

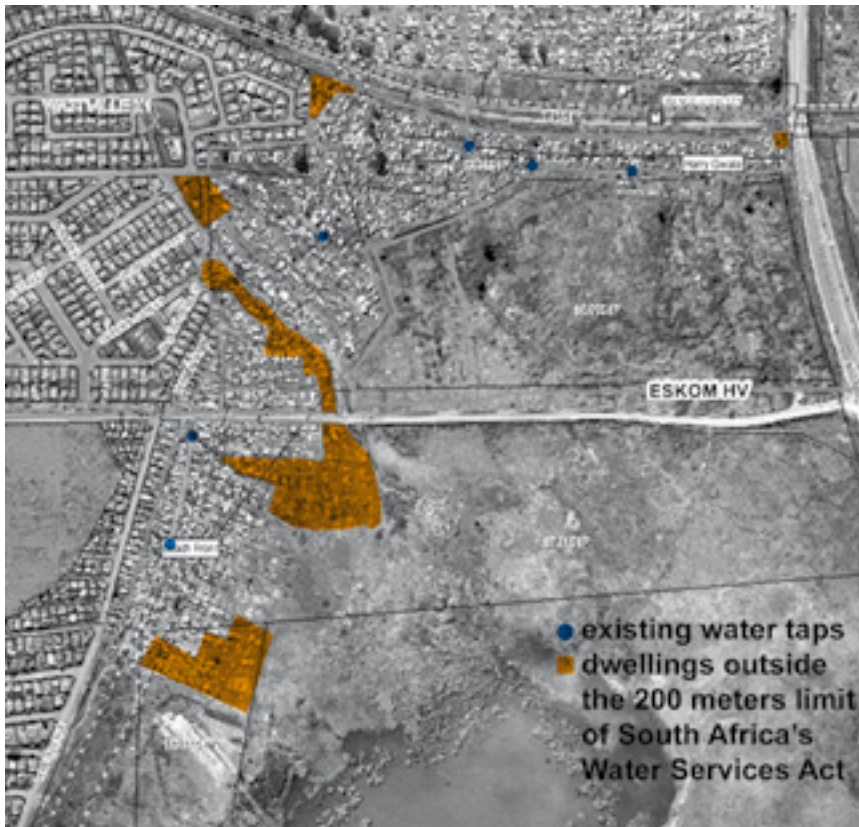
FINDING AND HOPE
THE SPATIAL
DIMENSIONS OF
HUMAN
RIGHTS IN
THE URBAN
INFORMAL
VERNACULAR



SHACK DWELLERS HAVE LONG PURSUED LEGAL AVENUES TO CONSOLIDATE HOUSING. A RECENT CASE DEMANDING INTERIM BASIC SERVICES FOR AN INFORMAL SETTLEMENT, HOWEVER, WAS AS MUCH A DEMAND FOR DIGNITY, EQUALITY AND VISIBILITY - CITIZENSHIP - AS FOR TOILETS, TAPS AND LIGHTS.

By **Kristen Kornienko**

A map of Harry Gwala settlement by the author and residents, which became a key item of evidence in court



This essay chronicles my involvement in the preparation of evidence for the recent case of *Nokotyana v Ekurhuleni Metropolitan Municipality*, while at the same time using the experience as a conduit to consider the actors grappling with housing and the rights of citizenship within the urban realm. It is a vignette drawn from the Harry Gwala shack residents' ongoing, rights-based quest for a dignified living environment that demonstrates

their self-initiated collaborations with professionals like myself, which led to the drawing of a map depicting their concrete realities, while at the same time revealing one of the abstract consequences of those realities – the changing face of hope. It also chronicles how South Africa's Constitutional Court jurisprudence, while empowering that hope, concomitantly undermines it with its seeming impotence in defining the content of the Constitution's

socio-economic rights (the right to a dignified life), curtailing potential socio-spatial transformation in informal communities.

Looking out over the makeshift rooftops of Harry Gwala, it is easy to question whether hope for a viable process of change lies in this self-made, organic development. Yet, is the sterile replication of corrugated rooftops in state 'township developments' any more hopeful? Instead, perhaps hope resides in the urban poor's increasing knowledge of their constitutional rights and development policies, and their use of courts to demand implementation'. After all, it is here that I found the role dignity plays unfolding in the living spaces of the community and in the private personas of the Harry Gwala residents. It was the settlement's leader, Johnson Nokotyana, who – with the support of the community – initiated the case, and followed its passage through to appeal before the Constitutional Court, demanding the dignity and reality of basic services for a community that began as an overflow tent-town adjacent to an apartheid era township in the mid-1980s, and is still without adequate toilets, lights and water taps.

Harry Gwala community's legal representative, human rights lawyer Moray Harthorn, related how this transpired, beginning with an initial collaboration in July 2004, when the residents:

Were under acute threat of eviction and relocation, the lorries were there and the Red Ants were removing people to [the peripheral township of] Chief Letuli. It was a desperate situation. I was being called on a Saturday morning because the lorries were there rounding people up.

For the next several years, there were repeated failed consultations with the municipality. Then:

In 2007, people felt emboldened to ask for another meeting [with the city] to request interim services. To ask for toilets, which we were told was not possible. For refuse removal, which we were told would happen. And for electricity, which we were told we would have to wait until July to hear about. Nothing happened.

It was at this point that the community decided to bring a suit against the city of Ekurhuleni. Since then, the residents and Harthorn, with policy advice from Marie Huchzermeyer, have built a case for *in situ* upgrading stemming from Chapters 12 and 13 (now Volume 4, Part 3) of the *National Housing Code*.

I was introduced to Hathorn in 2007 and began fieldwork in Harry Gwala concerning sensitive methods of implementing infrastructural upgrades. In conversations and meetings with residents and Hathorn, the question of how to present the community's lack of water taps to the court in a compelling manner arose. We settled on the simple, yet visually powerful, idea of physically mapping the community of 1,250 households within the framework of South Africa's *Water Services Act*, which states there must be a source of potable water within 200 meters of every household. Using equipment borrowed from the maintenance department at the University of the Witwatersrand, a group of residents and I produced a map of the settlement.

As desired, this process of mapping articulated the everyday concrete realities, while unearthing a character of personal dignity, which resonated within the precariousness of the community. A casual look at informal settlement in South Africa is misleading, eliciting such sentiments as 'bleak', 'dangerous' and 'desperate'. While those characterizations are distressingly accurate, further engagement with the organic aesthetic of Harry Gwala revealed a community embedded in its locale on the eastern edge of greater Johannesburg, where livelihoods are deftly crafted and elaborate social networks are formed. It revealed a community whose residents hang on to their sometimes tattered belief in the South Africa that Madiba (former President Nelson Mandela) described, in which they have a right to a place in the city. It revealed a community waiting for the government to fulfill its promises to provide housing, and at the same time forming civil organizations and plotting survival strategies. It also revealed community fears that the municipality will again send Red Ants – a security agency described as 'state-sponsored mercenaries' – to demolish their homes or evict their neighbors².

Meanwhile, daily rhythms proceed. Residents wait for the city to install more water taps or they informally install their own. Illicit electrical connections to power bare bulbs, radios, TVs and computers are wired shrewdly. Residents go to work or look for work. Mobile phones are charged on car batteries or solar panels for a fee. Men push and pull handmade carts twice their height filled with recyclable materials. People play community league football on a field of dust using a ball, or a can, or a plastic bottle. Women wait for the price of paraffin to come down while eating less and sitting in the dark. They scabble in the coal dust making briquettes with mud. Residents stand in line for water,

gossiping in groups about the latest news, or squabbling about their place in the queue. They scrub and iron their clothes and polish school shoes. Passing a *shebeen* (tavern) there is the sound of music, laughter and shouting. There is the smell of cooking and open sewers. This was the contextual texture within which we walked and measured and mapped.

The map, though only in the form of lines and colors representing actual distances, became evidence heard in the Johannesburg High Court in 2008. The court decided against sanitation, electricity and high mast lighting. It did, however, order five more water taps to be installed. On appeal, the richness of personal dignity alluded to in the mapping process underpinned Hathorn's legal argument, rooted in the interdependence between abstract notions of a dignified life and the concrete reality of basic services. 'We wanted to address the Constitution's intent of dignity

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and equality, to make some statement that sanitation should be addressed on this ground'. Others echo this link³. The court found against the line of argument, however, thus legitimizing misuse of Chapter 13 of the Housing Code⁴. Instead of empowering socio-economic rights, the court ordered the province to decide on the feasibility of upgrading Harry Gwala within 14 months (by the end of 2011). To date, the community has not only been left in the same physical state, but effectively on the outside of South Africa's new democracy looking in.

My experience in Harry Gwala supports Pithouse's claim that South Africa's promise of housing has two faces: the physical reality of a living environment and 'a mode of inclusion into the post-apartheid nation... a realization of the promise of democratic citizenship'⁵. The implications of this dichotomy manifested in my post-case interviews with residents, which exposed a tension elicited by des-

perate need, a growing lack of faith in the government, and a residual loyalty to the African National Congress, the dominant emancipatory political party of the apartheid struggle now in power⁶. The canniness with which many shack dwellers see through progressive housing rhetoric was displayed by a resident who commented on the 'the watch-a-ma-call-it wasting list' when referring to the official lists and backlogs overshadowing South Africa's urban housing delivery. His comment also intimates a pervasive erosion of hope.

At the same time, the perceptiveness framing the resident's statement serves to stave off hopelessness – as has been revealed, amidst this shrewdness is an element of self-determination. Mbembe alludes to the nature of this tension between hope and hopelessness in his statement that, 'what gave... the future its power was the hope that we might bring into being... a systematic transformation in the logic of our social life'⁷. He questions hope when he suggests that in recent years life has been reduced to 'a struggle to make it from today to tomorrow' for many of the nation's poorest. In an effort to dispel Mbembe's use of 'gave' in the past tense, I am reminded of Fanon's notion that formerly oppressed 'people [need] to find their own vernaculars and practices for realizing themselves as creator of life', thus reflecting on whether the process of informal development, as illustrated in this vignette of Harry Gwala, is in fact a necessary, painful machination toward authentic democratic change⁸. ♦

- 1 S'bu Zikode, 'Despite the State's Violence, Our Fight to Escape the Mud, Shit and Fire of South Africa's Slums Will Continue' (11 November 2013) *The Guardian*.
- 2 Dan McDougal, 'Slum Clearance, South Africa-Style' (25 April 2010) *The Sunday Times*.
- 3 Marius Pieterse, 'Eating Socio-Economic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited' (2007) 29 *Human Rights Quarterly* 796; Paul O'Connell, 'The Death of Socio-Economic Rights' (2011) 74 *The Modern Law Review* 532; Redson Kapindu, 'The Desperate Left in Desperation: A Court in Retreat – *Nkotyana v Ekurhuleni Metropolitan Municipality* Revisited' (2011) *Constitutional Court Review*.
- 4 Marie Huchzermeyer, *Cities With Slums* (2011).
- 5 Richard Pithouse, 'Political Agency in South African Shack Settlements' (2012) *Presentation at the Conference on Urban Revolutions in the Age of Global Urbanism* 7.
- 6 Kristin Kornienko, *Engaging Informal Settlements as Landscapes of Place: Reconceptualizing Urban Communities in the Struggle for In Situ Upgrading* (Doctoral Thesis, 2013).
- 7 Achille Mbembe, 'Democracy as a Community Life' (2011) *Public Seminar: Wits Institute for Social and Economic Research* at http://www.jwtc.org.za/volume_4/achille_mbembe.htm
- 8 Franz Fanon, *The Wretched of the Earth* (2004) 135.

**EVERYONE HAS THE RIGHT TO
HAVE ACCESS TO ADEQUATE
HOUSING.**

**Constitution of the Republic
of South Africa, 1996**