



THE WITHHOLDING OF RATES IN FIVE LOCAL MUNICIPALITIES

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'It doesn't matter if you open a tap here...or in the informal settlement – the water that comes out is black. If you don't have water and you don't have sewerage services, even with all of your money, you cannot solve the problem. This is a human rights issue, a quality of life issue.' Ratepayer

Introduction

In South Africa, participation in 'invented' spaces has almost become synonymous with service delivery protests – the mass protest action by marginalised and vulnerable communities who take to the streets in order to have their voices heard. Since 2004 there has been a significant increase in the frequency and number of violent incidents that have marred these protests. Service delivery protests are, however, not the only form of protest to emerge in 'invented' spaces. During the same period, but perhaps less visibly, we have seen an emerging form of protest in the practice of withholding rates. This, as the name suggests, is the practice whereby ratepayers withhold their property rates and, in certain instances, fees for services such as electricity and water on the basis that municipalities are not fulfilling their duties.

An evaluation of these two forms of protest action reveals that many of the reasons that drive service delivery protests are also the imperatives for rates withholding (Atkinson 2007: 58). These include, but are not limited to, poor quality or no service delivery by municipalities; failed attempts to engage municipalities to remedy the status quo; a sense of frustration and futility with regard to



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accessing and influencing key decision-making processes within municipal councils, and allegations of incapacity, mismanagement and corruption at the municipal level (Powell, May and Ntliziywana 2010: 5-9).

The practice of rates withholding, while motivated by the same imperatives that drive service delivery protests, is a 'new' form of protest action emanating from a different quarter within South African society. Ratepayers who withhold and the ratepayers' associations to which they belong are largely comprised of white, professional people from traditionally 'well-off' communities. This is in contrast to the perception that middle-income to rich citizens demonstrate apathy to municipal participatory processes because they are able to rely on their financial resources to meet their needs (Tshabala and Lombard 2009:40). However, as the opening quote to this article indicates, there are certain municipal failures that affect all citizens regardless of financial status. Withholding rates is, therefore, indicative of a new form of citizen vulnerability, and a new modality in terms of which dissatisfaction is expressed.

While the practice of rates withholding may not be associated with the physical violence and structural damage associated with other forms of protest, its consequences can be just as detrimental. Firstly, it has the potential to exacerbate historical racial and class divisions in our society, to the detriment of nation building. Secondly, the standoff between ratepayers and their municipal council can damage public trust and effective government within the particular municipality. Thirdly, if there is no basis in law for withholding rates it undermines the rule of law and the constitutional authority of the state. Lastly, withholding the payment of rates to municipalities

reduces the municipal revenue base, which in turn can reduce expenditure on services to the broader local community. It was for these reasons that the Community Law Centre (CLC) in partnership with GTZ-SLGP and SALGA embarked on a research project to examine and gain a perspective on the practice of rates withholding in five municipalities located across three provinces in South Africa.

The Department of Cooperative Governance and Traditional Affairs (Cogta) has acknowledged that 'much of local government is indeed in distress' (Cogta 2009: 8). There is no doubt that, in practice, the imperatives that drive protest action coincide with many of the factors that cause municipal distress. It was, however, not the aim of this research to evaluate the veracity of ratepayers' claims or even find immediate solutions to these deeply embedded problems. Rather, the objectives of the project were to understand the dispute from the perspective of the local actors and other interested parties; to examine the implications of these disputes for local democratic government and cooperative governance; and to recommend ways to help resolve the stand-off and strengthen local government. In so-doing, a number of stakeholders with an interest in these disputes, ranging from local ratepayers' associations, municipal leadership, councillors from opposition parties, provincial departments responsible for local government, Cogta and the National Taxpayer's Union were interviewed to get their perspective on the issue.

This is a synopsis of the key findings of our research and recommendations. It begins by defining the key elements of rates withholding, evaluating the legal basis for this practice, and finally, listing some practical recommendations on how to end these disputes and strengthen local democracy.

DEFINING RATES WITHHOLDING

The majority of ratepayers who withhold their property rates and/or fees for services have formed ratepayers' associations to represent their interests. These associations exist in the majority of the country's municipalities. Many of these local ratepayers' associations are members of a national umbrella body called the National Taxpayers Union. The Union provides advice, information and support to its local member associations. According to its policy, it does not intercede in the dealings between its member associations and their municipalities. Individual associations are solely responsible for taking the decision to withhold rates and taxes from their municipalities. One of the key findings of our research relates to the fact that, while similar processes are adopted by ratepayers' associations in the lead-up to a declaration of dispute, there is no uniformity in rates withholding across municipalities. The nature and form of any dispute with a municipality is determined by local conditions. So, for example, it is possible that not all ratepayers in a ratepayers' association are withholding rates. The reasons for withholding also vary from municipality to municipality and can range from disputes concerning property rate tariffs to service delivery failures in respect of key services such as water and electricity.

Despite these differences it is possible to identify an emerging pattern in the steps that precipitate a formal declaration of dispute by ratepayers' associations:

1. A service delivery failure is identified. In identifying the service delivery failure, ratepayers usually disaggregate the municipal bill and continue to pay for services actually received – usually this is for the trading services such as electricity and water. In most cases, ratepayers

withhold property rates taxes on the basis that the 'broader' municipal services (for which no identifiable service fee is charged), such as sewerage removal or road maintenance has not been fulfilled.

- 2. Engaging the municipality.** Ratepayers' associations seek to resolve the problem by engaging with the municipality. These efforts are well documented in order to ensure a proper 'paper trail' of the dispute and the attempts made to resolve it.
- 3. Declaring a dispute in terms of section 102(2) of the Municipal Systems Act.** If these efforts fail to resolve the problem, the ratepayers' association declare a dispute with the municipality in terms of section 102(2) of the Municipal Systems Act. As will be discussed later, section 102(2) provides that where there is a dispute about any specific amount owed to the municipality the declaration of a dispute can suspend the credit control and debt collection processes of the municipality until it is resolved.
- 4. Withholding payments.** If the declaration of a dispute does not remedy the problem, ratepayers withhold the payments of rates, depositing the money into a private interest-bearing account.
- 5. Providing the municipality with regular accounts of money withheld.** Ratepayers' associations provide a meticulous account to the municipality on a monthly basis detailing:
 - Amounts paid for services (e.g. water and electricity) received; and
 - Amounts withheld and deposited into the trust account.
- 6. Delivering services.** Only in instances of extreme service delivery failure, do ratepayers use the interest of the capital amount invested to deliver services themselves.

PERCEPTIONS AND RESPONSES TO RATES WITHHOLDING

PERCEPTIONS

Generally the actions of the ratepayers have been seen as unlawful and a breach of the rule of law. Ratepayers who are providing services are accused of illegally running a parallel municipality of their own. Explicitly or by inference, some politicians see a sinister agenda at work. Public claims have been made that either a racist, political or anti-developmental agenda is behind the actions of ratepayers. One inference drawn is that the majority of ratepayers are white and well off and want their money to be spent only on service delivery in their residential areas. Another inference is that some white ratepayers are resisting the democratic changes in the country and want to undermine government's legitimacy.

Similarly, ratepayers' views are also informed by certain perceptions about their municipalities. These perceptions relate to rampant maladministration, corruption and incapacity in their local municipalities.

Ratepayers also see the failure to engage by the municipality as an attempt to enforce political dominance by the majority party and to keep ratepayers at an arms-length of municipal affairs.

RESPONSES

The response from political leaders and government officials has varied between condemnation and seeking pragmatic ways to resolve the problem. Cogta has reportedly questioned the legality of ratepayers' actions but taken a pragmatic approach to finding a solution. The Ministry has acknowledged that some grievances may be genuine and are due to systemic fragilities in service delivery, financial management, billing and communication with citizens. The Ministry has sought to mediate by bringing municipalities, ratepayers and the broader community to the table to agree on a solution. Its approach encourages local parties to work together to solve problems of service delivery in their own areas.

THE LEGAL BASIS FOR WITHHOLDING VERSUS THE RIGHT TO DISCONNECT

Ratepayers' associations justify withholding rates on a number of legal grounds. Municipalities, however, contest the legality of their actions. Several municipalities have used aggressive strategies to coerce defaulting ratepayers to pay outstanding rates and/or service charges. The most commonly used mechanism is the disconnection of the electricity

supply to individual ratepayers. In turn, ratepayers' associations argue that municipalities do not have the legal right to disconnect electricity for the non-payment of rates, on the grounds that they are not withholding payments for electricity.

In evaluating the legality of rates withholding we are, therefore, faced with two key questions:

- Is there a legal basis for withholding rates? and
- Are municipalities entitled to disconnect services in response to withholding?

A LEGAL BASIS FOR WITHHOLDING RATES

Rates boycotts versus the withholding of rates: Is there a difference?

The first argument raised by ratepayers is the distinction between rates boycotts and rates withholding. Rates boycotts are not a new phenomenon in South Africa. Fjeldstad (2004: 540) observes that the non-payment of rates and user charges were used as weapons by non-white communities to protest against the apartheid regime. This practice of non-payment of rates and service charges has, however, continued to persist in many townships and informal settlements in post-apartheid South Africa. Ratepayers argue that whereas rates boycotts is linked to the 'culture of non-payment', or, as Fjeldstad states, an 'entitlement culture', the withholding of rates is only a temporary measure forced upon them by municipal failure (Fjeldstad 2004:540). Once the municipality performs, ratepayers claim that they are willing to withdraw the money deposited in the private trust account and pay for the services received.

The Constitutional Court in *City Council of Pretoria v Walker* 1998 (3) BCLR 257 (CC) makes it clear, however, that this distinction has no basis in law. The court held that it is the role and function of the courts to make a declaration of rights and grant appropriate relief, in that:

If every person who has a grievance about the conduct of a public official or a governmental structure were to take the law into his or her own hands or resort to self-help by withholding payment for services rendered...it carries with it the potential for chaos and anarchy and can therefore not be appropriate.

The court went further to say that:

A culture of self-help in which people refuse to pay for services that they have received is not acceptable. It is pre-eminently for the courts to grant appropriate relief against any public official, institution or government when there are grievances. It is not for the disgruntled individual to decide what the appropriate relief should be and to combine with others to take it upon himself or herself to punish the government structure by withholding payment which is due.¹

It is, therefore, unlikely that any court would condone the distinction between rates boycotts and withholding as having any basis in law.

Is the relationship between ratepayers and municipalities a contractual one?

The second basis for rates withholding relates to the argument that the relationship between ratepayers and municipalities is a contractual one. In other words, if ratepayers pay for the services they receive, municipalities must deliver. The duty to perform in such a contractual relationship, therefore, only arises where both parties to the contract perform.

The Constitutional Court in *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30, 2010) firmly located the relationship between municipalities and citizens within the domain of public law. >>

>> The court referred to:

...the special cluster of relationships that exist between a municipality and citizens, which is fundamentally cemented by the public responsibilities that a municipality bears in terms of the Constitution and legislation in respect of persons living in its jurisdiction.²

The court has therefore confirmed that the relationship between ratepayers and municipalities is not a *quid pro quo* relationship. The failure to perform by either the municipality or ratepayers can therefore never result in the *automatic* termination of the public duties owed to each other.

Is the “dispute clause” in section 102(2) of the Municipal Systems Act a valid basis for withholding payments?

As discussed above, the declaration of a dispute in terms of section 102(2) of the Municipal Systems Act will have the effect of suspending the credit control and debt collection processes of the municipality until such time that the dispute is resolved. The Systems Act is clear, however, that any dispute must relate to a ‘specific amount claimed by the municipality’. A dispute on the basis of ‘general dissatisfaction’ with municipal services does not qualify. ‘Blanket withholding’ on general grounds such as failure of the municipality to maintain municipal roads or public places will not have the effect of suspending the credit control and debt collection processes of the municipality.

CAN PROPERTY RATES AND TRADING SERVICES BE DISAGGREGATED?

A popular perception that has informed ratepayer’s actions is that income from property rates is used to fund communal services rendered to communities such as road building and maintenance or storm water drainage. Income from trading services, on the other hand, such as water and electricity, are generally thought to fund the delivery of these specific services.

The key difference between property rates and service charges (as discussed by Steytler and de Visser: 2009) lies in the fact that the right to levy property rates is derived from the Constitution itself and is as such a municipal tax.³ As a tax, it can be used to finance a number of activities from the running of the council and municipal administration, to the costs of delivering trading services to the

public. The courts have therefore made it clear that property rates and service charges are not mutually exclusive. Whereas service charges are defined narrowly, property rates are defined broadly and may include service charges in its ambit.⁴ It is therefore clear that no watertight distinction exists between property rates and fees and service charges for trading services.

Section 102(1)(a) of the Systems Act furthermore makes provision for municipalities to consolidate municipal accounts and suspend any service by a municipality as a means of enforcing the payment of any unsettled account. So, for example, where the payment of the “electricity portion” of a municipal account is up to date, as is the case with many ratepayers, it does not preclude the municipality from allocating the payment of electricity to any other outstanding portion of the municipal account, such as property rates or water.

LEGALITY OF DISCONNECTIONS IN RESPONSE TO RATES WITHHOLDING

THE DUTY TO COLLECT DEBTS

Section 96(a) of the Municipal Systems Act provides that a municipality ‘*must* collect all money that is due and payable to it subject to this Act and any other applicable legislation’. Case law has confirmed the peremptory nature of this duty. In *Mkontwana v Nelson Mandela Metropolitan Municipality*, the Constitutional Court held that municipalities have the duty to;

“...send out regular accounts, develop a culture of payment, disconnect the supply of electricity and water in appropriate circumstances and take appropriate steps for the collection of amounts due.”

The credit control and debt collection processes pursued by the municipality must, however, take place within the stringent framework as outlined by the Systems Act. Section 97 of the Systems Act outlines the content and salient features that every credit control and debt collection policy must contain. Importantly, by specifying the details to be included in the credit control and debt collection policy, the Act strives to ensure legal certainty, in that citizens are fully aware of what is expected of them, as well as the recourse that is available in the context of the termination of services. Importantly, section 97 directs municipalities to make specific provision for indigent and vulnerable debtors.

FAIR ADMINISTRATIVE ACTION

Beyond appropriate credit control and debt collection policies, the termination of a municipal service is also subject to the requirements of fair administrative action. This is not only an entrenched right in section 33 of the Constitution, but is also contained in the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

In the landmark decision of *Joseph and Others v City of Johannesburg and Others*⁵ the Constitutional Court condemned the municipality for relying on the necessity of debt collection as a means of justifying its non-compliance with PAJA. In that case, the automatic disconnection of electricity without notice or consideration of the context fell short of the requirements of fair administrative action. Similarly, even in the context of rates withholding, ratepayers are entitled to fair administrative action, including notification of the impending termination of services.

The right to fair administrative action goes hand in hand with the warning given by the court in *City Council of Pretoria v Walker*, which guarded against the selective recovery of debts or use of the credit control and debt collection processes of a municipality to pursue any agenda. The court held that:

*No members of a racial group should be made to feel that they are not deserving of equal “concern, respect and consideration” and that the law is likely to be used against them more harshly than others who belong to other race groups.*⁶ >>

>> Without undermining the importance of legal clarity in these disputes, a legal declaration of rights will not result in sustainable solutions to resolve these disputes. It will not help the parties to get along in future as partners rather than adversaries, as they must. It will not result in the *relational* aspects of community envisioned in the *White Paper on Local Government* (1998). It is the parties themselves – namely the municipalities and the ratepayers associations – who must solve these disputes, with the assistance of others to facilitate the way.

KEY FINDINGS

LIMITED FINANCIAL IMPACT, BUT SUBSTANTIAL POLITICAL IMPACT

About R10 million is currently being withheld by ratepayers associations in 35 towns across the country with more than half of that amount withheld by just three municipalities. There was general agreement amongst the interviewees that the financial impact was negligible. The political impact of the disputes is much more pronounced. This relates to the cost involved in the loss of trust in the relationship between the municipality and a sector of its citizenry. More particularly, a divide or vacuum has opened between public authority and people who are geographically, politically and economically intertwined. Accommodation and cooperation, not adversity and protest, are necessary for peaceful co-existence and the development of these areas. As one municipal official intimated, a loss of confidence in the municipality benefits no one.

DISPUTES RELATE TO SPECIFIC SERVICE DELIVERY PROBLEMS

In all cases, the grievances giving rise to the declaration of a dispute were linked to concrete service delivery problems. In most cases, municipal and provincial officials confirmed that there were genuine service delivery problems at issue, indicating a high degree of convergence amongst the parties on the factual basis underpinning the dispute. As one provincial official put it, there may be politics at play, but at the end of the day they [ratepayers] wouldn't have a space if the municipality had done what it was supposed to do. The important consideration here was that failures in service delivery had provided the space within which to mobilise discontent. This being said, agreement on the factual problems provides a strong basis for resolving the dispute, irrespective of the perceptions the parties may hold about each other's motives.

CONNECTIONS MADE BETWEEN GRIEVANCE AND REAL OR PERCEIVED INCAPACITY, MAL-ADMINISTRATION AND CORRUPTION

In all cases, ratepayers saw the service delivery problems as nested within systemic failures of governance and administration. Many municipal and provincial officials also alluded to broader institutional problems. From the Auditor-General's reports it is clear that actual problems of this kind are prevalent in these five municipalities. The high probability that actual problems of governance are involved in the disputes again provides a factual basis for resolving the disputes, and suggests the need to reform certain aspects of governance and administration to prevent their recurrence in future. >>

MUNICIPALITIES RESPOND TO THE DECLARATION OF DISPUTES IN A VARIETY OF WAYS

Municipal responses ranged from disengaging entirely, while employing aggressive legal strategies (such as cutting off electricity) to compel payment, to engaging the ratepayers' associations with a view to finding a solution. The principal points of contact between ratepayers' associations and municipalities were the offices of either the mayor or manager. The two chief forms of contact at these levels were formal correspondence and meetings. In all five municipalities, there was evidence of these kinds of contact, even in municipalities where there is presently little or no contact between the parties. The fact that there was some evidence of engagement even in cases where the parties were locked in legal battles is a further indication that there is firm ground to resolve these disputes.

A BREAKDOWN IN COMMUNICATION A COMMON THEME

Poor communication emerged as one of the most important factors in the disputes. In all five municipalities, a breakdown in communication had precipitated the disputes and hampered efforts to find a solution. Across the groups, many interviewees agreed that open and frank engagement between the parties was essential, and conversely that poor communication had bred discontent and misunderstanding. A strong message was that communication did not mean simply talking about the problem. It meant taking practical action to resolve the problem and following through on those actions in a responsible and reliable manner.

Had communication and engagement been effective to begin with, some of these disputes could have been avoided altogether. Most ratepayers and officials from municipalities and provinces were explicit on this point. The absence of dialogue, engagement, and follow-through had frustrated and alienated the ratepayers and undermined trust between the parties.

REPRESENTATIVE ORGANS OF COUNCILS APPEAR NOT TO PLAY A SIGNIFICANT ROLE

A fundamental question of the research was what part, if any, the democratic structures of council played to address or resolve the grievances. Where were the grievances registered and discussed with a view to resolving them?

When asked whether they participate in ward committee, IDP and budgeting processes, most ratepayers indicated that they did. However, most seemed to be discontented over the way these processes were organised and run. One ratepayer indicated that their association had submitted a list of issues via these processes but that they were never addressed. Another explained that their items were never carried over from one meeting to the next because meetings were 'not properly minuted'. A councillor felt that ward committee meetings were dominated by 'members of the mayoral executive committee'. The implication in this statement was that the presence of executive officials undermined the role of ordinary councillors in public participation. Several ratepayers expressed concern that budget and planning meetings 'were not properly advertised' and they had to find out about meetings 'from each other via sms'. >>

>> Some municipal officials confirmed that ratepayers' associations participated in participatory structures, while others denied it. Ratepayers, however, generally expressed discontent about the accessibility and efficacy of these participatory mechanisms, and neither party could offer any positive examples of progress being made in these structures. This is an interesting finding when contrasted with positive examples that both parties cited of ad hoc meetings between them, given that it is the participatory structures in municipalities which are designed to be the main avenues through which community needs and concerns are discussed and addressed. The inference was that these structures were not addressing the ratepayers concerns and, due to poor administration, may even have added to their discontent.

How did the dispute play out in the council itself? No standout examples were provided to suggest that these disputes were debated and discussed in the council itself. Some councillors appeared unsure about whether the matter had been discussed in council at all. It was not clear how the dispute was registered or discussed inside the executive and legislative organs of the five municipal councils.

A strong message from the councillors was that part of the problem is that council structures are generally organised along political party lines, which elevates the party caucus and offers few incentives for deliberative politics to emerge across party interests. One of our main conclusions is that the executive mayoral committee system is neither suited to conditions in our country nor is it an effective instrument for local nation building. It leads to executive-centeredness and carries the risk of the party caucus replacing council.

Nation building in our context requires that we actively build local political community for the long term. That goal will only come when leading sectors of a local community have incentives to deliberate and find common ground on the matters that separate and unite them. This cannot happen solely through ward committees and other structures without decision-making authority, it must also take place through the representative structures of local government where decisions are taken. This is in keeping with the argument by Tshishonga and Mbambo (2008: 771) that 'participation has no meaning unless the people involved have significant control over the decisions concerning the organisation to which they belong'. All local representation should have a proportional stake and influence in decision-making if we want to build local unity and overcome division. For these reasons we recommend reviewing the effectiveness of executive types from the point of view of local nation building, if possible with a view to abolishing the executive mayoral committee system and establishing executive committees.

RECOMMENDATIONS

RESOLVING THE STANDOFF IS NECESSARY AND POSSIBLE

Several opportunities exist to resolve disputes before they escalate to the point of breakdown. These do not necessarily have to take the form of formal mediation measures but rather substantive engagement on the part of both parties to find a sustainable solution. As the elected authority the municipality must take the lead in opening the engagement. Local government has a constitutional duty to provide services and responsible government in local areas. Ratepayers for their part must dispel any perception that they are holding municipalities to ransom.

Importantly, issues need to be localised and viewed in the current context. Local disputes should not be linked to national politics or traditional divides. The effect of this is that the local problem or issue is clouded by perceptions that have no bearing on the problem itself or the solution. It is, arguably, more difficult to focus on fixing a water pump stopping the water supply to a town when the emphasis has shifted to the motives of the parties who want it fixed or have not fixed it.

PRACTICAL LEADERSHIP AND OPEN COMMUNICATION FROM ALL PARTIES ARE ESSENTIAL

Open and frank dialogue is the only basis on which a sustainable solution to rates withholding can be built. However, effective communication must translate into tangible action in order for it to yield results. Personal and institutional reliability must be developed, which means following through on decisions and practical actions like returning phone calls, honouring commitments and scheduling, and showing up for meetings. Working together and finding the balance will require communication and understanding from all parties.

IMPROVEMENTS TO STRENGTHEN GOVERNANCE AND ADMINISTRATION ARE NEEDED

Engagement will be a fruitless exercise if there are no simultaneous improvements to strengthen governance and administration to ensure that there is no recurrence of the problems. In most of these municipalities the disputes were clearly rooted in a set of broader institutional weaknesses. Some of these were reflected in the Auditor-General's reports. Many of the grievances were consistent with government's own findings in its report on the state of local government.

Officials, councillors and ratepayers suggested several areas where improvement was needed:

- The Auditor-General should be given statutory powers to take action against persistent non-compliance by municipalities.
- Participation of ordinary residents in the formal participatory structures of council must improve in respect of both formal participation and substantive outcomes. This relates to oversight over budget preparation and transparency, IDP processes, ward committee meetings, and ward-specific processes and projects. >>

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- Engagement outside of these formal structures must be robust. Petitions and complaints mechanisms as well as report-back processes to communities need to be regularised and better managed, and direct engagement with ratepayers on specific issues must be facilitated.
- A fair portion of rates should go back to the paying ward for routine maintenance. Grant funding should go to communities too poor to pay.
- Municipalities should routinely undertake visits to each ward to ascertain first hand the state of projects.
- Council executive structures should be made more transparent and inclusive.

OMBUDSMAN FOR SERVICE DELIVERY

An important finding of our research is that short of litigation, there are no other administrative checks and balances or remedies available to ratepayers to hold municipalities to account for service delivery failures. In addition to strengthening oversight over municipalities and instituting mechanisms that will alert national and provincial government to municipal distress, it is recommended that consideration could be given to the creation of a statutory ombudsman to investigate complaints about municipal administration.

CONCLUSION

While many of these recommendations may pave the way to resolving these disputes, it is the local actors who must live together and must ultimately resolve their own problems. This is in part what the White Paper on Local Government (1998) envisioned when defining developmental local government as 'local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives'.

Rates withholding, however, highlights the real, daily challenges that affect citizen engagement in the public participatory processes designed to achieve this vision. While rates withholding represents a 'new' form of protest action emanating from a different quarter within South African society, there is clear evidence of common problems and vulnerability experienced by those communities who participate in service delivery protests.

As such, our research highlights the need for new forms of collaboration and consensus seeking amongst communities in the context of a history of divided communities in South Africa. It highlights the need for an active citizenry that cuts across traditional divides to address the consequences of the institutional failures of municipalities and the failures of political representatives to exercise oversight over municipal affairs and represent communities' interests.

Importantly, a community where all voices are not given an opportunity to be heard will be a community that is continually at war. Energy that could be devoted to building community and seeking development gains that can benefit *all* citizens will be wasted on the struggle to be heard. For local nation building, municipalities must not only breathe new life into existing participatory structures but must induce new forms of collaboration and consensus seeking amongst groups and parties.

This article is a summary of a larger research project conducted by the Community Law Centre in partnership with GTZ and SALGA. The research paper “Withholding rates and taxes within five local municipalities’ was authored by Derek Powell (principle author), Annette May and Phindile Ntliziywana. The full report can be accessed at: <http://www.ldphs.org.za/publications/publications-by-theme/local-government-in-south-africa/withholding-of-rates/Withholding%20of%20rates%2015Nov010.pdf/view>

UPDATE

On 14 December 2010, the Department of Cooperative Governance and Traditional Affairs (Cogta) hosted a Stakeholder’s Forum in the Delareyville town hall. As part of its on-going work in the area of rates withholding, the Community Law Centre (CLC) was invited to make a presentation at the meeting. The Stakeholder’s Forum, which was hosted by Deputy Minister for Cogta, Yunus Carrim, brought together all of the key stakeholders who have an interest in resolving the ongoing disputes pertaining to rates withholding. The significance of this meeting is that the towns of Sannieshof, Ottosdal and Delareyville have active ratepayers’ associations that have been at the forefront of rates withholding in South Africa because of severe municipal service delivery failures.

The meeting provided community members from every sector of Tswaing with the opportunity to directly address the key political and administrative decision-makers who have the authority to substantively shape development in the region. The choice of Tswaing to facilitate discussions was therefore crucial to not only ensure that the standoff between communities and municipalities can be effectively addressed in the municipal area, but also with a view to extracting

best practice that can be applied to other towns experiencing similar problems.

The key outcome of the meeting was the establishment of a Stakeholder’s Forum comprised of ratepayer representatives, municipal management, civil society stakeholders as well as representatives of the national and provincial departments of Cogta and other key sector departments. This forum is tasked with overseeing the municipal turnaround strategy which aims to remedy many of the municipal failures that precipitated the practice of rates withholding. The forum holds great potential for similar partnerships to be established between municipalities and the communities they serve. However, given the history of mistrust and the high level of tension that has characterised the relationship between the community, ratepayers’ associations and the municipality, the CLC recommended some practical steps to ensure the accountability of all stakeholders and integrity of the process.

Practical leadership and open communication from all parties are essential for any solution:

- **Open and frank dialogue**
The importance of open and frank dialogue cannot be overstated.
Focusing on facts and actual problems not perceptions.
- **Managing expectations**
State expectations clearly and set realistic objectives.
Taking firm but fair positions.
- **Effective communication must translate into tangible action and results**
Take concrete action, not simply talking.
Following through on actions and agreements.

- **Develop personal and institutional reliability**
Respond to letters.
Keep meetings and start them on time.
Deal with complaints before they are problems.
- **Forging new partnerships**
Use available social capital and experience wisely.
Work as partners to fix *actual* problems.
Be clear on the boundaries between the parties.
Bring other sectors of the community into the solution.
- **For these principles to change the status quo and build trust -**
They must be reduced to concrete terms and be clearly defined, for example, in an agreement or memorandum of understanding. (Uncertainty and confusion will create the risk of misunderstanding and will result in regression).
Clear deadlines and processes need to be in place, including deadlines for activities and how potential disputes will be dealt with.
Operating within the agreed framework must become the norm.

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Legislation:

The Constitution of the Republic of South Africa, 1996

Local Government: Municipal Systems Act 32 of 2000

Case law:

City Council of Pretoria v Walker 1998 (3) BCLR 257 (CC)

Joseph and Others v City of Johannesburg and Others (CCT 43/09) [2009] ZACC

Rates Action Group v City of Cape Town 2004 (12) BCLR 1328 (C)

ENDNOTES

¹ *City Council of Pretoria v Walker* 1998 (3) BCLR 257 (CC) at para 92.

² *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30 at para 24.

³ S 229(1) Constitution- 'a municipality may impose(a) rates on a property and surcharges for fees for services by or on behalf of the municipality'. See: *Fedsure Life Assurance Limited and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC), at para 39.

⁴ *Rates Action Group v City of Cape Town* 2004 (12) BCLR 1328 (C), at para 76 , the court noted that:

[t]here is nothing in the Constitution or in any of the other statutes which says that a municipality may not recover parts of its costs by one method, and another part by another method. The City is entitled to impose property rates to recover its costs in relation to services which it provides, and is also entitled to impose user charges. There is no reason why it may not do both.⁴

⁵ *Joseph and Others v City of Johannesburg and*, at paras 53-54.

⁶ *City Council of Pretoria v Walker* at para 81.