

**Preparing for the 'ethical encounter':  
Investigating the role and type of citizen education to  
encourage participation in local government**

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**JRSTAR001**

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## DECLARATION

Research dissertation presented for the approval of Senate in fulfillment of part of the requirements for the degree of Master of Law in approved courses and a minor dissertation. The other part of the requirement for this degree was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of Master of Law dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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26 MARCH 2010

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## ABSTRACT

The South African Constitution envisages the South African democracy as both representative and participatory. Post-apartheid local government is designed to bring government closer to the people and create spaces for community and citizen participation. Ward committees and Integrated Development Planning Forums act as the primary spaces for community involvement in local government decision making. Cornwall calls these spaces provided by the state through legal or institutional structures 'invited spaces'. The state regards them as *its* spaces where citizens or their representatives are invited. Power relations pervade these spaces and determine what knowledge is produced, which voices are heard and how much influence these voices have. The provision of invited spaces as the 'proper spaces' to engage the state might also act to demobilise and delegitimise spaces outside these forums.

The Constitutional Court has repeatedly emphasised the importance of citizen-state interaction in what it calls 'meaningful engagement'. Cornell argues that this is informed by the notion of ubuntu and can be conceptualised as an 'ethical encounter'. I argue that this notion is informed by both a recognition of another's humanity and a redistribution of resources and power so that people can live a life of dignity. This dissertation looks at the possibilities for an 'ethical encounter' at a local government level. Much has been written on the problems and challenges of local government in its structure, its politicisation and the dynamics within these invited spaces. This is compounded by service delivery protests which are directed at the inadequacy of local government. These protests suggest that the invited spaces do not provide the options for ethical encounters.

These are local 'invited', 'officialised' spaces. yet they provide the potential for what Foucault calls 'strategic reversibility', that is an ability to turn them around and use them as sites of resistance to the hegemonic. It is suggested that the role of civil society is to educate and empower citizens outside these spaces so that the invited spaces can be used as democratic 'shared' sites of participation. This entails learning what these spaces should do, what is happening in reality, and the rules of the game in these spaces, as well as examining how the local power dynamics work outside of the spaces. It is about alternative forms of knowledge being developed; about critical consciousness raising and empowerment; about holding the tension between opposition to and co-operation with the state; about enhancing agency as well as the capacity for moral responsibility on a personal and social scale; and about a new form of citizenship that is not merely oppositional but is dedicated to ubuntu.

This dissertation explores how this might be fostered and argues that it is a reflective NGO that should provide an education programme. It also considers various education programs already in operation and suggests that the IDASA study circles provide a potential site for such a programme. At the same time it is noted that work must be done on both side of the equation in order to enact this ethical encounter at local government level, thus structural and capacity reforms are necessary to make government more responsive.

## ABBREVIATIONS AND ACRONYMS

<b>AGISA</b>	Accelerated and Shared Growth Initiative for South Africa
<b>ANC</b>	African National Congress
<b>CBO</b>	Community Based Organisation
<b>CDW</b>	Community Development Worker
<b>CPP,</b>	Centre for Public Participation
<b>CSO</b>	Civil Society Organization
<b>DDP</b>	Democratic Development Programme
<b>DPLG</b>	Department of Provincial and Local Government
<b>FCR</b>	Foundation for Contemporary Research
<b>GEAR</b>	Growth, Employment and Redistribution Programme
<b>IDASA</b>	Institute for Democracy in South Africa
<b>IDP</b>	Integrated Development Planning/Plan
<b>KZN</b>	KwaZulu Natal
<b>LED</b>	Local Economic Development
<b>LGTA</b>	Local Government Transition Act
<b>NGO</b>	Non-Governmental Organisation
<b>RDP</b>	Reconstruction and Development Programme
<b>RSA</b>	Republic of South Africa
<b>SANCO</b>	South African National Civics Organisation
<b>WPLG</b>	White Paper on Local Government

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## INTRODUCTION

The 1994 elections heralded a new era for South Africa, one that promised to be marked by equality, dignity and democracy. The South African Constitution regards this new democracy as representative and participatory.<sup>1</sup> It is representative because it is based on a multi-party system with regular elections, a common voter's role and proportional representation.<sup>2</sup> In addition it also provides for a participatory governance framework and guarantees the opportunities of citizen involvement in public processes of decision-making.<sup>3</sup>

Local government is tasked with the job of facilitating inclusive development and democracy on a local level. In order to do this public participation is enshrined in local government law and policy as a means to deepen democracy, make governance more responsive and accountable, and empower the citizenry. Ward committees and Integrated Development Planning (IDP) Forums are the institutionalised spaces for citizen participation at the local level in South Africa.

Cornwall calls these forums created by government 'invited spaces', in that they are regarded by the state as *its* spaces where citizens or their representatives are invited to provide information and participate.<sup>4</sup> This creates a dynamic whereby the state officials 'own' and control the spaces and set the agendas around which participation takes place.<sup>5</sup> This is critical, as it means that officials are more powerful in these spaces

The 2009 *State of Local Government Report* indicates that local government is in 'distress' and community participation is breaking down.<sup>6</sup> The recent service delivery protests are understood by commentators (yet not by government) as an indication of the disintegration of citizen-state communication. Pithouse notes:

The language driving the actual planning and implementation of these protests, present in meetings, slogans and songs... speaks to notions of dignity and the idea that the disrespect shown towards people by the state has now become intolerable. Certainly this disrespect has a lot to do with evictions, an absence of toilets, intolerable water queues, candles in cramped cardboard and plastic shacks and so on. But it also has a lot to do with the pervasive sense that the state

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<sup>1</sup> Constitution of the Republic of South Africa, 1996. (Hereafter 'the Constitution'). See s 57(1) 'the National Assembly may...(b) make rules and orders concerning its business, with due regard to representative and participatory democracy'.

<sup>2</sup> *Ibid* s 1(1) (d).

<sup>3</sup> See s 69(d), 70(1) (b), 72, 115, 118, 59, 72(1)(a) and 118(1)(a)

<sup>4</sup> Andrea Cornwall 'Making spaces, changing places: situating participation in development' (2002) *Institute of Development Studies Working Paper No 173* at 9. Available at [www.ids.ac.uk/download.cfm?file=wp170.pdf](http://www.ids.ac.uk/download.cfm?file=wp170.pdf) [Accessed 21 August 2009] (Hereafter 'Making spaces').

<sup>5</sup> Harry Shier 'Constructing active citizenship: interacting participation spaces in the participation and organisation of children and young people as active citizens in Nicaragua.' Paper presented at seminar *Active Citizenship in Central America: Twenty First Century Challenges* (Dublin City University 7-8 November 2008) at 1.

<sup>6</sup> Department of Cooperative Governance and Traditional Affairs *State of Local Government in South Africa* (2009) 3-4 Available at [http://uscdn.creamermedia.co.za/assets/articles/attachments/24145\\_state-local-gov-rpt1.pdf](http://uscdn.creamermedia.co.za/assets/articles/attachments/24145_state-local-gov-rpt1.pdf) [Accessed 23 October 2009].

disrespects people by lying to people during elections and by failing to listen to them at other times.<sup>7</sup>

This suggests that the participation in governance is inherently tied to the recognition of people's dignity, a value that underpins the South African Constitution. It also indicates that the invited spaces are not serving as a channel through which people can effectively access the state. I argue that one effective way to address the problems of poor local government participation is through a non-governmental organisation-led citizen education programme that empowers marginalised people or 'the Pooors'<sup>8</sup> to participate and effectively claim their rights in these invited spaces. Central to this citizen education programme is the need to foreground issues of power working inside and through these invited spaces. It attempts to aid people to reconfigure these spaces so that it can be used to achieve practical goals as well as potentially challenge the broader configuration of power. The aim is for citizens to demand an ethical encounter.

In a recent speech Drucilla Cornell discussed what she called the 'ethical encounter', which is an engagement based on the African communitarian notion of ubuntu.<sup>9</sup> Cornell argues that the ethical encounter encapsulates the South African Constitutional Court's rulings demanding 'meaningful engagement' between citizens and the state.<sup>10</sup> This is an ideal-type encounter, a 'radical moral statement about what participation should look like. I will argue that this type of participation takes cognizance of the need for both the recognition of another's humanity and the redistribution of resources to facilitate that person's dignified existence. This is in line with the transformative vision of the South African Constitution and enacts the ideals underpinning a participatory democracy. Furthermore, an ethical encounter demands that 'invited spaces' become 'shared spaces', where the state and citizen representatives interact in spaces on more equal terms. It is a space where conflict is understood as a reality but ubuntu prevents relations from breaking down.

However, this ideal-type encounter is currently hindered by both functional and agency problems. The functional problems encompass the arguments and critiques of the design, administrative capacity and politics that render the invited space unresponsive to participation spaces. Agency problems are those that hinder effective participation in invited spaces. I argue that apartheid-style local government provide no space for meaningful engagement and thus

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<sup>7</sup> Richard Pithouse 'The University of Abahlali baseMjondolo' 2007 *Voices of resistance from occupied London* 17 at 17. Available at [www.abahlali.org/node/2814](http://www.abahlali.org/node/2814) [Accessed 12 January 2009].

<sup>8</sup> 'The Pooors' is a term that comes from Ashwin Desai *We are the Pooors: community struggles in post-apartheid South Africa*. This term in recognition of the domination of the power to name. 'Poverty', 'the poor' and even 'poor people' have been conceptualised in academia and elite politics. It quantifies or qualifies poverty. The claim 'we are the Pooors' is an act of resistance, of renaming and of reclaiming power similar in type to black consciousness movement associated with Steve Biko. It is a post-colonial moment of countering neoliberal tendencies and dominant forms of knowledge produces about the people who are not speaking. It is also used in recognition of the power to regain and reclaim dignity in undignified situations.

<sup>9</sup> Drucilla Cornell 'uBuntu and the law' *Sawyer Seminar Round Table Discussion* (University of Cape Town, 5 August 2009).

<sup>10</sup> *51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* 2008 ZACC 1 (CC) para 15. (Hereafter 'City of Johannesburg').

there is no history of formal engagement. Furthermore, the opposition to apartheid has arguably created a culture of participation based on struggle and opposition to the state rather than co-operation, collaboration, compromise and conflict resolution. Encouraging the ethical encounter means discussing what must be done on 'both sides of the equation' by citizens and the state, in order to create this type of encounter at local government level.<sup>11</sup>

There are a number of issues must be addressed in order for participation to be meaningful and sustained. These include structural and policy reform and staff capacity building. This dissertation will focus on a citizen education programme that attempts to renegotiate power relations in invited spaces by building critical consciousness and political capabilities so citizens can recognise how and why the interaction in invited spaces fall short of the ethical encounter. The Constitution's vision of a South Africa characterised by equality, dignity, freedom and democracy such a program

## Chapter Outline

Chapter One sets out the background to public participation. It considers the following: first it defines public participation and expands on the notion of invited space; second, it considers the value of public participation; and third it looks at public participation as a human right that is enshrined in international instruments. The right to participate in African regional instruments warrants attention as it is coupled with a duty to participate and linked with democracy, good governance and development. Thereafter, the chapter considers participation in the context of democracy as this is of particular pertinence to South Africa. Finally, it notes the warning from Development Studies of the dangers of institutionalising and mainstreaming participation without cognisance of the workings of power. Therefore, power is introduced as an important analytical tool when looking at participation. It also looks at the notion of community and gender which should be considered using power as an analytical lens.

Chapter Two discusses the notions of ubuntu and the ethical encounter, which frame this dissertation. The Constitutional Court's rulings on the importance of engagement provide the moral and intellectual description of what this encounter should look like. It is argued that the ethical encounter facilitates both a recognition of another's humanness and a redistribution of resources. This is in line with the transformative vision of the South African Constitution. The adoption of ubuntu as an informing motif of state-citizen interactions means that citizenship is reconstituted as an enactment of one's humanness in every encounter. In the political sphere, this means that people participate in invited spaces to create a better life for all. However, this

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<sup>11</sup> John Gavenda 'Towards participatory governance: assessing the transformative possibilities' in Samuel Hickey and Giles Mohan (eds) *Participation: from tyranny to transformation* (2004) 25 at 26. (Hereafter 'Towards participatory governance'.)

notion of citizenship is challenged by forces of neo-liberal globalisation which change and adjust relations between citizen and state.

Chapter Three considers the 'generative history' of the local government.<sup>12</sup> It discusses the legacy of apartheid on local government and the legacy of the anti-apartheid struggle on the 'culture of participation'. The chapter, then, sets out the law and policy which enshrines participation and introduces the two primary invited spaces for participation, the ward committees and IDP forums. Finally, it discusses research on the problems in these participatory arenas.

Chapter Four sets out the main tenets of a citizen education programme. It argues for a programme run by a non-state actor that aids and supports already existing grassroots organisations to develop 'critical consciousness', that is, the ability to analyse power relations. The programme is embedded in the local context. It is a self-reflective education, it is aware of the role of the NGO and refuses to replicate patterns of patronage which ultimately disempower and perpetuate dependency. It considers IDASAs study circles as an example of how such a program might work. Chapter Five provides a brief summary of the main argument.

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<sup>12</sup> Henri Lefebvre (trans J Moore) *The production of space* (1991) 110.

# CHAPTER 1: THEORISING PUBLIC PARTICIPATION

## 1.1 Introduction

This chapter reviews the literature on public participation in order to contextualise South Africa's commitment to public participation in local government and the potential pitfalls of this type of structured participation between citizen and state. First, it considers what is meant by participation, its importance and the types of participation. Second, it looks at participation in government processes as a human right. Third, the African regional instruments are considered and I suggest that they conceive participation as a duty of citizenship. Furthermore, these instruments tend to see participation as a means to enhance democracy, governance, development and realise human rights. Consequently, the chapter discusses how participation plays a role in 'deepening democracy' to make governance more responsive, effective and accountable. Finally, it considers the warnings regarding the problems of institutionalising and mainstreaming participation and situates this dissertation in response to this critique. I see a role for participation in invited spaces as long as the invitees are cognisant of the workings of power and strive for the ideal ethical encounter where power is more equally distributed.

## 1.2 Defining participation

Public participation is a widely-used term. It has been criticised for being 'politically ambiguous' and 'definitionally vague'.<sup>13</sup> Certainly, it has been used to refer to a set of methodological tools used in development programmes as well as evoked as a political philosophy. It has also been used to refer to various social or political interactions in different contexts and scales.<sup>14</sup> However, at its core it signifies how ordinary people exercise their political agency and 'voice' in taking part in the decision-making processes that affect their lives.<sup>15</sup>

This dissertation is primarily concerned with public participation in governance matters. In a way everyone participates 'whether as an effective actor or a passive victim'.<sup>16</sup> However, the focus is on the active processes whereby people take part in the government decision-making. Voting and protest action would both be considered participation, but this study's main focus is

<sup>13</sup> Ibrahim Steyn 'Towards transformative local participatory governance' (n.d.) Democracy Development Programme (DDP) Available at <http://www.ddp.org.za/research-unit/research-papers-by-ddp/local-spaces-for-transformative-local-participatory-governance.doc/file> [Accessed 11 November 2009].

<sup>14</sup> R McGee et al 'Legal frameworks for citizen participation: synthesis report' (2003) Logolink at 10-11. Available at [www2.ids.ac.uk/logolink/resources/downloads/SynthesisRep-Web.pdf](http://www2.ids.ac.uk/logolink/resources/downloads/SynthesisRep-Web.pdf) [Accessed 2 November 2009].

<sup>15</sup> Andrea Cornwall and Karen Brock 'What do buzzwords do for development policy?: a critical look at "participation", "empowerment" and "poverty reduction" (2005) 26(7) *Third World Quarterly* 1043 at 1046.

<sup>16</sup> M Stiefel and M Wolfe *A voice for the excluded: popular participation in development: utopia or necessity?* (1994) 5.

on the participation of people in local government through the spaces created by law and policy, although these are not isolated from other forms of participation.

As mentioned, I have followed Cornwall's lead in thinking of participation in spatial terms. Cornwall describes the spaces, channels and practices created to increase the legitimacy and participatory nature of the state as 'invited spaces'.<sup>17</sup> They might be institutionalised spaces, produced by law and policy or transient spaces created to inform, consult or involve communities in specific projects. With the emphasis on 'opening up' governance, these spaces can exist on local, national and international levels. Cornwall argues that the 'primary emphasis' of these spaces is 'on *relocating* the poor within the prevailing order: bring them in, finding the place, lending the opportunities, *empowering* them, *inviting them to participate*'.<sup>18</sup>

Invited spaces are distinguished from other spaces, ones conquered, claimed and owned by the common man. These have been called 'popular', 'invented', 'created' or 'claimed' spaces. These spaces grow out of common interest or concerns and come into being through organisation and mobilisation.<sup>19</sup> They are 'organic spaces' created and owned by 'less powerful actors *from or against* the power holders'.<sup>20</sup>

Gavenda develops this analysis and introduces a third space, namely, 'closed spaces', where there is no access to decision-making processes: 'decisions are made by a set of actors behind closed doors, without any pretence of broadening the boundaries of inclusion'.<sup>21</sup> Shier has refined the above typology to describe spaces for exercising citizenship:

1. Closed spaces only open to power-holders.
2. Spaces dominated by power-holders. Representatives of excluded/marginalised groups are invited to participate, however it is tokenistic and there is no real power transfer.
3. Spaces of genuine shared responsibility for decision-making.
4. Separate spaces for excluded/marginalised groups that are established, organised and facilitated by the power-holders.
5. Separate spaces for excluded/marginalised groups which are self-facilitating or autonomous, but made viable by the backing of the established power-holders.
6. Wholly autonomous spaces created and managed by excluded/marginalised groups without the backing or support of the established power-holders (may be oppositional or illegal).<sup>22</sup>

This typology draws attention to the types of potential interactions and interrelations within the spaces. On the one hand, people could be invited to participate in order to inform them of a project or to consult them about their needs. This is a 'planner-centred approach' focuses on

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<sup>17</sup> Andrea Cornwall and Vera Schattan P. Coelho (eds) 'Spaces for change? the politics of participation in new democratic arenas' in *Spaces for Change? The Politics of Participation in New Democratic Arenas* (2007) 1.

<sup>18</sup> Cornwall 'Making spaces' (note 4) 3 (emphasis in original).

<sup>19</sup> *Ibid* 24.

<sup>20</sup> Gavenda 'Towards participatory governance' (note 11) 35.

<sup>21</sup> *Ibid*. 35.

<sup>22</sup> Shier (note 5) 9-10

efficiency outcomes.<sup>23</sup> On the other hand, people could become 'genuine protagonists' in the decision-making process.<sup>24</sup> This is a more people-centred approach that sees participation as a 'means' to meet local needs but also as an inherently valuable process which empowers the poor and redistributes power.<sup>25</sup> The extent to which power is allocated in the spaces depends upon how participation is perceived and constructed. If it is framed as a methodology to improve governance or service delivery, it will limit the potential people have in the participatory spaces. If it is perceived as a 'mutual decision-making process, where different actors share power and set agendas jointly', as mentioned in Level 3, it offers more potential.<sup>26</sup>

One of the main criticisms of institutionalising and officialising participation through creating invited spaces is that the spaces become part of the 'political technology' which may act to discipline and co-opt participants, restrain choice, maintain the status quo and cement relations of domination.<sup>27</sup> Indeed, Ballard argues:

Inviting people to participate might allow an authority to say that there should be no need for anyone to operate outside of those invited spaces. Clearly the government is not *against* participation – it has taken steps to create forums for the people to speak. Having established its moral authority as a supporter of participation, it can demand to know why it would be necessary to operate outside of those forums it has established for the purpose... [Thus they] criminalise one informal space of citizenship practice by designating the other as "proper" informal space for civil society participation.<sup>28</sup>

It seems that this is happening in South Africa, where the government's line is that '*people have all these spaces for engagement and yet they take to the street. What is wrong with them (the people, rather than the spaces)? They must be under the spell of a third force/foreigner, what they are saying is not what people want, need or desire*'.<sup>29</sup> Although this is a rather simplistic and reductionist narrative it illustrates the dangers of ignoring the power that constructs the discourses around 'the right way' to participate as well as ignoring that power inside these spaces might make them inaccessible to people.

However, it is important not to romanticise or glamorise alternative popular spaces. Engagement with the state is often a long-term project, one that involves collaboration, deliberation and conflict resolution. Reactive popular spaces are often transient and thus limited in what they can achieve. They may lack a sustained commitment to long-term active

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<sup>23</sup> V Michener 'The participatory approach: contradiction and co-option in Burkina Faso' (1998) 26 (12) *World Development* 2105 at 2106.

<sup>24</sup> Valerie Miller, Lisa VeneKlasen and Cindy Clark 'Rights-based development: linking rights and participation : challenges in thinking and action' (2004) 36(1) *IDS Bulletin: Developing Rights* 31 at 32.

<sup>25</sup> *Ibid.* 24.

<sup>26</sup> *Ibid.* 24..

<sup>27</sup> Foucault (1991) cited by Andrea Cornwall 'Participation in development: tracks and traces' (2002) 28 *Currents* 4 at 5.

<sup>28</sup> Richard Ballard 'Participation, democracy and social movements' (2009) 4 (1) *Critical Dialogue – Public Participation in Review* 17 at 19.

<sup>29</sup> See Ballard (note 28) for a similar argument.

engagement with the state.<sup>30</sup> Furthermore, they often do not provide people with the knowledge, skills and resources to participate effectively with the state.

Invited spaces exist in a dynamic relationship to each other, and with claimed and closed spaces, where what happens in one affects the other.<sup>31</sup> For instance, claimed spaces often 'prepare, empower, support and legitimise those who are then delegated to enter the invited space on their behalf'.<sup>32</sup> In addition, closed spaces may attempt to restore legitimacy by creating invited spaces which opens up more possibilities for claimed spaces. Therefore the potential of invited spaces must be assessed in relation to the other spaces.<sup>33</sup>

The institutionalisation and mainstreaming of invited spaces offers possibilities for their 'subversion, appropriation and reconstitution'.<sup>34</sup> Invited spaces might be *used* by people who want to engage, they may not be truly representative, inclusive or even particularly instrumental, but they offer *potential* for several reasons. Firstly, they are created by an ideological commitment to state-citizen collaboration and this is often grounded in law and policy. This provides a building block upon which to make claims for real and effective participation. Secondly, Foucault notes the 'strategic reversibility' of power relations so that spaces produced by the powerful are filled with those alternative and resistant visions, which transform the possibilities of that space.<sup>35</sup>

Therefore expanding the capacity and agency of those that enter the invited spaces is important so that they might participate with full understanding of the power working these spaces. This is the ingrained hegemonic practices that dictate the rules of the game inside the spaces and the broader systems of oppression such as patriarchy, cultural norms and the tendency to criminalise poverty that contextualise spaces. Knowing how power works expands the ability of people to reconfigure and subvert the power working against them in the spaces.

### 1.3 The value of participation

Many theorists have expounded on the importance of participation. I will use the South African Constitutional Court's ruling in the *Doctors for Life*<sup>36</sup> case, which will be discussed in the next chapter, as a starting point to analyse the importance and value of public participation. The

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<sup>30</sup> Cheryl MacEwan 'New spaces for citizenship? rethinking gender participation and empowerment in South Africa' (2005) 24 *Political Geography* 969 at 981 (hereafter 'New spaces for citizenship').

<sup>31</sup> *Ibid* 980

<sup>32</sup> Shier (note 5) 1.

<sup>33</sup> John Gavenda 'Finding the spaces for change: a power analysis' (2006) 37(6) *IDS Bulletin* 23 at 27 (hereafter 'Finding the Space').

<sup>34</sup> MacEwan 'New spaces for citizenship' (note 30) 977.

<sup>35</sup> Cornwall 'Making spaces' (note 4) 9.

<sup>36</sup> *Doctors for Life International v The Speaker of the National Assembly* 2006 (12) BCLR 1399 (CC) (Hereafter '*Doctors for Life*').

majority judgement examined the role of public participation in the legislative process and emphasised that participation is both instrumental and constitutive as it:

- enables the creating of law and policy that is more likely to be accepted and more effective in practice;
- strengthens the legitimacy of government;
- acts as a counterweight to secret lobbying, influence peddling and ensures accountability, responsiveness and openness;
- encourages the active involvement of people in government institutions, laws and processes and improves their knowledge of governance and enhances civic dignity,
- is of special importance in South Africa where huge economic and social inequalities exist and to those who are relatively disempowered are often not heard.<sup>37</sup>

It is useful to understand the emphasis placed on participation by using Parfitt's distinction between participation as an 'end' and as a 'means' of democracy and development.<sup>38</sup> On one hand, participation acts as a 'means' to achieve certain developmental and democratic ends. As articulated above, participation can increase the legitimacy, accountability, responsiveness and efficacy of governance and generate ownership, 'buy in' and commitment to local projects and programmes. This can be called the 'effectiveness and efficiency' rationale for promoting participation.<sup>39</sup> On the other hand, participation is considered an 'end' in that it sees 'empowerment' as an outcome of the process.<sup>40</sup> The last two points, above, indicate that the Constitutional Court acknowledges the intrinsic and instrumental value of participation. Participation enables people to behave as active citizens and recognises that everyone has valuable contributions. It provides opportunities for the expression of voice and agency. Hence it is important in its own right and might be empowering for individuals as they are given the space and right to be heard. This can be called the 'equity and empowerment' rationale for promoting participation.<sup>41</sup>

The focus of this dissertation is on the value of participation for improving the lives of 'the Pooors' and those who are excluded and marginalised. It has long been assumed that participation and its association with good governance and decentralization improves the lives of 'the Pooors'.<sup>42</sup> This should not be left uninterrogated.

Research evaluating the effect of participation is mixed. Some research indicates that participation is associated with improved conditions, increased social services and less

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<sup>37</sup> Adapted from *Doctors for Life* para 119.

<sup>38</sup> Trevor Parfitt 'The ambiguity of participation: a qualified defence of participatory development' (2004) 25 *Third World Quarterly* 537 at 537.

<sup>39</sup> Francois Theron et al 'Participation according to IAP2 Principles: opportunity or challenge for Integrated Development Planning in South Africa?' (2007) at 3. Available at [http://www.iap2.org.au/sitebuilder/resources/knowledge/files/770/journal\\_issue1\\_idp.doc.pdf](http://www.iap2.org.au/sitebuilder/resources/knowledge/files/770/journal_issue1_idp.doc.pdf) [Accessed 7 January 2009]

<sup>40</sup> Parfitt (note 38) 576.

<sup>41</sup> Theron et al (note 39) 3.

<sup>42</sup> Peter K Spink and Nina J Best 'Introduction: Local democratic governance, poverty reduction and inequality: the Hybrid character of public action' (2009) 40 (6) *IDS Bulletin* 1 at 1.

deterioration of the communal areas. Participation can lead to community and organisational empowerment and feelings of personal and political efficacy.<sup>43</sup> However, Putzel warns that not all participation by poor people promotes a poverty reduction agenda and can even be counterproductive for pro-poor development.<sup>44</sup> He notes that 'the Pooors' might be mobilised to participate on the basis of identity politics or patronage relationships rather than projects that are designed to 'directly improve their economic position in society'.<sup>45</sup> Participation may, also be harmful to society, for instance people were mobilised into political action in Rwanda and Bosnia which lead them to murder their fellow compatriots. Thus participation should be understood from a 'political perspective' in order to recognise it is not always a positive phenomenon.<sup>46</sup>

This thesis will demonstrate that a key impetus for South Africa's adoption of a participatory governance framework was efficiency, empowerment and pro-poor goals.<sup>47</sup> Piper and Deacon argue that the impetus for enshrining participation in local government was three-fold.<sup>48</sup> First, it reflected an ideological commitment by the ANC to 'people's power'. Second, the international trends emphasising participation in governance were channelled into policy documents through the South African reliance on consultants in conceptualising the new order.<sup>49</sup> Third, participation is advocated as a way to improve the responsiveness and accountability of poorly performing municipalities, which was a huge problem on the eve of the new dispensation.<sup>50</sup> The way that policy documents have understood the value of participation is considered in Chapter Two. However it is important to look at the broader trends which see participation as a human right and essential for democracy and development.

#### **1.4 International and regional instruments on the 'right to participate'**

In this section I would like to illustrate four points. First, there is some sort of human right to participate. Hence participation is considered intrinsically important to human beings. Second, regional and international instruments set out the state's duty to provide for this participation thus authorising and encouraging the creation of invited spaces. Third, African instruments also emphasise the duty of citizens to participate. Fourth, these regional instruments construe participation not only as a 'end' but as a 'means' to attain better governance, promote

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<sup>43</sup> Wandersman and Florin cited by John Prestby et al 'Benefits, costs, incentive management and participation in voluntary organizations: a means to understanding and promoting empowerment' (1990) 18(10) *American Journal of Community Psychology* 117 at 119.

<sup>44</sup> James Putzel 'The politics of participation: civil society, the state and development assistance' (2004) *Crisis States Development Discussion Paper 1* at 2 Available at [www.crisisstates.com/download/dp/dp01.pdf](http://www.crisisstates.com/download/dp/dp01.pdf) [Accessed 17 June 2009].

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid* 3.

<sup>47</sup> See the RDP policy documentation mentioned in Chapter 3 as one example.

<sup>48</sup> Laurence Piper and Roger Deacon 'Too dependent to participate: ward committees and local democratisation in South Africa' (2009) 35(4) *Local Government Studies* 415 at 416.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid* 420.

development and realise other rights. Thereafter I also consider the Manila Agreement which provides a radical redefinition of participation, as I believe it is a useful way to look at participation and the role of the state and NGOs.

Steiner notes that in international human rights instruments, the right to political participation, entrench a specific right to vote with the 'vague' notion of a right to 'take part' in public affairs.<sup>51</sup> For instance, Article 21 of the Universal Declaration of Human Rights provides for the right of participation in government 'directly or indirectly', and emphasises that 'the will of the people shall be the basis of the authority of the government'.<sup>52</sup> Similarly, Article 25 of the International Covenant on Civil and Political Rights states that 'every citizen shall have the right and the opportunity...to take part in the conduct of public affairs, directly or through freely chosen representatives'.<sup>53</sup> The Human Rights Committee elaborated on this article, stating that it 'covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels'.<sup>54</sup> Importantly, the Committee added that there should be no discrimination between people, everyone should have an equal right to take part.<sup>55</sup>

Three regional instruments are useful in considering the value and definition of public participation in the postcolonial African state. Participation is construed as a right and duty in Africa, one that is essential for development and democracy.

The first is the African Charter on Human and Peoples' Rights. It enshrines a vague right of African people 'to take part' in governance.<sup>56</sup> Article 25 emphasises African states' obligation to provide for and facilitate this process and it links the realisation of this right with access to information and education.<sup>57</sup> The African Charter also introduces the *duties* that citizens have to each other, the family, the community, the state and Africa.<sup>58</sup> The individual is required:

<sup>51</sup> Hendry J Steiner 'Political participation as a human right' (1988) 1 *Human Rights Year book* 77 at 78.

<sup>52</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) Art 21 (3).

<sup>53</sup> International Covenant on Civil and Political Rights, 1976 G.A. res.2200A(XXI) 1966 Art 25 South Africa signed this instrument on 3 October 1994 and ratified it on 10 December 1998.

<sup>54</sup> Annotation by General of the Draft International Covenants on Human Rights 10 UN GAOR Supp. Note 19 (1955) at 173. Also see Human Rights Committee *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)*: CCPR/C/21/Rev.1/Add.7 para 6. 'Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process... Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens... and no unreasonable restrictions should be imposed'.

<sup>55</sup> *Ibid.*

<sup>56</sup> African Charter on Human and Peoples' Rights (1981) OAU Doc CAB/LEG/67/3 rev. 5, 21, ILM 58 (1982), entered into force 21 October 1986 and acceded to by South Africa on 9 July 1996. Art 13 reads: '[e]very citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives...'

<sup>57</sup> Article 25: States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood

<sup>58</sup> Article 28 reads: '[e]very individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.' Art 29 reads: 'The individual shall also have the duty: 1. to preserve the harmonious development of the family and to work for the cohesion and respect of

to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society.<sup>59</sup>

In addition, the individual should 'contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity'.<sup>60</sup> Thus, a *right* to participate is complemented with a *duty* to do so for the common good.<sup>61</sup> Arguably, the duty and responsibility that individuals have towards each other and the state is conceptualised and promoted through the notion of ubuntu discussed in the following chapter.

The second agreement, the 1990 African Charter for Popular Participation in Development and Transformation, explicitly links participation with development, socio-economic recovery and the transformation of Africa.<sup>62</sup> It was adopted at the Arusha Conference by delegates from African governments, NGOs and UN agencies.<sup>63</sup> It defines popular participation as the 'fundamental right of the people to fully and effectively participate in the determination of the decisions which affect their lives at all levels and at all times'.<sup>64</sup> The focus on the people's role in the realisation of popular participation is informative and appears to reiterate the African Charter's notion duty. People are required to be 'be fully involved, committed and indeed, seize the initiative' to participate.<sup>65</sup> This suggests a communitarian notion of citizenship where people are active citizens. The Charter states that people's organisations should be established which are 'genuinely grass-root, voluntary, democratically administered and self reliant and that are rooted in the tradition and culture of the society so as to ensure community empowerment and self-development'.<sup>66</sup> These organisations would then consult with government, though structures provided by government. This suggests that people need to organise in their own claimed spaces, which will then interact with the invited spaces prepared for by government. Government

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the family; to respect his parents at all times, to maintain them in case of need; 2. To serve his national community by placing his physical and intellectual abilities at its service; 3. Not to compromise the security of the State whose national or resident he is; 4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened; 5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law; 6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; 7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; 8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity'.

<sup>59</sup> Article 29 (7).

<sup>60</sup> Article 29 (8).

<sup>61</sup> See also the Inter-American Democratic Charter OAS Doc AG/Res.I (XXVIII-E/01) (2001). The preamble notes '[i]t is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy'.

<sup>62</sup> African Charter for Popular Participation in Development and Transformation 1990 ECA Doc CM.16/11; UN Doc A/45/427. The Charter for Popular Participation was adopted at the end of the International Conference on Popular Participation (12-16 February 1990, Arusha, Tanzania). (Hereafter 'Popular Participation Charter').

<sup>63</sup> *Ibid* preamble para.3. The Charter states that its aims are to put 'participation for development' on the institutional map, identify obstacles to people's participation in development, discuss approaches to promoting popular participation, make recommendations for governments, the UN and donor agencies and propose ways to monitor progress in the facilitation of people's participation in Africa's development.

<sup>64</sup> Article 10.

<sup>65</sup> Article 13.

<sup>66</sup> Article 13.

must create 'the necessary conditions for such an empowerment and facilitate effective popular participation in societal and economic life'.<sup>67</sup> This includes opening up political processes<sup>68</sup>, reforming law and policy to eliminate bureaucratic procedures that limit participation,<sup>69</sup> respecting human rights,<sup>70</sup> and promoting peace.<sup>71</sup> Interestingly, the Charter prescribes a role for local and international NGOs in creating this environment conducive to participation.

The third document of relevance is the recently adopted African Charter on Democracy, Elections and Governance.<sup>72</sup> The Charter sees public participation as both an objective and a principle of democracy in Africa. As an objective, states are required to promote 'the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs'.<sup>73</sup> Moreover 'effective participation of citizens in democratic and development processes' should be a principle in implementing the Charter. Thus participatory democracy is seen as a form of good governance.<sup>74</sup> This Charter is radical in that states are required to recognise democracy and participation as fundamental rights. This is not explicitly articulated in any other binding international instruments.<sup>75</sup> Furthermore, it contextualises participation in Africa and looks at the contemporary problems on the continent such as unconstitutional changes of government, corruption, poor representation of women, minorities and vulnerable groups.<sup>76</sup> Article 40 requires that states provide spaces and structures for participation, thus further emphasising a commitment to institutionalising participation.<sup>77</sup>

These regional instruments link participation to human rights, development, democracy and public participation in a similar way to the Vienna Declaration:

Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.<sup>78</sup>

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<sup>67</sup> Article 11.

<sup>68</sup> Article 16.

<sup>69</sup> Article 3.

<sup>70</sup> Article 17.

<sup>71</sup> Article 18.

<sup>72</sup> African Charter on Democracy, Elections, and Governance AU Dec. 147 (VIII) (2009) (Hereafter 'African Charter on Democracy'). It is still unratified by South Africa.

<sup>73</sup> Article 2 (10).

<sup>74</sup> *Ibid* Preamble.

<sup>75</sup> F Ngarhodjim 'African Charter on Democracy, Elections and Governance: a critical analysis (2007) *Paper for the Open Society Institute: African Governance Monitoring & Advocacy Group* at 4. Available at [http://www.afrimap.org/english/images/paper/ACDEGNgarhodjim\\_EN.pdf](http://www.afrimap.org/english/images/paper/ACDEGNgarhodjim_EN.pdf) [Accessed 12 January 2010].

<sup>76</sup> *Ibid* 2.

<sup>77</sup> African Charter on Democracy (note 72) Art 40.

<sup>78</sup> Vienna Declaration and Programme of Action UN Doc A/CONF.157/2; 32 ILM 1661 (1993) Part I para 8.

However, the regional instruments mentioned above, position public participation in the African milieu and, read together, emphasise the importance of participation for postcolonial states and people.

There is one last agreement that adopts a different view of participation. The above instruments see participation as a right and a duty to enact better governance, democracy and development. A reduced and simplistic conception of this would be, 'people can and should participate *in the state* to make things better'. In other words, people should be 'invited in' The 1989 Manila Declaration turns that on its head as it suggests that the state should contribute to the development of the people.<sup>79</sup> It sets out four principles to guide the promotion of public participation:

1. Sovereignty resides with people.
2. The legitimate role of government is to enable people to set and pursue their own agenda.
3. To exercise their sovereignty and assume responsibility for the development of themselves and their communities, the people must control their own resources, have access to relevant information, and have the means to hold the officials of government accountable.
4. Those who would assist the people with their development must recognize that it is they who are participating in support of the people's agenda, not the reverse. The value of the outsider's contribution will be measured in terms of the enhanced capacity of the people to determine their own future.

Although this is a more radical stance, it draws attention to the role of government and NGOs in supporting participation without encouraging dependency. This is important to consider in light of the education programme suggested in Chapter Four.

This section has aimed to discuss the normative framework of participation as a human right. It has focussed on participation as conceived by African instruments. As indicated, participation has been closely linked to democracy. There is a plethora of debates around the optimal type and amount of participation in a democracy, however South Africa is committed to a type of participatory democracy so it is important to look at the trends to incorporate participation into a type of representative democracy, and what this means.

## **1.5 Participatory and representative democracy**

A number of studies, most notably the World Bank's *Voices of the Poor* Report and the Commonwealth Foundations' *Citizen and Governance*, have pointed to the growing gap between ordinary people, especially the poor, and the government institutions that affect their lives.<sup>80</sup> This so-called 'democratic deficit' has stimulated debate on the role of public participation for improving governance. Representative-type democracy and its institutions are seen to have

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<sup>79</sup> The Manila Declaration was the result of the Inter-regional Consultation on the People's Participation in Environmental Sustainable Development extracts available at <http://www.srds.co.uk/srds/srds009.htm> [Accessed 10 December 2010].

<sup>80</sup> John Gavenda 'Six propositions on participatory local governance' (2002) 29 *Currents* 29 at 29.

failed to fulfil the promises of democracy. There is a general sense of disillusionment with government, fuelled by growing examples of corrupt, unresponsive and unaccountable officials.<sup>81</sup> This section will look briefly at different forms of democracy, and the role of public participation for good governance.

*Representative democracy* has been construed as an indirect way for citizens to exert some control over political processes.<sup>82</sup> Citizens are required to 'aggregate all their concerns and beliefs about the way things should be done into a single mark on a ballot'.<sup>83</sup> This form of 'elite democracy' sees the vote as a 'political blank cheque' for elected leaders to do as they will once elected.<sup>84</sup> This is particularly problematic in South Africa, where citizens vote for political parties and not individuals and, often, elected leaders show more allegiance to the party rather than to the people.<sup>85</sup> Thus, representative democracy is accused of being:

ineffective in accomplishing the central ideas of democratic politics: facilitating active political involvement of the citizenry, forging political consensus through dialogue, devising and implementing public policies that ground a productive economy and healthy society and, in more radical egalitarian notions of the democratic ideal, assuring that all citizens benefit from the nation's wealth.<sup>86</sup>

These 'radical egalitarian notions' of democracy were enshrined in the Freedom Charter which states that the 'people shall govern' and that 'the people will share in the nation's wealth'.<sup>87</sup> The Freedom Charter is arguably the ideological and moral basis from which the new South Africa has grown. One way to counter the problems of representative democracy is to create opportunities for participation and thus reduce the gap between citizen and state. This is based on notions of direct democracy.

*Direct democracy* is associated with the classical Greek city-states where 'the people assemble and every citizen is directly involved in every government decision'.<sup>88</sup> In its ideal form it is a space where there is equality among members, each voice is heard and diversity is treated

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<sup>81</sup> John Gavenda 'Strengthening participatory aApproaches to local governance: learning for the lessons abroad' (2004) Winter *National Civic Review* 16 at 16.

<sup>82</sup> McGee (note 14) 9.

<sup>83</sup> Ballard (note 28) 17.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> Archon Fung and Erick Olin Wright 'Thinking about Empowered Participatory Governance'(2003) in Archon Fung, Erik Olin Wright and Rebecca Abers (eds) *Deepening democracy : institutional innovation in empowered participatory governance* The Real Utopias Project IV, 3 at 3 (Hereafter 'Thinking about empowered participatory governance'.)

<sup>87</sup> The Freedom Charter was the statement of core principles of the South African Congress Alliance made up of the African National Congress, South African Indian Congress, the South African Congress of Democrats and the Coloured People's Congress. Its formulation involved an extensive consultation process with people all over the Country. It was adopted as The Congress of the People, Kliptown 26 June 1955. Many of its demands were encapsulated in the South African Constitution. *The Freedom Charter*. Available at <http://www.anc.org.za/ancdocs/history/charter.html> [Accessed 1 February 2010].

<sup>88</sup> Richard Calland *The first 5 years: a review of South Africa's democratic Parliament* (1999) 61.

with tolerance and compassion.<sup>89</sup> Fanon notes the importance of this kind of interaction in the postcolonial state:

In an undeveloped country experience proves that the important point is not that three hundred people understand and decide but that all understand and decide, even if it takes twice or three times as long.<sup>90</sup>

Fanon links the need for direct democracy to 'awakening the people', countering demoralisation and internalised oppression as well as aiding in nation building. However, this form of direct democracy is not always feasible or effective for every decision.

Innovations for promoting participation such as *participatory/deliberative democracy* negotiate the trade-off between direct and representative democracy by promoting public consultation. These emphasise 'eliciting broad public participation in a process that provides citizens an opportunity to consider the issues, weigh alternatives, and express a judgement about which policy or candidate is preferred'.<sup>91</sup> Such public dialogue is based on critical analysis. It encourages cooperation rather than consensus building and, in its best form, asks participants to transcend their own interests and shift their view through the process of deliberation.<sup>92</sup> In other words 'talk-centric'; replaces 'voting-centric' democracy.<sup>93</sup> Various ways are used to include citizens and civil society in deliberative processes, such as public meetings, citizen's panels or conferences and citizen juries.

Fung and Wright have argued for a different kind of participatory governance, one that is *empowered participatory democracy/governance*. This would include state-driven reforms which 'are participatory because they rely upon the commitment and capacities of ordinary people to make sensible decisions through reasoned deliberation and empowered because they attempt to tie action to discussion'.<sup>94</sup> This 'progressive institutional reform strategy' draws inspiration from participatory budgeting in Brazil and Kerala's Panchayat reforms, to name just two examples. These spaces have the potential to be 'radically democratic' as they are 'shared' rather than 'invited' spaces and thus power is more equally distributed between citizen and state officials.<sup>95</sup>

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<sup>89</sup> For a South African example of such interaction, see Nelson Mandela's description of local meetings 'Everyone who wanted to speak did so... It was democracy in its purest form. There may have been a hierarchy of importance among the speakers, but everyone was heard, chief and subject, warrior and medicine man, shopkeeper and farmer, landowner and laborer.... The foundation of self-government was that all men were free to voice their opinions and equal in their value as citizens.' cited by Amartya K Sen 'Democracy isn't Western' *Wall Street Journal* (24 March 2006) Available at <http://arthshastra.com/pdf/DemocracyIsntWestern.pdf> [Accessed 12 February 2010].

<sup>90</sup> Franz Fanon (trans. Richard Philcox) *The wretched of the earth* (2005) 135.

<sup>91</sup> E Weeks 'The practice of deliberative democracy: results from four large-scale trials' (2000) 60(4) *Public Administration Review* 360 at 360.

<sup>92</sup> Ballard (note 28 ) 18.

<sup>93</sup> S Chambers 'Deliberative democratic theory' (2003) 6 *Annual Review of Political Science* 307 at 308.

<sup>94</sup> Archon Fung & Olin Wright 'Thinking about empowered participatory governance' (note 86) at 5.

<sup>95</sup> Archon Fung and Eric Olin Wright 'Deepening democracy: innovations in empowered participatory governance' (2001) 29 (1) *Politics and Society* 5 at 6-7.

Most of the reforms link participatory governance with a policy of decentralisation in order to enable citizens' better access to the state. Decentralisation has been lauded 'as the key to state reform, popular empowerment and, more recently, poverty reduction'.<sup>96</sup> Despite this, it is not clear why decentralised, but still bureaucratic, government should be more democratic.<sup>97</sup> Decentralisation has come under increasing criticism in failing to transform the state or provide more inclusive democracy. In fact, research in South Africa indicates that poor performance of local officials tends to lead to general disillusionment with democracy.<sup>98</sup> Other research indicates that decentralisation also adversely affects women's political representation.<sup>99</sup> Although decentralisation might have failed to completely realise its aims, it does make the state more accessible to 'the Poores' and provides a site where people might engage with officials. Certainly local government is less intimidating than centralised government. Furthermore, it might be easier to demand an ethical encounter on a local level where people can insist to be *seen*, and not reduced to a statistic.

In summary, participatory reforms aim to enhance representative democracy and rejuvenate its institutions.<sup>100</sup> These reforms are often accompanied by decentralisation processes and an emphasis on including the most marginalised groups in participatory processes. These moves are seen as a means to make government more responsive, effective and accountable and thus contribute to the good governance agenda and development. Participation becomes 'an input to as well as an output from democracy'.<sup>101</sup> Although these reforms strengthen the possibility and potential of participation as *right* in governance processes,<sup>102</sup> without an analysis of the political processes of participation, their potential to enhance democracy is limited. Gavenda argues that bringing direct and empowered forms of participation into local government can, under certain circumstances, aid in democracy building and lead to pro-poor outcomes. However, he warns that simply creating new invited spaces does not automatically lead to inclusive pro-poor outcomes. This will depend on the power relations that exist inside and outside of these spaces.<sup>103</sup> This point is central to this dissertation. For participation to be real and meaningful, the provision of a participatory space by the state is not

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<sup>96</sup> Samuel Hickey and Giles Mohan 'Relocating participation within a radical politics of development.' (2005) 36 (2) *Development and Change* 237 at 245. (Hereafter 'Relocating participation').

<sup>97</sup> Patrick Heller 'Moving the state: the politics of democratic decentralization in Kerala, South Africa, and Porto Alegre' (2001) 29 (1) *Politics & Society* 131 at 132.

<sup>98</sup> Michael Bratton and Sibanyoni Mxolisi 'Delivery or responsiveness? a popular scorecard of local government performance in South Africa' (2006) *Afrobarometer Working Paper No. 62* at 1.

<sup>99</sup> Jo Beall 'Decentralizing government and decentring gender: lessons from local government reform in South Africa' (2005) 33 (2). *Politics and Society* 1 at 1 Available at [http://eprints.lse.ac.uk/2905/1/Decentralizing\\_govt\\_and\\_decentering\\_gender\\_LSERO\\_version.pdf](http://eprints.lse.ac.uk/2905/1/Decentralizing_govt_and_decentering_gender_LSERO_version.pdf) [Accessed 10 December 2009].

<sup>100</sup> Rajesh Tandon 'Participation, citizenship and democracy: reflections on 25 years of PRIA' (2008) *Community Development Journal* 284 at 293.

<sup>101</sup> *Ibid* 294.

<sup>102</sup> Gavenda 'Towards participatory Governance' (note 11) 25.

<sup>103</sup> *Ibid*.

sufficient, change in power dynamics and an active commitment to an ethical encounter is integral.

## 1.6 The mainstreaming warning

As citizen participation provisions have been incorporated into legislation and policy, so participation has become institutionalised and mainstreamed. One particularly strong critique has come from the Development Studies field, which sees this mainstreaming of participation as another means to regiment and control dissent. It has been described as a means to 'save government money, stave off demands for services and counter opposition to the regime'.<sup>104</sup>

Parfitt notes that participation in development thought has been criticised on two levels, namely, for its theoretical incoherence and for its practice.<sup>105</sup> With regards to theory, participation has been critiqued for the inadequate attention paid to power, structure and agency, the romanticisation of 'the community' and the obsession with the local as opposed to broader, systemic structures of injustice.<sup>106</sup> Participation in practice has been faulted for its routinisation and institutionalisation which 'translated into a managerial exercise based on 'toolboxes' of procedures and techniques'.<sup>107</sup> Hence it loses its 'radical roots' as becomes a technique to generate 'buy in' and achieve efficiency goals rather than empowerment.<sup>108</sup>

The warning by development theorists on the danger of mainstreaming participation is important. They demand that advocates are vigilant of the potentially disempowering and disciplining effects of structured participation. However, I do believe that institutionalised participation might be useful, provided that it incorporated a consideration of power and political agency.

## 1.7 Power and empowerment

I have argued that integral to considering and promoting participation in invited spaces is an analysis of power.<sup>109</sup> Ballard similarly notes that '[w]e need to recognise participation as an inherently political process rather than be fixated on the technical process of consultation'.<sup>110</sup> My interest in participation and development is grounded in a commitment to pro-poor change, equity and social justice. Without analysing how power works in the spaces created for

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<sup>104</sup> Cornwall 'Making spaces' (note 4) 12.

<sup>105</sup> Parfitt (note 38) 541.

<sup>106</sup> *Ibid.*

<sup>107</sup> Cleaver 2001 cited by Parfitt (note 38) 545.

<sup>108</sup> *Ibid.*

<sup>109</sup> Tandon (note 100) 292.

<sup>110</sup> Ballard (note 28) 20.

participation, we run the risk of maintaining and reinforcing the structures and systems that perpetuate inequality and poverty.<sup>111</sup>

Lefebvre famously noted:

Space is a social product...It is not simply “there”, a neutral container waiting to be filled, but it is a dynamic, humanly constructed means of control and hence of domination, of power.<sup>112</sup>

Understanding how power works is thus context bound. It means looking at the invited space and its context and recognising the potential and dangers of power working within and outside these spaces for pro-poor transformation. It is important to discuss the various conceptions of power. Acknowledging power means envisaging empowerment: what we want the power relations to look like and how we will move towards this.<sup>113</sup>

A useful starting point is Eyben’s summary of the various approaches or models of power. These understandings of power will be discussed briefly with reference to the ‘empowerment potential’ of each conception.

*Power over* is the ability to act on, control or influence a thing or a person’s actions and thoughts.<sup>114</sup> Here power is understood as a zero-sum game, you either have power or you do not. It is seen as a finite resource and the only way to gain it is to take it from the more powerful.<sup>115</sup> Empowerment, based on this view, would mean increasing the representation of ‘the Pooors’ and in existing political and economic structures. However these structures are not changed.<sup>116</sup>

The *power to* model is the conventional understanding of power. It is generative or productive power; the ability to do, say or choose: to have an effect. It is about agency.<sup>117</sup> This understanding also introduces ‘structure’, which is the formal and informal ‘rules of the game’, embedded in social institutions that act to constrain to agency. Thus empowerment would be about changing the nature of power relations and expanding their capabilities to engage.<sup>118</sup> It might involve strategic action against systemic relations of oppression.

The *power with* model discusses power gained through cooperation and collective effort. It refers to the need of those in a ‘subordinate position’ to ‘gain support from others to develop new

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<sup>111</sup> Rosalind Eyben ‘Linking power and poverty reduction’ In Ruth Alsop (ed) *Power, rights, and poverty: concepts and connections* (2004) DFID and the World Bank. 15 at 15. Available at <http://siteresources.worldbank.org/INTEMPPOWERMENT/Resources/PPFinalText.pdf> [Accessed 10 November 2010].

<sup>112</sup> Lefebvre (note 12) 24.

<sup>113</sup> Tandon (note 100) 292.

<sup>114</sup> Eyben (note 111) 20

<sup>115</sup> Cecilia Luttrell et al ‘Understanding and operationalising empowerment’ (2009) *Overseas Development Institute Working Paper 308* at 6. Available at [www.odi.org.uk/resources/download/4525.pdf](http://www.odi.org.uk/resources/download/4525.pdf) [Accessed 12 February 2009]

<sup>116</sup> *Ibid.*

<sup>117</sup> Eyben (note 111) 17.

<sup>118</sup> Capability refers to Sen’s conception of capability, which sees it as ‘notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead’ Amartya K. Sen ‘The standard of living’ (1985) *The Tanner lectures on human values* at 46. Available at <http://www.tannerlectures.utah.edu/lectures/documents/sen86.pdf> [Accessed 20 March 2009].

ways of understanding -or frameworks of meaning-about how the world could work.<sup>119</sup> This 'liberation of the mind' discussed by postcolonial writers and feminists would be achieved when people organise and mobilise and thus develop a shared worldview. Empowerment would be the collective strength and solidarity of groups who have 'developed a voice and a capacity to influence change'.<sup>120</sup>

Related to this is the notion of *power within*, which is the self-worth, dignity and personal liberation that comes with a consciousness-raising. It is associated with inner strength, self reliance as well as self-respect and mutual regard. Empowerment means gaining a sense of personal agency.

*Power everywhere* is informed by Foucault's understanding that power is like a capillary network: it infuses all aspects of social life. Every person is implicated in relations of power in every part of their daily lives and actions.<sup>121</sup> Empowerment is possible in all situations and at all times. It also suggests that in invited spaces, alternative resistant discourses and ways of being can exist alongside the hegemonic. It suggests that all spaces are contested spaces and can be reconstituted.

*Power/knowledge* is associated with Foucault's claim that power cannot be separated from knowledge production and truth-making. Knowledge reproduces relations of domination and determines what is 'normal' and 'natural' and 'thinkable' and 'doable'.<sup>122</sup> Thus power is understood as socially constructed. Empowerment would be an understanding of this. It means asking: what forms of knowledge are considered legitimate and acceptable; who created this knowledge; and how does this knowledge maintain hegemony? For the purpose of this dissertation it is also important to recognise how participation is constructed; what are its discourses; how the targets are constructed - are they seen as beneficiaries, clients, users or citizens; and how does this construction influence how people perceive themselves, the possibilities of engagement and the extent of agency?<sup>123</sup>

These models of power can be incorporated into Lukes's three dimensions of power:<sup>124</sup>

- *Visible power* is the observable and definable aspects of political power such as the formal rules, structures, authorities, institutions and procedures of decision-making. This is encapsulates *power over*.

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<sup>119</sup> *Ibid* 22.

<sup>120</sup> *Ibid*.

<sup>121</sup> *Ibid*

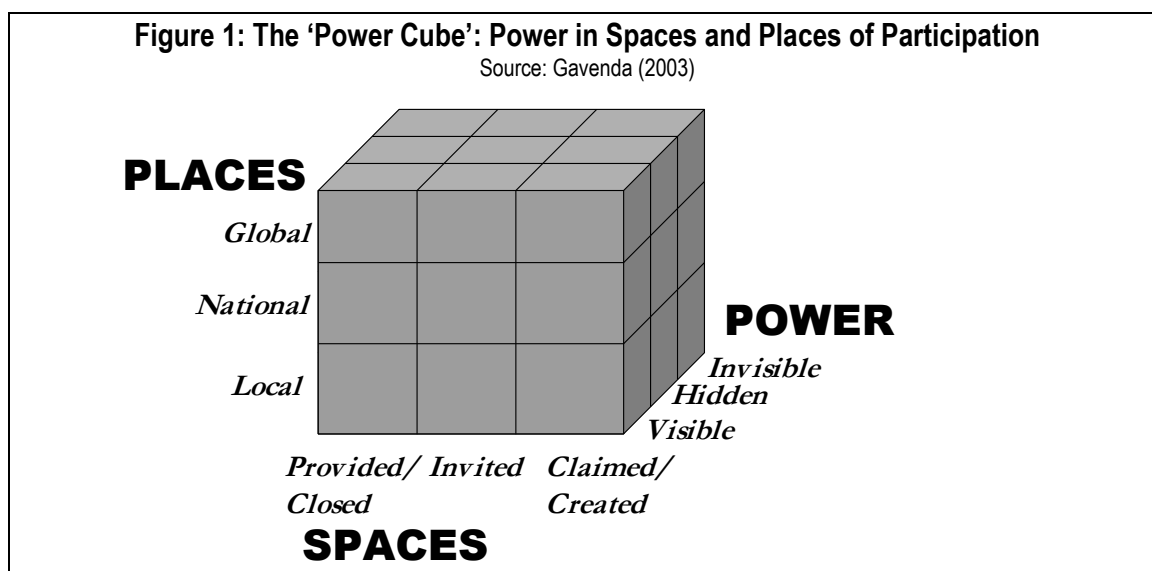
<sup>122</sup> Eyben (note 111) 23.

<sup>123</sup> Cornwall 'Making spaces' (note 4) 8.

<sup>124</sup> As used by Gavenda 'Finding the spaces' (note 33) 29.

- *Hidden power* is the power that enables groups and individuals to set the political agenda. It determines whose voices are heard and what issues are on the agenda and consequently which concerns are devalued and delegitimised. It encompasses the political economy of participation and includes the distribution of resources which benefits the privileged and is systematically biased against others. The *power to*, *power with* and *power/ knowledge* models would fit in here.
- *Invisible power* shapes meanings about what is acceptable and unacceptable. It is also the internalisation of the oppressive discourses and identities of powerlessness that shape understanding of self.<sup>125</sup> This is associated with socialisation and the hegemonic discourses, which dictate that the order is 'natural' and common sense and thus beyond challenge. This links with the *power within*, *power/knowledge* and *power everywhere* models. I believe this ubiquitous acceptance of the status quo is the most dangerous and insidious working of power. It is here where empowerment might indeed be radical. Here is where people have to gain a sense of critical consciousness to shake off the shackles of 'natural', 'normal' and 'necessary'.

Building on this, Gavenda's 'Power Cube' can be used to examine the interrelationship between forms of power in different spaces.<sup>126</sup>



On one axis are the spaces: closed, invited and claimed. The other axis shows the levels of action: local, national, global and the final dimensions are the forms of power within the spaces: visible, hidden and invisible. The cube is similar to a Rubik's cube: one can start by looking at any block or side, but each is linked to the other dimensions.<sup>127</sup> This indicates that 'the

<sup>125</sup> Miller *et al* (note 24) 25.

<sup>126</sup> Gavenda 'Finding the space' (note 33) 25.

<sup>127</sup> *Ibid* 26.

dynamics of power depend very much on the type of space in which it is found, the level at which it operates and the form it takes'.<sup>128</sup> Gavenda has used this cube with several civil society actors to make the workings of power more visible and thus plan strategic action. This power cube is useful for interventions, and Chapter Four suggests it is useful as a tool in a citizen education programme.

### 1.7.1 Community and power

Community must be understood through the lens of power. There are conceptual problems with the notion of 'community' which are left unexplored in the policy and legal documents of post-apartheid South Africa. In order to look at encouraging meaningful participation and working with a community group, this notion must be examined.

The community is often treated as a geographical grouping of people. This naming of *the community* by the state is often an imposition and is not shared by the people in that so called community.<sup>129</sup> This top-down 'naming' which makes the community appear natural and self evident suggests that *community interests* can be easily represented in organisational structures and invited spaces. However, communities are seldom homogenous.<sup>130</sup> In South Africa, community has been strongly associated with class, race and ethnicity and disregarding this would hide the workings of identity politics and the resulting diversity of interests, associations and alliances. These need to be excavated and their workings exposed.

Although community should not be reduced and treated in an uncritical manner, the core tenants encapsulated in the concept should be noted. *Community* denotes a sense of a shared reality and connections between people. It is what theorists have called social capital that is, the relations between people and the norms of reciprocity and trustworthiness that are developed from these networks.<sup>131</sup> Hence social capital is the 'institutions, relationships, and norms that shape the quality and quantity of a society's social interactions'.<sup>132</sup> Looking at social capital means examining the *power with* model in action. Although social capital has been linked with better democracy,<sup>133</sup> increased public participation<sup>134</sup> and social learning<sup>135</sup> it also has a 'dark

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<sup>128</sup> *Ibid* 30.

<sup>129</sup> N Nelson and S. Wright 'Participation and power', in N Nelson and S. Wright (eds) *Power and participatory development: theory and practice* (1995) 1 at 15.

<sup>130</sup> Nonkosi Mngxali, *Public participation at local government level in South Africa : a critical analysis of integrated development planning and ward committees* (2008) M.Soc.Sci Dissertation, University of Cape Town at 17.

<sup>131</sup> Robert Putnam *Bowling alone: the collapse and revival of American community* (2000) 19.

<sup>132</sup> 'What is social capital?' (1999) The World Bank Available at <http://www.worldbank.org/poverty/scapital/whatsc.htm> [Accessed 11 November 2009].

<sup>133</sup> Robert D Putnam *Making democracy work. civic traditions in modern Italy* (1993) 6-7.

<sup>134</sup> Steven Robins 'Grounding "globalisation from below": global citizens in local spaces' in David Chidester, Phillip Dexter, Wilmot Jam *What holds us together: social cohesion in South Africa* 242 at 273.

<sup>135</sup> Deepa Narayan & Lant Pritchett 'Cents and sociability: household income and social capital in Rural Tanzania' (1997) *World Bank Policy Research Working Paper No. 1796* at 3-4. Available at <http://ideas.repec.org/p/wbk/wbrwps/1796.html> [Accessed 17 December 2009].

side', as social capital is particularly strong in drug cartels and gangs which have negative affects on society.<sup>136</sup> Certainly the South African state sees social capital as a good thing. Local government has been tasked with the developing it as it is considered an asset in improving municipal governance and service delivery, aiding in local problem solving, encouraging citizen participation and aiding in poverty reduction strategies.<sup>137</sup> The importance of social capital for this dissertation is twofold: firstly, it often indicates how power works along networks and alliances and as argued, examining participation demands that we examine power in action. Secondly, social capital is a potential resource for the citizen education programme, as discussed in Chapter Four.

### 1.7.2 Gender and participation

It is also important to look at gender as another axis where power works and affects people's ability to participate. Gender roles are socially constructed and shaped by 'ideological, historical, religious, ethnic, economic and cultural determinants' which must be taken into account to facilitate gender-sensitive development and inclusive participation.<sup>138</sup>

Moser argues that women are often burdened and constrained by balancing the triple roles of 'reproductive', 'productive' and 'community managing' work.<sup>139</sup> Often it is only productive work that is considered *work* as reproductive and community-managing labour are considered natural and non-productive and thus made invisible. Moser notes that the majority of men's work is valued directly, through payment, or indirectly, through status and political power.<sup>140</sup> Treating women's and men's roles, responsibilities and needs in the same way eclipses the time, resource and ideological demands on women and will subtly act to exclude women from participatory opportunities.

There appears to be both practical and ideological barriers to women's participation in invited spaces. The practical barriers appear to be as a result of the gendered roles.. For instance, meetings might be held at times when women have to look after their children. Even if women do enter these invited spaces, ideological barriers such as 'tradition' and 'culture' may prevent them from speaking or being heard. For instance, research on Xhosa women in the Western Cape shows that they perceive the community forums and local council meetings to be 'men's spaces'<sup>141</sup> These women do not have the confidence to speak out nor do they think they will be taken seriously. Similarly, research in KZN finds that the patriarchal value system has

<sup>136</sup> J Field *Social Capital* (2003) 23.

<sup>137</sup> See for instance City of Cape Town. *Draft Integrated Social Capital Formation Strategy* (2005).

<sup>138</sup> Caroline Moser 'Gender planning in the third World: Meeting practical and strategic gender needs' 17(11) *World Development* 1799 at 1800.

<sup>139</sup> *Ibid* 1801.

<sup>140</sup> *Ibid*.

<sup>141</sup> MacEwan 'New spaces for citizenship' (note 30) 976.

resulted in an 'ideological burden of subordination and inferiority' which impact how women's perceive 'their rights, entitlements and opportunities'<sup>142</sup> to participate in invited spaces and make their 'citizenship substantive and meaningful'.<sup>143</sup> The power of cultural norms in mediating invited spaces is often not recognised in the provisions for certain participatory processes in South Africa.<sup>144</sup>

The role of women's community managing work, which includes informal collective activity and often encompasses managing shared resources and goods, is also overlooked by participation and social capital theorists. There is evidence from both South African townships and rural communities that suggests that women who do not or cannot participate in formal structures, do participate in informal organisations and networks around local issues.<sup>145</sup>

In conclusion, it is important that we focus on the nature and dynamics of patriarchal power relations, particularly in South Africa, which inhibit women's participation in invited spaces. Considering gender and the socially constructed gender roles, highlights gender division of labour and the triple burden placed on women, which must be taken into account when working towards more inclusive participatory spaces. Furthermore, women's 'community management work' creates potential spaces where democratic participatory practices can be practiced and supported. It also provides the social capital that supports participation.

## 1.8 Conclusion

This section has aimed to situate public participation in a broader theoretical context. It has looked at the definition and value of public participation and considered participation as a human right. An examination of several regional instruments has shown how participation has been linked with democracy, development and good governance. This led to a consideration of participation in democratic processes. I argued that the spaces created for participation should be considered through the lens of power in order to prevent these spaces for becoming 'tyrannical'. The power cube has been proposed as one way to look at power working in different spaces and places. I concluded by exploring notions of community and gender which further compound the need to consider power with participation.

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<sup>142</sup> A Williamson et al 'Decentralising voice: women's participation in integrated development planning processes in KwaZulu-Natal, South Africa' Paper presented at the *Conference on the Place of Participation in a Democratising South Africa* (Johannesburg 20-32 November 2006) 8.

<sup>143</sup> MacEwan 'New spaces for citizenship' (note 30) 983.

<sup>144</sup> Cheryl MacEwan "Bringing government to the people": women, local government and community participation in South Africa' (2003) 34 *Geoforum* 469 at 478.

<sup>145</sup> MacEwan 'New spaces for citizenship' (note 30) 985.

## CHAPTER 2: THE CONSTITUTIONAL COURT AND THE ETHICAL ENCOUNTER

### 2.1 Introduction

This chapter will set out the ideal-type encounter envisaged for invited spaces. It is informed by the Constitutional Courts rulings on meaningful engagement and ubuntu and is in line with the transformational nature of the Constitution. It argues that an ethical encounter, informed by ubuntu demands that recognition is coupled with redistribution so that people are able to live lives of dignity. The space created by making ubuntu operational is a 'shared' space, where state and citizens meet on more equal terms and dissent and conflict is accepted and does not break down this 'constitutional relationship'.<sup>146</sup>

### 2.2 The Constitution, ubuntu and the ethical encounter

The 1996 South African Constitution envisages a society founded on the values of equality, dignity, freedom and social justice.<sup>147</sup> This indicates a profound commitment to break from the racist and unjust nature of Apartheid. The 1993 Constitution enshrined ubuntu as a core value of the Constitution. Even though this was removed in the 1996 Constitution,<sup>148</sup> Constitutional Court Justices Sachs and Mokgoro argue that it is a key informing principle when interpreting the Constitution.<sup>149</sup> It is seen as a way to ground South African jurisprudence in an African value system while confirming the mutuality and interdependence of all South Africans.<sup>150</sup>

uBuntu is not easily defined. It has been called an Africanist world-view or 'philosophy of life'.<sup>151</sup> Cornell definition is substantial and informing, she sees ubuntu as:

the African principle of transcendence through which an individual is pulled out of himself or herself back towards the ancestors, forward towards the community, and, towards the potential each one of us has. The famous phrase 'umuntu ngumuntu ngabantu' literally means 'a person is a person by or through other people'.... Each one of us has the potential to embody humanity, or humanness, understood from an ethical perspective. Further, *ubuntu* requires us to come out of ourselves so as to realise the ethical quality of humanness... if the two of us relate to others around us in a manner that lives up to an ethical understanding of humanness then we will have created an ethical community<sup>152</sup>

<sup>146</sup> *Joe Slovo Community v Thubelisha Homes and Others* 2009 ZACC 16 (CC) para 408. (Hereafter '*Joe Slovo*').

<sup>147</sup> The Constitution (note 1) preamble.

<sup>148</sup> The removal of ubuntu has been criticized as an indication of the de-Africanisation of the Constitution.

<sup>149</sup> See Y Mokgoro 'uBuntu and the law in South Africa' Paper presented at the first colloquium *Constitution and Law* (Potchefstroom. 31 October 1997) 3.

<sup>150</sup> *Ibid* 10.

<sup>151</sup> *Ibid* 1

<sup>152</sup> Drucilla Cornell 'uBuntu, pluralism and the responsibility of legal academics to the new South Africa' Inaugural lecture, Department of Private Law (University of Cape Town, 10 September, 2008) 5-6.

Cornell goes on to say that 'people live through the help of others' and thus there is an imperative to maintain and conform to certain ethical demands.<sup>153</sup> uBuntu is tied to the notions of 'group solidarity, conformity, compassion, respect, human dignity, humanistic orientation and collective unity'.<sup>154</sup> It is the interconnectedness between humans, animals and the ancestors which declares that acting in an ethical manner is in each person's own interests. It is, in Cornell's words, 'an activist ethics of virtue'.<sup>155</sup> Hence ubuntu is both a philosophical and politico-ideological concept. As a philosophical concept, it dictates the basis of the ethical. It is also a politico-ideological concept because it calls for socio-political action which encourages sharing, respect and ethical behaviour.<sup>156</sup>

The Constitutional Court has construed ubuntu as a 'unifying motif of the Bill of Rights' and a 'structured, institutionalised and operational declaration'.<sup>157</sup> It is considered 'intrinsic to and constitutive of our constitutional culture'.<sup>158</sup> The Court has also argued that the state should act as a 'moral representative of its people' and sets the standard for moral values within society. This declaration of ubuntu is an important value system informing constitutional relations on the one hand, and the state's role to epitomise and exemplify the moral values of society on the other. As such it suggests that the state is required to enact ubuntu in its relations, particularly in participatory forums.<sup>159</sup> In other words, ubuntu must be a politico-ideological concept informing state-society relations.

uBuntu should also be understood as an African value linked to realising deliberative democracy. Carew argues that African traditions are committed to promoting face-to-face participation and deliberative democracy. uBuntu emphasises mutual consideration and respect as an ethical base from which people can come together to deliberate.<sup>160</sup>

In summary, I would argue that the ethos of ubuntu should inform practices of participatory democracy. It provides an ethical and ideological guide for building a democracy based on the constitutional values of equality, dignity and freedom. The following section will briefly sketch the Court's understanding of the importance of 'participation' and its ally 'meaningful engagement' and link it to ubuntu. I will look first at the *Doctors for Life* judgement as it elaborates on what participation should look like. The constitutional validity on several bills was challenged as the applicants claimed that Parliament had failed to fulfil the constitutional obligation to facilitate

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<sup>153</sup> *Ibid.*

<sup>154</sup> Mokgoro (note 149 ) 3.

<sup>155</sup> Cornell (note 152) 5-6.

<sup>156</sup> Mabogo More 'South Africa under and after apartheid' in K Wiredu (ed) *A companion to African philosophy* (2006) 149 at 156.

<sup>157</sup> *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC) para 37. (Hereafter 'Port Elizabeth')

<sup>158</sup> *Dikoko v Mokhatla* 2007 (1) BCLR 1 (CC) para 114.

<sup>159</sup> *State v Makwanayane* 1995 (6) BCLR 665 (CC) para 316.

<sup>160</sup> George Carew 'Economic globalism, deliberative democracy' in K Wiredu (ed) *A companion to African philosophy* (2006) 460.

public involvement. I then consider the *Port Elizabeth* and the *City of Johannesburg* judgements as key to understanding how the Court construes meaningful engagement. Both of these were eviction cases. Another eviction case, the *Joe Slovo* judgement, further elaborates on the ideal type of relationship between citizen and state. All three of these judgements use meaningful engagement as a way to negotiate, allocate and resolve conflict over resources.

### 2.2.1 The Constitutional Court's interpretation of the 'right to participate'

As mentioned, the *Doctors for Life* judgement expanded on the right to participate and the importance of participation. The Court held that the government has a 'constitutional obligation' to facilitate public participation, defined as the provision of 'meaningful opportunities' to engage in the government processes.<sup>161</sup> The government also has a duty to ensure people have the ability to take advantage of those opportunities.<sup>162</sup>

The state has much leeway to conceptualize and determine how best to fulfil this constitutional obligation. However, the opportunities created for participation must be 'meaningful'. The Court appears to construe meaningful opportunities as those which allow people's voices to be heard and considered, and possibly have an impact.<sup>163</sup> In other words:

All parties...should feel that they have been given a *real opportunity* to have their say, that they are *taken seriously* as citizens and that *their views matter* and will *receive due consideration* at the moments when they could *possibly influence* decisions in a meaningful fashion.<sup>164</sup>

This indicates that participation cannot be hollow and inconsequential. Tokenistic consultation will not be considered public involvement. To emphasise and compound this, the two Bills that did not meet the reasonableness test in providing for public participation were deemed invalid. This indicates a deep commitment by the Court to public participation and sets the standard for the constitutional obligation to facilitate meaningful public participation. It also demands that public participation is taken seriously by the government.<sup>165</sup>

### 2.2.2 Meaningful engagement and ubuntu

In *Port Elizabeth Municipality v Various Occupiers*, Sachs' majority judgement relies heavily on ubuntu as an ethical and politico-ideological concept. He argues that the Court is called upon to promote the 'constitutional vision of a caring society based on good neighbourliness and shared concern' which is encapsulated in the concept of ubuntu.<sup>166</sup>

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<sup>161</sup> *Doctors for Life* (note 36) para 231

<sup>162</sup> *Ibid* para 129.

<sup>163</sup> *Ibid* para 146 and 171.

<sup>164</sup> *Ibid* para 235 Sachs's concurring judgement (emphasis my own).

<sup>165</sup> The Court also elaborated on the role of participation in governance in *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 ZACC 12 (CC) *Merafong Demarcation Forum and Others v President of Republic of South Africa and Others* 2008 ZACC 10 (CC). See also *Occupiers of 51 Olivia Road* (note 10).

<sup>166</sup> *Doctors for Life* (note 36) para 32.

The spirit of *ubuntu*, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving society of the need for human interdependence, respect and concern.

Arguably, this informs Sachs's calls for meaningful engagement between citizen and state as a way to solve problems. Sachs writes:

one potentially dignified and effective mode of achieving sustainable reconciliations of the different interests involved is to encourage and require the parties to engage with each other in a proactive and honest endeavour to find mutually acceptable solutions. Wherever possible, respectful face-to-face engagement or mediation through a third party should replace arms-length combat by intransigent opponents.<sup>167</sup>

The onus is on both citizen and state to embark on this engagement. The state should not dehumanise the citizen to 'faceless', 'anonymous' 'obnoxious social nuisances', but rather recognise that 'justice and equity require that everyone is to be treated as an individual bearer of rights, entitled to respect for his or her dignity'.<sup>168</sup> At the same time, citizens, even those struck by poverty, should not see themselves as 'helpless victims, lacking the possibilities of personal moral agency'.<sup>169</sup> Sachs argues that justice and equity demands that people are resourceful 'in seeking a solution to their plight and to explore all reasonable possibilities of securing suitable alternative[s]'.<sup>170</sup>

This judgement preceded the *Doctors for Life* judgement and is thus provides insight about what meaningful engagement between citizen and state should look like. It is a face-to-face engagement, an engagement that recognises agency and the need for compromise that is honest and proactive and above all, is a human engagement. This is what Cornell calls a form of 'operational *ubuntu*'.<sup>171</sup>

In *Occupiers of 51 Olivia Road and Other v City of Johannesburg and Others*, Yacoob J built on Sachs' judgement on the importance of engagement and issued an Interim Order stating that parties must 'meaningfully engage' in a dialogue to reach mutually acceptable solutions.<sup>172</sup> He stated that 'engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process'.<sup>173</sup>

<sup>167</sup> *Port Elizabeth Municipality* (note 157) para 40.

<sup>168</sup> *Ibid* para 41.

<sup>169</sup> *Ibid*.

<sup>170</sup> *Ibid*.

<sup>171</sup> Drucilla Cornell and Nyoko Muvangua in *Law in the ubuntu of South Africa* (forthcoming) at 165 Available at [http://www.isthisseattaken.co.za/pdf/Papers\\_Cornell\\_Muvangua.pdf](http://www.isthisseattaken.co.za/pdf/Papers_Cornell_Muvangua.pdf) [Accessed 11 December 2009]

<sup>172</sup> This is similar to the 'process-orientated participatory remedies' which reflect the models of the non-court centric models of the education reform movement in the USA See Doron Isaacs 'Interpreting, litigating and realising the right to education in South Africa: lessons from America.' (2007) 31.

<sup>173</sup> *City of Johannesburg* (note 10) para 15.

In other words, meaningful engagement is seen as a 'means' because it enables the resolution of conflict and, most importantly, humanises state-citizen relations. Indeed, the Interim Order was a success, as the parties filed affidavits with the Court 'outlining a remarkable settlement' whereby the municipality provided substantially for the people who were being evicted.<sup>174</sup> I would argue that this settlement came about because of the humanising of state-citizen relations as well as the fact that they were under Court mandate to find mutually acceptable solutions. Arguably, this meant that both citizen and state shared the space of engagement and power was more equally distributed than in an invited space. This engagement with its more equal power distribution and the recognition of citizens as humans and the resulting provision for their dignified existence is the ethical encounter.

This order for 'meaningful engagement' is once more reflected in the recent *Residents of Joe Slovo Community v. Thubelisha Homes and Others*. It is worth quoting this in full:

This case compels us to deal in a realistic and principled way with what it means to be a South African living in a new constitutional democracy. It concerns the responsibilities of government to secure the ample benefits of citizenship promised for all by the Constitution. It expands the concept of citizenship beyond traditional notions of electoral rights and claims for diplomatic protection, to include the full substantive benefits and entitlements envisaged by the Constitution for all the people who live in the country and to whom it belongs. At the same time it focuses on the reciprocal duty of citizens to be active, participatory and responsible and to make their own individual and collective contributions towards the realisation of the benefits and entitlements they claim for themselves, not to speak of the well-being of the community as a whole. When all is said and done, and the process has run its course, the authorities and the families will still be connected in ongoing constitutional relationships.<sup>175</sup>

This is an example of how ubuntu should work in an ethical relationship. The state is required to recognise the full range of *human* rights that ensure that people live a dignified existence. People have rights and responsibilities towards the state and each other. Thus there is a 'moralisation of social relations'.<sup>176</sup> Although the judgement does not mention ubuntu it certainly has a strong presence and is encapsulated by the proposal of 'ongoing constitutional relationships'.

This section has outlined the notion of ubuntu and how it has informed the Constitutional Court's rulings on 'meaningful engagement'. This provides an example of what an ethical encounter between state and citizen should look like. This is my 'radical moral statement' of the ideal participatory space.<sup>177</sup> It is encouraged by this comment:

Perhaps the most empowering aspect of *ubuntu* is that, by taking its interactive ethic seriously, we should not shy away from the actual attempt to operationalise this powerful ideal because of fears of failure to do so adequately. Indeed, the very spirit of *ubuntu* might suggest to us that, while such failures are to be expected, the true enactment of this sort of ethic is itself constructed through the

<sup>174</sup> Brian Ray 'Occupiers of 51 Olivia Road v City of Johannesburg: enforcing the right to adequate housing through "engagement"' (2008) 8 *Human Rights Law Review* 703 at 706.

<sup>175</sup> *Joe Slovo* (note 146) para 408.

<sup>176</sup> Term comes from Carew (note 160) 460.

<sup>177</sup> Martha Nussbaum 'Capabilities as fundamental entitlements: Sen and social justice' (2003) 9 *Feminist Economics* 33 at 47.

ongoing participation of the community in such struggles, including failures of operationalisation and efforts to resolve them, to create a new South Africa.<sup>178</sup>

It seems that the operationalisation of ubuntu needs some encouragement at a local level. The question is: if meaningful engagement is advocated by the Court as an ethical and effective way to solve problems, why does it not characterise the encounter between state and citizen (and their associated groups or representatives) at a local level? My argument is two-fold. Firstly, there are some problems with the structure of local government and the practical workings of these participatory spaces. This will be discussed in Chapter Three.

Secondly, even with these changes there is still the issue of power. In the cases described above, the Court mandated meaningful engagement. By doing so the Court acted to disrupt and redistribute power between citizen and state. Both were under Court orders to participate and their finding of a solution was mutually beneficial. In spatial terms, the space changed from one that *invited* citizens to participate, to one in which power was *shared* between citizen and state. Similarly, the service delivery protests, interpreted through the lens of power, may be understood as a means to improve the bargaining position in the invited spaces.

Therefore any citizen education programme designed to encourage and facilitate participation in local government in South Africa needs to understand and devise strategies to address the power dynamic in local participatory spaces. It must empower people to demand an ethical encounter and a shared space. In addition, broader systemic relations of power must be recognised and related to the local governance and participation therein. This might facilitate mobilisation against oppressive practices and structures that prevent the ethical encounter. Participants might demand that the exercise of power be based on the notion of ubuntu, which encapsulates dignity, equality, justice and transformation of existing hierarchies of power which oppress and silence. I believe that this focus on demanding an ethical encounter is in line with the transformative vision of the Constitution.

### **2.3 Transformative Constitutionalism**

The South African socio-democratic Constitution is seen as transformative in content and aspiration. This is articulated in the Preamble, which states the adoption of the Constitution in order to:

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

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<sup>178</sup>Drucilla Cornell and Karin van Marle 'Exploring *ubuntu*: tentative reflections' In Drucilla Cornell and Nyoko Muvangua (note 171) 451 at 476.

- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
- Improve the quality of life of all citizens and free the potential of each person; and
- Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.<sup>179</sup>

Sections 1, 7, 39 and the Postamble reiterate and maintain this political and moral vision of 'large-scale egalitarian social transformation'.<sup>180</sup> The epilogue of the 1993 Constitution foresees the Constitution providing a 'historic bridge' between an unjust past and a 'future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans'.<sup>181</sup> Klare suggests that what is envisaged is a 'transformative constitutionalism'.

a long-term project of constitutional enactment, interpretation, and enforcement committed (not in isolation, of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through non-violent political processes grounded in law.<sup>182</sup>

Inherent in this definition is an understanding that relations between state and citizen must change and power must be redistributed so that a greater number of people are given voice. As Chief Justice Langa notes, this redistribution of power cannot be realised without '[t]he provision of services to all and the levelling of the economic playing fields that were so drastically skewed by the apartheid system'.<sup>183</sup> In other words, there must be 'recognition' with 'redistribution'. Nancy Fraser's 'bifocal' conception of social justice is useful to understand the substantive revolution required in the new South Africa.<sup>184</sup>

Fraser sees social justice as being about the politics of recognition and redistribution. Recognition tends to be associated with identity politics. It is about valuing difference and diversity while recognising the equality of all groups. Fraser argues that this formation of recognition might act to rectify identity and displaces the struggle for economic justice.<sup>185</sup> Hence she calls for recognition to be seen in terms of the equality of members as 'full partners in social

<sup>179</sup> The Constitution (note 1) preamble.

<sup>180</sup> Saras Jagwanth 'Democracy, civil society and the South African Constitution: some challenges' (2003) *Management of Social Transformations Discussion Paper* 65 at 13. Available at <http://www.unesco.org/most/wsf/jagwanth.pdf> [Accessed 1 April 2009].

<sup>181</sup> Constitution of the Republic of South Africa Act 200 of 1993.

<sup>182</sup> Karl E Klare 'Legal culture and transformative constitutionalism' (1998) *14 SAJHR* 146 at 150.

<sup>183</sup> Pius Langa 'Transformative constitutionalism' Prestige Lecture (Stellenbosch University, 9 October 2006) at 3. Available at <http://www.mymaties.com/portal/page/portal/law/index.english/news/2006/Pius%20Langa%20Speech.pdf> [Accessed 1 April 2009]

<sup>184</sup> Nancy Fraser 'Social justice in the knowledge society: redistribution, recognition, and participation' (2001) *5 Beitrag zum Kongress "Gut zu Wissen", Heinrich-Böll-Stiftung* at 4. Available at [www.wissensgesellschaft.org/themen/orientierung/socialjustice.pdf](http://www.wissensgesellschaft.org/themen/orientierung/socialjustice.pdf) [Accessed 20 July 2009]

<sup>185</sup> Nancy Fraser 'Rethinking recognition' (2000) *3 New Left Review*. Available at <http://www.newleftreview.org/?page=article&view=2248> [Accessed 10 January 2010].

interaction' hence misrecognition would mean 'social subordination' whereby people are prevented from participating as full and equal members.<sup>186</sup> In other words:

recognition, understood broadly as well, so as to encompass not only reforms aimed at upwardly revaluing disrespected identities and the cultural products of maligned groups but also efforts to recognize, and valorise, diversity, on the one hand, and efforts to transform the symbolic order, deconstruct the terms that underlie existing status differentiations, and thus change everyone's social identity, on the other.<sup>187</sup>

However, in order for substantive social justice, recognition must be accompanied by redistribution:

redistribution, also understood broadly, to encompass not only income transfers, but also reorganizing the division of labor (sic), transforming the structure of property ownership, and democratizing the procedures by which investment decisions are made.<sup>188</sup>

Fraser argues that in a capitalist society distribution and recognition cannot be separated as:

Economic issues such as income distribution have recognition subtexts: value patterns institutionalized in labour markets may privilege activities coded 'masculine', 'white' and so on over those coded 'feminine' and 'black'. Conversely, recognition issues—judgements of aesthetic value, for instance—have distributive subtexts: diminished access to economic resources may impede equal participation in the making of art. The result can be a vicious circle of subordination, as the status order and the economic structure interpenetrate and reinforce each other.<sup>189</sup>

The commitment to participatory democracy and developmental local governance must be a commitment to this type of social justice, whereby voice and recognition is linked with redistribution of resources. Participatory governance was institutionalised to enact 'people's power', and enable 'developmental governance'. It was envisaged as redressing the political economy of participation and the skewed distribution of resources which is a legacy of apartheid. As mentioned earlier, ubuntu means recognition of another's humanity, and consequently, each person's right to live a dignified existence. I would argue that this encapsulates both recognition and redistribution.

There is another part of transformative constitutionalism which informs the ethical encounter. Langa suggests that transformative constitutionalism should become a 'permanent ideal',

a way of looking at the world that creates a space in which dialogue and contestation are truly possible, in which new ways of being are constantly explored and created, accepted and rejected and in which change is unpredictable but the idea of change is constant... This is a perspective that sees the Constitution as not transformative because of its peculiar historical position or its particular socio-economic goals but because it envisions a society that will always be open to change and contestation, a society that will always be defined by transformation.<sup>190</sup>

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<sup>186</sup> *Ibid.*

<sup>187</sup> Fraser (note 184) 5.

<sup>188</sup> *Ibid.*

<sup>189</sup> Fraser (note 185).

<sup>190</sup> Langa (note 183) 5.

This kind of society is radical in the sense that it challenges the status quo, it allows for dissent and is characterised by real discussion and democracy. It is what Foucault would have called the 'heterotopia' which is a space where new ways of being and acting are explored and previous rules of interaction are challenged.<sup>191</sup> The learning in these spaces might pattern other behaviours as they provide sources of alternative experiences.<sup>192</sup> Young envisages this space as the 'unoppressive city', a place where 'there is openness to the unassimilated otherness'.<sup>193</sup> It is heterogeneous, plural and playful, places where people witness and appreciate diverse cultural expressions that they do not share and do not fully understand.<sup>194</sup> Fung and Cohen call for 'empowered participatory democracy' where formal institutions are reconfigured so that citizen and state agents interact in new ways.<sup>195</sup> The commonality of these theorists conception of a radical space is that it is composed of a variety of actors and each is valued for their contribution to the whole. Power is reconfigured so it is shared among participants and dissent and conflict are accepted. This provides the space for an ethical encounter based on the notion of ubuntu and understood to realise both redistribution and recognition.

Habermas has similarly defined the 'ideal speech situation' whereby:

1. Every subject with the competence to speak and act is allowed to take part in a discourse.
- 2a. Everyone is allowed to question any assertion whatever.
- 2b. Everyone is allowed to introduce any assertion whatever into the discourse.
- 2c. Everyone is allowed to express his attitudes, desires and needs.
3. No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in (1) and (2)<sup>196</sup>

uBuntu adds to this, arguing that the space should also be characterised by its humanness. I argue that this humanness is the ability of each individual to see and hear the other and thus feel a sense of compassion even though they might not agree. Nussbaum also argues that compassion is integral to deliberation. This will be discussed further in Chapter Four, as she provides some useful tools to teach compassion.<sup>197</sup>

The 'spaces of dialogue and contestation' have been legally mandated by the Constitution and on a local government level exist in the form of ward committees and Integrated Development Planning meetings. However, Chapter Three will show that these are not currently enacting ethical encounter.

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<sup>191</sup> See Michel Foucault 'Of other spaces' (1986) *16 Diacritics* 22-27

<sup>192</sup> Cornwall 'Making spaces' (note 4) 7.

<sup>193</sup> Iris Marion Young 'The ideal of community and the politics of difference' In Penny A. Weiss and Marilyn Friedman (eds) *Feminism and community* (1993) 233 at 254.

<sup>194</sup> *Ibid* 241.

<sup>195</sup> Fung and Olin Wright 'Thinking about empowered participatory governance' (note 86) 42.

<sup>196</sup> Jurgen Habermas (trans C Lenhart & S W Nicholson) *Moral consciousness and communicative action* (1980) 43 at 86.

<sup>197</sup> Martha Nussbaum 'Education for democratic citizenship'. Lecture delivered on the occasion of the awarding of the degree of Doctor Honoris Causa at the Institute of Social Studies, The Hague (The Netherlands, 9 March, 2006) at 5.

## 2.4 Citizenship and ubuntu

By advocating an ethical encounter I am proposing a different kind of relationship between the people and the state. It demands that we revisit what it means to be a citizen.

The notion of citizenship is rather slippery, contested and often evoked for various means and agendas.<sup>198</sup> It has been construed as dependant on its articulation in various historic contexts.<sup>199</sup> This section will discuss the two main approaches to citizenship and discuss a synergy proposed by Ruth Lister, which I believe is similar to the relations of citizenship implied by ubuntu.

Liberal conceptions of citizenship rely on the formal status of citizens and emphasises the individual rights conferred on a person due to *his* (and more recently *her*) legal status. Citizens have certain minimal obligations so that the rule of law is upheld, such as obeying the law and paying taxes.<sup>200</sup> Hence citizenship is understood in legal and administrative terms. It is associated with individual freedoms based primarily on civil and a narrow understanding of political rights. In the 1950s, Marshall advocated for the extending the notion of citizenship to include social and economic rights which he saw as essential to guarantee the resources for people to participate in political life.<sup>201</sup> This liberal conception has been called 'passive' or 'private' citizenship because the emphasis is on person's rights and entitlements rather than any obligation to take part in public life.<sup>202</sup> Participation is seen as a choice and there is no sense of social duty, solidarity or a social bond between people that demands collective effort.<sup>203</sup>

Liberal citizenship is often associated with the nation-state. Citizenship is dependant on the laws and constitution of a particular country. Stewart calls this 'state citizenship'.<sup>204</sup> He argues that it tends to be 'internally inclusive and externally exclusive'.<sup>205</sup> This can be quite dangerous, as the question 'where do you come from' becomes exceptionally loaded. In South Africa this has culminated in violence against the 'non-citizen-other'.

Finally, the liberal conception of citizenship is deeply associated with individualism. Lister argues that this 'represents an impoverished understanding in which individual citizens are reduced to atomised, passive bearers of rights and citizenship is transformed from a collective

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<sup>198</sup> Ruth Lister 'Citizen in action: citizenship and community development in a Northern Ireland context' (1998) 33 (3) *Community Development Journal* 226 at 226.

<sup>199</sup> Angus Stewart 'Two conceptions of citizenship' (1995) 46(1) *The British Journal of Sociology* 63 at 64.

<sup>200</sup> *Ibid* 74.

<sup>201</sup> See generally T H Marshall *Citizenship and social class* (1950).

<sup>202</sup> Will Kymlicka and Wayne Norman 'Return of the citizen: a survey of recent work on citizenship theory' (1994) 104 *Ethics* 352

<sup>203</sup> Stewart (note 199)72.

<sup>204</sup> *Ibid*.

<sup>205</sup> *Ibid* 67. This was made clear in my own work with a citizenship education programme in Khayelitsha. When discussing 'what it means to be a citizen' the group used liberal discourses around citizenship, a citizen was considered 'not a foreigner'. However, in South Africa, 'foreigners' are afforded the same rights as everyone else, except for the right to vote. Hence, they reduced citizenship to the legal status to vote.

political activity to the pursuit of individual economic interest'.<sup>206</sup> Obviously this conception of citizenship does not fit in with a conception of ubuntu, which sees humanness and community created in the interaction between people.

The second conception of citizenship is the civic republican view. This view has its origins in Greece and is related to the ideal of direct democracy. It stresses the intrinsic importance of political participation for participants.<sup>207</sup> Citizens thus have duties and responsibilities alongside their rights. Civic republicanism relies on a moral conception of a good citizen who is active in political discussion and decision-making and committed to the public good. People have to feel and think like citizens.<sup>208</sup>

Lister proposes a synthesis of these apparently incompatible approaches of citizenship, based on the notion of human agency.<sup>209</sup> The civic republican tradition sees citizenship 'as representing an expression of human agency in the political arena', while the liberal tradition sees 'citizenship as rights enables people to act as agent'.<sup>210</sup> Hence Lister draws a distinction between two formulations 'to be a citizen' and 'to act as a citizen':

To be a citizen means to enjoy the rights necessary for agency and social and political participation. To act as a citizen involves fulfilling the full potential of the status. Those who do not fulfil that potential do not cease to be citizens. I emphasise this because otherwise we are in danger of creating a measuring rod of citizenship against which many, especially women, but also say chronically ill or severely disabled people, might once again fall short because of the demands they face in their private lives and other constraints.<sup>211</sup>

Therefore people have the agency to construct their own citizenship practice.<sup>212</sup> It is a situated practice and not constrained to the public realm but can rather span the public/private divide. Thus citizenship becomes a 'multi-tier concept'.<sup>213</sup> It suggests that citizenship can be created from below and it is not merely conferred on from above. Furthermore, unlike the notion of liberal citizenship, which has been criticized as Westernised, citizenship-in-action is grounded in the local.

It is here when we might introduce the notion of ubuntu, whereby a person's identity and citizenship is defined by action and conduct in relation to others. Citizenship would mean recognising that each person should live a dignified life and be treated in a dignified manner, not just because of the rights and entitlements conferred by the Constitution, but because it maintains the humanness of us all. ubuntu also confers a responsibility on each person to take

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<sup>206</sup> Lister (note 198) 228.

<sup>207</sup> *Ibid* 362.

<sup>208</sup> A Oldfield *Citizenship and community: civic republicanism and the modern world* (1990) 172.

<sup>209</sup> Lister (note 198) 226.

<sup>210</sup> *Ibid* 228.

<sup>211</sup> *Ibid* 229.

<sup>212</sup> MacEwan (note 30) 982.

<sup>213</sup> *Ibid* 985.

part in public life, to exercise self restraint and to behave in a way that does no harm in order to realise and maintain an ethical community.

#### 2.4.1 'Neoliberal creep' and its affects on citizenship

One of the main challenges to the citizenship described above is the process of globalisation, which in its present form, tends to be a type of 'global neo-liberalism' which encourages decentralisation, cost recovery, privatisation of public goods and services, and cuts in social service spending.<sup>214</sup> This neoliberal creep affects citizenship in two ways. Firstly, privatisation, cost recovery and competitiveness adversely harm 'the Pooors' and prevent them from living a dignified existence and realising their substantive citizenship.<sup>215</sup> Secondly, it changes the relationship between citizen and state and thus the nature of citizenship. I will elaborate on how these various processes have played out in South Africa and their effects on 'the Pooors' and their citizenship.

There is an increasing emphasis on the privatisation of public goods and service provision at a local level.<sup>216</sup> Regularly called public-private partnerships, they are considered the most 'effective and efficient' way to deliver services. This 'marketisation of public sector', 'contracting out', 'competitive tendering', 'outsourcing' or privatisation has an unanticipated negative impact on politics, political organisation and democratic deliberation.<sup>217</sup> Outsourcing and privatisation disempowers local communities as private service providers cannot be held to account in the same way as can government. Moreover elected leaders are absolved of their responsibilities for service provision.<sup>218</sup> Local government struggles to regulate private providers to ensure the access, quality and efficiency of the services and goods, particularly when they are dealing with large multinationals.<sup>219</sup> Thus, privatisation act to weaken and 'delegitimised' the state.<sup>220</sup> It becomes unclear as to how people can practice citizenship through mobilisation, participation and holding leaders to account.

Hirschman argues that the existence of private services provision creates incentives for people to 'opt out' of public services.<sup>221</sup> People that can afford (or just about afford) it choose private provision based on it efficiency-effectiveness claims. This results in the withdrawal of the middle-class from the public sector. This has two main effects, firstly it weakens the possibilities

<sup>214</sup> B Cashdan *Local government and poverty in South Africa* (2000)10.

<sup>215</sup> Even the World Bank has acknowledged this. See in general the *World Development Report: Entering the 21st Century* (1999) World Bank.

<sup>216</sup> See Caroline Andrew and Michael Goldsmith 'Local Government to local governance: and beyond? (1998) 19 (2) *International Political Science Review* 101-117.

<sup>217</sup> Putzel (note 44) 8

<sup>218</sup> MacEwan (note 144) 470

<sup>219</sup> Cashdan (note 215) 8.

<sup>220</sup> Putzel (note 44) 8.

<sup>221</sup> Albert O Hirschman *Exit, voice, and loyalty: responses to decline in firms, organizations, and states* (1970) 43.

for 'voice' as it is these people that are more likely to fight and advocate for better service provision and who are most able to hold the government to account over failures.<sup>222</sup> Secondly, the economic capital used to maintain public services is reduced as people who paid for services in the public arena exit.<sup>223</sup> This results in poor services for poor people.<sup>224</sup>

The South African focus on 'cost recovery' is often detrimental to 'the Pooors'. This market-approach to service delivery results in cut-offs and restrictions, which prevent people from meeting their basic needs. Beall highlights the adverse effect it has on poor urban women who are heavily reliant on local services such as electricity, water, and clinics in order to sustain their family.<sup>225</sup> The expense of services and subsequent cut-offs act has resulted in the destruction of public property and 'illegal connections'.<sup>226</sup> Although, this might be dismissed as lawlessness, one must look at the systemic structural violence inflicted on 'the Pooors' by preventing access to basic goods and services needed to survive.

The South African's Local Economic Development Plans tends to emphasise the neo-liberal concept of 'competitiveness' where municipalities compete for business investment and development in their area by providing the most 'conducive environment' for businesses. This inter-local competition deepens intra-local inequalities as competing municipalities 'bargain away living standards for the poor in an effort to create an investment-friendly environment'.<sup>227</sup>

This neo-liberal creep into South African public policy changes 'citizens' into 'consumers' or 'clients' of services. Citizens have rights and are able to hold government to account if the fail to fulfil their constitutional duties to protect, promote and fulfil these rights. Clients of services are customers of private agencies. The relationship is 'contractual and commercial' rather than 'institutional and political'.<sup>228</sup> This changed relation to the state isolates people into 'individual consumers with income streams and preferences'<sup>229</sup> and limits the possibilities for collective action. Furthermore, it shifts the focus onto technocratic processes of delivery and away from a democratic participatory culture. It sees problems at local level as a lack of capacity rather than a lack of democracy.

The technocratic approach that focuses on 'delivery' rather than 'democracy', 'results' rather than 'process', contradicts South African history of democratic deliberative struggle and

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<sup>222</sup> *Ibid.* Hirschman notes 'the possibility for exit' tends 'to atrophy the development of the art of voice – and what is the art of voice, but the art of politics'.

<sup>223</sup> B Deacon 'Globalization: a threat to equitable provision'(2000) 31(4) *IDS Bulletin* 32 at 38

<sup>224</sup> *Ibid.*

<sup>225</sup> Beall (note 99) 263.

<sup>226</sup> *Ibid.*

<sup>227</sup> Cashdan (note 214) 7.

<sup>228</sup> David Hemson 'Can participation make a difference? prospects for people's participation in planning' (2007) 3 (1) *Critical Dialogue – Public Participation in Review* 9 at 10.

<sup>229</sup> Cashdan (note 214) 11.

the notion of ubuntu. Obviously it is important that people at a local level receive services, however this should not eclipse the value of public participation in local government, which reiterates the value of citizens as agents making their own lives and history. Commercial relations tend to dehumanise. The ethical encounter calls for state-citizen relations to be humanised and moralised.

## **2.5 Conclusion**

This chapter sketched the notion of the ethical encounter has traced the conception of an ethical encounter, informed by the communitarian notion of ubuntu and the Constitutional Courts rulings on 'meaningful engagement'. I have argued that this type of encounter incorporates recognition and redistribution and enacts the transformatory ideals of the Constitution. I have also discussed how this leads to a conception of citizenship based on action and suggested a key challenge to this is the neoliberal globalisation which is changing relations between citizen and state.

## CHAPTER 3: SOUTH AFRICAN LOCAL GOVERNMENT

### 3.1 Introduction

South African local government is considered the main vehicle for engaging the citizenry in governance processes. This chapter will look at the history of local government's engagement with the people. I argue that the history of struggle against local government informs current interactions. The post-apartheid legislative and policy provisions for participation are discussed, with a particular focus on Integrated Development Planning (IDP) and ward committees, as invited spaces created for participation. I briefly examine the research on the problems of these participatory arenas in order to show the necessity for the proposed citizen education programme.

### 3.2 The 'generative past'

Lefebvre argues that 'every social space has a history'.<sup>230</sup> Each space has a 'generative past' because it relies on past conceptions of the space which acts to shape current 'expectations, relationships, and conduct'.<sup>231</sup> It is necessary, therefore, to look at the history of local government in South Africa, its 'social genesis' and its relations to the public, in order to understand the current form, amount, and type of engagement in these spaces.<sup>232</sup> Hickey and Mohan note:

The transformative potential of local-level participatory interventions is defined less in terms of their technical design, than their engagement with underlying forms of popular agency and social relations, both of which are historically constituted in particular contexts.<sup>233</sup>

Similarly, Cornwall adds 'no institutional design can insulate these spaces from the play of party politics, nor from practices associated with prevailing cultures of politics in other political spaces'.<sup>234</sup> Therefore, it is useful, too, to look at the history of struggle and agency which has its roots in the anti-apartheid movement and its engagement with local government.

#### 3.2.1 Local government: an institutional history

The 1909 South African Act united the former Boer republics and the British colonies into one sovereign state. A three tier system of government was established.<sup>235</sup> There were, however, no constitutional safeguards or provisions for local government. It was seen as a structural

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<sup>230</sup> Henri Lefebvre (note 12) 110.

<sup>231</sup> *Ibid.*

<sup>232</sup> Pierre Bourdieu 'Social space and symbolic power' (1989) 7(1) *Sociological Theory* 14 at 19

<sup>233</sup> Samuel Hickey and Giles Mohan 'Participation: from tyranny to transformation?' (2005) Paper presented at *Participating to Create a Different World: Shaping Our Own Future* (Ottawa, 14-17 August 2005) at 2.

<sup>234</sup> Andrea Cornwall 'Deliberating democracy: scenes from a Brazilian municipal health council' (2008) 36 *Politics Society* 508 at 526.

<sup>235</sup> South Africa Act of 1909 part II s 4.

extension of the centralised state.<sup>236</sup> Municipalities derived their power from provincial ordinances and thus had no original power and could not carry out self-initiated activity.<sup>237</sup> In other words 'the apartheid regime was de-concentrated rather than decentralised'.<sup>238</sup> This meant participation on a local level would have little impact, as decision-making power was not vested in the local.

Successive pieces of legislation were passed since 1909 that institutionalised racial segregation, and effectively excluded the 'black', 'coloured' and 'Indian'<sup>239</sup> populations from political participation.<sup>240</sup> Local government administrative structures were agents in executing the racist policies of apartheid through enforcing segregation, instigating forced removals and the regularly destroying informal settlements.<sup>241</sup> This created an antagonistic relationship with the Black communities<sup>242</sup> which resulted in a widespread 'culture of alienation and disillusionment' from local government.<sup>243</sup> Some argue that these memories persist and are manifested through distrust in local government and low levels of participation.<sup>244</sup>

Not all municipalities, however, were 'toothless watchdogs of the central government'.<sup>245</sup> The relationships between the apartheid central government and several of the larger municipalities were often conflicted. Some municipalities were made up of people who opposed the ruling party and refused to implement apartheid policies.<sup>246</sup> Central government attempted to deal with this by creating regional offices to execute its mandate, thus bypassing the municipalities. This further undermined the authority and legitimacy of local government and subsequently made participation in local government pointless.

The apartheid policy of 'separate development', whereby different racial groups managed their 'own' areas, meant that black people were disenfranchised as they became citizens of 'Bantustans' where traditional authorities performed local government functions.<sup>247</sup> There were

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<sup>236</sup> Dumisani Nyalunga 'An enabling environment for public participation in local government' (2006) 1 (1) *International NGO Journal* 1 at 6. Available at <http://www.academicjournals.org/INGOJ> [Accessed 10 December 2009]

<sup>237</sup> Chris Tapscott 'The challenges of deepening democracy in post-apartheid South Africa' Paper presented at *LORC Seminar* (Kyoto, 7 July 2006) at 2.

<sup>238</sup> *Ibid.*

<sup>239</sup> I have placed these 'race' groups in inverted commas, following the lead by critical race theorists who do this to indicate the socially constructed nature of race and remind the reader that these categories should not be considered essential or biological

<sup>240</sup> Eldred de Klerk 'South Africa's negotiated transition: context, analysis and evaluation' (2002) *Conciliation Resources*.

Available at <http://www.c-r.org/our-work/accord/public-participation/southafrica-negotiated-transition.php> [Accessed 12 January 2010].

<sup>241</sup> MacEwan 'Bringing government to the people' (note 144) 476.

<sup>242</sup> I use Black (with a capital B) to indicate all 'non-white' groups. 'Non-white' perpetuates an unreflexive discourse which assumes that whiteness is at the centre and forms a norm upon which all 'others' should be judged.

<sup>243</sup> MacEwan 'Bringing government to the people' (note 144) 476.

<sup>244</sup> *Ibid.*

<sup>245</sup> S Parnell and A Mabin 'Rethinking urban South Africa', (1995) 21(1) *Journal of Southern African Studies* 39 at 46

<sup>246</sup> Tapscott (note 237) 2.

<sup>247</sup> J de Visser 'Developmental local government in South Africa: institutional fault lines' (2009) 1(2) *Commonwealth Journal of Local Governance* at 7. Available at <http://www.austlii.edu.au/au/journals/ComJLLocGov/2009/2.html> [Accessed 12 December 2009].

several structures introduced for Black people at the local level.. However, they were generally poorly run and mere tokens, facilitating a small consultative role in racist white rule. For instance the Black Local Authorities were considered puppets of the apartheid state, and were regular targets of violence and resistance.<sup>248</sup>

The administration of Black areas was based on a top-down development style, where high-level officials in the state apparatus were the only decision-makers and did not involve the communities in the development process.<sup>249</sup> This 'production-centred', 'blueprint' approach has left an impact. Research shows that people often feel that decisions are made at a high level and participation is meaningless - just another box to check.<sup>250</sup> Furthermore, this authoritarian approach has altered the relations between citizen and state and some argue created a 'dependency mentality' whereby people expect delivery from the state without participating.<sup>251</sup> Although this is a contentious issue, the key point is that people have very little experience of participating in government processes.

### 3.2.2 Culture of struggle

South Africa's democracy was brought about in part through grassroots mobilisation and radicalism.<sup>252</sup> The liberation movement was deeply associated with struggles for participation at a local level:

The struggle against apartheid mobilized hundreds of thousands of South Africans not simply around the political goals of freedom and equality, but around their exclusion from decision making and service delivery at the local level.<sup>253</sup>

This fight for political participation, recognition and redistribution is upheld as providing a rich history of social capital and participatory culture. Indeed civic and political organisation was often well-informed, organised and facilitated public discussion and involvement.<sup>254</sup> This was applauded in policy documents and by politicians who aimed to 'channel' these participatory and democratic practices into the new governance frameworks. In 1991 then President Mandela remarked:

We are determined that the people of South Africa will make their future and will continue to exercise their full democratic rights after liberation from apartheid. We do not want popular

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<sup>248</sup> Cashdan (note 214) 2.

<sup>249</sup> Johny MacKay *Developmental local government: a study of public participation of the integrated development planning process of the City of Cape Town* (2004) M.Admin Dissertation, University of the Western Cape at 30.

<sup>250</sup> Theron et al (note 39) 12-14.

<sup>251</sup> D A Kotze *Development Administration and management: A holistic approach* (1997) 40.

<sup>252</sup> T Barnes 'Nation building without mortar? public participation in higher education policy making in South Africa'. (2006) 24 (1) *Perspectives in Education* 1 at 1.

<sup>253</sup> David Everatt et al "'Living for the Sake of Living": Partnerships between the poor and local government in Johannesburg' (2004) *United Nations Research Institute for Social Development. Paper No 16 at iii*. Available at <http://www.unrisd.org/> [Accessed 13 January 2010].

<sup>254</sup> MacKay (note 249) 31.

participation to cease the moment when apartheid goes. We want to have the moment of liberation to open the way to ever deepening democracy.<sup>255</sup>

‘However, there was another side to the liberation struggle. It was linked with ‘high levels of social conflict and a vituperative attitude towards local authorities’.<sup>256</sup> Boycotts of rents and user charges were weapons against the apartheid state. In the late 1980s, the strategy of the liberation movement was to make townships and homelands ungovernable. Fjeldstad comments that even in the new dispensation, rent and service boycotts continue and ‘[n]on-compliance with respect to service charges seems to have become an established “norm” in many areas’.<sup>257</sup> It is important not to under-theorise non-payment, but it is beyond the scope of this dissertation to evaluate it.<sup>258</sup> Yet non-payment appears as an example of how local communities set themselves up in opposition, rather than in partnership to local government, which is the discourse that is actively promoted in policy documents. This suggests that the relationship between people and municipalities is, historically, an adversarial and complicated one.

Asendorpf suggests that the lack of involvement of communities in local government processes, particularly IDP plans, is a result of the political culture changing slower than the political structure.<sup>259</sup> He argues that:

Mass action and a culture of boycott continue to be the main means of political expression. A big rally in the stadium is valued much higher than the discussion about concrete - and often difficult - decisions in a small workshop. And despite all campaigning, non-payment of rates still carries the image of politically and morally justified resistance.<sup>260</sup>

The liberation struggle was based on resistance and non-cooperation and justified on moral grounds, yet the new dispensation requires democratic deliberation, as well as a tolerance of diversity and dissent. It also requires collaboration, co-operation, compromise and (as the policy document reiterate) partnership. Moving from a participatory culture of opposition and resistance to one of management and implementation needs a fundamental paradigm shift. Yet citizens have very little trust in local government and lack the willingness to negotiate with the state. In fact, in 2006 more than four in ten South Africans thought that ‘all’ or ‘most’ local government councillors or officials were corrupt and only one in ten felt that local councillors ‘try their best to

<sup>255</sup> Mandela (1991) cited by T Barnes (note 252) 1.

<sup>256</sup> MacKay (note 249) 31.

<sup>257</sup> Odd-Helge Fjeldstad ‘What has trust got to do with it? non-payment of service charges in local authorities in South Africa’ (2004) 42(4) *The Journal of Modern African Studies* 539 at 540.

<sup>258</sup> There appears to be two schools of thought, one that argues there is an inability to pay for services and the other which refers to an ‘entitlement culture’, ‘dependency’ and ‘culture of non-payment’ inherited from the apartheid era. Fjeldstad at 9.

<sup>259</sup> Although Asendorpf’s study was conducted in 1997-1998, the low rates of participation and the general disillusionment around local government participation process seems to indicate that this still might be the case. Dirk Asendorpf ‘A culture of boycott: reasons for the fragility of South Africa’s democracy at the local level: the case of Umtata/Transkei’ (2000) 35 (3) *Africa Spectrum* 273 at 275.

<sup>260</sup> *Ibid* 275.

listen to what people' have to say.<sup>261</sup> In my own research one of the most significant issues that I found in discussions in Khayelitsha was a belief that participation 'would not make a difference'.<sup>262</sup> This lack of trust and sense of powerlessness coupled with numerous experiences of corruption and poor and inefficient service delivery makes co-operation and partnership a rather elusive goal unless the 'participatory culture' is addressed and citizens feel empowered.

The trend towards street protest rather than institutional participation is confirmed by research. South Africa has very low levels of citizen participation and interaction with government.<sup>263</sup> Yet South Africans have one of the highest rates of protest participation in the region and are 'among the most likely to resort to protest again, given the reason and the opportunity'.<sup>264</sup> Mattes suggests that 'low levels of participation and high levels of protest may also be a function of an imperfectly formed political culture, ie that citizens either do not understand the responsibilities of democratic citizenship, or simply do not care'.<sup>265</sup> I have argued above that another legacy of apartheid is that people do not *how to use* the channels for local government and how to hold government to account. Democracy is new and the role of the citizen and a democratic agent is one that must be learnt.

People in South Africa, however, have the right to occupy both claimed and invited spaces and choose where they would prefer to raise their concerns as long as any action is within the law.<sup>266</sup> Protests are one way to engage with government. Invited spaces should not be seen as a substitute for claimed spaces. However research shows that effective invited spaces might reduce confrontational, hostile and disruptive forms of participation when communities feel alienated from their elected leaders.<sup>267</sup>

This section has attempted to provide the historical background of participation in and against local government and thus help explain the current mismatch between participatory structures and struggle culture. It is suggested that South Africans have not yet learnt the skills to negotiate and claim their rights through the system.

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<sup>261</sup> Robert Mattes 'South Africans' participation in local politics and government' (2008) 66/67 *Transformation* 116 at 126. (Hereafter 'South Africans' participation').

<sup>262</sup> Khayelitsha focus group, 2 September 2009

<sup>263</sup> Robert Mattes 'South Africa: democracy without the people?' (2002) 13 (1) *Journal of Democracy* 22 at 23.

<sup>264</sup> *Ibid.* The 2006 survey showed that participation in protests and demonstrations is the highest in Africa at 25 per cent.

<sup>265</sup> Mattes 'South Africans' participation (note 261) 128.

<sup>266</sup> Ismail Davids 'NGOs: oiling the wheels of public participation'. Foundation of Contemporary Research Powerpoint Presentation Slide. Available at <http://www.planact.org.za/commentary.htm> [Accessed 1 March 2010].

<sup>267</sup> *Ibid.*

### 3.5 Setting the scene: the Transition and the post-apartheid landscape

In order to examine local government participation in contemporary South Africa it is essential to look at the transition to democratic rule and the current context in which local government functions.

The 1993 Interim Constitution symbolised the collapse of apartheid rule. It created the Government of National Unity and paved the way for the 1994 national elections. These elections were the first time Black people were allowed to participate as equal citizens of South Africa. The Local Government Negotiation Forum (LGNF) was established to discuss the transformation of local government and debate its prospective form and function in the new South Africa.<sup>268</sup> It is this forum that was credited with paving the way to a relatively peaceful transition to local level democracy.<sup>269</sup>

Although the local level transition phase took a long time, the new legislative framework for local government radically changed its powers, roles and responsibilities.<sup>270</sup> Municipalities were given more authority and autonomy. The impetus to decentralise was driven by an imperative to take government closer to the people and thus to 'enhance opportunities for participation by placing more power and resources at a closer and more easily-influenced level of government'.<sup>271</sup>

However, apartheid fundamentally altered the systems, institutions, geography and psyche of South Africans. I have argued, above, that the apartheid policy affected the legitimacy and role of local government and the reactionary anti-apartheid struggle culture has affected how people interact with government. Theron et al comment:

The existing local government landscape in South Africa is a complex developmental environment shaped by the legacy of apartheid-style social engineering, hopelessness bred by overwhelming poverty, an unresponsive and uninformed beneficiary community, inefficient government institutions and ineffective change agents – all at odds with the high expectations of a frustrated citizenry.<sup>272</sup>

This and other features of the socio-economic-political landscape prevent or hinder participation. Practical issues such as poverty, spatial separations, poor public transport, language barriers and illiteracy might prevent access to spaces. Similarly more elusive barriers, such as the effect of patriarchy, a violent struggle culture, populist politics, hopelessness and disillusionment

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<sup>268</sup> The LGNF was made up of representatives of the old state and ANC-aligned South African National Civics Organisation.

<sup>269</sup> Mngxali (note 130) 34. The LGNF negotiated the Local Government Transition Act 209 of 1993 which outlined the processes of change

<sup>270</sup> Simon Bekker and Anne Leilde 'Residence perception of developmental local government' (n.d) at 3 Available at <http://www.gdri-africancities.org/uploads/Publications%20Perso/Politeia.pdf> [Accessed 1 December 2009].

<sup>271</sup> T Mogale 'Local governance and poverty reduction in South Africa (2005) 5 (2) *Progress in Development Studies* 135 at 138.

<sup>272</sup> Theron et al (note 39) 2.

affects if, how, when and in what way people participate.<sup>273</sup> These issues must be acknowledged in order to understand participation in South Africa.

### 3.7 Local government and participation

Hemson identifies three levels of participation in local government. The first is formal electoral participation through voting in elections. The second is structured and sanctioned participation in the official spaces created at a municipal level. The third is informal community initiated action to challenge municipal practices or policies. This might take the form of petitions, protest marches or the creation of alternative community structures.<sup>274</sup> I have traced the historical genesis of the second and third levels of participation. This section will outline the constitutional, legislative and policy frameworks that institutionalise public participation.<sup>275</sup> I will then look at the South African local and invited spaces and argue that they are fraught with problems which prevent the ethical encounter.

#### 3.7.1 The Constitution of the Republic of South Africa, 1996.

The South African Constitution establishes three spheres of government – national, provincial and local – which are distinctive, interdependent and interrelated.<sup>276</sup> Even though the different spheres have to work collaboratively on certain budgets, policies or activities, local government is created to be more autonomous and responsive to its constituencies, although the extent of this will be discussed.

##### 3.7.1.1 Local government municipalities and elections

The local sphere is made up of municipalities where the executive and legislative authority is held by the Municipal Council.<sup>277</sup> There are three types of municipalities and different kinds of elections are held for each category.<sup>278</sup> However in each municipality at least half of the councillors are nominated from party lists. This selection of representatives from party electoral lists is problematic as it means that councillors are allocated to constituency areas, which they must then service.<sup>279</sup> They are not always 'embedded' in the local context and thus have less impetus to facilitate meaningful public participation procedures. Furthermore, the elected leaders

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<sup>273</sup> *Ibid* 1.

<sup>274</sup> Hemson (note 228) 10.

<sup>275</sup> Department of Provincial and Local Government *IDP Guide Pack: Overview* (2001) 9 (original emphasis)

<sup>276</sup> The Constitution (note 1) s 40(1) Also see the Intergovernmental Relations Framework Act 13 of 2005.

<sup>277</sup> *Ibid* s 151.

<sup>278</sup> Category A municipalities are in metropolitan areas and are divided into wards. Category B municipalities are those outside the metropolitan areas, they are also made up of wards and form part of Category C, the district municipalities. District municipalities have executive, legislative and administrative authority over the municipalities in their area. District Management Areas (DMAs), sparsely populated regions such as conservation and rural areas, are also governed by the district municipality.

<sup>279</sup> I Buccus and J Hicks 'Crafting new democratic spaces: participatory policymaking in KwaZulu-Natal, South Africa' in J Pretorius (ed) *African politics: beyond the third wave of democratisation* (2008) 156 at 156. Available at <http://www.jutaacademic.co.za/africanpolitics/chapters/chapter8.pdf> [Accessed 12 November 2009].

often owe more allegiance to the party – which includes them on the party lists – than their constituency. Hence these leaders may take the party line rather than act on their conscience or for the best interests of a specific community.<sup>280</sup> In the face of weak opposition, the ruling party is often assured of re-election and this reduces the responsiveness and accountability of elected leaders. Williams argues, quite controversially, that ‘in the South African version of democracy, the party is everything and the constituency is nothing’. He provocatively suggests that democracy is replaced by ‘partocracy’.<sup>281</sup>

Habib contends that the problem with this system is that it reduces the substantive vulnerability that elected leaders face.<sup>282</sup> Substantive vulnerability is when political leaders are uncertain about their re-election and thus they become more responsive to the needs and desires of citizens. It enhances the leverage of citizens and thus increases the accountability of leaders. Thus Habib calls for a revision of the municipal election system.

### 3.7.1.2 Role of local government

Section 152 of the Constitution sets out the objectives of local government.<sup>283</sup> There is a strong emphasis on the role of local government to realise local level democracy and development. The specific functions of the municipalities are set out the Constitution.<sup>284</sup>

The Constitution established the notion of participatory and developmental local governance. It has been given ‘institutional life’ through a number of policy and legislative documents.<sup>285</sup> These will be discussed below with reference to the mandate to consult or involve the community in its workings.

### 3.7.2 Reconstruction and Development Programme (RDP) 1994

The RDP is a socio-economic policy framework.<sup>286</sup> Its conceptions of democracy and citizen participation are noteworthy. The RDP defines democratisation as a central principle in South

<sup>280</sup> Adam Habib ‘South Africa: conceptualizing a politics of human-oriented development’ (2009) <http://www.polity.org.za/article/south-africa-conceptualizing-a-politics-of-human-oriented-development-2009-08-13> [Accessed 1 December 2009].

<sup>281</sup> John J Williams ‘Community participation in local formal participatory spaces’ (2009) *DDP Workshop Publication: Institutional Participation in the South African Public Sphere* 12 at 16.

<sup>282</sup> Habib (note 280).

<sup>283</sup> It states the objectives of local government are: a) to provide democratic and accountable government for local communities; b) to ensure the provision of services to communities in a sustainable manner; c) to promote social and economic development; d) to promote a safe and healthy environment; and e) to encourage the involvement of communities and community organisations in the matters of local government.

<sup>284</sup> See Part B of Schedule 4 and 5 of the Constitution. It includes electricity delivery, water, sewage, sanitation, storm water systems, local roads, local public transport, refuse removal, fire fighting services, municipal health services, decisions around land use, street trading, abattoirs, fresh food markets, recreational areas, local tourism, libraries and other community facilities. The municipal council must also: Pass by-laws; approve budgets and development plans; impose rates, taxes and levies for the use of public goods and services; issue fines for disobedience of municipal by-laws; raise money to fund local projects.

<sup>285</sup> Thabile Sokupa ‘Revitalizing public participation’ (23 Sept 2009) *NGO Pulse*. Available at <http://www.ngopulse.org/article/revitalising-public-participation> [Accessed 2 December 2009].

<sup>286</sup> It has since been overtaken by the Growth Employment and Redistribution Policy (GEAR) and Accelerated and Shared Growth Initiative for South Africa (ASGISA).

Africa's development.<sup>287</sup> Democracy is when 'all South Africans have access to power and the right to exercise their power',<sup>288</sup> while development is understood as the 'active involvement and growing empowerment' of the citizenry.<sup>289</sup> Empowerment is conceived as a form of substantive citizenship, where people have formal rights and the ability to exercise these rights. This ability is dependant on social and economic factors, as well as 'meaningful information and education, and an institutional network fostering representative, participatory and direct democracy'.<sup>290</sup> The RDP links democracy, development and empowerment and suggests that it is the state's duty to create spaces and mechanisms for 'direct democracy'.<sup>291</sup> Civic associations and social movements are considered key to the democratization of society, but the RDP claims the capacity of these organisations needs be developed to prepare them for their 'changed roles'.<sup>292</sup>

This document is significant for several reasons: first, the RDP sets out a yardstick upon which the effectiveness of participation should be measured. In other words, participation is judged by the extent to which people are empowered. Second, participation is linked with socio-economic factors; this suggests that the recognition of people as human beings and agents in their own lives, must be accompanied by a redistribution of resources. Third, the vision of RDP is a state-driven empowerment whereby people are inserted into the development process and the energy of the struggle movements and organisations are harnessed for development purposes.<sup>293</sup> Thus, it assumes participation can be channelled from claimed to invited spaces relatively easily. This does not take cognisance of the power mediating *access to* and *voice in* the invited spaces.

### 3.7.3 White Paper on Local Government (WPLG) 1998.

The WPLG is depicted as the 'mini-constitution' of municipalities.<sup>294</sup> It interprets the constitutional provisions for the local government system and is central in envisaging the transformation and developmental role of local government. Developmental local government is understood to be manifested in municipalities that maximise social development and economic growth through effective utilisation of their resources.<sup>295</sup> Central to the developmental project is an attempt to 'democratize development', build 'social capital through providing community leadership and

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<sup>287</sup> *Reconstruction and Development Programme: a policy framework* s 1.3.7. Available at <http://www.anc.org.za/rdp/rdp.html> [Accessed 2 December 2009].

<sup>288</sup> Section 5.2.2.

<sup>289</sup> Section 1.3.3.

<sup>290</sup> Section 5.2.1.

<sup>291</sup> Section 5.2.6.

<sup>292</sup> Section 5.2.7.

<sup>293</sup> Edgar Pieterse 'Empowerment' in Nick Shepherd and Steven Robins *New South African keywords* (2008) 69 at 70.

<sup>294</sup> Mohammed Valli Moosa 'Foreword' in White Paper on Local Government (6 March 1998) 1 at 6. Available at [www.treasury.gov.za/legislationmfma/guidelines/whitepaper.pdf](http://www.treasury.gov.za/legislationmfma/guidelines/whitepaper.pdf) [Accessed 6 August 2009] (Hereafter 'WPLG')

<sup>295</sup> 'Introduction' WPLG at 8.

vision', and 'empower marginalised and excluded groups within the community'.<sup>296</sup> In short, it envisages local government 'committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives'.<sup>297</sup> In order to realise this vision, the WPLG proposes structures and strategies must be developed to facilitate engagement between elected leaders, civic organisations and citizens.<sup>298</sup> It outlines the function, composition and role of these forums. Citizen participation is envisaged on four levels: as voters, citizens, consumers and end-user and organised partners.<sup>299</sup>

There are several problems with the WPLG, despite its 'noble sentiments' and 'visionary dimension'. It has been accused of being overly optimistic and ambitious in seeing municipalities as the driving agents of economic and social development, an effective service delivery agencies and facilitators of local level democracy.<sup>300</sup> In addition its one-size-fits-all approach to municipal governance is considered unsustainable and unrealistic.<sup>301</sup> Like the RDP, it links empowerment, inclusive development and participation with the redistribution of resources and suggests that participation should be facilitated by government in invited spaces.

### **3.7.4 Municipal Structures Act, 1998 & Municipal Systems Act, 2000.**

The 1998 Municipal Structures Act establishes the category and types of municipalities and sets out the various structures of local governance.<sup>302</sup> Section 19 sets out the objectives of municipalities and state they must 'develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers'.<sup>303</sup>

The Municipal Systems Act<sup>304</sup> sets out the principles, processes and mechanisms to enable municipalities to pursue 'the social and economic upliftment of communities and the provision of basic services to all our people'.<sup>305</sup> Active engagement of communities is seen as a 'fundamental aspect' of the local government system.<sup>306</sup> Interestingly, the legal definition of a municipality includes the local community.<sup>307</sup> This attempts to emphasise that residents 'own' the municipality, and are part of the development process. However this seems to have no

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<sup>296</sup> *Ibid.*

<sup>297</sup> *Ibid.*

<sup>298</sup> Section B.3.3.1 at 34.

<sup>299</sup> *Ibid.*

<sup>300</sup> David Schmidt 'Report on the Good Governance Learning Network Workshop on the Local Government White Paper Review Process' (2007) Good Governance Network at 7.

<sup>301</sup> *Ibid.*

<sup>302</sup> Act 117 of 2000 (hereafter 'Structures Act').

<sup>303</sup> Section 19. Also see s.44(3) which states that the municipality's executive must also provide an annual report on the extent of public participation in municipal affairs.

<sup>304</sup> Act 32 of 2000 (hereafter 'Systems Act').

<sup>305</sup> *Ibid* 'Preamble'.

<sup>306</sup> *Ibid*

<sup>307</sup> Section 2 states that each municipality consists of political, and administration structures as well as the community which consists of the people who reside in the area and civic organisations.

immediate practical implications on public participation except perhaps to suggest that people should share in the costs of development.<sup>308</sup>

Section 5 outlines the rights and duties of community members<sup>309</sup>. These rights are important in that they set out what people should expect from the municipalities and provide the framework to make claims against municipalities and hold officials to account. The rights are balanced with notions of duty and responsibility, although these are limited.

Section 16(1) states that the municipal council must develop a 'culture of participatory governance' and create conditions conducive to community participation. It outlines when and in what forums community participation must be sought, that is, in IDPs, performance management, budget preparation and strategic decisions relating to the provision of municipal services. Furthermore, there is a burden on local government to build the capacity of the local community to participate effectively in the municipal affairs, as well as build staff capacity so that they too can foster community participation.<sup>310</sup> The municipality is required to 'establish appropriate mechanism, processes and procedures to enable the local community to participate in the affairs of the Municipality'.<sup>311</sup> Due consideration must be made for those who are illiterate or have disabilities as well as women and other disadvantaged groups.<sup>312</sup>

Enabling public participation is closely linked to providing information. The Act sets out an obligation to communicate possibilities for participation and how it should be conducted.<sup>313</sup> This is supported by Section 32 of the Constitution which gives everybody the right to information that the government has or that which is needed to protect one's rights. The aim is to promote transparency and accountability in governance and enable people to participate effectively.<sup>314</sup>

There are several other pieces of legislation that confirm and supplement the above Acts in demanding consultation or community involvement in municipal affairs:

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<sup>308</sup> Piper and Deacon 'Too dependant' (note 48) 418.

<sup>309</sup> Residents have a right to (1) contribute to the decision-making processes of the municipality, provided that it is through the "correct" mechanisms and procedures; (2) prompt response' to their communications; (3) be informed on the state of affairs in local government as well as decisions that affect their 'rights, property and reasonable expectations'; (4) demand that council proceedings are open, impartial and untainted by personal self-interest; (5) use public facilities and municipal services provided that certain taxes and levies are paid. They also have a duty to (1) uphold and adhere to the rules and laws of the municipality when exercising their rights.; (2) to pay their taxes and levies, respect other people's rights; and (3) to allow access of municipal officials to their property if they need to perform municipal functions Adapted from Systems Act (note 304) s 5(2).

<sup>310</sup> Section 16(1) b.

<sup>311</sup> Section 7(2) These procedures must include the receipt, processing and consideration of petitions and complaints; notification and public comment procedures, public meetings and hearings; consulting recognised community organisations and, if appropriate, traditional authorities; as well as reporting back.

<sup>312</sup> Section 17 (3).

<sup>313</sup> Section 21.

<sup>314</sup> This has been legislated in the Promotion of Access to Information Act 2 of 2000 and Protection of Disclosures Act 26 of 2000. The Promotion of Administrative Justice Act 3 of 2000 is also relevant.

- The Systems Act is supplemented by the Municipal Planning and Performance Regulations Act<sup>315</sup> which requires that the local community should be involved in the development, implementation and review of the municipalities' performance management systems.
- The Municipal Finance Management Act states that municipal budgetary processes must invite and take into account representation and comments from local community.<sup>316</sup> Furthermore the meetings where the annual report and budget are discussed must be open to the public.<sup>317</sup>
- The Municipal Property Rates Act also requires that the public must be consulted in decisions relating to municipal property rates.<sup>318</sup>
- The Traditional Leadership and Governance Framework Amendment Act no. 41 of 2003 confirms section 81 of the Structures Act as it confirms that the traditional council in the area must work with the local municipal council.

The above Acts outline the requirement for public participation in local governments and delineate the structures and processes of invited spaces. They also set out the obligations and duties on citizens, municipality officials and councillors. Even though there is a strong legislative framework for participation, the policy development has lagged behind.<sup>319</sup>

### 3.7.5 Policy and Participation

The 1997 Batho Pele 'White Paper on Transformation of Service Delivery' was the first to include references to participation.<sup>320</sup> Consultation is seen as a means to make service delivery more responsive and effective.<sup>321</sup> Community participation is seen as instrumental rather than empowering.

The 2007 *Draft National Policy Framework for Public Participation* is the first extensive policy document which outlines (a) the value of participation; (b) the assumptions underlying participation; (c) the various levels of participation; (d) issues that require participation; (e) the strategies for participation; and (f) the forms of participation advocated for local government.<sup>322</sup> The document focuses on ward committees as the main means to facilitate community involvement. It has yet to be accepted and implemented as policy.

The absence of a policy on a structured participation process has been considered a 'serious impediment' to promoting and facilitating public engagement.<sup>323</sup> The draft document is envisaged as a source of information on public participation. It has been, nevertheless criticised

<sup>315</sup> Municipal Planning and Performance Regulations Act 32 of 2002.

<sup>316</sup> Municipal Finance Management Act 56 of 2003. See s 84, 116, 120.

<sup>317</sup> Section 130.

<sup>318</sup> Municipal Property Rates Act No. 6 of 2004 s 3, 22, 84.

<sup>319</sup> Imraan Buccus 'Local government, participation and poverty in KwaZulu-Natal' (2007) *Centre for Public Participation research paper* at 8. Available at <http://www.cpp.org.za/publications/2007/local.pdf> [Accessed 17 December 2009].

<sup>320</sup> Batho Pele means 'People first'. It was first applied to government departments and only recently has it been incorporated in local government through the Batho Pele Change Management Engagement Programme, BPLN, Service Delivery Improvement Plans and Batho Pele Forums. See *Concept Paper Seventh Batho Pele Learning Network* (2008) Available at <http://unpan1.un.org/intradoc/groups/public/documents/CPSI/UNPAN031696.pdf> [Accessed 10 February 2010].

<sup>321</sup> 'Batho Pele' Department of Public Service and Administration Website. Available at <http://www.dpsa.gov.za/batho-pele/Definition.asp> [Accessed 10 February 2010].

<sup>322</sup> Draft National Policy Framework for Public Participation 2007. Available at [www.pmg.org.za/node/14164](http://www.pmg.org.za/node/14164) [Accessed 1 September 2009] (Hereafter 'Draft Public Participation Framework').

<sup>323</sup> *Ibid* 7.

for being pitched at a very general level and framing public participation as consultation rather than real involvement.<sup>324</sup> It does not provide for a transfer of decision-making power to the people and thus enact effective empowerment.<sup>325</sup>

Several municipalities and provincial governments, most notably KZN and the Western Cape, have introduced guidelines and programmes in order to meet obligations to facilitate public participation.<sup>326</sup> This has garnered a mixed response with some commentators welcoming further institutionalisation of participation and others warning that facilitating participation requires flexibility and cannot be initiated through bureaucratic processes.<sup>327</sup>

### 3.8 The invited spaces

The institutional framework mentioned above creates invited spaces and emphasise their empowerment potential. I will consider the IDP forums and ward committees as the primary spaces for citizen involvement and evaluate the extent to which they enacted meaningful engagement by reviewing some of the research on their workings.

#### 3.8.1 Ward committees

Ward committees first emerged in the eighteenth century in the Cape Colony and were later used by the apartheid system, but were rejected as illegitimate by the majority of the Black population.<sup>328</sup> The ward system was revisited and revised in the post-apartheid state. Its primary objective is to 'enhance participatory democracy in Local Government'.<sup>329</sup> It is meant as an 'formal, unbiased communication' channel to convey concerns and complaints from communities to the council and communicate decisions and plans from the municipal council to communities as well as mobilised the community to attend meetings and participate in municipal processes.<sup>330</sup>

The Structures Act provides for the establishment of ward committees.<sup>331</sup> It outlines the ward committee's powers and functions as well as the processes and procedures associated with its running. Ward committees as advisory and representative structures, chaired by the Ward Councillor.<sup>332</sup> Ten members are elected from the ward and should represent various

<sup>324</sup> Buccus (note 319) 6.

<sup>325</sup> Imraan Buccus et al 'Research report: public participation and local governance' (2007) *Centre for Public Participation research paper* at 3. Available at <http://www.cpp.org.za/publications/2007/local.pdf> [Accessed 11 December 2009].

<sup>326</sup> *Ibid* 2.

<sup>327</sup> Petrus A Brynard 'Realities of citizen participation' in Koos Bekker (ed) *Citizen participation in local government* (1996) 39 at 44.

<sup>328</sup> Mpho Putu 'The role of ward committees in enhancing public participation in Rustenburg Municipality: a critical evaluation' (2006) *Research report for IDASA Citizen Leadership Unit* at 9. Available at <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1991> [Accessed 12 January 2010]

<sup>329</sup> Structures Act (note 302) s 72(3).

<sup>330</sup> Steven Friedman 'On who's terms: participatory governance and citizen action in post-apartheid South Africa?' Paper presented at International Institute of Labour Studies Workshop *Participatory governance: a new regulatory framework?* (Geneva, 9-10 December 2005) at 36.

<sup>331</sup> Structures Act (note 302) s 72-78

<sup>332</sup> *Ibid* s 74(a).

interests groups. It should have an equitable gender representation.<sup>333</sup> Elections of ward committee members are determined by each municipality and may be based on sector or area models. Members serve on a voluntary basis although reimbursements for direct expenses have been introduced recently.<sup>334</sup> Ward Committees are required to be open, transparent and accountable to the broader community.<sup>335</sup>

The 2005 Notice reinforces that no executive powers can be delegated to ward committees.<sup>336</sup> Yet ward committees are considered the official structure for participation and thus have 'exclusive legitimacy' as the invited space for participation. Thus they are the 'proper' spaces but properly powerless. The Notice encourages 'constructive' and 'harmonious' interaction between the municipality and community.<sup>337</sup> They are viewed as non-partisan spaces as where conflict and party politics are absent.<sup>338</sup> Evidence indicates that this is misguided.

### 3.8.1.1 Problems and challenges

As of 2009, ward committees had been established in 99 per cent of the municipalities.<sup>339</sup> Research conducted in 2005 indicated that only 43 per cent of South Africans had some knowledge of ward committees in their areas.<sup>340</sup> This low level of awareness of the legislated tools and forums for participation is problematic and indicates a municipalities' insufficient communication strategy and perhaps a lack of commitment to facilitating participation.

The research indicates that the ward committees system does not work. They have very little impact on local government process and might even adversely affect more organic, sustainable forms of participation.<sup>341</sup> I review and summarise the research on the 'functional problems' of ward committees into three main categories *structural/institutional design*; *administrative/implemental*; and *political* issues, there are not mutually exclusive nor are they exhaustible but they clarify the main problems with these committees. However it must be noted that these findings come from pockets of research and cannot be generalised to all municipalities.

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<sup>333</sup> *Ibid* s 4.5.3.

<sup>334</sup> Local Government Laws Amendment Act 18 of 2008 requires that all municipalities that must budget for all the 'out of pocket' expenses incurred by members while performing municipal duties. Municipalities should develop their own policies to determine the criteria for calculation expenses.

<sup>335</sup> I Davids (ed) *Learning about local government: a first step towards active engagement* (2006) 16-17.

<sup>336</sup> Guidelines for the establishment and operation of municipal ward committees' Notice 965 of 2005 (GG 27699 of 24 June 2006) s 5(3)(d).

<sup>337</sup> Section 5(1)(3)(b)(v).

<sup>338</sup> Section 4(2).

<sup>339</sup> National framework guidelines for provinces and municipalities in the implementation of the ward funding model, Notice 364 of 2009 (GG 32112 of 9 April 2009) at 4.

<sup>340</sup> Hemson (note 228) 11.

<sup>341</sup> Schmidt (note 300) 2.

### Institutional design issues

- There is a lack of common understanding of how ward committees should feed into and aid in municipal development planning and decision-making.<sup>342</sup>
- They lack decision-making power. They are 'feeble and poorly developed and incapable of having any impact upon council processes'.<sup>343</sup>
- The Committees are run by councillors who have limited powers due to the strong centralisation of governance processes.<sup>344</sup>
- There are no measures to hold ward committee members to account.<sup>345</sup>
- Ward committee members are unable to hold non-compliant councillors and officials to account. They are merely referred to the Council and decisions are made there.<sup>346</sup>
- The fact that wards are demarcated according to geography is problematic. Civil Society Organisations (CSOs) which have a broad but relevant focus might be prevented from participating in these forums because they are not geographically situated.<sup>347</sup>
- There is a mismatch between municipality's administration and ward delimitation. In big municipalities ward councillors are not able to attend ward meetings and respond to issues raised.<sup>348</sup>

### Administrative/implemental issues

- Ward committee are often under-resourced and lack administrative and logistical support.<sup>349</sup>
- Ward committee members lack training in municipal processes and the technical details of budgetary, IDP and performance management processes. Skills and support are also needed in order for members to engage with the community.<sup>350</sup>
- Municipal officials are often unprepared to engage with ward committees and are unreceptive to participation, thus they also need training.<sup>351</sup>

### Political issues

- Although ward committees are meant to be non-partisan, they are often characterised by local power struggles and party politics.
- Ward committees are often considered an extension of a party branch or a means to further a political party agenda.<sup>352</sup> This politicisation also acts to reduce the representativeness of the committee<sup>353</sup> and erode the potential to advance communal over party interests<sup>354</sup>

<sup>342</sup> Buccus et al (note 325) 8.

<sup>343</sup> Piper and Deacon 'Too dependant' (note 48) 416.

<sup>344</sup> Claire Benit-Gbaffou 'Local councillors: scapegoats for a dysfunctional participatory democratic system? lessons from practices of local democracy in Johannesburg'(2008) 4 (1) *Critical Dialogue – Public Participation in Review* 26 at 26.

<sup>345</sup> Janine Hicks 'Assessing the effectiveness of community based involvement'(2006) *Centre for Public Participation report*. Available at [http://www.cpp.org.za/main.php?include=docs/community.html&menu=\\_menu/pubs.html &title=Documents](http://www.cpp.org.za/main.php?include=docs/community.html&menu=_menu/pubs.html &title=Documents) [Accessed 1 February 2010].

<sup>346</sup> *Local democracy in action: a civil society perspective on local governance in South Africa* (2008) Good Governance Learning Network at 64 (hereafter '*Local democracy in action*').

<sup>347</sup> Nyalunga (note 236).2.

<sup>348</sup> Schmidt (note 300) 3.

<sup>349</sup> SE Mohamed 'From ideas to practice: the involvement of informal settlement communities in policy making at a city level in South Africa' (2006) 37 (1) *Sociology in Transition* 35 at 40.

<sup>350</sup> Laurence Piper and Nonhlanhla Chanza 'Too 'raw' to represent: the marginalisation of youth in Msunduzi ward committees'(2006) 2 (2) *Critical Dialogue –Public Participation in Review* 18 at 22.

<sup>351</sup>Hicks (note 345).

<sup>352</sup> Laurence Piper and Roger Deacon 'Deepening democracy, enhancing elite control or just ineffectual? ward committee politics in the Msunduzi Municipality (2006) *Grant Report for Centre of Civil Society & University of KwaZulu-Natal* at 2. Available at <http://www.nu.ac.za/ccs/default.asp?3,28,10,2589> [Accessed 11 November 2009].

- Community members often believed that the political affiliation of the ward councillor influence agenda of committee meetings and thus reduced the potential for meaningful engagement.<sup>355</sup>
- There is a lack of participation by professionals on voluntary basis, which could potentially to build the strength and capacity of ward committees.<sup>356</sup>
- They lack legitimacy and credibility. An interesting trend exists whereby the 'traditionally voiceless and disadvantaged people tended to be over-represented on ward committees'.<sup>357</sup> It seems that the more economically powerful do not take the ward committee system seriously, this undermines its effectiveness.<sup>358</sup>
- Ward committees are the main forums for involving the public in the Performance Management Systems.<sup>359</sup> However, councillors and officials are often resistant to being assessed by their 'underlings', the ward committee.<sup>360</sup> They tend to be hostile and frustrate the efforts of the ward committee.
- Ward committees are overly dependent on (1) the performance of ward councillors, (2) the political will of the local party and (3) the support of the municipality.<sup>361</sup>
- Often the implementation of ward committees is 'the beginning and the end of the discussion about participation' and prevents real engagement on appropriate structures and mechanisms to facilitate meaningful participation.<sup>362</sup>
- They tend to be dominated by men's voices.<sup>363</sup>
- There is conflict between traditional leaders, ward committees and the council.<sup>364</sup>
- It was found that many committee members hold personal aspirations to become councillors themselves and thus wilfully mislead the community.<sup>365</sup> Committees are accused of being subject to corruption, clientalism and nepotism

Hence ward committees appear to be a failure in enabling participation. They seem to be 'talk shops' with little authority and power for real influence. Piper argues they are 'another form of tax on the poor, this time their time and energies' and have very little impact.<sup>366</sup>

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<sup>353</sup> See Philippe Gervais-Lambony 'Identity, justice and democracy at the ward level in South African cities : space matters' (2006) Paper presented at *The Place of Participation in a Democratising Country: Decentralisation, Local Councillors and Civil Society in South African Cities* (Johannesburg, 20-21 November 2006). Available at [http://www.ifas.org.za/democratic\\_transformation/pdf/HSRC-IFAS1\\_Seminar\\_nov06-PGL.doc](http://www.ifas.org.za/democratic_transformation/pdf/HSRC-IFAS1_Seminar_nov06-PGL.doc). [Accessed 1 February 2010] and Martin Legassick 'Community protests over housing in the City of Cape Town' (2009) *DDP Workshop Publication: Institutional Participation in the South African Public Sphere* 47.

<sup>354</sup> Laurence Piper and Roger Deacon 'Partisan ward committees, elite accountability and community participation: the Msunduzi case' (2007) 3 (2) *Critical Dialogue – Public Participation in Review* 41 at 41.

<sup>355</sup> Similarly Putu (note 328) found that there was often conflict between ward councillors' political mandate and the committee's interests.

<sup>356</sup> *Ibid.*

<sup>357</sup> *Local democracy in action* (note 346) 26.

<sup>358</sup> *Ibid.*

<sup>359</sup> See Systems Act (note 304) s 42 and Structures Act (note 302) chp 4.

<sup>360</sup> *Local democracy in action* (note 346) 62.

<sup>361</sup> Piper & Deacon 'Too dependant' (note 48) 416.

<sup>362</sup> Schmidt (note 300) 3.

<sup>363</sup> MacEwan 'New spaces for citizenship' (note 30) 976.

<sup>364</sup> Putu (note 328) 30

<sup>365</sup> Hicks (note 345).

<sup>366</sup> Laurence Piper 'Local governance in post apartheid South Africa' (2009) *DDP Workshop Publication: Institutional Participation in the South African Public Sphere* 20 at 20.

### 3.8.2 Integrated Development Planning

Integrated development planning (IDP) has been depicted as the 'cornerstone of developmental local government' in South Africa.<sup>367</sup> First introduced in 1996 by an amendment to the LGTA, it has been described as:

a process by which the planning efforts of not only various spheres and sectors of government and other institutions, but, also, of the various economic, social, environmental, legal, infrastructural and spatial aspects of a problem or plan are integrated – brought together – in a way that enhances development and provides for sustainable empowerment, growth and equity for the short, medium and long term.<sup>368</sup>

This 'overarching fulcrum around which local government developmental and regulatory responsibilities revolve'<sup>369</sup> aims for 'more strategic decision making, deeper levels of local democracy, more goal-oriented budgeting, more developmental and transformative outcomes, changes in spatial configurations, and better coordinated and prioritised on-the-ground delivery'.<sup>370</sup> Central to IDP is the role of public participation. There is a legislative insistence that the process includes participation of local communities in assessing and prioritising needs, implementing programs and monitoring the systems.<sup>371</sup>

The Systems Act sets out the objectives and procedures for IDP. An *IDP Process Plan* must be drawn up and made accessible to the members of a municipality. This is a 'schedule of events detailing all events and activities involved leading to the drafting and completion of the 5 Year Plan [IDP]'.<sup>372</sup> It includes an outline of how, when and in what way the public can participate in the IDP.<sup>373</sup>

An *IDP Representative Forum* should be established to provide the space for community and stakeholder participation in the IDP process.<sup>374</sup> This should consist of representatives from all stakeholders.<sup>375</sup>

<sup>367</sup> *Local democracy in action* (note 346) 53.

<sup>368</sup> IDASA *Integrated Development Planning: participant's workbook* (1998) 6.

<sup>369</sup> Mogale (note 273) 139.

<sup>370</sup> P Harrison *The origins and outcomes of South Africa's Integrated Development Plans*, in M van Donk et al (ed) *Consolidating developmental local government: lessons from the South African experience* (2008) 321 at 322.

<sup>371</sup> De Visser suggests that the IDP process can be divided into two processes. 'Micro-process' involve the community assessing their needs and should be done at a ward level and thus utilize ward committees. 'Macro-processes' are processes whereby the community is consulted on the prioritisation of needs throughout the municipality. The draft proposal should be opened for comments before it is submitted for adoption and the final version should be made available to the public. J De Visser *Developmental local government: a case study of South Africa* (2006) 104.

<sup>372</sup> 'Integrated Development Plan' (2008) City of Cape Town Available at [http://www.capetown.gov.za/EN/IDP/Pages/IDP\\_processplan.aspx](http://www.capetown.gov.za/EN/IDP/Pages/IDP_processplan.aspx) [Accessed 2 January 2009].

<sup>373</sup> Davids (note 335) 19.

<sup>374</sup> *Ibid* 23.

<sup>375</sup> Such as municipal councillors, traditional leaders, ward committee representatives, officials from municipal and government departments, representatives from organised stakeholder groups, groups/people who fight for the rights of unorganised groups, and community representatives. Davids *ibid* 66.

### 3.8.2.1 Problems and challenges

It is difficult to generalise about IDP forums as their participatory processes and their effectiveness will differ from municipality to municipality.<sup>376</sup> Hemson argues that participatory forums should be judged with regards to the level of engagement of citizens in the forums and the effectiveness of this engagement.<sup>377</sup> Insights into levels of engagement are provided by a 2007 survey of Western Cape Municipalities.<sup>378</sup> A surprising 77 per cent of respondents of all the metro districts reported that they have no knowledge of an IDP and 78 per cent were not aware of their City's municipal budget. With regards to the perceived effectiveness of IDP forums, the results were equally grim, 82 per cent of respondents believed their needs are not reflected in the IDP.<sup>379</sup>

As above, the research on the problems of IDP is summarised into three main categories. There is considerable overlap between the problems with IDPs and ward committees as the latter are seen as 'primary channel' through which community members can participate in the IDP forums.<sup>380</sup> The problems mentioned above are also applicable.

#### Institutional design

- IDP forums are often not structurally empowered, what happens in the space may not necessarily affect the IDP produced.
- The IDP consultation processes is not linked to the budget allocations. High level bureaucrats have final decisions on budgetary and resource allocation.<sup>381</sup> This reduces the actual impact and potential power of the IDPs, causing Heller to call it a 'non-starter'.<sup>382</sup>
- The detail required by legislation on IDP is too specific and prevents a municipality finding innovative ways to provide for public participation.<sup>383</sup>
- IDPs attempt to achieve too many things, resulting in trade-offs between different goals which means none are completely satisfied and the documents often tend to be too complex to be useful.<sup>384</sup>
- The incorporation of logistical and financial aspects into IDPs increases the technocratic nature of the process. This reduces the potential for wide- ranging inclusive participation as people are estranged by the intimidating and technical language.<sup>385</sup>

<sup>376</sup> Koos de Waal 'Development' In Nick Shepherd and Steven Robins *New South African keywords* (2008) 58 at 66.

<sup>377</sup> Hemson (note 228) 10.

<sup>378</sup> *Report on survey conducted by the Provincial Government of the Western Cape on public participation in municipalities' Integrated Development Plans and municipal budgeting processes* (2007) Foundation for Contemporary Research (FCR) 1 at 5. A hundred thousand questionnaires were collected and analysed to assess the extent of public participation in IDPs and budgeting processes.

<sup>379</sup> *Ibid* 6. Similarly, research in KZN found that respondents felt that that the IDP did not reflect the community's priorities. Buccus (note 325) 15.

<sup>380</sup> Mngxali (note 130) 39.

<sup>381</sup> A Todes et al 'Some progress, but role of women in local government often marginal' (2007) 5 (1) *HSRC Review* 4-5.

<sup>382</sup> Heller (note 97) 147.

<sup>383</sup> De Visser (note 371 ) 106.

<sup>384</sup> Schmidt (note 300) 4-5. Schmidt suggests that IDPs should be broken down into a number of similar planning instruments with narrower purposes

<sup>385</sup> Harrison (note370) 324.

### Administrative/Implemental

- In certain municipalities the budget and IDP participation processes are condensed to mass meetings ('imbizos') which are not a decision making forums nor are they deliberative.<sup>386</sup>
- Officials seem to use easily organised forums such as presentations which enable them to fulfil the legislative commitment to 'involve' or 'consult' without having to meaningfully engage.<sup>387</sup>
- There is weak co-ordination between departments and the forums are often badly organised.<sup>388</sup>
- The ambitiousness of IDPs meant many of the first plans were drawn up by external consultants, as municipalities lacked the capacity to do so.<sup>389</sup> In many areas this continues to be so and local government becomes a 'cash cow' for consultants.<sup>390</sup> This prevents officials from learning and championing public participation.
- Despite the 1998 state-instituted extensive training programmes for officials and councillors, by 2005, capacity was still poor, it was found that only 37 per cent of municipalities have the independent capacity to prepare IDPs.<sup>391</sup>
- There is very little feedback to the community on the IDP. This result in people feeling excluded and marginalised from the process.<sup>392</sup>

### Political issues

- Although the policy and law requires that special attention be given to marginalised and disadvantaged groups to participate in the IDP processes, IDPs are often captured by elites or powerful groups<sup>393</sup>
- Research indicates that IDPs tend to neglect gender issues.<sup>394</sup>
- IDP Representative Forums are not representative of women, the youth, and people from informal settlements, farm workers, business people and the elderly.<sup>395</sup>
- IDP forums are often perceived as a sham, a mere rubberstamping procedure to consult on pre-designed plans.<sup>396</sup> This results in distrust, alienation and cynicism of the process.
- IDPs forums tend to be highly politicised and act to allocate resources towards loyal supporters.<sup>397</sup>

In conclusion, the research seems to indicate that the IDP theory and strategy of participation rests on notions of 'involvement' or 'consultation' rather than 'empowerment'.<sup>398</sup>

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<sup>386</sup> Laurence Piper and Bettina von Lieres. 'Inviting failure: public participation and local governance in South Africa'(2008) 1(1)*Participation and Governance* 22 at 33.

<sup>387</sup> de Waal (note 376) 66.

<sup>388</sup> Theron et al (note 39) 5.

<sup>389</sup> *Local democracy in action* (note 346) 53.

<sup>390</sup> Theron et al (note 39) 19.

<sup>391</sup> *IDP Hearings 2005 National Report* (2005) Department of Provincial and Local Government. 35 per cent have some ability but need support and 28 per cent lack the most basic capacity

<sup>392</sup> Hicks (note 345).

<sup>393</sup> Williamson et al (note 142) 7.

<sup>394</sup> A Todes et al (note 381) at 4-5.

<sup>395</sup> Frieda Mariè Human *The effectiveness of integrated development plans in the Free State* (2007) M. Dev Studies Dissertation. University of the Free State at 111.

<sup>396</sup> Williams 'Community participation in local formal participatory spaces' (note 281) 17.

<sup>397</sup> *Ibid.*

<sup>398</sup> Theron et al (note 39) 19.

IDPS are technocratic, unrepresentative, tokenistic and too complex. It does not seem to be providing experiences of the ethical encounter.

### 3.9 The local ethical encounter?

The main question is whether these invited spaces are enacting the ethical encounter. The research indicates that people do not believe or trust that these spaces have the potential for a real impact and meaningful engagement.<sup>399</sup> Indeed, the forums are structurally disempowered and fraught with implementation, capacity and power problems. They would correspond with Shier's second space mentioned in chapter one as a space where groups are invited to participate, however it is tokenistic and there is no real power transfer

Certainly *power over* seems to be held and rarely relinquished by councillors and top officials. The *power to* of these forums is restricted by institutional and administrative barriers. *Power with* is retarded by the politicisation and internal struggles within the committees. *Power within* is not a focal point. Furthermore the *power in creating knowledge* is usurped by external consultants and officials who speak for communities.

Enabling an ethical encounter would mean invited spaces are considered legitimate and useful. Citizen and state actors would enter as equals. These spaces should be what they promise a 'consensual bargaining platform'<sup>400</sup> where there is a power to make decisions and participants are part of that process.

### 3.10 Conclusion

This chapter has outlined the background of local government and people's interaction with it. It has been suggested that a 'struggle culture' which defined itself in opposition to the state does not provide experiences of an ethical encounter with the state. This suggests that a civic education programme is necessary. I went on to discuss the legislative and policy framework created to enact participatory democracy. I have looked at the two invited spaces and the problems which prevent these spaces from enacting an ethical encounter. The problems in these spaces reinforces the need to work on both sides of the equation. Chapter Four looks at one side, that of a citizen education programme. I argued that this might encourage changes in law and policy. However, it will do so 'from below'. Invited spaces are created 'from above' in a democratic gesture and it is important that people make these spaces work for them.

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<sup>399</sup> One of the most significant issues that I found in discussions in Khayelitsha was a belief that it 'would not make a difference'.  
Khayelitsha focus group, 2 September 2009.

<sup>400</sup> *IDP Manual 2002* cited by Human (note 395) 57.

## CHAPTER 4: A CITIZEN EDUCATION PROGRAMME

*If we sit around and wait nothing will be done and things will get worse. We have to fight for things and make improvements. We just need to know how.*<sup>401</sup>

### 4.1 Introduction

I have shown that in South Africa the local invited spaces are fraught with problems. These include a lack of capacity and knowledge on the part of the inviters and invitees on how to engage as well as an unequal power distribution in the spaces. I have argued that the ethical encounter, the ideal type encounter based on ubuntu and which incorporates recognition and redistribution is not occurring at a local level. Certainly several 'top-down' solutions are needed to improve the efficacy of the spaces. One of the most important is to improve the institutional status of the spaces. These forums must be given real powers to make decisions so that public participation is meaningful and has an impact. There are a host of other ways that these spaces can be improved 'from above', however this chapter focuses on the other side of the equation. It proposes a citizen education programme to empower people to claim an ethical encounter. In Chapter Three, I argued that the struggle culture has not provided people with the tools to participate in invited spaces; therefore the focus of the education programme in this chapter is on strengthening of citizen voice and their capabilities to engage the state in invited spaces. A successful education programme might, in the long term, address some of the functional problems of these spaces as citizens lobby and advocate for structural change.

Any educational programme needs to be based on an understanding of why people participate. I briefly introduce theories as to understand the motivation behind participation and outline some South African research on citizenship education. I then discuss the citizen education programme that I believe is needed and compare it to programs that are currently running in South Africa.

### 4.2 Why do people participate?

Participation requires an investment of time and resources, and the demands it makes on people are often disregarded in the enthusiastic promotion of participation.<sup>402</sup> It is often assumed that if the spaces are provided, the people will come. This should not be left uninterrogated.

Generally, public participation only involves the portion of the population that is interested and has a stake in the decision being made.<sup>403</sup> Social Exchange Theory proposes that people

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<sup>401</sup> Interview with a woman in Khayelitsha cited by MacEwan 'Bringing government to the people' (note 144) 474.

<sup>402</sup> Frederick Golooba-Mutebi 'Reassessing popular participation in Uganda' (2004) 24 (4) *Public Administration and Development* 289 at 290.

will participate if (1) the benefits outweigh the costs; and (2) the benefits are varied and thus more valuable.<sup>404</sup> Political Economy Theory adds that the benefits need to be 'selective', that is, they specifically reward participating individuals. People tend not to participate if they can receive the same collective benefits as the participants and thus 'free ride'.<sup>405</sup> It is useful to distinguish between the benefits of participation:

- *Material benefits* are the tangible rewards that can be translated into monetary value. It includes wages, increased property value and information that comes from participation.
- *Solidarity benefits* emanate from the social interaction inherent in participation and include socialising, status, group identification and recognition.
- *Purposive benefits* are derived from supra-personal goals and include bettering the community, doing one's civic duty, and fulfilling a sense of responsibility.<sup>406</sup>

Empirical studies show that the most active participants are motivated by purposive benefits.<sup>407</sup> Their behaviours are not based on pure self-interest, but are motivated by a source of duty, responsibility and a sense of belonging or purpose within a community.<sup>408</sup> These studies are important as they indicate that a communitarian value system such as ubuntu can encourage participation as it upholds citizenship action for the common good. In addition it reinforces and enhances the purposive benefits as they become more valued.

### 4.3 Research on civic education

Finkel's research on the effects of civic education in South Africa provides useful insights.<sup>409</sup> He found that civic education has statistically significant effects on local government participation.<sup>410</sup> In addition, he found that people are more likely to participate if:

- The type of civic education is active and participatory and includes role playing and dramatisation.<sup>411</sup>

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<sup>403</sup> J L Creighton *The Public Participation Handbook* (2005) 22-23.

<sup>404</sup> Prestby et al (note 43) 119.

<sup>405</sup> *Ibid.*

<sup>406</sup> *Ibid* 120.

<sup>407</sup> *Ibid.*

<sup>408</sup> Another study on 'societal interest' and civic engagement in America confirms this. Societal interest is defined as a value orientation which commits a person to the collective. Civic engagement is defined as participation in political, social and community affairs through formal and informal organisations. Expressions of 'societal interest' significantly influenced the likelihood that people will actually engage in participatory behaviour. Furthermore it was found that appeals that link self-interest with participation are not very effective in encouraging participation and education programs should focus on the collective benefits of participation. Carolyn L. Funk 'Practicing what we preach? The influence of a societal interest value on civic engagement' (1998) 19(3) *Political Psychology* 601-614

<sup>409</sup> Steven E Finkel 'Civic education and the mobilization of political participation in developing democracies' (2000) Paper prepared for the conference *Political Participation: Building a Research Agenda*, (Princeton University, 12-14 October, 2000) 475 adults who had attended a civic education workshop run by various advocacy were interviewed and they were matched with a control group according to race, age and gender.

<sup>410</sup> *Ibid* 1..

<sup>411</sup> Similarly Finkel and Ernst 1998 study of South African high school students found that civic education increased their political knowledge. However the quality of instruction and the kinds of pedagogical methods employed by instructors were central to determining whether students adopted democratic values and skills. Students are taught by instructors who they perceived to be competent and likable where more likely to adopt democratic values and skills. Similarly, classes that were taught with using active, participatory instructional methods showed increased democratic orientations Steven E Finkel and Howard R. Ernst 'Civic education in post-apartheid South Africa: alternative paths to the development of political knowledge and democratic values' (2005) 26 (3) *Political Psychology* 333 at 333.

- Participants are asked to participate by people in their social circles.<sup>412</sup>
- Participants had prior 'participatory resources' such as information, skills or social attachments which enable the translation of civic education training into practice.

These findings are significant for a number of reasons.<sup>413</sup> First, they indicate the potential ability of civic education to enhance participation. Second, they show that the type of instruction is important. Third, they highlight the value of NGO support in providing information and participatory training for those who are marginalised, disadvantaged or inactive in the political sphere and thus brings them into the participatory arena. Fourth, the NGOs studied tend to work as secondary organisations training the trainers who then work in community level groups or organisations. This suggests that grassroots organisations that already exist can be supported with capacity training without imposing top-down assumptions about community boundaries, needs and local politics. Finally, it suggests that encouraging participation and mobilisation must have a holistic focus. On the one hand, training needs to provide information and a space where participation can be practiced, on the other hand, the social networks and affiliations that encourage mobilisation and participation should be supported because they provide the impetus and pressure for participation.

#### **4.4 Citizen education: a proposition**

In South Africa, 'the Poors' are the most active participants. They seem to have the greatest stake in government decisions, yet are often the least able to participate effectively in technical and politicised arenas of local government.<sup>414</sup> Considering the problems with local invited spaces, small groups such as CBOs or grassroots NGOs that already exist in impoverished communities, should be targeted for a citizenship education programme. I am not alone in proposing such a programme. IDASA, CPP, FCR, Fairshare, Black Sash, and DDP all have civic education or capacity-building programmes. I will outline how I envisage this programme and then compare it to what is currently being offered.

The proposed programme should be run by what I call a 'reflective NGO', one that interrogates and acknowledges the power dynamics working between an NGO and a community group in order to prevent the imposition of new forms of patronage. The programme should help people develop the skills and knowledge to participate effectively in invited spaces. The ethical encounter would lie at the core of the programme as an informing motif of interactions within and

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<sup>412</sup> Finkle (note 409) 7.

<sup>413</sup> It is important to note that the research on the success of civic education programs is mixed. Research in Zambia illustrated that civic education some impact on participants' knowledge and values but little on their behaviour. Michael Bratton and Philip Alderfer 'The effects of civic education on political culture: evidence from Zambia.' (1999) 27(5) *World Development* 807 at 807

<sup>414</sup> See research by Mattes 'South Africans' participation in local politics and government' (note 261) 119. Natália S. Bueno 'Political participation, resources, and race in Brazil and South Africa: evidence from Belo Horizonte and Cape Town' South African Association for Political Studies *Western Cape Colloquium*, (Cape Town, 8-9 October 2009)12; Hemson (note 228); Bekker and Leilde (note 270). These all confirm the poor people are more likely to participate in local governance.

outside the learning space and as an ideal of what participation in invited spaces should look like. Besides formal knowledge and skills needed to participate, there must be an analysis of power and how it works. In other words, they must develop a critical consciousness: the ability of people 'to understand and think critically about the inequitable power relationships that affect their lives, and to take action to challenge and transform those relationships'.<sup>415</sup> Gavenda's 'power cube' introduced in Chapter One is a particularly useful analytical tool to analyse power working and devise strategies to address the power inequalities. In summary, a citizen education programme cognisant of the dynamics of South African local government would result in the following outcomes:

- Citizens<sup>416</sup> gain knowledge and understanding on how government works and the ways that have been provided for engagement.
- Citizens experience participation and deliberation in their claimed spaces and are able to use these abilities and the confidence in other arenas.
- Citizens gain an understanding of how power works and gain navigational skills to 'work' these spaces for their best advantage.
- Citizens are able to initiate action and engage in invited spaces fully cognizant of the limits of such a space.
- Citizens adopt and internalise values of *ubuntu* and thus have compassion for each other, realise their mutuality and demand that they are treated with dignity and compassion. They demand an ethical encounter in invited spaces. They demand that the state sees them as human beings who deserve a truly human and dignified existence as well as a human encounter.

One might question why I propose a *citizenship* education rather than a *participation* education. This is for two reasons. First, a key focus area should be on building critical consciousness and an ability to analyse power, this is a citizenship attribute rather than just a participatory tool. Second, *ubuntu* should be the underlying value of the programme; it encourages people to investigate what it means to be a citizen who acts in the spirit of *ubuntu*. Participation in invited spaces is a means to enact citizenship and demand recognition and redistribution in the public sphere. However, acting 'in *ubuntu*' should not be limited to this sphere only, but should infuse and inform all actions. We imagine this citizen as one who lives a responsible life, exhibits self-restraint in personal choices and is aware of the mutuality of all people and is willing to resolve conflict without violence or harm done to another.<sup>417</sup> These qualities essentially inform and contextualise participation: without them democracies become

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<sup>415</sup> S Golub and K McQuay 'Legal empowerment: advancing good governance and poverty reduction' (2001) in *Law and Policy Reform at the Asian Development Bank* (2001) 1 at 14

<sup>416</sup> Citizen is used here in the broad sense, that is to act as a citizens as described by Lister. It does should not exclude people who do not have voting rights such as so-called 'foreign nationals', 'refugees' or 'permanent residents'. This is important point in the context of increasing levels of 'xenophobia' in South Africa.

<sup>417</sup> Juliet Merrifield 'Learning citizenship' (2001) A discussion paper prepared for the *Institute of Development Society for Participatory Studies Participation Group Research in Asia* (PRIA) at 5. Available at [http://www.pnet.ids.ac.uk/docs/Other/learning%20citizenship\\_merrifield.pdf](http://www.pnet.ids.ac.uk/docs/Other/learning%20citizenship_merrifield.pdf) [Accessed 12 February 2010]

very difficult to govern.<sup>418</sup> This is a much broader programme than education for political participation.

Williams argues that participatory development programmes should be evaluated in three arenas:

1. the ways that the programme impacts on patterns of political representation, that is who is represented and the how they voice their claims<sup>419</sup> (whom the programme targets);
2. the extent to which the programme leads to poor people's political learning, in other words the knowledge that 'the Poores' have of their formal political rights and de facto local rules of the game (the knowledge gained); and
3. the degree that the programmes reshape political networks. In other words action initiated that challenge patronage relations and oppressive practices (how it changes oppressive power relations).

I would add two more:

4. the extent to which people express feelings of 'power within', 'power with' and 'power to'. (its empowerment potential); and
5. the degree that people interact and claim a space in the invited spaces and demand an ethical encounter, where recognition of another's humanity means that power is redistributed so invited spaces becomes shared spaces (the driving values behind the programme).

This provides a useful guide to the conceptualisation of the programme. I will discuss it with due reference to these guiding principles.

#### **4.4.1 On whom should the programme focus?**

The proposed citizen education programme should be directed at already existing grassroots groups. A facilitator from, or trained by, an NGO and versed in the theoretical and practical side of adult education could partner with a CBO and perhaps work with a small group of people who could then work with others. However, this is context specific and depends on the particular group. The point is that the programme works with organisations that already exist for the following reasons: first, people rarely organise themselves in a spontaneous manner and traditional forms of organisation tend to remain the most important as a base for political participation.<sup>420</sup> Second, South Africa has a rich history of struggle and community organisation, particularly in townships, and this provides a starting point for such a programme. Working with organic forms of organisation in claimed spaces offers the potential to engage and utilise already existing social capital. These groups need not be politically orientated (in the narrow sense): they may be loose interest groups such as GAPA – Grandmothers against Poverty and AIDS.<sup>421</sup>

<sup>418</sup> Kymlicka et al (note 202) 352-353.

<sup>419</sup> Glyn Williams 'Evaluating participatory development: tyranny, power and (re)politicisation'(2004) 25(3) *Third World Quarterly* 557 at 568 (hereafter 'Evaluating participatory development').

<sup>420</sup> Putzel (note 44) 4.

<sup>421</sup> See GAPA website at <http://www.gapa.org.za/> [Accessed 10 February 2010] and Rachel Pryzby 'South Africa's unsung "she-heroes": a practicum study of NPO Grandmothers against Poverty and AIDS, Khayelitsha Township, Cape Town' (2008) Available at [http://digitalcollections.sit.edu/isp\\_collection/88](http://digitalcollections.sit.edu/isp_collection/88) [Accessed 10 July 2010].

Economic co-operatives offer another potential site for such a programme. Members in these groups have experiences of participation and deliberation and these offer a useful platform for the programme. Yet, it should be noted that the power and discourses that include people in these groups and exclude others must be confronted. A community is not a homogenous and harmonious unit: the complexities and conflicts within it must be acknowledged.<sup>422</sup>

#### 4.4.2 What should it focus on?

This section provides a breakdown of the broad attributes that need to be fostered in a citizen education programme. They are knowledge, abilities and values.<sup>423</sup> These will be discussed briefly, as they form the basis of an education programme. I will then expand on the role of a specific value ubuntu and link it to compassion.

##### 4.4.2.1 Providing information, developing knowledge

*Knowledge* is the information, understanding and awareness required to participate.<sup>424</sup> People need relevant and easily understood information on local governance, the law and their rights in order to access resources and advocate for the realisation of their rights and participate in local government spaces. 'The Poores' in South Africa often struggle to access this information.<sup>425</sup> It includes the rights protected under the Constitution: information on how local government works, how local government is structured; the role and responsibilities of councillors, officials and citizens in local governance as it is provided by law and the ways to hold municipal councillors and officials accountable.<sup>426</sup> A citizen education programme in South Africa should provide this information. Better still a programme should facilitate the discovery of this information so people develop the skills to do this themselves.

Programmes run by the FCR,<sup>427</sup> EISA<sup>428</sup> and DDP<sup>429</sup> provide information on participation processes and mechanisms. This 'official' and often technical knowledge is important and useful

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<sup>422</sup> A citizen's education programme might also be instigated within NGOs that are serving other needs, such as skills development NGOs. However, the power working within the NGO must be considered. For instance, I designed a project 'Learn to Earn in Khayelitsha on active Citizenship and Participation' and it was run as part of their lifeskills course.

<sup>423</sup> Drawn and adapted from Merrifield (note 417) 5.

<sup>424</sup> *Ibid.*

<sup>425</sup> Kealeboga Maphunye 'Foreword' in Davids (note 335).

<sup>426</sup> *Ibid.*

<sup>427</sup> The Foundation of Contemporary Research has developed a manual *Learning about local government: first step towards active engagement*. Although this provides useful official information on local government it is lacking in an analysis of power. 'Civic Education Project' FCR Website Available at <http://www.fcr.org.za/projects/participatory-democracy-projects/civic-education-project/> [Accessed 1 March 2010].

<sup>428</sup> EISA aims to 'assist community-based and grassroots organisations to claim the existing spaces for citizen participation in municipal processes capacity building, information provision and ongoing support' in order to encourage citizen participation. They run workshops that target ward committees and councillors and civil society groups on local governance. 'Capacity building' EISA website <http://www.eisa.org.za/EISA/igovcb.htm> [Accessed 1 March 2010].

<sup>429</sup> The Democratic Development Programme (DDP) democracy and voter education programme aims to transfer information on democracy, human rights, the Constitution, the functioning of government and citizen engagement. DDP partners with CSO and CBO networks to rollout this programme. Democracy Development Programme Annual Report 2006 at 16. Available at <http://www.ddp.org.za/newsletter-and-articles/annual-20report-202006.pdf/view> [Accessed 1 March 2010]

in that it allows for claims to be made against the state.<sup>430</sup> However, I would argue that the citizenship education programme must go further than just providing information and must examine and contextualise current participation in the invited spaces. Citizens know the informal *de jure* rules of the game, and witness how 'power over' is held and maintained in that particular context. The facilitator's role would be to draw out these experiences and subject the *de jure* rules to a power analysis so people develop a critical consciousness and are able to devise strategies for strategic engagement.

It is important that the provision of information does not create learners as passive recipients. The programme should aim to empower and help people realise their own agency. One of the skills that should be developed is critical engagement with the world. This demands that the methods are experiential and collaborative.<sup>431</sup>

#### **4.4.2.2 Developing skills and abilities to engage**

Knowledge and information is useless unless one has the ability to claim rights and exercise voice. Certainly the transition to democratic rule led to the 'opening up' of the state and emphasised invited spaces to exercise citizenship. New abilities need to be learnt in order to participate effectively in these spaces. The abilities needed to engage and demand an ethical encounter are those required to deliberate. They include abilities to negotiate compromise, communicate, collaborate, influence others and exercise leadership.<sup>432</sup> Arguably these abilities can be learnt and practiced in the safe learning space which enables people to think critically and discuss collectively about their situation.

People also need the confidence to participate. As noted above, Fickle suggested that the most effective participatory programs used dramatisation techniques, for example people experiment and experience participation and reflect on this. They 'cut their political teeth and acquire skills' which can be transferred into other arenas such as the invited spaces, community meetings (claimed spaces) or even in the private sphere. For instance it might be as simple as assertiveness skills which encourage people to repeat their right to access and contribute to Council meetings in the face of an official who refuses to allow their contributions. Learning spaces create an opportunity for citizens to exercise and practice active citizenship.

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<sup>430</sup> Providing information on how government works is important. I was involved in a workshop on active citizenship and participation in Khayelitsha and a simple diagram of what each sphere of government does and what councillors and ward committees should do was handed out. One woman commented that this would help her and her street committee to engage with local government.

<sup>431</sup> Pablo Freire *The politics of education: culture, power and liberation* (1985) 105.

<sup>432</sup> Merrifield (note 417) 6.

### 4.4.2.3 Developing critical consciousness

As mentioned earlier, for effective participation people need to develop critical consciousness both as an ability and a knowledge set. For people to counter oppression they must critically examine the causes and workings of power.<sup>433</sup> Brett suggests that raising critical consciousness has four qualities:

- power awareness: knowing that society and history can be made and re-made by human agency;
- critical literacy: imbibing and practising analytical habits of thinking;
- de-socialisation: challenging the values and language learned in mass culture; and
- self-organisation: taking part in and initiating social change projects.<sup>434</sup>

These are useful way to conceptualise critical consciousness: it involves awareness, analysis and challenging oppressive power relations and, importantly, action. There is another informing idea that should be part of raising critical consciousness. People learn to see the world in a different way but they also learn to imagine alternative possibilities and realise that 'different tomorrows are possible'.<sup>435</sup> Giroux calls these the 'language of critique' and the 'language of possibility'.<sup>436</sup> A vision of a different kind of invited space a different kind of relationship with the state must inform analysis. My vision is of an ethical encounter.

Another important point must be raised, which is that developing a critical consciousness of how power works and looking at one's own agency is self-reflexive practice. There is a tendency to examine how power functions 'out there'.<sup>437</sup> Hence one's own complicity and agency in reproducing oppressive power relations is left unexamined. Encouraging critical reflection on power means the facilitator and the participator critically self-reflect. This may evoke emotions such as anger, anxiety, fear, guilt, hopelessness and excitement which must be dealt with and 'contained' in the learning space.

### 4.4.2.4 Fostering ubuntu

Knowledge and skills might not necessarily promote democratic participation unless they are underpinned by values that drive and direct action. A programme should encourage democratic dispositions – 'habits of mind, reflecting deeply-held values and attitudes that underpin effective citizenship'.<sup>438</sup> I have argued for a specific value system informed by the traditional

<sup>433</sup> P Freire *Pedagogy of the oppressed* (1972) 29.

<sup>434</sup> Peter Brett "Endowing participation with meaning": Citizenship education, Paulo Freire and educating young people as change-makers' (2007) at 4-5. Available at <http://www.citized.info/pdf/comarticles/Endowing%20Participation%20Peter%20Brett.pdf> [accessed 10 February 2010]

<sup>435</sup> Pablo Freire *Pedagogy of the heart* (2004) 55.

<sup>436</sup> Hendry A Giroux *Teachers as intellectuals: toward a critical pedagogy of learning* (1988) 108.

<sup>437</sup> Jethro Pettit 'Power and pedagogy: learning for reflective development practice' (2006) 37(6) *IDS Bulletin* 69 at 71.

<sup>438</sup> Merrifield (note 417) 6.

communitarian system of ubuntu which notes the connectedness between people and commits people to ethical action.

I am not alone in advocating a citizenship education programme grounded in ubuntu. The South African Department of Education sees ubuntu as a key communitarian value that should be fostered through citizenship education.<sup>439</sup> Waghid links ubuntu with Nussbaum's notion of compassion and argues that education programs can teach compassion<sup>440</sup>.

Nussbaum argues that three capacities are needed for the 'cultivation of humanity' and 'for the health of democratic citizenship'.<sup>441</sup> First, one needs a capacity for critical analysis of oneself and one's traditions. This is why there is an emphasis on fostering critical consciousness. Second, one needs the ability to see the self as a human being 'bound to all other human beings by ties of recognition and concern'.<sup>442</sup> Certainly this is at the core of ubuntu. Third, one must develop a 'narrative imagination', the ability to put oneself in another's place and to understand another's emotions and wishes and desires.<sup>443</sup> In other words, one cannot just *know* ubuntu but one has to *feel* it. I would argue that these three capacities provide a guide on how to 'teach ubuntu'.

Knowledge, skills and the critical consciousness, all grounded in ubuntu and linked with belonging and organising in a collective, provide the basis for an education programme to enable people to demand an ethical encounter. This programme aims to help build *power with*, *power within* and hence *power to*. I will now elaborate on one tool: the power cube which facilitates this development of critical consciousness.

#### **4.4.3 A methodology: the power tool**

Power is at the centre of this programme and indeed this dissertation. I have argued that power works in invited spaces to reduce the potential for an ethical encounter. Hence a citizen education programme must help people to recognise this power working at various levels and challenge it.

In Chapter One I introduced the power cube which is a useful tool in that it considers different forms of power in various spaces and at different levels. It indicates how these all interact and it provides a framework to devise strategies to realise more effective participation. .I

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<sup>439</sup> See Department of Education *Manifesto on values, education and democracy*. (2001) Available at [www.info.gov.za/view/DownloadFileAction?id=70295](http://www.info.gov.za/view/DownloadFileAction?id=70295) [Accessed 1 March 2010].

<sup>440</sup> Yusef Waghid 'Citizenship education as compassion' (2004) 32 *Journal of Education* 105. Also see Yusef Waghid 'Education for responsible citizenship' (2009) 27(1) *Perspectives in Education* 85.

<sup>441</sup> Nussbaum (note 197) 5.

<sup>442</sup> *Ibid* 7.

<sup>443</sup> *Ibid* 6.

want to provide a brief example of how this might work focussing on the invited spaces and power working at a local level.

**Figure 2: Local Invited Spaces**

LOCAL LEVEL	Visible Power	Hidden Power	Invisible Power
<p><b>Invited space</b></p> <p>Example: IDP forums</p> <p>Analysis:</p>	<p>Law and policy that governs IDP processes.</p> <p>Councillors are in charge. They set the agenda and say who can speak. The problem is that they do not listen to us and what we say has no impact</p>	<p>Powerful people in the community speak more.</p> <p>Some people can not get to meetings because of transport issues.</p>	<p>'It is not right for women to speak in community meetings'(patriarchy).</p> <p>'Poor people are stupid and don't understand what is going on'.</p> <p>These norms result in people feeling shame and prevent them from exercising voice.</p>
<p>Strategy:</p>	<p>Rights awareness: using rights as claims to make one's voice heard. Demand responsiveness and accountability.</p> <p>If resistance is too strong; acknowledging the de jure rules of the game and attempting to look at other ways of participating eg. approaching other councillors, mobilising with other groups.</p> <p>Advocating so that IDP processes are really considered. Try to reclaim invited spaces so they are shared spaces and IDPs are drawn up collaboratively. Use a model like participatory budgeting as in Brazil,</p>	<p>Capacity and confidence building to help other people speak.</p> <p>Raising the issue of the inaccessibility of spaces with councillors and proposing that meetings be held in different places.</p> <p>Hold alternative meetings and send representatives from these meetings to IDPs.</p>	<p>Interrogate norms of patriarchy, class, capitalism and assumptions about poverty: attacking internalised oppression and asserting each persons value. Challenge what appears 'normal', 'natural' and 'common sense'.</p>

Although this is a simple example it provides a tool to understand and develop strategies to solve the problems people face in invited spaces. It also indicates that there needs to be a variety of strategies, ones that address and meet practical needs, as well as more strategic attempts to challenge oppressive relations of power and develop agency.

However strategising to meet local needs can be a morally slippery area, for example, if the rule of the game suggests that bribery is the best way to get an identity book. This is when it

is important that an education programme is grounded in a value system. uBuntu suggests that we live in a collective and bribery is detrimental to all, so one should seek ways that do not reduce the ethical capital of the collective, for instance, incessant phone calls or establishing a friendly relationship with a clerk at Home Affairs might work. These are different uses of the rules of the game, they demand that one is treated as a human being, and that one is seen and heard as a human being, it. These strategies demand an ethical encounter but it does not use unethical behaviour.

#### **4.3.1. Analysing power means analysing patriarchy**

Analysing and considering gender is especially important in South Africa which is constitutionally committed to realising gender equality. In Chapter One I mentioned that the 'triple role of women' should be considered when thinking about a citizenship education project.<sup>444</sup> In addition, women in South Africa are already participating in informal spaces as part of the 'community management work. So a citizenship education programme could support women in these spaces and better enable them to participate in the invited spaces by providing information, skills and support. However, as noted, women face ideological barriers to participation. A power analysis asks people to identify the workings of patriarchy, culture and tradition. Ideally it would lead to a situation where women are empowered enough to challenge these institutions. Yet one must be aware of the potential patriarchal backlash which 'keeps women in their place'. Challenging patriarchy is important, but potentially dangerous for women, and thus must be considered carefully.

It is also important to look at the 'hidden history of participation by women in political action'.<sup>445</sup> Men might have the political voice in a community, but women often have significant hidden power. Dismissing this and forcing a challenge of gender norms might be counter productive and diminish what women are already doing. In other words, it is sometimes necessary to choose the battles, but always to retain the gender equality ideal.

#### **4.4. The role for South African NGOs and current programmes**

I proposed that the citizen education programme should be run by an organisation separate from the state. This is important for two reasons. First, the research in Chapter Three indicates that people are distrustful of and alienated from the state. An education programme must not be seen as state propaganda or another way to restrict and regiment dissent. Second, the programme might be contrary to the state's agenda as it encourages deliberation of the workings of power and the challenges to the status quo.

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<sup>444</sup> Moser (note 138) 1801.

<sup>445</sup> Merrifield (note 417) 8.

I have suggested that there is a potential role for NGOs in running a citizen education programme with established organised groups. The role of the NGO is important because:

- The organised NGO has access to funding and thus can provide access to training and capacity building.
- Participation is a long term process, and NGOs have a potential role as a support system for groups engaging, especially since they have greater access to resources.
- NGOs often have links and networks with organisations and people in powerful positions. They are able to facilitate partnerships, provide contacts and even aid in the opening of shared spaces where CBOs and the state meet.

However, this role comes with several conditions. The NGO must be critically reflective on its own role, it should not foster dependency and it must maintain and uphold a strong ethical relationship with the people it is supposed to help. The importance of examining how power relations might be adjusted if aid is provided to grassroots organisations in the form of information and participation opportunities might be illustrated by an example.<sup>446</sup>

In 2009 a community living on the Symphony Way in Delft, Cape Town faced the threat of eviction. The community were being aided in their struggle against their looming eviction by the Anti-Eviction Campaign (AEC), a radical poor people's movement,<sup>447</sup> and predominantly by two individuals who acted as 'coordinators'. The role of the coordinator is described by AEC activists:

We are not leaders in the traditional authoritarian sense. Instead, we are like a set of cutlery. We are the tools that are there to be used by poor communities fighting against the cruel and oppressive conditions of South African society.<sup>448</sup>

However, they are also the 'knowers' and this significantly shifted the power dynamics within the community. The community had created an organising committee to strategise and mobilise to prevent eviction, yet its power and capacity was usurped as the community members sought the knowers' advice and direction. This happened despite the AEC's ideological commitment to democratise communities and their belief in the agency and power of poor people to organise themselves. One can assume that a similar thing might happen if a knower provides information on local government. An authoritarian relationship might implicitly displace a previously organic and democratic way of organising. Thus the NGO's facilitator must be cognisant of this risk and be prepared to bring this to attention and challenge this dynamic. An attempt to empower changes the workings of power and runs the risk of creating a patronage relationship. It is important to interrogate whether providing 'aid' perpetuates domination and oppression and creates new relations of power and acts to bind people more tightly to this new structure.<sup>449</sup> If this is the case, have people been empowered?

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<sup>446</sup> This example is drawn from my own experience in Delft, 2009

<sup>447</sup> The Anti-Eviction campaign is a social movement. More information is available at <http://antieviction.org.za/>

<sup>448</sup> Anti-Eviction Campaign Website. Available at <http://antieviction.org.za/about-us/> [Accessed 17 February 2010]

<sup>449</sup> Williams (note 419) 563.

There are several other problems of an NGO providing education and support. Firstly, it might weaken the social contract between citizen and state as a 'middle man' is introduced.<sup>450</sup> Secondly, the NGOs or facilitators view of the 'way to participate' or the 'how power works' or even the 'needs of a community' might be imposed on the groups being 'educated'. Thirdly, the NGOs funding might limit the potential radical element of the project. Finally, this pedagogy might reveal broader systemic relations of power that cannot be addressed at the local level: a NGO might not be able to aid people to participate in wider arenas because of capacity or institutional politics.

#### **4.4.1 The NGO as an intermediary?**

The legislation on participation sees a potential role for an NGO as an intermediary between the state and citizens. This means that the NGO will advocate on behalf of one or more groups of grassroots organisations. This would most likely happen at a local level in IDP forums or on a national level in certain policy or law making forums. I do not see this as a particularly transformative role for the NGO but it cannot be completely dismissed. The proposed role for the NGO is providing an 'education of liberation', and acting as a support and resource base for groups wanting to exercise their voice.<sup>451</sup> Exercising voice on behalf of these groups runs the risk of diminish and constrain these voices.

In Chapter Two I mentioned the Manila Declaration. One of its key features is that organisations that assist by participating in support of people's agendas, should be valued by the extent to which they enhance the people's capacity to 'determine their own future'. This is important as it recognises the agency and capability of human beings. South Africa has a strong struggle culture, perhaps not a strong participation culture, but there are numerous examples of agency. People are not helpless victims, they can participate; they just need to know how. I would argue that participation by an NGO should be *in support of* rather than *on behalf of* grassroots groups. NGOs might form part of a group lobbying for a specific need but should not lead that group.

#### **4.4.2 Current civic education programmes**

There are several programmes already run by NGOs. These seem to fit into two categories: those that provide information on local governance through workshops and those with a broader focus. I have briefly mentioned the FCR, EISA and DDP programmes which provide mainly information. Some of the organisations with broader, more intensive programmes are:

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<sup>450</sup> Hickey and Mohan 'Relocating participation' (note 96) 248.

<sup>451</sup> Freire (note 431).

- **The Centre for Public Participation (CPP).** This KZN NGO's programme works with a variety of strategically identified stakeholders from government officials, councils and ward committee members to citizens groups. It aims to build the understanding skills and attitudes of the various stakeholders and then bring them together so that they can develop priorities and action their learning.<sup>452</sup> CPP focuses on 'both sides of the equation'. However this prevents it from being an organisation solely aligned with aiding 'the Pooors' and the focus shifts from empowering people to increasing participation.
- **PlanAct.** This is an NGO working in the Gauteng Urban Areas.<sup>453</sup> It is similar to the CPP however it is much more contextualised and flexible. It incorporates conflict resolution skills, leadership training and advocacy skills.
- **Fair Share.** Based at the University of the Western Cape, Fair Share offers an intensive two week *Budget Advocacy and Monitoring Resources Training* course.<sup>454</sup> The programme provides training, technical assistance, consulting and mentoring for community leaders who then become community 'resources'.<sup>455</sup> Fair Share envisages that these people will create organisations that will then develop local training programs, advocate and monitor municipal budgets, assist citizens wanting to participate in community budgeting and develop appropriate monitoring mechanisms.
- **Community Connections.** This Phillipi-based community development agency aims to strengthen the capacity of CBOs to 'conscientise, organised and agitate' for transformation.<sup>456</sup> Although it does not provide citizen education, I include it as it emphasises the importance of looking at power relations. It focuses mainly on providing institutional support by offering training to community workers as well as access to information, computers and networking opportunities. It recently instigated a networking and advocacy programme as it noted that even professional, well-run CBOs struggle to engage as equal partners with funders and local government.<sup>457</sup> This programme provides a mediated platform for engagement between the parties.

It is clear that there are a number of organisations that realise that CBOs need support to engage in local governance. One innovative programme stands out as it incorporates information

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<sup>452</sup> 'Programme 2: Governance and advocacy capacity building' (2006) Available at [http://www.cpp.org.za/main.php?include=about/programms.html&menu=\\_menu/about.html&title=Search](http://www.cpp.org.za/main.php?include=about/programms.html&menu=_menu/about.html&title=Search) [Accessed 1 March 2010] Their most recent programme aims to 'strengthen the capacity of community groups to understand and engage with structures and processes of governance and advance the achievement of civil, political, and socio-economic rights and poverty alleviation' Shelton George 'Project on Deepening Democracy through Participation from below' (15 July 2008) Available at [http://www.cpp.org.za/main.php?include=docs/news/2008/nz0715.html&menu=\\_menu/about.html&title=Search](http://www.cpp.org.za/main.php?include=docs/news/2008/nz0715.html&menu=_menu/about.html&title=Search) [Accessed 1 March 2010]

<sup>453</sup> See PlanAct website available at <http://www.planact.org.za/index.htm>. [Accessed 1 March 2010]

<sup>454</sup> See the BAMR website for an outline of its module at <http://www.fairshare.uwc.ac.za/programmes/local-government/budget-advocacy-and-monitoring-resources> [Accessed 1 March 2010]

<sup>455</sup> *Ibid.*

<sup>456</sup> Community Connections 'About'. Available at [http://www.connectionsafrica.org.za/about\\_vision.htm](http://www.connectionsafrica.org.za/about_vision.htm) [Accessed 1 March 2010]

<sup>457</sup> Community Connections 'Advocacy and networking'. Available at [http://www.connectionsafrica.org.za/prog\\_network.htm](http://www.connectionsafrica.org.za/prog_network.htm) [Accessed 1 March 2010]

provision with skills development and a power analysis. It could potentially be grounded in, and advocate for, an ethical encounter.

#### 4.4.2.1 An example of best practice: the IDASA's Study Circles Programme

The IDASA's Study Circles Programme was initiated in 2003 as one of the projects within the Citizen Leadership Programme.<sup>458</sup> The programme was informed by a need to address the decreasing levels of citizen participation.

A study circle is a small group of people who meet for several sessions, set their own ground rules and carry out planned studies on community problems.<sup>459</sup> Led by an impartial facilitator people start with personal reflection and examine problems from various points of view, the circle explores solutions and makes plans for action and change.<sup>460</sup> It should then involve the whole community as change agents. It is a collaborative, democratic learning space based on the following principals:

- Involve everyone. Demonstrate that the whole community is welcome and needed.
- Embrace diversity. Reach out to all kinds of people.
- Share knowledge, resources, power, and decision making.
- Combine dialogue and deliberation. Create public talk that builds understanding and explores a range of solutions.
- Connect deliberative dialogue to social, political, and policy change.<sup>461</sup>

This non-formal self initiated adult education aims to

- Build knowledge and understanding of the workings of democracy at a grassroots level.
- Enhance citizen participation in public life broadly, and local governance initiatives in particular.
- Introduce self-instructional methodologies of democratic action and participatory learning at community level.
- Assist with sustaining the tradition of popular education in South Africa<sup>462</sup>.

IDASA provides a 20-day training course for young 'middle-level' community leaders from civil society organisations such as residents' associations, HIV/AIDS groups and others.<sup>463</sup> It aims to help leaders 'develop a deeper understanding of government and the importance of citizen participation, and cultivate practical grassroots organizing skills'.<sup>464</sup> These leaders then

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<sup>458</sup> IDASA and IBDS *Study Circles Programme Evaluation Report*. (2004). Available at [www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1666](http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1666) [Accessed 1 March 2010].

<sup>459</sup> Mpho Putu 'Starting a study circle in my community: what to do?' (2006) Available at [www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1690](http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=1690) [Accessed 1 March 2010].

<sup>460</sup> What is a Study Circle Programme? (1 Nov 2005) Available at [http://www.idasa.org.za/index.asp?page=programme\\_details.asp%3FRID%3D65](http://www.idasa.org.za/index.asp?page=programme_details.asp%3FRID%3D65) [Accessed 1 March 2010].

<sup>461</sup> *Ibid.*

<sup>462</sup> *Ibid.*

<sup>463</sup> Putu (note 459) 2.

<sup>464</sup> 'More information on IDASA Citizen Leadership Unit' IDASA. Available at [http://www.idasa.org.za/index.asp?page=programme\\_details.asp%3FRID%3D65](http://www.idasa.org.za/index.asp?page=programme_details.asp%3FRID%3D65) [Accessed 1 March 2010]

set up and support study circles in their areas. This programme has been extremely successful with 150 study circles running around the country<sup>465</sup>.

This programme embodies the key aspects of an ethical encounter-based programme, it is democratic and collaborative. It is community-initiated and based on building and empowering people. It focuses on learning, collaboration and compromise. Consequently, it provides some practical ideas on how a citizen education programme based on ubuntu might be run. One might just adapt study circles such as these so that ubuntu becomes a founding value of the circle, power analysis is a central part of the discussions, and people focus more on ways to participate in local governance space.

## 4.5 Conclusion

In Chapter Two, I argued that the notion of ubuntu should guide an ethical encounter between citizen and state. It requires a profound humanisation of the state, as officials need to feel a sense of compassion for and connectedness with people participating in invited spaces. Compassion changes the invited spaces to shared spaces where power is more equally distributed because compassion recognises the 'other' as an equal and seeks redress for injustice. However, I have also argued that ubuntu and, concomitantly, compassion need to be demanded from the state. A civil service organisational culture that supports and incentivises acting in ubuntu is important but demands must be made for it. These can be grounded in the transformative vision of our Constitution which seeks to transform the relationships between people and the state. People must see how power works to prevent the ideal encounter and then can either choose to address this through strategic action or simply acknowledge and 'work the space' to achieve those immediate goals. The point of this programme is to empower people to claim and assert their presence in invited spaces and in this way move the spaces from invited to shared spaces.

In this chapter I have outlined an education programme that attempts to help people engage with the state and improve participatory spaces from the bottom up. It is about empowering people to demand dignity and an ethical encounter. At its core it attempts to address issues of power so that poor people can become active participants in the ethical encounter. It enables people to reclaim and reconstitute a space and place for themselves in invited spaces. I have outlined a potential programme and suggested that IDASA's Study Circle programme could potentially be adapted to empower people to demand an ethical encounter.

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<sup>465</sup> Marie-Louise Ström 'Building democracy through study groups' (15 June 2006). Available at [http://www.idasa.org.za/index.asp?page=programme\\_details.asp%3FRID%3D65](http://www.idasa.org.za/index.asp?page=programme_details.asp%3FRID%3D65) [Accessed 1 March 2010].

## CHAPTER 5: CONCLUSION

South Africa enshrines political participation in law. The Constitutional Court has interpreted this to construe a general right to take part in governance affairs in a much more direct manner than the political right to vote. Public participation is considered of significant value in the post-apartheid context. Apartheid was decidedly racist and authoritarian and excluded the majority of people from the ability to influence decisions and conditions that affected their lives. In addition, participation is considered important in order to improve governance, facilitate development and empower people.

Invited spaces have been created at various levels to facilitate participation. The local sphere of government is seen as the main agent in providing for the engagement of citizens. However, creating the places for engagement does not necessarily challenge and affect who it is that has the power to make decisions nor does it necessarily affect the status quo. Development theorists have warned about the possible tyrannical affects of these spaces which are under the guise of enabling participation, but are tokenistic and have very little impact. Unfortunately local level invited spaces in South Africa in the form of IDP forums and ward committees are established as advisory bodies and thus are limited in what they can achieve.

On a practical side, local invited spaces often do not function because of capacity, resource and power issues. In addition people have very little experience of participating in invited spaces. The 'struggle culture' left a legacy of citizenship defined in opposition to the state. Protests, mass marches and non-payment campaigns were the tools of the struggle. It was a resistance that was morally justified. However these circumvent invited spaces.

I have suggested that the ideal-type encounter in invited spaces is an 'ethical encounter' which is informed by the constitutional values, the notion of transformative constitutionalism, ubuntu and the Constitutional Courts rulings on 'meaningful engagement'. An ethical encounter is an engagement in which citizens and their representatives come together with the state officials and interact, deliberate and discuss. The encounter is grounded in ubuntu, thus recognising the humanity of all, accepts difference and tolerates conflict, it is a compassionate encounter, where each person sees and hears the 'other'. This recognition of another's humanity demands the space is 'shared' and power more equally distributed. Furthermore, recognising another human means resources should be redistributed to ensure that persons (and the group they represent) can access power and participatory spaces and can live a dignified existence.

I have argued that one way to create the ethical encounter is to empower people to demand it. I have proposed a citizen education programme aimed at educating for local

government participation as one way to do this. These 'learning spaces' aim to help people develop knowledge, gain skills and analyse power. These must be challenging spaces where people examine power dynamics working inside the space, outside the space and in other spaces. It encourages the organisation, the facilitator, and the citizens to be critical reflexive. Hence these spaces must be able to contain the intellectual angst and emotion that results in confronting power. There must be experience of ubuntu and democracy in these spaces.

The education programme aims to empower people from where they are so that they can demand changes in the nature of invited spaces, this is not to diminish or undervalue claimed spaces but rather aims to use the invited spaces for what they were meant for: to realise meaningful engagement. I am aware that by advocating invited spaces as spaces for participation might be construed as prescriptive and another way to numb down dissent: another middle class proposition on the 'right way' to do things. In a way I am, except that I also ask that rather than focussing merely on *methods* that people use to participate, we interrogate the ethical and moral basis from which state and citizen engage. Obviously these are linked. I have suggested that ubuntu should guide *how* people engage on both sides of the equation. Violent and destructive protests do not enact ubuntu, but nor does poverty, evictions and cut-offs. uBuntu means we are all in this together and we must participate in a way that recognises our mutuality.

Further research need to be done on the on the practical workings of such an education programme. It is also important that the focus is on 'both sides of the equation' and local government reforms, capacity building and research aim to enhance the responsiveness and political will of state officials so that they too are prepared for the ethical encounter. The Constitutional Court has provided a vision of a meaningful engagement: it is important that this is now implemented at a local level.

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