

Participatory Budgeting in South African Local Government: A Right or Illusion

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Abstract : One of the central features of post-apartheid constitutional reform was the establishment of local government as a distinct sphere of government in the Constitution of the Republic of South Africa, 1996. Local government, constituted by about 279 wall-to-wall municipalities, have legislative and executive powers vested in democratically elected municipal councils to govern areas within their jurisdiction subject only to limits imposed by the Constitution. In addition, unlike the past where municipalities merely played a service delivery role, they are now mandated to realise an expanded developmental mandate – pursue social justice and sustainable development; contribute, together with national and provincial government, to the realisation of socio-economic rights entrenched in the Bill of Rights; and facilitate public participation in local governance. In order to finance their developmental programmes, municipalities receive equitable allocations from national government and have legal powers to generate additional finances by charging rates on property and imposing surcharges on services provided. In addition to its general obligation to foster public participation in local governance, the law requires municipalities to facilitate public participation in their budgeting processes. This requirement is generally consistent with recent trends in local government democratic reforms which call for inclusive budget planning and implementation whereby citizens, civil society and NGOs participate in the allocation of resources. This trend is best captured in the concept of participatory budgeting. This paper specifically analyses the legal and policy framework for participatory budgeting at the local government level in South Africa. Using *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality 2014 (5) SA 256 (ECP)* as an example, this paper argues that the legal framework for participatory budgeting creates an illusory right for citizens to participate in municipal budgeting processes. This challenge is further compounded by the barrenness of the jurisprudence of courts that interpret the obligation of municipalities in this regard. It is submitted that the wording of s 27(4) of the Municipal Finance Management Act (MFMA) 53 of 2003 - which expressly stipulates that non-compliance by a municipality with a provision relating to the budget process or a provision in any legislation relating to the approval of a budget-related policy, does not affect the validity of an annual or adjustments budget - is problematic as it seems to trivialise the obligation to facilitate public participation in budgeting processes. It is submitted that where this provision is abused by municipal officials, this could lead to the sidelining of the real interests of communities in local budgets. This research is based on a critical and integrated review of primary and secondary sources of law.

Keywords : courts and jurisprudence, local government law, participatory budgeting, South Africa

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