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Huchzermeyer, Marie

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Does recent litigation bring us any closer to a right to the city?

Marie Huchzermeyer

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The Bill of Rights and Constitutional Court are important institutions that were fought for in the negotiated transition.

Part of their role was to ensure that the kind of atrocities committed under apartheid rule would never be repeated.

One atrocity was to deny black individuals and households urban freedoms and rights, or 'a right to the city'.

The Constitution's mandate, however, goes beyond this, to ensure ongoing transformation towards a more equal society.

This means that the right to the city that our Constitution strives for is one of an equal right to the city. This has important components

- Equal right to participate in decision-making
- Equal right to access and use the city
- Equal right to basic services

Transformation has occurred in many important areas, but the opposite has also been the case, particularly under city governance approaches that prioritise urban competitiveness.

A competitiveness to attract investment translates into a negative competitiveness to keep the poor out, to not attract more poor than the city next door.

City of Tshwane spends more on security companies to 'manage' informal settlements, in essence to keep new arrivals out, than it spends on providing basic services to these settlements.

- It is praised for taking steps towards eradicating its informal settlements.
- The poor have to migrate elsewhere.

There has been a perverse continuation of urban and housing rights violations post 1994.

It was only in 2000 that the Bill of Rights was evoked by a marginalised and violated urban community (represented by Irene Grootboom) in the Constitutional Court.

In what was received as a landmark ruling, the Court interfered with the Executive, instructing the Ministry of Housing to amend its housing policy to better cater for those living in intolerable conditions.

It took 4 further years for the policy changes to be adopted into housing policy. Chapters 12 and 13 were added to the national Housing Code:

- Housing in Emergency Circumstances and
- Upgrading of Informal Settlements.

In the following 5 years, these two policies have not been properly implemented, if at all. Unnecessary violations have continued and marginalised communities have had to resort to the courts.

However, the landscape has changed significantly. Whereas the Grootboom case involved an isolated community with only a loose network of support through the Legal Resources Centre which acted as 'Friends of the Court', today cases reach the Constitutional Court through social movements such as

- Landless People's Movement,
- Inner City Tenant Forum,
- Abahlali base Mjondolo,
- Anti-Privatisation Forum and
- the Anti-Eviction Campaign.

These movements coordinate, exchange, and take an interest in one another's legal struggles.

In these legal struggles, there is an inevitable intersection between the 'learned' middle class (*actually often the very comfortable upper class*) and social movements.

It is at this intersection that as a non-lawyer I have had the opportunity to interact with LPM, Abahlali and more recently, the Informal Settlement Network. It has given important insights and meaning to my work, and as I understand it, vice versa.

While there has long been a human rights network, it is only recently that a 'middle class' network around urban rights has emerged.

This is not a purely legal network, but one that bridges urban policy and tries to be effective on fronts other than litigation – in order to avoid the need for litigation.

In its interaction with social movements, it is possibly at the beginnings of what an urban reform movement has long been in Brazil.

In Brazil, urban reform is not understood as the liberal agenda that it became in late 19th century Europe, essentially securing a future for the middle class against the threat of a socialist revolution, and therefore despised by Engels in his ***Housing Question***.

Urban Reform in Brazil fills exactly the gap in left thinking about the city (the gap derived from the Marxist ideology of nothing but a revolution). Henry Lefebvre from the 1960s and later David Harvey have worked at filling this gap with the concept of a Right to the City.

Urban Reform in this sense is a pragmatic commitment to gradual but radical change towards grassroots autonomy as a basis for equal rights.

- It intersects with but does not dictate to the grassroots.
- It is driven by a pragmatic ethic that does not shy away from addressing immediate crises.
- Inevitably it is then also a commitment to prevent a regression into increased violations and to ensure existing policies are implemented – this was the core of Abahlali's successful legal action around KZN Slums Act.

In a very moderate way, the three components of the right to the city that I set out at the beginning:

- Equal participation in decision-making
- Equal access to and use of the city
- Equal access to basic services

have all been brought before the Constitutional Court through a coalition between grassroots social movements and a sympathetic middle class network.

Judgements have involved moderate advances.

- Participation in decision-making is a serious concern for the Court, but it faces a huge dilemma on what to do about it. Time and again, a frustrated court orders 'meaningful engagement', but is unrealistic about how this will be achieved, who will ensure it, and just how averse municipalities are to this.

- Access to (and use of) the city has not been ordered in more than a temporary nature, and only indirectly – in the Olivia Road case, meaningful engagement has resulted in a temporary solution for the evictees from San Jose, within the inner city. In other cases, e.g. the Joe Slovo case in Cape Town, the Court has been insensitive to location of the poor in the city, instead endorsing relocation onto the periphery.

- Access to basic services has been the theme in the Phiri/Mazibuko case around the right to water in Soweto. The Court was not sympathetic. In the Harry Gwala case, where judgement is pending, the hearing was sympathetic to the extent that the Provincial government was required to apologise to the community for a three year delay in a feasibility study on in situ upgrading. Whether the court advances the right to basic lighting and sanitation in its ruling remains to be seen.

The convergence around the right to the city, via litigation, is a strong experiential basis for far wider action and interaction.

What my exposure to the KZN Slums Act case has taught me is that intellectual capacity is by no means located only in the 'learned' middle class.

Its from this that I derive hope for an urban reform movement in South Africa that centres on a right to the city. However, one must beware that this language is fast being usurped by the 'mainstream' within the UN, UN-Habitat, NGOs, think tanks, consultants etc., in something of an empty buzz word, where the concept of grassroots autonomy and meaningful convergence is completely forgotten.

Thank you