EXAMINING THE EXISTING INFRASTRUCTURE FOR PUBLIC PARTICIPATION IN LOCAL GOVERNMENT

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Introduction

Public participation is one of the key tenets of a democratic system of governance and one of the core principles of good governance. South Africa has embraced the right for citizens to participate in policy and decision-making to an extent that it is a right that can be demanded, defended and protected. Public participation is one of the foundational principles of the Constitution and is embedded in the country's legislative framework. In a number of cases, the Constitutional Court has established that public participation is so important in South Africa, so much so that it is the only requirement for which exemption cannot be given (O'Regan, 2017). This is because the public, under South African law, has a right to be informed about decisions and laws that may affect them and be afforded an opportunity to influence those decisions and laws.

Despite the existence of this progressive legislative framework that supports public participation across all the three spheres of government, meaningful inclusion of the public in government decision- and policy-making remains problematic. Research has shown time and again that government largely facilitates public participation to meet its compliance requirements as opposed to facilitating meaningful opportunities for co-creation and consensus-building (Fuo, 2015; Baez-Camargo and Gatwa, 2018; Theron, Maxhegwana and Draai, 2015). This is more glaring in local government, the one sphere tasked with

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the most responsibility for facilitating public participation, and the one closest to the people (Eglin and Ngamlana, 2015).

This lack of meaningful opportunities for the public to participate in local governance has, over time, led to a growing divide between government and citizen. This in indicated by a growing spate of service delivery protests and the implementation of poor quality government development programmes (Eglin and Ngamlana, 2015; McCrindle and Selebalo, 2016; Munshi, 2016). Due to a lack of meaningful measures for accountability in local government, corruption increased to alarming proportions. Presently only a third of South African municipalities are functional in being able to meet the minimum standard of efficiency expected of them. The rest require support of varying degrees (CoGTA 2018[1], CoGTA, 2009). This means, amongst other things, that the local government project is in trouble and service delivery is under threat.

One of the key factors that has led to the near collapse of the local government project is the manner in which public participation is

facilitated in local government. The public is not viewed and afforded space to co-create as a key partner in local government decision-making but is rather treated as a 'stakeholder', an 'invited guest'. Its role is to give input and opinion while those who know best (the public officials, elected political representatives and technocrats) make the decisions that they believe to be in the best interest of the community. Technocrats and experts are accorded greater space to influence decisions made, sometimes to the detriment of others who have the right to be involved. This has led to development interventions that are not targeting communities pressing needs, poor monitoring of development programmes, an over-reliance on consultants for service delivery, lack of ownership of infrastructure developed, poor accountability, transparency and openness, and ultimately has created a general perception that local government is not working.

Central to the challenge of public participation in local government is the current "infrastructure" for public participation which, in its present design, is not able to deliver the kind of public participation envisaged by the 2017 Report of the High Level Panel on the Assessment of Key Legislation (HLPKL). The report notes that:

> *"[t]he original conceptual framework for citizen participation in local government is limiting and robs local government of the opportunity to tap into the capacity, the energy and resources that rests within citizens to drive change. There is a need to rethink the role of active citizens in local governance as co-drivers of change. The existing framework for citizen participation only enables the public to participate as invited guests in local government processes as opposed to partners and co-creators. This argument is derived from the emphasis on the term to 'encourage and to consult' in Section 152 (1) of the Constitution, in Sections 1 and 4 of the Municipal Systems Act, and in Section 19 of the Municipal Structures Act." (page 402)*
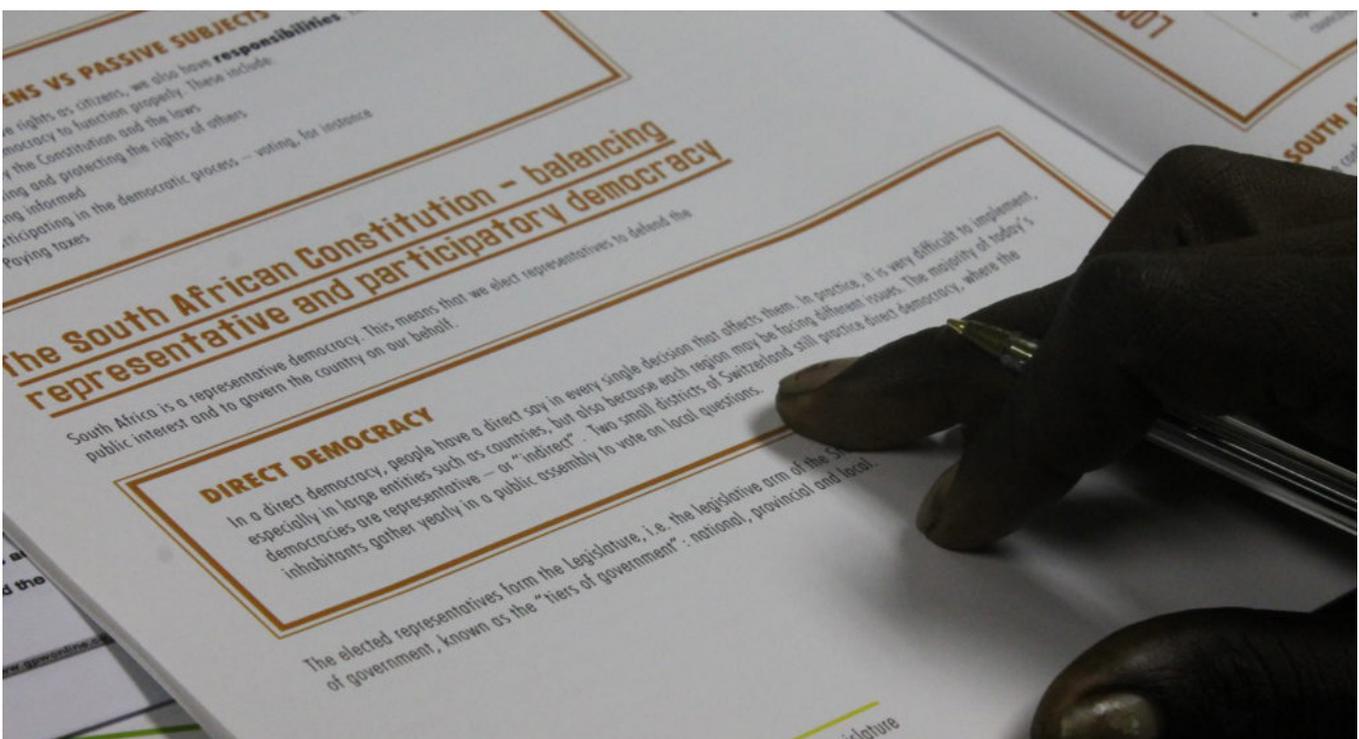
Infrastructure in this paper refers to the basic elements that need to be in place to facilitate public participation, such as the legal framework, the resources (human and otherwise), the organized and otherwise civic groups etc. This paper identifies some of the elements of the existing infrastructure for public participation in local government, discusses challenges with each element and makes some preliminary recommendations for how these challenges can be addressed. The paper presents a snapshot view of what the challenge is when looked at from a holistic perspective. The aim is to contribute to an ongoing conversation on public participation in local governance.

A snapshot view of the existing infrastructure for public participation

South Africa has a public participation infrastructure that occupies a great deal of our time, money and political capital. This infrastructure is made up of the following elements:

1. **The legal framework for participation:** the laws that support and regulate how participation must happen.

2. **The human resources:** the human resources and skilled civil servants whose jobs are to facilitate public participation.
3. **Civil society:** organizations outside of government whose work and activities support public participation and ensure it happens.
4. **Accountability of elected representatives:** mechanisms to hold public representatives to account.
5. **Citizens' capacity to participate:** the programs that are in place to build the capacity of citizens to participate.
6. **Legal mechanisms to defend participation:** the institutional mechanisms put in place to defend the right of citizens to participate.

1. The legal framework for participation

There are numerous laws, policies, guidelines and rules that regulate public participation in the decision-making processes of government. Examples include section 195 of the Constitution, the Municipal Systems Act, the Municipal Structures Act, the Municipal Planning and Performance Management Regulations, the Batho Pele White Paper and many others. These laws exert great influence on how participation happens, how it is resourced and how it is facilitated. One major

limitation of the present legislative framework is that it fails to provide mechanisms through which unstructured, uncensored and innovative forms of participation can thrive. It views these as obstructive and delegitimizes democratic innovation that falls outside of the legislated prescripts.

As it stands, the present legislative framework has created a high demand for compliance, and compliance tends to trump innovation and quality. The legislative framework falls short of providing mechanisms to support and protect innovative and potentially effective forms of participation that fall outside the ambit of compliance.

A second limitation lies in that, in institutionalizing public participation, there are no mechanisms intentionally put in place to facilitate the transfer of power from public officials and politicians on the one hand, to citizens on the other, during public engagements. Presently all agenda-setting and decision-making power rests with public officials and/or politicians. Within the present legislative framework in local government, citizens have very little influence on recruitment of senior public officials, performance monitoring, oversight, and have no power to recall their elected public officials. In holding to account, citizens are rendered
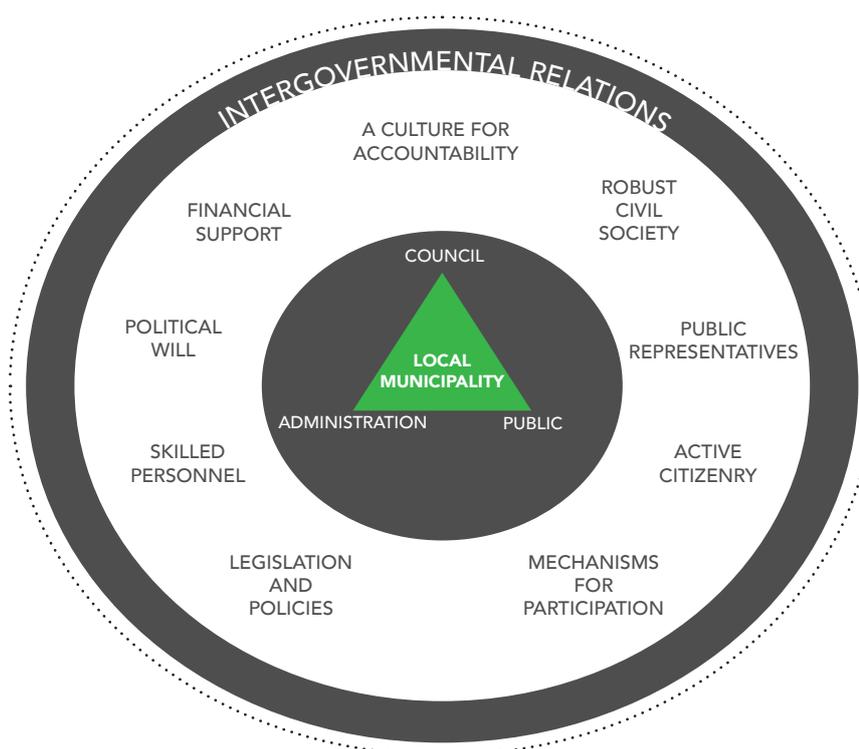
'toothless' unless they innovate and devise various strategies and tactics, outside of the legally provided for platforms, to demand accountability and exert greater influence in decision-making.

Thirdly, the legislative framework does not facilitate the brokering of relationships between citizens and the state in responsive ways. The law creates a box within which all communities and all of government must fall. However communities' social, economic and political dynamics differ; their capacities differ, so do their needs and reasons for participating in public affairs. While it is commendable of government to create rules for how the public must be engaged in key decision-making processes, it ought to do this in ways that allow for creativity, agency and innovation. This will take different shapes and different forms from one community to the other.

2. The human resources

In recent years it had become standard practice in municipalities across the country to employ people whose responsibility is the facilitation of public participation. This is a step in the right direction as it indicates the municipality's intention to facilitate meaningful involvement of the public in local governance. However there are very few programs across the country's universities and colleges that prepare civil servants for this task. It is assumed that these officials will 'learn it by doing it'. Facilitating public participation is much deeper than the events-organizing tasks that it is sometimes reduced to be in many municipalities. It involves the building of and sustaining of relationships; it is about assessing skills and capacities of communities and rallying those in ways that contribute to the strategic goals of a municipality. The requisite skills for this kind of work are complex: a hybrid of different disciplines that range from sociology, social facilitation, planning, communication etc. Public participation personnel often need to facilitate the transfer of power in public participation processes in ways that build agency and unlock the potential of communities. This is a difficult task to achieve in that the institutionalized mechanisms through which they must achieve this are not designed to support this

agenda, and the present political context in the country is not in support of this either.

3. Civil society

Civil society refers to those organizations outside of government who mobilise and organize to support public participation in local government. There are a number of these in South Africa, some formally organized and others informal, loose associations. Over the years this civic space has become polarized with different views on how public participation must happen, all influenced by different interests.

There have also been a number of 'models' and 'tools' for participatory planning, participatory implementation and participatory monitoring that have been developed and tested by civil society and there has been a push for government to adopt these to improve public participation. Some of these tools demand high levels of literacy and technical expertise and are not accessible for communities to use on their own, leading to an over-reliance on technical advisors to communities in their engagements with government.

In its efforts to improve public participation, municipalities get caught up in piloting different civil society-initiated models which not only exhaust the supporting staff, but exhaust the communities in which these are implemented. Furthermore the competition for government attention and the push by civil society to have government embrace one model over others has meant that there have been greater levels of unhealthy competition within civil society as well.

Over the years there have been very few community-initiated and organic forms of engaging government that have been documented and replicated in responsive ways. Many of the organic forms of engaging government that most of the social movements are employing are not as community-driven as they are made out to be. They are rather driven by some organized structure behind the community. Perhaps it is true that South Africa is a relatively new democracy and that participation in government processes requires a level of technical literacy that has not yet matured in civil society. It is therefore

possible that communities will still require the assistance of some partner to hold their hand as they engage government, especially in demanding accountability. If that is the case, we need to devise strategies to build the capacity of communities to engage on their own in the near future.

What is true of civil society is that it rarely organizes itself along ward boundaries. The notion that there exists 'sector-interest groups' organized along ward boundaries from which ward committee members can be drawn is a misnomer. It is therefore not surprising that the ward committee system ran into so many problems because its foundational design was flawed.

Finally, across the country, municipalities appreciate and value the business sector as a key stakeholder to be consulted on key decisions. Municipalities sadly underestimate the value of civil society, whether organized or not, in mobilizing the capacity and energy of its citizens to contribute to the developmental goals of the municipality. They underestimate the capacity that rests within civil society, academia, the youth, and other ordinary people to provide innovative solutions to local developmental and service delivery challenges and prefer that of technical experts drawn largely from the business community.

In doing this, municipalities position themselves as the sole providers of solutions for most, if not all, of the service delivery problems in their jurisdiction. The private sector is contracted in to provide technical support. This breeds a culture of dependency where citizens are demobilized from co-creating and innovating. The long-term effects of this cannot be under-estimated. No amount of business investment can counter the effects of a demobilized citizenry whose agency has been clipped. The present institutionalized "box-ticking" mechanisms for citizen participation do very little to harness the creative ability of civil society.

4. Accountability of elected representatives

There are numerous research reports that have focused specifically on the ward committee as a mechanism for public participation (McComas,

2001; Collingwood and Reedy, 2012; Mkwanazi, 2013; Ngamlana, 2016; Freedom House SA, 2017; and Ngamlana and Coopoo, 2018). In this paper we will not revisit this conversation. The focus of this paper is on the electoral process as there is a growing realization that those in power do not necessarily represent the public interest[3]. In local government, a hybrid of a proportional representative system and a direct electoral system is in place.

The challenges with the proportional representative system are rather obvious in that citizens vote for the political party of their choice and political representatives are selected from a party list that voters did not necessarily help create. Once in public office, citizens have limited or no power to recall these individuals.

The election of ward councillors follows a different process. These are elected directly by ward communities based on their stated ability to represent the interests of the ward. These individuals are allowed, in terms of the electoral laws, to align with political parties for greater support and backing (financial and otherwise). However many of these individuals prefer to campaign as independent candidates. It is argued by some (Mkwanazi, 2013; Ngamlana, 2016, Ngamlana and Coopoo, 2018 and Freedom House SA, 2017) that the political party alignment of ward councillors is necessary for influencing key decisions within municipal councils, as the crux of the debates and discussions happen within political party caucuses. Parties take positions in caucus on certain issues and within council, they, as a block from whichever party, stand by the caucus decision. This puts an independent councillor at a disadvantage as they fail to influence the debates when it matters most, before decisions and positions are taken.

In the end ward councillors end up paying allegiance to their political parties of choice as opposed to the communities that elect them into office. Furthermore the legislative framework as it stands denies communities the right to recall their elected ward representatives. This decisions lies with a Member of the Provincial Executive. With no threat of recall and with political ambitions, ward councillors have no incentive to account to ward communities.

While most political leaders enter into politics as well-meaning, public-spirited individuals, in the process of trying to make it onto the list and to rise through the ranks of the party, they lose sight of the common good and focus on career advancement. To make it to the higher echelons of the political parties, politicians have to please higher ranks and other political party factional interests in whose hands their political future lies. Social scientists have shown that when someone enters a profession they, consciously or unconsciously, become subjected to the pressure to conform to the norms of that field. Politicians are no different, even the most determined and well-meaning will, upon taking office, learn 'not to rock the boat' and to go with 'the way things are done around here' and ultimately conform (Nabatchi and Amsler, 2014). This has indeed been the case during the last few years in the country where we have seen rampant corruption and looting of state coffers in what is now known as 'state capture'.

This is the crux of the argument advanced by those who suggest doing away with institutionalized mechanisms for public participation (Munshi, 2016, Ngamlana and Coopoo, 2018). They argue that the institutionalized spaces are subject to manipulation by political elites for their own narrow interests as has been the case with the ward committees. They argue in support of organic forms of participation which they believe are not as easily manipulated. This paper argues that both the institutionalized and organic spaces are needed to strengthen good local governance.

5. Citizens' capacity to participate

Many organizations, that have championed civic education in the past (including Afesis-corplan, the Socio-Economic Rights Institute of South Africa, Planact, BESG to name a few) have for a long time advocated a strategic and deliberate approach to civic education, one which focuses on building civic agency. Civic education is a process through which the capacity of citizens to self govern is built. An environment that best supports self governance is one in which the potential, capacity and creativity of citizens is appreciated and space is created for them to innovate and realize this potential. There is a great need for the kind of education that builds civic agency because each new generation includes new people that must acquire the knowledge, learn the skills, and develop the dispositions and traits of private and public character that underpin a constitutional democracy. Psychology has shown that the habits of mind as well as the habits of the heart – the dispositions that inform the democratic ethos – are not inherited (Lamons, 2012). Empowering civic education is therefore crucial in preparing young South Africans for citizenship and for civic life.

The present approach to civic education is not fit for this purpose. For example instead of teaching people why they must vote and how the process of voting impacts on the daily lives of voters – the why of voting, the IEC and others focus on how to vote. Municipal sponsored civic education tells communities how government is structured and not how this structure affects people's daily engagements with the municipality and how they can engage with government in accessible ways. As a result only government seems to understand where cooperation lies in the notion of cooperative governance as citizens still get sent from pillar to post while government systems remain unsynchronized and in silos. For example civic education does not seek to build the capacity of citizens to co-create and partner with government and to contribute to the well being of their municipalities. A revised approach to civic education necessitates a revision of the manner and mechanisms through which citizens engage with the state. Otherwise what will be the point of building the capacity of citizens to engage in governance in creative ways only to close spaces for them to co-create?

6. Legal mechanisms to defend participation

Existing mechanisms built into law for the defence of the right to participate are inadequate, inaccessible, often expensive and at times inappropriate. The process of removing an ill-performing ward councillor is a case in point. The Municipal Structures Act dictates that only a MEC responsible for local government in a province has the power to remove or suspend a councillor, after numerous investigations and submissions. The ward community that elects the ward councillor has no power to recall the person once elected to office. The same is true for the recourse mechanism built into the Promotion of Access to Information Act (PAIA) where a person or entity once denied access to what they believe is information that should be in the public domain, must, after numerous attempts

to get the information from a state institution (or private body), litigate. This is assuming that there exists legal support at the community level for poor and marginalized communities to access this recourse mechanism.

Accessibility of relevant, up to date and accessible information to citizens is critical to inform how they position themselves to engage local government. Protests have proven to be the one mechanism available to citizens that deliver results in the shortest timeframes, simply because the recourse mechanisms built into law are either inappropriate or inaccessible. The institutional mechanisms such as the petitions committees, oversight committees, municipal council, etc. have also failed dismally to provide meaningful recourse for communities when called upon to do so. The challenge with these institutions has much to do with their capacity and political will.

The table below summarizes some of the key points raised above with each element of the infrastructure for public participation.

Element of the infrastructure	Some of the challenges discussed in the paper
1. The legal framework for participation	• It fails to provide mechanisms through which unstructured, uncensored and innovative organic forms of participation can thrive;
	• It has created a high demand for compliance and compliance trumps innovation and quality;
	• There are no mechanisms to facilitate the transfer of power which is necessary for co-creation; and
	• It does not facilitate the brokering of relationships between citizens and the state in responsive ways.
2. The human resources	• They lack the requisite capacity to facilitate the kind of citizen participation necessary to achieve a vision of a developmental local government;
	• Very few institutions across the country offer the kind of multi-disciplinary training that would equip these officials with the requisite skills for facilitating the kind of public participation that this paper is calling for.
3. Civil society	• There is no consensus amongst civil society on what 'good', 'effective' and 'meaningful' public participation looks like;
	• There are numerous models and tools for facilitating inclusive participation – in local government planning, implementation and monitoring – and there is a great civil society push for government to adopt one or the other (or sometimes all) leading to competition within and amongst civil society and fatigue from government in trying different approaches;
	• Most of the civil society devised models and tools are highly technical, requiring communities to depend on some technical support to implement;
	• Generally, municipalities underestimate the capacity that rests within civil society for the advancement of the goals of a developmental local government; as a result they do not value civil society as much as they do business for example.
4. Accountability of elected representatives	• The dual electoral system in local government poses challenges for accountability. • In the proportional representation system, citizens have very little influence over who makes it into the political party list and no power to get them off the list. As such these deployed individuals account to their political parties. • In the direct representation system, the ward councillor once elected from the ward community aligns with his/her political party, for various reasons, and accounts to the same. Ward communities have very little power to recall these individuals once they vote them into power. • While most politicians have great public-spirited intentions for entering into politics, they tend to lose sight of the common good as they pursue political career advancement.
5. Citizens' capacity to participate	• Citizens generally lack the capacity to participate in local governance in ways that contribute to the vision of a developmental local government.
	• Civic education is not targeted at building the capacity and skills necessary for civic agency.
6. Legal mechanisms to defend participation	• The legislated mechanisms are inadequate, inaccessible, often expensive, and at times, inappropriate;
	• Institutionalized mechanisms are either poorly capacitated or those who lead them lack the political will to listen to and address grievances raised by communities or both;
	• Sometimes the only recourse mechanism left to aggrieved communities is to protest.

Conclusion

For a long time now many have argued that the manner in which public participation is conceptualized, legislated and facilitated is problematic in many ways. Many have either looked at the legislative framework and have tried legal reforms to strengthen public participation. This only resulted in many laws, regulations and policies that have failed to bridge the gap between local government and its citizenry. Others have focused of fixing the institutional arrangements meant to facilitate public participation.

Only when a comprehensive and deeper understanding of where the problem areas are, can meaningful solutions be crafted.

[1] Speech delivered by Deputy Minister of CoGTA, Andries Nel, at the Launch of the Good Governance Learning Network's State of Local Government Publication. August 2018

[2] The CoGTA Report on the state of municipalities that culminated in the then Turn Around Strategy. The assessment was confirmed by the 2016 report which culminated into Back to Basics as a strategy

[3] This has been a dominant underpinning view in the state capture conversation and is evident in the rejection of local ward councillors in service delivery protests.

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