

Mass struggle needed

the Municipal Services Partnership Framework Agreement

On 11 December 1998, COSATU and the employer body, the South African Local Government Association (SALGA) signed the Framework for Restructuring Municipal Service Provision. One of the framework's main objectives is to regulate private sector participation in municipalities. But despite disagreement between the parties over the privatisation of KwaZulu-Natal's Dolphin Coast's water services in March 1999, Nelspruit water services were privatised a month later. Currently, a programme of privatisation is being implemented in Johannesburg with little, if any, adherence to the framework.

The framework is relevant to labour, communities and the general public, who need affordable and efficient service delivery. It is particularly important to working people given historical backlogs and apartheid inequalities. But can the Framework regulate the private sector and ensure affordable and efficient services for all?

SALGA negotiated the framework in the last quarter of 1998, to prevent a proposed COSATU national strike against the privatisation of basic services.

Shifts in COSATU policies

Since its 1992 economic policy conference, COSATU opposed privatisation as the method of addressing economic growth and lessening apartheid

Parties signed a Framework for Restructuring Municipal Service Provision in December 1998. Maria van Driel assesses it and argues that mass struggle is needed to amend and enforce the agreement.

inequalities. COSATU proposed an alternative – that privatisation be opposed and that the state provide basic services.

In 1995, COSATU signed the National Framework Agreement (NFA) with government. The NFA enabled the restructuring (including privatisation) of national public assets (excluding local government restructuring). A number of assets like Sun Air and six radio stations were then privatised. Transnet was divided into different parts like SAA and Portnet, in preparation for privatisation. This marks the beginning of a shift in COSATU policies.

But in June 1998, a COSATU central committee reaffirmed COSATU's position that basic services (like water and electricity) should not be privatised. Instead, basic services should remain within the local state. This would also assist to make local councillors more accountable to the people.

But even before the central committee meeting, the struggle against privatisation was gaining momentum. This took place particularly in Nelspruit where the local council announced its intention in mid 1997 to privatise its water services to British multinational, Biwater, for 30 years. This announcement united opposition to privatisation from different quarters in South Africa and abroad. COSATU's local structure in Nelspruit led the growing mass-based opposition to privatisation. This mass mobilisation was responsible for preventing privatisation in Nelspruit until April this year. Eventually Nelspruit was overtaken by Dolphin Coast, whose privatisation proposals were made much later.

Deadlock at Nedlac

In July 1998, the COSATU Mpumalanga regional congress agreed to a programme of mass action to support demands to restructure Nelspruit water services within the public sector. The COSATU Exco later postponed the regional action in favour of national action in support of Nelspruit.

COSATU and SALGA/Department of Constitutional Development (DCD) deadlocked at Nedlac in the second week of September. According to the LRA, this enabled the federation to give notice for protected strike action. However, the ANC intervened and initiated negotiations amongst the parties, in an attempt to stop the proposed national strike. These negotiations included representatives from COSATU/SAMWU, SALGA and the Minister of DCD, Valli Moosa.

On 18 September 1998 the parties signed the Record of Understanding. The record included broad objectives, principles and processes for the restructuring of local government. It also included provisions for private-public partnerships or privatisation to take place.

The Municipal Services Agreement (1998)

is based on this record. Although the record seeks to 'safeguard communities' interests' and the framework recognises the importance of democratic community participation in municipal restructuring, there was very little public debate involving communities and the broader public. Even the discussions within COSATU/SAMWU were inadequate given the strategic political importance of this agreement. To some extent this accounts for the employer's disregard of the agreement.

Different perspectives

COSATU and SAMWU had different perspectives on privatisation before the Nedlac process started. In a memo to Nedlac, COSATU stated that it was not opposed to 'forms of partnerships with the private sector that are aimed at leveraging resources... for... improved and greater levels of service delivery'. SAMWU, on the other hand, was opposed to all forms of privatisation and devoted a national anti-privatisation campaign to this end. Although SAMWU participated in the negotiations and accepted the outcome, the framework tends to be closer to the COSATU's position. However, the framework has meant a shift in SAMWU's position on privatisation.

Regulation necessary

Internationally, regulatory frameworks have tried to regulate the private sector by setting down service and quality standards, the rate of return etc. Frameworks are based on the belief that unless companies are regulated, their profit motive will result in cut-throat capitalism, at the expense of both users and service-providers.

Despite the emphasis on deregulation within the neo-liberal programme, regulations exist in different service sectors in advanced capitalist countries.

For instance, in Britain and the United States, the rate of return is set down for energy and water services.

People and organisations (including the World Bank) have debated how to implement and monitor regulations effectively. For instance, international experience shows that national legislation regulates the private sector more effectively than contractual agreements between the private sector and individual government departments. It seems that regulatory legislation carries the authority of national government and is more effective in ensuring that the private sector implements regulations.

What and how regulations are monitored varies. Independent persons, commissions, or national government may monitor the implementation of regulations. It seems that individuals are more accountable for their decisions while commissions have a lower potential for corruption. Most countries seem to favour an agency monitoring the implementation of regulations across different sectors. Reasons for this include: higher resistance to improper influences; a consistent policy approach across sectors; cross-fertilisation of relevant experiences; and economies of scale in administration.

Regulations fail

International experience suggests that regulatory frameworks have been unsuccessful in harnessing the private sector's rampant capitalist tendencies and ensuring quality, affordable and accessible service delivery. For example:

- ❑ In Britain, the price of water rose 177% between 1991/92 and 1992/3. In 1991/2, water was cut off in 21 000 homes because people could not pay the bills
- ❑ In Hungary in 1994, a company partly owned and run by Lyonnaise des Eaux won a water contract in the town of

Kaposwar. Initially the price of water dropped. However, by 1996, the price of water rose by 50%, canceling out the price cuts made in 1994.

Given that regulatory frameworks fail to regulate the private sector, South Africa's framework agreement is a capitulation by labour. Labour has agreed to the privatisation of basic services. Privatisation is also a cornerstone of the government's macro-economic strategy, GEAR. However, we are still confronted with the challenge to improve and extend basic services to all South Africans. Labour and communities must therefore assess the framework to understand the challenges and possibilities it raises.

Assessing the framework

The framework states that it is a 'guide' to local government restructuring. This raises the issue of the agreement's status and parties' obligations and commitments for its implementation. The 'guide' approach accounts for the many employer violations.

The framework contains broad outlines to cover all service sectors. Parties will still negotiate the specifics for each service sector and the further development of the framework. This will be done at the Sectoral Forum (SF) which was set up to restructure local government.

Section A: Restructuring framework

The framework recognises municipalities' constitutional obligations to deliver basic services to all South Africans. It also states that the transformation of public sector delivery should be transparent; and should include consultation with users, providers, communities and elected representatives; and that all spheres of government should participate.

However, the framework does not define the powers and functions of government and other role-players. The basis for DCD's



The agreement provides a basis around which unions and communities can mobilise struggle.

support for water privatisation in Dolphin Coast is therefore unclear when measured against the framework

The framework defines the basic level of service as the minimum level of service necessary to ensure an acceptable and reasonable quality of life, taking into account health and environmental considerations. It states that no-one should fall below the minimum level of service. The framework acknowledges the need for cross-subsidisation, although it doesn't specify how this will be done.

Principles of service delivery

Municipalities should be restructured to ensure that services are delivered in a manner consistent with the principles outlined in the framework. The principles include:

- ☐ all South Africans must have access to water, sanitation services, electricity, rubbish removal, and other basic services;
- ☐ all residents should receive a lifeline amount of services;
- ☐ service standards must be established and monitored;

- ☐ democratic practices and accountability to residents and users must be established,
- ☐ the Batho Pele principles of the DCD must be observed, including consultation, access to services, information, transparency, redress and value for money;
- ☐ employees must have job security, good working conditions, and sound health and safety practices. Their capacity to deliver services must be developed.

A problem with the framework is that providers are not forced to implement the principles – they merely have to 'strive' to do so. But the principles themselves provide labour and communities with the space to contest issues and ensure that the principles are met. It is difficult to perceive the private sector fulfilling any of the principles.

Process of restructuring

Workers and communities must be involved in the whole restructuring process to ensure effective service delivery.

The framework states that public sector

restructuring must be implemented to improve and extend services before the private sector is even considered for service delivery. Labour and SALGA had agreed to this at the National Labour Relations Forum Local Government (NLRFLG) in June 1997. (The NLRFLG was the fore-runner of the SA Local Government Bargaining Council (SALGBC)). However, municipalities that cannot comply with this agreement because of their capacity, are not obliged to do so. This undermines the national bargaining council and the agreement, particularly as no process is set up to assess municipalities' (potential) capacity. This provision can therefore be exploited in the interests of privatisation.

The framework provides for both public and private sectors service delivery on an equal basis. But it recognises the public sector's superiority in meeting social needs and the need to regulate the private sector's rampant capitalist tendencies. Private sector participation must build municipalities' capacity. But long-term contracts like Dolphin Coast's for 30 years, undermine municipalities' abilities to develop capacity and expertise.

Sectoral Forum (SF)

The SF includes representatives from labour, government and SALGA, and will focus on local government restructuring. Amongst other things, the SF will build consensus between the parties on the objectives, principles and transformation of service delivery. Private sector participation in municipalities must be consistent with the SF's guidelines and the framework. A full costing exercise must be undertaken to compare costs and benefits of public and private sector delivery. But the responsibility for tasks is not defined. COSATU is therefore correct to reject the Dolphin Coast privatisation and the DCD's

role, as a blatant violation of the framework.

The SF will also monitor and oversee compliance with agreements, delegate any matter to any forum or structure it deems fit and deal with disputes. Presumably, issues in dispute will be taken to the SF through the SALGBC. Disputes relating to conditions of service will be referred to the SALGBC and those of a broader restructuring nature will be referred to the NFA six-a-side.

The SF has been bogged down in trying to complete the outstanding issues related to the framework itself. Meanwhile, privatisation is going ahead without adherence to the framework.

Section B: Municipal Services Regulatory Framework

The framework includes regulations for all providers and specific regulations for the private sector. It calls for transparency consistent with the Constitution and the LRA. Some regulations are:

- ☐ all people must have access to basic levels of service. The parties must determine a basic level of service for each sector, and the lifeline tariff necessary to realise this;
 - ☐ the tariff structure should allow for cross-subsidisation;
 - ☐ the price of new connections should be limited and controlled;
 - ☐ private providers must ensure that their budgets are in accordance with the priorities for service delivery. The contract must provide 'sufficient checks and balances' to ensure the private sector has sufficient funds to effectively fulfil their contractual obligations;
 - ☐ union rights, collective bargaining and skills development must be in line with national legislation. 'High' health and safety standards must be implemented.
- The regulations are vague but the broad

outline provides the potential around which to mobilise broad sections of society to ensure that they are implemented and reflect the interests of working people.

Monitoring

Municipalities have the authority to monitor, review and evaluate targets. However, the framework states that the municipality must not be 'inflexible'. This potentially compromises the municipality's authority and effectiveness. Companies must pay the municipalities' costs for monitoring the contract. Interestingly, there is no obligation on municipalities to monitor private contracts.

Parties in the SF are still negotiating monitoring tools such as the code of conduct for councillors and officials in cases of conflict of interests, and the penalty clause for non-compliance with agreements.

Private sector regulations

Some of the regulations include: Municipalities must retain ownership of 'core' assets, but may lease or sell off certain assets in a transparent manner. The parties still need to define 'core'. Measures need to be taken to protect the municipality against asset stripping and ensure that services are returned as 'going concerns' with assets in a state of 'good repair and maintenance'. At the moment, these vague measures can only advantage the private sector as no effective regulation can take place.

Further, companies must report regularly on their performance and there must be full disclosure of information. The SF must still develop the corruption schedule specifying conditions for which companies will be disqualified. Other important regulations are still vague, such as limiting the rate of return, and that contracts provide for 'sufficient funds' and

'checks and balances'. The framework does also not set time-frames.

However, like the principles for service delivery, the regulations provide a basis around which labour and communities can mobilise and struggle. It is clear that the employer has no intention of implementing the framework, even though the regulations and principles are vague. The issues are how to use the framework to advance the struggle for basic services and how to ensure that municipal employers comply with the agreement.

Conclusion

COSATU and SAMWU have been unable to enforce the implementation of the Framework Agreement. The collective bargaining decision on public sector restructuring is undermined, including the LRA. The government (the employer) has no intention of honouring this agreement. While privatisation is gaining ground, basic services are becoming even more inaccessible to working people.

The labour movement is faced with two choices: either accept this capitulation (without even having been defeated); or turn to mass struggle as the basis to regain its political credibility within the working class and society as a whole.

While international experience demonstrates that regulatory frameworks are unable to curtail the private sector's rampant capitalist tendencies, the Framework Agreement is the terrain on which to mount the struggle to regain lost ground. This mass mobilisation will enable labour and communities to rebuild organisation and regain the political and ideological clarity necessary to reverse privatisation. ★

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