs is influenced by the political restructuring which the democratic state undertook to create an enabling environment for civil society – this was done by repealing repressive legislation and building a political climate permitting public scrutiny and protest activity. Furthermore new legislation was passed such as the Non Profit Act which officially recognised civil society and created a system of voluntary registration for its constituents and provided

²³² C Pycroft, Addressing rural poverty: restructuring rural local government', in Parnell et al, *Democratising Local Government*.

²³³ Habib, State-civil society relations in post-apartheid South Africa.

²³⁴ *ibid.*

benefits and allowances in exchange for NGOs and CBOs undertaking proper accounting and providing audited statements to governments. And, a fiscal environment was created to enable the financial sustainability of this sector. Institutions like the National Development Agency were formed with a mandate to fund legitimate non profit activity while tax regulations were reformed to grant registered CSOs tax exemption status. The effect of these changes has been the establishment of a fiscal, legal and political environment facilitating the development of a collaborative relationship between the state and formal NGOs. Habib argues that these NGOs have often been contracted by the state to assist in policy development, implementation and service delivery. This is usually encouraged by donors who fund such partnerships and advocate for the professionalisation and commercialisation of NGOs. Habib contends that while this has sustained the financial viability of these NGOs it has resulted in blurring the non profit / profit divide and affects the accountability of these NGOs.

The second block within civil society according to Habib, involves the proliferation of informal, survivalist community based organisations networks and associations which enable the poor and marginalised communities to survive the daily ravages of neoliberalism. These organisations have no relationship with the state so preoccupied are they with simply surviving the effects of state policies. They receive no resources from the state nor do they covet recognition from the state in fact, ‘it is doubtful whether the majority of them even recognise that the plight of the communities in which they are located is largely a result of the policy choices of political elites’.

The third block within civil society outlined by Habib is that category of organisations described as ‘social movements’. Social movements are largely a response to the effects of neoliberalism. This category is made up of a diverse set of organisations some national based and others locally based – but all of them formal community based structures which have a distinct leadership and membership often supported by a middle class activist base. They are not ‘survivalist agencies but are more political animals.

Indeed they have been largely established with the explicit political aim of organising and mobilising the poor and marginalised; and contesting / and or engaging the state and other social actors around the implementation of neoliberal social policies. As a result they implicitly launch a fundamental challenge to the hegemonic political and socioeconomic discourse that defines the prevailing status quo'. These social movements have an explicit relationship with the state (unlike block 2) depending on the issue it straddles adversarialism and engagement which puts them on a relatively more even footing with the state (than their block 1 counterparts/colleagues) engaging the state in an attempt to persuade it through lobbying, court action and even outright resistance.

Elsewhere Habib together with Richard Ballard and Imraan Valodia contends that social movements in post apartheid South Africa oppose either government policy on distributional issues such as the inability of poor citizens to access basic services or the state, banks and private landlords with regards evictions or securing land tenure. Other social movement activity also includes the trade unions, opposition to corporations and government with regards pollution and the environment and opposition to multilateral organisations and foreign corporations in relation to unpayable or odious debt. Ballard et al argue that the most tangible effect of social movements on the political landscape of South Africa is that they represent the interests of the poor and the marginalised. Social movements are an avenue for marginalised citizens to impact on material distribution and social exclusion – claiming a certain degree of influence and power over the state. Ballard et al contend that the government's shift to a more state interventionist and expansive economic policy with a welfarist orientation seemed to coincide with the emergence and heightened activity of social movements in the country. They suggest therefore that social movements have contributed to

the emergence of a political climate that encourages state elites to become more responsive to its marginalised citizens.²³⁵

Habib contends that the second and third blocks are products of processes associated with globalisation and its particular manifestation in South Africa. As a result of the state's neoliberal policies there has been an increasing leverage of multinational corporations and domestic businesses, a liberalisation of financial and trade markets, deregulation of the economy, relaxation of exchange controls and privatisation of state assets.²³⁶

Nicola De Jager²³⁷ looking at civil society from the point of view of government argues that the South African government through its policies and legislation acknowledges and encourages the ethnic and cultural plurality of citizens so long as these differences are not mounted to contend with government. Alongside this however, the African National Congress led government considers itself to be 'the only leader of the people' by virtue of democratic elections and therefore the only legitimate voice representing the views of the people. De Jager argues that the government appears to be attempting to create unity via centralisation and promoting conformity through the centralisation of the government structure in particular the increasing control of the Presidency. Plurality, demonstrated through the multiplicity of civil society organisations is also being restrained with attempts to institutionalise their role and their function being largely confined to implementers of government policy. De Jager's view is that the South African government is succumbing to the global trend of centralisation and that the alternative views expressed through the medium of civil society are being silenced. De Jager contends that civil society organisations derive their legitimacy from their ability to place new issues on the public agenda, provide

²³⁵ R Ballard, A Habib and I Valodia (eds), *Voices of Protest: Social Movements in Post Apartheid South Africa*, University of KwaZulu-Natal Press, Pietermaritzburg, 2006, p 415.

²³⁶ Habib, State-civil society relations.

²³⁷ N De Jager, The South African government and the application of co-optive power, *Politikon*, 33 (1), April 2006.

information, act independently from government and business interests and from their closeness to the people on the ground. For De Jager centralisation involves the moving away of direct participation in the decision making process by the citizen which means that civil society becomes the obvious other avenue for articulating the concerns and issues of citizens. She contends that it is intrinsic that civil society remain autonomous but in South Africa the promotion of state society partnerships are characterised by the state setting the policy and determining the objectives while civil society is reduced to implementer of state policy thus blurring the lines of separation between the two. De Jager contends that there is a very strong view from government quarters that civil society should not adopt the role of critical overseer of the African National Congress government and the government be seen as the 'only vehicle which possesses the capacity to act as the leader of the people in their struggle to establish a democratic state'. Thus civil society must fit in with and advance the goals of the state.

The above arguments suggest that civil society activity in South Africa, while facing centralising tendencies, is still positioned to support the developmental mandate of local government. There are however differing categories of strength and impact. So while some decentralisation initiatives may benefit from resilient and sustained civil society activity, others may not.

Political will

The centralising tendencies affecting civil society in South Africa are further compounded by centralising tendencies operating within local government that obstruct the building of local democracy. Cameron contends that another of the reasons the African National Congress supported the advent of local government was because it had failed to win two of the provinces in the 1994 elections KwaZulu-Natal (which was won by the Inkatha Freedom Party) and the Western Cape (won by the Democratic Alliance). It did however have high support in the metropolitan areas and large towns of these provinces. By upgrading local as opposed to provincial government, the Af-

rican National Congress could strengthen its support in these provinces.²³⁸ Indeed Patrick Heller argues that democratic developmental government in South Africa has given way to ‘political centralisation’.²³⁹

Among the centralising tendencies observed at local level are Integrated Development Plans are rarely institutionally integrated in the budgetary process – final budget decisions remain the prerogative of the Council.²⁴⁰ The integrated development process therefore cannot cultivate a culture of citizen responsiveness that is at the centre of its developmental mandate. Likewise ward councillors are unable to represent local citizens with regards service delivery planning because what happens in the Council meetings does not affect decisions taken at mayoral or executive committees.²⁴¹ This means that a vital component of local citizen participation and representation to effect change is squandered.

Cameron contends that the nature of local government institutionally reflects trends towards centralisation. He argues that the replacing of two tier metropolitan with unitary tier structures by the Local Government Municipal Structures Act was a preference of the ruling party because the abolition of the two tier system limited the number of metropolitan authorities opposition parties could win. Likewise the Structures Act lists the types of municipality provincial governments must determine to be established in their jurisdictions. The African National Congress controlled provinces chose the executive mayor option, while the two opposition controlled provinces chose the collective executive option. Also the African National Congress’s National Deployment Committee, rather than local branches, chose their executive mayor candidates – Cameron labels this ‘creeping centralisation’. The ruling party seems to want mayors who will follow national dictates,

²³⁸ Cameron, History of devolution of powers.

²³⁹ Heller, Moving the state.

²⁴⁰ *ibid.*

²⁴¹ Atkinson, A passion to govern.

particularly the national, neoliberal macro-economic framework and not succumb to populist expenditure pressures.²⁴²

The centralising tendencies of the governing African National Congress has resulted in its imposing its embrace of a neoliberal orthodoxy and subsequent public administration doctrines upon local government. This has encompassed a drive to streamline management systems, cut costs and emphasise administrative performance as opposed to mobilising participation, training ordinary citizens and engaging in consultation. There is therefore an increased emphasis on outsourcing, privatisation and public-private partnerships. This has prompted the view that ‘the ANC’s technocratic concern with getting the institutions right has all but obviated efforts to build local democracy and mobilise participation.’²⁴³

The African National Congress’s embracing of a neoliberal orthodoxy cannot be discussed without reference to its initial commitment to social upliftment. This is popularly illustrated in the debates surrounding the Reconstruction and Development Programme and the Growth Employment and Redistribution Policy which will be dealt with fully in the next Chapter. Ivor Chipkin²⁴⁴ argues that in the Reconstruction and Development Program, development was seen as a task of the state. The Growth Employment and Redistribution policy on the other hand, stresses an important role for non state players and the private sector in development. He argues that this grants to local government a task that is less administrative and technocratic, less concerned with building its own institutional capacity to drive development and more strategic and political. In this regard a developmental role for local government accents the importance of building political and strategic alliances with local constituents and agents to meet its obligations as defined by the Constitution. Here the stress is on ‘ensuring’ as opposed to

²⁴² Cameron, History of devolution of powers.

²⁴³ Heller, Moving the state.

²⁴⁴ I Chipkin, A development role for local government, in Parnell et al, *Democratising Local Government*, p 57.

‘delivering’ services and infrastructural redress. Chipkin argues that the Reconstruction and Development Program stressed the ‘leading’ role of the state in meeting basic needs, developing human resources, building the economy and building state and society. The Reconstruction and Development Program document argued that ‘every office of government from the smallest village council to the largest national department will have to be restructured to take forward the RDP’. Such was the rationale behind the hands and feet metaphor- where councils were deemed to be instruments of the new developmental vision. The Growth Employment and Redistribution policy however changed the conception of the role of the state. Under the Reconstruction and Development Program the state was to be transformed into a tightly structured unit to ‘lead’ development and economic growth. The Growth Employment and Redistribution policy envisaged government’s primary role to ‘facilitate’ conditions through fiscal restraint, budgetary reform and public sector asset restructuring to produce a ‘competitive fast growing economy’ and therefore more jobs culminating in ‘equitable distribution of income and improved standards of living for all.’ So development is no longer deemed a question of state investment and state organisation but stressed rather is its role in the development of policy frameworks to hold its agencies and non state bodies to its policy principles and targets. Development is seen less as a technical and bureaucratic task of marshalling and co-ordinating the respective tiers of government, agencies and personnel around targets set nationally and more as a political undertaking , of building appropriate alliances and partnerships with non state agencies to realise development priorities according to local conditions.

Pycroft argues that the tensions between the Growth Employment and Redistribution policy and the Reconstruction and Development Programme are acutely felt at local level. National government sees municipalities as the main delivery agent for the government’s ambitious development programmes. At the same time municipalities face tight financial constraints that restrict the capacity of councils to deliver effective services. Munici-

palities' ability to borrow both domestically and internationally is tightly controlled in an effort to reduce over all government borrowing.²⁴⁵

For Pycroft the switch from the Reconstruction and Development Programme to the Growth Employment and Redistribution policy 'represents a recognition of the inescapable influence of global economic forces'.²⁴⁶ To be successful within a global economy according to the Growth Employment and Redistribution policy requires a reduced budget deficit, market oriented growth, fiscal discipline, labour market flexibility and reduced government intervention – all of which reduce the government's ability to influence poverty alleviation and income redistribution. Pycroft argues that the Growth Employment and Redistribution policy seeks to position South Africa within the global economy and the changes within South Africa's economic management are mirrored by changes within its approach to the role and function of the state. The global economic orthodoxy of the Growth Employment and Redistribution policy is complemented by the adoption and implementation of a range of policies aimed at restructuring the state collectively referred to as 'the new public administration'. South Africa is now seeking a mode of administration that changes the role of government from being the principle vehicle of socioeconomic development to one of guiding and facilitating that development. The characteristics of this new approach include the transfer of state owned enterprises to the private sector, a reduction in the size of bureaucracies, the introduction of managerialism, decentralisation, greater public service accountability, an emphasis on service delivery and the implementation of performance management. Elements of 'new public administration' are seen in both the White Paper on Local Government and in the White Paper on the Transformation of the Public Service.

The centralising tendencies at local levels together with the 'new public administration' discussed above affect the democratic, developmental mandate

²⁴⁵ Pycroft, *Democracy and delivery*.

²⁴⁶ *ibid.*

of local government. This is seen in the way local political will is re-directed to decentralisation through setting up service delivery institutions at the cost of building local democracy and mobilising participation.

The effects of ‘the new public administration’ on the development agenda of local government pertaining to service delivery and participation is the subject of the next chapter.

CONTRACTING LOCAL DEMOCRACY

IT HAS BEEN argued that there is a shift within local government from ‘democratic to market modes of accountability’.²⁴⁷ In this Chapter I examine the course taken by local government (in some instances) towards a preference for public-private contracts as my case studies are illustrative of the resultant effects of this course on democratic, developmental service delivery and participation. First, I outline the role of the state in shaping the course towards public-private contracts and a managerial vision of local government. Second, I deal with the nature of public-private contracts and the ways they have manifested at local government levels in South Africa.

THE ROLE OF THE STATE

Guy Mhone and Omano Edigheji²⁴⁸ argue that ‘South Africa is confronted with the major challenges of attempting to promote democratisation, good governance and sustainable human development in the context of gross domestic socio economic inequalities, a history of past conflict and in the context of an increasingly integrated global order driven by market fundamentalism’. So while South Africa attempts to make its economy globally competitive it also has to improve the standard of living of all South Africans especially previously disadvantaged communities and there is an expectation that democracy will result in the improvement of material conditions through expanded services and improved service delivery and increased employment and income generating opportunities. Mhone and Edigheji argue that new governance mechanisms which include the restructuring of the public sector to include participation of business, private sector, labour and

²⁴⁷ Heller, Moving the state.

²⁴⁸ G Mhone and O Edigheji, Globalisation and the challenges of governance in the new South Africa, in G Mhone and O Edigheji (eds), *Governance in the New South Africa: The Challenges of Globalisation*, University of Cape Town Press, Landsdowne, 2003.

civil society organisations as well as global processes such as international trade, foreign investment, portfolio investment and financial flows, the activities of transnational corporations and multilateral organisations (e.g. World Bank) are all globalisation processes that reduce the scope for government intervention.

The paradox which South Africa finds itself in with regards global positioning versus government intervention for social upliftment is well illustrated in the oft cited, previously mentioned differences between the African National Congress's initial social policy the Reconstruction and Development Program and its later macroeconomic framework policy the Growth Employment and Redistribution.

According to Tom Lodge ²⁴⁹ the Reconstruction and Development Programme had two main aims, the alleviation of poverty and the reconstruction of the economy. It contended that these two objectives were interrelated. Balanced economic growth could be achieved without the simultaneous promotion of economic development. Development would be impossible without growth. Economic growth without development would fail to bring about structural transformation (i.e. a more advanced economy and a more equitable and prosperous society). Policies that concentrated on promoting growth would accentuate existing inequalities and maintain mass poverty which would stifle growth. The government should play 'a major enabling role' in integrating growth with economic reconstruction and social development.

The Reconstruction and Development Programme proposed five ways to combine growth with development; meeting basic needs, upgrading human resources, strengthening the economy, democratising the state and society, reorganising the state and the public sector. Furthermore these activities should involve and empower ordinary people - 'development is not just about the delivery of goods to a passive citizenry'. It claimed to be 'people

²⁴⁹ T Lodge, Policy processes within the African National Congress and the Tripartite Alliance, *Politikon*, 26 (1), 1999.

driven' with the aim of deepening democracy through enabling people affected by development projects to participate in their planning. The Reconstruction and Development Programme argued that 'neither commandist central planning nor unfettered free markets' could remedy the structural economic crisis manifested by inefficiency, regulation and repression. It contended that the public sector should strengthen the ability of the economy to respond to inequalities and to promote growth. It may have to be enlarged through nationalisation or reduced through privatisation which would promote efficiency. According to the Reconstruction and Development Programme government, trade unions, business and civil society should co-operate in redirecting the economy and labour policies should stress education, training, a living wage and collective bargaining. Affirmative action should include training, anti discrimination and the development of local expertise in preference to the import of outsiders – the public sector should set an example in that recruitment and training should reflect South African society in terms of race and gender. Economic restructuring should be geared to increasing national investment in manufacturing, job creation and basic needs. South Africa should become a significant exporter of manufactures. Internationally competitive industries should be integrated better with other sectors of economic activity. Anti trust legislation would be needed to spread and deracialise business ownership and foreign investors should receive the same treatment as local business people. The Programme also directed that policies should ensure that foreign investment creates as much employment and knowledge transfer as possible. The government should help small and black owned enterprises through contracts and capital availability. In agriculture, subsidies and controls should be removed and support services given to those in need. The financial sector should undergo reform – the government should encourage institutions that mobilise private savings behind the Reconstruction and Development Programme while not reducing incentives for private savings. Banks, insurance companies and building societies should become more accessible, accountable and transparent in their dealings with the public. Many of the Pro-

gramme's objectives could be achieved through the reallocation of public expenditure.

Lodge argues that in 1996 two events signalled the African National Congress's withdrawing of its commitment to the Reconstruction and Development Programme. First, on 28 March the Reconstruction and Development Programme office under the helm of Jay Naidoo was closed down and incorporated into the work of line departments. And second, on 14 June Minister of Finance Trevor Manuel presented the Growth Employment and Redistribution policy insisting that it was well in keeping with Reconstruction and Development Programme objectives.

The Growth Employment and Redistribution policy was a fair departure from the Reconstruction and Development Programme however. Lodge argues that it emphasised job creation and capacity building to meet the requirements of international competition. 6% growth by 2000 would be reached by reducing the deficit to 3%, more rapid tariff reductions on clothing textiles and vehicles, government right sizing to control the rise of the public sector wage bill, the gradual relaxation of exchange controls, privatisation, wage increases set below productivity growth, greater 'sensitivity' in wage determination to varying capital intensity, regional circumstances and firm size. Absent from the Growth Employment and Redistribution policy was the concept of the 'people driven' programme of participatory development. Since its inception the emphasis has been on big firms having a role in large scale development of infrastructure and mass delivery. Also viewing job creation as 'the primary source of income distribution' confirmed the emphasis on growth rather than equity. The policy's commitment to a differentiated labour market may also have implied a less determined application of the Reconstruction and Development Programmes advocacy of 'basic living wage'.

Patrick Bond ²⁵⁰ presents a harsher critic of the demise of the Reconstruction and Development Programme and the rise of the Growth Employment and Redistribution policy. He contends that the progressive components of the Reconstruction and Development Programme never gained momentum because of the shift in macroeconomic perspective from radical restructuring grounded in the 1955 Freedom Charter, to state led Keynesian managerialism (the sentiment at a 1990 African National Congress-Congress of South African Trade Unions economics conference in Harare), to what became 'unabashed home-grown structural adjustment along neoliberal lines'.²⁵¹ Bond asserts that in South Africa the search for a social contract based on the general will degenerated into corporatism mixed with elements of populism, patronage politics and neoliberalism where many progressive thinkers were 'hoodwinked' while labour and social movements risked 'emasculatation'. Bond evidences his argument by pointing out that in 1993 the Congress of South African Trade Unions, one of the world's most militant trade unions endorsed the General Agreement on Tariffs and Trade. Also in the early 1990s the Democratic Movement divested much time over 'pacts', 'accords' and 'social contracts'. Bond asks 'How did mediocre hucksters of neoliberalism flatter and cajole so many formerly tough minded working class leaders and progressive thinkers into abdicating basic principles?' His argument is that 'scenario planning' became the empirical basis for corporatist deal making in the sphere of macroeconomic policy.²⁵² 'Scenario planning' was a term coined by Bob Tucker of Nedcor/Old Mutual in 1990 when he assembled a group of economists and political thinkers to brainstorm about what they wanted to see in a post apartheid society. Bond argues that 'scenario planning' did not constitute much analysis but rather a way for a deal to be struck between government and business. He cites as an example the publication in 1993 by Nedcor/Old Mutual 'Prospects for Successful Transition' which was the first of several aggressive attempts to

²⁵⁰ P Bond, *Elite Transition: From Apartheid to Neoliberalism in South Africa*, University of Natal Press, Pietermaritzburg, 2000.

²⁵¹ *ibid*, p 55.

²⁵² *ibid*, p 55.

forge an overreaching social contract between the National Party government, the African National Congress, labour and organised community groups. This ‘compact’ mooted a transition away from authoritarianism, violence and racial segregation but contended that it should occur through conventional economic policies.²⁵³ The effect of ‘scenario planning’ on macro-economic policy in South Africa, for Bond, is what resulted in Growth Employment and Redistribution policy, aimed at reducing excessive government spending, reducing government deficit, enhancing future revenues through economic growth, increasing efficiency in tax collection, income tax cuts for the rich which meant more pressure on the Finance Ministry to raise money from value added tax and a regressive tax on consumption which leaves poor people shouldering more burden for supporting government. Bond argues that Growth Employment and Redistribution policy also meant that the Reserve Bank’s control of the money supply and interest rates would continue unchanged while the Ministry of Finance stepped up liberalisation of exchange controls applying to foreign investors and South Africans – so foreign companies could borrow locally more easily while local investors were granted more scope to expand their international portfolios. The Growth Employment and Redistribution policy also had provisions aimed at enhancing domestic fixed investment such as tax incentives for new manufacturing investments. Restructuring of state assets was also high priority with the objective of increasing efficiency and attracting new investment. The government announced forthcoming privatisation and joint ventures in telecommunications, minerals and energy, agriculture, forestry, leisure and transport. Concerns were expressed by workers in these industries that their wages and jobs would come under pressure while consumers who had hoped for access to cross subsidies for increased access to electricity, telephones or recreation would be disappointed as commercial values predominated in parastatals.²⁵⁴

²⁵³ Bond, *Elite Transition*, p 59.

²⁵⁴ *ibid*, p 79.

Bond argues that immediately after the 1994 election the Reconstruction and Development Programme ‘took on a mythical tone’.²⁵⁵ He contends that the Reconstruction and Development Programme was fatally undermined by ‘timid politicians, hostile bureaucrats and unreliable private sector partners.’²⁵⁶ He argues that much murkiness surrounded the interpretation of the Reconstruction and Development Programme – from the right (neoliberal), the Reconstruction and Development Programme was influenced in its maintaining strict limits on state expenditure and the promotion of international competitiveness but there was also a presumption that when the market failed, the state would step in to facilitate access to basic goods and services. From the centre (corporatist), the Reconstruction and Development Programme was a programme to meet basic needs which would open up new opportunities for the private sector to take up a wide range of economic activities. From the Left (socialist), it was argued that there were means within the Reconstruction and Development Programme to decommodify (remove from the market) and destratify (make universal) basic needs goods.²⁵⁷

For Bond, the Reconstruction and Development Programme was flawed from the outset in its formulation. When the Reconstruction and Development Programme White Paper was first drawn up Minister Jay Naidoo was briefed to ‘send the right signals to the markets’ this resulted in his allocating the drafting of the paper to two technocrats closely associated with the African National Congress’s neoliberal wing based at the Development Bank of Southern Africa. Bond argues that at the time of the drafting of the White Paper the signals from the markets demanded high interest rates, fiscal discipline, lifting of currency controls, an export bias trade policy ‘obsequious’ to global corporations, tariff cuts and the industrial policy of picking the winners and deindustrialising sectors such as clothing and textiles and automobiles which could not compete with international trade. Bond con-

²⁵⁵ *ibid*, p 89.

²⁵⁶ Bond, *Elite Transition*, p 90.

²⁵⁷ *ibid*, pp 92-96.

tends that the White Paper did not deal with the more pressing problems such as the vast excess capacity in many industrial sectors, insufficient consumer buying power amongst the black majority, inadequate global competitiveness, the structural bias of production towards luxury and not basic goods and away from capital goods (machinery), inefficiencies caused by enduring racial and gender imbalances and the drain of capital abroad or into speculative investment pools.²⁵⁸

Bond also points out while the orthodox economic policies were adhered to in the White Paper the commitment to a vibrant and independent civil society essential to democratisation was not. While it was contended that mass based organisations would exercise checks and balances on government and that the Reconstruction and Development Programme envisages a social partnership and that government should provide services and support and encourage independent organisation where it does not exist, attempts by the civic movements to access funds promised by Jay Naidoo's office were rebuffed by the then National Party Minister of Constitutional Development Roelf Meyer. Instead the funds were used to run the Masakhane campaign – set up to persuade township residents to pay their municipal bills. The Masakhane campaign argues Bond was a failure because of poverty and mass unemployment and also because if services were cut off electricity or water could be illegally reconnected. Also there was a legacy of undemocratic government and the 1985 African National Congress campaign to 'make townships ungovernable'. Due to the effectiveness of earlier boycotts many local authorities simply neglected to even send township residents their accounts – billing would now require accurate township residents' rolls and addresses in informal settlements. Furthermore residents often felt justified in boycotting, meter tampering and hooking up power supply illegally due to the injustices of the past, regressive pricing associated with township pre paid meters.²⁵⁹ Bond argues that the Masakhane Campaign actually seemed

²⁵⁸ Bond, *Elite Transition*, p 97.

²⁵⁹ *ibid*, p 100.

to have the opposite effect as in most townships the millions spent on publicity coincided with a 15% drop in rate payments. The Director General of the Department of Housing said in 1996, 'The Campaign and the ideas behind it are correct but it needs to be politically reinvigorated. Its not just about getting people to pay for services but a social contract between government and the people in terms of rights and responsibilities on both sides.'²⁶⁰

Despite the raging debate centring on the divergences between the Reconstruction and Development Programme and the Growth Employment and Redistribution Policy, there have also been discussions as to how there is indeed a measure of continuity between the two. Academics and political activists are also arguing that the government's economic stance has begun to change. To substantiate this they point to a rise in social expenditure and argue that the African National Congress is now pursuing a more interventionist state led economic strategy.²⁶¹ This notwithstanding the governing party's embracing of neoliberal macroeconomics reducing spending and increasing viability greatly influenced the move towards the increased use of contracts to provide services at the local level.

PUBLIC-PRIVATE PARTNERSHIPS

Implicit in the South African government's neoliberal economic policies was the favouring of private sector involvement in initiatives traditionally reserved for the public sector. This includes service delivery. Aside from outright privatisation, the private sector can also be included in service delivery arrangements through public-private partnerships. Since both the case studies that form this research are examples of public-private partnerships it makes sense to define these partnerships broadly and then contextualise them in terms of South African service delivery initiatives.

²⁶⁰ Bond, *Elite Transition*, p 108.

²⁶¹ A Habib, The politics of economic policy-making: substantive uncertainty, political leverage and human development, *Transformation*, 56, 2004.

Public-Private partnerships defined

The term privatisation, in terms of service delivery, technically refers to the full divestiture of state assets but has now come to incorporate various kinds of delegation of public duties to private organisations. The World Bank defines privatisation as private sector involvement in financing, operating and in some cases ownership. Aspects of private sector involvement range from contracting out, reducing or discontinuing the provision of some goods and services by government and introducing commercial principles or market criteria. There are various different forms of privatisation:

- Service contract - where the public authority retains responsibility for operation and maintenance of the service but specific components of the service e.g. operating treatment works or billing are contracted out the private sector. These contracts are short term (1-2 years) and the local authority does not relinquish managerial functions.
- Management contract – where the management contractor operates and maintains the service and may undertake to reshape and improve the system. Duration is 2-10 years and the public authority monitors the agent but remains responsible for new investment.
- Lease or Affermage – where the leaser rents the facility from the public authority which transfers complete managerial responsibility for operating and maintaining the system to a private company. Duration is usually longer than 10 years
- Concession – where there is an investment linked contract and the concessionaire has overall responsibility for the services including operations, maintenance and management as well as capital investments during the concession. The concessionaire is also responsible for tariff collection and ‘customer management’. The ownership of fixed assets is assigned to the local authority at the end of the contract usually as long as 25-30 years. Regulation is by contract.

- BOT – Build, Own, Operate, Transfer contracts, used usually to construct new parts of a service system e.g. water treatment plants, dams and waste water treatment plants. The private operator builds the plant and assumes responsibility for operation and maintenance. After a time, usually 25 years, the facility is transferred to the public authority.
- Full Divestiture – where the utility has been fully privatised. Ownership of the utility rests with the private operator who is responsible for operations, maintenance, investments and tariff collection. Private utilities operate under supervision of an independent public regulatory authority.
- Community provision – where the state ceases to provide services that are then taken up communities and NGOs.²⁶²

Aside from full divestiture of public assets, other forms of privatisation infer some kind of relationship between the private and public sector. Carsten, Greve and Graeme Hodge argue that public–private partnerships can be loosely defined as ‘cooperative institutional arrangements between public and private sector actors’. They add that although these partnerships have gained wide interest around the world there is little agreement on what they actually are. Some see them as a new governing tool replacing the traditional method of contracting out through competitive tendering. Others see them as a new language in public management designed to cover older established procedures involving private organisations in the delivery of public services. Others view them as a new way to handle infrastructure projects such as building tunnels renewing harbours. Others use ‘contracting out’ and ‘public-private partnerships’ interchangeably.

Carsten, Greve and Hodge²⁶³ point out that governments ‘have contracted with the private sector for centuries. Since the beginning of civilisation there

²⁶² Bond et al, Water privatisation.

has been a distinction between what is private and what is public and there has often been tension between the two. As the state gradually increased its role in underpinning citizen welfare, higher living standards were accompanied by the growth of major public enterprises, often in place of failed embryonic private markets. Even up until the mid 1970s nationalization was still being witnessed in the UK in order for the government to achieve ‘commanding heights of the economy’. The mixed economy was deemed necessary to ensure that public good was not left to the vagaries of the market, which experience through periods of depression, had shown was a rather unstable and flawed system. Increasing financing pressures and a reducing political support base saw the more recent period of economic rationalism evolve. These notions along with policies tied to individual rationality and a maximum role for market mechanisms, also implied a minimum role for government. The slogan ‘steering not rowing’ was taken as the recipe for a new ideology to shape government. Greve and Hodge trace private service provision versus government service provision back to Mathew the private tax collector from the bible. They add that there was private cleaning of public street lamps in 18th century England, private railways in the 19th century and 82% of the vessels in the Drakes fleet that conquered the Spanish Armada in 1588 were private contractors to the Admiralty and the first ship that sailed to America was a joint effort between private and public actors. These partnerships were characterised by arguments over efficiency, service quality and accountability and today the desire to adopt private capacities for government purposes continues with public-private partnerships having become a central tenet for ‘third way’ governments.

Formal definitions of public-private partnerships include ‘cooperation of some sort of durability between public and private actors in which they jointly develop products and services and share risks, costs and resources which are connected with these products’. Or, ‘an arrangement between a municipality and one or more private firms where all parties share risks,

²⁶³ G Hodge and C Greve, *The Challenge of Public-Private Partnerships: Learning from International Experience*, Edward Elgar, Cheltenham, 2005, pp 4, 8.

profit, utilities and investments through a joint ownership of an organisation'. Public-private partnerships are seen by some as 'yet again screwing the taxpayer' with private project sponsors seen as 'evil bandits running away with all the loot'. Others however see it as 'a marriage made in heaven' which result in better defined and controlled services provided more cheaply and quickly with reduced pressure of government budgets.

Ken Coghill and Dennis Woodward²⁶⁴ argue that the biggest advantage of public-private partnerships for governments are their use for contracting substantial infrastructure projects such as highways, tunnels and buildings. Where such projects involve the private sector partner providing the finance for the project the government is able to enjoy the provision of such infrastructure at seemingly no cost. The specific gains for government are two-fold. It does not need to either divert revenue with concomitant levels of revenue raising or alternatively borrow the funds to build the project and thus prevents any contribution to public debt. Furthermore it is spared the necessity of servicing that debt – freeing it either to keep revenue extraction low or to use taxes in some other way. So governments who can minimise public debt or reduce it are seen as 'good economic managers' by the majority of financial journalists and the voting public. Minimising public debt, like delivering balanced or surplus budgets, gains the applause of international financial markets and governments are conscious of the need to maintain their support. Coghill and Woodward point out though that using private sector finance for infrastructure development might lead to reduced taxes but the actual real cost to the community might in fact be greater than had governments taken charge of raising the finances. This is because governments are able to borrow funds at rates below those of the private sector borrowers since they are seen as better credit risks. Private sector partners not only have to pay more for their borrowing but their need to operate profitably means that they will need to recoup from their public customers more than just the extra cost of borrowing. This means that private sector financ-

²⁶⁴ K Coghill and D Woodward, Political issues of public-private partnerships, in Hodge and Greve, *The Challenge of Public-Private Partnerships*, p 81.

ing and operation of projects will cost the community more than public provision unless the private sector can deliver greater efficiencies than the public sector.

The view that the private sector can operate more efficiently than the public sector and achieve quicker and cheaper outcomes is a central tenet of the neoliberal economic paradigm that underpins the move to privatisation and public-private partnerships. Public-private partnerships may also be attractive for government. They can override lengthy public consultations and debate by signing contracts while infrastructure projects can be delivered more quickly. Another reason for governments going the partnership route is to develop and maintain the approval of the business community. Business' that are the direct beneficiaries of government contracts are unlikely to oppose government and might even support it through donations or public statements. Governments may also choose to initiate public-private partnerships based on advice they receive from public servants or private consultants which is most likely to reflect the dominant neo liberal economic view described as the 'Washington Consensus' and the transformation of the public service inline with the New Public Management that has seen government bureaucracies adopt private sector practises. This has entailed moves towards 'smaller government', contracting out and notions of 'steering not rowing'. Also political leaders themselves have for the most part increasingly embraced the hegemonic neoliberal paradigm given the lack of credible alternatives since the discrediting of Keynesian views in the 1970s and the collapse of communism in the 1980s and 1990s. Coghill and Woodward argue that even the democratic socialist project has retreated into a discourse of the 'Third Way'.

Coghill and Woodward argue that the prime beneficiary of a partnership contract is the private sector. Depending on whether the private firm is a partner in a major long term project, a major contractor or simply a short term consultant, government contracts can be lucrative in terms of providing employment for a workforce, generating profits and attaining tax advantages

or other incentives. Government may also be a beneficiary in the partnership arrangements. They may gain business support or acquiescence, they may gain favourable press for their good financial management as well as high credit ratings for minimising debt and 'fiscal responsibility'. Coghill and Woodward contend that the public may or may not benefit from partnership arrangements. If needed infrastructure that otherwise would not have been built (because the government faced major debt or political problems) is provided through the advent of public-private partnerships then clearly this would be a great benefit. Likewise if the neoliberal assumptions of the superiority of private sector over public sector provision holds true then a benefit would be that services are delivered more quickly and efficiently. If, however the private sector is not able to perform more efficiently than the public sector then the public stand to lose since private sector borrowing costs and the need for profit returns means that the overall cost to the community will be greater than public provision. Coghill and Woodward point out that even in those cases where it can be demonstrated that public-private partnerships produce better results there is still a case to made that other factors might outweigh these advantages and undermine any public benefit. This pertains to other values than those of a purely economic nature e.g. the public might have concerns with issues of principle such as participation in decisions, democratic control and accountable governance, rather than with the economies of earlier provision of facilities or services or lower costs.

Coghill and Woodward go on to argue that some of the underlying principles and assumptions of the neoliberal economic paradigm that justifies public-private partnerships are problematic. First the view that public debt is necessarily bad. Public debt can indeed be deleterious - there are numerous examples of countries falling into debt traps, being forced to devote more and more of their output to repaying loans until they reach a stage where they are unable to service their debt and need to be bailed out by structural adjustment loans from the International Monetary Fund and World Bank. Typically these come with a regimen of policy directives of the neoliberal type that involve cutting back on government spending particularly on wel-

fare, privatising state owned enterprises (which are often subsidised by government) and removing any impediments to unrestricted foreign investment. Notwithstanding this, argue Coghill and Woodward, public debt need not be such an evil. If government debt is applied to increase consumption levels or is squandered on public monuments or corrupt leaders then obviously debt is bad. If however, government debt is used for productive purposes the returns that it generates to the national economy will exceed the costs of borrowing. There is evidence to suggest that countries that invested in infrastructure, education and research have fared best in the economic development stakes. Also, provided that government debt is not excessive and the interest on the loans can be serviced, government debt should not pose any problems. Over time the productive investments of government undertaken with the loans will see the economy expand sufficiently such that the increased revenue will enable not only the servicing of loans but their repayment.

The second problematic assumption implicit in public-private partnerships for Coghill and Woodward is the view that the private sector is inherently more efficient than the public sector. This is because public sector service provision leads to allocative inefficiency where services allocated do not correspond to consumers preferences and are charged at prices excessive or subsidised that do not reflect producers real costs. Public sector service provision also leads to productive (also known as internal or technical) inefficiency where resources are not used economically to produce a given output or the given level of resources is not used optimally to maximise outputs.²⁶⁵ The private sector on the other hand is marketed on the basis that; it has a stronger focus on service delivery, it only requires payment for contract infrastructure and services delivered, it guarantees a high level of confidence that infrastructure will be available on time and without cost blow out, it can provide access to the best technical and management skills and outcomes

²⁶⁵ R Batley, Public-private partnerships for urban services, in M Freire and R Stren (eds), *The Challenge of Urban Government: Policies and Practices*, The World Bank Institute, Washington, 2000.

will be improved by the use of competitive forms to stimulate creativity, pricing and delivery. This, is in part an ideologically held view based on certain beliefs about the competitive nature of markets. In reality however competitive markets appear to be increasingly the exception rather than the norm as they are replaced by monopoly and oligopoly and governments are often compelled to regulate in order to achieve competitive outcomes. Also the apparent inefficiency of some public sector enterprises can be explained by their need to conform to government charters demanding pursuit of multiple objectives which are inconsistent with maximising profits as a measure of efficiency - e.g. there may be cross subsidies for certain sections of the public or some services might need to be provided irrespective of costs. The authors argue that studies comparing public and private sector service delivery have mixed results and need to be examined on a case by case basis.

Coghill and Woodward make the point that even if one of the strengths of public-private partnerships is their ability to deliver services quickly and cheaply through superior efficiency this cannot displace other social values. Equity and democracy cannot be sacrificed for greater efficiency. public-private partnerships effectively change the relationship from government provision of services to citizens to one of private provision to consumers/customers. Democratic rights and entitlements are therefore reduced to the dictates of the market place where citizens' rights as consumers are greatly curtailed. The ability of a citizen to partake as a consumer is limited by his/her level of wealth. So universal entitlements to all, become available only to those able or willing to purchase the service. This means that issues of equity are at stake. Also the avenues for redress of grievances by citizens are limited through market mechanisms. Likewise recourse to administrative law and other bodies e.g. administrative appeals tribunal or oversight of government action, are more transparent and provide greater access for citizens than consumer complaints and legal action. Ultimately in a democracy governments are held accountable by voters for their activities but this accountability can be weakened by public-private partnerships. In part this is because the public are excluded from the decision to implement partnerships

with the private sector. Political decisions are simply presented to the public as technical decisions. Furthermore current governments (with limited public input) are committing future governments and future voters to particular courses of action. Yet a democratic polity should be able to change policy direction and priorities, public-private partnerships therefore limit a society's capacity to manage its response to new policy factors. public-private partnerships also add to the potential for corruption of the political process. The fact that large sums of money flow from discretionary decisions introduces the potential for bias decisions sought by those tendering or offered by decision makers.

Coghill and Woodward point out however that public-private partnerships are in a way less contentious than outright privatisation because the terminology 'partnership' infers agreement, mutual benefits and equality, also public assets are not sold but leased to private contractors – they will eventually be returned and rather than losing ownership of something formally in public hands, new infrastructure is viewed as gaining something new. Also the lack of any acceptable alternative ideology in the public or political domain leaves partnership opponents with little room to manoeuvre – especially with the dominance of the neoliberal paradigm - or where new governments have to preserve the credibility of their political opposition to privatisation whilst accommodating the neoliberal paradigm while finding ways of providing goods and services. public-private partnerships remove the government from involvement in labour relations in either the construction or provision of public facilities and services.

Hiromitsu Ishi ²⁶⁶ contends that although the original role of government was limited to what Adam Smith called 'cheap government', providing only defence and the administration of justice, government increasingly began to play a larger role in providing public goods and services to maintain better conditions in the economy and society. Thus the relative share of government fiscal activities tended to increase steadily in the national economy

²⁶⁶ H Ishi, The role of government in the social sector, n.d.

towards a bigger government. Ishi argues that the pricing mechanism of the market secures an optimal allocation of resources, if certain conditions are met. These conditions are satisfied reasonably well over wide areas in the so called market economy. In these areas the government does not concern itself with matters of resource allocation. There are however a number of conditions where market forces cannot secure optimal results and the question is how government can intervene to obtain a more efficient resource allocation. The government has to supply a public good that has two important characteristics: non-rivalry and non-exclusion. Ishi classifies goods and services from the pure public good on the one extreme to a pure private good on the other. Pure public goods are best thought of as a scientific term used to describe a hypothetical good that offers perfect non-rivalness in consumption and a zero degree of exclusion. By contrast a pure private good is best regarded as a hypothetical good whose benefits are completely rival in consumption and simultaneously in the perfect degree of exclusion. Ishi points out that there are a wide variety of areas between the two extreme cases in relation to various degrees of non-rivalness and exclusion – these he calls ‘impure public goods’ which are provided to the general public in the social sector (a sector where private and public goods overlap). Where inefficiencies arise in the provision of private goods through the market process an element of public goods is involved with certain social value. Ishi distinguishes between private goods provided adequately by the market and public goods satisfied through the government. Certain goods are satisfied by the market, if they are considered so meritorious that they ought to be satisfied through the government over and above what is supplied by the market, they become ‘a sort of’ public goods. Another type of public goods are merit goods such as free education, health and subsidised low cost housing. Ishi argues that merit goods are not the same as public goods in general. Public goods constitute a special problem caused by market failures but merit goods fall within the scope of consumer sovereignty as private goods are satisfied. So merit goods must be supplied by the government based upon the assumption of social value in a democratic society.

Nutavoot Pongsiri ²⁶⁷ argues that as a result of the free market economy most countries are engaged in radical changes to their economies as well as to the characteristics and roles of the state and the private sector. The traditional concept of an autonomous private sector acting in pursuit of its own goals, notably profit maximisation and a public sector with discretionary powers and multiple objectives relating to the pursuit of long term goals in the public interest has changed. Owing to the dynamics and interdependencies of the current economic and social environment the current trend is toward a mixture of public-private and government-market decision making. He argues that this inter-organisational partnership will continue to flourish. Pongsiri traces the growth of public-private partnerships to the 1960s where the USA deployed partnerships as a way to stimulate private investment in the development of inner-city infrastructure. The economic recession of the 1970s also led the local and state governments to seek more efficient ways to provide public services by contracting out to private firms. Throughout the 1980s public-private partnerships were viewed as a derivative of the privatisation movement where public asset sales, outsourcing and divestiture were seen as vehicles for enhancing the provision of public services in the free market economy. Pongsiri argues that the new concept of a 'mixed economy' comprises a vast variety of economic patterns neither totally dominated by state enterprises nor operating under a totally unregulated system of competitive private firms. Pongsiri contends that public-private partnerships do not simply mean the introduction of market mechanisms but that the public and private sectors now have common goals which can both be satisfied by a partnership.

Pongsiri argues that in the case of the public sector the main rewards of the partnership include improvement of program performance, cost efficiencies, better service provisions and appropriate allocation of risks and responsibilities. The private sector benefits include better investment potential and more opportunities to expand business interests in order to make reasonable prof-

²⁶⁷ N Pongsiri, Regulation and public-private partnerships, *International Journal of Public Sector Management*, 15 (6), 2002.

its. Despite this however there may be some drawbacks. These include problems with equity, access, participation and democracy. Pongsiri notes the importance of regulation when it comes to public-private partnerships. He contends that public-private partnerships are more likely to be successful if governed by sound legal procedures, agreements and contracts that clearly define the relationship between government agencies and private firms. Regulation is a key element to maintain competitive market discipline on public service provision especially in developing countries. Regulatory systems for public-private partnerships should include monitoring the performance of contractors and ensuring contractual compliance. It should also include clear rules for financial performance and practical experience to staff responsible for implementing the contract. Furthermore the contract should assure the contractor that it has protection from expropriation, arbitration of commercial disputes and respect for contract agreements – investor security is crucial. public-private partnerships also involve sharing or transferring a measure of responsibility and control for operations. This may cause shifts in accountability arrangements. While governments are preoccupied with political accountability through the electoral process, public-private partnerships open new channels of accountability. Where government still retains accountability, it must ensure the respective accountability of its partners through formal agreements. Also private partners are required to disclose information regarding the partnership such as expenditures to their partners and the public.

PUBLIC-PRIVATE PARTNERSHIPS IN SOUTH AFRICA

The decision to pursue public-private partnerships in South Africa was first mooted a year after the introduction of the Growth Employment and Redistribution policy. In 1998 the cabinet approved the establishment of an Inter-departmental Task Team chaired by the Department of Finance to explore how ‘public-private partnerships could improve infrastructure and service delivery efficiency’. Four years later the department produced the ‘Strategic Framework for Delivering Public Services Through Public-Private Partner-

ships' (January 2001). It also set up a dedicated Public-Private Partnership unit in the National Treasury which spearheaded a number of projects such as the N3 toll road between Johannesburg and Durban. At the same time a number of municipalities began to institute privatisation initiatives such as corporatisation and restructuring state assets. A Municipal Infrastructure Unit was set up as early as 1997 which worked closely with provincial MECs for local governments as well as local councils. A Municipal Investment Unit was also set up in 1997, assisted by the Development Bank of South Africa, its mandate was to facilitate and promote public-private partnerships in the municipal sector. By 2001 the Municipal Infrastructure Unit had finalised 13 municipal service partnership projects worth R3.4 billion. The Municipal Infrastructure Unit defined public-private partnerships as a collaboration between government departments or state owned enterprises such as electricity utility Eskom or telecommunications parastatal Telkom, and private companies. The aim of public-private partnerships, according to the Municipal Infrastructure Unit, is for the state to transfer some of the financing and operating risk of a project to the private sector while retaining ownership of the scheme. Public-private partnerships were encouraged in government circles because of the 'limited capacity of the fiscus, the need to enhance service delivery and the need to develop infrastructure'.²⁶⁸

Edward Russel and Dick Bvumba²⁶⁹ argue that at the time of democratisation in 1994 South Africa's public service was somewhat of a paradox. A minority of privileged citizens received premium services but the majority of disadvantaged, poor citizens received poor or no services. Likewise there were pockets of skills and capacity which contrasted with sections greatly lacking in resources. The meeting of the new service delivery challenges with the advent of democracy led to an exploration of alternative forms of service delivery (defined as 'the identification, development and adoption

²⁶⁸ S Jacobs, SA goes public with its private partnerships, *epolitics*, 33, Idasa, 2001.

²⁶⁹ E Russel and D Bvumba, Alternative service delivery and public service transformation in South Africa, *The International Journal of Public Sector Management*, 14 (3), 2001.

by public departments and agencies of means of delivering public services other than through traditional, hierarchical bureaucracy. Alternative service delivery may take place within or outside the public service or through partnerships between public, private and non profit sectors.’)²⁷⁰ These alternative forms of service delivery included a local variant of international marketisation tendencies towards privatisation, and public private partnerships. Russel and Bvuma point out that many countries faced with difficulties of reforming traditional bureaucracy and anxious to quickly improve service delivery and cost effectiveness in public sector operations have opted for privatisation or marketisation initiatives. Following the Interdepartmental Task Team on public-private partnerships (Department of Finance) three documents were issued by the government; ‘Strategic Framework of Delivering Public Private Partnerships’, ‘Treasury Regulations’ under the ‘Public Finance Management Act 1999 to regulate public-private partnerships in national and provincial government departments and ‘Guidelines for Public Private Partnerships’ to explain public private partnerships and their use. The definition of public-private partnerships is laid out in the Treasury Regulations as:

1. A contractual element whereby a private party performs a departmental function on behalf of a national or provincial department for a specified time.
2. Substantial risk transfer to the private party.
3. A schedule of outcome based financial rewards derived either from service tariffs or user charges, from a departmental budget or from a combination of these sources.

The Guidelines for Public Private Partnerships distinguish five types of partnership contract:

1. Service Contract (1-3 years) e.g. facility repairs, maintenance.

²⁷⁰ *ibid.*

2. Management Contract (3-8 years) e.g. regional water supply management.
3. Leases (8-15 years) e.g. airport or port facilities.
4. Build Operate Transfer (15-25 years) e.g. schools, prisons, hospitals.
5. Concessions (15-30 years) e.g. airport, seaport, toll road.

Russel and Bvuma argue that the Regulations and Guidelines documents bring the perspective of management control requiring the department in question to focus on value for money, affordability, transparency, risk transfer and sound project management – there is no element of mandating market testing or contestability. The documents assert that the benefits of public-private partnerships ‘include efficiency gains, output focus, economies from integrating the design, building, financing and operation of assets, inventive use of assets, innovative financial structuring, managerial expertise and better project identification’.²⁷¹ Likewise the discussion of feasibility is exclusively technical and fiscal. No mention is made of employment impacts, industrial implications, social implications or impacts on rural and regional areas or previously disadvantaged communities.

Russel and Bvuma contend that the new focus on public-private partnerships was probably precipitated by a need to intensify service provision. In July 1999 President Mbeki in his opening of parliament speech emphasised the need for government departments to accelerate service delivery. Consequently the Minister for Public Service and Administration Fraser-Moloketi prioritised service delivery stating that service delivery must be accelerated to relevant communities, accessibility of services to appropriate communities must be increased, and service delivery mechanisms must accord with Batho Pele principles. Fraser-Moloketi’s department then developed a ‘Framework for Improving Efficiency and Service Delivery’ (2000). The Framework identifies 26 varieties of alternative service delivery options un-

²⁷¹ *ibid.*

der four headings: partnering, shared service delivery, the creation of public entities and outsourcing. The Framework (unlike the Regulations and Guidelines) does address issues of contestability, market testing, benchmarking, and industrial and social implications.

It should be noted that the urgency to accelerate service delivery in South Africa is not unfounded. According to Meshack Khosa aside from vast backlogs in infrastructure and service delivery there is also a need to contend with massive income and other socio economic inequalities, fiscal constraints and varying levels of implementation capacity. Statistics from the Development Bank of South Africa provide some insight as to the challenges around service delivery in South Africa at the time of implementing a drive towards public-private partnerships:²⁷²

Table 1: Infrastructure and service backlogs, 1998

Service	Number with access	%
Electricity (households)	4,932,000	58
Water (population)	22,980,000	59
Sanitation (population)	18,162,000	47

Source: Development Bank of South Africa, South Africa's Infrastructure and Service Backlogs, 1998.

Notwithstanding government's defence of introducing the private sector into the public sector domain on the basis of accelerating service delivery there has been significant criticism of public-private partnerships as a mode of service delivery in South Africa. Patrick Bond has provided one of the most comprehensive critiques of private participation in the public arena. His views are important because they highlight the difficulties inherent in reconciling increased private sector activity with the extension of democracy.

Patrick Bond²⁷³ argues that privatisation initiatives in South Africa were influenced by the World Bank and its links with senior local authority per-

²⁷² See table, Infrastructure services and backlogs, 1998, in M Khosa, *Empowerment through Service Delivery*, HSRC, Pretoria, 2000.

²⁷³ Bond, *Cities of Gold*, p 96.

sonnel, high ranking Department of Constitutional Development officials and local consultants. He adds that public participation is simply a euphemism for clever marketing of top down market oriented policies which have to be sold because they are ‘essentially unpopular and harmful to either the interests of specific interest groups and/or the people as a whole’.²⁷⁴ Bond asserts that South African social movements and allied technical resources personnel have long campaigned for infrastructure and services for all. These were eventually reflected in the Reconstruction and Development Programme which was essentially the African National Congress’s 1994 campaign platform. By late 1994 however, ‘World Bank staff and conservative local consultants were actively involved in undermining those promises by developing arguments for the South African government about household affordability and funding options related to infrastructure and services.’²⁷⁵ Bond argues that the technical advice was based on faulty information and was biased towards privatisation and higher user fees for three reasons. Firstly the World Bank’s South African staff ignored the Reconstruction and Development Programme and the constitutional guarantee of basic services and housing to all citizens. Secondly it failed to correctly analyse and incorporate information about relative affordability and the indirect benefits of basic services. Thirdly in its review of funding options World Bank staff did not consider utilising a mode of redistribution of resources from national to local level that the African National Congress had promised and that the World Bank had itself endorsed in its 1994 World Development Report where it encouraged cross subsidisation through a progressive block tariff that ensures lifeline access to basic services for all.

This, argues Bond, took place amidst a national South African Mine Workers Union campaign against the privatisation of essential municipal services. It was evidenced when in May 1997 the South African cabinet approved two contradictory policies one from the Water Minister stating the aim of

²⁷⁴ P Bond, *Cities of Gold, Townships of Coal,: Essays on South Africa’s New Urban Crisis*, Africa World Press Inc, Trenton, 2000, p 94.

²⁷⁵ *ibid*, p 95.

supplying a free lifeline water service to all households and the other from the Minister of Constitutional Development promoting cost recovery policies for household water supplies. In September 1997 the Municipal Infrastructure Investment Framework was established. And in May 1997 the International Finance Corporation announced a R25 million investment in the Standard Bank South Africa Infrastructure Fund with the aim of providing foreign currency required for privatisation. The International Finance Corporation anticipated gaining a return on investment of more than 30% on 90% of its investments. The Corporation made no effort to invest in a manner that broadened ownership to the black majority but promoted an investment fund run by a big bank. Bond contends that this resulted in a crisis when in July – September 1997 as the government insisted on using harsh tactics to enforce a cost recovery approach to infrastructure and services a series of township protests broke out in Gauteng, Mpumalanga and the Eastern Cape. Demands were for lower service charges, an end to pre paid (more expensive) electricity meters and cut offs of basic services. The protests turned violent in some areas such as KwaThema, Thembisa and Butterworth and included clashes with the police and municipal councillors. By the end of 1997 nearly all municipalities began widespread cut offs of basic services to non payers. The Department of Constitutional Development's 'Project Viability' was expected to declare various municipalities illiquid.

Bond's view is that local democracy had been judged too expensive for South Africa and the 400 or more municipalities expected to fail would be amalgamated into large district councils. He adds that the growing municipal fiscal crisis emanated from the Department of Finance which cut the crucial 'inter governmental grants' (which pay for municipal service subsidies) by 85% between 1991 and 1997 according to the Financial and Fiscal Commission. This lent new meaning to the idea of a 'culture of non payment'. Bond argues that the Reconstruction and Development Programme lists a number of areas related to the International Covenant on Economic, Cultural and Social Rights in which South Africans can draw entitlements to an adequate consumption level of goods and services. These are also codi-

fied in the South African Bill of Rights where the state is obliged to ensure to citizens second generation socio-economic rights such as water, housing, health care and other services along with a general commitment to equality of state service provision. The Reconstruction and Development Programme's approach to second generation rights was to ensure that essential service needs are met through vast increases in government subsidies and redistributive tariff systems when a cost recovery approach fails to deliver services to those who need them. In terms of municipal services the Reconstruction and Development Programme specified the need for tariff restructuring, cross subsidies and lifeline services to the poor with respect to water and electricity.

In terms of water to ensure that every person has an adequate water supply the national tariff structure, according to the Reconstruction and Development Programme, must include the following:

- A lifeline tariff to ensure that all South Africans are able to afford water services sufficient for health and hygiene requirements
- In urban areas a progressive block tariff to ensure that the long term costs of supplying large volume users are met and that there is a cross subsidy to promote affordability for the poor and
- In rural areas, a tariff that covers operating and maintenance costs of services, and recovery of capital costs from users on the basis of a cross subsidy from urban areas in cases of limited rural affordability.²⁷⁶

In terms of electricity the Reconstruction and Development Programme stated that the electrification program would cost around R12 billion with annual investments peaking at R2 billion. This would be financed from within the industry as far as possible via cross subsidies from other electricity consumers. Where necessary the democratic government would provide

²⁷⁶ ANC, Reconstruction and Development Programme, sec 2.6.10.

concessionary finance for the electrification of poor households in remote rural areas. A national electrification fund, underwritten by a government guarantee, would be created to raise bulk finance from lenders and investors for electrification. Such a fund would potentially be linked to a reconstruction fund to be utilised for other related infrastructural financing needs. A national domestic tariff structure with low connection fees would be established to promote affordability. (Reconstruction and Development Programme: 2.7.8)

Bond argues that the World Bank ignored the cross subsidisation mechanism laid out in the Reconstruction and Development Programme that would have effectively obviated the need for privatisation. The World Bank's recommendations began with several urban reconnaissance missions to South Africa and were detailed in the Urban Infrastructure Investment Framework of November-March 1994/95. The paper not only rejected the Reconstruction and Development Programme's core arguments on financing, service standards and redistribution but also rejected the World Development Report: Infrastructure for Development report which recommended a relatively interventionist approach to policy, program and project design. This resulted in the Framework report making a weak case for state intervention, suppressing the economic benefits of infrastructure and adopting a pro privatisation approach. Bond argues that the reasons behind this are to do with World Bank interests where there is a broader alliance of international and domestic financial capital. Bond argues that privatised South African infrastructure is potentially highly profitable with internal rates of return approaching 30%. He argues that it is inappropriate that infrastructure investment for low income people becomes the basis for high rates of return. Also although the Department of Constitutional Development recognised the need for a regulatory framework to prevent undesirable practises such as monopoly pricing or cherry picking no framework was formally established.

Bond also deals with whether or not infrastructural goods within the privatisation debate are public or private, and if private whether public manage-

ment is necessary to internalise externalities. He argues that the World Bank staff in South Africa have strongly advocated privatisation of municipal services. This is contrary to the *World Development Report 1994* which advocated that:

Because many infrastructure facilities are locationally fixed and their products are non-tradable, users cannot readily obtain substitute services that better suit their needs...it is (often also) difficult for users to obtain information about service alternatives or characteristics. They cannot therefore 'shop around' for the best source of supply and are vulnerable to any abuse of monopoly power ... roads are not private goods ... Water outside of piped networks is often in practice and in principle a 'common property' resource. Although most infrastructure goods are private, they produce spillovers or external effects many of which affect the environment ... To ensure that society obtains positive benefits such as public health benefits from water and sanitation, the private goods must also be delivered efficiently. The characteristics of various infrastructure activities have implications for how services should be provided. To the extent that specific infrastructure activities entail natural monopoly or depend on a network characterised by natural monopoly, they will not be provided efficiently by an unfettered market.²⁷⁷

... A number of problems arise for which markets cannot guarantee solutions. Many infrastructure services, especially those that resemble public goods, will be undersupplied if markets alone are left to determine their provision. Market outcomes may allocate fewer infrastructure services to the poor than society desires.²⁷⁸

... Because markets often fail to reflect these externalities, their management usually falls to government.²⁷⁹

Bond argues that the message here was that even for those infrastructural services that are private there is compelling evidence to retain state control. 'For to effectively internalise the developmental externalities associated with infrastructure will generally require the state which has the capacity to

²⁷⁷ World Bank, *World Development Report 1994: Infrastructure for Development*, Washington, DC, pp 23, 24.

²⁷⁸ World Bank, *World Development Report 1994*, p 73.

²⁷⁹ *ibid*, p 104.

address the social costs and reap the social benefits to make calculations about the broader economic cost/benefit analysis associated with infrastructure (whereas private sector suppliers tend to rely upon only narrow financial cost/benefit analysis).’ This is particularly obvious with respect to the need for universal access and cross-subsidisation from large to small consumers, which are the opposite incentive of what private sector providers react to, as profit maximising actors in a market setting. Privatisation and public-private partnerships also risk corruption, in the tendering and drawing up of contracts, monopoly in the privatised service, higher user charges, inflated directors fees, share options and management salaries, wide scale retrenchments and anti-union policies.²⁸⁰

With regards to participation, Bond asserts that the Reconstruction and Development Programme stated very clearly that: ‘beneficiary communities should be involved at all levels of decision making and in the implementation of their projects ... key to such implementation is capacity-building, and funds for community-based organisations must be made available.’ He points out that, in its *World Development Report 1994*, the World Bank made certain commitments to participation, inter alia by stating that ‘The importance of participation in effective delivery of local public goods is well recognised and it is central to community provision of service ... Without local participation projects often either foundered at implementation stage or were not maintained and failed to produce sustained benefits.’²⁸¹ And: ‘User groups and other interested parties need to be consulted by the public officials and technical specialists who usually lead the process’²⁸² However, the *World Development Report 1997* contains a shift towards a more instrumentalist approach. Bond argues that the World Bank’s conception of participation is limited to NGOs, and does not include mass-based organisations or social movements. The main reason for this is because NGOs are perceived as being able to redirect people’s demands away

²⁸⁰ *ibid*, p 105.

²⁸¹ World Bank, *World Development Report 1994*, pp 76,78.

²⁸² *ibid*, p 84.

from the state and deliver ever increasing social services and poverty alleviation. Likewise there was no community participation aspect in the designing of the key financial and institutional components of infrastructural policy in South Africa in the Municipal Infrastructure and Investment Framework. The projects had limited consultations with community representatives such as trade unions and were designed by technical experts with no sense of the political and social importance of infrastructure, the Reconstruction and Development Programme and hence no incentive to establish higher standards and more generous subsidy arrangements.²⁸³

Elsewhere, Bond has pointed out with David McDonald and Greg Ruiters²⁸⁴ that there are four main arguments made in favour of privatisation. Firstly the argument pertaining to capital and expertise where it is asserted that the public sector does not have the necessary resources or expertise to provide services on the scale that may be required. Limited state budgets combined with the sheer enormity of the task also compounds the fact that the public sector lacks the necessary engineering, accounting and other such expertise. The private sector on the other hand is argued to have the capital and the expertise to invest and operate on very short notice. Bond et al refute this argument claiming that in reality the amount of public funding available for infrastructure development is a political choice – currently local and national governments around the world have introduced conservative macro-economic policies and severe fiscal restraints and then informed constituents that the state does not have sufficient funds for infrastructure investments.

The second argument in favour of privatisation pertains to efficiency and the view that the private sector is more efficient than the public sector. This is based on its need to compete for contracts and make profits which result in motivations to cut costs and find more efficient ways of providing services. This is in contrast to the ‘lazy’ and unmotivated public sector worker or manager. The efficiency gains are translated into lower costs for services

²⁸³ *ibid*, p 122.

²⁸⁴ Bond et al, Water Privatization.

and more accessibility of services for service consumers while money saved by the state can be directed back into further service extensions / upgrades and targeted subsidies for the poor. Bond et al take issue with this view claiming that international experience has shown that the anticipated cost savings for end users and for the state often do not materialise. Reasons for this are because private companies usually ratchet up prices after they sign the contract citing ‘unanticipated costs’. Also it is not necessarily the case that private sector firms are more efficient than the public sector – if anything public sector employees may be more productive because their work is labour intensive while the private sector has state of the art techniques when it comes to labour utilisation. Efficiency also leads to capital intensive rather than labour intensive production which undermines development objectives – where labour is needed however the private sector may prefer low waged cheap labour. And private sector firms operate in their own closed environment with little interest in the financial health of other firms or sectors let alone the gains and losses associated with service delivery like gender, racial equity and spatial desegregation. They are unable to consider the public good because they are bound by shareholder demands and profitability.

The third argument promoting the private sector is that of accountability. The public sector is labelled as inherently corrupt and unaccountable to the public plagued with nepotism and incompetence which affects its ability to monitor itself. So in this case the private sector could provide monitoring. Also private firms are more accountable because they have to abide by their contracts and are overseen by an independent regulator. Bond et al refute this argument on the basis that international experience suggests that private firms are actually less accountable than their public counterparts. Contracting out and privatisation lead to less accountability because political responsibility declines and various information seeking tools such as ‘freedom of information’ legislation which applies in the public sector are weaker or non-existent as private firms are not readily transparent to the public. Furthermore corruption within tenders and poor execution of contractual obliga-

tions with regards to e.g. environmental hazard avoidance have also been noted in privatisation contracts.

The fourth argument used to defend privatisation is that of innovation. Private firms are marketed as being more innovative when it comes to the development of new technologies and systems. This is motivated by the fact that they are in constant competition with other firms while the public sector lacking competition and incentive will always 'lag behind'. Bond et al argue that taking South Africa as an example this can be disproved. The provision of water and waste management services by the private sector has been anything but innovative but followed rather well trodden patterns of investment in energy dependent and resources inefficient systems of service delivery. This is despite advances in areas such as natural sewerage treatment, low flow toilets and showers, waste diversion systems. Also 'institutional memory' features in this argument for after 30 or so years what happens to the institutional memory when the private sector leaves? It is critical to have workers and managers who have intimate knowledge of the areas that they service to pass on to their public sector counterparts.

Melanie Samson²⁸⁵ in her work on waste management in South Africa shows how some of the above points manifest within service delivery and resulting participation when contracts are employed by municipalities. Samson argues that the use of contracts results in the formulation of a local contracting state where the local authority enables rather than enforces service delivery. Through case studies of Thabazimbi, Sol Plaatje and Johannesburg Samson argues that contract based services do not necessarily bring about better or less costly services. In Thabazimbi the private company contracted to deliver waste management services failed to employ enough staff and provide necessary equipment. This Samson contends, 'dumped' harder, unpaid cleaning work on township dwellers (women in particular).²⁸⁶ In Sol Plaatje, Samson found that workers employed under the waste management

²⁸⁵ M Samson, *Dumping on Women: Gender and privatisation of waste management*, Municipal Services Project, Cape Town, 2003.

²⁸⁶ *ibid*, p21.

contract were underpaid. Furthermore the municipality seemed more interested in facilitating empowerment of black entrepreneurs (holders of the contract) than service users in black working class areas.²⁸⁷ This throws up issues of accountability and equity alike. In Johannesburg, Samson argues the waste management body Pickitup, (owned by the Johannesburg council and contractor of other waste management private companies), was mainly concerned with making money. This affected wages, benefits, facilities and protective clothing and equipment. Samson concludes that the use of contracts to provide waste management services in Johannesburg, ‘caused more problems for waste management workers and for the working class communities where they live.’²⁸⁸

The above arguments presented against public-private partnerships draw attention to the fact that deepening democracy falls firmly within the domain of the state rather than in the domain of the private sector. This has to do with the way services are provided i.e. as a basic right rather than as a commodity. It is also related to the participation of citizens in matters that most concern them. If services remain in the public domain, citizens have a political right to engage with service providers and hold them accountable. If however service delivery has been removed from the public domain, service users’ political rights are transformed into consumer rights and the local authorities democratically mandated to serve them effectively abdicate their political responsibilities. The case studies that follow are illustrative of the dilemmas inherent in public-private partnerships with regards to democratic deepening.

²⁸⁷ *ibid*, p 41.

²⁸⁸ *ibid*, p 62.

THE NELSPRUIT WATER CONCESSION

IN APRIL 1999 a local authority in the Mpumalanga province, the Nelspruit Transitional Local Council (later the Mbombela Local Municipality), entered into a concession agreement with a private company, the Greater Nelspruit Utility Company. The concession was for the provision of water and sanitation services to the Nelspruit Council and the contract was valid for 30 years.

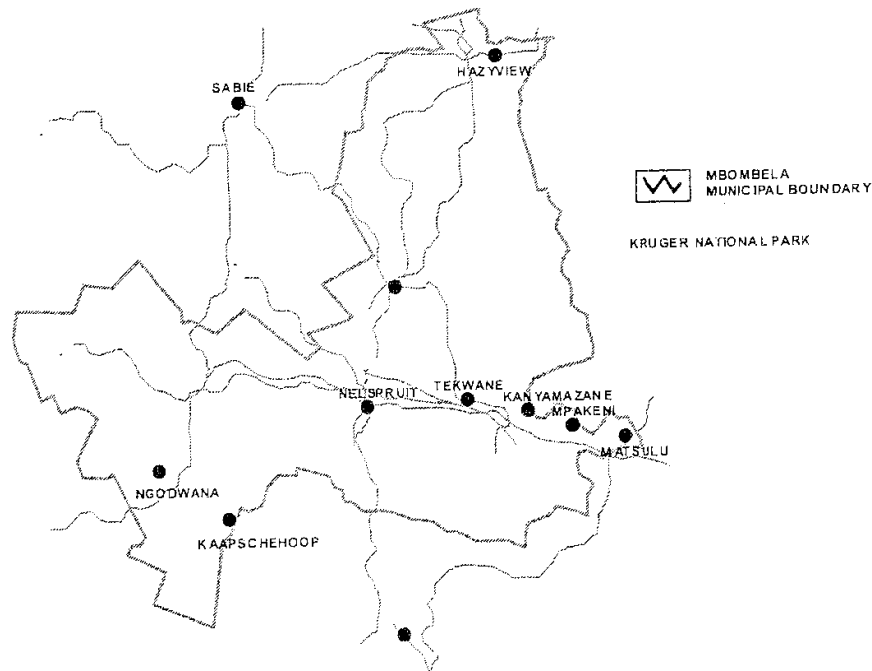
The Nelspruit Council in its new transitional form faced the challenge of extending water services to urban townships formerly falling under a 'black local authority'. Not only was its jurisdiction increased, straining existing resources, and budgets but it was also in the process of institutional amalgamations and restructuring – the process of democratic decentralisation was therefore already challenged. Alongside the challenges to service delivery was that of engaging with communities whose civic organisational structures had been eroded and who had no history of participation through formal local political structures. This was compounded by local politicians who seemed more committed to their party structures than to local citizens. The choice of external means of service provision in the form of a public private partnership further complicated the challenges to democratic decentralisation. This case study is illustrative of the tensions that exist between delivering services as rights and delivering services as commodities which transplant public sector responsibilities into the private sector affecting the link between political accountability and service delivery. It also throws light on how this contradiction shapes participatory trends between citizens and local government where there is less emphasis on empowering communities and more on favouring paying consumers. The conception of services as commodities and citizens as consumers fundamentally affects the ability

of local government to deepen democracy through its democratic mandate of delivering services and facilitating participation.

THE CONCESSION AREA AND ITS SERVICE USERS

The city of Nelspruit in the province of Mpumalanga was dramatically affected by demarcations of local government boundaries shortly after 1994. Under the new demarcation and the formulation of the Nelspruit Transitional Local Council, the population of Nelspruit increased from 24 000 to 230 000. The Nelspruit Council now included the former homeland KaNgwane and several 'black' townships and traditional areas including Matsulu, KaNyamanzane, Luphisi, Msogwaba and Mpakeni. This significantly changed the profile of communities served by the new municipality. Many of the newly incorporated areas had never received water and sanitation services and residents of these areas were poor and unemployed as compared with residents of the city of Nelspruit. At the time of the concession agreement the Nelspruit Council was still in a transitional phase under the Local Government Transition Act of 1993 which remained in force until the 2000 local government elections and demarcations when it was consolidated into the Mbombela Local Municipality which further increased the scope of its jurisdiction.

Figure 1: The Mbombela Local Municipality



Source: Public Relations Office, Mbombela Local Municipality.

The concession area is a good example of the racially determined development patterns typical of the apartheid era where the town of Nelspruit and its incorporated suburbs is affluent with high income levels, low unemployment levels and high levels of water and sanitation services. Localities outside the town however, (within the concession area) are characterised by low or indigent income levels, high unemployment and non-existent or low level basic services.²⁸⁹ These localities, formerly falling under ‘black local authorities’ or the ‘homeland’ of KaNgwane are the legacy of apartheid local government where blacks were not seen as local citizens but rather as necessitative of urbanisation who should practise citizenship within the homelands and for whom service delivery was not prioritised. Both of these localities resisted the conditions created by the apartheid government. In the townships around Nelspruit there were widespread rent and service charge boycotts during the mid 1980s joining the boycotts launched by the civics

²⁸⁹ Gillett, The impact of water and sanitation service privatisation on the poor, p 79.

movement throughout the country. In KaNgwane, in 1986 there were sporadic incidents of civil unrest aimed mostly at the homeland government regarding the state of schools and education.²⁹⁰ The dawn of a new democratic dispensation was therefore looked upon by citizens in these localities as way their needs would met equitably and their citizenship legitimately exercised through political representation and participation. 1996 census results showed that annual household incomes in townships such as Matsulu and KaNyamanzane (where I conducted fieldwork) averaged at 37.80% and 32.63% respectively for the R0-R6000 (indigent) category. Also, while unemployment rates in the city of Nelspruit were in the vicinity of 3.41%, townships such as Matsulu and KaNyamanzane had unemployment levels of 36.31% and 30.86% respectively.²⁹¹

The 1996 South African census also revealed that 2578 households in Matsulu and 679 in KaNyamanzane received water services from piped water on site (as opposed to piped water in their dwellings), while 2004 households in Matsulu and 151 in KaNyamanzane resorted to the use of public taps. Furthermore 4998 households in Matsulu and 866 in KaNyamanzane used pit latrines for lack of proper sanitation services in the form of flush toilets. Matsulu is divided into three sections namely, A, B and C. Areas A and C are better developed than area B which could be classified as rural. Area A is made up of sections of government housing as well as houses residents have built themselves. Area C has no government housing – houses there are all built by township residents. Land is divided into stands with house numbers. KaNyamanzane is a better developed township than Matsulu, it is divided into 10 sections with various sections constituting a higher standard of homes, some government housing and poorer areas where people live in shacks.

²⁹⁰ V Makanjee, Apartheid's satellites: from urban to rural revolt, in M Bennet and D Quin, Political conflict in South Africa, data trends 1984-1988, *Indicator SA Issue Focus*, 1988.

²⁹¹ A Kotze, A Ferguson and J Leigland, Nelspruit and the Dolphin Coast: lessons from the first concession contracts, *Development Southern Africa*, 16 (4), 1999.

Table 2: Household incomes in the Nelspruit Council area, 1996

	R0-6000	R6001-12000	R12001-30000	R30001-R72000	R72001-R132000	R132001 +
	%	%	%	%	%	%
KaNyamanzane	32.63	11.37	26.22	21.41	6.92	1.43
Matsulu	37.80	21.94	27.99	10.18	1.63	0.43
Luphisi	60.63	16.30	17.40	4.60	0.20	0.40
Mpakeni	44.22	21.51	29.48	3.58	1.19	0
Msogwaba	40.08	20.52	29.79	8.28	0.95	0.36
Nelspruit	14.52	5.20	11.18	23.62	24.98	20.47

Source: SA Census 1996, in Gillett, The impact of water and sanitation service privatisation on the poor, p 77.

Table 3: Unemployment in the Nelspruit Council area, 1996

Locality	Unemployment rate
KaNyamanzane	30.86%
Matsulu	36.31%
Luphisi	31.78%
Mpakeni	31.23%
Msogwaba	34.48%
Nelspruit	3.41%

Source: *ibid.*

Matsulu and KaNyamanzane, reflecting the provincial trend, were both dominated by support for the African National Congress both in the ward and PR categories. This is reflected in the tables below. The number of votes cast for ward Councillors suggests that there was a good turn out for voting at the local government elections in 2000 and that ward constituencies either had existing or had forged relationships with their political representatives. There is also evidence of general civic activity around the issue of services. This is evident in the protests in KaNyamanzane following a cholera outbreak in 1999 related to water cut offs and later, opposition in Matsulu and KaNyamanzane to having to pay for water services in the wake of the Free Basic Water Policy – which actually only covered the first 6 kilolitres consumed by a household per month. These protests were overtly led by formal opposition to the African National Congress, the Pan African-

ist Congress. I return to the subject of civil society activity in Matsulu and KaNyamanzane later.

Table 4: Election results in Matsulu and KaNyamanzane, 2000

MATSULU

WARD 13		
PR ELECTION		
Party	Votes	%
ACDP	11	0.45
ANC	2139	88.39
DA	104	4.3
IFP	54	2.23
PAC	43	1.78
UDM	69	2.85
WARD ELECTION		
Candidate / Party	Votes	%
C Korope DA	52	4.31
NJ Gubaye ANC	1073	88.9
PV Mabunda IFP	37	3.07
PA Banda UDM	45	3.73

WARD 27		
PR ELECTION		
Party	Votes	%
ACDP	9	0.47
ANC	1735	90.98
DA	123	6.45
IFP	11	0.58
PAC	8	0.42
UDM	21	1.1
WARD ELECTION		
Candidate/Party	Votes	%
BR Mdluli DA	64	6.73
MI Mathebula UDM	17	1.79
MJ Mamba ANC	870	91.48

Chapter Seven

WARD 28		
PR ELECTION		
Party	Votes	%
ACDP	4	0.23
ANC	1647	93.74
DA	52	2.96
IFP	31	1.76
PAC	14	0.8
UDM	9	0.51
WARD ELECTION		
Candidate/Party	Votes	%
DP Khoza IFP	21	2.39
JM Mndawe ANC	831	94.65
JM Mbenyane DA	26	2.96

KANYAMANZANE

WARD 18		
PR ELECTION		
Party	Votes	%
ACDP	85	3.51
ANC	2086	86.2
DA	95	3.93
IFP	3	0.12
PAC	34	1.4
UDM	117	4.83
WARD ELECTION		
Candidate/Party	Votes	%
GM Mokoena ANC	1032	86.22
JB Mashaba DA	53	4.43
TK Mabilane ACDP	48	4.01
S Ndabane UDM	64	5.35

WARD 19		
PR ELECTION		
Party	Votes	%
ACDP	17	1
ANC	1504	88.47
DA	47	2.76
IFP	6	0.35
PAC	67	3.94
UDM	59	3.47
WARD ELECTION		
Candidate/Party	Votes	%
BE Nzimade ANC	748	88.1
C Macpherson DA	23	2.71
C Nkambule ACDP	11	1.3
L Maphosa PAC	35	4.12
M Themba UDM	32	3.77

WARD 20		
PR ELECTION		
Party	Votes	%
ACDP	25	0.8
ANC	2828	90.04
DA	111	3.53
IFP	15	0.48
PAC	148	4.71
UDM	14	0.45
WARD ELECTION		
Candidate/Party	Votes	%
E Mathebula ANC	1418	89.52
JF Sibaya IFP	14	0.88
PM Dube DA	58	3.66
PS Mashigo ACDP	21	1.33
SV Mashaba PAC	73	4.61

Source: Independent Electoral Commission, www.elections.org.za.²⁹²

THE SERVICE PROVIDERS: THE LOCAL AUTHORITY AND THE CONCESSIONAIRE

When the Nelspruit Transitional Local Council was consolidated into the Mbombela Local Municipality, it fell under the Ehlanzeni District Municipality.

²⁹² I am very grateful to Laurence Snyman, Documentation, Independent Electoral Commission, Pretoria for all his assistance.

pality. As a district municipality Ehlanzeni is the water services authority for the district but can delegate authority to category B municipalities within its jurisdiction. The Nelspruit Transitional Council's decision to enter into the concession therefore removed Nelspruit from the Ehlanzeni planning landscape as far as water and sanitation was concerned which also removed any potential for cross subsidisation.²⁹³

The vision statement set out in the Mbombela Municipality Integrated Development Plan was 'To be a municipality that provides equal opportunities, sustainable services, economic growth and quality of life for all.'²⁹⁴ This was to be achieved through alleviating poverty and promoting socio-economic development by providing reliable, sustainable and affordable services to all residents of Mbombela. The Plan outlined its broad development goals among which were the alleviation of poverty by ensuring that indigent residents have access to free lifeline basic services and food security through the implementation of co-ordinated urban/peri urban renewal and sustainable integrated rural nodes in Mbombela. Economic transformation was also stated as a development goal specifically through the promotion of equitable creation and distribution of wealth in Mbombela. A further development goal was the promotion of good governance by ensuring representative governance through the efficient, effective and sustainable utilisation of resources in consultation with the residents of Mbombela.

In terms of water services the Mbombela Municipality listed its objectives as providing all households with 6kl of free basic water, ensuring the promotion of all household access to the same level of service provision by the municipality, to provide 60% of households in formalised areas with metered potable water on their stands by December 2007, to provide 40% of households in informal areas with potable water to a yard tank on their stands by December 2007, to alleviate constraints with regard to development and to assure affordability with the aim of cost recovery. Likewise in

²⁹³ Gillett, The impact of water and sanitation service privatisation on the poor, p 93.

²⁹⁴ Mbombela Local Municipality, Integrated Development Plan, 2002-2006.

terms of sanitation the objectives set out were that all households should have minimum basic sanitation by 2010 and there should be promotion of household access basic level of service provision by the municipality. The Integrated Development Plan also laid out its objectives with regards other basic services such as electricity. These included becoming the license holder to supply electricity in the area of Mbombela, ensuring the promotion of household access to basic level of service provision by the municipality, complying with minimum service delivery standards, 100% electrification within Mbombela's area of jurisdiction by December 2007 and the provision of cost effective electrical services to all customers within the Council's formal area of jurisdiction.²⁹⁵

The Nelspruit Council's decision to enter into a concession contract was made within the parameters of the legislative/policy framework governing water services in South Africa. The South African Bill of Rights provides that access to water is a basic human right.²⁹⁶ The Water Services Act of 1997 gives definition to the national water policy reiterating that everyone has the right to access a basic water supply and sanitation.²⁹⁷ The Act gives the Minister of Water Affairs and Forestry the power to set national norms and standards and the relevant water service authority (municipality) the power to determine details such as tariffs. Water service authorities are also required to ensure efficient, affordable, economical and sustainable access to water services to all consumers in its area of jurisdiction. While doing so water service authorities are directed to take into account 'alternative ways of providing access to water services.'²⁹⁸ The Act also stipulates that a water services authority may perform the functions of service provider itself or may enter into a written contract with a water services provider or form a joint venture with another water services institution to provide water ser-

²⁹⁵ Mbombela Local Municipality, Integrated Development Plan, 2002-2006.

²⁹⁶ Constitution, sec 27, I, (b).

²⁹⁷ Water Services Act, no 108 of 1997, sec 3, 1.

²⁹⁸ *ibid*, sec 11 (1) and (3) (a).

vices.²⁹⁹ The Water Services Act therefore opens the way for private sector involvement in the delivery of water services.

The 2002 White Paper on water and sanitation services formulated after the demarcation and advent of local government changed the focus of water service delivery from the Department of Water Affairs and Forestry to local government i.e. local government now assumes full operational responsibility for water and sanitation services while the Department instead of being a direct provider will assume a more regulatory role.³⁰⁰ The White Paper also sets out the new financial framework for the provision of water and sanitation. Rather than the Department acting as a funding channel for water services, local government is now responsible for financing these services through two consolidated grant mechanisms namely, the local government equitable share and the proposed municipal infrastructure grant.³⁰¹ The White Paper also introduced the free basic water policy. In terms of this policy, the provision of the first 6 kilolitres consumed by a household per month is free of charge. The cost associated with providing this free water service is funded by national government through an allocation of the local government equitable share.³⁰²

Municipal service partnerships are guided by a policy framework published by the Department of Provincial and Local Government³⁰³. The framework provides that a service contract may take the form of a public-private partnership, a public-public partnership or a public-NGO/CBO partnership. The first would involve a contract between a municipality and a private entity, the second between a municipality and a public entity and the third a municipality and a community based or non governmental organisation. The policy framework supports partnerships because of the backlog of municipal

²⁹⁹ Water Services Act, sec 19 (1).

³⁰⁰ Department of Water Affairs and Forestry, *Water is Life, Sanitation is Dignity, Water Service White Paper*, October 2002, sec 1.3.

³⁰¹ *ibid*, sec 1.3.

³⁰² *ibid*, sec 5.5.1.

³⁰³ Formerly the Department of Constitutional Development (DCD).

infrastructure and the growing need for service provision. The policy is given force by the Municipal Infrastructure Investment Unit whose mandate includes grant funding to local authorities to hire expertise for project preparation and contract management for service partnerships.

As the Nelspruit Council's population grew ten fold, its income only grew by 38%.³⁰⁴ In order to extend services to its expanded jurisdiction the Nelspruit Council would have had to have budgeted R250 million to water and sanitation services. As it stood the municipality budget for water and sanitation was only R8.5 million.³⁰⁵ The Nelspruit Council first turned to provincial and national government for assistance but was turned down. The Development Bank of South Africa and the Municipal Infrastructure Investment Unit stepped in to help the Nelspruit Council prepare tender documents for private sector investment through a long term concession for water and sanitation services.

Among the tenders for the concession were Colechurch International, SAUR International, Msukamanzi/Murray Roberts, Metsi-A Sechaba/Biwater (a Suez Lyonnaise subsidiary), Aquafund and Compagnie Generale Des Eaux. The concession was awarded to Metsi A Sechaba/ Biwater. As the tendering guidelines required bidders to include a South African black majority owned company as partner, Biwater provided an equity grant to purchase 10% of its shares as concessionaire. The tender for this grant was won by Sivukile Investments, a South African black empowerment firm which was delegated the responsibilities of marketing and communication and has to date had very little input into concession matters. The Greater Nelspruit Utility Company was formed by the Biwater / Sivukile partnership for the purposes of the concession. Biwater hold 90% of the Greater Nelspruit Utility Company (64% of which is held by Biwater Capital based in the Netherlands and 26% by Biwater Operations a South African subsidiary)

³⁰⁴ Kotze et al, Nelspruit and the Dolphin Coast.

³⁰⁵ Municipal Infrastructure Investment Unit (MIIU), Municipal service partnerships: the Nelspruit and Dolphin Coast Examples – questions and answers, www.local.gov.za/DCD.

the remaining 10% of the shares is owned by Sivukile which has the option to increase its share to 51%. Despite the promise of private sector investment the primary source of financing for the concession came from the Development Bank of South Africa which loaned R150 million to Biwater over 7 years – by the time of the research Biwater had drawn R56 million for capital investments.

The concession contract is a lengthy 600 page document quite complex in nature with a clause that prevents either party from revealing the contents of the contract without written consent from the other party. It is therefore not a public document. The contract provides that the Greater Nelspruit Utility Company take over, manage, maintain, build and rehabilitate all the infrastructure assets related to Nelspruit's provision of water and sanitation services for the period of 30 years after which they will be transferred back to municipality. The Company is responsible for metering, billing, revenue collection and capital investments to extend water and sanitation services to under-serviced areas. The Company was also bound to take on all municipal staff from the water and sanitation sectors. The contract also provides a role for the municipality to regulate the concession contract with regards tariff setting, asset maintenance and new asset acquisition. The concessionaire is required to pay a fixed annual fee to cover the monitoring and evaluation costs of the concession.³⁰⁶

The decision to enter into the concession was justified by the Nelspruit Council on three grounds. First there was a need for significant capital investment necessitating the involvement of the private sector. Second there was a desire to improve management and operational efficiency. Third non payment was seen as an area of concern that would best be dealt with along commercial lines. Views from within the Nelspruit Council elicited the fact that the Department of Finance did not allow local authorities a capital growth rate more than 6% of their budget (the Nelspruit budget was ap-

³⁰⁶ Municipal Infrastructure Investment Unit (MIIU), Contracts in implementation, Municipal Service Partnership in South Africa, projects completed in the period March 1998–February 2002.

proximately R25 million) and it was not possible for the Council to borrow the necessary funds to upgrade water and sanitation services as it would have required the Province's Premier to stand guarantor. The Nelspruit Council did not have the requisite credit rating to borrow from either the Development Bank of South Africa or commercial banks (banks are reluctant to lend for water services as tariffs are set by national government departments e.g. the Department of Water and Forestry this means that cost recovery and a margin for profit are not the primary guidelines for tariff setting). Aside from issues of capital it seems that the Nelspruit Council simply did not have the capacity to manage water services efficiently given their vast challenges.³⁰⁷

Opposition to the concession was consolidated by the Congress of South African Trade Unions and its affiliate the South African Mine Workers Union. The main arguments opposing the contract were firstly, that public withdrawal from the direct delivery of services reduces the potential for positive social justice and development outcomes resulting from basic service provision. Secondly international experiences suggest that concession arrangements often result in job losses and a deterioration of working conditions. Both of these issues are relevant to this case study and I develop them later. The impact of the trade union opposition to the concession was tempered however however by the South African Mine Workers Union having to respect the Congress of South African Trade Unions and its alliance with the African National Congress.³⁰⁸ Another source of opposition to the concession came from political opposition party the Pan Africanist Congress. In her thesis Amanda Gillett notes that no alternatives to the concession arrangement had been tabled at the Council. Furthermore when the option of a public-private partnership was presented it received unanimous support from all the Councillors. Siphosiwela Provincial Secretary of the Pan Africanist Congress (Mpumalanga) and elected Councillor for the Mbombela

³⁰⁷ Gillett, The impact of water and sanitation service privatisation on the poor, p 83.

³⁰⁸ A Weekes, The struggle against water privatisation in Mbombela between 1997 and 2004, *Centre for Civil Society Grant Report*, 2006, quote 101, Jacob Phala SAMWU, p37.

Municipality contends that the concession did not have community support and was pushed through by the MEC for local government – he adds that there were African National Congress Councillors opposed to the concession but were ‘told by the head office to support it’. Gillett also cites interview material with Bheka Mazibuko African National Congress Councillor for the Mbombela Municipality claiming that ‘all the Councillors had been in favour of this (the concession), despite what some Councillors said outside of Council Chambers.’ It seems that there were African National Congress Councillors who supported the idea of a concession at Council meetings but denied this in community forums. Gillett argues that the decision for the concession was ‘driven by a national level agenda as much as by the Council itself’.³⁰⁹ It is perhaps significant that at the time of the concession agreement the Nelspruit Council was still in a transitional phase and that politically motivated Councillors saw the need to ‘toe the party line’ in order to be re-instated in the new permanent Local Council. This would explain why there was no opposition voiced in Council Chambers by those who may have held dissenting views. The financial constraints in extending and maintaining water and sanitation services coupled with the awareness that municipalities be self financing (in line with government policy) probably also influenced dissenting Councillors to agree to the concession in Council Chambers. The very inception of the concession agreement therefore suggests that the Council, albeit short of finance and resources, was more concerned with national/provincial directives than with local community concerns. Furthermore Councillors, although not yet formally mandated to represent wards, were doing little to represent and give effect to local citizen concerns in Council Chambers. This throws doubt on local government as ‘holding the promise of being the crucial sphere of state action to extend democracy to all South Africans’ and suggests that local government simply serves national government.

³⁰⁹ Gillett, *The impact of water and sanitation service privatisation on the poor*, pp 85, 90.

THE QUALITY OF SERVICE DELIVERY THROUGH THE CONCESSION

I explored service delivery through the concession with a view to assessing how equitable services were in terms of being provided to all citizens equally, how effective services were in general and in terms of responsiveness to community needs and reactions to community defined problems and priorities and how affordable services were given the rights of South African citizens to access basic services.

Equity

South Africa's history of service delivery was based on racial discrimination where 'white' municipalities were better facilitated to provide for their service users than 'black' municipalities. With the advent of democracy and following constitutional principles legislation directs that municipal services be equitable. The implication is that services are now to be available to all local citizens equally. The concession arrangement therefore would ideally seek not just to maintain existing services but also to extend services to areas within the concession area which had never before received them. The infrastructural strides made by the concession are impressive. At the time of the fieldwork 91km of water mains had been laid in the township areas and 8km in rural areas. Furthermore 18km of sewer mains had been laid in township areas and 17km in rural areas. Townships residents consequently gained the possibility of access to a 24 hour water supply and higher levels of infrastructure in the form of waterborne sanitation and yard taps. At the time of the fieldwork 4500 households in Matsulu were connected to a water supply i.e. 4500 out of 9000 erven – 70% of the township population. In KaNyamanzane 6000 households were connected to a water supply i.e. 6000 out of 8500 erven – 70% of the township population.³¹⁰ Aside from the infrastructural gains, Biwater has set up a reservoir and purification plant. Township residents now have access to clean water and local schools and clinics can provide drinking water that is safe.

³¹⁰ Data provided by GNUC, 16 June 2003.

This notwithstanding there are constraints for local citizens with regards accessing these services and where the services are accessed it cannot be argued that it is on the basis of equity but on the basis of who can afford to pay. With regards access, the re-demarcations that increased the size of the Mbombela jurisdiction meant that not all areas under the municipality were covered by the concession. There was therefore a disparity in service delivery standards between areas serviced by the concession and areas within Mbombela not covered by the concession. Areas not covered by the concession included illegal settlements with no formal water or sanitation services at all. This is a good example of the difficulties incurred when local authorities enter into long term commitments with the private sector in the midst of an ongoing process of national reform. In terms of equity, water and sanitation services provided by the concession were, by most accounts, unreliable and of poor quality. The general consensus amongst local service users in Matsulu and KaNyamanzane is that they are not equal to their Nelspruit counterparts in terms of the services they receive. The Mbombela water services are plagued with issues of effectiveness and affordability that severely affect the prospect of delivering equitable services.

Effectiveness

The majority of householders in Matsulu and KaNyamanzane complained bitterly about the effectiveness of their water services. A Matsulu resident said, 'Often when I switch on the tap, nothing except air comes out! But the meter still runs and I get a very big bill.'³¹¹ Although areas of Matsulu serviced by the concession are supposed to be receiving a 24 hour service, water was only available between 5 and 8am and 4 and 7pm. As such, stories abound about service consumers being forced to leave taps open with buckets under them in the hopes of catching water when it is provided.³¹² Residents of Matsulu and KaNyamanzane also complained about their water bills. They argued that readings were overestimated and bills alarmingly

³¹¹ Household interviews, Matsulu and KaNyamanzane, 24-27 February 2003.

³¹² Councillor Kubai (Matsulu), interview, Nelspruit, 24 February 2003.

high. Furthermore bills were too complicated to understand. The water tariffs were set at R1.26 per kilolitre if less than 6 kilolitres was consumed per month, R1.82 if 6 to 30 kilolitres were consumed and R2.03 if 30 to 100 kilolitres were consumed³¹³ but many households were receiving water bills as high as R500 a month. This was seen as unacceptable especially by residents who inhabited areas which were originally part of the KaNgwane homeland where some water services were available for the flat rate of R14. Added to this there were complaints about water cut offs – some township residents claimed that they were cut off from their water supply for up to 6 days despite having paid their bills on time. There were also complaints about Biwater personnel. A KaNyamanzane resident said that meter readers and service consultants were ‘rude and impatient’. Matsulu residents were dissatisfied about the lack of accessibility of Biwater pay points and complaints facilities – an old pensioner complained that she lived in Matsulu B but had to walk all the way to Matsulu A to pay her water bill.³¹⁴ Residents in the townships argued that they were happy to pay for water services if the bills accurately reflected their water consumption as opposed to being excessively high. Those who were unemployed or pensioned believed that they should be given a lower, flat rate for services while those in arrears argued that the service provider was too harsh and should make allowances for a reasonable payment structure.³¹⁵

The Constitution provides that water is a basic human right. The struggle by township residents to access this water or their denial of this water from their service provider is therefore an infringement of a social right vested in the Bill of Rights. This is compounded by the fact that the concessionaire failed to respond to the needs and priorities of its service users. The concession is a very good example of the difficulties involved in reconciling ser-

³¹³ Biwater 1999 tariffs – there was also a basic connection fee of R30.25 and a refundable deposit for a first-time water connection of R438.90. Importantly, these tariffs were introduced before the advent of the Free Basic Water Policy.

³¹⁴ Household interviews, Matsulu and KaNyamanzane.

³¹⁵ *ibid.*

vices as rights with services as commodities. Although Biwater expanded service infrastructure significantly there was not an effective extension of services to township residents i.e. full water service for 24 hours per day. Biwater blamed this on technical difficulties. These difficulties were linked with area topography, illegal water connections and a difficult operations context. According to Biwater personnel some areas of Matsulu being high lying, required water service infrastructure that facilitated the pumping of water upward. This had posed some technical challenges.³¹⁶ Illegal water connections were also a big problem for Biwater. According to Frans Greyling a senior engineer at the Mbombela Municipality, illegal water connections in the Matsulu valley used all the water destined for households at the top of the valley. Greyling argued that illegal water connections resulted in high levels of unaccounted for water. He contended that in Matsulu 50% of the water provided was unaccounted for owing to illegal water connections. Illegal connections may also explain why householders were presented with exorbitant bills. Apparently it was common to find three or four households illegally connecting to a pipe that was metered at one household or illegal township settlements tapping into water service sources. Greyling also pointed out that illegal connections damage and destroy water infrastructure.³¹⁷ Martin Njisse Biwater Director of Operations stated that some 6000 disconnections have had to be made owing to unaccounted for water usage. He also claimed that Biwater workers were often intimidated by township residents when they went in to repair and maintain infrastructure and read meters. According to Njisse public anger towards Biwater is directly aimed at Biwater staff with incidents of stone throwing, vehicle damage and vehi-

³¹⁶ Councillor Kubai and Councillor Mazibuko, Mbombela Local Municipality, interviews, Nelspruit, 25 February 2003.

³¹⁷ Frans Greyling, senior engineer, Mbombela Local Municipality, interview, Nelspruit, 26 February 2003.

cle theft. This, for Njisse, is compounded by the fact that Biwater workers actually come from the townships they are serving.³¹⁸

The animosity towards Biwater which surprises Njisse so much probably has its basis in the fact that township residents expecting better services under their new democracy have had to contend with limited services, cut offs and high water bills. Limiting services and cutting off water supplies are intrinsic to service delivery that is based, as is the case with the concession, on cost recovery techniques.

Affordability

At the time of the research payment rates for water services in Matsulu and KaNyamanzane were 8% and 35% respectively.³¹⁹ According to Biwater representatives the concession was expected to lose R11 million in 2003. Furthermore there was a moratorium on capital expenditure to extend new services to households in the concession area. Biwater had limited its service to operating and maintaining existing infrastructure. Biwater representatives contended that there would be no new infrastructure spending until payment levels in Matsulu and KaNyamanzane (Biwater's two largest problem areas) had reached at least 50%.³²⁰ Biwater's cost recovery challenges were further compounded with the initiation of the government's free water policy. Under the free water policy Biwater was obliged to ensure that service consumers received 6 kilolitres of water a month free i.e. service consumers pay only for water consumed over and above 6 kilolitres. This re-defined Biwater's credit control measures. In an effort to raise payment levels Biwater had begun cutting off water supply to those in arrears of their water bill. The free water policy however obliged them to make 6 kilolitres of water available to service consumers for free. In cases where there had been cut offs for non-payment, Biwater installed stand pipes (accessible

³¹⁸ Martin Njisse, director of operations, Biwater, interview, Nelspruit, 25 February 2003.

³¹⁹ Information from Biwater Credit Control Division, 25 February 2003.

³²⁰ Brian Simms, managing director, Biwater, interview, Nelspruit, 24 February 2003.

within 200m) to ensure a basic supply of water. The removal of meters following cut offs however, resulted in high levels of unaccounted for water owing to a surge in illegal reconnections. Biwater then adjusted its stance by installing metered water tricklers in the case of non-payers. Water tricklers essentially restrict the flow of water but ensure that the free 6 kilolitres is provided. At the time of the fieldwork 800 of the metered connections in Matsulu had been installed with tricklers as had 100 in KaNyamanzane.³²¹ Biwater was also forced to restrict hours of water flow for credit control purposes. This was in contravention of its contractual obligation to provide a 24 hour service to consumers.

The reasons behind non payment for services in Matsulu and KaNyamanzane are crucial to an understanding of the functioning of the concession. Sceptics referred to ‘a culture of non payment’³²² this ‘culture’ supposedly drew from the mass protest tactics employed by the civics movement during the 1980s in opposition to high rents and service costs. In so far as the ‘civics hit the apartheid state where it hurt most – in the purse’³²³, local citizens under the new democratic dispensation should exercise their responsibility in terms of municipal bills. This view was waged against the fact that township residents who did not pay their water bills, paid their electricity bills and managed to maintain cellular phones.³²⁴ Biwater acknowledged however, that there were township residents who were unemployed, pensioned or simply too poor to pay water bills and embarked upon a series of debt management schemes and customer care policies. This revealed that although there was a percentage of service consumers unable to afford water, there was also a large percentage of consumers who were gainfully employed and able to pay their water bills. This suggested that the reason be-

³²¹ Harold Moeng, commercial manager, Biwater, interview, Nelspruit, 25 February 2003.

³²² Councillor Van Heerden, Democratic Alliance, interview, Nelspruit, 24 February 2003.

³²³ Beall et al, *Uniting a Divided City*, p 71.

³²⁴ Mazibuko and Kubai, interviews.

hind the non payment for water services was politically or ideologically based. At the outset of the negotiation process for the concession, labour groups vehemently opposed the new service delivery model on ideological grounds. The Congress of South African Trade Unions and the South African Mine Workers Union argued that the concession would have a negative impact on public sector workers in terms of loss of jobs and reduction in working conditions. They also argued that the concession could not serve social justice concerns in terms of the impact commercialisation of services would have on poor consumers. The unions advocated water services that included an allowance of free water, equitable services, community participation in service design and full cost recovery only if basic needs are met and cross subsidisation is in place. They were backed by political party opposition campaigning within townships. Councillor Siwela of the Pan Africanist Congress explained that his party did not support the concession on the grounds that ‘the state has a responsibility to look after national assets, one of which is water, water is a right, how do you privatise a right?’ Siwela also claimed that ‘it’s difficult for politicians to encourage people to pay for water when (before 1994) they had been promised that the new political dispensation would deliver services for free’. He added that when members of his constituency showed him their exorbitant water bills he simply advised them not to pay!³²⁵ Ward Councillors in Matsulu and KaNyamanzane confirmed that there was a fair amount of anger in their constituencies regarding the politics around service delivery. Councillor Mathebule said that there was a definite feeling among township residents that water should be free and that Biwater was just a rich, private company making money from the poor.³²⁶ Councillor Mamba explained that there was still some confusion among Matsulu residents as to whose authority they should respect: the new municipality’s or the established traditional authority. Apparently a traditional chief had been accepting levies for services from some Matsulu communities who had then refused to pay for water services over and above

³²⁵ Councillor Siwela (PAC), interview, Nelspruit, 27 February 2003.

³²⁶ Mathebula, interview.

these levies. According to Mamba, the traditional chief in question was prosecuted for his actions.³²⁷

The provision of water services in the case of the Nelspruit concession was intrinsically political – water was widely seen as a right and a promise by the new government. The problems around the effectiveness and affordability of the service were also accentuated by what was publicly seen as the municipality's abdication of its service provision related duties. Furthermore, the various political transitions still taking place compounded the challenges of embarking upon a long term concession contract.³²⁸ After the concession contract was signed two significant national level policies were instituted. These policies affected the terms of the contract. The first was the local government re-demarcations where the Nelspruit Transitional Local Council was consolidated into the Mbombela Municipality and the second was the introduction of the free water policy. The re-demarcations increased the size of the Mbombela jurisdiction which meant that not all areas under the municipality were covered by the concession. This resulted in a disparity in service delivery standards between areas serviced by the concession and areas within Mbombela not covered by the concession. The municipality's failure to service these outstanding areas resulted in illegal water connections by illegal settlements which have sprung up next to townships serviced by Biwater. The change over in administrations when the Nelspruit Council became Mbombela also affected the concession. The newer Councillors at the municipality were not part of the original negotiations and signing of the concession contract and so were uninformed and perhaps not as committed to the service delivery model. In fact the concession's biggest promoter Dr Wanie resigned from his position as Chairman of the Nelspruit Town Council at the time of the re-demarcations. The introduction of the free water policy affected Biwater's credit control strategies which they were forced to adopt because of the low payment rates. Instead of water cut offs for non

³²⁷ Councillor Mamba (Matsulu), interview, Nelspruit, 24 February 2003.

³²⁸ Discussions with Laila Smith, senior researcher, Centre for Policy Studies, March 2003.

payment, Biwater had to install the trickler system. Furthermore the furore over free water as a political right intensified non payment rates. Interestingly enough the introduction of the free water policy provided Biwater with the legal basis upon which to withdraw from the concession contract. Its doing so would have left the Mbombela Municipality liable for a R50 million debt incurred by Biwater through Development Bank of South Africa loans.

Service provision through the concession is pivoted around issues of cost recovery rather than service user concerns. Furthermore the national free water policy that should guarantee every local citizen a basic level of water provision as a right, has had to be reduced to a 'trickle' system in order for the concessionaire to comply and still meet its cost recovery criteria. The various technical difficulties cited by Biwater in terms of illegal connections and exorbitant water bills render the cost of water, even for those township residents who can afford to pay, costly at best. The concession therefore sets up a tension between services as basic rights and cost recovery. Although full cost recovery was tempered by the advent of the Free Basic Water Policy there still seems to be little impact on the quality of life in Matsulu and KaNyamanzane.

THE QUALITY OF PARTICIPATION THROUGH THE CONCESSION

I explored participation of service users in the concession arrangement by determining the effect of civil society activity around decisions made regarding the provision of water, the level of consultation and information provision between the service providers and users and the extent to which formal mechanisms for participation were meaningfully utilised.

Civil society activity

Civil society activity opposing the concession took the form of the Mbombela Anti-Privatisation Forum.³²⁹ This Forum is not in any way linked to the Anti-Privatisation Forum. It seems as though the term 'anti-privatisation'

³²⁹ Weekes, The struggle against water privatisation in Mbombela, p20

was coined by township residents in what they saw as rich private companies taking money from the poor for services that were supposed to be part and parcel of democracy. It also followed a general sense that the South African Municipal Workers Union had begun taking a softer stance on the privatisation of water in Mbombela and indicating less of an interest in resisting privatisation as a policy and more in the logistical areas of worker re-trenchment and processes of privatisation.³³⁰ The Forum was instituted in 2002 and followed two initiatives 'Operation Vulamanzi' (turn on water) and 'The Dismantle Biwater Coalition'. These initiatives comprised members of the Pan Africanist Congress as well as people from taxi associations, churches and ordinary community members concerned with water services. The form of organisation seemed to be fairly loose with some members claiming that they were not part of a movement but rather part of a community fighting Biwater.³³¹ The tactics used in this fight included boycotting water payments, illegally re-connecting to water supplies and sometimes vandalising Biwater property.³³² The Forum's main demands were a flat rate of R30 per month for water services, discontinuation of disconnections and infrastructure for informal settlements. The Forum became more visible in 2004 during the furore over a cholera outbreak in the area where a group of children were admitted to hospital to be treated for cholera following a series of water cut offs. The main spokesman for the Forum, Henry Nkuna reflected the anger felt by Forum supporters when he was quoted as saying, 'If it's necessary we'll use violence...if they come into the townships to cut our water supplies or take our goods, we'll vandalise their cars and beat up their workers.'³³³ The tactics employed were therefore the same as those of the civics movement resisting apartheid. Nkuna also explained that, 'We are unemployed, most of us. And if you are expecting a person who is unemployed who survives with a loaf of bread with 6 children, how do you ex-

³³⁰ *ibid*, quote 29, Henry Nkuna, p15

³³¹ *ibid*, p16

³³² *ibid*, p15

³³³ J Pauw, *Metered to death: how a water experiment caused riots and a cholera epidemic*, Centre for Public Integrity, 2002.

pect that person to pay for water?’³³⁴ According to Dale McKinley of the Anti Privatisation Forum, the Forum in Mbombela died down after the water cut offs were re-assessed by Biwater. The Forum captured the current anger of the township in relationship to the cholera outbreak. It used the anger and panic of a possible cholera epidemic directly linked to a lack of clean water to negotiate with Biwater officials. This resulted in the cut offs being reversed despite non payment of bills.³³⁵ It seems that the formulating of the Forum drew from the history of the area of civics organisation. Although the Forum succeeded in representing and mobilising the township’s interests in terms of a single purpose however, it could not be sustained as a long term civil society vehicle to oppose the concession (the Forum had initially demanded that the concession be cancelled and that the municipality take on the delivery of services, charging township dwellers a flat monthly rate). Reasons for this include a lack of skilled civic leaders present in the community. It seems that the leaders of the Forum were co-opted into local government structures leaving the community without the infrastructure to organise – of the people I spoke to, two who knew of the Forum and the other who had once participated in it in were now working at Biwater, Sivukile and the municipality respectively. The non sustainability of the Forum in a way mirrors the decline of the civics movement. The way that the African National Congress, towards the end of the anti apartheid struggle, sought to maintain central control often conflicting with the activities and objectives of the civics representing township residents³³⁶ is replicated in the decline of the Forum giving way to the policies of the new local government and its private sector partner. Another reason put forward for the fact that the Forum did not survive as a long term vehicle to oppose the concession is that township dwellers seemed to be more accepting of the concession after the incorporation of Sivukile a South African company in the concession arrangement. This is questionable however given the long stand-

³³⁴ Canadian Broadcasting Corporation, *Struggling to provide safe drinking water to the poor*, 2004.

³³⁵ Dale McKinley, Anti-Privatisation Forum, interview, Johannesburg, 26 April 2006.

³³⁶ Beall et al, *Uniting a Divided City*, p 70.

ing grievances around water services in KaNyamanzane and Matsulu. Furthermore insofar that township residents see themselves as poor and exploited by big private companies it is unlikely that differentiation would be made between 'white' or 'black' private companies. McKinley added that the Anti Privatisation Forum had attempted to keep the 'flame' of opposition going but was challenged by a lack of community co-ordination and structure and the fact that it could only garner rhetorical, verbal commitments from potential participants. The reasons for this may be explained by the fact that township residents were not familiar with the Anti Privatisation Forum geographically located in Johannesburg and could not have an affinity with its workings in the way that they had with their own Forum constituting members from their community. McKinley also pointed out that the South African Municipal Workers Union, the most formidable opposition to the concession but also part of the tripartite alliance with the African National Congress, chose to distance itself from the Mbombela Forum which may have had bearing on the slump in its activity as well as the difficulty the Anti Privatisation Forum incurred in its effort to entrench itself.

It is interesting to note that Henry Nkuna was an active freedom fighter in the military wing of the Pan Africanist Congress and that opposition to the concession in Nelspruit continued through Pan Africanist Congress ward councillors in KaNyamanzane and Matsulu but did not have much impact on the overall outcome either because the Pan Africanist Congress is a minority in the Council or, as mentioned, the Council is less of a decision making body than the provincial or national structures in terms of privatisation policies.

Consultation and information

Before embarking on the concession, the Nelspruit Council set up a consultation process to access public opinion on a private concession as a service delivery model. At the outset, labour unions such as the Congress of South African Trade Unions and the South African Municipal Workers Union were against what they termed the 'privatisation of a basic need that should

stay in the hands of government.³³⁷ They argued that the state should remain responsible for providing basic services, a private concession would not prioritise the needs of the poor and other models of service delivery had not been explored adequately enough. They also expressed concerns over the terms of employment for former municipal workers under a private concessionaire and water tariffs. Labour opposition to the concession led to a protracted consultation period (records show that the Nelspruit Council consulted with labour unions approximately 8 times) and was eventually forced to suspend negotiations with possible bidders until it could resolve differences. Consequently a 'Water Summit' was convened involving provincial politicians, local Councillors and union representatives. The South African Mine Workers Union presented a model of an alternative form of service delivery to a private concession. The Nelspruit Council rejected it citing a lack of resources, capacity and expertise. Members of the labour unions argue however, that their alternatives were rejected because 'the decision had been made well in advance of discussions with (labour unions) and that it would have been very difficult for them to reverse the process.'³³⁸ The Council then reopened negotiations with potential bidders which resulted in the signing of the concession agreement.

The concession agreement was then subjected to a formal review by the Sectoral Forum convened by the Department of Constitutional Development, the South African Local Government Association and the Congress of South African Trade Unions. The Sectoral Forum concluded that the concession contract was fully consistent with the 'Framework Agreement for the Restructuring of Municipal Service Provision' published by the South African Local Government Association and the Congress Of South African Trade Unions. This notwithstanding, both labour unions persisted in their opposition to the concession even though two of their major grievances were allayed when all of the municipal workers retained their jobs (at Bi-

³³⁷ Jacob Phala, SAMWU, interview, Nelspruit, 26 February 2003.

³³⁸ Gillett, *The impact of water and sanitation service privatisation on the poor*, p 89.

water) and the municipality remained responsible for setting tariffs.³³⁹ The consultation process was initiated through the media but there was a sense among local politicians that although certain civic groups participated it would have been more beneficial for organisations such as church groups to have been specifically consulted, possibly because had they been persuaded to the benefits of the concession, it would have been given greater legitimacy by township church goers. Local politicians also claimed that general public meetings were not rigorous enough or became ‘too political’ to be of practical value.³⁴⁰ This is an interesting point as it shows that some politicians felt that public meetings could have done more to engage local citizens on the issue of privatised water services while others believed that water should not be seen in ‘political’ terms and any ‘political eruption’ over the issue of services simply holds up the process.

Prior to the signing of the concession contract Biwater embarked on a series of public consultations of its own. In an effort to increase public ‘buy in’ of the private concession, Biwater visited areas it would be servicing and convened public meetings in an effort to elicit the perceived needs of township residents. These meetings usually took place on Sunday mornings and were held in community centres and schools. The initial meetings were attended by up to 500 people. These meetings were used to explain to people how services were to be extended to them in the form of increased infrastructure and water purification. According to Biwater staff once people’s ‘concerns were addressed’, interest would decline and the next set of meetings would see a lower turnout.³⁴¹ It seems more likely however that the reduced interest in meetings was linked more closely to the fact that township residents did not view these fora as a space to oppose the concession. Although satisfied with an extension of services, township residents still viewed service charges with suspicion. Biwater also initiated consultations with the African National Congress Youth League, the Pan Africanist Congress, church led-

³³⁹ Kotze et al, Nelspruit and the Dolphin Coast.

³⁴⁰ Mathebula, interview.

³⁴¹ Moeng, interview.

ers and women's and business groups.³⁴² The nature of these consultations was to garner public 'buy in' for paid services by marketing increased and superior services. Biwater's relationship with its service consumers after the signing of the concession contract however seemed to deteriorate. According to a Matsulu ward Councillor, 'There is a communication breakdown between the community and Biwater, there must be cooperation between the two. Currently there is no mechanism in place for Biwater to communicate with community members.'³⁴³ This is certainly evidenced by testimony from township residents who claim that after they had been provided with their new water service, meters had been installed without their knowledge, usually when they were not at home.³⁴⁴ It is possible however that given the hostility Biwater faced from service consumers, communication became difficult. It did however make an effort to communicate with service consumers during its customer care strategy (aimed at increasing payment levels). This strategy included talk show presentations, radio announcements, flyers and kombis driving through the townships with loud speakers.

Community consultation by the Mbombela Municipality after the signing of the concession contract was minimal. Consultation was usually included in workshops for the Masakhane Programme (a social empowerment campaign stressing the importance of citizen responsibility for municipal bills). The municipality did however take steps to encourage payment for services in the form of radio announcements and flyers. This can hardly pass as consultation though and implies that the municipality was in fact trying to avoid direct contact with service users.

The municipality's limited role in community consultation was echoed in its regulatory role in the concession contract and in its under utilisation of legislatively defined community participation mechanisms.

³⁴² *ibid.*

³⁴³ Mamba, interview.

³⁴⁴ Household interviews, Matsulu and KaNyamanzane.

Community participation / input (through various mechanisms, e.g. ward councillors / ward committees)

The role of the municipality in the concession, aside from tariff setting, was to regulate the service delivery. The concession agreement stipulated that Biwater would pay the municipality R2.5 million a year for regulation. The municipality set up a Compliance Monitoring Unit in 1999 for this purpose. The Unit placed most of its focus however, on the technical side of regulating the concession. The Unit comprised Deputy Municipal Manager Roelf Kotze, senior municipal engineer Frans Greyling and two Councillors. It functioned as a monthly monitoring committee that published monthly reports. Its main focus was to determine Biwater's performance regarding operations and maintenance. This meant that the Unit concentrated on Biwater's capital expenditure and was very technical often involving engineers and consultants. Involvement of political Councillors was therefore limited, politicians are not after all 'interested in details such as the size of pipes.'³⁴⁵ With the advent of the exceedingly low payment rates however, the Unit began to concentrate on ways to increase payment levels which included hiring financial consultants KPMG. It was at this point that it was recognised that the underlying causes for non payment needed to be explored. This warranted a socio-political approach and saw the restructuring of the Unit to include political Councillors, and a consumer care and financial advice division. At the time of the research the new unit had not yet been consolidated and the views of some of the original unit members were that politicians (political Councillors) had turned the unit into a 'customer complaints service' where complaints were duly lodged and forgotten about.³⁴⁶

Aside from the Compliance Monitoring Unit, the municipality has played no role whatsoever in the delivery of water services under the concession. Legislation specifically directs municipalities who resort to external means of service provision to continue 'generally exercising their service authority' to

³⁴⁵ Roelf Kotze, deputy manager, Mbombela Local Municipality, interview, Nelspruit, 26 February 2003.

³⁴⁶ Greyling, interview.

ensure the uninterrupted delivery of services in the best interests of the communities they serve. A case in point of Mbombela's failure to exercise its service authority is illustrated in the transfer of municipal labour to Biwater. At the time of the concession 141 water service workers were transferred from the municipality to Biwater as according to the concession contract which provided that no municipal workers would lose their jobs because of the concession and that they would be working under the same or better conditions of service.³⁴⁷ Notwithstanding the official transfer, there was an agreement between the municipality and Biwater that the municipality would remain involved in annual wage negotiations for the first five years of the contract. According to Enos Meele, a South African Mine Workers Union consultant at Biwater however, the municipality has been reticent in this regard. During the 2002 wage negotiations for example, the municipality recommended a 9% increase, Biwater refused and the municipality did nothing further. Former municipal workers argued therefore, that the municipality was not protecting their interests. Workers also complained that financial benefits such as housing subsidies were not extended to them uniformly and benefited only workers at management levels. Workers were also aggrieved by the fact that Biwater, as a form of policy, never made loans available to its employees. The municipality's loans policy was more flexible. This perpetuated the notion that Biwater was only concerned with profit and not the general well being of its workers. Added to this were complaints from workers that they were not receiving any training to better their skills – skills transfer was part of the concession agreement.³⁴⁸ Furthermore although Biwater had a South African Mine Workers Union consultant on its permanent staff, it set up a labour forum. The actual make up and function of the labour forum was not consolidated, at the time of the research, but it seemed as though workers were being encouraged to take their grievances to the labour forum before/rather than approaching their

³⁴⁷ Nick Erasmus, human resource manager, Mbombela Local Municipality, interview, Nelspruit, 26 February 2003.

³⁴⁸ Enos Meele, Biwater SAMWU consultant, interview, Nelspruit, 27 February 2003.

union. There was a clear feeling that Biwater was not union friendly.³⁴⁹ It could be argued that this is evidenced by the fact that no Biwater workers joined the July 2002 nationwide strike organised by the Congress of South African Trade Unions in spite of the fact that many of them had wage grievances. Discouraging union activity is contrary to democratic practise. Regardless of a private company providing services, the municipality still has a duty to ensure that workers providing services are given access to their rights. In this case, interviews with municipality officials revealed that they seemed either unaware or uninterested in the situation of their former employees.

'Biwater thinks it can solve political problems with technical solutions'³⁵⁰

The success of the concession as a service delivery model was very much based on the acceptance for the project on the ground and reasonable payment levels.³⁵¹ Ward Councillors were therefore optimally placed to act as mechanisms of communication between service consumers (i.e. their ward constituencies) and the service provider (i.e. the municipality playing a role in the concession). It was clear that most of the ward Councillors interviewed were well aware of the needs and grievances of their constituencies regarding water services. It was also clear however that this valuable information was not being channelled and utilised to impact on the service delivery. Councillor Mamba from Matsulu said that he was frequently approached from members of his constituency complaining about high bills and the lack of a 24hr service. He claims that he tried to talk through the water bill with his complainant to establish whether or not he could have used so much water. In the case of the lack of service, Mamba said he had lodged

³⁴⁹ William Spencer, Independent Municipal Allied Trade Union (IMATU), interview, Nelspruit, 25 February 2003. Fifteen of the workers transferred from the municipality to Biwater were IMATU members. IMATU markets itself as an independent trade union while SAMWU is affiliated with COSATU. Furthermore IMATU has traditionally been associated with white membership drawn mainly from the management sectors while SAMWU has been associated with black laborers.

³⁵⁰ Greyling, interview.

³⁵¹ Mazibuko, interview.

several complaints on behalf of constituency members with Biwater through the payment and complaints facility in Matsulu but had never received feedback.³⁵² Councillor Kubai from Matsulu argued that members of his constituency essentially felt that they were not being given any dignity. Many of his complaints included cut offs without warning and difficulties interpreting water bills. Complainants argued that they would like their bills to reflect the first 6 kilolitres of water used and then be more clear about the cost of water thereafter. Kubai also argued that many people in his ward felt resentful about paying for water when they observed the amount of illegal connections essentially providing people with free water.³⁵³ Councillor Mathebula of KaNyamanzane was rather more proactive in his stance. Following a barrage of complaints from his ward members about their high water bills, he undertook to go on a sampling project with Biwater. The project was to determine whether or not meters were read fairly. Mathebula claimed he was satisfied that meters in KaNyamanzane were read fairly. He also contended that he personally witnessed a large amount of water abuse in his ward. Examples of this were children playing with hosepipes unsupervised by adults or hose pipes left to run while nobody was at home. Mathebula said he tried to set an example in his community by advocating for water conservation – he pointed out that his own water bill was never more than R100 a month – he has a wife and two children.³⁵⁴ The testimony from ward Councillors indicates that local communities are becoming accustomed to communicating with their ward Councillors. It is unfortunate therefore that in the case of the Nelspruit Water Concession, this valuable link with communities was not utilised optimally. Although these ward Councillors were part of the Mbombela Municipality they did not seem to think that part of their duties included briefing the municipality on community grievances regarding water services. The reason for this may have been owing to the feeling within the municipality that it had washed its hands with regards the de-

³⁵² Mamba, interview.

³⁵³ Kubai, interview.

³⁵⁴ Mathebula, interview.

livery of water services and that even if the concession were to fail it would simply find a replacement for Biwater. This was probably owing to the fact that providing water and sanitation services through a public-private contract had been mooted in the Council with no allowance made for an alternative. While it makes sense that service complaints be lodged with the service provider, the concession may have enjoyed greater legitimacy if the municipality had played a more definite role in community issues. This pertains particularly to the politics around the delivery of water. Township residents who believed that their basic needs would have been better protected by their municipality than by a profit driven private company may have exhibited a greater acceptance of the concession if they could have had more contact with their municipality.

Aside from service complaints, ward Councillors could have played a valuable role in explaining the free water policy to communities and pointing out to them the importance of paying for services. Many township residents seemed confused by the free water policy. They interpreted it as meaning that all water consumed was free. It could be argued that the African National Congress political campaigning was responsible for this misinterpretation. None the less many service consumers were unhappy to discover that only a limited supply of water was to be free. This may have accentuated the hostility towards Biwater as a private company that charged for water while the government was providing free water. Arguably ward Councillors may have been in the position to influence their constituencies to utilise their free water prudently and consume less so as to ensure lower bills. Payment levels may have also been positively impacted on if service consumers could have been convinced that payment essentially goes back to sustain the service as opposed to solely enriching the private company.

At the time of the research the need to communicate more meaningfully with service consumers had become more of a priority. As a result Biwater in conjunction with the municipality established water forums in Matsulu and KaNyamanzane. The water forums involved Biwater, the Mbombela

Municipality, ward Councillors and township residents. They included technical personnel and personnel equipped in social aspects of service delivery. The water forums were established because Biwater began to recognise that township residents were turning to their ward Councillors with their grievances and that these grievances had no way of being passed on to Biwater's operations division. The forums were therefore an attempt to fill the gap with regards important community information.³⁵⁵ It seemed that service consumer feedback began to penetrate Biwater, this is evidenced in the fact that the water bill format was restructured in response to complaints that it was too complicated to understand. Also, new credit control strategies were attempted. These included freezing arrears to avoid accrual of interest or removing arrears from bills altogether.

Despite the progress made in fostering some level of community participation in the delivery of water services through the water forums, there still remained instances where mechanisms for forging links with communities were squandered. An example of this was Biwater's outsourcing of revenue collection to consultants. Biwater insisted that these consultants would concentrate on customer care and improving data bases as well as improving payment rates. In spite of this however the links forged and relationships built between the consultants and service consumers would be better placed with the local authority rather than a temporary, apolitical body.

Failure for the concession would inevitably mean failure for the Mbombela municipality. It would be in the municipality's best interests therefore to strengthen its political hold on issues around the delivery of water and sanitation services. This could be achieved with the advent of the water forums but there is also a need to entrench the role of ward Councillors in external means of service provision. This could take the form of ward Councillors having a clearly defined role as intermediaries between communities and service providers.

³⁵⁵ Kotze, interview.

THE ESKOM SHELL SOLAR CONCESSION

IN JUNE 2002 the National Electricity Regulator and national electricity utility Eskom entered into a concession contract with a private company Eskom Shell. The concession agreement was for the provision of electricity services to rural areas in the Eastern Cape and KwaZulu-Natal provinces. The contract was interim in nature and set to run for 18 months followed by a review period which would determine whether or not a long term concession agreement would be finalised.

Eskom, as South Africa's national electricity utility is responsible for maintaining and, given the new democratic dispensation, extending services to areas never before serviced. Many of these areas include deep rural communities which fell under the former 'black homelands'. Given that Eskom and not local authorities is the primary electricity provider in the country, there is a need to reconcile electricity provision to local communities with political recourse to local government. The Ugu District Municipality in KwaZulu-Natal composed of a series of local municipalities comprises many rural areas never before serviced. The extension of services to these areas is, as in the previous case study, challenged by newly amalgamated and restructured local municipalities lacking skills and finance i.e. limited in terms of financial and institutional decentralisation. Likewise, the challenge of promoting local citizen participation in communities with no history of local government representation is mammoth, with no history of civic activity to draw from and compounded by the provision of basic services by an authority external to the municipality in the form of a public private partnership. This case study is a good example of the logistical challenges faced by newly formed local authorities where the lack of capacity, skills and resources may adversely affect the provision of services in a democratic way. This case study is a further illustration of how vesting public sector respon-

sibilities in the private sector destroys the link between service delivery and political accountability. Furthermore it is vital that newly formed local authorities establish avenues to engage with local communities in order to best represent them. Such a relationship can never be consolidated however if local citizens are represented solely by private entities in terms of their services. Once again, the removal of the local authority from any aspect of the provision of a basic service is detrimental to democratic deepening in that the service delivered is no longer rights based and participation assumes a commercial form.

THE CONCESSION AREA AND ITS SERVICE USERS

The Ugu District Municipality is one of ten districts in the province of KwaZulu-Natal. It is made up of six local municipalities; Vulamehlo, Um-doni, Umzumbe, Ezinqoleni, Umuziwabantu and Hibiscus Coast. It covers 5866 km² and has a population of 687 735. Some 16% of the Ugu District Municipality is urban and 84% is rural. A staggering 88% of the population lacks basic services.³⁵⁶ The better part of the rural quotient of the Ugu District Municipality was formerly part of the KwaZulu homeland where its 'citizens' faced oppression not just from apartheid but also from the structure and nature of the homeland government led by Inkatha Freedom Party leader Mangosuthu Buthelezi. The KwaZulu Legislative Assembly which administered the homeland was essentially controlled by the Inkatha Freedom Party, the entire KwaZulu 'cabinet' in fact formed the executive of the Inkatha Freedom Party. Buthelezi himself supplanted Zulu lineage structures with a hierarchical organisation of homeland government in order to consolidate personal power. His view of KwaZulu as a 'Zulu' nation resulted in the breaking of ties between the Inkatha Freedom Party and the African National Congress and other mobilisation structures. Also the relationship between the Inkatha Freedom Party and the KwaZulu Legislative Assembly meant that the Party had access to resources denied other political mobilisation structures, this includes land, housing and employment. The

³⁵⁶ Ugu District Municipality, Integrated Development Plan, 2002.

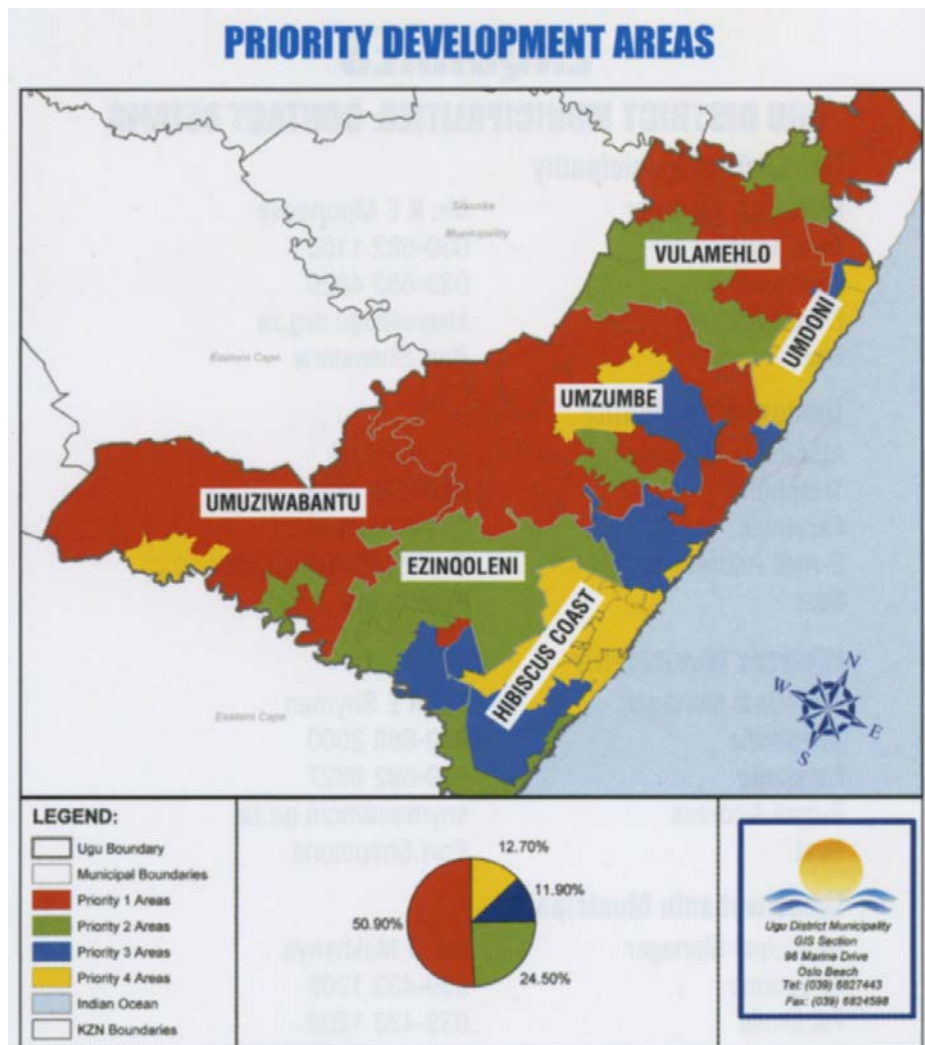
Party's link to the KwaZulu homeland also meant that it escaped state repression in the form of harassment and bannings. Ultimately therefore the Inkatha Freedom Party could not pursue boycott tactics like the civics movement because it controlled homeland administrations and had various retail interests which would have been affected. 'Citizens' of KwaZulu were therefore not privy to the civil society organisation of their counterparts in urban areas. Their scope for local political participation was thus curbed, both from above and from below. Furthermore services were rendered by the homeland government through tribal chiefs in unequal ways, in terms of favouring Inkatha supporters with land, housing and jobs.³⁵⁷ Ugu faces many challenges, including backlogs in the delivery of water and sanitation, hazardous road conditions, and poor accessibility. Alongside this is the municipality's clear under-capacity for the delivery and regulation of services. Also, amalgamations of previously disadvantaged areas, such as Vulamehlo and established municipalities such as Hibiscus Coast, have resulted in difficulties in prioritising needs and distributing capacity. Some 51% of the Ugu District Municipality has a priority rating of one (1), denoting that people living in the area are in dire need of development intervention. Examples of these are the Umzumbe and Umuziwabantu municipalities. Approximately 13% of Ugu has a priority rating of four (4), meaning a fairly low level of demand for development intervention: an example of this is the Hibiscus Coast Municipality.

Eskom Shell's concession area (also known as its 'permission area') in the KwaZulu-Natal province include the rural areas of Dweshula (Umzumbe Municipality) and Kwajali (Umuziwabantu Municipality), both of which have been the subject of my fieldwork for this case study. Dweshula is what could be classified as deep rural, the nearest town, Port Shepstone, is an hour's drive away. Households are scattered on a hilly terrain, serviced by a small general dealer, and many householders are old-age pensioners caring

³⁵⁷ D Booth, A strategic divide: townships on contested terrain, in M Bennet and D Quin, Political conflict in South Africa, data trends 1984-1988, *Indicator SA Issue Focus*, 1988.

for children. Many residents are unemployed and make do with subsistence living. Kwajali is not as rural as Dweshula and is located near the town of Harding – it has more infrastructure than a deep rural area.

Figure 2: Ugu District Municipality



Source: Ugu District Municipality, Delivering sustainable development to communities, n.d.

The Ugu District Municipality was dominated politically by the African National Congress. There is however a strong Inkatha Freedom Party bearing following the provincial trend. In Dweshula the ward election results reveal that the Inkatha Freedom Party Councillor received 84 votes to the African National Congress's 113. Likewise in Kwajali, the Inkatha Freedom Party Councillor received 86 votes to the African National Congress's 99 (see tables below). Dweshula and Kwajali therefore reflect an example of local party competition in the sense that the governing party has significant party opposition. This is contrary to the national trend where the African National Congress has captured such a large majority of the vote that South Africa has been described as a dominant party democracy. One of the virtues of healthy opposition is that the governing party is forced to consider other policy options and that minorities are, to an extent, spoken for. In the case of Dweshula and Kwajali one might expect that discontent over service delivery would be reflected in electoral politics. This has not really been the case with regards electricity services however with both African National Congress and Inkatha Freedom Party Councillors agreeing that the municipalities Umzumbe (Dweshula) and Umuziwabantu (Kwajali) lack the skills and capacity to take on responsibility for electricity services. Councillors from both parties complained however that they were not informed about the solar concession arrangements and that they could have had some role to play had they been. African National Congress Councillors argued in favour of public-private partnerships (probably following the national party line) while Inkatha Freedom Councillors focused more on the distinction between the limited services offered by the solar concession versus the wider services offered by Eskom. Aside from being uninvolved and uninformed about electricity services to rural areas in the form of the concession, Ugu Councillors also admitted to having only vague ideas about the Free Basic Electricity Policy. This lack of knowledge about vital services to their jurisdiction by Ugu Councillors is explained by the fact that Ugu was never, in its transitional form or before that, a provider of electricity services to its jurisdiction. These services were provided by Eskom. All the planning for

the concession therefore was effected through the South African Local Government Association acting on behalf of the municipalities in question.

Table 5: Election results in Dweshula and Kwajali, 2000

DWESHULA, WARD 1

PR ELECTION		
Party	Votes	%
ANC	224	47.36
DA	73	15.43
IFP	176	37.21
WARD ELECTION		
Candidate/Party	Votes	%
BE Ngubo DA	41	17.23
CL Shezi ANC	113	47.48
J Cele IFP	84	35.29

KWAJALI, WARD 7

PR ELECTION		
Party	Votes	%
ACDP	3	0.79
ANC	204	53.83
DA	2	0.53
IFP	170	44.85
WARD ELECTION		
Candidate/Party	Votes	%
M Hulley DA	2	1.06
SG Memela ANC	99	52.38
SS Ngaleka IFP	86	45.5
WM Dlamini ACDP	2	1.06

Source: Independent Electoral Commission, www.elections.org.za.³⁵⁸

The Ugu Municipality's Integrated Development Plan reflects its prioritisation of service delivery. Its vision statement is a commitment to empowering people through education, skills development, good health and safety. It

³⁵⁸ I am very grateful to Laurence Snyman, Documentation, Independent Electoral Commission, Pretoria, for his assistance.

prioritises water services, land for development, investors and settlement. It also pledges a commitment to ‘the cherished tenets of democracy’.

The Plan acknowledges a variety of development challenges. These include high levels of poverty and unemployment which are exacerbated by poor land use management, unsustainable land and settlement delivery, unsustainable road construction, the lack of adequate energy sources, the lack of access to clean, potable water and sanitation and a severely under resourced institutional environment unable to meet the development challenges of the district. The Plan also lays out a series of key focus areas which are; agricultural development, the development of links between coastal and inland tourism assets, a focus on rural poverty as a core area of intervention through integrated infrastructure, tourism, agro-industry, human settlement, land reform and sustainable livelihoods, a district wide integrated HIV/AIDS programme and barrier free access across the district.³⁵⁹

THE SERVICE PROVIDERS: THE CONCESSIONAIRE, NATIONAL ELECTRICITY UTILITY ESKOM, THE NATIONAL ELECTRICITY REGULATOR, AND THE DEPARTMENT OF MINERALS AND ENERGY

The tender to provide non-grid electricity services to Ugu Municipality was awarded to Eskom Shell and the concession agreement was between Eskom Shell, national electricity utility Eskom and the National Electricity Regulator.

Eskom Shell was created in 1998 when Eskom began looking for ways to extend energy services to areas located off their electricity grid. Solar was seen as an appropriate alternative and Eskom entered into a solar electrification project with the Shell company to supply rural, off grid areas with solar energy. Eskom Shell was formed to facilitate this project with Eskom holding 50% of the shares and Shell the other 50%. Before the interim agreement, that is the subject of this study, was signed however, Eskom no longer regarded solar energy as an appropriate means to electrify off grid areas. It

³⁵⁹ Ugu District Municipality, Integrated Development Plan.

conducted an audit of current solar services and argued that solar energy was not commercially viable owing to low payment rates. It also concluded that solar was not its core business and was too experimental.³⁶⁰ For this reason when the interim concession contract was drawn up, Eskom refused to enter into the agreements and the National Electricity Regulator was left to take on its designated role (as the national utility and licensed electricity distributor in most off grid areas, Eskom was supposed to be responsible for awarding non-grid service contracts to the various consortia and acting as the agency of government as well as reporting on off grid service providers' performances to the National Electricity Regulator).³⁶¹ Eskom limited itself to demarcating areas for non-grid service provision.

The mandate of the National Electricity Regulator is to regulate the electricity industry 'in accordance with government policy and law'.³⁶² The National Electricity Regulator was only supposed to play a regulatory role in the application of non grid concessions. This role would include awarding market access rights, enforcing technical and customer service standards, price reviews and price control, the management of disputes and the monitoring and evaluation of the project.³⁶³ The virtual withdrawal of Eskom from the process however redefined and increased the National Electricity Regulator's role in the concession contract. The National Electricity Regulator's involvement shifted beyond regulation to the actual signing of the contract, compliance, quality and volume control, disputes and the administering of subsidies.³⁶⁴ The National Electricity Regulator thus became party to

³⁶⁰ P De Renzy Martin, Shell's business models for village power, Draft, 6 December 2000.

³⁶¹ Y Afrane Okese and C Thom, Understanding the South African off-grid electrification programme, Energy and Development Research Centre, University of Cape Town, 2000.

³⁶² Interim Non Grid Energy Services Contract entered into between the National Electricity Regulator and Eskom and Eskom Shell Solar Home Systems (Pty) Ltd (The Non Grid Service Provider), 3 June 2002.

³⁶³ National Electricity Regulator, *Lighting Up South Africa*, 2002.

³⁶⁴ George Van Der Merwe, National Electricity Regulator, telephonic interview, 1 September 2003.

the concession contract. According to sources, the National Electricity Regulator did not align with Eskom's misgivings about solar energy provision because it had available to it funding allocated for the provision of non grid services and did not wish it to be returned, unused, to the national treasury.³⁶⁵

The Department of Minerals and Energy is mandated to deal with energy policy, regulation of the electricity sector and national electrification. As the initiator of the off grid concessions programme, its responsibility includes the overall management of the programme as well as the drawing up of formal procedures to enable the National Electricity Regulator to track the progress of the off grid electrification programme. The Department of Minerals and Energy is also largely responsible for administering the Free Basic Electricity subsidy with funds from the national treasury. As of 1 July 2003 however these funds were officially supposed to flow from the treasury to the Department of Local and Provincial Government which would then pass them on to local authorities. This means that concessionaires would have to apply for these funds from local authorities and sign contracts with them. The Department of Minerals and Energy is also responsible for determining and administering the capital subsidy in conjunction with the National Electricity Regulator.

The national goal of 'universal access to electricity by 2010' led to the awarding of subsidies for non-grid electrification by the Department of Minerals and Energy. The private companies who won the tenders for the provision of solar energy to rural areas entered into concession contracts with the Department of Minerals and Energy the National Electricity Regulator or Eskom. These public-private partnerships are unusual because they involve the Department of Minerals and Energy rather than municipalities entering into concession agreements with private companies. The reasons for this, as already touched on, are twofold. Firstly, electricity extension to

³⁶⁵ Yaw Afrane Okese, National Electricity Regulator, telephonic interview, 1 September 2003.

rural areas in South Africa (albeit minimal) has historically been the responsibility of the national electricity utility Eskom rather than that of municipalities (indeed local municipalities catering for rural areas were only established in 2000). Secondly, the aforementioned new local municipalities do not have the skills or capacity to provide electricity services to their areas and still for the most part rely on Eskom. The partnerships involve the private companies setting up and providing non grid electrification services in areas demarcated by Eskom for a specified period of time with regulation (including tariff setting) by the National Electricity Regulator and guaranteed subsidies from the Department of Minerals and Energy. Typically, concession agreements involve the transfer of municipality assets concerning the service being provided to the concessionaire for the period of the concession. In this case municipalities targeted for service do not own any assets pertaining to the provision of electricity services and so the private companies awarded concessions will set up and retain ownership of assets. Furthermore the private companies involved in the partnerships are not required to pay a concession fee to their public partner the Department of Minerals and Energy.

The context in which non-grid electrification is being installed needs to be mentioned as the concessionaires are faced with several challenges. Rural households are generally associated with poverty and subsistence living, often coupled with high unemployment. It is unlikely, therefore, that the majority of them will be able to pay the full market cost for electricity services and the service providers will thus have to rely on subsidies to see a return on their investments. Also, members of rural households suffer from relatively high illiteracy and innumeracy levels and the service providers are therefore likely to have difficulty in making their target consumers understand the dynamics of the service being offered. Furthermore, certain stakeholders have expressed concern that consumers would prefer to have access to grid rather than non-grid electrification. If this is indeed the case, the con-

cessionaires remain unsure of their position should grid electrification eventually be extended to areas which they are servicing.³⁶⁶

During negotiations of the Eskom Shell concession, affected municipalities were represented by the South African Local Government Association (SALGA) which is cast as the ‘voice of local government in provincial, national, regional and international relations’ and mandated to ‘support and strengthen the capacity of municipalities’.³⁶⁷ The Association’s representatives argued that most local authorities in the areas zoned for the Eskom Shell service lacked the capacity to play a major role in rural electrification and preferred Eskom to act on their behalf.³⁶⁸ Also, according to the Electricity Act, electricity providers do not require permission from municipalities to supply electricity should they be supplying less than five giga watt hours per year per unit. The solar service falls into this category. As a result it was concluded during the negotiation process that municipalities would have no role to play in non-grid service provision in the form of solar. Furthermore, they were given no role in regulating the service owing to the fact that the technology involved in solar power was considered beyond their capacity.

The Eskom Shell concession agreement is instructed by the policy / legislative framework surrounding electricity and non-grid energy provision in South Africa. The Reconstruction and Development Programme envisaged the connection of 2.5 million households to the electricity grid during the period 1994-1999. Eskom, the national electricity utility, committed itself to meeting 70% of this target while the remainder was to be met by the municipalities.³⁶⁹ By the end of 1999, approximately two million households had been electrified by way of grid connections; 80% of urban areas had

³⁶⁶ D Banks and R Karottki, Energy service to rural communities: power, service and profit, *Renewable Energy World*, January 2000.

³⁶⁷ South African Local Government Association, Vision Statement, www.salga.org.za.

³⁶⁸ Afrane Okese, interview.

³⁶⁹ *ibid.*

been electrified in contrast to 46% in rural areas. The reason for this difference is that urban areas are easier and cheaper to grid electrify than rural areas, which are located too far away from the national grid or are too scattered to allow for easy grid electrification.³⁷⁰

As a result, there has been an increasing interest in the use of non-grid technologies to supply rural households with electricity. Non-grid electrification refers to any type of technology that is utilised to supply electricity that is not linked up to the national grid. Not only are these technologies cheaper than the grid supply but in many rural areas grid electricity is used for the kind of services for which non-grid systems can suffice.

The current policy goal is universal household access to electricity. The policy recognises that this would have to include non-grid options such as solar home systems and mini-grids using distributed generation. Legislation separates the energy sector into demand and supply sub-sectors. The demand side is analysed in terms of the energy requirements of households, industry, commerce etc. and the supply side is analysed in terms of electricity, nuclear, oil, liquid fuels, gas, coal, transitional fuel and, the subject of this case study, renewable energy sources.³⁷¹ Renewable energy refers to energy that harnesses naturally occurring non-depletable sources of energy such as solar, wind, biomass, hydro, tidal wave, ocean current and geo thermal, to produce electricity.

South Africa currently relies mostly on fossil fuels as a primary energy source (approximately 90%) with coal providing 75% of this.³⁷² This situation lends itself to concerns about coal combustion, the main contributor to carbon dioxide emissions. In keeping with current global environmental

³⁷⁰ National Electricity Regulator, *Regulatory Framework for Non-grid Electrification in the Republic of South Africa*, 2000.

³⁷¹ A Theron, *Municipal and district municipality responsibilities regarding electrification planning – the role of integrated development plans and prioritisation between grid and non-grid. technologies*, Net Group Solutions, Durban, 2003.

³⁷² C J Cooper, *Digest of South African Energy Statistics*, Department of Minerals and Energy, Pretoria, 1999.

concerns, South Africa needs to be seen as a responsible player with regard to the environment. Also, the country enjoys an abundance of renewable energy sources that have yet to be developed; developing them could prove the answer to building a new capacity that could meet the growing demand for electricity.

At present, renewable energy accounts for only about 9% of South Africa's total energy consumption.³⁷³ Most of this energy is generated from fuel wood and dung rather than modern renewable energy technologies. Establishing and expanding renewable energy sources would go a long way to reducing reliance on wood and dung for fuels.

South Africa is in a good position to harness solar energy as it experiences some of the highest levels of solar radiation in the world. The average daily solar radiation in the country varies between 4.5 and 6.5 kwh/m² compared to 3.6kwh/m² for the USA and 2.5 kwh/m² for the UK and Europe.³⁷⁴ There is thus considerable resource potential for solar water heating applications, solar photovoltaic and solar thermal power generation.

In a drive to extend the provision of electricity to rural households and realise its goal of 'universal access to electricity by 2010',³⁷⁵ the government began awarding subsidies to rural areas for non-grid electrification projects. The subsidies were intended to lower the capital and service price barriers faced by consumers, thus stimulating a market and ensuring wider access to electricity services. These subsidies could also be viewed as part of the government's broader initiative on rural development.

In February 1999 the Department of Minerals and Energy (Department of Minerals and Energy) indicated that it was ready to enter into a series of public-private partnerships with various consortia to establish rural electric-

³⁷³ Department of Minerals and Energy, *Energy Futures* 2001, 2000.

³⁷⁴ Srasen, *Towards a renewable energy strategy for South Africa*, PhD thesis, University of Pretoria, 1996.

³⁷⁵ M Wenzel, Making rural electrification work, *African Energy*, 4 (5), Sept–Oct 2002.

ity supply ‘concessions’ in South Africa. As a result, six concession agreements were awarded for the provision of some 300 000 solar home systems to rural households.³⁷⁶ The concessions were awarded to Solar Vision for rural areas in the Northern Province, Nuon RAPS and Electricite de France-Total for rural areas in KwaZulu-Natal, Renewable Energy Africa for rural areas in the Eastern Cape, Transenerge for rural areas in the Eastern Cape and the North West Province and Eskom Shell for rural areas in KwaZulu-Natal and the Eastern Cape.

The provision of non-grid electrification and more specifically, renewable energy sources are provided for in various pieces of legislation.

In the 1998 White Paper on Energy Policy, government committed itself to promoting access to affordable and sustainable energy services. To this end, renewable energy sources are seen as advantageous in that they can be used to supply remote areas where grid electricity supply is not feasible. Renewable energy is also seen as a least- cost energy service.

The Energy White Paper asserts that government will facilitate the sustainable production and management of solar power and non-grid electrification systems such as solar home systems, solar cookers, solar pump water supply systems, solar systems for schools and clinics, solar heating systems for homes, hybrid electrification systems and wind power. All of these will be largely targeted at rural communities. In addition, government will promote appropriate standards, guidelines and codes of practice for renewable energy.

The Energy White Paper acknowledges that South Africa, contrary to international trends, has neglected the development and implementation of renewable energy applications despite the fact that its renewable energy resource base is extensive and many appropriate applications exist. The White

³⁷⁶ D I Banks, J Willemse and M Willemse, Rural energy services - sustainable public-private partnership based delivery, Rural Area Power Solutions, n.d.

Paper states that renewable resources can increasingly contribute to a long-term sustainable energy future.

According to the white paper:

Government policy on Renewable Energy is thus concerned with meeting the following challenges:

Ensuring that economically feasible technologies and applications are implemented;

Ensuring that an equitable level of national resources is invested in renewable technologies given their potential and compared to investments in other energy supply options; and

Addressing constraints on the development of the renewable industry.³⁷⁷

The Energy White Paper enjoins the non-grid industry to make optimal use of private sector financing opportunities in conjunction with the funding mechanisms being put into place for electrification by the government.

The White Paper on the Promotion of Renewable Energy and Clean Energy Development of 2002³⁷⁸ argues that renewable energy resources, with which South Africa is well endowed, need to be developed in order to reduce the reliance on fossil fuels, thus reducing the level of carbon dioxide emission.

The Renewable Energy White Paper puts several objectives for renewable energy policy forward. Financial objectives include ensuring that an equitable level of national resources is invested in renewable energy technologies and facilitating the creation of an investment climate for the development of the renewable energy sector that will attract foreign and local investment. Legal objectives include developing an appropriate legal and regulatory framework for pricing and tariff structures to support the integration of renewable energy into the energy economy and attracting investment. Techno-

³⁷⁷ Department of Minerals and Energy, White Paper on the Energy Policy of the Republic of South Africa, December 1998, Part 3, Section 7.7.

³⁷⁸ Department of Minerals and Energy, White Paper on the Promotion of Renewable Energy and Clean Energy Development, August 2002.

logical goals include promoting research, development and local manufacturing to strengthen renewable energy technologies and optimise implementation. Other goals include promoting knowledge of renewable energy and thereby increasing its use and improving communication and interaction between national, provincial and local government institutions on renewable energy policies. Renewable energy projects that receive government assistance will be required to incorporate empowerment and job creation.

The National Electricity Regulator which receives its mandate from the Electricity Act 41 of 1987, has produced a Regulatory Framework for non-grid electrification in South Africa.³⁷⁹ The document identifies several areas of regulation that need to be considered for non-grid electrification. Among them are issues surrounding market access such as monopoly rights, concession periods, licenses and commitments to rural development. Service standards, price control and disputes are mentioned as are monitoring and evaluation.

According to an agency agreement between Department of Minerals and Energy and Eskom,³⁸⁰ Eskom is mandated to enter into non-grid contracts that are acceptable to the Department of Minerals and Energy. Eskom is given control of non-grid service providers, including the administration of subsidies to them, but the utility remains accountable to the Department of Minerals and Energy.

Any contract between Eskom and a non-grid service provider³⁸¹ calls for the employment of locals and the transfer of skills to previously disadvantaged people. It obliges the service provider to supply non-grid electricity systems to all customers within the permission area, provided that there are subsidy funds available. The service provider is also bound to co-operate with other

³⁷⁹ National Electricity Regulator, Regulatory Framework.

³⁸⁰ Agency Agreement between the Government of the Republic of South Africa in its Department of Minerals and Energy and Eskom for Non-grid Electrification, 2001.

³⁸¹ Non-grid Electrification Service Providers Contract between Eskom and the Non-grid Service Provider. This contract was never in fact entered into.

suppliers of electricity on national and regional plans for the supply of electricity. The service provider is obliged to install non-grid electricity systems at its own cost and maintain them according to specified standards. Rates and tariffs are set by the National Electricity Regulator that are adequate to generate enough revenue to cover that the non-grid service provider's operations, maintenance, and taxes and enable it to earn a fair rate of return. The contract also obliges the service provider to ensure that fee collection, service maintenance and energy sales points are accessible to all customers.

The Eskom Shell solar concession contract is interim in nature valid for a period of 18 months. It stipulates that a final concession will only be entered into if the interim agreement is deemed to be successful within the first six months of its implementation. It is interesting to note that 'success' is defined in commercial terms. 'The contract will be considered a success if there is an 80% recovery of the service fee, containment of vandalism and theft (i.e. not exceeding 2% of the total installed non grid electricity systems), installation and connection rates of at least 80% of the planned annual installation rate, and the actual payment of subsidies by the National Electricity Regulator to the non grid service provider.' The contract authorises Eskom Shell to 'establish, operate and maintain a Non-Grid Energy Service *Business* and sell energy to *customers* in the permission area, which authorisation includes all such things as may be necessary for the non grid service provider to establish and operate the non grid energy service business.'³⁸² Again it is interesting to note the use of commercial terms that govern this service delivery – 'business' not 'service' and 'customer' as opposed to service user. The contract also allows Eskom Shell to set tariffs and service and rental charges but with the approval of the National Electricity Regulator. The contract is clear however that the 'tariffs and charges shall entitle the non grid service provider to generate enough revenue to cover

³⁸² Interim Non Grid Energy Services Contract, sec 7.1 – my emphasis.

reasonable operational and maintenance costs, taxes and earn a fair rate of return.³⁸³

THE QUALITY OF SERVICE DELIVERY THROUGH THE CONCESSION

I assessed service delivery during the interim concession period according to equitability in terms of equal provision to all citizens, effectiveness in general and in terms of responsiveness to community needs and affordability given the rights of South African citizens to access basic services.

Equity

Extending electricity services to rural areas too far away from the national grid to be serviced by Eskom presented a host of practical difficulties between Eskom and the concessionaire which are dealt with below. It also presented however significant political difficulties regarding the equity of energy services to the rural poor in terms of the interface between grid and non grid electrification. While rural residents in Dweshula seemed, for the most part, happy with their services, dwellers in Kwajali complained bitterly about the Eskom Shell service. An angry interviewee stated, ‘service is very poor’.³⁸⁴ There were also complaints about the technical nature of the service, residents claimed that they could only power lights and not their radios and TVs, they also complained that Eskom Shell was not maintaining the systems and that pre paid cards were not readily accessible. It seems that Eskom was moving into the rural areas around Harding and expanding grid connections – Kwajali is in the vicinity of these areas. Eskom Shell viewed this extension of Eskom services as an infringement of its concession area , I explore the strained relationship between Eskom and Eskom Shell later. This could go some way to explaining why the Eskom Shell service here was waning. From a political point of view, the seemingly erratic nature of Eskom’s grid connections (which are in fact based on electrification plans

³⁸³ Interim Non Grid Energy Services Contract, sec 11.2.

³⁸⁴ Household interviews in Kwajali, 23 July 2003.

pre-dating demarcations for municipal boundaries), present questions on the issue of equity relating to service delivery. This is well illustrated by two local municipalities under the Ugu District Municipality, Umzumbe and Vulamehlo. Certain wards in Umzumbe have households that receive grid electrification from Eskom while in areas in Vulamehlo Eskom has installed visible electrification infrastructure. According to ward councilors in the area, householders are increasingly frustrated with not having electricity when they see their neighbours being serviced by Eskom (as in Umzumbe) or electrification infrastructure in place (as in Vulamehlo). Some ward councilors assert that householders in their wards³⁸⁵ expect a full electricity service and that it is unlikely that they could sell a scheme such as the solar home system service to them owing to the limited services it offers.³⁸⁶ Indeed this was confirmed by field research in Dweshula and Kwajali where 19 out of the 20 householders interviewed said they would ideally prefer to be serviced by Eskom because the service offered would include cooking, heating and refrigeration facilities unlike the solar service which is limited.³⁸⁷

Effectiveness

The Eskom Shell solar service essentially includes the installation and maintenance of a 'solar home system'. The solar home system is a 50 WP photovoltaic system capable of powering a 12 V black and white TV, a radio and three to four lights. It consists of a battery and a solar panel mounted on a pole outside the customer's home. The solar panel attracts sunlight which is stored in the battery. The system allows for 200 watt hours per day (+- 4 hours per day), it also has a three day autonomy i.e. it can store energy for three days should there be no sunlight. The system has an interface indicat-

³⁸⁵ The Eskom Shell solar home systems have not permeated the Ugu District Municipality: solar home systems are only operational in two local municipalities of Ugu, namely Umzumbe and Umuziwabantu.

³⁸⁶ Councillor Mfeka, ANC, Water and Sanitation Portfolio Committee, interview, Port Shepstone, 24 July 2003; Councillor Gumede, IFP, Planning and Environment Portfolio Committee, interview, Port Shepstone, 25 July 2003.

³⁸⁷ Household interviews in Dweshula and Kwajali, 21 July and 23 July 2003.

ing how many days usage is left before the load disconnects; it also indicates the charge level of the battery.

Figure 4: The Eskom Shell Solar System



Source: Pamphlet distributed by Eskom Shell.

The response to the service by householders in Dweshula was overwhelmingly positive. A pensioner and grandmother caring for three children summed it up when she said, ‘It’s more than I ever had before’.³⁸⁸ She was referring to the fact that she previously had to rely on candles for lighting and a dry cell battery for her TV. The battery had to be charged periodically at the local shop which is at the foot of the hill and some kilometres from her homestead – a long walk with a heavy battery. Many householders interviewed expressed the hope that the solar home system uses would be expanded. Comments such as ‘it gets very hot here – we need a fridge’ and ‘in the winter we still use wood to make a fire’ were common. Complaints regarding the technical nature of the service were also recorded, a young unemployed man claimed that, ‘all of the lights can’t work at the same time and if the TV is on none of the lights work’.³⁸⁹ This was apparently due to the nature of the battery allocation. The limitations of the solar home system

³⁸⁸ Household interviews in Dweshula.

³⁸⁹ Household interviews in Dweshula.

with regards energy capacity was clearly a source of frustration among householders. From a developmental point of view however, incremental extension of electricity should begin with lighting, to facilitate school going children who need to study and communication, to rural areas in the form of TV and radio.

Dweshula householders were satisfied with the technical and operational services offered by Eskom Shell. They claimed that their complaints were dealt with swiftly and that there was regular maintenance of their systems. Householders also stated that Eskom Shell was very easily accessible to them as service providers. Indeed, the delivery of service by Eskom Shell sets a standard for service delivery in South Africa especially in the sense of extension of social justice and democracy through recruitment and employment opportunities. Eskom Shell recruited locals from Dweshula and trained them to maintain and repair the solar home systems. These personnel were known as 'Rural Service Providers'. Part of the Rural Service Provider's duty was to deal with problems or complaints from the communities they served. This ensured wide accessibility by service consumers to the provider. Rural Service Providers worked under Maintenance Officers who were provided with vehicles and answered to Area Managers who were required to keep detailed records of all complaints, maintenance and up-keep in their zones. This level of organisation resulted in an efficient service. Not a single householder interviewed in Dweshula complained about maintenance of their systems.³⁹⁰ The Dweshula local general store was targeted by Eskom Shell to take complaints from Dweshula householders about their service. Store staff was in constant contact with rural service providers or could use the public phone in the store to phone Eskom Shell (collect). An interview with Dweshula ward councillor, Joyce Cele, revealed that energy services through solar powering was a milestone for the remote rural community of Dweshula and that residents were happy with the service. Cele added that it was her hope that Eskom Shell would extend its services fur-

³⁹⁰ *ibid.*

ther into Dweshula and into its neighbouring ward, Mwaleni where the level of service offered by the solar home system would be considered by rural dwellers, as nothing short of miraculous.³⁹¹

Affordability

Notwithstanding the effectiveness of the solar home service in Dweshula there has been serious discontent over the issue of affordability for the service. The Eskom Shell solar home system is activated every 30 days by a pre paid magnetic card that can be purchased by the customer at a cost of R58. The customer also has to pay an initial installation fee of R100.

Most of the Dweshula residents interviewed expressed the opinion that R58 a month for the solar home system was exorbitant given that costs for heating, cooking and refrigeration still had to be borne over and above those of the solar system. Many pointed out that paraffin and gas, the most common sources of energy used to supplement solar, are expensive.³⁹² Bearing in mind that most Dweshula residents are either pensioners caring for children or young people unable to find urban employment and relying on subsistence living, R58 is unaffordable. The cost factor in the case of the solar home system is intrinsically wound up with the issue of government subsidies.

According to the interim concession contract that was signed between the National Electricity Regulator (National Electricity Regulator), Eskom the national electricity utility and Eskom Shell the concessionaire it was stipulated that the National Electricity Regulator would make subsidies for the solar home systems available to Eskom Shell. According to the contract, the National Electricity Regulator was to subsidise the installation of every non-grid system installed by Eskom Shell, provided that there was proof of installation. The subsidy was determined at R3 500 per installed system plus a

³⁹¹ Councillor Joyce Cele, Dweshula, interview, 25 July 2003.

³⁹² Household interviews in Dweshula.

R58 service fee.³⁹³ During the contract period, however, the Free Basic Electricity scheme was initiated by the Department of Minerals and Energy (50 kW hours per month or R20, for grid services). Non-grid service providers were invited to participate. In the case of Eskom Shell, subsidies were to be administered in the amount of R40 per customer. According to Eskom Shell representatives, the Free Basic Electricity project was piloted by it for a period of 6 months (August 2002 to February 2003) during which customers were charged R18 for their solar energy cards as opposed to R58. At the time of writing, Eskom Shell had recovered none of the subsidies and the pilot cost it some R288 000.³⁹⁴ The Department of Minerals and Energy does not officially recognise that Eskom Shell ever reduced its service cost from R58 to R18 under the Free Basic Electricity scheme. It also claims that of the 5 430 systems Eskom Shell claims to have installed, only about 3 000 have been identified by the Department.³⁹⁵ The Department of Minerals and Energy is still investigating Eskom Shell's subsidy claims and it had, at the time of writing, only received capital subsidies from the National Electricity Regulator for the systems verified. The actual contract to provide subsidisation for the Free Basic Electricity scheme also proved contentious. Under the contract, the Department of Minerals and Energy refused to guarantee that the R40 subsidy would flow for a period of seven years and Eskom Shell refused to sign the contract because of this.³⁹⁶ Eskom Shell, although keen for the concession to go ahead, acknowledged that the company was not running optimally from a business perspective.³⁹⁷ There was also a feeling from some stakeholders that Eskom Shell should change its business model to one in which it would not retain ownership of the system but rather

³⁹³ Interim Non Grid Energy Services Contract, sec 6.1 and sec 6.2.

³⁹⁴ Clive Horlock, general manager, Eskom Shell, interview, Port Shepstone, 22 July 2003.

³⁹⁵ Dr Izak Kotze, director of electrification, Department of Minerals and Energy, interview, Pretoria, 29 July 2003.

³⁹⁶ David Mahuma, director for energy policy, Department of Minerals and Energy, interview, Pretoria, 29 July 2003.

³⁹⁷ Horlock, interview.

sell it to the service consumer outright and be obliged to provide a limited number of maintenance visits a year, e.g. four.³⁹⁸

The complications around the subsidy issue have confused service consumers in Dweshula. Dweshula residents confirmed that, for six months, the cost of their pre paid cards was reduced from R58 to R18. They were very happy with this, stating that it was much more affordable. The reversion back to R58 however was met with some dissent but not enough to give up the service altogether. Dweshula residents claimed that Eskom Shell explained that the service fee had to be increased again because of the lack of government funding.

The financial aspect of the interim concession period is one that bears mentioning as it was what the success of the interim period was premised on. As mentioned above, according to the interim contract a formal concession would only be entered into if the interim agreement was deemed successful within the first six months. Aside from the provision of subsidies, the contract defined ‘success’ as recovering 80% of the service fee, containment of vandalism and theft (i.e. not exceeding 2% of the total installed non-grid electricity systems) and installation and connection rates of at least 80% of the planned annual installation rate.³⁹⁹

The goal of recovering 80% service fees was duly achieved. The area with the lowest payment rate in Eskom Shell’s permission area, Flagstaff, recorded a payment rate of 87%. Areas such as Dweshula had payment rates of 90%.⁴⁰⁰ Although the high payment rates may have had much to do with the solar energy card being prepaid (less than 100% payment rates would be calculated by the number of solar system owners who did not purchase prepaid cards for the month), according to household interviews conducted with consumers of this service, there was an overwhelming belief that elec-

³⁹⁸ Afrane Okese, interview.

³⁹⁹ Interim Non Grid Energy Services Contract, sec 3.3.

⁴⁰⁰ Horlock, interview.

tricity should not be free but paid for.⁴⁰¹ This notwithstanding, Eskom Shell had set itself various performance indicators which included payment level targets of 95%. These had not been reached.⁴⁰²

Incidents of theft and vandalism exceeded the 2% allocated for (and the 1% allocated for by internal Eskom Shell performance indicators). According to company representatives, 600 solar panels had been stolen at the time of writing and insurance for these panels is the responsibility of the company. Many systems had also been tampered with in efforts to tap into stored energy without using a solar energy card. Such tampering had damaged systems, calling for repairs not covered by ordinary repair and maintenance budgets. Incidents of corruption also come to light. Certain Eskom Shell representatives had been eliciting bribes in exchange for system tampering in order to exact free power.

At the time of writing, Eskom Shell had installed 5 430 solar home systems. Of these, however, over 1000 systems had to be removed for various reasons.⁴⁰³ Removal of systems was worrying as Eskom Shell set itself an installation target of 50 000 systems. Reasons for disconnection included non-payment; if a customer failed to buy a monthly card, a warning was issued after 15 days and if the customer failed to respond, the system was removed after 30 days. System tampering also gave rise to disconnections, for when it was found that a solar system had been tampered with, it was removed. There were also disconnections where grid connections had taken place in the non-grid permission area. While the interim contract provided for grid extension into the permission areas, Eskom was required to give adequate notice of this to Eskom Shell with information as to when the connection was to take place, in order to enable the removal of the solar system.⁴⁰⁴ Ac-

⁴⁰¹ Household interviews in Dweshula.

⁴⁰² Horlock, interview.

⁴⁰³ Colin Naider, technical manager, Eskom Shell, interview, Port Shepstone, 22 July 2003.

⁴⁰⁴ Interim Non Grid Energy Services Contract, sec 5.3.

According to Eskom Shell this procedure was not followed. It seems that Eskom connected households in the permission area to grid electricity without informing Eskom Shell, resulting in the latter experiencing considerable trouble in removing the solar systems from the households in question. These householders appeared to be under the impression that the systems belonged to them as they paid an initial fee of R150 (later R100) at installation. Some householders used the wiring and parts of the system for other purposes as soon as they did not need to access energy from them.

Success of the interim concession is centered on the financial viability of the concessionaire rather than the experience of the service user. Furthermore government subsidies earmarked for the extension of electrification to rural areas is not reaching its target, the rural poor. This is compounded by the fact that a private company has less invested politically in assuring that poor service users receive their subsidies but more invested in the promotion of its own bottom line. Removing services from the public realm and placing it within the private realm severs the link between service delivery and government accountability. This is problematic when there seems to be no recourse for local citizens in terms of their rights to claim service subsidies.

THE QUALITY OF PARTICIPATION THROUGH THE CONCESSION

I determined participation of service users in the concession arrangement according to the levels of civil society activity around the decisions made regarding the provision of electricity services, the amount of consultation and information provision between the service providers and users and the extent to which formal mechanisms for participation were employed.

Civil society activity

‘There is little or no civil society activity here – it is a forgotten community’.⁴⁰⁵ Salvan Chetty heads the Mawleni Development Committee in the

⁴⁰⁵ Salvan Chetty, Mawleni Development Committee – Solidarity Peace Trust, interview, 30 April 2006.

Dweshula area which focuses on upgrading rural agriculture programmes and schools. He argues that aside from the school teachers, people are unskilled and illiterate with little experience as far as organising or mobilising around issues. This is reflected by the interviews where rural residents seemed confused at the mention of civil activity and seemed to think that their only recourse lay with Eskom Shell and Eskom as the two competing service providers. This lack of civil society activity or indeed inclination towards civil society activity is probably best explained by the fact that areas under the former KwaZulu homeland were repressed not only by apartheid but by the homeland government administered to by tribal chiefs. Homeland 'citizens' enjoyed no political representation or participation either legitimately i.e. through homeland governing structures or 'illegitimately' through civic based organisations as was the case with their urban counterparts. As a result there exists no 'culture' or habit of civic activity and no infrastructure from which to draw. Community organisation is further hindered by the fact that rural dwellers are far flung and not in particularly close proximity with each other. Chetty argues that the tribal authority is one organisation which probably could mobilise community members around issues or represent their grievances but this has not occurred around services, 'Even the chief lives in Margate'. Chetty claims that his organisation is the only community grouping in the area and it does not know very much about services to rural dwellers. Other civil society organisations in the Ugu area mirror this claim. Sam Shoji of Boboyi Multipurpose, a civil society organisation based in Port Shepstone claims that civil society in the rural areas of Ugu is not very active. He argues that this is due more to a lack of knowledge among rural dwellers as to their rights as opposed to general apathy. He adds that his organisation doesn't mobilise around pertinent issues either and as such he does not even know that solar services are provided by a private company. Boboyi Multipurpose works with the Department of Social Welfare in the province and is focused on social development programmes.⁴⁰⁶ Lulu Bodla of an NGO Ziphakhamiso in Port Shep-

⁴⁰⁶ Sam Shoji, Boboyi Multipurpose, interview, 2 May 2006.

stone concurs with Shozi. His organisation focuses on development in terms of HIV training, educational upliftment and helping people from areas like Dweshula and Kwajali apply for social grants. Bodla argues that civil society in the area is simply not empowered enough to organise and help people enforce their rights to basic services. He adds that he has had complaints from clients about the fact that they are not serviced by Eskom. When he took it up with Eskom however they simply informed him that they cannot power rural areas too far off the grid.⁴⁰⁷

This was the limit of activity around the issue of energy service provision. This is despite the fact that the reversion to R58 from R18 for the solar service owing to unpaid subsidies was surely ripe ground for civil activity even if it just took the form of one of the NGOs in the area drawing up a petition to represent Eskom Shell service users in terms of their subsidies. It is a possibility though, that the NGOs interviewed may be seeking a more collaborative as opposed to adversarial relationship with state. As a result they would be more inclined to assist the state with its development programmes or service delivery initiatives instead of taking it to task on shortcomings in representation of citizens. Given the fact that the rural residents of Dweshula and Kwajali are not accustomed to participating in civil society organisations regarding their service delivery, the local authority would be another alternative conduit to initiate community participation in local affairs. Owing to the private nature of the concession however, it was the concessionaire who forged participatory links rather than the local authority.

Consultation and information

Information provision about the solar home service was readily provided by Eskom Shell. It could be argued in fact that service consumers were informed about the solar home service thoroughly and innovatively. Eskom Shell utilised community networks fairly successfully during the process of providing information about their service to service consumers in Ugu.

⁴⁰⁷ Lulu Bodla, Ziphakhamiso, interview, 2 May 2006.

Eskom Shell approached ward councillors and traditional leaders in Dweshula and Kwajali in order to make contact with their constituencies. They then set up a series of meetings at local schools which were well attended by service consumers – these meetings were addressed by Eskom Shell personnel who used the opportunity to instruct users about their service or inform them about any changes. Eskom Shell also used the street theatre concept to educate and inform users about the solar home service. Locals from the area, interested in drama, worked with Eskom Shell personnel to stage little skits for the community based around the solar home system. Booklets and brochures (in three different languages) were also widely distributed around Dweshula and Kwajali. It would seem that Eskom Shell as a service provider recognises the importance of communicating with its service consumers and making itself readily accessible to them.

Notwithstanding the fact that service consumers in Dweshula and Kwajali were well informed about the solar home service, there was absolutely no community consultation about this service with these rural residents. This is largely due to the fact that the local municipalities (Umzumbe and Umuziwabantu) and the District Municipality (Ugu) had no role whatsoever in the interim concession and hence in the delivery of the service.

Community participation / Input (through various mechanisms, e.g. ward councillors / ward committees)

Before the Eskom Shell interim concession was entered into there was a consultation process among stakeholders. These stakeholders included Eskom, the National Electricity Regulator, the Department of Minerals and Energy, Eskom Shell and the South African Local Government Association essentially representing the affected municipalities. The South African Local Government Association representatives contended that most local authorities in the areas zoned for the Eskom Shell service lacked the capacity to play a major role in rural electrification and wanted Eskom to act on their

behalf.⁴⁰⁸ This presented no difficulties as according to the Electricity Act, electricity providers do not require permission from municipalities to supply electricity through solar systems as the systems supply less than five gigawatt hours per year per unit. It was therefore concluded that municipalities would have no role to play in non-grid service provision in the form of solar. Furthermore, they were given no role in regulating the service because the technology involved in solar power was considered beyond their capacity. Their capacity to regulate the service politically does not seem to have been of any concern.

It is interesting to note however that stakeholders interviewed expressed the view that the municipalities most certainly should play some role in the delivery of the solar service. Dr Izak Kotze, Director of Electrification of the Department of Minerals and Energy stated that despite lacking capacity, municipalities should ideally assist with electrification programmes. He added that care was taken when entering into the interim concession that non-grid service provision fell into the relevant municipality's Integrated Development Plan.⁴⁰⁹ Dr Hendri Geldenhuys of Eskom concurred, saying that municipalities need to play a consultative role in the service delivery as well as having direct decision making capacity.⁴¹⁰ Despite this however, some Ugu municipal officials claimed that besides their lack of involvement in the solar project, they were not even informed about its existence!⁴¹¹ Ugu official Kamal Bhimma added that the solar home systems was entirely a Department of Minerals and Energy initiative – the municipality was not consulted at all by Eskom or Eskom Shell. He attributed this however as having to do with the fact that historically, electricity was never a service

⁴⁰⁸ Afrane Okese, interview.

⁴⁰⁹ Kotze, interview.

⁴¹⁰ Dr Hendri Geldenhuys, Eskom Distribution, interview, Pretoria, 28 July 2003.

⁴¹¹ Thulani Bhengu, IDP manager, Ugu District Municipality, interview, Port Shepstone, 23 July 2003.

provided by the municipality but rather by Eskom.⁴¹² Ugu Deputy Municipal Manager Nathi Ndelu explained the Ugu District Municipality does not viably have the capacity to take on the delivery of electricity services. He maintained however that it could well provide a regulatory role in projects such as the solar home systems. Ndelu also pointed out that after community consultations (in the form of annual road shows held by the municipality), the main areas of concern for Ugu communities were water, infrastructure in the form of roads and communications.⁴¹³ Indeed this is reflected in the Ugu District Municipality Integrated Development Plan⁴¹⁴ where water and sanitation services, housing, roads, rail services, health, education and skills development and poverty alleviation are prioritised.⁴¹⁵ The fact that Ugu has not made much of electricity services has to be placed within context. Ugu is a fledgling municipality (as are all local authorities in South Africa), the setting up of new municipalities and amalgamations of existing ones presented challenges ranging from issues of capacity and skills to logistics and administration. Initiatives such as non-grid solar electrification therefore were seen as well within the realm of Eskom's responsibility and expertise while the municipality concentrated on backlogs in water and sanitation as well as the building of roads and attempting to secure pensions, disability and child care grants in order to alleviate poverty. As a local ward councillor said, 'although electricity is important it is generally considered somewhat of a luxury in comparison to the massive tasks that fall to the municipality.'⁴¹⁶

⁴¹² Kamal Bhimma, general manager services, Ugu District Municipality, interview, Port Shepstone, 22 July 2003

⁴¹³ Nathi Ndelu, deputy municipal manager, Ugu District Municipality, interview, Port Shepstone, 25 July 2003.

⁴¹⁴ Section 25 of the Local Government Municipal Systems Act stipulates that municipal councils must adopt a single, inclusive and strategic plan for the development of the municipality known as an Integrated Development Plan (IDP).

⁴¹⁵ Ugu District Municipality, Integrated Development Plan.

⁴¹⁶ Councillor Kriek (DA), Economic Development Portfolio Committee, Ugu District Municipality, interview, Port Shepstone, 23 July 2003.

The consequences of the lack of municipal involvement in the delivery of the non-grid solar service are multiple. Legislation clearly directs that local authorities take responsibility for the delivery of services to their constituencies. This fulfils democratic principles of transparency and accountability and, through mechanisms of consultation and participation, guarantees greater efficiency.

While Eskom Shell made a laudable effort around information provision regarding its service, it could be argued that this was motivated by productivity levels. Eskom Shell is after all a private company. The general lack of community consultation around this service provision is worrisome. Arguably if the municipality had been party to the interim contract it would have been involved in consulting with communities to illicit their needs and views around the solar home system service – it is, in fact, legislatively required to do so.⁴¹⁷ Such a consultation process would have revealed that there are some divisions in the views of Ugu communities with regards electricity services. Councillor Mfeka (Vulamehlo) argued that ‘people who seriously want development will not accept the limited services offered by solar – in my ward for example, it would be unacceptable. About 180 homes in the area are serviced by Eskom, so people expect the same level of services.’⁴¹⁸ Likewise, Councillor Gumede (Umdoni) stated that ‘we have not had any part of the solar project but would not accept it anyway. We want Eskom services not the limited ones offered by solar. Anyway some households are electrified by Eskom and people won’t accept the solar home systems if their neighbours have full electrification.’⁴¹⁹ While intrinsically wound up with the issue of equity, as discussed above, the point to be made here is that Ugu communities are increasingly unhappy about receiving an electricity service that is limited. Furthermore they seem to be communicating their sentiments to their local councillors. Local councillors however, have no mandate to give their concerns voice because the municipality is not

⁴¹⁷ Local Government Municipal Systems Act, sec 78 (3) (b) (3).

⁴¹⁸ Mfeka, interview.

⁴¹⁹ Gumede, interview.

involved in the service delivery arrangement. A frustrated councillor claimed, 'The municipality has had nothing to do with this project – not even community-wise. How can we go out and start selling a scheme when we don't even know what our role is? We have never been approached by Eskom or by Eskom Shell about this project.'⁴²⁰ 'Selling the scheme' is an important concept because, as many of the councillors conceded, grid electrification is not immediately possible and may not be possible for a while in deep rural areas and so solar presents an interim option for if not a full electricity service than a limited one. Communities expecting services within the new democratic dispensation then need to be persuaded of the value of an initial limited service – this persuasion would more likely be successful when coming from elected representatives in the form of ward councillors. The success of a project such as the solar home system has a lot to do with community acceptance of the service. Hence, ward councillors and municipalities would have had an indispensable role to play should they have been party to the interim contract. Furthermore the whole of point of having ward councillors is to secure a legitimate way to represent the interests of citizens in local politics by encouraging participation. This advent is lost to Dweshula and Kwajali residents and is further compounded the point I made earlier about the low levels of activity in civil society organisations because local citizens are unaccustomed to participating in affairs directly relating to them.

The provision of services by Eskom Shell, according to Dweshula residents, was highly efficient as were links forged between the service provider and service consumers in the form of Rural Service Providers and other modes of accessibility. It could be argued however that the links forged should ideally have been between Ugu communities (service consumers) and Ugu municipalities (legislatively directed service providers). Such links would have gone some way to the Ugu District Municipality building relationships

⁴²⁰ Councillor Magubane (IFP), Umzumbe Municipality, interview, Port Shepstone, 23 July 2003.

with its constituencies and initiating a culture of dialogue within the domain of service delivery as legislatively required to.⁴²¹

The subsidy debacle that occurred during the Eskom Shell interim concession is another area of concern in the context of delivering services democratically. The Free Basic Electricity scheme which was piloted by Eskom Shell for six months, effectively reducing the solar service fee from R58 to R18, resulted in setting Eskom Shell back R288 000 owing to unpaid subsidies and confusing service consumers. Although householders interviewed expressed discontent over the increase in their service fee (once the pilot was over) there was nothing much they could do about it as they had no means of making government accountable to them over increased service fees owing to the failure of subsidy payments. Interviews with ward councillors revealed however that despite full knowledge that the service was provided by a private company, service consumers still blamed politicians for their service related plight. 'I have been in the council for three years now and we (councillors) are taking criticism for the failure to deliver services. People are getting frustrated, they feel that the municipality is not in touch with them. Ward councillors consult frequently with wards usually at the local school on various issues among which is electricity.'⁴²² It seems that there is a dialogue process in place within Ugu between service consumers and municipality representatives. This cannot affect services very far however if municipalities have no part in service contracts. Service fees, in the case of the Eskom Shell solar home systems, were defined by business profitability rather than by the need to provide affordable services. The subsidy contention was essentially that the Department of Minerals and Energy refused to guarantee subsidies beyond a five year period. Eskom Shell's insistence on a longer subsidy period betrayed the fact that its initial optimism at being able to run the service independently was waylaid by its failure to meet internal performance indicators. Among these indicators were a pay-

⁴²¹ Local Government Municipal Systems Act, sec 16 (b) (i) (ii).

⁴²² Mfeka, interview.

ment rate of 95% and a 1% budget amount for stolen panels which was exceeded. Eskom Shell also had to deal with the unexpected removal of systems and claims that it needs 25 000 customers to reach its break even point. (Eskom Shell's target is to install 50,000 systems and it is hoping for a concession period of 20 years.)⁴²³

The confusion around parties to the interim contract and the failing relationship between Eskom and Eskom Shell bring into question the level of public transparency of the interim concession. The Department of Minerals and Energy, mandated to deal with energy policy, regulation of the electricity sector and national electrification, initiated the off grid concessions programme. The mandate of the National Electricity Regulator is to regulate the electricity industry. In the case of this interim concession however, the National Electricity Regulator's role expanded beyond regulation to the actual signing of the contract.⁴²⁴ The National Electricity Regulator's increased role had to do with Eskom's unwillingness to enter into an agreement for solar home systems. The National Electricity Regulator had available to it funding allocated for the provision of non-grid services which it did not wish to return to the national treasury.⁴²⁵

Eskom's unwillingness to enter into a concession contract with Eskom Shell may lie in the history of its relationship with the Shell company. This history, as mentioned above, began in 1998 when in an effort to extend energy services, Eskom started looking for ways to supplement electrification to areas it could reach. Solar was seen as an appropriate alternative and Eskom entered into a solar electrification project with the Shell company (hence 'Eskom Shell'). Before the interim concession agreement was signed however, Eskom conducted an audit of current solar services concluding that solar energy was not commercially viable owing to low payment rates. It

⁴²³ Horlock, interview.

⁴²⁴ George Van De Merwe, National Electricity Regulator, telephonic interview, 1 September 2003.

⁴²⁵ Afrane Okese, interview.

also argued that solar was not its core business and was too experimental.⁴²⁶ When the interim concession contract was drawn up, Eskom refused to enter into the agreements and the National Electricity Regulator was forced to take on Eskom's designated role⁴²⁷ while Eskom limited itself to demarcating areas for non-grid service provision.

Eskom's lack of enthusiasm for solar continued into the interim concession period. An Eskom representative remarked, 'Eskom is looking rather critically at the project (the Eskom Shell interim concession) at the moment. The long term replacement cost of equipment is creating a heavy burden. Also Eskom is not convinced that operating costs are in the target range. There are some serious doubts about the solar home systems.'⁴²⁸ Eskom Shell representatives conceded that their relationship with Eskom is 'not very good.'⁴²⁹ They complained that Eskom had been moving into Eskom Shell permission areas and connecting households there to the grid without informing Eskom Shell first, as contractually obliged to. These were households that Eskom originally claimed to be unable to reach for the next twenty years. Reasons for this action could not be obtained from the Department of Minerals and Energy, the National Electricity Regulator or Eskom. Legislation directs that the public be included in decisions around service delivery.⁴³⁰ The implication of this is that the public be kept abreast of service delivery arrangements affecting them. In the case of the Eskom Shell project, there exists marked confusion within Ugu communities as to who (Eskom Shell or Eskom) should be providing services and why some communities are serviced by Eskom Shell and others by Eskom.

The lack of municipal involvement in electricity services has been recognized by the Ugu municipality and consequently a consultant has been hired

⁴²⁶ De Renzy Martin, Shell's business models for village power.

⁴²⁷ Afrane Okese and Thom, Understanding the South African off-grid electrification programme.

⁴²⁸ Geldenhuys, interview.

⁴²⁹ Horlock, interview.

⁴³⁰ Local Government Municipal Systems Act, sec 17 (2) (d) (e), sec 20 (2) (e).

to draw up an 'Electricity Master Plan'. At the time of the field work for this case study the plan was in its infancy. It was, for the most part, a technical document at the information gathering stage and was yet to be presented to the municipalities for the incorporation of a political aspect. The document classified target areas for non-grid electrification as those of a density of 50 households per square kilometre. The idea was to integrate densely populated areas with sparsely populated ones in order to facilitate grid connections. The National Electrification Fund budgets approximately R1.2 billion per annum for nation wide electrification (this is target driven and works out to about R3 500 per connection). This works out to about 42 000 connections for the KwaZulu-Natal province, which has 10 district municipalities and 60 local municipalities. In effect, this means that about 2 500 connections per municipality are budgeted for. This budget, however, is for grid connections. Non-grid budgeting is still extremely vague. The Electricity Master Plan made allowances for non-grid electrification simply because of various settlement densities and also because of distances of rural households from the existing grid infrastructure. The backlog for electrification at the time of writing was approximately 80 000 households. Taking into consideration the abovementioned 2 500 connections per municipality, it will take about 20 years to address the backlog, hence the need for non-grid, regardless of whether it is solar, mini grid or some other form. The Electricity Master Plan also incorporated the fact that, under the Electricity Basic Service Support Tariff i.e. the Free Basic Electricity scheme, municipalities will be responsible for administering subsidies to Eskom or other electricity service providers. The Master Plan divided electricity services into two sections, demand side planning and supply side planning. In demand side planning the municipalities would have a role in determining where and when services will be required and whether they should be grid or non-grid. This would then be incorporated into the Integrated Development Plan and planned with Eskom and the National Electricity Regulator. The service provider would handle the supply side planning. It is not likely that the mu-

nicipality will play much of a regulation role owing to its lack of capacity. That would be left to the National Electricity Regulator.⁴³¹

Ugu's Electricity Master Plan will also need to take into consideration the shifts and changes taking place within the electricity sector in general. These changes are essentially with regards the establishment of Regional Electricity Distributors. Regional Electricity Distributors are formed by merging the distribution business of Eskom with that of local government municipal electricity departments. It is hoped that municipalities will begin to play a larger role in electrification projects in terms of determining areas for grid or non-grid electrification, administration of subsidies to the service provider and the regulation of contracts with an emphasis on the service consumer. Although municipal oversight alone may not lead to better service delivery it can still be an important starting point for new municipalities to engage with local communities. This could be the framework upon which meaningful local citizen participation could be built.

⁴³¹ Anton Theron, Ugu consultant, NET Group, interview, 1 September 2003

Chapter Nine

THE IMPACT ON DEMOCRACY OF LOCAL SERVICE DELIVERY ARRANGEMENTS AND LEVELS OF LOCAL PARTICIPATION AS REVEALED BY THE CASE STUDIES

IN CONCLUSION, I return to the research questions I posed in the introduction to this study; do current modes of local government service delivery promote substantive democracy in South Africa? And likewise, do current levels and types of local participation promote substantive democracy in South Africa? I attempt to answer these questions drawing from the findings of my two case studies and acknowledge that these do not speak for local government service delivery and participation in South Africa as a whole or for public private partnerships in general. In brief recapitulation, substantive is that which refers to development meaning a commitment not just to economic growth but to the quality of growth. This quality is informed by meeting basic needs and incorporating cross sectoral concerns into the decision making process thus empowering citizens.⁴³² In the words of Larry Diamond and Leonard Morlino, the meeting of developmental objectives achieves substantive democracy as it involves the implementation of greater political, social and economic equality. Indicators for successful substantive democracy, or that which indicates substantive quality; are freedom gained through the enforcing of socioeconomic rights and equality resulting when every citizen or group are given equal rights, protections and access as well as political participation which goes beyond extending the franchise and can influence the government decision making processes. They refer to this process as that of ‘deepening’ democracy.⁴³³

Decentralisation is seen as a way to intensify development because decentralised forms of government can be more responsive to the needs of the

⁴³² Fitzgerald et al, *Managing Sustainable Development*, p 5.

⁴³³ Diamond, Consolidation.

poor and more likely to enhance participation at the ‘community level’. Responsiveness is defined as the achievement of congruence between community preferences and public policies while participation is defined as not just an increase in the quantity of participation but also an increase in the scope of participation to include the poor and disadvantaged. Responsiveness however does not simply follow from increasing participation or representation of the poor. For responsiveness to occur, participation must be ‘effective’ i.e. participation must result in changes in organisational behaviour and accountability of relevant government structures. Accountability in this instance involves internal accountability i.e. of bureaucrats to elected representatives as well as external accountability i.e. fairness of elections and representativeness of elected councillors.⁴³⁴

My two case studies reveal that the promise of development through decentralised local government is challenged by the use of public private contracts when it is neither responsive to needs nor partial to the participation of local citizens. It cannot therefore contribute to democratic deepening.

ENABLING BASIC RIGHTS?

In Chapter Two I argued that an increased use of contracts in the public sector to provide services transforms the state into an ‘enabling’ entity. A local authority therefore enables the delivery of services as opposed to producing them directly itself. Both of my case studies for research were examples of enabling local authorities and illustrative of the impact enabling has on political responsibility and accountability.

The South African Bill of Rights entrenches first as well as second generation rights. First generation rights, civil and political rights are negative in character because there is no obligation on the part of the state to act in their enforcement – the state merely has to guard against violating them. Their implementation is free or at least inexpensive because they merely require

⁴³⁴ R C Crook, Decentralisation and poverty reduction in Africa.

the state to refrain from acting. They are also absolute and immediately satisfiable and formulated with a high degree of precision so that courts can more easily establish the obligations generated by them. Second generation rights on the other hand pertaining to socioeconomic rights are positive in nature requiring specific action by the state in order to be enforced. This means that their implementation would be costly, requiring increased welfare provisions, programmatic requiring time to be realised and sometimes vague in nature resulting in imprecision and more effort on the part of courts to translate and enforce.⁴³⁵

The difficulties surrounding the enforcement of second generation rights are amply illustrated by the case studies. In the first instance the service has to be defined as a right. According to the South African Bill of Rights 'Everyone has the right to have access to sufficient water' (sec 27 (1) b). The Bill of Rights does not however contain an express right of access to electricity. This right can only be implied in the right to housing. In a landmark case⁴³⁶ the Constitutional Court held that the right to housing entails more than bricks and mortar it may also entail the provision of such services as 'water sewerage, electricity and roads'. This interpretation is supported by the United Nations Committee on Economic, Social and Cultural Rights which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. The Committee has construed the right to housing broadly to include the right of 'sustainable access' to 'energy for heating, cooking and lighting' (paragraph 8 b general comment 4 1991 on the Right to Adequate Housing) furthermore it asserts that economic accessibility or affordability is one of the essential elements of the rights to such basic services as water, housing, food, education and health. In the South African context all policy choices must be analysed against the backdrop of the right to equality recognised under section 9 of the Constitution. Given South Af-

⁴³⁵ P De Vos, Pious wishes or directly enforceable human rights? Social and economic rights in South Africa's 1996 constitution, *South African Journal on Human Rights*, 13, 1997.

⁴³⁶ SA v Grootboom 2000, SA 721 (CC).

rica's history of unequal municipal service provision this right would require that the provision of electricity be underpinned by the twin principles of fairness (no discrimination between groups) and equity (everyone receives an equal standard of service provision). Section 9 (2) enjoins the state to take 'legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination'.⁴³⁷ So while the right to water is stipulated, the right to electricity is less so. In the case of the Nelspruit water concession, the provision of water was therefore conceded to as a right, even though as I argue later, it was hardly provided as one. In the case of the Eskom Shell Concession however the provision of electricity was not seen as a right by the providing bodies but simply as a service requiring payment. The vagueness around electricity's status as a right may have contributed to the lack of a role played by the local authorities in the delivery of electricity services.

An attempt to provide basic rights in the form of services through the free basic water and electricity policies, is the second instance of the difficulties with enforcing socioeconomic rights. The Free Basic Water Policy in Mbombela resulted in negative financial implications for the concessionaire whose cost recovery process was interrupted, while in Ugu, the Free Basic Electricity Policy failed to have an effect on service costs owing to non disbursed subsidies. The free basic policies did not therefore make an impact on the poor in terms of receiving services as basic rights. The main reason that I put forward to explain this is that both services were delivered through the use of contracts, effectively removing the local authority from the equation and eradicating political responsibility.

Through the delivery of basic services municipalities fulfil some of the positive obligations implicit in advancing socioeconomic rights. The very purpose of municipalities is to be 'developmental' advancing the conditions of their communities by providing basic services (rights) such as access to

⁴³⁷ M Nefale and T Roux, Promoting access to affordable electricity: comments on the Draft Electricity Distribution Industry Restructuring Bill, *ESR*, University of Western Cape Town, 4 (4), 2003.

adequate housing, healthcare services and sufficient food and water. The overall thrust of these rights is to assist the poor by protecting and advancing their social and economic interests and addressing the apartheid legacy of poverty and inequality. Municipalities have broad discretion on how these services are provided, including the use of contracts which is not in itself inconsistent with the Constitution or municipal legislation but its processes and outcomes have significant effects on the realisation of socioeconomic rights.⁴³⁸ Involving the private sector in the delivery and management of services and the overall adoption of business models to deliver these services conflicts with the definition of access to basic services as core rights in the Constitution, with the implicit requirement that mechanisms for distribution recognise and uphold the underlying equality of membership of society. These socioeconomic rights are specifically affected by the imposition of commodification, full cost recovery, disconnection and prepaid metres and the provision of limited amounts of free water.⁴³⁹

The use of contracts in the market is pivoted on the concept that demand for goods and services is based on flows of expenditure. Consumers express their wishes through market choices. They can buy what they want to and reject what they don't want. Hence the market is driven by preferences of the consumer making the consumer sovereign. The use of contracts in the context of public services however is somewhat different. Firstly if the service, or part of the service, is to be provided free of charge, the demand for that service is no longer based on expenditure, but on a political right to the service. Secondly if the service contract was between a public body (representing the service users) and a private service provider, the consumer is no longer sovereign.⁴⁴⁰ The outcome of this is that the service providers cannot

⁴³⁸ N Steytler, 'Socioeconomic rights and the process of privatising basic municipal services under the Municipal Services Act', *ESR*, 4 (4), University of the Western Cape, 2003.

⁴³⁹ S Flynn and D M Chirwa, 'The constitutional implications of commercialising water in South Africa', in D McDonald and G Ruiters (eds), *The Age of Commodity: Water Privatisation in Southern Africa*, Earthscan, London, 2005, p 59.

⁴⁴⁰ Harden, *The Contracting State*.

institute general commodification of goods and cost recovery techniques as if the service is solely premised on expenditure because given the rights variable, service users have a right to the service even if they can't afford to pay for it. Furthermore if the service user is not sovereign, the service provider would have less of an obligation to consider service user concerns. In this case then, there is a greater need for the local authority or public entity to protect the needs of service users who are more 'citizens' than 'consumers' and who are consuming 'rights' rather than 'services'.

According to neoclassical theory a commodified good or service must have the characteristics of a 'private good' in that it must rival in its consumption and it must be excludable (i.e. users can be denied access if they do not pay). Private goods can therefore be priced for individual consumption and respond well to market signals. 'Public goods' on the other hand resist commodification because they are non excludable (i.e. users cannot be prevented from utilising a public good or service such as air because they can't afford to pay for it), and non rival (e.g. the consumption of street lighting does not diminish the amount available for the next person).⁴⁴¹ Both water and electricity provided by the case study concessions were commodified. Before the advent of the Free Water Policy, Biwater had set water tariffs and allocated water provision to its various provision areas. Its commodification techniques were however thwarted in the sense that water bills went unpaid by many township residents who believed that water should be provided for free as a basic right. The general commodification practise of tariff setting was also thwarted when many township residents claimed their water bills were too high – a complaint linked to either accumulated bills or illegal water connections to the service user in question. Furthermore some provision areas, such as parts of Matsulu on hilly terrain were denied full services owing to infrastructural demands. Eskom Shell structured the delivery of electricity services along commodification and profit lines. The concession would be deemed successful only if there was an 80% recovery of the ser-

⁴⁴¹ D McDonald and G Ruiters, Theorising water privatisation in Southern Africa, in McDonald and Ruiters (eds), *The Age of Commodity*.

vice fee. Eskom Shell was more successful in commodifying its services possibly because of its pre paid policy but also perhaps because most of the rural residents interviewed believed that electricity should be paid for.

The point of commodifying services is to recover costs. Cost recovery is the practise of charging consumers the full, or nearly full cost of providing services. This is in contrast to the practise of the state subsidising these services. Cost recovery can be defined as the recovery of all or most of the cost associated with providing a service by a service provider. For publicly owned service providers this may or may not include a surplus above and beyond the cost of production. For private sector providers it necessarily includes a surplus i.e. a profit. In either case the purpose is to recoup the full cost of production.⁴⁴² Eskom Shell based its cost recovery techniques on the pre paid system while Biwater used a general billing system followed by service cut offs for payment defaulters.

Biwater's methods of cost recovery in Mbombela's townships highlight the challenges posed by contract services to enforcing socioeconomic rights. In order for cost recovery to be effective the service provider must be able to measure the consumption of the service by a household regularly and accurately. Furthermore the service provider must be able to collect payments. In the case of Matsulu and KaNyamanzane, household consumption of water was constantly disputed. Many township residents interviewed insisted that they did not consume the amounts of water reflected on their water bills. Biwater representatives also acknowledged the problem of illegal water connections resulting in large amounts of unaccounted for water. The disputes around water consumption therefore led to low payment levels for water services – 8% in Matsulu and 35% in KaNyamanzane. Administratively, given that it is run as a business, Biwater was forced to contend with non payment by instituting water cut offs. Terminating water supplies however

⁴⁴² D A McDonald, The theory and practice of cost recovery in South Africa, in D A McDonald and J Pape (eds), *Cost Recovery and the Crisis of Service Delivery in South Africa*, HSRC Publishers, Cape Town, 2002.

failed to motivate payment and resulted rather in more hostility towards having to pay for services. Cut offs therefore, instead of being a temporary measure to procure payment resulted in being so protracted that many township households were left without access to water for long periods of time. Water cut offs were also eventually accompanied by the removal of infrastructure to mitigate illegal reconnections. Such a lack of access to even basic supplies of water is not commensurate with water as a basic right. With the institution of the Free Basic Water Policy, water to payment defaulters was reintroduced using the trickler system, this limitation on water however is also hardly rights based. Eskom Shell's application of the Free Basic Electricity Policy is also reflective of its concern with profit margins than with enforcing basic rights (which is in order given that it is a business and not a political entity). After failing to receive the necessary subsidies from the National Electricity Regulator following a pilot run, Eskom Shell simply raised the cost of its pre paid service, resulting in Dweshula and Kwajali residents bearing the cost of subsidies which many did not even know were due to them. The character of a pre paid service is in itself contrary to a rights based approach in that payment for the service must precede the service.

The application of commodification techniques by Biwater and Eskom Shell show how the service user becomes of less importance to the service provider than if the service user had been a 'consumer'. The Nelspruit water concession exhibits how the commodification of water fails to take into account the needs of local citizens in terms of an adequate service and grievances around affordability. The concessionaire seemed motivated only by raising payment levels. Efforts at cost recovery were the only instance at which it took the views of the local community into consideration. Likewise the Eskom Shell Concession only provided its service to those who could afford it sealing cost recovery with a prepaid system. Given that the contract for services in Mbombela was with the local authority, it is only plausible (and enforceable by law) that the municipality have some role in representing the interests of 'non consumer' service users. Likewise in the case of

Ugu, despite the service contract with electricity utilities and regulators, it is inconceivable that the local authority had no role in protecting and proclaiming the interests of local citizens. Even if the role of Mbombela and Ugu was to 'enable' the service contract, their purpose was still an important one. Townships like Matsulu and KaNyamanzane have a history of either not receiving adequate services or not being required to pay for services. This was tied up in apartheid structures of unequal service provision and later, increased subsidies to facilitate defunct black local authorities. Furthermore local political uprisings often took the form of non payment for rates and services in pursuit of 'ungovernability'. These were the limited forms of engagement and communication that township residents had with local authorities. With the advent of democracy however, local authorities are required to harness an engagement process with local citizens and forge processes, even if only 'enabling' services to represent their interests and best serve service rights. Likewise rural areas such as Dweshula and Kwajali should ideally be represented by their local authorities in order to facilitate a rights based approach to service delivery. These areas were formerly part of the apartheid 'homelands' and with the advent of newly demarcated local authorities, finally have a chance to legitimately participate in the affairs of local government. Should local government therefore not be providing a service, it should consolidate means to enable the service provision in a way that prioritises basic rights, in this case, through subsidies.

The two case studies reflect the difficulties in reconciling the delivery of services as rights with the delivery of services by the private sector. In Mbombela water provision by the concession has rendered limited, unequal services to townships at costs that for the most part cannot be borne. The free water policy is also lost to the trickle system. In Ugu the solar systems did not match the scope of services provided by Eskom and were costly because of an inability to access subsidies. Rural dwellers were not even aware that subsidies were due to them. In both case studies local authorities abdicated their responsibilities to provide services / rights to the private sector. This included their responsibility to monitor the tariffs of the services, the

participation of the users concerned and the delivering of the free basic service policies to meaningfully benefit the poor.

Deepening democracy is also affected when services, supposed to be overseen by local authorities are delivered according to market values as opposed to taking a rights based approach. The delivery of services is vital in the deepening of democracy because it is inextricably wound up with freedom and equality, two of the basic principals of democracy. According to Diamond and Morlino freedom is guaranteed by three types of rights, political, civil and socioeconomic. Socioeconomic rights are rights entrenching basic services such as water and housing. Equality implies that all citizens enjoy the same rights regardless of their income or other status.⁴⁴³

In terms of the Constitution, local government in South Africa is obliged to 'Ensure the provision of services to communities in a sustainable manner'.⁴⁴⁴ It is further obliged by legislation to deliver services that are 'Equitable, accessible and financially sustainable'.⁴⁴⁵ Municipalities are awarded the choice between delivering services directly or indirectly but remain responsible for regulating the provision of the service, monitoring and assessing the implementation of the agreement, controlling and adjusting tariffs and 'generally exercising its service authority so as to ensure the uninterrupted delivery of the service in the best interest of the local community'.⁴⁴⁶ Municipalities are also required to establish a sound customer management system that creates a positive and reciprocal relationship between service users and the municipality as well as setting up mechanisms for service users to give feedback to the municipality or service provider regarding the quality of services.

⁴⁴³ Diamond and Morlino, *The quality of democracy*.

⁴⁴⁴ Constitution, sec 152 (1).

⁴⁴⁵ Local Government Municipal Systems Act, sec 73 (2).

⁴⁴⁶ *ibid*, sec 81 (1).

My two case studies suggest that local government, through the use of public private partnerships, is challenged in the delivery of equitable, accessible and financially sustainable services. Furthermore it is failing to ‘generally exercise its service authority to ensure the uninterrupted delivery of the service in the best interest of the local community’. Also municipalities seem to do little to create positive and reciprocal relationships among service users regarding service payment or quality.

Insofar as concession arrangements infer that other agencies assume responsibility for the delivery of services, the municipality is still obliged to retain an oversight or regulatory role under the banner of political responsibility. In the case of the Nelspruit water concession the oversight facility stipulated to in the contract resulted in a Compliance Monitoring Unit which focused purely on technical aspects of the service delivery. Its emphasis was on the smooth running of delivery of the service as opposed to the socio-political dynamics surrounding services. The municipality only seemed concerned with community grievances insofar as they pertained to increasing cost recovery. It actually seemed rather dismissive of complaints regarding cut offs and limited water supplies. The concession seemed to be based very much on the ‘bottom line’ and the not the furthering or best interests of local communities.

Likewise in the Eskom Shell concession, the contract went so far as to define success in terms of financial feasibility. In this case the municipality was not even aware of the dynamics surrounding the solar service – not even when rural communities in its jurisdiction did not receive electricity subsidies due to them and were forced to cover the full cost of the solar service.

The actual services provided by the concession arrangements are also a point of contention. In the case of the Nelspruit concession although strides were made in terms of infrastructural capacity and water purification, cut offs and limited hours of service rendered water services vastly inefficient to service users. The cost of water was also far too high to be affordable in

many cases and the free water policy difficult to understand and make use of. In the case of the Eskom Shell concession, energy services were greatly limited in that they did not cover cooking, heating or refrigeration. Their redeeming quality however was the fact that scattered rural households who had never before had the benefit of electricity services were now able to receive an albeit limited service. Affordability was once again an issue however with householders still having to bear the cost of cooking, heating in the form of gas or wood over and above their solar service fee. This was compounded by the fact that service users were not able to access their subsidies under the free electricity policy.

Neither of the concessions could be said to have promoted equity. In Nelspruit owing to the fact that the concession was put in place before local government jurisdictions were finally demarcated, areas not served by the concession also fell under the responsibility of the Nelspruit municipality. Many of these urban squatter settlements merely tapped into water supplies illegally. In Ugu, Eskom was moving intermittently into areas and providing full electrification, those not connected to the grid however had to make do with limited, expensive services.

The case studies show that citizen's freedom and equality are constrained by the choice of concessions in the provision of basic services. In both the Mbombela and Ugu case studies local citizens who are constitutionally entitled to basic rights (in terms of socioeconomic freedoms), could not adequately access them. In Mbombela this was because cost recovery measures dictated that even free basic water be reduced to a trickle system. In Ugu local citizens paid more than double what they should for their energy service because the service provider could not access subsidies under the Free Basic Electricity Policy. The effect on the quality of democracy of local citizens not being able to access their socioeconomic rights is just as serious as their not being able to access their political or civil rights. Likewise if they do not receive rights on an equal basis as was the case in Mbombela

where access to water was markedly restricted or in Ugu where services were limited, their rights to equal social justice is constrained.

The Constitutional Court has held that positive social and economic rights are enforceable – ‘at the level of basic needs...profound inadequacies require state intervention.’⁴⁴⁷ The Court understands substantive equality in terms of how social and economic rights are conducted with reference to the impact of an act or omission on the group under discussion. This requires an understanding of the structural inequalities in society in general. According to the Court failure by the state to take these factors into account when devising and implementing plans to realise social and economic rights might result in the state being found not to have fulfilled its constitutional duties. The right to equality is therefore interpreted as moving beyond a formal guarantee of equal treatment to encapsulate the state advancing social and economic rights with regard to the different social and economic circumstances in which the affected groups find themselves.⁴⁴⁸ Local authorities in South Africa are therefore accountable to local citizens with regards service delivery notwithstanding their choosing external methods of service provision. The emphasis on the obligations of the state set forth by the Constitutional Court imply that both Matsulu and KaNyamanzane township residents and rural dwellers in Dweshula and Kwajali are entitled to a closer protection by local authorities regarding their service delivery.

CITIZENS OR CONSUMERS?

In Chapter Two I argued that traditional methods of public participation are transformed with the use of contracts to provide public services. The main reason for this is that citizens, in contract terms, become consumers. The use of private contracts also transforms the role of political councillors in terms of public participation in service delivery. My case studies reveal how pub-

⁴⁴⁷ SA v Grootboom, 2000.

⁴⁴⁸ P De Vos, Grootboom, the right of access to housing and substantive equality as contextual fairness, *South African Journal on Human Rights*, 17, 200.

lic participation in a political sense is undermined by forms of participation that do not include the local authority.

With the use of contracts to provide services in the public sector there are changes in the ‘principal’ and ‘agent’ variables. Where the original principal is the consumer, it is now the group of citizens represented by a democratic government. The agent now includes the politicians or political bureaucracy who contracted with the service provider. The new principal has less control over the agent as it cannot directly influence the agent through increased purchasing or an increased market for services rendered satisfactorily. Likewise the agent’s interests will most likely rest with its contracting partner and not the principal.⁴⁴⁹ As a result of the separation of politics and administration the traditional role of political councillors is also significantly altered. Municipalities are democratic political institutions organising the common concerns of the public facilitated largely by political councillors. The role of political councillors includes comprehending subject matter from different points of view, considering it, compromising conflicting interests and judging what is most reasonable and appropriate in a given situation. In cases where the municipality is not responsible for providing services however, local councillors lose touch with communities and their interests.⁴⁵⁰

The complications around the ‘principal’ / ‘agent’ relationship are amply illustrated by both of my case studies and present the first point of difficulty when trying to establish public participation at local levels of government. In Mbombela the concession contract was between the municipality and Biwater – who collectively constitute the agent. The township residents of Matsulu and KaNyamanzane constitute part of the principal (the rest being the whole of the concession area). The agent Biwater is therefore accountable to the municipality and not the principal. Furthermore despite the municipality having an obligation to represent the principal’s interests, it effec-

⁴⁴⁹ Myers et al, Consumer satisfaction.

⁴⁵⁰ Hansen, Local councilors.

tively abdicated its role to the agent as provider of the service. Biwater was therefore only influenced by township residents when they refused to pay for services – it responded by instituting cut offs. Likewise township residents although attempting to participate through ward councillors, had effectively no recourse in the municipality regarding water services. Eskom shell on the other hand did not even have a relationship with the municipality but only rather with the national electricity utility. This complicates participatory channels further when ward councillors cannot represent the interests of local citizens given that the municipality is not party to the contract.

There have been a number of problems surrounding formal institutional channels for participation at the local level in South Africa. These include the fact that the performance of councillors has not proved very effective as they lack expertise and clarification about their specific duties. The advent of ward committees on the other hand still needs to be institutionalised.⁴⁵¹ The weakness relating to formal channels of participation are illustrated by the integrated development planning process undertaken by local government throughout the country. The process (in most cases) has been described as allowing for ‘a sophisticated degree of interdepartmental coordination, planning integration and technical input but only as deliberated within a small circle of experts and politicians’.⁴⁵² This is in lieu of genuine local level input. There is enough evidence to show that integrated development processes within municipalities did little to initiate participatory planning and where there was participation it was not adequately reflected in the final outcome.⁴⁵³

These elements are compounded by the use of contracts in the public sector and demonstrated by the case studies. In the case of Nelspruit ward councillors had a very good understanding of the grievances and complications around the service delivery of water within their constituencies. They were

⁴⁵¹ Atkinson, *A passion to govern*.

⁴⁵² Heller, *Moving the state*.

⁴⁵³ Beall et al, *Uniting a Divided City*, p 81.

however not empowered to do any thing about it given that the Council had turned the service over to Biwater. Ward councillors interviewed also failed to display any sense of how best to utilise or channel their information in order to represent their constituencies. The same applied to ward councillors in Ugu who, aware of the shortcomings of the solar service, did little to procure change through the Council. In terms of services, ward councillors in Matsulu, KaNyamanzane, Dweshula and Kwajali seemed neither to represent their communities nor bear accountability to them. In terms of ward committees, at the time of the research the Nelspruit case study had not quite consolidated its ward committees regarding water. In Ugu no ward committees regarding electricity services had been established.

Problems around formal institutional channels for participation also include the fact that, for the most part, ward councillors receive their information from caucus structures and find themselves serving on committees without much purpose or mandate or indeed any real powers. There is evidence that committee meetings are seen as a waste of time because all decision making powers are centralised at the executive level leaving ward councillors disempowered and disconnected from meaningful debate and opportunities to influence decision making around issues that affect the communities they represent. There is also evidence that council meetings are caucus driven rubber stamps for a series of decisions taken by mayoral or executive committees without any real accountability.⁴⁵⁴

Once again my two case studies are illustrative of this. In the Nelspruit water concession some councillors supported the concession in the Council but not in their community structures. This suggests that although they may have had sympathy with the concerns of township residents, they did not see their role as facilitators of these concerns. If Council meetings were caucus driven however, and the evidence for this may be contained in the fact that many councillors interviewed saw the concession as a *fait accompli* that would simply be replaced by another concession should it fail, perhaps ward

⁴⁵⁴ Atkinson, *A passion to govern*.

councillors did not think their input would be of much relevance. This raises questions as to how far and if at all, ward councillors actually represent their constituencies at local level. Supporting the concession in Council chambers also suggests a 'toeing of the party line' which is hardly commensurate with promoting the interests of local citizens in accordance with democratic governance. The Eskom Shell concession was instituted within a local authority that, although African National Congress led, had significant Inkatha Freedom Party opposition. It would be expected therefore that local citizen grievances around electricity services through a concession would play out more formidably in Council chambers – there is evidence that local political configurations which allow for the piercing of African National Congress dominance can affect the width and impact of participation. An example of this is the integrated development planning process in Durban where there is a strong opposition party element in the form of the Inkatha Freedom Party which resulted in a more participative process and 'greater institutional continuity'.⁴⁵⁵ Unfortunately however, given the municipality's lack of involvement in the concession, the solar services held no part in Council discussions.

The use of contracts for services is often justified by a lack of finance, skills and general capacity. In Mbombela, the Council needed a budget of R250 million rand for the provision of water services when it had only R8.5 million, borrowing was not a possibility. In Ugu electricity services were seen as Eskom's domain given the large service backlogs falling to the newly created / amalgamated municipality. Yet when local authorities choose to provide services through private contracts opportunities to build municipality capacity are squandered. This is particularly so with regards fostering local participation. The nature of contracts eradicate the political dimensions of service delivery and render the formal mechanisms for participation pointless. In both concessions there was ample evidence to suggest that local residents were more and more using the advent of ward councillors to

⁴⁵⁵ Heller, *Moving the state*.

communicate their preferences and grievances to the government through the local tier. In the solar concession, it was useless because the ward councillors sat on the Ugu council not on the Eskom Shell board. Furthermore the municipality's lack of involvement in the delivery of solar services rendered community needs in this regard beyond the authority of the municipality. In the water concession however the municipality did retain some authority over the service in that legally, despite its contracting out the service it is still obliged to remain 'responsible' for service delivery it was also contractually required to monitor the concession. Monitoring of the concession assumed more of a technical form than a political one and 'responsibility' that could have manifested itself through feedback by ward councillors was squandered. Many of the ward councillors interviewed seemed aware of their constituency's displeasure with water services and the reasons for it. They seemed less aware however as to their role within the council regarding water services provided by the concession.

The two case studies suggest that weakly entrenched mechanisms for participation are compounded by the use of contracts and that this undermines the substantive principle of politically engaging with local citizens and fostering their participation in local affairs.

To recapitulate, public participation is seen as intrinsic to democracy because it provides effective checks on government, secures a more accurate reflection of citizen's desires which results in improved governmental output and better policies more efficiently and fairly administered, ensures that citizens become more involved in the affairs of government and increases the sense of legitimacy of government resulting in better compliance by citizens with the democratic system. Participation is also intrinsically linked with democratic responsiveness and representativeness. Responsiveness refers to the extent to which governments take note, on a systematic basis, the full range of public opinion in the formulation and implementation of law and policy. The electoral process is not a sufficient enough mechanism to enable detailed preferences to be articulated and so there is a need for sys-

tematic and regular consultation with communities. Representativeness is also increased by participation. In many cases participation is limited to those most willing or resourced to participate. Those disadvantaged or marginalised are less likely to be participants in the political process. Participation mechanisms therefore have to be designed in such a way as to capture those most disengaged from the political process. Responsiveness and representativeness have great bearing on popular control and political equality both of which are good indicators of the quality of democracy.

Participation is a vital component of democratic deepening. According to the Diamond and Morlino model, participation falls within the formal aspect of indicators for democratic quality in the form of the franchise. To guarantee quality of democracy however, the state must ensure that citizens make use of formal rights to influence the decision making process. This goes beyond the voting process and encapsulates organising, assembling, protesting and lobbying for interests through political parties and civil society organisations. Participation also encompasses the discussion of policy issues, the communicating with and demanding accountability from elected representatives and direct engagement with public issues, particularly at the local level. Responsiveness by government is another indicator for democratic quality and influences the degree to which citizens will be satisfied with the performance of democracy and view it as legitimate. Quality in terms of responsiveness is when democratic governments make and implement policies that citizens actually desire. This process is shaped by the participation of citizens through democratic mechanisms or civil society organisations.⁴⁵⁶

Local government in South Africa is constitutionally mandated to ‘Encourage the involvement of communities and community organisations in the matters of local government’.⁴⁵⁷ Legislation further directs that that ‘A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory govern-

⁴⁵⁶ Diamond and Morlino, *The quality of democracy*.

⁴⁵⁷ Constitution, sec 152 (1).

ance.’⁴⁵⁸ Various mechanisms and processes to further public participation at the local level are stipulated in the legislation. These include political structures such as ward councillors and ward committees, the consideration of petitions lodged by communities, notification and public comment procedures, public meetings and hearings by the municipal council, consultative sessions with local community organisations and report back to local communities.

My two case studies suggest that local government in South Africa, in employing public private partnerships, is neither ‘encouraging the involvement of communities and community organisations in political matters’ nor ‘developing a culture of municipal governance that complements formal representative government with a system of participatory governance’.

The choice of concessions for the provision of services effectively removes the local authority from being responsible and answerable to local citizens in terms of the services they are entitled to receive. In the case of the Nelspruit water concession, the local authority seemed only too happy to abdicate the responsibility for water delivery in its jurisdiction. It even stated that should the concession fail it would simply look for a new concessionaire. This is not encouraging bearing in mind that the municipality had an established water service delivery unit in place which could have been consolidated within a new democratic dispensation. Instead the local authority chose to hand over its capacity to deliver water services to a private company, corroding whatever capacity existed within the municipality and foregoing the opportunity to build relationships with local communities as between a service provider and service users. Not only did the municipality wash its hands of all responsibility in the delivery of water services after the signing of the concession but it was also clearly hesitant to have any input whatsoever regarding concession issues. This was evident by its failing to negotiate wage increases on behalf of its former water service employees with concessionaire Biwater, despite being contractually obliged to do so. It

⁴⁵⁸ Local Government Municipal Systems Act, sec 16 (1).

was also silent on Biwater's 'Labour Forum' instituted to reduce union activity amongst workers. It cannot be concluded that the Nelspruit local authority has a water service delivery model that encourages the involvement of communities and community members.

In the same vein the Eskom Shell solar concession exhibited no local authority involvement whatsoever. Notwithstanding ardent opinions from Eskom, the Department of Minerals and Energy and the National Electricity Regulator that the municipality should have been involved in at least a consultative or oversight role, no effort was made to secure the involvement of the Ugu Municipality in the concession. Likewise the municipality made no effort to become involved or even sufficiently informed in the concession arrangements remaining content to shrug its shoulders and lament the fact that no one had consulted it. The Ugu municipality was in a different position to that of Nelspruit in that it had never delivered electricity services to its jurisdiction before. Electricity services in South Africa are delivered for the most part by Eskom. It therefore had no existing facility that was corroded by the concession but it did however lose the opportunity to build up an engagement process with its local communities through the provision of a service.

This point is particularly pertinent when the relationship that has been established between the concessionaire and the community it serves is considered. Eskom Shell has succeeded in building a very strong engagement with the small rural communities it serves. It achieved this in three ways. Firstly it found new and innovative ways to communicate with local communities employing the street theatre concept to explain its service and the service charges. This appealed to service users all of whom were interviewed showing a thorough knowledge of how to access the service and its various implications. Secondly Eskom Shell made itself readily accessible to local service users by instituting a facility whereby service users could use the telephone at the local store to call the Eskom Shell help centre reversing the charges. Thirdly Eskom Shell recruited and trained field staff from within

the rural communities it serves making itself more accessible still to service users. Eskom Shell's communication with service users was based on information provision and technical support as opposed to facilitating participation. Despite this however it succeeded in forging links with service users in deep rural areas who had never before been serviced. This illustrates that it is possible to engage meaningfully with local citizens through service delivery.

Biwater (unlike the Nelspruit municipality which limited itself to the Masakhane Campaign) also attempted to engage with local communities around issues of service delivery particularly issues of non payment for services. It did not however manage to build much of a rapport with service users probably because of the hostility that surrounded the institution of the concession, the high tariffs for water and the water cut offs.

Participation through both concessions was pivoted on information provision and servicing technical needs. There was very little meaningful participation with local citizens in terms of their influencing service delivery arrangements. As I have argued, this is largely because the nature of service contracts has reduced the role of the local authority. Another avenue for participation however is civil society activity. This is not only a vital component of democratisation but all the more necessary when institutionalised mechanisms for participation are failing to take hold. It has been noted that civil society activity in South Africa comprises the rise of brand new social movements. This is striking given the formidable role played by civic organisations in the resistance to apartheid and the transition to democracy. Evidence is that old avenues for opposition were all absorbed into the post apartheid government leaving opponents of government without a voice. This also meant that state-civil society relations changed from the adversarial opposition that characterised apartheid politics to a more collaborative and development oriented focus - 'key activists took jobs in parliament and other government structures...civics mainly oppositional role to the state

was now deemed inappropriate as they were urged to move on from ‘resistance to reconstruction’’.⁴⁵⁹

Both case studies reflect this thesis. In the case of Mbombela, the only notable civil society activity was the Mbombela Anti Privatisation Forum uprising in the early stages of the concession. The Forum took its momentum from anger within townships over reports that a few children had been admitted for treatment of cholera. This fuelled panic of a possible cholera outbreak. The Forum therefore seemed to take on more of a single issue purpose – that of an impending cholera outbreak, rather than a general opposition to privatising services. This may be one of the reasons that it failed to sustain throughout the concession despite continued community grievances regarding payment for services. Another reason that could explain the way the Forum suddenly fizzled out and its members disappeared (I couldn’t find any to interview) is that its leaders were employed by the new municipality and the concessionaire. Indeed the only people who knew very much about the Forum that I spoke to worked at Biwater, Sivukile, and the municipal human resource department. These people denied having actually been part of the Forum however. In the case of the Ugu municipality, civil society organisations in the area concentrate mainly on collaborating to procure development as opposed to being adversaries to local government or local service providers. An organisation known as Ziphakhamiso, for example, helps local citizens to apply for social grants. Despite this however the issue of social grants due to users of the Eskom Shell concession has never surfaced within the organisations work. When local citizens complained about a lack of electricity services, the organisation approached Eskom for an explanation. Eskom claimed that it was struggling to extend services to non-grid areas. The organisation simply passed this information on to the local citizens that had voiced grievances without going further to advocate for these concerns. Likewise other civil society organisations in the area devote them-

⁴⁵⁹ R Ballard, A Habib, D Ngcobo and I Valodia, *Globalisation, mobilisation and contemporary social movements in South Africa*, Centre for Civil Society, University of KwaZulu Natal, June 2003.

selves solely to projects such as the ‘garden project’ funded by the Mawleni Development Committee which helps far flung rural citizens to make a subsistence living.

The lack of civil society activity with regards grievances for services in Mbombela and Ugu is explainable, to an extent, by the lack of infrastructure and social / political climate needed to sustain such activity. In Mbombela the Anti Privatisation Forum (proper) attempted to consolidate the Mbombela Forum’s activity but found a lack of community structure around activism, a lack of co-ordination with community members and difficulty getting activists to commit to a cause.⁴⁶⁰ The lack of sustainable civil society activity also mirrors the demise of the civics movement to the liberation party and is reflected in the ruling party’s centralising tendencies within the African National Congress dominated local Council. In Ugu, rural communities are generally not very organised around issues that concern them. There is a sense that local residents are not aware about their rights and means to enforce these rights.⁴⁶¹ Indeed many of the residents I interviewed in Dweshula were old age pensioners caring for young children – hardly activist material and more attuned to the days when they were part of the homelands where aside from apartheid discrimination of ‘homeland citizens’ they were beholden to traditional authorities dispensing favours in the forms of land, housing and jobs on behalf of the Inkatha Freedom Party headed homeland government – they did not have the space or instruments with which to mobilise as had their urban counterparts.

The case studies show that the various benefits traditionally associated with participation are negligible in the case of Mbombela and Ugu. Service delivery arrangements failed to entrench participation by local communities to the point where local government is made accountable to local communities in terms of services they are receiving. Also the lack of participation by local citizens does not leave room for an accurate reflection of citizen’s de-

⁴⁶⁰ Dale McKinley, Anti-Privatisation Forum, interview, Johannesburg, 26 April 2006.

⁴⁶¹ Chetty, interview.

sires or a consequent increased efficient output of services. And the low levels of participation effectively mean that local government response to local citizens is poor or lacking altogether. The effect of this on the quality of democracy in South Africa is that local citizens are not having any influence on the decision making process regarding service delivery through formal institutional channels. The positive impact some of the new social movements have had on service policies in South Africa e.g. the Treatment Action Campaign, suggests that civil society activity is a significant antidote to weak institutional participation mechanisms. If concessions are going to be a continued form of delivering services by local authorities township and rural residents in Mbombela and Ugu will suffer the consequences of non participation unless they either find ways to socially mobilise or organisations provide them with structures and resources to do so.

AND WHY CAN'T WE HAVE A SOUL?

During the 1980s the civic movements call for basic living conditions and legitimate political participation echoed the rumble from below of those who were poor and oppressed. Their target were those above, who exploited and denied them citizen rights. The result was the dawn of democracy which brought with it the promise of a new local authority mandated to provide equitable services, indeed socioeconomic rights and allow legitimate representation and genuine participation in accordance with local citizenship. Years later, the civics fight for affordable services and legitimate participation is yet to be realised. If the case studies presented are anything to go by, services are still unaffordable, cut offs are still rife and genuine participation does not manifest itself through formal channels designed for that purpose. Local government in South Africa, the main instrument of the Reconstruction and Development Programme has, in instances, cut off its 'hands and feet' and replaced them with service contracts. Ward councillors seem to be as illegitimate as those who served in apartheid's Black Local Authorities given their impotence and lack of accountability. Developmental decentralisation imposed from above cannot result in democratic deepening if there is

no commitment to building democracy from below. This lack of commitment within local government, displayed by the case studies, renders it merely a democratic shell – a shell with no soul.

APPENDIX A

ALTERNATIVE FORMS OF SERVICE DELIVERY:
THE NELSPRUIT WATER CONCESSION

Questions for Matsulu and Kanyamazane households

GENERAL INFORMATION ABOUT HOUSEHOLD

Area

Matsulu

Kanyamazane

Who is the head of the household (maker of decisions about water)?

Mother

Father

Son

Daughter

Other

Into which income bracket does this person fit?

Indigent

Low

Middle

High

How many people live in this household?

How many of them are employed?

QUESTIONS

1. What kind of water facility do you have?
 - a) Tanker
 - b) Communal standpipe
 - c) Yard tap
 - d) In house connection
 - e) Other
 - f) None
2. What kind of sanitation facility do you have?
 - a) Waterborne
 - b) Chemical toilet
 - c) VIP
 - d) Bucket
 - e) Other
 - f) None
3. Do you think your water sanitation service is affordable?
4. What approximately is your water bill per month?
5. Do you pay your bill or are you in arrears? If arrears, by how much?
6. Do you receive any free water?
7. How much water approximately do you use per month?
8. Are you happy with the service?
 - a) Is the water clean
 - b) Is the water pressure adequate

- c) Does the water ever get cut off (distinguish here whether it is a service failure or a cut off for non payment)
 - d) Other
-
- 9. Is your water / sanitation service ever repaired or maintained?
 - 10. Where do you complain if you have a problem?
 - 11. Are your complaints dealt with satisfactorily?
 - 12. What is your relationship with the water company?
 - 13. What is your relationship with the municipality?
 - 14. Have you ever been approached by the utility for water / sanitation?
 - 15. Has the standard of service (water / sanitation) been higher or lower since 1999 ?
 - 16. What do you feel the impact of the Concession has been on you ?
Good / bad - why ?

Appendix B

QUESTIONNAIRE FOR HOUSEHOLDS IN UGU DISTRICT MANAGEMENT AREA DC21 - UMZUMBE KZ213 & UMUZIWABANTU KZ214

BACKGROUND INFORMATION

Area

Who is the head of the household ? Is he / she employed ?

Details of employment / income group if possible:

- a) indigent - R500
- b) low R500-R2500
- c) middle R2500-R8000
- d) high R8000+

SERVICES

What kind of electricity facility do you have?

Does your electricity facility cover:

- a) cooking
- b) heating
- c) lights
- d) radio
- e) TV
- f) All
- g) Other

Do you think your electricity is affordable?

How much is your electricity bill per month?

Do you pay your bill or are you in arrears?

How much did you pay to have your system reconnected?

Does the service ever fail?

Did you ever have to pay to have your system reconnected?

Is there some place where you can complain if the service fails or if you have any other problems?

Are your complaints dealt with adequately?

Did the Shell Company ever hold a meeting / workshop to explain to you how this new electricity service was going to work?

Did anyone from the local municipality ever inform you by way of a public meeting, radio announcement or flyer about the new electricity system you were to receive?

Have you ever approached your ward councillor with any complaints about your electricity service? Has he / she been at all involved in the delivery of your electricity service?

What did you do for your energy needs before you received the solar home systems?

Are you happy with your electricity service?

Does the electricity supply ever get cut off - do you know why?

Is your electricity system ever repaired or maintained?

Would you prefer that Eskom supply you with electricity rather than the
Shell Company?

Do you think that electricity should be free?

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