

## 25 years of local government conference, 25-26 November 2020

Speaker notes: Origins and impact of local government transition process in South Africa – Andrew Boraine, [andrewboraine@icon.co.za](mailto:andrewboraine@icon.co.za)

### Introduction

- Welcome opportunity to celebrate *and* to review basic assumptions
- Will cover three points in my 15 minutes:
  1. What came before the 25 year period we are talking about, and to what extent did the struggles of the 1970s and 80s prefigure a future local democratic state?
  2. Negotiating from below – the local government transition process in the early 1990s
  3. Three key elements of the local government arrangements in the SA Constitution of 1996, and how these have largely been squandered

### Roots of local government system in the struggles of the 1970s and 80s

- Black consciousness movement in the early 1970s, focusing on local self-help schemes
- Grassroots mobilisation, organisation and education in the late 1970s and 1980s
- Broad-based, multi-sector alliances: 1980 schools boycott, Free Mandela Campaign, anti-Republic campaign, Fattis and Monis boycott, etc
- UDF: connecting local struggles to national interests
- Organs of people's power, self-government replacing stooge councils, notion of 'liberated zones': Organs of insurrection, or prefiguring the local state, or both? UDF Isizwe, 1986: "the building of people's power is something that is already beginning to happen in the course of our struggle. It is not for us to sit back and merely dream of the day that the people shall govern. It is our task to start to realise that goal now. We must start the process of liberating South Africa. We must begin to place power in the hands of the people, in all spheres...Even in the present we must start to build the beginnings of our future society."
- Concept of democracy more than multi-party elections (Murphy Morobe, 1987): 'When we say that the people shall govern, we mean at all levels and in all spheres, and we demand that there be real, effective control on a daily basis.'

### Rise of the local negotiating forums in the early 1990s

- Render the townships 'ungovernable', in particular, the financial collapse of the BLAs, opened space for local negotiation forums
- Soweto Accord, led by Albertina Sisulu and Cyril Ramaphosa, 1990

### The role of the Local Government Negotiating Forum (LGNF)

- Local negotiating forums on their own could not address the essential issue of political power. LGNF established March 1993
- Statutory (existing national, provincial and local governments) and non-statutory (SANCO, SAMWU, extra-parliamentary political parties)
- Three agreements:
  1. Local Government Transition Act (commenced February 1994):

- Objective was to reintegrate segregated municipalities, countrywide, including rural areas and homelands (origins of concept of 'wall to wall' treatment of local government)
  - by managing a transition through three phases:
    - pre-interim – 50/50 statutory/ non-statutory local forums
    - interim - transitional local and metropolitan councils, with specific checks and balances, from 1995 to 2000
    - final – commenced after 2000 local government elections
  - Schedule of 25 powers and functions for local government
  - Also established representative 'Provincial Committees' appointed by the Transitional Executive Council (TEC) to provide checks and balances on all-powerful provincial administrators
  - Established national demarcation board
  - Provision for organised local government
  - Concept of 'cooperative government'
2. Local Government Finances and Services: statement of intent towards equitable provision of services ('one municipality, one tax base', payment for services – end the rent and services boycotts)
  3. Local government provisions in the Interim Constitution (Chapter 10)
    - Constitutional recognition extended to local government, vesting local government with a range of original powers: "A local government is no longer a public body exercising delegated powers. Its council is a deliberative legislative assembly with legislative and executive powers recognised in the Constitution itself..." – Constitutional Court, 1999
    - Broad conception of municipal role, powers and functions
    - Direct link between LGNF and the Multi-party Negotiating process. CODESA talks stalled over three explosive issues: control of the military during the transition, control of the police, and the future of local government. Joe Slovo: 'Chaps, we've got to give them a bus ticket home. Don't paint them into a corner': Section 245(3) provided an election formula which was central to the negotiated settlement as a whole: 40% PR, 60% wards, with 50/50 allocation of wards between former WLAs and BLAs

### **Key elements of the local government arrangements in the SA Constitution**

- From a level to a 'distinctive' sphere of government – shift from hierarchical divisions of government power to equivalent status – radically new constitutional dispensation recognised globally, with the (theoretical) ability of a municipality to express its own local character and carry out its mandate.
- (Note last minute horse-trading over division of powers and functions between provinces and local government to arrive at exclusive provincial legislative competence – non-ANC provinces threatening to revolt against Constitutional certification).
- Concept of inter-dependence (not fully autonomous) and cooperative government. Relational spectrum: neither subordinate, not fully distinctive, but inter-related.
- The concept of participatory governance is rooted in the definition of a municipality as consisting of the elected political structures, the administration *and the*

*community of the municipality*, in other words, a three-way relationship between elected leaders, officials and citizens (Municipal Systems Act, 2000). This harks back to concepts of 'popular power' and citizen participation during the struggles of the 1970s and 1980s.

### Results?

- The past 10-15 years in South Africa has unfortunately seen the steady hollowing out of the concepts of cooperative, participatory and integrative governance.
- Local government, even in well-resourced metro areas, has not lived up to its unique status and Constitutional opportunities.
- In terms of current experiences in many communities, the South African (local) state is *disorganised, disabling and distant*.
- It is *disorganised* because of poor horizontal, vertical and spatial integration of policies, plans and budgets, and an inability to implement. Cooperative governance remains largely unrealised. It remains to be seen whether the 'One District, One Plan' concept will address this. As long as we hang on to our instrumentalist notions of the state, and not pay attention to the relational aspects, I have my doubts. We make the mistake of reducing the role of local government to that of 'service delivery' rather than an organiser of local relationships.
- It is *disabling* because of a system of rigid and complex rules and processes, and the weaponization of regulatory procedures by politicians and officials. The net result is 'governance for government', rather than responsiveness to community-led initiatives and better development outcomes.
- It is *socially distant* because of hierarchical command and control attitudes, and bureaucratic institutional culture and language. The local state tends to be orientated inwards and upwards to political parties and auditors, not downwards and outwards to communities. Participatory processes are reduced to tick-box exercises. Civil society organisations and business are often viewed as the enemy.
- Were we idealistic at the time? Of course we were, but with good reason. We were inspired by the participation of millions of South Africans in their own liberation. What we were perhaps naïve about is believing that getting the right structures and rules in place would be enough to address the development challenges. What we didn't realise is that people run structures, and at the end of the day, if you put the 'wrong people' in the structures, who, as in the case of Donald Trump in the USA, are determined to subvert the institutions, you get poor results no matter what is in the Constitution or in law.