



SPATIAL JUSTICE: ACCOUNTABILITY THROUGH COLLABORATION AND CONFRONTATION

Edward Moloji and Tiffany Ebrahim¹ - Socio-Economic Rights Institute

Approaches adopted by social justice organisations are often characterised as either primarily ‘collaborative’ in that their strategies aim to build collaborative relationships between government, citizens and civil society, or as ‘confrontational’ in that they aim primarily to activate citizens to hold government accountable. These approaches and strategies can however be interwoven, and while both are necessary, neither is sufficient to improve accountability to social justice imperatives, or to enhance the agency of communities to hold duty bearers to account.



PHOTO: SOCIO-ECONOMIC RIGHTS INSTITUTE

BY INTERWEAVING PUBLIC interest litigation, applied research and policy advocacy, the Socio-Economic Rights Institute (SERI) employs a combination of confrontational, cooperative and complementary strategies to improve social and spatial justice.

This chapter begins by locating accountability within the context of social and spatial justice. It then

discusses different methods of engaging the state in order to advance accountability through the lens of a “4C” (Confrontational, Complementary, Cooperative and Co-opted) model. It then sets out examples of relevant methods: the Chung Hua Mansions case as an example of a confrontational method; the application of the findings of the Spatial Mismatch research report² as a complementary method, and

Acknowledging and 'recognising the injustices of the past' begins with explicitly requiring the radical transformation of South Africa into 'a society based on democratic values, social justice and fundamental human rights' (The Constitution 1996: 2).

SERI's submission on the City of Johannesburg's Special Process for the Relocation of Evictees (SPRE) as a cooperative method. The chapter then analyses how confrontational, complementary and cooperative methods can be used together or separately to advance accountability, and concludes with a reflection on lessons, implications and risks.

ACCOUNTABILITY TO SOCIAL AND SPATIAL JUSTICE

The enactment of the South African Constitution and the transition to constitutional democracy has been understood as 'a bridge away from a culture of authority... to a culture of justification –a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion' (Mureinik 1994: 32). This understanding, embodied throughout the text of the Constitution, is most clearly stated in its founding values in which 'accountability, responsiveness and openness' are listed alongside the 'advancement of human rights and freedoms' (The Constitution 1996: 3). Moreover, accountability creates an obligation on the state 'to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner' (Patel 2013: 57). In line with this, the state is ultimately accountable for the advancement of human rights and freedoms and may be called to

account for actions it takes towards this objective. The state is obliged to respond to the demands of the people and carry out its duties in a responsive and open manner, which demands regular interaction with people and a willingness to make policy decisions that are reflective of this engagement.

Social justice organisations aim to address issues related to rights, opportunities and socio-economic inequalities. The United Nations (2006) considers the equality of rights, the equality of opportunities and the reduction of socio-economic inequality as essential components of a social justice agenda. Many human rights organisations in South Africa derive their social justice agendas from principles in the Constitution. Acknowledging and 'recognising the injustices of the past' begins with explicitly requiring the radical transformation of South Africa into 'a society based on democratic values, social justice and fundamental human rights' (The Constitution 1996: 2).

Spatial justice considers how geographical space is linked to social justice. A spatial justice agenda involves analysing and influencing the intersection between geography and unjust social phenomena (Marcuse 2009). Spatial justice asks which social and economic groups get to live, work and play in geographical spaces that offer valued resources and opportunities (Soja 2009).

The Spatial Planning and Land Use Management Act (16 of 2013) (SPLUMA) aims to enable effective and efficient planning and land use management. SPLUMA focuses on five development principles which are listed as: spatial justice, spatial sustainability, spatial resilience, efficiency and good administration. In doing this, it foregrounds spatial justice as the first principle, creating a legal obligation to align land development and land use management policies and plans with spatial justice. Within this principle of spatial

justice, the Act asserts that 'past spatial and other development imbalances must be redressed through improved access to and use of land' and that 'spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation'. This reveals a clear legal and policy imperative to improve spatial justice and to redress apartheid spatial injustice which entrenched social injustice by actively locating black communities on city peripheries.

SERI's work combines a social and spatial justice agenda. Through a combination of public interest litigation, action research and policy advocacy, SERI aims to hold the state accountable to its constitutional housing obligations and provide tools for citizens to hold duty bearers accountable to social and spatial justice imperatives and to provide adequate housing for the poor, closely located to livelihood opportunities.

There is no single formula for successful engagement with the state, and a "multidimensional approach"³ through different but complementary methods is arguably the most effective. The Public Affairs Research Institute (PARI) has developed a 4C model to characterise the interactions between social justice organisations (SJOs)⁴ and the state⁵. It broadly categorises organisational approaches into Confrontation, Cooperation, Complementary and Co-optation. Confrontation is considered likely when there is a fundamental disagreement, or perception of disagreement, on what a social justice outcome would be or how it could be achieved. In order to redress fundamental disjoints between policy and practice or a failure to implement legal or policy imperatives, SJOs may engage through public participation processes, or in different forms of protest or collective

There is no single formula for successful engagement with the state, and a "multidimensional approach" through different but complementary methods is arguably the most effective.

action or undertake litigation. Complementary approaches often rely on pre-existing networks and suggest some degree of agreement between the state and an SJO on the goals and strategies needed for a social justice outcome. Cooperation implies a high level of agreement between the goals and strategies employed by SJOs and the state. Lastly, Co-optation as a method is less concerned with influencing the outcomes of social justice, but places an emphasis on the processes and social relations with the state that are required to achieve it.

PUBLIC INTEREST LITIGATION - INNER CITY HOUSING

SERI's litigation seeks to assist communities and social movements to develop legal agendas for change to complement and reinforce their other activities, campaigns and strategies. Some of this work includes the use of the court system to confront the injustices encountered and to hold duty bearers to account. The case of the residents of Chung Hua mansions provides an example of the use of litigation as a confrontational method to advance social and spatial justice. This case illustrates the use of litigation to hold the City of Johannesburg (the City) accountable to provide alternative accommodation and prevent homelessness arising from the eviction of poor inner city residents.

SERI represented 250 occupiers in a dilapidated building in the inner city of Johannesburg. Having previously attempted to illegally evict the residents, the owner launched an eviction application in the High Court seeking their eviction. The occupiers,

represented by SERI, sought an order to direct the City to provide all the occupiers with alternative accommodation nearby and secure from future eviction. Most of the residents in the building rely on living in the inner city for their livelihoods and jobs and would not be able to afford the transport costs necessitated by living elsewhere. Removing them from the city would be counterproductive to spatial and social justice imperatives.

The case was heard in June 2012 and judgement handed down the same day. The court ordered the City to provide alternative accommodation to all of the Chung Hua occupiers in a location as close as possible to their current location, where they may reside without a threat of further evictions, within a period of seven months. The City was further ordered to file a report with the Court within four months of the order identifying the nature and location of the alternative accommodation to be provided to the residents. The City however failed to comply with the court order and on the 20th of December 2012, SERI launched an enforcement application against the Executive Mayor, the City Manager and the Director of Housing of the City of Johannesburg. The purpose of the enforcement application was to compel each of these duty bearers to take the necessary steps to make sure that the City complied with the court order granted in June 2012. The citing of individual duty bearers in litigation is highly confrontational and may be taken as a personal attack on the officials – it specifically challenges these particular individuals to account for their failure to act on court orders.

In May 2013, the court directed the Executive Mayor, City Manager and Director of Housing to personally explain why the City had not acted to provide shelter to the homeless, and ordered them to take the steps necessary to provide shelter to the occupiers of Chung Hua Mansions within two months. If they did not, the Mayor, City Manager and

the Director of Housing would be held in contempt, and be handed a fine or jail time as a result. The City subsequently appealed the court's decision and the matter was heard on appeal. The court then directed the parties to "meaningfully engage" with each other. The principle of meaningful engagement is to ensure that parties engage with one another with the aim of finding a solution to the problem at the hand. The parties discussed the kind of accommodation offered, the terms and conditions on which the accommodation would be provided and any objections to them which were raised by the occupiers. Following the engagements, the City finally offered accommodation in portable cabins on open land to the south of the inner city, which it said would be ready by September 2015. The process of meaningful engagement introduces elements of complementary and cooperative working relations with the state in a confrontational atmosphere. This engagement allows the parties involved to collaborate in finding a solution to the matter at hand. This process illustrates that confrontational methods can allow for complementary and cooperative methods.

By September 2015 the accommodation was not ready and SERI instituted contempt proceedings against the Mayor. In so doing, SERI moved again from the use of complementary and cooperative methods to a confrontational method. The institution of these proceedings led, in part, to the City eventually identifying a small building next to a sports field just to the south of the inner city, to which 93 Chung Hua residents were relocated on the 9th and 11th of January 2016. By confronting the City in court, SERI successfully held it accountable for its inaction in ensuring that the residents of Chung Hua were not rendered homeless. The litigation furthermore ensured that people were not relocated away from their current place of residence so that they could continue to build their livelihoods in the city.

APPLIED RESEARCH – SPATIAL MISMATCH

SERI's spatial mismatch research provides an example of how applied research can produce a measure to which the state can be held accountable to spatial justice targets and plans. Through this research, SERI's goals complemented those of the state to redress the effects of apartheid spatial planning, which have been on the agenda of democratic housing and planning sectors. This is evidenced by the 2004 Breaking New Ground (BNG) plan, which recognises explicitly that 'the inequalities and inefficiencies of the apartheid space economy [have] lingered on', and that "[h]ousing for low-income urban dwellers is still provided on the periphery and very limited delivery has taken place in rural areas' (National Department of Housing, 2004:11).

In dealing with this inequality, the plan proposed various measures to 'promote the achievement of a non-racial, integrated society through the development of sustainable human settlements and quality housing' (National Department of Housing, 2004:7). The state's commitment to redressing apartheid spatial planning is further evidenced by the introduction of SPLUMA, a land use management act aimed at reversing apartheid spatial legacies through the development of key policy targets and strategic spatial planning interventions.

SERI's research on spatial mismatch provides a mechanism by which to measure progress towards these goals. The "Spatial Mismatch Hypothesis" is the idea that living far from jobs may harm one's employment prospects. The research investigated the applicability and extent of spatial mismatch in metropolitan municipalities and found that where people live has direct effects on their employment opportunities, re-enforcing the rationale on which SPLUMA is based, that people should be housed close to dense and economically viable urban cores.

Well-located residences remain unaffordable for the poor, forcing them to live on city edges, which creates a poverty trap in which living on the periphery leads to poverty, and poverty ensures living on the periphery. Population density increases with distance from the city centre, while jobs, economic activity and social amenities are most highly concentrated in the urban core. In order to curb the effects of spatial mismatch the report concludes that proximity to jobs significantly reduces the level of unemployment in a particular geographic area. Policy recommendations include efforts to counter spatial mismatch by making housing available for the poor in well-located areas, close to jobs in economic centres and well-off suburbs.

Spatial mismatch is a powerful tool for both accountability and collaboration as it provides a measurable indicator of a key principle in SPLUMA and the extent to which SPLUMA is implemented; it further provides the opportunity to identify where the gaps lie and advocate for properly regulated, socially responsible development that can help lift people out of poverty. This strategy will be central to dismantling the "apartheid city" and moving towards spatial justice in urban areas. The jobs/housing mismatch is central in SPLUMA-required spatial development frameworks, municipal bylaws and land development decisions. Through the provision of a measurable indicator for determining progress, this research created an accountability mechanism. Quantifying the size of spatial mismatch in South Africa offers a benchmark against which progress towards one aspect of spatial justice can be measured.

The jobs/housing mismatch is central in SPLUMA-required spatial development frameworks, municipal bylaws and land development decisions.

POLICY ADVOCACY – RELOCATION OF EVICTEES

SERI's right to housing advocacy aims to call municipalities to establish plans and measures to provide affordable accommodation close to economically viable areas in cities. The inner city in Johannesburg is an advantageous location with access to employment opportunities, transport and other social amenities. Nearly all of the state's efforts to facilitate affordable housing in Johannesburg's inner city have served households with income between R3 500 and R15 000 (SERI 2016a). Many households in the inner city that earn less than R3 500 face evictions by private developers or municipalities in processes of gentrification underway in parts of the inner city.

Cooperation between a social justice organisation and the state implies there is a high level of agreement on goals and strategies (PARI 2017). In court papers⁶ the City of Johannesburg acknowledges that there is a lack of affordable housing available in the inner city. SERI is in agreement with the City on this, and has developed a range of advocacy strategies to critically engage the state on increasing its supply of affordable housing programmes and alternative accommodation programmes in South Africa's higher density urban centres. These strategies include, but are not limited to, developing policy briefs, attending public consultations on policy amendments and making policy submissions.⁷

In 2016, SERI made a submission on the City of Johannesburg's Special Process for the

Relocation of Evictees (SPRE). The City formulated SPRE in response to its constitutional obligation to provide temporary alternative accommodation to occupants who might be rendered homeless by an eviction. SPRE is an example of cooperation with the state by contributing to local government's development of policy and guidelines on the procedural requirements for an eviction, meaningful engagement and the provision of alternative accommodation. The City invited a range of key stakeholders, including SERI, to presentations of their policy, guidelines and implementation plans to provide alternative accommodation in the inner city. SERI made a submission that welcomed the City's recognition of its constitutional and statutory obligations; its plan to provide permanent accommodation alternatives; its situational assessment and enumeration process; and the adoption of a process that addressed both "qualifying" and "non-qualifying" occupiers. The submission also raised concerns about the quality of the City's engagement with residents, the nature of alternative accommodation provided, and the qualification criteria for residents to access alternative accommodation.

Although there was agreement between SERI and the City on the need to develop a programmatic approach to the provision of alternative accommodation in the inner city, problematic aspects of the policy and guideline that concerned SERI were equally noted in the submission, which shows that absolute agreement is not required for an SJO to build a cooperative and collaborative relationship with the state.

ANALYSIS

Public interest legal organisations do not solely rely on litigation or confrontation to bring about social change. Dugard and Langford (2011: 55) argue that public interest litigation should be 'seen as merely one facet – albeit an important one – of broader, more varied

SERI has developed a range of advocacy strategies to critically engage the state on increasing its supply of affordable housing programmes and alternative accommodation programmes in South Africa's higher density urban centres.

efforts to achieve social mobilisation and change'. Without over-emphasising the agency of actors and under-emphasising the structures of dominating power a single judgment is unlikely to undo, Dugard and Langford (2011) propose that the empowering potential of litigation lies in litigation that is rooted in broader mobilisation. The Public Interest Legal Services in South Africa (PILS) report published by SERI in 2015 extends on this argument. The PILS report provides a framework to consider the value and impact of public interest legal organisations. The report suggests that social change is assisted through a variety of complementary methods that should not be confined to a positive legal outcome. Applying this lens to SERI's relationship with the state is useful insofar as it highlights the simultaneous use of confrontational, complementary and cooperative methods to critically engage and collaborate with the state on its social and spatial justice agenda.

SERI's use of public interest litigation, research and policy advocacy characterises the organisation's relationship with the state as confrontational, complementary and cooperative. According to the PILS report (2015), these methods give rise to a variety of sites of impact, ranging from particular outcomes for individuals and groups, symbolic and discursive changes, and changes to law and policy.

Obtaining a positive outcome for particular individuals and groups is understood as 'actual concrete change to the lives of clients, individuals and communities' (SERI 2015: 65). The use of litigation to secure alternative accommodation for the residents of Chung Hua mansions is an example of this concrete change. Symbolic and discursive changes is concerned with 'how an issue is understood and discussed, in the public domain' (SERI 2015: 65). The production of research on the existence of spatial mismatch helps frame a discussion regarding the impact of housing that is far removed from job

The production of research on the existence of spatial mismatch helps frame a discussion regarding the impact of housing that is far removed from job opportunities and assists in the production of policy tools for redress.

opportunities and assists in the production of policy tools for redress. Lastly, changes to law and policy speaks to 'changes in policy that have occurred as a result of an intervention' (SERI 2015: 65). The SPRE submission on the City's approach to the relocation of unlawful occupiers is an example of SERI cooperating with the state to develop a local government policy that is in line with South Africa's progressive housing jurisprudence.

The simultaneous use of confrontation, cooperation and collaboration as methods of engagement is not necessarily counterproductive. This chapter argues that while these methods may seem to be in conflict with one another, they actually work best when used together. In other words, while confrontational methods may lead to adversarial relationships with the state, and run the risk of forming a barrier to future collaborations, SERI's experience has shown that confrontation usually acts as a vehicle to usher in collaborative approaches with the state. The courts have purposefully tried to enable a collaborative environment between citizens and the state in confrontational atmospheres through the provision of "meaningful engagement". The production of research and comments on public policy by an SJO may complement state objectives, however, these activities are also useful to produce accountability mechanisms that may be used to hold the state accountable to social and spatial justice imperatives. Foregrounding the voices and agency of communities in its litigation, research and advocacy, SERI is able to formulate advocacy positions and litigate in the interests of marginalised communities. The state is

not accountable to social justice organisations, it is accountable to its citizens, and it is citizens who are best placed to relate their experiences and challenges of living in a spatially and socially unjust society.

CONCLUSION

This chapter has set out three examples of tools that can be employed to strengthen accountability to improve social and spatial justice, each speaking to confrontational, complementary and cooperative methods. The chapter illustrates that spatial justice is achievable through methods that include, but are not limited to, targeted policy advocacy, research

and litigation. These methods, that are reflective of confrontational, complementary and co-operative approaches are not exclusive of each other and are better suited when used in conjunction with one another. Lastly, amplifying community voices through litigation, research and advocacy is central to the efficacy of all of these methods in SERI's experience. By defining a research and advocacy agenda that develops the evidence base, and takes forward the agenda of community groups, SJOs can activate the agency of community groups and help shift their role from passive recipient to active citizen, making public accountability a reality.

REFERENCES

- Dugard J and Langford M (2011) Art or Science? Synthesising Lessons from Public Interest Litigation and the Dangers of Legal Determinism. *South African Journal on Human Rights* 27: 39-64.
- Fox J (2000) Civil Society and Political Accountability: Propositions for Discussion. Paper presented at Institutions, Accountability and Democratic Governance in Latin America. The Helen Kellogg Institute for International Studies, University of Notre Dame (May 8-9, 2000)
- Langa P (2006) Transformative Constitutionalism Stellenbosch LR 351, 352.
- Liebenberg S (2016) Remedial Principles and Meaningful Engagement in Education Rights Disputes *PER/PELJ*(19)
- Marcuse P (2009) Spatial Justice: Derivative but Causal of Social Injustice. *Justice Spatiale - Spatial Justice*. 1:1.
- Maylam P (1990) The Rise and Decline of Urban Apartheid in South Africa. *African Affairs* 89(354): 57.
- Mureinik E (1994) A Bridge to Where? Introducing the Interim Bill of Rights. *South African Journal of Human Rights*: 31-48.
- Najam A (2000) 'The Four C's of Government-Third Sector Relations'. *Non-profit Management and Leadership* 10(4): 375-396.
- PARI (Public Affairs Research Institute) (2017) *Social Justice Organisations Working with the State*. Johannesburg: PARI
- Patel M (2013) Transparency and Accountability in Governance: As Reforming Tools in India. *Voice of Research*, 2(2): 56-60
- SACN (South African Cities Network) (2015) *Spluma as a Tool for Spatial Transformation*. Johannesburg: SACN
- RDLR (Rural Development and Land Reform) (2011) Guidelines for the development of Spatial Development Frameworks, version 8. Pretoria
- SERI (Socio-Economic Rights Institute of South Africa) (2015) The Public Interest Legal Services in South Africa. Johannesburg: SERI
- SERI (Socio-Economic Rights Institute of South Africa) (2016a) Policy Brief: Affordable Public Rental Housing. Johannesburg: SERI
- SERI (Socio-Economic Rights Institute of South Africa) (2016b) Edged Out: Spatial Mismatch and Spatial Justice in South Africa's main urban areas. Johannesburg: SERI

NOTES

- ¹ The authors are grateful to Alana Potter, Tim Fish Hodgson and Dennis Webster for their useful writing, advisory and editorial contributions to this chapter.
- ² SERI (2016) "Edged Out: Spatial Mismatch and Spatial Justice in South Africa's main urban areas" accessible here http://www.seri-sa.org/images/SERI_Edged_out_report_Final_high_res.pdf
- ³ The SERI (2015) "The Public Interest Legal Services in South Africa" report can be accessed here http://www.seri-sa.org/images/Seri_Pils_report_Final.pdf
- ⁴ A social justice organisation is defined here as a civil society organisations that explicitly focuses on social justice issues and challenge systemic inequalities.
- ⁵ PARI (2017) "Social Justice Organisations Working with the State" report can be accessed here <http://pari.org.za/wp-content/uploads/Confrontational-Complementary-Co-operative-or-co-opted-Social-Justice-Organisations-working-with-the-State.-RAITH..pdf>
- ⁶ Dladla and the Further Residents of Ekuthuleni Shelter v City of Johannesburg and Another ('Dladla'), City of Johannesburg answering affidavit, para 29
- ⁷ Policy submissions made by SERI include submissions on the City of Johannesburg's draft Spatial Development Framework, and a submission on the City of Johannesburg's draft Spatial Development Framework