

Withholding rates

A NEW CULTURE OF NON-PAYMENT



Photo: Neil McCartney/TheCitizen

Rates boycotts, alongside other forms of community protest, were historically linked to the grassroots struggles of communities against the apartheid government. Protest action in various forms – such as rates boycotts, bus boycotts, student protests and community riots – were among the few effective tools available to disempowered communities to voice their dissatisfaction. Those forms of protests – sometimes destructive and violent – conjure up images that are reminiscent of apartheid era activism. Rates withholding is an emerging form of protest that is being utilised increasingly by communities across South Africa.

Rates withholding, as the term suggests, is based on the non-payment of property rates. However, that is not where the action stops. The property rates which are withheld are then deposited in a trust account dedicated to holding these funds on behalf of the ratepayers association. A number of communities across South Africa have opted to practise rates withholding to demonstrate their discontent about what they perceive as inadequate service delivery by their municipalities. They contend that these municipalities have failed to use their property rates taxes in an efficient and equitable manner to effect service delivery.

A number of communities in the Free State, Eastern Cape and North West have been withholding property rates in an organised manner. In the Free State, for instance, communities in Bethlehem, Frankfort, Hennenman, Ventersburg, Welkom, Deneysville, Edenville, Heilbron, Kroonstad, Oranjeville, Villiers and Smithfield are refusing to pay rates. The same is true in the Northern Cape, where the communities in Barkly-West, Delpportshoop, Warrenton, Windsorton, Carnarvon, Sutherland, Williston, Britstown, Colesberg, De Aar and Hanover are withholding property rates.

It appears that those participating in this form of protest action are members of the business communities and local ratepayers

associations who are dissatisfied with municipal service delivery. The move to withhold municipal taxes seems to have gained momentum nationally. Currently communities in more than 220 towns are involved in some form of dispute with their municipalities. Certain associations claim to have declared “official” disputes against their municipalities “in accordance with the Municipal Systems Act”, while communities in 20 towns have already started withholding their property rates.

The dispute

According to the ratepayers associations, the basis of the dispute is the failure of municipalities to fulfil their constitutional duty of basic service delivery. They allege that among other violations, municipalities have failed to provide clean drinking water to communities. Even when they do, there are frequent interruptions in access to water, in direct contravention of the Water Services Act of 1997. They also allege that the water supplied in certain municipalities is contaminated. Furthermore, sewerage works are either not operational or frequently out of order, causing pollution and posing severe health risks to communities. In certain towns it is alleged that waste is accumulating because waste removal operations have practically ceased. Other complaints revolve around overgrown bushes along public roads due to the failure of municipalities to clear them regularly. In addition, street lights do not work and cemeteries have “become unsafe places to visit as they are crumbling owing to lack of attention from the municipalities”. In short, it is alleged that there has been a complete breakdown in municipal service delivery in these towns.

In response to these perceived failures, ratepayers are withholding property rates that are due to their municipalities and depositing them into designated trust accounts managed by the ratepayers associations. It is estimated that close to R20 million has already been paid into these accounts. In Colesberg, for instance, the Colesberg Residents and Ratepayers Association (CIBBV) has opened such an account into which they deposit the amount owed to the municipality for property rates. At the same time, the CIBBV continues to pay the municipality the component of the fees due for electricity and water supply.

The ratepayers associations have in certain instances ‘taken over’ some of the responsibilities of their municipalities to provide services. In particular, they claim to have undertaken the maintenance and operation of the sewerage systems as well as the cleaning of streets.

The ratepayers associations claim that they are not boycotting taxes. They are rather ‘withholding’ taxes. They argue that there is a huge difference between tax boycotting and tax withholding.

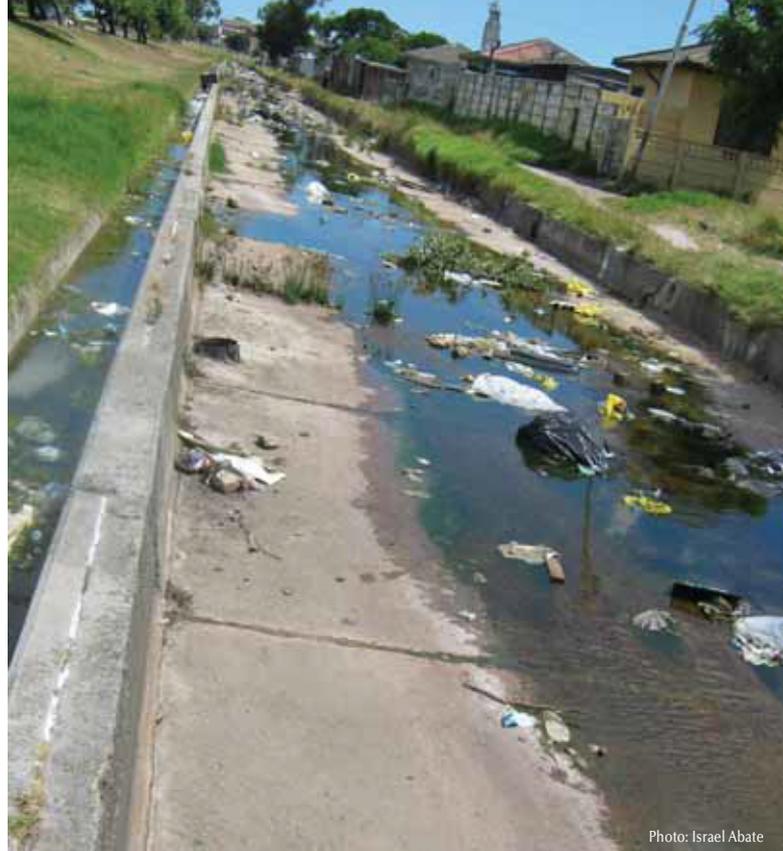


Photo: Israel Abate

They also promise that the tax withholding is only temporary. Once the service delivery problems are resolved, they say, the money will be withdrawn from the trust accounts and paid to their respective municipalities.

Government has, however, urged the communities not to withhold their taxes. The Department of Provincial and Local Government stated that “resorting to protest such as this does nothing but frustrate both ratepayers and municipalities. We especially encourage direct and robust communication rather than resorting to protest such as this.”

Comment

Municipalities have a legal obligation to provide basic services to their residents in an adequate and timely fashion. The failure of municipalities to deliver basic services not only causes immense hardship to the residents of municipalities, but can have a detrimental impact on the social and economic development of these municipal areas. The failure of municipalities to deliver basic services does not, however, warrant the withholding of taxes by communities.

In post-apartheid South Africa, where participatory democracy is entrenched, the Constitutional Court has observed that these forms of protest “have no place in a constitutional state in which the rights of all persons are guaranteed and all have access to the courts to protect their rights”. In short, if citizens are dissatisfied with the way in which matters are being handled by municipalities, they must use the available legal channels to enforce their rights. As Judge Pius Langa has stated,

[i]t is pre-eminently for the courts to grant appropriate relief against any public official, institution or government when there are grievances. It is not for the disgruntled individual to decide what the appropriate relief should be and to combine with others to take it upon himself to punish the government structure by withholding payment which is due.

If citizens take the law into their own hands whenever a dispute arises between themselves and public officials, Langa points out, the result will be “chaos and anarchy”.

The attempt to create a distinction between ‘rates boycotts’ and ‘rates withholding’ is unconvincing. However equitable and attractive the option of ‘rates withholding’ may appear to be, it is an unregulated form of protest and cannot be said to be wholly representative of the views of the communities which these ratepayers associations purport to represent. The fact is that an amount which is due to a democratically elected government body has not been paid at the appropriate time, and such action cannot be justified.

If rates withholding continues, municipalities are entitled to take measures to enforce payment. The question is whether municipalities may, for example, disconnect electricity supply in response to arrears on property rates accounts, especially where electricity accounts are not in arrears.

The Systems Act makes provision for municipalities to consolidate municipal accounts and suspend any service by a municipality as a means of enforcing the payment of any unsettled account. This mechanism can, however, only be used when a municipality has a credit control and debt collection policy which provides for this form of debt collection and which has been duly enacted in a by-law. Municipalities therefore may, for instance, discontinue the electricity supply to those who insist on withholding property rates.

Suspending water provision is, however, more problematic. It is suggested that it should not be suspended to enforce payment, as water is a basic necessity and suspending its supply may result in a human rights violation (see discussion, p 15).

The ratepayers who are involved in disputes with their municipalities argue that they have declared official disputes against their municipalities in accordance with the Systems Act, so the municipalities are not entitled to suspend municipal services against them. The Systems Act, however, only prohibits the suspension of services when there is a dispute “concerning any specific amount claimed by the municipality from that person”. This argument is therefore not tenable. The dispute envisaged in the Systems Act is not a dispute resulting from dissatisfaction with municipal services, but rather pertains to disagreements related to the amounts owed for municipal services or taxes.

These arguments notwithstanding, the fact that communities feel compelled to resort to this form of protest action is an indictment against municipalities on two counts. Firstly, where there is a sustained failure to fulfil basic service delivery obligations, then this amounts to a failed municipality. The extent to which a municipality has completely failed to meet its service delivery obligations, however, has to be evaluated case by case.

Secondly, it is alleged that ratepayers associations have offered to assist municipalities and to work hand in hand with them to find local solutions to service delivery problems, but to no avail. The constitutional framework for developmental local government, as seen in the participatory framework established in the Systems Act, clearly envisions municipalities that are not only rooted in the communities which they serve, but work alongside communities to achieve social and economic development. Where municipalities have failed to take advantage of opportunities and offers of assistance by ratepayers associations, to the detriment of service delivery in the municipal area, then there is much to be concerned about. However, a fine balance must be struck between working hand in hand with communities and being held hostage to their demands.

These arguments notwithstanding, the stand-off between these associations and municipalities is indicative of the extent to which channels of communication have broken down. Inasmuch as the scenes of violent protest that characterised service delivery protests in the period from 2005 to 2007 were a wake-up call to municipalities, this form of protest should also serve as a stark reminder of the need for municipalities to be responsive to the communities which they serve.

Going forward, the preferred way of settling this dispute is to open channels of communication and engage constructively. Provincial governments need to play a particularly important role in brokering a settlement. The effort of the communities in Kroonstad and Bethlehem to resolve the dispute by involving the national and provincial spheres of government sets a good example for communities in other municipalities.



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