

Land Occupation and the Limits of Party Politics

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In the recent election the DA, together with COPE, made much of their intention to defend the rule of the law. But while the dust thrown up in that election is still settling, the City of Cape Town is already engaged in violent and unlawful behaviour towards its most vulnerable citizens.

On Tuesday 19 May, a group of backyard shack dwellers occupied a piece of vacant municipal owned land in Macassar Village, outside Cape Town. Rents for backyard shacks in the area can reach as high as R600 a month and they have become overcrowded and simply unaffordable to many people. The law on trespass does render this occupation unlawful and the City of Cape Town has laid a charge of trespass against the occupiers. But following the right to housing guaranteed in the Constitution the law also makes specific provision for the protection of the rights of unlawful occupiers. That protection extends to making it a criminal offence to evict an unlawful occupier without an order of the court.

A court can only issue an eviction order against an unlawful occupier after a careful process that includes a significant degree of consideration for the rights of occupier. A Constitutional Court decision against the Port Elizabeth Municipality in 2004 famously insisted that, when considering application for eviction orders, courts are required to “infuse elements of grace and compassion into the formal structures of the law.” It added that they should pay careful attention to the history of evictions under apartheid and to how that history has left “lasting and enduring effects on the distribution of land and access to housing today.”

The state should have responded to this occupation by immediately providing emergency support for basic needs. After all unaffordable rents and consequent overcrowding are as much a disaster as any flood or fire in terms of the suffering that they impose on people. The state should then have begun sincere negotiations about some sort of interim relief leading to a long term plan for housing.

But instead the state response has been violent and, in strict legal terms, criminal.

People, including a child, have been shot at with rubber bullets and others have been arrested on the entirely spurious charge of public violence. It is in fact the police who are guilty of public violence not to mention assault, intimidation and wrongful arrest. Moreover the state has demolished the occupier’s shacks every day and then confiscated their building materials. Despite this the occupiers have managed to rebuild everyday with what materials remain. These demolitions have been undertaken without an order of the court and are therefore illegal and criminal acts. The confiscation of building materials is straight forward theft. In terms of the law the infractions of the occupiers are much less serious than those of the state. In principle officers in the police and the Anti-Land Invasions Unit should be immediately arrested for assault, intimidation, theft and

demolition of shacks without an order of the court. But in practice the prospects of this happening are close to zero.

The City of Cape Town's willingness to disregard the rule of law to defend the elite monopoly over urban planning is hardly a unique aberration. On the contrary many ANC run municipalities, with eThekweni and Erkhuleni being perhaps the most notorious, have a long record of routine and systematic state criminality towards shack dwellers. This has included unlawful evictions as well as unlawful and often violent repression. One of the reasons why municipalities have been able to get away with this is that it's often extremely difficult for poor people to get access to competent and committed legal support. Moreover when it is possible to access legal support it sometimes happens that both lawyers and judges put their own class based assumptions and prejudices before the letter of the law.

In the past the DA and the ANC have both given active support to attempts at legal reform aimed at reducing poor people's rights to land and housing. In practice this means that they have both been committed to criminalising the survival strategies of the urban poor and to deploy armed force to defend this criminalisation. When challenged on this they are both likely to argue that the state needs to firm up the law in order to protect its plans for rational development. But everyone knows that there is no rational plan to steadily work through housing lists until everyone has a decent house. On the contrary in most cities the number of people without access to decent housing is growing. According to Professor Martin Legassick in Cape Town "there is a backlog of some 400,000 homes, increasing by some 20,000 a year, but with a maximum of 8, 000 houses a year being built." Across the country 'housing lists' are usually a simple fiction used to justify the arbitrary and often self interested despotism of local political elites and to present popular protest and innovation as 'queue jumping.'

If the major political parties continue to operate on a tacit agreement to accept that the rule of law need not apply to the poor, the demand for real equality before the law will have to come from outside of party politics. But just as the DA and the ANC share a tacit agreement that the rule of law can be suspended to beat poor people back into overcrowded unaffordable backyard shacks the political parties also share a tacit agreement that politics conducted outside of their control is somehow unacceptable. Already Cape Town's DA Mayor Dan Plato and local ID councillor John Heuvel have resorted to the paranoid language that the ANC has routinely deployed against self organised communities and movements. They speak as though there is something perverse and fundamentally illegitimate about independent organisation by poor people. They speak as if a decision to think and act together is some sort of illegitimate conspiracy.

The political parties have failed to address the housing crisis. The magnitude of their failure means that it is inevitable that they will also fail to retain their monopolies on urban planning and on the right to legitimately engage in politics. They are now obligated to face up to all of this and to learn to respond to popular innovation with negotiation and creativity rather than slander and violence. If they are unwilling or unable to do this it

will be them, rather than the people they have failed, who will be responsible for a rapid escalation in the social conflicts that are already endemic in our cities.