

PUBLIC PARTICIPATION, ELECTORAL DISPUTE AND CONFLICT RESOLUTION MECHANISMS

The Case of Moutse, South Africa, Wards 5 and 6, 2013-2016

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ABSTRACT

This study examines the concept of public participation and the dispute resolution mechanisms that can be utilised to resolve electoral disputes and conflicts at the level of local government in South Africa. The study stems largely from community-based participatory action research, also referred to as café conversations. This research project was conducted in Moutse, Wards 5 and 6 of the Ephraim Mogale Local Municipality, a category B municipality that is the smallest of the four municipalities in the Sekhukhune district. It is a cross-border district that extends across the north west of Mpumalanga and the southern part of Limpopo. Sekhukhune is 94% rural and 5.3% urban and approximately 50% of the population are under the age of 18. Moutse comprises four villages: Mamaneng-Matatadineng, Ga-Matlala Ramoshebo, Mokgwaneng and Tshikannosi. Research data collected in the form of community dialogues are used in this article together with relevant journal articles, books and media reports on the same subject. The aim of the article is to explore the importance of public participation by community members in the affairs of their community. The article argues that enhanced public participation can properly facilitate members of the community to take part in the resolution of disputes and conflicts in their community. The findings of the research are that public participation remains an important element of a democracy, and that the public at all times wants to be involved in making decisions that affect their rights.

Keywords: public participation, community, formal and traditional mechanisms, election disputes, conflicts

INTRODUCTION

Public participation is the cornerstone of democracy in any country and should be viewed not as a privilege but as a constitutional right (Maphazi, Raga, Taylor & Mayekiso 2013, p. 56); Davids 2005, p 12). Public participation is an inclusive process that goes beyond mere representation. Public participation allows community members to have control over the public affairs of their community and enables them to resolve any disputes and conflicts that may arise in their community. Public participation can be defined as a process whereby community members are afforded an opportunity to have their voices heard by government institutions that are meant to represent their needs (Mofolo 2016, p. 232; Sebola 2017, p. 26).

Former Tanzanian president Julius Nyerere once opined that ‘if development is to benefit the people and communities, the people must participate in considering, planning and implementing their development plans, ... the duty of the government is to ensure that the leaders and experts implement the plans that have been agreed upon by the people themselves’ (Nyerere 1979, p. 41).

Napier points out that public participation in the decision-making process of local government is the cornerstone of participatory democracy (Napier 2008, p. 166). In addition, effective public participation involves the sharing of information and requires that public participation must affect decision-making (ibid.). Participatory democracy is a term used to cover a wide variety of democratic models and entails the participation of constituencies in the direction and running of a democratic society (Held 1996, p. 264). Esau points out that the participation of communities enables them to take up their citizenship rights, enhances state accountability and ensures that communities have a say in issues affecting their livelihood (Esau 2007, p. 1).

The importance of public participation has been further highlighted by the Constitutional Court in *Doctors for Life International Speaker of the National Assembly* (2006 6 SA 416 (CC)), *Matatiele Municipality v President of the RSA (No 2)* (2007 6 SA 477 (CC)) and *Merafong Demarcation Forum v President of the RSA* (2008 5 SA 171 (CC)). Moreover, legislative interventions such as the *Municipal Structures Act 117 1998*, the *Municipal Systems Act 32 2000* and the White Paper on Local Government (1998) provide legal frameworks for public participation at local levels for the promotion of democracy.

Furthermore, sections 59 and 72 of the Constitution provide for public participation in the National Assembly (NA) and National Council of Provinces (NCOP). Section 152(2) of Constitution of the Republic of South Africa 108 of 1996 establishes that the objective of local government is to provide democratic and accountable government and to facilitate public participation in decision-making, while section 195 establishes the accountability of decision-makers. *The*

Public Participation Framework for the South African Legislative Sector (2013) was also promulgated to institutionalise public participation.

MOUTSE AREA

The Ephraim Mohale Local Municipality is a category B municipality, and is the smallest of the four municipalities in the Sekhukhune district. It is a cross-border district municipality that extends across Mpumalanga and Limpopo province and is situated in the north west of Mpumalanga and the southern part of Limpopo (Sekhukhune District Municipality IDP 2005; Department of Water Affairs and Forestry 2006). Sekhukhune's population is 94% rural and 5.3% urban (Sekhukhune IDP 2004/2005), and approximately 50% of the population are under the age of 18. Moutse comprises four villages: Mamaneng-Matataidimeng, Ga-Matlala Ramoshebo, Mokgwaneng and Tshikannosi.

The villages are among the 605 sparsely populated villages dispersed throughout the Sekhukhune District, and those under Ephraim Mogale Local Municipality comprise almost one million people according to Statistics South Africa (Stats SA 2011; Ephraim Mogale Local Municipality 2017b; Maphunye 2017, p. 403). The municipality was established after the 2000 local elections and consists of five local municipalities: Elias Motsoaledi, Greater Tubatse, Fetakgomo, Makhuduthamaga and Ephraim Mogale (Ephraim Mohale Local Municipality 2017a). The Sekhukhune web page (LIM471) states that the establishment of the municipality was a result of the amalgamation of Marble Hall, part of Moutse (West), Transitional Local Council (TLC), Leeuwfontein, a portion of Hlogotlou/Lepelle Transitional Rural Council (TRC), and Springbokvlakte TLC.

The unemployment rate is 34% in the Sekhukhune District, with 42% of the households having no formal income. As only 36% of the population in Sekhukhune have full access to electricity, most households rely on paraffin and gas to cook (Poverty nodes Sekhukhune-SANRAL). In addition, the Sekhukhune District has a high level of illiteracy, with 28% of the population having no formal education while only 1% of the population has any tertiary qualifications (Poverty Nodes Sekhukhune-SANRAL).

Most of the electoral disputes in Moutse pertain to the fact that these communities were unilaterally incorporated into Limpopo prior to the 2009 elections, without consultation. As a result, community members threatened to boycott the 2009 elections in an effort to convince the government to relocate them back to Mpumalanga (*news24.com* 2009). Among the reasons for their unhappiness at being moved to Limpopo was that the Limpopo provincial administration provided poor service delivery compared to that of Mpumalanga. The community further complained of a lack of consultative meetings with government officials

about the demarcation process and the reason behind the demarcation (Maphunye 2017, p. 486).

The frustration of the community in the period leading to the 2009 elections was exacerbated by the failure of a public referendum or public consultative meeting between communities, IEC officials and government officials under the Department of Corporative Governance, to reach a conclusion (*news24.com* 2009). The community approached the Constitutional Court of South Africa to have the demarcation issue solved but to no avail and they continue to live in the same dire circumstances. The public hospital, for example, is in Polokwane which is about 200 km away from Moutse. With no efficient public transport this means that many patients are unable to access the hospital (Kotlolo 2011).

Representative Public Participation

In the context of local governance public participation can be characterised as both participatory and representative (Phooko 2014, p. 42). The former means that the community participates directly in day-to-day decision-making on matters affecting their communities. This form of governance is achieved through community meetings where community concerns and demands are expressed (Kotze 2013, p. 496-9). Representative or indirect public participation means that the community elects their own representatives for the decision-making processes that affect them (Mafunisa & Xaba 2008, p. 453). Elections are an example of this form of public participation.

Community protests generally indicate frustration when the community is denied the opportunity to participate in matters affecting them. Lack of public participation may also concern the attitude of the government towards public governance, in particular the top-down notion that government should decide on what is best for communities (Moynihan 2007, p. 59). Attempts to transform the image of local governance have largely consisted of giving effect to public participation. However, it can be argued that such transformation is reflected in legislation but fails to filter down to the community, and in this context community members in Moutse Village expressed the view that their situation had barely changed since the first democratic elections of 1994 (4 December 2014)¹.

Maphunye and Mafunisa indicate that public participation is not only consistent with certain rights in the Constitution, particularly freedom of speech, but also represents a departure from apartheid-era governance where decisions and policies were imposed on communities (Maphunye & Mafunisa 2008, p. 467). The role of public participation in a democratic society is further enhanced

1 Sources where we have provided only the date are the views of community members and are not included in final reference list.

through the African Charter on Promoting Popular Participation. Decisions and policies in a democratic state are likely to be accepted and legitimised if they encompass the wishes of the community (Levi 1998, p. 82). Public participation must be clearly illustrated through advancing consultation, collaboration, involvement and cooperation between the government and the community concerned. This cooperation is essential to achieve better and more accessible decisions, and to realise communal goals (Naidu 2008, p. 82). Monitoring the effectiveness of mechanisms adopted to enhance public participation can also reveal whether the desired public goals are achieved, using appropriate tools. (Maphunye & Mafunisa 2008, p. 469).

Although voting is regarded as the most legitimate form of public participation, during the community dialogues that we conducted some villagers of Mokgwaneng argued that voting alone is insufficient to effect significant changes in governance (26 October 2014). Effective participation in the affairs of the community with regard to governance appears to be an important issue. While the villagers of Mokgwaneng stated that though they seldom experience disputed elections and/or conflicts at voting stations, they feel that the government only listens a few months before the election (26 October 2014) and that their participation in governance diminishes afterwards. Reduced community participation in governance is often more pronounced in the rural areas where the electorate may be unaware of the identity or mandate of their municipal councillors.

Public participation is a vital tool for the success of a democracy; without it governance may seem autocratic and this may lead to disputes and conflict (Maphunye & Mafunisa 2008, p. 469). Booyesen argues that the importance of public participation can be acute when the needs of the electorate are neglected; the community may then vent their frustration in various ways, some of which may be violent (Booyesen 2009, p. 3). Ile and Mapuva point out that this may be because politicians sometimes manipulate the concept of public participation in order to serve their own interests (Ile & Mapuva 2010, p. 40).

Democratic participation enables citizens to elect public representatives who must in turn be accountable (Murambo 2008, pp. 124-127). Held asserts that 'democracy is championed as a mechanism that bestows legitimacy on political decisions when they adhere to proper principles, rules and mechanisms of participation, representation and accountability' (Held 1996, p. 263). Thus, decisions taken in the absence of public consultation cannot be said to represent the wishes of a society founded on the principles of democracy and social justice.

Forums in a Representative Democracy

A representative democracy needs a forum that enables the people to monitor their representatives, functions as the centre of rational debate, allows for electoral

competition and in so doing produces better leaders. A mechanism that best promotes democratic values also benefits the community, and values that promote and protect democracy include freedom and equality before the law. Such freedom should entail political participation in order to make meaningful contributions to the decision-making processes. Freedom of expression must therefore be central in the decision-making process, even though this does not necessarily entail adopting every view expressed (Held 1996, p. 107).

The result of a lack of proper public consultation was reflected in the decision by the National Executive Committee of the African National Congress (ANC) to nominate member of parliament, Thoko Didiza, as their mayoral candidate in Tshwane (Gauteng Province) in 2016. The community responded with violent protests and malicious damage to property as they considered the nominee to be unrepresentative since her nomination had been imposed on them. While this article is not concerned with the details of the incident, what it illustrates is that meaningful public participation in decision-making processes underpins democratic values. This in turn means that the government has to afford both space and opportunity for the public to engage in decision-making, particularly at local government level (Mafunisa 2007, p. 489-96). Mofolo argues that two decades into democracy there is still a need for public participation at local government level. Public participation should also be promoted at intragovernmental forums to address service delivery protests (Mofolo 2016, p. 231).

Williams writes that there is more to local government elections than the right of people to vote for a certain political party (Williams 2007, p. 16). Local government elections must be seen as a mechanism that enables citizens at local level to participate and be heard in governance. Ile and Mapuva also point out that elections provide citizens with a political voice through electing leaders they feel will properly represent their needs (Ile & Mapuva 2010, p. 35).

Public participation and attendant rights are constitutionally guaranteed, thus rights connected to public participation should not be limited to or manipulated for electioneering purposes (Mothepe et al. 2015, p. 904). Unfortunately, electioneering appears to be a machinery designed to collect votes that bear little fruit for the voters. The voices of the voters should be reflected through their representatives; however, there is a lamentable disconnect between the public and the elect (Williams 2007, p. 16), a gulf that may lead to election boycotts. Plattner argues that boycotting elections illustrates public frustration which stems from unfulfilled promises (Plattner 2005, p. 184).

Role and Challenges of Public Participation

The purpose of public participation is to promote democracy in order to advance public needs. However, some representatives entrusted with this task, such as

councillors, traditional leaders and their advisors, may lack morality, have vested interests or in other ways use their positions to further their own ambitions. This goes against the essence of public participation.

The Department of Cooperative Governance and Traditional Affairs (COGTA) has an Integrated Development Plan (IDP), which also facilitates public involvement in decision-making processes. IDP can be regarded as a key strategic plan and instrument for development in local government (Aklilu, Belete & Moyo 2014, p. 257). However, the role of IDP creates more questions than answers; the main question is, who benefits from IDP and how? IDP is criticised because it seems to benefit those who are politically connected while communities are left to fend for themselves (Mautjana & Makombe 2014, p. 54).

Despite the good intentions surrounding the adoption of the IDP, it has not enhanced public participation due to several obstacles. A study conducted by Mafunisa and Xaba points to the fact that in many municipalities community participation was conducted for compliance only. Lack of resources is one of the obstacles to meaningful public participation (Mafunisa & Xaba 2008, p. 459); other examples include the lack of coordination and alignment of municipal policies and the needs of the community (Mafunisa & Xaba 2008, p. 460). Mautjana and Makombe write that IDP programmes fail to assist those who may want to participate in the process but are unable to do so because of impairments such as illiteracy and innumeracy (Mautjana & Makombe 2014, p. 54). In many cases public participation is elusive because there is generally a lack of information concerning public meetings and an accompanying culture of non-participation. The importance of public participation was evident in the 1990s with the establishment of inclusive bodies such as the South African National NGO Coalition (SANGOCO).

Today, public participation is encouraged and conducted through forums like the Presidential Public Participation Programme (Izimbizo/Imbizo), Ward Committee Council and IDP processes. These include the facilitation of structures for community participation in improving service delivery by the Department of Provincial and Local Government (DPLG), together with GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) and Co-Operative Governance and Traditional Affairs (COGTA). Kondlo however points out that programmes such as Izimbizo need to be re-constructed to allow ordinary community members to create the agenda, because the Izimbizos have been misused by government officials for their own benefit (Kondlo 2010, pp. 385-6).

Other challenges that affect public participation include the reluctance of government to listen to complaints, and the concomitant tendency to provide a platform for the well-connected only. For example, the government would prefer to engage with traditional leaders, with community members reduced to being

mere spectators (Kondlo 2010, p. 386). During our research similar sentiments were raised by the community of Tshikannosi (7 December 2014).

Vigorous election contestations serve many different purposes, including an understanding of electoral issues; but these may also result in the aggravation of national disunity (Williams 2007, p. 17). Issues debated during elections are likely to highlight the socio-economic priorities of the communities. Municipalities thus need to have clear organisational capacity and decision-making processes in order to achieve their socio-political mandates in line with the socio-economic development of the community (Williams 2007, p. 17).

Community participation in elections is not limited to outcomes only but also to the voting itself. This includes access to voting stations, a secret ballot, dispute resolution both before and after elections, and the opportunity for voters to freely choose their preferred candidate without any influence from political parties (Williams 2007, p. 17). When election promises are not fulfilled, this can result in disputes and conflict.

RESEARCH METHODOLOGY

This study stems largely from community-based participatory action research, also referred to as café conversation (Stratford et al. 2003, pp. 585-7; Horowitz et al. 2003, pp. 541-5). The research on electoral dispute and conflict resolution was conducted in Moutse, Wards 5 and 6 of the Ephraim Mogale Local Municipality, one of the five local municipalities making up the Sekhukhune District Municipality in Limpopo Province (formerly Greater Marble Hall) municipality of Limpopo.

The research project was conducted between May 2013 and December 2016 and was aimed at improving community contribution with regard to preventing, managing and resolving electoral disputes. The Unisa research team comprised three institutions, namely the Institute for Dispute Resolutions in Africa (IDRA), the Institute for African Renaissance Studies (IARS) and the WIPHOLD-Brigalia Bam Chair in Electoral Democracy in Africa.

These institutes deal mainly with dispute resolutions, elections, democracy and African renaissance. The rationale behind the choice of Moutse as a site for this research lies in the predicament of the local municipality, a community still enraged by the decision of the Municipal Demarcation Board to incorporate it into Limpopo Province (*News24.com* 2009). As a result, public participation issues raised by various members of the public in Moutse are probably unique to the area, hence the study's conclusion and recommendations cannot be extrapolated to other South African communities.

A thorough consultation with community stakeholders and the dialogues conducted in four villages revealed that there were underlying factors beyond the

scope of this research. These included political dynamics and limited knowledge of electoral matters. Although the focus of this research was on electoral dispute and conflict resolution, a general argument raised by members of the respective communities was that issues of service delivery cannot be excluded as they are central to local governance, particularly if these issues relate to electoral dispute and conflict resolution.

This seems to accord with Mofolo's argument in which he avers that if public participation is enhanced it can result in a reduction in the number of service delivery protests (Mofolo 2016, p. 232), as public participation by definition also includes community participation in policies regarding delivery (ibid.). This view has also been echoed by Molepo et al. who point out that service delivery protests are a manifestation of non-compliance with constitutional and legislative requirements for public participation (Molepo et al. 2015, p. 367).

The research was facilitated by the Unisa research team through community dialogues in the villages the team visited. Their brief was to find out from the residents what the causes of election-related disputes were and how they thought these disputes could be resolved, and also to tap into community knowledge about dispute resolution. The research was conducted by identifying community representatives who later formed a Community Representative Committee (CRC) for each village. The Unisa research team trained the CRC on how to conduct community dialogues and also discussed the aims and objectives of the research. The research was conducted according to Unisa's ethical clearance certification and guidelines.

Freedom to Participate

The participants of the research, including the CRC and community members, had to sign a consent form confirming their willingness to participate. The form also gave the participants an opportunity to withdraw from participating or refuse to disclose their identity (names) at any time during the research. One of the responsibilities of the CRC was to identify community knowledge holders who could provide the political history of the respective communities and share invaluable information on election-related disputes to which some community members might not be privy. During these discussions members of the community were divided into groups and each group was assigned a CRC member and a member of the Unisa research team.

The members of the CRC, with the assistance of the Unisa research team, emphasised the aims and objectives of the research and the topic for the dialogues. They allowed community members to participate by expressing their views on the topic based on their individual experiences and knowledge. The discussions

were regulated using a 'talking object' which maintained order during the discussions. This talking object, which could be any small object such as a pen or stick, was circulated among community members and no one was allowed to speak without having the object in his or her hand. Once a community member had spoken, the token was passed to a different community member. The role of the CRC and the Unisa research team was to direct the discussion.

The languages that dominated the discussion during these community dialogues were Sepedi and Sesotho sa Leboa, although some of the community members preferred IsiSwati, IsiZulu and IsiNdebele. The proceedings during the community dialogues were recorded. The Unisa research team formulated questions that were discussed in the dialogues and with the CRC during their training before being presented at the dialogues. These questions were as follows:

- What mechanisms, traditional or formal, are used to resolve community disputes in Wards 5 and 6 in Moutse?
- Where, when and how often do community members converge to address election-related disputes?
- What steps ought to be taken to resolve election-related conflicts in Wards 5 and 6 in Moutse?
- Who is responsible for community disputes, conflict negotiation and mediation during elections in Ward 5 and 6 in Moutse?

The CRC advised the community members to be solution-driven when responding to these questions and therefore their responses and suggested solutions form part of the conclusion and recommendations in this article.

MECHANISMS FOR DISPUTE AND CONFLICT RESOLUTION

There are two mechanisms, namely traditional and formal, that can be used to resolve electoral disputes and conflicts. The traditional method of dispute resolution forms part of living customary law and has been embraced as an essential African method to resolve community disputes and conflicts (Adeyinka et al. 2014, p. 147). It relies on traditional leaders and community forums to resolve disputes within their respective communities and is consistent with the African concept of ubuntu, a concept which embraces a widely humanist philosophy. While it does not have a precise meaning (Mbigi 1995, pp. 1-5; Ramose 2008, p. 2) ubuntu is described as a philosophy of life which values group solidarity, humaneness and order in society (Mokgoro 1998, p. 3). Dispute resolution in African communities is predicated on this concept, which highlights the need to resolve disputes and conflict in a manner that promotes consensus-building

and social reconstruction without harming the prospect of future relationships (Adeyinka et al. 2014, p. 157). Midgley and Keep (2013, p. 48) note that the concept of ubuntu has been a key value in South Africa's young democracy as it embodies the cultural diversity of the country and the importance of sharing. Ubuntu forms part of a social system driven by more than resolving conflicts, but also improving social relationships (Choudree 1999, p. 20). In contrast, the formal mechanism makes use of Western and European methods of dispute and conflict resolution such as the courts and law enforcement officials. The formal method of resolving disputes and conflicts is not popular in South Africa's rural areas such as Ga-Matlala Ramoshebo and is sometimes viewed by communities as a winner-takes-all approach that does not focus on continued relationships (15 November 2014). This can be a challenge when one considers that the formal mechanism may present solutions to which rural communities are not accustomed.

The community in Ga-Matlala Ramoshebo prefers traditional mechanisms because they believe their community members do not have the capacity to understand formal mechanisms and that the accessibility of the formal process remains a problem (*ibid.*). The other issue of prime concern is that the courts generally require a person educated in law to represent the interest of the litigant, and this legal representative may not be acquainted with the community traditions he or she represents (*ibid.*). Similarly, the courts have specific locations which may require members to travel long distances or seek accommodation near the court's location, far from their families.

The cost of litigation is also an issue that could discourage the community from invoking the courts (*ibid.*). In this respect, some Tshikannosi residents highlighted their dissatisfaction with Western methods (7 December 2014). These respondents are generally suspicious of lawyers, judges and the entire formal justice system and are of the view that the formal machinery does not have their interests at heart (*ibid.*). The traditional mechanism of resolving disputes and conflict pre-exists formal legal structures, and according to them, it is tested and reliable. For centuries these methods were employed to resolve disputes and conflict between locals and opposing communities (Osi 2005, pp. 222-223).

Traditional mechanisms are often based on community culture and encompass many elements of dispute resolution; these include teaching, storytelling, respect and fostering continued relationships beneficial to all (Osi 2005, p. 194). Traditional courts were created by traditional communities for the purpose of resolving their own disputes and conflict (Osi 2005, p. 195) when there were no formal courts to speak of.

However, some members in Tshikannosi expressed disaffection with traditional justice mechanisms which they consider might discriminate unfairly against some members of the community (opinions of the community given on

7 December 2014). They preferred a formal legal process, based on the Constitution, that does not discriminate. Other community members argued that there are different forums that can be approached before the dispute or conflict can be brought to the attention of traditional leaders (16 November 2014). One of the examples they gave is that a dispute can be resolved by other community representatives such as family councils or ward councillors and their advisers.

Only if the dispute is not resolved can the issue be taken to a traditional leader (Kariuki 2005, p. 5). The power of traditional leaders to hear disputes was recognised when the colonialists enacted the Black Administration Act of 1927 which enabled chiefs to resolve disputes. However, they were limited in terms of the sanctions they could impose. For instance, chiefs do not have the power to impose imprisonment, but a person can be banished from a community for a transgression (Kariuki 2005, p. 6). If a decision of a traditional leader is undermined, the traditional leader can report the default to a magistrate's court. Similarly, an offender has the option of approaching a magistrate to appeal against the outcome of a traditional court. Unfortunately, traditional courts carry little authority and this enables parties to take their matter to a magistrate's court, even when the case has not been finalised in the chief's court (Bennett 2001, p. 164).

Conflicts between political parties and community members have arisen during voting campaigns in Tshikannosi when a particular political party, or traditional leader with an affiliation to a political party, denies other community members or political parties access to a community hall to campaign for elections (7 December 2014). These conflicts escalate when community members are either coerced into voting for a particular political party, or prevented from attending gatherings organised by particular political parties (this view was provided by an elderly community member interviewed on 7 December 2014). In Tshikannosi, political coercion was said to be rife and community members accused traditional leaders of pressurising them. In addition, members of the community warned the Unisa research team about what they described as 'the hostile environment' in Tshikannosi.

The research was therefore conducted with much caution, as researchers were warned that they might be physically attacked by individuals belonging to certain political parties. These might view the dialogue as an attempt to oppose their own political party rather than create awareness of political tolerance in the community. Other members of the community were discouraged from joining in the study, and fearing for their lives they chose not to participate. These examples indicate that a struggle for political power would be aggravated in the pre-election period.

Some community members claim that the problem in Tshikannosi is how to resolve political disputes when traditional leaders entrusted with resolving

community issues have themselves become politicians or are affiliated with political parties (7 December 2014). One elderly woman interviewed in a community hall in Tshikannosi, pointed out that community members have forgotten what the spirit of ubuntu entails and that guidance from community elders on disputes and conflict resolution is often ignored (7 December 2014). Community interviews indicate that age may determine which method is to be adopted, with the younger generation preferring the formal i.e. legal approach while elders prefer the informal, traditional mechanism.

Some community members of Mokgwaneng expressed their scepticism regarding the judicial process and its composition (15 November 2014). They were of the opinion that the formal judicial process might be presided over by a third party who would apply the letter of the law but be oblivious of the need to foster continued relationships between the parties. As a result, this formal machinery might ignore the culture of the litigants as it seeks to apply the law constructed on a Western ideology that would not consider the background of the parties (Osi 2008, p. 201).

Another community member in Mamaneng argued that he still preferred a traditional method of resolving disputes, which he believed to be more connected spiritually to the ancestral way of doing things (16 February 2015). This participant argued that the traditional African approach offers more reconciliation and spirituality than do legalistic Western mechanisms. He further pointed out that a traditional method was intended to appease the ancestors when they were wronged. According to African culture, the relationship between the living and the dead plays a major role in resolving disputes, requiring specific rituals to be performed when certain transgressions occurred.

Furthermore, he argued that exposure to Western culture had led to the death of African methods of dispute resolution. He felt that people needed to go back to their roots and recognise what is important. He further stated that exposure to a Western lifestyle is problematic, and that the youth of today are migrating to urban areas where they are exposed to new methods and turn their backs on their roots. Correspondingly, the youth who were interviewed were critical of the traditional mechanisms for resolving disputes, describing these as old and outdated (18 October 2014). Their biggest concern was the impartiality and ineffectiveness of traditional courts.

Similarly, women argued that their voices are not heard because traditional leaders marginalise them and they feel oppressed in traditional forums, despite the Constitution protecting their right to equality and freedom of speech (18 October 2014). Some community members pointed out that women were not allowed to speak in traditional forums such as mediation because traditionally women are considered to be minors under the tutelage of a male guardian.

Scholarly research emphasises the fact that customary law has been subjected to a repugnancy clause since colonial times and this has affected its reliability among certain community members. Section 211(3) of the Constitution states that customary law is applicable, provided that its application is consistent with the Constitution. Section 211(1) recognises the role and institutions of traditional leaders, while subsection 211(2) empowers traditional leaders to apply their customs. Section 212(1) goes further to state that national legislation may provide for the role of traditional leaders as an institution at local government level.

The Constitutional Court in *Shilubana v Nwamitwa* 2009 (2) SA 66 (CC) has also recognised the power of traditional leaders to develop customary law. Despite all these efforts there appears to be little relevance and use of traditional mechanisms. It seems that the Constitution has awarded traditional leaders de jure authority without proper checks and balances to ensure that they perform their duties properly. Measures should be adopted to ensure that during elections, or when managing conflicts, traditional leaders remain impartial and are not directly affected by political matters nor become biased towards certain issues or people.

Corruption was another issue raised by some community members in Tshikannosi who argued that the formal mechanism is independent and cannot be manipulated through corruption, bribes and nepotism. Perhaps the far-reaching effects of corruption should not be limited to informal forums only, as in light of recent media reports it appears that judicial officers at the courts are not immune to corruption (*Heraldlive* 2014).

Community members in Mamaneng consider that both the formal and indigenous courts are effective (26 October 2014). They believe the gravity of the matter should determine which court should administer the matter, and that indigenous courts should deal with purely traditional matters, while other matters should be heard by formal courts.

PREFERRED MECHANISM FOR PUBLIC PARTICIPATION

The community-based participatory action research in Moutse, Wards 5 and 6 revealed that other villagers also held community meetings to collectively discuss and address issues affecting them. These issues are, however, not limited to electoral disputes and conflicts. For example, the village of Mokgwaneng held meetings in their community hall every Wednesday (26 October 2014). Ga-Matlala Ramoshebo villagers stated that they initially used to convene community meetings and that they no longer do so due to political differences and conflict (15 November 2014).

Failure to convene community meetings culminated in reduced or diminished input from the community members with regard to decisions directly or

indirectly affecting them. The village of Mamaneng/Matatadibeng did convene community meetings; however, the person or structure that called such a meeting often influenced how many people would attend the meeting (18 October 2014). It is the representative's function to listen to the concerns and demands of the village, and according to the community members of Mamaneng/Matatadimeng it is unclear whether these concerns are considered in the decision-making process (18 October 2014). The villagers of Tshikannosi indicated that they used to meet once a week but this is no longer the case (7 December 2014).

Voter access presented different problems and concerns, particularly for the elderly and the disabled. In Moutse voting stations were far from voters' homes; some community members in Mamaneng/Matadimeng alleged that they had to walk a distance of four kilometres from their homes to reach the voting stations. This problem is aggravated by the lack of public transport to take community members to voting stations (19 October 2014).

Similarly, blind and illiterate people find it difficult to cast their ballot in secret because of the assistance they need; names are read in public and they have to indicate their voting choices verbally, thus their choice could be overheard by those behind them in the queue. Community members informed the research team that a tactile voting template for the blind (a Braille ballot) should be used to ensure confidentiality, and pointed out that they had not yet benefitted from the use of such a ballot even though these were in use in urban areas. Voter confidentiality is in name only for many disabled people (Williams 2007, p. 17).

RECOMMENDATIONS AND CONCLUSION

The responses to the questionnaires posed during community dialogues in the respective villages were solution-driven and therefore form part of the recommendations from the community. This is because the purpose of the project (community-based participatory action research) was aimed at educating and similarly gaining insight from the members of the community about electoral dispute and conflict resolution. It was aimed at assisting community members to find ways of resolving their own electoral disputes and conflicts rather than imposing solutions on them. Responses and recommendations to the research questions discussed by community members during the community dialogues are as follows:

- The community of Ga-Matlala Ramoshebo urged the Independent Electoral Commission of South Africa (IEC) to take full responsibility for resolving electoral disputes and conflicts. They were also of the view that the South African Police Service must be actively involved in ensuring security before, during and after elections.

- The communities suggested that the IEC should actively engage with the community by educating the community about voting processes. In this regard, the community proposed that ward committees should be elected to represent the community on electoral matters, with members drawn from the community they are representing.
- Because some members of the community of Mokgwaneng preferred the traditional mechanism, this community was of the view that the traditional authority, as a representative body of the community, must take responsibility for ensuring that electoral disputes and conflicts are resolved. The community also expressed concerns about visibility and access to municipal councillors, alleging that some municipal councillors reside far from their communities and could therefore be ignorant of the challenges experienced by the communities they represent. Conversely the community may not know their councillors if they live far away from the areas they represent.

Public participation forms an integral part of every democratic state and encompasses collective governance by ensuring that people have a say in matters affecting many aspects, including political, social and economic life. According to Booysen (2009, p. 24) the process of public participation needs to be revisited to ensure that the people have an efficient form of representation. The legislative framework governing the process of public participation is intended to regulate this process. However, this legislative framework has to a large extent failed to achieve the progressive realisation of a free and fair democratic society characterised by participatory governance.

This representation is meant to give impetus to effective participatory governance ensuring that the wishes and demands of the community are both protected and included in decision-making. Dispute and conflict resolution mechanisms can be effective only if the authorities listen to those concerned. Participation in elections does not necessarily guarantee that members of the public contribute to how governance is to be steered. For public participation to make a meaningful contribution to governance the community must participate in the decision-making process, rather than merely elect their representatives and then delegate subsequent decision-making to them.

The Constitution advocates for meaningful participation in social or political decision-making. Thus, politicians must have regular meetings with members of the public and relevant stakeholders to promote and enhance the effect of public participation in South Africa. This will capacitate community members and encourage them to develop a sense of responsibility in relation to affairs affecting their communities. By taking part in decision-making processes the community

will also be able to monitor and evaluate whether the proposed objectives or ventures are attained.

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