



IN PROFILE: TOWARDS RECLAIMING THE CITY

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Ndifuna Ukwazi (NU), a non-profit organisation that strives to advance urban land justice in Cape Town, and Reclaim the City (RtC), a campaign to prevent the regressive disposal of well-located public land, have adopted a three-pronged strategy to reclaim local democratic space in Cape Town. The strategy includes strategic litigation, legitimised by a popular mandate, and communicated through an intense media push. This *In Profile* examines the reasoning behind the strategy, and the successes and challenges encountered.

BACKGROUND

South Africa faces an acute housing crisis.¹ In Cape Town, almost 400 000 households are in need of housing.² Local and provincial governments have the responsibility to progressively realise the right to housing for citizens living within their boundaries. A wealth of academic literature describes the spatial mismatch between employment opportunities and housing location in Cape Town; this is also recognised in both the City and Provincial Spatial Development Frameworks (SDFs) that call for urban densification and integrated, well-located housing developments.

Public land that could be used for such housing is scarce. The Mayor of Cape Town, Patricia de Lille, has repeatedly called on National Government to release nationally-owned land for development due to the 'shortage of suitable available land for housing'.³ Scarcity, however, does not mean that appropriate land does not exist; the Western Cape Provincial Government (WCPG), for example, owns a number of land parcels within the inner city with great potential for housing development, some of which were in fact advertised as possible investment opportunities.⁴ Yet despite progressive policies and rhetoric, the WCPG has elected to dispose of its valuable land assets with a seeming disregard for the long-term social and economic costs.⁵ The sale of one particular piece of

land in early 2016, the former Tafelberg Remedial School in Sea Point, fuelled the birth of the Reclaim the City campaign (RtC), to prevent the regressive disposal of well-located public land.

STRATEGIC LITIGATION

As far back as 2014, an attempt was made to engage with the WCPG, with regard to the proposed disposal of four well-located parcels of land.⁶ In April of that year, NU, together with two of its partner non-governmental organisations, Equal Education (EE) and the Social Justice Coalition (SJC), made a joint submission to the Provincial Minister of Transport and Public Works objecting to his department's proposed disposal of these land parcels on the basis that those properties should be used to develop mixed-income housing.⁷

Almost two years later, when the Tafelberg property was sold, NU offered its legal services to RtC. This was preceded by correspondence between NU and the WCPG, a few months earlier. NU sought clarity from the department about the rationale behind the sale of the site, in the midst of a housing crisis, and when there is a need to address apartheid spatial planning. The WCPG was dismissive in its response, and suggested NU make a Promotion to Access to Information Act (PAIA) request.⁸

Below are the motivations for, and outcomes of, the resultant strategic decisions taken by RtC and NU:

1. Seek court intervention to urgently interdict the transfer of Tafelberg to ensure that there would be time for a review of the province's decision to sell the land before the property moved out of the state's possession. The threat of litigation prompted an offer from the province to initiate a mediation process.⁹
2. NU, representing supporters of RtC, proposed that information exchanged during mediation should be released, if not during, then at least at the conclusion of the process, to ensure an open and transparent negotiation process. The WCPG withdrew from negotiations around the terms of mediation.
3. The WCPG then offered a settlement to avoid going to court, the terms of which effectively rewound the clock, going back to the point where it gave notice of the intention to dispose of Tafelberg. The province offered to re-send the notices of disposal, this time including a notice in an isiXhosa newspaper as required by law and allowing for public submissions of any objections to the proposed sale.
4. An emergency meeting of RtC constituents was held to discuss the terms. It was decided that the settlement should be accepted with the following amendments. The WCPG should:
 - ✦ Release the record of reasons for the decision to sell the property in the first place.
 - ✦ Commit to hold a public hearing to discuss the sale with concerned citizens.
 - ✦ Identify land that it owns in Cape Town upon which it will commit to building affordable housing.
5. The WCPG rejected all three amendments.
6. After the proposed mediation and amended settlement was unsuccessful, RtC lawyers accepted an offer from the WCPG in May 2016.¹⁰

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7. Following the court order, a collective decision was made giving the public an opportunity to protest the disposal and preventing the sale of Tafelberg was vital (even without the amendments to the settlement) and a major victory for the campaign.

BUILDING SUPPORT AND ESTABLISHING A MANDATE

Key to the campaign building momentum and its success has been the bringing together of a wide range of supporters and constituents. In mobilising supporters from as disparate a background as a middle-aged mother working as a domestic worker in Sea Point, to a middle-class young person studying at UCT, RtC has established a diverse support base.

Diversity of voices and a focus on the experiences of those most affected by the housing crisis have been important in building solidarity between different communities and sites of struggle. RtC organised regular weekend forums, where supporters could give testimony to how spatial exclusion affected them personally. These same forums provided a space for campaign updates, discussion and debate, and collective decision-making on certain campaign issues.

Despite having faced, and are still facing, difficulties when attempting democratic, *legitimate* and *inclusive* decision-making in the absence of defined campaign structures, these forums have been crucial to building the legitimacy of RtC. Supporters of the campaign were able to provide NU with a mandate to represent their interests through strategic litigation. Further, the founding affidavit and four

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supporting affidavits submitted as part of the court action were authored by forum attendees.

POPULAR EDUCATION AND THE MEDIA

In addition to legal representation, NU has been able to offer RtC research and communication support. An important aspect of the overall campaign strategy has been to provide supporters with solid facts regarding the realities and costs of the housing crisis, South African housing policy and law, and international examples of alternatives to the apartheid city. Armed with this knowledge, myths and misconceptions about an inclusive Cape Town can be dispelled.

The dissemination of this content has not been without its challenges: the main difficulty has been tailoring a particular topic to a particular constituency. For example, residents of Sea Point may be interested in a different subject matter to the Young Mobilisers, a group comprised of youth from different backgrounds – some are students, some are young professionals. NU has tried to overcome this hurdle by hosting fortnightly reading groups. The manner in which these have been executed has been rather sporadic and participation inconsistent. Working

towards a more consistent, effective manner in relaying internally produced content is currently a key objective of both RtC and NU.

Another tactic has been providing information to journalists, and the media at large – a critical tactic for capturing public imagination. Updates of campaign progress through social, print and broadcast media have placed immense pressure on the WCPG. Front page newspaper articles, high profile radio interviews, and consistent social media attention have forced responses, engagement, and ultimately – in combination with strategic litigation – a major concession in the form of the court-sanctioned settlement.

CONCLUSION

The three-pronged campaigning explored in this paper – strategic litigation, legitimised by a popular mandate, and communicated through an intense media push – has proven to be very effective for NU and RtC. The formation of the campaign was not a difficult process, as issues around land use, access to housing and spatial integration are important to many. The challenge has however been in creating and sustaining meaningful participation and inclusion in decision-making with supporters and campaign constituencies in an environment where decisions have had to be made at an incredibly fast pace. As we move forward, this is a challenge we attempt to overcome in order to really reclaim local democratic spaces in Cape Town.

NOTES

- ¹ Approximately 1.9 million households are living in shacks or informal dwellings country-wide. Statistics South Africa, 2011. Census 2011- Fact Sheet, pg. 9. http://www.statssa.gov.za/census/census_2011/census_products/Census_2011_Fact_sheet.pdf
- ² City of Cape Town. *Built Environment Performance Plan 2015/2016*, pg.33. http://www.capetown.gov.za/en/Housing/Documents/CCT_BEPP_2015_16_June.pdf%20Accessed%20%20February%202016
- ³ City of Cape Town. Media Release, 06 February 2014. *Open Letter to president Jacob Zuma from Executive Mayor of Cape Town, Alderman Patricia De Lille*. <https://www.capetown.gov.za/en/MediaReleases/Pages/Open-ettertoPresidentJacobZumafromtheExecutiveMayorofCapeTownAldermanPatriciadeLille.aspx>
- ⁴ Western Cape Government, Department of Transport and Public Works, March 2014. *Request for Expressions of Interest: Property Development Investment Opportunities in the Cape Town Central City Regeneration Programme*. <https://www.westerncape.gov.za/text/2014/March/expression-of-interest-regeneration-programme.pdf>
- ⁵ Ibid. (Helen Bowden Nurses Home, Main Road Sea Point, Top Yard and Alfred Street Complex. Collectively known as the Four Sites).
- ⁶ The Alfred Street complex, which is bordered by Prestwich, Chiappini and Alfred Streets in the CBD; Helen Bowden Nurses Home in Green Point; Top Yard on Buitenkant Street; and the former Tafelberg Remedial School site in Sea Point.
- ⁷ Joint Submission to the Ministry of Transport and Public Works; Social Justice Coalition, Ndifuna Ukwazi and Equal Education, April 2014. *Provincial Government Must Halt Sale and/or Lease of Four Properties Showcased at Investors Conference*. http://reclaimthecity.org.za/wp-content/uploads/2016/03/9.-Joint-Submission-to-Ministry-of-Transport-and-Public-Works_17-April-2014.pdf
- ⁸ Minister letter to NU, <http://reclaimthecity.org.za/wp-content/uploads/2016/03/15.-Minister-Grant-letter-to-NU-19-February-2016.pdf>
- ⁹ Mediation normally entails a neutral third party facilitating a discussion between two sides during a disagreement, and throughout there is an understanding that information exchanged is strictly confidential.
- ¹⁰ In effect, the WCPG admitted that it failed to comply with legal requirements in the sale of state land. The settlement, made an order of court, states that the WCPG must reopen the 21 day period for public comment and objection. The Provincial Cabinet, and indeed Premier Helen Zille herself, will review the objections and make a final decision as to whether to go ahead or to cancel the proposed sale.