

THE KWAZULU-NATAL SLUMS BILL: AN ILLUSTRATION OF AN INSTITUTIONAL SHIFT IN DEMOCRACY

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Abstract

In August 2007, the provincial government of KwaZulu Natal in South Africa passed the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Bill (hereafter referred to as the "Slums Bill"). The Slums Bill seeks to progressively eliminate slums and slum conditions and to prevent their re-emergence in the province. While the provincial government has argued that this Bill is a natural step in the democratic progression of South Africa and international efforts for poverty and slum eradication we strongly disagree. In this paper we illustrate that the secretive nature of the Bill's development and passage, not only marginalized *imjondolo* (shackdweller) communities, but echoes apartheid legislation. We also discuss the socially democratic values of housing policy legislation in the 1990s and identify how the Slums Bill illuminates a radical institutional shift in South African decentralization efforts. While we argue that this institutional shift is inherently undemocratic in nature, we offer multiple recommendations for the province and South Africa to return to a more inclusive form of social democracy.

Introduction

The province of KwaZulu-Natal (KZN) in South Africa has a problem. Shack dweller communities or *imijondolo* (singular, *umjondolo*) are growing despite a variety of policies aimed at reducing their numbers. The living conditions in these communities are extremely poor. Inadequate infrastructure and non-existent services plague these neighborhoods and the constant threat of fire hangs palpably over this marginalized population. In an attempt to address this problem the provincial legislature has passed the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Bill (hereafter referred to as the "Slums Bill").

The Slums Bill is insufficient to solve the housing problem in KZN and is in fact a clear example of how South Africa has moved away from its progressive ideal of democratic institutions founded on civic participation and towards Western models of technocratic decentralization, discussed in more detail later. Given this shift, alarming parallels arise between the Slums Bill and apartheid era legislation. The Bill reinforces and exacerbates a history of hostility between marginalized communities and local governments and shows more concern for international influences than it does for the communities it purports to serve.

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A Description of the Slums Bill

The Slums Bill, drafted in October 2006 and passed in August 2007, seeks to progressively eliminate slums and slum conditions and to prevent their re-emergence in the province. More specifically, the Bill: a) aims to increase coordination between municipalities and provincial government regarding slum elimination; b) requires that owners secure vacant property to prevent illegal occupation; c) establishes a timetable for obligatory evictions by owners; d) mandates that owners renovate to remove unhygienic conditions; e) prohibits substandard or illegally constructed accommodation for financial benefit, and; f) authorizes eviction of unlawful occupants by the municipality “if such eviction is in the public interest.”¹ The Bill criminalizes non-compliance of landlords, property owners, and occupiers, punishable with fines or imprisonment. Implementation responsibilities lie with the municipality, which the Bill requires provide “transit areas” for longer-term evictees. Transit areas are intended to be “temporary accommodation,”² but no maximum time periods are prescribed. While the transit area must be near an economic center, proximity to health clinics, schools or other community resources is not necessary.

A Brief History of the Slums Bill

Housing provision has been a fundamental issue in South Africa since its transition from apartheid. During this transition, the Housing White Paper of 1994 emphasized a strategy, focused on the poor, which decentralized institutions from the national level to the local and provincial levels.³ The White Paper states the government’s commitment to a “development process driven from within communities... equipping and empowering people to drive ... [the] development of their physical environment and the satisfaction of their basic needs.”⁴ The document recommends creating appropriate institutional frameworks that enable this process, and addresses the importance of accountability, performance standards and monitoring mechanisms for all state interventions.

With the ratification of its Constitution in 1996, South Africa put into law the recommendations of the 1994 White Paper. Section 26 declares, “Everyone has the right to have access to adequate housing” and that the “state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.” Furthermore, “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.”⁵

Two key pieces of housing legislation, enacted in the early years of the Republic, began to institutionalize the ideals of the Constitution. The Housing Act of 1997

¹ Ibid., 8,11.

² Ibid., 12

³ South Africa 1994, Section 4.1

⁴ Ibid., Section 4.4.4

⁵ South Africa 1996, Section 26

outlined the roles held by the national, provincial and municipal governments in housing development and delivery. The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act (PIE) of 1998 repealed a 1951 apartheid era law entitled the Prevention of Illegal Squatting Act of 1951. The PIE Act aimed to prevent arbitrary deprivation of property, and states that no law shall do so. It requires state institutions and owners to obtain a court order before they may legally evict unlawful occupiers of property.

The 2004 national housing policy, Breaking New Ground (BNG), attempted to apply international best practices, such as *in situ* upgrades, to the issue of informal settlements. Breaking New Ground hoped to be a “comprehensive plan for the development of sustainable human settlements,” and specified a need to shift policies from those that are based on conflict or neglect to those that seek to stabilize the communities in question and integrate them into the urban landscape.⁶ Integral in this policy was the insistence that relocation only be used as a last resort.⁷ In an effort to align itself with the new national housing policy, KZN adopted the Housing Strategic Plan for 2004 -2007. The Strategic Plan specifies the eradication of slums in the province by 2010 as the first of seven key areas of focus for the next five years.⁸

Unfortunately, these policies were not sufficient to stem the rise in imijondolo communities in the province. Couched in the rhetoric of slum eradication first encountered in the KZN Housing Strategic plan and reinforced by the international development community, the Slums Bill was seen as a legislative tool for addressing the problem of slums in the province and providing a legal framework for dealing with slums and slumlords. The Bill was presented to parliament on June 21, 2007, and framed as the logical result of previous housing policy in South Africa and KZN, although it proved to be a significant departure from prior policy. Public meetings were held in the development of the Bill, but differing accounts of those meetings call into question the degree to which participation was encouraged. In a hearing on May 4, 2007 at the Kennedy Road umjondolo community, one report indicated that only a brief outline of the Bill was given and many questions posed by the people most affected went unanswered.⁹ During parliamentary proceedings, legitimate concerns including the severe language of the bill, the perception of the bill as harkening back to apartheid era clearances, and unchecked municipal power during implementation were played down as the Bill passed with overwhelming cross party support due to effective framing strategies by the Bill’s supporters.

Echoes of Apartheid

Despite the KZN parliament’s insistence, the Slums Bill does not progress naturally from such national policies as the Housing Act of 1997, the PIE Act of 1998

⁶ South Africa 2004

⁷ Huchzermeyer 2007

⁸ KwaZulu-Natal Department of Housing 2004

⁹ Mkhize 2007

and *Breaking New Ground* of 2004. It is in fact, more reminiscent of apartheid era housing policy as seen by the multiple parallels described below.

Housing policy, by its nature and definition was a critical tool in the colonial and apartheid regimes' racial engineering programs. In 1913, at least three decades before the crystallization of apartheid policy, the government passed the Natives Land Act, which made it illegal for blacks to purchase property from whites except in reserves. As a result the entire black and native population of the country existed on less than eight percent of South African land. Ten years later the Natives (Urban Areas) Act of 1923 legislated segregation and began criminalizing mixed race interaction in land and housing affairs. The first housing-only legislation was written in 1925 by an Afrikaner commission tasked with researching "the native question" or "the bantu problem." The commission "urged a demarcation in housing schemes between white, coloured and "native" areas, and recommended special sections in government departments to look after coloured interests."¹⁰

When the National Party came into office in 1948, it argued that apartheid and its concise and systematic legislation was about "formulating a new moral language with which to legitimate the project of radically restructuring society."¹¹ The cornerstone of apartheid legislation, the Group Areas Act of 1950, constructed distinct "residential areas" throughout the country, and separated people by race. It was implemented and enforced by other formal legislation such as the Western Areas Removal Act, which permitted forced removals by violent police action. Throughout the 1950s and 1960s several vibrant communities, like the famous Sophiatown, were invaded by the State. These townships, once epicenters of interracial interaction were bulldozed to the ground. The wounds from such destructive acts imposed upon these communities are not healed. Thus, the threat of elimination and destruction for "the public good" that is specified in the Slums Bill represents much more than a conceptual last resort toward progress. It is, in fact, a treacherous reminder of a repressive state.

As a result of these forced removals, which took non-whites out of economic centers, large informal settlements and "slums" sprang up. The National Party responded with the Prevention of Illegal Squatting Act of 1951 that gave the Minister of Native Affairs the power to remove blacks from public or privately owned land and to establish "resettlement camps" to house the displaced people. Resettlement camps were located in undesirable locations, far from job opportunities or viable community centers. The parallels between resettlement areas and transit areas as described in the Slums Bill are not lost to the imijondolo communities.

As anti-apartheid social movements mobilized in the 1960's protesting Pass Laws and forced removals, the national government responded by establishing local government protocols which were essentially useless advisory bodies without any authority. Through the 60's and 70's several acts created municipalities and boards that were considered corrupt by the people, and the non-white leaders who sat on them were

¹⁰ Gilliomée 2003

¹¹ Ibid.

distrusted because of their apparent allegiance to the National Party. In 1982 Black Local Authorities were put in place to squelch the rising violence. They were immediately deemed politically illegitimate by the people because they enforced all of the previous policies of segregation and economic exclusion.¹² The housing policies enacted by these bodies were based on racial suppression and inequality. These ineffective local governments have created a long history of mistrust between the people of South Africa and their municipal representatives. Tensions remain to this day and are reflected in the fundamental distrust of the municipal powers granted by Slums Bill.

The Unrealized Democratic Potential of The Republic of South Africa

The pervasive anti-democratic nature of apartheid policy and its emphasis on violent racial engineering left the country with decades of social, political, and economic inequalities. Developing political mechanisms to redress this inequity has left the people of South Africa and the African National Congress (ANC) "with what might arguably be the greatest transformative challenge ever faced by a democratic government."¹³ Despite these challenges, the negotiated end to apartheid gave way to the new Republic of South Africa, grounded in social democracy and promising to hold human rights, human dignity, and freedom of expression as its highest ideals.

In June of 1990, the two most despised laws of apartheid were repealed, the Group Areas Act, and the Population Registration Act, rolling back decades of brutal racial engineering. Municipal, provincial, and state level government agencies that were once charged with the enforcement of racial segregation were now the primary agents of social and economic revolution. The ANC embraced their "transformative challenge" with wide sweeping decentralization efforts that included negotiations with the National Party. In these early years, leadership from aligned political parties and factions within the ANC itself had varying ideas of how a new South Africa should look. Democratic decentralization was viewed as fundamental to engaging civic participation in dismantling apartheid policy infrastructure and opposition parties viewed decentralization as an essential check of ANC power and control.

Following the passage of the Constitution, policies and laws regarding housing and property continued in the vein of justice for the most underserved communities in South Africa. When Nelson Mandela took office in 1994 the ANC laid out an aggressive Reconstruction and Development Program (RDP). RDP's housing agenda promised to provide 1.1 million government subsidized units to accommodate the nearly 5 million (of an estimated 12.5 million) South Africans without proper housing.¹⁴ RDP's 1994 White Paper on Housing weaves together topics of economic empowerment, financing strategy and poverty alleviation for the majority of South Africans. It discusses combining the resources of civil society, private institutions and the State to finance its strategy, and

¹² South Africa 1998, White Paper on Local Government

¹³ Heller 2001, 145

¹⁴ Lodge 2003

encourages private investment once the public environment is conducive and attractive to such investment.¹⁵

By 1998 South Africa appeared to have met all of the qualifications for a successful decentralization effort including a high degree of state capacity (as inherited from the first-world nature of the apartheid regime), a well developed, financed, and politically respected civil society, and a left-of center-political party in office that had a significant social movement history.¹⁶ The ANC leadership publicly stressed the need for an overhaul in local government infrastructure (dismantling the Black Local Authorities of '82), in order to overcome the apartheid legacy of poor and abusive relationships between the municipalities and the marginalized communities they were created to “serve”.¹⁷

In its quest to decentralize government, South Africa looked to the international community for templates to expand its democratic institutions. Given its status as the “African Superpower” due to its developed infrastructure and economy, it followed in the footsteps of western decentralization techniques that emphasized administrative development known as “technocratic decentralization.” Unfortunately, decentralization efforts of this sort rarely succeed in developing countries since “[b]lueprints developed in the West are hardly appropriate to Third World contexts,”¹⁸ and the ANC rapidly began failing expectations. Various levels of government and society did not shift as quickly as necessary into the decentralization efforts, and the new state faced a “recalcitrant bureaucracy, military and judiciary [which] in learning to cope the ANC has moved to dangerous practices of centralizing power, and perhaps condoning corruption,” so that a “continued democratic future for South Africa cannot be guaranteed.”¹⁹ This institutional shift moved away from the Republic’s founding democratic ideologies.

When Thabo Mbeki took office in 1999 South Africa’s institutional shift was well under way. The government abandoned RDP and implemented Growth, Employment and Redistribution (GEAR); “an orthodox neoliberal strategy of growth-led development and national trends of marketization and managerial insulation.”²⁰ GEAR embraced the Washington Consensus development agenda which emphasized liberalizing trade and privatizing industry. As a result it alienated civil society and ignored their calls for participatory engagement. In order to promote consistency between this new economic program, and political sectors of the country, the ANC rolled out technocratic decentralization efforts that were also modeled after Western concepts of public administration.

¹⁵ South Africa 1994, Section 4.6

¹⁶ Heller 2001, 143

¹⁷ South Africa 1998, White Paper on Local Government

¹⁸ Heller 2001, 145

¹⁹ Hawker 2000

²⁰ Heller 2001, 145

The KZN Slums Bill is a perfect example of the policy overhaul that has occurred between 1994 and 2006. The RDP ideal of “people driven” development, with its goals of training citizens, educating them, and engaging them in housing initiatives has been completely abandoned. GEAR centers on “streamlining management systems, cutting costs, and emphasizing administrative performance rather than mobilizing participation.”²¹ The majority of the Bill targets implementation procedures to improve cooperation between the municipal and provincial governments. An entire chapter of the Slums Bill delineates the annual administrative and bureaucratic reporting procedures for the 51 municipalities in the province.²²

Recommendations and Conclusion

In a landmark case (*Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg*, February, 2008), the Constitutional Court ruled in favor of evicted imijondolo communities. This case emphasizes the founding ideals of South African democracy, enforcing the city’s responsibility to engage the community to come to a mutually desirable solution. In the final ruling, Chief Justice Yacoob states, “... the larger the number of people potentially to be affected by eviction, the greater the need for structured, consistent and careful engagement.”²³ It is an unreasonable and inefficient solution for the Constitutional Court alone to remind municipal and provincial governments of their responsibilities toward civil society. Briefly, we have the following recommendations:

- **Repeal the act:** With its emphasis on the bureaucratic relationship between the province and its municipalities, it is an element of technocratic decentralization that alienates civil society. This alienation has led to political, economic, and social instability in the province. Organizations will continue to challenge the constitutionality of the bill because it alters the PIE Act by criminalizing owners who do not begin eviction of “unlawful occupiers.” This edict directly contradicts national legislation including the 2004 Breaking New Ground Housing Strategy, and violates Constitutional precedent.
- **Legitimize imijondolo communities:** Removing value laden terms like “slums” and “eradication” from the discourse would allow the provincial government to engage the communities rather than alienate them. Rather than slums elimination, the province should discuss imijondolo community improvements. Even this slight change in the discourse would grant the imijondolo status as legitimate communities with legitimate concerns.
- **Institutionalize civic participation:** As we have seen in multiple examples, decades of abuse under apartheid takes more than 10 years to undo, therefore structures on all levels of government must be held accountable to their constituencies and do their best to deliver according to structured

²¹ Heller 2001, 143

²² KwaZulu-Natal Department of Housing 2006

²³ Yacoob 2008, Section 19

negotiation between communities and the state. Civic participation needs greater legitimacy, institutionalization and resource support in order for true engagement to occur.

In less than 15 years, the Republic of South Africa has radically diverted from the social democratic ideologies of its inception and has left behind a large swath of its population, who still live under Third World conditions. This diversion has disillusioned many of the social movements that once fought so hard for its existence. Grassroots housing organizations have accused the government of wanting “followers not comrades” in economic development.²⁴ When the Government hosts “Freedom Day” in honor of its Constitution, housing advocates host “UnFreedom Day” to reflect the widening gap between policies and democratic ideals.

²⁴ Abahlali baseMjondolo 2008, Abahlali baseMjondolo to Mourn UnFreedom Day

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