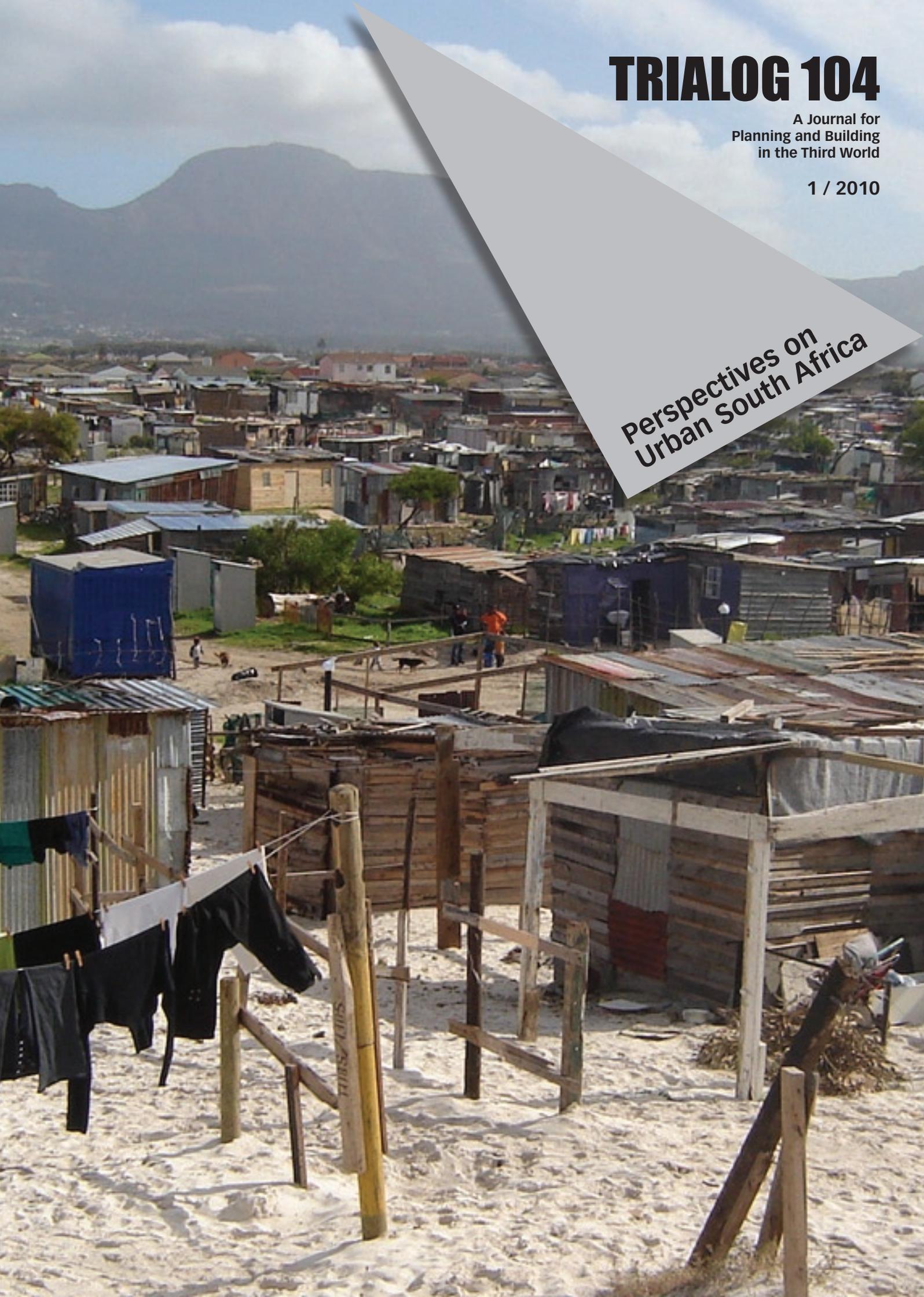


# TRIALOG 104

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# Editorial

2010 berichteten die Medien viel über Südafrika und auch mögliche Auswirkungen der Fußballweltmeisterschaft auf die Stadtentwicklung wurden dabei thematisiert. Fast zehn Jahre nach dem letzten Heft zu Südafrika (Heft 69, Sommer 2001) nimmt TRIALOG dieses kurzzeitige Interesse für das Land am Kap zum Anlass, den Blick nochmals auf die dortige Stadt- und Raumentwicklung zu lenken: welche Fragen werden hier – jenseits der Konjunktur des Großereignisses – derzeit aufgeworfen, welche Themen angeschnitten, welche Herausforderungen gesehen?

**Alison Todes, Catherine Cross, Pieter Kok, Marie Wentzel und Johan van Zyl** untersuchen die bislang ungebrochen dynamische Verstärkung Südafrikas durch innerstädtischen Bevölkerungszuwachs und Zuwanderung, mit deren Folgen Großstädte besser fertig zu werden scheinen als Kleinstädte im ländlichen Raum. Vor dem Hintergrund zunehmender Proteste gegen kommunale Misswirtschaft beleuchtet **Gerhard Kienast** die Situation der Kommunalverwaltungen und bezweifelt, dass derzeitige Reformen in Bezug auf kommunale Versorgung, Finanzmanagement und Neuverteilung der Aufgaben zwischen den Regierungsebenen Erfolg haben können ohne eine transparente Rechenschaftslegung. Aus Sicht des Planungsrechts beschreibt **Stephen Berrisford**, wie widersprüchliche Interpretationen des Eigentumsbegriffs sowie unklare Kompetenzen, die durch überhastete Dezentralisierungsprozesse entstanden sind, eine Reform der noch aus der Apartheidzeit stammenden Raumplanungsgesetze verhindern und somit zur weiteren sozialräumlichen Segregation beitragen. Für das Ideal einer wettbewerbsfähigen Stadt werden informelle Siedlungen oft abgerissen oder rigider Kontrolle unterworfen. **Marie Huchzermeyer** kritisiert, dass trotz vieler Lippenbekenntnisse zum „Recht auf Stadt“ dieses fatale Wettbewerbsparadigma oft nicht in Frage gestellt wird und weist auf den inhärenten Widerspruch zwischen solchen Stadtmarketingkonzepten und einer Stadtreform zugunsten der Benachteiligten hin. **Umut Duyar-Kienast** diskutiert die zukünftige Rolle von Kleinstädten in Südafrika am Beispiel von Stadtverwaltungen des Amathole Distrikts im Ostkap sowie deren Erfahrungen mit lokalen Strategien zur Wirtschafts- und Raumentwicklung. **Joel Bolnick und Benjamin Bradlow** schildern, wie dem Netzwerk Shack/Slum Dwellers International (SDI) angeschlossene Basisgruppen in Südafrika ihre Wohnsituation in Selbsthilfe und ‚informell‘ verbessern, um nicht ewig auf ein Haus des nationalen Wohnbauprogramms zu warten. Trotzdem suchen sie – vor allem bei Siedlungsverbesserungen – den engen Kontakt zur staatlichen Verwaltung. **Moegsien Hendricks, Sabrina Lee und Anzabeth Tonkin** kritisieren, dass steigende Grundstückspreise in lukrativen Lagen zu einer Verdrängung von sozialen Wohnnutzungen und somit zu einer Verstärkung der sozialräumlichen Segregation beitragen. Dem könnte durch eine steuerliche Abschöpfung und Umverteilung des Bodenwertzuwachses entgegengewirkt werden. **Richard Pithouse** bemängelt, dass die Frage nach einer demokratischen, sozial gerechten Stadtentwicklung in Südafrika fast nur auf die technischen Fragen des Hausbaus und der Infrastruktur reduziert und damit entpolitisiert wird. Der Beitrag wird ergänzt von einem eindringlichen Appell von **S’bu Zikode**, Präsident der Sozialbewegung Abahlali baseMjondolo, der betont, dass die Landfrage gerade auch in der Stadt eine politische Frage bleibt. **Kate Tissington** untersucht die Spannungen und Enttäuschungen in der Zusammenarbeit zwischen (Rechtshilfe-)NROs und sozialen Bewegungen und weist – trotz aller Kritik an der dominanten Rolle von NROs – auf die zahlreichen Potenziale in der sich stetig verändernden Beziehungen dieser Akteure hin.

Die größte Herausforderung für ein zunehmend urbanes Südafrika ist die fortbestehende soziale Spaltung, die Kapstadt und Johannesburg das unglückliche Prädikat der Städte mit der extremsten sozialen Kluft weltweit einbringt. Unter diesen Rahmenbedingungen versuchen neue Sozialbewegungen und neue Akteursgeflechte Ansätze zum sozialen Ausgleich zu stärken und zur Verwirklichung des Rechts auf Stadt beizutragen. Dabei geht es nicht um graduelle Verbesserungen sondern um eine substantielle Verringerung der sozialen Kluft und der sozialräumlichen Segregation.

South Africa was given a lot of media attention in 2010, and among other things that received attention was the potential impact of the Football World Cup on urban development. Almost ten years after the last issue on South Africa (Issue 69, Summer 2001), TRIALOG takes this fleeting interest for the country on the Cape as grounds for another look at the urban and regional developments there: beyond the attraction of the major event, what questions are being raised, what subjects are touched upon, and what challenges are being recognised?

**Alison Todes, Catherine Cross, Pieter Kok, Marie Wentzel and Johan van Zyl** examine the hitherto unbroken dynamic urbanisation of South Africa due to urban population growth and migration; large cities seem better able to cope with the consequences and effects than small towns in rural areas. Within the context of increasing protest against municipal mismanagement, **Gerhard Kienast** casts light on the situation of local authorities and questions whether current reforms relating to municipal service provision, financial management and reallocation of tasks between the different levels of government can achieve any success when lacking transparent accountability. **Stephen Berrisford** describes, from the viewpoint of planning law, how contradictory interpretations of the definition of property rights and opaque competencies that were created by rushed decentralisation hamper a reform of land-use and spatial-planning laws that originated in the Apartheid era and thus contribute to further socio-spatial segregation. In pursuit of the ideal of a “competitive city”, informal settlements are often razed or subjected to rigid controls. **Marie Huchzermeyer** takes a critical look at this fatal paradigm of “competitiveness” which, if not questioned, reduces the reference to the “right to the city” to simple lip service. She points out that current concepts of city-marketing are inherently incompatible with a city reform in favour of the disadvantaged. **Umut Duyar-Kienast** discusses the future role of small towns in South Africa using, as example, the municipalities of the Amathole District on the Eastern Cape and their experiences with local economic and regional development strategies. **Joel Bolnick and Benjamin Bradlow** describe how the grassroots groups in South Africa connected to the network Shack/Slum Dwellers International (SDI) “informally” improve their housing situation through self-help so as not to have to forever wait for a house from the national housing programme. Nonetheless, they seek – particularly when it comes to settlement upgrading – close contacts to the state administration. **Moegsien Hendricks, Sabrina Lee and Anzabeth Tonkin** argue that rising land prices in lucrative areas are leading to a displacement of social housing and thus to an increase in socio-spatial segregation. This could be remedied through a taxing and redistribution of the land value increases. **Richard Pithouse** complains that the question of a democratic, socially just urban development in South Africa is reduced almost entirely to the technical aspects of housing and infrastructure “delivery”, and is thus depoliticised. His contribution is complemented with an appeal from **S’bu Zikode**, the President of the social movement Abahlali baseMjondolo, who stresses that the issue of land remains a political issue, particularly in the city. **Kate Tissington** examines the tensions and frustrations found in the co-operations between (legal aid) NGOs and social movements and points out – despite all the criticism of the dominant role of NGOs – the numerous opportunities innate to the continually changing relationships of these players.

The biggest challenge faced by an increasingly urban South Africa is the persistent social divisions that give Cape Town and Johannesburg the unfortunate position of being the most extremely socially divided cities in the world. Under these conditions, new social movements and new constellations between actors seek approaches for strengthening social equality and the realisation of the right to the city. It is not about a gradual improvement, but rather about a substantial reduction of the social divide and socio-spatial segregation.

Umut Duyar-Kienast, Gerhard Kienast, Astrid Ley, Klaus Teschner

## Perspectives on Urban South Africa

Volume Editors: Umut Duyar-Kienast, Gerhard Kienast, Astrid Ley, Klaus Teschner

### Inhalt / Table of contents

- 4     **South African Urbanisation after Apartheid**  
Alison Todes, Catherine Cross, Pieter Kok, Marie Wentzel and Johan van Zyl
- 9     **The Crisis of Local Governance –  
Can South Africa’s Municipalities Turn Things Around?**  
Gerhard Kienast
- 18    **Unravelling Apartheid Spatial Planning Legislation in South Africa:  
A Case Study**  
Stephen Berrisford
- 25    **The Policy Context for Informal Settlements:  
Competitiveness, Slum Eradication and a Right to the City?**  
Marie Huchzermeyer
- 29    **The Role of Small Towns in South Africa and their Regeneration:  
The Case of the Amathole District in the Eastern Cape**  
Umut Duyar-Kienast
- 35    **“Rather a Better Shack now than Wait Twenty Years for a Formal House” –  
Shack Dwellers International and Informal Settlement Upgrading in South Africa**  
Joel Bolnick and Benjamin Bradlow
- 42    **Value Capture – Fiscal and Regulatory Instruments for Pro-Poor  
Urban Development**  
Moegsien Hendricks, Sabrina Lee and Anzabeth Tonkin
- 48    **Local Despotisms and the Limits of the Discourse of "Delivery" in  
South Africa**  
Richard Pithouse
- 54    **Land is a Political Question**  
S’bu Zikode
- 56    **Between Praxis and Paralysis:  
The Relationships Between Legal NGOs and Social Movements**  
Kate Tissington
- 64    **Veranstaltungen / Forthcoming Events**

# South African Urbanisation after Apartheid

Alison Todes, Catherine Cross, Pieter Kok, Marie Wentzel and Johan van Zyl

## **Verstädterungstendenzen in Südafrika nach dem Ende der Apartheid**

Südafrikas Bevölkerung strömt weiterhin in die Städte, die ein ausgeprägtes Wirtschaftswachstum verzeichnen. Vor allem betrifft dies die Provinz Gauteng, das ökonomische Zentrum des Landes. Allerdings sind nicht alle Wanderungsbewegungen durch Wirtschaftswachstum induziert. Es gibt auch nicht zwangsläufig eine Abwanderung aus Gebieten mit Raten hoher Arbeitslosigkeit, Armut und defizitärer Versorgung. Hauptquelle der Migration sind die früheren Homelands, wo sich die Landwirtschaft weiter im Niedergang befindet und Haushaltseinkommen im wesentlichen aus Sozialtransfers, Rücküberweisungen städtischer Verwandter und von Arbeitspendlern bestritten werden. Die Landreform stellt bisher keine Alternative zur Abwanderung dar. Gleichzeitig verlassen immer noch viele Menschen die kommerziellen Farmen, oft nach gezielten Vertreibungen. Auch Wanderarbeit ist noch gang und gäbe, hat aber ihre Form verändert. Internationale Migration gewinnt an Bedeutung und diese Zuwanderung konzentriert sich ebenfalls auf die Städte. Hauptursache des Stadtwachstums ist aber nach wie vor die natürliche Bevölkerungszunahme, die zusammen mit abnehmenden Haushaltsgrößen zu einem wachsenden Flächenbedarf führt. Zwar setzt diese Entwicklung die Großstädte unter Druck; sie haben aber allemal bessere Voraussetzungen mit Zuwanderung und Bevölkerungswachstum fertig zu werden als die Kleinstädte und Stadtverwaltungen im ländlichen Raum.

Under apartheid, the movement and settlement of the majority black people in South Africa was highly constrained. A complex web of policies attempted to retain large parts of the black population within 'homeland' areas reserved for their occupation, and to limit their movement to the cities. These homeland areas however

were mainly spatially marginal and poor thus policies were unable to contain movement to cities over the long term, and by the mid 1980s they had broken down as people streamed to cities. Nevertheless, the spatial disjunctures at national and regional scales between where large numbers of black people live, and places of growth

►  
**Figure 1:** Densely-built lower middle class suburb in Cape Town, South Africa's fastest growing metropolitan region. Photo: Umut Duyar-Kienast





Figure 2: South Africa: provinces, major cities and former homelands. Source: authors

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and employment, have proved remarkably persistent, many years after apartheid. This paper draws on existing studies to provide an overview of the main urbanisation trends post-apartheid, and to explain some of the key underlying dynamics.

**Urbanisation trends post-apartheid**

By the time the new post-apartheid government was installed in 1994, South Africa was already predominantly urban, with 55.1% living in urban areas in 1996 (Stats SA, 2003). However if the larger of the dense rural settlements created through apartheid resettlement and betterment policies are taken into account, some 64.8% of the population could have been seen as urban 1996 (Stats SA, 2003), and this number rose to 68% by 2001. Yet even beyond these definitions, the agrarian base of rural areas within the former homelands is limited, with households relying largely on incomes from social grants, remittances and commuting. Thus the distinction between rural and urban in South Africa is complex and open to contestation.

Perhaps the most important trend in the post-apartheid era has been the movement to cities experiencing economic growth. The largest metropolitan areas have grown fastest, especially in Gauteng (Van Huyssteen et al, 2009), the country's economic heartland (see map). Some of the other large cities have also grown rapidly, but patterns are uneven across places (SACN, 2004). There has also been out-migration from the Eastern Cape and Northern Cape, which are experiencing economic decline, to the Western Cape and the north-eastern provinces (parts of KwaZulu-Natal, Mpumalanga and Limpopo). While many people moved to small towns, there are strong movements onwards from there into the metropolitan areas, cities and large towns (Todes et al, 2010).

The post-apartheid growth rates of cities however have not been particularly rapid. SACN (2004) shows that urbanisation rates were highest in the 1946-1970 period, and progressively slowed thereafter, although some of the largest cities – particularly Johannesburg – grew faster in the 1996-2001 period than previously. This decline mirrors national population growth rates. As is the case internationally (United Nations 2004), city growth rates are predominantly the result of natural increase, even in Gauteng (Landau and Gindrey, 2008).

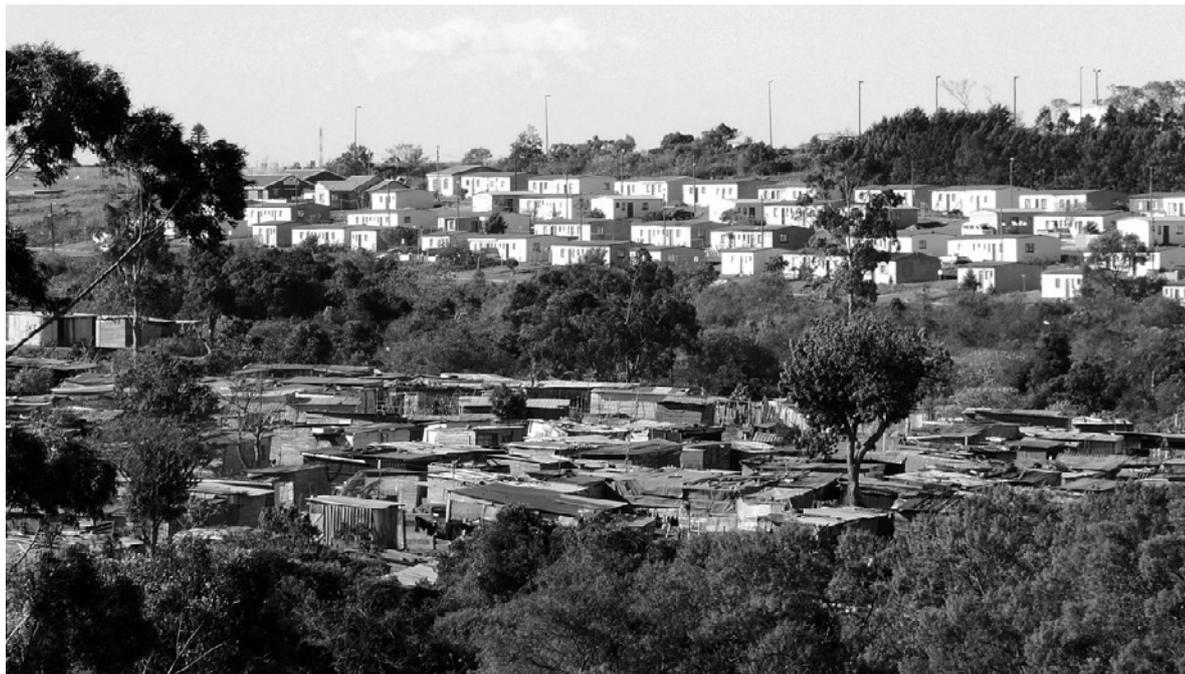
While the predominant trend is towards areas of economic growth, not all migration follows growth. There is considerable movement within and among rural areas, small towns and cities, sometimes in search of housing or services (Cross, 2001). Nor is there necessarily out-migration from areas with high levels of unemployment, poverty or lack of services (Kok et al, 2003). The following sections explore the dynamics underlying these trends.

**Conditions in Rural Areas**

The rural sector of former homelands is the main source of migration into the major metros. For the last forty years, household farming has been in severe decline (Cross et al. 1999). In many areas, rural families have now given up on any cultivation option, and are relying entirely on the cash economy, with social grants in many ways substituting for cultivation. With remittances falling, home farming in collapse and grants rising as a share of household income, the rural household economy is now a dependent one.

There are a number of reasons for this slow crash in subsistence farming, with poor market access, climate hazards and environmental degradation in the lead. Population pressure, land shortages and institutional problems are also critical (Andrew et al, 2003). There are some

**Figure 3:** In the foreground shack dwellings, in the back a typical example of government's mass housing programmes (Buffalo City Municipality). Photo: Gerhard Kienast



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successful initiatives to promote agricultural production in these areas, but they are relatively limited in scale. Many schemes do not go beyond a survivalist level in practice, despite their intentions. Employment declines in some key industries such as mining have reduced income sources for rural households, resulting in out-migration, even to small towns with limited employment prospects (Bank and Minkley 2005). However while poverty pushes people to leave their home communities, the very poor cannot migrate in large numbers, since they lack the resources to mobilize even medium-distance moves (Cross, Kok, Van Zyl et al, 2005).

Land reform has not been an alternative to urban migration. While delivery has improved since 2002, it is way below government's formal intentions, with only 5.7% of land redistributed by 2008 compared to a target of 30% by 2014 (Atkinson 2010). It is widely agreed that it has not created the expected livelihoods. In many cases, production has declined and households revert to subsistence farming practices, despite the intentions of policy-makers. Agriculture is instead used to supplement off-farm incomes. Poor skills and capacity, lack of post-settlement support and inadequate land are often seen as the key problems (Hall 2004).

Further displacement of black people off commercial farms has been another important trend, with one study suggesting figures as high as 2.4 million (of which 942,303 were evictions) between 1994 and 2004 (Wegerif et al. 2005), although the scale of these claims is contested. Those displaced have settled in and around urban areas, often in small towns (Atkinson, 2007), many of which do not have the capacity or revenue to absorb them (CDE, 2005). According to Wegerif et al. (2005), some two-thirds of farm evictions are work-related, and are linked to declining agricultural employment on farms and its casualisation in the face of growing competitive pressures resulting from the deregulation of South Africa's agricultural sector. The introduction of minimum wages, legislation granting tenure rights to longstanding farm workers, the availability of housing in small towns, and fear of crime

have also resulted in evictions (Wegerif et al, 2005). Some farm workers however choose to live in town as facilities are accessible and they have autonomy, even if costs are higher (Atkinson 2007).

There is a lack of recent studies on the 'displaced urban settlements' - the dense rural settlements created through apartheid government resettlement programmes. Most were spatially marginal and relied on migrant remittances or commuting. However studies in the late 1990s showed that these settlements had not disappeared - although some experienced out-migration - in part as a consequence of existing social networks and better housing than in cities (CDE, 1998).

#### **Circular migration**

Despite assumptions that circular migration would disappear with the ending of apartheid, this does not appear to have occurred (Posel, 2003). Under apartheid the migrant labour system allowed workers to migrate on a temporary basis to cities, leaving families within homeland areas. Although old forms of migrant labour have declined, new forms have emerged as circular migrants, many of whom are now women, take on insecure and poorly paid work as informal traders, domestic workers, security guards and the like (Cox et al, 2004). Circular migration allows families retain the security and social networks they have in rural areas, and to diversify their income sources. Most circular migrants are poor, but the poorest cannot migrate and are often trapped in places offering limited economic opportunities.

#### **International Migration**

The post-apartheid period has seen a significant growth in migration from Africa as well as elsewhere as political and economic refugees, and those seeking better economic conditions have moved to South Africa, particularly to the major cities. South Africa's dominant economic position in the region has made the country a preferred destination. Established social networks help to facilitate migration



◀ **Figure 4:** Bustling taxi rank at Mdantsane (Buffalo City Municipality): South African township dwellers have to travel long distances to their places of work in the main cities. Photo: Patrick Fallis

**1** The nine largest South African cities (ranked in terms of population size) are Johannesburg, Cape Town, eThekweni (Durban), Ekurhuleni (an agglomeration of more than twenty cities, towns and townships on the East Rand), Tshwane (Pretoria), Nelson Mandela Metro (Port Elizabeth), Buffalo City (incl. East London and King Williams Town), Mangaung (Bloemfontein) and Msunduzi (Pietermaritzburg).

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to South Africa. The widespread xenophobic attacks in 2008 on foreign nationals and ethnic minorities leaving 62 people dead (Polzer 2010), however, may change the attractiveness of South Africa to migrants.

Figures on the number of international migrants in South Africa are uncertain. The 2007 Community Survey (Stats SA 2007) found that 2.7% (1,268,000) of South Africa's population was born outside the country, not much more than in 2001. About half (46.8%) were located in Gauteng and 13.4% in the Western Cape. These figures, however, are unlikely to include undocumented migrants for whom no reliable estimates exist. In January 2010 South Africa hosted a total of 357,768 registered refugees and asylum-seekers (UNHCR 2010), who are largely accommodated in the major cities. In 2008/2009, 280,837 illegal foreigners were deported (DHA, 2009), but these figures include multiple offenders and exclude those who are never apprehended (Landau 2007). Zimbabweans currently make up the largest group of international migrants in South

Africa. In 2009 the South African government introduced a moratorium on the deportation of Zimbabweans, and committed to assist undocumented Zimbabweans in South Africa to access legal documentation (IRIN, 2010), but deportations will resume in 2011.

**Urban conditions**

The South African economy is concentrated in a few large cities and particularly in Gauteng and the other major metropolitan areas. Around 60% of output (reflected in Gross Value Added (GVA)) derives from the nine largest cities<sup>1</sup> (see Table 1). The nine largest cities account for over half of employment (51.6%), with the metropolitan areas in Gauteng alone accounting for 25.7%. This level of concentration has been evident for decades, but has strengthened since 1996 as growth has focused on the tertiary sector, and as low-waged industries have declined. Economic growth in the post-apartheid period has been particularly focused on Gauteng (SACN, 2006). It is

**Table 1**  
**Population Growth Rates and Economic Significance of the Nine Largest Cities, 1996–2007**

Indicator	Data	Johannesburg	Cape Town	eThekweni	Ekurhuleni	Tshwane	Nelson Mandela	Buffalo City	Mangaung	Msunduzi
Population (Community Survey)	2007	3 888 180	3 497 097	3 468 086	2 724 229	2 345 908	1 050 930	724 312	752 906	616 730
% Contribution to national economic output	2009	13.7%	11.0%	8.7%	8.7%	9.0%	2.5%	1.7%	1.8%	1.4%
% Contribution to national employment	2009	11.23%	9.29%	8.80%	7.33%	7.10%	2.61%	1.92%	1.95%	1.40%
Average annual population growth rate	2001–2007	3.16%	3.20%	1.94%	1.57%	2.81%	0.73%	0.52%	2.60%	1.82%
	1996–2001	4.10%	2.45%	2.35%	4.12%	3.37%	0.73%	0.57%	1.35%	1.18%

Source: Todes et al (2010); SACN (2004, 2006); Statistics South Africa (2007); Quantec, *EasyData* RSA Regional Indicators Database

(1). Names reflected here are those of the municipalities covering these areas. Common place names where these are different from municipal names are: eThekweni (Durban); Ekurhuleni (East Rand, including several towns); Tshwane (Pretoria); Nelson Mandela (Port Elizabeth); Buffalo City (East London); Mangaung (Bloemfontein); Msunduzi (Pietermaritzburg)

**Figure 5:** Amathole village in the former Ciskei homeland: Betterment planning of the 1960s forced rural population into villages and resulted in further de-agrarization of the black population. Photo: Florian Kopp/DED



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not surprising then that migration has been so oriented to major cities, and particularly on Gauteng.

Pressures experienced by cities for land and services are also the consequence of declining household size (Van Zyl et al, 2008). At national level, household size has declined from 4.5 in 1996 down to 4.3 in 2005, thereby increasing the number of households. The decline in household size is more pronounced in cities. Poverty is also emerging from within cities as households split. For instance, youth migration has emerged as an important dynamic in the post-apartheid era as youth are now able to move independently (Cross 2005). Youth who migrate are on a different circuit from adult families, moving through temporary forms of accommodation. The child support grant may also be allowing households to split. Shrinking households are often associated with poverty and with more insecure accommodation (Cross, Kok, Wentzel et al. 2005). People with formal housing may be leaking back into poverty pockets in the shack settlements as a

consequence of affordability, although the significance of this trend is unknown.

**Conclusion**

This paper has shown that the major cities have experienced the most growth post-apartheid – as a consequence of both economic growth there and conditions in rural areas. Circular migration is common, but some are unable to migrate. International migration is increasingly important and is focused on cities, but natural increase is still the most important source of urban growth, with shrinking households contributing to the lateral spread of cities. Although these trends put pressure on cities, they are in a better position to respond than smaller municipalities, which are generally less well resourced. Nevertheless, the cities will have to confront a range of challenges, including the need to accommodate growth in contexts where existing bulk infrastructure is already reaching the limits of its capacity.

# The Crisis of Local Governance – Can South Africa's Municipalities Turn Things Around?

Gerhard Kienast

## **Lokale Regierungsführung in Schwierigkeiten – Schaffen Südafrikas Kommunen die Wende?**

Seit Jahren kommt es in Südafrikas Kommunen immer wieder zu Aufständen. Anlass sind meist mangelhafte Dienstleistungen, die Arroganz lokaler Amtsträger und Korruption bei öffentlichen Ausschreibungen. Nach dem Amtsantritt Präsident Zumas im Mai 2009 erreichten die lokalen Proteste einen neuen Höhepunkt. Nach einer landesweiten Bestandsaufnahme zeigte sich die neue Regierung selbst schockiert vom Ausmaß der Misswirtschaft. Als Ursachen gelten unzureichend ausgebildetes Führungspersonal, politische Einflussnahme und fehlende Rechenschaftslegung. Allerdings wird auch eingestanden, dass man den Kommunen über Jahre hinweg immer mehr Aufgaben zugemutet hat, denen weder die Mittelzuweisung noch die überörtliche Planung gerecht wurden. Gerade ländliche Gemeinden können die vom Staat garantierte Grundversorgung mit Wasser, sanitären Einrichtungen und Strom nicht gewährleisten. Ende 2009 erarbeitete die Nationalregierung ein Strategiepapier um eine kommunalpolitische „Wende“ einzuleiten. Danach sollen sich alle Kommunen auf Versorgungsziele festlegen und ihr Finanzmanagement entscheidend verbessern. Zugleich ist das zuständige nationale Ministerium mit den Provinzen eine entsprechende Zielvereinbarung eingegangen. Eine grundlegende Neuverteilung der Aufgaben zwischen den Regierungsebenen gilt als notwendig. Wie diese aussehen wird, ist aber noch ungewiss. Eine erste Gesetzesänderung soll die Verwaltung der Gemeinden professionalisieren und den als schädlich erkannten Parteeinfluss zurückdrängen. Solange es aber an Mechanismen für eine transparente Rechenschaftslegung gegenüber den Bürgern fehlt, ist weder mit einer Effizienzsteigerung der Kommunalverwaltung noch mit einem Ende der Proteste zu rechnen.

Since 2004 a wave of popular protest has drawn attention to the crisis of South African municipalities. On the peripheries of Johannesburg and Cape Town, in the Free State towns of Vrede, Harrismith and Ladybrand, in Durban and Harding (KwaZulu-Natal), Delmas and Secunda (Mpumalanga), the townships of Port Elizabeth and in many other places, residents have taken to the street to demand that councillors be sacked for the sub-standard services provided, to denounce corruption and nepotism, and to denounce the poor workmanship

of RDP houses or their "improper" allocation. Many protests were drastic and some violent: tyres were burnt; buckets of rubbish were emptied on the street; highways were blocked; and in some cases protesters burned down the houses of municipal councillors. Often the situation was exacerbated by the government's responses, as was the case in Delmas where police fired randomly at residents protesting against an outbreak of typhoid fever that was probably a result of deficient sanitation infrastructure.

**Figures 1&2:** Makeshift roadblocks with burning tires, a common feature of community protest in South African townships. Photos: Ella von der Haide



### Power struggles within the ruling party and their fallout on public service

Ever since the African National Congress (ANC) government abandoned its original Reconstruction and Development Programme (RDP) in order to follow the market-liberal Growth, Employment and Redistribution strategy (GEAR) in 1996, there has been a lot of internal pressure within the ruling party and its alliance with the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). For a long time, contradictions were kept in check by the former party leader and President Thabo Mbeki who could rely on the strict hierarchy and strong party discipline.

Things only changed in 2005, when Mbeki fired his deputy Jacob Zuma who was faced with corruption charges. Leading union members and communists rallied to Zuma's support, and so did Zulu traditionalists and the nationalist ANC Youth League. They started to engage President Mbeki and his followers in a power struggle. As Zuma declared his candidacy for the ANC presidency, the party became divided into supporters of either camp.

The internal power struggle had a massive influence on the everyday routines and social relations within government institutions. Arguably, ANC infighting had the most devastating effect on local municipalities. However, inner-party contestation did not stop when Jacob Zuma dethroned Thabo Mbeki as party president at the ANC's national conference in December 2007.

After the party's new leadership had forced President Mbeki to resign in September 2008, disgruntled members, including many party leaders, left the ANC to form the oppositional Congress of the People (COPE). While the new party was able to claim only 7.4% of the vote in the April 2009 national elections, the split led to the paralysis of several municipalities where council members have joined COPE or were suspected to support the party in secret.<sup>1</sup> Since councillors are elected on the basis of party nominations, they have to give up their mandates if they leave their party or are expelled.

Despite many appeals to reconciliation, national and provincial ANC leaders have been unable to reign in local power struggles.

While cautioning that only in-depth individual case studies would do justice to the complexities of mass protests, Atkinson (2007: 53) proposed three main causes for the phenomena: "municipal ineffectiveness in service delivery, the poor responsiveness of municipalities to citizens' grievances, and the conspicuous consumption entailed by a culture of self-enrichment on the part of municipal councillors and staff". Atkinson also stressed that local protests indicate failures of the entire intergovernmental system. Criticising a "creeping decentralisation", which allocated more and more functions to municipalities, with little support by sectoral departments, she concluded:

1

A case in point is the Amahlathi Municipality in the Eastern Cape, where more than half of the council members were hauled before ANC disciplinary hearings.

2

The South African Constitution of 1996 granted local governments executive authority over a range of functions, including electricity and gas reticulation, potable water supply and sewage disposal, public transport and municipal planning. Additionally, national and provincial governments are obliged to delegate other powers and functions to municipalities, "if (a) that matter would most effectively be administered locally; and (b) the municipality has the capacity to administer it" (Section 156 (4)).

3

Previously known as the Department of Provincial and Local Government (DPLG).

"Municipal governments are bearing the brunt of state failure regarding the policies that actually have nothing to do with them" (ibid.).<sup>2</sup>

After two years of social protests, municipal elections in March 2006 assumed the character of a referendum on service delivery. However, contrary to public expectations, the protests were not signals of a systematic revolt against the ANC: the support for the ANC even increased. For Atkinson (2007: 54), this was a sign that "elections do not function as 'quality control mechanisms'". In contrast, Booysen (2007) argued that "the grass roots were involved in a multifaceted series of direct engagements with their party to simultaneously keep it in power but also pressure it for advances in service delivery".

Although imprecise statistics by the Incident Registration Information System of the South African police indicate that "in an average week over the period 2004 to 2008 there were more than ten protests involving 'unrest'" (Alexander 2010: 27), data collected by a private research company, which only covers "major protests" around service delivery, indicates that an initial peak in 2005 was followed by a lull in 2006. Alexander (ibid.: 28) has explored the correlation between protest action and political events: "The implication is that, for a period, activists put their energies into the elections, and/or that broader populations placed hope in the possibility of electoral politics addressing their concerns. (...) The figures for 2009 are staggering, (...) according to this source, there were more service delivery protests in the first seven months of the Zuma administration than in the last three years of the Mbeki administration. Unlike the lull that followed the 2006 elections, the 2009 election was followed by a storm."



**Figure 3:** Shack dwellers affiliated to the Western Cape Anti-Eviction Campaign demand dignified housing (July 2005). Photo: Ella von der Haide

The author argues that "it is reasonable to describe the phenomenon as a rebellion of the poor". It must be noted, however, that protests did not happen in the poorest parts of the country, notably the rural areas. It is "comparative poverty" and a sense of injustice, being subject to the worst service delivery in the face of individual enrichment, which drives people to protest. While the raised issues haven't changed much since the Mbeki era – inadequate service delivery and lack of accountability by local councillors – "a significant difference is that the new government has greater legitimacy. Ironically, perhaps, this may have encouraged a heightened level of protest, with people believing that Zuma is more likely to address their demands" (Alexander 2010: 37).

### ***Fleeing forward – from a "state of paralysis" to a "turnaround strategy"***

In May 2009, Jacob Zuma reorganised the government by introducing two new ministries – one for national planning; one for performance management, monitoring and evaluation – indicating a desire to "strengthen our ability to co-operate across the three levels of government and work as a single delivery machine" (The Presidency, 2009).

In the midst of angry community protest, the crisis of local government could no longer be ignored. Sicelo Shiceka, Minister of the Department of Cooperative Governance and Traditional Affairs (CoGTA)<sup>3</sup>, initiated a country-wide assessment of municipalities, vowing to provide "provincialised hands-on support". The results of the fact-finding missions were compiled in a national State of Local Government Report, covering problems of "governance", "service delivery & infrastructure", "finance" and "labour matters", which were described with frankness hitherto unheard of from official sources (CoGTA, 2009).<sup>4</sup> It was launched in October 2009 at an unprecedented meeting chaired by President Zuma that included mayors and municipal managers of all South African municipalities as well as Zuma's entire Cabinet. Bringing home central messages of the report, the President announced a Turnaround Strategy for Local Government that would soon follow.

### ***Troubled governance – lack of accountability, lack of skills and political interference<sup>5</sup>***

Analysing what the Minister called the "state of paralysis and dysfunction" of South African municipalities, CoGTA's report tries to distinguish between "problem statements (symptoms)" and "root causes". For governance alone, nine problem areas and 49 causal factors were pointed out.

Quite realistically, "a lack of citizen confidence and trust in the system" (p. 11) and an "unresponsive government" (p. 72) are seen as main drivers of community protests. Yet, the analysis of "local democracy" is limited to ward committees,<sup>6</sup> community development workers (CDWs), and traditional leaders. CDWs are employed by the government to provide the public with information on municipal services and to assist residents in accessing these. Hence, they may improve communication but cannot be expected to contribute to democratic decision-making. As for ward committees, the report states that their "functionality and effectiveness (...) is a matter of

serious concern" (p. 13). Ward councillors are seen as either unwilling or unable to organise proper consultation. Thus, ward issues are rarely considered in planning and programme implementation.

The authors of the report seem shocked that "A culture of patronage and nepotism is now so widespread in many municipalities that the formal municipal accountability system is ineffective and inaccessible to many citizens" (11).

One of the underlying problems detected is that there are "no clear distinctions between councils and administrations" (72). "Deployment (of officials) and interference by political parties" leads to contestation between elected leaders and key figures of the administration. Related problems are "irregular and un-procedural suspensions, dismissals and disciplinary hearings" (73).

Another main factor undermining the administration is lack of human capacity. High vacancy rates, even amongst senior managers, are a common phenomenon. Attracting qualified and experienced professionals is especially difficult outside of urban areas.

Similar problems seem to cripple the provincial departments responsible for local government. They have been found to be "under-resourced, poorly structured and capacitated, and often lacking a core focus on their oversight and governance mandates" (19).

### ***Basic services and development planning – spanners in the works of the delivery machine***

The lack of infrastructure in rural areas and the proliferation of informal settlements in urban areas are seen as "the two main obstacles to accelerating basic services" (35). According to 2009 figures, more than 1 million households have not yet received what the government considers "a basic level of water service": piped water within 200 metres of their homes. More than 3 million households are considered part of the "sanitation backlog", i.e. they rely on buckets or pit latrines without ventilation. More than a quarter of South Africans (3,365,644 households) are not yet connected to the electricity grid. More than 40% (almost 5 million households) cannot count on "adequate refuse removal service", i.e. removal at least once a week. The number of households in informal housing is estimated at 1,240,000 (49).<sup>7</sup>

The report stresses that solving these problems is beyond the institutional and fiscal capabilities of municipalities and requires a "whole-of-government response" (37). However, "the gap between the ideals of intergovernmental coordination and the realities on the ground is fundamental" (53). Municipal Integrated Development Plans (IDPs) were introduced to coordinate infrastructure development, but in many cases they have lacked effective implementation because government departments ignored local planning.<sup>8</sup> According to the Municipal Structures Act, districts have the role to facilitate development but "in reality (this is) a haphazard arrangement" (35).<sup>9</sup> More recently, Provincial Growth and Development Strategies were developed. Yet, since they have no legal basis there are no consequences for not engaging in regional planning. Given that there is no alignment between plans

**4** In June 2009, the Minister made astounding revelations about his encounters in the North West Province: "If the North West is indicative, in any way, of what is happening in our municipalities in the other eight provinces then we need to declare a national state of emergency on local government in this country," he said (Mail & Guardian 10.06. 2009).

**5** Unless stated otherwise, all quotations included in the following chapters are taken from CoGTA's State of Local Government Report (2009).

**6** Ward committees are supposed to provide a link between the community and the municipal council. They consist of the ward councillor and up to 10 members of the community who receive no remuneration, except for out-of-pocket expenses. It is left to municipal councils to regulate the procedure of ward committee elections. The Municipal Structures Act only requires "for women to be equitably represented (...) and for a diversity of interests in the ward to be represented".

**7** The authors of the State of Local Government Report have qualified this figure, stating that "the National Department of Housing is currently in the process of assisting Provincial Housing Departments with the compilation of a demand database" (CoGTA 2009: 49).

**8** Integrated development planning (IDP) is linked to the municipal council's five-year term of office. According to Rauch (2002: 155f.), it should "serve as a basis for decisions on municipal and sector budgets and investment programmes, on institutional and administrative reorganisation, on municipal economic programmes and on land-use management".

**9** Post-apartheid legislation has created three categories of municipalities: Metropolitan municipalities (category A), covering the largest cities, have exclusive authority within their boundaries. Local municipalities (category B) fall under district municipalities (category C) with whom they share authority. Only sparsely populated areas, such as game parks, are governed directly by districts.

**10**

For several years this was highlighted by the National Treasury and the Auditor-General. For the year ended in 2008, 152 of the 283 municipalities obtained either disclaimers, qualified or adverse opinions (55).

**11**

“Socio-economic vulnerability” is understood as the combination of weak local economies and high unemployment rates. Indicators for “institutional vulnerability” include the (lack of) compliance with legally prescribed management mechanisms, the fiscal capacity and debtor levels, as well as audit opinions received.

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**Table 1:** Location of services and performance results according to municipal classification. Source: COGTA (2009a) Local Government Turnaround Strategy

developed at different levels, CoGTA calls for “a greater focus on the national setting of milestones and targets, (... and) a more institutionalised system for a workable integrated development plan for the nation” (36).

**Fiscal dilemma – unfunded mandates, a culture of non-payment and accounting standards**

By 2009, the majority of South Africa’s municipalities were weighed down by poor financial management, insufficient revenue generation and, consequently, increasing grant dependency. Some of the fiscal challenges are due to the socioeconomic inequality inherited from apartheid. Of course, this requires redistribution across municipal boundaries.

CoGTA concedes that the situation is aggravated by unfunded mandates such as the maintenance of bulk infrastructure and health services; inadequate debt collection systems; the inability to implement the Municipal Property Rates Act, which requires sophisticated property valuation; the inability to manage indigent registers (listing those who are entitled to free basic services); and last but not least, fraud and corruption (74).

Between 2003/04 and 2009/10, South African municipalities have become increasingly dependent on government grants, namely the so-called Equitable Share, an unconditional allocation that is intended to fund a range of municipal activities, although national free-service levels are the main purpose. By 2007/08, 57 municipalities received more than 75% of their revenue from national transfers (59). At the same time, at least 85 municipalities had acquired debtor levels higher than 50% of own revenue. This is due to inadequate debt collections, a high level of indigents and a “culture of non-payment”. According to CoGTA, “this renders the majority of local municipalities financially not viable and unable to upgrade and maintain infrastructure” (61).

An underlying problem is the municipalities’ inability to accurately plan and spend their budgets, as well as to prepare proper financial statements.<sup>10</sup> CoGTA has attributed this failure to lack of capacity; lack of financial controls, which invite abuse and fraudulent activity; and to “unrealistic” accounting standards (74).

**No more one size fits all – different treatment for vulnerable municipalities**

One of the main realisations of the State of Local Government Report is that municipalities differ widely in terms of needs and capacity and that “the assignment of powers and functions, and many other governance agreements, such as integrated development planning and financial reporting, did not take into account (those differences)” (29).

Previous categorisation merely distinguished municipalities according to population figures, percentage of urbanisation and the size of municipal budgets. Now, a new classification based on socio-economic and institutional vulnerability has been introduced.<sup>11</sup> In result, local municipalities are grouped into four classes described as (1) “most vulnerable”, (2) “second most vulnerable”, (3) “second highest performing” and (4) “highest performing” (see table 1).

Not surprisingly, most of the municipalities falling within the lowest quarter cover areas previously located in the apartheid Bantustans. Approximately half of the municipalities of the Eastern Cape, half of KwaZulu-Natal, half of Limpopo and 10% of the municipalities of the North West Province are in this category (27).

Consequently, the report argues that “rural municipalities in former ‘homeland’ areas for example, need to be released from the complexities of compliance with an integrated development plan that is way beyond their capacity to implement” (53).

MIIF (Municipal Infrastructure Investment Framework) Classification	No. of Municipalities	Total no. of households	GVA (2004) per household [South African Rand]	Universal household access to basic services 2007				Adverse audit opinions 2007/08	Disclaimer audit opinions 2007/08	Audit reports not submitted 2007/08	COGTA Municipal Spatial Classification			
				> 90%	60 – 89%	30 – 59%	< 30%				Class 1	Class 2	Class 3	Class 4
<b>A</b>	6	4,714,021	154,000	1	5	0	0	0	0	0	0	0	0	6
<b>B1</b>	21	2,207,005	103,000	1	13	5	2	0	6	2	0	0	7	14
<b>B2</b>	29	1,095,454	78,000	3	13	10	3	1	6	5	0	4	8	17
<b>B3</b>	111	1,605,681	70,000	4	53	34	20	4	39	19	7	34	43	27
<b>B4</b>	70	2,878,449	27,000	0	0	0	70	3	25	8	50	20	0	0
<b>C1</b>	25	3,837,597						0	3	1	1	2	10	12
<b>C2</b>	21	3,948,992						0	6	4	11	9	1	0
<b>Grand Total</b>	<b>283</b>	<b>12,500,610</b>		<b>9</b>	<b>84</b>	<b>49</b>	<b>95</b>	<b>8</b>	<b>85</b>	<b>39</b>	<b>69</b>	<b>69</b>	<b>69</b>	<b>76</b>

- A: Metropolitan Municipalities (with populations over 1 million)
- B1: Local Municipalities with large budgets and containing secondary cities
- B2: Local Municipalities with a large town as a core
- B3: Local Municipalities with small towns, with relatively small population and significant proportion of urban population but with no large town as a core
- B4: Local Municipalities which are mainly rural with communal tenure and with, at most, one or two small towns in their area
- C1: District Municipalities which are not water service authorities
- C2: District Municipalities which are water service authorities
- GVA Gross Value Added

## The Local Government Turnaround Strategy – a trouble-shooting agenda

Responding to community protest, CoGTA's Local Government Turnaround Strategy (LGTAS) aims "to restore the confidence of our people" (CoGTA 2009a:3). It tries to calm the waves by assuring that the "overall architecture of local government is still sound. (...) Current problems must be seen as part of an effort to learn and correct as we continue with implementation" (ibid: 5). The slogan "local government is everyone's business" evokes the responsibilities of the national and provincial spheres, appeals to political parties not to "destabilise and place inappropriate pressure on councils and administration", and invites the citizenry "to contribute to building responsive, accountable and effective municipalities" (ibid: 22).

Short-term measures are supposed to "address immediate financial and administrative problems"; strengthen ward committees; differentiate responsibilities and simplify IDPs; provide more funding and capacity to municipal infrastructure in rural areas; and accelerate informal settlement upgrades in metropolitan areas (ibid: 23).

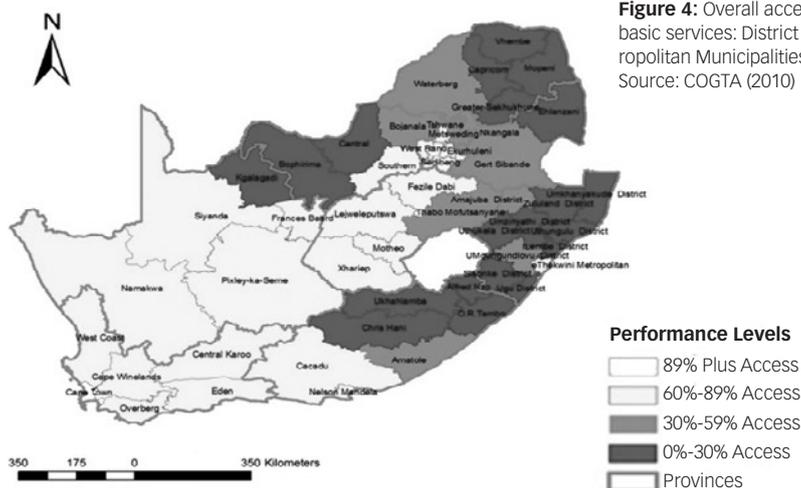
For the medium term CoGTA proposes, inter alia, to hold a single election for national, provincial and local government; it repeats pledges of service delivery and the "eradication of all informal settlements", and that "all provinces and municipalities should have clean audits" and "municipal debt is (to be) reduced by half"; and it promotes the idea of "empowered and capacitated organs of people's power (Street, Block / Section, Village & Ward Committees)" (ibid: 23-24).

The methodology for short-term measures is based on the idea that "each municipality will define its improvement areas in consultation with the province". As a next step "municipalities are expected to develop own turnaround strategies with communities". On the one hand municipalities are told that they "own the process" and should not involve external consultants. On the other hand, there is a language of "must" and "local strategies should (...) be guided by the strategic objectives of the national strategy" (ibid: 43).

To this effect, CoGTA provides templates organised according to problem areas such as "basic service delivery" or "governance and public participation", each requiring information on the status quo; the setting of annual targets (for December 2010 and July 2011); the identification of "capacity challenges", activities and indicators; and the "unblocking actions needed from other spheres or agencies".

In order to support municipal strategies, CoGTA has vowed to put in place a National Coordinating Unit which "will oversee, monitor and report on the progress of the LGTAS"; an intergovernmental working group consisting of national sector departments, provincial premiers and local government departments as well as SALGA; Technical Service Units at provincial level; as well as a Rapid Response Team "to attend to critical interventions across the country" (ibid: 44).

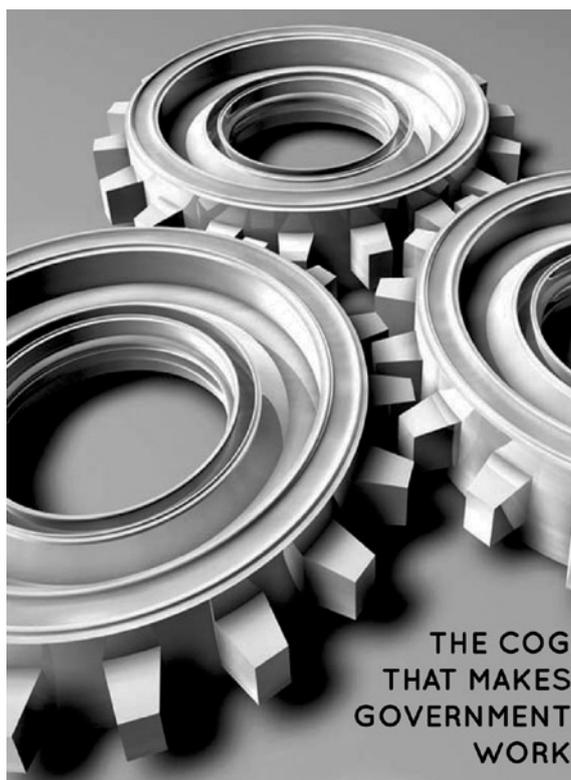
The timeframe set for the elaboration and implementation of the municipal turnaround strategies is extremely tight.



**Figure 4:** Overall access to basic services: District & Metropolitan Municipalities 2007. Source: CoGTA (2010)

Between 20 January and 9 February 2010, Provincial Support Teams had to undertake visits to municipalities "to identify 2 of the most vulnerable municipalities which required urgent assistance from government" (Phase 1). By 30 April, each of the 283 municipalities in the country was expected to develop its own strategy and to include its priorities in their Integrated Development Plans (IDPs) and budgets (Phase 2). By 30 June, provinces were supposed to examine draft IDPs and Municipal Turnaround Strategies within them. Simultaneously IDPs and budgets had to be adopted by municipal councils (Phase 3). By March 2011, the provincial ministers of local government shall provide the national level with "comment on the commitments made to the IDPs" (Phase 4) (CoGTA, 2010a).

Not much has emerged about the strategies' progress. While some media have alleged that "deadlines have come and gone, with the majority of municipalities failing to comply – and national government doing nothing" (Leadership, 27.07. 2010), the Minister claimed that "every municipality has their own turnaround strategy where



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**Figure 5:** A service delivery machine functioning like clockwork: The self-perception of the Department of Cooperative Governance and Traditional Affairs. Source: CoGTA (2009b)

## Outcome 9 – the medium term goals of cooperative government

**Output 1: Implement a differentiated approach to municipal financing, planning and support:** Six metros and 21 municipalities containing secondary cities shall be granted more autonomy in respect of infrastructure and housing delivery. The IDPs and revenue plans of smaller municipalities are going to be simplified and focus on the delivery of a set of 10 critical municipal services.

**Output 2: Improving access to basic services:** Government renews its pledge to provide “universal access to basic services” by 2014. Every household is promised access to water and sanitation, so far only available to 92% and 69% of households respectively. The percentage of households benefitting from refuse removal is supposed to increase from 64% to 75%; access to electricity from 81% to 92%.

**Output 3: Implementation of the Community Work Programme:** 237,000 “job opportunities” (“2 days of work per week or the monthly equivalent”) are supposed to be created within the poorest wards of each municipality, of which 30% are to be associated with “functional cooperatives”.

**Output 4: Actions supportive of the human settlement outcome:** In order to increase population densities within metros and large towns, the government aspires to release 6,050 hectares of “well located” public land<sup>12</sup> for low income and affordable housing. A new National Upgrading Support Programme for 45 priority municipalities shall formalise tenure for 400,000 households. New land use planning and management legislation should be enacted by 2011/12.

**Output 5: Deepen democracy through a refined ward committee model:** A review of the legislative framework for community participation is underway. It is likely to “propose revised/new responsibilities and institutional arrangements for ward committees and community development workers”. The government pledges “to ensure that at least 90% of all ward committees are fully functional by 2014”.

**Output 6: Administrative and financial capability:** The percentage of municipalities with unqualified audits is supposed to increase from 53% to 100%. By 2014, all critical financial indicators<sup>13</sup> are supposed to be halved. This is supposed to be achieved through tighter controls, better support by provincial departments, and a campaign aiming to ensure that six critical posts within municipalities, including those of municipal managers and chief financial officers, are filled with competent staff.

**Output 7: Single window of coordination:** CoGTA has vowed to review all sector legislation impacting on local government and service delivery (by December 2010) and to reform the intergovernmental fiscal framework (before the 2011 local government elections). In order to “bring greater cohesion to the work of government and remove the fragmentation within the cooperative arrangements”, CoGTA has already proposed a number of legislative reforms, including a Municipal Systems Amendment Bill.

## Local Governance in South Africa – a can of worms half-open

Based on the official assessment that methods of integrated development planning, local economic development and accruals accounting proved to be too ambitious for low-capacity rural municipalities, one could broach the technocratic nature of previous reforms. At the same time, the shadowy existence of municipal spatial planning in South Africa (see also article by Berrisford in this issue of TRIALOG) is a prime example of too little, rather than too much, ambition. Will CoGTA's review of sector legislation open a new window of opportunity for the rationalisation of planning laws?

It is necessary to go beyond the government's analysis and to question its assumptions. A case in point is the renewed commitment to the “eradication of all informal settlements”, which is dealt with by Huchzermeyer (see article in same issue). Local governance in the former homelands is another area that would require a detailed discussion. Neither the turnaround strategy nor the medium term goals of “Outcome 9” make an attempt to sort out the overlapping mandates of municipalities and traditional leaders. CoGTA seems to ignore the serious implications for rural development and the compromised nature of democracy in the former homelands (Ntsebeza, 2006). Westaway (2010) has found compelling arguments for the view that the government wants to rule the Bantustans by welfare, custom and tradition rather than by democracy, rights and development.

they have identified their own problems and solutions” and “there is no doubt that we will reach the targets set” (SA Delivery, 15.09. 2010).<sup>14</sup>

Meanwhile, the long-term vision of the Turnaround Strategy has become intertwined with a broader drive towards performance management. Like all government departments, CoGTA had to define its overall outcome and a set of outputs that it hopes to achieve by 2014 (see text box; The Presidency 2010). In September 2010, Minister Shiceka and his provincial counterparts signed the respective delivery agreement.

## Cooperative government – still under construction

Systemic factors, including the two-tier system of local government (district and local municipalities), as well as poor intergovernmental support and oversight, have been found to be amongst the root causes for the troubles of local government (CoGTA, 2009a: 3). According to the South African Local Government Association (SALGA), the powers and functions of the different spheres of government, as defined by the Constitution, leave too much space for interpretation. SALGA has called for an “urgent

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“Land with a 30 to 45 minute journey to work and services using less than 8% of disposable income for transport” (The Presidency 2010: 14).

13

Currently, 24% of the municipalities register debtor levels of more than 50% of own revenue; nationwide municipalities are owed a staggering total of R54bn. 8% of municipalities are overspending on their operational budget; 63% of municipalities are underspending on their capital budget; 92% spend less than 5% of their operational budget on repair and maintenance.

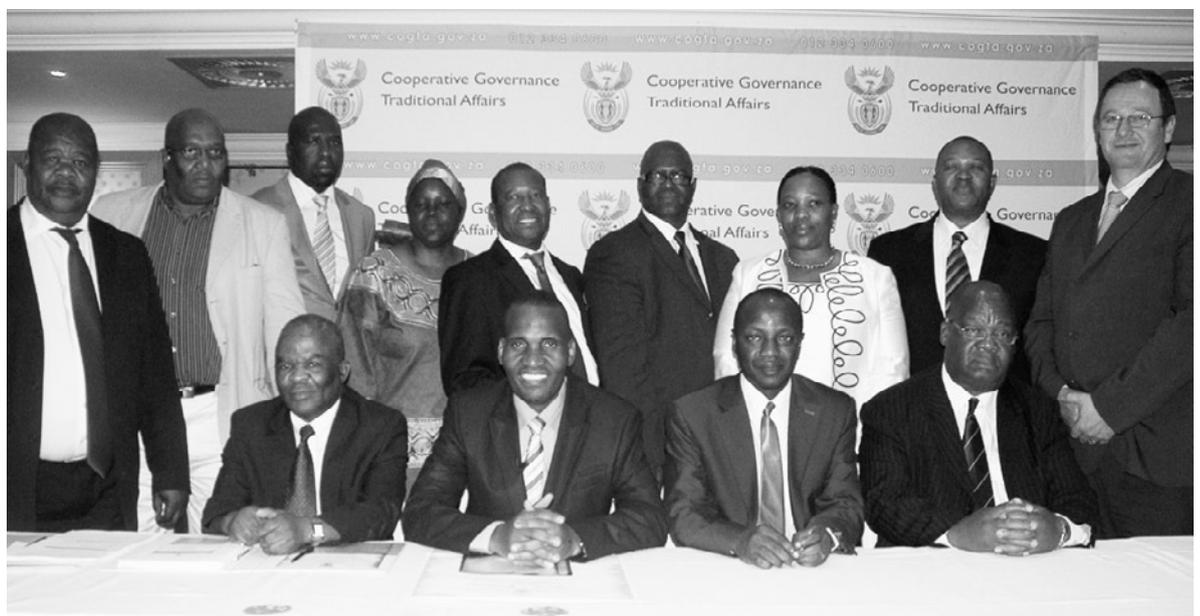


Figure 6: Signing of the Outcome 9 Delivery Agreement, 30 September 2010: Sicelo Shiceka, Minister for Cooperative Governance and Traditional Affairs (first row, second from the left), Collins Chabane, Minister for Performance Management, Monitoring and Evaluation (to his right) and provincial ministers for local government. Source: CoGTA homepage

intervention” to define powers and functions and to determine responsibilities (SALGA, 2010).

The outcomes-based approach chosen by the South African government tends to emphasise the control function of the national sphere and the limits of local autonomy. Constitutional law experts argue that the rationale for subsidiarity in the South African Constitution is rather functional than principled (Community Law Centre, 2008). Thus, to some degree, the top-down approach is consistent with the constitution. Nevertheless, there is cause for concern.

Rather than strengthening the accountability of elected leaders at provincial and municipal levels towards their constituencies, the “Outcome 9” delivery agreement can be seen as a new mechanism for upwards accountability. In the political forum set up to deliberate on the agreement, municipalities refused to take responsibility for outputs, which largely depend on the funding and support provided by higher spheres of government. Nevertheless, it is envisaged that the process will be cascaded down and performance agreements be signed between provincial ministers and executive mayors.

As an ad hoc measure, the Local Government Turnaround Strategy seems to have had little success in ensuring that provincial sector departments participate in the IDP process. According to the head of the Amathole administration, “CoGTA did little to ensure that this took place, contrary to the LGTAS commitments”, and (by October 2010) “a number of structures that were supposed to be set up by CoGTA as part of the short term interventions (which end soon) have not been established” (Mlokoti 2010). The systemic problems of cooperative governance are yet to be tackled.

As a “single window of coordination” (output 7 of its delivery agreement), CoGTA will have to review the entire legislative framework impacting on local government and its fiscal relations. Behind closed doors, it has also returned to the policy review that was started in early 2007. Although there have been at least four internal drafts for a “Green Paper on Cooperative Governance”, the depart-

ment still hasn’t managed to come up with clear recommendations regarding the allocation of functions between provincial and local government. Hence, despite a lot of effort for control and coherence, the South African system of cooperative government is still very much under construction.

### ***The political administrative interface – a line must be drawn***

One of the most promising features of the government’s turnaround strategy is the recognition that the conflation of party and state had very negative effects on municipalities’ functionality and accountability. Situations where “senior staff are more likely to be politically committed to the government of the day rather than being non-partisan or neutral” are one of the main characteristics of “new public management”, the mainstream of international public sector reform (Hughes, 2003: 44). Yet, in South Africa the practice whereby party office-bearers populate the municipal administration has led to various problems and quite often degenerated into “utter bureaucratic and political paralysis as a result of sliding staff morale and perennial power struggles” (de Visser, 2010: 57).

When President Zuma addressed his cabinet and municipal leaders in October 2010, it became clear that some rethinking had taken place and councillors cannot be “mayor and municipal manager at the same time”. More to the point, the Deputy Minister for Cooperative Governance and Traditional Affairs remarked “... it’s not for the party structures to micro-manage councillors, especially as this has sometimes less to do with ensuring that councillors perform effectively and more to do with influencing tenders and narrowly interfering in appointment of staff. Municipal structures should not be treated almost like sub-committees of party structures” (quoted in Local Government Research Centre, 2009: 16).

While it is too early to assess the impact of these discussions, it is safe to say that they are not merely rhetoric. In the LGTAS, CoGTA vows to undertake legal reforms for a “clearer separation between the legislative and executive functions” of municipal councils and to undertake steps

## **14**

By mid-June, more than 240 documents had been uploaded to the department’s website. So far no analysis of the process has been published and it is too early to evaluate its impact.

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◀ **Figure 7:** Invited spaces: Public participation during Buffalo City’s 2010 IDP hearings. Photo: Gerhard Kienast

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to professionalise local administrations (CoGTA, 2009a: 31-34).

A major step into this direction is the Municipal Systems Amendment Bill, which has been tabled to Parliament in August 2010. If enacted, it would oblige municipalities to only appoint people with appropriate "skills, expertise, competencies and qualifications" as municipal managers and to other senior positions and would bar them from holding office in political parties.

While this reform might cure some of the worst excrescences of nepotism and fraud, according to de Visser (2010) from the Community Law Centre at the University of the Western Cape there are other institutional flaws, which limit the functioning of municipal councils and have contributed to the breakdown of local democracy. One problem is lack of clarity about the role of the council speaker and his relation to the municipal executive. The other is that municipal councils operate in terms of a committee system that exists to support the executive rather than to exercise oversight over the executive and administration. According to de Visser, solving these problems might require some "smaller institutional changes" but more importantly, "skilful leadership that crosses political and factional divides" (ibidem: 54).

### **Ward committees – still the only show in town?**

Although leading politicians have often pledged their commitment to make government more responsive and accountable, the proposed reforms regarding the interface between council and communities are not very promising. Besides the above-mentioned attempts to depoliticise the administration, all efforts concerning local democracy seem to concentrate on ward committees, one formal mechanism of public participation, which was introduced almost a decade ago and is believed by some to be part of the problem rather than part of the solution.

Most case studies and theoretical analyses of ward committees and the other institutional mechanisms of participation created in South Africa converge in the conclusion that they do not work in practice (see the literature compiled by Smith, 2007; and Bénéit-Gbaffou, 2008). Many authors have unravelled the reasons for their failure, which can be found both within the structures (issues of legitimacy, capacity, resources etc.) and in the immediate political environment (i.e. a centralised council decision-making structure and a dominant party system). Some argue that the most important problem with ward committees and other formal systems is "that they have crowded out many more appropriate and effective forms of participation" (Schmidt, 2008: 13) and that "they can paradoxically serve to demobilise rather than mobilise" (Ballard, 2008: 180).

Drawing on the works of Cooke and Kothari (2001) and Cornwall (2004), Sinwell (2009) has argued that the "invited spaces" of participation created in South Africa serve to legitimate the interests of those in power. Others still believe that a change in the institutional structures of local government can serve to enhance citizen participation and made recommendations for improving the functioning of ward committees, including calls for a democratic election of ward committees; institutionalised

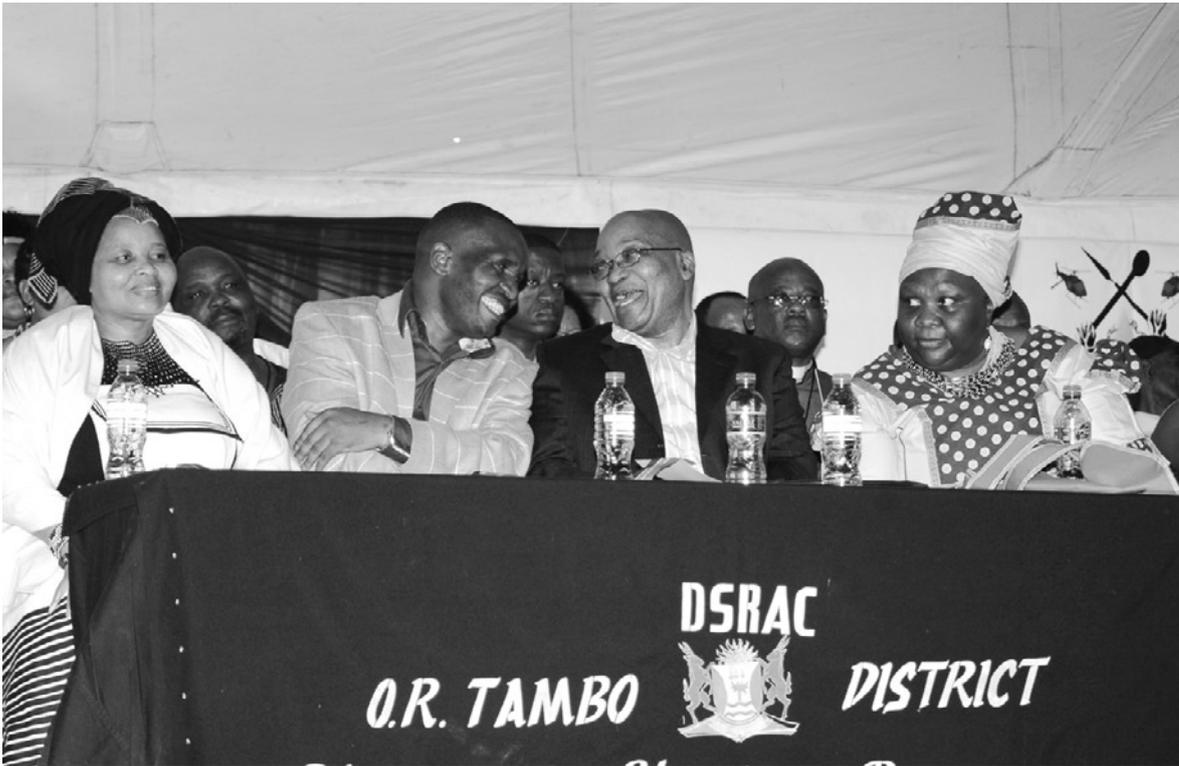
communication between committees and municipal council; capacity building; administrative support; and the introduction of stipends for committee members (Smith and de Visser 2009: 60-62).

Hence there are various possible yardsticks to evaluate the reforms proposed by CoGTA. Some of the suggestions of the Outcome 9 delivery agreement seem to assimilate recommendations made by Smith and de Visser: ward committees should become more representative and report to council; the Ministry is going to prepare legal amendments to ensure that ward committees are consulted in respect of the IDP, budget and strategic decisions on service provision; a representative from ward committees will be included in the council's audit committee, for the first time giving ward committees some oversight function; ward committees are promised "access to office space and equipment; technical and administrative assistance through dedicated staff; communication material and (... remuneration of) out-of-pocket expenses" (The Presidency, 2010: 52).

Will these measures make ward committees more inclusive and local government more responsive and accountable? – There are at least three reasons for scepticism. First of all, government seems to ignore the caveats, which were raised by Smith and de Visser (2009: 62): "Ward committees should be seen only as one of a number of mechanisms and channels for public participation in local governance." Public announcements made by Minister Shiceka rather suggest that ward committees are going to stay what Schmidt (2008) has called "the beginning and the end of the discussion about participation".

Second, CoGTA's service delivery agreement does not spell out how ward committees are supposed to be insulated against undue party political influence and many observe what Atkinson (2007: 54) called a "fundamental ambiguity in the ANC's understanding of local accountability". Responding to wide-spread community protest, senior ANC leaders have favoured a return to the unitary grassroots organisation that allowed the movement to control townships under the apartheid rule. Curiously, this anachronistic and undemocratic concept has become part of the turnaround strategy's "Vision 2014", aiming for "empowered and capacitated organs of people's power (Street, Block / Section, Village & Ward Committees)" (CoGTA, 2009a: 24). Given the illegal treatment of dissenting grassroots voices like the Landless Peoples Movement or Abahlali baseMjondolo, the totalitarian subtext of the official government strategy is extremely disconcerting (see contributions by Tissington and by Pithouse in this issue of TRIALOG).

Finally, CoGTA proposes legal amendments to the effect that "municipal council must allocate funds to enable ward committees to perform their functions, exercise their powers and undertake development in their wards", which could then be awarded to communities implementing projects (The Presidency, 2010: 52-53). This is another notion that Smith and de Visser had cautioned against very clearly: "Ward committees should not be considered as agents of delivery or managers of development projects and funds (...) as they are structurally and technically not equipped to fulfil this role." If this course is followed, CoGTA is likely to multiply exactly the kind



◀ **Figure 8:** Sicelo Shiceka, Minister for Cooperative Governance and Traditional Affairs, sharing a joke with President Zuma during the 50th commemoration of the Pondoland Revolt, June 2010, Eastern Cape. Source: COGTA homepage

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See Makwembere 2007 for an in-depth study of “public sector industrial relations in the context of alliance politics”.

of problem described by Staniland (2008): “participation mechanisms (...) in the process of allocation of public resources to local residents, (which) tend to diffuse practices of clientelism, co-opt local leaders, and extend social control over a potentially powerful civil society that they contribute thereby to fragment and sedate” (as summarised in Bénit-Gbaffou 2008: iii).

### Conclusion

The driving force behind government’s recent interventions in the sphere of local government was massive popular protest. According to research into the motivation of local protests, such an intervention was exactly what was called for. Alexander (2010: 34) “found no evidence that Zuma, or the ANC in general, were held responsible for people’s problems, and some interviewees argued that the timing of protests was linked to having a government that, at long last, would listen to people and address their complaints”. Leading ANC politicians have intervened personally in some of the unrests, listening, making promises, sometimes prompting the demise of local office-bearers, always calling on the loyalty of party members to abandon the revolt. The nationwide screening of the “State of Local Government” has left no doubt that indeed many municipalities are struggling to deliver on their mandate and are beset with serious problems, including lack of resources, lack of capacity, and lack of accountability. It is too early to assess whether the institutional reaction to the crisis, the Local Government Turnaround Strategy will live up to its name. While in some cases filling critical vacancies and sorting out local power struggles between different factions of the ruling party might have been all that was needed to end the paralysis of the administration, there are also systemic problems that need to be addressed.

CoGTA has recognised that national and provincial government did not provide enough support to municipali-

ties, which were swamped with unfunded mandates. Government has announced changes in the legal framework of intergovernmental relations and the municipal funding system, but official proclamations have been highly contradictory. The “Outcome 9” delivery agreement announces the creation of “special purpose vehicles” which shall take over responsibility for municipal infrastructure; some ponder on the elimination of districts; even the abolition of provinces seems to be within the realms of possibility. Meanwhile, the “embedded autonomy” of local government (Oldfield 2002) is left hanging in the balance.

The vow to depoliticise municipal management indicates that, after more than 15 years of one-party domination, government has accepted that party membership is a predicament for managers in executing their duties when political affiliation is shared with both the majority of councillors they have to account to and with municipal officials who they must hold to account.<sup>15</sup> It remains to be seen whether the relevant legislation will be passed and, more importantly, whether it will be sufficient to reign in the widespread corruption and cronyism that have bedevilled local government.

It is unlikely that greater accountability will be achieved by tighter regulation and sanctioning alone. As Pieterse already argued in 2002 (p. 9), “political and managerial emphasis on performance management techniques is inadequate to move public servants to act in developmental ways”. At the end of the day, it is the citizens themselves who have to hold government to account. Despite official commitment to citizen empowerment, ward committees have not been able to play that role. As long as formal mechanisms of public participation do not allow for democratic autonomy, people are likely to continue to take the streets. If government does not address increasing inequality, the troubles of local governance may well shift to a national scale.

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\* All internet sources accessed on 03.01. 2011



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# Unravelling Apartheid Spatial Planning Legislation in South Africa: A Case Study

Stephen Berrisford

## ***Die schwerfällige Entwirrung der raumplanerischen Gesetzgebung Südafrikas aus der Apartheidzeit: eine Fallstudie***

*Die Bestrebungen zur Änderung der noch aus der Kolonialzeit und der Zeit der Rassentrennung stammenden Raumplanungsgesetze Südafrikas stießen in den 15 Jahren seit Ende der Apartheid auf unerwartete Blockaden. Obwohl Südafrika im afrikanischen Kontext vielfach als Musterland gesehen wird, zeigt die stockende Reform der Gesetze im Planungsbereich die Schwierigkeiten bei der Verwirklichung der idealistischen und fortschrittlichen Vision einer post-rassistischen Gesellschaft. Trotz der weit verbreiteten Anerkennung einer kausalen Beziehung zwischen den alten Planungsgesetzen und der strikten sozialräumlichen Segregation, dem räumlichen Erbe der Apartheid, sowie trotz der nötigen Motivation für Gesetzesänderungen war es für Politiker und Planer in Südafrika scheinbar unmöglich, den legalen Rahmen der Bodennutzung und Raumentwicklung zu modifizieren. Dies liegt sowohl an einer der Dezentralisierung geschuldeten Unklarheit über nationale, lokale und regionale Kompetenzen in der planerischen Gesetzgebung, als auch an der widersprüchlichen Interpretation des durch die neue Verfassung verfügten unbedingten Schutzes des Eigentums, wobei mit Blick auf die Enteignungen der Apartheidzeit jegliche planungsrechtlichen Eingriffe verteufelt werden. Die von den Planern der Apartheid benutzten Gesetze, mit denen Rassentrennung und Ungleichheiten im Raum geschaffen und verfestigt wurden, sind so immer noch die einzigen Werkzeuge, über die heutige Planer verfügen, um über die zukünftigen Bedingungen der Raumentwicklung zu entscheiden.*

To varying degrees each town or city in South Africa reflects not only an unequal distribution of infrastructure, amenities and accessibility, but the distances between the places in which the poor and the well-off live exacerbate that inequality. They also make for an inefficient spatial pattern with the costs of installing and maintaining infrastructure unusually high and public transport difficult to provide. This all conspires to create an unsustainable model for urban development. The roots to this legacy are complex and varied, but the regulatory framework governing land tenure, development and use has played a very prominent role in creating the problematic situation now faced by South African towns and cities.

## ***Historical background:<sup>1</sup> planning laws in reinforcing the segregationist vision of successive colonial and apartheid governments***

On the one hand a battery of detailed, comprehensive, provincial laws in force in the four provinces of the Union and then Republic of South Africa were developed, from the late nineteenth century onwards, to regulate tightly the development of land in urban areas reserved for "White" ownership. This had the effect of preserving property values, promoting a high level of amenity and a high standard of infrastructure, which, until this became redundant after restrictions on land ownership were extended under the Group Areas Act in 1950, obstructed all but a very few well-off black people owning land in these areas. On the other hand the planning laws applied in areas reserved for black people were rudimentary in their protection of amenity, generally prohibited the use or development of land in those areas for commercial

or industrial purposes, and were coupled with laws that drastically restricted black people's ability to own land in urban areas.

Planning laws thus formed part of the legislative arsenal used both to maintain racial segregation within towns and cities and to prevent and restrict urbanisation, especially by black South Africans.

## ***Window of opportunity 1: around 1994***

The first window of opportunity that arose to reshape the legislative framework governing urban planning and development was in the build-up to the transition to democracy, marked by the first democratic elections in 1994 (see Figure 1). In terms of interest in planning law reform, there were two main thrusts of effort. The first was based in the National Housing Forum and supported primarily by technical experts aligned with or working for the Urban Foundation, a business-funded think-tank that had for many years focused on alternative urban policy and practice. The second was aligned broadly with the African National Congress and was based at the Institute for Local Governance and Development at the University of the Western Cape.<sup>2</sup> Its contributions to the African National Congress were managed through the Congress of SA Trade Unions (COSATU). These two groupings cooperated closely and were responsible for the emergence of an approach to law reform that had far-reaching impacts, developed through a series of meetings and workshops. These gatherings were eventually formalised into a body known as the Forum for Effective Planning and Development ("FEPD"). Representation on this body was increas-

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For the purposes of this case study, a complex history is summarised here. More detailed studies can be found elsewhere, such as Harrison, P., A Todes and V Watson (2008) and Mabin, A & Smit, D (1997).

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Both the Urban Foundation and the Institute for Local Governance and Development ceased to exist shortly after they made these contributions.

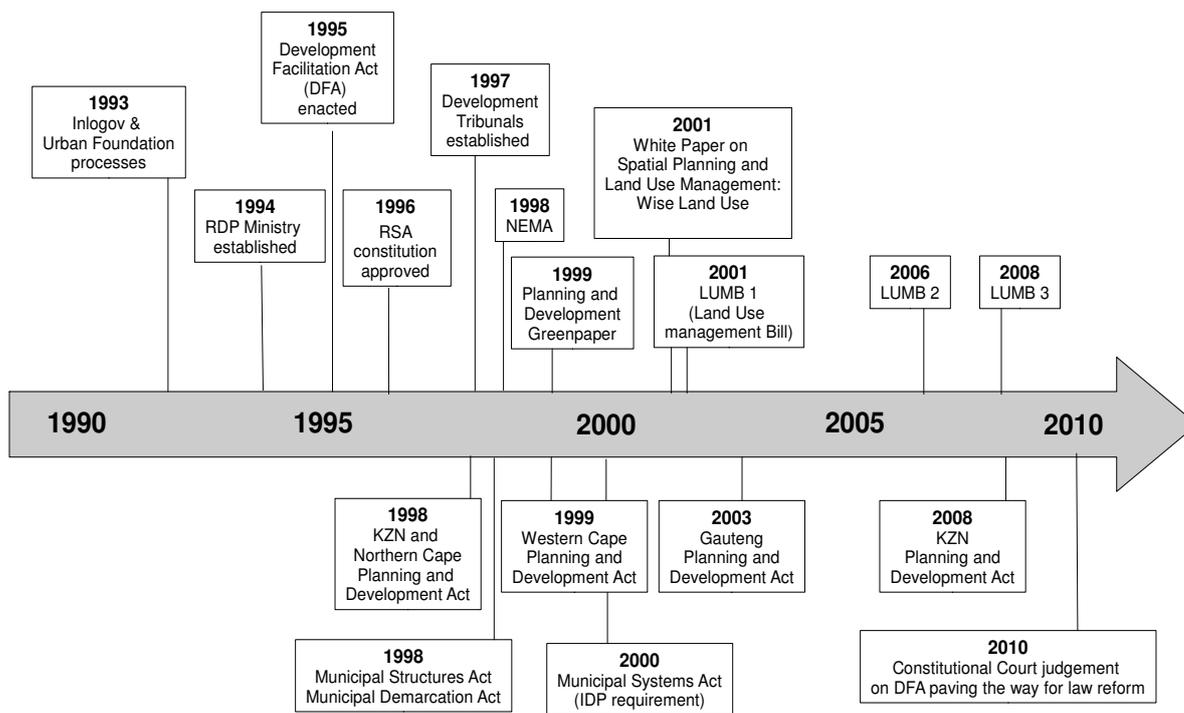


Figure 1: Timeline of South African planning and land use legislation. Source: author

ingly widened to include academics, government officials and NGOs.<sup>3</sup>

This grouping was united in its support for a new law that would operate on an interim basis while the long-term vision for urban and planning regulatory reform was worked out. The first element of this proposed new law was that it would provide an alternative route for the approval of land development projects envisaged by the new government as part of its Reconstruction and Development Programme (“RDP”).<sup>4</sup> The second object of this new law would be to provide a relatively quick and easy way for new councils to put in place new spatial plans for the future, which would be binding on the decisions of the council as well as other decision-making bodies, including the proposed “development tribunals”.

In order to ensure that the decisions taken by the tribunals and indeed the contents of the new local planning instrument were consistent with a new vision for development in South Africa, it was proposed that the new law include a set of substantive principles to guide all decisions made in relation to the use and development of land.

Finally, it was proposed that the new law should create a high-level body charged with researching alternatives to the inherited legal frameworks for urban (and rural) development and planning and advising the new government on law and policy reform in this area of governance.

All of these proposals were taken up in new legislation, the Development Facilitation Act of 1995 (DFA). The implementation of this new law began in 1997 with Development Tribunals established in most provinces. Land Development Objectives were drawn up by many municipalities, but were shortly overtaken by the requirement to produce Integrated Development Plans under the Municipal Systems Act (see below). As is also discussed below, the Development and Planning Commission was established and commenced work.

### Window of opportunity 2: around 2000

During the second part of the 1990s, there was a great deal of activity in the regulation of urban development and planning. A number of processes were running in parallel to each other, each characterised by a lack of integration with the others.

Firstly, as required by the Development Facilitation Act, a national Development and Planning Commission was appointed in 1997 jointly by the three ministers responsible for Land Affairs, Constitutional Development and Housing. The Commission completed a Green Paper on Development and Planning in 1999, which proposed a new approach<sup>5</sup> to the regulation of planning and land development. Upon completion of its mandated work, the Development and Planning Commission was formally disbanded in 2000. After a consultative process, the Minister of Land Affairs published a White Paper on “Spatial Planning and Land Use Management” entitled “Wise Land Use” in 2001. This was approved by the national cabinet, and the first of many versions of a Land Use Management Bill based on the White Paper’s recommendations was published in the Government Gazette in 2001. The White Paper adopted a different approach in that it proposed a much stronger role for national legislation, rationalising the provincial laws into one uniform set of national rules and procedures.

Secondly, the Ministry for Constitutional Development<sup>6</sup> submitted to parliament a bill that was approved and published in 2000: the Municipal Systems Act. This law included a far-reaching chapter that required every municipality to produce an Integrated Development Plan (“IDP”) as part of a suite of local government legislation. It was assumed that the IDP would build on the Land Development Objectives required in the DFA.

Thirdly, the Ministry for Environmental Affairs & Tourism submitted to parliament a bill that completely overhauled

**3** The process was very much a creature of its time, characterised by optimism, a willingness to negotiate and compromise, and a commitment by almost all parties to work hard and meet deadlines, often without financial reward. It was thus in many ways unique: a grouping of diverse and representative stakeholders willing to work together, willing to work hard, and enjoying a high level of political legitimacy from all quarters.

**4** This new law was intended to address the concern that many local government councils remained, and would remain for a few years after the first national elections, under the effective control of the “old guard”. The thinking was that these forces, both in the political and technical arms of the councils, would try to block big, new, transformative projects. The new law would thus provide a way around this set of obstacles, taking the decision out of the hands of local councils and giving that power to an appointed tribunal and then giving that tribunal extraordinary power to override not-in-my-backyard (“NIMBY”) resistance.

**5** That approach was essentially one in which the principle of provincially specific legislation was retained in each province, there was a strong emphasis on local government planning, and the concept of the provincial Development tribunals provided by the DFA was retained.

**6** This ministry was subsequently renamed the Ministry for Provincial & Local Government and then the Ministry for Cooperative Governance & Traditional Affairs.

7

This Department was subsequently renamed the Department for Rural Development and Land Reform.

8

The Ministry of Housing has been renamed the Ministry for Sustainable Settlements.

9

Section 146(2)(b) of the Constitution.

10

Part A of Schedule 5.

the regulatory context for environmental management, which was enacted in 1998, the National Environmental Management Act (“NEMA”). This Act specifically provided for the Minister to proclaim and enforce regulations for the carrying out of environmental impact assessments, although it was not until 2006 that these regulations were actually proclaimed. Until then, the EIA regulations under the 1989 Environment Conservation Act remained in place.

Thus, as South Africa entered the first decade of the 21st century, there was a White Paper on the rationalisation of planning laws but it was already eclipsed by developments in local government and environmental law.

### **Window of opportunity 3: 2009**

Frustration with the inability to enact new planning legislation grew steadily both inside and outside government. The Department of Land Affairs (“DLA”)<sup>7</sup> worked, in increasing isolation, on drafts of the Land Use Management Bill (“LUMB”), beginning in 2001. Each of these successive drafts was widely rejected and strongly opposed, initially by other national departments and provincial governments and then by parliament itself when the 2008 draft was sent back to the Department by the Speaker.

Already by 2004 powerful interests in national government, the National Treasury and the Presidency, were expressing dissatisfaction with the inability of the DLA to make progress. They were joined around 2007 by the Minister of Housing,<sup>8</sup> who became increasingly vocal in her frustration. Her department, she argued, could not be expected to deliver “sustainable human settlements” when the legislative framework for planning was so inappropriate and unwieldy. In 2004 and 2008, the National Treasury commissioned comprehensive reviews of the “planning regulatory environment” with a view to its “modernisation and rationalisation”. In 2009, the Presidency commenced work on a “regulatory impact assessment” of the 2008 LUMB, which was supplemented by a detailed review of the implementation of the DFA to date.

It appears that this confluence of high-level interest in and frustration with the slow pace of planning-law reform might yield results, especially as it comes to a head at a time when the Constitutional Court has finally given clarity on some aspects of the question of which functional area of legislative competence includes the regulation of land development and land use, which is dealt with in more detail below.

### **Legal difficulties**

The years 2001 to 2010 were characterised by a sense of paralysis in the development of new frameworks for planning legislation. Some of these arose from institutional and administrative problems, and others from legal difficulties. Regarding the latter, the most intractable was the question of interpreting the 1996 Constitution’s provisions that set out which sphere of government – national, provincial or local – has the power to make planning laws. The second, which has received less attention but which remains a difficulty, is the extent to which planning laws can interfere with and restrict the exercise of property rights.

### **Constitutional powers and functions**

Schedules 4 and 5 of the 1996 Constitution set out the areas of legislative competence of national and provincial – and to a lesser extent, municipal – government. Schedule 4 covers areas of concurrent legislative competence including environment, regional planning and development and urban and rural development (Part A) and municipal planning (Part B). Schedule 5 contains areas of exclusive provincial legislative competence, i.e. provincial planning (part A).

Because “land” is not specified as a functional area of legislative competence, it automatically becomes an area of exclusive national legislative competence. The 2001 White Paper argued that this means that all legislation governing the use and development of land falls within the exclusive legislative competence of national government. That argument was never widely accepted and has not been reflected in subsequent drafts of the Land Use Management Bill (“LUMB”).

If one were to adopt a different line of argument – that land development is an integral part of “urban & rural development” – then the matter falls under the concurrent powers of national and provincial governments. This approach has been adopted in various drafts of the LUMB. Under this approach a national law such as, for example, the LUMB would prevail over provincial legislation on the basis that it “requires uniformity across the nation” and that it provides such uniformity through the establishment of “norms and standards, frameworks or national policies”.<sup>9</sup>

Alternatively, provincial governments appear to have been motivated by a view that provincial planning laws are justified on the strength of the provinces’ exclusive legislative competence for “provincial planning”. It can be argued that “provincial planning”<sup>10</sup> refers to planning at a provincial scale rather than to all planning (and land development) that happens to be carried out within a province’s boundaries. This argument would obviously not support the idea of provincial legislation to govern land development. On the other hand it can also be argued by provinces, as indeed they have done, that land development is not an area in which “uniformity across the nation” is needed. In that case there is no compelling argument for section 146(2) national legislation governing land development.

Finally, local governments have argued that the term “municipal planning” is broad enough to cover the sort of planning law that provides for spatial plans and provides for the rules of land development and land use management. This interpretation would allow both national and provincial laws to be enacted, to run concurrently, but would ensure that those laws concentrate decision-making powers in local government.

In June 2010, this impasse was finally broken by a decision of the Constitutional Court in a case between the City of Johannesburg and the DFA Development Tribunal of the province of Gauteng in which the City argued that the Chapters of the DFA providing for Development Tribunals are unconstitutional. The City based its approach on the local government view outlined above, i.e.



◀ **Figure 2:** District 6 Museum in Cape Town. The documentation shows the demolition of the neighbourhood during apartheid and the resettlement of its inhabitants following the racial divide policy. This spatial legacy of apartheid still remains difficult to be reversed. Photo: K. Teschner, Misereor, 2006

that planning laws are about “municipal planning” rather than “urban and rural development” or “provincial planning”. The court’s unanimous judgment supported the City’s viewpoint and so there is finally clarity. Firstly, new planning law must be enacted as “municipal planning legislation”, which means that both National and Provincial government can do so, subject to special rules governing a possible conflict between the two and provided that the new law concentrates decision-making powers at the local level. The Court was also clear that there was a need for far-reaching law reform and effectively gave the national government two years within which to do this, setting a deadline of mid-2012.

### **Property rights protection**

When considering the content of a new planning law, it is important to understand the extent to which the law can permit an organ of state to make a planning decision that restricts a landowner’s ability to develop or use his or her land as they wish. This is a vexed issue in any country. In South Africa, it has an added dimension in that landownership patterns starkly reflect the history of dispossession under colonialism and apartheid. Particularly during the mid to late twentieth century, the state actively took land away from people who were not classified as white and also put in place legal restrictions on black people owning land. The implementation of comprehensive zoning-based planning laws added to this already grim picture by confirming use and development rights applicable to white-owned land, thereby enhancing its financial value. Efforts to invoke a planning-law-led approach to addressing the spatial legacy of dispossession and segregation are thus met with two types of property-rights-based resistance. Firstly, efforts to promote investment in formerly deprived areas by curtailing the exercise of unused development rights in better-resourced areas will encounter opposition from the holders of those rights who will argue that this constitutes an “expropriation” of property under

section 25 of the Constitution, thereby obliging the State to compensate them financially. Secondly, where land is developed or redeveloped for the purposes of housing low-income people, the neighbours will inevitably, and many already have done so, challenge the decision on the basis that their rights to the use and enjoyment of their land will be reduced or lost entirely because of a range of possible causes such as increased crime, air pollution, water pollution and reduced property values.

### **Institutional responsibility: national departments**

At the advent of democracy in 1994, the national physical planning function was transferred to the Department of Land Affairs. That Department’s main function was to drive the three pillars of the country’s land reform programme: *redistribution* of land held by white farmers to black ownership; *restitution* of land that had been taken from black owners to them or their descendants either by *restoration* of the land itself or through compensation by cash or alternative land; and *tenure reform* in the areas under customary ownership. The officials who had operated the physical planning apparatus of the apartheid government were either transferred to provincial governments or were assigned to work on land reform projects. A small unit was retained within the Department of Land Affairs as a Directorate responsible for the implementation of the DFA. By 2010, that unit had grown considerably to a “chief directorate” dedicated to “spatial planning and information”. The Department, however, always focused explicitly on rural development and rural land issues. Indeed, in 2009 the Department’s name was changed to the Department of Rural Development and Land Reform. It has never been easy for the planning agenda, especially insofar as it concerns urban planning issues, to receive the attention it requires in the Department. While nominally the Department for Rural Development and Land Reform remains responsible for planning law reform, in

**Figure 3:** Segregated urban structure of Cape Town Metropolitan Area without substantial changes since 1995: view over the “black African” township Khayelitsha with buffer zones and informal extensions. Photo: K. Teschner, Misereor, 2008



**11**  
Formerly Department for Constitutional Development and then Department for Provincial and Local Government.

**12**  
Four provinces, Gauteng, Kwazulu-Natal, Northern Cape and Western Cape, battling to rationalise their planning laws, impatient with the pace of national planning law reform, and driven by a political imperative to pre-empt legislative intervention by the national government had used the period leading up to 2000 to enact new provincial laws.

practice, as indicated above, many of the key steps being taken to affect the planning regulatory framework are taken by other Departments.

So, for example the national department responsible for local government matters, now known as the Department of Cooperative Governance and Traditional Affairs (“CoGTA”)<sup>11</sup> has dominated the policy and legislative debates and interventions around local-level development planning through its responsibility for the Municipal Systems Act and its Integrated Development Plan. Similarly, the Department of Environment Affairs has led on the regulation of land development in terms of NEMA.

The National Treasury as well as the Presidency have also shown a keen interest in “rationalising the planning regulatory environment” with the intention, for the Treasury, of creating a more cost effective and efficient system of regulating and managing development and, for the Presidency, of promoting a more efficient system of planning and coordinating government’s interventions, particularly from a spatial perspective.

### **Spheres of government**

Since 1994 there has been a low-intensity friction between national government and the provinces as to who is entitled to run with planning-law reform. While this has increased and decreased at times, it was ultimately moderated by the shared sense of frustration at the difficulty of interpreting the applicability of Schedules 4 and 5 of the Constitution. Nevertheless, while national government struggled to make progress on this front, a number of provincial governments persisted with new law-making initiatives in their provinces.<sup>12</sup>

The Western Cape enacted new legislation in 1998 to replace the Land Use Planning Ordinance of 1985 that

it inherited from the old Cape Province. Subsequently, it embarked on a process to compile its own new legislation that would integrate planning, environmental and heritage legislation into one statute. This process ended as it too battled to address the difficulties around the respective legislative competencies of provincial and national government.

In the Northern Cape, which inherited the same Land Use Planning Ordinance as the Western Cape, a new Planning and Development Act was enacted in 1998 and was partially implemented, although most of the previous law’s rules for rezoning and subdivision were retained in practice.

In Gauteng, a new Planning and Development Act was passed in 2003. It was never implemented, and a process to develop an alternative to it has been followed since 2007.

In Kwazulu-Natal, a new Planning and Development Act was also passed in 1998 and also never implemented. That province, however, has made more progress in addressing the issue and a newer Planning and Development Act was enacted ten years later and has been in force since May 2010.

### **Planning difficulties: What is planning?**

At the time that the search for a new post-apartheid planning framework emerged in 1994 there was, legally speaking, a clear understanding of what “planning” was for the purposes of making new planning laws. “Town and Regional Planning” was accepted to cover the following legal elements:

- Provisions empowering particular arms of the state to make “town plans” and “regional plans”;

- Rules to be followed by anyone wishing to establish a new township, i.e. a set of conjoined plots of land with the intention to develop them as a whole;
- Rules to be followed for the subdivision of land, particularly land that falls within an established township; and
- Rules to be followed in the changing of a permitted land use either to change the underlying zoning of the land or to amend the zoning conditions.
- This broad description in fact was supported by legislation from 1976<sup>13</sup> that defined precisely what fell under the legislative competence of the then provinces when dealing with "town planning".

The complicity of the planning profession in the implementation of apartheid and the use of the planning laws to promote a segregated and unequal landscape had gravely undermined the legitimacy of both planning as a discipline as well as planners as a profession. Consequently, there was a concerted effort to move away from the tainted term "town and regional planning" and move towards the more progressive-sounding "development planning". Over and above the moral and ethical shortcomings of apartheid-era planning law, there was also a concern that it had been unduly focussed on controlling development. In the new South Africa, planning laws should be changed to facilitate development. The Forum for Effective Planning and Development proposed a definition of development planning that was widely embraced. It was

"a participatory approach to integrate economic, sectoral, social, institutional, environmental and fiscal strategies in order to support the optimal allocation of scarce resources between sectors and geographical areas and across the population in a manner that provides sustainable growth, equity and the empowerment of the poor and the marginalised".

Clearly a much wider scope was now envisaged for planning and the planning profession. It is sobering to compare this description with that used in the 1976 legislation and to consider which provides the greater clarity to the legal draftsman. The omission of the term "town and regional planning" in the schedules of functional areas of legislative competence in the Constitution reflected a rejection of the type of planning with which nobody wanted to be associated. However, leaving that term out from the Constitution meant that there was now no clear mandate to any sphere of government to repeal that very, reviled legislation that had prompted the rejection of the outdated, albeit more legally precise, terminology in the first place.

### **"Planning" and "environment"**

A further flaw identified in pre-democracy planning was that it was seen to have paid little attention to environmental concerns. As a body of new environmental management legislation was built up from 1998, so the schism widened between a body of law and a profession responsible for planning and those which were growing rapidly around environmental management. Increas-

ingly, planning was associated with an illegitimate past, an inability to embrace the new challenge of sustainable development and too close a relationship with developers. On the other hand the environmental sector was characterised by new, far-reaching laws, bolstered by South Africa's preparations for and hosting of the World Summit on Sustainable Development in 2002 as well as a new profession on the ascendant. At a practical level, this created an inefficient and often unworkable system for planning as well as the management of development. Two parallel sets of laws were applied, implemented by different professionals and adjudicated by different officials in different departments and, generally, different spheres of government as well.

### **What are the lessons from South Africa's experience?**

Firstly, the experience here shows that a country needs a high level of agreement on some key issues before commencing a revision of planning laws. These issues pertain especially to the expectation of what planning is, both as an activity of government and as a profession carried out by practitioners in both the public and private sectors. In South Africa, the vision of development planning that emerged in the early to mid-1990s was ambitious and broad. There was, however, not enough thinking about how it would translate into legal provisions and how these in turn would relate to existing, inherited laws. The capacity of a vision, no matter how widely shared, to shift a regulatory framework that protects so many diverse and often lucrative interests was underestimated. In retrospect it's easy to be critical, but there was an inadequate assessment of which aspects of a new planning vision should be translated in legislation, and how that should be done. Some aspects of the planning vision, indeed of any planning vision, do not lend themselves to becoming law. There are limits to what the law can do and these need to be understood too. While the debate in South Africa was often over-simplified to relatively crude combat between "facilitation" on one hand and "control" on the other, it did not engage with a more complex debate around what activities need to be changed through a planning process and what are the legal steps that will either generate those activities or promote changes in existing ways of acting. Only some changes in the way

**13** The Financial Relations Act, 67 of 1976, Schedule 2, section 14. This definition fell away with the advent of the new constitutional dispensation in 1996.

**Figure 4:** Rigid settlement pattern and segregated urban development following an outdated planning legislation: middle income neighbourhood in Jo'burg. Photo: K. Teschner, Misereor, 2010



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land is developed and used are influenced by legislation, let alone specifically "planning" or "land use" legislation. Most changes result from the ways in which land markets operate, the availability of capital in a society, land tenure trends, and technology.

Secondly, the experience of the Development Facilitation Act shows that an ambitious legislative intervention needs to be backed up both by consistent and well-resourced institutional capacity as well as by regular monitoring. When the Act was first enacted, it depended on a small team based in the Department of Land Affairs to support its implementation. Provincial governments had to establish and operate their Development Tribunals with minimal support from the centre. As concerns arose with the way in which the Tribunals operated and with the Constitutionality of some aspects of the law in light of the 1996 Constitution there was not the sort of robust support and confident leadership that is needed either to support or change an approach. The DFA was intended to be an interim measure. It has indeed proved to be interim, with its most significant chapters declared constitutionally invalid by the Constitutional Court in 2010, but this was not the envisaged way in which it would come to an end.

The DFA was carefully designed to provide for a process, driven by the Development and Planning Commission that would put in place both a long term alternative to the DFA but also the transitional arrangements for taking the existing planning laws, including the DFA, into the new era. Instead, the work of the DPC was largely ignored and the "planning law" process was overtaken by others such as the Municipal Systems Act and NEMA.

Thirdly, the underlying legal and constitutional basis on which a new planning system is to be built has to be clear at the outset. However planning is conceptualised, it ultimately boils down to regulations over what households and businesses can do with their land and rules determining which government authorities have the power to authorise new land development. These are inherently contestable issues. All parties, in both public and private sectors, will strive to carve out the most generous space for themselves and their interests. The wider and looser the constitutional parameters are, the more such space they are able to carve and the less there is for the law to impact directly on human behaviour. Any legislative intervention that is being systematically and consistently challenged on grounds of constitutional and legal validity needs to be very carefully analysed before it is pursued. Not to do that risks the entire enterprise collapsing, as has been the case with the DFA.

Fourthly, there needs to be a deep understanding of the way in which strategic planning that affects land development and land use is linked to the day-to-day decision-making processes. In South Africa's case, the former was covered in the Integrated Development Plans of municipalities in terms of the Municipal Systems Act while the latter was covered by a host of laws but primarily the provincial planning Ordinances. Consequently, the plans had very little impact on the decisions around development applications. The plan-making processes consumed substantial resources with notoriously little impact on patterns of actual development. Even where these two endeavours – plan-making and deciding on applications –

take place in terms of the same piece of legislation, there is a difficulty in getting the plan to impact on the decision-making, but where they are operating under completely different legislative umbrellas, then there's really only a very weak prospect of effectiveness.

Fifthly, the South African experience shows that when opportunities arise they have to be seized. There were at least three "windows of opportunity" between the early 1990s and the late 2000s. Each one passed; none of them yielded significant positive change. Here some responsibility lies with the organised planning profession. This grouping was largely in disarray during this period; firstly as it struggled to deal with its own chequered history and then as it battled to articulate a vision of how it thought a new planning system should operate. What would a new system look like? What did they think would work best? Were there examples from abroad that they thought should be pursued in South Africa? On all of these questions there was largely silence on the part of planners and their organisations. The weakening of "urban sector" NGOs after 1994 also diluted the contribution that could be expected from that quarter. It is hard to expect any government to come up with an acceptable framework for law reform if the interest groups most likely to be knowledgeable in the area and most likely to be involved in the framework's implementation themselves have no view on what changes are needed.

Sixthly, the South African case shows how difficult planning is to manage politically. For government departments and their ministers, planning is tantalising because it is imbued with powers both stated and implicit to control both private land development as well as the work of other departments and levels (or spheres) of government. On the other hand it also comes with the risk of being seen as the source of red tape, bureaucratic impediments to economic development, and legal complexity. It is significant to realise that after fifteen years of democratic government, the national government has yet to resolve satisfactorily where, institutionally, the home of planning law should be. That the function has been left to be managed by a department that has rural land reform as its primary mandate suggests that the political horse-trading necessary to locate the function in a more appropriate setting has proved impossible to resolve. As this case study shows, this is not for lack of interest. The matter has consistently received intense scrutiny from the most powerful organs of state, the Presidency and the National Treasury, but all efforts to resolve the fundamental question of which Ministry should be responsible for its implementation have been in vain.

Finally, it is worth reflecting that one of the hallmarks of much colonial-era legislation was that it was heavy on procedural detail attempting to provide for any eventualities, no matter how improbable. This provides a legal minefield. Even where a provision has not been fully implemented or indeed implemented at all, if it remains on the law book it can trip up subsequent efforts to, in this case, effect law reform. No matter how compelling a positive vision might be, a process of law reform has to tackle the minutiae of inherited legislation, go through it in detail, and determine whether it is appropriate that it remain or that it be repealed. In each of these cases, though, careful thought has to be given to the implications of that choice.

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# The Policy Context for Informal Settlements: Competitiveness, Slum Eradication and a Right to the City?

Marie Huchzermeyer

## ***Das politische Umfeld für informelle Siedlungen: Wettbewerbsfähigkeit der Städte, Slumbeseitigung und ein Recht auf Stadt?***

*Die Haltung von Regierungsstellen zu informellen Siedlungen ist oft verknüpft mit dem unter Stadtplanern und Politikern beliebten Idealbild einer "Stadt ohne Slums". Damit verbunden ist das Ziel einer Wiederherstellung der planerischen Kontrolle, der Beseitigung bestehender Armenviertel durch Abriss oder Aufwertung sowie der rigorosen Unterbindung aller neu sich entwickelnden informellen Siedlungsformen. Solche Haltungen müssen im Kontext einer weltweit verbreiteten städtischen Politik verstanden werden, die auf „Wettbewerbsfähigkeit“ der jeweiligen Stadt im nationalen sowie globalen Kontext ausgerichtet ist. Dies hat in erster Linie zum Ziel, externe – vor allem ausländische – Investoren anzuziehen und langfristig zu binden. Ohne diesen Rahmen in irgendeiner Weise in Frage zu stellen, werben neuerdings verschiedene Organisationen, u.a. UN Habitat, für das "Recht auf Stadt", mit Bezugnahme auf das von Henri Lefebvre vor 40 Jahren entwickelte Konzept und die Forderungen vieler städtischer Basisorganisationen heute. Der Beitrag argumentiert, dass die in den Ländern der globalen Peripherie angestrebte und geförderte Art städtischer Wettbewerbsfähigkeit grundsätzlich nicht vereinbar ist mit der Verwirklichung des Rechts auf Stadt – im Sinne einer demokratischen Stadtreform zugunsten der Benachteiligten und Ausgeschlossenen.*

Since the mid-1990s, policy makers and economic analysts have increasingly emphasised "competitiveness" at urban, regional and national levels (Turok, 2004). This trend responded to economic globalisation – the growing mobility of capital across national borders and the removal of restrictions that would protect national markets from foreign interests (ibid.).

Since the bankruptcy of major financial institutions in the US in 2008, the world has witnessed the crumbling of liberal economic orthodoxy. Although the economic crisis has its roots in an "urban crisis" (Harvey, 2009: 1270), namely in an overly commodified and under-regulated housing finance market, we are only just beginning to see a fundamental questioning of urban policy orthodoxy.

In this paper, my particular concern is how policies for urban competitiveness treat poor urban inhabitants who are only marginally connected to the formal economy but are as mobile as people skilled for formal participation in the globalising economy. My concern is that the management of mobility in the interest of urban economic competitiveness in itself justifies the need for slum free cities. I also explore what this in turn means for a "right to the city", a notion that very recently entered the South African policy vocabulary.

## ***Competitiveness and its adoption and use in urban policy***

In simple terms, a city's competitiveness is defined as its "economic position ... in relation to other cities or the wider economy" (Turok and Bailey, 2004: 152). The notion of competitiveness was adopted into urban policy

before being well-defined or even proven relevant. Ivan Turok (2004: 1070) observes that "its prolific use has outstripped coherent definition or robust evidence of its validity".

Social movements as well as progressive academics have taken issue with the policy of urban competitiveness, particularly in the way urban management has come to mimic the management modes of large corporations. Turok warns that "[c]ompetition between places cannot operate in the same way". Unlike firms,



◀ **Figure 1:** Department of Housing's 2004 vision for its N2 Gateway housing project in Cape Town which was to replace the informal settlement "Joe Slovo" with higher income housing on the same land. Source: City of Cape Town

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"cities cannot go bankrupt if they are uncompetitive" (ibid.). And new urban competitors cannot be created overnight in the way new, competitive firms may arise (Turok, 2004: 1073).

However, Turok (2004: 1075) confirms that "[c]ompetition between places is a reality" (not only a policy). It occurs through trade and locational decisions of firms and the response of individual people to labour and housing markets. When there are "consistent losers", such competition incurs "substantial human cost" and the widening of "social inequalities" (Turok, 2004: 1074). Here the "losers" are not only cities experiencing the flight of capital and of skilled people as determined by the market, but also cities left out when policy chooses to prioritise public spending only on select localities which it seeks to make competitive. In the "heady atmosphere" of "hyper-competition" (ibid.), governments also "devote scarce public resources to economic growth through global investment" and divert "attention away from the environment, social welfare and other social concerns" (Douglass, 2002: 58).

There is also a perverse spatial consequence. A competitive city is one that portrays modernity in its fullest sense and does not show signs of informality. It is hostile to environments that emerged informally, even if these can be legalised and serviced. Writing from the Asia-Pacific region, Arif Hasan (2010: 293) observes that "World Class cities" shun the upgrading of informal settlements, preferring to relocate older informal settlements to the urban periphery. Motivations for this relate both to the direct opening up of urban space for private investment and to the management of human mobility.

At its core, urban competitiveness is about managing mobility. On the one hand, there is the task of attracting and holding onto what Mike Douglass (2002: 56) refers to as "hyper-mobile" capital. On the other hand, there are mobile people. Policies for urban competitiveness actively seek to encourage those with relevant skills to move to a particular city, while they actively discourage the same of those without skills or formal economic means. The literature is silent on this discouragement of poor people's migration to the aspirant competitive city.

**Figure 2 :** Middle income rental housing in 1<sup>st</sup> phase of N2 Gateway project in Cape Town, built on former land of Joe Slovo informal settlement in 2007. Photo: K. Teschner, Misereor, 2008



One mechanism readily used by decision-makers throughout South Africa's large cities to discourage city-ward migration of poor people is not to provide affordable residential environments in any proportion to the real need. If the unwanted population still enters through the back door of shack settlements, the approach is not to extend services into these areas and not to permit the expansion of these settlements. There are many relatively simple ways not to make cities attractive to the poor, at least not more attractive than other cities. Large South African municipalities increasingly use "security measures" (as offered by private security firms) to prevent the poor from building new shacks.

In 2006, UN-Habitat (2006: 43) reported that South Africa was "stabilising" its slum population. The source of UN-Habitat's statistics is unclear and the methods that the South African government applies to achieve this end remain un-named. It seems relatively clear that a literal translation of the "Cities Without Slums" slogan of Cities Alliance, UN-Habitat and the UN Millennium Development Goals into eradication-through-eviction have impacted on migration and housing patterns in South Africa.

### **Urban competitiveness, social cohesion, development and slum upgrading**

In Europe, dominant perceptions of urban economic competitiveness have shifted to assume "that economic success is conditioned by social structures and relationships, often summed up in the term social cohesion" (ibid.). Increasingly, competitiveness has come to be promoted hand in hand with "social cohesion" (Turok and Bailey, 2004: 135). Turok and Bailey (2004) identify five dimensions of this concept:

- equity and inclusion,
- social connectedness,
- common social values,
- social order ("or an absence of conflict" –p.185) and
- place attachment.

For the Asian Pacific, similar attributes are aspired in the search for "new ways of gaining a competitive edge" (Douglass, 2002: 60).

In South Africa, the global agency Cities Alliance (based within the World Bank) promoted urban economic competitiveness hand-in-hand with a "developmental agenda" (and with networking between cities through the South African Cities Network). However, South African cities' approach to informal settlements over this period regressed. Cities abandoned the extension of basic services into informal settlements (fearing it might attract more invaders) and increasingly resorted to harsh security measures to curb informal settlement growth and to ensure informal settlement eradication (Huchzermeyer, 2010).

In South Africa, there is an absence of any concerted effort by urban policy-makers and their advisers (whether in Cities Alliance or elsewhere) to ensure that the drive for urban competitiveness is balanced with "development" appropriate to the lives of the poor. This is despite



◀ **Figure 3:** Houghton Court in the centre of Joburg: urban poor resisting resettlement to the outskirts of the “world class African city”. Photo: K. Teschner, Misereor, 2010

the fact that the City Development Strategies and State of the Cities Reports that Cities Alliance and the South African Cities Network have promoted in South Africa attempt to balance four policy components: productivity, sustainability, good governance and inclusion (SACN, 2004). In 2008, Cities Network developed indicators for social inclusion. But these relate only to the existing urban population and do not gauge the challenges faced by those attempting to enter the city without resources. Cities Networks’ reports are also silent on the increasing use of security measures by South African local governments in managing informal settlements and curbing informal settlement growth.

And even if social inclusion were more meaningfully added to the local government agenda in South Africa, there remains concern. While this idea gained prominence in the west as well as the Asian Pacific, Turok and Bailey (2004: 151) find the validity of this notion as poorly understood as that of competitiveness itself. In part, the problem lies in the dilemma that the very policies followed under aggressive competitiveness exacerbate inequalities and undermine all other dimensions of social cohesion.

**The use of property within urban competitiveness**

Across the globe, there have been attempts to cater for city inhabitants, including the precariously poor and marginalised, as homeowners. Homeownership is promoted by a powerful development lobby which ignores a reality of increasing growth in rental tenure as the only option for the poor and the slightly better-off to access and inhabit the city (Andreasen, 1996; Keyder, 2005).

Linked to globalisation and urban competitiveness is the removal of restrictions on the urban land market and increasing privatisation of public land and its release into a profit-seeking residential and commercial market. This has resulted in a growing scarcity of urban land for owner-occupied low income housing, in particular self-help “squatting” or the benign invasion of land by desperately poor households. As a result of this scarcity, migrants are increasingly forced into low-quality rental units.



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◀ **Figure 4:** Important notice..., Orlando East, Johannesburg. Photo: K. Teschner, Misereor, 2010



**Figure 5** : CBD of Jo'burg.  
Photo: K. Teschner, Misereor,  
2010

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It is ironic that while globalisation, competitiveness and land market liberalisation reduce the possibility for self-help owner-occupation of the poor and push increasing numbers into precarious rental accommodation, it is unauthorised rental accommodation that was targeted by the largest eviction drives on the African continent in the new millennium.

#### **Why property and urban competitiveness undermine the right to the city**

In the current urban economy that depends to a significant extent on a property economy, an individual's right to live in the city is often dependent on that individual's claim to ownership of property. The three notions that Henri Lefebvre linked to his concept of a "right to the city" are the right to "the oeuvre, to participation and appropriation" (Mitchell, 2003: 18). The right to "appropriation" is "clearly distinct from the right to property" (ibid.). Yet those who are not fortunate to have rights to property "must find a way to inhabit the city despite the exclusivity of property" (Mitchell, 2003: 20).

Turning to the oeuvre, Mitchell (2003: 18) explains that "in the city, different people with different projects must necessarily struggle with one another over the shape of the city, the terms of access to the public realm, and even the rights of citizenship. Out of this struggle the city as a work – as an oeuvre, as a collective if not singular project – emerges, and new modes of living, new modes of inhabiting, are invented".

However, as Mitchell argues, "[m]ore and more the spaces of the modern city are being produced for us rather than by us" (ibid.: 18, emphasis in the original). From the perspective of informal settlement dwellers in aspirant African world class cities, the point to make is of course that cities are not even produced for "us" but rather for international investors and the professionals who service their needs.

For Lefebvre (1996/1968: 154), the oeuvre stems from "complex thought". Today, this notion is contrasted

vividly with the urban celebration, almost exclusively, of productive consumption, in what Lefebvre referred to as "products", be they shopping malls or sports arenas constructed for mega-events and motivated primarily in terms of their economic returns.

Already in the 1960s, Lefebvre observed that "[t]wo groups of questions and two orders of urgency have disguised the problems of the city and urban society: questions of housing and the 'habitat' (related to a housing policy and architectural technologies) and those of industrial organization and global planning. The first from below, the second from above" (Lefebvre, 1996/1968: 177).

Today one may refer to these two "orders of urgency" as, firstly, the minimal catering to basic needs, and secondly, the catering for urban economic competitiveness. Lefebvre possibly suggests what is missing from post-apartheid planning ideals in South Africa. He argues that the two foci, the "habitat" as opposed to "industrial organisation and global planning", have ignored or even squeezed out the possibility of "the realisation of urban society" (Lefebvre, 1996/1968: 178). It has left no space for the "oeuvre", or has not provided "the social and political force" for the "oeuvre" to emerge (ibid.).

Lefebvre therefore concluded in the late 1960s that "[o]nly the taking in charge by the working class of planning and its political agenda can profoundly modify social life and open another era: that of socialism in neo-capitalist countries" (ibid.: 179). It is this notion that inspired a "consistent socio-political mobilisation" in Latin America "since the mid-1970s", where a right to the city began to be realised "both in political and legal terms" (Fernandes, 2007: 208).

What is deeply disturbing for the future of cities is that urban competitiveness is never an end state that any city will reach, but an ongoing state of responding to what competitors do elsewhere. Harvey (2004: 239) has warned that "[t]hose that now have the rights will not surrender them willingly". And correspondingly, Abahlali baseMjondolo (2010, no page number) argue that "if there is a 'right to the city', it is a very difficult right to actually get". They also speak of the "very high price" they are paying "to access any meaningful and broader idea of our right to the city" (ibid.). As Harvey (2008: 38) observes, the right to the city is still "restricted in most cases to a small political and economic elite who are in a position to shape cities more and more after their own desires".

#### **Conclusion**

A right to the city cannot be merely added to the existing urban agenda. In South Africa, it cannot be realised through the existing developmental agenda without unseating the urban competitiveness agenda. A right to the city clashes with the way urban competitiveness treats human mobility, favouring the skilled and discouraging, repressing and criminalising the unskilled. For South Africa, the notion of a right to the city, in particular the transition from urban competitiveness to a right to the city, must be further developed for the right to the city not to become just another hollow slogan.

# The Role of Small Towns in South Africa and their Regeneration: The Case of the Amathole District in the Eastern Cape

Umut Duyar-Kienast

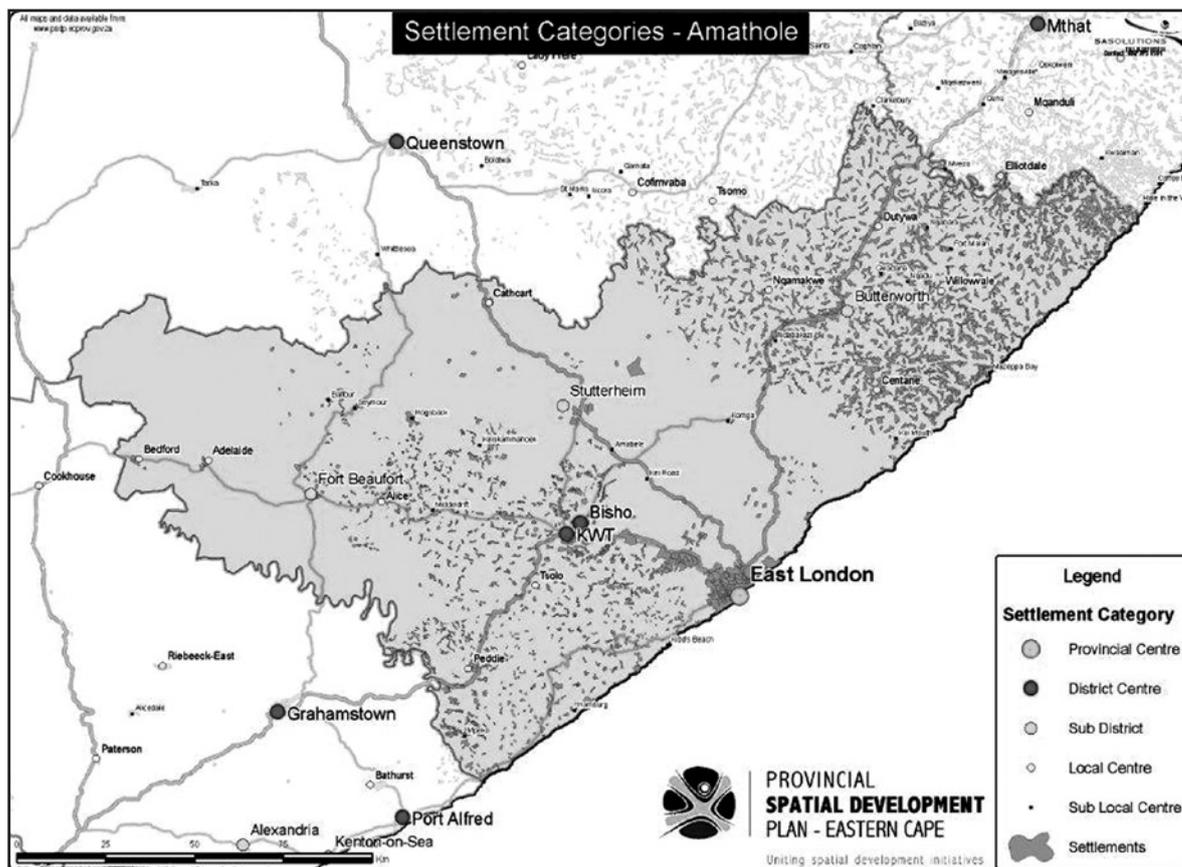
## Die Rolle von Kleinstädten in Südafrika und ihre Erneuerung am Beispiel des Amathole District in der Provinz Eastern Cape, Südafrika

Die Entwicklung von Kleinstädten spielt eine große Rolle für die räumlichen Entwicklungsstrategien in Südafrika. Segregation als Folge der Rassentrennung während der Apartheidzeit sowie sozio-ökonomische und demographische Gegebenheiten stellen dabei große Herausforderungen dar. Stadtverwaltungen und andere Institutionen – beispielsweise der Amathole Distrikt im Ostkap – erarbeiten deshalb Wirtschafts- und Raumentwicklungsstrategien. Die hier dargestellte Diskussion um die zukünftige Rolle von Kleinstädten basiert auf Erfahrungen, die während der Implementierung des Stadterneuerungsprogramms für Kleinstädte im Amathole Distrikt von dessen Landesentwicklungsgesellschaft (Aspire) in den Jahren 2009 und 2010 gesammelt wurden.

The towns in South Africa are experiencing challenges with respect to inherited spatial, social and economic disintegration. The apartheid regime created a fragmented spatial structure based on racial divide,<sup>1</sup> which is very difficult and costly to undo today. On the one hand, the legal framework for spatial planning is very complex, contradictory and outdated. On the other hand, the existing tenure structures are very rigid and do not facilitate a racial mix on space.

Manifestation of apartheid planning in rural areas are dense and large settlements created as part of resettlement policies and "betterment planning" (Todes et al. 2010: 333), which – in most cases – have neither an agricultural nor industrial economic base. This development causes a distortion of the definitions for "rural" and "urban" within the context of South Africa. The character of the settlements and small towns in the Eastern Cape is still rural due to the lifestyles, close relationships to sur-

<sup>1</sup> There is a variety of literature to this topic but to mention some, please see A. J. Christopher (2001) and E. Pieterse (2009).



**Figure 1:** Settlement pattern and categories in Amathole District. Source: Eastern Cape Provincial Spatial Development Plan (PSDP), Province of Eastern Cape 2010

**Provincial centre:**  
East London

**District centres:**  
Bisho, King Williams Town (KWT)

**Sub-district centres:**  
Fort Beaufort, Stutterheim, Butterworth

**Local centres:**  
Alice, Adelaide, Bedford, Willowvale, Centane, Cathcart, Elliotdale, Ngqamakhwe, Dutywa, Peddie

**Sub-local centres:**  
Middledrift, Balfour, Keiskamhahok, Seymour, Hogsback, Komgha, Kei Road, Kei Mouth, Kidds Beach, Hamburg, Ama-bele, Ndabakazi, Nqabara

**2**  
RDP refers to Reconstruction and Development Programme. It is a South African socio-economic policy framework introduced by the African National Congress (ANC) government of Nelson Mandela in 1994. One of its components has been provision of housing to low-income groups.

**3**  
The distinction between the "provincial urban centres" and the "rural towns" is based on the main economic activities and sizes of these towns. Whereas in Nelson Mandela and Buffalo City there is larger industrial production – basically, the automotive sector – other towns are rather dependent on governmental service sector or agriculture.

**4**  
Please also compare with the article by Todes, A. et al. in this issue of TRIALOG.

rounding villages, and lack of diversity in terms of services and urban facilities.

Typical spatial structures in South African towns demonstrate a spatial divide in that some residential suburbs and, to some extent, the central business districts with main services are mostly "white", whereas there are other residential areas for "black", "coloured" or "Indian" groups. Even some extensions of suburbs through townhouse developments show this racial homogeneity. Similarly, new social housing developments, i.e. RDP housing areas, are almost exclusively occupied by black community members, as the primary beneficiary group. Thus, the new developments in the housing market of the post-apartheid era still isolate each racial group. Especially the tenure structures are very rigid: formal land and house ownership is the most common tenure form, and it rarely changes hands and mixes different groups.

As a result, economic, demographic and spatial conditions deepen the poverty in the Province, while service delivery is getting costly and difficult.

### **The role of small towns**

Today in South Africa, small towns play a role as service nodes in their rural settings with poor infrastructural facilities. They attract migration from the rural hinterland, especially those people who cannot afford to move to the big cities directly. At the same time, they are experiencing challenges to accommodate the newcomers, to reverse the spatial divide created in the apartheid era, and to handle issues of land use management and service delivery in general.

Small town development is an important component of the overall spatial development in South Africa. Regarding the roles of small towns in the future, the following questions arise for development practitioners and planners: Can small towns be examples of a sustainable development, including self-sustaining food provision, accessible urban services, affordable housing, and job opportunities?

**Figure 2:** Spatial growth in Alice through RDP housing (provided by Amathole Economic Development Agency, no date)



What are the requisites for this kind of development? How can an economic basis for a sustainable development be created in these areas? Which sector could take the driving role? What are the ways to develop sustainable and equitable resource management?

### **Urbanisation patterns and intra-provincial migration in the Eastern Cape**

Aside from the two large urban clusters on the coast, Port Elisabeth/Uitenhage (Nelson Mandela Bay Metro Municipality) and East London/Mdantsane (Buffalo City Municipality), the Eastern Cape is characterised by small towns, former homelands, townships and RDP<sup>2</sup> housing areas, as well as coastal resorts. Settlements are far from each other and agricultural land in-between is either underutilised or not arable due to erosion, climatic conditions, and scarcity of ground water. In the coastal zone, the natural environment is under pressure due to developments ranging from high-end touristic resorts or golf estates to informal settlements.

Urbanisation and spatial development patterns are directly related to migration. The analysis provided in the EC Provincial Spatial Development Plan (PSDP) shows that migration patterns since 1990s in the province are quite complex (Province of Eastern Cape 2010). While the western interior part of the province has been depopulated, in coastal zones the population tends to increase. This trend is most probably the result of a decline of agricultural and economic activities. Besides unfavourable climatic conditions and limited availability of water in interior areas, the decline of commercial farming and the resulting shedding of jobs are the reasons for this movement (Province of the Eastern Cape 2010: 45). Rather unexpectedly, migration to the major provincial urban centres in the province, such as Nelson Mandela Bay and Buffalo City, seems to have slowed down in comparison to the 1990s, whereas a movement to rural towns, such as Queenstown, Aliwal North or Matatiele, has stayed persistent in the last decade.<sup>3</sup>

Especially migrants from rural areas, i.e. displaced farm workers as cited by Todes et al (2010: 338) referring to previous research, do not have means to migrate directly to major cities. Their motivations are not limited to the search for employment but also to the benefits of social networks and secure tenure. Thus, they prefer to move to the next small town. However, in most cases these small towns do not have capacities to accommodate them in terms of services and job opportunities.<sup>4</sup>

FHISER (2006: 33) argues that the population of the Eastern Cape was in general more stable during 2000-2005 than it was 10 years earlier. Their research shows "only 5.6% of all household members were on the move as migrants" at the time when they interviewed the households in the EC. Accordingly, they argue that densification of rural settlements had slowed down, although it still exists. They suggest that this might be related to the wider availability of social grants and basic services in rural areas, which means that people are not forced to be closer to rural centres to have access to such services. Still the bulk of rural-to-urban movement aims at the bigger metropolitan areas, especially Cape Town or Johannesburg. According to the survey by FHISER (2006: 34, 35), "25% of



◀ **Figure 3:** Inefficient land use and poor infrastructure are characteristic for RDP housing areas, Alice / Eastern Cape. Photo: Clint Mueller, 2010, provided by Aspire

those who [were] absent [from the EC] [stayed] in Cape Town, 30% in Johannesburg and 10% in EL or PE and 16% in other Eastern Cape towns", whereas "6% were moving between rural areas".<sup>5</sup> This underlines the estimations that there are quite substantial local circulations between rural areas and small towns as well as to local centres such as Port Elisabeth and East London, as these destinations sum up in total 32% of the migrants.

In general, the secondary towns in the Eastern Cape attract poor migrants from rural areas, whereas the large towns in Western Cape and Gauteng remain the ultimate destinations with more opportunities of services and economic activities. The "environmental push", i.e. the geographical factors including impacts of climate change (Annez et al. 2010) that are observed in other African regions, is also valid for the Eastern Cape. These factors result in migration from the rural interior to coastal zones. The migrants, however, keep in contact with their town of origin and larger family. A "rural-urban livelihood link" is the result, rather than a clear rural-to-urban migration, as classified under "circular migration" (Beall et al. 2010).

### **Socio-economic profile of the Eastern Cape**

According to the Community Survey, in 2007 the population in the Eastern Cape Province (EC) was estimated to be 6,527,747 with an average household size of 4.1 (StatsSA 2007: 44, 45). Despite a 6.18% increase of the EC population between 1996 and 2007, a gradual decline in the percentage share of the EC was observed with respect to the total South African population (approximately 15.11% in 1996 and 13.45% in 2007) (StatsSA 2007: 14). At the same time, the age pyramid for the EC showed a pattern of a young population (between ages 5-20), indicating high mortality or migration among older people as of the age 20 (StatsSA 2007: 18).

In general, the population in the EC is young and has limited opportunities for jobs and almost no options for personal growth and perspectives, so one of the options for people remains out-migration. Another trend shows an increase in the number of households between the 1996 Census and 2007 Community Survey, while the average size of households is declining. Families in vulnerable

groups are splitting in order to have access to social grants or housing as separate households.

Social grants are most the common income source for most of the population. According to the Community Survey, approximately 11 million South Africans were receiving social grants (StatsSA 2007:42). In the same survey, the total population was estimated at 48.5 million. The ratio of the population receiving social grants to the total was then approximately 22%. According to the Labour Force Survey's official definition, in September 2003 the unemployment rate in the EC was 32% (30% male and 34% female), while the expanded definition showed higher rates at 49% (46% for males and 53% for females) (Province of the Eastern Cape 2004: 33).

The Eastern Cape is one of the poorest provinces in South Africa, with a limited economic productivity level. Nationally, it was the second-lowest province (after Limpopo) with a per capita gross value added (GVA) of around R9,883. This figure was significantly below the national average of R21,664 in 2003 (according to HSRC (2003) cited by the Province of the Eastern Cape 2004: 21). The Eastern Cape economy is based on a significantly larger tertiary sector, mainly characterised by the public sector. Two-thirds of the Eastern Cape's GVA is accounted for by the tertiary sector (66-67%), the secondary sector indicates 26%, and the primary sector contributes 7-8% to the total. Since the mid-nineties, agricultural production has been declining; growth within the primary sector is based on forestry and fishing. The secondary sector mainly refers to automobile and related manufacturing in the Nelson Mandela Metro and Buffalo City Municipalities (Province of the Eastern Cape 2004: 21, 22).

### **Small towns in the Amathole District Municipality, Eastern Cape: demographic and spatial characteristics**

In the Eastern Cape, besides the Nelson Mandela Bay Metro Municipality, there are six district municipalities.<sup>6</sup> The Amathole District Municipality (ADM) is one of them and includes eight local municipalities within its boundaries.<sup>7</sup> Again each of these local municipalities covers both rural and urban areas with several towns in varying sizes.

**5** The percentages mentioned do not sum up 100%. Information regarding destinations of approximately 13% of migrants is missing, as the source gives a summary and the original set of data is not available.

**6** Alfred Nzo, Amathole, Cacadu, Chris Hani, OR Tambo and Joe Gqabi District Municipalities.

**7** Amahlathi, Buffalo City, Great Kei, Mbhashe, Mquma, Ngqushwa, Nkonkobe, and Nxuba Local Municipalities.

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## 8

For example, Hamburg and its associated township Kwandlambe in Ngqushwa Local Municipality accommodated 1,170 people; when including the surrounding villages of Bell, Bodiham and Lovers Twist, around 2,300 people live in the larger area of Hamburg according to the 2001 census cited by Aspire (2009b: 77, 78).

## 9

Average block size in Alice CBD is 75x90m with 10 plots; so each block covers an area of 0.67 hectare with 10 dwellings, i.e. 15 dwellings per ha. The density of population can be estimated 61.5 persons/ha with an average household size of 4.1 for the Eastern Cape. Please see Aspire (2010: 8).

## 10

Please refer to Small Town Regeneration Model document developed by Aspire in 2009.

According to the Community Survey (2007), the population of the Amathole District was about 1,635,433 in 2007. The population is unevenly distributed across the local municipalities. The majority lives in the Buffalo City LM (42.8%), including the towns of East London, Bisho, King Williams Town and the biggest township Mdantsane (ADM 2009: 13, 14).

The EC Provincial Spatial Development Plan (PSDP) (Province of the Eastern Cape 2010: appendix 2) put the towns, which are urban centres within the local municipalities, into five categories according to their size and service capacities: provincial centres, district centres, sub-district centres, local centres and sub-local centres.

The sub-district centres and local centres fulfil similar functions: they are "municipal-scale administrative centres; local-scale service centres for commercial and social goods and services, [providing] residential development covering full range of economic bands (middle income to low income) [and show] potential for value-adding agro-industrial and [/or] tourism" (Province of the Eastern Cape 2010: 65).

In the Amathole District Municipality (ADM), besides East London, Bisho and King Williams Town, there are 26 small towns within the categories of sub-district, local and sub-local centres. Their population sizes vary from approximately one thousand<sup>8</sup> to more than a hundred thousand, such as in Butterworth (Figure 1). These small towns fulfil functions such as administrative and commercial centres and transport nodes for their rural hinterland. They provide health, educational, wholesale and retail services as well as banking facilities for their inhabitants and the population of the surrounding villages.

In general, the population densities in the region are very low. In the area of the Amathole District Municipality (ADM), which covers 23,577.11 km<sup>2</sup>, the density of the population is only 69.3 people/km<sup>2</sup> (ADM IDP 2009: 16).

In the scale of the towns, again the settlements show low densities due to the extensive growth towards the fringes. Across the income groups both in rural and urban areas, all types of housing consist of one-storey buildings. "Urban" and "rural sprawl" are used to define this spatial development. For example, adjacent to the CBD of Alice (Nkonkobe Local Municipality/ADM), which is in one of the small towns showing urban characteristics in terms of its built structure, the density is around 15 dwellings per hectare.<sup>9</sup> Despite of this low density in the town centre, in the last decade Alice has been growing towards its fringes through the construction of RDP settlements (Figure 2 and 3).

### **Economies of small towns**

According to the Amathole District Municipality Integrated Development Plan (IDP), the economy of the district is dominated by the manufacturing sector (41%) followed by community services (30%), finance and business services (10%) and, at the fourth rank, the agricultural sector (8%) (ADM, 2009: 24). While main economic activities related to manufacturing and service sector are in East London, Butterworth, Bisho and King Williams Town, we can observe that smaller towns depend on agriculture, tourism and

to some extent on community services. The IDP (ADM, 2009: 25) states that the agricultural sector has experienced a significant decline since 1995 (from 6% in 1995 to 3.9% in 2007), and in most parts of the District it has not developed beyond subsistence level. This information needs to be correlated with the data on migration patterns since the mid-1990s, farm evictions, and the decline of commercial farming in the western part of the province. In relation to the high unemployment levels, this picture indicates that the small towns' contribution to the economy remains limited.

### **Small Town Regeneration Programme in Amathole**

Aspire is the Economic Development Agency of the Amathole District, with a mandate to promote economic development. In order to fulfil its function, Aspire uses a combination of spatial and sectoral approaches. It concentrates on development corridors along the main national roads in the District, specifically on small towns along these corridors. Since 2008, it has managed to attract the national attention to small towns in the region. As a result of Aspire's initiative, the South African National Treasury redirected some part of its Neighbourhood Development Programme Grant (NDPG) to the development of small towns in the Amathole District; Aspire became the implementing agency for the Small Town Regeneration Programme.

The main assumption of the National Treasury's Neighbourhood Development Programme Grant is that large capital investments by government will attract the private sector to previously disadvantaged towns and neighbourhoods and, at the end, this will strengthen local economies and improve social well-being by creating jobs and providing services in these areas. This assumption is still open to discussion.

As cited by Pieterse (2009: 2, 3), referring to the specific case of Cape Town, several scholars state that private investment has not followed the government's priority areas. His argument is that the protection of private ownership and private interest is so deeply anchored in the society and in the constitution that it is almost impossible to channel private investment towards rather vulnerable and disadvantaged areas and communities, which are obviously not economically attractive. This argument can be extended to explain why it is so difficult to reverse negative impacts of the spatial divide in small towns caused by the apartheid regime.

During the implementation of the National-Treasury-funded Programme, Aspire approached the challenge of promoting economic development in small towns by both creating anchor projects in these towns and developing a model for small town regeneration based on its own experiences. It has been a two-track approach in which practical experiences are reflected on and attempted to be generalised. The first version of the model, developed in September 2009,<sup>10</sup> was still very much focused on planning steps beginning with status quo analysis, and preparing strategy documents based on high-level feasibility assessments on proposed developments. This model was implemented during 2009/10 in 5 pilot towns in the Amathole District Municipality.

## **The main pillars of the Small Town Regeneration Programme:**

- Put strong emphasis on the uniqueness of each town. Aspire acknowledges that there are no blue-print solutions and each town has its own potentials. These need to be explored together with other role players. Therefore, at the beginning of the regeneration process, a vision for each town based on its potential is developed –, e.g. Alice sees itself as "a university town"; Hamburg wants "to keep its quiet and beautiful environment as a touristic small village"; Stutterheim builds "upon the existing businesses"; Butterworth begins with improving its CBD to be "a functional economic and transport node"; and Dutywa will be developed as the "rural centre" and improve the services for the hinterland.
- Begin with spatial interventions as anchor projects. Spatial interventions in each town can be used to identify and unlock the bottlenecks and provide a basis for cooperation between parties. Anchor projects related to the vision of each town create a concrete case upon which the components of the regeneration process are implemented.
- Work in close cooperation with local municipalities. Local municipalities are the main partners and take responsibility in terms of spatial planning, community engagement and operations. It is important to acknowledge their roles and challenges and work in close partnership.
- Take the responsibility of stakeholder management. Aspire takes a clear role to mobilise stakeholders and facilitates participation of those. In doing that, it fulfils functions of a technical and political advisor.

The model allows a systematic approach to the implementation of the programme and the purpose is to develop the model further based on the actual experiences. The following issues can be summarised as challenges and lessons learned during this process.

### **Challenges of small town regeneration**

#### *1. Complexity and comprehensiveness*

In contrast to typical municipal local economic development (LED) projects, which concentrate on establishment of cooperatives in a sector – mostly agriculture, arts and crafts etc. – economic and spatial regeneration is a very complex process. It is multifaceted and includes at least spatial, sectoral and financial planning; intergovernmental relations; partnerships between public and private sectors; community engagement; and stakeholder mobilisation.

#### *2. Complex and outdated legal framework*

To date, spatial planning and land use management legislation applicable to the Eastern Cape still reflects the legacy of the apartheid regime and includes the Land Use Planning Ordinance 15 of 1985 (referring to areas of former RSA), the Transkei Township Ordinance 33 of 1934, and the Land Use regulations Act 15 from 1987 (referring to former Ciskei) (Figure 4). In rural parts of former Transkei, there is no valid land use management legisla-

tion, which causes a vacuum. Traditional leaders in the area have strengthened their power as decision-making bodies on land allocations. This creates conflicts between modern, administrative and technical bodies and traditional and feudal structures, which are acknowledged as officially co-existing.<sup>11</sup>

The recent key legislation and policies related to spatial planning and development in general include the following: the Development Facilitation Act (Act 67 of 1995), the White Paper on Wise Land Use Management (March 2001), the Draft Land Use Management Bill (December 2004) and the Municipal Systems Act 32 of 2000 (Province of the Eastern Cape, 2010: 190 and appendix 5). However, these policies only give a framework for development strategies and do not regulate day-to-day work on the local government level such as decision-making on rezoning and subdivision, etc.

#### *3. Access to land*

Besides the discourse on land reform and redistribution in South Africa with respect to the availability of land for rural and urban poor, even local municipalities do not have access and secure tenure rights on land in their area of jurisdiction. In the small towns of the former Ciskei area, e.g. municipal commonages, belong to the Department of Land Affairs at the national level and are under the custodianship of the provincial government, i.e. Department of Roads and Public Works. The national and provincial government is rather reluctant to facilitate the process of allocation of land to the local government and the process has been stopped by moratoriums. In the former Transkei region, the traditional leaders have the power as the decision-making body with regard to the land use. Thus, the local municipalities have limited authority in utilising the land in their area.

#### *4. Environmental degradation*

Various types of environmental degradation can be observed in the entire District. Interior parts on the west are experiencing serious scarcity of water. For example, the small towns of Adaleide and Bedford are amongst the worst affected. This has especially negative impacts on the agricultural sector. Erosion and soil degradation is evident in the eastern part of the province, the former Transkei region, due to the overgrazing and terraces previously built to gain agricultural land through betterment projects. Lastly, the coastal zone of the District is negatively impacted by the urbanisation and migration trends, which cause pressure on the natural resources and the biodiversity in the area.

Consideration of the environmental issues is important in order to be able to propose ways of appropriate resource management for sustainable growth and development. In this kind of growth scenarios, small towns can play a crucial role.

#### *5. Challenges at local government level: technical capacity issues and fiscal and financial problems*

Local municipalities in the Eastern Cape do not have systems and capacities in place to plan, to implement, to enforce laws and by-laws, and to collect revenues. They are overloaded with unfunded mandates related to their "developmental" role and cannot concentrate on their core functions.

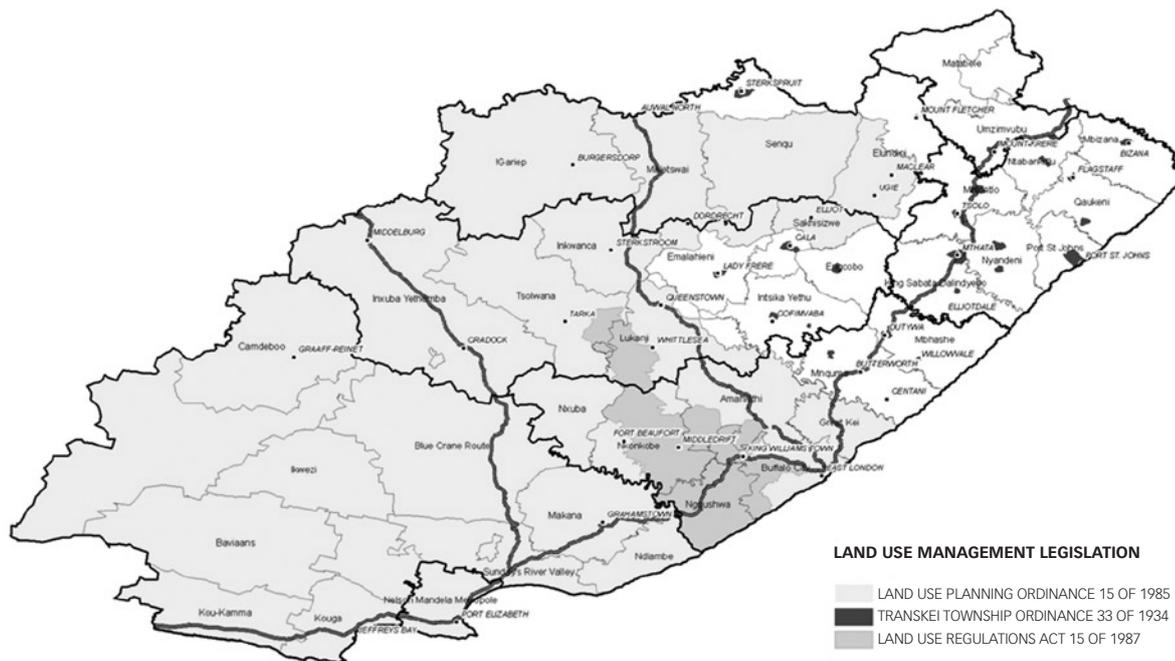
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**Figure 4:** Land Use Management legislation applicable to the Eastern Cape. Source: Department of Land Affairs 2008



**Abbreviations**

- ADM** Amathole District Municipality
- CBD** Central Business District
- EC** Eastern Cape
- GVA** Gross Value Added
- HSRC** Human Sciences Research Council
- IDP** Integrated Development Plan
- LED** Local Economic Development
- NDPG** Neighbourhood Development Programme Grant
- PSDP** Provincial Spatial Development Plan
- RDP** Reconstruction and Development Programme
- RSA** Republic of South Africa

Based on a questionnaire from early 2010 (Province of the Eastern Cape, 2010: 139, 140), the PSDP indicates that most of the municipalities in the province do not have planning staff; only 13 planners are employed in 8 of 41 municipalities in the EC. Respectively, they experience challenges related to implementation of current legislation, record keeping, evaluation of applications, managing the relations to stakeholders, and land use management in general. There are problems in compiling budgets, implementing projects and getting clean audits.

*6. Lack of economic base and infrastructure for growth*  
Agricultural activities in the rural hinterland of small towns are limited. Commercial farms have been declining, while small-scale farmers do not have access to market and do not have capacities to provide goods at the required quality standards. There are also almost no manufacturing industries in the area. The larger industries, such as the automotive industry, are concentrated in bigger towns.

The urban infrastructure is either old and deteriorated due to the lack of maintenance or new settlements are not well serviced due to the high development costs. In addition, limited connectivity between settlements and high transportation costs negatively impact the livelihoods of people both in urban and rural areas.

**Concluding remarks**

The article highlights the role of small towns and the key issues faced during the implementation of small town regeneration programmes. Today, these towns are centres for public services, transport and retail in relatively poor-serviced rural areas. Although they experience challenges to promote economic stability or growth and to address service needs of their inhabitants, they can play an important role in the urbanisation of South Africa.

In order to be able to answer the questions regarding the future role of small towns in the Eastern Cape, however, further monitoring of interventions and research are necessary. But we can already state that small towns definitely deserve the attention of the institutions or governmental bodies working in the area of spatial planning and economic development.

The small towns should be considered as agencies for development and supported to fulfil their functions. They can provide an alternative to current urbanisation patterns by providing self-sustaining centres for urban services with an economically strong rural hinterland.

In order to create an economic base, a totally new and innovative sector should be anchored in these small towns. As the region is also experiencing negative impacts of climatic changes and scarcity of resources, this new sector needs to be sensitive to the environment and sustainable. First of all, there is a need for an innovative vision of socially and environmentally sustainable economic growth. Subsequently, the types and sizes of the capital investments in infrastructural interventions must be appropriate to this desired growth.

Thus, the awareness about the complexity of the municipal functions and interdependency of economic and spatial development is crucial. Professional capacity building in local municipalities, and simplification and standardisation of planning and land use management procedures, are key issues. During the regeneration processes, alternative and sustainable ways of resource management need to be explored. Also, land needs to be made available for infrastructural and anchor projects. And last but not least, challenges in partnerships between stakeholders and intergovernmental relations need to be overcome for the efficient implementation.



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# “Rather a Better Shack now than Wait Twenty Years for a Formal House” – Shack Dwellers International and Informal Settlement Upgrading in South Africa

Joel Bolnick and Benjamin Bradlow

## “Lieber jetzt eine bessere Hütte als 20 Jahre Warten auf ein reguläres Haus” - informelle Maßnahmen zur Verbesserung von Siedlungen in Südafrika

Vor dem Hintergrund, dass staatliche Programme zur Wohnungsversorgung in Südafrika erstens weit davon entfernt sind, den Bedarf zu decken, und zweitens die Menschen zu Leistungsempfängern degradieren, versucht die südafrikanische Allianz des internationalen Netzwerks Shack/Slum Dwellers International (SDI) Alternativen aufzuzeigen. Die Unterstützung des 'informellen' Wohnungsbaus und die Aktivierung der Bewohner sowie deren Selbsthilfepotenzials wird von den Mitgliedern des Netzwerks als aussichtsreichster Weg angesehen, um die Wohnverhältnisse der Menschen zeitnah und nachhaltig zu verbessern. SDI arbeitet in einem Umfeld, wo formelle staatliche Systeme mit dem – für die meisten uneingelösten – Versprechen eines geschenkten Einfachhauses die Kreativität und Produktivität des informellen Sektors vernichten. Trotzdem sucht die Allianz Verknüpfungspunkte zwischen der informellen Wirklichkeit der Armen und den formellen Institutionen. In diesem Sinne werden einfache Verbesserungen der informellen Hütten vorgenommen und die dazwischenliegenden Freiräume geordnet sowie neugestaltet - als modellhafte, kostengünstige und von den Bewohnern kontrollierte Maßnahmen zur Erneuerung der informellen Siedlungen in den Städten Südafrikas..

A substantial portion of the production of basic services and housing stock in the cities of the Global South lies in the realm of the “informal”. For it is a recognised fact that urban poor households are the largest suppliers of these amenities. Responses by the State and the market — the “formal” world — lag way behind. One billion people live in slums (UN Habitat, 2008). As an example, African cities, many of which are characterized by a proliferation of informal settlements, are set to triple in size (BBC News, 24.11.2010). The attendant challenges of informal settlements are likely to intensify without new approaches to urban policy and practice.

In most instances, the creative solutions provided by the urban poor themselves, are considered criminal or dangerous. Instead of an incremental continuum between informality and formality, an aggressive contrast is made between community-constructed shacks that need to be “eradicated”, and state or market-driven formal houses that need to be “delivered”. Once shack settlements are seen as a problem, it is an easy step to assign blame for the exclusion of the poor from their rights as citizens on the poor themselves.

Such an approach proliferates even in cities in middle-income countries where the relative robustness of the formal housing sector, state resources, and institutional capacities, make interventions in the low-income sector a realistic prospect. In fact, nowhere has this contrast between formal and informal housing delivery been more acute and more contradictory than in post-apartheid South Africa. Over two million state-subsidized formal housing opportunities have been overshadowed by the

construction of an even greater number of “illegal” shacks by the poor themselves. The housing backlog has not budged since 1994. Then, there were approximately 300 informal settlements. Official figures estimate that there are now over 2,600 (South African National Upgrading Support Program (NUSP), 2010). The pace of urbanization and other demographic trends only partially explain this fact.

This paper will introduce community organizations and support professionals affiliated to Shack Dwellers International (SDI). It will make three related arguments about the role of the alliance of these organizations, known as the South African SDI Alliance, in informal settlement upgrading in South Africa. Firstly, the Alliance has, for the vast

**Table 1:** Informally Settled Households by Province, 2007. Source: Statistics South Africa, Community Survey Key Municipal Data 2007 / NUSP 2010

Province	Total Households	% Households in informal settlements	Number of households in informal settlements
Eastern Cape	1,586,739	6.4 %	101,551
Free State	802,872	13.6%	109,191
Gauteng	3,175,579	14.3%	454,108
KwaZulu Natal	2,234,129	6.3%	140,750
Limpopo	1,215,935	3.6%	43,774
Mpumalanga	940,403	9.2%	86,517
Northern Cape	264,653	8.9%	23,554
North West	911,120	16.0%	145,779
Western Cape	1,360,180	8.0%	108,814
<b>Total South Africa</b>	<b>12,500,610</b>	<b>9.7%</b>	<b>1,214,038</b>

National and provincial calculations of number of households in informal settlements based on data from Community Survey Key Municipal Data 2007. Variation of 1,479 between provincial and national totals is due to rounding of figures in the provincial calculation, as well as the overall Community Survey methodology.

### Primary actors in the South African SDI Alliance

The **Federation of the Urban Poor (FEDUP)**, a nationwide federation of slum dwellers who practice the rituals of all federations affiliated to SDI throughout the world. The core activities are women-led daily savings, enumeration, pragmatic partnerships with the State, and practical community-led housing development / land acquisition / incremental informal settlement upgrading.

The **Informal Settlement Network (ISN)**, a bottom-up agglomeration of settlement-level and national-level organizations of the poor at the city-wide scale in the municipalities of Cape Town, eThekweni (Durban), Johannesburg, Ekurhuleni, Nelson Mandela Bay (Port Elizabeth), Mid-Vaal, and Tshwane (Pretoria).

The **Community Organisation Resource Centre (CORC)** is an NGO that supports the social processes of community-based organizations that want to work for themselves, by facilitating engagements with formal actors like the State. It also supports the development of "social technologies," especially the SDI rituals of savings, enumeration, and community-led development strategies.

The **uTshani Fund** is a formal bridging finance institution of FEDUP, which provides loans for house construction, land acquisition, and incremental informal settlement upgrading.

**iKhayalami's** mission is to support FEDUP and ISN members who were not in line for state subsidies to begin to upgrade their existing dwellings and their existing informal settlements. It designs and manufactures cheap housing solutions that are easy to transport and erect as a response to emergencies.

1 Signatories included large and small contractors, labour unions, community organisations and financial institutions. FEDUP, then known as the South African Homeless People's Federation, was the community organization representative.

majority of its existence, operated in a context whereby formal systems of the State were designed to crush informal ingenuity and production of services. Secondly, despite the challenges, the Alliance has always sought to build connections between the informal practice of poor people and the formal institutions intended to improve the lot of the poor. Finally, as the formal ground shifts towards the long-standing incremental practices of the poor, the South African SDI Alliance has been intensifying its work with city governments to develop scalable, practice-based protocols for upgrading informal settlements. The extent of the proliferation of informal settlements has, for some, dampened the promise and exuberance of the early days of liberation in South Africa. It is with the practices of the very people who populate these informal settlements that the Alliance has begun to rekindle that potential.

#### A bridge waiting to be built

In 1994, the first post-apartheid Minister of Housing, Joe Slovo, succeeded in getting all major stakeholders in the housing sector to sign the "Botshabelo Accord."<sup>1</sup> The document committed all signatories to assist the State

in providing support to the urban poor in their efforts to house themselves. Building a bridge between the formal and informal sectors was the basic underlying principle of this agreement.

Since Slovo's untimely death in 1995, however, the State has aggressively pushed a housing delivery approach that has shut out virtually all stakeholders other than officials, local politicians and smaller private developers. These three groups have learned how to play the patronage system that now characterizes resource flows through all tiers of Government into tightly controlled, top-down projects. The urban poor have been reduced, in the eyes of the State, to little more than recipients of Government largesse. The function of NGOs in producing services has generally been restricted to the roles of legal "watchdog" and policy think tanks (notwithstanding the fact that these are the functions many of them prefer). Large construction companies and developers, after an initial period of enthusiasm, have walked away in droves. In spite of regular protestations to the contrary, the banking institutions have not made any meaningful contribution to this sector.

In 2004, signs began to emerge that some people in Government were realizing that the State's housing policy was heading for disaster. Instead of stakeholder accord, the situation was characterized by a sharp polarization. On the one hand there were, and still are, government institutions at national, provincial, and local levels that insist on eradicating shacks by any means possible, including evictions. On the other hand, there is a largely disempowered citizenry whose primary tactic is to demand that State institutions solve their problems. This demand is made even when the State's solutions stifle the informal energy and innovation of the poor that have reached much greater scale in the absence of effective formal intervention.

#### Building a people's alliance in the midst of a dysfunctional framework

The South African Alliance of community-based groups and support professionals affiliated to Shack Dwellers International (SA SDI Alliance) has, since its inception in 1991, tried to moderate the damaging aspects of the current housing delivery system by piloting community-led informal settlement upgrading projects in partnership with the state. The main community partners in this alliance are the South African Federation of the Urban Poor (FEDUP) and the Informal Settlement Network (ISN). FEDUP is a nationwide collective of primarily women-led daily savings schemes. ISN, which includes FEDUP, is an agglomeration of settlement-level and nationwide community-based leadership structures with a footprint in over 600 informal settlements in South Africa.

Since the leaders, primary actors and mass membership of this alliance, live in informal settlements, its practice-based methodologies are rooted in the daily, lived experience of slum dwellers. Without fanfare or public hysteria, the Alliance as a whole has been learning for almost twenty years from informal experience. This encompasses a range of social and technical practices: social organization, community information collection, community-driven standards, layout, land development and infrastructure provision by communities.

Figure 1: Joe Slovo settlement, Cape Town, prior to realignment. Photo: Klaus Teschner, Misereor, 2009



FEDUP and ISN remain committed to the vision of housing production that underpinned the “Botshabelo Accord,” which was, in fact, signed by the Federation. The Alliance has been trying without interruption to develop this vision through practical action. Even during the late 1990s, when the Alliance built over 11,000 houses in every province in the country (an achievement not yet rivalled by any other civil society initiative), it focused on an incremental and in-situ housing approach to settlement upgrading. Their rationale was, and still remains, that if one wants cities with better design principles, with poor people participating in policy-making and implementation, then one needs to demonstrate practically how this can be done. Practical experience, as opposed to professionally driven policy documents and legal challenges, is the most sustainable contribution to the development of institutions capable of addressing urban poverty.

The South African SDI Alliance has always pursued this methodology at considerable risk. Over 80% of the houses constructed by the Alliance were built on land that was not formally titled but was close to transport nodes, public amenities and employment opportunities. The inhabitants themselves occupied and consolidated their residency informally. In many cases, house plans followed house construction, and were designed by community people themselves conforming to their standards, layout and design. In other instances, they delivered services incrementally, experimenting with innovations such as shallow sewers, solar water heating, and public toilets. Even when they were drawn into relocations and green-fields development, these were always on land that was closer to city centres.

However, officials at national, provincial and local levels generally disliked the Alliance for its approach. For the Alliance’s approach was antithetical to the operations of these formal actors: Instead of seeking to eradicate informality and turn to formal institutions to start from scratch in the delivery of new housing, FEDUP and its allies celebrated informality and encouraged it to flourish, recognizing it as the basis for real delivery at scale. It is a bitter irony that the custodians of a housing approach that was richly resourced and institutionally enabled, criticized as ineffective the Federation’s articulation of a people’s process. This was in spite of the fact that formal housing delivery was failing to keep up with the people’s own informal production of housing, a model underpinning the Federation’s approach.

The mainstream subsidy juggernaut of formal developers working in concert with officials took off in the early 2000s. FEDUP and its allies found themselves being squeezed from all sides. The so-called “People’s Housing Process” remained a side note in the implementation of housing delivery. Even when it was implemented, it rarely encouraged scalable approaches to people’s empowerment through housing. Still, the Alliance was able to capitalize on the rhetoric of people’s participation and score important political agreements with National Government.

By 2005, however, the Alliance saw that an alternative strategy was required. The State owed the Alliance R80 million (USD11.5 million) in subsidies for housing stock that the Alliance had pre-financed. Lack of finance capital, along with regulatory and political constraints, ham-

pered the Federation’s ability to sustain the scale it had achieved.

The Federation realized that as far as formal, subsidy driven housing was concerned it had to compete within the existing framework rather than continue to contest it through precedent-setting alternatives. In spite of the growing failure of the housing delivery process, policy makers and officials were generally not interested in alternatives. The communities were. The Federation and its allies were now faced with the reality that only those members who were on council waiting lists, or who lived on land already earmarked for development, were going to benefit from even the Federation’s housing process. In line with overall national statistics the Federation found that, on an annual basis, only one out of thirty of its members was able to access a subsidy and become an owner of a formal house.

### ***Small steps along a new path: unleashing informal potential***

This was clearly an untenable situation. As a result, the SA SDI Alliance floated an affiliated organization called iKhayalami in 2005. iKhayalami’s mission was to support Federation and ISN members who were not in line for state subsidies to begin to upgrade their existing dwellings and their existing informal settlements. Based on the successful “Hogar de Cristo” model in Chile that provided starter housing and basic services to hundreds of thousands of households in the 1990’s, iKhayalami developed a practice that it encapsulated in its motto: “Rather a better shack now than wait twenty years for a formal house.”

The South African housing policy had made a small provision, since 1994, for informal settlement upgrading. This space widened marginally with the National Department’s adoption of the “Breaking New Ground” strategy in 2004. Still, iKhayalami, the Federation and its allies, found themselves excluded from the formal systems from the outset. Irrespective of changes at the policy level, the State’s aggressive pursuit of a “city without slums” meant that the majority of the inhabitants of informal settlements for whom no alternative housing was being

**Figure 2:** Joe Slovo settlement, Cape Town, after slum fire in 2009. Photo: iKhayalami





▲  
**Figure 3:** Pegging out sites: Quarry Road, Durban. Photo: Samke Phewa, CORC

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**Figure 4:** Realigning shacks - Quarry Road, Durban. Photo: Samke Phewa, CORC



developed, found themselves in extremely precarious situations. Well-resourced and institutionally protected anti-land invasion units employed by local Governments patrolled the informal settlements of all cities and towns, randomly pulling down any new structures (and all too often old established structures as well), even those that were improvements and extensions to existing dwellings. Aggressive relocation policies to grotesquely planned greenfields sites on the peripheries of cities and towns became increasingly common. All too frequently, those who "benefited" from a housing subsidy were as adversely affected as those who continued to be excluded.

The South African SDI Alliance consistently re-appraised its decision to struggle for transformation through building partnerships with state institutions. Some civil society groups who took the simpler route of confrontation and non-collaboration, accused the SDI Alliance of being "sell-outs" and legitimating the actions of an anti-poor state. In spite of these challenges, the SDI groups remained conscious of the everyday difficulties of their members, the urban poor themselves. They therefore chose to continue to engage seriously in both reforming existing government institutions and protocols for delivery as well as trying to build new ones. As far as the Alliance was concerned, demanding solutions from government, blaming them for failure and waiting for them to deliver, simply would not produce any benefit for the poor.

iKhayalami initially considered working with the Ethekwini and Cape Town municipalities on the construction of on-site transit housing as part of in-situ upgrading projects. When it became clear that most of these transit camps were being built a long distance away from existing settlements, often without any clear strategy for returning inhabitants to existing sites, iKhayalami changed its strategy. Weak community leadership, corroded by systems of patronage and hand-outs, made the Alliance go back to basics and focus on supporting community organizations to begin demonstrating practical alternatives.

The Alliance was in a better position than most to witness first-hand how the governance approach of a paternalistic state was turning the erstwhile back-bone of South Africa's liberation struggle — the urban poor — into entitlement-driven dependents, trapped in a dysfunctional system of bureaucratized delivery. Nothing reflected this more starkly than the steady decline in community savings, collective action and self-reliance. These are the three hallmarks of the SDI approach and were shining characteristics of FEDUP and its community allies during the first decade post-apartheid.

Instead of collective action in partnership with Government, iKhayalami turned to individualized responses in which it helped the Federation and its allies upgrade the shacks of individual members whose living conditions were particularly bad. For almost two years, iKhayalami upgraded the shacks of HIV/AIDS orphans, overcrowded households, and families who had experienced fire, flooding or forced eviction.

Gradually, iKhayalami and its allies in FEDUP and ISN added other dimensions to their work. They developed a small factory for the production of modular units that were cheap, fire resistant and easy to manufacture and transport. They also began installing small drainage and sanitation systems in a few informal settlements in the Western Cape. Since they were not successful in securing state support, they cross-subsidized this work by building community centres, clinics and crèches for NGOs working in informal settlements.

#### ***The informal alternative shows potential for scale***

SDI has a reputation globally for its pragmatism and its patience, hallmarks of informal practice. Opportunities for a small scaling-up of service production came when one of its larger affiliated communities in the city of Cape Town, the famous Joe Slovo settlement on the N2 highway, experienced a major fire in March 2009. iKhayalami and the ISN responded by facilitating a reblocking and shack reconstruction process. Within 3 weeks, the Alliance had assisted the community in rebuilding 120 dwellings in accordance with a reconfigured layout that opened lanes for emergency vehicles and for drainage, and created small pockets of public space for the residents.

SDI's established rituals for community mobilization, organization, and upgrading – community savings, community information gathering and negotiations with state authorities — were shared with the Joe Slovo community. By the time the 120 dwellings had been reconstructed these rituals had been up-scaled into protocols for com-

munity participation in informal settlement upgrading. It was not long before they caught the attention of the City and National Government.

Unlike before, all tiers of government were now coming around to the realization that the incremental upgrading of informal settlements was a desirable option. Little experience in that regard had survived 15 years of top-down, "one-size-fits-all", capital subsidy driven housing delivery. The SDI Alliance quickly formalized its relationship with the City of Cape Town and began to re-align its relationship with other cities and towns so that informal settlement upgrading, rather than house construction, formed the basis of the engagement. In the course of 2009 and 2010 agreements were reached with the cities of Ethekwini, Ekurhuleni, Johannesburg and Stellenbosch. Precedent-setting pilot projects were identified, university institutions were approached for technical capacity and the Joe Slovo learning was refined and scaled up. In mid-2010 the Chair of the ISN, Patrick Magebhula, was appointed as the only community-based actor on a new five-person panel to advise Minister Sexwale on human settlements policy and practice. A formal dialogue was started with the National Upgrading Support Programme (NUSP) of the national Department of Housing. The Alliance's capacity and experience was once again made available to all actors in the sector who were seriously interested in tangible outcomes that could be taken to scale.

### **A set of precedents nation-wide**

There are many interesting results of these efforts.

In Durban, the Federation and its allies responded to a fire at Quarry Road informal settlement. Shack dwellers from Cape Town who had participated in pilots in their home town came to Durban and assisted the affected community in a blocking out exercise that resulted in 85 shacks having been rehabilitated, improved, rebuilt and reconfigured according to a community designed layout. At the same time, medium density housing units are being planned in Cato Crest and are constructed in Piesang River, Inanda, as demonstrations of how community-based initiatives can address issues of density as an alternative to relocation.

In Johannesburg in the communities of Slovo Park, Ruimsig and Kliptown, SDI have achieved the following: 1050 individual household connections to water mains have been installed, paid for and maintained by the communities; a community hall has been completed; a community library has been set up; a settlement is being re-blocked in order to move densely placed shacks further apart in order to minimize the risk of shack fires; blocked drains were cleaned by the communities; settlement enumerations are taking place. Fellow shack dwellers under threat of eviction have been negotiating to be incorporated into an 'established' settlement, while formerly indifferent or hostile politicians and officials are getting to engage with the Alliance and contribute towards and learn from the process.

In Stellenbosch three pilot sites have identified and joint working groups of city officials and communities are planning for the first interventions to take place in 2011.



In Ekurhuleni, five pilot projects have been identified. In one of these, Thinasonke, land tenure challenges have been resolved and a modular community hall has been constructed and transported to the site. It only awaits council approval before it is erected.

▲  
**Figure 5:** Sheffield Road, Cape Town – inner space before upgrading. Photo: Aditya Kumar, CORC

In Cape Town, the partnership between the city authorities and the Alliance is well established. With support from the University of Cape Town, communal toilets are being constructed in Barcelona informal settlement, Gugulethu. Enumerations, GIS mapping and profiles are being conducted in TT Section, Khayelitsha, and in Europe informal settlement, Gugulethu.

The flagship project is an upgrading initiative on a road reserve on Sheffield Road in Philippi. Whilst this is a temporary upgrading until people are provided with suitable and acceptable alternative land, the capacities built and the lessons learnt are certain to be long lasting and have already been exported to the other pilots throughout the country. This is increasing the prospects for a genuine people's process to be at the heart of the Minister's undertaking to upgrade 400,000 informal households by the year 2014.

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**Figure 6:** Sheffield Road, Cape Town – new public space after upgrading claimed by women and their children for domestic chores and play. Photo: Aditya Kumar, CORC





**Figure 7:** Enumeration - "Europe" Informal Settlement, Cape Town. Photo: Aditya Kumar, CORC

### ▲ *The case of Sheffield Road*

It is useful to examine the Sheffield Road experience in some detail, given its important role as the first centre for learning about community-based informal settlement upgrading in the country. Sheffield Road informal settlement was identified in mid 2009 as a settlement to be upgraded in conjunction with ISN and the City of Cape Town. A community-based shack-count was used to ascertain the number of shacks in the settlement. A final count determined that 167 families lived on the road reserve and would benefit from the upgrading process. This enumeration formed the basis for an unconventional program in which a poor, landless community developed their own upgrading plans in close collaboration with local government, social movements, professionals and academics.

**Figure 8:** "Rather a better shack now than wait twenty years for a formal house." Quarry Road, Durban. Photo: Samke Phewa, CORC



Though policies and laws always exist on the books, it is the practical lessons learnt through this partnership that are bearing the most fruit in affecting the City's practice. Initially the City was reluctant to talk of partnership, especially for a settlement built on a road reserve. But, in large part because of what is happening at Sheffield Road, the SDI Alliance now has regular interactions with the Informal Settlements Department of the City of Cape Town.

The SDI team and the City hold monthly Strategic Partnership Planning meetings at management level. At this meeting a select number of ISN, Community Organisation Resource Centre (CORC) and iKhayalami representatives discuss strategy with the Heads of Departments at City level and monitor the learning to emerge from a proposed 21 pilot projects in 21 different informal settlements. Work has already started in three of these settlements, including Sheffield Road. There are also monthly meetings with City officials at settlement level to discuss the issues related to specific settlements and find ways to address pressing issues. A key component of the partnership is to aid communities in their engagements with the City to improve basic service provision such as water, sanitation, drainage, waste removal and electricity.

In the three settlements where the pilots have already started direct channels of communication between community leadership and city authorities ensure that agreements translate into delivery. For example, in Sheffield Road, the City has funded and started to install additional 15 water borne toilets and 3 communal water points. They have also connected drainage from the water outlets to storm-water drains, thereby reducing the risk of flooding.

The most challenging aspect of the partnership with the City of Cape Town to date has been getting them to sanction and support SDI and the community's blocking-out agenda. The City made it clear at the onset of the partnership that they would not support the improvement of shelters and the reconfiguration of the settlement into a better layout. After three months of negotiations, the South African SDI Alliance was able to demonstrate the overall benefits of such an activity: better use of space, better drainage, public open space for women and children, greater safety and security. The City of Cape Town agreed in July 2010 that their partnership with the Alliance would include matters related to blocking-out, beginning with the blocking out of Sheffield Road.

The building of technical capacity at community level and in the ISN has been ongoing. iKhayalami has trained the leaders from Sheffield Road to draw maps to scale. Now there is an ISN mapping team that does the mapping of settlements that are part of the pilot projects. This team constantly trains other community members as they progress from one settlement to the next. The skill of drawing a map to scale is a crucial step in understanding a settlement and beginning to envisage a new layout plan.

The ISN has also set up a pilot project team made up of members who are part of the executive structure of ISN. The pilot project team has been involved in all aspects of engagement with communities who are part of the pilot projects. This team has been working closely with technical support professionals on the ground. Weekly meetings are held between the pilot project team and the technical

professionals to plan the week ahead and to capacitate the team where needed. They are learning a great deal by doing and it is envisaged that in future it will be they who will be leading technical aspects in the communities with professional support where needed.

At the street or cluster level, iKhayalami and ISN have conducted participatory planning workshops. The reconfiguration of two clusters, involving 28 families, has already been designed and implemented. The design has included a rudimentary drainage system that takes storm water out the settlement and minimizes the risk of flooding. The reconfiguration has also created space for additional standpipes and toilets. In addition to iKhayalami, the community has received technical support from academics and students in the Department of Architecture at the University of Cape Town.

The final element of the upgrading is the construction of basic, affordable but highly functional informal housing units, designed and manufactured by the South African SDI Alliance, at a materials costs of R3,500 per unit. Households interested in these units have been required to make a R350 contribution. For those who are most vulnerable and financially insecure, payment takes the form of a 50% deposit prior to construction with the balance payable within three months.

### **Protocols for informal settlement upgrading at scale**

There have been numerous quantitative and qualitative outcomes of this project, along with the rest of the Alliance's informal settlement upgrading experience in the last half decade, that now constitute elements of the SDI Alliance's protocols for upgrading informal settlements. They are:

1. Community members are organized through planning committees and are actively involved in all aspects of the development from conceptualizing, designing, making financial contributions and implementation;
2. Local government is fully committed and provides basic services at no cost, and as prioritised with the community.
3. As a result of the partnership, the City of Cape Town and the ISN are challenging elements of existing regulatory frameworks in urban development,<sup>2</sup> such as recognition of reconfiguration or re-blocking as part of informal settlement upgrading;
4. The strategy of ISN is to network informal settlement communities at the city-wide scale precisely in order to facilitate people-led development strategies with city-wide reach; ISN's grassroots networking capacity means that the learning in this project has been made available to over 120 communities in the Western Cape and hundreds more throughout the country.
5. Community contribution is seen not only as a definite possibility, even for the very poor, but as a powerful mobilizing and accountability mechanism and as a means of leveraging external resources, especially from the State.

Different typologies for upgrading and associated costs have begun to emerge and get standardized. Minimum (and maximum) plot and shack sizes are being established, with no one getting less than their previous footprint.<sup>3</sup> Even settlements with very high densities can be re-configured in such a way that communal open space is made available. These are indeed small beginnings, but within them, almost completely formed, can be found the configuration required for scaling up. Experience shows that solutions will not emerge overnight, but that their emergence and their escalation, once it starts, will be exponential. Unlike subsidy-based housing delivery, informal settlement upgrading cannot succeed even in one community, let alone at scale, without the active participation of those households who constitute it.

### **Conclusion: A participatory framework for realizing inclusive cities in South Africa**

Even if it is just physical upgrading that needs to be done, it is highly unlikely that the Minister's target to upgrade 400,000 households in four years is going to be met without active community participation. This is not just about sending in consultants and contractors to do the job. That is not upgrading. Upgrading the lives of the people requires mobilization and consultation around the needs for upgrading that people identify. It is a permutation of that old rallying cry of the South African liberation struggle: "Nothing for us without us." For this is not about bricks, land, and services alone. This is about realizing real democratic, developmental citizenship.

Professional interventions can certainly add value, but they cannot change people's informal financial management systems or their complex and intricate inter-relationships. Bring in the consultants and the contractors and continue to treat the urban poor as children, or at best as beneficiaries, and four years down the line we will have improved informal settlements, but they will still house poor, vulnerable, unorganized and very angry citizens.

The South African government has seen informality as a threat. Its institutions have kept the informal world at arm's length from the production of services and housing. The poor have therefore bore painful witness to the attendant dysfunction of such a strategy. But the things that appear as failures of informal practice — haphazard density, lack of regulated services, etc. — are a result of the State's inability to harness the positive aspects. Survival and innovation have been the hallmarks of systems that the urban poor develop to produce services and shelter in the absence of effective state intervention.

As the South African government makes a political and potentially bureaucratic shift towards incremental upgrading, the formal framework moves closer to a facilitating synergy with longstanding informal practice. When the poor and the State work together to "co-produce" developmental outcomes, the results will begin to yield the kind of sustainability and scalability necessary to address the challenges that have not abated in South Africa's cities since 1994. The development of mechanisms and institutions for this "co-production" is the strategy — and outcome — of the South African SDI Alliance's practice-based approach.

**2** For example in Sheffield Road they are finding ways in which to approve the electrification of informal settlements that are located on a road reserves.

**3** For example: following numerous engagements and meetings, the Sheffield Road community decided that in the re-blocking, households should be apportioned at least the same footprint as they had had previously. Also materials are provided on the basis of plot size and level of household contribution. Despite the fact that the re-blocking activity took place in a settlement with a high density of shacks, the community was able to open up public space that women and their children claimed as a space for domestic chores and play.



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# Value Capture – Fiscal and Regulatory Instruments for Pro-Poor Urban Development

Moegsien Hendricks, Sabrina Lee and Anzabeth Tonkin

## **Die Abschöpfung von Wertzuwachs als Finanzierungs- und Steuerungsinstrument für eine Stadtentwicklung zum Wohle der Armen**

*Wer vom Zuwachs der Grundstückspreise profitiert ist eine der umstrittensten Fragen in der Stadtplanung, gerade in Südafrika, wo Obdachlosigkeit, Ungleichheit und Armut weiter zunehmen. Die wachsende Nachfrage nach gut erschlossenem städtischen Bauland läßt die Grundstückspreise steigen, drängt den staatlichen Wohnungsbau an die Peripherie und treibt die sozialräumliche Spaltung weiter voran. Development Action Group (DAG), eine NGO aus Cape Town, argumentiert daher – die Theorien von Henry George und Henri Lefebvre verbindend – für eine Abschöpfung und Umverteilung des Wertzuwachses, die auch das „Recht auf Stadt“ der Armen verwirklichen soll. Gefordert wird die Bereitstellung öffentlicher Liegenschaften für den sozialen Wohnungsbau; die Verpachtung von Bauland soll Vorrang vor dem Verkauf an private Entwicklungsgesellschaften haben und das Instrument der Enteignung häufiger genutzt werden. Großes Potential sehen die Autoren auch in einer progressiveren Anwendung der Grundsteuer, die den Kommunen Mehreinnahmen beschert und eine gerechtere Stadtentwicklung ermöglichen würde. Eine höhere Besteuerung von Brachflächen zur Dämpfung der Bodenspekulation ist schon jetzt gesetzlich zulässig, wird aber kaum genutzt. Längerfristig wird eine Rückkehr zur getrennten Besteuerung von Grundstücks- und Gebäudewerten angestrebt, die erst im Jahr 2004 abgeschafft wurde. Bisher fehlt allerdings der politische Wille zu einer Abschöpfung des Bodenwertzuwachses. DAG sucht den Dialog mit Entscheidungsträgern, bietet Schulungen für Fachleute an und bemüht sich zugleich um eine Mobilisierung der Zivilgesellschaft, um den Reformideen zum Durchbruch zu verhelfen.*

Land, and who benefits from increases in land value, is at the centre of much debate in South Africa, one of the world's most unequal societies where homelessness and poverty are on the rise. It has a fundamental impact on urban planning, design and sustainable human settlements. Due to governmental hesitation to intervene in the land and property market, the availability of affordable, well-located, serviced land remains a huge challenge. This poses a major obstacle to the provision of adequate housing for the urban poor, causing informal settlements, backyard rental and other forms of inadequate housing situations to develop (Brown-Luthango, 2006).

There is a need to develop capacity and mainstream land value tax and other value capture mechanisms, where all or a portion of increments in land value attributed to public and "community" interventions are recouped by the public sector. The Development Action Group (DAG)<sup>1</sup> argues that urban land and property markets cannot be relied upon to cater to the needs of the poor. Summarising the organisation's position, this paper argues for bold, decisive and strategic state intervention in these markets, and explores existing and potential mechanisms which would ensure that vulnerable citizens reap the benefits of governmental investments.

**Figure 1&2:** Life in the shacks is unhealthy, dangerous and exhausting: Shack dwellers from Cape Town have to live with raw sewage spilt between their makeshift homes, and must be happy that they can do their washing at the communal tap. Photos: Ella von der Haide, 2005



## Housing needs and continuous segregation

Rather than addressing imbalances, post-apartheid policies have tended to compound socio-economic challenges inherited from the past. According to the State of the Cities Report (South African Cities Network, 2006), our cities today are more unequal than they were ten years ago. Furthermore, more than 27% of South Africa's urban population lives in informal structures. Between 1996 and 2001 there was a net increase of 735,627 informal dwellings, excluding backyards (South African Cities Network, 2004).

At an average cost of \$131,579 per hectare (in some cases \$197,368), the City of Cape Town will need between \$900 million and \$1.3 billion to acquire sufficient land to alleviate the housing backlog. An ever-increasing demand for well-located land drives up its price and forces the state to acquire land for subsidised housing in undesirable peripheral areas where land is cheaper.<sup>2</sup>

## Value capture and the "right to the city"

Since the government's approach has resulted in limited benefit to the poor there is room to explore other strategies through existing value capture mechanisms, and piloting innovative value capture instruments. Examples include the use of public land for the poor and tenure other than freehold; increasing municipal revenue through leasing of public land as opposed to the sale to private developers; capturing unearned value increments due to public investment in infrastructure; and expropriation (Brown-Luthango, 2006).<sup>3</sup>

The notion of land as a collective, rather than an individual, asset lies at the heart of the value capture concept. Effective land management should ensure that the value of land, a finite natural resource, benefits all members of society, particularly when public investment (such as the provision of infrastructure) increases property values.

Effective urban reform and eradication of socio-spatial inequalities require government to implement policies that promote the "social function of land" over the private consumption of land and land value (Furtado and Jorgensen, 2006).

DAG's approach towards equal access to land and resources is rooted in "the poor's right to the city", premised on citizens' capacity to assert rights in articulating their resource needs, realise their socio-economic rights, and participate in democratic decision-making processes (Levebre, 1996). This notion of the "the poor's right to the city" is the premise for DAG's democratic urban governance agenda, i.e. that poor citizens should be equipped with proper tools and knowledge to effectively claim and defend their rights through their active participation in the development and implementation of pro-poor public policy that manifests itself in a city that works for all citizens. Further it also informs DAG's advocacy and lobbying agenda and approach where cooperation with, and support to, the government is equally significant, specifically regarding understanding institutional and regulatory challenges and constraints, but also regarding governmental willingness to explore alternative (if not drastic) approaches to urban land management.



## Growing inequality

The pervasiveness of the market-driven development paradigm results in the entrenchment of the historical spatial and socio-economic inequalities and the further exclusion and marginalisation of the urban poor. Kothari (2007) states that the "revitalisation of urban areas must take place in a way that genuinely promotes a socially and economically inclusive society. The redevelopment of urban areas must not be left only to market forces, as that could result in the exclusion of poor people from access to housing and livelihoods including essential public services". This delivery approach has forced poor communities to find alternative ways to access shelter and land, and coupled with the nature of the state's engagement with poor communities, has influenced the political climate in the country (Houston, 2009).

## Limited reach of existing policy and urban regulatory systems

Charlton (2006) states that "the largely unchanged apartheid-era laws on urban land clearly and definitely favour the rich and influential segment of the population". South Africa's urban policy and regulatory context is complex, with a wide range of sometimes contradictory national and provincial policies and strategies, and the separation of responsibilities between various spheres of government is frequently unclear. The policy environment requires high levels of inter-governmental co-operation in both planning and implementation of urban development projects that has thus far represented a challenge to all spheres of government. In addition, there is a remarkable lack of understanding of urban development issues amongst public representatives and officials as well as an absence of shared long-term visions of the development of urban centres. South Africa's 2004 settlement policy Breaking New Ground (BNG) focuses on the creation of sustainable human settlements and introduces the upgrading of informal settlements, amongst others. However, while policy intentions shifted toward a sustainable human settlements approach, housing delivery continued to marginalise poorer households, mainly due to the

▲  
**Figure 3:** Inhabitants from inner city areas of Cape Town unvoluntarily resettled to the huge "Temporary Relocation Shelter" area in Bliciesdorp, Delft, at the periphery of Cape Town, due to increasing real estate values in the city, slum fires and forced evictions. Photo: K. Teschner, Misereor, 2009

**1** The Development Action Group (DAG) is a housing and urban development organisation based in Cape Town, South Africa, dedicated to accessing land for poor and marginalised urban citizens through a rights-based approach, premised on the 'right to the city' (see [www.dag.org.za](http://www.dag.org.za)).

**2** Personal communication of Mercy Brown-Luthango with a City of Cape Town official, 10 August 2008.

**3** Expropriation is only used by the South African government when major public infrastructure services are provided, such as the construction of dams, roads, and electricity and sewerage plants, and is subject to compensation based on the land's market value. Land acquisition in terms of its social use is less common and is limited to the government's (rural) land reform, in particular its land restitution programme. Even in this instance, the government's ability to expropriate land is fraught with many encumbrances as it is based on the willing-seller-willing-buyer approach.



**Figure 4:** Clifton Cape Town has some of the highest land and property prices in Africa. Photo: DAG

**4** Formal sector employment grew by 1.4 million jobs between 2000 and 2006 of which 71.4% of workers employed were in the formal sector in the major metropolitan areas.

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**Figure 5:** Land on the sentinel mountain (behind the Hangberg settlement, Hout Bay) was recently sold to a private landowner, taking well-located land out of public use. Photo: DAG

government's inability to acquire sufficient well-located serviced land. Subsequent to BNG, the Housing Development Agency was established by the national department of human settlements as a special purpose vehicle to acquire, hold, develop and release land for residential and community purposes. To give effect to this, the Housing Development Agency Act was promulgated in September 2008, and it is intended to address the challenge related to the acquisition of land.

#### A booming property and land market

The increase in housing prices has put home ownership out of reach of a great proportion of the population. Between 2000 and 2004, the price of the average South African house (80m<sup>2</sup> – 400m<sup>2</sup>) increased from \$31,579 to \$64,271 (Philp, 2004). Prices of houses at the top end

of the market (>\$342,105 to \$1.2 million) doubled and in some cases trebled between 1999 and 2005.

Notwithstanding, houses in the "affordable" (<\$29,736) segment of the market, i.e. ostensibly public-financed housing stock, has not shown the same level of growth (Rust, 2006). One factor accounting for this is a lack of "trading" in this sector of the market and below, which is due to households in these segments often being unable to afford to move into a higher bracket of the housing market and hold on to their properties. This, according to the Western Cape Sustainable Human Settlement Strategy, means that "housing as a potential investment and wealth and income accumulation vehicle is effectively foreclosed to the poor, while the wealthy on the other hand enjoy astonishingly high returns" (Western Cape Department of Local Government and Housing, 2006:15).

#### Factors accounting for high land prices

Furthermore, scarcity of suitable land for residential development means that this growth in the price of land is unlikely to slow down in the near future. Land prices in urban areas have been driven up by urbanisation, largely due to migration which has translated into a greater demand for land. Economic growth, higher levels of formal sector employment,<sup>4</sup> lower inflation and substantial personal tax relief have also played a role in the escalating price of land (ABSA, 2006). Whilst the international financial crisis put a damper on the land and property markets, it has not resulted in any significant changes in levels of affordability, and therefore, increased access for the lower end of the market in South Africa.

Land speculation drives up the price of land and deprives those most in need of land, infrastructure and services from accessing these resources by retaining land and





◀ **Figure 6:** If government captured increases in land value, up-market redevelopment, like here in the Bookap in central Cape Town, could subsidize developments inclusive of the poor. Photo: Ley 2010

withholding it from the market. The land market in South Africa is distorted, and by itself will not distribute land from those who hoard it to those who need it. As Kotaka and Callies (2002:1) have put it: "the free market does not always – some would say often – result in a logical and equitable distribution of land uses and attendant public facilities necessary to serve the use of land".

### Options of value capture

The scale of challenges calls for bold, decisive initiatives and strategic state intervention in the market. Interventions should be aimed at redistributing the value derived from a soaring property and land market more equally, and simultaneously strive to protect and secure the rights of the poor in the city.

Value capture refers to a process by which all or a portion of increments in land value attributed to public and "community" interventions are recouped by the public sector. This increased value can arise from three sources: changes in land use regulations; installation of infrastructure; and growth of the population and income of the whole society which would create additional demand for land and increase its price (Doebele, 2001). Mechanisms to capture value include conversion of additional value into public revenues e.g. taxes, fees, as well as infrastructure developments to benefit the poor. The creative and innovative utilisation of value capture mechanisms can provide additional resources that can assist the state in meeting its constitutional obligation in terms of the progressive realisation of the socio-economic rights of all its citizens.

A redistribution element should be an essential part of any value capture initiative. Furtado (2000:3) argues that value capture instruments and policies should thus be

linked to urban policies which are aimed at eradicating socio-spatial inequalities.

### Property taxation and land value tax in South Africa

Municipalities in South Africa's urban centres have used property taxes as a main source of revenue since as early as the 1800s. Municipalities could choose to use any one of the following: a tax on the value of land (site rating); a tax on the total value of both land and buildings (flat rating); or a split-rate where both land and buildings are taxed, but at different rates (also called composite rating).

The South African Constitution guarantees property taxation as a revenue source for municipalities. The White Paper on Local Government, a policy proposal published in March 1998, suggested substantial changes in local government finance, citing certain features of the property rates dispensation that required reform and proposing a simpler and uniform valuation system. With the passing of the Local Government Municipal Property Rates Act in 2004, one uniform system was prescribed for the whole country, namely a tax based on total market value of both land and buildings (McCluskey and Franzsen, 2004; Franzsen and McCluskey, 2000, McCluskey, Lim and Davis, 2007). This effectively did away with pure site-value taxation and composite rating.

Some commentators feel that the abolishment of the site-value taxation was short-sighted as the advantages of site-value rating are well documented (Bhana et al, 2009). A number of studies have shown that previously when municipalities had a choice between three tax systems, most opted for a system which taxes the land portion at a higher rate than the buildings or improvements. Of the 840 municipalities in existence in the late 1990s, two

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In fact, of all the major cities in South Africa, only Cape Town and Port Elizabeth preferred the flat rate. Their percentage growth on improvements was low compared to the average for the whole of South Africa and particularly those cities on site-value rating (Dunkley, 2000).

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thirds were either using site-value rating or composite rating (Bell and Bowman, 1998 in Department of Land Affairs and World Bank, 2006: 24). Similarly, a study by Dunkley (2000) found that during the period 1951 to 1984, the number of towns that raised revenue from site value increased from 36 to 98 while the number of towns on flat-rating declined from 187 to 61. Cities on site-value rating experienced 413% aggregate growth in the value of improvements, those on the composite rating showed growth of 282%, and those on the flat rate showed the lowest growth rate of 189% (Dunkley, 2000: 3).<sup>5</sup>

All seven municipalities studied by McCluskey and Franzsen (2004) were on either site-value rating or composite rating and had been on the particular system for 15 years and more, in some cases as long as 50 and 80 years. Seventy-two percent of the officials interviewed indicated that a site or land value tax encourages development, and some felt that a site-value tax was easier to administer (McCluskey and Franszen, 2004:39). The authors argue that a site or land value tax is more progressive than a flat-rate tax, because it improves "vertical equity" as land owners are concentrated in the upper income segment of the population. In addition, a system that taxes improvements/buildings dampens development, which diminishes the available housing stock, thereby driving up rents. Thus, one has to wonder what the motivation was for the South African government to eliminate this option from new property tax legislation.

The Municipal Property Rates Act of 2004 makes provision for the declaration of special rating areas for the purpose of upgrading certain areas, and allows for local authorities to introduce an additional levy or tax that could be determined on the value of land. However, so far the revenue generated through special rating areas has been limited to upgrading of public spaces, law enforcement, street lighting, etc., but often with no benefits to the poor, and sometimes resulting in the displacement of poor people. The skewed application of the special rating area

can be attributed to NIMBYism (not in my back yard) and notions of separate development, i.e. growing the rates base on the one hand, and upgrading of poor areas on the other.

Lessons for South Africa

Political will and champions

While South Africa has a broad urban development policy agenda promoting spatial restructuring and inclusive cities, a strong "developmental" state is needed to generate buy-in, leverage resources, institute the necessary planning and regulatory frameworks, and develop the instruments needed to change current development practice and ensure that markets include the poor. Political will is critical in the face of resistance from vested interests such as big landowners and developers. Uncaptured value represents a tremendous loss of potential revenue for municipalities.

Participation and partnership

Public participation and effective civil society mobilisation are necessary to put value capture on the policy agenda, to balance opposition from vested interests and to ensure that value capture instruments are applied in a way that benefits the whole community. Currently, there is an absence of meaningful engagement of the poor, where the state plays the role of facilitator. However, the state cannot just be a facilitator of competing needs in a society with elevated levels of inequality. The developmental state needs to regulate and have a say in markets that do not work for the poor. In order to effect intervention in markets, citizens need to develop an urban engagement agenda to ensure that the poor are able to attain their "right to the city". Public participation in planning and decision-making around value capture mechanisms should be encouraged. Taxpayer education programmes should be accompanied by an improvement in the quality



Figure 7: Informal Settlements like the shacks on Lavender Hill require infrastructure and upgrading. Photo: DAG

of infrastructure and services provided to the community in order to manage possible resistance from taxpayers (Kelly, 2000:12).

### *Policy and practice*

Value capture initiatives as a source of securing additional financial resources are limited in the South African urban development context. Potential incentives to obtain buy-in from private developers, for example rebates on development levies, density bonuses, flexible zoning standards, and speedier approval of development plans, remain largely untapped. Whilst urban policy is supported by a number of planning instruments such as national, provincial and local spatial development frameworks, integrated development plans (IDPs), and sustainable human settlement plans, there is a dearth of value capture and other land management instruments to secure not only much needed municipal finance, but also to regulate urban land use and land access toward spatial integration, equality and eradication of poverty.

The reasons for this are manifold:

- The pervasive influence of vested interest, i.e. notions of separate development and land speculation, limit the application of instruments for redistributive purposes.
- There is a lack of political will to regulate the urban land market.
- Development practitioners and government officials have limited experience and skills in using value capture instruments and land management tools.
- Land management policies and regulations are outdated and archaic.
- Land value capture instruments are not mainstreamed in planning and other urban development professions.

### *Capacity development*

Any attempt to introduce value capture mechanisms must be accompanied by substantial education and capacity development of municipal officials. Municipalities are not homogenous; some are weaker than others in terms of administrative capacity, competency of municipal officials and the potential to capture value in that specific municipality. The introduction of a value capture mechanism like a land value increment tax has the potential to provide much needed revenue, and has the potential to strengthen technical and human resources capacity at local government level.

### **Way forward**

There are three categories of instruments which DAG would like to explore in partnership with government:

The first category consists of instruments such as the increased tax on vacant land which could be implemented with immediate effect. These instruments can be used, and are used, without having to make any changes to existing legislative and policy frameworks.

The second category encompasses instruments which have been implemented to varying degrees of success such as the inclusionary housing policy, development contributions, and the "Special Rating Area". DAG's role in this regard would be one of exploring ways to improve the applications and intended outcomes of the use of these instruments.

The third category includes instruments which require more onerous legal processes such as the use of an increased tax on land only, excluding tax on improvements. Part of this process needs to carefully consider unintended consequences of value capture mechanisms, as the introduction of a land value tax could, for example, put an unnecessary burden on small-scale, subsistence farmers or emerging black farmers. Clear protective measures such as progressive rates, tax rebates and tax exemptions need to be considered for vulnerable groups.

### **Conclusion**

Urban spaces are the engines of economic growth, places of innovation, and cultural, political and environmental diversity. They are also places of tremendous inequity, poverty, and exclusion, challenging role-players in all sectors to find sustainable approaches to urban development which reduce poverty and inequality. Good practice has shown that even small interventions in the urban land market can have positive effects on poverty and inequality if strategically planned and well-executed. However, enormous gaps exist in the functioning of the state and its legislative frameworks and policies, especially at local government level, to intervene in the land and property markets, and to capture unearned value.

The value capture agenda is still an emerging concept in Southern Africa, and therefore requires significant capacity and dedicated research resources to advance this agenda. A value capture programme needs to be linked to a broader urban reform agenda and a clear vision and plan for the development and management of the city as a whole.

The paper also acknowledges the vested interests in maintaining the status quo regarding the unregulated private consumption of land at the expense of the urban poor, as well as the resistance to changes in the implementation of innovative value capture and land taxation mechanisms by bureaucracies. Meaningful interventions to implement innovative mechanisms require long-term commitment and high-level political buy-in from all spheres of government. To offset the vested interests in maintaining the status quo, the challenges of bureaucracy and lack of political will, it is important to have civil society organised around issues of land value capture and taxation, and to put pressure on government to effect the necessary changes. Mobilisation of South African civil society, together with the development of a global community of practice, will surely provide the impetus needed to counter-balance pervasive market-driven practices.

*This article is based on a paper prepared by Kailash Bhana, Moegsien Hendricks and Anzabeth Tonkin, which was presented at the UN-HABITAT Central, Eastern and South-Eastern Europe Regional Conference on Property and Land Taxation, in Warsaw, Poland in November 2009 (Bhana et al 2009).*



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# Local Despotisms and the Limits of the Discourse of "Delivery" in South Africa

Richard Pithouse

## **Lokale Machtgeflechte und die Grenzen des Diskurses der 'Lieferung' von Häusern oder Infrastrukturleistungen durch den Staat in Südafrika**

*Unter Regierungsbeamten, Journalisten, Basisaktivisten und Akademikern in Südafrika besteht meist breite Übereinstimmung darüber, dass es im Land eine wachsende Wohnungsnot gibt, d. h. eine wachsende Zahl von in Hütten lebenden Menschen und vom Wohnungsmarkt Ausgeschlossenen, obwohl der Staat seit Ende der Apartheid beeindruckende zwei Millionen Einfachhäuser gebaut hat. Allerdings sind sie meist schlecht ausgeführt und in der Regel am Stadtrand. Die Hartnäckigkeit, mit welcher städtische Probleme trotzdem weiterhin auf eine – technisch zu lösende – Wohnungsfrage reduziert werden, ist symptomatisch für die vom herrschenden ANC betriebene Entpolitisierung der urbanen Konflikte und für die Reduktion der Frage nach sozialer Gerechtigkeit auf eine technokratisch optimierte Lieferung von Häusern oder Leitungsnetzen durch die Verwaltungen. Dies folgt wiederum dem – auch an anderen Stellen der Welt zur Norm erhobenen – Postulat einer urbanen Wettbewerbsfähigkeit, das die Schaffung eines sicheren Umfelds für Investitionen, Tourismus sowie Privatunternehmen zur kommunalen Kernaufgabe erklärt. Das System der staatlichen „Lieferung“ stößt jedoch an die Grenzen korrupter Lokalverwaltungen, in denen der regierende ANC oft zu einem lokalen Machtgeflecht im Dienste privater Bereicherung mit ausgeprägter Klientelwirtschaft verkommen ist. Von Seiten städtischer Basisbewegungen und einzelner NROs wird das Konzept der „Lieferung an die Armen“ je nach Ansatz mit teils konträren Argumenten kritisiert: als Entmutigung von Selbsthilfe einerseits – einem traditionellen, erzieherischen Menschenbild folgend, das eine „Gewöhnung an Hilfe“ vermeiden will – und andererseits als Kritik am Eingriff dieser „Lieferung“ in die Selbstbestimmung der informellen Siedler/innen, geleitet von der Idee einer Würde und Entscheidungskompetenz jedes Einzelnen sowie der radikalen Ablehnung technokratischer Planungen von oben: „nichts für uns ohne uns“. Das Problem der Blockade selbstbestimmter Entwicklungen durch despotische lokale Machthaber ist für beide Ansätze gleichermaßen ungelöst, weswegen der Autor in der Polemik zwischen den sie tragenden Akteuren zur Bescheidenheit mahnt.*

The degree to which the urban question in South Africa has successfully been reduced to the housing question is both illustrative and symptomatic of the general success in depoliticising urban issues in particular and the requirements of social justice more broadly. The resolution of the urban question is now typically seen, often through an astonishingly hubristic use of the language of international competitiveness, as a matter of efficient, bold and creative management that can produce an enabling and secure environment for investment, tourism and entrepreneurship. Social justice is often seen as a question of steady progress by an efficient state, partnered, where necessary, by NGOs and overseen by human rights organisations that can, where necessary, appeal to the courts for oversight.

This is all nested in a consensus around a vision of democracy as rule by unelected but enlightened experts whose performance is managed by elected politicians and who can enable the flourishing of the energies that animate the market. This is hardly unique to South Africa. Its underside – the capture of attempts at managerial efficiency by clientelist party networks, the increasing illegality and violence of state-driven exclusion and repression and so on – are equally familiar internationally. And in South Africa there is, although not to the degree in, say, Haiti or Bolivia, also the production of real dissensus. This

emerges from both the constitutional aspirations to which the state is formally committed and the degree of popular mobilisation, a considerable proportion of which has been in support of the demand for housing. At times legal and popular activism have developed productive synergies.

## **The outlines of the housing crisis in South Africa**

There is general agreement on the broad outlines of the housing crisis in South Africa. A government official, newspaper editor, grassroots militant or academic are all likely to agree that the post-apartheid state has built houses at an impressive rate but that these houses have been poorly designed and constructed and, most often, located on the urban periphery. There is a similar degree of agreement about the fact that, although the state has built more than two million houses, the number of people living in shacks, as well as the broader group of people who cannot afford commercial housing, is escalating rapidly. There is also no doubt about the facts that corruption has been endemic in the provision of housing or that concerns about housing have often been central to the extraordinary wave of popular local protest that has rocked South Africa since, at least, 2004 (Alexander 2010). It's equally clear that housing is central to the demands of the organised poor people's movements that, like Abahlali baseMjondolo, the Western Cape Anti-Eviction Campaign

and others, have engaged in sustained popular struggle in recent years.

### ***The depoliticisation of the mass struggle and the discourse of "delivery"***

But there are a number of increasingly clear fractures in how the housing crisis and prospects for its resolution are understood. The African National Congress began to see the resolution of the housing crisis in technocratic terms in the years immediately before its ascent to state power. This was part of a broader political shift in which a people, constituted in mass struggle, was turned into a politically passive population requiring management and service provision from above. The term that has taken centre stage in this transition is "delivery". It has, perhaps by sheer dint of relentless repetition, developed an extraordinary currency across society. A woman blockading a road with burning tyres is just as likely to frame her demand in terms of "speeding up delivery" as is a newspaper editor, NGO worker or campaigning politician. The currency of the term does not only stem from the frequency with which it is deployed. There is also a real sense in which, despite formal constitutional commitments to liberal democracy, many forms of entirely legal dissent are seen as politically illegitimate by the ruling party and, sometimes, the media and some currents in civil society. The degree to which legal forms of dissent are tolerated narrows dramatically from the top to the bottom of the class hierarchy. But while it is often extremely difficult for poor people to oppose the party or its policies they can, legitimately and safely, raise questions about the efficiency of their implementation – about, in the clichéd phrase of the day, the "pace of service delivery".

The ubiquity of the language of delivery is one symptom of the overwhelming ideological hegemony that the ANC was able to achieve for its deeply compromised social programmes solely on the basis that it, rather than the

apartheid state, was administering them. But it is also one consequence of the unstable pact forged between the ANC and older elites in which concessions were negotiated, formally and informally, in exchange for a cessation of hostilities. In other words what had been rendered political during the struggle against apartheid was rendered, by mutual agreement between elites, as technical at the dawn of parliamentary democracy. "Depoliticisation", Jacques Rancière tells us, "is the oldest task of politics, the one which achieves its fulfilment at the brink of its end, its perfection at the brink of the abyss" (2007:19).

But delivery also has tremendous currency amongst both that part of the authoritarian left that sees itself as a rival managerial class to the ANC as well as the broad constellation of elite forces to the right of the ANC and located in civil society, the academy, media and business that would like to see more of the state's social functions being managed by appropriate NGOs and consultants accountable to donors rather than by officials accountable to elected politicians.

### ***Challenging the language of "delivery"***

There are, broadly, two lines of critique that have emerged outside of the state and against the general consensus that the resolution of the housing crisis is a technical question of "speeding up delivery". The first is rooted in a set of discourses with Victorian roots that stress the alleged dangers of welfare dependency and argue that the poor need to take proactive action to pull themselves up by their bootstraps. In the contemporary postcolony these discourses use the language of empowerment but tend to stress the importance of interventions such as savings groups, microfinance and sweat equity and to actively discourage any form of popular political empowerment, any sort of direct confrontation with oppression or any sense of entitlement to state support. The second set of discourses that challenge the hegemony of the idea of



◀ **Figure 1:** Beneficiaries of top down housing "delivery" have no say in planning their homes and communities. Photo: Clint Mueller, 2010, provided by Aspire



**Figure 2:** Evicted shack dwellers from Arnett Drive, Durban, after their homes have been demolished by the eThekweni Municipality's Land Invasions Unit (January 2008). Photo: AbM

"delivery" is largely rooted in ideas of dignity. They include a popular moral economy rooted in the imperative of personal and collective dignity which often extends to the view that people should be treated with respect which is sometimes taken to mean that they should be, at least, co-planners of their homes and communities. The experience of popular political empowerment in the 1980s, and the radically democratic ideas and practices that were sometimes a key part of this political sequence, are also central to this second set of discourses. They have also been influenced to some degree by the ideas around self-management, autogestion, the right to the city and so on that are attractive to the small anti-authoritarian left in South Africa. These discourses are all, in various ways, committed to both popular political empowerment and the defence and support of what the Brazilian urbanist Marcelo Lopes de Souza (2006) calls "grassroots urban planning".

### ***Delivering to the "deserving" poor and criminalising the "undeserving poor"***

But there is also a third challenge to the language of delivery that comes from within the state itself. The state continues to present plans for ever more efficient and less corrupt delivery as the solution not just to the housing crisis but to the urban crisis and, indeed, the whole social crisis in general. But, at the same time, it has, in recent years, also made serious attempts to separate the deserving poor, who will patiently wait for delivery, from the undeserving poor, whose aspirations for a safe and dignified urban life are increasingly presented and treated as criminal. Delivery, in other words, is being withdrawn as a universal right and the state is increasingly approaching factions of the poor as a security problem rather than as potential "beneficiaries" of development. This has been accompanied by a state discourse that poses the shack settlement not in terms of social justice or an imperfect but still valuable popular attempt at accessing the city, but as a problem to be eradicated by a twin strategy of building houses and the criminalisation of squatting. The recent return to the high apartheid strategy of building "transit camps", essentially government shacks often set in semi-carceral conditions, is one response to the

presentation of the shack settlement as a social pathology rather than as, what it is, the best available housing option for millions of people despite its obvious imperfections.

South Africa has, by international standards, a relatively progressive set of laws and policies relating to housing rights, but the state acts in blatant, systemically unlawful and often criminal violation of these laws and policies on a daily basis. It also continues to call for their reform in a direction that would dramatically reverse some of the policy and legal gains made after apartheid.

The state is enthusiastically supportive of the bootstrap versions of bottom-up empowerment and has, on occasion, used these sorts of projects to try and separate the deserving poor from the dangerous poor. But, to their credit, the organisations that support these projects, and which aim to do so, in part, via building high-level alliances with the state, do not generally endorse the project of criminalising that part of the poor cast as undeserving. However some left and human rights NGOs have followed the logic of the state and sought to actively demonise autonomous poor people's organisations as criminal, violent, manipulated by malevolent outsiders and so on when they have declined to accept NGO authority. In some cases there has been outright complicity between state and NGO attempts at unfairly demonising independent poor people's movements.

### ***Different approaches to popular empowerment confront similar difficulties***

The partisans of popular political empowerment, like, say Abahlali baseMjondolo (AbM), and the partisans of what I have here called bootstrap versions of popular empowerment, like, say, Shack Dwellers' International (SDI), tend to operate in very different ways. For instance AbM has very little access to money and no professional staff or technical support NGO. It is willing to engage in mass protest when there is no willingness on the part of the state to negotiate, openly engages in unlawful civil disobedience, such as the organised connection of electricity, and, although it does not support any political party, is the subject of deep suspicion by the ANC which sees it as a rival.

SDI is a global NGO with professional staff which works with grassroots federations, centred around savings groups, in a large number of countries. In South Africa, its grassroots structures are linked together as the Federation of the Urban Poor (FEDUP). SDI does not engage in direct confrontation with the state, does not openly support its affiliates in engaging in unlawful civil disobedience, has tremendous resources and considerable technical expertise and has enjoyed sustained high-level backing by leading figures in the ANC, including the current and previous housing ministers.

Yet there is a real sense in which these quite different sorts of organisations share much of the terrain on which they operate and confront some of the same difficulties. One of those difficulties is the enormous degree to which housing delivery, presented in technocratic terms by politicians and also often planned in a similar mode by officials, often in partnership with NGOs, is routinely subordinated to the patronage networks within the ANC.



◀ **Figure 3:** Abahlali baseMjondolo's march on Jacob Zuma on Human Rights Day, 22. March 2010 . Photo: Kalinca Copello / AbM

***The degeneration of a national liberation movement into a "means of private advancement"***

The pervasiveness of patronage and clientalism with the ANC should not be seen as a simple matter of corruption. Straight-forward corruption does occur but even then it is often embedded in clientalism in so far as the allocation of opportunities to practice corruption goes. Officials, perhaps working with NGOs, may develop a project along technocratic lines. But that project is highly likely to be captured and distorted by party networks at every level from the allocation of contracts to build houses through to the provision of materials, the allocation of labouring jobs and the allocation of houses. There is consider-

able media coverage of how the ANC, sometimes acting through its investment arm, Chancellor House, makes developmental and other decisions that are in its own pecuniary interest and how support in the factional battles between the party elites is often secured, at least in part, by access to patronage. What is less well covered is the degree to which support is secured by access to patronage at the party's base. In Durban I've not witnessed any development, or even disaster response, channelled through party structures in which these dynamics were not a decisive factor in how things actually played out.

The party has not degenerated to the point where it is nothing but "a means of private advancement" (Fanon,



◀ **Figure 4:** As much as South Africa's poor need free basic services, delivery is often tainted by corruption and clientalist politics. Photo: K. Teschner, Misereor 2010



▲  
**Figure 5:** Police cordoned off roads in downtown Durban during AbM protest in March 2010. Photo: Kalinca Copello /AbM

▼  
**Figure 6:** Abahlali baseMjondolo has shown that the urban poor can speak for themselves. Community meeting at Richview Transit Camp, Durban, March 2010. Photo: AbM

1976:136) – the trade union federation COSATU continues to take ethical positions within party structures – but it certainly lacks any credible sense of a collective emancipatory vision and has largely become a means of private advancement. In Durban, the late John Mchunu, formerly chairperson of the ANC in the city, was awarded millions of rands in construction contracts by the state. Local ANC leaders in shack settlements are also given jobs, contracts, emergency aid of various sorts (food, building materialist etc) in exchange for loyalty.

One consequence of this is that there can be no smooth movement between technocratic planning and implementation. This is not merely a question of friction "slowing

delivery down". On the contrary there is often, as when relief after a fire only goes to people who can show party cards or when houses in a development are allocated on the basis of political affiliation, a fundamental distortion of the initial aims of planners.

***The dominance of the ANC and its internal networks of patronage***

In most of South Africa there is no real threat to the ANC at the polls. The real threat to leaders of the organisation at all levels comes from the contestation within the movement. This contestation is often acute and sometimes violent and leaders of the party, at all levels, are generally far more concerned with shoring up support within the party rather than with managing dissent outside of it.

The party leadership is well aware of the popular hostility to increasingly blatant forms of patronage and so there is an increasingly strident anti-corruption discourse. But the same leadership that is speaking against corruption has come to power via networks constituted around networks of patronage – for instance John Mchunu was a key backer of Jacob Zuma – and it is difficult to see how they could act against these networks without putting their own positions at real risk. Certainly there are cases where senior party leaders take serious action against corruption. There is, for instance, no question that the new housing minister, Tokyo Sexwale, has taken some decisive steps against certain forms of corruption. However, party loyalty is built in the shape of a pyramid and people near the top of that pyramid are generally only aware of the precise nature of the deals that sustain their position with regard to people in the layers immediately beneath them. But each layer of people is dependent on clientelist relations with lower layers with the result that it is often impossible for senior people to drive a project of technocratic efficiency.



In Fanon's analysis there is, inevitably, an authoritarian underside that accompanies the degeneration of the party into a "means of private advancement". He writes that the party "helps the government to hold the people down. It becomes more and more clearly anti-democratic, an implement of coercion" (1976:136). A party that says and that must continue to say that is for the people when, in fact, it has become a means of private advancement via complicity with domination, will inevitably collapse into paranoia and authoritarianism as it tries to square the circle by pretending, to itself as much as anyone else, that private enrichment is somehow the real fruit of national liberation.

In contemporary South Africa, it is not at all unusual to find that people live in fear of local councillors and their ward committees and the Branch Executive Committees of the local party structures. In fact, it is no exaggeration to say that we have developed a two-tier political system with liberal political rights for the middle classes and increasingly severe curtailment of basic political rights for the poor.

Much of this is made possible by the simply hostility that middle-class society, including influential streams in the media and civil society, display towards poor people when they do not present themselves, or are not presented, as passive victims patiently waiting for help. There is a rather extraordinary silencing (Trouillot: 1995) of the present at work in the name not just of international competitiveness and efficiency but also in the name of human rights, social justice, civil society (and the various sects of the vanguardist left – all as stridently vociferous as they are alienated from any popular support). But the ongoing entrenchment of the two-tier political system also has a lot to do with the nature of informality as a subject position.

### **Informality and local despotism**

As Partha Chatterjee (2004) has shown the urban poor, often living and working informally and therefore outside of the law, have a tenuous relationship to civil society. An existence in legal limbo can, as, for instance, Asef Bayat (1997) has shown with regard to Tehran, open up opportunities for the quiet encroachment of the poor. It can also enable more direct forms of confrontation with the power of state and capital. There are a number of studies illustrating this in the Latin American context (e.g. Fernandes: 2010, Zibechi: 2010). However informality can also, as Ananya Roy (2003) has shown in her study of Calcutta, produce systemic insecurity which can in turn result in profound dependence on clientelist relations with political parties as people are only protected from eviction, and are only able to access development, for as long as they continue to demonstrate loyalty to party structures.

Of course party political systems of clientalism and patronage are not the only forms of local and often micro-local despotism. It is not unusual for NGOs to secure their turf with very similar strategies to parties and with similar results including, on occasion, the violent horizontal defence of individualised relations of vertical patronage. There are also, in some cases, real authoritarianisms within community organisations that have been developed outside of party structures. I've never encountered a community in South Africa that is effectively run by criminal

networks as can happen in Brazil (Souza: 2009), but there certainly are alliances between criminal networks and various kinds of local organisations, be they constituted in alliance with parties or NGOs.

Much of the debate around the housing crisis in South Africa, and many of the attempts to make some inroads into resolving that crisis, does not take these local forms of despotism and their ability to capture and distort developmental projects seriously.

### **The experiences of shack dwellers' movements in Durban**

In Durban, in the years in which I was doing full-time research on housing and spending much of my time each day in shack settlements (2005 to 2008), I was aware of two attempts to generate innovation from outside of the ANC and the model of development in which "beneficiaries" patiently wait for "delivery". The first was that of SDI and the second was that of AbM.

The SDI strategy included organising on the ground via FE-DUP as well as high-level deal making between its professional staff and the municipality that included deploying an SDI staff member to the housing department. But while there was high-level political and official support for SDI, this support did not translate into meaningful progress on the ground. There seemed, at the time, to be broad agreement between SDI and city officials in the city that the chief reason for this was political suspicion by local party elites (despite the fact that SDI membership often overlapped with ANC membership and structures) and attempts to capture housing projects for the purposes of patronage.

AbM did not start with a thought-out strategy to achieve what it wanted – participatory in-situ upgrades rather than forced removals to peripheral sites, termed "human dumping grounds" by the movement. In its first mobilisations in 2005, the movement was certainly acting independently of party control but it did not see itself as hostile to the party. Most activists were convinced that the real problem was the local party leaders and that if they could raise their voices enough senior party leaders would respond to them.

But the response of the state and the party to independent organisation was so hostile that, in the end, the movement had no real choice but to organise independently of the party. This entailed replacing party structures, which are accountable upwards, with movement structures that were accountable downwards.

This organisation was democratic, public and determined and therefore able to sustain itself in the face of fairly relentless attempts at delegitimation, co-option, personal intimidation and outright state repression including public displays of state violence. The result of this independent organisation with outside solidarity – from church leaders and, when there was blatant public state repression, also international human rights organisations – was that, after two years of sustained struggle, the movement was invited to enter into negotiations with the city. These negotiations were conducted between AbM and city officials and a planning NGO working with the city. They

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References continuation on page 55

# Land is a Political Question

S'bu Zikode

[...] Land and housing are the most urgent problems in our cities and there is a serious difficulty in resolving the issue of land and housing in our country. Land comes before housing and this difficulty comes when we all continue to pretend that the issue of land is not political. [...]

The question remains very complicated when our country is administered by politicians who talk about the struggle and about being for the people while also pretending that the matter of land is not political. [...]

Those who are in power today have the power to distribute our land fairly and freely to those who do not have land. Why have they betrayed us today? The answer is simple. If they do so they will be giving away the very power that makes them powerful.

Taking the land back will never be easy.

Taking the land back will require us to become and to remain the strong poor. A year ago we learnt a hard lesson. We learnt that South Africa is not a real democracy. The middle classes and even the working classes are free to debate and to discuss the future of the country. But we, as the poor, have been evicted from democracy. We were attacked and driven from our homes with the support of the police and the politicians looked. Cosatu was silent and the Human Rights Commission was silent. We have learnt that there are many people who do not think that democracy is for the poor. [...]

We need to make this democracy real for the poor. Therefore we need allies amongst those groups who are allowed to think and to speak for themselves in South Africa. They need to use their freedom and safety to stand with us and to defend us as we struggle for our own freedom. Our organisations and movements need to forge a living solidarity with progressive faith based organization, trade unions, professionals in all specialised fields, individuals and active citizens in general. We need to form a powerful national alliance for urban reform that will always be willing to defend the right of the poor to think, speak and organise for themselves. [...]

Some of us have already joined this journey to a new urban order not only by sitting in cool offices but by sweating in communities where we are busy organizing, conscientising and being conscientised as we organise and are organised by popular self education, meetings, camps and protests. Some of us have already lost our homes in the land of our birth as our punishment for struggling to access the well-located lands. [...] This is the price which those who are serious about the prize of A New Urban Order must be prepared to pay.

One cannot begin any meaningful discussion of the urban crisis while the poor continue to be excluded from the conversations that are meant to build the very new urban order that is for all. [...] We decided long ago not to accept the situation where some people talk about the poor and even for the poor without ever speaking to the poor. [...]

There is no doubt that the work of the intellectuals, town planners, engineers, architects and other professionals is critical. We do need their skills. But for

as long as they remain on their own their knowledge is very fragile. We need to plan our cities together.

I remain convinced that if all the work of the urban experts is done in isolation from the poor, those who are meant to benefit from it, then it will not solve the problem. The first problem is that despite all their education the experts are often really ignorant of the real needs of the people. The second problem is that expert ideas, even good ideas that fit with the needs of the people, have no power on their own. An idea can only move into the world and start to reshape the world when it has a living force behind it. An idea that is worked out between the organised poor and the urban experts will have a living force behind it when the organised poor accept it as their own. [...]

In his State of the Nation Address Msholoz<sup>1</sup> himself committed his government to acquire more than 6,000 ha of well-located land for the poor. This promise came as a response to the struggles of the poor in the cities and towns across the country. Obviously if the state fails to acquire and redistribute this land there is nothing that will stop the people from identifying and occupying such well-located land on their own. We will give this our full support as a movement. If the alliances that we want to make with the churches, trade unions, the intellectuals and the urban experts will support us in this then we'll know that they are really on our side. For as long as human beings are living and dying in the mud and the fires any politics of patience is just another name for oppression.

[...] Land should not only be seen to be well located because it is identified by the state. The poor have a right to identify land that is well located for them. [...] Our cities require a strong leadership from the poor with a real consciousness as to how the issue of land remains a fragile question. Organisation, mobilization, active citizen participation and a clear political consciousness will enable a popular democratic rebellion that can put the will of the people against the will of the few to build our new cities. The transfer of land to the poor and even to the working class requires radical action. [...]

Our new urban order can only be realised when the land that has already been occupied by the poor is transferred to them with the full assurance of land tenure. If more land is not made available for those who don't already live in well located occupations then the poor can find the new land themselves. The state has a duty to invest in our communities and to support our occupations through building infrastructure and maintaining it, far before considering building subsidized housing projects. Land tenure must come first, then the provision of services and infrastructure and then housing projects.

[...] Our struggle and every real struggle is to put the human being at the centre of our society, starting with the most dispossessed who are the homeless. Washing away political discourse and narrowing the fragile political question of land into a complicated technical question will not help any of us at all. The organizing of the poor that takes place in our disgruntled spaces is very important for any change. And in those discussions by the poor who are marginalized because they do not count in our society lie some of the significant answers that most of us fail to recognize. [...]

1

Msholoz<sup>1</sup> is the clan name of Jacob Zuma, President of the Republic of South Africa.

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## S'bu Zikode

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were, in the end, successful. Settlements that had entered the movement were able to negotiate participatory in-situ upgrades and to do so in a manner that committed the state to use the progressive provisions, hitherto left fallow, from amidst its policy options. This was a breakthrough of national significance (Pithouse: 2009). A key reason for the success of these negotiations was that local party structures had been expelled from the process and a democratic community organisation had been able to negotiate directly with city officials.

### ***A democratic model of development brought under control of the local party***

AbM had developed some innovative strategies to secure their commitment to a democratic model of development. For instance, in an earlier concession from the state, the repair of the toilets in the settlements, the movement did not, as the ANC does, allocate the jobs to its supporters. Instead, everyone in the community who aspired to those jobs was invited to put their name forward and a blind lottery was held. Of course, any movement or organisation, no matter how democratic, will, inevitably, find itself under increasing pressure to conform to patronage-based modes of operation as it comes closer to being able to exercise real power over real resources. New tendencies can emerge within a movement and new people can seek to enter it with new agendas.

But AbM didn't get the opportunity to test the tenacity of its democratic mettle through a full-scale upgrade. Before the fruits of the deal that had been negotiated could begin to be realised, the movement was attacked, removed from its original base in the Kennedy Road settlement, and replaced with an unelected Community Policing Forum under the control of the local ANC (Chance: 2010).

There were various factors that enabled this attack. One of these factors was that the movement, which was and remains multi-ethnic, lost considerable support in the Kennedy Road settlement as ethnic sentiment escalated in the wake of the Zulu nationalism that surrounded the ascent of Jacob Zuma to the presidency. This was accompanied by an extraordinary campaign of slander against the movement and its leading members by ANC structures and certain kinds of government officials including some police officers. Allegations were made of everything from witchcraft to corruption, but the most consistent theme, often backed by senior police officers and politicians, was that AbM was being paid by foreign NGOs that were, in turn, in the pay of foreign governments determined to "stop development" and "keep African people poor".

Local party leaders and the local business class were also promised access to the development that AbM had negotiated. That development is still scheduled to go ahead, but if the settlement is not returned to democratic government before it begins, it will certainly be captured and distorted by the local party structures. Already disaster relief after fires has been distorted in the usual ways.

Both the AbM and SDI strategies, whatever their other merits and limits, have failed to realise the material change that they had hoped to achieve in Durban. Lessons must be learnt from this experience.

### ***Perspectives***

While meshing state and NGO elites can, on occasion, result in shifts in policy, it does not appear to the current writer that any strategy of meshing state and NGO elites will be able to challenge the clearly worsening degree to which local party structures are operating in a despotic manner on the ground. The AbM experience has proven that sustained popular mobilisation can democratise settlements at the local level. But it has also shown that, certainly in Durban, the ANC is willing, when an appropriate constellation of circumstances creates the opportunity, to sanction the use of police-backed horizontal violence to return a dissident territory to their control.

It may be that there is no realistic possibility of resolving the housing crisis without some sort of fundamental political change in South Africa. But when millions of people are living in literally life-threatening conditions, attempts must be made to do what can be done. And when gradual change in the fissures of the present takes a democratising form it can, as well as winning material concessions, enlarge the possibilities for more fundamental progress. But in view of the fragility of the positive innovations that have been developed, and the fact that no one has decisively solved either the problem of local despotism or the general slide amongst elites into a security rather than rights-based response to the housing crisis, there is a pressing need for organisations committed to housing rights to avoid damaging turf wars.

If any realistic chance of progress does require a popular challenge to local party structures, and if there is a decreasing tolerance for such challenges, then what is required from all the organisations committed to housing rights is, at a minimum, something like the following:

1. A clear and public recognition by all actors that poor people have an unqualified right to organise outside of the control of the ruling party and its local representatives if they so choose.
2. A clear and public recognition by all actors that poor people have the right to assert themselves politically and in opposition to the programmes of the state if they so choose.
3. An agreement between all organisations that any repression of any organisation will be vigorously and publicly contested by all organisations.
4. An agreement between all organisations to work together on issues of common concern while accepting differences and the right for all organisations to, should they so wish, retain their autonomy.
5. A commitment by all organisations to organise in a genuinely democratic manner at the local level. This must include, at a minimum, all positions being subject to regular election.
6. A recognition that while different organisations are pursuing different strategies these are all experiments and that no one has any sort of final answer to the challenges that need to be confronted and so a degree of mutual humility is required.

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# Between Praxis and Paralysis: The Relationships Between Legal NGOs and Social Movements

Kate Tissington

## **Zwischen Handlung und Lähmung: die komplizierte Beziehungsdynamik von Nichtregierungsorganisationen und sozialen Bewegungen**

*Die Socio Economic Rights Institute of South Africa (SERI) unterstützt als Rechtshilfe-NRO mit Menschenrechtsorientierung verschiedene städtische Sozialbewegungen sowie lokale Gemeinschaften aus städtischen Armensiedlungen in Südafrika. Damit ist sie – ebenso wie andere zivilgesellschaftliche Organisationen – der vehement geäußerten Kritik am (Abhängigkeits-) Verhältnis zwischen Nichtregierungsorganisationen und sozialen Bewegungen ausgesetzt. Der Beitrag geht auf die Kehrseiten dieser Zusammenarbeit ein, aber auch auf Spannungen zwischen den städtischen Sozialbewegungen Abahlali baseMjondolo und Shack/Slum Dwellers International, die verschiedene Arbeitsansätze verfolgen. Eine Beschränkung auf die Schwierigkeiten im Verhältnis der Akteure würde jedoch das eigentliche Potenzial sowie die Komplexität dieser Beziehungen verschleiern. Es zeichnet sich vielmehr ab, dass zwischen Praxis und Paralyse ein breites Spektrum an höchst nuancierten, lokal ausgehandelten und sich stetig verändernden Beziehungsgeflechten entsteht.*

Recent critiques of those who work with/write about social movements have both forced questioning about the integrity of the relationship between middle-class activists/academics/NGOs and social movements. These critiques have often come *from* middle-class academics and activists who have worked with social movements in the past and who criticize the representation of 'the Poor' and social movements (e.g. Desai, Sinwell, Böhmke, McKinley). Meanwhile, neo-Critical Legal Studies (CLS) scholars (e.g. Madlingozi, Pieterse) question the relevance of a rights-based approach for achieving social change.

This paper will examine the tensions and benefits that emerge from the nexus between social movements and 'support organisations', in particular those using a rights-based approach and offering legal services, working together on socio-economic rights advocacy, research and litigation in South Africa. It argues that the critique clouds the real potential of such relationships, as well as their complexity.

Between praxis and paralysis there is in fact a broad spectrum of highly nuanced and negotiated relationships among legal organisations and social movements.

The legal NGO Socio-Economic Rights Institute of South Africa (SERI) takes the stance that – given the lack of genuine participatory democracy, local level accountability and significant change to the lives of poor South Africans – all efforts by poor people, communities and social movements to organise around these issues, should be supported. Instead of fear or paralysis what is required is entering into "messy" collaborations and ongoing interrogation. However, those individuals, communities and social movements who are holding government to account are fighting for not only a greater cause, but also struggle for material improvements to their and their families' quality of life.

## **A brief overview of the current socio-economic/political context in South Africa**

Since the African National Congress (ANC) came into power in 1994 with its post-apartheid promise of a better life for all, outlined in its Reconstruction and Development Programme (RDP), there have been some successes in improving the lives of formerly dispossessed South Africans. However, with its shift to neoliberal policies in the Growth, Employment and Redistribution (GEAR) strategy in 1999, many of these gains have been lost and the government has failed to establish a truly democratic state that promotes and achieves social justice and substantive equality for all.

South Africa is a middle-income country with impressive resources and infrastructure. It is also one of the most unequal societies in the world with inequality increasing since 1994,<sup>1</sup> and suffers from pervasive structural poverty<sup>2</sup> and extremely high unemployment levels.<sup>3</sup> While pro-poor government spending has increased over the years - with billions pumped into the education and health systems, grants and transfers to local government for rolling out infrastructure and subsidising basic services, and housing for poor beneficiaries – this spending has often been extremely inefficient and ill-targeted.

Instead, apartheid geography and spatial inequality in towns and cities persist and the housing backlog has increased. Yet the government continues to build (limited) houses far from social amenities and economic opportunities and evict others/relocate people to temporary holding camps. Other critical issues include the gentrification of inner cities, as well as the wide-scale bank repossession of township houses and eviction of poor families. Free basic services (subsidised water, sanitation and electricity) are national policy imperatives, however are a local government competence. This decentralisa-

**1**  
In 2008, the richest 10 % of households in South Africa earned nearly 150 times more than the poorest 10 %.

**2**  
It is estimated that 42 % of the population, live below the poverty line according to an absolute measure of poverty pegged at an income per adult of R322 per month (Bhorat and van der Westhuizen 2008: 4).

**3**  
Using the expanded definition which included discouraged work seekers, unemployment in South Africa stands at approximately 36 percent (Statistics South Africa 2010: xiii).



◀ **Figure 1:** Macassar Village occupiers affiliated to Abahlali baseMjondolo protest in downtown Cape Town (May 2009). Photo: AbM

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tion model is compromised by cost-recovery pressures on municipalities, lack of skills/capacity, and the increasing commodification of basic services. The high costs of services are playing out across the country with cut-offs, illegal connections and the installation of pre-paid water and electricity meters (Tissington et al 2008).

#### **Social movements in post-apartheid South Africa**

Around 1999 a number of post-apartheid 'new social movements'<sup>4</sup> emerged in response to the implementation of the government's neoliberal economic policies. These post-apartheid social movements largely comprised community-based organisations (CBOs) and included the Anti-Privatisation Forum (APF) and the Landless Peoples Movement (LPM) in Johannesburg, the Western Cape Anti-Eviction Campaign (AEC) in Cape Town and the Concerned Citizens Forum (CCF) in Durban.

For communities to mobilise against ANC councillors, policies and democratic rule was unprecedented, and these movements received attention both locally and internationally. Initial actions were largely reactive and sought to ameliorate the worst and immediate excesses of government policy, such as evictions and disconnections from water and electricity (Dwyer 2008: 1).

Since 2004 there was a massive upsurge in less organised popular protests throughout the country, mostly initiated in urban informal settlements and townships. According to a report by the Centre for Sociological Research at the University of Johannesburg, despite overwhelming support for the ANC, there is a great deal of frustration with representatives of local government, who are perceived by local township residents as incompetent and unresponsive to their needs (CSR 2009: 9). The recent protests in 2009 mostly occurred after unsuccessful attempts by

community members to engage with local authorities over issues of failed service delivery (CSR 2009: 1). Moreover, the protests are met by increased state violence and repression (CSR 2009: 9).

Thus, the crisis of lack of access to housing, basic services and other socio-economic goods is not purely technical, but also political and requires a deepening of democracy and participation at the local level.

#### **Critiques of social movements and cross-class collaborations**

Recent critiques of cross-class collaboration between these social movements and middle-class activists/academics/intellectuals have tended to place blame on both sides. Unsurprisingly, social movement critics are mostly those with first-hand experience, and their writing exhibits the frustrations, not only with the way in which they interact (or do not interact) with poor people's movements, but also with the strategies of the movements themselves, and their failure at sharing their ideological direction effectively or at all (Walsh 2008; Böhmke 2010; Sinwell 2010).

According to Sinwell, the "Left has tended to assume that movements like the APF automatically challenge neoliberalism because the face of the forum's leadership is anti-neoliberal" (Sinwell 2010). Instead of a romanticised depiction of social movements they are rather the potential sites for collaboration. It is the "friction between various forces" that Walsh argues "can open up the most unlikely spaces for change" (Walsh 2008: 267).

A deeper understanding of the relationships and dynamics between social movements and 'allied professionals' or 'support organisations', is undoubtedly necessary and important.

**4** Diani defines a social movement as 'a network of informal interactions between a plurality of individuals, groups and/or organisations, engaged in a political or cultural conflict, on the basis of a shared collective identity' (1992: 13). Social movements emerge when there is a pervasive mood of dissatisfaction among poor people, when formal institutions of governance are "insufficiently flexible" to respond to their problems (Della Porta and Diani 1999).

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On the one hand Walsh (2008: 256) argues, "middle-class activists, academics, aid workers and the Poor engage in sometimes damaging interactions and patronages". On the other hand, Bond (2008: 273) states how "often it is the work of solidaristic intellectuals and progressive service organisations (sometimes misnamed 'NGOs') to assist in strategising the terrain, connecting the dots, and liaising with others like-minded in potentially allied organisations."

The urban-based shack-dweller movement, Abahlali baseMjondolo (AbM), has most recently come under fire for its alleged misrepresentation of its politics, as well as its relationship with academics, lawyers and other "sympathetic intellectuals" who reinforce a "romanticised myth" about the movement (Böhmke 2010a; Sinwell 2010). Much of this criticism has been in the wake of attacks on the movement and its leaders in Kennedy Road in September 2009, which occurred with the alleged complicity of the police and local ANC branch structures (Böhmke 2010; Chance 2010). These attacks which left two people dead and forced an estimated thousand people from their homes, have come under scrutiny from a number of individuals, and are subject of a current court case. Sinwell (2010) argues that the "Left needs to be careful not to over-romanticise their contribution to a more democratic South Africa", referring to social movements like AbM. He appears troubled about the lack of direction within current movements and argues that "the demand to think, speak and act on behalf of oneself does not necessarily challenge the neoliberal status quo." He also expresses the "danger that focusing solely on repression and police brutality arouses emotions, thereby blurring our vision and hiding the nature of the movements themselves" (Sinwell 2010).

Social movements have historically expressed distrust towards middle-class academics and NGOs. According to an APF statement in 2003 the "humanitarian concern" of NGOs was accused of "creating the moral framework for the conduct of capitalism", their emergence as a "neoliberal innovation." While NGOs provided resources to communities it was argued, they "disempower or misrepresent the very people they assist" (APF 2003). These attitudes towards middle-class 'do-gooders' earning good salaries in donor-funded NGOs are understandable. Legal NGOs, as opposed to development or community organisation NGOs, have an added dimension in that they deal with rights as currency and the legal system as terrain.



► **Figure 2:** Leaders of the shack dwellers movement Abahlali baseMjondolo celebrate their victory over the KwaZulu-Natal Slums Act in the South African Constitutional Court (14.10. 2009). Photo: AbM

## Critiquing a rights-based approach

Critiques of a rights-based approach are important as they raise important "sites of friction" or "new terrains of action" (Walsh 2008: 256) for socio-economic rights. More practically, they highlight some of the key issues that confront social movements working with legal NGOs in South Africa.

A central critique is that the rights discourse is entrenched within the liberal framework and "formulated, interpreted, and enforced by institutions that are embedded in the political, social, and economic status quo", it serves to reinforce the status quo as opposed to being transformative in nature (Pieterse 2007: 797). McKinley (2010) further argues that there is a fundamental danger in an "uncritical acceptance of a purely legalised, rights-based approach/discourse to solving socio-economic injustice and inequality" in that it implies that a struggle can only "mitigate the injustice and inequality inherent in the capitalist relations but never move beyond this towards a revolutionary change in political, economic and social relations".

According to Roithmayr (2010), the liberal perspective is that when human rights aspirations are not being fulfilled it is because a sound idea suffers flawed implementation. In contrast a radical critique of human rights suggests the entire rights project is flawed, because it legitimises neoliberalism and leaves in place the class structure that reproduces racial inequality in South Africa.

Madlingozi (2006: 8) argues that liberal analyses do not engage in any critical structural analysis of the system that reinforces inequality and structural poverty. Linked to this is the fear that the rights discourse in fact demobilises the radical, counter-hegemonic action of social movements and can have an unwelcome effect on their ability to engage in "extra-institutional actions" - e.g. direct protest action or civil disobedience (Madlingozi, 2007: 89).

Furthermore, it takes time and resources away from other mobilisation, as litigation is lengthy, expensive and intensive. This criticism has been levelled against the APF in the *Mazibuko* water rights challenge. However it has been shown that the litigation has the potential to reinvigorate movements and even impact broader struggles (despite a loss in court) (Dugard 2010).

## The role of the judiciary in enforcing rights claims

If communities and social movements choose a rights-based approach, their claims may very well end up in a court before a judge. Two arguments relating to the role of the judiciary revolve around legitimacy and competence i.e. what standing do judges have to make the kind of decisions they do, and are they well-placed and capable of making these kind of decisions. Dugard (2009) argues that as an institution, the judiciary has failed to advance transformative justice in critical systemic ways.

The judiciary has not warmed to its role as adjudicator of socio-economic rights claims, particularly those by poor people asking them to provide alternative accommodation, more water per month, access to sanitation

etc. These all have budgetary implications for the state, are perceived to interfere too heavily with terrain of the separation of power between the judiciary, legislature and executive, and often require some kind of 'content judgment'. The Constitutional Court, particularly, has been the most uncomfortable with this role and has implicitly stated that it will not rule on 'minimum core' obligations of the state (Liebenberg 2010: 163-183), while the lower courts appear more willing to engage with and interpret socio-economic rights appeals.

The reality is that courts rely on the state for the implementation of its decisions and being aware of this dependence has been vague in the definition it has given to these rights (Wilson 2010: 33). The hesitancy of judges to give content to rights is of concern to legal scholars and, more importantly, those trying to claim socio-economic relief through the courts. Pieterse (2007: 797) points to 'counter-transformative tendencies' of the judiciary and a dearth of progressive and bold judges, but also writes: *"constitutional, legislative, or judicial articulations of socio-economic rights, in response to the demands of social movements, create a space for the audible expression of need, and as such have the potential to stimulate legal developments that lead to more encompassing definitions of rights"* (Pieterse 2007: 822).

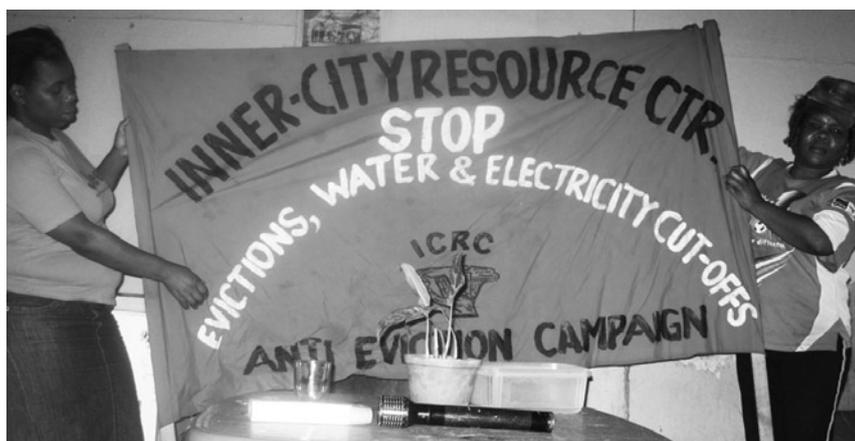
Lack of access to justice for the poor remains a fundamental barrier to transforming the 'paper rights' of the Constitution to reality for millions in South Africa. This is manifest in the elitist and alienating nature of the court system, the difficulties in accessing affordable, high-quality legal representation in the specialised field of socio-economic rights,<sup>5</sup> the high costs of appeals and lengthy time span of cases. This critique is often advanced by those individuals, community-based organisations and social movements who struggle to access the law and engage in litigation.

While there may be legal NGOs and *pro bono* lawyers in large towns and cities, there is very little assistance available for those living in rural areas and small towns. Another problem relates to the type of lawyers and institutions required to facilitate access to justice around socio-economic rights. Conflicts between social movements on the one hand, and traditional legal services lawyers on the other, are often attributed to differing political orientation, understandings of class, social change and analyses of systemic inequality and oppression (Shah and Elsesser 2010: 1).

### Moving beyond the critiques

For legal NGOs as well as social movements, there needs to be a shift to a praxis approach to using the law for social change (Wilson 2009; Dugard 2010). According to Madlingozi (2006: 8-9; 21):

*"Legal academics can only play a role in progressive politics [...], if they become part and parcel of the lives of those who are in the subaltern and periphery. Through participatory action research, legal academics can contribute to the solution by revealing the ideological distortions in society, by debunking assumptions, demystifying the law and human rights and by exposing the contingent and reified nature of inequalities."*



▲ **Figure 3:** 51 building committees linked to the Inner-City Resource Centre represent 8,000 poor tenants, many of them migrants, and fight against water and electricity cut-offs and evictions in the inner city of Johannesburg. Photo: K. Teschner, Misereor, 2010

He further states that legal academics have the ability to expose the limits of law as a tool for social change by showing that the law imposes limits on the scope of democracy and can serve to depoliticise and remove crucial issues from the public agenda (Madlingozi 2006: 21).

Critically important is the recognition that the law is contested terrain that is constantly in flux and shaped by actors, mostly those with power and access to resources and legal expertise. In this sense, the court is just another "political venue" (Shah and Elsesser 2010: 4) and rights are less "established facts" than potentially useful "political resources." Shah and Elsesser raise a number of important and pertinent points about the role of lawyers in community and social movement struggles including the need for:

- accountability, self-scrutiny and honest reflection around power dynamics between lawyers and communities;
- ensuring that rights are not mobilised in a purely individualistic way but focus on positive collective impact;
- ensuring the law is not viewed as a solution but rather as a 'tactical tool';
- stressing that winning is not everything (and often losing can be beneficial as part of a larger strategy);
- recognition that lawyers (and legal cases) often take up a lot of space and power can gravitate to lawyers so as to be vigilant about "managing and passing along power".

McKinley (2010), speaking from a social movement/community activist perspective, argues that *"we need work/activism that combines a tactical legal approach with strategically defined grassroots struggles for more systemic change."* He recognises that the law is a "double-edged sword" and whereas oftentimes activists are drawn in on highly unfavourable terms e.g. arrest for protests which are deemed illegal, high bail posted etc, the law can be a *"useful tool/medium to expose, defend and push back misuse, oppression and reaction"* i.e. by getting interdicts against evictions.

For Pieterse, it is critical that the translation of socio-economic rights should not be a top-down process and he proposes an important role for litigants, activists, and social movements "in ensuring that conceptually empty socio-economic rights are awarded content 'from the bottom up'", (2007: 829).

**5** In South Africa these include *inter alia* the Legal Resources Centre (LRC) and Lawyers for Human Rights (LHR) as well as the CALS, SERI and SECTION27. ProBono.Org acts as a clearing-house and facilitates free legal services for the poor from volunteer private lawyers. *Pro bono* units at Webber Wentzel and Eversheds are also active in assisting with community socio-economic struggles.

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6

Abahlali baseMjondolo Movement of South Africa and Another v Premier of the Province of KwaZulu-Natal and Others Case CCT 12/09, 2009 ZACC 31 (CC). URL: <www.saflii.org/za/cases/ZACC/2009/31.pdf>

7

Interestingly, SDI publicly supported AbM's challenge to the Slums Act in 2009. According to the coordinator of the secretariat, "SDI's partnership with the State does not erase the contestation between those who want slum-free cities at all costs and those who want slum-friendly cities as a precondition for their incremental elimination. It simply locates the debate within the National and Provincial Departments rather than the courts". J Bolnick, SDI letter to *The Witness* (24 February 2009). URL: <www.witness.co.za/index.php?showcontent&global[id]=20089>

8

The Informal Settlement Network (ISN) is an alliance of settlement-level and national-level organisations of informal settlement dwellers. Since 2009, ISN, often in partnership with local authorities, has been piloting incremental informal settlement upgrades. URL: <www.sasdialliance.org.za/isn/ >

9

Abahlali baseMjondolo Press Statement, "Once Again the Name of Our Movement is Being Abused by the NGOs" (14 May 2010). URL: <www.abahlali.org/comment/reply/6702>

10

AbM attended an ISN meeting in late 2009, accepting an offer of solidarity after the attacks, however never agreed to join the ISN. Abahlali baseMjondolo Press Statement, "Once Again the Name of Our Movement is Being Abused by the NGOs" (14 May 2010): <www.abahlali.org/comment/reply/6702>

11

The Concerned Citizens Forum (CCF) was formed as a loose network of organisations in July 2001 in Durban to mobilise and coordinate residents and community based organisations (CBOs) around evictions and services cut-offs in working class urban areas, particularly Bayview and Westcliff, in the 'indian' township of Chatsworth (Dwyer 2004: 1).

In practice, this involves a rethinking of how lawyers and social movements engage as well as a sober and creative reflection how courts and legal struggles can be used to effect social change.

### **Between praxis and paralysis: experiences from SERI's work with social movements**

The NGO SERI uses a rights-based approach and supports individuals, communities and social movements who are attempting to hold the state (mostly local government) accountable for service delivery. The organisation provides an explicit platform for rights-based campaigns by Abahlali baseMjondolo (AbM), the Anti-Privatisation Forum (APF), the Coalition Against Water Privatisation (CAWP) and the Informal Settlements Network (ISN). While these social movements work broadly on issues relating to access to land, housing and basic services, they employ very different strategies and tactics and have different leadership formations, organisational structures and decision-making processes which require different forms of engagement.

The relationship between SERI and these social movements takes various guises and is not purely one of 'legal services provider'. However, legal advice and litigation capability appears to be one of the most sought after forms of assistance. While social movements are engaged in proactive campaigns around issues of land, housing and basic services there is a never-ending barrage of evictions, demolitions and cut-offs that social movements members face on a daily basis. For most legal NGOs in South Africa it is this defensive litigation that consumes much of their time and there is desire to move away from providing legal assistance on these cases. Desai (2008: 277) argues that while fighting evictions from shacks in court, are important defensive battles, "one can see how they do not advance a broader anti-capitalist struggle".

There is a tendency of the 'middle-class Left' to criticise community-based movements because they are either 'unstrategic' or even 'counter-revolutionary'. Thus, how do social movements move past this to more proactive and collaborative struggles that change the status quo?

SERI believes that defensive litigation can provide a very useful 'way in' to more proactive campaigns. One answer to the above question lies in coordinating more effectively around defensive legal issues together with social movements, other legal NGOs and *pro bono* legal services providers. The stakes are high when 400 inner city residents are facing imminent eviction, for example, however realistically it is very difficult to rescind an eviction order if there has been notice and some engagement. In this case what is needed is for a lawyer to be involved further in advance to challenge an application, or for there to be education and training on the applicable eviction law/procedure and how social movement/community leaders can access the courts and defend eviction applications without lawyers.

However, this would not change the fact that there is a fast-tracked process of gentrification occurring in the inner city or a local authority who sees no place for the poor there. Nor does this change the government's market-driven approach to housing and the lack of redistribu-

tion of land in urban areas. Further, this does not change the property clause in the Constitution. SERI, together with those movements it supports, is involved at all these levels of engagement through its litigation, training, research, advocacy and policy engagement. SERI believes that cultivating relationships between lawyers/researchers and activists/communities/social movements, based on shared visions of injustice, transformation and social change, can be beneficial.

There is a broad spectrum of highly nuanced and negotiated relationships that occur not only between SERI and the social movements it works with but also for SERI *in relation* to the different movements and their ideological differences with *each other*.

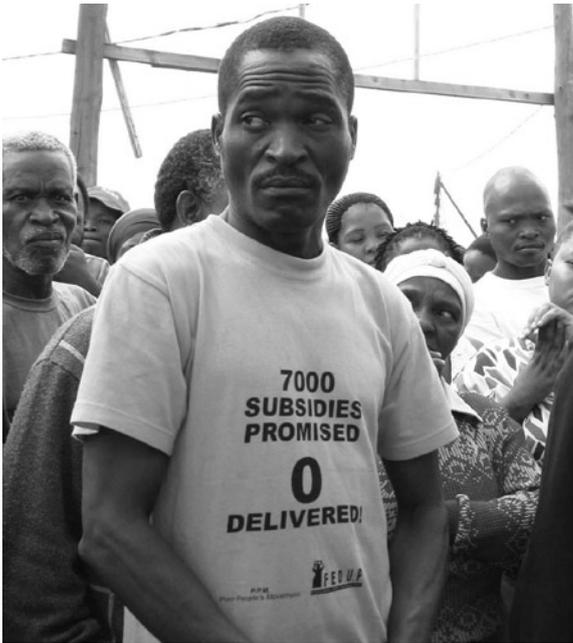
### **Unpacking the terrain between paralysis and praxis**

Social movements are engaging in legal struggles and proactive rights-based approaches because they produce results, which are not being gained elsewhere. In this process there are new terrains being navigated around issues relating to the strategy and tactics of social movements, leadership structures, the role of litigation and the legal process, and the ever-present question which relates to how social movements and legal NGOs work together most effectively in the struggle for the realisation of socio-economic rights for all, participatory democracy and government responsiveness.

An element of the critiques against social movements, particularly AbM, revolves around their so-called "turn to the law." Böhmke (2010<sup>6</sup>) questions the significance of AbM's defeat of the KwaZulu-Natal Slums Act in the Constitutional Court.<sup>6</sup> What this assertion inadequately recognises is that the Slums Act court case challenged a piece of legislation that legalised repressive and unlawful practices in the province, and was about to be replicated throughout the country. The victory in the Constitutional Court prevented this – although its effects are not obvious anywhere (that is the point). Interesting to note is that the lawyers representing AbM were initially hesitant to take on the challenge and did so on the insistence of the movement.<sup>7</sup>

A further site of critique relates to social movements' championing of *in situ* informal settlement upgrading, which Sinwell argues "essentially earns the right for the poor to remain in shacks and upgrade them" (Sinwell 2010) and Böhmke argues "allows the government off the hook in brick and mortar delivery and is sly World Bank orthodoxy" (Böhmke: 2010<sup>8</sup>). These assertions show a lack of understanding of the housing crisis, the nature of the government's upgrading of informal settlement policy and implementation in particular, as well as dismissal of calls by shackdwellers to provide them with land and services vs. houses in far-flung areas.

Relationships between social movements themselves are by no means clear. For example, SERI supports both AbM and ISN,<sup>8</sup> and works with the latter's Alliance partners SDI and CORC occasionally. AbM and ISN (through its affiliation to SDI) are ideologically opposed and do not work together closely even though they both advocate for *in situ* upgrading.<sup>9</sup>



AbM has been highly critical of SDI in the past and recently issued a press statement which stated that they have a “completely different politics to SDI” and “do not believe that progress will come by friendship and loyalty to an oppressive government”, but rather believe that the poor have a “duty to resist oppression” and to organise and build “our own power against the rich, against the politicians and against that part of civil society that think that it has a natural right to represent the poor”.<sup>10</sup>

The ideological and other differences around informal settlement upgrading, as an example, are apparent, also between civil society organisations and development NGOs, government officials within departments and between spheres of government, between the National Support Upgrading Programme (NUSP) and the Department of Human Settlements, among lawyers etc. This highlights the need for a much broader approach to be taken. SERI believes that people organise in different ways depending on their context and can learn from each other and help strengthen each other.

### **Role of social movement leaders and leadership structures**

Another terrain of contestation revolves around the leadership structures of social movement and community-based organisations and how these impact on the working relationship between social movements and legal NGO. Often strong working relationships are forged between professionals within NGOs and activists in movements/CBOs. - It is important that these relationships are not founded on patronage or top-down exploitation. It is also important to recognise that leaders, particularly when they are ‘elected’ or ‘deployed’ in a movement, will be subject to internal organisational squabbles and disciplinary measures and that may jeopardise ongoing campaigns (or court cases). There may even be the suspicion that certain activists are being targeted for reasons other than those put forward by the leadership, possibly disagreement over ideological/political differences. Those professionals supporting social movements had to tread a fine line in these instances.

A recent study of the role of the Concerned Citizens Forum (CCF)<sup>11</sup> in Mpumalanga Township, Durban from 1999 to 2002, raises important insights into certain models of cross-class collaboration between grassroots activists and middle-class intellectuals, with important lessons for those working with social movements. The CCF’s executive leadership comprised outsider academics and activists – “city-based intellectuals” - and township youth activists in mobilising roles on the ground. This core group of city based activist-leaders had access to resources and acted as central organisers, initiators and transmitters of information between groups and individuals (Dwyer 2008: 12). According to Siwisa (2008: 933), this led to the township youth activists feeling exploited and forced to “rally troops” without human and material resources. He argues that the differences between the leadership and grassroots activists can best be explained by differences in “political ideologies and consciousness” with a vast social gap between CCF core leadership (Leftist, university-educated intellectuals with secure employment) and youth activists (high school drop-outs with a history of unemployment) (2008: 932). He believes this lack of understanding and connection between the leadership and grassroots activists was partly responsible for the CCF activities not displaying “any coherent, cohesive and extensive mobilisation in the township” (Siwisa 2008: 937).

Another site of contestation and negotiation is around the motivating role that professional, political and material gains play in social movements, and the way in which support organisations advance these interests. Siwisa argues that personal gain by certain individuals appeared to be motivating factors behind organised unrest in Mpumalanga township rather than anti-neoliberal, CCF-linked politics (2008: 937). The role of local politics and individual material and political aspirations of local leaders, and the extent to which those organising and mobilising for something greater in social movements (i.e. resisting neoliberal policies) can/will ignore messy relationships for a foothold in a township/settlement (or to continue with an important court case), are important to problematise further. Should we be concerned if a social movement activist is engaging legal NGO lawyers to assist a particular settle-

▲ **Figure 4&5:** Shack dwellers from Piesang River, Durban, organised in the Federation of the Urban Poor (FEDUP) show their discontent over the unfulfilled promises of the Housing Minister. Photo: A Ley

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ment community, in order to advance himself politically and become a councillor in that ward? What if he acts as a gate-keeper to certain actions/allegations against the state (so as not to alienate himself from his party)? These are questions that must remain at the forefront of those working with social movements.

SERI has been aware of allegations against it that it pays social movement leaders to bring cases to the organisation (which is obviously untrue), as well as allegations against social movement leaders that they charge clients before bringing a case to the NGO lawyers. Securing free and good lawyers for eviction/disconnection/upgrading cases is a big boost for social movement leaders who sometimes have political and material aspirations outside of the movement. Support organisations and NGOs are often brought into these internal struggles and should be aware of the politics and dynamics of the movements/leaders they work with.

## Litigation and legal process

There are valid critiques of a rights-based approach in relation to social movements advocating for structural change. One fear articulated by social movement critics is that they will get held up by pointless and counterproductive legal battles which will take away their focus and resources from 'furthering the march towards revolution'.

However, in SERI's experience, taking up a legal struggle can be a catalyst for better organisation and communication between leaders and members. A court case, especially one that gets media coverage, can galvanise a movement's leadership and members in the face of demobilisation. Litigation is a process that requires strong leadership and honing of strategy and tactics. Writing about the loss of the *Mazibuko*<sup>12</sup> case in the Constitutional Court, Dugard (2010: 95) argues: "*initial feedback suggests that the judicial defeat has neither deterred the campaign nor discouraged further uptake of proactive litigation by the APF... the Mazibuko rights-based mobilisation has already indirectly impacted, and continues to impact, broader struggles in South Africa.*"

Another criticism of lawyers working with poor people is the process of "legal storytelling" that occurs between attorneys and litigants, attorneys and advocates, advocates and judges, judges and litigants etc (Gilkerson 1991-92). Often, clients aim to be pure and virtuous when they tell their story to lawyers, and in a sense this kind of relationship is inevitable, albeit often detrimental to a case overall. Lawyers need the truth in order for litigation to be successful. With community lawyers or public interest lawyers this relationship takes on a different angle, and these lawyers need to balance the facts of a case and their ethics with the knowledge that social movements are not perfectly formed, perfectly strategic, perfectly organised or perfectly holy. Sometimes, they operate outside the law as a tactic. These lawyers supporting poor peoples' struggles have to be aware of this and approach 'clients' differently than would traditional lawyers, who would often condemn illegal actions on the part of their clients and refuse to represent them.

While some lawyers will only take winnable cases, SERI does not take that stance and its lawyers sometimes

adapt legal assistance to the context of supporting social movement struggles – by giving them all the options available to them and letting them decide what is best in terms of their strategy. In other words it's about providing information, choices, options, legal repercussions, recourse etc. Sometimes, a perceived 'losing case' can be taken to show up a farcical system, sometimes a 'losing case' in fact becomes a victory due to other circumstances.

## Power and resources

A donor-funder organisation like SERI has human and material resources which are often desperately needed by those organising and mobilising on the ground. The most sought after assistance is legal assistance in urgent situations where there has been a negative infringement of rights, as well as access to information and education on the law, legislation, jurisprudence, policies, development in government departments etc. This is particularly so for grassroots leaders, but also for community members who rely on them for assistance. While SERI staff members get invited to attend national and local government meetings, legal workshops, technical and planning conferences etc., these doors are often not open to grassroots activists who nonetheless crave the kind of information gleaned from these encounters. What is needed much more is to link in the grassroots activists to what legal NGO workers are privy too i.e. taking information down and engaging over issues so as to elevate them back up.

The obvious argument against the kind of relationship outlined above is that it creates dependence; that communities and organised movements become reliant on NGOs and middle-class activists (who in turn rely on this reliance for their jobs and donor funding). Criticism against this kind of collaboration fails to recognise the desire for those involved in grassroots struggles to be self-reliant and able to resist evictions, organise marches, educate community members, engage with government and the media on their own terms. These terrains are, however, not favourable to the poor. They are difficult to access even for well-funded and educated NGOs and professionals! Finding ways to align power and resources to ensure accountability of those with power and resources opens up many opportunities for social movements and legal NGOs.

One of SERI's recent experiences of this has been in the involvement with activists and community members in Balfour, Mpumalanga, where community members and leaders involved in protests in 2009 and 2010 faced criminal charges. SERI went to Balfour and assisted a clearly overworked Legal Aid SA lawyer to deal with the over 40 criminal cases, which resulted in most charges being dropped or people being put through the 'diversion programmes'. Apparently the prosecutor was 'ruffled' because she had not even read the dockets of the public violence, malicious damage to property and arson cases. In this case, SERI merely showing that there was outside attention on these cases changed the balance of power and provided legitimacy and assistance to leaders who face daily, ongoing harassment and stress navigating unfavourable legal terrain together with institutional incompetence (via the legal system) and outright harassment and repression (via the police).

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CICI 2011 - Conferência Internacional de Cidades Inovadoras, organised by Sistema Federação das Indústrias do Estado do Paraná, Centro Internacional para Formação de Atores Locais (CIFAL) and Instituto de Promoção do Desenvolvimento (IPD). Contact: phone +41 3271 7408, <cici@cici2011.org.br>, [www.cidadesinovadoras.org.br/cici2011/](http://www.cidadesinovadoras.org.br/cici2011/)

### June 20–23, 2011 in Amsterdam, NL

International Conference on Management & Innovation for a Sustainable Built Environment, organised by the Section Real Estate and Housing at the Delft University of Technology; the Association of European Schools of Planning (AESOP) and European Network of Housing Research (ENHR). Contact: phone +31 6 27227520, <info@MISBE2011.nl>, [www.misbe2011.nl/](http://www.misbe2011.nl/)

### July 4–8, 2011 in Perth, Australia

World Planning School Congress 2011, organised by the Global Planning Education Association Network (GPEAN). Contact: phone +61 8 9389 1488, <info@eecw.com.au>, [www.wpsc2011.com.au/index.html](http://www.wpsc2011.com.au/index.html)

### July 4, 2011 in Toulouse, France

ENHR New Housing Researchers Colloquium organised by European Network of Housing Research (ENHR) Info: [www.enhr2011.com](http://www.enhr2011.com)

### July 5–8, 2011 in Toulouse, France

ENHR Conference 2011 "Mixité": an urban and housing issue? Mixing people, housing and activities as the urban challenge of the future. Organised by European Network of Housing Research (ENHR) Info: [www.enhr2011.com](http://www.enhr2011.com)

### July 7–9, 2011 in Amsterdam, NL

Annual RC21 Conference 2011: The struggle to belong. Dealing with diversity in 21<sup>st</sup> century urban settings. Organised by Research Committee 21, Sociology of Urban and Regional Development, International Sociological Association. Info: [www.rc21.org/conferences/amsterdam2011/](http://www.rc21.org/conferences/amsterdam2011/)

### July 12–14, 2011 in New Forest, UK

5<sup>th</sup> International Conference on Sustainable Development and Planning, organised by Wessex Institute of Technology. Contact: phone +44 023 8029 3223, <enquiries@wesses.ac.uk>, [www.wesses.ac.uk](http://www.wesses.ac.uk)

### Aug. 16–20, 2011 in Frankfurt/M, Germany

VI. International Conference of Critical Geography. General theme: "Crises – Causes, Dimensions, Reactions". Contact: Phone +49 69 798 23547, <info@iccg2011.org>, [www.geo.uni-frankfurt.de/afh/Personen/belina/iccg2011/ENG/index.html](http://www.geo.uni-frankfurt.de/afh/Personen/belina/iccg2011/ENG/index.html)

### August 22–26, 2011 in Montreal, Canada

Ecocity World Summit, organised by Montreal Urban Ecology Centre. Contact: phone +1 514 395-1808, <info@ecocity2011.com>, [www.ecocity2011.com](http://www.ecocity2011.com)

### September 8–11, 2011 in Istanbul, Turkey

6<sup>th</sup> International Conference of the Network "Private Urban Governance & Gated Communities": Re-Interpretation /Transformation of Territorial Boundaries. Organised by Istanbul Technical University, Housing Research and Education Center (HREC). Contact: phone +90 212 293 13 00-2806, <gatedist2011@itu.edu.tr>, [www.gatedcommunities.istanbul2011.itu.edu.tr](http://www.gatedcommunities.istanbul2011.itu.edu.tr)

### September 11–14, 2011 in Tallin, Estonia

55th World Congress of the International Federation for Housing and Planning (IFHP): The impact of housing and planning on the economic environment. Contact: phone +31 70 324 4557, <events@ifhp.org>, [www.ifhp2011tallinn.com.ee](http://www.ifhp2011tallinn.com.ee)

### September 15–18, 2011 in Xi'an, China

IWA International Conference: Cities of the Future Xi'an. Technologies for Integrated Urban Water Management. Organised by Xi'an University of Architecture and Technology (XAUAT) and the International Water Association (IWA), China Regional Office. Contact: phone +86 1399 283 2176, <cofxian2011@xauat.edu.cn>, [www.cofian2011.com](http://www.cofian2011.com)

### Sept. 25–Oct. 01, 2011 in Tokyo, Japan

UIA 2011 – The 24<sup>th</sup> World Congress of Architecture, incl. work programs on Sustainable Architecture, Architecture and Society, Urbanization, Habitat, Cultural Identity, Facilities (Educational and Cultural Spaces / Public Health). Contact: phone +81-3-5216-6956, <uia2011-reg@congre.co.jp>, [www.uia2011tokyo.com/en/](http://www.uia2011tokyo.com/en/)