Critical Dialogue

Public Participation in Review

A Quartely Journal on Public Participation in Governance

Edited by: Imraan Buccus

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Critical Dialogue
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This new edition of *Critical Dialogue* continues to meet the needs of civil society in the country and the region in engendering the area of public participation in governance, within the realm of a constitutional democracy. This edition also seeks to enhance the culture of open debate by publishing not only academics, but also activists and practitioners who are closely attached to political developments 'on the ground.'

Included is a piece by Saranel Benjamin entitled "Reclaiming the voices of dissent: social movements challenging contemporary forms of public participation" where she looks at how social movements have emerged to contest the terrain of public participation. Sophie Oldfield also looks at social movements, particularly the politics of progressive post-apartheid social movements and civil society in a period that spans just over a decade into democratisation.

John Williams, in his article "Community participation and democratic practice in post–apartheid South Africa: Rhetoric vs Reality" evaluates a number of research projects to access community participation in Cape Town from 1994-2004. Mark Heywood writes about "Constitutionalism and the politics of the Treatment Action Campaign (TAC)" examining how the TAC links its advocacy to the constitution, as well as its approach to alliances and the political contest over what policies are best for the poor as has become evident in the new South Africa.

Karen Reid and Desmond D'Sa look at advocacy in the environmental sector while Imraan Buccus and Lubna Nadvi look at the role played by civil society in legislative reform, in the context of the Protection of Constitutional Democracy against Terrorist and Related Activities Bill (2004). Mammo Muchie examines continentally framed research and the alliances between research NGOs and universities in order to produce a pan-African intellectual community.

Evidently, this edition includes fascinating pieces from academics, activists and practitioners that we hope would serve as a catalyst for further debate and discussion around public participation.

The Editor

Reclaiming the Voices of Dissent: Social Movements challenging contemporary forms of Public Participation

By Saranel Benjamin
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Much of the literature on public participation has centred on the electoral politics and policy intervention through interest groups. Through this polarisation of public participation, a large gap is left in both the theory and practice.

The global capitalist economy has seen the rise and development of organic community struggles around socio-economic injustices. As a result, social movements have emerged to contest the terrain of public participation. They have found other means outside the existing theoretical frameworks of public participation to engage with the state. In post-apartheid South Africa, social movements have emerged to alter the political landscape.

The problem with the confinement of public participation

Democracy has been attributed meaning in so far as it entertains particular forms of public participation, such as electoral politics or policy intervention. This confinement poses a danger to public participation. Electoral politics provide a limited terrain for public participation that is largely contested by political elites and big capital, and policy intervention is being rendered largely inaccessible to the "public".

Public participation through electoral politics has been promoted as a key measure of good civic participation. It has also become the symbol of what a nation state needs in order to be embraced by the global political (and more so economic) community as a civilised democracy. Most nations in the global political playground are hailed as democracies purely because they have an electoral system in place, notwithstanding the fact that some of these democracies are violators of human rights. The reduction of democracy to a vote is a point of concern, as democracy becomes intermittent between electoral polls.

Circumscribing democracy and by its extension, public participation, to representation at the polls becomes an even greater point of concern when one reflects on how issues such as trade, the structure of an economy, labour and living have been institutionalised in international institutions (International Labour Organisation, The World Trade Organisation, the United Nations Organisation) and thereby removed from public spaces and interaction. Through these institutions, governments negotiate their international status in these forums rather than in consultation with their citizenry. Accountability is to international institutions and big capital. As a result, the disconnection between citizen and state becomes more pronounced.

While negotiations around the privatisation of water, electricity, education and health care are being conducted between governments at the World Trade Organisation, international capital and governments at national levels are reducing citizens' engagement to a vote. "Your vote is your voice!" is the slogan of today. However, at the same time, statistics from countries around the globe show that voter turnout is low. Even the newly founded democracy of South Africa is not exempt from this. According to McKinley[1],

The national voting turnout has gradually

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decreased since South Africa's first, one-person one-vote elections. In 1994, 19,5 million people voted; in 1999 just over 16 million voted; and in 2004, under 16 million (remembering that the country's population has grown substantially over the last decade) (2004).

McKinley shows further that, of the entire population of South Africa, just under 7 million eligible to vote did not register for the elections. In addition, of those registered to vote (20,600,000) over 5 million chose not to vote (2004). According to Dalton, Bürklin and Drummond, not only is voter turnout down, but also the public's trust in parties and representative institutions are also on a downward turn (2001:141). Similarly, Schugurensky states that "Poll after poll, all over the world, tells us that citizens have low trust in politicians and political institutions" (2004)[2].

In contemporary capitalist democracies, citizens have been given a small confined space to participate, through the election polls. Evidence shows that this form of democracy is clearly in crisis with fewer and fewer people turning out to vote every four or five years. Calling this voter apathy and blaming it on the individual citizen is problematic, in that it circumscribes the sphere of our interrogation.

What about the broader institutional and social factors that are playing a key role in detaching the state from the citizen (Schugurensky, 2004:2)? What then happens to civic engagement in between elections? This confinement is dangerous for democracy in that if politics is left solely in the hands of politicians, the political class will become accountable only to itself, corporate funders and international capital as opposed to the citizenry (Schugurensky, 2004:3).

The second focus of public participation has been public intervention in policy development through institutional forms. Much of the emerging theories on public participation from group theory and pluralism to elite theory, play around in this restricted space of policy making and intervention. Restricting participation to policy making and intervention within prescribed institutional forms restricts the number of civil society actors to those who have the resources to access these institutional forms of intervention, that is knowledge and information about the process, and in depth understanding of the policy. In addition it becomes an elite form of participation constraining public participation to institutional forms, thus institutionalising both democracy and participation. Public participation then only becomes recognised if the "public" (read: elite groups) participates within the institutional "democratic" framework.

Elitism and Public Participation

Capitalist globalisation has laid the political and economic stage bare for the rise and rise of elitism. The gap between the rich and poor has been exacerbated through the rapid acquisition of wealth and the accumulation of profits by political elites and big capital. This, juxtaposed with the institutionalising of what ought to be democratic processes between citizen and state to decide on issues of life and living, into international institutions decided between big capital and political elites, has created a schism in public participation. No longer is participation about the public participating in political, social and economic life, but it has mutated into the participation of elites to serve their own interests around accumulation of wealth and profit making.

Within the framework of capitalist globalisation, national governments have relinquished their privilege as being caretakers of their citizenry by handing over policy making to international institutions within. Instead they have become the caregivers to the interests of big business. Whose interests are being served through the privatisation of water and other basic services? Whose interests are being served when a national government signs away its rights to make working conditions more flexible? It is clear that some sort of pact has emerged between nation states and capital, at

a global and local level. This pact has had serious implications for the development and promotion of public participation in every single country touched by capitalist globalisation.

Within the functioning of capitalist globalisation and the interference of big capital in intergovernmental institutions like the World Trade Organisation, it is clear to see that critical policy issues relating to the well-being of the citizens of a country are being decided at a forum where the public are not invited to make representations, and at the same time remaining dislocated from the state.

All of the agreements emerging from the WTO serve the interests of an elite few. So it would not be too far off the mark to conclude, at this point, that globally, we are being ruled by a small oligarchy of self-appointed elites and big capital. At a national level, we can conclude that through representative democracy we are being ruled by a small class of elected politicians who, combined with capital, jointly represent an elite group. Using Walker's[3] words:

> Public policy is not the expression of the common good as conceived of by the citizenry…This description of policy making is held to be dangerously naïve because it overlooks the role of demagogic leadership, mass psychology, group coercion and the influence of those who control concentrated economic power.

The scope of the public's participation in policy making is indicative of the breadth and depth of influence and the power and authority that determine policy. The exertion of political power (and how much of it one has) plays a critical role in determining whose interests get represented. So while there may be a broad range of different groups with different politicized interests, not all gain access to the public forum. Those that have significant political power have the access.

Who is the 'public' in public participation?

Civil society in post-apartheid South Africa has developed its own binaries. It has experienced changes in its nature, size, shape, politics and direction. These changes have seen civil society splinter, and new forms of organisations are emerging as actors on the political stage. The nature and form of these organisations constitute a representation of the times in post-apartheid South Africa.

There has been a strong emergence of smaller community based organisations (CBOs) that are less formal in their structure and organisation, less resourced and located more at the level of communities. According to a study done by the Centre for Civil Society, CBOs form 53% of the total of 98,920 voluntary organisations in the country (Swilling and Russell, 2002: 20). These CBOs serve constituencies that face extreme forms of poverty on a day-to-day basis. Most of the CBOs have little or no resources and access to key information that would allow them to engage in policy intervention as a form of public participation. Hence they are largely left out of this process.

The non-governmental organisations (NGOs) have relinquished a large part of the watchdog role they held during apartheid years. Post-apartheid South Africa has seen the NGO sector becoming more professionalised and involved in service delivery (Kotze, 2004:3). In addition, NGOs have become more institutionalised, operating within the confines of a neo-liberal framework. As Habib and Kotze point out, neo-liberal jargon has been adopted into the context and environment of the NGO sector without an interrogation of the ideology that lies behind it (Habib and Kotze in Mahone and Edigheji (eds) 2003).

Within the confines of the neo-liberal agenda and the co-opted role assumed, NGOs have found their ground quickly receding to professional consultants with little

or no access to grassroots communities. Often, in their attempts to act as agents of service delivery on behalf of government, NGOs are seen as abandoning the poor, marginalized people and perceived as agents of government, answerable to donors rather than people on the ground.

A lot of NGO work in terms of public participation has been fundamentally located in policy intervention. Submissions on policies get discussed in workshops and meetings amongst themselves, government representatives and with donors (Kotze, 2004: 17). As Azar Jammine[4] puts it, "A lot of talking was taking place amongst the haves about addressing the needs of the have-nots". In addition, NGOs have direct access to some of the largest pools of financial resources from donor circles that fund the kind of public participation that involves policy negotiations, as opposed to more direct forms of civic engagement. The NGO sector has become an elite grouping within civil society, dislocating itself from the realities of grassroots experience of poverty.

The emergence of social and community movements movements onto the political landscape reflects a shift in public participation trends. McAdam and others state that "social movements and revolutions have, in recent decades, emerged as a common…feature of the political landscape" (1996:1). In addition they are of the opinion that these movements arise out of particular political developments such as "shifting institutional structure and ideological disposition of those in power" (1996:1).

Post-apartheid South Africa has seen a surge of community and social movements emerging in response to the state's macro-economic policies. Desai's work located in impoverished communities show that a national movement organised around socio-economic and political rights is emerging in post-apartheid South Africa (2003). These community movements are largely left out of the policy-making arena as a result of poverty, lack of access to resources and illiteracy.

But this does not necessarily indicate that despite this particular lack of engagement, that no public participation is taking place. On the contrary, Desai shows that public participation through participatory democracy and democratic citizenship is taking place and is on the increase. The nature and form of community movements is significantly different to formal NGOs (who are involved in policy development) and so their manner of organizing and the character of their activism are largely at odds with conventional notions of public participation.

Social Movements – a representation of the times

The new social movements are a product of the socio-economic conditions that have prevailed since apartheid, through South Africa's ten years of democracy. At the dawn of democracy, most people believed the African National Congress's (ANC) rhetoric of a "better life for all". Most believed that the liberation struggle would bring in addition to the right to vote, salvation from the disparate economic situation, and that this would lift the majority of the poor and marginalised out of squalor and into economic prosperity.

However, the ANC-led government's process of abandoning apartheid and taking up a neo-liberal macro-economic policy has seen the majority of the poor in pre-and post-apartheid, being caught in the same spiralling poverty. An exacerbating factor to this spiralling poverty is that unemployment is currently at its highest, with the number of unemployed people constituting just over 40% of the population. Not only are people losing their jobs, but also young people are finding it difficult to gain employment. Unemployment rates between 1993 and 2002 show a steady increase in the number of unemployed people: in 1993 the unemployment rate was 31%. By 2002 this had gone up to 41.8% (Kingdon and Knight, 2000 : 4). These rates include those who have never worked before and who are looking for jobs. Within this context of growing

unemployment, the larger proportion of those unemployed are women (Kehler, 2001:2).

In addition to the spiralling poverty that was inherited from apartheid, the adoption of neo-liberalism has also added to the poverty cycle in that basic services, such as water, electricity, housing, education, health care and transport (formerly public transport) are in the process of being privatised and in some instances have already been privatised. The installation of pre-paid water meters in areas like Orange Farm and Phiri in Gauteng[5] and in Mpumalanga and Bayview in Kwazulu-Natal have ensured that people are only entitled to these basic services if they have the money to pay for them.

In David McDonald's study into the provision of basic services in post-apartheid South Africa, the fundamental conclusion he comes to is that people cannot pay for basic services, not, according to popular opinion, because they are lazy or because they embody a culture of non-payment, but because they cannot afford to. In addition, many sacrifice basic needs such as food and clothing to be in a position to pay for access to water and energy (2002:7). In an additional study done by the Municipal Services Project it was found that of the people interviewed who could not afford access to basic services, most were unemployed; in flexible, insecure, unprotected, low paying jobs; or had no access to a social grant like a pension.

The government's adoption of neo-liberalism as its economic policy not only saw the private sphere being attacked, privatised and commodified, but it also brought on a decimation of industries where poor, semi- and unskilled women dominate the profile of the workforce. For example, the clothing, textile and leather industries, which has a majority of women workers, has shed 17,000 jobs in 2000. The rate of job losses in this sector has been on an upward projectile. The car component-manufacturing sector loses on average about 13,000 jobs per year. Subsidies for agricultural farming have seen this sector also taking a knock.
Together with unemployment and poverty came the

inability to pay for basic services such as health care, energy, water and rentals. This within the context of an economic system that entrenches poverty rather than alleviates it, has created a downward spiral into desperate poverty.

Social Movements reclaiming the voices of dissent

While well-resourced NGOs cavort in institutionalised forms of public participation, claiming to represent the interests of the public, social movements are connecting with the real public – the poor. In most cases, some NGOs find themselves protecting the interests of the state and operating within the neo-liberal framework already set out for them. On the other side, social movements are trying to find alternative ways of voicing their dissent at South Africa's macro-economic policy, a policy that is viewed as largely anti-poor.

These new movements have arisen organically from within communities as a direct response to the non-delivery and extinguishing of basic services by the state. In Chatsworth (Durban) whole communities have arisen, organised themselves and met the state head-on in an attempt to prevent evictions from council flats. Out of this the Bayview and the Westcliff Flat Residents Associations were born. In Tafelsig, the same organic organising took place, to reinstate people in the homes from which they were evicted. Out of this struggle, the Western Cape Anti-Eviction campaign took root. The Anti-Privatisation Forum today has 22 affiliates around Gauteng – all organised to fight the onslaught of pre-paid water meters and electricity disconnections.

Social movements do not only engage in what the literature calls "good" public participation, that is policy intervention and negotiations with the state. They have had to use a wide range of creative, sometimes hostile attempts to participate in a society that has a disregard for the poor. They are therefore perceived by the state, the ANC and its alliance partners as "anarchists", "criminals", "ultra-left", and "counter revolutionaries"

and of "siding with the bourgeoisie and its supporters"[6] Social movements have been pushed to the periphery of public participation. While all the social movements mentioned here have tried negotiating with the state and attempted to use the courts to gain access to basic services, they have not been as "successful" as for example, the Treatment Action Campaign (TAC). None of these public participation processes has resulted in victory for the poor.

However, illegally reconnecting water and electricity in homes that have been disconnected, or reinstating a family back into the home from which it has been evicted, has been and continues to be successful. Social movements, according to McKinley, don't object fundamentally to the uses of institutionalised forms of public participation, but rather they see that some form of "reliance on formalised participation in such institutions, that includes participation in electoral politics, is inherently incapable of fundamentally transforming social relations" (2004:11).

Conclusion

Social movements have done more than alter the post-apartheid political landscape. They have re-introduced the concepts of the 'democratic citizen' and 'participatory democracy'. A democratic citizen is not just one who votes, or who is part of an interest group accessing the policy-making arena. Rather, this citizen is one who is active in deliberations on political, social and economic policy development, implementation and evaluation, holding organs of government accountable for the consequences that emerge from these policies through their community driven activism.

While discourses on public participation try to locate democracy within the realm of representation through elected politicians, statistics show that not only is this blinkered version of democracy in crisis, but that in response to attempts to maintain the status quo of a passive citizenry, participatory democracy is on the increase.

The number of people joining organisations and becoming involved in civic engagement is creating new sites of contestation that enable an environment of participation in-between the ballot boxes. While there may be structural barriers to participatory democracy, the political and economic context in which we are currently located is playing a greater obstacle to participatory democracy. It is within this obstacle course to participation that social movements have organised, mobilised and located themselves.

FOOTNOTES

1 Taken from "A Disillusioned Democracy: South African Elections ten years on", April 2004, . The article also appeared in the Mail and Guardian newspaper as "New Power to the People", May, 21 2004.

2 This is taken from a talk given at a meeting at the Toronto Metro Hall, April 29, 2004.

3 In McCool's Public Policy Theories, Models, and Concepts: An Anthology (1995)

4 quoted by Kotze, 2004:17

5 For more information on this please refer to "Nothing for Mahala: the installation of pre-paid water meters in Stretford, Ext.4 Orange Farm, Johannesburg, South Africa"

6 See Dale McKinley's paper: "Democracy and Social Movements in South Africa", presented at the School of Development Studies Conference: "Reviewing the First Decade of development and democracy in South Africa", 22-24 October 2004, Durban

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Moving beyond polemics: Civil society politics in South Africa

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Introduction

'Square pegs in round holes', 'buzzing and diving mozzies'; these are metaphors that have caricatured social movement activists and organisations in the *Mail & Guardian* in 2004. The most recent explosion of this debate can be analysed in the letters and comment pieces following Ferial Haffajee's 'Fact, fiction and the new left' where she critiques social movements for their 'predictable' analysis of post-apartheid South Africa as a 'revolution sold down the river.' She argues that such analysis illustrates the ways in which social movements try 'to make South Africa a node on the map of anti-globalisation resistance' rather than rigorously grappling with the complexities of change. A slew of letters and comment pieces contested her arguments (for instance, by the Social Movement Indaba, Fatima Meer academic and activist with the Concerned Residents in Durban, Roger Ronnie, General Secretary of the South African Municipal Workers' Union, and subsequent responses by academics such as Patrick Bond and others).[1]

The emotive intensity, at times angst, embedded in this debate between activists, state officials, politicians, journalists, and academics highlights contestation over the politics of progressive post-apartheid social movements and civil society in general at this juncture ten years into democratisation. What is it about progressive social movements, in particular, but civil society organisations in general, in this period in South Africa that has positioned this issue so centrally in public, political and academic discourse? I consider this question in this short paper by reflecting on the complexities of practice of civil society organising in

relation to the state. Although research on community-based civil society organising informs the analysis,[2] I draw on conceptual literature on civil society in general to think through the South African polemic on social movements and the role of civil society in the post-apartheid period.[3]

Despite different visions of development and politics, theorists and practitioners across the South African political spectrum conceptualize 'civil society' as necessary and good, as an instrumental element of post-apartheid reconstruction and democratisation (Johnson, 2002). But quite contradictory assumptions are built into the promotion of civil society. Popular, 'anti-neo-liberal' ('ultra left'[4]) critics frame South African urban politics as an adversarial, oppositional polarization of the state versus progressive organs of civil society (McDonald, 2002; Bond, 2000a). 'Liberal' thinkers from a range of political perspectives stress governance and participatory models through which civil society must work with the state (Parnell et al., 2002). In these divergent interpretations, the role and dynamic of post-apartheid civil society has been polarized (Habib and Kotzé, 2003).[5]

Images of 'progressive' and 'emancipative' civil society movements in the populist, anti-neo-liberal camp, on the one hand, and capacitated, voluntary, representatives of the 'community,' by liberals, on the other, speak at cross purposes.[6] Both readings of politics frame civil society organising in South Africa in monolithic, simplified hues. From research on community-based social movements, I argue that these binaries do not do justice to the practice of civil society organising: in other words, polemical political discourse does not

match the complexities of political practice. For instance, in everyday initiatives to get services or to protect those that already exist, community-based civil society organising crosses the boundary between opposition and engagement, combining both for strategic purposes.

Analysis of civil society practice at the community scale highlights, instead, the diversity of community-based organising that builds from historical and geographical differentiation across cities, towns and rural areas. Community organizing illustrates wide-ranging demands on and engagement with the state, as well as savvy and selective opposition to state programs and policies. The multiple positions and strategic engagements that community-based organisations and social movements adopt produce a often contradictory and always uneven politics that has been under-theorized in academic and policy debate.

Civil society, the state, and development

The promotion of civil society and the centrality of images of opposition and engagement in reading civil society-state relationships are not particular to South African development or to South African conceptual work. These tensions are mirrored in the international neo-liberal and post-structural, post-development literature on civil society, the state, and models of state-civil society relationships.

In line with global initiatives, decentralized planning and service delivery and civil society participation and partnerships have been promoted across the developing world. A turn to the local scale through decentralization has been championed by the 'new right,' in particular donor agencies and global institutions such as the World Bank and the International Monetary Fund through the conditions attached to structural adjustment programs (Teriba, 1996; Mohan and Stokke, 2000). At the same time, the 'new left,' in particular post-structuralist theorists, have also promoted the local, arguing that at

this local scale there is a space for radical democratic projects such as progressive social movements to attempt to reinvent and restructure the political and economic inequalities underpinning the status quo (Friedmann, 1998). Critiquing development as modernist, these approaches emphasize the particular and the local as sources of indigenous and appropriate knowledge (Crush, 1995; Escobar, 1995).

Whereas civil society and the 'local' are important, they are not exclusively so or critical in a normative, idealized sense. In this global turn to the local as the site for development, there are several inherent dangers. In particular, there is a tendency to romanticize the local and to view the local in isolation from broader economic and political structures (Mohan and Stokke, 2000). For instance, local, social movements, and associations – organs of civil society – do not operate in vacuums or in contexts and with power of their own choosing. Nor is 'civil society' by definition 'civil' or 'virtuous' (Hearn, 2001: Bayat, 1997; Kasfir, 1998; Markovitz, 1998). In analysis of civil society, therefore, investigation of the access to and use of power becomes critical, placed in relation to the heterogeneous and complex character of organs of civil society and their varied relationships with the state and market forces. The nature of the power that state and civil society actors and institutions draw on becomes an empirical question rather than a conceptual assumption. The following section traces out this debate in the South African context.

Debating the nature of South African civil society-state relationships

Habib and Kotze identify a critical "need to transcend the false divide that has emerged between opposition and engagement in South Africa" (2003: 28). The following discussion outlines the issues and discourses in which engagement and opposition are articulated in the South African context. In particular, arguments for

engagement prioritise issues of governance, while proponents of opposition stress issues of justice.

Reconstructing Governance versus Achieving Socio-economic Justice

The post-apartheid state, at all tiers, has prioritized recreating governance patterns and broadly reconfiguring state-society relationships, outlined in the Constitution (RSA, 1996) and in other state policy and legislation (such as the White Paper for Local Government 1998 and the Municipal Structures Act and the Municipal Systems Act of 1998 and 1999, respectively). Statutorily mandated community development forums (such as Reconstruction and Development and Community Policing Forums) have been instituted to facilitate communication between local government and civil society, and to provide a platform through which civil society could participate in area-based decision-making (see Chipkin, 2003, for instance). This model of local governance assumes however that organs of civil society can access forums, have the capacity to participate, and find these bodies logical places in which to pursue agenda. The arena of civil society is defined as a space for progressive debate on development, symbolic of the democratic era. Although forums should not be written off[7], they have been monopolized by established and (or) well-resourced organizations; and, in many places and political contexts, they are unworkable, replicating existing bodies and adding an additional layer of community-based bureaucracy and gate keeping (Oldfield, forthcoming).

Nonetheless vast amounts of intellectual and official energy have been channeled into reconstructing South African governance so that society – communities, organizations, and citizens – may engage with the state to access services from the state, particularly those groups previously disenfranchised and discriminated against. State structures have been reconstructed so that national, regional, and local governments are both independent and interdependent (Parnell et al., 2002). Policy design, finance, and implementation have been divided across the tiers of government.

In most instances, municipalities are at the forefront of delivery, responsible for the building and maintenance of low-income housing and the delivery of water and, in some instances, electricity. In practice the period since 1996 has seen complex relationships evolve between civil society actors and organisations, councilors, state officials and institutions that demonstrate the complexities involved in shaping 'positive' urban governance.

At the same time that the South African state has grappled with means to institutionalize and deliver on its development imperatives, it has made particular choices at the macro-economic scale. Emblematic in the Growth, Employment, and Redistribution framework (GEAR), macro-economic policy has embraced neo-liberal ideologies that prioritize a restructuring and downscaling of state activity and a promotion of private sector actors and logics. These policies emerge at the urban scale as, on the one hand, the promotion of competitiveness through 'global city' status and the development of 'world class' infrastructure to attract foreign investment (Robinson, 2003); and, on the other, in the context of local governments implementation of policies of cost-recovery for services. Populist, anti-neo-liberal critics argue not only that these choices demonstrate the neo-liberal turn to the right in South African governance, but that these decisions have come at the cost of socio-economic justice and redress (Bond, 2000b).

The collection of papers in the volume edited by McDonald and Pape (2002) on cost recovery and service delivery best represent this perspective. They argue that policies of cost-recovery in service delivery jeopardize the post-apartheid project by disenfranchising and further alienating black communities and citizens already disadvantaged by the ravages of the apartheid system. These actions, they demonstrate, negate the government's extension of services in the democratic era. Poor households and communities face an affordability crisis due to high unemployment levels and the real difficulties in eking out livelihoods in the post-apartheid period. Their evidence refutes claims

that residents do not pay their service bills, rentals, and rates because of cultures of non-payment nurtured as forms of resistance to the apartheid state. Although these arguments and figures have been challenged, this type of conceptual and empirical work provides an ideological and factual platform on which many social movements understand and articulate the service delivery crisis. Although implementation of cost-recovery policies have been piecemeal and specific to different local authorities, cut-offs of water and electricity, removal of furniture in lieu of rental payment, evictions and arrests for protesting such actions have become commonplace. In response, residents go without water and electricity (even homes in extreme cases); many illegally reconnect themselves to services[9], and organize not only in their neighborhoods but also across the city.

Arguments that underpin struggles for socio-economic justice or reconstructing governance are not incorrect or falsely constructed, but they are partial. Their partiality reflects, in part, the politics of engagement and opposition in the post-apartheid context.

Theorizing civil society organizing and everyday politics

Everyday civil society is complex, differentiated, at times confrontational and 'uncivil,' at other times, co-operative and collaborative.[10] Research on community-based civil society practice illustrates that local context directs activism, the spaces and sites for a wide range of activities that present a continuum between engagement and opposition. These choices reflect local context and they shape the autonomy of community based organizations to act within their areas and to engage with other organisations and the state. Local context also directs community-based civil society to different parts of the state – to particular institutions, policies, and particular officials and politicians. This differentiation is not uniform, nor completely disparate – instead it coalesces around particular issues such as water politics, housing policies, or particular actions by the state and/or activists. Moreover the consequences of local action cannot be assumed as bounded to the local. Local actions have ramifications at multiple scales, and their origins and inspirations also derive from the multi-scalar nature of activist and community-based networks within and outside of South Africa. This complexity and plurality informs civil society organising as well as the range of relationships with the state.

Conceptualizing State-Civil Society Relationships
Models of state-society relationships have also been built on a dichotomy that distinguishes between processes of synergy (engagement) and processes of separation (opposition). Does the state act in synergy with civil society? Or, does the state act on civil society, forcing and shaping its engagement? Evan's (1995) work on 'embedded autonomy' provides a useful route out of this binary by arguing that 'successful developmental' states have some autonomy from civil society and market actors, but must also be embedded in society.

The depth and durability of the state's embeddedness are crucial for understanding state action, discourse, and the implementation of its developmental agenda through its relationships with particular groups in society. This argument proves useful for analyzing local politics, specifically the wide variety of relationships between the state and civil society that span from engagement to opposition. But, this type of model only provides a generic architecture or framework to articulate power relations between state and society. It charts out a continuum on which state-society relationships may be placed with 'developmental', successful cases on one end and 'predatory', failed examples on the other. Although useful at an international scale, this normative model is not able to differentiate relationships within a national context, or, for instance, within cities.

A second question thus arises: why does the state – its various institutions, policies, actors – act in uneven and unequal ways in different places, contexts, and with different groups? To conceptualize the differentiated experience of and character of civil society-state politics

– to move beyond a binary of 'good', 'bad', 'engaged', or 'oppositional' – requires another set of analytical tools. Here, Jessop's (1990) strategic-relational analysis of the state proves useful.

He argues that the state is constructed relationally – it is a site of, an agent in, and a product of struggles for power (through access to resources or decision making, for instance). This complex mix of roles, functions, and processes do not occur simultaneously or evenly. Rather, they coalesce in contingent and strategic moments, in places, and in particular projects. The combination of Evans's architecture of embedded autonomy combined with Jessop's strategic-relational argument facilitates analysis of the South African state's relationships with civil society.[11] Combined with examination of the geographies and diversity of civil society, this type of approach helps move beyond a binary of opposition and engagement.

Conclusion

In simplified terms, contemporary South Africa is marked by a competition over the right to be the legitimate representatives of 'poor people in struggle.' On the one hand are the hegemonic forces of the tripartite alliance and its civil society affiliates, with extensive symbolic capital rooted in and maintained through representations of the anti-apartheid struggle and post-apartheid political achievements. On the other hand are the new social movements that mobilize communities in a continued struggle for socio-economic justice and substantial democracy in the context of post-apartheid liberal democracy and neoliberalism. Whereas the hegemonic force (the tripartite alliance of ANC, SACP and COSATU) possesses extensive objectified political capital, the power of social movements (like the Anti-Privatisation Forum in Gauteng and the Western Cape Anti-Eviction Campaign) originates in their ability to mobilize communities for public acts of resistance and speak on behalf of the working poor.

The clash between policies for economic liberalization and struggles for socio-economic justice is an ongoing multi-faceted struggle. The local and national politics it generates are diverse and dynamic with everyday civil society characterised by balancing acts between political engagement and opposition. While political engagement may grant access to material resources for community development, it may also undermine the legitimacy of the movement as an independent representative of struggling people. On the other hand, community mobilisation may empower the movement in dealing with state institutions, but may also lead to branding as disruptive forces are made into a target for state repression.

The political discourses of the 'old anti-apartheid' and 'new post-apartheid' movements revolve around shared reference points, as both claim to be the legitimate representatives of poor people that struggle for social justice. This congruence creates a political space for constructive collaboration. The present period seems, however, to be marked by a growing mistrust between civil society organisations and actors from the state. On the one hand, state officials and politicians interpret activities by social movements and 'left' civil society as by definition, adversarial. On the other hand, activists and organisations interpret state actions as, by definition, neo-liberal and therefore counter to the interests of the poor and progressive politics. The polarization within and between civil society and the state in the post-apartheid period holds real consequences. We need more complex and grounded understandings of civil society[12] and less polemical constructions of state-society relationships as products of neoliberalism and democratisation to move beyond the polemic.

FOOTNOTES

1   See the following *Mail & Guardian* issues: June 18-24, June 25-July 1, p.30-34 and July 2-9, 2004.

2 See, for instance, Oldfield and Stokke (2004). Building Unity in Diversity: Social Movement Activism in the Western Cape Anti-Eviction   Campaign. *Globalisation, Marginalisation and New Social Movements in South Africa*, Centre for Civil Society, University of KwaZulu Natal.

3 'Civil society' is a term and concept that includes a wide variety of organizations with diverse forms and politics. The broadness of its definition is problematic. Clearly 'civil society' organizations in South Africa span a continuumm from 'radical' social movements, political parties, civic organizations, to clubs and religious organizations, for instance. In this paper I draw reference to community-based organizing (the focus of my empirical research) as 'civil society', I am not arguing that civil society should be so narrowly defined. Although I do not include this in my analysis, a typology of South African civil society would be useful to better understand the diverse practices and politics the term encompasses.

4 This polemic resonates with national-level African National Congress rhetoric about the politics of civil society, illustrated in President Mbeki's castigation of the 'ultra left' and their project of 'disunity' and the ANC deputy secretary general Mthembi-Mahanyele's contrast between "positive social formations" that have responded sympathetically to the government and those with which "we have a bit of a problem" (Electronic Mail and Guardian, 15 August 2003) – in other words, President Mbeki's 'ultra left.'

5 Similar issues are articulated by Johnson (2002) as the question of reconciliation of popular movements and mass mobilizations with liberal democracy and Mangcu as a shift 'from the lifeworld of social movements to the systems world of bureaucrats and technical experts, all in the name of empowerment and reconstruction" (2003: 288).

6 In contrasting these groups, I am not arguing that the South African context represents a 'level playing field.' Groups have differential access to power. Actors and institutions that promote engagement often work with or closely to state resources, policy, and administrative channels. In comparison, 'anti-neo-liberal' activists face a dire shortage of financial and administrative resources.

7 The effectiveness and politics of forums in post-apartheid South Africa is a topic that requires systematic research attention.

8 See the series of articles in the Sunday Independent in June and July, 2003 by the Minister of Water Affairs and Forestry, Ronnie Kasrils, and academics Patrick Bond and David McDonald debating not only the survey statistics but also their interpretation.

9 For instance, of the 87 736 cutoffs done between 1996 and early 2001 in the Tygerberg Administration of the City of Cape Town, 52 670   households were reconnected illegally (McDonald and Smith 2002: 31, quoted in Xali, 2002: 116).

10 There is an extensive historical and contemporary literature on South African civil society. See, for instance, debates in *Urban Forum* and a variety of Centre for Policy Studies reports.

11 For a more detailed discussion of these issues see Oldfield (2002).

12 The Centre for Civil Society, University of KwaZulu Natal, has just completed a project on 'Globalisation, Marginalisation and New Social Movements in Post-Apartheid South Africa' that takes significant steps in this direction. The individual reports on seventeen different South African social movements are available on the Centre's website and the analysis has been drawn together in a book edited by Habib A., Valoidia I., and Ballard R. (forthcoming).

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Community Participation and Democratic Practice in Post-Apartheid South Africa: Rhetoric vs Reality[1]
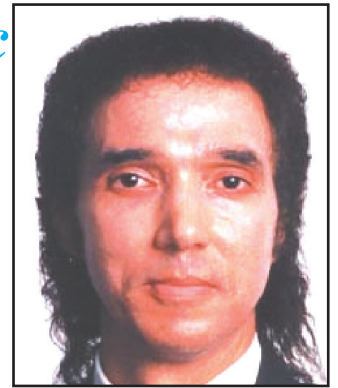
By: John J Williams[2]

Community participation is important in post-apartheid South Africa with regard to the design, implementation and evaluation of integrated development planning at local level. This paper evaluates a number of research projects to assess community participation in Cape Town from 1994 to 2004. Evidence, however, suggests that community participation has been largely rhetorical and not substantive. Thus, with a view to encourage strategic engagement of communities with local authorities, this paper suggests a range of conceptual, theoretical and practical steps to advance transformative planning practices at grassroots level. Hence the importance of substantive elements of community participation such as the initiation, identification, orientation and authentication of participatory processes.

Keywords: South African constitution, local government, integrated development planning, policy debates, programmatic purpose, planning bureaucracy, grassroots, Area Coordinating Teams, Mayor's Listening Campaign.

1. Problem statement and key arguments

The direct involvement/engagement of ordinary people in the design, implementation and evaluation of planning, governance and overall development programmes at local or grassroots level, has become an integral part of democratic practice in recent years.[3] In the case of post-apartheid South Africa, community participation has literally become synonymous with legitimate governance. In this regard, for example, the Municipal Structures Act, Chapter 4, states that "[t]he participation of citizens in the structures will... revolutionise the way that local governance happens at the metropolitan level. Individual municipalities will be empowered to decide what is best for their situation, with the guidance of national legislation that permits a variety of forms of local participation" (RSA,1998). Yet, it would seem that most community participation exercises in post-apartheid South Africa are largely spectator politics, where ordinary people have mostly become endorsees of pre-designed planning programmes, often the objects of administrative manipulation and a miracle of reconciliation in the international arena of consensus politics whilst state functionaries of both the pre- and post- apartheid eras ensconce themselves as bureaucratic experts summoned to "ensure a better life for all".

Informed discussions and rational debates on the merits and demerits of specific planning programmes are literally non-existent, even though "community participation" features as a key component of planning programmes at local level. In short, it would seem that the bureaucratic elites of officials and councilors are determined to impose their own truncated version and understanding of "community participation" on particular communities. This highly atrophied form of "participation" seems to be working precisely because in the South African version of democracy, the party is everything and the constituency is nothing[4] (except every four years when it is required to vote for a specific party). Such a limited form of democracy gives rise to an administered society, not a democratic society, as the consent for governance is not earned through rigorous policy debates of the merits and demerits of specific social programmes, but political acquiescence is manufactured through the skilful manipulation by

a host of think-tanks, self-styled experts, opinion polls and media pundits. Indeed, often community participation is managed by a host of consulting agencies on behalf of pre-designed, party-directed planning programmes and is quite clearly not fostered to empower local communities. Hence the largely nebulous forms of community participation in one of the largest municipalities in South Africa, the City of Cape Town. This paper reviews community participation in Cape Town with the view to advance specific strategies to effect more meaningful forms of engagement, dialogue and empowerment at grassroots level.

The rest of this paper comprises three interrelated sections, viz:
• Post-apartheid constitution and its significance for community participation
• Some examples of community participation in Cape Town: 1994-2004; and
• Conclusions and recommendations.

2. Post-apartheid Constitution and its significance for community participation

The history of the struggle against Apartheid in Cape Town indicates that community participation depends to a great extent on the nature of organization and mobilization at grassroots level as well as the programmatic purpose of such participation (Williams, 1989). Defined in such terms, community participation is quite clearly not an unproblematic engagement of contestatory power relations. On the contrary, community participation is often driven by specific socio- economic goals that seek to ensure a "better life for all", especially for those who have been historically marginalized during the successive colonial-cum-apartheid regimes in South Africa. Indeed, South Africa, especially as a post-apartheid constitutional state, has adopted a policy nomenclature that is replete with notions of public participation, grassroots-driven development and participatory governance(cf eg RSA, 1993; 1995; 1996,a,b,c; 1997, 19981,b; 1999, 2000). Even so, extant literature suggests that the very notion

of participation assumes a wide range of discourses, meanings and applications within and across different contexts (Friedmann, 1992). More importantly, perhaps, it would seem that participatory modes of governance and decision-making are profoundly influenced, if not shaped, by the contradictions, tensions, conflicts and struggles straddling not merely the political relations of power but also the economic and ideological apparatus at local level (Williams, 2000). Indeed, the World Bank and the International Monetary Fund, in recent years have made 'public participation' a type of mantra to effect meaningful change in the lives of poor people (McGee with Norton, 2000). Moreover, the World Bank[5] has launched a special website called " Voices of the Poor", to provide the necessary educational and training materials for "people-centred" development at local level, a sentiment that also resonates profoundly in post-apartheid South Africa.

It should be stressed, however, that local government in South Africa had until the early 1990's no constitutional safeguard, as it was perceived as a structural extension of the State and a function of provincial government. In terms of community participation, South African history reflects very little opportunity for community participation. The fact that most of the population had no political rights until 1994 demonstrates the total absence of participation of any sort. Instead the method of government was highly centralised, deeply authoritarian and secretive, which ensured that fundamental public services were not accessible to black people (Williams, 2000).

Indeed, in the wake of the abolition of Apartheid in 1990, local government assumed an important role vis-à-vis institutional transformation. Hence public policies were formulated to create "people centred development", predicated, amongst others, on democratic practices such as equity, transparency, accountability and respect for the rights of citizens, especially ordinary people: the poor, homeless and destitute (ANC, 1994; RSA, 1995; 1999; 2000).

With a view to ensure bottom-up, people-centred,

integrated development planning at grassroots level, the South African Constitution, in subsection 152 e) states that "[t]he objective of local government is to encourage the involvement of communities and community organisations in the matters of local government" (RSA, 1996a). Whilst, as a broad theoretical statement of intent, this constitutional provision for community participation in the affairs of local government, appears to be quite a radical posture insofar as it ensconces of the right of citizens to contribute towards the form, substance and overall dimensions of their respective communities. In practice, however, this constitutional right encounters profound structural limitations in the midst of bureaucratic institutions where uneven relations of power militate severely against such a constitutionally-driven community participatory model of development planning at grassroots level.

Extant literature suggests community oriented development plans presuppose the existence of community forums and related contractual relations through which communities can express their specific concerns and priorities to a particular local authority. This also means that communities are sufficiently conscious of their rights and obligations as citizens at grassroots level vis-à-vis a specific municipality, ie, effective municipal governance at local level is often the outcome of the quality of deliberative skills and civic commitment in local communities, ensuring that tensions and contradictions in development plans are resolved through the rigorous interaction between municipal councillors, officials and community organizations (Lavalle, 2004).

Most researchers also agree that there are various factors that contribute towards meaningful community participation at grassroots level vis-à-vis a particular local authority (municipality), such as the existence of community fora to (re)present the concerns and interests of a specific community to a specific planning authority, reliable and reciprocal contractual relations between the voters and their elected representatives and the political will (commitment) from councilors and officials

in a specific municipality to ensure effective, efficient and sustainable community participation in development planning programmes (cf eg Friedmann, 1992; Fung and Wright., 2001). Since ten years of democratic rule has just been celebrated in South Africa, the question arises: what is the status of these theoretical assumptions and experiential insights on community participation at local level in South Africa? With a view to reflect on these theoretical perspectives, the ensuing section considers briefly some examples of community participation in on one of the biggest municipalities in South Africa, the much-vaunted and self-avowed liberal City of Cape Town, 1994-2004.

3. Some examples of community participation in Cape Town: 1994-2004

In the City of Cape Town, where the author worked from 1990 till 2004 as a Principal Urban and Regional Planner (Policy & Research), there were various attempts at encouraging community participation in the development programmes of Local Government, ranging from critiquing local area planning in 1989, the definition of a metropolitan spatial development framework in 1991 to the revision and elaboration of various drafts of service delivery programmes, eventually resulting in a number of Integrated Development Plans for the City of Cape Town.

Williams (2003; 2004a,2004b) examined Area Co-ordinating Teams (ACTS) as a mode of engagement by the City of Cape Town to 'foster' community participation in development planning at grassroots level in the historically neglected areas of Hanover Park, Heideveld, Manenberg, Langa and Guguletu. He used both open-ended interviews and structured questionnaires to ascertain the levels of understanding, co-operation and commitment to community participation in the design, implementation, monitoring and evaluation of integrated development planning projects and programmes in Metropolitan Cape Town.

Williams concludes that Areas Coordinating Teams

constitute good public policy – on paper. By creating institutional space and opportunities where individuals, community organizations, Council administration and elected representatives can sit and discuss issues affecting their lives, whether it be improvement of infrastructure, housing, health, or any other service which are provided by local government, should be encouraged and sustained. In practice, though, ACTs are a structural failure. Not only are the issues raised at the ACTs completely non-binding, as Council is not obliged to follow through on any issue raised through ACTs. Also, often individual officials and Councillors who are supposed to be participating in ACTs are not obligated to attend the scheduled meetings. Thus, for ACTs to become effective instruments of fundamental social change, Council must support ACTs, both by passing appropriate by-laws to institutionalize them officially and to draw up a code of conduct that compel officials and councillors to attend and take seriously scheduled meetings and related development planning initiatives. In their present format, therefore, it can be concluded that ACTs have been implemented mostly for their symbolic value rather than to empower communities and to transform the unequal relations of socio-economic power in the City of Cape Town.

This means that it is not so much the presence or absence of community organizations at grassroots level that determines the nature and impact of community participation on local government development programmes, but whether or not their ideas and proposals with regard to development strategies are taken seriously by a specific local authority and incorporated into their specific Integrated Development Plans [IDPs]. For example, in the case of Cape Town, Mackay (2004)[6] indicates that whilst community organizations, in the form of Development Forums, are well organized in the Khayelitsha Sub-councils and in the Mitchell's Plain Sub-council areas, this does not mean that their development proposals enjoy the necessary consideration by the Planning Department of Cape Town. Here one can readily refer to the Mayor's Listening Campaign through which various meetings

were held in 2004/2005 to allow community representatives to influence the annual budgetary process by making specific recommendations on particular service delivery programmes to the planning authorities in the Municipality of Cape Town. Yet, institutionally, the City of Cape Town does not seem to have the necessary structural and logistical support base [in place] to collate, analyze and integrate the various proposals into their planning progammes as community participation is not driven or facilitated by the IDP Directorate but by the largely dysfunctional Transformation Directorate, the nebulous Social Development Directorate and the nominal Sub-Councils Directorate. Whilst the IDP Directorate, in terms of the Municipal Systems Act, Act No 32 of 2000, is supposed to ensure effective community participation in a municipality's s Planning Progamme, yet, in the case of Cape Town, for example, the specific directorate in question, does not seem to have either the logistical capacity nor the human resources to comply with this statutory requirement. Consequently, community participation in relation to the IDP is largely a ceremonial exercise and not a systematic engagement of communities to influence the Development and Service Delivery Programmes of the City of Cape Town. Equally important, in Cape Town, there are no real institutional structures to co-ordinate, evaluate and monitor community participation in the formulation, implementation and evaluation of the Integrated Development Planning.

Hence, the institutional conflicts that seems to exist in Cape Town in relation to community participation. In this regard, Mac Kay's research (2004, pp 60-108) is quite revealing: For example, whilst in Cape Town, the Transformation Office claims responsibility and accountability for community participation, yet it lacks the requisite facilitation or co-ordination infrastructure and skills to execute this statutory task. In fact the two Public Participation practitioners are unskilled, lacking the required training and knowledge base in public and development management methodologies to function optimally. Hence the obvious lack of communication

and co-ordination of logistics during the IDP's participation sessions from 2001 till 2004.

Community participation processes, for example, were arranged at the Mayoral Office, yet, not a single community organization or individual member of the community was actively involved in arranging meetings or making input as to how the IDP should be conducted. Also, not a single community organization or NGO participated in the assessment of the form of public participation the community needs, analysis or the way forward regarding budgetary alignments. Whilst popular participation was supposed to be the main planning approach, yet the City of Cape Town simply expected communities to support pre-designed IDP programmes without explaining to them the substantive processes informing such programmes. For example, right from the inception of the post-apartheid municipal government in Cape Town after December 2000, and especially during the Mayor's Listening Campaigns in historically neglected areas, Councillors and officials failed to explain the current state of service delivery to communities or the purpose of the IDP; how the IDP would evolve; the benefits the IDP offered for communities and the consequences if they did not participate in statutory planning processes. Consequently, communities attend these supposedly participatory meetings (Mayor's Listening Campaigns) as ill-informed or non-informed spectators. Hence there is a notable decrease in attendance by communities at public participation meetings since 2001, perhaps because they do not trust Council. Such distrust could very well be related to the fact that, institutionally, the public participation process does not seem to receive the necessary co-operation from Council officials. For example, in the case of the communities of Mitchell's Plain and Kraaifontein serious questions were raised about the scrapping of rent arrears and problems pertaining to service payments, yet these questions were not answered by the City of Cape Town Finance Department. Also, feedback is seldom, if at all given to communities after the workshops such as the Mayor's Listening Campaign of June 2003.

Indeed, in Cape Town in 2004, ten years since the birth of democracy in South Africa, communities still do not receive equal electricity services. Black communities, residing in areas maintained by ESKOM, do not receive the minimum government contribution of 60 kilowatts like those largely white communities who reside in municipal areas. Indeed, generally, services are still delivered on the same racial basis as they were delivered prior to the birth of the non-racial Uni-city in December 2000.

In fact, racial boundaries in service delivery still exist and attitudes of management have still not changed (Williams, 1998; 1999a, 2000). For example, in Cape Town, the method of waste removal is disproportionate because solid waste, trashed in standard black bins on wheels, in white areas, is removed on a weekly basis while Big Dumping Waste Bins (a hygiene threat) in Black areas such as Wallacedene and Scottsdene are only removed when the need arises – ie they are removed on an irregular basis. In plain language, this means that whites are still the privileged group in post-apartheid Cape Town. In view of this skewed form of service delivery, the Mayor's so-called Listening Campaign remains largely an expedient, public relations exercise, and cannot be considered as an appropriate conduit for effective community participation in the development and service delivery programmes of Cape Town.

4. Conclusions and Recommendations

Based on the preceding examples of community participation in Cape Town, it is clear that often the non-existence of community organizations undermines community participation.

It is, therefore, necessary that communities organize themselves into civic bodies that can represent their interests at local government level. More importantly, perhaps, in historically marginalized sections of society, communities should revisit their richly-textured experiences of organization and mobilization against

the apartheid state, and adapt such strategic forms of engagement and dialogue to empower citizens at grassroots level. In short, the birth of democratic South Africa does not mean the realization of a more equitable socio-economic dispensation. This specifically means communities should not cease to organize, on the contrary, they should refocus their organizational and mobilization energies and goals to ensure socio-economic development programmes commensurate with their enshrined constitutional rights, such as the right to life and overall human dignity (Williams, 1999b; 2000a,b,c). Local government planning programmes can only contribute towards these citizen rights if communities are aware of their rights and specifically their right to participate in local government planning programmes.

• Hence, in this regard, it would perhaps be useful to review and adapt those models of mobilization that communities used to plunge the Apartheid State into systemic crisis that resulted in the birth of a democratic South Africa on 27 April 2004 (Williams, 1989). These community forms of struggle included, amongst other strategies, issue-based protests and mass demonstrations against poor services (Ibid). It is only when communities realize that, unless they are informed citizens claiming their constitutional rights through effective community participation in local planning programmes, only then they can ensure a more equitable socio-economic dispensation in historically marginalized sections of the post-apartheid society (Williams, 2003; 20004a,b). Relying on the good intentions of the bureaucratic elite of local government, as borne out by their highly questionable record since 1994, quite obviously does not take them to the Promised Land of "a better life for all". This, however, does not mean that the bureaucratic elite of councilors and planning officials have no role to play. On the contrary, they can make a very important contribution to effective community participation by, amongst other practical steps:
• acquire the requisite skills and knowledge of public

participation, civil society, local government;
• promote education and literacy skills in historically neglected communities;
• understand community views on participation.
• encourage voluntary participation;
• ensure that the public's contribution will influence planning decisions;
• ensure equal opportunities for participation;
• seek out and facilitate the involvement of those potentially affected;
• communicate to participants how their input affected the decision;
• provide participants with the information they need to participate in a meaningful way;

 Most importantly perhaps, Councillors and officials must realize that community participation is not a neutral endeavour. Hence they must consider the following planning issues that impact on community participation vis-à-vis integrated development planning at local level, viz:

• **intervention:** who makes the decision(s) with regard to specific issues eg officials or councillors or civil society bodies or all of them and how?
• **initiation** of specific steps to change existing situation on the ground eg in terms of Reconstruction and Development Programme [RDP]: what is the origin of specific development of policies? Were they local, national, regional or global and why?;
• **identification** eg who identifies specific policy issues: what factors impact on particular service delivery programmes? Are they all taken into consideration? If not, why not?
• **orientation**: eg whose voices are heard, what are the overriding perspectives, ideals, frame of reference, intended beneficiaries?;
• **authentication**: eg are there instances of co-determination of service-related issues, ie partnerships with specific community groups ? Are these partnerships sustainable?

FOOTNOTES

1 The author thanks the two referees for their helpful comments. He, however, is responsible for any remaining errors

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3 In this regard, see for example: http://www.ids.ac.uk/ids/particip/information/index.html#introart

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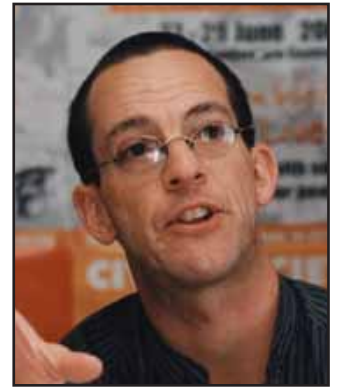
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Constitutionalism and the Politics of the Treatment Action Campaign (TAC)

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Looking back on ten years of democracy, one of the things that most distinguishes the Mandela government from the Mbeki government is the emergence of a more focused and visible left opposition to some of the policies and omissions of the government. This has taken a range of forms including the consistent criticism by COSATU on economic policies such as GEAR and its consequence in job losses and privatization, as well as the emergence of a variety of 'social movements', that are vociferously challenging government on issues such as landlessness, evictions, electricity cut-offs and water tariffs.

The Treatment Action Campaign (TAC) is often listed as one of these movements. However, one of the factors that distinguishes TAC from most other pro-poor organisations is the opportunity it has seen and the advantage it has taken of the Bill of Rights in South Africa's Constitution and of a wide variety of constitutionally mandated statutory bodies[1]. At different points the TAC has directed its campaigns through the High Courts, the Constitutional Court, the National Economic Development and Labour Council (NEDLAC), the Human Rights Commission, the Public Protector, the Commission on Gender Equality and the Competition Commission.

This article examines how TAC links its advocacy for HIV treatment to the Constitution, as well as its approach to alliances and the political contest over what policies are best for the poor as has become evident in the new South Africa.

Struggle and South Africa's Supreme law

There is no disputing that the final Constitution of the Republic of South Africa (1996) is the product of a negotiated settlement, which, even whilst it allowed for majority rule, left pre-1990 class relations largely undisturbed. Rather than producing a big bang that fulfilled the ANC's election slogan of 'Jobs' and 'Land' for the previously disenfranchised, it set these goals as aspirational values, promising "human dignity, the **achievement** of equality and the **advancement** of human rights and freedoms." (my emphasis) Undoubtedly the Constitution entrenches some of the compromises on fundamental rights that were made in the pre-1994 negotiating process[2]. However, centuries old political conflicts are rarely resolved on a piece of paper and it might be argued that one of the inherent strengths of the Constitution is precisely its unambiguous signal that, by 1996, the transformation of South Africa was still unfinished business. Indeed, with its non-derogable references to human dignity and equality and with its command that the state must 'promote and fulfill' the rights in the Bill of Rights it invites – and offers to order – future contestation over the best way to improve the lives of the historically disadvantaged. Similarly, the finding of the Constitutional Court in its very first judgment[3] that 'socio-economic rights' are justiciable was a signal that the Court would pass judgments in future cases of conflict over whether government was fulfilling its positive duties to better people's lives.

In the light of this, there are two approaches to the Constitution that can be adopted by organizations campaigning to better the lives of the poor: one approach sees it as an ossified and incontestable legitimization of relations of inequality and refuses to engage it other than describing it as a 'sell out'. This approach is

manifested in organizations like the Anti-Privatisation Forum, who protest that in the new South Africa "the capitalists are protected… the roots of this lie in the Constitution, which protects private property; a constitution that the Alliance, including the SACP, willingly agreed to"[4].

Another approach sees the Constitution, and the Bill of Rights in particular, as a site where battles can be fought to leverage the social and economic position of the poor beyond what was granted in 1994, as well as to contest new incursions of policy and law on poor people that emanate from the new government. The TAC chose the latter approach.

Since late 1998, the TAC has constantly invoked Constitutional Rights to legitimate and promote demands for access to treatment for poor people. In this context it is important to note that the Bill of Rights does not only have value for social activists in the actual process of litigation, but also as part of securing and holding a moral high ground and mobilizing people to stand up for their rights. Similarly, it is not only of use in holding the State to account, but can also be used to restrain abuses in the private sector. Generally, TAC has used law and mobilization concurrently. For example, when TAC challenged the Pharmaceutical Manufacturers Association (PMA) in 2001 and the multi-nationals GlaxoSmithKline (GSK) and Boehringer Ingelheim (BI) in 2002-03, both in court and out of court, intellectual property 'rights' and their application were challenged legally and politically on the basis of constitutional rights to life, dignity and access to health care services. Whilst arguments took place in court, demonstrations were held outside: often the former reinforced the moral claims of the latter.

The result was that in both cases powerful multi-national companies backed down, ceding considerable ground in the process. In 2001, for example, the PMA's decision to withdraw its legal action against the government made it possible for the government to implement policies of mandatory generic substitution, substantially lowering the cost of medicines and reducing the profits of multi-national companies. At the time the *Sunday Times* estimated that this would result in savings of over R2bn per year for consumers of medicines. Similarly in 2003 the settlement agreement negotiated between TAC and BI and GSK, under the auspices of the Competition Commission, led to the two companies effectively surrendering their intellectual property rights, and thus their markets, on three essential anti-retroviral medicines and their combinations[5]. By December 2004 GSK had issued voluntary licenses to five different companies, including its Cipla, an Indian generic company that had never previously been the beneficiary of a licence from GSK. These two examples demonstrate the value that resides in the Constitution and the law to challenge private profiteering. Some critics of this approach, challenge it on the grounds that the victories are only temporary reforms with no impact on the relationships of power that cause the problem in the first place. This too is mistaken: there is no doubt that legal action and high-visibility campaigns against profiteering from medicine influenced the World Trade Organisation's (WTO) August 2001 clarification of the TRIPS agreement and its explicit declaration that intellectual property rights may be over-ridden, not only in cases of emergency, but in the interest of public health generally "and, in particular, to promote access to medicines for all.[6]"

In addition to applying human rights law against human rights violations by the private sector, TAC has also demonstrated how advocacy campaigns combined with litigation can be used to hold the government to account and to compel it to implement policies that favour the poor and disadvantaged. However, this too is contested, not surprisingly by both the government and the ANC. In an edition of *ANC Today* in November 2004, TAC's use of the constitution and frequent threats of litigation against government are belittled by an (unnamed) writer. Whilst it is admitted that the use of legal action "at face value .. may appear to be based on a genuine cause to further the interests of people living with HIV and AIDS" it is claimed that in reality this is merely an expression of an "academic desire to test the limits of our constitution and the law in general in pursuit of

[the TAC and AIDS Law Project's] subjective goals as lobby groups.[7]" The author goes on to boast that despite:

> "All the efforts and resources that are invested in pre-court case processes, none of the legal threats has ended up in court except for the case around the use of nevirapine … which dragged on for the most part of 2001 into 2002."

In the same article the ANC argue, "An independent judicial system that is fair and able to promote and defend social and other rights of citizens is all that we desire." This is a desire that is shared fully by the TAC, which has used litigation and legally created bodies, not with the objective of frustrating or maligning government, but as an instrument to advance policy in circumstances where other democratic avenues have been closed. Thus, for example, the litigation around the use of Nevirapine for the prevention of mother to child HIV transmission, came at the end of a long and failed process of engagement with government, rather than at its outset[8].

More recently, the threat of litigation to compel the government to adopt a mechanism for the interim procurement of anti-retroviral medicines came about as a result of a refusal by the Minister of Health to countenance legally sanctioned methods to purchase medicines in the absence of the finalisation of the official tender process for the procurement of anti-retroviral medicines. Given that even by December 2004 tenders had not been awarded is proof that the result of this was going to be to delay the start of the ARV rollout by over a year, at a cost of tens of thousands of lives. However, in a demonstration of its bona fides and as evidence that TAC is not just engaged in an "academic exercise", in March 2004 the TAC withdrew its legal case within hours of receiving a letter from the Minister of Health reporting that the Health MINMEC had agreed to interim procurement measures.

Similarly, in November 2004 TAC's resort to the High Court in an application for access to the Implementation

Schedules for the *Operational Plan on Comprehensive HIV and AIDS Treatment and Care*, became necessary after 11 unsuccessful attempts were made to request this information in letters to the Department of Health, Parliament and the ANC – as well as through the procedures that are set out in the Promotion of Access to Information Act.

TAC's critics on the left and the right dispute what litigation has achieved, but again the outcomes are very tangible and concrete. According to the 2004 Annual Report of the Health Ministry there are now 1,600 sites providing MTCT services (as opposed to 18 sites that the Minister spent over R4 million defending in the legal action against TAC); by December 2004, nearly 20,000 people were receiving ARV's through the public sector (in contrast with none one year earlier); and the budget for HIV prevention and treatment has been increased to R12 billion over the next three years.

Contrary to the assertions made in *ANC Today* this would not have been achieved without litigation, something that is admitted by the Minister of Health in a report of the Public Protector, where she states that "Government's cautious approach to the use of ARVs, not withstanding their wide use in many developed and developing countries, was accelerated by the judgment of the Constitutional Court in the TAC matter.[9]" Report Of The Public Protector On An Investigation Into Allegations Of Impropriety In Connection With The Approval By The Cabinet Of An Operational Plan For Comprehensive HIV And AIDS Care, Management And Treatment For South Africa, Designed By The National Department Of Health, October 2004, para 9.8

In conclusion therefore it is worth reminding both the government and the 'social movements' that the legal framework that was introduced in 1994 very consciously created institutions intended for use by the poor and disadvantaged, of whatever hue, to pursue – via democratic and legal means – a better life for all. It foresaw that governance would bring with it a contest between opposing class interests and that on occasion even a democratic government would act in

a fashion contrary to the interests and needs of parts of our society. In such cases resorting to the courts to determine the exact meaning of, and duties created by Constitutional rights would be justifiable. This, presumably, was what the late Dullah Omar, South Africa's first Minister of Justice, envisaged when he told the first conference of the Human Rights Commission (SAHRC) in 1997 that:

> "I have one fear concerning the Bill of Rights … Because of the imbalances we have inherited, only a few people have the capacity to enjoy their rights and the danger that we face is that the Bill will be the sole preserve of the rich and powerful."[10]

Approach to alliances:

The campaign for treatment is, of necessity, a political one, but TAC has always avoided projecting itself as a new political force. It has also avoided simplifying South Africa's political transition via a crude reductionism that describes the ANC and all its allies as having 'sold out' the poor. TAC views the ANC as a heterogenous organization, that encompasses both people whose sole aim is to exploit it for what Nelson Mandela recognized as "instant gratification[11]", as well as people fully committed to the democratization and development of South Africa in a fashion that dramatically improves the condition of the poor. As the 1999 and 2004 elections demonstrated, the ANC also still attracts the expectations of most of the countries' poor. It is for these reasons that, in all of its campaigns, TAC has expressed a broad sympathy with the ANC and its alliance partners, COSATU and the SACP. This permits a real engagement over difficult political and policy issues and even though TAC has pushed conflicts over ANC-decided policy into litigation and sometimes bitterly accusatory protest, it had continued to collaborate with government and the ANC with the implementation of good policies and programmes. The positioning of TAC's advocacy within the broad church of the ANC alliance has sometimes created a tension between the loyalty that most ordinary people still have to an essentially progressive government and party, and the constitutionally enshrined rights to freedom of expression (section 16) and the right to "assemble, to demonstrate, to picket and to present petitions." (section 17) In this respect it is arguable that TAC's campaigns have contributed to the deepening of democracy precisely because they have always been situated in the 'mainstream' of progressive politics, forcing individuals and organizations into moral and political dilemmas that they can easily avoid when a pro-poor movement conducts itself in a fashion that allows it to be cast – rightly or wrongly -- as 'the ultra-left'. This was recognised by Graca Machel who, in 2003 said of TAC:

> "that South African democracy is stronger for the efforts of those we recognize tonight, we need to rejoice because their efforts have helped move this country closer to that idealized just society.[12]"

In this context another point needs to be made: in pursuing the issues that link themselves to access to treatment it is important to project the demands of the poor and people with HIV for social justice and fairness in a manner that is not clouded by a meaningless political dogma which may alienate potential supporters. Thus, whilst there is no disputing that capitalism and the path followed by globalisation (rather than globalisation itself) are major determinants of both the global spread of HIV and inequity in treatment, little benefit accrues to 21st century poor by campaigning around aspirational but meaningless slogans such as 'Smash capitalism – Build Socialism now'. Neither is there advantage in using the AIDS epidemic, or other social ills, to persuade a new generation of people angered by poverty that the ANC government will 'sell out the poor'. The challenge is to make the constitutional state fulfil its duties and work for the poor by pushing the limits of social reform to ensure that people's dignity as well as the tangible advancement of all of their "human rights and freedoms" does take place.

TAC is categorised by some as a social movement presumably because it has mobilised thousands of people who are predominantly young, black, unemployed, female and have HIV. But the campaign for access to HIV/AIDS treatment has simultaneously been able to attract the sympathy and active or passive support of middle classes, and even some of the propertied and 'bourgeoise'.

Some of the 'left' have described TAC's use of the law and its location within the Alliance as a class compromise of poor people's interests. In particular they lament TAC's continued efforts to engage the ANC[13]. But achieving a broader appeal for issues of inequality around HIV/AIDS has not been done through compromise – but by highlighting the human consequences of inequity, putting forward rational arguments, and continually appealing for justice. In this respect, it is instructive that some of TAC's most 'radical' campaigns – including the 2003 civil disobedience campaign -- created extensive public debate on the issues they raised and drew support for across both class and race lines. These campaigns also provide examples of how, even within TAC's support base, initial disagreement gives way to support in the face of engagement and persuasion. For example, in 2000 TAC was publicly criticised by COSATU when it first broke patents by unlawfully importing generic Fluconazole from Thailand. However, one year later, COSATU Deputy President Joyce Phekane, was part of a TAC delegation that went to Brazil to collect and import generic anti-retrovirals.

Whither TAC?

Thus far, HIV/AIDS has been the catalyst, and TAC the vehicle for the awakening of a new generation of socio-political activists in South Africa. In the 1970's the Soweto Uprising, followed by the emergence of the independent trade union movement, also gave birth to a new generation of political leaders. Individuals such as Murphy Morobe, Mosiua Lekota, Cyril Ramaphosa, Cheryl Carolus and many more were inspired by the power of the poor that, they felt,

unleashed in the uprisings and strikes against apartheid and its laws. They were also inspired by the potential of the organizations that they had created, such as the United Democractic Front (UDF), the Federation of South African Trade Unions (FOSATU) and then later of COSATU, to overthrow apartheid. A momentum grew behind a diverse social movement that led to the cumulative strengthening of civil society, despite intense repression, over a period of 20 years.

But here the similarities end. Anti-apartheid activists had to hide from the police and other agents of the State -- but were succoured and shielded in communities they came from. Their heroism was acknowledged from the outset and those who died – such as Hector Petersen, Matthew Goniwe, Ruth First - were memorialized instantaneously. Organising in the AIDS epidemic is different. Despite the advent of formal democracy and constitutionally entrenched rights to equality and dignity, community organization around HIV is more difficult. Stigma and denial suffocate people with HIV/AIDS and inhibit organized responses. This was borne out in South Africa's 2004 general elections where the issue of HIV/AIDS was not formally raised as a priority by the electorate – despite the fact that it is a cause of pain and suffering to millions of people. Based on research that showed this, the ANC decided to downplay and largely ignore the AIDS epidemic during its election campaign. Arguably this added to the stigma, by creating an image of South Africa on the tenth anniversary of democracy that was a picture of robust health, zeal and an awakening and revival of African culture. Bed-ridden people in hospitals and 'home based care', or people with the visible scars of HIV infection, must have struggled to find themselves in these images, strengthening the inclination to lie low and die rather than spoil the party. A final but crucial difference is that whilst anti-apartheid activists risked and suffered assassination, HIV is more cruel. Many of the TAC's community leaders who mobilized ordinary people behind the struggle for treatment have died -- despite their best efforts to stay alive. In reality HIV has a greater capacity to rob civil society of its nascent social capital than the apartheid

security police, vicious though they were. As acknowledged above, the HIV/AIDS epidemic is a manifestation of economic and social inequalities and a 'new world order' that condones this type of crisis. In 2004 TAC has begun to redirect its campaigns to focus more singularly on the health system generally. However, the campaign will remain a focused one because whether (or not) people have obtained access to treatment is a narrow and easily quantifiable objective. Gradations of success or failure are easily determined. This continues to allow the setting of goals, self-evaluation and prevents the watering down of objectives. Put bluntly, either people have access to medicine and dignified health care or they do not. In conclusion there is no doubt that in the mid-to-long term a health activist movement, such as TAC, has to establish alliances with genuine social movements to address both the symptoms and aetiology of poverty and inequality. In the 1970s and 1980s the vision of an alternative form of socialist organization was a major driver and unifier of the anti-apartheid movement. There was a belief that, whatever the degree of adversity, apartheid and capitalism were historically predetermined (by a mixture of moral and Marxist reasoning) to give way to something better.

Today, the strong belief in social justice that has advanced organisations of the poor is much more cloudy and less theoretically elaborated – there is no philosophical underpinning or coherent alternative vision of the state and economy equivalent to that set out by Marxist theoreticians. Before long, social movements, including TAC, will have to confront this if human rights struggles, and the use of rights-based Constitutions, are to bring about lasting shifts in the economics of HIV/AIDS and poverty.

FOOTNOTES

1 This is not the only factor. At a recent workshop of 'social movements' (Globalisation, Marginalisation and New Social Movements in South Africa, 28-29 October 2004, School of Development Studies, Centre for Civil Society, University of KwaZulu Natal) TAC drew almost as much wrath from organisations aligned to the Anti-Privatisation Forum (APF), for its alleged *toenadering* with the government and the Alliance, as they express towards the government itself. TAC is variously accused of being too close to the government; too close to COSATU; or, too uncritical of traditional left anathemas such as the World Bank.

2 H Klug, Constituting Democracy, Law, Globalisation and South Africa's Political Reconstruction, Cambridge University Press, 2000.

3 Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of SA, 1996 (4) SA 774 (CC); 1996 (10) BCLR 1253 (CC) para 78.

4 APF Supports LPM: Land, Food and Jobs, pamphlet November 2004.

5 See The Price of Life, Hazel Tau and Others vs GlaxoSmithKline and Boehringer Ingelheim: A Report on the Excessive Pricing Complaint to South Africa's Competition Commission, available on . Also Competition News, the official publication of the Competition Commission, 'GSK and BI issue anti-retroviral licenses', February 2004.

6 *Declaration on the TRIPS Agreement and Public Health*, WTO Resolution WT/MIN (01)/DEC/2, Ministerial Conference, 20 November 2001.

7 *ANC Today*, Volume 4, No 4, 4-11 November 2004, 'TAC Court Case: Constant Legal Threats Don't Help HIV and AIDS Fight

8 Heywood M, Preventing Mother To Child HIV Transmission in SA: Background, Strategies and Outcomes of the TAC Case Against the Minister of Health, *SA Journal on Human Rights*, Vol 19, 2003 (2).

9 Report Of The Public Protector On An Investigation Into Allegations Of Impropriety In Connection With The Approval By The Cabinet Of An Operational Plan For Comprehensive HIV And AIDS Care, Management And Treatment For South Africa, Designed By The National Department Of Health, October 2004, para 9.8

10 A Omar, "Speech at the Opening of the SAHRC Conference" Conference Update, May 22, 1997.

11 N Mandela, Biko, Tambo and the RDP of the Soul, Umsebenzi, October 2004

12 Comments by Mrs Graca Machel on the Occasion of Presentation of the Nelson Mandela Award for Health and Human Rights, October 6, 2003.

The Double Edged Sword: Advocacy and Lobbying in the Environmental Sector

By Karen Reid and Desmond D'Sa

South Durban Community Environmental Alliance (SDCEA) is an environmental justice organization based in south Durban. Made up of 14 affiliate organizations[1] , and active since its formation in 1996, it is considered successful for many reasons, one of which is that it is a vocal and vigilant grouping in terms of lobbying, reporting and researching industrial incidents and accidents in this area. It contributes to the struggle against Environmental Racism for Environmental Justice and Environmental Health.

South Durban starts from the tip of the Durban Harbour and expands as far as Umkomaas in the south. Two major oil refineries are located here – Engen and SAPREF, who together with Mondi and Sappi (paper mills) are the largest polluters in south Durban. However, there are many other smaller industries (at least three hundred) here, and there is no comprehensive list of each industry and what it contributes to the toxic soup in the air.[2]

Advocacy and lobbying is one of the many tools used in south Durban, and the SDCEA has used this extensively to fight for better air quality in the locale, and this tool has led to many successes. At times this has worked but there are also times when it has back –fired, hence the double-edged sword. We will give concrete examples of this. The paper will initially examine current environmental issues in South Africa and then go on to some of SDCEA's successes, followed by some of the contradictions that are exposed by lobbying and advocacy.

Current environmental issues in South Africa are rooted in our social, economic, cultural and political context. The current thrust toward globalization and neoliberalism

has lead to increased poverty and unemployment. So many of these issues have environmental implications, and it is difficult to separate "the environment" from issues of water and sanitation provision, forestation, and pollution. The eradication of poverty is a key issue in South Africa and there is concern regarding South Africa's current industrial development. Every activity has an environmental impact, which is why environmentalists often advise a holistic integrated approach to development. The term "sustainable development" has well and truly been hi-jacked by government officials around the world, and especially in South Africa.

It would be encouraging to have government departments made aware of this fact. However, in reality the "Environmental Section" of a municipality appears to be tagged on a department on its own, merely handling Environmental Impact Assessments (EIA's) and giving advice on ecological issues. What environmental activists would like to see is a local government structure working with other departments in a way that takes into account the fundamental assumption that **everything** is linked and that water, waste and electricity (or any other) departments were all working to the same ends – to provide both services and employment for the citizen and to preserve the environment for future generations. (As opposed to cutting off citizens water etc and using "dirty" fuels for the generation of our famous cheap electricity). In other words, government departments need to promote environmental justice, not just to tag the word environment onto the end of concepts and documents.

Current environmental issues in South Africa are in

many cases the same for any social justice movement. Although everyone is aware of the impact of global warming, not many seem to realize that this could be "the end of the world as we know it". With the ice caps melting and the amount of plankton reducing, there are many species that we are about to loose. A recent article in *The Mercury* by Tony Carnie[3] gives an idea of some of the possibilities: by 2050 66% of all the species from the Kruger Park could be extinct, there will be 10% less rain, and plant kingdoms will shrink. However, in the local context, poverty is the number one issue, followed by problematic "industrial development" that seems to be supporting the accumulation of capital, instead of creating jobs. The current industrial development strategy that is being advocated by the South African government is certainly not "sustainable" by anyone's standards. For example, even though the South Durban Basin is a major employer of people, less and fewer jobs are being created here.

Another current "hot" issue is the issue of food. Big companies such as Monsanto are genetically modifying seeds. There are many issues here – one of which is the tampering of the actual genes of the plants, the other is the fact that companies are claiming to hold the patents of these plants. (And will thus accumulate capital). Companies and governments are pushing for the use of Genetically Modified Organisms (GMO's) as a way to solve the food shortage. However, this is just going to make the poor even more marginalized, as they no longer own their own seeds. This is a strategy that will cripple local farmers. They will have to pay more for seeds and pesticides etc. and then lose their independence, and will ultimately get trapped into an increasingly dependent relationship with those who own the seeds. In addition, pollination corrupts other plants and we will end up with a non-existent ecology.[4]

One of the underlying issues in the above example is that of technology. A recurrent underlying theme of many environmental issues in South Africa is this question. Whether we are looking at Eskom's Pebble Bed Modular Reactor (PBMR)[5] or Mondi's Multi Fuel

Boiler (MFB), the issue is that the First World is dumping their obsolete (and sometimes outright dangerous) technology onto the south, and making us pay.[6]

Communities pay for this with their health. When health problems escalate with technology in the north, the equipment literally gets shipped off to the south, where regulations are not as strict as those in the North.

This would link into current Carbon Development Mechanisms which attempt to balance out carbon emissions between the north and south, but in reality end up being yet another industrial development tool, that ends up giving money to the industrialists for projects with a green wash. It doesn't actually assist with reducing carbon emissions at all. However, we can all guess that South Africa is about to be flooded with projects with such a slant. The Bisasar Road is one of the first of these projects. Although the proposed project appears to be a good idea, it is the mechanism of carbon credits that is flawed in this instance; hence communities are appealing against this decision as well

SDCEA engagements: Organizing the people

SDCEA's first protests were made even before SDCEA was a formal body. In 1995, the then President Nelson Mandela went to Wentworth to open Engen's expanded plant, Phase 2. Engen had promised the community that they would install scrubbers, which were not fitted, resulting in the community protesting outside. This was SDCEA's initial public protest and ex-president Mandela insisted on speaking to the protesters present. The result of this was the biggest gathering of stakeholders in the Durban City Hall; approximately 600.This process was led by the former Deputy Minister of the Environment, Bantu Holomisa. The policy that came out of this process was that industry had to come up with programs to reduce pollution. This was a total failure and community groups like SDCEA had to continue to put environmental damage, incidents and accidents in the public domain, to get governments' response and attention. The process resulted in an agreement being drawn up

fine achievement on paper, but added the responsibility of monitoring the agreement. Communities perceived that Engen was not committed to the agreement, which led to further weakening of relations between communities and industry. Community organisations with limited resources end up "monitoring" corporate giants. Community challenges in terms of this monitoring include: lack of person power, lack of adequate skill, lack of time and shortage of funds.

Strengths and weaknesses of SDCEA

One of SDCEA strengths resides in its origin. Its membership is cosmopolitan, comprising of various creeds and racial groups. Creative thinking individuals and organizations formed this organization due to the realization that there would be strength in diversity Soon after its inception, members realized that the organization's credibility would lie with the quality of the information gathered on the various industries and on the many accidents and incidents that occur in south Durban. The media also turned out to be a crucial ally – and SDCEA has increased its use and effectiveness of this over the years. Another strength has been its ability to mobilize the local people around environmental issues. SDCEA has a number of volunteers that assist with everything from pamphlet distribution to taking Bucket samples

The "Bucket Brigade" consists of a group of people who take air samples when either the public complain, or when there is an incident or an accident. An air sample is taken which can be scientifically analysed either in South Africa or the United States. This has given SDCEA "scientific" credibility in that local industries and local government accept the bucket samples as a legitimate means of verification.

Effective use of research has also been a key in the success SDCEA has registered. It is pointless for a community organization to give out incorrect information. SDCEA has been sharing correct and relevant information in many different ways. SDCEA organizes a number of workshops, seminars and public meetings, which contributes towards public participation, education and mandates for action. We also give a number of presentations to diverse forums. Academics, local community support and knowledge have played a crucial role in organizing and synthesizing information. This led to international links, particularly with the Danish Nature Foundation who funded SDCEA for the Comparative study between Oil refineries in Denmark and Durban. By comprehensively researching this issue and producing this book, it became a tool for lobbying to ensure that better technology is used in south Durban. Also, the Danish partners assisted in the installation of the Geographic Information System (GIS) in the SDCEA office. This captures all community pollution complaints. Local and provincial government use a similar system for their Monitoring of Air Pollution. This also produces Pollution Maps, which have been given to local schools. This has given the community important information, enabling them to facilitate debates and discussions with the polluting industries. This has led to the industry employing a lot more communication personnel to sit in at meetings and respond to the community's questions and answers.

With credible and reliable information at hand, SDCEA undertake Toxic Tours called "The Cradle to Grave." SDCEA has given many tours, which educates international, national and even local community visitors. Learners and educators from all levels of institutions regularly take advantage of this learning activity. SDCEA has become a "one stop knowledge shop", for students, academics and learners.

In an attempt to further our influence, SDCEA works closely with learners at schools. Moreover, a recent publication called *Applied Meteorology and Climatology in South Durban*, aimed at educators and learners, has resulted.

SDCCEA has created a network with environmental organizations, both nationally and internationally. A good example of this is that SDCEA, along with groundWork and Friends of the Earth International, confronted Shell International about the incidents,

accidents and high level of pollution from their refinery in Durban along with other fenceline communities from other parts of the world. This strategy has gained the south Durban community international NGO collaboration, as well as international media attention. Some of the books written about Shell include; information about SAPREF contributed by the SDCEA. They are Riding *the Dragon* by well known American author, Jack Doyle; *Leaking Pipelines* – a book about Shell/BP in South Africa in collaboration with Friends of the Earth – Netherlands; Shell – *Failing the Challenge* was presented at the Shell AGM 2003 and *Behind the Shine* was the title of the report issued for Shell's 2004 AGM.[7]

A single share was purchased by an International NGO - Friends of the Earth U.K for both SDCEA and groundWork in order for them to gain access to the annual Shell Board meetings, this being an excellent tool for lobbying. This year, the fenceline neighbourhood groups were able to lobby 77 British Parliamentarians for legislation pertaining to corporate accountability. The community groups also made presentations to Shell Investors on the incidents at Shell plants around the world.

SDCEA Lobbying capabilities

One of our strategies includes legal protests, and SDCEA challenges government (all 3 levels) on the high levels of pollution, to give effect to our constitutional right "to a clean and healthy environment". These protests are sometimes successful because we do lobby all three tiers of government, and the number of letters that we write, along with the researched information could prove invaluable, especially if we take these issues to court.

One case of mixed success is that of the case of Mondi Paper. SDCEA has been locked in a struggle with this company for many years, over the proposed multi fuel boiler. At one stage of the proceedings, SDCEA, with assistance from the Legal Resource Centre (LRC), was able to bring a court interdict against Mondi as due procedure had not been followed in the EIA process.

However, since then Mondi has proceed with an EIA on a 90 ton Multi fuel boiler, and despite the fact that SDCEA collected over 5 500 signatures the development seems to be going ahead. SDCEA has appealed against this[8] and no response has been received yet. SDCEA has now objected to the rezoning of the land that is needed for this expansion. However, in calling for a halt to this development, it could have led to something that backfired in regard to the Air Quality Management Bill.

Good quality legislation is needed in order to regulate the air quality in South Africa. Until recently, there has been no effective legislation that has assisted with the regulation of air quality and with holding corporations accountable for their actions. Community organizations spent many hours pouring over the proposed legislation and giving suggested comments. As a result of the frenetic pace of developments, a section on clean fuels, allowing incineration to slip through the cracks was slipped in by government. This incident alone makes a mockery of all the time spent on the bill and governments own commitment to clean up polluted areas.

This is indicative of 'the backhand dealings' of both industry and government.

Conclusion

Over the last eight years, SDCEA has contributed to hundreds of EIAs (Environmental Impact Assessments) by providing information and technical assistance to local communities to challenge 'dirty' expansion programmes. Often, it seems that communities, staff members and volunteers spend hours researching a particular issue, and yet only one EIA has ever been stopped. However, the positive aspect that has come out of this time and effort is that the community is becoming more mobilized and empowered.

Through SDCEA's participation in the Multi-Point Plan, the following has been achieved:
a) There has been a broad Health Study in South Durban

Communities, which is being implemented at present under the auspices of the Nelson Mandela School of Medicine with international collaboration with the University of Michigan.

b) There has been the installation of 14 monitoring stations in the area, along with two meteorological stations. This was done in conjunction with NILU and eThekwini Municipality.

It cannot be denied that air quality has improved in south Durban over the last few years. SDCEA continually interacts with the relevant government departments over the results gleaned from the monitoring stations, and analyses the data on a regular basis. This has proved an invaluable tool, as all too often; SDCEA spends more time on the data than the municipality. Constantly lobbying for cleaner air quality in south Durban is also a double-edged sword. Constantly demanding clean air strengthens the possible case for the relocation of communities. Communities sense that relocations could be a possibility, especially if the Durban Airport land is going to be rezoned and industry further expanded.

Constant lobbying has resulted in SDCEA being considered a pest and often officials state that they feel that SDCEA's requests are a waste of time. However, it is hoped that all the hard work has paid off, and the community of south Durban end up with a healthier environment.

FOOTNOTES

1 The organizations are: Wentworth Development Forum (WDF), Treasure Beach Environmental Forum (TBEF), Silverglen Civic Association (SCA), Merebank Clinic Committee (MCC), Isipingo Environmental Committee (IEC), Earthlife Africa (EA), Clairwood Ratepayers Association (CRA), Christ the King, House of Worship, Bluff Ridge Conservany (BRC), Austerville Clinic Committee (ACC),…….

2 There is a list of industries, but not the chemicals emitted from each one.

3 2050 will be very different by Tony Carnie, *The Mercury* Thursday October 28th 2004

4 See www.safeage.org.za or www.biowatch.org.za for further information on GMOs or genetic engineering

5 For further information, see www.earthlife.org.za

6 For more information about Mondi and SDCEA's struggle against the Multi-Fuel Boiler, see http://wwwh-net.org/~esati/sdcea/index.html. SDCEA's recent appeal and the Record of Decision can be found here.

7 A copy of this can be seen on the SDCEA website

8 Again, this can be viewed on the SDCEA website

Resisting the Anti-terrorism Bill: The Role Of Civil Society in Legislative Reform

Imraan Buccus

Lubna Nadvi

Introduction

The South African civil society response to the recently tabled Protection of Constitutional Democracy against Terrorist and Related Activities Bill (2004), known initially as the Anti-Terrorism Bill (ATB), raises a number of critical questions around the effectiveness of public participation in resisting a controversial bill appearing before parliament for consideration. The outcomes of this particular process have implications for how civil society may respond to similarly proposed legislation in future.

This paper attempts to analyse the nature and context of the public's engagement with the ATB, by firstly tracing very briefly, its history, and then examining the levels of resistance to the bill, and the interesting civil society dynamics that emerged from the various national alliances that were formed in an effort to respond to the bill. We will argue that this process was somewhat unprecedented in the post 1994 period, particularly within the context of broader civil society participation in the formation of government policy on an issue of such critical national significance. It was unprecedented because never before has there been such a concerted effort by civil society to reform or reject a particular piece of legislation.

Moreover, this paper will attempt to understand the reasons that people participated in particular ways, honing in on their differences and similarities. In particular we will argue that participation in this process can be broadly divided into two distinct categories. One being primarily faith based, i.e. the Muslim community and the second, a loose coalition of journalists, unionists, NGOs and activists. This distinction does not reflect the view that there was no confluence of engagement between these groupings, rather that submissions on the bill were generally made along specific group interests. The paper will also look broadly at the effectiveness of their participation as an exercise in advancing democracy and civil liberties, as well as the specific group interests alluded to earlier.

It could be argued that the attacks on the United States on September 11, 2001 served as a catalyst for many countries, particularly the US and the United Kingdom, and South Africa at a later stage, to consider introducing additional legislation to deal with terrorism. In the case of SA, the government's argument that the then ATB would bring our country in line with similar international legislation was met with public anger and discontent from time of the introduction of the draft bill in 2002. The resistance stemmed primarily from the fact that draconian powers would be given to our law enforcement agencies to investigate and deal with acts of terror. This in itself recalls the dark days of apartheid where state repression in South Africa resulted in liberation movements being labelled as terrorist groups, and being

persecuted through the various organs of the state. The vague description of 'terrorism' further fanned fears that the ATB would seriously impact on civil liberties such as the freedom of association, expression, assembly and demonstration.

Given also the experiences of the Muslim and other minority communities in the US, in the wake of such legislation being introduced, illustrated the dangers of these laws being effected and the South African public was understandably nervous about having its own civil liberties curtailed yet again, after years of such treatment under apartheid.

These incidences in the US and elsewhere clearly provided sufficient motivation for those groups feeling potentially most affected, to act. As a result, South African Muslims, together with a range of other interest groups such as COSATU, one of the country's largest labour union federations, were propelled to undertake a sustained campaign to challenge and engage the government on this bill. What followed was arguably a rare and intriguing partnership forged between faith-based and other non-governmental interest groups, to tackle an issue, which would inevitably affect them and their activities.

Brief Chronology Of The Bill

In September 2002, the Department of Safety and Security introduced the draft ATB for comment and scrutiny. At this point a number of human rights organisations opposed the bill, arguing that it was fundamentally flawed. What was at issue were the many archaic provisions that would significantly curtail civil liberties guaranteed in our Bill of Rights. The initial demand by some, including the Muslim community, was that the bill be completely shelved, which the government did not deem feasible. The next course of action for detractors was to actively engage around demanding changes to technical aspects of the bill.

A revised bill, with shortened content and a removal of some problematic clauses, was then placed before parliament in March 2003. However, as the excerpt from the Freedom of Expression Institute (FXI) below indicates, the revised version was not without problems:

"The Freedom of Expression Institute in concert with a range of other Human Rights organisations opposes the introduction of this legislation in South Africa. Firstly, the bill itself is fundamentally flawed and the logic behind its motivation curious. Furthermore, the process followed in drafting this legislation is highly questionable as no discussion document was published neither was there proper consultation done by the South African Law Commission with the various stakeholders. Because terrorism is an offence that attracts some of the severest penalties known in law, it would have been thought that the bill would at least attempt to provide a simple, clean and unambiguous definition of the term 'terrorism'. Unfortunately this has not been done and on the contrary the bill presents a vague and incomprehensible definition of what it means by 'terrorist act', which it defines as " … an unlawful act … that is likely to intimidate the public or a segment of the public."[1]

Interestingly, a number of organisations also argued that the State had 22 pieces of existing legislation to cover crimes and activities covered by the ATB.[2] This was one of the more significant arguments raised by the various groups and it effectively informed and shaped the foundation of the objections to the introduction of the bill.

In the latter part of 2003, indications were that the bill would be fast-tracked through parliament. However, COSATU's intervention disrupted the process, arguing that strike action would be seen as "terrorist action" in terms of the construction of the bill. The April 2004 elections halted any progress on the bill, but thereafter it was once again revised, taking into account COSATU's concerns, and reintroduced to parliament. A compromise was reached with COSATU, and the

bill was renamed and unanimously passed in November 2004.

Resisting The Bill: Organising Protest At National Level

It was clear from the outset that the implementation of this bill was going to affect civil society across the board. The South African government's intention to introduce the bill and bring it into effect as soon as possible was read by many as conforming to the US government's agenda in dictating how 'terrorists' were to be dealt with. Groups which would be severely affected by the bill, and civil society as a whole, began to mobilise. Organisations across the country, from the FXI to individuals with legal and political expertise, joined the national coalition to organise the drafting of submissions unpacking serious flaws in the bill.

For example, a secretariat was set up in Durban, which worked together with the administrative networks of other organisations, to synchronise submissions to parliament, as well as issue regular public and press statements. What was intriguing was the way in which groupings that would otherwise, arguably, not have formed alliances, undertook to do so, as part of this broader organised resistance. This included religious bodies, NGOs, trade unions, individuals and professional associations. The constitution of the country became the most powerful tool to engage parliamentarians, with the primary argument being that the bill violated significant rights guaranteed by the constitution.[3]

a) Faith Based Group Intervention: Muslim Resistance to the Bill

The most prominent faith based group in the coalition was the Muslim community. The horror of the experiences of the Muslim community in the US and in other parts of the world, was clearly an indication to South African based Muslims, that they could not allow such legislation to be passed without challenging its proposed draconian measures, which would put them first in line as targets, should the bill be passed in its original form. No doubt the stereotyping of all Muslims who participate in legitimate resistance struggles and campaigns as terrorists has become the single most politically sensitive issue of the day, and challenging this idea remains an ongoing ideological battle.

The extreme measures with which the US based Immigration and Naturalisation Service (INS) authorities dealt with minority individuals after September 11, were daunting. US residents from minority groups, particularly men of Arab, Muslim and South Asian origin were simply detained, without being charged, or allowed access legal counsel. No explanation was given in many instances; many were arrested and refused trial. It was only after sustained protests from the public and human rights groups that the authorities relented, but there are still some individuals incarcerated unjustly, simply because they are Muslim, or of Arab or South Asian descent. If any of these individuals were found to have sent money to the Middle East or Asia, even for charitable causes, they were immediately suspected of channelling money to 'terrorist' organisations.

The South African Muslim initiative drew from a broad spectrum of the Muslim community. A range of Muslim organisations played an active role in making submissions and supporting the national initiative around the bill. These included the following organisations based across the country;

Islamic Medical Association (IMA)
Jamiatul Ulama (KZN)
Muslim Judicial Council
Sunni Jamiatul Ulama (SA)
Muslim Youth Movement (MYM)
Jamaitul Ulama, (Gauteng)
Council of Ulama Eastern Cape
Association of Muslim Accountants and Lawyers
Al Ansaar Foundation
South African National Zakaah Fund (SANZAF)
Islamic Dawah Movement (IDM)

Human Rights Foundation
Institute for Islamic Services
Red Crescent Society of South Africa
Media Review Network (MRN)

A cursory glance at the above list reveals that these are primarily religious organisations, with IMA and AMAL also representing professional interests. It would seem that as faith based groups, the level of public participation by Muslim organisations is located within a predominantly religious framework, the implications of which will be unpacked later on in this paper.

A submission made by the above organisations to President Mbeki in November 2003, noted that;

"There is no place for such legislation in the new, democratic South Africa. Our government should be the first to OPPOSE a bill of this type because it goes against everything that the freedom struggle stood for. If the liberation movements, during the apartheid days, were judged today under this bill all would be condemned as terrorist organizations. If the ATB is passed here, no South African will be able to support in ANY way ANY of the liberation struggles presently being waged in many parts of the world. This is hugely ironical because virtually the entire world supported the South African freedom struggle. We are told that the ATB is needed here in order to deal with groups like Pagad and the Boeremag. Both these groups have been apprehended without the bill. It took good police work, not new laws to achieve this. However, we must emphasize that if measures are contemplated to tighten up domestic security we will certainly be supportive of such moves provided they don't infringe on civil liberties."[4]

The letter clearly indicates the concerns felt by the Muslim community and others that supporting genuine liberation struggles globally would be severely hampered by such a bill, as would the undertaking of local protests, which had effectively been the hallmark of the anti-apartheid movement.

b) Intervention by Broader Civil Society

A number of progressive interest groups undertook to resist the bill. While some of the resistance involved public meetings and protests to a limited extent, oral and written submissions to the relevant parliamentary portfolio committee were the more notable forms of resistance.

In its submission, the Institute for Democracy in South Africa (IDASA) supported the "intention of the bill" and acknowledged the need for legislation to deal with terrorism in South Africa and internationally, but was concerned that "in an attempt to address the problems of terrorism, there is potential to make provisions which may be in contravention with the provisions of the constitution."[5]

IDASA explained that the 2002 draft ATB defined a terrorist act as "acts which intentionally intimidate the public, cause death or serious bodily harm or endanger a person's life." The amended (2003) version defined terrorist act to mean, "An unlawful act committed inside or outside the Republic." The latter definition, IDASA argued, is extremely broad and does not give clarity as to what acts would constitute terrorism. IDASA also expressed concern that the bill might contravene human rights enshrined in the Bill of Rights. In wrapping up its submission, IDASA said,

" Successful anti-terrorism legislation must endeavour to build strong international norms and institutions on human rights and not provide a new rationale for avoiding and undermining them. The legislation should maintain a balance between combating the threat of national and international terrorism while maintaining the hard won rights as enshrined in the constitution. We should be mindful of our repressive history which, at the time, passed

legislation which was intended to "protect" the country against organisations such as the ANC and the PAC which were considered to be terrorist organisations."[6]

The Law Society of the Cape of Good Hope (LSCGH) also voiced resistance to the bill, arguing in its submission that existing legislation was more than adequate in dealing with the threat of terrorism and that the proposed bill's provisions were unconstitutional. Vincent Saldana, who presented for the LSCGH, described the bill as a "stark reminder of old security measures." The LSCGH went further to warn that the bill failed to deal adequately with the complex relationships underpinning some communities.[7]

The South African Human Rights Commission (SAHRC) was also not convinced of the need for the bill. In its submission, the SAHRC proposed a number of technical changes to the bill and expressed concern at limitations on the right to silence. The SAHRC did, however, explain that it understood that the international environment was difficult and South Africa had obligations to meet. However, it made it clear that the manner in which each country incorporates international instruments depends on the country's circumstances, and that there was no need to go against the constitution.

Another notable submission was that made by the Unemployed and Social Activists Committee (USAC) who rejected the bill as "unconstitutional and a tool of imperialist oppression." The USAC contended that the bill was more repressive than apartheid itself. They went on to argue that the bill was defending "imperialist globalisation and the bourgeoisie of South Africa."[8]

In a number of statements, the Freedom of Expression Institute (FXI) argued that the bill would seriously impact on individual civil and political liberties. Moreover, the FXI was also concerned about the impact the bill would have on progressive formations in the country, particularly the social movements. A widely circulated press statement said, "What is worrying is the way the bill interfaces with the terrain of radical political protest in South Africa. One can easily surmise that the activities of social movements such as the Anti-Privatisation Forum (APF), the Landless Peoples' Movement (LPM) and the Treatment Action Campaign (TAC) will soon come under the attention of this legislation."

Journalists were also among those who resisted the introduction of the ATB. The South African National Editors Forum (SANEF) called for the withdrawal of the ATB saying it was " a serious threat to media freedom because the legislation could be used against journalists."[9] Kimani Ndungu of FXI commented "it violates the rights of the media to operate freely, and will compel journalists to provide information and hand over material to the State."

The intervention made by the Congress of South African Trade Unions (COSATU) had arguably been the most effective. During the drafting stages of the ATB in 2002, COSATU realised that legitimate strike action could be criminalized as 'terrorist action', and flexed its political muscle, resulting in the bill being stalled. In its submission, COSATU argued that the definition of 'terrorism' was far too broad and vague. It went on to say that;

"This would have the effect of expanding the scope of the bill to include activities, which though unlawful, in no way should be construed as an act of terrorism. This understandably has raised concerns about the potential that this has to be used to suppress political dissent. Considering the broad definition of a terrorist act upon which this provision is dependent, it is understandable that this provision has raised concern about it being used against organisations perceived to be left of government. Further, it is unclear how legitimate liberation movements may be distinguished in respect of acts endangering the security and territorial integrity of other countries."[10]

As a result of the various submissions made by some

of the above interest groups, with COSATU having exerted the most notable influence, the bill was revised, and renamed the Protection of Constitutional Democracy against Terrorist and Related Activities Bill. A compromise was reached primarily with the trade union movement, with the significant change being that the bill now stipulated, "a struggle waged by peoples… in furtherance of their legitimate right to national liberation, self-determination and against colonialism shall not be considered as terrorist activity."

Effective Public Participation: Dynamics of Addressing Legislative Reform

a) Strategic Alliances and National Engagement

Clearly, a number of diverse organisations were involved in resisting the bill. It can be argued that the participation of some organisations was more effective than that of others, for a wide range of reasons. De Villiers reminds us that, "Public participation is about access to power and decision makers. In most systems, certain people or interests have greater access to power and decision makers than others."[11]

We have attempted to unpack the levels of participation by broader civil society by examining briefly the role played by a diverse range of actors. There were essentially two categories, as identified in the introduction; one was primarily a religious based interest group, and the second a loose configuration of human rights groupings, trade unionists, journalists, NGOs and activists. While there are overlaps between the two categories, there are also arguably some significant differences.

The submissions made by the Muslim community were primarily informed by the kinds of harassment and unfair victimisation that Muslims face at a global level, in a post 9/11 context. Other groupings were not subjected to this kind of treatment, and hence their participation was located within the context of the potential compromise of certain rights guaranteed by the South African constitution.

The crux of the 'Muslim concern' was the possibility of being identified as "terrorists" because of their historical support for global issues such as the liberation struggles of the Palestinians, Chechnyans, Kashmiris, and more recently, the Iraqis. Moreover the fear was that their financial contributions to organisations supporting the struggles in the above countries would be severely constrained. In addition the threat of arrest, detention without trial, and such drastic measures should, for example, individuals be found to be in possession of materials promoting certain causes, was also seen as compromising essential rights to freedom of expression and association.

The submissions made by the second category, while alluding to some of the concerns expressed by the Muslim coalition, went further to argue that radical and progressive activities entailing criticism of neo-liberal interests could easily be labelled as 'terrorist activity'. Dale McKinley, a well-known social activist argued that; " The ANC government can use its discretion to define 'unlawful' dissent as terrorism". He added that; "it does not take a genius to figure out what this might mean for social movements such as the Anti-Privatisation Forum and the Landless Peoples Movement."[12]

The effectiveness of the resistance offered by COSATU can be attributed to the fact that they are a powerful, well-organised formation. Moreover, the fact that COSATU is a significant part of the national tripartite alliance helps locate its critique as serious and strategic. Bearing in mind the political ramifications, the government could not afford to introduce legislation seriously at odds with a powerful trade union movement, having the support of the vast majority of organised workers in the country.

While the submissions from the Muslim community played a very significant role in resisting the bill in its original state, it soon became clear that the influence of the trade union was going to be more substantial in

shaping the final version of the bill, partly because of their power to paralyse the effective functioning of the country. The fact that COSATU has broad-based support from working masses, no doubt had greater impetus in convincing government to revise technical aspects of the bill.

Conclusion

This paper has essentially attempted to analyse the formation of civil society alliances in order to better effect responses and resistance to a common threat. The fact that the process entailed taking on a piece of legislation that could change the landscape of how civil society functions, is a significant point, as it indicates the effectiveness of organised public participation around critical legislative issues.

Habib argues that " contemporary civil society is distinguished by the fact that it not only reflects the demographic realities of South African society but also transcends the racialised form of the adversarial – collaborative dichotomy that typified civil society relations with the state in earlier epochs." He goes on to say, " Indeed the distinctive feature of this period is not only the longitudinal growth of the sector, but the formal emergence, or at least the surfacing in the political sphere, of a significant part of it, viz black civil society actors who had hitherto either been banned or prevented from operating in the public arena."[13]

The fact that participants in ATB resistance efforts were from a diverse racial and political spectrum, seemingly confirms Habib's assertion. What it perhaps doesn't explain completely is the reality that the process we have outlined above reflects something of a fragmented approach. Essentially the non-faith based groupings engaged with the issue, largely within the context of class interests, whereas the former did not, to any significant degree. However, it should be noted that there were individuals in the faith-based category who were sensitive to the issue of class and did indeed tackle it. Also Habib's reference to the emergence of black civil society actors is significant in view of the role played by COSATU as a representative of majority black, working class interests.

It can thus be argued that the broader South African civil society's response to the ATB has illustrated that it has indeed matured as a collective force in national politics. The fact that it took on this issue with a modicum of success reflects well on the project of democratic consolidation. In so far as this coalition attempted to tackle a piece of national legislation that could impact on the hard fought for democratic rights of South Africans, there can be very little doubt, that the constitution of the nation, ultimately served to advance the interests of citizens and not those of the political elite.

ENDNOTES

1 Press statement issued by FXI, March 24, 2003

2 See Saber Jhazbhay's document and COSATU's submission

3 There were numerous submissions outlining the legal contradictions that the bill raised, which essentially violated the country's constitution. Significant among these were those documents submitted by a human rights lawyer based in Durban, Saber Jhazbhay

4This was part of a letter submitted to President Mbeki, in November 2003, authored by Mr. A. Dawjee, a media personality based in Durban and written on behalf of the listed signatories

5 IDASA's submission on the ATB, June 2003

6 Ibid

7 LSCGH's submission on the ATB, June 2003

8 USAC's submission on the ATB, June 2003

9 Press statement issued by SANEF, January 03, 2004

10 COSATU submission on the ATB- June, 2003

11 de Villiers, S, 2001: *A Peoples Government. The Peoples Voice*, Cape Town: Parliamentary Support Programme, pp 27

12 McKinley, D, South *Africa: Anti-Terrorism Bill to " Terrorise" Lef*t, Green Left Weekly, May 14 2003

13 Habib A (2003): *Relations between civil society and the State.* In J Daniel, A Habib & R Southall (eds.) *The State of the Nation 2003-2004.* Cape Town: HSRC Press.

Africanising Higher Education: The case of civil society and the African integration research programme

By Prof Mammo Muchie, Aalborg University, Denmark

Introduction:

The civil society and African integration (CSAI) programme began in July 2003 and its first phase came to an end after the Maputo conference in August 2004. The research programme followed a particular route to identify and bring together researchers from universities and NGOs by organising a series of planning meetings, followed later by separate regional workshops across the continent, culminating in a final conference that has bought representatives from the regions into an Africa-wide gathering. The objective of this process has been to organise high-level training and research that is continentally framed and delivered by forming strategic partnerships between universities and research NGOs in order to produce a pan-African intellectual community that takes the African identity and situation as the central problem in knowledge production. Universities have to turn into sites for producing a new pan-African intellectual force that is capable of originality and independence of thought, willing to generate knowledge in Africa, for Africa and the African people, and imbued with a strong civic and ethical sense. This is a programme that has the ambition of re-curriculating the processes of knowledge production based on the affirmation of the African identity of the African university. An African identity of the African university means a rejection of mimicry and taking western education as the norm, rather than as a reference to engage with criticism and independence of thought, epistemology and methodology. It means African problems become a primary focus in the knowledge creation process. Moreover, the African experience, cultural and historical environment would serve as critical input to knowledge making, training and research.

Universities would have autonomy, integrity, funding and support to carry out this task without being jettisoned as a civil servant department of a Government falling to the vicissitudes and caprice of political leaders in Africa.

South Africa is undergoing an exciting transformation of the whole higher education landscape. We live at a crucial moment of Africa's history where the problem of racialism and colonialism has been effectively rebuffed, but a more difficult challenge of rebirth, integration and transformation is upon us. The CSAI initiative is about creating a new African higher education landscape.

2. The Wider Context

The first generation of intellectuals that led the national liberation movement against colonialism and racialism have broadly succeeded in the task set before them by history. Africa has thus completed one historical phase in its long walk to attain full liberation. The historical task before Africans today is not a pan-Africanism of colonial freedom but a pan-Africanism of integration. The latter requires a new higher education conception and strategy for training people and creating knowledge. An innovative knowledge strategy built on the motto of "knowledgising Africa and Africanising knowledge" is required to bring together people, activities and institutions across the continent, to solve the real problems of the people of Africa.

The production of a pan-African intelligentsia based on

commitment, and innovation requires the re-organisation of the management and policy of higher education.

3. Background for the CSAI Initiative

Whilst the overall objective of restructuring higher education is ambitious and will take a long time, the civil society and African integration programme has the modest objective of bringing together universities and research NGOs from around the continent to run research networks and a doctoral programme on civil society and African integration.

The expectation is that this will inspire a whole set of developments in higher education where African wide knowledge, staff, student, curriculum and best practice integrations will take place, covering the spectrum of natural, engineering, mathematical, social and human sciences.

We recognise that structural transformation requires engagement with basic and applied research and high-level training of the human resources of Africa. The idea that Africa does not need universities that carry out basic research because the economic rate of return does not justify investment in them is not acceptable. As Rosdolovsky put it, "Higher education is the modern world's "basic education," but developing countries are falling further and further behind. It 's time to drive home a new message: higher education is no longer a luxury, it is essential to survival."

However the current situation of the universities in Africa has been made more difficult by misguided policies on higher education. We recognise that since the imposition of a neo-conservative economic arrangement for Africa, many African universities have been disrupted. It is no exaggeration to say that the universities have largely been decimated during the last twenty years of structural adjustment giving rise to the phenomenon of NGOs. A number of NGOs focusing on policy research and often engaged in "policy dialogues in five star hotels" (Issa Shivji) have

been funded and encouraged to mushroom across the continent. In the process, many universities have been de-legitimised. Their research has suffered and their teaching has been undermined.

There has been a steady degradation of the university as the site for creating fundamental and applied knowledge to assist African transformation. Like the humbled state, the university has been attacked and corroded to a point where it is seen as another 'white elephant.' It was fatally under funded and the rate of return from its production considered not justifying support. Universities in Africa fell to stringent cost-sharing schemes and academic programmes were affected and re-orientated, dictated by market demands and not social and community needs.

According to the World Bank Report of September 15,1996, "Overall, the average budget share of education dropped from 16.6 percent of government budgets in 1980 to 15.2 percent in 1990. As the education budget was shrinking, average allocations for higher education were also contracting from an average 19.1 percent of education budgets in 1980-84 to an average 17.6 percent in 1985-88. During the same period, real wages in the region fell by 30 percent. " The World Bank claims that in addition" some 23,000 qualified African academics emigrate from Africa each year in search of better working conditions. It is estimated that 10,000 Nigerian academics are now employed in the United States alone."

It is true that hordes of staff have left and engaged either in NGOs and moonlighting or when the opportunity avails has fled to foreign lands. Coupled with the crippling brain drain that the continent has been suffering, the higher education landscape has literally been intolerably blighted. This has been a very unfavourable development that has deeply affected the health of tertiary education in Africa as a whole. This degradation of the university had an impact on downgrading basic research, student-staff relationships, methodology, epistemology and the general spirit of

education.

There is a need to reverse this decline and re-legitimise the university as the proper site of knowledge production as it is essential to re-instate the state as the legitimate public power to oversee African development. The university has to emerge as a site of knowledge creation, research, training and service for development. Like the developmental state, Africa needs to create research universities and African-wide academies and specialized knowledge bearers rooted in Africa's history, internal and external challenges, culture and context.

The call for a new relationship between a re-legitimised African University and existing research NGOs like OSSERIA and CODESRIA is meant to revitalize and integrate the whole knowledge creating communities to challenge and escape the structural adjustment onslaught, by defeating its covert and overt agenda. This defeat is important to found a new radical imagination for the construction of the African knowledge world on a foundation that makes a difference in transforming the entire African human development landscape. To do so, universities have to be re-legitimised and research NGOs have to be encouraged to take active roles in training.

A new strategic partnership between universities and research NGOs with the added advantage of re-centring and originating knowledge with an African perspective can:

1. Assist the development and inclusion of knowledge systems that have been unrecognized and made invisible by the disproportionate concentration of the production of imitative knowledge from outside Africa.
2. Resist the tendency to go for epistemological mimicry and concentrate on training and research to bring about and promote relevance and focus on issues, challenges and concerns that matter to African development.
3. Open knowledge production to produce innovative knowledge that can enhance continental vision and application.

These objectives require changing the very concept of the academy in Africa.

There is a paramount need for the over 300 universities in Africa to elaborate their values, visions and missions by encapsulating the motto of 'knowledgising Africa and Africanising knowledge." This change of paradigm from taking the west as the norm and Africa as the imitator has to be radically revised for it has implications on the methodology, epistemology and the organisation and delivery of knowledge and training in the service of African development.

4. The Actual Process of Mobilising an African Intellectual Force

Recent regional workshops have two key focus areas: One is creating a continental research network that can feed research and the other is to organise high level training that can also assist in creating new blood for carrying out high level research.

Recommendations from each of the workshops can briefly be summarised as follows:

Western Africa

∗ The question of how to better understand the concept of regional integration was raised, as well as the need to change, or even adapt graduate training programmes. In this regard, it would be relevant to create a university with regional research programmes, and a campus that would promote research on Pan African issues.
∗ The Pan African University should be both a concept, and a physical structure; as a concept, the Pan African University (PAU) is better expressed in terms of an African Academy.
∗ As a physical structure or a set of physical structures, the PAU / African
Academy can take the form of joint degree programmes, common curricula,
Chairs in Pan African Studies located in carefully selected universities around the continent.

*Academic Research must be central to the African integration process; and research must be brought to bear on the key issues such as indignity and citizenship
*Research must not only focus on public issues, but its results must be shared with civil society, policymakers and regional organisations,
* Public policies must be re-designed to facilitate the movement, residence and work of all Africans, in all parts of the continent.

Eastern Africa

*There was consensus that masters programs are not advisable, there are many in African universities and are more costly than PhD programs.
* To involve research NGOs, using existing networks and their initiatives like Codeseria and Osseria.
 * Civil society research in the context of African integration is best undertaken if the research is organized in the context of Pan-Africanism, liberation, class analyses, and discourse de-construction.

 Northern Africa

* In view of the differences between African societies and the West in the origin and vision of the concept of civil society, there was need for an anthropological and sociological study of African societies in order to create an African concept of civil society. Such a study should consider the social system in these societies, and their attitude to citizenship, and their mode of social life.

* A study of the problems of national cohesion, and the relation between state and society in its vision of the evolving concept of citizenship. This study should consider the effect of such problems on the discourse and actions of civil society organizations in this context.
 * The creation of a database to be supplied by researchers from various African countries was proposed. Such a database would contain information about civil society in various African countries.

Southern Africa

It was agreed that, in order to have a continent-wide research and training programme, the following needs to be tackled:

- Setting up of an institutional structure to take the process forward.
- Further exploration of any research being done in the sub region.
- A thorough investigation of what went wrong /right with previous initiatives.
- The development of a fully-fledged and collectively owned forward plan.
- Bringing together all players/stakeholders to form a collective that will jointly take the process forward.
- An Africa-wide agreed programme to take to sponsors.
- The Concept Paper must be revised and be peer-reviewed.
- Develop a Post-Graduate Programme.
- Identify central problems for Research.
- Develop a New Project on Civil Society and Regional Integration   in Southern Africa.

5. Conclusion

The exercise of engaging the continent's scholars, research institutes and universities to work together in post-graduate training and research has been fully debated and reflected upon. A proposal has been produced with the hope of mobilising resources to run continental doctoral degrees and a tradition of doctoral seminars that link research to training.

This has been a profoundly worthy exercise as it helped to bring together the continent's scholars to think innovatively about how to organise knowledge production and training on a pan-African level. Africa is living through exciting times and the Africanisation of knowledge is firmly on the agenda driving explicitly and implicitly the direction of university development in Africa in the 21st century. The time has come for changing all universities to instantiate in their ideals/values and inscribe in their visions that NOW is the time to make all higher education and African

universities pan-African and build African scholarship, if indeed Africa is to claim the 21st century as its century of integration renewal and structural transformation.

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