

Lessons from eThekweni: Pariahs Hold Their Ground Against a State that is Both Criminal and Democratic

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When the evictions happened...The South African law and the constitution didn't work for us. They were pointing guns at us, threatening us, meantime we were fighting for our rights [as guaranteed in the law]. One comrade came asking them 'What about section 26?' but they didn't say anything...When our chairperson came to ask 'By what right and by what law can you this?' Teargas just got thrown in his face.

- Participant, Motala Heights workshop²

They hate us. It is quite clear that they hate us. The ones who hate us are our own government and the capitalists that they are working very closely with. They hate us more and more.

- Participant, Juba Place workshop³

It is an enigma. Those who suffer are always in that place the binds roots to the earth. They are also always in exile. Suffering is their centre, their heart. It reminds them of who they are.

- Ben Okri⁴

SECTION 1: Introduction

The working hypothesis of the broader research project of which this report is one small contribution is that:

the future of socio-economic rights, in their interpretation, implementation and effectiveness, is not merely a matter of formal legal doctrine. Instead, their future will depend on a host of institutional, political, social and legal factors which are in turn being shaped by the histories and contexts within which the particular socio-economic rights are being institutionalized.⁵

The task of this report is to consider the lived experience of formally guaranteed socio-economic rights with regard to land looking particularly at urban land and using the

¹ The arguments elaborated here, and in particular the claims about the pervasive criminality of the local state, are strongly influenced by the participants in the workshops held with members of the Motala branch of *Abahlali baseMjondolo* and with former residents of the *Abahlali baseMjondolo* affiliated Juba Place settlement. In Motala *Abahlali* activists have been threatened, sometimes at gun point, by the local councilor Derek Dimba and by the local tycoon Ricky Govender. Some tenants in the tin shacks have been threatened by their landlords. While many are determined to speak out publicly, and do so, others would prefer not to be made vulnerable by having their names listed in this report.

² Mark Butler *Motala Heights Workshop* 11 March 2007

³ Mark Butler *Juba Place Workshop* 11 March 2007

⁴ Ben Okri *A Way of Being Free* Phoenix London 1997 130

⁵ Heinz Klugg *Draft Terms of Reference*

greater Durban municipality of eThekweni as a case study. Within this broad view there is also a close view of the recent struggles and fate of two shack settlements – Motala Heights in Pinetown and Juba Place in Reservoir Hills.

The evidence permits only one interpretation: the local state acts in a systematically criminal manner towards its poorest residents on the assumption that this behaviour is within the norms of a shared social consensus amongst the social forces and institutions that count. That elite consensus is that rights formally guaranteed in abstract principle should not, in concrete practice, apply to the poor. This is not entirely dissimilar to, say, the elite consensus with regard to the exclusion of black people from the protection of legal rights in the American South in the 50s. There is an implicit assumption that people making their lives beneath a certain degree of poverty should not, in practice, be treated as citizens when it comes to the right to hold material and symbolic ground against the material interests and paranoid fears of the rich. However, although the poor are systematically excluded from the rights of local citizenship with regard to the right to hold land and to have that land developed, to enter schools and universities, and to hold dissenting positions, they are expected to support authoritarian community organisations that exchange vote banks for petty favours to local leaders. This contradiction is further complicated by the fact that the poor are included in many of the rights of national citizenship which include, crucially, access to grants and pensions and, albeit often poor, health care.

Official public participation processes function well for ambitious leaders seeking to make a career of delivering a simulacrum of community support for already determined policies and for state officials seeking to contain dissent. However the profoundly authoritarian orientation of the state's planning processes, an authoritarianism informed by a discursively weird but practically and ruthlessly effective mixture of Stalinism and neo-liberal technocratism, means that they offer nothing for movements or organisations of the poor seeking to mount any kind of challenge to the way things are.

Movements of the poor face serious and constant illegal repression and do not have the resources to, on their own, seek legal redress against a criminal local state. Therefore partnerships between organisations of the poor and resourced organisation are important. However these relationships are often problematic. One reason for this is that the legacy of the extraordinary degree of mobilisation achieved by the popular classes by the 1980s means that large parts of the state, civil society, and at times even capital, still have to justify their actions in the name of the poor. Hence the cultural capital associated with organisations of the poor has become a valuable commodity to the point that it is often the case that people who elaborate a general critique of commodification in principle, actively and uncritically seek to commodify the politics of the poor in practice.

Many of the NGOs or donors that take an interest in movements of the poor do so with the view to purchasing cultural capital for themselves by trying to buy the appearance of mass support for their projects through payments to individuals who they believe can deliver or broker the appearance of this support. These kinds of interventions invariably destroy real movements leaving dishonourable and alienating relations of patronage and,

ultimately, simulated fake movements in their place. At this point outright political fraud is not uncommon on both sides of the exchange. However NGOs and donors, be they liberal or socialist in orientation, that have principled commitments to work in a democratic mode and for democratic outcomes, can offer resources in a way that enables movements.

Section 2: Shack dwellers in Durban - the historical context of a contemporary struggle.

This section of the report provides a short overview of the history of shack dwellers in Durban looking at the ebb and flow between popular and state power. This overview is necessary to situate the examination of the case studies of Motala Heights and Juba Place in context with key continuities and discontinuities of power relations and legal and policy regimes through the flow of time. Although this section of this report only aspires to mark broad trends there are references to the literature, some of it excellent, throughout the text.

The eThekweni Municipality estimates that over 800 000 of the city's 3 million inhabitants live in what it used to call 'informal settlements'⁶ and now calls, in a return to the older language of colonialism, and often with overt hostility, slums.⁷ Shack settlements began to be constructed here following the loss of land and the imposition of various taxes after the destruction of the Zulu Kingdom by English colonialism in 1884⁸ and, at the same time, the movement into the city of Indian workers who had completed their indenture on sugar plantations.⁹ Bill Freund writes that "activities which were

⁶ Pearl Sithole develops an excellent critique of how the general academic failure to approach the elite consensus that certain forms of life are 'informal' and others 'formal' critically, or even thoughtfully, inscribes relations of domination into the structure of thought. See her 'Defining the Meeting Zone: Institutional and Community Imperatives Regarding the Informal Sector in Durban' in *Governance, Urban Dynamics and Economic Development: A Comparative Analysis of the Metropolitan Areas of Durban, Abidjan and Marseilles* Edited by Antoine Bouillon, Bill Freund, Doug Hindson and Benoit Lootvoet, Plumblin, Durban, 2002.

⁷ This discursive regression is not a local degeneration. It keeps pace with the World Bank and follows the lead of the United Nations Human Settlements Programme, Habitat. Nevertheless the virulent enthusiasm with which it has been taken up here is astonishing. The discursive common sense around 'informal settlement' assumes that it is something that needs to be developed (usually by the entrepreneurial energies of its inhabitants) while the assumptions around 'the slum' are that it is something that needs to be 'cleared' (away). There are some brief but useful comments on the contemporary (and often racialised) return to the language of 'slums' in Tom Angotti's excellent review of Mike Davis's *Planet of Slums* – 'Apocalyptic Anti-Urbanism: Mike Davis and his planet of slums' *International Journal of Urban and Regional Research* Vol.30, No.4, December 2006, pp. 961-7. The review is available at <http://abahlali.bayareafood.org/node/886>

⁸ As Jeff Guy explains: "(T)here was a fundamental difference between the life of the Zulu before 1879 and their way of life after 1884. In the former period they were in possession of their land and largely in control of their labour and its products: after 1884 they were losing this possession and control. These changes were initiated by external invasion and perpetuated by civil war." *The Destruction of the Zulu Kingdom* University of Natal Press, Pietermaritzburg 1994 pp. 243-244.

⁹ In 1960 R.G.T. Watson, former General Manager of the Tongaat Sugar Company, wrote, without regret, that in the 1920s 'Flogging...was accepted as the traditional and most effective method of getting work out of coolies and kaffirs and of maintaining plantation discipline'. Hutchinson, London, p. 149. It is hardly surprising that so many chose the autonomy of the shanty town over re-indenture. Tongaat is now

outside the law flourished and involved people of all colours”.¹⁰ Colonial authorities soon acted against the settlements and to legally entrench racial segregation with a view to “reducing illegal liquor traffic, theft, assault, and the risk of fire, to protect health standards and to maintain property values”.¹¹

The mass enclosures of land for the purpose of setting up a properly capitalist white agriculture given legal sanction by the 1913 Land Act pushed a dire rural crisis into a desperate cataclysm that is still playing itself out in the deprivation and struggles of today. In his *Native Life in South Africa* Sol Plaatjie wrote of the “roving pariahs” created by the “sickening procedure of extermination, voluntarily instituted by the South African parliament.”¹² In 1923 the state sought to stem the flow of people into the cities with the policy of Influx Control that aimed to prevent Africans from moving to cities, to force those (mostly men) with permits to inhabit segregated workers’ quarters and those without permits to leave. It stayed, in different versions, on the statute books until 1986 and was replaced, in 1990-1, by a “non-racial urban policy framework designed largely by the think-tanks of big business”¹³ with the Urban Foundation being the major player.

In 1929 and 1930 there were all kinds of, at times insurrectionary, resistances – some strongly connected to the Industrial and Commercial Workers’ Union of Africa (ICU). The ICU’s fascinating history is riddled with all kinds of contradictions, many stemming from its embrace of millennial thinking and charismatic leadership with a tendency to consider its own interests as primary. But amongst the many rich but often neglected lessons from this episode in our history there are two that are particularly important for the matter at hand. The first is that for all its flaws including the (often but not always thwarted) desire of many of its officials to be “deliverers of the people, not revolutionaries committed to self-emancipation”¹⁴ which led a good number of them to, like a good part of the professional left today, “sway between ideological crowing and organizational cowering”¹⁵ it was, ultimately, a project of the poor rather than for the

Moreland and is listed on the London Stock Exchange. Since 1909 the company has sought to set the agenda for the city’s spatial planning on the basis that it is the largest land owner in the city. Since 1989 it has successfully done so through a set of formal planning processes. In the post-apartheid era this is justified as a ‘public-private partnership’. Obed Mlaba worked there before becoming Mayor and, as Mayor, contracted Moreland to plan land use and to manage the uShaka themepark recommended by Moreland consultants and largely built and sustained with public money. p.151.

¹⁰ *Insiders and Outsiders: The Indian Working Class of Durban 1910-1990* University of Natal Press, Pietermaritzburg, 1995 p. 34.

¹¹ Maarsdorp & Humphries *From Shanty Town to Township*, p. 11. This quote, like so much of the discourse in this regard, is utterly indistinguishable from much of the language used to justify forced removals in contemporary Durban.

¹² Cited in Colin Bundy *The Rise & Fall of the South African Peasantry* David Philip, Cape Town, 1988 p.231. Bundy, writing about the 1913 Land Act, notes that “the details abound of infant mortality, malnutrition, diseases and debility; of social dislocation expressed in divorce, illegitimacy, prostitution and crime; of the erosion, desiccation and falling fertility of the soil; and of the ubiquity of indebtedness and material insufficiency of the meanest kind.” *Ibid.*, p. 221.

¹³ Mark Swilling ‘Introduction’ in *Apartheid City in Transition* Oxford University Press, Cape Town, 1991, p. xi

¹⁴ Helen Bradford *A Taste of Freedom: The ICU in Rural South Africa* Ravan Press, Johannesburg, 1988, p. 133.

¹⁵ Bradford *A Taste of Freedom*, p. 133.

poor. Because it was funded by membership subscription, the paid officials could never entirely escape their obligations to the membership. Helen Bradford explains that in the 1920s “The ICU was constituting itself as a rudimentary but nonetheless alternative power centre in wide-ranging spheres of social and state activities.” She adds, quoting Santos, that:

‘Parallel dual power is the necessary prehistory of a confrontational dual power’, and often the ICU was doing no more than bridging the gap between disintegrating traditionalist and racist capitalist worlds. But especially when infused with the creativity of members, even superficially moderate activities could point the way to the development of innovative, popular institutions. Fragmentary and partial though they were, these attempts to broaden the conflict to various arenas of society were nonetheless significant. Thus in addition to its meetings and office work, the ICU promoted alternative political and cultural practices to those through which whites shaped the ideas of blacks.¹⁶

The ICU ran night schools, staged music and dance performances and became what liberation theology would later call a prophetic voice in many churches often leading to a profound re-orientation of their collective social vision.

And while the ICU veered between outright militancy, setting up armed militias to protect against white attacks, and various kinds of accommodation with the colonial state it made innovative use of the courts. These resulted in all of the usual problems that come from dependency on legal strategies which are well elaborated by Helen Bradford. The growing legal expertise of the Union officials steadily removed them from members, officials tended to fetishise legal strategies at the expense of mass mobilisation, and the costs of legal strategies put the Union’s resources under major pressure. Bradford concludes that things got so bad that “some organizers were little more than touts for lawyers.”¹⁷ But, despite all of this, because the poor often faced illegal coercion, approaches to the courts resulted in major gains with the result that “legal victories were of enormous importance in attracting support.”¹⁸ Bradford notes that there was significant “grass-roots support for the ICU’s court battles” and, quoting Engels, concludes that

To argue that legalistic leaders never rose to the challenge of popular militancy is to romanticize the willingness of the labouring poor to storm the barricades. The commitment of subordinated groups to law and order should never be under-estimated. Not only are the norms of the dominant classes often internalized, but ‘indiscipline’ can also be contrary to under-class codes of behaviour. Nor do illegal protests necessarily further struggles more than constitutional actions. Simply in order to fight, achieving and defining

¹⁶ Bradford *A Taste of Freedom*, p. 138.

¹⁷ Bradford *A Taste of Freedom*, p. 135.

¹⁸ Bradford *A Taste of Freedom*, p. 136.

specific legal rights is a key tactic whereby movements acquire ‘first a soil to stand on, air, light and space.’¹⁹

As an aside it is interesting to note, that the ICU’s biggest marches and displays of subaltern counter-power took place in the same Sydenham streets where the biggest displays of post-apartheid subaltern counter-power have been organised by *Abahlali baseMjondolo*.

Important concessions were won by the resistances of 1929 and 1930 in the shack settlements of Durban and by the 1930s there were thousands of Africans and Indians as well as coloureds and a few whites in the largest settlement known as Cato Manor in English and Umkhumbane in Zulu. From this time there were also many Phondo²⁰ migrants into the city²¹ a good number of whom ended up in shack settlements like Umkhumbane. For a while Umkhumbane was tolerated as the Imperial war economy required more labour. Tellingly both the African National Congress (ANC) and the Communist Party of South Africa (CPSA) tended to approach shack dwellers rather gingerly and remained uncomfortable with the prospect of any serious alliance with shack dwellers’ resistances even when these vastly outnumbered anything that elite nationalism or white dominated and European inspired communism could muster. This was not unique to Durban and in Johannesburg there was a similar response to *Sofasonke*, the large squatters’ movement led by James Mpanza. Mpanza’s charismatic leadership was certainly colourful but Tom Lodge notes that while he included a paid a salary for himself from membership fees this “function should not be exaggerated: squatter leaders were often accused by their opponents of gangster style behaviour, but their subsequent careers demonstrate little evidence of great affluence.”²² It seems clear that some of the reluctance of nationalist and communist elites to engage seriously with vibrant mass based squatter politics was rooted in aspirations for a very limited and strikingly colonial conception of modernity. For instance in a debate with Mpanza over the right to brew beer, the ANC’s P.Q. Vundla declared that “we do not want these ‘native customs’ because our township being part and parcel of the town we have to follow the white way of living.”²³ Interestingly, given current realities, Lodge also notes, via Stadler, that “the central government displayed little enthusiasm in assisting local officialdom in its persecution of the squatters. The latter were housed at no cost to the state or industry. For the municipality though, the squatters represented a direct threat and challenge to its authority.”²⁴

Serious conflict erupted in Durban in 1949 between Indian landlords and African tenants denied the right to own property. By this time there were close to 70 000 people living in

¹⁹ Bradford *A Taste of Freedom*, p. 136.

²⁰ Although ‘Pondo’ remains the more common spelling Lungisile Ntsebenza makes a good case for ‘Phondo’ as a better option. Lungisile Ntsebenza *Democracy Compromised* HSRC Press, Cape Town, 2006, p.5.

²¹ William Beinart *The Political Economy of Pondoland 1860-1930* Ravan Press, Johannesburg, 1982

²² Tom Lodge *Black Politics in South Africa Since 1945* Ravan Press, Johannesburg 1983, p. 16.

²³ Tom Lodge *Black Politics*, p. 17.

²⁴ Tom Lodge *Black Politics*, p. 16.

the shacks. The initial response of the City was to provide basic services within the settlement – ‘roads, stormwater drainage, street lights and ablution blocks....Sites were also made available for schools, churches, community halls, sports grounds, crèches, shops’²⁵ and low interest loans were provided for building and upgrading shacks. In the policy jargon of today this would be called an *in-situ*-upgrade. For a while Umkhumbane flourished and its urban cosmopolitanism produced everything from its famous *izitabane* community, where homosexual marriage was pioneered in South Africa, to all kinds of musical and dance syntheses that have clear trajectories into the present. But in March 1958, with the population at 120 000, and the apartheid state achieving its full power, the Durban City Council, working within a colonial academic and policy consensus with a global reach,²⁶ began a ‘slum clearance’ project that forcibly removed Black shack dwellers to racially segregated modern townships on the periphery of the city. White shack dwellers, who according to Lodge “numbered a few thousand”²⁷ were presumably moved into the city. It was justified in the name of increasing property values, reducing crime and improving health and hygiene. People who didn’t have their names on the right documents “would have their homes and sometimes their possessions within them flattened without warning by bulldozers.”²⁸ But it wasn’t just people at risk of being made homeless by eviction who resisted. Forced removals to new houses in new townships were militantly opposed, primarily on the grounds that transport costs from the new townships to work were unaffordable.

In 1959 demonstrations in the settlements stopped the evictions 3 times. There were moments when the resistance was clearly organised and articulated as a women’s project²⁹ and Women of Cato Manor issued a direct challenge to the state, patriarchal relations in the settlement and the lack of militancy from the ANC Women’s League. In November there was a mass boycott of the municipal beer hall. As the conflict escalated lives were lost. In January 1960 6 000 people marched into the city. Protest in and around the settlement had been tolerated to a degree but the moment the shack dwellers went into the city that toleration was withdrawn. The army was brought in and resistance crushed. But instead of smashing the resistance the evictions scattered it resulting in a series of dramatic rural rebellions. As Tom Lodge notes, “The indignation of rural women was infectious, and it found fertile ground in rural worries and distress.”³⁰ But the mass evictions were continued and largely completed in August 1965.

²⁵ Gavin Maarsdorp & A.S.B. Humphreys *From Shantytown to Township* Juta, Cape Town, 1975, p.17.

²⁶ It is important to note this fact because it is now routinely assumed that the City Council’s policies towards shack dwellers must be highly commendable because they are informed by a global academic and policy consensus and are therefore ‘world class’. People who trade in this way of thinking seem uniformly uninterested in what actually existing shack dwellers think of the policies and are generally extremely hostile to shack dwellers who dare express a view. They also appear to be largely uninterested in history and to look into the future with a somewhat manical optimism. What ever they might say about vulgar Hegelianism this latter tendency does, in fact, unite certain types of Marxists and neo-liberals.

²⁷ Tom Lodge *Black Politics*, p. 147.

²⁸ Tom Lodge *Black Politics*, p. 147.

²⁹ See Iain Edwards ‘Cato Manor, June 1959’ in the excellent *The People’s City: Africa Life in Twentieth-Century Durban* (Edited by Paul Maylam and Iain Edwards, University of Natal Press, Pietermaritzburg, 1996)

³⁰ Tom Lodge *Black Politics*, p. 149.

Other shack settlements in the city were also razed despite resistance with the mostly Indian Tin Town on the Springfield Flats being cleared by 1964. A co-operative research project between the Durban Corporation's Department of Bantu Administration and the University of Natal aimed at assessing the capacity of relocated shack dwellers in the new segregated townships to pay for services concluded that "the policy of rehousing Africans in townships on the urban periphery involved them in a significant increase in living costs."³¹ The same conclusion was reached with regard to Indians relocated from Tin Town. These forced removals are remembered, bitterly, in popular and official memory as great crimes of apartheid and as originary events in many accounts of political conscientisation. But the memories of these settlements also capture the essential ambiguity that so often occurs in thinking about the shack settlement which is that it can simultaneously be a site of political and cultural freedom because of its proximity to the city, its cosmopolitanism and its autonomy from the state and authoritarian modes of enforcing 'tradition' and, also, a site of suffering because the absence of the state means the absence of the services - sanitation, roads, health, water, refuse collection and so on - that are needed for a viable urban life. So, speaking in 1960, the head of the ICU, A.W.C. Champion, who had, despite his other failings, supported militant mobilisation against conditions in Umkhumbane, still described it as "the place in Durban where families could breathe the air of freedom".³²

At the height of apartheid Africans were successfully barred from any autonomous or potentially autonomous spaces in the city and could legally live only in workers' hostels or servants' quarters. But in the late 1970s cracks began to emerge in the barriers around white space and by the 1980s the apartheid state, occupying Namibia, at war with the Cubans and the MPLA in Angola and battling insurrectionary township rebellions across the country, lost the capacity to completely regulate the movement of Africans. Where possible elite white suburbs were protected but people were able to flood into the cities, seize land in defiance of the state, and found communities autonomous from the state. This movement into the city was greeted with tremendous racialised panic in white and Indian communities but was celebrated by the ANC underground and in exile. In Durban's Northern suburbs like Sydenham, Clare Estate and Reservoir Hills settlements usually began as carefully hidden structures built at night in dense bush on steep terrain.³³ In Durban, and around the country, open resistance to threats of removal became possible when settlements became large enough. The settlements did not only become home to people fleeing rural poverty or regimes of terror on white farms. They also became an important safety net for the urban poor, for people fleeing political violence and for people, especially women, teenagers and sometimes even children, fleeing abusive relationships. In 1985 riots broke out in the Crossroads settlement in Cape Town after Minister of Co-operation, Development and Education Gerrit Viljoen said, in a sound bite that is regularly used by state officials twenty years later, that "uncontrolled squatting

³¹ Maarsdorp & Humphreys *From Shantytown to Township*, p. 40.

³² Paul Maylam, 'Introduction' to *The Peoples' City*, p. 19.

³³ The people who founded each settlement, and the circumstances under which they won the land, are very well remembered in each settlement.

would not be tolerated”.³⁴ In four days of conflict 18 people were killed and hundreds injured. In response the state declared a moratorium on forced removals. Although distinctions between ‘legals’ and ‘illegals’ (something which continues) allowed the state to continue to evict, mass revolt had, as in Durban a generation before, won a major concession – the exclusion of autonomous African communities from the cities, successfully enforced since the mid 1960s, was no longer absolute. Academics at the University of KwaZulu-Natal remember Marxist Geographer Mike Sutcliffe excitedly pouring over huge maps of Durban looking for spaces that could be occupied. Twenty years later he would be pouring over maps planning forced removals and, also, illegally banning shack dwellers’ marches and slandering organised shack dwellers with paranoid and racist conspiracy theories.

The hundreds of settlements that were founded in Durban in the 1980s had a wide range of very different origins, modes of governance, political affiliation and relationships with people in nearby township or suburban housing. But they were all nodes of connection enabling a new mobility between city, township and village life. Many people, via the better livelihoods and education available in the city, were able to dramatically improve their material circumstances and autonomy from a base in an urban shack. For many more who remained in acute poverty an urban base could keep hope alive and nihilism at bay. At the time many shack dwellers had tremendous hopes in the gathering popular resistances to apartheid. In his blurb for Omar Badsha’s *Imijondolo*, a photographic essay on the Amouti settlement in Durban, Desmond Tutu wrote to recommend this “harrowing chronicle of what does happen to God’s children who are victims of a vicious policy...I hope this book will sear our consciences so that we will work to put an end to policies that can produce such human tragedy”.³⁵ It was widely believed that the end of apartheid would be the end of the shanty town – via development and not destruction.

It was clear that apartheid would fall. Workers declared that the name of the coming new order was socialism. Local capital, following the example of USAID,³⁶ decided to invest in the winning horse, began to look to influence anti-apartheid struggles and set up an NGO called the Urban Foundation.³⁷ The Foundation aimed to persuade the poor that the market could work for them. It broke with the fears of invasion inherent in the apartheid term ‘squatter camp’ and introduced the term ‘informal settlement’ which, they felt, spoke to a temporary condition that could be alleviated by unleashing previously blocked entrepreneurial energies. The Foundation returned to the housing model of the early 50s, when the state was weaker and popular counter power was stronger than under high

³⁴ Laurine Platzky & Cheryl Walker *Surplus People: Forced Removals in South Africa* Ravan Press, Johannesburg 1985, p. xxvi.

³⁵ Omar Badasha *Imijondolo* Afripix, Durban 1985. Twenty years on, and more than ten years after the end of apartheid, the only thing that gives any indication that the photographs are not contemporary are the fashions worn by the models in the adverts in the newspapers with which many shacks are wallpapered.

³⁶ See William Robinson *Promoting Polyarchy* Cambridge University Press, Cambridge 1996

³⁷ See Marie Huchzermeye’s account of the Urban Foundation in her *Unlawful Occupation*, African World Press, New Jersey, 2004 pp. 121- 124 and 145 – 78. Anglo-American, the corporation behind the Foundation now owns Moreland, the company that has driven Durban’s spatial development policy since 1989. It is interesting to note how much more progressive their position on shack settlements was when popular struggles against apartheid were calling the credibility of the state and capital into question.

apartheid, and worked for the provision of basic services to shack settlements and for people to be allowed to develop their shacks into more formal dwellings as their incomes improved.

By July 1987 the Durban City Council publicly accepted the principle that the new settlements would be permanent but, nevertheless, in the same year “squatters in Wentworth, Clare Estate and Reservoir Hills had their shacks demolished by the police and many were arrested for trespassing.”³⁸ But more shacks were erected in Clare Estate and within two years the city conceded the permanence of the settlements in practice. In July 1991 the City resolved to develop the largest settlement, Kennedy Road, in partnership with the Urban Foundation in two phases. This was a pilot project for the Foundation. The shacks in the Kennedy Road settlement cling to the side of a steep hill squeezed up against the perimeter fence of the city’s main dumpsite, the largest in Africa, to the West and the South. The big fortified houses of suburban (and under apartheid segregation Indian) Clare Estate lie to the North, on the other side of Kennedy Road, and the shacks tumble down Eastwards to the ugly big box stores of Springfield Park where Tin Town used to be. Phase one was implemented and a community hall was built, 147 pit latrines and 4 communal taps were provided and electrification was begun. Fifteen years later that hall would play a central role in the biggest mass mobilisation of shack dwellers since the 1950s.

When the ANC opened their offices in Johannesburg after they were unbanned in 1990 a huge banner in the foyer declared ‘Occupy the Cities!’.³⁹ On 9 November 1993 the African National Congress issued a press statement in the lead up to the first democratic elections condemning the ‘housing crisis in South Africa’ as ‘a matter which falls squarely at the door of the National Party regime and its surrogates’. It went on to describe conditions in the ‘informal settlements’ as ‘indecent’ and announced that:

Nelson Mandela will be hosting a People’s Forum on Saturday morning in Inanda to hear the views of residents in informal settlements...The ANC calls on all people living in informal settlements to make their voices heard! ‘Your problems are My Problems. Your solution is My Solution’, says President Mandela.⁴⁰

One of the settlements specifically mentioned was Kennedy Road. Seven months later the ANC swept to power in the national parliament. After accession to power they made no attempt to ‘hear the views of residents in informal settlements’ but they did build houses. But, as Marie Huchzermeyer shows, “The central ideas put forward by the Urban Foundation in the early 1990s were incorporated into the national housing policy after the 1994 elections.”⁴¹ So although the state did push hard to build houses the ‘internationally applauded’ focus on rapid ‘delivery’ deflected attention from critical views, not least

³⁸ Brij Maharaaj ‘Segregation, Desegregation and De-Racialisation’ (*Durban Vortex* University of Natal Press, Pietermaritzburg, 2002, p. 179.

³⁹ Gill Hart brought this to the attention of Richard Pithouse.

⁴⁰ African National Congress *Southern Natal Statement on the Housing Crisis*, Durban 1993

⁴¹ Huchzermeyer, *Unlawful Occupation*, p.233.

from the recipients of this ‘delivery’ on exactly what was being delivered to whom. Various policy documents focussed “on the need to develop well-located land for the poor”⁴² but, as Huchzermeyer’s consistently principled work shows:

Minimising the up-front cost per unit requires new housing developments to be located on cheap tracts of land, or on land already owned by the state. In South Africa much post-1994 low-income housing has been developed on land that was purchased in the 1980s by the apartheid government for township development in accordance with its segregationist ideology. Thus, many apartheid urban plans have been unquestioningly implemented by the post-apartheid government.⁴³

But in some instances the new political credibility of the post-apartheid state allowed it to take an almost immediate step back from commitments undertaken in the last years of apartheid. For example in September 1995, just a year after the end of apartheid, the City felt able to change its plans for Kennedy Road from staggered upgrades to relocation and recommended that “the entire development of Kennedy Road be aborted” and promised that “the affected families [will] be rehoused in one of the Council’s fast track housing projects.”⁴⁴

But the legal regime soon changed with regard to evictions. Section 26 (3) of the Constitution of the Republic of South Africa, 1996 stated that “No-one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”⁴⁵ A year later the 1951 Prevention of Squatting Act of the apartheid government was replaced by the Prevention of Illegal Eviction and Unlawful Occupation of Land Act of 1998⁴⁶ in order to give force to Section 26 of the Constitution. This act establishes clear rights for shack dwellers protecting them from forceful and undignified eviction. The legal protection against forced evictions includes the following:

- Any eviction without a court order is illegal

⁴² Sarah Charlton ‘The Integrated Delivery of Housing: A Perspective from Durban’ in *Confronting Fragmentation* edited by Philip Harrison, Marie Huchzermeyer and Mzwanele Mayikiso University of Cape Town Press, Cape Town, 2003, p. 267.

⁴³ Marie Huchzermeyer ‘Addressing Segregation Through Housing Policy and Finance’ in *Confronting Fragmentation* edited by Philip Harrison, Marie Huchzermeyer and Mzwanele Mayikiso University of Cape Town Press, Cape Town, 2003, p. 213.

⁴⁴ City of Durban *Report to Committee: Kennedy Road Information Settlement* 22 September 1995. Original in the archive of the Kennedy Road Development Committee..

⁴⁵ Constitution of the Republic of South Africa 1996. The Constitution also states that:

* Everyone has the right to have access to adequate housing.

* The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

Furthermore Section 9 of the Constitution endorses the right to equality, which includes “the full and equal enjoyment of all rights and freedoms”. The state has an obligation to prohibit unfair discrimination in respect of all rights. To achieve equality, it can adopt special measures to protect or advance the rights of disadvantaged groups. <http://www.info.gov.za/documents/constitution/index.htm>

⁴⁶ See <http://www.polity.org.za/html/govdocs/legislation/1998/act19.pdf>

- A court cannot issue an order for an eviction without considering how long people have lived on the land, how important living on that land is to their economic and social well being and whether or not suitable alternative accommodation has been provided. Suitable alternative accommodation must be considered suitable by the people to be relocated, should not be more than 5 kilometers from where people are currently living and should not break up communities or take people too far from work and schools.
- Evictions are illegal if written notice has not been given at least 14 days before the eviction and if that notice is not in a language that the people facing eviction can understand, is not clear, does explain the grounds for the eviction and does not explain that people facing eviction have the right to oppose the eviction in court and to access legal aid to do so.⁴⁷

But there was no real progress with regard to the provision of housing. Sarah Charlton, a former employee in the eThekweni Metro Housing Services Unit established in 1997, recalls that “the allocation of sites in the new housing projects...tended to be to the benefit of local, parochial interests only rather than serving [to reduce] Metropolitan-wide backlogs”⁴⁸ and that the “reactions of formal residents, compounded by the different interests of ward councillors, served to hinder well-located development.”⁴⁹ The City’s own research showed that residents allocated houses in new out of town relocation townships “frequently...moved back to other informal settlements.”⁵⁰

On 4 June 1999 the ANC greeted news of their first victory over the Inkatha Freedom Party in the provincial election in KwaZulu-Natal with a euphoric press statement. They promised, that, as their first priority, “The ANC will together with our people address the concerns of the poorest of the poor living in squatter camps like Kennedy Road, Lusaka and Mbambayi”.⁵¹ Their power, including their power to demobilise popular militancy and to speak for its traditions, was justified first and foremost in the name of the poorest – people in ‘squatter camps’ like Kennedy Road. Kennedy Road voted solidly ANC in all elections and in Clare Estate the votes from Kennedy Road, and other large settlements like Foreman Road and Jadhu Place, won the ward for the ANC in local government elections. Most of the suburban Indian voters had supported the Democratic Alliance which saw shack settlements as criminal land invasions.

In 2000 the Constitutional Court sought to give effect to housing rights as provided for in Section 26 of the Constitution in the widely heralded Grootboom case. The court declared that the state must take reasonable steps to provide housing with particular attention to “people who have no access to land, no roof over their heads, ... people who are living in intolerable conditions and ... people who are in crisis because of natural disasters such as

⁴⁷ ‘Lessons from Stuart Wilson’s Workshop on Housing Rights’ *Izwe Labampofu* December 2006,

p. 6.

⁴⁸ Charlton, ‘The Integrated Delivery of Housing: A Perspective from Durban’, p. 267.

⁴⁹ Charlton, *Ibid.* p. 270.

⁵⁰ Charlton, *Ibid.* p. 273.

⁵¹ African National Congress *ANC KwaZulu-Natal Victory Statement*, Durban 1999

floods and fires, or because their homes are under threat of demolition”.⁵² However, as has been widely noted, Mrs. Grootboom remains homeless.

In 2001 the City authorities began a ‘Slum Clearance Project’ linked to the United Nations Habitat *Cities Without Slums* project. Durban was selected as a pilot for this project. For years Mayor Obed Mlaba would continue to speak as though the general approval of the UN in and by itself rendered all specific critique by shack dwellers “a plethora of untruths”.⁵³ So much for decolonising the mind. The Slum Clearance Project is based on the privatisation of the city’s rental housing, built for the Indian, coloured and white poor under apartheid, and the ‘*in situ* upgrade’ and ‘greenfield relocation’ of ‘informal settlements’.

In 2004 the national government acknowledged that shack settlements were continuing to grow and committed to an Informal Settlement Upgrading Programme in the form of a policy called ‘*Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements*’. This was in line with an international shift in the policy consensus that some have argued was in part a response to sustained mobilisations against evictions and relocations in Brazil beginning in the 1960s that had made relocation to new out of town townships an unviable policy. It may also have had something to do with the U.S. Security establishment’s new view that the global underclass was producing its new enemies and would be the terrain of its new battles.⁵⁴ But, either way, it should be noted that the new policy, indisputably a major step forward, had the full support of a group of key agencies of contemporary imperialism – the UN, the World Bank and USAid. Nevertheless there was significant progress. The new policy aimed to ‘integrate informal settlements into the broader urban fabric’, welcomed ‘civil society input’, and even committed to a ‘phased *in-situ* upgrading approach to informal settlements’ and a challenge to the marketisation of urban land use in favour of the poor.⁵⁵ In-situ upgrades are in general vastly better for shack dwellers (and of course for sustaining the popular desegregation of cities achieved by land invasions) than relocation and the policy moved beyond a merely rhetorical commitment to upgrades by making funds available for the purchase of occupied and unoccupied well-located land and for requiring shack dwellers to co-determine which land was ‘well-located’ and how the land should be developed. Moreover the policy also makes funds available for land

⁵² IDASA Budget Brief 111 <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=655>

⁵³ For example see Obed Mlaba, ‘Bringing Homes to the Poor’ *The Mercury* 21 March 2006 in which he levels this unsubstantiated and empirically incorrect accusation at comments made by S’bu Zikode in an interview with the *Mercury*. In fact Habitat has a dismal record of failure to engage with shack dwellers and functions largely to offer legitimation to governments with similar failings. Its attempt at developing a model pilot project in Soweto Village in the massive Kibera settlement in Nairobi, the city where Habitat has its plush headquarters, has been a complete failure. For more on Habitat’s failings see Robert Neuwirth’s *Shadow Cities: A Billion Squatters, a New Urban World* Routledge, New York, 2006.

⁵⁴ Mike Davis’s comments on this tend to reproduce the often racialised Manicheanism that informs it in the first place. A more thoughtful view is developed by Eyal Weizman in ‘Walking through Walls’: Soldiers as Architects in the Israeli-Palestine Conflict’ *Radical Philosophy* 136, March/April 2006, pp. 8 – 22.

⁵⁵ See Marie Huchzermeyer ‘The New Instrument for Upgrading Informal Settlements in South Africa’ in *Informal Settlements: A perpetual challenge?* Edited by Marie Huchzermeyer and Aly Karam, UCT Press, Cape Town, 2006, pp. 44-61.

rehabilitation. This means that the old excuse for evictions – ‘the land is not safe’ – did not continue to carry much weight.

But as Huchzermeyer notes, the message from the government was mixed from the start. In the same year as *Breaking New Ground* was launched Housing Minister Lindiwe Sisulu spoke about moving towards a ‘shack free society’ in a way that led other officials to speak of the need to ‘eradicate informal settlements’ in a mode that some understood as “a blanket mandate to remove shacks, in the absence of solutions that eradicate poverty, remove vulnerability and promote inclusion.”⁵⁶ She also notes that after the 2004 announcement that South Africa would host the 2010 soccer World Cup, policy work immediately began to include a distinction between ‘visible’ and ‘non-visible’ settlements with a view to eradicating the former.

In 2005 the national government repeatedly promised to ‘clear the slums’ by 2014. The provincial government and eThekweni Municipality announced that they would achieve this by 2010. More than 70 settlements were ‘ringfenced’ for ‘slum clearance’ and ‘relocation’. Statements by Mlaba and others made it clear that the plan was to make up the huge difference between the number of new houses being built, and the massively larger number of people living in settlements slated for ‘slum clearance’ and ‘relocation’, by subjecting the minority of shack dwellers to forced removals to new and largely rural townships and casting the majority as criminal and carriers of disease and simply destroying their homes leaving them homeless.

For those who were about to receive housing it was quite clear, although it was not stated as policy, that settlements in former African townships (non-visible?) were generally slated for upgrades while those in former white and Indian suburbs (visible?) were generally slated for relocation. It was equally clear, although again not stated,⁵⁷ that the settlements were being relocated in an order determined by the degree to which they were visible from the bourgeois world. There was and remains a *de facto* commitment to a form of separate development for the ‘formal’ and ‘informal’ spheres that denies the interrelation, historical and contemporary, between what the policy people now call the ‘first’ and ‘second’ economies. The Canaan settlement, on the road to Moreland’s new colonial themed golfing estates, office parks and malls to the North was the first to go. The removals were presented as the beginning of the promised post-apartheid ‘delivery’ but empirical research clearly indicates that, as with forced removals under apartheid, unemployment rocketed and income plummeted after people in the Canaan settlement were removed to the new Quarry Heights township. Many families were ripped from an

⁵⁶ Marie Huchzermeyer ‘The New Instrument for Upgrading Informal Settlements in South Africa’ in *Informal Settlements: A perpetual challenge?* Edited by Marie Huchzermeyer and Aly Karam, UCT Press, Cape Town, 2006, p. 44.

⁵⁷ In Cape Town this fetishization of white and rich eyes *as* eyes is officially inscribed in policy which explicitly distinguishes between ‘visible’ and ‘invisible’ settlements. The aim is to relocate ‘visible’ settlements before the 2010 soccer World Cup. Shereen Essof drew this to the attention of Richard Pithouse. More than a decade into democracy there is every reason to fear the white gaze.

acutely precarious life⁵⁸ and plunged into an even more desperate crisis.⁵⁹ After his visceral description of the shit, filth and suffering in the tiny hovels of Old Town in Manchester, Friedrich Engels observed that “However, it is the Old Town, and with this reflection the bourgeoisie is comforted”.⁶⁰ But he reported that in New Town the streets “are oftener paved or supplied with paved sidewalks and gutters; but the filth, the bad odor of the houses...remain the same”.⁶¹ In contemporary Durban the idea that somewhere, somewhere unseen and never to be seen, new houses were being built similarly functioned as balm to the bourgeois conscience. The fact that these new houses are called ‘starter homes’, implying that people will move on and up when in fact they are likely to get poorer, functioned as second layer of balm.

The Municipality had returned to the high apartheid policy of considering all attempts at creating new settlements as illegal land invasions. People erecting new shacks risk criminal charges and the city aims to demolish all new shacks. The City also threatens to, and often does demolish shacks that are extended or developed into more formal structures. The police force the settlements to remain ‘informal’, and therefore able to be described as temporary and denied basic services, and they force shacks to remain crowded, and therefore able to be described as dangerously overcrowded. Sometimes informality must become a performance – a brick wall is hidden behind a tarpaulin or sheet of rotting cardboard. In 1985 Laurine Platzky and Cheryl Walker excoriated the apartheid state for deliberately producing slums in order to be able to clear them: “First the government froze development, then declared the area a slum when it deteriorated”.⁶² Some things change, some stay the same.

But the movement into the City was not being successfully contained. Harvey Mzimela, head of the City Police’s Land Invasion Unit complained that it lacked sufficient staff to carry out its work which “entailed the breaking down of shacks, which has resulted in shooting and stoning instances”.⁶³ The police that do this work, are equipped and conduct themselves like soldiers and are popularly known in fear as *amaSosha* and in open or covert derision as blackjacks – the name given to the black police sent to demolish shacks in the late 1950s and early 1960s. Nevertheless many settlements were growing and new settlements were still founded, as they were twenty years ago, with quiet construction out of bourgeois sight lines in the dead of dark nights. Often people who had been relocated to a new rural township or had their homes demolished simply moved back to another

⁵⁸ See Wendy Annecke’s excellent although stolidly titled ‘The Apartheid of Basic Facility Provision in the City of Durban with a Focus on Energy’ in *D(urban) Vortex*, University of Natal Press, Pietermaritzburg, 2002.

⁵⁹ See Shahid Vawda’s *Migrants in Durban: Vulnerability and Coping Strategies Among Two Migrant Communities* in ‘Governance, Urban Dynamics and Economic Development: A Comparative Analysis of the Metropolitan Areas of Durban, Abidjan and Marseilles’. Durban, 2002

⁶⁰ Friedrich Engels, ‘Working Class Manchester’ in *The Marx-Engels Reader* edited by Robert Tucker, W.W. Norton and Company, New York, 1972. p. 434.

⁶¹ Engels, *Working Class Manchester*, p. 435.

⁶² *The Surplus People: Forced Removals in South Africa* Ravan Press, Johannesburg, p. xxxix

⁶³ Carvin Goldstone, ‘Not Enough Staff to Clear Slums - Land invasion crisis gets worse’, *The Mercury*, September 16, 2005, p. 4.

settlement in the city increasing the number of shacks in each settlement and the number of people in each shack.

The City said that it has already relocated 7 000 families and aimed to build 400 houses a month to be able to continue with relocation. The Municipality was not alone its confident assertions that all 'slums' would be 'cleaned up' or 'cleared' by a certain date.⁶⁴ Similar claims were being made with equal confidence in other cities and by the national government. In fact around the country more shacks were being built than houses in relocation townships and, even if this were not the case, current rates of building new houses would still not make 'slum clearance' by the declared dates remotely feasible.⁶⁵ The collective will to deny this most material of realities was pervasive. It, together with the equally fallacious collective delusion that shack settlements are a solely a consequence of the apartheid past (the structurally adjusted present and all kinds of contemporary accommodations between micro-local political and economic elites are clearly also fuelling their growth) reinforced the elite consensus that shack settlements should be treated as a temporary aberration which will soon pass.

This consensus led to the suspension of policies aimed at upgrading settlements. So, for example, until 2001 it was difficult but still possible to have a pre-paid electricity meter installed in your shack. To get electricity you needed to pay R350 and to be able to represent your case in a certain way. According to S'bu Zikode, who had then just become chair of the Kennedy Road Development Committee, "It all depended on who applied. If you seemed ignorant because you can't speak English you were just told to wait outside."⁶⁶ But in 2001 a policy decision was taken to stop the electrification of shacks altogether⁶⁷ and it became impossible to legally access electricity.⁶⁸ Similarly the

⁶⁴ This was Mayor Mlaba's response to the media after a huge march on his offices by *Abahlali baseMjondolo* in early 2006. In 2001 when former shack dwellers, who had been sleeping rough on the side of a road for two months after a forced removal, stormed a City Council meeting Mlaba told the media that "What must be understood is that the Metro has a policy...that within the next ten years we eradicate all informal settlements". *Homeless People Storm Top Meeting in KZN*, <http://www.iol.co.za> 19-02-2001. The policy is always considered to render protest unacceptable even though there are now more shack dwellers than there were in 2001 and it is, on its own terms, clearly failing.

⁶⁵ In Cape Town where, unlike in Durban, there are statistics for new arrivals (illegals) the annual number of new shacks (16 000) is double that of new houses (8 000). The backlog stands at 260 000 houses. Nationally the state's statistics indicate that the number of people living in shacks have grown from 1,4 million at the end of apartheid to 2.4 million in 2005. See Martin Legassick *A Review of Jacques Depelchin's 'Silences in African History'*, <http://www.ukzn.ac.za.ccs> 2006. Given that so many people avoid being counted by the state for fear of having their houses demolished the state's figures should always be seen as an undercount.

⁶⁶ Richard Pithouse's notes. 21 March 2005

⁶⁷ The policy states that 'In past (1990s) electrification was rolled out to all and sundry...electrification of the informal settlements has now been discontinued'. *eThekweni Electricity Supply Policy*

⁶⁸ The refusal to electrify shacks has been effective in persuading a number of people to reluctantly accept removal to townships on the city's rural periphery. Especially in the very dense settlements like Foreman Road and Jadhu Place many people, especially children, are terrified by the constant threat of fires. An astonishing number of people carry the signs of the Municipality's policy on their bodies as burn marks. In some settlements illegal connections are common. It is probably often true, as the state insists continually insists in its '*Izinyoka*' advertising campaign, that these 'homemade' connections are less safe

City stopped cleaning out the pit latrines in Kennedy Road in 2001⁶⁹ and actively removed services in some settlements, like Quarry Road where portable toilets were removed in 2004 and Shannon Drive where the one tap was disconnected during day light hours in 2005 on the grounds that people were ‘wasting water’ – in fact usage had gone up as the settlement had expanded.⁷⁰

This was heralded as a world class policy. The problem is that it was.

On 14 November 2005 the assumption that shack dwellers appreciated the city’s world class policies began to fall apart, spectacularly, when video footage of the police firing rubber bullets, stun grenades and live ammunition into the backs of fleeing shackdwellers, who later burned a suited effigy of Mayor Mlaba, went around the world. The shackdwellers were organised together as *Abahlali baseMjondolo*. With no funding at all, and with no NGO support aside from supportive press statements from the Freedom of Expression Institute in support of their right to speak and march, they had shattered the manufactured consensus around the City’s ‘World Class’ housing policy. It was a lead story on national and local news. The *New York Times* gave the story a full page. *The Economist* and *Le Monde* gave it half a page.

Something had to give. It did.

In late 2006 the M.E.C. for Housing In KwaZulu-Natal, Mike Mabuyakulu⁷¹ called *Abahlali baseMjondolo* to a meeting where the top officials in his department warned them to cease speaking to the media, to cease working with a university academic the officials identified as a ‘foreign agent working to destabilise the country’ and instructed them to join the global NGO Shack Dwellers International. When they announced their uncompromising refusal of all of this on radio the leaders were swiftly arrested by the notorious Sydenham Police and subject to a photographed assault that was so brutal (it consisted mainly of smashing the heads of handcuffed men against the walls and floors of the police station) that it could easily have killed them. At the same time Mabuyakulu also introduced *The Elimination and Prevention of Re-emergence of Slums Bill* into the provincial parliament. As Huchzermeyer explains this bill “makes no reference to the cooperative and participatory approach to informal settlements contained in Breaking New Ground. The Slum Elimination Bill speaks of ‘control and elimination of slums’,

than those provided by the state. But they’re certainly safer than a candle and 5, 6, 7 or even more people crammed into a tiny shack made of cardboard and packing cases.

⁶⁹ In the Motala Heights settlement they have recently even gone so far as to threaten to demolish the Municipality built ablution blocks to, in the words of an officer in the land invasions unit, ‘make you go back where you came from’.

⁷⁰ Everyone spends a lot of time queuing for and carrying water for drinking, cooking and washing but women often spend huge amounts of time queuing to wash clothes. This is usually made into an important social and political space but that fact does not detract from the brutality of an official state and mainstream NGO and media feminism that obsesses about the number of women in power while remaining entirely uninterested in the kind of casual misogyny that can describe the disconnection of water to an entire settlement as ‘best practice’.

⁷¹ Like Sutcliffe Mabuyakulu has come a long way. It’s not that long since he was organising workers in Madadeni, a township with a large shack dwelling population.

language used in the 1951 Prevention of Squatting Act of the apartheid government.”⁷² It is unlikely that this Bill could survive a serious legal challenge but it certainly indicates that the Province has no intention of subscribing to national policy or law in so far as its treatment of shack dwellers goes.

The Bill has been widely criticised as a major step backward and as being in direct conflict with the Constitution. But this regression is not only occurring at the provincial level. The national government has recently proposed a Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2006 that would radically compromise the protection given to shack dwellers and others under the current Prevention of Illegal Eviction (PIE) Act. As Stuart Wilson notes “The PIE Act is not just any legislation. It is constitutional legislation. Its purpose is to give effect to Section 26 (3) of the Constitution of the Republic of South Africa, 1996.”⁷³

In a submission on the proposed amendment Koni Benson argued that:

Our overall concern is that the bill has been proposed in response to the "nature and increase in land invasion" as a way to make it easier to evict "invaders" rather than getting at the root of why people are increasingly moving into open spaces, and how these actions can be negotiated or embraced by the state. We are concerned that the Constitutional right to housing is infringed upon by the proposed changes and that the changes offer no room to critique the roles and responsibilities of municipalities, or to include mechanisms that analyse why a particular invasion takes place. In fact, Section 3 of the proposed changes puts default of lease/bond payment over and above consideration of circumstances of occupiers such as length of time of occupation, the needs of the elderly, disabled, child, and female headed households, and the availability of suitable alternatives. Without considering socio-economic factors, the bill makes it a crime to be poor, desperate, and homeless. The changes will make it easier to evict people, and thus easier to ignore their right to housing.⁷⁴

The proposed Bill assumes that there is a consensus that land invasions are a social pathology but as Marie Huchzermeyer argued in her submission:

The strongest and best articulated views on land invasions are expressed from the land owning class, the property elite. From its perspective, land invasion is a threat to property values, always with the hope that the property clause in the Constitution be interpreted as protection not only of property but also against decrease in its value. Less explicitly articulated is the threat that land

⁷² Marie Huchzermeyer *KZN Slum Elimination Bill: A Step Back* 13 march 2007
<http://abahlali.org/node/903>

⁷³ Stuart Wilson *Comment on Comment on General Notice 1851 of 2006, Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill*, 30 January 2007,
<http://www.abahlali.org/node/655>

⁷⁴ Koni Benson *Statements on PIE Acts Amendment Bill by Ilrig* 13 February 2007
<http://abahlali.org/node/655>

invasions pose to the South African middle class privilege (unsurpassed among middle income countries with similar levels of inequality) of living at a safe distance from the poor, without being reminded of their existence. It is widely and officially acknowledged that urban class segregation (still overlapping to a large extent with race segregation) has been perpetuated in the post-apartheid city, in fact, one may argue, to the extent that the term 'post-apartheid' in spatial terms may as yet not apply to South African cities. While formal land developments continue to litter the urban periphery in segregated patterns in seeming ignorance of South African consensus on the need to overcome the apartheid city, land invasions have bravely inserted themselves on under utilised land, opening up access to the city for the poor.⁷⁵

In late 2006 *Abahlali baseMjondolo* won an important court case against the Municipality and using this, together with mass mobilisation, spectacularly and dramatically stopped an armed, violent and illegal in-progress eviction by the City in the Motala Heights settlement in Pinetown. This was given major and quite detailed attention in the isiZulu media⁷⁶ and it became clear that across the city shackdwellers, including those not organised in *Abahlali*, were gaining the knowledge and the will to resist evictions.

In March 2007 S'bu Gumede, Chairman of the City's Housing Sub-Committee, called a press conference to admit that the City could not clear the slums by 2010 or by 2014.⁷⁷

Marcelo Lopes de Souza, writing from Brazil, argues that "Even progressive professional planners and planning theoreticians usually share with their conservative counterparts the (tacit) assumption that the state apparatus is the sole urban planning agent – for better or worse."⁷⁸ de Souza shows that subaltern counter power "does not only criticize (as a 'victim' of) state-led planning, but can also directly and (pro)actively conceive and, to some extent implement solutions independently of the state apparatus. These solutions often deserve to be understood as '(grassroots) urban planning'."⁷⁹ And, indeed, a central lesson of this brief history is that in Durban urban planning has always emerged from the balance of power between city authorities and popular forces. The city authority's constituency has changed over the years from an alliance between the white working class and white capital to white capital on its own and then to an alliance between white capital and the black political elite. But although it has ebbed and flowed it is the permanent battle between ordinary people (sometimes merely struggling to make their way into the city and sometimes organised politically) and bureaucrats acting for

⁷⁵ Marie Huchzermeyer *Comment on General Notice 1851 of 2006 - Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006*, 16 February 2007 <http://abahlali.org/node/655>

⁷⁶ See, for example, (the unfortunately and inaccurately titled but well written and accurate article) 'Ubamise nse umlungu beyodilize imijondolo' *UmAfrika* December 15-21 2006, p.2.

⁷⁷ Carvin Goldstone 'Housing target is unrealistic say city officials' *The Mercury*, 6 March 2007, p. 5.

⁷⁸ Marcelo Lopes de Souza 'Together with the state, despite the state, against the state: Social movements as 'critical urban planning' agents' *City*, Vol. 10, No. 3, December 2006 p.327.

⁷⁹ de Souza, *Together with state*, p. 327.

privilege that has and will continue to make the city. What this means for the question at hand is that interventions to get the most out of a legal regime that, despite its limitations, remains vastly more progressive than the local state, must consider support for subaltern counter-power as a key strategy.

SECTION 3: *Abahalali baseMjondolo*

3.1 Competing theories of Social Movements and Social Progress

The broader project of which this paper is part is concerned with the social and political forces and factors that create the context in which the law functions. While the dominant view is still that social progress will occur through enlightened technocratic interventions or through civil society (understood as NGOs rather than popular organisations) participation in official processes that seek to ‘balance the interests’ of all ‘stakeholders’ there is an increasing focus on social movements. In South Africa this tends to take three broad forms. The first is that social movements can coalesce into a broad force that at some point can join with trade unions and the South African Communist Party to found a workers’ party that will make an electoral bid to institute proletarian hegemony. This is a classic socialist position which is sometimes put forward in a democratic and rational mode but is also sometimes asserted in a dogmatic and authoritarian manner that tends to alienate organisations grounded in democratic praxis. But even if this alienating authoritarianism were to be overcome the project has no short or medium term prospects for achieving change because although resistances to economic and political exclusion, exploitation and oppression are a pervasive and, indeed, ordinary part of most people’s lives, the number of people organised into actually existing mass based social movements⁸⁰ remains extremely small. Indeed with the exception of a handful of Municipal wards across the whole country people organised into actually existing mass movements are currently statistically more or less irrelevant to electoral processes in the geographic contexts of all three tiers of electoral power. In any event given that *Abahlali* inaugurated their political project with a decision not to pursue electoral power the *Abahlali* experience cannot provide a case study for this type of social movement project.

The second project is not generally explicitly articulated but clearly informs much practice. It is in essence the view that social movements will achieve change by legitimating the claims for influence of a counter elite located in the academy and NGOs. This project is usually not framed around electoral power but is rather about trying to replace one set of technocratic policy experts and regimes with another. If this project is really about winning back access to state power then its fortunes are either tied to the left electoral project or to hope for some sort of crisis that would persuade the current holders of state power to turn left. In both cases there are no medium term prospects for this project. However if this project has in fact settled for privileged elite access to donor power via so called ‘civil society’ (i.e. NGO and NGO/academic) spaces it is succeeding very well. However influence in these spaces only makes it possible to make appeals to

⁸⁰ Given the pervasive incidence of a form of political fraud in which tiny groups of as little as three people are willfully misrepresented as ‘social movements’ by NGOs and others seeking political capital the qualifier ‘actually existing mass based’ is important.

constituted power and does not make it possible to constitute counter power. *Abahlali baseMjondolo's* early commitment to speak for itself and to demand of all elites, be they in NGOs, the academy, council chambers or parliament, that they 'speak to us, not for us' has placed the movement outside the representative logic of this project. The movement's firm rejection of NGO attempts to buy the support of key individuals indicates that this commitment is serious and is being adhered to in both principle and practice. The movement's commitment to retain its autonomy has led to it being treated as a threat to this project with the result that it has suffered from a virulent left NGO authoritarianism which has extended to public slander and direct complicity with state authoritarianism. The experience of this authoritarianism provides a second reason to conclude that it is highly unlikely that *Abahlali* will, for as long as it sustains its democratic and mass qualities, be won over to this project.

The third project, which has both a liberal and a more radical articulation, is that social movements can achieve relatively short term progressive changes from the bottom up by working for particular changes by waging particular battles where they have the particular strengths required for effective interventions to be possible. The liberal view understands this as being largely limited to effecting changes in law, policy and practice through various forms of lobbying and engaging in advocacy directed to power as it exists to bring these in line with a human rights agenda. The more radical view sees social movements as having the power to, as well as winning specific victories in terms of the law, policy and state practice, also change the nature of state power by forcing its diffusion via a radicalisation of democracy.⁸¹ The unique and sustained successes of the Treatment Action Campaign show that the (not entirely but predominately) liberal version of this project can win hugely important material and symbolic victories. *Abahlali baseMjondolo's* project has not yet had a similar degree of success with regard to effecting changes in the state's behaviour but clearly have a realistic chance to effect significant changes. Moreover it is probably fair to say that while *Abahlali* have at times worked, although without any NGO style professional bureaucracy, in some of the modes of the TAC the fundamental thrust of the movement thus far has been in the direction of achieving specific gains via a more direct challenge to the nature of state power.

There are two important articles that attempt to think through this mode of struggle in a concrete manner. The first is a comparative study by Patrick Heller that compares public participation models in the Indian state of Kerala, the Brazilian municipality of Porto Alegre and South Africa.⁸² The second is an article by Marcelo Lopes de Souza who,

⁸¹ At the moment the most popular abstract theorization of the idea that state should be subordinated to society rather than captured is probably John Holloway's *Change the World Without Taking Power* (Pluto, London 2002). However this line of thought is not new – Fanon made a case for a radical version of this with regard to the post-colonial state in *The Wretched of the Earth* (Penguin, London, 1976) and it remains an implicit assumption in much of the work flowing from radical democratic theorists influenced by Fanon such as Paulo Freire. The Council Communism movement and the work of the Greek philosopher Cornelius Castoriadis have also been important but the most philosophically sophisticated contemporary expression of this position (although it despises the phrase 'social movement') is clearly the remarkable body of work by Alain Badiou.

⁸² Patrick Heller 'Moving the State: The Politics of Democratic Decentralization in Kerala, South Africa, and Porto Alegre' *Politics & Society*, Vol. 29 No. 1, March 2001 pp. 131-163.

writing from Brazil, explores how Latin American social movements have, by sustaining a degree of autonomy from the state and party politics, been able to, without being hegemonic, nevertheless undertake popular urban planning from below together with the state, despite the state and against the state.⁸³

Heller shows that officially endorsed forms of public participation have largely failed to enable meaningful popular participation in South Africa but that they have had important successes in Kerala and Porto Alegre. Given that in all three instances external pressures towards marketisation under technocratic managerialism are the same the South African failure cannot be explained solely by external forces. Heller concludes that in South Africa a vanguardist movement has taken state power, incorporated or marginalized social movements and retained its “instrumentalist understanding of state power...(and) insulationist and oligarchical tendencies”⁸⁴. However in Kerala and Porto Alegre “social movements that have retained their autonomy from the state have provided much of the ideological and institutional repertoire of democratic decentralization.”⁸⁵

Heller’s research shows that technocratic policy making “has deeply depoliticizing and autocratic impulses”⁸⁶. He argues that:

Where the technocratic vision is lacking is in its impulse to sanitize decentralization of everything political. For starters, any effort to move the state requires redistributing political power. Democratic decentralization is a political project.⁸⁷

This has been achieved to a meaningful degree in Kerala and Porto Alegre where “The traditional Left goal of capturing state power has given way to a strategy of devolving state power and reinvigorating civil society”⁸⁸. Keller adds that

In contrast to the technocratic view that sees state reform as a technical proposition that can be handled through appropriate institutional redesign, decentralization in both these cases has been messy, nonlinear, and driven by distinctly conflictual processes.⁸⁹

We have, he concludes, “the irony of an increasingly Leninist party defending neoliberal economic orthodoxy in South Africa, and in Kerala and Brazil of two de-Leninizing parties defending people’s planning”⁹⁰.

⁸³ Marcelo Lopes de Souza ‘Together with the state, despite the state, against the state: Social movements as ‘Critical urban planning agents’ *City*, Vol. 1, No. 3 December 2006 pp. 328-342

⁸⁴ Heller, *Moving the state*, p.134

⁸⁵ Heller, *Moving the state*, p.134.

⁸⁶ Heller, *Moving the state*, p.135.

⁸⁷ Heller, *Moving the state*, p.136.

⁸⁸ Heller, *Moving the state*, p.150.

⁸⁹ Heller, *Moving the state*, p.157.

⁹⁰ Heller, *Moving the state*, p.159.

de Souza is highly aware of the fragility of movements, especially to gradual co-option by state power to state agendas resulting from an insufficiently autonomous base for this mode of engagement. And he is also very aware of the micro-local power relations that can compromise movements. He notes that a key challenge for squatter movements is how to sustain “a very ambitious level of thought and action” with the likelihood of irregular and hard won “more or less modest tactical victories here and now”.⁹¹ But his examination of the Brazilian experience provides an avenue for optimism. He concludes that:

the dissident territories which are created by the insurgent spacial practices of those movements are bastions of an economic, political and cultural resistance in the framework of which local and regional particularities are highly valued and at the same time a universal message (freedom and solidarity) is sent.⁹²

But this requires that the theoretical and cultural autonomy of the movement be sustained. And for de Souza one of the key dangers to this is ‘left wing technocratism’. He argues that: “ ‘Left wing technocratism’ corresponds to a contradiction in the context of which ‘too much’ attention is paid to technical instruments and exaggerated expectations are raised in relation to the possibilities and potentialities of the formal legal and institutional framework.”⁹³ For de Souza the mixed results of the Brazilian experience show that ‘left wing technocratism’ is the inevitable outcome when “a progressive urban strategy is developed and supported mainly by scholars and the (middle-class) staff of NGOs, while the poor and their grassroots organizations only play a very secondary role in terms of strategy-building and intellectual elaboration.”⁹⁴ de Souza is clear that “Technical help from progressive intellectuals and professional planners can be very welcome and necessary”⁹⁵ but that this must be offered in such a way that the movement does not cease “to think and act autonomously.”⁹⁶

If Heller is right, and the broad thrust of his argument is persuasive, then the route to more effective opportunities for public participation in South Africa will come from popular and struggles for democratisation waged outside of direct control of the party and state. If de Souza is right, and his arguments carry equal suasive power, then organisations of the poor need to build and sustain their intellectual autonomy as a precondition for the possibility of independent engagements with the state. But if this is what needs to be done there is no easy road ahead in Durban given the degree of repression that *Abahlali baseMjondolo* has faced.

3.2 ‘A politics of the strong poor’

⁹¹ de Souza, *Together with the state, despite the state, against the state*, p. 330.

⁹² de Souza, *Together with the state, despite the state, against the state*, p. 329.

⁹³ de Souza, *Together with the state, despite the state, against the state*, p. 329.

⁹⁴ de Souza, *Together with the state, despite the state, against the state*, p. 337.

⁹⁵ de Souza, *Together with the state, despite the state, against the state*, p. 338.

⁹⁶ de Souza, *Together with the state, despite the state, against the state*, p. 338.

With the unbanning of the ANC in 1990 ANC aligned settlement committees were expected to affiliate themselves to the South African National Civics Organisation (SANCO) and when the local government system was set up each committee in each ward got one seat on the Branch Executive Committee of the local ANC which was chaired by the local councillor. This was supposed to facilitate the bottom up expression of popular views. In the beginning it seemed to work. But when it became clear that the new government's housing policy was not in the interests of shack dwellers growing doubts developed about the system as constant engagement through official channels failed to produce any results. Eventually this resulted in a cascading break with party control of the settlements that began on 19 March 2005.

The day before, bulldozers had started digging up a piece of land adjacent to the Kennedy Road settlement and long promised for housing. People had discovered from the workers on the site that this wasn't the beginning of the long awaited housing development but that a brick factory was being built. They spontaneously moved onto the building site and demanded that the local councillor come and explain what was happening. He arrived with the police and demanded the arrest of his constituents. 'They are', he said, to the profound shock of his constituents, 'criminal'.⁹⁷ That night there was a mass meeting in the settlement. The SANCO committee came under serious pressure and after long and careful discussions a new course of action was decided on. Early the next morning a few hundred people barricaded Umgeni Road, a major 6 lane road, with burning tyres and held it against the riot police for 4 hours suffering beatings and 14 arrests. Alfred Mdletshe told Fred Kockott, the first journalist on the scene, that "We are tired of living and walking in shit. The council must allocate land for housing us. Instead they are giving it to property developers to make money".⁹⁸ With this spectacular act the settlement, and its governing committee, announced its independence from party control.

Over the next two years the revolt that began in Kennedy Road developed into a mass movement.⁹⁹ The movement is governed by a constitution¹⁰⁰ that allows for two types of collective membership. A whole settlement can affiliate to the movement when it has an elected committee that is elected on an *Abahlali* affiliation mandate or seeks and receives such a mandate at an open assembly. At the moment 13 settlements have affiliated to *Abahlali* in this manner. In some instances an extant committee broke with SANCO and affiliated with *Abahlali* but in most instances a previous unelected SANCO committee was deposed after a struggle for democratisation and *Abahlali* committees were then elected. In settlements where it has not been possible to democratise the governance of the settlement, or where there is no mandate for collective affiliation, individuals can

⁹⁷ A year and a half later this would be the same response from 'left' intellectuals in the anti-ANC NGO driven Social Movements' Indaba when *Abahlali*, together with the Anti-Eviction Campaign, declared their intellectual autonomy from that project. Perhaps there is a profound problem with all politics in which a left elite, in or out of the state and its party, are given the right to represent and therefore to think and speak for the poor. Perhaps prospects for real change lie with the possibility of radicalising democracy via struggles from below rather than by opposing or circulating elites within representative democracy.

⁹⁸ Fred Kockott, 'Shack Dwellers' Fury Erupts' *Sunday Tribune*, 29 March 2005

⁹⁹ That is, by the standards of post-apartheid movements of which it is clearly by far the largest. However it is obviously tiny compared to, say, the UDF or the workers' movement of the 1980s.

¹⁰⁰

come together and form an *Abahlali* branch. There are currently 22 settlement branches and 3 street trader branches which vary considerably in size and the degree to which they sustain organisation outside of periods of crisis. If all the members of the 25 branches and the residents of the 13 collectively affiliated settlements are added up the combined figure is well more than 30 000 souls. The largest mobilisation that the movement has been able to organise was thwarted by an illegal banning and major police harassment but seems to have attracted around 20 000 people and very large mobilisations remain possible although now that the movement organises across the whole city, in nearby towns like Pinetown and Pietermaritzburg, and as far away as Tongaat and even Ermelo in Mpumalanga,¹⁰¹ bringing everybody together would only be possible with significant transport resources. No one really knows exactly how many people attend the weekly meetings held in each affiliated settlement and branch however it seems that there are around 200 people actively committed to attending and driving the various weekly meetings that keep the connections between the overall movement and settlement and branch committees open. Three hundred delegates attended the 2006 Annual General Meeting at which the movement secretariat was elected. Each of these 300 delegates had been elected and mandated in branch meetings or in open assemblies called for this purpose in affiliated settlements. Some of these meetings attracted many hundreds of people. There were certainly a good few thousand people who participated in the AGM process.

From the beginning the meeting was the engine of struggle for the *Abahlali*. Music, dance, ecumenical memorials for people who have died in the relentless shack fires, just hanging out and even a 16 team football league all work to sustain courage and weave solidarity. But the meeting, which is always open to all, is where the intellectual work is done. Frantz Fanon, a man with an indisputably firm commitment to action, celebrates the meeting as a liturgical act. The religious language is not only appropriate because the meeting can function to connect and sacralise the denigrated and to tend hope. It is also appropriate because the meeting, when genuinely open to the wider life lived in common, is a space for people and communities to become something new – in this case historical agents in the material world. And, indeed, meetings do generally start with a prayer and sometimes also a hymn. They are usually broken with *Abahlali* songs and concluded with the singing of *I am a Socialist*. Meetings have a serious and reverent feel and are conducted formally. When an issue is raised all the different positions are expressed and then the matter is discussed until consensus is reached. If consensus is not reached delegates are asked to discuss the matter in their settlement or branch meetings and the discussion is then continued the following week. If consensus cannot be reached then the matter is finally put to a vote. No one has ever been humiliated in an *Abahlali* meeting.

Like Fanon Alain Badiou recommends a break with the politics of representation, sees local politics as the site for this and heralds the meeting as central to radical process. For Badiou:

To say that politics is ‘of the masses’ simply means that, unlike bourgeois administration, it sets itself the task of involving the people’s consciousness

¹⁰¹ A Cape Town branch is scheduled to be launched soon.

in its process, and of taking directly into consideration the real lives of the dominated. ...politics is of the masses, not because it takes into account the 'interests of the greatest number', but because it is founded on the veritable supposition that no one is enslaved, whether in thought or in deed, by the bond that results from those interests that are a mere function of one's place.¹⁰²

The discussion at *Abahlali* meetings is not a performance of inclusion to legitimate an outcome determined elsewhere. Elected leaders and individuals with various forms of relative privilege are routinely subject to positions that they did not arrive with. The meetings are conducted in such a way that there is no shame in having some one else's initial position preferred to one's own initial position after careful discussion. But the outcome is usually that the decision arrived at draws from a variety of contributions.

The radically democratic political culture¹⁰³ has been carefully theorised within the movement in terms of the need to create a 'home for the poor' and in terms of the idea of 'a living politics'. The first commitment is a commitment to create a space where every one is respected and where there are no lies. This has been achieved to a remarkable degree. Interestingly *Abahlali's* movement structures are much more advanced in terms of gender with regard to both composition and orientation than any of the left NGOs that assume a natural right to teach movements how to be progressive. Furthermore delegates to a meeting can be as young as 18 or as old as in their 80s, African or Indian, Phondo or Zulu, healthy or sick, desperately poor or unionised workers. The movement's humanism, articulated both poetically and in the form of a rigid axiom, commits everyone to the view that everyone matters and is worthy of respect. The idea of a 'living politics' is a commitment to a politics that avoids sterile 'zim zims' (ideological dogma abstracted from actually existing struggles that functions only to 'give all the power to those who know the zim zims') by keeping discussion and action orientated around the real ideas and needs of real people and communities. This is not an anti-intellectualism. On the contrary it is a rigorous intellectualism that, like all serious intellectualism, prefers to engage with the shifting complexities of a real situation rather than to take refuge in empty jargon. It is a commitment to genuinely scientific struggle and against the pseudo-science of political dogma. So, for instance, instead of seeking to built support by issuing a general condemnation of neo-liberalism the movement is more likely to make a demand for a certain piece of land and against the interests of particular individuals in the local business and political elite and, through an ongoing process of discussion, derive its general principles from this concrete experience.

Abahlali has never succumbed to the NGO logic of having one person become a minor celebrity who then substitutes themselves for the movement. People who represent the movement at meetings and in the media and so on are rigorously elected, mandated and rotated in accordance with the commitments to gender balance and to give each

¹⁰² Alain Badiou, *Metapolitics*, p. 73.

¹⁰³ See Jacob Byrant *Towards Delivery and Dignity: Community Struggle in Kenned Road* and Raj Patel *A Short Course in Politics at the University of Abahlali baseMjondolo*, July 2006, <http://www.abahlali.org/node/237>

settlement and branch its share of access to representation. The radically democratic political culture has held consistently¹⁰⁴ in the weekly overall movement meetings to which all affiliated settlements and branches are invited to send a representative as well as in the various movement sub-committees and organisations such as the churches sub-committee, the Women's League, the Youth League, the Soccer Committee and so on. But while many of the affiliated settlement committees and most of the branches have done well in this regard it seems that some of the committees, especially those that did not emerge from an internal struggle for democratisation, retain a degree of authoritarianism within their settlements even though radical democratic practice is fully accepted within the overall movement structures. This most commonly takes the form of substituting an individual or small group of individuals for a democratic collective that is often matched with a failure to achieve the 50% gender balance in all overall movement structures.

Abahlali baseMjondolo has welcomed middle class support when it is prepared to situate itself 'within the politics of the poor' and rejected this support when it assumes a right to lead, usually on the basis of relations of patronage enabled via access to donor funding. Amongst other things the idea of a politics of the poor is a self conscious decision to ensure that the spaces of power are spaces constituted in the languages¹⁰⁵, modes of engagement and places where the poor are powerful. As a movement its primary theoretical concerns and innovations have moved from an assumption that politics (questions about who thinks and who decides) is as important as economics (questions about enclosure, production and distribution). This break with the economic strand of Marxist orthodoxy has led to a significant deal of suspicion and an initially shocking but now mundane tide of slander from the more stolidly dogmatic elements of the NGO left.¹⁰⁶ But it is probably a key factor in the dramatic (relatively speaking of course) success of *Abahlali* in becoming an actually existing mass movement of the poor and may perhaps characterise future progressive actually existing mass movements of the poor. One of the reasons for this is that a praxis committed to radically democratic action as a means and end of struggle immediately creates a space in which people immediately

¹⁰⁴ At the time of the final revision to this paper Kennedy Road is in major crisis with 4 members of the Kennedy Road Committee in prison and on hunger strike and another 5 being sought by the police. Only time will tell whether the movement will be able to sustain its democratic character under these kinds of pressures. By all accounts it seems that when the Anti-Eviction Campaign in Cape Town and the Landless People's Movement in Johannesburg came under similar pressures they immediately became much more rigid and hierarchical organisations and much less able to successfully mediate internal disagreements.

¹⁰⁵ This question of language is critical. Political work cannot have democratic outcomes if it is not conducted in the languages that ordinary people understand. Fanon's insights in this regard remain important and Ngugi's path breaking body of work in this regard is now complimented by a Harri England's excellent case study of a human rights NGO in Malawi. See *Prisoners of Freedom: Human Rights and the African Poor* University of California Press, Berkeley 2006

¹⁰⁶ England's important case study concludes that "NGO and project personnel maintain the same distinctions towards 'ordinary' subjects as elites. Despite the cherished ability to criticize power activists, including those claiming to promote the causes of freedom...are quite as much embedded in entrenched inequalities as anyone else...Taking activists' rhetoric for granted, would fail to notice how their practice of activism actually contributes to maintaining inequalities...Those who become, often with support from foreign donors, the vanguards...are the progressive ones, the enlightened few leading the way out of darkness." *Prisoners of Freedom*, p. 8.

are and feel valued. This in turn enables a sufficient degree of collective emotional and intellectual autonomy to sustain conviction, strategic innovation and ethical utopianism through the hard and often ugly battles that pave the way to even the most trivial material victories. *Abahlali* have won many scattered material victories but they have not won any decisive victory around the right to land and housing in the city. However they have certainly been able to create and to sustain the sort of intellectual and ethical dissidence and resistance within the settlements that de Souza sees as necessary to create the autonomous base that can sustain critical engagement with the state.

The commitment to a politics of the poor has also resulted in a complete abstentionism from all forms of party politics including the politics internal to the ANC. This had its most spectacular consequence in a mass boycott of the March 2006 local government elections. The boycott was carefully theorised in a series of discussions that concluded that there is a difference between ‘party politics’ and ‘people’s politics’ and that the former, identified as a mechanism of elite control, will always seek to capture the latter, identified as a space for popular democracy. The decision to commit to people’s politics is not a commitment to pursue autonomy from the state. On the contrary there is a hard fought day to day struggle to subordinate the local manifestations of the state to society and to win, on the terms of each settlement, access to state services like water, electricity, toilets, refuse removal, education and health care. However it is a decision to pursue the political autonomy of the movement. The principled decision to keep a distance from what is widely seen as a mode of politics that has an inevitably corrupting influence on any attempt to keep a struggle grounded in truth was key to the rapid building of a mass movement. People were generally very keen to talk to people who had publicly committed themselves to remain politically autonomous from constituted power and permanently subject to the questioning of constituent power. The commitment to keeping people’s politics autonomous from the corrupting influence of state power included a commitment by everyone who accepted elected office in the movement to place themselves last on the list when housing was won. This was a dramatic break with the politics of local patronage so typical of the ANC and SANCO.

In its first year the movement had no outside funding at all. After a number of large mobilisations some support for project related expenses was won from 3 separate progressive donors – the same donors that fund other movements in South Africa. All attempts to set up relations of patronage with the movement or individuals within the movement have been refused thus far and the outside resources that have been accepted have always remained under democratic collective authority and the movement has remained entirely unprofessionalised. So, despite its size it has no phone line, no office and no paid staff. Key militants have often paid a considerable price for their involvement in terms of incurring personal expenses and losing jobs and the expense and time away from work following arrests and police assaults.

3.3 Organising under a criminal local state

In the course of their struggle *Abahlali* have been subject to sustained state criminality but on occasion have successfully used the law to defend themselves against aspects of

this criminality and, also, to extract information from the state. This section of this paper gives a brief overview of some of the state illegality that the movement has endured. However it is certainly not a comprehensive account. For instance it does not include any analysis of the habitual use of arrest as an intimidatory tactic. At the time of writing just under 200 people have been arrested and a good number of them detained for short periods of time over the last two years. Arrests are invariably accompanied with casual police violence in the streets, in the vans and in the cells. In each case the charges have been dropped before going to trial. It is clear that the arrest was the punishment and that there was never any interest in actually going to trial. However it is worth noting that these arrests were all on criminal charges such as public violence and that legal NGOs are not allowed to provide services for criminal cases and that most donors are not allowed to provide support for people arrested on criminal charges. A criminal state routinely criminalises the legal and democratic expression of dissent and so this major loophole in the NGO and donor support system for communities and movements under threat from state repression needs to be plugged as a matter of urgency. It is also worth briefly noting that although the Public Order Policing Unit and Municipal Security are violent everywhere, there is a particular problem with racialised violence from some of the Indian Police Officers at the Sydenham Police station which has jurisdiction over shack settlements in Sydenham, Clare Estate and Reservoir Hills. This is often overtly political but is also often not. For example a teenage boy from Flagstaff visiting relatives at the Foreman Road settlement from was shot in the knee for urinating in public on New Year's Eve 2006/7. In many other parts of Durban shack dwellers have comparatively good relationships with local police stations.

3.3.1 Illegal evictions and movement responses

At the time of writing there have been no evictions in settlements in which *Abahlali* has a strong presence since December 2006 when an in-progress eviction was halted in the Motala Heights settlement.¹⁰⁷ But prior to this evictions were carried out regularly and they still are in settlements where *Abahlali* does not have a strong presence. An eviction normally occurs very swiftly when a relocation site becomes ready. There is no discussion with residents as to whether or not they approve of the relocation site or of the houses that have been built at the site. Evictions happen without a court order, without consultation, without adequate notice, without any acknowledgement that residents have the right to oppose evictions and in many instances are accompanied with casual violence. The usual scene at an eviction includes keening women being tear-gassed to move them away from their homes. It is entirely typical for houses to be knocked down while people's possessions are still inside. Once houses are flattened, machines are brought in to pulverize the building materials and often, but not always, a fire is then be set to burn away the last remaining evidence that there had been a settlement there. People on the list to get a house are taken to the relocation houses but people not on the list are simply left homeless. In general shack owners get onto the housing list but shack renters are left homeless. It is not unusual for more people to be left homeless than

¹⁰⁷ However it must be noted that the situation in Motala Heights is far from resolved. The Municipality continues to send its security officers to the settlement to threaten the local leadership and is still seeking to evict everyone not covered by the court judgement.

relocated. In most instances residents report that elites within the settlement are rewarded for delivering the settlement as a vote bank or for containing dissent during the eviction by having a large degree of control over who gets onto the housing list with widespread allegations of corruption. Residents also generally report that while the actual eviction is occurring there is a flurry of last minute deal making to get onto the housing list which generally requires the payment of bribes or even, in some instances, sexual services to local elites or state officials. All of this is unconstitutional, illegal and simply criminal. In Johannesburg and Cape Town the municipalities do not evict without court orders and so it is clear that in this regard there is a particular problem with the eThekweni Municipality.

Initially *Abahlali's* resistance to evictions took the form of mass mobilisation. When word came that homes were being marked for an eviction or that an eviction was happening cell phone text messages would be circulated and as many people as possible would gather on the site. But the evictors always come armed and very willing to use violence. Unarmed people simply can't resist teargas and rubber bullets let alone the constant threat of live ammunition and so although this mode of resistance could slow down the process considerably it could never succeed in permanently stopping an eviction on its own.¹⁰⁸

However a new strategy was developed after the Lusaka settlement in Reservoir Hills was destroyed in the rain on 27 October 2005. There were 54 families living in Lusaka and 19 were not on the housing list and were left homeless. Shortly after the eviction Anna Weekes interviewed one of the people rendered homeless:

Walter Siyacela Ndenza came to the city from rural Bizana in 1990 looking for a better life. He first rented a shack in Mayville, just outside the city but then bought a shack for R800 in the Lusaka informal settlement, equally close to the city. "Buying my own shack was some kind of progress", Siyacela said. With the little money he earned as a casual construction labourer in the nearby suburb of Reservoir Hills, Siyacela bought two lawnmowers and sought work in the suburb cutting lawns. This is how he supported his three dependents. But when the Lusaka community was forcibly removed by the ANC Ethekewini municipality, municipal police smashed one of the lawnmowers irreparably and broke the other one, which is now under repair.

"They broke my machine when they were destroying everything else we owned," said Siyacela. "Now I am reduced to making helicopters out of wire whereas I only did this before in winter when the demand for grass cutting was low. Not a lot of people buy these wire toys, and it takes about two days to make one. I have to pay to fix the lawnmower broken by the municipality

¹⁰⁸ However it should be noted that over the last two years the Municipality has been picking off the small settlements which are more vulnerable. It seems unlikely that they could evict the very large and well organized *Abahlali* affiliated settlements like Kennedy Road, Jadhu Place and Foreman Road where thousands can gather in minutes.

with money I don't have. I also have to replace the other goods that were smashed by the municipal police." ¹⁰⁹

The 19 families illegally made homeless in this eviction decided to occupy the lawn outside the office of Ward Councillor Jayraj Bachu, They lived there for 4 days with their remaining possessions at which point they were arrested for trespassing. The law requires that people arrested for trespassing for the first time should be released with a warning but they were detained in the Sydenham Police station for 4 days before *Abahlali* was able to mount a legal challenge which resulted in the charges being dropped in court. The 19 families were then accommodated in the Kennedy Road hall. But the media attention and agitation by *Abahlali*, coming as it did just after a march of thousands¹¹⁰ in the same area, forced a concession in negotiations with Derek Naidoo in the Housing Department – the Lusaka families were added to the housing list and given re-location houses under electricity pylons in Mount Moriah. The houses are appalling badly made and so far from where people were working that many have suffered a major decline in their fortunes. But being expelled from the city and into a township house was better than being rendered homeless.

In June 2006 residents of the 227 shacks in the 30 year old Motala Heights settlement in Pinetown had been able to stop the process of marking out houses for eviction with mass mobilisation but had been personally threatened by the local councillor, Derek Dimba, who had arrived with the police and a pistol holstered on each hip. The staggered evictions began in October 2006. Contact was made with the Centre on Housing Rights and Evictions and an *Abahlali* funded meeting set up with Stuart Wilson from the Centre for Applied Legal Studies in Johannesburg. He explained that the eThekweni Municipality's evictions were illegal and recommended that in communities facing eviction all residents that did not want to move should sign a power of attorney form with a lawyer who could then write to the city manager and mayor explaining that those people did not wish to move and would contest the eviction in court. This, he said, was enough to stop evictions in Johannesburg and Cape Town. It was done. In November 2006 Municipal Security returned to the settlement with the police to continue to evict. Settlement chairperson, Bheki Ngcobo, showed the police a copy of the letter sent from *pro bono* attorney Shanta Reddy to Mlaba and Sutcliffe. In response he was pepper-sprayed at point blank range, knocked to the ground, kicked and told 'Govender is the only Mayor here.' Ricky Govender is a local tycoon widely believed to have the councillor in his pocket and to be pushing for the eviction of the shack dwellers from council owned land as he wants to develop commercial housing on the adjacent which he has purchased. A number of homes were demolished that day. Sibongile Thabete reported that she and her baby daughter Zindle were left homeless after she couldn't pay a R2 000 bribe to the ANC Motala committee to get on the relocation housing list. The Motala Heights *Abahlali* Committee then approached the Legal Resources Centre. Mahendra

¹⁰⁹ See Anna Weekes *Starting from Scratch After Forced Removal*
<http://abahlali.org/comment/reply/189>

¹¹⁰ The police had estimated the march at 6 000 and this is how it was reported in the media but others put the figure much higher. But what ever the real number it was large enough to show that *Abahlali* had a critical mass of support in the area.

Chetty represented them and on 29th of November they won an interdict in the Durban High Court preventing the eThekweni Municipality from evicting them. This received prominent media coverage. On 3 December 2006 the Centre on Housing Rights and Evictions supported a workshop hosted by *Abahlali* at which Stuart Wilson gave an input on the law governing evictions and Marie Huchzermeyer spoke about the policy. It became clear that the Municipality was consistently acting in violation of both the law and the national policies. This knowledge gave people a lot of confidence. On 13 December 2006 the Municipality returned to the settlement to evict in spite of the court order. The Motala Heights committee explained what happened in their press release:

The Municipality's plan was to demolish five shacks while most of their tenants were away at work. They started with shack number B83, leaving Thathazile Mkize, S'bu Mhlongo, Sibongine Danisa, Bheki Mkize, Zama Nzuzza and Bafana Gumede homeless. Shortly after we reminded the municipality workers of Section 26 of the South African Constitution, specifically that they cannot demolish a house without the consent of everyone living in it (not just the consent of the owners but the tenants too). Since they didn't have that consent they would need a court order for every one of the planned demolitions. After they made it clear that they did not have that either, we immediately asked for police reinforcements to come from Pinetown and once they arrived, we explained that the municipality workers were breaking the Law and demanded they should be arrested should they continue. Only a few minutes ago, the municipality workers were leaving Motala Heights.

Last time that they visited Motala it was a completely different story. Committee members Bonginkosi Mazibuko and Nkosi Ngcobo had demanded R2,000 from each of us in order to provide us with a house in Nazareth. Those who didn't have that money were told they would not be given a house. One house might have 8, 9 or even 12 tenants but only its legal owner is offered a house in Nazareth. All the rest are made homeless once the shack owner is relocated. We estimate that to date, over fifty people have been made homeless in our area.¹¹¹

It had been no simple matter to get the police to threaten the Municipality workers with arrest. Bheki Ngcobo had spent the previous three days moving in a constant circle between Mahendra Chetty's offices at the Legal Resources Centre, the Pinetown police station and the settlement. The police were initially uninterested in his copy of the court interdict but after a number of telephonic discussions with Chetty eventually accepted its status in law.

But some settlements have been unable to mount effective resistance. Former *Abahlali* secretary M'du Hlongwa explains what happened to the Juba Place settlement:

¹¹¹ *Victory for the people of Motala Heights* <http://www.abahlali.org/node/455>

On Thursday, the 9th November 2006 the Municipality told people in Juba Place that they would be relocated. They were told that they were coming to evict on the 11th (Saturday) of same month and surely they did come and they did evict on that day. They destroyed the houses (shacks), giving a house to the shack owners only, leaving homeless all the people who were staying with the owners and all those who were guarding houses for owners who were for years at farm, or no longer living in the area. With every eviction most of the owners are relocated but the people staying with them are just left homeless. On the 11th after demolishing people's homes the municipality promised to come back on the 14th (Tuesday) as it didn't finish on the first day. People left homeless on the first day then took their belongings to the other houses that hadn't been demolished to try and keep them safe. But the Municipality came back to complete its destruction of people's houses and lives and the community on Thursday (16th) and then Saturday (18th)

A large number of people, including children and grannies were left homeless. Then the municipality gave those homeless only the Sunday (9th) to move out from the area with all their belongings. They were told that if they didn't move out with all their belongings by the end of the day then they would bring the police security force to remove them and guard the area. People got stranded and frightened not knowing what to do and where to go. The ABAHLALI BASEMJONDOLO MOVEMENT SOUTH AFRICA arrived at the scene, listened to the story and tried to get an alternate place to stay for people. Fortunately places were found in nearby shack settlements (Pemary Ridge & Mpolweni) and the movement also managed to get a community hall in the area for emergency accommodation. Woman and children went to the hall. A list was made of people who had been left homeless and who were still in the area and it come to 35 people. A court case was opened against the municipality (eThekweni) at the Durban High Court. This was all done with the aid of Legal Resource Centre – an NGO, like COHRE, ODAC and the FXI that respects the human dignity of shack dwellers.

Abahlali and the LRC took these evictions as an abuse to human dignity. The constitution says “The people shall govern,” and “There shall be shelter for all.” That must be fulfilled. It hurts as this turns out to be a habit to the municipality. When ever they relocate they leave people homeless. They break the law all the time. There's even an old mother who owned a house and she didn't get a new house after it was demolished. Her house was given to another woman who was a tenant in another house. There is always this corruption in every relocation. That mother is now homeless. This is why Abahlali is fighting every day. We will stop forced removals and we will stop evictions. We will force the municipality to upgrade the settlements where people are living. We will force the municipality to obey the law. We will

force the municipality to talk to shack dwellers and not for shack dwellers. Sekwanele!¹¹²

There was an attempt at a Lusaka-style occupation. Some people rendered homeless in the eviction occupied the nearby park and although they held the park for some time they were eventually pushed out by the police without the kind of media interest that the occupation of Councillor Bachu's office had aroused. Perhaps the key difference between the Motala Heights and Juba Place experience is that in Motala Heights there was an ANC committee supporting the relocation and an *Abahlali* committee opposing it. In Juba Place the *Abahlali* affiliated committee, lead by a man on the relocation list, ultimately decided to accept relocation fearing that the alternative would be homelessness. This left the people not on the relocation list on their own. The overall *Abahlali* structure did not make any intervention with regard to mass mobilisation as it, on principle, never speaks or acts for an affiliated settlement or branch without a request for support and then, if that request is forthcoming, seeks to struggle with rather than for a community. However after the eviction *Abahlali* was approached for support and helped to institute a legal process begun against the Municipality by Juba Place residents which is continuing and from which there may still be some relief. But at the moment the residents are scattered in *Abahlali* settlements across Durban.

3.3.2. Illegal repression

Abahlali have consistently been subject to severe state repression. Much of this has been at a discursive level with politicians from local councilors like Yakooob Baig and Jayraj Bachu through to City Manager Mike Sutcliffe, Mayor Obed Mlaba and MEC's like Bheki Cele and Mike Mabuyakulu deploying various, and often contradictory versions of the Third Force slur in an increasingly paranoid fashion. This has often been highly racialised with the key assumption being that there must be a white agitator¹¹³ inciting shackdwellers. *Abahlali* have been able to respond to the various Third Force arguments very well. S'bu Zikode wrote a now classic response¹¹⁴ which was widely published, republished and translated appearing everywhere from *Huisgenooit* to *The Journal of Asian and African Studies*. *Abahlali* also responded by inviting the media to 'Meet the Third Force'¹¹⁵ and announcing that all their meetings are open to the media and anyone else at all times. This openness, together with the fact that many journalists have spent time in the settlements and seen how the movement works, combined with a scrupulously honest approach to the media, has meant that the media - elite and popular; isiZulu and English; local, national and international - has overwhelmingly sided with *Abahlali* against politicians trying to slander it as a Third Force.

¹¹² M'du Hlongwa 'Juba Place Evictions' *Izwe Labampofu* <http://abahlali.bayareafood.org/node/508>

¹¹³ For example see *White Man Stirs Up Protest* <http://www.abahlali.org/node/182> and *Shackdwellers 'under the sway of an agent provocateur'* <http://southafrica.indymedia.org/news/2006/10/11358.php>

¹¹⁴ See *We are the Third Force* <http://www.abahlali.org/node/17>

¹¹⁵ *An Invitation to Meet the Third Force* 12 December 2005 <http://www.abahlali.org/node/880>

However other forms of state repression have been more difficult to deal with. The police have consistently treated all spontaneous protests as illegal and responded to them by attacking people without making any attempt to negotiate or giving any warnings to disperse. These attacks are usually carried out with rubber bullets but tear gas, dogs, stun grenades and, on occasion, live ammunition are also . In the Siyanda settlement 5 people were wounded and one killed after police broke up a road blockade with live ammunition on 5 December 2006. In a statement issued after an incident where police used live ammunition on people attempting to march on the Sydenham police station in protest at the arrest and assault of S’bu Zikode and Philani Zungu, the Freedom of Expression issued a statement that made the following observations:

The FXI views the actions of the police both in the Kennedy Road settlement and outside the police station as illegal and unconstitutional. The attempted march from Kennedy Road to the police station was clearly a spontaneous action and hence no notification could be given to the police regarding the march as required by the Regulation of Gatherings Act. The Act does contemplate spontaneous gatherings and specifies how the police should respond to such gatherings as the one in Kennedy Road yesterday. In a case where no notice was given for a gathering, the police are obliged to make all attempts to contact the organisers of the gathering and negotiate how the gathering will proceed....

Clearly, the police involved in the operation against Abahlali baseMjondolo yesterday – both in Kennedy Road and at the Sydenham police station – were in violation of these provisions and, thus, acted illegally. Further, they acted in such a manner as to prevent citizens from exercising their constitutional rights to gather, associate and freely express themselves. These actions of police as if they are above the law is an extremely disturbing trend of late in all parts of South Africa....

These incidents highlight an extremely worrying phenomenon: police that act outside of the law, while claiming to be upholding the law. The result is a frightening environment of repression developing within South Africa, with free expression constantly being in danger – especially the free expression of poor communities for whom their main form of expression is to take to the streets.¹¹⁶

Clearly the police assumption that protests that have been organized without informing the police can be broken up with immediate recourse to potentially fatal violence is not congruent with the law. But even marches where permission has been applied for in advance have been banned. In essence the city has allowed

¹¹⁶ Freedom of Expression Institute *Increasing police repression highlighted by recent cases* 12 September 2006 http://www.fxio.org.za/pages/Home%20Page/Breaking%20News/PR_2006-09_increasing-police-repression.html

Abahlali to march in and around the settlements and townships when permission has been requested weeks in advance but has consistently sought to prevent them from entering into the city. The first attempt to march into city was made by the newly elected Foreman Road Development Committee who scheduled a march on Mayor Mlaba for Monday 14 November. But, as in 1956, a shack dwellers' march into the city was a step too far for the state. The Committee completed all the paper work necessary to stage a legal march in good time. But three days before the scheduled march a terse fax was received from the Municipality stating that the march was 'prohibited'.¹¹⁷ City Manager Mike Sutcliffe is responsible for administering requests to hold legal marches. The Freedom of Expression Institute issued a statement condemning Sutcliffe's ban as "a flagrant violation of the Constitution and the Regulation of Gatherings Act".¹¹⁸ On the day scheduled for the march over 3 000 people gathered in the Foreman Road settlement to take a collective decision on how to respond. There was a large police presence at the two exits from the settlement. The Committee warned that it would be dangerous to march and suggested that a rally be held in the settlement instead. But the majority decided that they could not accept this and would stage a peaceful march in protest. Speaker after speaker observed that while marching might be dangerous continuing to live in the settlements under the current conditions was also very dangerous. The marchers, mostly women, set off singing up the steep dirt road that leads out of the settlement singing *Yonk' indawo umzabalazo uyasivumela*. They had just stepped on to Loon Road, where the 'informal' dirt track meets the 'formal' tarred road, when they were met by the police. They had posed no threat to any person or property. Without the mandatory warning the police charged the protestors and began arresting and beating people at random resulting in a number of serious injuries. System Cele had her front teeth broken as she was beaten down onto Loon Road by baton blows to the back of the head.¹¹⁹ At least two police officers fired shots from pistols and people were shot at point blank range with rubber bullets while cowering on the ground. It was just sheer good luck that no one was killed.

There were a total of 45 arrests. While the police were beating people back down the dirt road that leads into the settlement someone shouted 'You can't do this to us. This is a democracy'. Officer Swart's response was to say 'There is no democracy here!'¹²⁰ He had a clear grasp of the situation. For some hours police blocked both entrances to the settlement preventing anyone from entering and shooting, mostly with rubber bullets but stun grenades and live ammunition were also used, at anyone trying to leave the settlement. Protestors, lead from the front at the Loon Road entrance by Fikile Nkosi, a

¹¹⁷ Fax from the Municipality dated 9 November 2005. Sutcliffe's ban resulted in a hard hitting press statement by the Freedom of Expression Institute and a strongly worded petition by more than 50 top constitutional rights academics from around the world. However he remained unrepentant and justified, and continues to justify his illegal suppression of basic rights on the grounds that the Foreman march was 'political'. Clearly for Sutcliffe basic rights should only be respected when their exercise poses no threat to his authority.

¹¹⁸ Freedom of Expression Institute Press Statement dated 10 November 2005.

¹¹⁹ See System Cele's account of this attack in her article 'Police Brutality' in *Izwe Labampofu* December 2006 <http://abahlali.org/node/570>

¹²⁰ Author's notes

19 year old domestic worker, successfully kept the police from entering the settlement with barrages of stones. During the police siege a suited effigy of Mlaba was burnt in the settlement.

Police threatened academics and journalists with violence if they reported what they had seen and stole their cameras at gun point. The police simply refused to open cases of intimidation, theft and assault against other SAPS officers and the Independent Complaints Directorate refused to accept complaints without case numbers.¹²¹ However after the march a number of officers from Crime Intelligence and the National Intelligence Agency were undertaking overt investigations into various people active in *Abahlali baseMjondolo* and there were also, often inept, attempts at covert surveillance.¹²² There was now a *defacto* ban on all political activity outside of the settlements which held for three months.

Abahlali were eventually able to garner the connections to begin to challenge their *de facto* banning on Monday 27th February 2006. Sutcliffe had, again, illegally banned a planned march into the city. This time the movement had grown to the point where 20 000 people were expected. The day before the march an attempt by Councillor Baig and Mayor Mlaba to win people in Jadhu Place over with *breyani*¹²³ was laughed off and failed dismally. As dawn broke on the day of the march the police occupied the three largest settlements - Foreman Road, Jadhu Place and Kennedy Road - in a military-style operation using armoured vehicles and helicopters. All exits were blocked off and key people were arrested, sometimes while still asleep, and later assaulted in Sydenham police station. There were major stand offs at all three settlements and in the city where people from smaller settlements and Wentworth and Chatsworth were gathering. But this time *Abahlali* were able to go to the High Court and, in a day of high drama watched closely by the national media, won a court order interdicting the City and the police from interfering with their right to protest. With the interdict in their hands the shack dwellers were able to leave the settlements and march into the city in triumph. The provincial minister for Safety and Security, Bheki Cele, stood on the steps of the City Hall staring

¹²¹ See Raj Patel *Go Home and Make New Lies* <http://www.abahlali.org/node/187>

¹²² A month after the march the Vice-Chancellor of the University of KwaZulu-Natal (UKZN), Professor Malegapuru Makgoba, informed Fazel Khan (in front of three witnesses) that Mayor Mlaba had asked him to take action against the two UKZN academics he believed to be 'behind' the march. Makgoba said that he would submit a National Intelligence Agency report on the academics in question to the university council to see if there were grounds for a charge of 'incitement'. The academics in question had, together with a third academic, been part of the movement but had certainly not been 'behind' it. Makgoba later backed down in the face of a public challenge and flatly denied having ever issued this threat. Since then Mlaba, Sutcliffe and Jacob Zuma have all stated that Makgoba has been asked to remove, in Zuma's words, the 'academics who are embarrassing the government'. Fazel Khan is the only one of the three academics who remains at the University. He was also a key leader in a February 2005 strike at UKZN. He is currently facing a disciplinary process aimed at dismissal which has based on entirely ludicrous grounds. See Philani Zungu's article *The Strong Poor and the Police* <http://www.abahlali.org/node/549>

¹²³ If their intelligence had been more accurate and less given to paranoid conspiracy theory they would have known that '*Phansi breyani!*' had long been a slogan of the movement. The slogan arose in opposition to the tendency by Baig and others to assume that people would be won over with occasional free food at elections or when there was some dissatisfaction. It is now used more generally against any attempt to, in any form, buy the right to halt, fragment, co-opt or direct resistance.

menacingly at people he recognised and drawing his finger across his throat. Sutcliffe loaded his furious press statement with words like ‘criminal’ and ‘anarchy’ and promised to challenge the court. In fact he issued no challenge to the court and said nothing when the court ordered the city to pay punitive costs a week later. *Abahlali* were able to go to the High Court because of advice from Simon Delaney and Na’em Jenah at the Freedom of Expression Institute and because of a promise to pay for an advocate from Andile Mngxitama at the Foundation for Human Rights.

In addition to the illegal banning of marches and the assault of people attempting to march in defiance of illegal bans the police have, on two separate occasions, been used to prevent *Abahlali* from speaking to the media. The first incident occurred in the run up to the local government elections. S’bu Zikode was invited by telephone and in writing to be a panellist on the live SABC TV talk show *Asikhulume* and told that each panellist could bring 60 guests to make up the student audience. The show was filmed in Cato Manor (Umkumbane). The *Abahlali* delegation arrived in good time in their red shirts. ANC officials were at both doors and they simply refused to let anyone in a red shirt enter the building. People in black ANC and white IFP t-shirts were waved through and the other three panelists were allowed in. But even Zikode, invited panellist, was prevented from entering. The police were at both entrances and actively endorsed what the ANC officials were doing. The 60 *Bahlali* began protesting outside the hall by singing and dancing. The police responded with immediate aggression and, without making any attempt at negotiating or without giving any warning, began to tear gas the protestors outside as the show went on air with one of its 4 invited panellists prevented from entering the building. But after the first tear gas attack the protestors regrouped with renewed vigour and the police waved Zikode to the doors. He showed his written invitation and politely asked to be let in. He was immediately assaulted by the police - hit with batons and punched. The protests intensified and a few people managed to get through the line of police officers and ANC officials and to start banging on the glass doors. At that point they had to let Zikode in. One other person, Philani Zungu, slipped in as the door was opened but although there were empty chairs at the back no other *Bahlali* were let in.¹²⁴ People looking through the side windows said that Obed Mlaba’s smug expression faltered a little as Zikode strode into the hall and was given the microphone. He was able to speak for about 3 minutes and then there was a torrential cloud burst that put the programme off air. There was no scandal about this. On the contrary Mawethu Mosery, Chief Electoral Officer in KwaZulu-Natal, went so far as to laud the *Asikhulume* show as proof of the free political climate. There appears to be an elite consensus that sees illegal repression of basic political rights by the state as unimportant when the victim is not a political party.

On Monday 4 September 2006 *Abahlali*, with the support of Mukelani Dimba at the Open Democracy Advice Centre, used the Promotion of Access to Information Act to demand that City Manager Sutcliffe tell them, in concrete detail, what the city’s plans are for shackdwellers. The next day Mxolisi Nkosi, the HOD in the Dept of Housing, called *Abahlali* in to berate them and demand that they cease speaking to the media. *Abahlali*

¹²⁴ See DSM press statement on exclusion of *Abahlali* from *Asikhulume*
<http://www.nu.ac.za/ccs/default.asp?2,27,3,882>

asserted their refusal to be silenced all over the media spectacularly out arguing Departmental Spokesperson Lennox Mabaso in two major radio debates. The next day Nonhlanhla Mzobe, a key *Abahlali* activist in the Kennedy Road settlement, found that her boss at the Municipal dump had received a letter from the local councillor, Yakoob Baig, demanding that she be fired for supporting the 'red shirts'. The following Monday *Abahlali*, together with community organisations from the Municipal flats in Wentworth and Chatsworth, protested outside the Housing Summit at the ICC wearing t-shirts demanding "Talk to Us, Not For Us." Again this put them all over the newspapers, radio and TV.

On Tuesday *Abahlali* were invited to be on *iGagasi* FM from 18:00 to 19:00. They had recently raised some money via a 16 team football tournament to help with the transport between the settlements. Some of this money was used to hire a small car, a Tazz, to help with all the getting round for radio interviews, meetings and so on in the hours after taxis have stopped running. At around 17:40 S'bu Zikode (President), Philani Zungu (Deputy President) and Mnikelo Ndabanakulu (PRO) got into the car to leave for the radio interview. While the car was still stationary, officers from the Sydenham police station, pounced. They thrust guns into the faces of the *Bahlali* and accused them, in a highly racialised manner, of driving a stolen vehicle. The police ordered the three men out of the car. When they saw that Ndabankulu was wearing one of the famous red *Abahlali* T-shirts they pulled it off him, insulted him, pushed him around, threw the shirt into the mud, made a great show of standing and spitting on it and announced that 'there will be no more red shirts here'.

Philani Zungu politely but firmly told them that they had no right to act like this and suggested that this was racist political intolerance. He was assaulted. Zikode was also assaulted as the two were bundled into the van. The police picked up Ndabankulu's red shirt and said they were taking it 'to use as a mop in the station'.

Ndabankulu, Zikode's wife Sindi, Zungu's mother, Ma Zungu, and a handful of others soon got to the nearby Sydenham police station. They were denied entrance, sworn at and racially abused. Someone sent an SMS to *iGagasi* FM radio explaining that their guests were under arrest. This was announced on air. Within minutes *Bahlali* started arriving from all over Durban and Pinetown. There was soon a crowd of around 40 people outside the station. Access to the prisoners and medical attention for Zungu was asked for, but denied. The police refused to say what the charge was.

In the nearby Kennedy Road settlement an emergency mass meeting was being held in the hall. More than 500 people squeezed in and more waited outside. An SMS was sent to people at the police station to see if bail was possible. The police said that there would be no bail. When this was conveyed to the meeting a group of women in the front decided to march on the police station.

Within minutes of people getting onto the road the police arrived. They gave no warnings to disperse and began shooting with rubber bullets and live ammunition. Anyone on the road or even moving between the shacks was shot at. A women in her 40s, who asked to

be known only as Zinovia, was shot in her left leg with live ammunition after being lured out of the shadows with a promise that she could retrieve a dropped cellphone.

Back at the police station there was a glimpse of Zikode and Zungu lying face down on the floor handcuffed and bound at the feet. Ndabankulu's red shirt was lying on the floor next to them. In the Charge Office there was a whiteboard headed 'Suspicious Behaviour' that listed '3 Black Men Driving a Tazz' at the top. It was announced that Zikode and Zungu were to be charged with assaulting a police officer.

Word was received that the police were continuing to shoot in the settlement and that there had been some attempt to drive them back with stones and bricks. Zikode got access to his cell phone and sent out two messages "Please look after Sindi!" and "Nayager has satisfied himself with us. Too tough with Philani." (Glen Nayager is the notorious station commander with a record of racist violence towards *Abahlali*. He has also been accused of intimidating journalists who have witnessed police violence against *Abahlali*.) Zikode was assured that Sindi was ok and asked if he wanted people to protest outside the police station, as they were determined to do, or to make a tactical retreat in the hope of calming the police down. He replied "Up to them!! I am fighting for them. Not for myself."

Suddenly a group of men in camouflage arrived all pumped up with adrenalin and a will to violence. They declared the collection of about 40 people an illegal gathering and began herding people off using their machine guns like cattle prods and threatening to shoot. One of the Sydenham policemen shouted, in Fanakalo, 'Hamba inja! Hamba!' Another, a notoriously racist and violent local police reservist, a local businessman known as Rafiq told anyone who'd listen that 'The Red Shirts must go back where they came from'.

Kennedy Road was still occupied by the police. But around Clare Estate small groups of *Bahlali* were meeting in settlements or in safe places like the forecourt of the BP in Clare Road.

The next morning there were hundreds of *Bahlali* in the Durban magistrates' court. The Magistrate released Zikode and Zungu without asking for bail. They were joyously carried out of the court on the shoulders of their comrades. Both men had visible head wounds and explained that they had been personally assaulted by Nayager who had hurled political abuse on them saying "this is what happens to you when you get cheeky in the media" as he bashed their heads against the wall. A group of policemen had enthusiastically photographed Nayager's assault which only ended when Zungu was knocked unconscious and could not be revived. After the celebration in the court gardens was over they went straight to the District Surgeon to have their injuries recorded with a view to laying charges against the police. That afternoon Mnikelo Ndabankulu went back to the police station to request the return of his red shirt. He reported that instead "I got a world class klap." Another red shirt was sewn for him on a rented pedal power sewing machine. A complaint was laid with the Independent Complaints Directorate but there has been no response. However a civil case is being taken up by Shanta Reddy with support from Amnesty International.

The local government elections also resulted in serious repression in E-Section of Umlazi. A group of longstanding ANC and SACP activists were unhappy with their councillor, Bhekisasa Xulu, and claimed that he had withheld ANC membership cards to engineer his re-nomination despite widespread unhappiness with his conduct. They decided to put up an independent candidate, Zamani Mthethwa, to oppose Xulu. Supporters of the Mthethwa campaign claimed that there was widespread intimidation in the lead up to the election including death threats, assaults and whippings. They also alleged that there had been blatant fraud during the election.

On the day after the election they staged a small protest against the alleged electoral fraud. The Public Order Policing Unit shot dead a young woman, Monica Ngcobo, near the protest and shot and seriously wounded S'busiso Mthethwa in his home. The police claimed that Ngcobo had been shot in the stomach with a rubber bullet because she was throwing stones but the autopsy later showed that she had been shot in the back with live ammunition.

Abahlali made contact with Monica Ngcobo's uncle, attended the funeral and then proposed that a local organisation be formed to deal with the crisis. This was agreed. It was primarily made up of women who had been evicted from Umkhumbane in their youth and they called it, in a direct reference to Women of Cato Manor, Women of Umlazi.

Women of Umlazi and Abahlali organised a large march on 31 March in protest at these police shootings. Then two former SACP activists who had worked closely with the Mthethwa campaign and the organisers of the march, Komi Zulu and Sinthembe Myeni, were later assassinated in separate carefully planned attacks. Others survived assassination attempts. MEC for Safety and Security, Bheki Cele, insisted that aside from the police shooting of Ngcobo none of the attacks were in any way political. Mayor Obed Mlaba, who lives in Umlazi, said nothing at all. Women of Umlazi responded by organising weekly mass meetings attended by hundreds of residents to which the Umlazi SAPS were invited. On 1 June, the Umlazi SAPS entered Councillor Xulu's fortified house and arrested two of Xulu's employees for the murder of Komi Zulu. Thousands of residents of E-Section then began organising to ensure that there is a fair trial and to push for the arrest and prosecution for Xulu.

The shootings and murders in Umlazi happened in a working class township far from elite eyes and received very little media attention. No newspaper has seen fit to seriously investigate the story or run an angry editorial. No Human Rights NGO issued a statement. None of the academic experts who trade in pithy soundbites have bothered to go and spend some time in Umlazi. Aside from Bheki Cele's now infamous comment, there has been no statement on the Umlazi shootings from any politician. The scandal is that there is no scandal. Monica Ngcobo's family laid a complaint with the Independent Complaints Directorate. A year later they have heard nothing and no police officer has been arrested for her murder.

SECTION 4: Workshops with Motala Heights and former Juba Place residents

Two workshops were held to prepare for the writing of this paper. The first was in the Motala Heights settlement. It was held on Sunday 11 March 2007 in the meeting hall rebuilt after the previous hall was demolished during the last round of evictions. It was well attended by people living in the shacks in Motala Heights and by people living in the tin houses, which they insist must also be called shacks, in the adjacent suburb of Motala Farm. Both communities are organised into one *Abahlali baseMjondolo* branch which organised the workshop. Motala Heights was eventually able to stop the eviction juggernaut but the victory has come at a cost. The City has not allowed the people who lost their shacks to rebuild and so they have had to be accommodated with others. This has resulted in major over-crowding which in turn has introduced some minor tensions and difficulties into a community that was, while defending itself against the evictions, remarkably united. The Motala Heights workshop was followed by a meal of briyani and a screening of a film on the first year of *Abahlali baseMjondolo* called 'Briyani and the Councillor',¹²⁵ as well as a film about *Operation Murambatsvina* and unedited video footage of the *Abahlali* protest against the Social Movements Indaba and Centre for Civil Society in December last year.¹²⁶ Despite the problems resulting from the overcrowding the mood during the lunch and film screening was excited and defiant.

The second workshop, held for former Juba Place residents on 18 March 2007, was quite different. Juba Place has been completely destroyed and its remnants burnt away. The workshop was held in the Pmary Ridge shack settlement which, like Juba Place, is in the elite suburb of Reservoir Hills. People came from 7 different settlements where they are now living as well as the relocation site of Nazareth. They had no organised structure and the workshop was organised by Philani Zungu, the Deputy President of *Abahlali* who, with others, has taken an active interest in trying to find accommodation in other settlements for Juba Place residents left homeless in the eviction. A group of former Juba Place residents have been living in the meeting room in Pmary Ridge since the eviction which is beginning to cause some tensions in Pmary Ridge. Initially the mood in this workshop was in tune with the fragmented and sad reality of the life of a once established community after an eviction. But by the end it was militant and plans were being made for collective action and approaches for support to the Legal Resources Centre and *Abahlali baseMjondolo*. For the duration of the workshop a bulldozer on Municipal business unrelated to the settlement moved up and down past the meeting room moving very close to the structure and to where children were playing. The driver was continually drinking from a quart of Black Label.

Mark Butler facilitated the workshops and Mnikelo Ndabankulu graciously offered assistance with this. The workshops followed the pattern of group work and report backs and Mark Butler transcribed the report backs in full.

¹²⁵ This film was made by Sally Gilles and Fazel Khan. It is online at <http://abahlali.org/node/149>

¹²⁶ This footage was shot by Antonios Vradis and is online at <http://abahlali.org/node/657>. Vradis was living in Motala Heights at the time of the eviction and stood firm with everyone else.

In both workshops it was quite clear that all the participants feel very strongly that they have been excluded from citizenship and the legal protection that it offers and that this feeling of exclusion and abandonment was experienced with great pain. It is widely assumed that the law in a democratic state embodies ideals of equality and justice and provides protections and rights to everyone without fear or favour. But it is clear that participants in both of these workshops understood the law very differently on the basis of their lived experience of oppression. For most participants the law was understood as a tool that the rich deploy against the poor. The epigram at the top of this paper gives a good sense of lived experience that has led people to feel excluded from the legal protection of citizenship:

When the evictions happened...The South African law and the constitution didn't work for us. They were pointing guns at us, threatening us, meantime we were fighting for our rights [as guaranteed in the law]. One comrade came asking them 'What about section 26?' but they didn't say anything...When our chairperson came to ask 'By what right and by what law can you this?' teargas just got thrown in his face.

People in Motala were clearly deeply shocked at the cruelty with which they had been treated. They concluded that law does not only favour the rich but that it also fails to offer protection for the poor. The Constitution provides for gradual social progress and the idea that progress is slow but steady is a key alibi for contemporary forms of oppression. But many people in Motala said very clearly that the 'development' to which they had been subjected was not only not for them but had in fact had devastating material consequences for them. The treatment to which they had been subjected was elaborated in detail as these five, separate, quotes from the report backs from the group discussions illustrate:

When the eviction happened, we were unhappy because people were left sleeping outside – they were homeless. Some people who were evicted had small children inside and they did not know what to do or where to go. Some slept outside in the rain. Some lost jobs as a result – because, for example, they had no clothes to wear to work. It hurts me because some were evicted while their clothes and possessions were inside and they lost everything and then their jobs too.

The problem we see is that of abuse – nobody cared for anybody. Nobody was thinking of anybody. The councillor said 'Houses have been developed for some of the people. The rest of you must go back where you came from.' Those of us who didn't own shacks he was telling us to go from this place. After the evictions, some were just trying to make a shelter – not even a shack – and the municipality just came and threw that down too.

The main factor that really shocked us was they just came and evicted us when we had said that we want our houses here, that we don't want to go. Some shacks are still here but the only one who helped us was the Abahlali

lawyer [Mahendra Chetty from the Legal Resources Centre]. No-one else defended us.

We are the group from what we will call the 'tenant shacks'. We are renting the tin houses from private owners. We are not only Indians – there are Africans too who are renting there. We must talk about the pain the people are going through. This is not just about the feelings in our heart but also the properties – the dwellings and the things in their dwellings. In these tin houses, when it rains, it's like there is no roof there is so much leaking. Our children are being affected. In the rainy weather many are not going to school because they are sleeping on wet beds and they and their clothes are dirty and wet. There is pain also for the old people and the pensioners and those who are handicapped. Think about what these bad conditions mean for those who are bedridden – it is pitiful to see. And transport is a problem – it is hard to get from place to place. We are trying to improve our lives in different ways and this makes necessary to get from place to place but where we are living there are few taxis and you can wait for an hour and half before you get a lift. We poor people have no say with the landlords. If we ask for improvements, they say they'll increase the rents – which are too high already. As for the law, the implementation favours the rich. From the Municipality we see favouritism for the rich and the poor have no say at all. The rich have the money and the poor do not. If we, the poor people, want someone to come to deal with a problem (e.g., health inspectors, water problems, anything that is affecting us) there is no-one who comes to deal with it. But the rich snap their fingers and it's sorted. The poor are being pushed out. They say it's because it is private lands we are on, we are just told and forced to go.

Even before the demolitions and evictions, the Municipality came here and shot people, and blew the chairman with teargas between the eyes. After the evictions, some were homeless with nowhere to sleep. Others were sleeping in storerooms, toilets, and under cardboard boxes. We are in a bad situation since being chased out. The law did nothing for us. The police, they told us – go speak to Ricky Govender about what we can do.

After the groups had reported back from their discussions Bheki Ngcobo, the local *Abahlali* chairperson, made an individual intervention stressing the sense of exclusion, expressing his anger at the Councillor who had threatened the community at gun point and who had, days before the workshop, had them excluded from the Ward Committee elections on the basis that they 'were supposed to be in Nazareth'. Bheki also expressed his pain at how education has become a route to personal advancement rather than collective empowerment and issued a challenge to people schooled in the norms and epistemologies of domination to try and see things as they really are. The instance on drawing attention to the humanity of shack dwellers, usually rendered invisible as citizens and hyper visible as threats to the bourgeois world, has been central to the work of *Abahlali*. It takes on a radical edge against the elite consensus that stretches across

state, capital and civil society and which can only tolerate the poor as passive, mute, exploitable and powerless pawns. Time and again challenges to this elite consensus have resulted in paranoia and startlingly virulent displays of discursive and physical violence.

Motala seems to be out of the Municipality - they don't care about us and the areas of jondolos are not known in the Municipality. The cause of this is Councillor Dimba who has said he doesn't know us because we all supposed to move to Nazareth. The Municipality seems to be saying they do not need us here. Well, they can bring a bulldozer and drive it from front to back, and from back to front – but we will stay, and that is all.... It is time for us all to talk because the people united will never be defeated. Let us no more talk in abusive ways of different racial groups with words like 'Charros' and 'Zulus' or whatever. We are one, and we will fight now, together... We must take the Councillors and the Municipality to the High Court. If you learn by going to the Universities, then you must learn not for yourself but for the people. The media – TV, newspapers, radio – must come here to us to see for themselves. Look at this book [Holding up a black bound notebook with white pages]. It looks black if you take it as it looks from here. But if you think to take it as it is, as it really is, then you have to turn it round to see the whiteness of the pages. This book it is not only black, it is also white. It is white inside.

The idea that the lived reality of the underside of 'development' in eThekweni was an explosive truth in the context where political and economic elites justify much of their power in the name of the poor had much resonance. For Louisa Motha:

I was happy when I saw on the TV show called Zola 7 the public exposure and embarrassment of some social workers working in the Joe Slovo settlement of Jo'burg. Some of them were even fired after the show. We must work to bring Zola here to make a show about life in the shacks. The politicians are afraid to be embarrassed so we must go to the media.

The promise of the Mandela era, a promise of an inclusive citizenship for all irrespective of race and class remains a moral anchor in the storm primitive accumulation that is ripping Motala apart. There was wide resonance for the views of Mr James, whose wife had been able to stop an eviction from Govender¹²⁷ with help from the Rental Housing Board in 2005 while he was in prison.

When the black government took over they brought us freedom and we talked about being a 'rainbow nation'. But we are upset now because it is not working. What we need is equality, and freedom, and that everyone has decent housing. We all need an equally good living – not be ridiculously rich,

¹²⁷ The eviction notice, served on behalf of the Govender Family Trust, simply informs Mrs James that “You are hereby given notice to vacate the above premise. The property that you now occupy is going to be developed. We are building mini-factories on the said property. Kindly be advised that this decision if ours is final and not negotiable. Kindly pay all outstanding rents immediately. You have 30 days from the date of this letter.” Mrs. James still lives in that house.

but a good living for everyone who is here. We shouldn't be separated. We want the scales to be balanced. We want a free and fair life. Equal living for everyone.

Then the questions stated:

I have a question. I am sleeping under a tree here. How long must I remain there?

Parts of this area are being used as a dumping ground for dangerous rubbish. This is another way to show that the landlords have no feelings for the people. A fire at the rubbish lasted for 2 days recently. Poor people are suffering and getting sick but where can they go for medical help?

Let me ask the house a question: is it right and legal for one man to buy a whole lot of land when there are so many who are landless and homeless?

If we go to the Council and we get no help, where do we go? Because it's not just our struggles about land and housing, but there are all sorts of problems like health problems from the toxic fumes of some of these factories nearby, education problems – all these things. We have been rejected all round. Where do we go from here?

Louisa Motha, more schooled in Abahlali's politics of the strong poor than most people in Motala, had an answer:

We are always going to them. They are not coming here. We must go and bring them from the Council to here, and they can sit in these chairs and answer our questions.

The former residents of Juba Place came out of their group discussions with very clear positions on the law and a very strong consciousness of the place of the poor in the real life of the law:

The law is not working in favour of the poor. Instead it is serving the agenda of the rich. The poor have to toyi-toyi and do lots of organising and protesting before it starts to work for them. But the rich don't even have to do this – it's just automatically on their side. It's just the same for service delivery – when the poor in the shacks need basic things like water, they have to act in their numbers to demand these things, but one rich person just gets it when they ask.

It is very clear that the law is not working for the poor. In our experience, people have to sleep outside without shelter because of the law. When the law takes its course, the law does not consider the effects of laws on the people -

and its effect is to make them homeless. When they are drafting laws they do not take this into account.

Clearly, the law is not working for the poor. It is oppressing us more and more. For example, we, the people from Juba Place, would not have been homeless for 5 months if the law was really working for us. If a rich family had been affected by these strong winds which are blowing currently the government would give them temporary accommodation. But we have been homeless for 5 months.

Even the councillors do not respond to the concerns of the poor people. Even when the story of the evictions was being covered in Isolezwe, no councillor came to see for himself and to see how he can help. If this had happened to a rich man they would have come to help. No one cares for the poor.

Even in terms of the low cost houses that were built. The process of giving these to the people who were meant to have them was corrupt and some people got cut out. But the police don't investigate people who turn low cost housing developments for the poor into some sort of business for themselves.

Getting lawyers is very difficult for the poor. We don't even know where their offices are. And even if we get hold of them, there is no follow-up from their side after we have reported an issue to them.

When we think about whether the Constitution and the rights we are supposed to have now have made a good effect, we notice that actually there is only a slight difference. Compared to the laws of the apartheid time, some of those of the new government are slightly better – we can be proud of safe abortions – but on the whole we are going back. We should start afresh and get new laws by talking with the people at the grassroots and community-level. But in our experience there is no big difference with apartheid and the way the law works now.

People make a joke that, if someone comes to check about your TV license, if you haven't got a license it is better to kill that person, because the punishment might be less for killing than for owing money on your TV license. Abahlali were invited to come to a conference about crime by Diakonia Council of Churches and we thought our input would be to point out that, yes there are crimes like theft and housebreakings and so on, but the big crimes made by the rich and powerful are just ignored. In reality, the whole system of rights and law seems upside down.

In idealised representations of democracy and the rule of law the police are presented as the enforcers and protectors of rights. But a different view emerged in this workshop. Here the police are experienced as the armed wing of the elites at the top of a set of highly oppressive local social relations.

The police are supposed to be protecting people but they are oppressing us. For example, when we were living in the park after our homes were destroyed by the Municipality, we had someone there to look after our belongings. But the Municipality came to take these things of ours away forcibly (even some people's ID documents) and the police assisted them to do this crime against the people. Also, while we were there, the people in the big houses made up complaints of noise coming from us in order to pressure us to leave – and the police responded to these complaints and helped to push the poor people out.

The eThekweni Municipality rules all criticism of its housing policy as ‘lies’ that are unacceptable to the point of being ‘criminal’ because it is ‘delivering houses’. Participants in this workshop had very clear positions on this ‘delivery’:

Nazareth is not good. They are bad quality houses there. In some, there are no toilet seats – and complaints about these things are not dealt with. They are not plastered inside and they get flooded in the rain. Where they are located is bad too – there are no shops nearby at all and we must travel to Pinetown for anything we need. There are absolutely no job opportunities there, and no-one's working because the transport costs prevent anyone from either getting or keeping a job.

Compared to Juba Place what we have in Nazareth is not 'delivery' – it's oppression. In Juba Place all we had to think about was paraffin and candles – now in Nazareth we have to think about all sorts of things. It would have been better just to spend some money to electrify our places at Juba Place than to spend all this money to build new bad houses far away at Nazareth.

[When the eviction happened] Bhekani Ntuli [a housing department official] just announced: “Everyone's going to Nazareth. Those who do not have their own place now must go there and stay together with the people you are staying with now.” There was no official notice, just hearsay. Ntuli arrived on the Tuesday and we were evicted on Thursday. We even lost jobs and some equipment for our work through the evictions, not just our houses. Some people were forced to offer Ntuli R50 or a live chicken in order to get a house at Nazareth. Allocation of these houses was a bit arbitrary – it's as if they just looked at people's faces and decided who looked more deserving.

When asked “Why is it like this? And what can be done to make it better?” the unity of the position on the law fragmented into a range of positions with the last being shocking in its obvious and bitter truth:

These questions are too hard. Our concern is to get out of these 'hostels' [shacks] and into proper housing.

The reason why the law works for the rich and not the poor is discrimination. It is not discrimination that is based on race, or gender or any of these – it is because we are poor. And the law is not at all effective in the areas that affect our actual lives. For example, we are forced to live so that too many men and women are sharing a single room or shack. And so it becomes very hard to do things like washing ourselves when we are sharing like this because of issues of privacy – but the law does not protect this for poor people. No social workers came [after the eviction], there are no interim structures for us to live in.

Building structures and a movement of the poor and the shackdwellers can help to oppose and to challenge the things that are wrong. If we are strong we can force the government to discuss their proposals and policies and to see what we agree with and what we do not.

The people who draft such policies and laws do not speak to us about these things because they hate us. It is quite clear that they hate us. The ones who hate us are our own government and the capitalists that they are working very closely with. They hate us more and more.

With this obviously correct observation hanging in the air the workshop could not continue. It turned into a planning meeting with a view to regrouping the residents and organising action. The local Councillor Jayraj Bachu was selected as an accessible target. It was decided to form a committee and send a representative to Mahendra Chetty at the Legal Resources Centre to see how the case was coming and to elect representatives to attend the weekly Abahlali meetings and request solidarity for direct action against Bachu.

There was a final challenge:

How can we trust that you will write what we have said here today? That you will not make it softer on the government?

It's easy enough to understand the economic logic of the exclusion of the poor from citizenship. Local business elites makes deals with local political elites to take control of valuable land. It is primitive accumulation in its most ugly and cruel form and, as always, the social foundation of the new developments with their shiny cosmopolitan kitch is men with guns coming to take land from the poor for the rich. But hatred? Jean Bertrand Aristide wouldn't find this strange. In an interview with Peter Hallward he asserted that:

Everything comes back, in the end, to the simple principle that *tout moun se moun* – every person is indeed a person, every person is capable of thinking things through for themselves. Those who don't accept this, when they look at the nègres of Haiti – and consciously or unconsciously, that's what they see – they see people who are too poor, too crude, too uneducated, to think for themselves. They see people who need others to make their decisions for

them. It's a colonial mentality, in fact, and still very widespread among our political class. It's also a projection: they project onto the people a sense of their own inadequacy, their own inequality in the eyes of the master.¹²⁸

It is remarkable how precisely the same stereotypes commonly directed at all African people by white society under apartheid are now so often directed at the very poor by both black and white people – sometimes with a genocidal passion. The old ideas about the inhumanity of the other have not been abandoned nor have they been defeated.

In *The Wretched of the Earth* Frantz Fanon famously asserted that "the unemployed man, the starving native do not lay a claim to the truth; they do not say that they represent the truth, for they are the truth."¹²⁹ Shack dwellers are a truth about a profound failure of our society that many, black and white, would rather repress in their pursuit of a chimerical shiny (and fundamentally fantastical) modernity of the 'world class' metropole. The return of the repressed truth is not often welcome. In some ways we are not that far from the dystopia in Ngugi wa Thiongo's *Wizard of the Crow*¹³⁰ in which the elite manically try to build the tallest building in the world while sending out the police to beat back the swirling mass of terrestrial agony. Repression is preferred to integration. Hence the lived reality of an entirely perverse hatred producing a consequent state criminality under the contemporary sign of a good society – a parliamentary democracy.

The nomination of hatred as a key driver of contemporary oppression is a fundamentally accurate analysis. Noting this is not to try and lessen the significance of the economic forces driving oppression but merely to extend and therefore to enrich the analysis. It is striking that over the same period that these workshops were being held there was a parallel process in the broader movement of *Abahlali baseMjondolo*. This involved a conscious collective process to begin an articulation and elaboration of *Abahlalism* being mindful to keep this new 'zim zim' as close to the lived experience of oppression and resistance as possible. This process continues but it is interesting that the first discussions eventually nominated three pillars of *Abahlalism*: respect, courage and action. Self respect, and the courage to act on it, seem to add up to a good weapon against hatred.

SECTION 5: Conclusions

The Constitution commits our society to certain principles with regard to housing. Yet anyone with eyes to see must confront the reality that as the gated communities and malls and golf courses eat up the remaining city land men with guns invade shack settlements to violently expel people from the city and to render them homeless. This occurs in the name of the state that is in principle governed by the Constitution. And the settlements

¹²⁸ Peter Hallward 'An Interview with Jean Bertrand Aristide' *London Review of Books*
<http://www.abahlali.org/node/844>

¹²⁹ Frantz Fanon *The Wretched of the Earth* Penguin, London 1976

¹³⁰ Ngugi wa Thiongo *Wizard of the Crow* Harvill Secker, London 2006

that have, so far, survived this cleansing of the poor from the spaces of the rich become steadily more crowded and endure with progressively less access to electricity, water and sanitation. This too occurs in the name of the state that has designated them informal, temporary and therefore not worthy of investment.

For Nayager and Sutcliffe and Mlaba and Mabuyakulu *Abahlali baseMjondolo*, which amongst other things is a collective decision to demand the symbolic and material integration of the repressed, is the worm in the rose. For many shack dwellers it is the rose in the worm. Left to itself in an anti-dialectic of Manichean disjuncture this contradiction has an inevitable tendency towards the kind of brutality that happens every day in the Sydenham police station – a brutality that is only distinguishable from that happening in Harare by the fact that it is local rather than national in focus. The empirical facts do not allow us to deny that representative democracy or the democracy of parliament in no way precludes state criminality.

In this context a movement like *Abahlali baseMjondolo* has every moral as well as every legal right to exist and to make its claims. Yet it is not even certain that the movement can survive. It has successfully avoided internal sclerosis via commodification or ossification thus far. But the rapidly escalating physical violence of the state, and the open complicity with the discursive violence of the state from a competing elite in part of the NGO left, pose serious threats. It is an open question as to whether the movement can sustain its mass based and radically democratic character under these pressures. But if the movement can endure, what can be learnt from its experiences thus far in order to think about how it can be supported to engage more fruitfully with the law in the future?

Some lessons are obvious and they have already been alluded to in various ways. One is the fact that a criminal state criminalises dissent and that therefore any commitment to realising the progressive aspects of the constitution and related laws in practice needs to confront the urgent need for legal support for people and organisations accused of criminality as a result of their political actions. In Durban it is now quite clearly bad faith to assume the good faith of the state. Another is that a desire to make more radical interventions motivated by a recognition of the failures of the current civil society model focussed around liberal NGOs should not automatically assume that support for more left NGOs is the solution. At least two of the left NGOs that raise money in the name of social movements have rendered themselves a clear and present danger to the prospect of an autonomous mass based and democratic politics of the poor. On reflection this fact, initially disquieting or even shocking for some, becomes perfectly comprehensible. For Alain Badiou a radical political event occurs when a group essential to a situation but rendered politically inessential to it rejects subordination and thereby throws the situation into crisis. This is what the ICU did. This is what *Abahlali baseMjondolo* are doing. He, in a strangely exact echo of a phrase used by Fanon with similar intent, calls it a ‘mutation of the logic of the situation’ that is radical because it changes the structure of a situation and therefore brings forth new possibilities for action rather than merely making tactical manoeuvres within the extant situation. Badiou provides, as a paradigmatic example of this, the Paris Commune and the declaration of the communards on March 19 1871 that they had decided to take the ‘direction of public affairs’ into their ‘own hands’.

But he is clear that this mutation in the logic of a situation is a threat to counter elites competing for power as well as those in power:

Let's call 'the Left' the set of parliamentary political personnel that proclaim that they are the only ones equipped to bear the general consequences of a singular political movement. Or, in more contemporary terms, that they are the only ones able to provide 'social movements' with a 'political perspective'. Thus we can describe the declaration of March 19 1871 precisely as *a declaration to break with the left*. This is obviously what the Communards had to pay for with their own blood.¹³¹

"It is", he insists, "important to argue that such a rupture is always a rupture within the Left in the formal sense I have given to that term."¹³² Hence, in contemporary South Africa we find that the hatred from that quarter of an autonomous politics of the poor is blazoned in our newspapers in the precise language of the state.

A third lesson is that sustaining and extending the practical and public support of democratic NGOs like the Freedom of Expression Institute, the Open Democracy Advice Centre, the Centre on Housing Rights and Evictions, the Church Land Programme and the Legal Resources Centre is crucial. The same is true for the support of lawyers like Shanta Reddy and Mark Serfontein. All of these organisations and individuals have worked by talking and thinking with rather than for the movement and have enabled the movement to increase the quality and quantity of its mobilisation while undertaking the quite technical work required to use the law and the media to keep political space open for the mass expression of dissent. However one obvious innovation is that movements like *Abahlali* need to be able to have sustained access to their own lawyer or lawyers who, taking instruction from the movement and with no need to balance work for the movement with any other institutional project, can, on a day to day basis, oppose the sustained criminality of the state. This would not be to replace democratic institutions like the Legal Resources Centre or the Freedom of Expression Institute where there are particular and very important skills and networks. But these institutions are under intense and multiple lines of pressure and so more or less have to act on matters of particular and precedent setting importance with the result that many of the minor incidents of day to day state criminality such as intimidation, assault, destruction of property, petty corruption etc are not confronted with any legal challenge. A lawyer or lawyers under the day to day control of the movement could take up these issues in a way that begins to make pervasive criminality an irrational choice for a local state even when it feels the seductions and pressures of money, the desires for a shiny modernity and the lure of irrational hatreds far more directly than the weight of the legal record of the balance of political forces at the time of the transition from apartheid.

But as important as attempts to force a criminal local state to comply with the law are they are not the limit of what can be achieved. Marie Huchzermeyer notes that in South Africa we are not even succeeding in achieving the *in-situ* upgrades that the World Bank

¹³¹ Alain Badiou *Polemics* Verso London 2007 pp.272-273.

¹³² Badiou, *Polemics* p.289.

began to recommend in the 1970s after resistances from Brazilian shack dwellers threw relocation projects into crisis. She writes that in Brazil, where things are comparatively better, “An intellectual left...has critically engaged with informal settlements through the question of exclusion, and has aligned itself with popular movements, developing strategies to secure a physical and political stake for the working-class in the rapidly changing urban environment.”¹³³ However in South Africa “consultants and even development NGOs have found a secure niche”¹³⁴ within the logic of the state and its co-opted professional civil society. Against this she recommends “progressive long term support for community organisations.”¹³⁵

This is what Bheki Ngcobo was asking for in the Motala workshop. Achieving it requires a serious commitment to speak to and not for organisations of the poor and to undertake this on the terms of those organisations and in the modes of engagement and the languages and places where the poor are strong. It requires, as S’bu Zikode has said, a willingness to be a servant rather than a master. It seems that middle class ‘civil society activists’ often fear that this kind of commitment will direct them towards the particular and away from the general. However the general can only be a set of particulars and real universality has always emerged from a direct confrontation with the particular. As Englund cautions on the basis of his important Malawian civil society case study the desire to begin from abstract concepts and principles, imagined to be universal and higher, rather than the particular situations of particular poor people, imagined to be local and lesser, “fosters elitism and undermines substantive democratization.”¹³⁶ He ends his book by arguing that “activists have too often imagined themselves as the agents of the universal and ‘the grassroots’ as the captives of the particular. The procedure has precluded the discovery of general import in particular claims, no less than the identification of particular interests in activists’ universalism.”¹³⁷ With regard to the reluctance to accept that the universal is only ever really discovered in the particular we would do well to remember Badiou’s injunction that: “There exists no stronger a transcendental consequence than that of making something appear in a world which had not existed in it previously.”¹³⁸ It is now certain that if our famous Constitution is not to function as little more than one option in a bouquet of marketing tools for a state and its allies needing to disguise the continuation of profound injustice then something radically new will have to be bought into the situation that has allowed the Constitution to fail shackdwellers in eThekweni so badly thus far. Perhaps it may be the voices of the people in whose name the Constitution is most often celebrated.

¹³³ Marie Huchzermeyer, *Unlawful Occupation*, pp. 230-231.
¹³⁴ Marie Huchzermeyer, *Unlawful Occupation*, pp. 234.
¹³⁵ Marie Huchzermeyer, *Unlawful Occupation*, pp. 235.
¹³⁶ Englund, *Prisoners of Freedom*, p. 9.
¹³⁷ Englund, *Prisoners of Freedom*, p. 204.
¹³⁸ Badiou *Polemics*, p.285.