The right to the city

Marie Huchzermeyer

- **The amplified footprint of apartheid cities**

We cannot speak of South African cities twenty years into constitutional democracy as having overcome the imprint of apartheid. While poor households today live in deteriorated inner city districts, the compartmentalised footprint of South African cities as of 1994 has blurred only marginally. The added footprint of the past two decades, the rapidly expanding peripheries of South African cities, followed new forms of segregation and exclusion.

Contours of exclusion and their legitimacy in privileged society shifted (if not entirely) from artificially constructed 'racial' difference to stark difference in the ability to consume, the former having determined the latter. The leafy apartheid 'suburbs', inhabited by a largely unquestioning light-skinned minority, have their equivalent today in themed estates with luxury villas, catering to an exclusive moneyed minority – a mere 3% of South Africa's households. More densely packed 'townhouse' complexes cater to the aspiring middle class, depending on definition barely 10% of households in the country.

The uncertainty of the political transition around 1994 enabled informal settlements to spring up on vacant land. Those in or near urban centres were relocated to transit camps or dormitory housing developments on the distant urban peripheries mostly beyond apartheid era townships. Informal settlements in and around apartheid era townships have remained largely informal.

Apartheid's suburbs were inscribed with prohibitions and exclusions. In a seeming caricature of their apartheid era counterparts, today's minority suburbs have perfected exclusion through solid if not lethal barriers. For those invested and residing in these walled landscapes of illusion, the spatial irony is clouded by the sense of indispensable security and legitimate privacy, luxury, status and world class standard.

Those in the private sector whose wealth was secured or extended through direct involvement in two decades of planning, designing, financing and developing property of this nature have thrived on the absence of any serious political debate on the spatial state of South African cities. In the terms of critical urban geographer David Harvey, they have enabled the disposal of over-accumulated capital.

A national policy since 2004 on sustainable human settlements, while attempting to speak to the 'broader residential property market', has had negligible effect. Protest from impoverished townships and informal settlements, while speaking to the highest urban inequality on the globe, sparks only a reductionist politics of housing and service delivery. Politicians avoid hard questions on the real obstacles to spatially integrating the poor into South African cities.

Urban visions generated in progressive networks of NGOs, activists and planning academics during the late apartheid years were of apartheid 'cities' turned into truly urban centres shared by all. Public transport corridors, actives streets and public spaces were to generate opportunities for

entrepreneurship and encounter, stitching together internalized suburbs and townships separated by planned 'buffers'. Low income housing was to be inserted into the urban fabric in locations convenient to the livelihoods of the poor. The ANC alliance's Reconstruction and Development Programme (RDP) embraced these ideals. However, they ring hollow today, as does most of the RDP.

In the labor market and broader society, two visionary interventions helped a broken society transition some way beyond apartheid – reconciliation and affirmative action. These have had no spatial equivalent in South African cities. Fear of 'black' masses in informal settlements legitimizes the fortification of upmarket estates. While quotas of low income units for all residential areas as in 'fair share' plans in the US, were considered in housing policy debates a decade ago, only a weak 'inclusionary housing' policy emerged with no spatial effect.

The national imperative of rendering South African cities globally competitive, so as to attract the investment on which the developmental state depends, politically legitimizes the ever more excessive exclusionary developments which the private sector plans and proposes. While ignoring municipal spatial planning frameworks, these plans and proposals have made their way through processes of urban development approval.

- **Protracted devolution through delays in planning reform and municipal accreditation**

Around 1994, the then Department of Land Affairs understood that the planning and land use management bureaucracy at municipal level would take time to reform. It assumed that the newly created provinces would have the ANC alliance's reconstruction and development interests at heart. The Department, following groundwork by a network again spanning civil society and academia, had an interim Development Facilitation Act promulgated a year before the Constitution. The 1995 Act was to 'facilitate' development, not only for the victims of apartheid planning, until such time as the planning system had been fully reformed in line with the pending Constitution. In particular, the Act allowed provincial tribunals to approve developments within municipal boundaries.

In the years that followed and after completion of municipal restructuring in 2000, metropolitan municipalities developed spatial frameworks to transform the apartheid city through transit oriented corridors, urban compaction, integrative public spaces and better located low income housing. However, an obstacle to these spatial frameworks' ability to guide urban investment in several metropolitan municipalities, most notably Durban/eThekwini and Johannesburg, was the continued application of the Development Facilitation Act. In the absence of any planning reform since 1995, the interim Act became a vehicle for overriding municipal planning and land use management. Technically, this was justified as being more efficient than lengthy municipal approval procedures.

Two political imperatives reinforced this seemingly perverse post-apartheid reality, one subsidized housing delivery, the other economic growth. Both lent power to provinces, allowing them to compete for prominence, and through mass delivery to secure support from the majority poor electorate.

The promised redistribution through rapid provision of free-of-charge housing to impoverished households was, in the first instance, a provincial task. The Constitutional requirement was for the erstwhile Department of Housing to accredit municipalities, once capacitated, with the housing function. This would entrust them with full control over housing subsidy funds. In the tension between strong metropolitan municipalities and provincial governments, which also contributed to delay in planning reform, the accreditation process has been slow, politics interfering with undertakings by the state. In the absence of planning reform, provincial tribunals, particularly that in KwaZulu-Natal, continued to approve subsidized housing developments of the provincial government in poor locations within and beyond the boundaries of metropolitan municipalities.

Provincial tribunals, seeing sense in massive economic investment, also approved privately proposed gated estates, townhouse developments, malls and business parks, despite no integration, no urbanism, no room for the poor and little regard for municipal spatial development frameworks in these profit oriented proposals. While this trend was most pronounced in Gauteng, the provincial tribunal in KwaZulu-Natal in 2010 prided itself on having approved more than 18 billion rands in investment in that province.

Unreformed planning procedures in the hands of provinces, developers and conservative planners helped perpetuate patterns of spatial injustice. These subject poor masses to the time, cost and danger of excessive travel from economically barren residential areas to the nodes of economic growth. While costly to access, work for the unskilled in these centres remains scarce, underpaid and precarious, leaving many to dependency on state grants and informal means of making a living.

- **Constitutional Court intervention on behalf of municipal planning**

In another post-apartheid irony, it was a metropolitan municipality that questioned the constitutionality of the approval processes under the Development Facilitation Act. City of Johannesburg, joined by eThekwini Municipality, took this question through the Courts, starting in 2006. With reference to the economy and procedural efficiency, the cities' constitutional cause drew opposition from the national ministry responsible for planning reform, several provinces, the South African Property Owners Association and the South African Council for Consulting Professional Planners.

Confirming a judgment of the Supreme Court of Appeal, the Constitutional Court in 2010 found that 'this situation cries out for legislative reform'. It confirmed that the provincial tribunals had encroached on 'municipal planning' which involves development approval and township establishment within municipal boundaries. It clarified that national and provincial spheres of government do not have the right to assume executive municipal powers.

The Constitutional Court ordered national government to complete and enact long overdue national spatial planning and land use management legislation within 24 months. This legislation was to respect the non-hierarchical constitutional principles of cooperative government and intergovernmental relations and was to place the powers for approvals with municipalities alone.

The new Spatial Planning and Land Use Management Act of 2013, SPLUMA, inscribes, for the first time, spatial aspects into the right to housing by articulating this as a right to 'equitable spatial patterns and sustainable human settlements'. It requires the promotion of 'social and economic inclusion' and redress for the 'imbalances of the past'. It makes spatial development frameworks at municipal, provincial and national level legally binding, though for review every five years.

However, although raised in submissions on the bill, there remains the potential of a lingering hierarchy in that 'national' and 'public' interests can override municipal decision-making. In the absence of any definition of these interests, economic growth and global competitiveness framed as national or public interest irrespective of the spatial configuration they demand, may continue to trump municipal level plans to redress urban spatial imbalances.

At the same time the accreditation process for municipalities to assume the full set of housing functions continues to face delays. Government's current Medium Term Strategic Framework commits to the accreditation of 49 municipalities by 2019. However, as the political landscape diversifies and opposition party support increases in urbanised areas, the ruling alliance seems to tighten its national and provincial grip. In this context, the devolution required for spatial restructuring threatens to become an elusive ideal.

- **Local autonomy on the path towards a right to the city**

Central-local tensions have been critical in debates on the urban question. A normative ideal embracing local autonomy even beyond municipalities, which informed urban policies of the French and Brazilian left and is gaining momentum globally, is that of a 'right to the city'. French sociologist and philosopher Henri Lefebvre developed this concept in part out of his concern for everyday life and housing in the late 1960s. State subsidized housing then, as in South Africa today, was devoid of urban qualities, to the extent that misery, resulting from isolation, inconvenience, uniformity, lack of choice and absence of creativity, undermined the freedom (from homelessness) afforded through housing. This led Lefebvre first to articulate a 'freedom of the city' which he developed further into the 'right to the city'.

The 'city' which Lefebvre promotes through this right is home to an urban society made up of ordinary people who appropriate and inhabit spaces rather than these being dominated by spatial inscriptions of the state or the market. Land use management in this city allows for diversity and complex intensities (centralities) to emerge, allows the poor or excluded to inhabit conveniently located land, and is not over-determined by the need to generate profit. Much ignored are Lefebvre's lengthy engagement with urban strategies and planning, and his three concrete recommendations: The urban is to enter squarely into the political conscience and debate, local autonomy or self-management is to be given space, and the right to the city is to enter into codes or legislation.

The Left tends to dismiss autonomy and devolution as prerequisites of neoliberalism, enabling the rolling back of the state. However, left governments, notably France under Mitterrand in the 1980s and Brazil under Lula in the 2000s (though less directly) built on Lefebvre's writings on the right to the city. Both countries recognized the importance of cities or urban areas by creating

dedicated ministries of cities with coordinating functions beyond just housing or 'human settlements'. Already in 2001, Brazil, with pressure from an Urban Reform Movement linked to the Worker's Party which was then in control only of several municipalities, enacted a 'Statute of the City' bringing together all relevant urban law. In a federal system which devolves important powers down to municipalities, the Urban Reform Movement had pioneered the content of the Statue of the City in Workers' Party municipalities. Private property under Brazil's Constitution and its Statue of the City is subject to social functions determined through progressive urban planning and regulation. The Workers' Party's model of direct democracy builds political strength from trust in the local. It thrives on a high degree of local autonomy, and built its growing political support on that basis.

Lefebvre's recommendations are essential, but they represent no silver bullet today. In Brazil, in the face of strong economic pressures, the unfortunate need for political compromises, and competing ideas from the political centre and the right, often backed by powerful global agencies, the urban question has had to remain intensely debated.

But as for Brazil, Henri Lefebvre's analysis and recommendations on the 'right to the city' have relevance for turning the path of South African cities. For the segregated city not to be perpetuated, coordination at national level of the system of urban planning and land use management must be aligned, and urban rights expanded beyond access to adequate housing to a right to the city. For approvals of exclusionary developments or peripherally located housing not to be threaded through loopholes in the SPMUMA legislation, the spatial state of the city must enter political consciousness and debate at all levels. Can such awareness at the local level, coupled with national, provincial and even municipal trust in greater autonomy, form the basis of robust undertakings to restructure South African cities?