



RECLAIMING SOCIAL ACCOUNTABILITY AND PARTICIPATION TO STRENGTHEN THE INTEGRITY OF LOCAL GOVERNANCE

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The Constitution of the Republic of South Africa (1996) and the White Paper on Local Government (1998) both set out the mandate for democratic and accountable participatory local government. While there have been significant achievements since the first local government elections in 2000, municipalities are plagued by allegations of corruption and mismanagement, a lack of accountability and insufficient civic engagement. While most discussion has focused on, for example, ward committees and the functioning of IDP prioritisation processes, there has been little attention paid specifically to land and infrastructure development decision making processes.



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RECENT cases such as the governance crisis in Nelson Mandela Bay Municipality (Olver 2017), controversy around the Foreshore Freeway Project in Cape Town (Chambers 2018), and the land and development challenges experienced in Lephalale linked to the construction of Medupi power station (Phadi and Pearson 2018) highlight a need to address

these governance issues. In addition, when local government does engage in participatory processes, these are often accused of being formulaic.

The intention of accountable and participatory local government, as embodied in the Constitution and the White Paper, is getting lost. Specifically, with regard to spatial transformation and debates around

land and infrastructure development decision making processes, there is a need for the advantages of participatory governance to be highlighted in order to improve accountability and good governance. The Integrity, Transparency, Accountability and Technology (InTACT) Project, that forms part of the Cities Support Programme of National Treasury and which is supported by the Isandla Institute and Strategies for Change, looks to address this issue. The outcome-based orientation of the InTACT Project aims to assist in reclaiming social accountability as an important element of local government practice. This paper builds on a discussion of the contextual factors that often present complex accountability and integrity challenges to good governance; it also reflects on how accountable and participatory local government, as embodied in the Constitution and the White Paper, can be strengthened via innovative tools and mechanisms highlighted and documented by the InTACT Project, and how these can be supported by local government, civil society, the private sector and other stakeholders.

LOCAL GOVERNANCE SINCE THE WHITE PAPER

The White Paper on Local Government (1998) was an element of the drive to decentralise and democratise governance in South Africa. Its intention was to promote developmental, cooperative, participatory and democratic local government. The White Paper, together with the legislation that built upon it and defined the roles and responsibilities of the local government system, including the Municipal Systems Act (No. 32 of 2000) (MSA), the Municipal Financial Management Act (No. 56 of 2003) (MFMA) and the Spatial Planning and Land Use Management Act (No. 16 of 2013) (SPLUMA), sought to create an efficient and participatory local government system. These pieces of legislation enabled government-led,

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or 'invited spaces' (Cornwall 2008) of participation, such as ward committees, imbizos, public meetings, complaints systems and satisfaction surveys. Specifically, Integrated Development Plans (IDPs), set out and enabled by the MSA, were intended as prime sites for meaningful public participation in the budget and infrastructure prioritisation and strategic development decision making of local government. In fact, the MSA defines communities not merely as beneficiaries of municipal services but as a constituent part of a municipality, in conjunction with political and administrative structures.

It is important to note that the term 'public participation' can be defined in a number of ways, and Arnstein (1969) defines eight levels of public participation arranged in a ladder pattern with each rung corresponding to the extent of citizen influence. These levels range from manipulation, to informing, consultation, partnership, and on to delegated power and citizen control. The levels are, in turn, collectively grouped into three degrees of participation, namely Citizen Power, Tokenism and Non-participation. With reference to Lefebvre's (1968) concept of the Right to the City, the ideal is for an empowered citizenry, and while the spirit of the White Paper may have been to nominally create a degree of citizen power in local government decision making, the effective delegation of power and citizen control was, and remains, limited. This can assist in explaining why local government participatory processes are often accused of being formulaic. In contrast, meaningful public participation in the budget and infrastructure

prioritisation and strategic development decision making of local government would result in claims that citizens have not only been consulted, but have directly influenced these decisions; however, evidence of this remains minimal.

While there have been notable achievements by local government in the twenty years since the White Paper, overall service delivery and governance has not met expectations, and a number of municipalities are plagued by allegations of corruption and mismanagement, a lack of accountability and insufficient civic engagement. The local government legislation highlighted above, as well as other procedures, mechanisms and structures that have been put in place to promote accountable local government, strongly institutionalising a system of upward accountability, have inadvertently resulted in a culture of compliance in local government, where the form often takes precedence over the function. In addition, a number of more recent attempts by municipal governments to improve accountability have followed a 'service-user' approach, with the use of information and communications technologies (ICT) and 'e-government' initiatives to facilitate fault or issue reporting, as well as satisfaction surveys and community scorecards to gauge citizen needs and concerns.

However, questions remain around the accessibility and inclusivity of these mechanisms, with regard to existing citizen capacity and knowledge, as well as city responsiveness. There is also a growing body of evidence that these approaches may reduce local government receptiveness to community-driven and collective approaches to social accountability, with an example being the City of Cape Town's reluctance to engage with community-driven social audits (Storey 2014). This situation is also concerning as there are well-documented issues with existing formal institutional structures of participation, such

as ward committees (Smith and de Visser 2009) and IDP forums. Municipal accountability initiatives can also be affected by changes in leadership, as these initiatives often need champions in the face of internal municipal resistance. It is clear that current approaches do not meaningfully enable civic agency and co-production in decision making.

'BOTTOM-UP' COMMUNITY-FOCUSED, AND GOVERNMENT-LED ACCOUNTABILITY INITIATIVES

In this context, and given the low level of trust in local government as evidenced by a 2015 survey where 62% of citizens sampled had no trust in local government (Afrobarometer 2016), increasingly frustrated citizens are finding other ways to voice their concerns and demand accountability. Public protests, often simplistically labelled 'service delivery protests', are the most prominent, and often the last resort of citizens that have previously engaged local government in other forms (Chigwata et al. 2017). These protests can be seen as 'invented spaces' of participation (Cornwall 2008), but it can be argued that they may not be a sustainable or constructive way to ensure government accountability and responsiveness.

In response, civil society and government have introduced initiatives to strengthen existing accountability mechanisms or create new opportunities for improved transparency, participation and accountability. These initiatives include social audits, budget transparency initiatives, citizen budget capacity building and participatory budgeting, community-based monitoring, and informal settlement upgrading innovations; these are either citizen or government-led, and often focus on making information easier to access and understand, training citizens on policies and methods of engagement,

and therefore improving citizen capacity for more meaningful engagement with local government processes. Social audits have been facilitated by the Social Justice Coalition in Cape Town, Equal Education in the Western Cape and Gauteng, Planact in the City of Ekurhuleni, Afesis-Corplan in Buffalo City Municipality (BCM), and the Built Environment Support Group (BESG) in Msunduzi Municipality. These audits have mostly focussed on reviewing local service delivery and procurement issues, but have been met with varying levels of municipal receptiveness and responsiveness. Community-based monitoring has, for example, been undertaken by the Black Sash and the Social Change Assistance Trust's Community Monitoring and Advocacy Programme (CMAP) to monitor government facilities across the country, including South African Social Security Agency (SASSA) offices, Home Affairs offices, and health clinics.

Participatory planning, management and budgeting initiatives have been piloted, such as eThekweni's 'People's Budget' participatory budgeting process that ran from 2002 to 2006, which used ward committees and other participatory forums to elicit citizen priorities. However, it fell away due to administrative and political resistance within the municipality (Smith 2004). Metros such as Mangaung and Ekurhuleni, as well smaller municipalities such as Makhado (2012), have also piloted participatory budgeting programmes, but the method has yet to become sustained or institutionalised in South Africa. In addition, the HSRC notes that there is currently little learning from and dissemination of these many initiatives within and between municipalities (HSRC 2014). Particularly at project level, these tools and innovations often do not find enough institutional or strategic support, and internal fragmentation and silos within municipalities limit the potential for internal discussion and collaboration (HSRC 2014).

WHY FOCUS ON LAND AND INFRASTRUCTURE DEVELOPMENT DECISION MAKING PROCESSES?

The Integrated Urban Development Framework (IUDF) (CoGTA 2016) and the National Development Plan (NDP) (NPC 2012) identify spatial transformation as vital for the development and growth of South African cities. These, and other policies and plans, identify land and infrastructure development as key levers for moving towards inclusive, resilient, and efficient cities that ensure viable livelihoods for all urban residents. However, land and infrastructure development processes are complex and necessitate mediation between the often competing and/or conflicting needs and interests of stakeholders, as well as alignment with resources, capacity and institutional functions and structures – where these often operate in silos, and across different spheres of government. Some aspects of these processes are well legislated and regulated, while others are opaque or open to discretion, which can allow for their integrity and social accountability to be called into question. But what exactly do the concepts of land and infrastructure development entail?

The Spatial Planning and Land Use Management Act (SPLUMA) defines land development as 'the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme'. Land use

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refers to the purpose for which land is or may be used (e.g. residential, commercial, transportation, recreational, industrial, or institutional, among others), and the conditions associated with these land uses. Land use is decided upon in clearly defined approval processes, and guided and regulated by land use schemes and procedures (also known as the land use management system). However, in addition to the definition of land development contained in SPLUMA, land development can also be viewed as the decisions taken in regard to the physical development of land using public investment to facilitate, assign value to, service and construct on land in order to influence investment by the public and private sectors and to respond to city needs and imperatives, such as the demand for housing. Land development can also include land transactions such as land disposal and land acquisition.

Infrastructure development is closely related to land development. Metropolitan municipalities are responsible for infrastructure provision for household services (such as water, sanitation, electricity, storm water management, municipal roads, refuse removal and street lighting), public housing, and municipal services and facilities (such as municipal public transport, emergency services and community services). In recent years there has been more emphasis placed on strategically located catalytic projects. These aim to create mixed and intensified land uses, a mix of incomes, and require major infrastructure investment and a blend of finance, where a mix of public funds leverage private sector investment as well as unlock household investment. All municipal infrastructure projects, whether catalytic or not and regardless of the type of infrastructure development, can vary in size and complexity and involve similar decision making processes – this also applies to land development decisions.

THE INTACT PROJECT

In this context, the City Integrity, Transparency, Accountability and Technology Project (InTAcT), initiated by the National Treasury's Cities Support Programme (CSP), aims to assist cities to improve their governance performance, with a focus on land and infrastructure development. Specifically, the focus of InTAcT is on analysing their land and infrastructure development decision making processes – for example how decisions are made, ratified and communicated to relevant stakeholders, including citizens and communities – in order to identify complexities, vulnerabilities and good practices. The intention of InTAcT is also to explore the nexus between decisions made regarding land development, land use management and infrastructure projects, and to understand the extent to which these decision making processes enable integrity and social accountability outcomes, and/or how to progress towards these outcomes.

The InTAcT Project focuses on four critical areas of decision making related to land and infrastructure development: prioritisation, procurement, permissions and performance. These areas have been identified as places where unaccountable, unethical and opaque actions take place, and therefore require attention in order to improve governance. Partnerships are also an important element in land and infrastructure development, with the choice and type of partnership playing a part in the decision making process, and governed by the processes of prioritisation, procurement and permissions.

Specifically, prioritisation refers to city processes in selecting, resourcing and prioritising specific land development and/or infrastructure projects for inclusion in city plans and budgets. These processes occur at both city level as part of IDP development, as well as at local level. These decisions are captured in

IDP, BEPP, budget and Service Delivery and Budget Implementation Plan (SDBIP) documents.

Procurement refers to decisions taken through the municipal supply chain management (SCM) system to procure land, goods and services for land development-related infrastructure projects, as well as municipal land asset disposal. These processes are highly regulated and involve a number of legal requirements.

'Permissions' refers to the urban planning regulatory decision making processes, such as decisions made via planning tribunals, planning committees and delegated authorities regarding land development applications. These processes are often quasi-judicial and decisions need to be made based on clear policy and ethical judgement. Decisions include land use, infrastructure and urban planning matters such as rezoning, development contributions, building plan approvals etc.; the issuing of licenses and permits; and the levying of penalties.

Lastly, performance refers to decisions regarding the assessment of performance, the consequences of inadequate performance, and how performance is reported. This type of reporting happens annually and/or over a 5-year period, and is tied to terms of office and associated IDPs.

Why are integrity and social accountability critical for land and infrastructure development decision making processes?

Public integrity can be viewed as the application of generally accepted public values and norms in the practice of public sector organisations, so it is important to determine whether decisions in land and infrastructure development are made against these values and norms, in the public interest and with social accountability in mind. Taking socially accountable land and infrastructure development decisions means that citizen inputs are invited, acknowledged and taken into account in the

identification of public priorities, and that these inform land use, land development, and infrastructure development decisions. Thus, decision making should be accessible, inclusive and responsive to public interests. Municipalities should also account to citizens and local stakeholders for decisions made that impact on the form and direction of urban land development. In essence, socially accountable decision making should drive inclusive spatial transformation and build public trust.

Social accountability can also improve municipal performance in infrastructure development processes by recognising and supporting citizens and civic actors as important partners and co-producers. Therefore, by focusing on integrity and social accountability in land and infrastructure development decision making processes, the InTAcT Project can assist in reclaiming social accountability as an important element of local government practice, restore or reinforce public trust in the system of local government, and ensure that progress on urban spatial transformation imperatives is made.

SOCIAL ACCOUNTABILITY TOOLS

The InTAcT Project has, as one of its aims, to create an inventory of innovation and good practice within cities, supplemented by documentation of relevant global innovations and good practice. The intention of this inventory is to provide cities with ideas and tools to improve their social accountability and integrity. This paper focuses specifically on two social accountability tools, namely citizen-based monitoring in relation to IDPs, and planning concordats.

CITIZEN-BASED MONITORING IN IDP PROCESSES

Citizen-based monitoring (CBM) aims to enhance public accountability and service delivery by

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concentrating on citizens' experiences of government performance. A 'Framework for Strengthening Citizen-Government Partnerships for Monitoring Frontline Service Delivery' was approved by the Cabinet in August 2013. The approach emphasises building the capacity of both citizens and officials to: (i) monitor how citizens experience service delivery; (ii) analyse this feedback; (iii) take actions aimed at improvement; and (iv) communicate the outcomes to all stakeholders. Building on experience from CBM pilots that began in October 2013, the Department of Planning, Monitoring and Evaluation (DPME) recently developed a version of the CBM three-step method applicable to the municipal Integrated Development Planning (IDP) process. This decision was made in response to a widely held public view that IDP processes have become formulaic, as the voice and needs of citizens expressed through public consultations have not been seen to be reflected in finalised IDPs or in service delivery or land and infrastructure development.

The CBM method aims to increase participation of both communities and provincial sector departments in the development of municipal IDPs, specifically in the prioritisation of projects that are to be reflected in the IDP. Municipal performance against community-identified priorities can then be assessed, and ward-level service improvement plans that respond to the specific needs of each ward can also be developed. In 2017, the CBM method applied to the IDP process was piloted in Umsobomvu Local Municipality, centred on Colesberg, in the Pixley Ka Seme District of the Northern Cape. The project was implemented with guidance from the Northern Cape Office of the Premier and the Provincial Department of Cooperative Government.

The CBM method applied to municipal integrated development planning has the potential to strengthen citizen participation in the prioritisation of infrastructure and land development projects, as well as municipal performance monitoring. The process engages citizens on the IDP in terms of ward level needs, and through such a process, citizens can gain a stronger voice in the broader IDP process and achieve greater influence in the prioritisation decisions undertaken in their municipality. The process thus enhances government responsiveness as well as citizen trust in local government. The method also serves to link prioritisation and performance monitoring processes to ensure agreement on issues or projects that will be monitored at the ward level; doing so involves building the capacity of ward councillors, committees and residents to play an important role in monitoring service delivery. The process also has the potential to improve municipal answerability in terms of its performance in addressing the needs and priorities identified.

Finally, CBM emphasises the relationship between citizens and government, as well as the roles of different spheres of government. With the Umsobomvu pilot project, as a joint initiative led by the municipality, the Office of the Premier, the DPME, and provincial departments, building trust was an important social accountability objective of the process. Trust building includes enhanced participation of community members in the IDP process, as well as improved municipal collaboration with provincial sector departments. In terms of Arnstein's (1969) ladder of participation, CBM increases the level of public participation from one of consultation (tokenism) towards a level of partnership and delegated power (citizen power).

The method that emerged from the Umsobomvu project can be applied in other municipalities

to strengthen public participation in land and infrastructure development, and build the capacity of citizens to play a role in monitoring service delivery. The method takes advantage of existing IDP processes and ward structures, and can involve Community Development Workers (CDWs) and Community Work Programme (CWP) participants. The CBM method can also be applied more broadly to service delivery improvement plans and land and infrastructure development decision-making processes in government departments; by doing so, citizen involvement in the prioritisation of land and infrastructure development projects, as well as overall municipal performance monitoring is strengthened. The method is applicable in differing geographic contexts, including at a metro level with the inherent complexities that cities embody.

However, the method relies on the provincial sphere of government to lead the process, provide training, and coordinate with municipal leadership. Although this may limit the transferability and impact of the method if pursued by municipalities on their own, it could form part of the induction of new municipal governments. The citizen-based monitoring method is resource intensive, especially as it entails different phases (planning and monitoring) that should ideally feed into one another. Government infrastructure and resources that already exist (e.g. ward committees, CDWs, CWPs) can be utilised to manage the human resource costs, although this will still incur costs, for example catering and transport. Activities that will need to be further costed include community surveys; report production; and any operating costs – these will vary depending on the size of the municipal area and municipal wards. As an element of the project, DPME also provided support to the South African Local Government Association (SALGA) in the design of a series of knowledge-sharing workshops on how existing local

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government participation mechanisms can integrate CBM principles and tools. DPME will further refine the model in 2018, in collaboration with the Department of Cooperative Governance and Traditional Affairs.

PLANNING CONCORDATS

The Edinburgh Planning Concordat, first implemented in 2013 in the city of Edinburgh, Scotland, is a framework for enabling developers, affected citizens and the city council to work more closely together when a large-scale development is proposed. Affected citizens are represented in the process by a community council, which is an elected voluntary body that represents all residents in a loosely defined local area. The concordat is a memorandum of understanding and therefore not legally binding, but rather defines the relationship between parties in the planning application process; it specifically aims to increase discussion between developers and community councils at the pre-application stage. For clarity, the concordat process is applicable to both development proposals that are in line with the existing land use zoning rights, as well as those that trigger planning departures from existing land use rights.

The Edinburgh Planning Concordat sets out what is expected from both the public and private sectors at each stage of the planning application process, in terms of resources, skills, and processes. For any major development there are two stages: the pre-application stage, and the actual planning application and decision-making stage. In terms of the Planning (Scotland) Act of 2006, any applicant is required to carry out pre-application consultation as part of

a Proposal of Application Notice (PAN) process. The concordat aims to make this consultation more meaningful by encouraging discussion between developers and community councils during the pre-application stage.

The concordat outlines the roles of developers, community councils and the city council in this consultation process. Developers are encouraged to welcome community engagement on proposals, as community councils feel they then have an opportunity to influence the development and can make constructive suggestions on improvements. The concordat stipulates that they should arrange an early meeting with a community council to discuss how the pre-application consultation process will happen. Developers are responsible for engaging meaningfully with the local community and take all reasonable steps to amend proposals to reflect the views of the community. This engagement can give stronger voice and potential influence to community councils in development decisions at an early stage in the development planning process. The concordat suggests that to facilitate consultation, developers should assist community councils with setting up websites and distributing leaflets regarding the consultation process.

The role of community councils in the concordat is to represent the views of the community on the proposed development, and for example to raise concerns of potential impacts on roads, schools and other infrastructure. Community councils are encouraged to engage positively with developers, and to bear in mind that if a proposal is in line with the city's Development Plan (a strategic planning tool similar to a spatial development framework – SDF – in the South African context), then it is likely to be approved. If there are still areas of concern, the developer can engage with these in constructive discussion. The concordat stipulates that community

councils must ensure that they represent the views of a diverse range of residents of the area that they represent. To do this they must organise community meetings, and notify citizens via their website, emails, and leaflets. It recognises that the voluntary nature of community councils means that they may need to seek help from the developer in consulting widely with the community. It must be noted that this procedure carries the risk of developers and community councils deciding on who to involve. A Community Engagement Fund was also set up in 2013 with contributions from developers, with grants of up to £300 (approximately R5000) to assist community councils in engaging their communities more widely on major development proposals. Community councils are not expected to liaise with developers if they are fundamentally opposed to a development.

The council thus encourages developers and community councils to work together at the pre-application stage, and for developers to see communities as an equal development partner. The concordat also states that the city council needs to ensure that it assists community councils in understanding proposals and policy implications through providing training, in order to empower citizens to engage more meaningfully and have some influence on the process. Apart from training, council planning officials also assist by preparing a pre-application report to the city's Development Management Sub-committee that outlines which issues need to be addressed when the application is submitted. The council must consider if the submitted proposal has taken community opinion into account as one of the material planning considerations when taking a decision, because the Planning Act stipulates that community councils must be consulted, and it encourages the city council to better acknowledge and respond to citizen views in major development proposals. The concordat thus improves the

accessibility of planning permissions processes, as citizens are able to access more information and get clarity on major development proposals, and communicate concerns at an early stage of the permission process prior to application submission.

A planning concordat could be implemented in South African cities and link into existing development application permissions processes, which would significantly increase the level of community consultation that currently exists in planning application processes, where citizens are only consulted once a development application has been submitted. Due to the widespread view that municipal planning decisions in South African cities do not have sufficient transparency or opportunity for input (Dentlinger 2016; Theron 2016), a planning concordat could aid in addressing these concerns. As such, the planning concordat process could be particularly useful when development projects trigger planning departures from existing land use zoning rights, as this is where the greatest scope for improved citizen voice and influence can lie, and is currently the site of greatest concern by planning experts in terms of vulnerability to undue influence (National Treasury 2018).

Earlier engagements could improve the effectiveness, efficiency, accountability, transparency and inclusivity of the development permissions processes; this resonates with the principle of good administration in planning decision making, contained in the Spatial Planning and Land Use Management Act (SPLUMA) of 2013. Planning concordats could also be adapted to the context of smaller, resource-constrained cities, although Community Engagement Funds, similar to that in Edinburgh, may only be viable in large cities due to the increased administration capacity and funding involved, and the level of development needed from larger projects to finance such a fund. A direct analogue to community

councils does not exist in South African cities, but existing ward committees, Municipal Development Forums (MDFs) or community-based organisations could serve as community representatives in the pre-application consultation process. The significantly greater resources possessed by ratepayer's associations in middle and high income areas in South Africa, in terms of knowledge of the planning system as well as financial capacity, also mean that they have a better chance of engaging cities in planning and permissions processes. Yet these ratepayers' associations are seldom representative of the broader community in the area. For an initiative such as the concordat to find traction in this context, training more representative bodies such as ward committees, Municipal Development Forums (MDFs) or community-based organisations, could make a significant difference in addressing some of these imbalances. The costs of implementing a planning concordat would include the setting up of pre-application discussion sessions as well as funding community-based organisations to conduct broad community engagement on major project proposals. Additional municipal planning department funding and human resources would be needed. Similar to the CBM method, in terms of Arnstein's (1969) ladder of participation, a planning concordat increases the level of public participation in development permissions processes from one of consultation (tokenism) towards a level of partnership and delegated power (citizen power).

The concordat is a memorandum of understanding and therefore not legally binding, but rather defines the relationship between parties in the planning application process; it specifically aims to increase discussion between developers and community councils at the pre-application stage.

CONCLUSION

The social accountability tools and mechanisms surfaced through the InTAcT Project, can, with the necessary contextual and institutional support, strengthen social accountability and integrity in local government practice towards the goal of truly accountable and participatory local government, as embodied in the Constitution and the White Paper. This paper has made the case for why accountability in land and infrastructure development decision making processes is vital for driving spatial transformation.

Suggestions have been made as to how the two social accountability tools discussed in this paper can be linked into existing municipal mechanisms and processes in order to facilitate their uptake,

beyond the phase of NGO or project support. These suggestions were made considering the changes in the contextual factors relevant to municipal accountability and transparency since the dawn of the White Paper, and the various local government, civil-society, and community-led initiatives over time to provoke or enable improvements in municipal accountability and transparency and meaningful citizen engagement with local government land and infrastructure development processes. As part of a broader array of social accountability and integrity tools, citizen-based monitoring in relation to IDPs, as well as planning concordats, can assist in reclaiming social accountability as an important element of local government practice in South African cities and towns.

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