Cities and Global Governance

URBAN POLITICS OF HUMAN RIGHTS

Edited by Janne E. Nijman, Barbara Oomen, Elif Durmuş, Sara Miellet and Lisa Roodenburg

‘With contributions from a stellar roster of established and emerging human rights scholars, this book puts urban communities and governance at its center. The results are riveting, and illuminating for both theory and practice. From Istanbul to São Paulo, from San Francisco to Nairobi, the topics covered are broad. At the same time, there is exceptional depth to the analyses, in large part because the chapters are positioned in dialogue around key issues of spatial inequalities, norm diffusion, mobilisation, housing, urban politics, and more. This remarkable volume expands our understanding of the human rights-urban nexus in ways that will reverberate far beyond its pages.’

Martha F. Davis, *University Distinguished Professor of Law, Northeastern University*

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Urban Politics of Human Rights

Increasingly, urban actors invoke human rights to address inequalities, combat privatisation, and underline common aspirations, or to protect vested (private) interests. The potential and the pitfalls of these processes are conditioned by the urban, and deeply political. These urban politics of human rights are at the heart of this book.

An international line-up of contributors with long-term engagement in this field shed light on these politics in cities on four continents and eight cities, presenting a wealth of empirical detail and disciplinary theoreticalisation perspectives. They analyse the 'city society', the urban actors involved, and the mechanisms of human rights mobilisation. In doing so, they show the commonalities in rights engagement in today's globalised and often deeply unequal cities characterised by urban law, private capital but also communities that rally around concepts as the 'right to the city'. Most importantly, the chapters highlight the conditions under which this mobilisation truly contributes to social justice, be it concerning the simple right to presence, cultural rights, accessible housing or – in times of COVID – health care.

Urban Politics of Human Rights provides indispensable reading for anyone with a practical or theoretical interest in the complex, deeply political, and at times also truly promising interrelationship between human rights and the urban.

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Nijman is the author of numerous publications including 'Renaissance of the City as Global Actor. The role of foreign policy and international law practices in the construction of cities as global actors', in *The Transformation of Foreign Policy: Drawing and Managing Boundaries*, ed. by Andreas Fahrmeir, Gunther Hellmann and Miloš Vec (2016) pp. 209–241.

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Cities and Global Governance

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1 General introduction

Urban politics of human rights

Barbara Oomen, Elif Durmuş, Sara Miellet, Janne E. Nijman and Lisa Roodenburg

Introduction

Human rights and the urban – two concepts that both seem to quiver with hope, promise and potential. Songs, selfies and cinematography praising city life conjure images of growth, freedom and emancipation. Similarly, it is difficult to read the preamble of the Universal Declaration of Human Rights without being touched by how its language seeks to emphasise how recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family forms the foundation of freedom, justice and peace in the world. Behind these promises loom, however, perhaps inevitably, the disappointments of the world's stark reality. The failure to deliver on human rights by the very states that signed so many solemn pledges and took on so many treaty obligations becomes clearly visible in cities. The slums behind the shiny facades, the people begging next to high rise banks, the divergent life-worlds and opportunities of children in a single city.

These two concepts and the realities behind them are increasingly connected, one shaping the other. The 'everyday' of human rights surface in street art, park protests and mayors' speeches that confront urban inequalities; they are claimed in newspapers, town halls and district courts. Equally, we see cities claim a role in the promotion and protection of human rights in global (policy) fora. Similarly, human rights and the urban conjoin in the self-identification of 'human rights cities' and in the invocation of the 'right to the city' to attain social justice. However prevalent the interconnection between these two concepts, there is nothing self-evident about it. The seemingly neutral concepts of both 'urban' and 'human rights' are so abstract and vague that we risk losing sight of how their interrelationship and their individual and combined manifestations on the ground are deeply political, with politics understood as the process by which individuals and other actors negotiate and compete in the process of making and implementing shared decisions (Hague et al. 2019, p. 4).

Urban politics of human rights lie at the heart of this volume. We seek to understand who mobilises human rights, via which mechanisms,

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in and through which urban spaces, over which conflicts and – perhaps most importantly – to what effect? To what extent do urban actors realise their articulated visions of justice, equality and democracy? The insights this volume generates are grounded in urban experiences across the world: in Kırşehir in the Asian part of Turkey, in Istanbul, Bologna and Malmö in Europe, in Cape Town and Nairobi in Africa, in São Paulo in South America and in New York, San Francisco and other cities in North America and the Bay Area in North America.

This ambition calls, first, for a close examination of 'the urban', understood as a contested object and concept, a scale of analysis, a process and a 'collective project in which the potentials generated through urbanisation are appropriated and contested' (Brenner and Schmid 2015, p. 65) (Section 'Exploring the Urban'). Subsequently, there is the need for a closer examination of the multi-faceted notion of human rights and its interrelationship with the urban: by what political processes are norms, discourses and practices of human rights urbanised, and how is the urban affected by human rights mobilisations (Section 'Urbanising Human Rights')? After this groundwork, we turn to the urban politics of human rights, focusing first on 'city society' – the individuals and other actors, both within and outside public and private institutions in the city, involved in mobilising human rights (Section 'City Society'). Subsequently, we set out the various mechanisms of mobilisation, ranging from framing, protests and strategic litigation to democratic deliberation and institutionalisation (Section 'Mechanisms of Mobilisation'). This background then allows for a closer examination of the actual politics and the legal, discursive, physical struggles at play in different urban contexts (Section 'A Matter of Politics'). Finally, in this chapter, we explore the conditions under which the urban politics of human rights can further the underlying objectives of urban (social) justice (Section 'To What Effect?').

The analysis presented in this introductory chapter is not merely based on the growing literature on cities and human rights, but foremost on the nine rather complementary chapters that make up this volume. These chapters are written by authors who do not only represent very different disciplines, but also all have a long-term engagement with the cities and the political and legal struggles that they analyse. In addition, the rich empirical accounts highlight various rights at stake, different mechanisms of mobilisation and outcomes; they theorise differently the politics at play and the relationship with the urban.

Situating This Volume

This volume engages with scholarly debates over cities, human rights, urban governance and urban politics, all of which situate the urban as an indispensable scale and site of political struggle and human rights mobilisation. Our inquiry touches upon different (empirical)

developments and by extension, different strands of literature. The first of such developments and relating scholarship is the globalisation of urban law, governance and politics soon after accompanied by the emergence of cities as global actors (Blank 2006a,b, Frug and Barron 2006, Porras 2009, Acuto 2013a,b, Barber 2013, Aust 2015, Curtis 2016, Nijman 2016, Aust 2017, Ljungkvist 2017, Oomen and Baumgärtel 2018, Coenen et al. 2019, De Losada and Galceran-Vercher 2021). This literature has helped establish the importance of the city, often equated with 'the local authority' within international law and global governance structures. The present volume speaks to and complements this literature by examining not only how human rights are urbanised in the local and transnational levels but also the actual on-the-ground mobilisations in and impact of human rights on the urban. This way the – at times unspoken – hypothesis that the local level is the one most fit to implement international laws and policies on the ground as well as see the results thereof is faced with nuanced reality checks through the empirical findings. It is, in addition, important to note that while this strand of literature does not focus explicitly on human rights as a normative framework and concept to analyse in relation to the urban, which is what the present volume aims to do, it does shed light on the dual character of cities as part of the problems characteristic of the 'urban age' and the solutions to such problems (Aust and Du Plessis 2018). Exceptionally, some scholarship on the emergence of cities as global actors point to the need for pluralist understandings of urban agency that look beyond the role of (local) state authorities (Derudder et al. 2018). The argument then is to expand the understanding of urban politics as 'what local state agencies do' to include 'the external, mobilised social groups which try to influence th[e] policies' as developed by local authorities (Savage et al. 2003, p. 153 as cited by Bassens et al. 2018, p. 10).

Second, the increasingly *local* engagement with human rights and its implications for international law is another phenomenon that this volume speaks to. The localisation of human rights has been examined and theorised, albeit rarely with an explicit focus on urban politics (Merry 2006, De Feyter 2011, Brysk and Stohl 2019). This literature offers many useful insights and theories of local human rights practice, social mobilisation (Rajagopal 2003), vernacularisation (Merry 2006) and contestation (Brysk and Stohl 2019). While the 'local' rather than the 'urban' has garnered more attention in this research, some studies examine global urban justice and specific phenomena, such as the emergency of human rights cities (Oomen et al. 2016). In his pathbreaking work on the human rights cities of San Francisco, New York and Barcelona, for instance, Grigolo sets out how a human rights city can be understood as a process defined by the competition and collaboration between different stakeholders, with the institutionalisation of human rights as an objective

(Grigolo 2019). Roodenburg, in her work on the role of human rights in urban debates on migration, distinguishes five functions of human rights in the urban: to legitimise actions that deviate from national policies, as legal standards that guide local policy, to bind actors to a shared goal, at times under the radar and finally to promote a city (Roodenburg 2021). Still, most research on human rights cities focuses more on the legal and sociological phenomenon and the normative legal implications of human rights cities (Hirschl 2020), and much less on the politics of how they come about in diverse urban contexts across and beyond the 'Global South' and the 'Global North'.

Third, this volume also engages with analytical and normative debates beyond urban studies scholarship. Scholarship on human rights, especially research conceptualising human rights (only) as law, and a branch of international law in particular, has been criticised for its state-centricity (Alston 2005, De Feyter 2005, De Brabandere 2009, Clapham 2013, Gal-Or et al. 2015, Fraser 2019). While the engagement of human rights scholarship with an international legal background with cities has brought about attention towards local governments as a relevant actor in human rights (Accardo et al. 2012, Marx et al. 2015, Starl 2016, Oomen and Baumgärtel 2018, Hoffman 2019, Durmuş 2020), the scholarship still focuses its attention on state actors at the local level, mostly disregarding different non-state actors and dynamics within the city. The chapters in this volume address in different ways the critique of state-centrism that has been levelled against the international human rights regime by bringing into focus the urban politics of human rights. The different contributions highlight the involvement of a myriad of actors who use human rights, for instance, to respond to urbanisation processes (García Chueca 2016). At the same time, this volume is mindful of critics who argue, for instance, that human rights city initiatives may preserve the state-centric human rights framework, by emphasising local 'state actors' and by only indirectly recognising the role of other local actors, such as community-based groups and social movements (Grigolo 2016, Fernández-Wulff and Yap 2020). They caution against top-down and programmatic understandings of local human rights engagements and against 'merely substituting the city for the state as the responsible actor' (Grigolo 2016, p. 285, García Chueca 2016, p. 108 as cited by Goodhart 2019, p. 151). Some sharing this criticism of state-centrism and the conceptualisation of the local government as a monolithic 'actor' in the analysis of the localisation of human rights questions have looked at the role of the individuals within the local state authorities (Sabchev et al. 2021; Miellet 2019). The challenge we attempt to tackle in this volume is therefore to examine the complex interactions and negotiations between various non-state and state actors within cities, including key individuals within and outside those 'actors' that shape the urban politics of human rights.

Finally, this volume engages with and speaks to post-colonial critiques of urban studies that call for more 'global' urban studies and debates on theorising urban politics, struggles and justice from a more diverse range of geographical and historical urban contexts (Robinson 2016, 2021). This also calls for, among others, much more attention to post-colonial urban contexts and reflections on urban informality (Roy and Alsayyad 2004, Roy 2011). This volume responds to this invitation, by bringing recent debates on theorising the urban and comparative urbanism as a practice in conversation with scholarly work on the urban politics of human rights. The individual chapters do so by empirically examining the urban politics of human rights in a diverse range of cities across and beyond the Global South and North in relation to different urban processes and phenomena. Some chapters explicitly engage with post-colonial critiques of comparative urbanism, and others zoom in on historical translocal manifestations of the urban politics of human rights.

Having situated this volume vis-à-vis these broader debates, the remainder of this chapter zooms in on key themes and concepts and presents a theorisation of the urban politics of human rights on the basis of the volume's chapters.

Exploring the Urban

The urban condition is often argued to define future life on the planet (Gleeson 2014). We have entered an epoch of new scales of urbanisation: 'the urban represents an increasingly worldwide condition in which political-economic relations are enmeshed' (Brenner and Schmid 2011). In this situation of 'planetary urbanisation', no natural or socio-space on earth remains untouched or unrelated to the urban. We value how this analysis opens up urban research beyond the city in a strictly territorial sense. The present volume does not take the urban or the city as an ontologically fixed or pre-defined category or object of study. Urban scholars have long warned against presenting the urban as a singular condition (Brenner and Schmid 2015, Brenner 2016). Instead, their work traces 'processes of urbanization that are bringing forth diverse socioeconomic conditions, territorial formations and socio-metabolic transformations across the planet' (Brenner and Schmid 2015, p. 152). Conceptually, this involves 'destabilizing the terms of the urban' (Robinson 2018, p. 236) and interrogating diverse processes and its different dimensions, the urban as a concrete abstraction and as lived experience (Brenner 2016, p. 280). As Robinson (2021, p. 98) notes, as a concept, the urban 'can only ever exist as emergent and multiple, in a state of constant, strong revisability'. Returning to this volume's ambition to examine and theorise the urban politics of human rights, this also necessitates being attentive to the diversity, distinctiveness and interconnectedness of urban engagements with human rights across various urban settings.

While the analyses in this volume loosely depart from an understanding of the urban 'as a key scale of analysis and political activities' (Darling and Bauder 2019, p. 5), the case studies turn to urban spaces where 'concrete struggles over the urban are waged' (Brenner and Schmid 2015, p. 178). On the basis of the empirical contributions of these case studies, at least four urban dynamics stand out.

First of all, *neo-liberalisation* has come to shape the urban (Sassen 2001, Brenner 2019). If there is one site in which neo-liberalisation has taken effect, it is in cities around the world. Global capital flows in and out, often in the form of property investments that push out local owners and tenants. This is demonstrated, for instance, in Gürlek's description of the local Abdal community being pushed out of their homes due to a neo-liberal repurposing of the valuable area upon which they had resided (Chapter 3). Furthermore, decrease in public spending and faith in free market fundamentalism have led not only to the privatisation of public goods such as transportation, education and housing, but also to the privatisation of spaces that were once public, often with the assistance of modern surveillance. Take Cape Town's waterfront and beaches as shown by Pieterse (Chapter 9) in this volume, where cameras and other forms of surveillance exclude certain urbanites while openly welcoming others. Another aspect of neo-liberalisation that has strongly affected urban governance is the combination of decentralisation and deregulation. While the former empowered local authorities by giving them a vast array of competences and responsibilities previously centralised, the latter led to an outsourcing of these responsibilities to public-private arrangements empowering private actors in the long run. This trend also strengthened the growing technocratic urban law, as demonstrated by Åberg and others in their discussion of squatter eviction in Malmö in this volume, that serve to support property ownership. Neo-liberal policies generate and exacerbate inequalities in cities. The global structuralist dynamic of neo-liberalisation is however met by a more context-specific dynamic of the urban, grounded in local histories and shaped by the specific configuration of space and actors in a given setting.

Second, *spatialised inequalities* are (re)produced and contested in cities both in the Global North and Global South. Socio-economic inequalities are etched into the urban landscape. The latter in turn also deepens them. On the one hand, we see city centres with high-rise commercial buildings, ample opportunities for consumerism and citizens blurring into hurried masses. On the other hand, if one looks away from the centres, there are the banlieues, the slums and the areas that never make it to city marketing folders with inhabitants that often struggle to meet daily needs. The contrasts within cities are often enormous. Some areas are spotlighted and developed, while other areas are to be avoided, bulldozed or hidden out of sight. In all these areas, there are people whose lives are affected by their surroundings, whether these are the slums or the shady lawns of Nairobi (Chapter 8 by Jones and Gachihi) or the old

quarters and streets in Kırşehir once home to characteristic song and dance of the Abdals, now bulldozed to make way for the modern Turkey (Chapter 3 by Gürlek). These *spatialised inequalities* have implications for the enjoyment of human rights around the globe, in the Global North and South, both within and between cities.

Third, cities are also socio-spaces where communities develop *localised identities*. Often, city dwellers identify more closely with the neighbourhood and city in which they live than with the state in which their city is located. The cultural minority 'Abdals' associated with and embedded in the fabric of Kırşehir, for instance, have reported not being the same community when uprooted from their ancient neighbourhood to the modernised high-rise buildings (Gürlek, Chapter 3). The São Paulo Pacaembu sports stadium, home to soccer matches and pop concerts, was converted to host emergency beds for COVID patients. Vormittag (Chapter 10) describes this as an instance of how specific landmarks – and the stories, symbols, songs and sentiments connected to them – create a sense of belonging: an identification that is often enthusiastically promoted by city administration and commerce alike. As such, scholars have pointed to the emergence of urban citizenship, that – as is the case of national citizenship – shapes legal status and political membership, sets out rights and obligations and stimulates civic virtues and ways of engagement via discourses of inclusion and participation (Oomen 2020, Shachar et al. 2017, p. 5, Vrasti and Dayal 2016).

Lastly, all the above – the global connections, the free flow of capital, the challenges faced and the strengthening of urban identities – contribute to a strengthening of *urban autonomy* in the relations between cities and the nation state. This becomes apparent, for example, in the human rights city of Bologna in the decoupling of urban migration policies from those developed at the national level, as described by Sabchev in Chapter 5. This theme also emerges when cities and urban actors take on the role of 'norm-entrepreneurs' on such international matters as the apartheid regime, claiming space and agency on a topic that would traditionally be considered within the jurisdiction of national foreign affairs policy (Novak, chapter 2 in this volume). Even if, under classical international law, states are the main actors in international relations and those that traditionally make international law, urban actors increasingly and collectively seek to influence the global human rights agenda, as is the case with the right to housing (Fernández-Wulff, chapter 6 in this volume).

Let us now turn to a discussion of how these combined dynamics of the urban relate to the second key concept in our investigations – human rights.

Urbanising Human Rights

The relationship between human rights and the city runs deeper and further back into time than can be set out here. After all, it was in the context of cities, and city-states, that rights and duties of those who inhabited

them vis-à-vis those who ruled them were first carved out (Prak 2018). Etymologically, the term citizenship is derived from the Latin word for city, and in Europe, the term citizen was a synonym for town dweller in the early Middle Ages. After the Second World War and the deep sorrows brought about by fascism and virulent nationalism, nation states were ready to agree upon the universal, inalienable and indivisible rights of their citizens, they did so within cities. The United Nations were founded in San Francisco, the Universal Declaration of Human Rights was formulated in Paris, the binding nature of human rights treaties was agreed upon in Vienna, monitoring of these treaties takes place in New York and Geneva and the interpretation of socio-economic rights was developed in Maastricht. This overview, while demonstrating the importance of the city for human rights, also makes clear why human rights critiques focus, among others, on the actual or perceived Western roots of these so-called universal norms (Rajagopal 2003). That said, these norms are met by local contestation, practices and localised understandings of human rights in cities around the globe (Oomen and Durmuş 2019).

As has often been discussed in human rights scholarship, it took decades for the promises penned up after Second World War to be actually mobilised to address injustices. Even if civil society organisations such as Amnesty International are often credited with making the move from norm-setting to implementation of human rights (Moyn 2010), local authorities also played a role. Novak illustrates this in chapter 2 of this volume where he points out how cities in the United States played an important role in combating Apartheid from the 1970s onwards. Cities passed divestment ordinances, lobbied with national authorities and worked with activists, academics, international organisations and collaborated within the context of city-to-city networks to strengthen human rights in South Africa. Similar types of (trans)local human rights engagement, which can be found today, often in explicit reference to human rights norms, can, however, partially constitute 'human rights exportism', seeking to strengthen the human rights of others while helping to create foregoing business opportunities that contribute to realising human rights (Ignatieff 2005).

Logical as it may seem, the legal responsibility of local authorities for human rights of all city dwellers long received little attention, eclipsed behind the state as the subject of international (human rights) law (Blank 2006a,b, Nicola 2012, Aust 2018, Aust and Nijman 2021). The main reason for this was the state-centricity of classical international law, and by extension, international human rights law, which placed the responsibility to respect, protect and fulfil specific human rights obligations vis-à-vis individuals within national jurisdictions squarely on states (Smith 2016). Over the past decades, however, following the trend of scholarly attention to other non-State duty bearers (Alston 2005), the formal responsibility of local authorities for human rights has received more and more attention

in both scholarship and practice (Oomen and Baumgärtel 2018, Hirschl 2020). This has a wide variety of reasons. The most recent UN human rights treaties, for instance, concerning the rights of children, or persons with disabilities, explicate responsibilities of all governmental authorities for rights protection. Decentralisation has also caused local authorities to often carry primary responsibility for, for instance, socio-economic rights such as the right to housing which in turn has taken on increased legal significance (Coomans 2006). In the field of international law, UN bodies have recognised increasingly local authorities as duty bearers, stipulating their responsibilities and stimulating them to accept these duties within a range of reports and processes (UN 2015, Council of Europe 2019). Second, and perhaps more interestingly, urban actors have also become more and more central to the advocacy, contestation and negotiations around existing and new human rights norms, often developing their own collective normative understandings on (specific) human rights and advocating for their acceptance in international law and global governance (Durmuş 2020, 2021a, Durmuş and Oomen 2021).

While this volume zooms in on the urban scale and the urban politics of human rights, we believe that the use of and engagement with human rights by urban actors is best understood not in strictly scalar terms, but as linked to various processes and spaces. The chapters in this volume focus on different urban processes, such as mobilisations, contestations and negotiations, through which human rights are urbanised (also see Darling 2016), and less on comparing the use of human rights by urban actors *in* different urban contexts or on comparing local authorities' engagement with human rights with that of states.

The interconnectedness of cities, and the degree to which they function as a hub, explains the rise of self-designated 'human rights cities' across the world. The idea of such a city originated in Rosario, Argentina, in 1997, but swiftly travelled to Europe, where Barcelona became one of the cities driving the European Charter for the Safeguarding of Human Rights in the City in 1998, with Gwangju currently functioning as one of the hubs in the global human rights cities movement in Asia and globally, hosting annual conferences and working towards further institutionalisation of the concept (García Chueca 2016, Oomen et al. 2016). Montréal, to offer one example, took the European Charter as inspiration for its Charter of Rights and Responsibilities. The networks that connect these cities also include a broad spectrum of international and regional organisations, businesses, donors and other norm entrepreneurs, as becomes apparent in the case studies on New York, São Paulo, Cape Town and Bologna, presented by Fernández-Wulff, Vormittag, Pieterse and Sabchev, respectively, in their chapters.

Bringing into sight the four dynamics of the urban set out above, the chapters of this volume show how these dynamics call for and stimulate engagement with human rights.

Neo-liberalisation stimulates engagement with human rights in many different ways. The harsh effects of neo-liberalisation on cities in the field of access to basic needs and the increased inequalities resulting from free market reign are met urban actors who contest neo-liberalisation by invoking human rights principles such as equality and human dignity, and the civil, political, social and economic rights to which these principles gave rise. Both Can (Chapter 4) and Fernández-Wulff (Chapter 6), for instance, show how invoking the right to housing in the Bay Area and in New York was essentially a response to the hardship on home owners resulting from the move towards housing as a private commodity instead of a public good. Similarly, the homogenising forces of the global economy call for a pushback by means of an invocation of cultural rights, for instance, in the case of Roma rights presented by Åberg and others (Chapter 7) and the rights of the Abdals in Gürlek's case study (Chapter 3). While this concerns claims *against* local governments, decentralisation and the felt need to safeguard public interests in times of privatisation and deregulation has also caused many local governments to explicitly include human rights in their policies, politics and ordinances.

Large *spatial inequalities* characterise today's cities and play a key role in both the engagement with human rights and how these engagements play out. The cases of São Paulo, Nairobi and Cape Town all show how the material conditions in these cities threaten the right to life, and violate a long list of other rights, of people who live in the slums and squatter camps and are wilfully kept from wealthier parts of town. It were the conditions in the Roma squatter camp in Malmö that caused activists to embark on a set of court cases to improve their condition.

It is moreover the city as imagined, dreamed up, and as the breeding ground of *localised identity* that cause actors to call in human rights, be it for the purpose of city marketing or as a rallying call for a more just city (Fainstein 2010, Roodenburg and Stolk 2020). This localisation, as we will see, calls for renegotiation of both terminology and content of the rights concerned, a recasting of the global language in the vernacular (Merry 2006). The urban renegotiation of human rights can also lead to the emergence of new urban rights. One could think of home-grown notions such as the 'right to the city' that calls for the right to belong and co-produce the urban, which originates from the work of Lefebvre from 1968 (Mayer 2009), but also of the Cape High Court's interpretation of the right to public presence in the context of urban resistance as described by Pieterse (Chapter 9). Other examples of new urban rights can be found in charters that were created by urban actors, such as the European Charter for the Safeguarding of Human Rights in the City and the Global Charter-Agenda for Human Rights in the City.

A final urban dynamic, the stronger emphasis on *urban autonomy*, explains the degree to which urban engagement with human rights takes place in an active dialogue with a wide range of national and international

actors. Urban actors increasingly team up nationally and internationally, claim a place at the international negotiating table and insert their understandings in norm-setting and norm-interpretation processes (Blank 2006a,b, Aust and Nijman 2021, Novak, in this volume). One reason is to take these reworked understandings home, but there is also the separate desire to make a mark on global governance and the international development of human rights.

Let us now turn to the actors and the mechanisms involved in the specific 'pathways' (Brysk and Stohl 2019) of rights mobilisation in urban settings.

City Society

Classic legal human rights understandings involve binaries. There are rights holders and duty bearers; individuals and authorities; civil society and the State. All the chapters in this book show how this binary structure hardly holds true for urban realities. At times, as in the cases presented by Can, Jones and Gachihi, Åberg and colleagues and Pieterse, civil society is indeed the driving force in holding the local government accountable for human rights violations. But even then, it does so with the involvement of, for instance, national and international authorities. In other cases, such as Sabchev's description of Bologna (Chapter 5), or Novak's discussion of US anti-Apartheid cities (Chapter 2), local authorities, civil society and even the courts come together to collectively strengthen human rights. The different roles local governments take in the cases within this volume demonstrate that it would be not only simplistic but also inaccurate to place local governments permanently and solely under the category of duty bearers. Instead, local governments, urban civil society and other urban actors are complex and flexible constructs taking diverging roles depending on context.

Norm entrepreneurs can be found at community centres, universities, in town halls, in elected offices, municipal councils or among civil servants, in businesses, religious organisations, with individuals and all forms of organisations. In order to be successful, they forge alliances that not only cross the classic binary of state and civil society, but also are essentially multi-sited and literally or figuratively multilingual, forged not only within the urban confines but also at conferences and meeting places elsewhere. This volume abounds with such novel partnerships, which collectively work towards the mobilisation of human rights and that could be called city society. Such city society consists of many fragments. In Nairobi, as Jones and Gachihi set out (Chapter 8), it is political society made up of the urban poor that, in contrast to civil society, rallies for rights in the context of Nairobi's Social Justice Centres. Most importantly, the city society, as opposed to merely civil society, can be constituted of both public and private actors, institutions, collectives and

individuals, any and everyone who engages in human rights mobilisations and contestations.

What becomes apparent in virtually every analysis of the city society driving the mobilisation of human rights is the role of networks. Some argue that access to networks through which rights-based norms and practices are disseminated and the availability of cooperation with different actors who can offer funding, resources and know-how are crucial ingredients for successful human rights mobilisation and institutionalisation in the city (Durmuş 2021b). The classic horizontal, national city and mayoral networks have increasingly given way to transnational networks such as those of human rights cities. Novak (Chapter 2) explores an ancestor of human rights cities by mapping a transnational network of norm-entrepreneurs that encompasses horizontal local government networks as well as universities, local, state and federal government officials, pre-existing advocacy networks on civil rights and businesses. Jones and Gachihi (Chapter 8) and Åberg Batzler and Persdotter (Chapter 7) show that horizontal networks among local NGOs, local communities and activists are crucial as well for an exchange of knowledge and resources. In the international law-making arena, there are also multi-level governance assemblages active, which include international organisations, UN special rapporteurs, private funders and business, that engage in a permanent dialogue on how human rights should be understood and mobilised within the urban context (Marcenko 2019).

The interplay between human rights and the urban, however, can be strongly informed by national and local party politics. Sabchev and Vormittag, for example, present cases in which networked human rights cities join forces to distance themselves from more restrictive national policies driven by right-winged populism. In Pieterse's analysis of Cape Town (Chapter 9), it is civil society, in conjunction with national ANC-forces, that takes on the local government led by the Democratic Party, in order to ensure equal access to urban spaces for all residents.

In short, to understand the urban politics of human rights, it is important to make an effort to unpack 'the urban', to map the actors involved in the politics of mobilisation and their national and international connections, in addition to considering the mechanisms of mobilisation.

Mechanisms of Mobilisation

Mobilisation of human rights can, as sociologists and political scientists have pointed out, socialise states and strengthen social justice (Simmons 2009, Goodman and Jinks 2013). Any attempt to focus on the urban politics of human rights can build on these insights on national processes. Such insights involve the interplay between global and local actors – the human rights spiral invoked and refined by Novak in his contribution (Risse and Sikkink 2013) and also the combination of

material inducement, persuasion and acculturation that causes states to comply with human rights and the importance of considering culture, structure and agency in any analysis (Goodman and Jinks 2013, p. 9, Sabchev et al. 2021). Localisation of human rights is, to a large extent, about 'vernacularisation', the uneven, negotiated translation of global and abstract norms into a language that is accepted and in line with local culture and traditions (Merry 2006, Goodale and Merry 2007, De Feyter et al. 2011). According to Haglund and Stryker, it involves specific mechanisms (informational, symbolic, power-based, legal and cooperative), actors (individuals, groups and organisations) and pathways, that concretise and specify processes of rights translation by 'spatially and temporarily locating the relevant actors and mechanisms in distinct contexts' (Haglund and Stryker 2015, p. 3). In the process of vernacularising human rights, grassroots organisations continuously renegotiate the terms of their engagement with municipal governments and their policy processes, in order to redefine what traditional human rights principles, such as participation and accountability, mean at the local level (Fernández-Wulff and Yap 2020). Mobilisation of human rights, also by urban actors, involves politics by definition.

If city society – in all its forms and manifestations – mobilises rights, the process of mobilisation can be understood as a social, discursive, spatial and material construction that foregrounds human rights over other normativities. This is often done in conjunction, or even competition, with other strategies, as Jones and Gachihi set out. Such foregrounding of human rights can, as becomes apparent in this volume, be done via a wide range of mechanisms, such as, framing, protests, visualisation, public interest litigation, democratic deliberation and institutionalisation (Brysk and Stohl 2017).

Wherever, whenever and by whomever rights are mobilised, one key first step is that of *framing*, the consideration of urban problems as human rights challenges. Gürlek's contribution illustrates how – in the absence of such framing (or other normative framings) by the stakeholders – a mobilisation to protect the interests of those vulnerable in the face of an urban challenge is highly unlikely to occur. There is nothing self-evident about this mobilisation, nor is there about the specific rights picked out of the human rights catalogue. Even with the foregrounding of one particular right, such as the right to housing in Fernández-Wulff's study of New York City, and Can's analysis of the Bay Area, there is need for reinterpretation, refinement and/or filling in of the global norm to ensure that it leads to the desired local outcomes. This involves political choices. As Can's comparison with Istanbul shows, the framing process within a specific socio-spatial and political context can also lead to a choice of a different vocabulary, such as the right to the city. Essentially a discursive act, framing can take place in many places: the mayor's speech, the twitter hashtag (#Right2City), the title of a policy report or a slogan on a protest sign. It can unify constituencies and alienate others.

Human rights mobilisation can also be about physical *protests* that support implementation of human rights or posit an alternative vision towards the one that is dominant. In Nairobi's Social Justice Centres, in the streets of Istanbul, at the University campuses filled with concern about Apartheid, human rights made their way into urban politics by means of protests. Within urban spaces, the mobilisation of rights is material as much as it is social. It can be done not only by putting the spotlight and cameras on flagrant injustices, but also by means of artwork and creative protests that affirm human rights and contest *visually* their violation.

A classic way of invoking human rights, and one that sets human rights apart from other normativities, is that they can be readily invoked in the context of *public interest litigation*. Here, too, there are wins and losses in terms of the underlying objectives. In Malmö, those pitting Roma rights against urban nuisance law to secure dignity for those living in squatter camps came out empty-handed, wondering whether political processes would not have been more helpful. In Cape Town and Bologna, on the other hand, carefully framed rights claims, with enough social support, did lead to wins in courts and later to improvement of rights compliance by the authorities.

Another mechanism of rights mobilisation consists in so-called *democratic deliberation*. The call for such deliberation, on equal terms, gives way to concepts such as the right to the city, to the invocation of rights and to claiming a seat at the international table. At the same time, as becomes apparent in Fernández-Wulff's discussion of the right to housing in New York, this deliberation forms a key process in reworking, vernacularising, given local meaning to a universal claim.

Finally, *institutionalisation* is a mechanism of mobilisation that emerges in many of the studies in this volume. There is the São Paulo secretariat of Human Rights and Citizenship, described by Vormittag, with roots dating back to the early nineties. There is Bologna's Office of New Citizenship, Cooperation and Human Rights, in Sabchev's case study. Here, human rights are not invoked against local authorities, but underlie local decision-making processes and institutions.

All of these mechanisms of mobilisation of human rights, importantly, may also constitute the contestation of human rights in the urban context. This is because the very notion of state-centricity underlying international human rights law, as well as the dichotomy of rights holders vs. duty bearers, and many other practices restraining human rights to the legalistic, apolitical, technocratic, international, public or institutional realms and excluding actors and processes that are outside such formal spheres, are challenged by a multiplicity of urban actors claiming the space and the voice to shape a localised understanding of human rights. As such, the mobilisation of human rights in the urban context, challenges the very fundamental assumptions about human rights, and

opens constructive spaces of criticism, and thus 'urbanises' human rights (Section 'City Society').

A Matter of Politics

However rights are mobilised, mobilisation is essentially a political process. Human rights are used to claim and to contest. Mobilisation of human rights involves struggles and negotiations. Let us now turn to explicit struggles that actors engage with when they mobilise human rights, and to how the urban context ties into each of these struggles.

First, it is important to recognise the power dynamics that come with rights talk, and that are behind human rights framing. The interests of private capital in Malmö benefitted from the prevalence of the right to property over other human rights. Seemingly 'neutral' urban law leads to the exclusion of not only individuals, but also specific groups of people, and positing rights-based claims against it constitutes quite a radical counternarrative.

Also, which right to mobilise is a matter of politics, explicitly mulled over by actors in city society. Can, for instance, convincingly shows why those seeking to combat homelessness in California's Bay Area turned towards claims based upon the right to housing, whereas the same cause in Istanbul was put forward as being about the right to the city.

One of the choices to be made here, particularly in the context of strategic litigation, is whether the emphasis should be on rights as laid down in the national constitution, or the international human rights framework. This, of course, depends on the constitutional dispensation, and domestic understandings of the justiciability of, for instance, socio-economic rights; similarly, focus on either national or international law can also be a matter of politics. At times, domestic constitutional frameworks can be interpreted in more progressive ways than international human rights law, as demonstrated by Pieterse. In the examples he describes, South African courts are developing an interpretation of constitutional rights that are urban-specific, such as 'the right to be present', which aligns with previously non-codified discourses on the 'right to the city'. This example also proves that strategic decisions in human rights mobilisations can invent or develop 'new urban rights' rather than existing codified law.

In all this, the image of human rights as alien, and western in origin, can definitely play a role, as becomes clear in Jones' and Gachihi's analysis of how activists in Nairobi's Social Justice Centres reflect on these rights, and their (in)ability to truly address the colonial legacy of inequality.

All chapters show how human rights politics play out in the cityscape. Via marches, artworks, rainbow-coloured zebra crossings, occupation of beaches and buildings. The shanty towns by which university students in Novak's case study draw attention to apartheid injustices shows the

interplay between the material and the normative, the spatial and the political. The urban politics of human rights involves many actors, and occurs by a variety of mechanisms, it always involve struggle. Here, an outstanding question then is how these struggles and mobilisations play out.

To What Effect?

The urban engagement with human rights can count on high expectations, as well as on critique and concern, as with human rights engagement in general. In terms of expectations, there is the promise in equal treatment, recognition of human dignity and participation for all. Human rights may also function as a discursive umbrella under which to unite a wide variety of interests, a clear and globally agreed set of goals, and to uphold the law in court and thus to guide and constrain governmental power. Critiques of human rights focus on their poor track record in terms of delivery (Moyn 2018), their lack of attention for underlining structural causes of injustices, and the fact that they even run the danger of undermining other more emancipatory strategies for (social) justice struggles (Kennedy 2002). Human rights critics focus moreover upon their origins in Western Enlightenment thinking (Rajagopal 2003) as well as their legalistic, state centric and even totalitarian focus (Handmaker and Arts 2018).

The million-dollar question on the mind of everyone with a stake in the urban politics of human rights – as an activist or an academic, a councillor or a citizen – is of course whether mobilisations of human rights make a difference. The chapters which we discuss and introduce here paint a nuanced but ultimately affirmative picture. While each of the chapters addresses all of the themes set forward in this introduction – relevant processes of urbanisation, the urbanisation of human rights, the dynamics of city society, mechanisms of mobilisation – they are organised with a focus on the themes predominant in each article.

First, three chapters set out clearly how, over time, processes of urbanisation such as neo-liberalisation, spatialised inequalities, localised identities and strengthened urban autonomy have paved the way for a discussion of urban politics of human rights. The often-neglected historical perspective on the potential of the urban for the realisation of human rights is provided here by Novak in his chapter on US cities joining forces against the Apartheid. The politics of this process, involving intracity mobilisation, city-to-city collaborations and international lobbying many decades ago, foreshadow current urban politics. The case also shows how such inter-city mobilisations can ultimately lead to strengthening human rights, even in faraway places.

Processes of urbanisation – starting with the way in which neoliberalism has led to the privatisation of public space and the erosion of the public good – are at the heart of Gürlek's description of Kırşehir.

Here, the bulldozers bringing modernisation to this Turkish town also ploughed away communal, cultural life, the song and dance of the Abdals in the streets, to be replaced by a homogenised, consumerist and privatised alternative in the new high-rise buildings. Nevertheless, political countering of these processes of urbanisation by means of the mobilisation of human rights can take many forms, as Can shows in her study of Istanbul (where protesters foregrounded the right to the city) and the Bay Area (with the emphasis on the right to housing). These different mobilisations, inevitably, also lead to different outcomes.

How human rights are urbanised forms a key theme in the next two chapters. Sabchev, discussing the rights of migrants in the human rights city of Bologna, also shows how rights-based cooperation of city society leads to more just outcomes. In the case of Bologna this involves a generalised human rights discourse, but urbanising human rights can also focus on one human right in particular. In this regard Fernández-Wulff, in her analysis of the politics of the right to housing, shows how this right makes its way into democratic deliberation in New York, leading to adjustment of policies. In both cases, the understandings of human rights are developed and contested within a multi-level context, but also these understandings are very much tailored to the local situation.

The following two chapters make clear to what extent the urban politics of human rights comes out of an interplay between actors in city society that does not always lead to the intended results. Åberg and colleagues critically reflect on how strategic litigation based on Roma rights in Malmö could not stop evictions, due to a construction of urban law that foregrounds concepts such as property and nuisance, and openly wonder whether such litigation can address underlying structural injustices. Similar concerns are raised by Jones and Gachihi in discussing urban protests against extrajudicial killings in the postcolonial context of Nairobi. Are human rights not too limited, too Western, too little political to truly lead to urban justice, their respondents wonder.

The two final cases presented, however, do show the potential of human rights to contribute to urban justice, by mechanisms of mobilisation ranging from strategic litigation to institutionalisation. Pieterse, in a detailed study of Cape Town, shows how the homeless, beggars and sex workers managed to claim the right to public presence through a range of court cases. Vormittag, finally, shows how São Paulo, confronted with one of the biggest human rights threats in its history in the context of COVID-19, could draw on institutionalised human rights policies in order to foreground human rights, equal treatment and dignity in its response.

And so it becomes clear that the urban mobilisation of human rights can make a difference, in particular when these mobilisations have deep historical roots, are framed as such, carried forward by a wide range of well-connected actors in the context of 'city society', and socialised

and institutionalised by being woven into the collective imagination, praxis, city ordinances, institutions and the cityscape alike. Cities lie within nations, and what happens within them will always be conditioned by these nations and by the confines of global economy, this volume points to the politics of human rights that comes with the urban mobilisation of human rights and how it may lead to a strengthening of urban justice.

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Part 1

Exploring the urban

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2 Reconsidering extraterritorial human rights obligations of cities and local governments

Apartheid divestment ordinances in the United States, 1975–1994

Andrew Novak

Introduction

From 1948 to 1994, apartheid was a central operating principle of the South African government, which enforced labour exploitation, racial segregation and limitations on human rights (Hostetter, 2006, pp. 2–3). In the United States, the foreign policy of President Ronald Reagan preferred 'constructive engagement' with the apartheid regime over confrontation to protect a large American economic stake, about $14.5 billion by the early 1980s, one-fifth of South Africa's foreign direct investment (Seidman, 1990, pp. 60–62). To change US foreign policy towards the apartheid regime, a nationwide grassroots movement convinced local and state governments, universities, corporations and other entities to reassess their ties to South Africa (Culverson, 1996, p. 127). By the early 1980s, more than 2,000 local, state, regional and national organisations in the United States were engaged in the issue, including in at least 35 of the 50 US states and affecting $100 million in leverage (Lansing, 1981, p. 321). Cities, counties and towns 'created the momentum' for change at the federal level, as they were early adopters of at first symbolic and later stricter anti-investment and anti-procurement policies against South Africa (Grey, 1987, p. 401). By the end of the apartheid period, more than 140 state and local jurisdictions in the United States passed legislation or ordinances divesting in economic relations with South Africa, including withdrawing bank loans, contracts and pension funds, on the theory that this economic activity symbolically and materially contributed to the perpetuation of apartheid (Fenton, 1993, p. 564).

Using network and diffusion theory, this chapter addresses the involvement of US cities and local jurisdictions in the movement to divest in South Africa beginning in the late 1970s. In the 1960s, the international norm against apartheid gradually became more specific, to include non-cooperation with the apartheid regime (Goldberg 1985, pp. 4–5). Blocked by Reagan's 'constructive engagement' policy at the federal level, US states and local jurisdictions took increasingly aggressive

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action against corporations doing business in South Africa or with South African operations whilst simultaneously lobbying the federal government to adopt a more confrontational policy (Culverson 1996, p. 143). The historical episode of local anti-apartheid ordinances raises several themes that appear throughout this volume. First is the importance of networks among advocates and local government officials, a causal mechanism that helps to explain how the divestment idea quickly diffused in American local policymaking (see Culverson 1996, pp. 136–137; Johnson, 1999, pp. 6–8). Apartheid divestment networks activated relationships first formed during the civil rights movement in US South, as the struggle for racial equality became a global cause. Notable civil rights leaders such as Rev. Jesse Jackson, Jr., became outspoken opponents of the South Africa's white regime at a time when the American relationship with newly independent black majority-ruled African countries was still ill-defined (Klotz 1995, p. 466). Apartheid divestment organising also took advantage of links between cities, activating pre-existing alliances such as the US Conference of Mayors, and through non-governmental organisations such as TransAfrica Forum and the American Committee on Africa (ACOA) that were coordinating protests, circulating model ordinances and testifying before city councils (Klotz 1995, p. 466; Larson 2019; Lopez 1985).

The local apartheid divestment movement was also related to the spatial geography of American society, another theme in this book, which in turn helped define the networks that formed. Urban jurisdictions, especially large cities, had become bastions of diverse, progressive Democratic Party leadership that served both as a political counterweight to conservative Republican federal policy and as an incubator for African American civic leadership and participation (Biles, 1992, p. 114; Grant, 2019). At the same time, 'college towns' such as Madison, Berkeley and East Lansing, with strong links to student organisers, reinforced a 'town/gown' diffusion of the divestment idea. College towns were the first local jurisdictions to pass divestment ordinances as university campuses exploded in their own battles over university endowment funds, leading to the largest nationwide protests on college campuses since the end of the Vietnam War (Altbach and Cohen, 1990). This raises another theme in this volume. Divestment targeted money: activists attacked corporations with South African subsidiaries or business operations, shareholders who invested in South African-affected businesses, and contracts that sold goods to the South African military and police (Lansing 1981, pp. 306–307). American local jurisdictions are market participants, with public pension funds, procurement contracts with private companies and local investment by foreign businesses. However, they are also regulators that can use licensing and tax powers to determine local policy, affecting even the largest US corporations such as General Motors in Detroit and Coca-Cola in Atlanta (Blank, 2006, pp. 276–277). Although the direct economic impact of local apartheid divestment

ordinances was perhaps debatable, symbolically it attacked neo-liberal capitalist forces that underpinned President Reagan's 'constructive engagement' policy. Localities, especially large cities, had benefited from economic globalisation after World War Two and were forced to reckon with how these same global forces sustained apartheid (see Fry 1990, pp. 120, 123–125).

The final theme that recurs throughout this chapter, as it has through this volume, is the construction of a local identity defined by the networks that developed in the apartheid divestment battle, distinct from state and federal identities. In this instance, local concern for events that took place in South Africa could better be described as a global-local, or 'glocal' identity, as cities and towns 'establish a competitive, cosmopolitan identity in the contemporary world' (Paganoni, 2012, p. 14). The 'boomerang' theory of transnational advocacy posits that local, on-the-ground actors will seek out international assistance in an attempt to 'bypass' the nation-state, thereby applying pressure for change from above and below (Keck and Sikkink, 1999, p. 93). The local apartheid divestment movement subverted the traditional power structure of the 'boomerang' advocacy model: local advocates and officials based in the Global North sought assistance to promote an international norm from South African political exiles and nationalist leadership and from international organisations such as the UN Sanctions Committee (see Culverson 1996, pp. 136–137). The supreme irony is that the local apartheid divestment ordinances likely violated the US Constitution because they infringed on federal powers to regulate foreign commerce and conduct foreign affairs (see Denning and McCall, 2000, pp. 750–751). Yet, the diffusion of the divestment idea became so widespread and uncontested in American society that business associations, trade councils and corporations resisted directly challenging the constitutionality of these divestment ordinances lest they risk public ire (Caron, 2003, p. 183). This is evidence of just how widely the divestment norm diffused by the time the US Congress overrode President Reagan's veto in 1986 and installed sanctions on the apartheid regime (Klotz 1995, pp. 458–460).

Using network and diffusion theory to explain apartheid divestment

UN resolutions first articulated a norm against apartheid in the early 1960s, beginning with General Assembly resolution 1761 in November 1962, which created the Special Committee Against Apartheid and called for sanctions on South Africa. In 1965, the General Assembly condemned apartheid as a 'crime against humanity'. The UN Security Council also condemned apartheid in a series of resolutions through the 1970s (Goldberg, 1985, pp. 4–5). International treaties, including the Convention on the Elimination of Racial Discrimination (Article 3) and

the Convention Against Apartheid (Article 1), were also explicit. Falk (1966, p. 790) explained that the UN General Assembly resolutions contributed to 'a process of norm creation that improves the chances for norm implementation' to pressure Western powers to take more robust action against apartheid. In 1985, the UN Security Council (Resolution 569) called on states to refrain from investing in South Africa, trading in kruggerrands, selling computer equipment to the South African police and military and floating new loans (Schechla, 2015). Anti-apartheid activists certainly perceived a moral obligation not to cooperate with the apartheid regime (Caron, 2003, p. 176). The UN Human Rights Committee has clarified that obligations that are binding on national governments are also binding on all subsidiary organs of the state, including sub-national governments, regardless of the state's internal organisation (A/HRC/30/49, 7 August 2015). However, a direct international legal obligation, even construed as binding, is insufficient to explain the expansive arena of local lawmaking against apartheid in the United States.

The theory of 'transnational advocacy networks' helps explain how non-state actors articulated an international norm against apartheid divestment and succeeded in altering the behaviour of the US federal government (Keck and Sikkink, 1998). Activists and other non-state actors help to define international legal obligations: they indirectly influence state behaviour by lobbying and calling for boycotts; set the agenda for international conferences and treaty negotiations and monitor compliance by investigating and publicising breaches (Roberts, 2001, p. 775). Scholars have provided several causal mechanisms as to how norms and ideas may spread. One example is through 'epistemic communities', scientific or technical elites that diffused knowledge by virtue of their expertise, often in technical, public health or environmental fields (Haas, 1989). However, this paper uses 'transnational advocacy networks' to capture the dialogic and dynamic nature of human rights norms, which may be culturally contingent or subject to interpretation or evolution (Betsill and Bulkeley, 2004, p. 474). Here, we are tracing the evolution and diffusion of a single idea, an apartheid divestment norm, which makes network theory analytically useful. Whilst the messy interaction of NGOs, states, international organisations, voluntary associations and sub-national governments may be conceived in a less structured, more dynamic way (see Berman 2010, p. 12), network theory provides a structure to show how a specific norm can spread. 'Transnational advocacy networks' use grassroots advocacy, bargaining and strategic alliances to pressure states to comply with new norms (Keck and Sikkink, 1998, pp. 8–10). Unlike epistemic communities, advocacy networks promote a normative or moral agenda rather than a factual or objective one (Klotz, 2002, p. 51).

Like civil society actors and other 'norm entrepreneurs', local governments can shape and proliferate human rights norms (Oomen and Durmuş 2019). In the constructivist school of international relations,

non-state actors (or in this case, sub-state actors) can be agents of a particular rule and can convince other social actors to adopt the rule (Adler, 1997, pp. 322–323; Klotz 1995, pp. 459–460). Ideas and identities can alter state behaviour through a learning and adoption process as principles and decision-making processes known as 'norms' are internalised (Risse and Sikkink, 1999, p. 5). A norm 'life cycle' proceeds from emergence through cascade to internalisation as people embrace the specific normative argument (Finnemore and Sikkink, 1998, p. 895). 'Norm dynamics' is the study of how these international norms, including those relating to human rights, emerge, diffuse and crystallise, changing state policy (Wunderlich, 2013, p. 20). Unlike the competing frames of international relations – realism's balance of power dynamics and liberalism's institutions that reduce transaction costs and ensure compliance – the causal variable in constructivist theory are these non-state and non-institutional actors that promote the new 'norm' (Price, 2003, p. 583). These advocates, or 'norm entrepreneurs', seize the opportunity to advance their normative agendas and alter the prevailing regime (Wunderlich, 2013, p. 20). A sizable academic literature describes why and how certain states come to adopt norms whilst others resist (Risse and Ropp, 2013, pp. 5–9). Norms need not have any specific content (Sanders, 2016, p. 168), and may benefit from existing advocacy networks (Carpenter, 2007, pp. 103–105) and existing values and beliefs: the more generalisable and universal the better (Finnemore and Sikkink, 1998, pp. 897, 908).

In the 'transnational advocacy network' frame, local governments may be agents of norm adoption separate and distinct from the national government and from non-governmental civil society. Local governments can broker norms through public advocacy and education, as well as through internal policy implementation and lobbying of higher-level governments (see Och 2018, p. 428). Local human rights commissions hear complaints, carry out audits and human rights impact assessments, and require reporting from other local government agencies (González, 2016, p. 385). Networks of local governments 'shape norms, policy preferences, and statutory and regulatory schemes' by collecting information, sponsoring conferences and organising distribution of services (Ibid., p. 401). Local governments have a dual role as state agents and as democratic expressions of the local community. Localities reflect local knowledge and culture within the limits of their powers as state agents, such as in the local budget, licensing and education (Blank, 2006, pp. 276–277). Local governments have unique characteristics: they vary in size with non-uniform internal structures and they provide functionally specialised direct services, such as infrastructure and public utilities (Briffault, 1993, pp. 341–342). Local government actors and city-to-city and municipal networks are not simply passive implementers of human rights norms, but active contributors to the content of those norms. Oomen and Durmuş (2019, p. 142) noted that 'cities and towns can act as agents, as norm entrepreneurs in introducing

specific understandings of human rights'. Cities and their networks have helped to define new rights and expand conceptions of existing rights (p. 145). Cities and towns can also have different understandings of rights than even their own national governments (p. 146). In addition to their role as 'mediators' of norms (Blank, 2006, p. 276) between the community and higher-level governments, local governments may also be conceived as hubs or 'loci' that bring together the private sector, international organisations, NGOs, citizens and voluntary groups (Nijman, 2016). Local governments have characteristics both of sub-state and non-state actors: they exist in a pre-existing constitutional and legal framework, but they also have autonomy to form agendas, pursue interests and even push the limits of their subordinate position (Durmuş, 2020, pp. 38–39).

When a state resists human rights advocacy, domestic activists may 'bypass their state and directly search out international allies to try to bring pressure on their states from the outside' (Keck and Sikkink, 1998, p. 12). This 'boomerang' pattern of transnational advocacy unites local activists and international allies 'around' the recalcitrant government to apply pressure from above and below. A later critique of this model conceived of a more dynamic 'spiral', several throws of the boomerang, to describe the complex process of human rights advancement, retrenchment and negotiation (Risse and Sikkink, 1999, pp. 18–20). The 'boomerang' (or the derivative 'spiral' pattern) may involve a power differential between the global actors and the local actors, as transnational NGOs from the Global North often have privileged access to media, donors and policy formulation compared to their Global South counterparts (Gready, 2004, pp. 348–349). However, the 'boomerang' model nonetheless gives some agency to local activists as change agents (Waites, 2019, p. 387). The 'boomerang' model of advocacy is useful to explain the multifaceted nature of the American anti-apartheid divestment network, but a simple 'call-and-response' model in which actors in the Global South call on assistance from organisations based in the Global North is too simple in this instance (Stevens, 2016, pp. 14–15). In the United States, local governments worked with South African nationalists and global anti-apartheid institutions to advance a norm that was originally conceived outside the Global North. Compared to human rights norms with putatively Western origins, the norm against apartheid came from principles of anti-imperialism and self-determination (see Rajagopal, 2006, p. 769). Rather than calling on international NGOs for assistance back home, apartheid divestment involved an 'inverse boomerang' in which norm entrepreneurs in the United States called on partners in South Africa to bolster the divestment agendas in the eyes of American policymakers (Pallas, 2017, p. 281). As Stevens (2016, p. 107) writes, the first calls to boycott apartheid came from activists and NGOs outside of South Africa, revealing to the resistance movement the promise of a globalised anti-apartheid campaign.

Theme 1: The importance of networks

The apartheid divestment movement in the United States reveals the importance of networks for the diffusion of 'norms' or ideas among local governments themselves and with higher-level authorities, civil society and other affected entities like universities and corporations. Networks reduce transaction costs inherent in advocacy through circulating best practices and effective strategies for lobbying (Diani, 2003, pp. 1–11). Networks also engage individuals who share certain norms and values; in turn, the network cultivates identities for members. Activists may be connected to new ideas and strategies as well as a forum to resolve differences (Passy, 2003, pp. 23–25). During the period of apartheid divestment, local governments brought together community organisers, church groups, labour unions, international organisations, South African political exiles, student groups and many others. Using the frame of Acuto and Leffel (2020, p. 5), we go beyond thinking of localities as 'hubs' to recognising local government networks as 'institutions' that 'are not just connections but actual producers of a vast variety of policy outputs and knowledge mobilisation mechanisms'. Similarities among South African divestment ordinances among local governments are evidence of coordinating networks (Caron, 2003, p. 178). The networks that promoted apartheid divestment resembled subsequent local lawmaking encouraging US ratification of international human rights treaties, membership in the global 'Human Rights Cities' movement, and alliances on gun control and climate change (Barber, 2013; Oomen and van den Berg, 2014).

The apartheid divestment movement benefited from pre-existing networks, reflecting the observation that norms diffuse more widely when they coincide with existing discourses and conduits for advocacy and messaging (Carpenter 2007, pp. 103–105). The US-based apartheid divestment movement drew on the 1960s civil rights movement. Organisations such as the Council on African Affairs and ACOA channelled Pan-Africanist sentiment in the United States, linking the domestic struggle for equality with decolonisation and African nationalism (Houser, 1976; Johnson, 2013). Black activists promoted Pan-African intellectual currents, culminating in the 1972 Africa Liberation Day March on Washington, which targeted US policy towards Rhodesia. Pan-Africanist conferences brought together black intellectuals, policymakers, student organisers and radical activists in a call for divestment from South Africa, resulting in the founding of TransAfrica Forum in 1977, a major influencer of US-Africa foreign policy (Johnson, 1999, pp. 6–8). As elsewhere, anti-apartheid activists in the United States took advantage of existing religious, labour and anti-colonial organising (Thörn, 2006, p. 293). ACOA helped connect local and state policymakers with anti-apartheid activists. The idea to pass out pass cards to members of

the Georgia legislature, for instance, in a symbolic representation of apartheid pass laws originated with ACOA (Moran, 2014, p. 120).

City government officials used existing city-to-city networks to amplify the divestment message. In August 1984, Boston Mayor Raymond Flynn wrote to 100 other American mayors to advocate a version of Boston's apartheid divestment ordinance, with no exception for corporations complying with the ethical business principles proposed by Rev. Leon Sullivan in 1977 (Walsh 1984, p. 778).[1] Flynn also lobbied the US Conference of Mayors to pass a sanctions ordinance and, when he became president of the Conference in 1991, encouraged member cities to pass divestment ordinances even after federal sanctions on South Africa. Other cities used the National League of Cities and state alliances of city governments to spread the divestment message (Lopez 1985). Mayors joined forces. In 1991, Boston Mayor Flynn, New York City Mayor David Dinkins and Los Angeles Mayor Tom Bradley sent letters to the South African Ambassador to the United States to release political prisoners (ACOA, 29 April 1991).

In time, the apartheid divestment movement became more organised (Klotz, 1995, p. 195). On November 21, 1984, the 'Free South Africa Movement' was formed when TransAfrica President Randall Robinson, Rep. Walter Fauntroy (D-DC), US Commissioner of Civil Rights Mary Francis Berry and former chair of the Equal Employment Opportunity Commission Eleanor Holmes Norton were arrested in a protest inside the South African embassy in Washington, DC. Simultaneous sit-in protests occurred in two dozen other cities; demonstrations continued weekly at the South African embassy and consulate for years (Feld, 2014, p. 110). Three days after the first embassy protest, on the other side of the country, the International Longshoremen's and Warehousemen's Union (ILWU) Local 10 chapter refused to unload cargo from South Africa, sparking an 11-day boycott. The Local 10 chapter strongly supported divestment by the San Francisco Bay Area's three largest municipalities, Berkeley, Oakland and San Francisco, and inspired the months-long protests at the University of California, Berkeley, then the largest student protest since the Vietnam War (Cole, 2015, p. 173). Grassroots mobilisation occurred among civil rights groups, organised labour, religious organisations and college students. Over the next 12 months, more than 5,000 protestors were arrested; on a single day, April 4, 1985, about 4,000 demonstrators marched outside the South African embassy in Washington, DC (Metz, 1986, pp. 382–383; Nesbitt, 2004, pp. 123–124).

The similarities among local apartheid divestment ordinances are evidence of network formation among activists and local government officials. At least 36 local governments, including Chicago, Houston, Los Angeles, San Diego, San Francisco and Washington, DC, enacted 'selective procurement' laws that denied city bids to organisations that did business in South Africa (Caron, 2003, pp. 162–164). The earliest of these

laws were passed in 1976 (Madison, Wisconsin) and 1977 (East Lansing, Michigan), but the bulk dated between 1984 and 1987. These policies varied in their specificity and strictness. Caron (2003, pp. 178–179) noted that non-governmental organisations circulated language for a model ordinance, which evolved over time towards greater strictness. Some ordinances specifically referenced other jurisdictions: Topeka copied Kansas City; Raleigh referred to Rochester; and Houston's resembled New York City's. The Sacramento City Council instructed the City Attorney to prepare a draft ordinance similar to that passed by Oakland, California (Caron, 2003). In its role as a conduit between local government officials and activist groups, ACOA circulated model laws and coordinated lobbying efforts. In 1983, legislative action was underway in 21 states and 8 cities and counties. The previous year, Massachusetts, Michigan and Connecticut, along with the cities of Philadelphia, Wilmington and Grand Rapids, had divested $300 million in South Africa (Boyer, 1983).

City governments benefited from activist expertise, and activists in turn benefited from local officials' enforcement power. One city government that benefited from strong connections with civil society was New York City. Activists worked with the city's Commission on Human Rights to challenge South African job advertisements that appeared in the *New York Times*, as only white applicants could be considered, contra the city's expansive non-discrimination law. ACOA flagged job postings in the *Times* as early as 1970. Eleanor Holmes Norton, later head of the US Equal Employment Opportunities Commission and an elected official from Washington, DC, was then head of the New York City Commission on Human Rights. The Commission benefited from pro bono legal assistance, whilst activists relied on the Commission's enforcement power over an expansive non-discrimination statute (Grisinger, 2019, pp. 1671–1675). These early links between city officials and civil society paved the way for a stronger posture. Frederick Schwarz (2008, pp. 403–404), Corporation Counsel of New York City between 1982 and 1986, recalled pressuring Mayor Ed Koch to consider South African divestment. Koch appointed a panel to review city policy, which concluded that whilst 'cities do not have the authority to conduct foreign policy, foreign events may, at some point, become a matter of civic and municipal concern'. The report, ultimately approved by the Mayor and City Council, recommended phased divestment, starting with suppliers to the South African military and police (Schwarz, 2008).

Another key feature of the anti-apartheid divestment campaign was that local governments lobbied the state to divest, and state governments lobbied the federal government to sanction South Africa, a reflection of the US federal system. In April 1985, the City Council of Portland, Oregon, voted to support bills pending in the Oregon state legislature to divest in South Africa. The state bills passed in June 1985 (Johnson, 2016, pp. 172, 175). Localities also supported one another.

In 1983, a South African company sought to build a casino in Atlantic City, New Jersey, triggering public outrage. As a result, the city council adopted an ordinance barring investment of city funds in banks or companies that did business with South Africa (Janson, 19 April 1983). Support for the Atlantic City ordinance came from other local leaders in New Jersey. Mayor Kenneth Gibson and Councilman Donald Tucker of Newark sent letters, and the city councils of Newark and Jersey City passed resolutions opposing the South African-funded casino. The New Jersey state legislature also considered bills to block future South African stakes in casinos (Janson, 19 April 1983). Boston, Massachusetts, provides another example in which city councillors lobbied state representatives to adopt anti-apartheid laws. In 1973, Massachusetts Assemblyman Mel King introduced a bill in the state legislature to deny access to the Port of Boston for ships carrying Rhodesian chrome. In 1981, the MASS-DIVEST campaign advocated complete divestment in South Africa, a bill that passed in 1982 over the governor's veto. King worked with Boston City Councilman Charles Yancey to pass a city ordinance in 1984 that divested city pension funds, prohibited bank deposits with South African lenders and extended the Massachusetts law to include occupied Namibia (Johnson, 1999, p. 9; C. Sullivan, 20 September 1984).

Links between city council members and federal government officials also appeared in the San Francisco Bay Area. US Rep. Ron Dellums (D-CA) spoke at the ILWU chapter protests in 1984; his father had been a member of the union chapter and his uncle was a prominent civil rights leader. During the Oakland City Council debates on apartheid divestment, many union members spoke in favour of the Council's divestment ordinance. Dellums, previously an Oakland city councilman, had introduced a South African sanctions bill in Congress every year since he was first elected to federal office in 1970. In 1986, following President Reagan's veto of South African sanctions, Dellums played a leading role in the Democratic Congress's override (Cole, 2015, pp. 172–173). One US Senator commented during the debate over the 1986 Comprehensive Anti-Apartheid Act that adoption of local anti-apartheid ordinances helped shape legislators' views and created additional sources of pressure to change federal policy (McArdle, 1989, pp. 845–846). In 1989, conservative US Senator Jesse Helms (R-NC) threatened to punish US cities that divested in South Africa by denying federal transportation funds. In response, US Senator Frank Lautenberg (D-NJ) stated, 'financial concerns must at some point yield to moral standards' (Leffel, 2018). Another US Senator, Daniel Patrick Moynihan (D-NY), described apartheid divestment as a grassroots view spread by citizens and communities that feel 'strongly about moral or ethical issues in world affairs' (Leffel, 2018). The localities had successfully made their normative case, and they did so through existing and newly formed networks.

Theme 2: Local government divestment ordinances in urban context

Another important theme that appears in the debate over apartheid divestment ordinances is that of local autonomy and control. Local ordinances against apartheid challenged the prevailing conception of federalism, and specifically the degree to which sub-national governments could affect or alter foreign policy (Fenton 1993, pp. 563–564). In this context, 'local' distinguishes city and county governments, creatures of US state constitutions, from state, federal and tribal governments, which have powers explicitly or implicitly defined by the US federal constitution (Sutton, 1999, pp. 48–49). Because of a tradition of local self-government in the United States, state governments have rarely interfered with the international competence of local government units, allowing localities to, for instance, seek foreign investment, form sister city partnerships and go on foreign trade missions (Kincaid, 1999, p. 115). During the 1980s, local governments greatly expanded international operations. Large cities such as Philadelphia and Seattle created international affairs offices to organise trade missions, hosted visited delegations and appointed their mayors as international trade negotiators (Fry, 1990, pp. 122–123).

Although the term 'local government' in this context does not necessarily mean 'urban', the apartheid divestment movement also had a distinctly urban dimension. The first urban element involves African American political organising. By the 1980s, large cities were centres of African American political leadership and civil society. Between 1940 and 1970, African Americans went from among the most rural populations to the most urbanised ethnic group in American society; by 1980, fully 85% of the African American population lived in urban areas (Adler, 2001, p. 4). Unlike rural areas, urban jurisdictions provided legal protections for African American and Latino voters that allowed them to exercise their political strength; additionally, the civil rights movement bequeathed to urban areas a 'a new cohort of black office seekers and politically active volunteers' (Biles, 1992, p. 114). US civil rights activists and the wave of African American congressmen first elected in the 1960s after election and voting reforms saw the struggle for racial equality as global and took special interest in South Africa's apartheid regime (Moran, 2014, p. 22). For this reason, large city and municipal governments were well-connected to the civil rights networks that formed the skeleton of the anti-apartheid movement.

One notable example of the deep connections between civil rights leaders and apartheid divestment networks comes from Atlanta, Georgia. Atlanta Mayor Andrew Young, once a close associate of Martin Luther King, Jr., possessed significant links both to the foreign policy establishment and to Atlanta's African American political establishment. As the US Ambassador to the United Nations under President Jimmy

Carter, Young advocated stronger sanctions on South Africa and frequently attended anti-apartheid events. The hostility of the Georgia state legislature to state-wide divestment spurred Atlanta's city council to act on a divestment ordinance. In 1986, Atlanta-based Coca-Cola announced that it was selling its South African bottling operations, a move that the Reagan Administration had opposed because continued business links were crucial to the success of 'constructive engagement' (Moran, 2014). In June 1985, Atlanta Councilmen John Lewis and Bill Campbell introduced a resolution to sever Atlanta's ties with local banks that had outstanding loans with South Africa. A second resolution the next month divested the city's pension funds (Moran, 2014). Bringing together his knowledge of foreign affairs and city leadership, Mayor Young testified before the US Senate Foreign Relations Committee in May 1985 in support of sanctions, drawing on his time as UN ambassador (Moran, 2014). Mayor Young's testimony shows that local government officials directly lobbied their federal counterparts to place sanctions on South Africa.

The second way in which apartheid divestment networks took advantage of the spatial geography of the United States was in college towns. College towns are 'alike in their youthful and comparatively diverse populations, their highly educated workforces, their relative absence of heavy industry, and the presence in them of cultural opportunities more typical of large cities' (Gumprecht, 2003, p. 51) – all ingredients that favoured adoption of apartheid divestment ordinances. The first apartheid divestment ordinances appeared in medium-size cities with large flagship state universities. In December 1976, the Common Council of Madison, Wisconsin (home to University of Wisconsin), passed an ordinance to deny city contracts to companies with economic ties in South Africa. This was followed in 1977 by a similar one in East Lansing, Michigan (home to Michigan State University). The Madison ordinance was the brainchild of the Madison Area Committee on Southern Africa, formed in 1969 (Pfeifer, 2010, pp. 20–21). In 1978, Davis, California (home of University of California, Davis), passed a non-binding resolution in favour of divestment; subsequently, in 1980, the city council passed a binding investment policy that precluded new investments in South Africa (Boyer, 1983). In California, Mayor Loni Hancock of Berkeley, California, first introduced an anti-apartheid ordinance in the city council in 1973, though the ordinance did not pass until 1979 (Drummond, 24 June 2013). Other early divestment resolutions succeeded in Cambridge, Massachusetts (1979), home to Harvard University and Massachusetts Institute of Technology, and Hartford, Connecticut (1980), home to University of Connecticut Hartford. These early 'college town' ordinances varied. Whilst Cambridge and Hartford city governments opted not to invest in corporations that did business in South Africa, others such as Berkeley (home to University of California, Berkeley), and Charlottesville, Virginia (home to University

of Virginia), withdrew public funds from financial institutions with operations in South Africa (Walsh, 1984, pp. 777–778).

The proliferation of the divestment idea among colleges and universities reinforced divestment by local governments. By the early 1980s, college campuses erupted over apartheid at elite schools like Dartmouth, Columbia and Cornell, at large public universities like Berkeley and Wisconsin, and at regional schools such as University of Utah, Purdue, and University of Illinois Urbana-Champaign (Martin, 2007, p. 330). Well over 10,000 students participated in a one-day strike at University of California, Berkeley (Altbach and Cohen, 1990, p. 40). At Columbia, students blockaded Hamilton Hall for three weeks in April 1985 until a court order forced them to desist. Other universities that saw apartheid protests included Harvard, Tufts, Brandeis, Iowa, University of Massachusetts, Rutgers, UCLA and Louisville. In 1977, 700 students were arrested at campuses nationwide in anti-apartheid protests, 295 of whom participated in a single protest at Stanford University (Martin, 2007, pp. 334, 336). At Princeton University, students blockaded Nassau Hall, resulting in ninety arrests for trespassing and obstruction (Lloyd and Mian, 2003, p. 112). At Washington, DC-area universities, students joined the regular protests at the South African embassy in addition to on-campus protests (Novak, 2020). University divestment in South Africa often preceded and influenced divestment by local governments. For instance, the successful divestment campaigns at Florida State University in 1985 and University of Miami in 1986 closely preceded in time divestment by Dade County, Florida, in 1987. Dade County, home to Miami, passed an ordinance requiring corporations to disclose their business connections with South Africa, which became a model for other Florida cities including Tallahassee (home to Florida State University) and Gainesville (home to University of Florida) (Billington, 26 June 1990). Ultimately, under pressure from student groups and local activists, more than 120 colleges and universities divested their endowments partially or fully from businesses with operations in South Africa (Massie, 1997, p. 621).

One of the most visible and enduring symbols of the apartheid divestment movement was first born on college campuses: the 'shanty'. An informational network of anti-apartheid student activists helped transmit the mock 'shanty' as a protest tactic, designed to be a symbolic representation of living conditions in South Africa (Martin, 2007, pp. 345–348). Building shantytowns on campus spread in informal, unstructured ways among college student organisations (Soule, 1997, pp. 861, 876). At least 46 shantytown events occurred on college campuses between 1985 and 1990, beginning at Cornell University in the spring of 1985, followed by University of Washington that fall. Shantytowns, as 'the defining feature of the divestment struggle's movement culture' were a controversial and confrontational tactic from the perspective of university administrators (Martin, 2007, pp. 330). Construction of the shanties even led to

violence with conservative factions, such as at Dartmouth College and Johns Hopkins University, or lawsuits with authorities over freedom of expression limits, especially at public universities such as University of Virginia (Soule, 1997, p. 858).

Theme 3: Apartheid divestment as 'Glocal' identity formation

The anti-apartheid cause started 'global' and ended 'local'. Apartheid divestment promoted a *global* citizenship or an urban identity that embraced global connections, distinct from state, regional or national identities (see Introduction, this volume). Cities are instrumental in developing what might be called a 'glocalised' identity: that is, a globalised local identity, a term first used in the business world and marketing (Robertson 1994, pp. 36–38). Local governments are 'mediators' between communities and higher-level governments; this mediation is 'the means by which these communities negotiate their values, preferences and normative vision with the larger national polity' (Blank, 2006, p. 276). With the increasing 'international competence' of local governments (see Kincaid, 1999); however, local governments also mediate between local communities and international actors. Nijman (2016) uses the term 'global cities' to describe cities that have developed a shared global identity in concert with other cities. 'Globalization changes localities' true allegiances by turning them into mediators not only between the national and the local, but also between the international and the local. Localities are thus faced not only with national concerns but also international concerns, and must harmonize all such concerns with their own knowledge, culture, and interests' (Blank, 2006, p. 277). Local government divestment ordinances were an instance of 'mediation' between local interests and global causes.

The role of local governments as 'mediators' in the apartheid divestment movement was an expression of this 'glocalised' identity. Pan-Africanist organisations such as TransAfrica Forum and ACOA became versed in local government policy-making (Larson, 2019). By passing apartheid divestment ordinances, local governments on behalf of their communities articulated a shared *international* identity rather than just a national one: 'the federal government's lack of sufficient anti-Apartheid measures constituted nation-state failure to enforce universal non-discrimination norms, thus prompting local authorities to codify and enforce those norms through divestment efforts' (Loeffel, 2018). The individual agency of activists in the local divestment movement was another form of social capital that helped bind local governments to international human rights norms (Sabchev et al., 2021). The apartheid divestment movement trained a generation of future public servants, who continued their principled coalition building and activism after they moved into local government positions themselves.[2]

Local government action on global issues and the increasing international presence of many large cities may also contribute to a 'global city' identity for citizens based on their local culture, preferences and interests (Nijman, 2016). This fits with the greater theme of this book: cities and local governments may contribute to a distinctive identity formation as rights-respecting globalcitizens.

Even international institutions became involved at the local level. The case of local apartheid divestment ordinances is an early example of United Nations encouragement of the internationalisation of city governance and relationships between UN agencies and local authorities (Acuto and Leffel, 2020, p. 12). With leadership drawn primarily from Africa, Asia and Latin America, the UN Special Committee Against Apartheid in New York hosted representatives of liberation and solidarity movements even over the objections of the US government (Thörn, 2009, p. 424). The UN Special Committee encouraged local government divestment. In 1975, the City Council of Washington, DC, considered a selective purchasing law that divested the city from four US corporations that did business in South Africa. At issue were millions of dollars of IBM computers and removal of scores of Motorola radios in police cars. Representatives from the UN Special Committee, including Edwin Ogebe Ogbu, Nigerian ambassador to the United Nations, spoke to the DC City Council in support of the resolution (United Nations Centre Against Apartheid, June 1975). In 1981, the UN Special Committee funded an ACOA conference in New York attended by 40 state legislators from 14 states to build connections and strategies about effective lawmaking, followed by a second conference in Boston two years later with nearly 200 state legislators (Larson, 2019).

Another link between local governments and the global realm were South African political exiles, who became deeply involved in the American divestment movement. South African exiles were 'key players in the local nodes of the movement' (McClendon and Scully, 2015, p. 7). In Boston, the African National Congress (ANC) representative Themba Vilakazi worked with Boston Coalition for the Liberation of Southern Africa and other activist groups to reach students and faculty on Boston-area campuses (Ibid.). South African exiles and ANC officials also worked with activists in the United States to develop local government anti-apartheid ordinances. In 1969, ANC President Oliver Tambo met with activists in Boston and encouraged a picket of ships carrying Rhodesian chrome (Larson, 2019). Whilst in Massachusetts, Tambo met with Professor Williard Johnson of MIT and State Assemblyman King to conceive of a strategy to use local and state legislative power to change the US federal government's policy towards Southern Africa. King first sponsored legislation in 1973 to prohibit Rhodesian chrome from the port of Boston, and ultimately succeeded in passing a broad South African divestment bill in 1982 over the governor's veto (Larson, 2019).

South African exiles even participated in city-to-city (and state-to-state) network formation. King and fellow Massachusetts Assemblyman Jack Backman befriended Tandi Gcabashe, a prominent anti-apartheid activist in Atlanta and daughter of former ANC president Chief Albert Luthuli. Gcabashe worked with local state representatives including State Reps. Julian Bond and Tyrone Brooks on divestment legislation in Georgia (Ibid.). Brooks and Atlanta City Councilman John Lewis were arrested at a demonstration outside an Atlanta meeting of IBM shareholders in April 1985. Brooks recalled traveling to the UN and to college campuses to promote divestment. When he introduced a divestment bill in the Georgia legislature in 1987, Brooks credited King: 'It really was the Massachusetts legislation that started all of this' (Moran, 2014, pp. 118–120).

ACOA, one of the Pan-Africanist organisations most closely associated with local apartheid divestment, also promoted links between the local and the global. In 1979, South African exile Dumisani Kumalo (much later South Africa's ambassador to the United States) became Project Director at ACOA, where he testified before city councils and state legislatures encouraging divestment. Under Kumalo's direction, ACOA served as a clearinghouse on divestment for student groups and local activists. Reportedly, the Pittsburgh city council backed divestment because of Kumalo's testimony (Larson, 2019). Other scholars have found the local activists to be the primary agents of diffusion of the divestment idea, rather than ACOA, which remained strongest in its home base of New York. Cooper (2000, p. 185) explains that the driving force behind local divestment ordinances was the grassroots anti-apartheid groups such as the Madison Area Committee on Southern Africa, which succeeded in passing a selective purchasing ordinance that became a model for other cities. Regardless of where the agency lies, the smaller symbolic victories at the local level 'indirectly forced major financial, educational, and governmental institutions to alter their routine, uncritical ways of dealing with South Africa' (Ibid., quoting Culverson, 1999, p. 158). The work of ACOA and local divestment groups was heavily aided by prominent South Africans such as Desmond Tutu, Chris Hani and Alan Boesack who did speaking tours across the United States (McClendon and Scully, 2015, p. 7).

Theme 4: Capitalism and globalisation as driving forces

Yet another theme that recurs in the apartheid divestment debate is the role of capitalism and globalisation. Local governments possessed significant and multifaceted economic links to South Africa. Many major American businesses with a South African presence were based in US cities. City governments signed procurement contracts and invested pensions and other public funds in South African banks and corporations

or those that did business with South Africa (Caron, 2003). The grassroots anti-apartheid movement in the United States proceeded on 'two tracks' simultaneously, targeting financial interests and government policy (Klotz 1995, p. 464). These two tracks were not wholly separate. Rev. Leon Sullivan, the first African American on a major corporate board of directors when he was appointed to the board of General Motors in 1971, was himself closely tied to the civil rights movement and African American political leaders such as Rep. Adam Clayton Powell (D-NY), who represented Harlem in Congress (Stewart, 2011, pp. 68–71). Articulated in 1977, the 'Sullivan Principles' provided guidance for large US corporations doing business in South Africa to prevent 'petty apartheid' and to require, among other things, non-segregation and equal pay (Sullivan, 1983). Local divestment directly targeted the globalised economic forces that made cities and other sub-national units into global players. Total divestment and sanctions gradually replaced the Sullivan Principles as a strategy to oppose apartheid, including from Rev. Sullivan himself, as the Reagan Administration tried to maintain business links with South Africa (Stewart, 2011, pp. 81–83). Apartheid activists and supportive lawmakers directly challenged corporations. US Rep. Charles Diggs of Detroit (D-MI), founder of the Congressional Black Caucus, toured a segregated General Motors factory in South Africa and remarked 'General Motors can do a hell of a lot more' at a time when it controlled 18% of South African automobile sales (Morgan, 2006, p. 527).

Why divestment? The growth of South Africa's economy after World War II enabled it to maintain a system of racial and labour exploitation by relying on foreign investment (First et al., 1973, pp. 290–291). American investment in South Africa had grown from about $660 million in the 1960s to $14.5 billion by the early 1980s (Ibid., pp. 130–133). In the United States, the divestment movement called on public entities, banks, corporations, universities and subnational governments to end business relationships with the apartheid regime. A divestment strategy was possible because South Africa's heavy debt load made it uniquely vulnerable to shifts in foreign lending (Levy, 1999, p. 416). Most local government divestment was indirect and comprised relatively small sums, but it came when South African inflation was high, currency weak and credit scarce (Gosiger, 1986, pp. 524–527). In 1971, Polaroid Corporation in Cambridge, Massachusetts, became the first major US company to condemn apartheid after employees discovered that South African police used the film to enforce pass laws. By 1977, a group of African American workers at Polaroid convinced company executives to end business relationships in South Africa (Morgan, 2006). Apartheid divestment also implicated the private sector through corporate social responsibility. Shareholders encouraged sale of South African-affected stock and other assets (Kaempfer et al., 1987, pp. 467–469). Activists targeted pension

funds and charitable institutions, including private universities, which were managed by trustees with fiduciary duties of prudent investment (Deeks, 2017, pp. 340–343; Ennis and Parkhill, 1986, pp. 30–35; Troyer et al., 1985, p. 129).

The apartheid divestment norm diffused so widely that corporations and business associations never directly targeted the constitutionality of local apartheid divestment ordinances, on the belief that they were too politically popular (Caron 2003, p. 183). In this regard, the apartheid divestment movement succeeded in subverting the market and capitalist forces that underpinned President Reagan's 'constructive engagement' policy. Today, many of the stronger local anti-apartheid ordinances would be unconstitutional. The federal government alone, not states or localities, can regulate foreign commerce (Article 1 of the US Constitution) and conduct foreign affairs (Article 2). Subnational legislation was arguably 'preempted' by Reagan's 'constructive engagement' policy (Bernaz, 2013, pp. 243–244). The most senior US court to pronounce on the constitutionality of a local divestment ordinance before the end of apartheid was the Maryland Court of Appeal, the highest court of the state of Maryland. The Court upheld Baltimore's divestment of a $1.1 billion pension fund on the grounds that it was 'broadly consistent' with US foreign policy towards South Africa and had only a 'tangential' foreign policy impact (*Board of Trustees of the Employees' Retirement System v. City of Baltimore*, 317 Md. 72, 1989). This case is likely no longer good law. In 2000, the US Supreme Court found Massachusetts's Burma divestment law unconstitutional, as it infringed on the foreign affairs power and undermined US sanctions on Burma (*Crosby v. National Foreign Trade Council*, 530 U.S. 363, 2000). As under many apartheid divestment laws, Massachusetts could not buy goods and services from corporations that did business in Burma (see Hirschhorn, 2008, pp. 350–352). Even when the United States did apply sanctions on South Africa in 1986, state and local divestment ordinances went far beyond what US federal law authorised. For instance, both California and the City of Los Angeles required their public pension funds to divest from South African investments even though federal law did not require this (Fischer, 1988, p. 702). It is a testament to the strength of the anti-apartheid divestment norm – and to the advocates and networks who promoted it – that the idea of apartheid divestment 'cascaded' to the point where it was too popular for business interests to challenge directly (see Caron 2003; Finnemore and Sikkink, 1998, p. 895).

Conclusion

Between 1975 and 1994, state and city anti-apartheid ordinances were a significant assertion of local power that challenged prevailing conceptions of constitutional federalism in the United States. Activists worked with city policymakers, taking advantage of city-to-city networks and

local enforcement powers to target businesses and city investments connected to a 'glocal' moral cause (Caron, 2003; Lopez 1985; Moran, 2014). The apartheid divestment movement shows the importance of creating the globalcitizen, one who sees that the same forces that produce homelessness also produce overseas oppression. In the United States, the local ordinances were intimately related to urban geography: the political leadership of large cities was connected to African American and Democratic Party leadership that challenged the Reagan Administration's conservative policymaking, whilst college towns provided fertile links between student groups and local policymakers (Biles, 1992, p. 114; Gumprecht, 2003, p. 51). By targeting corporations and investments, apartheid divestment challenged the postwar globalisation process that had turned cities into major global economic players; cities simultaneously positioned themselves against global economic flows but in support of a global moral agenda (Shuman, 1986). This episode showed that city-to-city organising could challenge traditional power structures that oppress human rights. Local apartheid divestment specifically targeted the global capitalist links that had greatly contributed to cities' postwar growth, but simultaneously reinforced the South African apartheid regime (see White 2004, pp. 53–55). In so doing, apartheid divestment dovetailed with other intellectual currents, such as corporate social responsibility and sustainable investment; even today, it is widely cited as a precursor for debates over fossil fuel divestment, sanctions on Israeli settlements in Palestine, and compliance with women's and children's human rights (Leffel 2018; Nijman, 2016).

Local apartheid divestment in the United States adds complexity to the 'transnational advocacy networks' frame because it undermines the power dynamic that scholars have critiqued about the 'call-and-response boomerang' model of advocacy (Stevens, 2016, pp. 14–15). Here, Global North advocates and local officials relied on international networks, to include South African political exiles and nationalist organisations, to serve an American agenda of changing US foreign policy, which in turn was intended to benefit South Africa (Minter and Hill, 2008). Cities were able to use their multiple, sometimes contradictory roles as market participant, regulator and quasi-advocate to amplify their political power *as cities*. With global urbanisation and the rise of mega-cities, many national constitutional and legal orders will have to adjust to accommodate the growing political power of their sub-state units (Herschl 2020, p. 10). This case study reinforces a view of cities, not as simple hubs for the spokes of a wheel, but as 'agents' in a much larger 'ecosystem' of global urban governance (Acuto and Leffel, 2020, p. 14). 'A major community of local government networking has been built over the last century', helping to transform policy priorities towards a sustainable future (p. 13). Apartheid divestment challenged existing US constitutional doctrine on local-federal relations and pushed the

boundaries of what had been constitutionally acceptable. Although from a jurisprudential perspective local divestment ordinances today would run afoul of the US Supreme Court's decision in *Crosby*, city-to-city networks and organising are far stronger and more prolific than in the 1980s, ensuring that cities will remain powerful actors in global politics despite constitutional constraints (Herrschel and Newman, 2017, pp. 3–4).

Notes

1 The Sullivan Principles, adopted in 1977, were guidance for US corporations doing business in South Africa. They required US corporations to adopt policies of non-segregation, equal pay and equal promotion potential. The principles were influential and honoured by most US corporations with South African subsidiaries. However, Rev. Sullivan's later attempts to establish timetables and benchmarks faced resistance (Stewart, 2011, pp. 62, 74, 77).
2 One example is Marc Morial, co-founder of the New Orleans Anti-Apartheid Coalition, who became mayor of New Orleans in 1994 and subsequently president of both the US Conference of Mayors and the National Urban League (Loyola University of New Orleans, February 27, 2019). Another example: two student leaders of the Student Coalition Against Apartheid and Racism were later elected to public office: Paul Strauss of American University, future US Shadow Senator from Washington, DC and Steve Phillips of Stanford University, future president of the San Francisco Board of Education (African Activist Archive, February 1, 1985).

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3 Human rights within the context of urbanisation

Focusing on the cultural rights of Abdals in Kırşehir (Turkey)

Albeniz Tuğçe Ezme Gürlek[1]

Introduction

The dynamics unleashed by globalisation affect the adventure of urbanisation. An adventure created by the tension found between the concepts of 'development' and 'human rights' as played out in urban spaces. The politics inherent in running a city, and the pursuit of growth, affect a broad category of human rights tied with quality of life and cultural sustainability. This study focuses on an exemplary case study of the tension between a certain form of urban development and the cultural rituals and practices that have developed over a long period of urban history. The focus is on Kırşehir (Turkey), situated in a small province, but very rich in terms of culture. What my analysis of the case study reveals is how elements of the cultural uniqueness of this city has been sacrificed to a nationwide project of urban planning, which was centrally conceived without taking into consideration local conditions.

Kırşehir is a small-sized city in the Central Anatolian part of Turkey. The city is known as a representative of Bozlak music and the Abdals. The term 'Abdal' refers to a unique cultural group, as well as the local folk musicians in Turkey. They are one of the most significant communities in terms of Anatolian musical heritage and the Bağbaşı neighbourhood of Kırşehir has been a home for them for years. Their unique music is a result of their distinctive lifestyles, social relations, religious views, cultural values and their ideas. At the centre is the unique way by which musical knowledge is passed on from generation to generation; it is inherited from father to son without any formal education and/or musical notation. Because of the cultural identity of the Abdals, Bağbaşı has always been famous in Kırşehir and the broader Central Anatolian region of Turkey.

Despite the value of this unique community, the Abdals have been a disadvantaged group socio-economically. As a result, they have been especially vulnerable to an urban renewal project implemented by the local government. In 2011, the Municipality initiated the Bağbaşı renewal project. The community was neither consulted or informed, nor able to

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provide their input to the renewal plan due to the poverty and educational problems created by their socio-economic positions. Like most other Anatolian people, they value their identity and the collective right to practice it in social life. However, thanks to the national development goals, the Abdals, like other disadvantaged groups, confront serious risks, chief among them displacement. Due to a decision made without their contribution, the Abdal community suffered the worst possible outcome of the process. They were displaced, some of them settled in the new apartments built by the Housing Development Administration of Turkey (TOKI), while others had to totally vacate the neighbourhood since they were tenants. Some of the Abdal families still live in their own homes in the area not included in the urban renewal project. But apartment life proved to be unsuited for the lifestyle of Abdals who moved in TOKI blocks; it leaded many Abdal families to desert the historic neighbourhood for detached houses in other neighbourhoods of the city. Today, only a small part of the community still lives in Bağbaşı, some of them in the new apartments and others in their old houses, which were not incorporated into the TOKI project.

In this study I focus on that disregard for the cultural rights of the Abdals by those who planned and implemented the renewal process while ignoring their rights to access, representation and participation in it. Due to this plan, the standards of life of the Abdals are subjected to a major transformation, which contains both positive and negative aspects but puts at risk the distinctiveness of their cultural rituals. On top of this contradiction of effects lies the force of a choice. Put it differently; this ambivalence becomes a reality in the conceptual space and associated practices of behaviour found between the 'right to culture' and the 'right to the city'. Clearly, there is a need for recognition of cultural rights when it comes to urbanisation. It is true that the urban planning focused on providing quality housing conducted by the state through TOKI has led to the transformation of many cities in Turkey. However, the centralised and one-size fits all approach has led to the loss of the cultural values and identities that had been cantered on the demolished settlements. The transformation of the urban environment in Turkey can come at a staggering cultural cost.

The case study is structured on field work which I conducted using two qualitative methods: participant observation and open-ended interviews. I have lived in Kırşehir for years and have taken the opportunity to observe the renewal process first-hand. My conclusion was that observation is not enough to explain the whole process but can serve as a starting point to understand the character and consequences of the transformation. To deepen insight into what transpired I used open-ended interviews. As a part of this research, I did deeply interview with ten of non-Abdal residents who were neighbours with Abdals in the area for years, ten residents of Abdals, three of the Municipal officials and three of the NGO and

Opposition Party representatives in local since July 2018. Besides, since I think that my own participant observations will not be sufficient, in June of 2021, I prepared an ethnographic observation form and designed questionary based on Bağbaşı, its renewal process and the cultural sustainability of Abdals. This form was filled with 32 participants living and/or working in the urban renewal area, working in different fields of social sciences. This permits us to understand the process from both the perspectives of those who implemented it, who observed it and those who were affected by the implementation. Importantly we can gain insight into whether and how the Abdals were incorporated in the process. My findings lead to the conclusion that the renewal process, as it was implemented, was a violation of the cultural rights of Abdals. According to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: 'Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation' (UN, 1992: Article-3, Paragraph-3). In Bağbaşı, both the physical and communal effects of the urban renewal project put at risk the sustainability of Abdals' unique culture. Considering the central role of their culture in Kırşehir being declared UNESCO city of music in 2019, the violation of rights extends to the broader public of this city. Because, according to the General Comment 21 of the UN: 'Minorities, as well as persons belonging to minorities, have the right not only to their own identity but also to development in all areas of cultural life. Any programme intended to promote the constructive integration of minorities and persons belonging to minorities into the society of a State party should thus be based on inclusion, participation and non-discrimination, with a view to preserving the distinctive character of minority cultures' (UN, 2009: Article 5, Paragraph 5).

Using the above tools, I present a report of the renewal process implemented in Bağbaşı. I also provide a historical overview of the Abdals and their cultural heritage, which may not be preserved for the future, following the renewal. In addition to this, in this section, I will look at how the history of urban renewal and the development of human rights are intertwined, and where it can be positioned in the literature when we examine urban renewal based on rights.

Urban Renewal and the Rights to Culture and to the City in Turkey

The roots of the concept of human rights may be traced back to the political philosophy of the Enlightenment. These ideas interacted with the long process of urbanisation, which began with the development of a sedentary lifestyle among humans. By the 19th century the concept

of urban renewal had become part of the political process, especially in developing nations. In this section I provide a timeline of the development of these two significant concepts and show their conflicts and interaction in history.

The Industrial Revolution is a major turning point in human history in every respect. It was not only the transition to a new manufacturing process, but also the associated transformations in society, economy, environment and culture all around the world. This process was reflected in big cities mainly through rapid urbanisation and its negative effects. In growing industrial cities this was exemplified by deepening poverty and rising unemployment because of the challenge to economic sectors arising from mechanisation, which in turn fed labour strife, class identities and struggles for rights. These cities faced increasing environmental issues and insufficient infrastructure facilities, becoming unhealthy areas. To counter this result, the discipline of urban planning arose to complement architecture. At the same time the social consequences of rapid industrialisation broadened the concept of human rights, raising them to the summits of a hierarchical order of value created by the systematisation of knowledge. The first generation of human rights, as expressed by documents such as The Declaration of the Rights of Man and of the Citizen in France in 1789, and the United States Bill of Rights in the US in 1791 were formed in this milieu of increased urbanisation. In turn they provided the foundation for the 1948 United Nations Universal Declaration of Human Rights. As more and more of humanity came to live in urban areas, human rights to a great extent mean the human rights of humans living and interacting in cities. In the second half of the 19th century, a series of renewal projects involving the opening of wide boulevards to make the city healthier, and liveable. In the late 1800s, the Paris Plan was implemented by Haussmann as one of the first urban renewal projects and this was revolutionary in urban life (Berman, 1988; Carmona, 2004; Harvey, 2013). Berman (1988: 150) underlines that this plan cleared the slum areas and opened up 'breathing space in the midst of layers of darkness and choked congestion'. As for Engels (2020) argues that Haussmann did not aim to solve poverty, but the displacement of the poor. This argument may be seen as the first criticism in the literature for the displacements caused by urban renewal. As parallel to this, Turkey of the second half of the 19th century had the first attempts at urban renewal aimed at spatial transformation in Istanbul, especially in the historical peninsula, which tended to be the frequent victims of large fires due to the use of wood (Tekeli, 2010; Yenice, 2014: 79; Keleş, 2015). Although not with the same intensity as that seen in the industrial cities of the West, an increase in the urban population, especially in Istanbul, caused the creation of new residential areas (Aktüre, 1985; Tekeli, 1985).

The late 19th century early 20th century urban movements had a transformative effect on many global cities in the world. This process was

intensified in the developed states after the destruction wrought on cities by the fighting of the Second World War. Cities had to be rebuilt, many times anew. However, this urban renewal fervour did not extend to the developing world. From the beginning of 1920s to the WWII, in Turkey, while there was a transition period from the Empire to the Republic, on the other hand the capital was moved from Istanbul to Ankara and the modernisation steps of the new republic were taken; later, Boratav would explain this period as reconstruction under open economy (Şenyapılı, 2004; Boratav, 2012: 39–59; Keyder, 2013). During the 1930s, a breakthrough was realised in national industrialisation by the state, which fostered the creation of factories in Turkey as part of a policy of import substitution (Bozdoğan, 2002). This policy and the factories that were created as part of it, paved the way for the formation of most mid-scale cities in Anatolia. Between 1940 and 1945, during WWII, industrial investments completely stopped, a change was observed in the current class structure due to the wide authority given to the political cadres and bureaucracy, due to economic recession a different form of urbanisation took place and, the first shanty settlements were built by Balkan immigrants in Istanbul (Erman, 2017). WWII was also a turning point in the development of human rights, which intensified in reaction to the social, cultural and economic destruction wrought in the war. The second generation of human rights arose from the wreckage of the developed world, with new rights such as social security, right to food, right to be employed, right to housing and right to education becoming enshrined in the Universal Declaration of Human Rights. These new rights affected social state policies in Europe which in turn shaped the urban acts inaugurated in Europe.

Right after WWII, the New Towns Act of 1946 established a program to build new urban areas and shaped urban renewal policies in the UK. In the US, these policies were not put in place until the 1960s, although after WWII, grants had been extended for such things as slum clearance, improved housing and new road constructions – and later in the 1950s, to comprehensive urban renewal projects. Carmon (1999) explains this time as the '*bulldozer period*'. As parallel to this, in Turkey, the time that started in 1946 and lasted until the 1970s, considered as a period of rapid industrialisation and unplanned urbanisation after industrial breakthroughs led to the mechanisation of the countryside. There was a bulldozer period experience of Turkey from 1957 to 1960. The Menderes government launched urban renewal operations in Istanbul that carried the destructive aspects of the Haussmann project in Paris. At the same time, with uncontrolled migration movements, slum settlements close to industrial areas were formed around big cities. While all these are taking place in Turkey and in the world, it should be noted that the urban renewal movement of the 1950s played a very important role in the civil rights era in the US, because, as noted in the literature on urbanisation,

the misapplications of these projects in both Europe and the US led to an intensive discussion of urban renewal and its relation to patterns of exclusion. As divisions and inequalities increased in the physical and social environments of cities, a necessity appeared to meet and protect the needs and rights of their inhabitants. This led Lefebvre to introduce the concept of the '*right to the city*', which aims to offer an alternative approach to human relations in the urban environment. His goal was to promote, defend and strengthen the interests of the whole society and primarily those living in the city. In this way, the legitimate demands of not only citizens, but also all inhabitants and social groups in the city were brought to the fore of the discussion (Koenig, 2006). Lefebvre's right to the city enfranchised citizens to participate in the use and production of urban space (Purcell 2002). In his concept, citizenship is defined to include all urban inhabitants, conferring two central rights: the right to participation and the right to appropriation (Lefebvre, 2015). Participation allows urban inhabitants to access decisions in city governance, and appropriation includes the right to access, occupation and usage of space and the right to create new spaces that meet the needs of the people (Lefebvre, 2015). The 'Right to the City' restructured the power relations that form the basis of urban space by transferring the control of urban space from capital and the state to those living in the city (Lefebvre, 2011). Harvey (2003) points out that Lefebvre's concept includes 'not only the right to access the resources available in the city, but also the right to change it according to our own desires'. Lefebvre not only brought the 'right to the city' concept to the literature, but also opened a discussion based on the production of space, and its effects not only on the city but also on the daily life and social relationships. This was one of the most important discussions in urban planning.

The period between 1980 and 2000 was defined by a crisis of capitalism and the transition to the global economy. This crisis also saw a transformation in production and spatial structures (Öktem, 2006). By the 1980s, cities began to be affected by a new set of neo-liberal urban policies stemming from the capitalist globalisation. Urban citizens, especially in the renewal areas, faced the disadvantages created by the neoliberal model shaped by the market economy. Globalisation also pressured nation-states (and the cities within them) to reach common standards concerning human rights. The interlaced dynamics of democratisation, transnational movements and international organisations forced states to deal with human rights, which in turn create both positive and negative obligations. This process brings to the fore another multifaceted confrontation between human rights and culture, which has been stressed by a rich and vast literature detailing this clash of 'global/local times' (Wilson and Dissanayake, 1996), 'poetics and politics' (Hall, 1997), 'roots and routes' (Urry, 2000). In the name of self-creation, society is pushed towards embracing nativism. This trend also becomes expressed in urbanisation

processes, where the city and/or locality becomes an important blessing to defend, leading to a confrontation between 'rights to the city' vs. 'identity commitment'. And the role of culture comes to play within this commitment of identity via providing coherence, distinctiveness and continuity (Pasupathi, 2014). In the 1980s, Turkey abandoned its policy of industrialisation through import substitution and protectionism, opting for outward-looking economic policies. In this process, while old industrial areas left the big cities, the squatter settlements formed around them became apartment buildings through the use of zoning amnesties and populist policies. Another situation observed in Anatolian cities in this period, is the emergence of new capital groups (Çavuşoğlu, 2014). In metropolitan areas, the abandoned historical areas in the city centre are rented or occupied by the new urbanites such as Kurdish immigrants who had to leave their villages due to terrorist incidents in the Southeast Region of the country. This period, when neoliberal policies began to shape cities with urban renewal, is the scene of local governments acting according to a global urban discourse, as well as the pushing of the labour geography out of the old metropolitan areas to suburbs. Concepts such as gentrification, urban rent, right to the city, transforming public spaces and gated communities began to be integrated in policy in this period. The post-2000 period, when neoliberal urban policies dominated all cities, is regarded as a period in which 81 cities were transformed by Housing Development Administration of Turkey (TOKI).

While globalisation emphasised the importance of the economic potential of cities, it also emphasised the human, cultural and environmental costs of development. Urban segregation deepened as urban poverty increased. As cities became attractive, the number of slums increased, and spaces for producing capital were created instead of new residential areas (Carmona and Wunderlich, 2013). The gap between the rich and the poor and the 'official' and 'informal' cities has widened. Merrifield (2017) summarises this process in urbanisation as 'new Haussmannization'. He argues that the same scenario that occurred in the Paris of Haussmann happens at global level today, and not only in capital cities but also all kinds of cities driven by transnational finance companies and supported by governments (Merrifield, 2017: 15). In the past forty years not only the capital cities but also all the metropolitan areas of the developed world have been affected by changes in the national and international economic system. Growth has been a contested issue in both advancing and declining cities, and local groups have mobilised to affect population and capital flows, to either limit or attract development (Fainstein, 2001; 5).

Urban areas are the most affected places by globalisation, since in 2008 the world population reached a momentous point when for the first time in history more than half of the world population lived in urban areas. To adapt to the new global economic system and attract transnational capital, states, especially developing states, changed the governance structure of

their urban areas. They did so seeking to develop the service economy by decentralising the industrial areas out of the city, fostering the building of shopping malls and luxury housing areas for the new class who work in the service economy, as well as airports, congress centres and other amenities that help link cities with the global capitalist market. During this period, Turkish cities have been transformed spatially, socio-economically and culturally by the destructive consequences of the TOKI housing projects, the national 'A university in every city' project, the implementation of concept parks and a growing number of shopping malls (Uzun, 2017). Cities were transformed from places of industrial production to places of consumption or observation (Urry, 1995). This is the period when local governments tasked with protecting public interests were liquidated and replaced by servile administrations that facilitated the destructive rentier urban transformation projects championed by construction capital. This in turn led to an increase in the formation of social movements and urban opposition practices against these policies. This reaction also took place in academia, where the 'right to the city' became an important part of discussions in urban studies trying to make sense of the applications of urban transformation projects. These urban landscapes were formed by the growing income inequality characterising Turkish cities, the segregation of income communities and the shift of public space to semi-public-semi-private areas (Yonucu, 2014; Kurtuluş, 2016; Şen, 2016; Türkün and Kurtuluş, 2016).

However, the question rises about the fate of the old inhabitants of the city, who had worked in the old industrial areas and lived in the cities for years. This paradox between old and new, city dwellers and new residents, capital and community, local and global, the marketing of, and the conservation of the old cultural values, is one of the most salient marks of globalisation on cities. While multicultural inner neighbourhoods were targets of renewal because of their historical and cultural values, this very process put at risk the cultural sustainability that made them valuable. The confluence of all these elements was another turning point in urban renewal policies in Turkey. Since 2000, this scenario was not only seen playing out in the metropolitan areas of the world, but also in smaller cities such as Kırşehir. One of the most important renewal projects implemented on the basis of the new legal framework and in a small sized city, was the Bağbaşı project. At the centre of this issue is the process by which living culture, as opposed to mere consumerist folklore, are sustained. In the Declaration on Principles of International Cultural Co-operation of 1966 UNESCO General Conference, Article 1 states that 'each culture has a dignity and value which must be protected and preserved', and Article 2 underlines that 'every people has the right and the duty to develop its culture'. In the name of preservation, it is important for members of the culture to practice as well as to pass on to the next generation the rituals which mark the spatial integration for the practitioner to create both self-actualisation and self-sameness.

At this point, the importance of culture for urbanisation, and the threat culture faces from the urban renewal process, becomes linked to the idea of human rights. The concept of 'human rights' covers a broad array of ideas, including both individual and collective rights. The two rights of interest in this study, 'the right to the city' and 'cultural rights', are both collective and/or group rights. Globalisation has brought increased importance to these rights. With globalisation, the political forces of the nation-state have been decentralised and the state's obligations in the field of human rights have shifted towards the increasingly relevant local governments. This is exactly why many national and local guidelines have been published on the topics of 'right to the city' and 'human rights in cities' in recent years: these include, the European Declaration of Urban Rights (1992), the European Charter for Women in the City (1994), The European Charter for the Safeguarding of Human Rights in the City (ECSHRC, 2000), Brazil The City Statue (2001), World Charter on the Right to the City (2004), Montreal Charter of Rights and Responsibilities (2006) and others. The purpose of these declarations is to call local governments to meet their duties and responsibilities regarding human rights. Basically, all these declarations are related to the 'right to the city' by representing different urban policies (UNESCO, UN-HABITAT, ISS, 2005: 3). There is an urgent need to transform cities into more democratic environments. The presence of democratic process in urban planning is an important issue for the evaluation of the local implementation of human rights (Koenig, 2006: 12). Rights implemented at the local level place individuals in a central position in the definition and development of their environment. In this context, the 'right to the city', according to Koenig (2006: 12), provides a starting point for a 'new generation rights', which include the implementation of universal human rights at the municipal level. The right to the city is a beginning for a democratic urban geography and not an ending of urban political structure (Purcell, 2006).

The Case Area: Bağbaşı Neighbourhood

Bağbaşı remained an important cultural zone for Kırşehir because the Abdals lived there since the end of the 1940s. It was learned from the interviews that the first Abdal families came to Bağbaşı from the surrounding villages in those times in search of employment opportunities. The neighbourhood initially had a patina of illegality and did not receive municipal services and infrastructure, as the Abdals did not obtain formal land titles and/or building permits (Dağ, 2000). According to information obtained from interviews with municipal officials; the municipality incorporated the neighbourhood in a municipal subdivision plan, and the neighbourhood settlers received land titles in the 1950s. When the Abdals initially built their houses, the area was empty

farmland. In addition, Bağbaşı was promoted by the municipality to other city dwellers, who had built gecekondu[2] in other districts such as Kervansaray, as an area where they could buy land parcels and build legal houses. Some of the Abdal families also came to Bağbaşı in the 1960s from Kervansaray following this process. In the following years, the Abdal population in Bağbaşı grew and the neighbourhood became an Abdal settlement. According to the interviews, there were times when the number of Abdal families in the neighbourhood exceeded 200, but in the early 2000s, the number of Abdal houses in the neighbourhood did not exceed 50.

Long after the settlement of the neighbourhood, going well into the 1990s, the municipality extended infrastructure service coverage over Bağbaşı. The population continued to grow in the 1960s due to an influx of people that were displaced from villages that were expropriated by the state during the construction of the Hirfanlı Dam. Also, some Roma families moved into Bağbaşı, and city settlers sometimes called the Abdals 'gypsies'. What made Bağbaşı a suitable settlement for Abdals and the other settlers was the availability of vacant state-owned land and the proximity to the roads that served their old villages. These lands were also cheaper because they did not have a reconstruction permit. By the 1990s, the area, now known as the Abdals neighbourhood, involved four streets, but continued to sprawl until 2010, when the renewal process started (Dağ, 2000).

Bağbaşı consisted of one- or two-storey detached houses with attached small gardens of trees (Image 3.1).[3] Mostly, streets were settled by people

Image 3.1 Bağbaşı neighbourhood: Abdals' settlement and the new TOKI blocks behind them.

(Source: Kırşehir Municipality)

from the same family and/or same villages. Neighbours knew each other and the potential for communal solidarity was higher than the other areas of the city. Streets were a part of the house and served the people as a communal living space. Their solidarity was based on 'to be Abdal' and this let them survive as a distinct community in the city centre. They shared not only needs, but also their business sense and skills, such as musical and dancing knowledge, the skills of a circumciser, aviculture and others.

The interviews conducted within the scope of this research shows that the music is a source of life for the Abdals, and they pride themselves on being musicians. Some families put a violin bow or drumstick under the pillow when a baby was born in the belief that the item would help the child grow up to be a musician (Dağ, 2000: 33). They learn how to play a musical instrument from father to son. The Abdal children start to play a musical instrument in their primary school years. At the beginning their role is to carry the musical instruments, and then they start to play music themselves at home, and finally they can accompany and play with the masters in wedding ceremonies.

Abdal musicians make their income from playing at wedding ceremonies in the summer, with winter being an off season from work. In Abdal culture, women do not dance in the public (Images 3.2 and 3.3). Because of this cultural prohibition, boys who call themselves 'köçek' dance in weddings as a show and earn money. It is possible to say that the Abdals do not operate along the stipulations of the modern economic system. They do not save money; they work and earn in the summer and spend in the winter, and live and think from day to day without long-term plans. Their form of intellectual ownership is different from the dominant form in the entertainment industry. The communal musical knowledge of Bağbaşı has been the foundation for the career of many unknown local musicians and nationally as well as internationally known ones such as Neşet Ertaş. But none of the educators sought to gain intellectual property rights or copyright agreements to earn money from their works (Dağ, 2000). They live a modest life, and their unique worldview extends to their negative view of politics, and refusal to participate in them as members of political parties. A new generation of Abdals, considering the changes in the music industry started to see music not as a profession but as a hobby. The number of people engaged in music as a profession is decreasing day by day (Dağ, 2000). Those young Abdals that still seek to continue the traditional musical education are also now working in other jobs as well, either self-employed or as civil servants. Others decide to give up the tradition altogether and seek employment in welding, auto repair and upholstery, due to economic difficulties.

For years, the Abdals have faced social exclusion due to their profession, lifestyle and even their physical characteristics, and their neighbourhoods are referred to as 'Abdals' Neighbourhood', which causes spatial segregation in the city. For years, it was a small group of musicians, artists and journalists who saw beyond prejudice and understood the role

Images 3.2 and 3.3 Abdal Musicians from Bağbaşı.
(Source: Kırşehir Municipality)

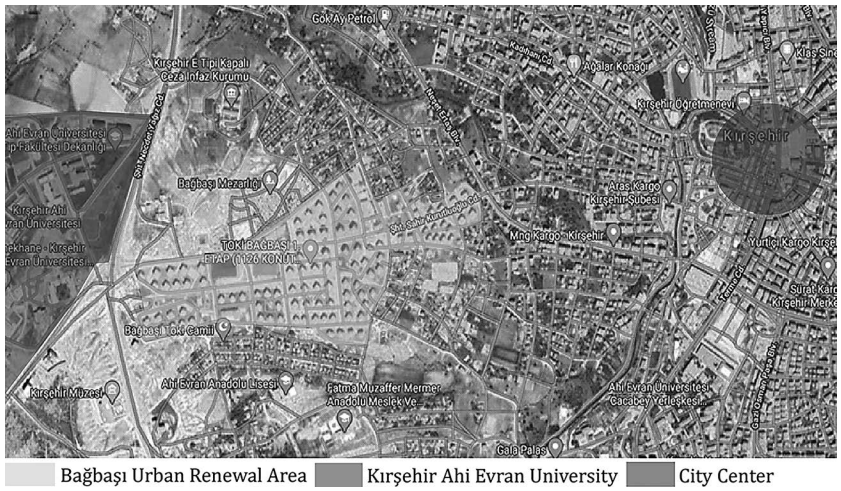
the Abdals play as part of the cultural value of Kırşehir. However, with the death of Neşet Ertaş in 2012, an increase in general interest in this community was observed. The general trend in urban politics that sought to mobilise cultural values to promote cities as offering unique experiences to consumers, denizens and entrepreneurs played a role in this. Pursuing a policy of leveraging creative industries for urban growth, the municipality launched a two-pronged project. It carried out an urban renewal project in Bağbaşı, while at the same time using the presence of the Abdal musicians in the city to apply for the prestigious label of UNESCO City of Music.

Bağbaşı was a very significant urban hub for the cultural sustainability of the Abdals, as it provided a free space for the enactment of their unique

cultural norms and rituals. For example, on religious festivals, everyone cooked something at home, gathered in the large open area of the neighbourhood and feasted together. Community members who were in dispute were reconciled and prayed together. The community maintained its kinship exclusivity by not tolerating marriages with non-community members. All these cultural rituals and values have preserved the musical heritage of Abdals and brought them to this day. Therefore, one of the most important elements in the transfer of their musical culture from generation to generation has been that the spatial conditions of the neighbourhood were suitable for making their music. The children could play their musical instruments at any time and the people around were not disturbed by this noise, because the houses were generally detached. By attacking these conditions of space that helped sustain the unique culture of the Abdals, the renewal project has put the survival of their culture at risk.

Abdals as an Indigenous Culture in Danger

A close look at the socioeconomic and physical geography of Bağbaşı neighbourhood reveals its high potential for rent-generation. Bağbaşı, to start with, is a poor low-income settlement situated on the road to Ahi Evran University, which was founded in 2006 as the first university of Kırşehir, commanding a spectacular view (Map 3.1). In June 2010, Kırşehir Municipality and TOKI signed an urban renewal protocol for a part of the larger Bağbaşı neighbourhood seen in the Map 3.2, within the scope of



Map 3.1 Map shows the project's location between city centre (marked right) and the university (marked left).

(Source: Google Map)

Map 3.2 Map shows the project area in the neighbourhood boundary.

Laws 2985 and 5393. On the project protocol there was no information provided on why this area was chosen as the focus or on how the project boundaries were determined. These were ambiguous, and only a certain part of the neighbourhood, was included into the project (Map 3.2).

The project, consisting of three stages, covered 480,000 square meters of space located between the city centre and the university campus. As seen in Map 3.2, the areas covered in the first stage (etap-1) and second stage (etap-2) were settled areas and the municipality had to demolish old buildings in order to build new ones. The area covered by the third stage (etap-3) was empty land. The project was started from the third stage (etap-3) because the goal was to move the inhabitants of the neighbourhoods covered by the first two stages, including the Abdals, to new housing built in the open land, before the demolitions in their areas began. The project consists of 2712 residences. The third stage consisting of 768 residences was launched in 2010, and the resettlement of residents into the new apartments started in 2013. According to the information obtained from the municipality, most of the old residents bought houses built during this stage. It should be noted that old inhabitants of the area did not have the right to live in their old houses as they would be destroyed. During the interview, the municipal officials stated that the residents were also obliged to choose their new apartment flats before the project started, so most of them chose from those to be built in the third stage because it would be finished first. The reason for this choice was that they did not want to move into a rental house while waiting for new houses. But it is learned from an interview with the former residents of the neighbourhood that the municipality has told the right holders that if they choose their new houses from the 3rd stage, they will give a ten square meter larger house. According to the information shared by the municipality in the interview, 865 parcels were included in the project area, and about 500 existing houses in the neighbourhood were destroyed. In the municipality, there is not an information about how many of them were Abdal families' houses. According to the interviews, half of the Abdal families lost their old houses because of the urban renewal. Some of them went to another neighbourhood and some others moved to the other cities.

One of the major problems with this project was the way the project managers handled the question of public participation in deliberations. To put it simply there was none. Before signing the project protocol with TOKI, the Municipality did not seek the opinions of those living in the area targeted for renewal. The local government did not make the slightest effort to encourage public participation. The residents learned that their homes would be demolished in the name of urban renewal when municipal representatives came knocking on their doors with expropriation decisions, long after the signing of the protocol with TOKI. In my meetings with the municipal authorities, they argued that every family was individually visited and had the situation explained to them by their

representatives. They showed me an example of the expropriation documents, which were filled in to determine the value of houses and showed photographs of existing properties. What was missing was any indicator in these documents of the opinion of the neighbourhood residents for the project. When this situation was asked during the interview with the residents of the neighbourhood, its accuracy could not be confirmed. Neighbourhood residents said that the municipal officials who came to their homes only took measurements and took pictures. Apart from this, information was given about the project once only with a meeting organised by the municipality in the sport centre and it has been reported there that this project would be realised no matter what, and it would be to their advantage to buy a house from TOKİ (Interviews, 2021).

A more serious issue was that the renewal process did not include any consideration of the socio-economic situation of residents, or the cultural values sustained by the existing spatial environment. The project only aimed to provide property owners with better housing conditions in a modern urban environment. But while this was done, most of them had to take loans, as the value of the new houses was higher than the previous ones. Apart from providing home-owning residents with the options of buying the newer apartments, no further circumstances of the residents or potential consequences were considered. Tenants living on rent were displaced with no compensation. Property owners lost businesses and thus sources of income. Socio-economic relations and the local community networks that underpinned them were destroyed (see the disconnect between the traditional two-storey houses and the new high-rise apartment buildings in Image 3.4). Daily life practices and rituals were

Image 3.4 Most common housing typology in Bağbaşı and TOKI Blocs.

(Source: Kırşehir Municipality)

Image 3.5 The construction of the new TOKI apartments.
(Source: Kırşehir Municipality)

dislocated. The role of space in sustaining Abdal culture was ignored. The result was to deny this culture the breathing space required for its continued reproduction (see Image 3.5 and the lack of organic communal spaces between and amongst the high-rise constructions).

One of the most important problems observed in the project was that the residents did not have the right to refuse demolition, but they could object to the price assigned to their property by the municipality. Some of them went to court and objected to the predetermined price and did not ask for housing from the project. According to the information provided by the municipality, 15% of the residents objected to the project, took the assigned price of their properties, and did not seek a TOKI apartment. On the other hand, 85% chose to buy an apartment from TOKI. Some residents of the neighbourhood who preferred to buy houses from TOKI did not borrow money to finance their new homes, as the value of their old properties was high enough to cover the cost. However, others had to finance their purchase via 20-year instalments because their old houses were low in value. As noted before, rental tenants were not given any option, and ended up displaced. This included many Abdals that now had to find housing in different parts of the city.

Municipal officials argue that this project was an important opportunity for the old residents. They argue that the new flats have many modern amenities, such as elevators, hot water and a central heating system, not available in the old houses. The municipality believes that it has carried out a successful project and that the locals are satisfied with it. In all of their statements, the municipal authorities underline that the urban fabric of the old neighbourhood gave an ugly visage to the city compared to the modern lines of the new apartments. In addition, according to the information obtained

from the municipality officials and the architect there was a planning opinion to create an Abdal Street cultural tourism area focused on the locale of the house of Muharrem Ertaş, the father of Neşet Ertaş. This included an area of four or five streets, where a few Abdal families still live, that were not demolished with this goal in mind. However, nothing came of these plans, as the city council took no decision on initiating a project. Even in 2022, there is still no sign of this mind of the municipality.

Concerning the viewpoint of the residents, a survey conducted by Çam (2019) with the participation of 163 people, did indicate high levels of satisfaction by the old residents with the physical condition and modern amenities of their new homes. But the same survey provided indicators that many residents missed their old homes and the neighbourhood community built around them (Çam, 2019). The surveyed residents expressed dissatisfaction with the condition of neighbourhood relations and communal solidarity in the new housing complexes. Many old residents also noted their dissatisfaction with the loss of the vibrant street life created by the spatial framework of their old neighbourhoods (see Image 3.4 for the contrast between the old and the new communal habitats). The new spatial conditions simply did not foster the practice of musical culture the old open spaces permitted (Image 3.5). Music had now become noise pollution. The communal space that hosted their unique culture was now gone. They were also unhappy with the financial burdens of modern living, including paying for apartment general dues or instalments of their bank loans. An example was that while they are happy about the central heating in their homes, they were unhappy having to pay for it. In their old homes they had used stoves for heating, which were cheaper and did not incur a monthly expense.

All these changes in their lives, while providing some positive short-term gains for the Abdals, have also created long-term economic, social and spatial problems. Their previously self-sufficient lifestyle has come to an end, and with it perhaps their unique musical culture. This is not only a loss for the Abdals and Kırşehir, but a wider loss for Turkey, as an indigenous culture of importance is at risk of extinction. This is a violation of their right to culture as a minority according to the ICESCR and the UN Declaration on the Rights of Minorities, because the lack of their inclusion in the decision-making processes for this urban renewal project and the state's interference – without their consent – into the spatial elements of their cultural practices and rituals have made it almost impossible for the Abdals to continue such practices and enjoy their right to their unique culture.

Conclusion

As an effect of neoliberal urban policies, the 2000s have increasingly been characterised by the evolution of central and local governments from 'regulators' to 'consummate agents' (Smith, 2002: 427). Since 2000, Turkish urbanisation has been conducted using urban land as an

economic development tool via urban renewal projects. In this period, what has earned particular attention is the way in which governmental institutions and their operations have transformed at the local and national levels. The processes that led to these transformations were shaped without public participation resulting in gross violations of their 'right to the city'. As Lefebvre (2015) underlined, the participation of urban citizens in the use and production of urban space is a central element of the 'right to the city'. Again, also a violation of Article 2, paragraph 3 of the UN Declaration of the Rights of Minorities (UN, 1992) and Article 15, paragraph 1(a) of the International Covenant on Economic, Social and Cultural Rights (UN, 1966). By ignoring the right to the city, Turkish urbanisation as practiced has caused significant social and cultural loss for cities. Despite the criticisms and the recording of these negative consequences by academics, experts on urban spaces and non-governmental organisations, the government has continued to follow the same destructive template. It seems to be continuously forgotten that non-participation in an urban renewal project, especially implemented in a settled area, means there is no input from the dwellers in the process while they will be the ones living with the consequences. According to many studies in recent urban literature, the tools explained by the local governments to justify urban renewal motives are the risk of earthquake, the crime rate of the renewal area, the worn housing stoke but the ones which were not explained urban rent, personal interests, the demands of local actors, etc. (Aksümer, 2021: 377). Unfortunately, among all these explained or unexplained reasons, there is no evidence of basic human rights such as the demands and problems of the society, cultural richness, diversity, difference and equality. The main question should be where the dwellers' right to shelter and right to the city come into play in this process? According to the Paragraph-7 and Paragraph-10 in General Comment No. 7 of the CESCR (United Nations, 1997), most of results of the urban renewal project in Bağbaşı constituted forced displacements and evictions. This is because Bağbaşı settlers had to leave their homes in any case and were only offered the right to demur at expropriated price and not the right to continue living in their old houses.

The fate of the Bağbaşı is only one of the cultural losses and human rights violations resulting from the Turkish urban renewal experience in the 2000s. The pity of it all can be expressed by considering the counterfactual of an urban renewal project that would have respected the 'right to the city' of the residents. Such a project would have seen a balance between the need to transform the socio-economic conditions of the residents while at the same time respecting the sustainability of Abdal culture as well as Abdals' right to participate in decisions affecting their culture and their right to enjoy their culture uninterfered. Such a project would have provided Kırşehir with a unique cultural identity, presented in a modern way,

and able to tap into the global resources that seek the experience of authenticity, while at the same time upgrading the socio-economic life of the Abdal and fostering their integration in the broader city cultural milieu. Instead, a one-size-fits-all method was implemented by the municipality and TOKI, which via demolition and rebuilding without local input, changed the spatial conditions underpinning Abdal culture, to the extent that we must now worry about its long-term sustainability. The municipality was able to put into effect its policy because civil society in the form of non-governmental organisations, academics and urban political actors remained silent, staying aloof and not seeking to mobilise popular resistance. There was a lack of advocacy in planning noted as important by Davidoff (1965) in protecting the 'right to the city'. By recreating the patterns of social exclusion of the Abdals by ignoring the developments, these actors bear as much responsibility for this transformation as the city government.

The protection of unique local cultures and values of living, such as those found among the Abdals of Bağbaşı, from the negative consequences of urban renewal necessitates broad participation by stakeholders in planning. The input of experts is a necessity, as is that of the people who live in these spaces and are the living carriers of culture. This requires a different legal framework that obliges municipal governments to conduct the process of urban renewal planning in a participatory manner, and with the protection of the unique local culture at the centre of the process. Without these conditions, political interests and the allure of urban rent management will always lead to projects that have catastrophic cultural consequences. The stakes are high, as once settlements with unique cultural heritages are lost, such as in Bağbaşı, these cultural practices may never be revived. This is why Jacobs (1992) emphasises that the city is an organised complexity, and this complexity cannot be resolved by scientific methods. As Lefebvre said, all the city citizens have the right to live in the city, to shape, use and produce the urban land according to their needs.

Notes

1 PhD Candidate in Urbanization, Mimar Sinan Fine Arts University, Istanbul. Research Assistant in Political Science and Public Administration Department, Kırşehir Ahi Evran University, Turkey. Kırşehir Bağbaşı Neighbourhood, which is presented as a case study in this chapter, constitutes the case study for author's doctoral thesis. But the conceptual discussion presented in this chapter within the framework of cultural rights and the right to the city was however not produced from the theoretical discussion of her thesis and is an analysis made for this edited volume.
2 Gecekondu is a Turkish word meaning a house built quickly without proper permission. It is a kind of squatter house.
3 The term 'detached house' refers to 'müstakil ev' in Turkish, which is a stand-alone house, but differs from the ones in the West. It signifies a small, one floor house with a small garden. Mostly, these houses are designed and built by their users, lacking professional architectural support.

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4 A tale of two cities

Comparison of Istanbul and San Francisco through right to housing

Aysegul Can

Introduction

Housing is a basic need that everyone should have access to as right to shelter is recognised as part of human rights. However, global economic restructuring since the 1970s, and the roll-back of the welfare state in the Global North has been a major contributor to a reduction in the affordable housing stock. Similarly in the Global South, recent economic development has been accompanied by a lack of sustainable affordable housing policies. The 'developed' part of the world experienced the withdrawal of industrial production and therefore the decrease of the primary circuit of capital (Merrifield, 2014). Real estate that works as a 'secondary circuit of capital' started to increase, and the capital has shifted over to this, as the primary circuit of capital slowed down. This rise in the real estate sector has become the main factor of urbanisation in the 'developing world' (Lees et al., 2015). In the Global South experiences, massive urban redevelopment and regeneration projects can exceed the neighbourhood scale, creating big spaces of gentrification and gentrification-led displacement (see Goldman, 2011; Shin and Kim, 2015). These urbanisation processes portray the unequal power relations in society that are part of increasingly intensified social polarisation. Istanbul can be situated differently in this debate, for it sits awkwardly between East (Asia) and West (Europe), and indeed can also be categorised as a Middle Eastern City. Gentrification research in Turkey started relatively early in comparison to other non-Euro-American studies, in the early 1980s, when it focused on those historical neighbourhoods in central Istanbul experiencing gentrification (Islam and Sakizlioglu, 2015). However, over the last 15 years or so processes of state-led gentrification have emerged, in the guise of massive urban regeneration and renewal projects facilitated by the state. These are displacing very marginal and working class people from valuable land in inner Istanbul and refashioning these areas for the use of middle and upper classes. These visceral projects though seem to have more in common with counterparts in the Global South (Shin, 2009; Kuyucu and Ünsal, 2010) than those in the Global North.

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At the same time, this situation has close links with the refashioning of Northern cities such as inner city London and New York when it comes to real estate speculation and accumulating wealth through investing in real estate (Lees et al., 2016). Global North has been affected greatly from the financialisation of housing market as well. This situation has led to policy changes for affordable housing in various European countries (see Elsinga, 2015) and countries in the Global North governments started to act in a business-like manner to even the play field for the market, sometimes at the expense of vulnerable urban population. This interconnectedness of policies regarding housing and accumulation of wealth through real estate sector in the North and the South is a pivotal point discussed in this chapter. Thus, this research draws on the growing rich body of work on comparative urbanism (Robinson, 2006, 2011; McFarlane, 2010) which challenges us to theorise the urban within a broader selection of cities including those on the 'periphery' of the global economy and move beyond the binary understanding of North and South. The notion and study of comparative urbanism go as far back to Wirth (1938) and what those anthropologists tried to achieve through comparative experiments of a more diverse set of cities had been discarded over the course of time to make way for a theory that has a more distinct separation between the wealthier and poorer cities (Robinson, 2016).

This research aims to investigate right to housing or right to shelter as a human right that has been affecting and reshaping cities around the world in the specificity of two areas that are subjected to completely different housing policies and are located in the North and the South respectively: The Bay Area and Istanbul. The pivotal question to answer here is how the choices of urban actors in two areas tell us about the employment and mobilisation of right to housing? Real estate and construction industry in Istanbul has been increasing to unprecedented levels since the 2000s and it is now the situation that, in Istanbul, there is a housing surplus and housing deficit at the same time (Tulumtas, 2018). On the other hand, San Francisco and the Bay Area, has been experiencing a brutal housing crisis with ever-increasing numbers of homeless people and studio flats that are going for millions of dollars. This crisis is usually blamed on the policies that limit development of new housing (Treuhaft et al., 2018). Both cities promote policies (at least on the surface) to increase affordable housing stock and diversity, and respect the right to housing for all segments of the population; however, while employing seemingly completely different methods, they are facing similar problems. The main focus here is to explain the motivations and decisions behind mobilising right to housing for different urban actors. The differences and similarities between two areas have driven me to choose them as part of my investigation of housing as a human right. The housing policies both in Turkey and the United States are very home ownership focused from the beginning, this macro level policy similarity makes two countries and

localities very comparable compared to other Global North countries that have a much stronger social housing policy to this day. Both Istanbul and Bay Area have a strong presence of housing and urban justice movements and organisations. Even though the organisations in both localities show their commitment to housing as a human right, in the case of Istanbul this is done through the sentiment of 'right to the city' and spatial commoning and the Bay Area organisations use right to housing for their fight for adequate housing and spatial justice. Finally, in Istanbul there is an abundance of new housing construction and a housing shortage for affordable housing. In the Bay Area, in the surface, there is a shortage for housing because of lack of construction; however, it is made clear in the chapter that this is really not the case (see analysis and conclusion). In the end, this seeming difference becomes a similarity in both cities. These points of difference and similarities make for a compelling discussion in terms of mobilisation of urban actors in two seemingly different localities. In this chapter, I hope to employ comparative urbanism in two different settings while showing the effect of global political and economic trends and the ways in which same concepts can be analysed in two areas.

This chapter briefly discusses the literature of right to adequate housing as a human right and how that has been reported and implemented all around the world. I also discuss the financialisation of housing in the North and South and the devastating consequences of this policy. This is followed by a methods section on how the case studies are chosen and analysed through the approach of comparative urbanism. In the analysis section of the chapter, housing market and mobilisation of housing as a human right in the Bay Area and Istanbul are investigated. The chapter concludes on some reflections on the motivations behind urban actors to use or mobilise right to housing in urban policies and the implications of this.

Housing as a Human Right

In the recent decades, housing has been increasingly seen as an investment and a tool to increase capital accumulation (Rolnik, 2019). This 'financialisation' of housing has had deleterious effects on the vulnerable urban population with many people around the world facing a lack of adequate housing or are forced to pay most of their salary for housing costs (Rolnik, 2019; Leijten and Bel, 2020). They are having trouble finding a well-located, affordable place with appropriate facilities, and young people (especially young women) cannot afford a home and are pushed to live in a situation of constant housing insecurity. Homelessness as a problem is on the rise all over the world, but especially in parts of the United States (Leijten and Bel, 2020). As it is documented in General Comment no.4 by UN Committee on Economic, Social and Cultural Rights

(CESCR), right to housing is not merely a roof over someone's head, but it means the right 'to live somewhere in security, peace and dignity'. The CESCR presented seven points to better understand what it means to have an adequate standard of living. These points briefly are: security of tenure for protection against landlord harassment or eviction, adequate infrastructure and sanitation, affordability so that the tenant can still have enough income left for their basic needs, a house or building safe and sound enough for weather or other health conditions, accessibility for disadvantaged groups such as elderly and people with disability, location of the property and finally the cultural appropriateness of a house or a neighbourhood so that the tenant can express their identity.

Even though housing has been seen as a safe and important investment by most of the world (see Rolnik, 2019), it actually is a right and not a commodity (UN Special Rapporteur on adequate housing, 2009). Access to adequate housing is found to be described and recognised as a right in many international documents, declarations and treaties such as: Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), The Convention on the Rights of Persons with Disabilities, Regional Human Rights Conventions (especially article 8) and Declaration on Social Progress and Development. However, of course, having access or having right to access to housing does not guarantee any actual claim to housing itself. Even though these documents provide some legal framework to protect right to housing, they do not mean that the states and countries ratifying these declarations and agreements can provide it on the spot. It is understood that the realisations of such rights will happen progressively with steps taken through available resources. Therefore, states are not obligated to provide housing for everyone immediately (Leijten and Bel, 2020).

The onset of mortgage-led housing ownership roughly started to become common in most of the world in 1980s and 1990s (Leijten and Bel, 2020), even though in places such as the United States, mortgage existed since the early 20th century. This deregulation and liberalisation of the mortgage finance system and the belief that the housing market will regulate itself better with less state intervention are rooted in the neo-liberal approaches that rely on the private market and its solutions (Rolnik, 2019). In places that had a strong public housing tradition such as Europe, this also meant privatisation and funding cuts to social housing to encourage homeownership.

The negative consequences of this process have become painfully clear with the 2008 global financial crises that were triggered by the mortgage bubble. Millions of households were affected through foreclosures and evictions, and, for example, in Spain, people were still very much indebted to the banks even after the repossession of their houses (for a discussion see Rolnik, 2019). In the United States, right before and after

the 2008 crisis more than 9 million evictions took place with more than 13 million households losing their homes (Sassen, 2014). This process of deregulation and financialisation of the housing market has been supported by the states around the world through policies, regulations and legislation that promotes privatisation. This commitment to financialisation continued even after the 2008 crash. One example is the fact that people who were in debt through pre-crises mortgage market were not protected after the crash, but rather the financial actors such as banks received more supports in the form of bailouts while there were austerity measures put in place and cutbacks from affordable housing programmes and further privatisation of social housing (see United Nations Human Rights Commission Report, 2017).

As part of this chapter, the notion of right to the city is also mobilised by some of the organisations in two cities. However, especially in the case of Istanbul, this notion is the main concept regarding the housing spatial justice advocacy groups. For this reason, I briefly introduce the concept to showcase a more holistic understanding of the situation in both cities. According to Lefebvre (1996), the right to the city emphasises that the city must be developed in such a way that it satisfies the demands of urban space users rather than its proprietors. As a result, it emphasises the critical role that city dwellers must play in decision-making. It envisions a far-reaching claim to move authority away from capital and the state and towards city dwellers. Inhabitants of the city, according to Lefebvre, lay claim to the right to the city (Lefebvre, 1996; Purcell, 2006). Residents grow to rely on and genuinely comprehend urban space via their daily routines and rhythms of life in the city. Lefebvre idealises the urban resident as the proper custodian of urban space; he embraces these regular activities. The right to the city is intended to further the interests of 'the whole society, and first and foremost of all those who inhabit' (Lefebvre, 1996:158).

Following from this, I first discuss the methods and the approach of this research and then present two case studies to articulate on the urban policies that led to his severe unaffordability in the North and the South.

Methods

In this chapter, I argue that many urban experiences in poorer cities are substantially connected to arrangements of power and wealth in the global North (Robinson, 2006) and seek to contribute to the creation of a more global urban studies. As Robinson (2016) argues this situation requires a methodological clarity and progress to analyse cities around the world in the face of a more 'planetary' urbanisation process. In the hopes of encouraging positive experimentation and drawing from the opportunity to make connections under the umbrella of right to housing, this research aims to bring together two localities with increasing

financialisation of housing from different experiences, but still similar consequences.

There are two motivations in the selection of case studies. There have not been much study in actually achieving comparative urbanism and there is always a concern that it can turn into an endless list of empirical accounts of case studies and not much else. In my selection of two very seemingly different cities, I will seek to achieve to represent the interconnectedness of cities in the Global South and the North and what two urban policies can tell us in terms of mobilising right to housing in an era of global housing financialisation. I am also interested in how the seemingly different policies and decisions from two different urban authorities can lead to similar consequences in two major areas in the world.

Initially, the main data collection methods were going to be document analysis and semi-structured interviews. However, due to the ongoing COVID-19 pandemic, it has been very difficult to arrange interviews and develop networks in the Bay Area. I travelled and spent a few months in the Bay Area since the year 2018, so I do not write or analyse from a completely alien point of view. In addition, I managed to conduct 3 in depth, semi-structured interviews with different urban actors and, I have collected data through the method of digital ethnography. The ongoing pandemic prompted many panels, webinars and meetings to be held online and this gave me the chance to collect more data and engage with urban actors on this issue. Finally, I analysed around 100 tweets tracing hashtags that contained or reflected on right to housing in the Bay Area and posted by various urban actors in the region. These actors include: UCLA Institute on Inequality and Democracy, Moms4housing, Coalition on Homelessness, House the Bay, Antieviction map, Compassionate Alternative Response Team (CASRTSF) and East Bay Permanent Real Estate Cooperative (Ebprec). In the case of Istanbul, I have conducted around 10 in-depth, semi structured interviews with urban actors. I have employed digital ethnography for the case of Istanbul as well. I analysed again around 100 tweets by the urban actors. These include: Istanbul Metropolitan Municipality, Chamber of Architects, Chamber of Urban Planners, Istanbul Urban Defence, Taksim Solidarity Association and The organisation 'Either Istanbul or Canal'. All of the collected qualitative data is also complimented by document analysis of official reports and documents. These are: United Nations policy documents and special rapporteur reports regarding right to adequate housing and homelessness, A Roadmap towards Equity: Housing Solutions for Oakland California, Affordable Housing Development policy papers and decisions prepared by the California Department of Housing, Urban Displacement Project by The University of California Berkeley, Anti-Eviction Map Project, Urban Habitat 2016 Policy Brief, San Francisco Foundation Policy Paper, Laws that were enacted in the last 30 years in Turkey for urban redevelopment and housing projects, professional

chamber reports on the issue of housing production in Istanbul, Istanbul Metropolitan Municipality Strategical plans (2015–2019), Turkey 10th 5 year Development plan (2014–2018) and Istanbul Development Plan (2014–2023).

Through the analysis of interview, ethnography and secondary data, I discuss the ways in which right to have access to adequate housing is mobilised in two cities. To be able to showcase a more tangible understanding of the cases and the theoretical framings at work in both contexts, I specifically give details of two moments of resistance/movements: Gezi Park Protests (Istanbul) and Moms4Housing (the Bay Area). Now I move on a brief description of policies of housing in the United States and the Bay Area followed by the analysis of mobilisation of right to housing.

The US Housing, Mortgage Policies and Housing in the Bay Area

What can be called a modern housing policy of United States started during the Great Depression with the creation of the Federal Housing Administration (FHA) through the National Housing Act of 1934. This was created to register and insure mortgages and administer some sort of security for the creditors (Dennis and Pinkowish, 2004). In the 1940s and 1950s, these housing projects mostly targeted the working class and the poor who could afford rent; however this demographic became much more racialised in the 1960s with the migration from South states and increasing suburbanisation of the white workers (Atlas and Drier, 1994). In the 1960s and the 1970s, with the civil rights movements, another round of public housing was built, but this was then identified as a welfare scheme or a solution for the most vulnerable (Vale, 2013). A big portion of the new coming residents were black and poor which led to these neighbourhood to become ethnically defined (National Fair Housing Association, 2008). As a result of the cut of federal funding, in the 1980s and 1990s, the public housing stock deteriorated greatly and thousands of flats were dilapidated. In addition to this deterioration, fund for public housing eroded another 25% between the years 1999 and 2006 (Sard and Fischer, 2008).

There have been many developments to include low-income housing in the domain of homeownership as well. There are two main changes that affected the housing market as we know it now: (i) the Community Reinvestment Act of 1977 and the creation of sub-prime loans and (ii) augmentation of securitisation (Rolnik, 2019). The 1977 Act led the banks to create a separate kind of mortgage portfolio through subprime or very high-cost loans to purchase a real estate (Marcuse, 1979). This situation meant that the banks altered their previous regulations on risk management and created this new mortgage product for what was previously

known as 'redline', then, offered it to families that were predominantly minorities or had no access to such real estate loans because they were considered high risk (Marcuse, 1979). Securitisation really allowed the operators to use real estate and debt arising from real estate to be part of the financial market. This refers to the selling of mortgage loans to investors in order to 'clean' the balances of credit institutions. Securitisation converts mortgages to mortgage-backed securitisation that is depended on the collection of the payments of individual mortgages (Marcuse, 1979; Rolnik, 2019).

The Bay Area consists of nine counties starting from Sonoma in the north and Santa Clara in the south and includes cities such as San Francisco, Oakland and San Jose (Silicon Valley). In this chapter, I focus on Oakland and San Francisco, but also give an insight to the housing situation in the Bay Area as a whole. This area is one of the fastest growing economies in the world mostly thanks to the tech industry (Treuhaft et al., 2018). The region's economic growth has actually exceeded that of the country's and in 2015, it surpassed China (Floum, 2016). This incredible growth brought about a demand for housing and the Bay Area has faced an increasing shortage of homes (City of Oakland, 2015). This ultimately led to a high rise in housing costs also because of the nature of tech industry (i.e. very high salaries).

In addition, homelessness continues to be an important problem in the state with informal homeless encampments in the cities of San Francisco and San Jose (Demographia, 2020). These two cities with the addition of Los Angeles, also have the highest household income in whole of the country (Demographia, 2020). This ultimately shows the unequal way of living in California. This housing crisis in the area is claimed to be not only linked to the economic boom and employment growth, but also the very restrictive land use and planning regulations of California (Calmatters, 2017). It is reported that land use planning in California gives the opponents of change and development many tools to scale and slow down projects through zoning restrictions, California Environmental Quality Act and time consuming review and approval processes (Calmatters, 2017). In addition to severe affordable housing crisis in San Francisco, Oakland is also facing problems of affordability and homelessness. There have also been reports from a policy paper prepared by City of Oakland (2015) that many families are squeezed out of Oakland through evictions, foreclosures and simply not being able to afford rent anymore.

Most policy papers that have been examined for this research (see Methods section) paint a picture of lack of new construction development and a need for more affordable housing stock through policies encouraging privatisation or further financialisation of the housing market; however there is a disconnect with what is happening on the streets of San Francisco, San Jose or Oakland between what is being said by the policy makers. It is widely accepted by developers, policy makers, academics,

businesses, companies and residents that there is a severe affordable housing crisis not only in the Bay Area but in all of the state of California. There are various writings that put the blame on restrictive zoning rules and lack of development in California as a state, but there is no mention of huge tax breaks given to tech giants (i.e. 2011 twitter tax break) or how companies such as Google used public bus stops and infrastructure for free and increased the real estate speculation in the area, or no fault evictions that the Bay Area residents faced over the years (see anti-eviction map) (Maharawal and McElroy, 2018). This alarming situation signals a need in policy interventions that puts right to adequate housing and right to city at its focus. In the next section, I will examine the fight to mobilise right to housing as a human right and create policies accordingly.

Mobilisation of Right to Housing as a Human Right in the Bay Area

As mentioned in the Methods section, I interviewed several urban actors and policy contributors from housing justice or homelessness associations. Racial inequality has always gone hand in hand with the exclusion of people of colour (especially black people) from having access to adequate housing. For that reason, most housing associations and advocates of housing justice are strongly connected and are part of black and indigenous movements. As stated in a recent panel (UCLA Luskin, 2021):

> The political demand of rent cancellation is rebellion against the terms on which property and tenancy were established through settler colonialism and slavery.

One recent and successful example of mobilising right to housing in the Bay Area and changing policy is achieved by a group of black mothers who occupied an investor-owned house in Oakland that had been empty for nearly 2 years. Through this occupation these women started an organisation called 'moms4housing' and grounded their demand on the promise of housing as a human right (Moms4housing, 2020). After a two month long occupation and demands on the ground of housing as a human right, the mothers were given the chance to buy the house and make it their home. As it is stated in a panel (UCLA Luskin, 2021):

> So when these unsheltered women engaged in this civil disobedience to bring that issue to the world and highlight the fact that there are four empty units for every unsheltered person in our city. It changed everything. It literally changed everything. We went for a two month stint inside something that was uninhabitable. That was owned by a notorious house flipper Wedgwood and fought a battle to make housing a human right.

Through Moms4housing's demand to be given the first chance to buy a vacant property and their subsequent legal win changed the legislation in housing in the Bay Area and introduced The Tenant Opportunity to Purchase Act. This is a direct consequence of mobilising housing as a human right on the ground. As stated by one of the city council members (UCLA Luskin, 2021):

> On the local level here now as a city council member I will be working on a daily basis to make housing a human right through legislation that was mentioned earlier, like the tenant opportunity to purchase act. It is something that we continue to push through the moms4housing, fine. We also are working on a state-wide constitutional amendment to make housing a human right, but we need the workers on the ground.

In the case of the Bay Area, according to my respondents and analysis of the related documents, right to housing is used and mobilised as part of the discourse very well by the associations, academics and housing activists, and it is definitely part of the conversation by all the housing justice, homelessness and affordable housing advocates. However, when asked about the reactions of the people on the ground or the vulnerable urban population to the discourse of right to housing, one of the respondents (Coalition on Homelessness) stated that:

> Many of the folks on the ground we talk with and we collaborate with, and they are all for it. But many of the folks we work with will not even ask for housing and see that asking for housing is just too much …… We go on the street and people are like 'I just do not want to be harassed, I just want access to water, I just wish I could take a shower'. So a lot of what we do is uplifting and saying, no you are worthy of a place to sleep at night that is not out on the street and that is not in a tent. And the homeless folks do respond positively and they usually say 'oh, yes, if you think we can, let's get together and let's do it.
>
> (Interviews, January, 2021)

He goes on to explain how the mobilisation and language of right to housing is used to emphasise this as a human right:

> We, as a coalition, articulate it as a human right, but of course there is a political ideology behind it, and I think that many of us deal with the political realities, we play the game, but then we are also pushing boundaries and pushing policies and advocating and organising around certain language …… So the way I see it, the political language of right to housing is usually for housed folks. So ok,

> we believe that individuals should have a right to housing, anything less is unacceptable and flies in the face of everything we believe in.
>
> (Interviews, January, 2021)

Another example for this kind of language being used for policy purposes is from the Ebprec where they identify their mission pillar as right to housing. As stated by them (Ebprec) in one of the interviews:

> So our mission pillars situate our political ideology in theory of change, into this conversation. To highlight each of them land without landlords, we believe housing as a human right. We really believe that housing should be a human right, not a commodity.
>
> (Interviews, February, 2021)

On that note, there are a lot of works happening in the Bay Area around the language of right to housing. In addition to the tenant opportunity to purchase act, through a citizen generated initiative called Proposal C, San Francisco passed a bill to collect taxes from its wealthiest cooperations for buying housing, expanding shelter and providing housing assistance for the poor population (Mission Local, 2020). This tax that more or less amounts to 500 million dollars has been pending in escrow until September 2020 and was just recently released with a supreme court decision due to the efforts of citizens and organisations such as Coalition on Homelessness (Mission Local, 2020).

When asked about the usual discourse of Bay Area not having enough housing because of restrictive urban development regulations, one respondent (Coalition on Homelessness) surmised that:

> I think we are building housing, but we are not building the right kind of housing. And because we are not building the right kind of housing, we also do not have the political will to say 'you know what, we messed up'. We have too many luxury condos and we cannot stomach as a society the idea of putting a poor person in a condo like that.
>
> (Interviews, January, 2021)

Finally, when asked about what right to housing and mobilising right to housing would mean in the field and on the ground, another respondent explained her (CASRTSF) perspective as: 'Human rights are violated because they are [homeless people of the Bay Area] unhoused and we want to change that (Interviews, January, 2021)'. A city council member of Oakland surmises the importance of housing skilfully (UCLA Luskin, 2021):

> Everything is connected to housing. From education to health care to quality of life, life expectancy. Everything is created from housing and emanates from there.

As I discussed throughout this section, in the Bay Area, the lobbying done by NGOs and grassroot organisations to influence policies with the help of their local politicians and legal team is a very important part of the mobilisation of human rights. This is complimented by work on the ground with NGOs reaching out to the vulnerable urban population and organising urban protests where necessary (i.e. sit-in protests, rallies, occupations).

The Turkish Housing, Mortgage Policies and Housing in Istanbul

This section discusses the Turkish housing market to give an insight concerning the changes of the housing system over the last decades. Starting from the late 1920s, Real Estate Credit banks were established to provide the financial and institutional set up to help solve the housing problems of especially low-income people without social security by using state resources; however, they were insufficient in serving this purpose (Tekeli, 1982). They, instead, targeted more middle class clients who needed a loan to purchase a home. There have not been any clear housing policies to create an affordable rental market.

Starting from the 1960s, with increasing industrialisation and urbanisation, the rural to urban immigration increased significantly and Istanbul was (and is) the city that received most of this immigration. The fact that there had been little to no history of social and affordable housing contributed to the growth of informal alternative settlements (Tekeli, 1982; Sen, 2009; Turkun, 2011) and migrants from cities all around Anatolia created their own solution by constructing informal settlements in state-owned land. In the Turkish context, *gecekondus* – illegal squatter areas built on state land – have become very important in the broader urban structure. There were two reasons for the emergence of gecekondu areas: attracting cheap labour and lack of political will to create affordable housing stock. First, although gecekondus were illegal, they were built by the users using their own labour, and this not only allowed the state to have low-cost housing in large cities, but also meant free labour in the production of such housing stock. Second, when the number of gecekondus increased dramatically in the 1980s and 1990s, the middle class and state officials overlooked this type of housing even though they were illegal because they did not want to be bothered with social housing policies (Turkun, 2011). Due to the increasing number of migrants in metropolitan areas and their political power in affecting elections, various measures were taken to integrate them into the system by giving their houses legal status, especially in election periods (Turkun, 2011). In the 2000s, official attitude to squatter areas changed direction, and the state claimed that people in gecekondus were invaders (Can, 2013), and the authorities started to express that urban regeneration and

transformation was needed in squatter areas and in the historic districts that had been 'invaded' by the urban poor (Can, 2013).

Another important development in housing was the foundation of Mass Housing Development Agency (MHDA) in 1984 with the purpose of producing affordable housing; however, it turned into a very powerful governmental institution with wide-ranging control over almost every aspect of the housing market. In addition MHDA only provided social housing for purchase. After its foundation, laws and regulations helped the MHDA gain the power it has now. There are several important laws that have made this possible (see law no. 5162, The Law for Preservation and Usage of Deteriorated Historical and Cultural Monuments, Municipality Law of 2005 and Law no. 6306). These laws not only formed the basis for many urban regeneration/renovation/transformation projects, but also, almost always resulted in the displacement of the urban poor. The Turkish state played two roles in the increasing capital accumulation through urban development: (i) the state regulated land use planning laws and regulations and also designating resources and (ii) it was the body actually constructing the developments and developing the land (Serin et al., 2020).

There has been three main ways of urban development and transformation: (i) urban regeneration projects in historical areas (ii) neighbourhood based urban regeneration projects in areas deemed risky (i.e. earthquake prone), but usually seen as a veiled way to transform squatter areas and (iii) suburbanisation through new-built or branded housing projects (Yılmaz, 2019; Ucal and Kaplan, 2020). Especially the first and second kind of urban redevelopment created several waves of gentrification while displacing vulnerable urban population to the periphery of Istanbul and sometimes outside of Istanbul and most of the time without any compensation (Can, 2020). That meant while the housing stock increased in the city, the affordability decreased. In many policy papers (Istanbul Metropolitan Municipality Strategical plans (2015–2019), Turkey 10th 5 year Development plan (2014–2018) and Istanbul Development Plan (2014–2023)) the right to housing, a mixed and diverse population and the need for a dignified living in an affordable environment are emphasised. However, the decreasing affordability in Istanbul is documented through several studies (see Coskun et al., 2014; Rebucci, 2015; Moody's, 2016).

In spite of the increasing land speculation, gentrification and decreasing affordability in the inner city of Istanbul, there is actually a surplus in the housing stock. According to a study conducted by the Ankara Civil Engineering Chamber (Tulumtas, 2018) between the years 2013 and 2018, there is a surplus of 490,000 unsold and empty housing units. Even though the study points out that there was 60% decrease in issuing planning and construction permissions to developers in the year 2018, there was already too many units in various housing projects in and around

Istanbul that were struggling to find a buyer. Given the current pandemic and an increasing economic crisis in Turkey, it is clear that these units will stay empty for a long time. As it was in the US housing policy, Turkish housing policy also put an immense emphasis on the encouragement of home ownership. At the same time, Turkey is an important example in terms of analysing affordability because of its expansive urban development since the early 2000s which was not the case (at least according to the official documents) in the Bay Area. Now I move on to the mobilisation of right to housing by urban actors on the ground to present a more holistic picture.

Mobilisation of Right to Housing as a Human Right in Istanbul

As mentioned in the Methods section, I have interviewed several urban actors who are advocating for affordable housing, right to housing and right to city for the vulnerable population of Istanbul. There are several ways that the mobilisation of right to housing has been used by urban actors. These are legal challenges, urban protests and spatial commoning practices. Many associations and urban actors I interviewed have been a part of or they themselves filed lawsuits against governmental organisations to protect or reclaim right to housing. However, during the mobilisation of this right through the legal system, right to housing is not directly quoted by the court files as part of the lawsuits. The lawsuits that are filed to uphold right to housing are usually based on right to the city, democratic rights such as right to protest, legal rights regarding private property, exploitation of expropriation regulations by the local government or local and national government's inability or unwillingness to protect and uphold planning laws and principles. One reason for this is that housing is perceived as home ownership (see previous section) and in that regard and according to my respondents, right to have access to adequate housing is usually mobilised through right to the city.

When asked about their opinion on right to housing, respondents usually emphasised how this is often misunderstood by the general public and that right to housing does not equate to right to or be able to buy a house. Since the Turkish housing market is very ownership oriented and the regulation and promotion of the rental market has never been an important agenda, the existence of an affordable housing stock to sell or purchase has started to be seen as right to housing. This is even visible in the social housing policies of Turkey which are solely based on home ownership. A respondent explained this issue as:

> I have been wasting my breath for so long about this issue. Right to housing does not mean right to own a house. Right to housing equates to having access to housing so even squatting is part of right

> to housing. The extend of displacement and dispossession in Istanbul is so high, but, still, even the academics and activists are not in this fight for affordable, or social rental housing.
>
> (Interviews, August, 2020)

Having said that, even though right to housing as a human right may not be spelled out by the activists, NGOs or urban organisations, the practices on the ground and in the field cannot be separated from Istanbulites claiming and demanding their right to the city and indirectly their right to housing. In line with this, the practices of spatial equality and commoning have been part of the mobilisation of right to housing in urban Istanbul. These practices include (but are not limited to) urban protests against urban renewal/regeneration/transformation projects in the private or public property, associations and organisations to raise awareness and help the vulnerable urban population in reclaiming their right to housing and right to city through legal challenges and occupation of these properties. The most famous right to city protest which is also the biggest unrest in the history of the Republic of Turkey is Gezi park Protests. As pointed out by many respondents that the right to housing, right to the city and urban identity as part of human rights has been exercised to its fullest during this protest to protect the last green space of central Istanbul. This is explained by one of the respondents as:

> I see Gezi [Protests] as a right to the city practise and I also believe that we learnt so much through those protests. We learnt about human rights, right to housing, urban citizenship and democracy. People are always amazed by the fact that so many people from different parts of the political spectrum were able to come together during these protests, but this did not happen overnight. We had to find minimum commonalities with everyone who was there and organise a resistance against the demolition of the park. Otherwise, we were going to lose it … Now I think this process of right to the city is still continuing and being exercised by everyone. Old women standing up to bulldozers that are trying to demolish their house or many communities using same tactics we used in Gezi to protect their neihgbourhood, parks and community [i.e. occupation, organising events, creating forums, filing lawsuits] is a clear example of that. I would even take it so far as to say that the election of Ekrem İmamoğlu [The Mayor of Istanbul who belongs to the opposition political party in Turkey] is an outcome of Gezi and right to the city movements.
>
> (Interviews, July 2020)

As I discussed throughout this section, in the case of Istanbul, urban protests such as the Gezi Park and the legal resistance initiated and followed by professional chambers, NGOs and grassroot organisations to

influence and reverse policies is a very important part of the mobilisation of human rights. Right to housing as a human right is being mobilised through the urban movements of right to the city and practices of spatial commoning in the urban area. Spatial commoning is briefly defined as collective social relations that retain, resist or demand bounded or abstract spaces beyond the market-led or state-led administration and are arranged by the following: community, mutual-pool resources and activities of sharing, caring and support in a community (Tsavdaroglou, 2020). People are not fully aware of or do not fully believe that they are entitled to housing as a human right. According to my respondents and the fieldworks I conducted as a housing and gentrification scholar in Istanbul over the course of the last decade, it sounds like wishful thinking and that is why it has been easier to mobilise right to the city as the notion of being a part of the city regardless of one's tenure and organising people around practices of commoning has had implications of protecting right to housing as well.

Conclusion

Merrifield (2014, p.x) talks about the 'urban fabric', the redundancy of making strict distinctions and the necessity to upgrade the 'chaotic conceptions'. This is because nowadays, peripheries and centres, cities and suburbs and urban and countryside are intertwined. This paper focused on two different areas (one in the Global north and one in the Global south) with seemingly different housing policies but seemingly the same outcome: a lack of affordable housing stock and no proper access to adequate housing. Even though the policies and localities differ, there is one overarching theme in both cities that makes them reach the same conclusion: land speculation and capital accumulation by dispossession. In both cities, the narrative of the policies look quite promising on paper with the mention of diversity, right to housing and a need for affordable housing for all; however, in practise these narratives are used to sugar-coat the further financialisation and neo-liberalisation of the housing market and keep the poor out of the centre even if it means that housing units are left to rot as they do in Istanbul and the Bay Area. This situation reveals two important things when it comes to mobilisation of right to housing as a human right: (i) the urgency of emphasising this as a human right for every urban citizen and (ii) fighting against the use of this narrative for the purpose of furthering land speculation.

In terms of employing comparative urbanism as an approach to analyse these two cities, it is obvious that the global neo-liberal approach to housing and increasing financialisation of housing as an economic investment rather than a public good is a commonality in both localities as well as the emergence of home ownership as the preferred policy. It is only the way the local and national authorities in Bay Area and Istanbul mobilise

this thinking in their policy implementation that differs slightly. While housing stock in Istanbul is continuously increasing since early 2000s, the affordable housing stock is not a part of this policy, and even for the 'social housing' stock it is home ownership through cheap mortgage loans that is being forced upon the urban poor. At the same time, the middle and upper class housing is being constructed more and more, sometimes with the help of state subsidies (MHDA) and tax exemptions through several laws that have been enacted with the risk of creating a housing bubble. In terms of Bay Area, even though the common explanation towards the severe unaffordable housing market is lack of development and restrictive zoning regulations, there are still tax exemptions for big companies and construction of luxury condos for the incoming high-income workers. In addition, it is reported by many grassroot organisations and respondents themselves that there is, in fact, enough housing to house everyone in the Bay Area. It is just that the political will is not there. This shows the importance of the financialisation and further neo-liberalisation of housing on a planetary level and the importance of land speculation and how it is actively supported through local and national policies (not only with deregulation) while giving the illusion of caring for housing as a human right.

One difference that was apparent in this research was that the way in which two cities mobilised and used the discourse of right to housing. Urban actors in the Bay Area chose to use this narrative as it is laid out by this paper: right to adequate housing is a human right that should be protected under any circumstances and anything else is not enough. In the case of Istanbul, the urban actors chose to mobilise this notion through the narrative of right to the city. According to many of the respondents (and this was alluded to in the Bay Area case as well), Istanbulites do not know or believe that they are entitled to housing as part of human rights. This also has its roots in the decades long stigmatisation of gecekondu areas which are ultimately exercising of right to housing. However, this has not been explicitly reported by the respondents.

From this point of view, mobilising people around the idea that they have the right to be part of the city life of Istanbul and reproduce and co-create their own experience of urban space resonates better in the field. The right to housing is then incorporated through the notion of right to the city. It is also easier to mobilise people to resist massive urban redevelopment and infrastructure projects that are implemented by the national state through authoritarian and neo-liberal urban policies which requires a language of city for all rather than housing for all. The attack on the cities of Turkey but especially Istanbul through projects that actively facilitate dispossession by accumulation and exclusion of any and all vulnerable urban population have always been used as political campaign tools to garner voters and create a divide in the society through pro and anti AKP lines. Most of the massive urban renewal or infrastructure projects that effectively displace people and unhouse them

have also been used a tool to portray a strong and benevolent state. For that reason, right to the city, which is ultimately used to mobilise and promote right to housing, has also been a political tool of the political opposition to garner support from the public and raise awareness. This explains why most prominent oppositional figures that can be seen as rivals to the current government are the Mayor of Istanbul and Mayor of Ankara rather than other kind of political party figures.

With populist leaders and nationalist movements portraying basic human rights as a narrative only raised for the most vulnerable and marginalised erases the decades of work on mobilising global human rights. There is a need to emphasise the fact that human rights, including and especially the right to housing, is necessary and pivotal to everyone in the world. This has become painfully clear especially during the COVID-19 pandemic. Many vulnerable citizens around the world have paid the price of decades of deregulation and financialisation of housing through their inability to pay rents, getting evicted in the worst time possible and basically inability to shelter in place.

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Part 2

Urbanising human rights

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5 Urban politics and the human rights city

The case of Bologna

Tihomir Sabchev

Introduction

Human rights cities (HRCs) have recently earned a distinctive place in the human rights localisation scholarship, which focuses on the role of individuals, civil society organisations and subnational public authorities in the protection and realisation of human rights (Merry 2006, De Feyter et al. 2011, Columbia HRI 2012, Marx et al. 2015, Sabchev et al. 2021). They have been increasingly attracting the attention of academics and practitioners for their capacity to transform abstract human rights commitments into tangible policies and practices (Grigolo 2016, Davis et al. 2017, Goodhart 2019), thus strengthening the effectiveness of the international human rights regime and delivering social justice 'on the ground' (Oomen and Baumgärtel 2014, Oomen et al. 2016).

Notwithstanding the widespread conceptual vagueness surrounding it (Davis 2017, MacNaughton and Duger 2020), the HRC can be defined as 'an urban entity or local government that explicitly bases its policies, or some of them, on human rights as laid down in international treaties, thus distinguishing itself from other local authorities' (Oomen and Baumgärtel 2014, p. 710). Its distinctive feature is a particular approach to city governance, in which the protection and realisation of human rights becomes an important criterion for the allocation of resources. In this respect, the HRC is inevitably shaped by urban politics, broadly understood as the exercise of power by public and civil society actors over the decision-making process at the local level (Davies and Imbroscio 2009). Rather than isolated from the outside world, however, urban politics and governance are nested within specific institutional contexts, and influenced by interactions with a multitude of state and non-state actors from the subnational, national and international level (Sellers 2005, Kübler and Pagano 2012). In other words, the choices pertaining to the everyday functioning of the HRC are determined not only by local elements, but also by decisions and processes that take place at supralocal levels.

Despite claims that human rights – and by extension HRCs – are transcending, beyond or above politics (see discussion in Goodhart

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2019, pp. 154–155, Nash 2015), both empirical and conceptual research demonstrates the relevance of urban politics to HRCs. Grigolo's extensive study on Barcelona, New York and San Francisco, for instance, indicates that political dynamics within the HRC can lead to the prioritisation of some rights over others (2019, pp. 108–109), and that human rights can be used instrumentally in advancing a law-and-order oriented local political agenda (2019, pp. 98–128). Such examples resonate with Oomen's argument that the translation of universal and abstract human rights norms involves 'an intensely political process' (2016, p. 4), as well as with Goodhart's conceptualisation of the HRC as a 'critical political praxis' realised by alliances between public and civil society actors (2019, p. 145).[1] At a more general level, they also fit well into broader scholarly accounts of the indeterminacy of human rights (see Chapter 1 in Addo 2010). In short, the HRC seems to maintain one of human rights' main qualities: it is an irreducibly political phenomenon (Nash 2015, pp. 1–18).

Nevertheless, the HRC literature has so far remained 'remarkably silent' when it comes to the political undercurrent that characterises the framing of local claims in human rights terms (Grigolo 2019, pp. 179–180). To be sure, analyses of the role of urban politics in shaping the HRC are not missing (Fernandez-Wulff and Yap 2020, Chapter 4 in Grigolo 2019). However, such analyses tend to focus on city-level negotiations, bureaucratic routines and interactions between the local and the global level of governance. At the same time, the role of intergovernmental relations within the state remains only partially accounted for (Baumgärtel and Oomen 2019, Roodenburg 2019). As a result, while scholars have recognised the fact that HRCs are horizontally and vertically nested in multi-level power structures (Oomen 2016, Fernandez-Wulff and Yap 2020), they have not done full justice to the multi-level nature of urban politics of human rights. Surprising as it may seem, the dynamics between subnational and national governments have remained only on the periphery of the HRC literature.

In addressing this shortcoming, I adopt a multi-level perspective of urban politics and explore the role of urban politics in the process of becoming and being a HRC. I use a qualitative in-depth case study approach (Rohlfing 2012) and focus on Bologna, the capital of the Italian region of Emilia-Romagna, and a city with a strong left-wing political tradition. In recent years, Bologna's local authorities have engaged explicitly in the adoption, institutionalisation and implementation of human rights, mainly in relation to the governance of immigration and migrant integration. Such a direct link between human rights and migrants' rights – especially when it comes to undocumented migrants or rejected asylum seekers – is a rather typical feature of HRCs (Baumgärtel and Oomen 2019, Roodenburg 2019). While a broad group of human rights advocates has navigated Bologna's experience as a HRC (civil servants, politicians, local civil society representatives, academics, etc.),

the municipal government and administration stand out as the protagonists in this process. Lastly, Bologna's distinctive political culture and the high politicisation of immigration and asylum governance in Italy (Urso 2018, Pettrachin 2019), makes it a compelling case for studying the role of urban politics in the localisation of human rights in general, and the emergence and consolidation of HRCs in particular.

In my analysis, I rely on a socio-legal approach and a broader understanding of human rights as law, practice and discourse. First and foremost, human rights are a set of international/regional positive law, which delineates the obligations of states party to it (Buergenthal et al. 2009, Shelton and Gould 2013). Classic examples are treaties, such as the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Second, human rights as practice indicates the translation of such legal instruments into concrete initiatives and policies, and their subsequent implementation (Merry 2006, Grigolo 2016). It comprises actions justified on the basis of human rights language, or with a goal of promoting human rights (Goodhart 2016). Finally, human rights as discourse pertains to ideas and moral values that can be invoked for emancipatory purposes, without necessarily making reference to international law (Ignatieff 2003, Roodenburg 2019, Fernandez-Wulff and Yap 2020).

My findings indicate that the use of human rights law, practice and discourse in Bologna was triggered by fundamental ideological differences between the left-leaning local/regional and the right-leaning national government in relation to the presence and integration of immigrants. More concretely, the adoption of human rights facilitated the development and justification of subnational political responses to legal, policy and discursive changes at the national level. In this respect, Bologna's transformation into a HRC to a large extent can be interpreted as a reactive process, and the result of a conflict between legality as defined at the national, and justice as perceived at the local level. In this process, human rights were instrumentalised for the construction and defence of an idea of justice aligned with the priorities of the local government and its civil society partners in the field of migration governance.

In the next section, I outline my main arguments in relation to the multilevel character of urban politics and governance, and the consequences this entails for the process of becoming and being a HRC. Subsequently, I present in detail Bologna's gradual engagement with international human rights over the last two decades. Based on the empirical analysis, I then move on to a discussion on the relevance of intergovernmental conflicts within the state to the emergence of HRCs, and the added value of human rights as law, practice and discourse to developing strategic responses in the context of such conflicts. In the conclusion, I put forward questions for future research.

Human Rights Cities and the Multi-Level Character of Urban Politics

To start with, the process of becoming and being a HRC typically includes some type of self-designation (Neubeck 2016). In this regard, it is usually local government officials together with their civil society partners that attach the human rights label to their city, and then promote it. At the same time, the dynamics that underpin this process can remain out of the spotlight of bold public announcements, or hidden between the lines of rather vague resolutions and proclamations (Neubeck 2016). The motives for self-designating as a HRC can vary from genuine moral convictions of local politicians and civil servants (Sabchev et al. 2021), to attempts for enhancing urban governability (Grigolo 2017), to the label being rewarding in the context of a city-branding tendency based on a neo-liberal logic (see Goodhart 2019, p. 151), or just because it is 'catchy' (MacNaughton et al. 2020, p. 121). Regardless of the officially communicated reasons behind it, however, translating and implementing international human rights to the local level constitutes a political project that involves contestation of power (Goodhart 2019). In other words, the HRC has a political undercurrent, which shapes its output in terms of human rights policies and practices.

On the surface, there appears to be a consensus among scholars that HRCs have an 'inherently political character' (Grigolo 2016, p. 293, see also Smith 2017, Goodhart 2019). In the HRC, state and civil society actors form alliances and compete with each other for authority over the way in which human rights are translated and implemented (Merry 2006, Nash 2015, p. 162, Roodenburg 2019). This process is influenced by the broader social structure (Grigolo 2016), and therefore by the selective activation of a concrete political culture that aims to provide answers to questions such as 'What are human rights?' and 'Who are human rights for?' (Nash 2016). As a result, HRCs adopt different sets of human rights while leaving out others (Soohoo 2016), and differences occur within the same HRC over time (see Grigolo 2019, pp. 98–128). In other words, in the HRC the abstract human rights ideas and norms are sifted in the urban politics sieve: the ones that make it through turn into ingredients for the local HRC recipe, while the leftovers can be preserved for future use.

When one delves into analyses on the role of urban politics in HRCs, however, one discovers an important shortcoming: while scholars have recognised the multi-level nature of urban politics of human rights (e.g., by including international institutions and organisations in their analyses), they have engaged only marginally with the role of intergovernmental relations within the state. The HRC literature is overwhelmingly focused on the dialectics between the international (or the 'global') and the local (Nijman 2016, van den Berg 2016, Aust and Nijman 2020, Swiney 2020). As a result, the urban politics of human rights seem to be

reduced to 'conversations' taking place 'within the camps of civil society and local government' (Grigolo 2019, p. 98), including interactions with supranational actors, such as UN organisations and human rights treaty bodies. Surprisingly, the dynamics between local governments and higher levels of state power – especially central governments – have remained in the periphery of HRC analyses, although a number of scholars have pinpointed their direct relevance to HRC experiences (Smith 2017, Baumgärtel and Oomen 2019, Roodenburg 2019). In essence, while the HRC literature has acknowledged the importance of urban politics, it has not fully accounted for their multi-level character.

Importantly, the lack of scrutiny in relation to the role of different levels of government in shaping HRCs' experiences can affect one's conclusions. A closer look at analyses that use as a starting point the relationship between the city and the state, rather than the city and the 'global', helps clarify this point. The study of Hirschl (2020) on the secondary – and often inexistent – constitutional status of cities, provides a good example. While HRC research paints a genuinely optimistic picture about the potential of cities to strengthen global urban justice through direct engagement with human rights (Oomen et al. 2016), Hirschl puts forward a number of examples that highlight the discrepancy between aspirations and reality in HRCs. In Sao Paolo, for instance, which has institutionalised human rights through the establishment of a large Municipal Secretariat for Human Rights and Citizenship, the difference in life expectancy in neighbourhoods that are less than 10 miles away from each other is almost 24 years (Hirschl 2020, p. 213). This arguably raises questions pertaining to local residents' right to life. In the city of New York – a classic example of a HRC (Grigolo 2019) – Manhattan is 'the second most unequal county in the United States, with the top 1% earning 113 times the average income of the bottom 99% families' (Hirschl 2020, p. 209). In short, Hirschl argues that cities cannot cope with such exacerbating levels of inequality and socio-economic exclusion on their territory, because they overwhelmingly lack constitutional standing and ability to generate own resources. Self-designating as a HRC may help raise public awareness about human rights commitments, but it does little to nothing to advance in practice the progressive agendas of some local authorities.

My argument, therefore, is that studies on the role of urban politics in HRCs need to address more critically the relationship between different levels of government within the state, and between the local and the national level in particular. HRCs – just as cities in general – are vertically and horizontally nested, with power being dispersed among public, private and civil society actors from all levels (Kübler and Pagano 2012, Fernandez-Wulff and Yap 2020, Kaufmann and Sidney 2020). The invocation of human rights at the local level – especially when local governments are the protagonists in such initiatives – often aims

at challenging the authority of upper level governments over controversial issues, such as the rights of undocumented immigrants (Baumgärtel and Oomen 2019, Roodenburg 2019). Such intergovernmental disputes undoubtedly make part of the urban politics of human rights, and can possibly shape the HRC to a greater extent than other interactions with local civil society or with actors from the international level. For better or worse, HRCs exist in multi-level systems of governance, and decisions taken at higher levels can have a profound effect on them (Sellers 2005, Kübler and Pagano 2012). Changes put forward by national governments provide both opportunities and constraints to HRCs, especially when such changes relate to the allocation of competences and/or resources in domains that HRCs have prioritised as part of their human rights agendas. Ultimately, overlooking the central state and the (re-)actions of its executive means overlooking the main guarantor, and at the same time, the main violator of human rights (Nash 2015, pp. 41–66).

In addition, intergovernmental disputes can be the very reason for invoking international human rights in the first place, prior to any subsequent human rights city-branding exercises. Grigolo, for example, notes that cities with progressive culture and orientation can invoke human rights, in order to 'challenge and modify' state practices, using human rights' 'higher, morally superior status' (Grigolo 2019, p. 10). In a similar vein, Kaufman and Ward conclude their brief comment on human rights implementation in the United States with the observation that subnational actors and human rights lawyers/advocates must 'ensure that local progress is sustained and replicated wherever harmful laws and policies surface' (2017, p. 11). Therefore, local human rights policies and practices – or in other words, the manifestations of urban politics of human rights – are not necessarily the aftereffect of becoming a HRC. On the contrary, they can be instruments that local governments use to address the effect of changes adopted at higher levels of government, and hence a precursor of a transition from an 'ordinary' to a HRC.

Lastly, if an intergovernmental conflict is the cause for becoming a HRC, rather than being just a catalyser for it, then one can argue that human rights are ultimately instrumentalised as 'means towards an end' (Oberleitner and Starl 2020, p. 178). The logic behind such an instrumental use is not our municipal policies must fit the framework of international human rights law because we have direct responsibilities under it, or because local civil society urges us to do so, but rather the human rights framework serves perfectly our policy (i.e., political) goals. One example in support of this interpretation of HRCs is the 'revision' of municipal rights charters in line with local government priorities, like in the case of Montreal (Frate 2016). Another example is the fact that changes in local political leadership can lead to stagnation of HRC initiatives, like in the cases of Graz (Starl 2017) or Barcelona (Grigolo 2019). Therefore, in the context of confrontations with higher levels of government, local

authorities may be using human rights law and norms to do 'politics by other means' (Wilson 2007). This raises the question: are HRCs 'a promising vehicle for making rights a reality' (van den Berg 2017, p. 49) in all circumstances, or in some cases international human rights can rather be the vehicle for making local political visions a reality?

To sum up, the analytic lens of urban politics and governance in HRCs cannot be confined to interactions between local authorities, local civil society and supranational institutions and actors. It is imperative that it also reflects on the nested character of cities within national systems of intergovernmental relations, which can generate incentives, opportunities and constraints for the localisation of human rights. Based on such multi-level understanding of urban politics, I turn now to the analysis of Bologna's transition into a human rights city, with a particular focus on the role of the dynamics between national and subnational authorities in this process.

Urban Politics and Human Rights Localisation in Bologna

To explore the role of multi-level urban politics in the way in which human rights were invoked, negotiated and implemented in Bologna, I use evidence from an extensive desk research and a two-month field research (December 2019 to January 2020) conducted in the context of the 'Cities of Refuge' project.[2] The former comprised of reviewing municipal, regional and national legislation, policies, ordinances and reports in the field of migration/human rights, local media sources and secondary academic literature. The latter included participant observation (events organised by the municipality/civil society) and seventeen semi-structured interviews with local, regional and central government officials, as well as representatives of the local civil society and an international organisation in Bologna (Table 5.1).

Bologna is the capital and the largest city of the Italian Region of Emilia-Romagna. It has a strong 'red' political tradition and a long history of social movements (Parker 1992). Since the Second World War a left/centre-left political majority has been governing the city with almost no interruption, which makes Bologna 'the traditional showcase city of the Italian Left' (Però 2005, p. 835). In addition, the local civil society has been at the forefront of the Italian emancipatory movements for LGBT rights and women's rights (Hajek 2014).

When it comes to local policies and mobilisations promoting migrants' rights in particular, Bologna has been again a protagonist in the Italian context (Caponio 2006).[3] To give an example, the municipality introduced measures to facilitate the access of locally residing immigrants to adequate housing and other services already in 1989. For the design and implementation of its policies at the time, the local government collaborated closely with labour unions and to a lesser extent with migrant

Table 5.1 List of interviews

ID	*Location*	*Date*	*Interviewee*	*Language*
B1	Bologna	18 December 2019	Two representatives of the municipal administration	Italian
B2	Bologna	19 December 2019	Representative of the municipal administration	Italian
B3	Bologna	9 January 2020	Representative of the municipal administration	Italian
B4	Bologna	10 January 2020	Four representatives of a local NGO	English
B5	Bologna	15 January 2020	Two representatives of the municipal administration and one representative of a local NGO	Italian
B6	Bologna	15 January 2020	Two representatives of a local NGO	Italian
B7	Bologna	16 January 2020	Representative of a local NGO	Italian
B8	Bologna	17 January 2020	Three representatives of a local NGO	Italian
B9	Bologna	20 January 2020	Representative of a local NGO	Italian
B10	Bologna	22 January 2020	Representative of the municipal administration	Italian
B11	Bologna	23 January 2020	Representative of the regional administration (Emilia-Romagna)	Italian
B12	Bologna	24 January 2020	Representative of an international organisation	Italian
B13	Bologna	27 January 2020	Representative of the municipal administration	Italian
B14	Bologna	29 January 2020	Deputy-mayor, municipality of Bologna	Italian
B15	Bologna	29 January 2020	Representative of a local NGO	Italian
B16	Bologna	30 January 2020	Representative of the Italian Ministry of Interior	Italian
B17	Bologna	30 January 2020	Professor at the University of Bologna	Italian

associations (Caponio 2005). Since 2004, the municipality has been also participating in the national Protection System for Refugees and Asylum Seekers (SPRAR). As a result, it has been permanently involved in the reception and integration of forced migrants in close collaboration with local social cooperatives. At present, Emilia-Romagna is the Italian region with the highest share of non-EU immigrants in the population (12.3%), while Bologna is the city hosting the highest number of asylum seekers and refugees in the region (Osservatorio Regionale sul Fenomeno Migratorio di Emilia-Romagna 2020).

While the reception and integration initiatives promoting the fulfilment of immigrants' socio-economic rights date back to the 1980s,

Bologna's explicit engagement with international human rights in this policy domain emerged only in the beginning of the 2000s. The initial impetus for the 'localisation' of human rights came from the regional, rather than the local authorities. In 2004, the left-wing government of Emilia-Romagna adopted Regional Law n.5/2004 'On the social integration of immigrants', which was one of the first regional legislations of its kind in the country. The then legislator chose to refer explicitly to human rights at several points. More concretely, Article 1(1) describes the regional law as 'inspired by the principles and values' of the Universal Declaration of Human Rights (UDHR) and the Charter of Fundamental Rights of the European Union (CFREU). Surprising as it may seem, inspiration was drawn also from the European Charter for Safeguarding of Human Rights in the City – a 'Charter' that is often cited in the HRC literature, and that arguably has more symbolic than legal value (Garcia-Chueca 2016, Grigolo 2019). Lastly, in addition to these rather general references, in Article 9 (2) the legislator also used specifically Article 21 of CFREU as the basis for the creation of a Regional Anti-Discrimination Centre.

How can one explain this uncommon at the time use of human rights instruments in subnational legislation on immigrant integration? According to a participant in the legislative process, the aforementioned regional law was 'a political response to the so-called Bossi-Fini law' (B11), which was adopted in 2002 by Italy's centre-right government. While Bossi-Fini's final draft (Law 189/2002 'Changes in Regulations on the Matter of Immigration and Asylum') was far less radical than the initial bill prepared by politicians from the right-wing anti-immigrant parties National Alliance and Lega Nord, it still included a notable shift towards more restrictive and punitive approach to immigration (Zincone 2011). The Bossi-Fini law promoted a certain 'cultural and political idea', according to which immigration should be governed through 'control and sanctions' (B11). On the contrary, Emilia-Romagna's left-wing government perceived immigration as a 'structural phenomenon', an 'opportunity' and a 'strategic resource for the future' (B11). It wanted to emphasise the 'equal rights and equal duties' of locally residing immigrants, and therefore sought instruments that would provide the basis for the adoption of more inclusive policies (B11). Such an approach was also needed to respond to the increasing presence of asylum seekers in the region, many of whom had been excluded from locally provided services. Therefore, the ideological conflict between the Italian left and right within the domain of immigration (Zincone 2011) ultimately led to the explicit referral to international human rights in Emilia-Romagna's regional legislation on immigrant integration. Shortly after, the national government challenged the constitutional legitimacy of the entire text of the regional law, but the Constitutional Court declared the appeal inadmissible and unfounded (Sentenza n.300/2005).

In the meanwhile, international human rights started slowly appearing on the agenda of the municipality of Bologna as well. In December 2004, the city became one of the founding members of the European Coalition of Cities Against Racism initiative (ECCAR), launched by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) (Comune di Bologna 2008). As per its Statute, one of the main goals of ECCAR is fighting discrimination at the local level and contributing to the 'protection and promotion of human rights' (ECCAR 2007). In addition, in 2005, the municipality also became signatory of the aforementioned European Charter for Safeguarding of Human Rights in the City (Comune di Bologna 2005).

The real breakthrough, however, came a few years later, when the municipality implemented an EU-funded project called 'Awareness on migration, development and human rights through local partnerships' (AMITIE) together with local civil society partners and the University of Bologna. The project included a 50-hour training in human rights for public officials, setting the foundations for the subsequent adoption of a human rights-based approach in local migration policy-making (B1, B2). The underlying logic to the use of human rights in local-level migration governance is well illustrated in the AMITIE final report:

> … with migrants portrayed as a burden to receiving societies, and even as criminals, the issue of human rights is still neglected. This disregard is particularly acute when migration is considered as a part of the national security agenda, and when referring to those migrants who have crossed the border through irregular channels.
>
> (Gozzi et al. 2011, p. 14)

The project report juxtaposes the local emphasis on human rights with an 'aggressive media and government discourse against migrants' and a recent national legislation (Law n. 94/2009 'Provisions on public safety') related to a long list of 'discriminatory and worrying measures' (Gozzi et al. 2011, p. 27), as well as 'possible human rights violations in policies and practices' (p. 29). The specific law, known as the 'Security Package', raised concerns about its compatibility with both EU law and international human rights law (Maccanico 2009), and was again adopted by a centre-right coalition that included the anti-immigrant Lega Nord. Contrary to the security-oriented logic of the Security Package, the AMITIE project foregrounded human rights as legal obligations, as an 'idea' that had played a central role in struggles for justice (Gozzi et al. 2011, p. 14), and as a remedy for problems in migration governance. The human rights-based approach in local migration policy-making was presented as a framework that empowers immigrants and facilitates their integration and participation into local societies (pp. 17–23).

In 2011, Bologna's local government demonstrated its commitment to institutionalising and consolidating its local human rights approach by establishing an 'Office for Cooperation and Human Rights' (later renamed into 'New Citizenship, Cooperation and Human Rights') (B14). The office made part of the municipal department overseeing issues of migrant inclusion, integration, human trafficking and partially reception of asylum seekers and refugees (B1). Importantly, it was run by an employee with human rights education and experience in an international humanitarian organisation, who started working closely with the municipal social services (B2). While this employee initiated the aforementioned AMITIE project and undoubtedly played a central role in the bottom-up diffusion of the human rights language within the administration, the stance of the local political leadership was also crucial. More specifically, the deputy mayor in charge for international relations – who was also vice-president of the ECCAR at the time – strongly supported the further engagement of the city with human rights, both discursively and in practice. In addition, in the beginning of his second term in 2016, Bologna's mayor Virginio Merola appointed a 'rights' deputy mayor, whose mandate included anti-discrimination, equal opportunities, gender equality and LGBT rights, as well as the supervision of the municipal human rights office (B2, B14).

In this context, the municipality of Bologna started translating the abstract international human rights into concrete local policies and practices in the area of reception and integration of immigrants. Building upon its experience from the AMITIE project, the municipality was awarded a second EU-grant in the framework of a new transnational partnership under the name AMITIE CODE (Capitalising on Development), which again involved sub-national public authorities and NGOs. This project was coordinated by Bologna's human rights office and aimed at 'raising awareness among citizens in general and some key groups in particular about the human rights of migrants', while also leaving a 'practical and concrete mark' (Fresa et al. 2018, p. 127). As a result, a number of local initiatives were implemented with the objective of improving service delivery, eliminating discriminatory barriers in municipal regulations and services, strengthening social cohesion and fostering interreligious dialogue. Examples include human rights trainings for 180 policy makers and civil servants, as well as for 210 teachers working in the local education system, and baseline studies identifying human rights issues in areas like access to housing and participation of migrants in local community life (B2).

All these initiatives made part of a four-year 'Local Action Plan for a Non-Discriminatory Action towards New Citizens with a Human Rights Based Approach', which was officially approved by the City Council in September 2017 (Fresa et al. 2018, pp. 143–157). The Local Action Plan (LAP) was the product of a long participatory process, during which

representatives of local stakeholders (municipality, regional government, university, civil society, etc.) identified three concrete rights to focus on: participation, non-discrimination and well-being (B2). While 'intended for the entire population', the LAP paid particular attention to 'new citizens, migrant people and communities', who faced 'particular difficulties in accessing their rights' (Fresa et al. 2018, p. 144).

Although a number of concrete measures based on the LAP were implemented, some aspects of it remained only on paper, due to internal dynamics within the local administration. For instance, the LAP foresaw the creation of a Steering Committee composed by department managers, who would monitor, evaluate and communicate the progress in embedding the human rights-based approach in local policy-making. Rather than establishing the Committee, however, the department managers decided that they will discuss the LAP implementation progress at their regular coordination meetings 'whenever there is a need for it' (B2). Nevertheless, until early 2020 there had been no such discussions. In addition, the initial draft of the LAP foresaw evaluations of department managers. Since this was a controversial topic, however, it was rejected and not included in the final version of the document. Lastly, other relatively small modifications of the LAP were made after consultations with local civil society actors.

While the municipal administration translated human rights into concrete policies and practices, Bologna's political leadership continued using them in its confrontations with the national level. By the end of 2018, the Italian government – with the leader of the anti-immigrant Lega Matteo Salvini heading the Ministry of Interior – decided not to sign the Global Compact for Safe, Orderly and Regular Migration (GCM). In response to this, the mayors of Bologna and Lampedusa started an initiative called 'Global Compact in Comune'. Initially, the two municipalities adopted the principles of the GCM through resolutions passed in the respective City Councils. Subsequently, the two mayors called upon other Italian mayors to do the same. Instead of reconciling with the approach of the national government that in their view put the country's reception system at risk, they suggested following the path outlined in the GCM, with respect to international law and human rights (Global Compact in Comune 2019). Moreover, to facilitate the diffusion of the initiative a draft resolution for the adherence to the principles of the GCM was prepared for other municipalities. In its very beginning, the draft resolution provided space for the inclusion of references to any statutes, charters, resolutions or other documents that demonstrate the commitment of the respective municipality with human rights and anti-discrimination.[4]

Lastly, Bologna also 'discovered' the utility of human rights law as a counterforce to restrictive changes in national legislation in relation to migrants' rights. In 2018, the so-called 'Salvini Decree' (Decree-Law 113/2018), along with a subsequent circular of the Minister of Interior, put

a halt on the local registration of asylum seekers. This effectively limited their access to several rights, such as signing a work contract, opening a bank account, and obtaining a driving licence. In response, the municipal leadership noted that the municipality will protect the rights of all locally residing immigrants through a path of 'responsibility and not of civil disobedience' (Bologna Cares 2018), or in other words, trying to 'change things from inside' (B14). Soon after, the municipality started rejecting the local registration of asylum seekers in line with the national law, being well aware that a local civil society organisation is preparing an appeal against the mayor for this decision. When the case reached Bologna's Civil Court, rather than objecting the appeal the municipal lawyers briefly noted that the mayor had simply applied the national legislation (B14). In her adjudication, the judge noted that according to Article 117 of the Italian Constitution, the legislative power of the state should be exercised within the constraints of EU and international legal obligations. More specifically, she referred to Article 12 of the ICCPR and Article 2 of Protocol n.4 of the European Convention of on Human Rights (ECHR), both of them providing every person legally present on a signatory state's territory the right to freely choose his/her place of residence. Importantly, her interpretation of the Decree's provisions went way beyond the concrete individual case. Consequently, when the court decision ultimately ordered Bologna's mayor to register the applicant, the municipality – based on the judge's broader interpretation – started registering all locally residing asylum seekers. Furthermore, the municipal staff contacted the asylum seekers who had seen their applications rejected in the previous months in order to register them as well. Bologna's mayor immediately celebrated the court decision, claiming that it was 'unjust to deny residence to asylum seekers' (Merola 2019), while according to a local NGO representative 'legality was restored' (B7).

Beyond their added value in this landmark court decision, international and regional human rights treaties became more important also for lawyers from local NGOs who provided legal assistance to forced migrants. With the aforementioned 'Salvini Decree' abolishing humanitarian protection – the most common form of international protection in Italy at the time – international human rights instruments became 'the only thing that is left in courts in order to prevent people getting rejected and entering into illegality' (B15). While the implementation of the law had always been problematic in the country and migrants always faced bureaucratic obstacles depriving them *de facto* from their rights, in the last years the *content* of national law itself had become the problem. In a response to that, within the local 'battleground' for the rights of forced migrants, lawyers had to invoke directly the obligations of the Italian State under European and international human rights law (B15). The specific instruments that they used in this respect were primarily Article 8 (but also Article 3 and Article 6) of the ECHR, as well

as the provisions of the CFREU, the UN Convention Against Torture (CAT), the Convention on the Rights of the Child, and the ICCPR.

Discussion

The empirical evidence from Bologna fosters a number of insights into the multi-level nature of urban politics and their role in the process of becoming and being a HRC. It confirms the assumption put forward in 'Human rights cities and the multi-level character of urban politics' section above that HRCs are horizontally and vertically nested instances of an inherently political phenomenon. In other words, analyses of the role of urban politics in HRCs ought to account for the dynamics taking place on the horizontal, as well as on the vertical dimension of urban governance (Kübler and Pagano 2012). Importantly, Bologna's case also shows the relevance of political/ideological conflicts between the subnational and the national level of government to *why*, *when* and *how* HRCs as a distinct form of human rights localisation occur.

On the horizontal dimension, the 'conversations' between the multitude of locally operating actors – municipal government, municipal bureaucracy, NGOs, social cooperatives, educational institutions and so on – shaped the urban politics of human rights in Bologna. Just as in many other HRCs (Grigolo 2019, Fernandez-Wulff and Yap 2020), this process was often marked with conflicts driven by individual and collective interests, which inevitably influenced some of the choices made (e.g., which rights to focus on, and how to measure the achieved progress). Exemplary in this respect is the fact that Bologna's municipal managers rejected the establishment of a monitoring mechanism proposed by the director of the human rights office. At the same time, however, Bologna's example also highlights the importance of local strategic alliances that represent the consensual side of urban politics of human rights. Such strategic alliances are arguably the bedrock of HRCs (Graham et al. 2016, Neubeck 2016). They tailor the abstract human rights notions to the local context and provide answer to the question 'who deserves what' in the city. In other words, they promote their understanding of urban justice redressed in human rights terms (Moyn 2018).

Undoubtedly, the horizontal dimension of urban politics played an important role in moulding the HRC experience of Bologna (e.g., through the participatory process that led to the development of the Local Action Plan). Nevertheless, looking at the interactions on the horizontal level provides only partial understanding of the process of human rights localisation in the city. Bologna's slow but steady course – from symbolic engagement with human rights to their institutionalisation and implementation – was influenced in several ways by dynamics taking place on the vertical dimension of urban politics. First, the ideological conflict between the local/regional and the national government in the field of

migration governance provided the reason for the local/regional political leadership to strategically engage with human rights. In this sense, the local adoption of human rights cannot be interpreted solely as a proactive 'downward diffusion' supported by subnational authorities, or 'grassroots localisation' driven by civil society (Goodhart 2019, pp. 147–148). It was at the same time a reactive instrumentalisation of human rights triggered by legislative and policy changes at the national level. Second, these conflicts left an imprint on the 'translation' of human rights, tailoring them primarily to the needs of locally residing immigrants. Lastly, the closer look on the vertical dimension of urban politics also reveals its relevance to the timing of human rights localisation. More specifically, changes at higher levels of government gave impetus to the gradual expansion of Bologna's human rights agenda (e.g., the 'Security Package' in 2009 and the 'Salvini Decree' in 2018). In sum, the vertical dimension of urban politics played a determinant role in shaping the entire trajectory of Bologna as a HRC.

Based on this analysis, it becomes evident that horizontal and vertical relationships worked in conjuncture to produce the HRC of Bologna. Both of them provided the motivation and energy needed for 'pulling human rights back in' (Baumgärtel and Oomen 2019). The explanation seems rather simple: regardless of the results of 'conversations' on the horizontal level around the rights of those present in the city, central governments retain their ultimate legislative (but also resource-allocating) authority to *impose* their own understanding of 'who deserves what'. For this reason, negotiations between local governments and civil society on the content and realisation of city dwellers' human rights – as well-intended as they may be – could end up with the reminder that counting one's chickens before they hatch can be a risky enterprise with a disappointing outcome. That said, Bologna's example draws a rather optimistic picture of the potential of human rights to be successfully mobilised against decisions taken by higher levels of public authority, partially because of the support received by the local Civil Court.

Viewed through the prism of the broader HRCs literature, Bologna's case highlights a common thread in HRCs: a relatively broad local coalition between public and civil society actors advocating for human rights (despite any internal conflicts) and a confrontation with a higher level of government (predominantly the national) over a contentious issue pertaining to access to or realisation of rights (migration, austerity measures, etc.) (Graham et al. 2016, Kaufman and Ward 2017, Smith 2017, Baumgärtel and Oomen 2019, Roodenburg 2019, see also Chapter 4 in Hirschl 2020). Consequently, and taking into account the above discussion on the multi-level nature of urban politics, such HRCs can be interpreted as *a response to a conflict between legality and perceived justice, which is manifested at the local level.* In the contemporary world dominated by sovereign states and their central governments, legality is first and foremost determined at the national level. In contrast, injustices such

as limiting someone's access to basic services, for instance, are directly experienced at the local level. As 'perceived', or in other words socially constructed, justice here represents the outcome of the inherently political process of rights negotiation in the city. Needless to say, the justice that a local government and its civil society partners seek to deliver could well be instrumental, rather than principled (Grigolo 2017).

Regardless of the case, when local governments indicate that a concrete urban issue represents an instance of imbalance between legality and justice, they can either remain passive, or seek a remedy. Taking migration governance as an example, in most cases local governments do the former and avoid confrontations with higher levels of public authority. Whenever they decide to respond, however, they are faced with a choice. On the one hand, some of them silently swerve away from the path of legality and enter 'grey zones' of welfare provision (de Graauw 2014, Dobbs et al. 2019). In such cases, local governments and their civil society partners focus their efforts on *de facto* delivering the justice they envision, while keeping off the radar of national authorities as much as possible (Oomen et al. 2021). A common point of reference in this respect is the provision of basic services to undocumented people who are not entitled to them in accordance to national legislation (Delvino 2017, Spencer 2018). On the other hand, usually more resourceful or 'brave' local governments choose the path of open confrontation. To restore the harmony between legality and justice, they need a counterforce that simultaneously (i) addresses the legal source of the conflict, (ii) provides practical remedies and (iii) enjoys high levels of legitimacy within and beyond their constituency. Human rights, with their quality to be simultaneously and selectively applied as law, practice and discourse, offer a toolbox for local governments that serves these three functions.

First, international human rights law can be a powerful strategic asset for local authorities in 'uphill battles' against higher levels of government (Baumgärtel and Oomen 2019). This is particularly relevant for policy areas marked by high degree of politicisation, such as the urban migration governance 'battleground' (Ambrosini 2020). The use of human rights law as a 'weapon' in such cases shifts the conflict between legality and justice from the arena of national jurisprudence to the one of legal pluralism (Baumgärtel and Oomen 2019), thus challenging the legality side in the equation. It should be noted that the effectiveness of international human rights law as a strategic tool of HRCs has been questioned (Swiney 2020, pp. 233–243, see also Chapter 4 in Hirschl 2020). However, as the evidence from Bologna demonstrates, it can have an added value for HRCs, also beyond 'classic' cases related to undocumented migrants' rights (Baumgärtel and Oomen 2019, Roodenburg 2019). Importantly, the availability of local expertise and the willingness of domestic courts to use international human rights law (Hostovsky Branders 2019) play a fundamental role in such endeavours.

Second, while using human rights as law usually aims at ending a rights violation, using human rights as practice facilitates rights promotion and rights fulfilment. The function of human rights practice, therefore, is to address the justice side of the above equation in two ways: by constructing the local idea of justice through human rights education/training, and by giving this idea shape through policies and practices that enhance the rights realisation of HRC dwellers, with a particular focus on certain social groups. In this respect, local human rights policies, as Starl has noted, represent 'the response to experiences of injustice' (Starl 2017, p. 57).

Lastly, while the use of human rights as law and practice addresses the legality-justice equation, the use of human rights as discourse serves to legitimise the actions of the alliance behind the HRC. Enjoying high levels of legitimacy strengthens the public acceptance of one's policy objectives and therefore helps advance one's political agenda. In this context, it should not come as a surprise that local governments, including the one of Bologna, choose to employ human rights as a discursive tool. In the end of the day, human rights are 'a benchmark for legitimate authority' (see Introduction in Goodhart 2016, p. 5), 'the contemporary language of global justice' (Nash 2015, p. 172) and a major instrument of civil society organisations that have sought to reframe normatively and change state policies. In regard to advocacy for forced migrants in particular, human rights is one of the most common norms promoted by pro-refugee organisations in Europe, because of their wide acceptance and moral superiority (Schnyder and Shawki 2019). By 'tapping into the power of moral-universal norms' (Schnyder and Shawki 2019, p. 121), local governments can thus present themselves as duty bearers above politics, whose only purpose for engaging in a conflict is to restore justice (Nash 2015). In sum, the human rights language is a useful tool for developing discursive legitimation strategies whenever conflicts with higher levels of government over migration issues (and not only) occur.

To recapitulate, applying a multi-level analytic lens to urban politics revealed the relevance of intergovernmental political/ideological conflicts to the transformation of Bologna into a HRC. Such conflicts seem common for HRCs. They juxtapose legality, as defined and imposed by central governments over subordinate public authorities, and justice, as negotiated and promoted by urban actors. Ultimately, such conflicts can provide a fertile ground for the instrumental use of human rights as law, practice and discourse in defence of locally constructed notions of justice, and by extension for the emergence and consolidation of HRCs.

Conclusion

As Smith has pointed out, 'there is no single pathway to a human rights city' (Smith 2017, p. 354). The case of Bologna, likewise, displays a number of rather unique contextual characteristics. Nevertheless, it shows that if one does not adequately engage with the role of urban politics

in general, and of subnational-national relations in particular, one risks missing a highway towards the HRC. As fascinating as the dialectics between the global and the local in making the HRC may be, the attention to them should not come at the expense of overlooking the role of intergovernmental relations within the state. In this respect, the case of Bologna demonstrates that a main reason for the affectionate relationship between the local and the global can be the estrangement between the local and the national in terms of politics. While this case study cannot serve as a basis for making any broad conclusions or generalisations, it can serve as a building block in future theory-building on the relevance of urban politics to the process of becoming and being a HRC.

From an analytical point of view, the case of Bologna highlights the need to embed the multi-level character of urban politics and governance fully in HRC analyses. In line with general trends in urban politics research, accounts of the urban politics of human rights must 'move beyond rhetoric about the global-local nexus' (Sellers 2005, p. 441) and critically address the consequences of the subordinate status of HRCs within constitutional frameworks (Hirschl 2020). While nesting such accounts within larger global trends is undoubtedly insightful (Smith 2017, Grigolo 2019), nesting them within national systems of intergovernmental relations is arguably indispensable.

Finally, the instrumentalisation of human rights for re-packing and advancing local political agendas in migration governance or other areas brings to the surface important questions to be addressed in future HRC research. Cities seem to be well-positioned to employ the discursive capital that human rights have accumulated for advancing their alternative policy goals. But what if the strong rhetorical commitments to human rights of local governments and their political leaders 'come back to haunt them' (Greenhill 2010, p. 54)? This consequence of the instrumentalisation of human rights is likely to occur sooner or later, since cities are far from immune to national governments' direct or indirect influence over nearly every aspect of urban affairs (Hirschl 2020). Moreover, it can also make HRCs' local authorities vulnerable to 'hypocrisy costs' in times of crisis (Greenhill 2010) – such as the recent COVID-19 one – when they can be urged by their local constituencies to provide solutions to issues that greatly exceed their capacities. Such situations have the potential to bring cracks within human rights alliances between local governments and civil society, and by extension jeopardise the future of some HRCs.

Notes

1 Instead of the term 'human rights city', Goodhardt uses the more inclusive term 'human rights community', emphasising in this way the need not to conflate cities with other types of locality (rural, suburban, etc.).

2 'Cities of Refuge' is a 5-year research project funded by the Netherlands Organization for Scientific Research that explores and explicates the relevance of international human rights as law, praxis and discourse, to how local governments in Europe welcome and integrate refugees (See https://citiesofrefuge.eu/).
3 It should be acknowledged that several scholars have critically reviewed the reception and integration policies of Bologna's left-wing governments, highlighting also their paternalistic and exclusionary side (see Però, D. 2005. Left-wing Politics, Civil Society and Immigration in Italy: The Case of Bologna. *Ethnic and Racial Studies,* 28, 832–858.; also Cappiali, T. 2017. 'Whoever Decides for you Without you, S/He is Against you!': Immigrant Activism and the Role of the Left in Political Racialization. Ibid. 40, 969–987.)
4 See https://globalcompactincomunehome.files.wordpress.com/2019/06/schema-di-delibera-per-ladesione-ai-principi-del-global-compact-for-migration-1.pdf [Accessed 28 February 2021]

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6 Beyond minimum protection

The politics of housing rights in the city

Paula Fernández-Wulff *

Introduction

Human rights are at a crossroads – or so it is often claimed. For sceptics, although human rights have helped advance equality and dignity in much of the world, the ideals, principles and mechanisms of human rights are ill-equipped to effectively deal with extractive neo-liberal capitalism, and may have even supported and deepened its disastrous consequences (Moyn, 2018; Whyte, 2019). Unable to alter social power structures, human rights would arguably benefit upper- and middle-classes while only offering vague promises to impoverished communities (Gordon, 1998; Landau, 2012; Douzinas, 2013). Scholars faithful to the human rights project have exposed the crucial role of social movements and civil society in countering such views of ineffective human rights (Rajagopal, 2003; White and Perelman, 2010; Sikkink, 2017; De Búrca, 2021), yet direct engagement with sceptical human rights literature remains rare. This chapter addresses the question of what, precisely, urban actors and urban policy dynamics can offer in this context: not just a neutral backdrop to social movement struggles in the city, but indeed a distinct set of opportunities for more emancipatory views of human rights.

To explore this question, the present chapter focuses on the right to adequate housing as a discursive frontier where human rights can aid in the moral and legal fight against the commodification of life (Polanyi, 1944; Fraser, 2014). Countering the sceptical view that human rights lead to the depoliticisation of civil society (Brown, 1995, p. 98; Whyte, 2019, p. 155), I focus on New York City to show that, even in a country that internationally opposes any notion of socioeconomic rights, the language of rights can provide an effective vehicle for agency and social mobilisation (cf. Merry et al., 2010), which can in turn repoliticise the thus-far commodified area of life that is housing.

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Despite their explicit resonance with ideas of social justice, and at least within the boundaries of the municipality, socioeconomic rights have remained bound by a State-centric logic of assistance and access to services or to specific goods, such as water, housing and food. In this sense, socioeconomic rights are 'formulated, interpreted, and enforced by institutions that are embedded in the political, social, and economic status quo' (Pieterse, 2007, p. 797), which can in turn hinder their transformative potential. The broader aim of this chapter is to show that engaging with municipal policy-making spaces and processes can reveal opportunities for social movements to develop new approaches towards traditional human rights principles, including accountability and participation, and that this, in turn, can point at new avenues for critical engagement with the ideals and practice of human rights.

This chapter follows a narrative form to weave the histories of New York City local housing-related policy victories together with the development of international law on the right to adequate housing. The chapter shows that, in the city, it is possible to find a common ground between the use of rights discourses and more radical approaches to social justice, in a way that answers the concerns of the abovementioned sceptics. Specifically, I expose the capacity of social movements to reframe the social justice issue that is housing into localised rights causes and claims, in a way that, despite challenges, can be empowering and radical in essence and approach. I show how social movement activists in New York City have influenced the way city and state-level officials use human rights language by operating a discursive and policy transformation, shifting the prevalent view of housing as a commodity for speculation within a capitalist market, into housing as a de-commodified basic need. Beyond claiming minimum protection for this basic need, I contend that activists are also redefining capitalist understandings of property as investment and for speculation, based in part on the diagnosis and prognosis advanced by United Nations Special Rapporteurs on adequate housing.

While human rights can provide a unique counter-narrative to prevailing power imbalances, structural inequality and injustice, experiences from different cities around the world show that translating these ideas into municipal policy is not an obvious task. One of the reasons behind this is that, despite identified opportunities, rights-based approaches to local policy cannot be replicated without the mediation of a democratic, agonistic process. Understanding municipal policy spaces as sites of contention over the definition of socioeconomic rights, my broader research seeks to understand how, and under what conditions, human rights tools, discourses and ideas can be transformed in municipal contexts, contributing to the expansion of a kind of democracy that does not shy away from, but rather thrives in conflict.

Framing housing as a human right, in a country where human rights are a rare language, has provided the radical tone necessary to rally constituents around a common cause, and it has become a framing shared

with institutional representatives. This double capacity of housing as a human right to both mobilise and institutionalise a re-commonified approach is crucial for ascertaining the possibilities and limitations offered by human rights discourses in the city.

The chapter proceeds as follows. First, it delves into the approach of the international human rights system to the right to adequate housing at the local level, detailing some of the challenges behind translating an international human right into local realities (Section II, a). It then moves on to explore the role of the UN Human Rights Council and Special Rapporteurs on adequate housing in expanding the meaning of the right to housing in a way that has allowed for its localisation, albeit with mixed results (Section II, b). The chapter then presents the recent history of housing in New York City (Section III, a), reflects on the role of UN Special Rapporteurs in reframing the right to housing in the United States (III, b) and analyses three main policy advancements that have secured new rights for city inhabitants (III, c). The goal of this Section is to evaluate the unique characteristics of the vernacular dialogue taking place between the urban and the international, and whether this dialogue can provide opportunities for more emancipatory visions of human rights. The chapter concludes by reflecting on these opportunities, both in the context of the right to housing and in that of socioeconomic rights more generally.

Housing Rights in the City: From Translation to Discursive Transformation

Much has been said about the history of New York City's Commission on Human Rights and its approach to anti-discrimination law (see, e.g. Merry et al., 2010, pp. 114–118; Grigolo, 2019, pp. 129–132). Although, in its origins, the right to adequate housing was also primarily focused on discrimination and, in fact, the full title of the UN Special Rapporteur on adequate housing is 'Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context', their work on topics including inequality and the financialisation of housing has considerably expanded its meaning beyond discrimination. This section focuses on (a) the evolution of the right to housing under international human rights law and (b) the role of UN Special Rapporteurs on adequate housing in expanding its meaning to encompass structural issues visible in the city.

The Right to Housing and the Role of the State Under International Human Rights Law

Although the right to housing is explicitly mentioned as part of an adequate standard of living within the International Covenant on Economic, Social and Cultural Rights (art. 11.1), it was not until 1991 that the

Committee on Economic, Social and Cultural Rights (the Committee) issued its General Comment No. 4, authoritatively explaining its content and implications. The language of this General Comment is similar to that of others at the time – this right is central to other socioeconomic rights (the principle of interdependence) but, given the tenuous status of the Committee as a relatively new body of independent experts, it was defined, as in the case of other socioeconomic rights, as a right to a minimum protection. Although 'the right to adequate housing applies to everyone' (para. 6), and it should not be interpreted as 'merely having a roof over one's head' or 'exclusively as a commodity' (para. 7), in practice, the obligation of States is to 'demonstrate … that it has taken whatever steps are necessary … to ascertain the full extent of homelessness and inadequate housing' (para. 13). The role of ensuring the right to housing is therefore not to prevent, but to redress when those extreme situations occur. When it can prevent, the 1991 General Comment only covered violations of individual rights, for example, forced evictions or discrimination, and not broader, structural issues. In other words, early conceptions of socioeconomic rights, and indeed human rights more generally, were limited to post-violation.

This *ex post* approach of human rights frustrated human rights activists from the beginning. The role of the State as both the guarantor of the right to housing and its violator (e.g. by allowing or even being responsible for forced evictions) does not sit well with the potentially empowering nature of rights-based approaches. Human rights can only be truly empowering if it can allow activists to demand justice *before* violations even occur. For example, in the context of UN Special Procedures (the collective name for all UN-mandated independent experts), civil society organisations can 'seize' Special Rapporteurs by submitting information detailing alleged violations, or risks of violations. These submissions can in turn trigger what is known as 'communications', i.e. letters by UN Special Rapporteurs addressed to governments and private actors on these issues. Such communications, if timed well, can therefore help prevent these violations before they take place, for instance, a forced eviction. However, how effective these communications are in preventing violations depends on a variety of factors and can certainly be more frustrating than empowering in their practical impact.

The Committee emphasises in its General Comment No. 4 that the right to adequate housing 'should be seen as the right to live somewhere in security, peace and dignity' (para. 2) and develops the meaning of adequacy in para. 8: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. The implementation of the right to housing at the local level is, however, fraught with challenges, and some of its principles have been challenged in practice. The concept of adequacy has, for instance, been contested by social movements pushing for the language of dignity instead (Fernandez-Wulff and Yap, 2020).

These conceptual challenges point at the opportunities and threats that activists encounter when attempting to use human rights at the local level, especially in urban contexts.

Even years after critics warned that rights language can be a source of frustration, given its overpromising character (see, e.g. Gordon, 1998; Landau, 2012; Douzinas, 2013, p. 63), a question human rights advocates still face is whether human rights as internationally conceived can be used as a vehicle for justice in the city. In the context of the right to housing, the COVID-19 pandemic has accelerated an increasing consensus on the idea that the State has an obligation to provide public services in order to ensure equitable distribution of resources among members of society with disparate levels of income and wealth. For example, the Committee's General Comment No. 24 indicates that '[t]he obligation to fulfil requires States parties … in certain cases, to directly provide goods and services essential to such enjoyment', and both the Committee and the Committee on the Rights of the Child have called for public housing programs in various statements (Jameson and Aubry, 2020, p. 3).

This emerging common sense around the need for public services that ensure equal access is the result of a confluence of factors, currently led by the public health crisis, but where human rights movements have had a prominent role for the past 20 years. Beyond this crisis, moreover, there remains the question of whether human rights will continue to be conceived as a matter of last resort (in other words, of minimum protection) for those who cannot afford the private market, or if human rights can in fact be understood as a first-order intervention to ensure protection for all – with the potential to reverse trends of inequality. The right to housing, especially when focusing on urban contexts, provides a fertile ground for examining this question.

Finding the Right to Housing in the City within International Human Rights

Regardless of who determines the content of local government law, local policies, including their goals, the funds allocated to their implementation, and their ultimate outcomes, have a tremendous impact on the operationalisation of the right to adequate housing, for instance, by planning fairly, providing infrastructure and avoiding or dealing with problematic planning outcomes such as racial or socioeconomic segregation. This section traces the recent history of local governments within the UN human rights system, with a focus on the right to adequate housing. It showcases the increasing involvement of this system, including its Special Procedures, with cities, and the evolving understanding of the right to housing as a structural diagnosis and prognosis of injustice in urban contexts.

The first reference to human rights cities in Human Rights Council resolutions can be traced back to 2012 (A/HRC/AC/9/6, pp. 17–18), when the Advisory Committee requested a first study be conducted on the topic. Since 2014, and except for 2017, the Human Rights Council has adopted resolutions or reports on local governments every year[1] – a clear marker of the increased interest in clarifying the obligations of these State agents.

While the Advisory Committee prepared its first report, former UN Special Rapporteur on adequate housing, Leilani Farha, focused her own first report on this topic, presenting it to the Human Rights Council on March 9, 2015 (OHCHR, 2015). In this report, she identified the 'critical responsibilities [of local governments] with respect to positive measures required for the progressive realisation of the right to adequate housing' (U.N. Special Rapporteur on adequate housing, 2015a, para. 8). Although, prior to her report, many international guidelines focusing on decentralisation largely ignored the right to housing (see, notably, the 1985 European Charter of Local Self-Government and the 2009 UN-Habitat's International guidelines on decentralisation and access to basic services for all),[2] a major shift occurred in how housing was considered within the context of human rights at the local level.

The early work of Leilani Farha was built on the priorities of the previous UN Special Rapporteur on adequate housing, Raquel Rolnik, towards the end of her own mandate. Notably, the last thematic report of Rolnik focused on the ten Guiding Principles on security of tenure for the urban poor (A/HRC/25/5), in which her understanding of the right to housing was clear:

> … [T]he concept of 'adequate' housing is not restricted to the right to a house. It is not a matter of having a place with a roof and four walls, but a stake in the territory which can serve as a base for accessing other rights: the right to education, the right to health, the right to protection, the right to freedom of expression, the right to non-discrimination. It is, in short, the right to the city, to the urban space.
>
> (Conectas Human Rights, 2014)

Farha took the baton of Rolnik's approach as an opportunity to follow up on this line of work (A/69/274, para. 10), noting in her first thematic report to the UN General Assembly that:

> The growing gap between the norms and standards that have been developed internationally and the realities of systemic homelessness, substandard housing conditions, unaffordable rentals and lack of access to adequate housing suggests to the Special Rapporteur a crisis of commitment to or understanding of effective implementation of the right to adequate housing.
>
> (U.N. Special Rapporteur on adequate housing, 2014, para. 19)

Under this practical focus on implementation, four of the six priorities she stated for her mandate had a distinct urban, or at least subnational, angle (paras. 60–89).

Shortly after the adoption of the Sustainable Development Goals, in November 2015, the Special Rapporteur coined the term 'Urban Rights Agenda'. Defined as an agenda '[b]ridging affordability, sustainability and liveability and charting a common path for States to follow, … it will require a shift in priorities, and in the allocation of resources, and the recognition of all members of society as legitimate participants in the decision-making process, including those who are marginalized' (U.N. Special Rapporteur on adequate housing, 2015b).

Farha's second report on the implementation of the 'new urban agenda' (A/70/270), together with her participation in Habitat III, represented a key discursive turning point. Whereas, until then, much of the right to housing doctrine had a marked focus on extreme situations, such as homelessness, forced evictions or informal settlements, the work of the Special Rapporteur firmly positioned the right to housing within cities as a human right within larger trends of worldwide structural inequality, speculation, deficits of accountability, and privatisation:

> International human rights law doesn't provide a prescription as to what percentage of income should be spent on housing costs. But under IHRL the right to housing implies that affordability will not only be answered through the development of social housing – which is all too often how it characterized [sic]. It is equally about ensuring the rules of the market conform with international human rights law.
>
> (U.N. Special Rapporteur on adequate housing, 2015b)

Together with her work on the financialisation of housing, this discursive transformation made the right to housing more responsive to structural problems and, I would argue, allowed civil society groups to tie their own local housing struggles to an international right to housing framework no longer anchored in national governments alone.[3]

These ideas coalesced, together with the UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights, into Habitat III in 2016, eventually leading to the 'Cities for Adequate Housing' Declaration in July 16, 2018 (Cities for Adequate Housing, 2018), which New York City joined in April 2019.

This 'localisation' of the right to adequate housing has had mixed effects. As I show in the next section, on the one hand, activists in New York City secured major legal and policy victories relying on a 'housing is a human right' framing with the support of the New York City Bar Association and various law-focused grassroots organisations. On the other hand, however, after the visit of Raquel Rolnik to the United States in 2009, and particularly after the ascent of the right wing to the

federal government, opportunities firmly rooted on international human rights have been arguably limited to path-dependent gains and have not necessarily led to the structural change that human rights embody.

Housing Rights in New York City

This section analyses, on the one hand, the tensions arising from a local administration tasked with upholding anti-discrimination laws that nonetheless believes that 'housing is about dignity';[4] and, on the other, the role of civil society and social movement organisations in pushing for a policy and discursive shift in city officials by simultaneously relying on New York City's various rights-based housing protection tools and on the work of UN Special Rapporteurs on adequate housing.

Specifically, the section looks into the recent history of New York City in what relates both to housing as an area of municipal public policy and to housing activists in their effort to push for change in the city (a). It then turns to explore the role of the two former UN Special Rapporteurs on adequate housing, Raquel Rolnik and Leilani Farha, in opening space for a more structural diagnosis of and prognosis for the right to adequate housing (b). The section ends with an analysis of three key victories for housing activists in New York City and how they relate to the international understanding of the right to adequate housing (c).

Here, I am less interested in tracing the direction of the influence (from the international to the local or *vice versa*), and more in identifying how the international human rights system can transform understandings of socioeconomic rights in a way that creates conceptual openings for social movements in the city. This may, in turn, allow them to exert increased power to promote a particular vision of justice, which has been found to be the determining factor in the success or failure of their strategies (Grigolo, 2016, p. 288).

A Short History of Housing Policy in New York City

The history of New York City's relationship to housing, as in most other cities, is one fraught with contradiction. With its first housing policies designed in the aftermath of the Great Depression and the creation of New York City Housing Authority in 1934, the city struggled to provide decent housing to the millions of immigrants that arrived at its shores each year.

The decade of the 1970s marked a turning point towards austerity in the city. New York City was on the brink of default as a result, among other reasons, of massive corporate bankruptcies and the refusal by President Ford to provide federal help to the city. Some saw the fiscal crisis that ensued as a 'punishment' for what during the 1960s had been seen as 'unnecessary extravagances', including a network of municipal public hospitals, subsidised and public housing, a free public university

(the City University of New York, CUNY), public libraries, affordable subway fares and culture at low prices (Phillips-Fein, 2017).

These socially liberal policies, driven by the city's powerful unions, had led – together with the exodus of white middle-class families to the suburbs and a local tax system ill-designed to keep up with the level of expenses – to high debt levels that, by the 1973 recession, the decreasing number of city lenders became reluctant to refinance (Freeman, 2014). Even after a series of major legislative changes, including declaring massive lay-offs and wage freezes in the public sector, increasing subway fares and charging tuition at CUNY, and after providing tax breaks and subsidies to business groups and real estate corporations (Phillips-Fein, 2017, p. 49), the city was unable to find money to pay back its lenders.

As a result, New York State passed a state law creating an Emergency Financial Control Board that would monitor the city's finances with a view to achieving a balanced budget by 1978 – a Board composed by four public officials, but also three private citizens directly appointed by the state Governor, including the then president of American Airlines and the president of a major firearms manufacturer (Phillips-Fein, 2017, p. 269). The public-private composition of this Board and its ability to monitor the city's finances remain, to this day, intact, albeit with a better balance of interests and better accountability by the state legislature since 2008 (New York State Financial Control Board, 2020). A simultaneous phenomenon started during this regressive decade: the first residential mortgage-backed securities were also produced then, which in turn led to the subprime crisis of 2008 (Sassen, 2012) and which are at the heart of the impact of the nascent financialisation of capitalism on the housing sector.

The 1970s were also the beginning of many housing rights movements in New York City. The 'white flight' phenomenon (referring to the government abandonment of urban centres, restrictive zoning and parallel tax incentives to suburbs resulting in urban decay as white inhabitants left the city) arguably gave rise to stronger organising in the face of the deteriorating urban fabric. Squatter rights movements including the 'Operation Move-In', supported by the tenant rights organisation Metropolitan Council on Housing (cf. Muzio, 2009), worked against Mayors Lindsay and then Koch's clearance of tenements and for the renovation of decrepit public housing units.[5] Church-based associations, civil rights and anti-war movement activists and many organisations led by age, class and racially diverse women (Gold, 2009), created a broad spectrum of tenant organising that, by 1973, was composed of an estimated 83 organisations (Lawson, 1986).

Finding affordable housing during the 1970s and 80s, when unemployment had soared, became gradually more difficult and led to a 5-fold increase in the numbers of sheltered houseless individuals between 1980

and 1987 (U.S. General Accounting Office, 1985, p. 12). This increase in the number of sheltered people, though appalling in itself, was largely the result of strategic litigation brought about by the co-founder of the Coalition for the Homeless – the US's oldest homelessness organisation – in the form of a class action lawsuit that ultimately led to the creation of a unique 'right to shelter' framework in New York City.

This lawsuit was premised on Article XVII, Section 1, of the New York State Constitution, which states that '[t]he aid, care and support of the needy are public concerns and shall be provided by the state'. This progressive phrasing, assigning a direct responsibility to public administrations for the support of those in need, would surprise many today. Based on this Article, in 1981, the *Callahan v. Carey* case was settled through the establishment of a right to shelter for all homeless men and an obligation for the city to maintain basic health and safety standards in shelters. The ruling, followed by *Eldredge v. Koch* guaranteeing this right for homeless women as well, has been fought against by the City, upheld and expanded by courts since then (Coalition for the Homeless, 2020).

The Role of UN Special Rapporteurs in Reframing the Right to Housing in the United States

At the time that this was happening, there was no global housing movement, and the 'right to adequate housing' was not yet a full-fledged human right *per se*. Although Article 25 of the Universal Declaration of Human Rights containing 'the right to a standard of living adequate for the health and well-being of himself and of his family, including … housing' had been signed (and arguably drafted, given Eleanor Roosevelt's involvement in the drafting Commission) by the United States already in 1948, the International Covenant on Economic, Social and Cultural Rights was not adopted by the General Assembly until 1966, with the United States signing it in 1977 but not ever ratifying it.[6]

As of June 2021, the United States is one of only two countries (with Israel) in the UN Western European and Others Group (WEOG) that has not extended a standing invitation to Special Rapporteurs (OHCHR, 2020b). In fact, the role of Special Rapporteurs has long been viewed with suspicion by the US federal government, as can be most recently seen in the first report of the so-called 'Commission on Inalienable Rights':

> … [T]he widespread proliferation of non-legal standards — drawn up by commissions and committees, bodies of independent experts, NGOs, special rapporteurs, etc., with scant democratic oversight — gives rise to serious concerns. These sorts of claims frequently privilege the participation of self-appointed elites, lack widespread

> democratic support, and fail to benefit from the give-and-take of negotiated provisions among the nation-states that would be subject to them.
>
> (Commission on Unalienable Rights, 2020, p. 41)

Yet this unfortunate attitude has not prevented the federal government from extending – albeit surely reluctantly – *ad hoc* invitations to mandates of Special Rapporteurs with a direct impact on housing, including that on adequate housing, Raquel Rolnik, in 2009. The visit was widely covered by civil society and the media (Coalition for the Homeless, 2009; More Than a Roof, 2009; Sheptock, 2009; Smith, 2009), and led to a reporting documentary detailing the testimonies provided during the visit (Campaign to Restore National Housing Rights, Housing is a Human Right and National Economic and Social Rights Initiative, 2009).

This visit, the first-ever of the housing mandate to the United States, was largely organised by the National Law Center on Homelessness and Poverty and by the then National Economic and Social Rights Initiative (NESRI, now Partners for Dignity & Rights), together with over 100 grassroots organisations in the cities that the Rapporteur visited. New York City was the first stop of her visit, where she sought to 'open a dialogue, open a movement towards the achievement and implementation of the right to adequate housing … More important [than the content of my final report] is what is going on here' (Campaign to Restore National Housing Rights, Housing is a Human Right and National Economic and Social Rights Initiative, 2009).

Public housing, homelessness and unaffordability were issues brought to the centre of her visit by grassroots organisations – with the understanding that the right to adequate housing, together with its interconnections with other socioeconomic rights such as education and healthcare, can tie all of those issues together (Reicher, 2009).

Although the following Special Rapporteur, Leilani Farha (2014–2020), did not visit the United States again, advocacy on the right to housing continued beyond Raquel Rolnik's official visit. For example, in an unheard-of move for Special Rapporteurs, Leilani Farha and the then Special Rapporteur on the right to safe drinking water and sanitation, Catarina de Albuquerque, undertook a three-day visit without an official invitation by the US government to the city of Detroit in October 2014. The visit took place four months after an allegation letter was sent to the United States detailing the excessive costs of water services in the city (Allegation Letter USA 9/2014, 2014), to which the United States unsurprisingly replied denying legal recognition of the right to water (U.S. Response, 2014), but which did not detail whether it had consulted with the state or city governments concerning the allegations (U.N. Special Rapporteur on adequate housing, 2015a, para. 39).

The strategic importance of this visit cannot be understated. Country visits are typically requested by Special Rapporteurs and must receive an official invitation by the host national government before such trip can be officially approved by the Office of the High Commissioner for Human Rights (OHCHR), which acts as the Secretariat for all mandate-holders and holds the ultimate decision on whether these visits are granted official funding. Instead, this informal visit took place at the invitation of civil society organisations (U.N. Special Rapporteur on adequate housing and U.N. Special Rapporteur on the right to water and sanitation, 2014), a procedure that, although presumably not forbidden by the OHCHR, is not an endorsed format and, as such, it did not lead to an official presentation to the corresponding Human Rights Council session of 2015, nor has it been ever included on OHCHR's website under the Rapporteur's official visits (see OHCHR, 2020a).

New York's Housing Activism and the International Human Right to Housing

The continued engagement of these organisations working on homelessness and poverty has kept them motivated to use the right to adequate housing, not simply as a banner, but importantly as a source of accountability (Tars, 2016), and for the New York City Bar Association to recommend that:

> [until] the United States … ratif[ies] and execute[s] the ICESCR … government actors [should] draw on the comprehensive approach to the right to housing under international human rights law in order to alleviate some of the issues that plague access to adequate housing.
>
> (New York City Bar Association, 2016)

Three major victories for grassroots organisations can be highlighted here.

First, in 2008, and after significant pressure from housing movements, the New York City Human Rights Law was amended to prohibit housing discrimination based on source of income; this includes, for instance, landlords refusing to rent to tenants who would pay rent using housing government assistance (NYC Human Rights Commission, 2020). More moderate gains have also been attained for individuals with criminal records applying for public housing, who may now be eligible under certain circumstances (National Law Center on Homelessness & Poverty, 2011, p. 67; The Bronx Defenders, 2015, pp. 69–77). Although many issues remain – including 'steering' (buyers of certain races being directed towards neighbourhoods occupied mainly by people of the same race); financing and predatory lending; diverting tax credits away from low-income housing programs towards home mortgages and the overall transition to rent vouchers (known as Section 8 vouchers)

to the expense of public housing – these are challenges that the New York City Bar Association emphasises that the framework of the right to adequate housing could improve (New York City Bar Association, 2016). More recently, the question of how the right to shelter could be reimagined as a right to housing has made it into mayoral debates in New York City (Smith, 2021), suggesting that the discursive shift led by grassroots organisations has had an impact on political discourses as well.

Second, in a major victory for the network of grassroots organisations Right to Counsel NYC Coalition, the right to counsel in eviction cases was passed in New York City in August 2017 – the first city to do so in the country. The right to counsel provides free legal representation to tenants in eviction proceedings for households with income at or below 200% of the federal poverty line, i.e. individuals earning under approximately $25,000/year, or $51,500 for a family of four (New York City Bar, 2020, p. 2).

Tenant representation in courts, through legal aid or otherwise, is in fact a key part of the right to adequate housing, as emphasised by the Committee's General Comment No. 7 on forced evictions (para. 15). And this understanding is shared by the Right to Counsel NYC Coalition as well:

> We are building campaigns for an eviction-free NYC and ultimately for a right to housing. Because our work is grounded in a history of tenant organizing and a belief that housing is a human right, we are now working to ensure that the Right to Counsel law is implemented in a way that upholds that right, that builds tenant power and that transforms the nature of the courts, furthering the dignity and humanity of every tenant.
>
> (Right to Counsel NYC Coalition and Housing Justice for All, 2021, p. 5)

Providing a right to counsel for low-income tenants therefore articulates the right to housing as a key defence against evictions, but also against the interests of real-estate developers. Ultimately, the Right to Counsel NYC Coalition believes that the right to housing is a crucial source of State accountability in the city:

> Our call to #ReclaimOurHomes rejects the government's practice of providing vast amounts of assistance and/or guarantees to the real estate and banking industries — practices that have resulted in centuries of racism — and rejects the claim that the government isn't responsible for providing a human right to housing.
>
> (Right to Counsel NYC Coalition, 2020)

Third, the phenomenon of 'rent stabilisation' – tenants' right to renew their leases and other protections, including a cap on sudden rent increases and safeguards against retaliatory evictions – was established

in New York City already in 1974 by the Emergency Tenant Protection Act. In 2019, the Housing Stability and Tenant Protection Act was passed at the state level, extending rent stabilisation and allowing municipalities across the state to opt into providing these protections. Although not all social movement demands ended up in the bill that was passed, uniting all tenants of homes qualifying for rent stabilisation was a marked success for housing rights activists, including those from the coalition that led much of the organising, Housing Justice for All. Other groups, including Tenants & Neighbors and the Metropolitan Council on Housing, also contributed to tenant mobilisation, as did a new set of progressive state Senators who had been recently elected (Stein, 2019). Specifically, universal rent control – which would have prohibited landlords from evicting tenants without good cause and from passing the cost of renovations on to renters, as well as ensuring faster implementation of the 2019 Act – did not make it to the bill, but it is still under consideration in the state Senate at the time of writing (NY State Senate, 2020).

As has been argued, '[r]ent control can offer circumscribed legal protection or serve as a tool that tenants can use to make an expansive democratic claim to the right to housing' (Teresa, 2020). Rent stabilisation can therefore be understood as part of a new understanding of the right to housing, in that it strives to create a system where homes are no longer (or not exclusively at least) subject to the laws of the market. In this sense, the struggle to democratically de-commodify housing is understood in New York City as vital to the quest of guaranteeing housing as a human right.

Conclusion

In her first report, Leilani Farha identified that local governments taking on housing rights obligations has led to 'contextualized understandings of the right to adequate housing' (U.N. Special Rapporteur on adequate housing, 2015a). In the context of New York City, this contextualised (vernacularised, in the words of Professor Sally Engle Merry) understanding has led to both path-dependent, piecemeal reforms, and to a gradual discursive transformation of housing as a human right.

The focus of New York City politics – along with much of the country – on housing choice and housing discrimination as means to protect individual rights has to a large extent constrained the opportunities that exist within socioeconomic rights, such as the right to housing, in the city. By relegating them to individual concerns over the private sphere in the form of protection against homelessness or eviction, instead of opening them up to the structural causes behind poverty and inequality, the right to housing in New York City has remained to a large extent imprisoned in a reality of an individual right to 'a roof and four walls'. Grassroots organisations have had to subsume their framing and policy goals within this framework, and hyper-local struggles resulting from the refusal of the US

to ratify the Covenant, its federated system and New York City's political opportunity structures have inhibited the capacity for more transformative, structural change to truly de-commodify housing in the city.

Yet at the same time, New York City activists are finding ways to connect their policy demands to both state-wide concerns such as rent stabilisation, and to international realities including housing affordability, access to justice and the financialisation of the housing market. In this sense, despite the challenges that come with using socioeconomic rights language in a country that refuses to adopt international frameworks, housing activists have learned to adapt and work with both the constraints of municipal jurisdiction over limited policy areas and the opportunities created by the international framework on the human right to adequate housing. The framing of housing as a human right that many activists adopt in New York City has become more than a demand to provide accountability *ex post*; it has also allowed for disparate groups – including those without a home, those with an unaffordable home and those evicted from their homes – to repoliticise, rally behind and push for an understanding of housing that is no longer an access to minimum protection, but indeed a de-commodified, basic need.

The conditions and scope of local policy-making provide both opportunities and threats for social movements willing to advance a rights-based agenda for housing in the city. On the one hand, municipal jurisdiction over areas such as public housing, tenant protections and procedural rights can provide windows of opportunity for mobilisation, collective action and solidarity. Yet on the other hand, they can lead to a piecemeal approach that reproduces the problematic question faced in other socioeconomic rights of *who* gets protection, and *when* that protection begins. It is this funambulist tightrope that activists must navigate when using human rights as a means to a politicised end in the city.

Notes

1 See A/HRC/RES/27/4 in 2014, A/HRC/30/49 report in 2015, A/HRC/RES/33/8 in 2016, A/HRC/RES/39/7 in 2018, A/HRC/42/22 on participation in 2019, and A/HRC/RES/45/7 adopted without a vote on October 6, 2020, requesting OHCHR to submit a report to the Council 'with a view to identifying possible elements of principles guiding local and national governments' before its September 2022 session (U.N. Human Rights Council, 2020).

2 A notable exception is UCLG's Global Charter-Agenda for Human Rights in the City of October 2012, whose Section X focuses on the right to housing and domicile, but this Charter-Agenda may be more aptly described as 'inter-local' than international. See (UCLG, 2012).

3 By this, it should not be understood that this discursive transformation occurred in a vacuum. Many organisations such as the Habitat International Coalition (HIC) had been working on this for years. My goal here is to reflect on the impact that the validation by a Special Rapporteur can have on local activists, and *vice versa*.

4 As stated by Jackie Bray, Director of the Mayor's Office to Protect Tenants during a public event (NYU Furman Center, 2019).
5 See, e.g., the New York Times' account of the squatter movement in (Evans Asbury, 1970).
6 It should be noted however that, upon signature, countries are bound by an obligation to refrain from acts that would defeat the purpose and object of a treaty (art. 18, Vienna Convention on the Law of Treaties, 1969).

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7 How urban law deflects rights claims

A case study of the eviction of a Roma squatter settlement in Malmö, Sweden

Karin Åberg, Frederick Batzler and Maria Persdotter

Introduction

From the 'Calais Jungle' to the camps surrounding the Pata-Rât landfill in Cluj-Napoca, camp-like settlements dot the map of contemporary Europe. Such settlements do not just offer accommodation to transient migrants, but constitute an enduring 'socio-spatial formation' (Picker and Pasquetti, 2015) that both confines and displaces individuals and communities that are seen to be somehow 'undesirable' – not least racialised Roma. In fact, a significant share of Europe's Roma population is excluded from regular housing and made to live in various kinds of camps. This is largely due to a complex and ongoing history of marginalisation, persecution and segregationist policies (Picker, 2017).

Until recently, camp-like settlements were a rare sight in Sweden. As a result of the successful campaigns of Roma civil rights activists in the 1960s, the dominant approach to Roma and Traveller housing has, for the past fifty years, been one of integration (Ohlsson Al Fakir, 2015). Unlike many other European countries, Sweden does not have a system of state-sanctioned caravan sites or institutionalised camps for Roma and Travellers. However, in the last ten or so years, starting in the early 2010s, makeshift settlements have appeared in cities and towns across the country. Their inhabitants are, for the most part, recent migrants from Romania. Many are also assumed to be Roma (SOU 2016:6).

Indeed, since the eastward enlargement of the EU in 2007 – at the cusp of the global financial crisis – there has been a noticeable increase in the number of impoverished EU citizens who travel to Scandinavia to seek livelihood opportunities. Unable to access and afford regular housing, many find themselves in homelessness. In 2015, there were an estimated 4,700 impoverished so-called vulnerable EU citizens living in Sweden (SOU 2016:6). The street-homeless and camp-dwelling segments of this population were, and still are, targeted by efforts to move them along,

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including repeated evictions. This mirrors what appears to be a widespread treatment of migrant Roma in Europe. According to Huub van Baar (2017, p. 12), 'endless, systematic cycles of forced evictions' are used by the authorities in several of the Member States against Roma EU citizens as a means to affect their 'voluntary return' without having to enact more costly and time-consuming expulsion procedures. In this context, social justice activists have attempted to mobilise human and minority rights legislation to prevent evictions and improve the rights situation of mobile Roma EU citizens.

This chapter considers the interface of human rights and 'urban law', such as environmental nuisance and public order law. It revolves around a set of cases concerning a community of some two-hundred Romanian Roma 'EU migrant' squatters in Malmö, Sweden, and builds on our first hand experiences as members of a street-law collective, the Centre for Social Rights (henceforth, the Centre).[1] Between 2015 and 2017, we participated in organising efforts to promote the interests and social rights of the Roma community in question. We also represented them in a number of legal cases against the City of Malmö and the local police authorities. In this chapter, we focus on our efforts to prevent the squatter community from being evicted from an unauthorised settlement – the Sorgenfri Camp – without a viable resettlement plan. We account for our experiences of attempting to mobilise a human and minority rights discourse and invoke the case law of the European Court of Human Rights (ECtHR), and discuss why this approach was eventually unsuccessful. This book chapter is an attempt to summarise our experience and analyse it with the benefit of hindsight as well as a greater theoretical understanding of the processes that we were a part of in 2015.

Our empirical material consists of legal documents (administrative orders, court appeals and judgements, etc.). Analytically, the paper is informed by critical legal studies and critical legal geography. In particular, it draws on Mariana Valverde's (2005, 2010, 2011) and Nicholas Blomley's (2007) work on 'spatial tactics' and the micro-management of urban space through urban law.

Based on an in-depth analysis of the convoluted legal process that eventually resulted in the demolition of the Roma squatter settlement (the Sorgenfri Camp), we offer a reflection on the potentials and limitations of the urban politics of human rights. Existing research has tended to focus on landmark cases that have expanded the applicability of human rights norms, despite such cases being rare exceptions. In this chapter, we instead look at a case where human rights-based strategies failed. More specifically, we explain how and why, in the specific case of the Sorgenfri Camp eviction, Roma and human rights claims were disabled by the use of certain mechanisms of Swedish environmental nuisance law. Following Valverde and Blomley, we suggest that this was because these mechanisms (which we consider examples of 'urban law') operate on the basis

of discretionary and flexible forms of power and regulate access to space through categories such as 'activity', 'use', 'property' and 'space', rather than through categories of 'personhood'; hence, they effectively deflect person-centred, rights-based claims. Furthermore, we make a case for an approach to strategic litigation that treats human rights as instruments to advance social justice rather than as ends in themselves.

The analysis unfolds as follows. First, we give a background on the case of the Sorgenfri Camp, and outline the administrative and legal process that led to the demolition of the settlement. Second, we provide an analysis of how rights and urban law interacted in this process, as well as offer a reflection on the use of human rights law in community organising. We begin, however, with a review of relevant legal developments and theoretical debates.

Rights and Means for Emancipation

European Roma Rights Litigation

Over the last decades, following the collapse of Soviet communism and the ascendance of neo-liberalism in the post-socialist Central and Eastern European states, a pan-European Romani movement has emerged that relies strongly on a language of human and minority rights (Vermeersch, 2006; McGarry, 2010). Since the 1990s, a number of new advocacy organisations, such as the European Roma Rights Center (ERRC) and Open Society's Roma Initiative Office, have been established to support Romani communities to access justice and claim minority rights. The ERRC engages in strategic litigation with the aim of addressing discriminatory treatment and improving the rights situation of European Roma. Over the years, the organisation has lodged over 60 cases with the European Court of Human Rights (ECtHR). Their work has helped to establish what Sandland (2008) refers to as 'a jurisprudence of difference'. Beginning with the 2005 landmark case *Moldovan and Others v. Romania*, the Court has increasingly shifted away from conventional rule-of-law-type analyses and begun to develop a concept of group-differentiated vulnerability, recognising a positive obligation on the part of states to take differences of culture and ethnicity into account (see also O'Nions, 2007; Peroni and Timmer, 2013). This marks a break from the earlier case law of the court, which for the most part equated anti-discrimination with equality of treatment. Given our focus on an eviction case, it is worth noting that the ECtHR has affirmed the right to adequate housing for impoverished and socially disadvantaged groups and established that group-differentiated vulnerability should be factored in when assessing the proportionality of an eviction order (see *Connors v. The United Kingdom; Winterstein and Others v. France; Moldovan and Others v. Romania; Yordanova and Others v. Bulgaria*).

The Case for and Against Strategic Rights Litigation

The use of strategic litigation in Roma rights advocacy mirrors a broader trend. Today, using human rights as a basis for strategic litigation is a common approach when trying to raise the legal and material standing of a marginalised group. Some speak of this as a 'rights revolution' (e.g. Ignatieff, 2000). In social organising and strategic litigation, the use of human rights adds moral and rhetorical force to the claims of a group. Framing a particular demand as a right offers the possibility of recognition by the legal order (Kennedy, 2002). Thus, the particular interests of a minority group can be made universal through Human Rights-based litigation and rhetoric.

Though not without merit, such approaches have been criticised for being anti-political or depoliticising (Brown, 2004; Brännström, 2017). Scholars on the left sometimes assert that rights-based approaches to social justice activism are counter-productive insofar as they reinforce the individualism of liberal thought and jurisprudence, and because they frequently fail to address injustices rooted in maldistribution (Blomley, 1994, pp. 408–412). Another common critique is that human rights are not universal, but rather highly contingent on material conditions. Moyn argues, for example, that the right to property must be understood in the context of capitalist relations, and can be viewed as much as a right to deny others certain property (Moyn, 2012, p. 17; see also Waldron, 1991).

Critical legal scholars generally object to the Human Rights project on the basis of it being a political and ideological project that is only ostensibly neutral and universal (Kennedy, 2002; Mutua, 2002; Brown, 2004). The apparent stability of the legal order stems mainly from social and economic power rather than from law itself. However, the supposed openness and accessibility of rights clouds this political and ideological influence. It is the shift of power relations between different groups and interests and not the legal argumentation that changes social conditions. It is ideologically or politically based strategies that ultimately determine the origin and legality of rights. The rights themselves do not primarily give rise to legal results (Kennedy, 2002, p. 33). Kennedy therefore poses the following question: if it is political and social movements that generate rights, rather than the rights in themselves that produce social progress, then do claims at all need to be formulated as human rights? Here, according to Kennedy (2002), the risk is that the decisive factor of social change is hidden behind the rights discourse. Brown similarly argues that the rights project is a particular method for resolving social conflict, which, in addition to obscuring the underlying power structures, also tends to exclude other forms of conflict resolution. According to Brown (2004), this might mean that the highly individualised rights discourse displaces more collective strategies for attaining social justice.

The critical Romani studies scholar Peter Vermeersch (2006) has argued that rights-based approaches are insufficient to adequately address issues of poverty and inequality that affect the European Roma. As concerns minority rights, scholars have also noted that they frequently require the establishment of some definitive criteria for determining who qualifies as a member of a given minority. For this reason, minority rights discourse risks contributing to the reification of minority identities (Brown, 1993, 2000; for an analysis of Roma minority rights discourse, see McGarry, 2010; Farget, 2012).

Rights and Urban Law

Mindful of the broader (leftist) critique of human rights based activism and strategic litigation, we wish to zoom-in on a set of dynamics that we believe thwart the efficacy of human rights based approaches to advance the interests of street-homeless and other subaltern groups.

Socio-legal scholars have noted the tendency of 'urban law' to deflect and disable rights-based arguments. Our definition of 'urban law' encompasses specifically urban regulations such as zoning-laws as well as regulations that are predominantly applied in densely-populated urban spaces such as nuisance and public order laws. Our definition also includes regulations that are issued by municipalities, such as public order ordinances (for a genealogy of North American nuisance and other urban laws, see Valverde 2011). A key characteristic of most forms of urban law is that they micromanage *activities in* and *uses of* both public and private space in ways that impact people's abilities to inhabit the city. And while the enforcement of such regulations often end up having disproportionate *effects* on street-homeless and other marginalised populations (see Mitchell, 2003), the regulations themselves, for the most part, technically avoid governing through categories of person (Valverde, 2005). Site-specific anti-begging laws and other contemporary anti-homelessness ordinances are paradigmatic examples of urban law. Unlike the vagrancy laws of the early modern era, which made it a punishable offense to *be* a vagrant (i.e. criminalising a status), these regulations tend to be facially neutral: They generally rely on broad-ranging, flexible, police-type regulations that aim to order urban space and that technically apply equally to all who inhabit such spaces.

Crucially, because many forms of urban law operate through categories of property and space rather than categories of persons, they tend to effectively block or deflect rights-based arguments. The legal geography literature on spatial tactics and regulations offer several different examples of this. For example, Hubbard (2013) shows how nationally-secured rights to sexual expression for LGBTQ individuals are eroded through local-level public order policing targeting displays of homosexual intimacy. Similarly, Blomley's work (2007, 2010, 2011) on the regulation of

panhandling through the enactment of traffic regulations details the ways in which such regulations deflect right-based arguments, and why this makes them resistant to constitutional challenge. As the title of one of his articles – 'How to Turn a Beggar into a Bus Stop' – captures, the use of traffic law to address sidewalk begging works to translate the social object of 'the beggar' into a legal object not much different from a telephone pole or a bus stop: an element which interrupts the smooth flow of sidewalk movements (Blomley, 2007). Based on a review of case law on the constitutionality of anti-begging measures that are based on traffic law, Blomley (2007) notes that civil rights organisations often attempt to challenge such measures by arguing that they violate the rights of *persons* and/or discriminate against particular *groups of people*. However, such attempts are likely to fail when the measures in question do not regulate through categories of persons. In Blomley's own words,

> Rights-based arguments around begging law, which time and again insist that identified persons are treated inequitably are negated, again and again, by the counter-argument that law is not regulatory of persons, but rather of actions and spaces. The purpose of the law, the courts say, is not to discriminate against people who panhandle, but rather to treat panhandling as a spatial activity that must be balanced with other activities, according to the overall function of the place.
>
> (2007, p. 1705)

He continues,

> [The technical legal categorisation of beggars as traffic] does some heavy ideological lifting, effectively blocking constitutional arguments on behalf of the public poor. Yet it does so by presenting begging law as not only respectful of equality, but actually constitutive of it. Using an alchemical language of space, use and mutual respect, it alchemically transmutes the intolerances expressed by those who seek such law, and the oppressions of those who suffer under it.
>
> (p. 1707)

While research on European Roma rights jurisprudence has celebrated the emergence of a 'jurisprudence of difference' in the case-law of the ECtHR, there has not yet been any systematic review of the ways in which state authorities circumvent or deflect rights claims by treating Roma communities as 'space problems' – as nuisances or order issues. Nevertheless, we know from social science research that such discursive elisions and forms of 'legal alchemy' (Blomley, 2007) are common across Europe (Pusca, 2010; Aradau, 2015; van Baar, 2017). As we will see,

the handling of the Sorgenfri Camp by local authorities had striking similarities with Blomley's analysis and theory, as the squatters were categorised in terms of environmental standards as sanitary hazards. In the following sections, we account for the details of the case before we zoom-out to discuss what lessons it holds for Roma rights activism and urban justice struggles more broadly.

The Eviction of the Sorgenfri Camp

The years 2014–2016 saw a fervent public and political debate over the visible presence of street-homeless Roma 'EU migrants' in the Sweden as well as over the appearance of makeshift, unauthorised settlements (*olovlig bosättning*) (Hansson and Mitchell, 2018). Evictions were common during this time. Statistics compiled by the National Enforcement Authority (*Kronofogden*) show that the agency approved and executed a total of 143 applications for an 'order to evict' in cases concerning 'unlawful occupation of land' and 'unauthorised settlements' between 2014 and 2015. The majority of the applications came from public and private property owners in the Stockholm and Gothenburg regions.

The Sorgenfri Camp stands out in this context. The settlement was the largest – and certainly the most contested – one in Sweden in the mid-2010s. It also constituted an important reference point in the public and political debate regarding the broader issue of unauthorised settlements (Persdotter, 2019, pp. 117ff). From a legal point of view, the case of the Sorgenfri Camp and the process that eventually led to its demolition is a somewhat idiosyncratic one. While nuisance and sanitation hazards are frequently cited as grounds for eviction, the Sorgenfri Camp remains, to this date, the only settlement of EU-migrants' to have been demolished directly on the basis of environmental law (cf. Davis and Ryan, 2016). In what follows, we outline the events and legal processes that preceded the eviction of the settlement before we turn to analyse the legal arguments made in favour of stopping the demolition and resettling the squatters.

The Sorgenfri Camp

The Sorgenfri Camp was set up on a privately owned vacant lot, located in a formerly industrial area, about two kilometres from the Malmö city centre. In the cadastre, the property is called 'Brännaren 19', but colloquially, it is better known as 'the steppe' or simply '*the* vacant lot'. The name that we use here – the Sorgenfri Camp – was first coined by solidarity activists and refers to the neighbourhood where the settlement was located. The Roma squatter community, instead, simply called it 'the platz'. Meanwhile, the newspapers described it as a 'shantytown' or as 'Sweden's largest slum' (Karlsson, 2015).

In 2015, the vacant lot was owned by the private real-estate development firm Granen Fastighetsutveckling AB. The firm's majority owner – the self-made property magnate Per Arwidsson – purchased the property in 1999 as an investment and left it sitting idle for nearly two decades (Westerberg, 2015). During this time, the weed-covered lot functioned as an 'urban commons'. It had a public parking space which was used by street-homeless people to park their camper trailers or pitch their tents. The vacant lot was also the site of numerous, often short-lived, squatter settlements, community gardening projects, temporary outdoor art galleries and a DIY-skateboard park. Notably, both the private property owner and the municipal authorities accepted, or at least tolerated, these initiatives.

When the Sorgenfri Camp was first established, in the spring of 2014, there were only a dozen people living there. As more and more people moved in, it began to look like an established tent village with cars, camper trailers, makeshift houses and vans arranged in a grid-like pattern. At most, there were about 200 individuals living there. By most standards, the vacant lot was not a good place to live. For one thing, it lacked electricity, sanitary facilities and drinking water. Running water was available in a nearby cemetery. The nearest public toilet was a ten-minute walk away. At the time, the surrounding area was about to be redeveloped: the city had approved a new plan for it, and construction was about to begin on several nearby properties.

The squatters received support from a network of local activists and activist organisations, including the Centre. The network worked together with the squatters to address practical as well as financial, political and legal issues. As members of the network, we made repeated requests to the municipality to have sanitary facilities and a garbage container installed on the site. When the municipality rejected their requests, the solidarity network fundraised to rent a set of porta-potties and a garbage container for the site. The squatters also organised regular cleaning days in the settlement in an attempt to counteract the intense stigmatisation of the settlement as a 'slum' and avert the threat of removal (Persdotter, 2019, pp. 129–130).

The Eviction Process

The municipal Environmental Administration (*Miljöförvaltningen*) began to receive nuisance complaints about the Sorgenfri Camp in the early autumn of 2014, at which point they contacted the owner with a request to clean-up the premises. Up to this point, the property owner had passively tolerated the settlement, but now the company turned to the Enforcement Authority to have the squatters evicted. For reasons which we discuss in the next section, this proved to be practically difficult – not to say impossible. Thus, the Environmental Administration issued

(on February 27, 2015) an 'imposition of a conditional fine' (*vitesföreläggande*) to the property owner, ordering the development firm to remove any litter from the site (Miljöförvaltningen, 2015a). The firm appealed the decision to the County Administrative Board (*Länsstyrelsen*), arguing that it was practically impossible for them to abide by the order. The Board ruled on a compromise: They upheld the decision, but removed the fine (Länsstyrelsen, 2015).

Faced with this situation, the Environmental Administration decided to issue a set of prohibition orders, based on the Swedish Environmental Code, banning people from staying on the site, as well as from storing tents or garbage, burning solid fuels, or 'defecating' on the premises (Miljöförvaltningen, 2015b). While previously the Environmental Administration had cited nuisance concerns as the basis for the imposition of the fine, they now framed their intervention as a necessary means to safeguard the health and security of the squatter community and nearby residents. To live on the lot was 'inappropriate'. The first prohibition order (issued on April 7, 2015) was addressed directly to the property owner and formulated in such a way that it would apply to anyone who was physically present on the site. The second order (issued on April 23, 2015), instead, addressed the (unnamed) collective of squatters who were living on the site. These were given four days to vacate the premises.

In order to halt the demolition of the settlement, the Centre appealed the second prohibition order, first to the County Administrative Board, and second to the Land and Environment Court, citing both formal deficiencies and human rights violations. The appeals were successful: in both instances, the courts struck down the prohibition order on procedural grounds, noting that the Environmental Administration had failed to observe due process requirements. The main issue was that the decision lacked clear and identifiable addressees, which is required by Swedish administrative law (Länsstyrelsen, 2015; dom i mål nr M 1806–16). In short, the court argued that the order was invalid because it had been addressed to a 'circle of unnamed persons'. As both instances found formal deficiencies, neither the Court nor the Board found it necessary to assess the claimed human rights violations.

The stance of the squatter community was that the camp should not be vacated without alternative accommodation being provided. One suggestion was that the city should provide an alternative camping site with portable toilets and running water. This argument enjoys support in various sources of human rights law (*Yordanova v Bulgaria*; CoE PACE, 2010; UNCRC, 2006). However, the City Council and municipal administration refused to authorise any alternative settlement, limiting their responsibility to short term accommodation for a minority of the camp residents, while providing tickets for the inhabitants to return to their home countries (Persdotter, 2019:136ff).

Once it became clear to the Environmental Administration that their first eviction attempt would be struck down, they drew up plans for a second attempt. On October 27, 2015 the authorities again ordered the camp to be vacated. This time the Environmental Administration made use of a special legal mechanism called a 'correction at the expense of the faulty party' (*rättelse på den felandes bekostnad*, hereinafter 'correction'). This mechanism extends the powers of the public authorities to correct a legal wrong in case the liable party does not comply with a previously issued order or if the authorities find that a correction needs to be carried out immediately to prevent serious injury. In this case, the Environmental Committee re-activated the two previous decisions – the injunction that required the property owner to remove all litter from the site along with the first prohibition order (dated 2015-04-07) that had been issued to the property owner. The decision of October 27 was appealed by the Center, but the appeal was denied by the County Administrative Board, and the Land and Environment Court (dom i mål M 9530-15). The squatters were given five days to vacate the premises.

In the afternoon on November 1, 2015, hundreds of people gathered at the site of the settlement. Some were there to protest the pending demolition. Others, hostile to the squatters, had gathered to celebrate the City's actions. Frayed banners hung from the chain-link fence that surrounded the settlement. One of them read in bold black letters 'Don't throw us out like trash!' (see Image 7.1).

Image 7.1 Banners to protest the pending demolition (Photo by Jenny Eliasson, Malmö museer (with permission from the photographer)).

Two days later, on November 3, the police arrived in full force at 04:20 am in the morning. Despite the early hours, around 60 protesters formed a human barricade at the entrance to the settlement and attempted to peacefully prevent the police from entering. Upon arrival, the police addressed the camp in Swedish through a megaphone, informing the residents and protestors that the police wanted a peaceful eviction and that they would only use the force needed. When the message was relayed in Romanian, the translator could not be heard by the residents. At around 05.15 – one hour after their arrival – the police forced all media representatives and observers to leave the site. After that, the camp was emptied of its residents and, later in the day, levelled by bulldozers.

The Legal Proceedings

The final and ultimately successful decision to vacate the Sorgenfri Camp was not burdened by the same formal flaws as the first decision. Therefore, we decided, as members of the Centre, to appeal the decision and to focus on the municipality's disregard for the inhabitants' human rights. Of course, by the time the court tried the case, the settlement had already been demolished.

Our appeal invoked the aforementioned European case law. A central ECtHR case in the argumentation was *Connors v. United Kingdom*, which also concerned the eviction of a group of Roma from a lot, in this case a family. Similar to the situation of the Sorgenfri Camp, the Connors had also been allowed to reside on a piece of land with their caravan but were later evicted as the local authority found that they committed nuisance. In this case, the Court noted that Roma people (referred to as 'gypsies') enjoy particular protection under the ECHR:

> The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases. To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Art.8 to facilitate 'the gypsy way of life'.
>
> (*Connors v UK*, para 84)

The ECtHR then proceeded to note that evicting a person into homelessness is a serious interference of their rights, due to its consequences on security and well-being. Moreover, the applicants had not been offered any alternative solution to their housing situation. For these reasons, the Court found a violation of Article 8.

As was raised in the proceedings, the importance of only conducting evictions when there are alternative residencies and always with regard to the evictee's dignity has also been stressed by the European Committee

of Social Rights (*COHRE v France*). In the case of the Sorgenfri Camp, the decision to evict the camp was not preceded by any proportionality assessment, nor were the inhabitants in any meaningful way consulted. It should also be noted that the inhabitants on several occasions expressed willingness to evacuate the camp on condition that they would not be left in a worse situation.

The City of Malmö opposed this argumentation. Initially, the authorities claimed that the appellant lacked a right to appeal as the decision was a correction of another decision, which was between the property owner and the City. Regarding the protection under Article 8 ECHR, the local authorities argued that it would be impossible for them to disregard legal actions required by environmental law merely because the affected person was Roma, as this would violate the principle of everyone's equality before the law, as found in the Swedish constitution (*Regeringsformen*) as well as in legislation on municipalities and public administration.

In the decision of the Administrative Court, the Court began by assessing whether the lot could be considered a 'home' to the appellant, in accordance with Article 8. It noted, that in similar cases by the ECtHR when applicants were found to have a 'home', the residents had either had ownership to the lot they resided on, or lived there between 5 and 30 years – enough time to establish a 'sufficient continuing link' to the property (*Gillow v UK; Buckley v UK; Winterstein et al v France*). Furthermore, the Court found that the appellant had only resided in the Sorgenfri Camp for about a year. This was not considered enough time to establish a sufficient continuing link. Thus, the Court found no violation of the right to a home. Second, regarding the rights of Roma, the Court acknowledged that a majority of the camps' inhabitants were Roma, and as such sharing a specific 'culture and travelling lifestyle'. Even so, the Court did not consider this to render all evictions of Roma people into a violation of Article 8. Notably, the Court also referred to article 14 of the ECHR, and appeared to imply that such an application would violate the freedom from discrimination in relation to the rights of the Convention.

Analysis of the Legal Processes

Having outlined the convoluted process that resulted in the demolition of the Sorgenfri Camp, we turn below to discuss the tensions and interactions between rights, spaces and politics that were present in this case.

Eviction Law and the Paradox of Illegibility

A first thing to note about the eviction of the Sorgenfri Camp is that it was not, technically, an eviction. The police stressed this when we called them in mid-November 2015, to request some documents related to the event. Over the phone, they explained that 'the police never participated

in any eviction'. What they did, rather, was to 'assist the municipal authorities so as to allow them to execute a decision to demolish the settlement in order to clean the grounds'. The squatters had been *evacuated* for safety reasons (personal communication, 18 November 2015). This of course did not make much difference to the squatters who saw over 100 police officers arrive in the dim hours of the morning to usher them off the site. However, the legal technicalities of the procedure were consequential for how the process unfolded. As we have already noted they also ultimately served to limit the opportunities for the squatters to seek redress and claim a right to resettlement in the aftermath of the 'evacuation'.

Under Swedish law, an 'eviction' is a formalised process with built-in safeguards meant to protect the rights of those who are faced with an eviction order. Crucially, such safeguards are largely absent when camp dwellers are moved on the basis of more discretionary forms of law enforcement. In the Sorgenfri Camp case, the property owner made several attempts to have the squatters removed through the regular civil law eviction procedure. However, when these attempts proved unsuccessful, the City of Malmö strategically shifted to a different legal register and 'evacuated' the squatters on the basis of Environmental Law.

To explain why it turned out to be rather complicated for the private property owner to have the squatters evicted on the basis of private property and eviction law, we need to first establish a few basic facts about the civil law eviction procedure. In 2014–2015, it was still the case that anyone who filed a request with the Enforcement Authority to have an individual or a group of people removed from their property was required to provide the authorities with the personal information (typically the name and civic registration number) of the individuals who they wished to evict. There were several factors that made it practically difficult for the property owner to obtain information about the inhabitants of the Sorgenfri Camp: There was a steady turnover of people on the site, and none of them were registered at the address. When the property owner managed to acquire information about some of the residents, the officials from the Enforcement Authorities were told, when entering the camp, that the person they had come to evict was no longer present on the site. On one occasion the eviction was not possible to carry out because the names of the evictees had been misspelled.

Similar due process requirements also made it difficult to enforce the April 23 prohibition order which forbade the squatters from staying on the site. As we explained previously, the Centre appealed the order and the Court found it invalid precisely because it had been addressed to a circle of unnamed persons. Furthermore, the fact that the settlement had been tolerated for an extended period of time meant that the police no longer had the authority to evict the residents as a matter of crime prevention. Altogether, this protected the Sorgenfri Camp from being

evicted for over a year. Indeed, the relative anonymity of the squatters made them *non-readable* in the eyes of the authorities, which made them difficult to regulate. Elsewhere, Persdotter (2019: 182ff) has theorised the situation in terms of a 'problem of illegibility'.

To be able to govern efficiently, the state needs to arrange its people in ways that facilitate functions like taxation and law enforcement. As political anthropologist James C. Scott (1998) argues, the modern state is defined by its unique capacity to render both its subjects and its territory legible (i.e. readable) to the state administration. This also means that it has difficulties managing people that do not fit neatly within its administrative grids. In such situations, state authorities might attempt to resolve problems of illegibility by reverting to forms of rule that are more discretionary and subjective – with nuisance governance being a key example (see Valverde, 2011).

In the Swedish context, the authorities have responded to the 'problem of illegibility' and attempted to circumvent the relevant due process requirements in three main ways. First, by ignoring them altogether. There is ample evidence that the Enforcement Authority in Stockholm and Göteborg have carried out evictions without issuing any eviction notice directly to the affected parties. Second, the national and municipal governments have proposed the use of more flexible forms of law (Persdotter, 2019). In connection with the demolition of the Sorgenfri Camp, the City of Malmö adopted a zero-tolerance approach to unauthorised settlements. The strategy relies on early removals of tent encampments on the basis of police law and public order ordinances. Third, the Swedish Parliament has partly revised the relevant regulations. In July 2017, following the conflict of the Sorgenfri Camp, a new mechanism called 'removal' (*avlägsnande*) was added to the Enforcement Code. The mechanism allows private property owners to apply to the Enforcement Authority to have a group of people removed from their property without having to provide the agency with the names of each individual member of the group if 'despite reasonable efforts they cannot obtain this information'.

In the case of the Sorgenfri Camp, the Environmental Administration resolved the problem of illegibility by shifting from the civil law eviction procedure into a different register altogether. In the following section, we account for this shift from one register to another in more detail. However, first we would like to note that the issue of anonymity created a strategic dilemma also for the Centre. In order to lodge any appeals on behalf of the squatters, we had to make our clients 'readable' for the legal system by presenting them with a name, a signature and a date of birth. As the clients needed to be affected by the decision to evict the settlement for the appeal to be admissible, we also had to prove that they had resided in the settlement. First when our client had a name, a date of birth and a home could they be recognised as a legal subject by

the Swedish state. However, breaking the anonymity of the client proved a risk as it worked in both directions: when they stated their personal information to the legal system, they became possible to evict under the civil law procedure. In the end, we decided to take the risk as the clients remained protected by the camp collective, rendering them difficult to identify in practice.

Shifting Registers: From Eviction Law to Environmental Law

As explained already, the final decision to 'evacuate' the settlement made use of a legal mechanism, called a 'correction at the expense of the faulty party'. While previous attempts to remove the squatters from the site had failed because of the due process requirements to identify and address them directly as respondents, this mechanism allowed the Environmental Administration to circumvent these requirements altogether. It did so by treating the property owner – rather than the squatters – as the respondent of the correction order and by emphasising the need for urgent intervention. Crucially, the decision of the City of Malmö specified that due to the urgency of the situation, it was of utmost importance to take immediate action to address the environmental and health situation in and around the settlement; the decision would therefore be effective immediately – even if it was appealed.

The shift from the civil-law eviction procedure to the environmental law procedure involved a re-categorisation of the settlement from an unauthorised occupation into a virtual garbage heap and a major nuisance to health. Significantly, this also changed the legal status of the squatters. In the context of the civil law eviction procedure, they had legal standing as respondents with abilities to leverage due process protections. The specific procedure that the Environmental Administration devised, however, effectively stripped them of this status. In a sense, they were legally reduced to litter along with their dwellings and belongings.

As Valverde (2011) notes, nuisance is a symbolic and intrinsically intersubjective category which expresses norms of cleanliness and propriety. As a legal category, 'nuisance' also regulates property in a site-specific manner. From this follows that nuisance governance tends to localise both problems and solutions (Valverde, 2011). In the context of the correction procedure, the Sorgenfri Camp came to be read as a discrete and spatially-bound environmental problem rather than the effect of a complex of social relations of impoverishment and marginalisation. Furthermore, by isolating the settlement (as a spatial object) as a nuisance and sanitation hazard *for* the squatters, the municipal politicians and authorities were able to rationalise the evacuation and demolition of the settlement as a necessary means to protect the squatters against harm; ensure equality of treatment under environmental law and uphold

established standards of sanitation, health and safety for the benefit of the public at large. Notably, the evacuation was also justified with reference to an equality-of-treatment argument. Altogether this served to negate rights claims on behalf of the squatters – claims that largely relied on a language of human rights and on arguments of group-differentiated rights to protection.

As the public officials and politicians who prepared the decision would have it, it would have been discriminatory to not give the squatters the same treatment as anyone else. As the chairperson of the City's Environmental Committee put it at press conference in connection with the demolition:

> In Sweden, we have a law that says that everyone should have access to good, dignified housing … and it is not dignified to live as they do [in the settlement]. We also have a principle of equality, and this means that all human beings should be able to live in acceptable conditions, and it is not acceptable to live as they do on Brännaren.

The paradox of the decision to evacuate and demolish the settlement was that although it was justified as a means to make sure that 'everyone should have access to good, dignified housing', it left the squatters in an even more precarious situation, on the streets with no reliable access to shelter. Indeed, as impoverished and transient EU citizens have few recognised positive social rights under Swedish law – and the authorities do not recognise any obligation to provide housing and other services under international human rights law – equal treatment means that EU citizens continue to be excluded from a range of welfare entitlements that are, at least in theory, available to nationals. At the same time, they remain subjected to the same negative duties and prohibitions that apply to others.

The Role of Human Rights

Human rights and constitutional arguments were raised numerous times during this procedure, both against and in support of the camp residents. While the language of rights was present in the appeals, rights and ideas of universality were also used against the resident's claims. In this section we elaborate on the consequences of relying on rights as a political strategy.

One lesson we have drawn from our work with the Sorgenfri Camp, as well as in other projects where we have combined law and social activism, is that framing an issue as a matter of rights can elevate the standing of the political struggle at hand. For one thing, the behaviour of the public media radically changes when law is inserted into a political conflict. Most large media outlets are much more willing to speak to white, Swedish-speaking 'human rights lawyers' than to self-organised

and racialised Roma squatters. While this has the major drawback that the primary focus is on the lawyer, we experienced that we could divert journalists towards the camp residents and that they were offered more media attention and interviews compared to before the legal proceedings. A factor in this was also that the camp inhabitants became less vilified. In our experience, media actors are more willing to frame what is going on as a conflict of interest, of relevance for the whole society, rather than the narrative of a vulnerable group building social bonds.

Moreover, engaging in legal proceedings allowed us to control the narrative. While many people tried to divert the general discussion into one of 'illegal occupants', we could frame the issue within the discourse of Roma rights, social inequality and homelessness. Focusing on Roma rights in the legal proceedings as well as in contacts with the media inserted eviction into a different discourse and a different organisational framework, where it was possible to cooperate with more established organisations, such as human rights NGOs and established Roma rights activists and community members. It also served as a reminder of a dark chapter in Sweden's history, that of evicting and persecuting Roma people for centuries. As this eviction was, to a greater extent, perceived as a continuation of this dark chapter, it forced police officers and state officials to question their own role in history.

One of our fears as lawyers supporting social mobilisation was the situation anticipated by scholars like Kennedy and Brown; that the legal procedure would outrival other expressions of politics. In particular when the second attempt to evict was initiated, we feared that the social mobilisation would be set aside, as the legal proceeding had (ostensibly) resolved the issue the previous time. However, while we in the Centre were drafting legal submissions, the camp residents along with members of the solidarity network were working hard to devise viable solutions and trying to build political pressure, so that the Municipality might choose an alternative path than a forceful eviction. This political mobilisation, though ultimately unsuccessful in stopping the eviction, meant that the squatters were able to remain on the site for over a year, providing time to strengthen the grassroots movement until they were ultimately forced out of the camp.

An explanation for this development might lie in how responsibility for different political issues was divided. The legal question that was tried by the Court only concerned the right of the camp residents to remain on the lot. The question of Roma emancipation, which the group was organised around, is much broader. We suggest that this was, at least in part, a result of the fact that the conflict over the Sorgenfri Camp was 'funnelled' through the machinery of urban and nuisance law. As Valverde (2011) notes, urban law (in particular nuisance law) tends to 'localise' problems to particular, bounded sites/properties. As activists engaged with the case, we experienced first-hand how this limited the sorts of claims that

were possible to make. Instead of fighting for more substantial rights, the squatters and their allies ended up struggling for a right to remain living in a makeshift settlement. That said; the most significant effect of the first appeal, that prevented an eviction, was that it bought time for a space that functioned as a melting pot for Roma interests and social activism. While the camp, in the end, was abolished and its residents scattered, it created an experience of political struggle and a feeling of self-determination that was completely new for many of the people involved (Oldberg, 2016). In sum, our experience is that legal proceedings and rights-claims can be useful, as long as it is perceived as secondary, as a support tool of the true motor of social change: self-mobilisation.

Conclusion

Our analysis resonates Valverde (2005, 2011) and Blomley's (2007) observations that urban law tends to disable rights claims on behalf of street-homeless and other marginalised communities. We have shown how certain mechanisms of environmental law were strategically mobilised by the municipal authorities in order to demolish the Sorgenfri Camp, and how this served to re-work the terrain of struggle for those who opposed the evacuation and demolition. The choice to evacuate and demolish the settlement on the basis of environmental law served as a means to circumvent certain due process protections. Furthermore, the use of the environmental nuisance regulations functioned to deflect rights-based arguments on behalf of the squatters. This is because these instruments operate through categories of activity, use, space and property rather than through categories of person. Regarding the Sorgenfri Camp, the ultimate decision to evacuate the settlement was a technical decision to restore the environmental conditions on the site. It categorised the settlement as a nuisance and disabled any claims the squatters' might have had to the site.

Crucially, the convoluted process that resulted in the demolition of the Sorgenfri Camp played out almost entirely within the registers of property and urban environmental law. This is reflective of a broader tendency on the part of the Swedish government and authorities to treat the situation of street-homeless Roma EU citizens as an urban order and nuisance problem, thus obscuring the systemic inequalities that contribute to why they are street-homeless in the first place. In the case of the Sorgenfri Camp, the settlement was framed and treated as a discrete and spatially-bound environmental problem – one that would go away once the settlement had been razed to the ground – rather than the effect of a complex social relation of impoverishment, racialised marginalisation and exclusion from social rights.

Elsewhere, Persdotter (2019) has argued that the policy response to the situation of Roma EU-citizens in Sweden has been characterised

by the devolution of responsibilities from the national – to the municipal level – and indeed, to the urban scale. By actively renouncing any responsibility to provide services to the population in question, the national government has effectively shifted responsibility onto the local level authorities, leaving often cash-strapped municipal governments to address the problem of street-homelessness among Roma EU-citizens with whatever means and regulatory tools they have at their disposal – urban order and nuisance law being a prime example of such tools.

We argue that the legal procedures regarding the Sorgenfri Camp show the necessity and possibility of protecting mobilisations from the legal system by intervening in law. While critical legal scholars have claimed that strategic litigation moves the decision-making to the courts, we argue for a more pragmatic perspective on the relationship between political organising and legal processing. At the same time, it was clear that rights claims were largely deflected by the courts. When human rights came up against property rights and urban regulations, the latter categories prevailed. It is ironic to note, that when the eviction was actually halted, albeit temporarily, this was due to procedural issues concerning rights and interests in property. Thus, the strategic litigation that proved most successful in terms of furthering the cause of the Roma community, was that which cantered on property rights, not human or social rights. This, we believe, shows an apparent weakness in human rights in relation to the neo-liberal, urban regulatory framework.

A topic that deserves further examination is the question of how much a general hostility towards the Roma community affected the decisions of the authorities. Individual representatives would of course vehemently contest any accusation of racism, but it seemed obvious to us who worked closely with the squatters, that they were held to a different standard than majority groups. We believe that this difference is significant, and constitutes a margin of repression that, according to our observations, is much wider for members of the Roma community, in particular those who are destitute and homeless. This margin of repression, as a part of the state's monopoly of violence, appears to vary according to which group is the object of the actions of the state. Though beyond the scope of this article, we ask the question of how underlying prejudices might amplify such tendencies of authorities to use urban law against marginalised groups.

Note

1 The Centre for Social Rights was founded in Malmö, Sweden in 2014 by a group of law students in order to explore if law can be used creatively to become a progressive tool in the hands of social justice movements. From the beginning, we placed emphasis on empowerment and self-organisation among subaltern groups. A key assumption of ours was that 'the law' is not outside of politics, but rather shaped by power structures in society. Thus, we believed – and still believe – that solutions to discrimination and

social injustice cannot be found solely within the legal order. At the same time, we saw strategic possibilities in combining grassroots organising with legal education and strategic litigation. One of our goals was to make law more accessible to people who regularly found themselves at the blunt end of law enforcement. In addition to supporting Romanian Roma migrants living in Malmö, we also worked together with asylum-seekers and undocumented migrants, unemployed people and people on long-term sick leave. While the Centre still exists, the organisation had its most active period (so far) between the years 2015 and 2017, during which the events analysed in this chapter took place.

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8 Decolonising human rights

The rise of Nairobi's Social Justice Centres[1]

Peris Sean Jones and Gacheke Gachihi

Introduction

> Because to start up a human rights space in an informal settlement … you have to fight a lot of forces.
>
> (Social Justice Activist '4')

In recent years, policy and academic attention has focused increasingly upon the *urban* context of human rights. Across a dozen informal settlements in Nairobi, Kenya, for example, a new form of social activism strongly embedded in local context is sprouting rapidly and provides an opportunity to understand better the relationship between the urban and human rights. The chapter contributes to broader debates on the emancipatory prospects for human rights and the role spatial dynamics play, through developing critical, yet constructive, perspectives on the urban engagement with human rights (e.g. Blomley, 2003; Carmalt, 2018; Jones, 2012, 2021; Oomen, 2016). Articulating the relationship between the urban and human rights is therefore no straightforward linear extension of international and national human rights law into cities (see Jones, 2021). Instead, the general challenges in translating their universal norms into locally meaningful standards require an explicit awareness of urban context as actively shaping human rights. In relation, in terms of approach, human rights can potentially gain much needed reflection from 'concrete experiences of actors on the ground' which 'shape the relevance and meaning of human rights in practice' (Destrooper, 2015:225). Heightened awareness and understanding of the role especially of the postcolonial urban context provides a means to assess the extent to which human rights are emancipatory in terms of how they are seen and used by actors but may also be adapted and transformed in practices as part of broader social and political struggles.

Since 2015, Nairobi is witnessing a phenomenon occurring in its informal settlements, home here to approximately 60% of all its residents, and indeed, constituting over one billion inhabitants globally.

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The first Social Justice Centre ('SJC') was established in Mathare, followed by another ten established in Dandora, Githurai, Kamukunji, Kariobangi, Kayole, Kiambiu, Kibera, Korogocho, Madakara and Mukuru. SJCs are community-based local organisations seeking change in their urban areas. If the urban context is considered an important modifying influence upon human rights and law, then the colonial origins and characteristic spatial division and inequality of the 'postcolonial' city, such as Nairobi, is a highly relevant arena in which to assess human rights. The term postcolonial is a broad and ambiguous label. Colonialism was not only about territorial control in a temporal and geographic sense but in addition was exerted through 'epistemological developments that have literally produced new forms life: new kinds of people came into being, while others disappeared, whole groups of them occupy the age in an ambivalent and melancholic relationship by which they are indigenous to a world that, paradoxically, they do not belong to' (Gordon 2014:84). Lewis Gordon goes on to suggest that an integral function of colonialism is therefore in how colonial subjects 'are posited as illegitimate although they could exist nowhere else … Such people are treated by dominant organisations of knowledge as problems instead of people with problems' (ibid.). Postcolonial city is therefore taken here to mean the dual qualities of the temporal sense of previously colonised urban areas, then, the after effects, re-making and vernacularising of hybrid urban space, practices and knowledge (King, 2009). In discussing Nairobi, it is the striking continuity of spatialised governance patterns across segments of the city –such as the continuous representation of slum dwellers as 'problem people' (next section) – that also brings to the fore the relevance of the 'after effects' of colonialism. In doing so, critiques come forth aimed at dismantling colonialism's lingering thought and practices. Human rights, for some observers, are also regarded as in need of *decolonisation* (Mutua, 2001). The extent to which the rise of SJCs may be contributing to such a decolonisation concerning human rights in the postcolonial city is therefore an important aside to the primary focus upon actor oriented urban human rights practice.

The chapter seeks to explore actor practice, influence of characteristics of place and context in broader urban politics of human rights through a case study of the rapid rise of Nairobi's SJCs. In doing so, it asks the following questions:

First, what are some of the key features of Nairobi as a postcolonial city shaping the urban landscape? Second, the chapter then describes some of the background to explain the rise of these SJCs and to ask how they work. Third, in what ways are human rights imagined by SCJ activists and in relation to characteristics of the urban context shaping these practices? Four, what, then, are some of the additional 'framing' processes that contribute to how rights are adapted to local context?

What does the experience of the SJCs tell us more generally about the modifying influence of the urban on human rights law and practice?

Methods used to answer these questions primarily include in-depth interviews conducted in September 2020 with five coordinators of five different Social Justice Centres. In addition, associated campaign and other reports and documents are used, predominantly from SJC webpages. Furthermore, one of the authors is an activist who is a founding member of the SJCs and draws on their experiences of building a social movement, while the other has observed SJC activities over the last six years. Finally, related academic literature includes those few works to date that deal with the SJCs directly.[2]

We turn first to set out some of the enduring features of Nairobi as a 'post-colonial' city and its continuous representation of slum dwellers as 'problem people'.

Nairobi's Urban Divide

Growing at over 10% per year in most of the post-1963 independence era, Nairobi's population growth steadied more recently to 4% per year, reaching a total of 3.1 million inhabitants in 2009 (Japan International Cooperation Agency and County Government of Nairobi, 2014), by 2017, in absence of a census, projected to be 4.2 million and closer to 5 million by 2020. Since the colonial era, when settlements were designated for different racial groups, living conditions have not kept pace with such an influx. A highly geographically unequal city exists, with the north east side of the city predominantly poorer and more informal. The current model of Nairobi's urban development path is to create a world-class city (Government of Kenya, 2007). Conversely, and somewhat contradictorily, 80% of the city's population remains employed in the *jua kali* (informal) sector, and 60%, as mentioned, live in informal residential spaces. This divide is therefore reinforced by the city's distinct spatialised political economy. While the pursuit of 'world class metropolis' (Government of Kenya, 2007) has provided developmental impetus and to some extent planning frameworks, this urban development privileges hyper-modern infrastructure for a small elite and perpetuates further privatised underdevelopment in the city's margins, or, neglected 'ruins' (Kimari, 2016; Manji, 2015). One of the most apparent yet enduring fault lines of the 'postcolonial city' therefore concerns the informal settlement or 'slum' or 'ghetto' as it is commonly referred to by residents themselves.

The Informal City Legal and 'Gray' Spaces of the City

Competing representations of slums depict them in different ways, for different ends. They are represented as informal spaces of different global, national and local interests. For example, slums can be depicted

as ripe for global capital to unleash modernist productivity (Harvey, 2008). Critically, representations often deny any political agency to slum dwellers (Pithouse, no date). Conversely, they can also be represented as driven exclusively by local initiative and sociability alone. There are powerful binaries at play, juxtaposing the 'formal' and 'informal' which influences patterns of urban development. The 'formal' city *uses* informality when opportune (McFarlane, 2012) such as, when depicting slums as unproductive or as anti-development, or socially delinquent, in order to ease eviction or change tenure in the guise of modernisation. The day-to-day negotiation of illegality renders slums with a high degree of precarity, reflected in often negligent and even oppressive policy, such as policing, for example (Jones et al., 2017). Consequently, the colonial logic of urban governance persists in the 'inherent structures of power, inherited from the colonial regime and institutionalized in the centralizing and authoritarian practices of city and state bureaucracies (which) leave an indelible scar on the urban landscape' (King, 2009). In Nairobi, the continuing alienation of the majority from formal planning is exacerbated by post-colonial neglect and, in more recent decades, also by neo-liberal patterns of development.

Of particular interest is how this stark urban divide modifies potential compliance with human rights norms, laws and practice. Law permeates almost every aspect of urban living, and structures both the city's physical environment (through, for instance, building regulations, health and safety laws and municipal bylaws regulating public space) and the human activities and interactions that take place within it. By granting and delimiting rights to urban presence and livelihoods, law has the power to marginalise and exclude. In post-colonial cities more generally there is 'complex articulation between economically impoverished – often informal – residents' everyday politics of access to resources, and collective mobilisation to claim rights, [which] are often overlooked' (Benit-Gbaffou and Oldfield, 2015). Activating rights may represent only one of several other considerations intrinsically shaped by the socio-spatial context. Local pragmatism may see residents work with patrons and political brokers who violate human rights but with whom they are nonetheless deeply implicated with in economic relations. When residents claim rights they may encounter a high level of economic, political and personal risk against powerful local actors, such as informal cartels. There may also be a suspicion of duty bearers, with preference for community self-reliance rather than claims on the state. Other preferences or strategies may be to promote local autonomy that is more radical.[3] Understanding slum dynamics (and their diversity) and their legal ambiguity or 'gray' status is therefore critical to any assessment of how urban development proceeds, and human rights are perceived and enacted. Attempts at mobilisation in response to human rights violations must also negotiate vested local interests and patronage networks, which in

the quotation at the beginning of this section, is explained as 'you have to fight a lot of forces'. While this may compromise rights in such spaces, it cautions against any simplistic assumption that rights are either rejected outright or do not somehow 'work' in the 'global south'. Rather, there may be a complex articulation and adaptation going on.

Informal areas of Nairobi are still 'not recognised or addressed by public authorities as an integral or equal part of the city' (Muungano Support Trust et al., 2012). Until only very recently was Mathare settlement, for example, something more than a blank presence on maps of Nairobi. The alleged illegality of many of these settlements leaves them with a high level of precarity. But the urban spatial divide also mirrors, therefore, something of a political divide. Another key disjuncture is a split in the political field. Following Chatterjee (2004), and his context of India, which seems to fit well with Nairobi too, *civil society* tends to be characterised as 'the closed association of modern elite groups, sequestered from the wider popular life of communities, walled up with enclaves of civic freedom and rational law'. Alternatively, *political society*, is defined as 'large sections of rural and urban poor, [who] make claims on government not within the framework of stable constitutionally defined rights and laws but direct political negotiations' (Chatterjee, 2004:4). In other words, it is essential to understand actors. It is also useful to remind ourselves that in assessing the potential for human rights these political splits are highly circumscribed by socio-spatial context. Any assessment should therefore start by looking at how human rights are given meaning through being adopted to local historical and social (Levitt and Merry, 2009) and we would add here – *spatial* – contexts.

What, then, explains the rise of the SJCs and how do they relate to human rights amidst these urban social-spatial contexts and dynamics in post-colonial cities?

The Rise of the Social Justice Centres

In accounting for the emergence of SJCs, there is a need to place them in a much longer arc of claiming and using human rights in the context of strategising for democratic reform in post-colonial Kenya. In 1999, as Kenya was undergoing political reforms, one of the authors was involved in the National Convention Executive Council – the executive of the National Constituency assembly. It was a forum to push demands for constitutional reforms and a critical mass civic education and struggle for a new political dispensation. Such experiences were taken into the period of reform post-2002, characterised by a number of civil society leaders moving into open government spaces. A considerable influence at this time for the nascent SJCs concerned the network of activists, again including Gachihi, who formed in 2003 the 'Bunge la Mwananchi' movement, or, 'Peoples Parliament', along with several other activists who

remain active in the SJCs.[4] Bunge is a grassroots pro-poor social movement that addresses issues of social inequalities through participatory democracy and which set up Hema la Katiba (Constitution Tent) for civic education outreach campaigns raising awareness on the right to organise and participate in constitutional reform process. On 27 August, 2010, Kenya voted in a new constitution. Bunge members met up daily in the Jeevanjee Gardens park in down town Nairobi (Kimari and Rasmussen, 2010:132) and provided an enabling structure whereby activists came together and subsequently formed the nucleus for the SJCs.

The Bunge movement expanded by establishing chapters in various settlements with grassroots chapters and platforms as far away as Mombasa city. Attention was draw to the growing problem of extra-judicial killings ('EJK') of young men by the police (Gachini, 2014). For example, in 2014, when four youths were killed in Huruma, activists associated with Bunge held the first community dialogue in Mathare settlement to raise awareness of the scope and nature of the problem of EJK. Local activists in Mathare then organised for a more permanent space in their community. Local activists began to meet every Saturday in Mathare, including a younger generation. Though they had no prior human rights work experience, many attending meetings were experiencing loss of friends or relatives to police killings. In February 2015, the first SJC, Mathare Social Justice Centre (MSJC), was officially registered as a Community Based Organisation (CBO). Some of this background highlights involvement from activists steeped in the political reform movement and issues to do with demands for deeper democratisation in Kenya.

What are some of the more specific motivations for organising the SJCs? Several inter-related issues can be identified and that help us contextualise human rights encounters across urban space.

How SJCs Operate

The main objective of the SJCs is 'to build a social justice movement and the community solidarity necessary to contest and organize against the normalization of extra-judicial killings and all injustices' (MSJC, 2019a,b). The social mobilisation is framed by strong preference for social justice discourse because it is deemed more appropriate to the situation activists encounter (see section 'Spatial Context and Social Justice'). To this end, SJCs' methods are multi-faceted, consisting of activities on several levels, with each SJC autonomous but also coordinating and collaborating with each other via a SJC Working Group. These activities include: collaborative practices, but also direct protest and action; use of social media and above all, extensive networking and partnering with activists, NGOs, academics and others.

When SJCs require it, they pursue confrontational and disruptive tactics through direct action. Indeed, activists contrast their more direct

methods to critical attitude towards 'more careful' NGOs. One of the biggest mobilisations to date concerned the 7th July 2018 'Saba Saba March for our Lives'. The march was modelled on the symbolism of the original Saba Saba march that took place over a decade before to demand wider democratic space during the oppressive era of former President Moi. In its modern form it was explicitly linked to a political frame aimed at broadening awareness of and denouncing EJKs, which is a deeply entrenched and widespread police practice (Jones et al., 2017). But a significant shift from the previous democratic struggle period was how the march was organised and led for the first time by young and poor grassroots activists from informal settlements, rather the political parties.

There were several associated actions complimenting Saba Saba. These included the joint Social Justice Centres Working Group press conference in Mathare settlement, again contrasting with traditional press conferences that usually take place outside of settlements and are organised and led by professional human rights institutions. Instead, on 7th July, people from all informal settlements gathered together and walked across Eastlands settlements where EJKs occur regularly at the hands of the police. The march ended at the Kamukunji grounds, a symbolic space in the slum commonly used by police for EJK. It was led by twenty mothers of victims of EJKs who shared their stories and experiences. Protestors also used powerful imagery such as using fake blood on their clothes and bodies, and in carrying fake coffins; also performing 'die-ins' by lying on the ground without moving, pretending to be dead. It was a symbolic exercise to reclaim spaces in the slum from their association with EJE and injustice. SJCs also use court appearances in police abuse cases to show solidarity and which contributes to building legal and social mobilisation.

Another example of more militant activism was that in February 2019, SJC activists demanded a post-mortem be held for their late colleague Carol Mwatha, a human rights defender who died in mysterious circumstances. SJCs activists blocked traffic by sitting on the road outside the City Mortuary and were eventually teargassed and dispersed by police.

SJCs members also use social media strategically for rapid sharing of information and quick mobilisation. When someone is arrested but they are not taken to the police station, or, when a suspected criminal is posted on the police Facebook wanted lists,[5] activists tweet for solidarity and to put pressure on the police. In the tweets, the activists often directly tag the Independent Police Oversight Authority (IPOA), the National Police Service, the Directorate of Criminal Investigations and other national institutions and organs. On occasions, SJCs instruct supporters to call *en masse* at police stations to inquire about someone's situation and show the police that they are being monitored. Rapid release of numerous activists and arbitrarily arrested people has often been an outcome of the solidarity (MSJC, 2017).[6]

In terms of who they mainly work with, SJC respondents identified key actors, though this fluctuates depending needs of specific campaigns: state agencies and oversight institutions, especially IPOA and different branches of the police, such as the local OCPDs (Officer Commanding Police Division); local authorities; members of county parliaments; but also, especially, a network cultivated with NGOs and INGOs and even at UN level. Organisational linkages are seen by the SJCs as assets though it appears a fine line to walk especially when it comes to issues of resources. After all, NGO workers are depicted often as 'muzungus (white people) with money' (in Clouzeau, 2019). But activists were aware that a fine balance existed between taking the resources and then becoming a client of or at least financially dependent upon NGOs or donors. SJCs activists depict (I) NGOs as representing not only access to resources and knowledge but also networks that can provide human rights defenders protection (SCJ 1). The most common way of sharing such knowledge is in the form of trainings and legal assistance. Despite some notable exceptions mentioned, such as Peace Brigades International (PBI), there is a perception of unequal relations with some NGOs. Some practices do appear to be changing for the better. An increasing number of NGOs representatives show support by attending the launches of each new SJC activists shared with the authors how events risks being taken over and dominated by NGOs. A respondent from an NGO mentioned in Clouzeau (2019) that there is the linger of a 'paternalistic position' with NGOs assuming an automatic role of educated 'teacher' when encountering non-professional and often uneducated (grassroots) actors.

Documenting and Reporting

Following the 2014 community dialogue organised in Mathare by Bunge, documentation of killings emerged as a growing concern and practice. Participants agreed that it was necessary for Mathare residents themselves to document the killings to prove the widespread and systemic existence of EJKs in informal settlements. 'As an activist cleverly put it, by counting EJKs, they were hoping to make them count' (Clouzeau, 2019). One of the major motivations besides lack of accuracy and with under-reporting by NGOs (see section 'Ownership of rights') is to present documentation in a more grounded contextualised way than NGOs do. SJCs activists wish to see the killings be made more visible and to raise awareness but that they are also something beyond statistics alone. The 'Who is Next?' report done by MSJC (2017) was an explicit attempt to enable the community to own the documentation process. In it, one aspect taken was to include names and photos of the victims. SJCs have in addition produced placards also with the names, ages, photos of the victims and the circumstances of their deaths that they display at events attended by politicians, journalists, NGOs and national institutions members. These were used by MSJC, for example, during Amnesty International's

Secretary General Kumi Naidoo's visit to Mathare. The visual and highly personalised nature of protest serves to re-humanise victims and to provide an important counter-narrative to the criminalising discourse encountered by informal settlements.

Spatial Context and Social Justice

In asking the area coordinators about their work and most important challenges they faced, all identified challenges as rooted in the specific situation of informal settlements which requires a social justice approach. These were, in other words, highly spatialised accounts of their work, meaning that informal settlements were associated with particular needs and characteristics:

> It's not about crime or anything else. It's like the poor in this country have no rights. If you live in Mathare then you deserve to live an undignified life. You're stripped of your dignity if you live in *informal settlements*. But then coming out as a community justice centre we wanted to say that we are poor but we deserve dignity. We know we are poor, we know we cannot afford to buy cars for us to be respected. Because police treat people who drive differently from those who walk. If you come from Kilimani (middle class areas) and I come from Mathare, our treatment will be very different. If they see my hair, my language with funny swahili and sheng from Kayole. You realise that it's criminalization of poverty. It's class struggle. We are treated differently. We are saying we are all human beings and we deserve dignity.
>
> (SJC 1, emphasis added)

From the above, peoples' dialects and the way they dress, walk and act, all are considered as markers that police and other actors to identify people from informal settlements as a basis for 'different', namely, discriminatory 'treatment'.[7] It's a profiling that is highly spatialised because residents are perceived as devoid of rights in slums but also especially when they stray outside. Poverty is depicted as having 'taken away the dignity of ordinary citizens, especially in informal settlements' (SJC II). The acute needs of informal settlement residents were consistently highlighted:

> Coming from *informal settlements* where housing is a challenge … social justice is what has been driving us for a long time … The hunger for dignity. So to me, social justice has driven me to see everyone live a dignified life. It's not that it's different from human rights. It actually encompasses everything in it. But we had to look for a way to start agitating and social justice has been the thing that has been pushing people.
>
> (SJC 1, emphasis added)

Occasionally juxtaposed with use of an explicit language of rights, activists firmly regard these places in the city as requiring an articulation of social justice, rather than human rights. For example, though activists identified some specific rights (particularly Article 43 of the Kenya Constitution addressing socio-economic rights), pressing needs and dignity are associated more with the relevance of social justice rather than with human rights *per se*:

> I think that social justice addresses dignity in a deeper way than human rights do … At what point is it okay for people to think that with no toilets, one meal a day and no water, they are still okay? Social justice basically addresses Article 43 of the Kenyan Constitution and speaks to the deep desire for dignity in every human being. So for example, during these COVID-19 times, when the government tells people to wash their hands with clean water to keep the virus away, how can people in Githurai, who have no clean water, and sometimes no water in their homes, wash their hands?
>
> (SJC II)

In the words of SCJ coordinator 'IV' under, the significance of constitutional human rights is therefore highlighted, but so too are its deficiencies in achieving the desired level of social change:

> But we have the same constitution. But to improve society, we need to merge human rights closer with social justice. Human rights are very legal. Uhuru Kenyatta (the Kenyan President) has a right to property. He cannot be denied that legally. But in a social justice sense, why does he have so much land and some people have nothing? Social justice is a powerful way of implementing the constitution across all classes.
>
> (SCJ IV and co-author)

All five activists therefore developed critical distinctions between rights and social justice, in which human rights are perceived as insufficient:

> Human rights has an aspect of philanthropy to it that takes away the people's power. But social justice is independence and awakening. In my view, for social justice, there is only one option, justice for the people. For human rights, what is right depends on how well the activist can argue out their case. So one is an absolute and the other is relative.
>
> (SJC II)

Rights are regarded as a set of values and approaches that must be determined through the strength of law and cases, i.e. as relative to legal

definition and deliberation. As elaborated upon by a third activist, a clear difference is identified:

> Human rights, in my opinion, refers to the written laws in the civic space, while social justice goes to the root of the issue and tries to address it from there … So human rights and social justice go hand in hand but they are different. Rights are civic education that is meant to create good citizens in a country - how to act towards others, state history, etc. But with social justice, we deal with these issues through political education … Political education seeks to understand why we are in the situations we are in isn't it? What is the history *of informal settlements*, what is their history with the police and state?
>
> (SJC III)

Rights alone are depicted as unable to account for the predicament of the informal settlements. Deeper underlying reasons for their vulnerability and being prone to state structural violence foregrounds the need for a movement:

> Our state is very deep rooted in marginalising people. It just creates violence whether structurally, economically and millions of young people nowadays don't have a job. So you see, this is no longer a question of the rule of law. Criminalisation. This is a question going back to our original framing, as a question of social justice. So you see the question of now why you need a vibrant social justice grassroots human rights movement to create this.

Another common perception is that human rights may exist on paper, but they must be struggled for. The idea that 'the constitution is not for us' comes up regularly in community dialogues organised by SJCs and in activists accounts that emphasise how rights do not pre-exist but must be fought for. Members draw on experiences of violations as a means to recover collective agency as a basis for mobilisation. One of the first coordinators of the first SJC, in Mathare, expands upon the limitation of rights and preference for a social justice frame:

> I personally prefer social justice … do you feel I should use human rights? But to me that sounds very professional. Social justice … even our organisation is called MSJC … on a personal level I feel it is more to do with an injustice than about rights. Social injustice sounds more personal … human rights is for lawyers whereas I am a grass roots human rights defender. Human rights is for lawyers and professionals, for NGOs, whereas we are a CBO not NGO. With social justice, we feel it … its more real and its more personal whereas when human rights I don't feel it as much because human rights encompasses bigger things, whereas social injustice is us! '*Haki*' (Swahili,

> meaning: human rights), but when we say it, it means justice, whereas human rights even sounds foreign, and people abuse it, even people who are suppose to protect it!
>
> (SCJ V)

Rights, then, are associated with several characteristics: legalism, professionalism, external impersonal actors, such as NGOs. Legal approaches are also regarded as slow and ineffective. So, it is not that legal spaces are at all irrelevant and secondary to 'political society' but rather that they offer only a partial indeterminate solution. One can therefore argue that what is being articulated here is an attempt to vernacularise rights, to reclaim it from 'foreignness' by localising it and to make it more effective. It suggests that vernacularisation in this context is also as much about *spatialisation*: in other words, activists consistently re-state the need to ground human rights in the broader spatial context of social justice, otherwise rights cannot effectively act as the means required to tackle the challenges in this specific context.

Activists explain that they intentionally called the structures 'Social Justice Centres' in order to distinguish them from formal institutions like the Kenya National Commission on Human Rights and NGOs in other words, professional organisations. Additional interviews with grassroots activists associated with the SJCs also suggests an association with human rights as too polite, individualistic (in Clouzeau, 2019) and not emancipatory enough. Wider structural issues are regarded as more systematic in contrast to addressing only specific events through individual human rights violations. There is a particularly strong link identified between youth unemployment, with the limited opportunities pushing youths to engage in the 'illegal' economy, or, to commit petty crimes, which exposes them to police brutality. According to social activist 'SJC IV', there is an intricate inter-weaving of differentiated spaces of the slum and of class in Nairobi's human rights sector. Poverty and its criminalisation is not only not always on the radar of the NGO sector but also requires a different kind of struggle, which is the motivating frame to create a bottom-up social movement from and for the slums. That motivation was due, according to SJC IV, to fill the 'void created by the middle class … to link with them in Korogocho, Mathare, it was very difficult. So the idea was to establish a human rights network, I started it that time'.

Activists' involvement in SJCs reflects how human rights need an holistic understanding, one entwined with these differentiated urban spaces in order to reclaim, and decolonise, them.

Ownership of Human Rights

'Ownership' is something of an umbrella term that we can use to hang several closely related aspects on. There is a struggle to balance

professional human rights approaches – especially documentation – with the need for activism of the grassroots human rights defenders in order to change structural conditions referred to. A major driving force concerns the reaction of activists to the professionalisation (e.g. in processes and procedures), which appears to provoke an added impetus to ground human rights in the needs and experiences of local communities. Jones et al. (2017) highlight how amongst professional human rights actors and local activists power relations concerning class and language are part of the reaction to perception of ownership over local contexts being taken over by INGOs and KHRC. Outside control is regarded as 'dehumanising' human rights work because professionals, unlike local activists, do not experience the human rights situation as an urgent one.

A central mobilising frame for these activists therefore is that NGOs have very limited oversight of cases in the informal settlements because they are not based in these areas. Activists are assumed to enable easier access to the community, better reflecting their needs due to geographic proximity (contrasted to NGOs); knowing the local environment and above all, identifying with the victims. The reaction to professionalisation is also expressed in what activists perceive as the documentation gap, namely, under-reporting of incidents – especially EJK when NGOs base it on media reports – because of a near total absence on the ground where the killings where happening (SJC IV). A common refrain from activists is that the human rights language has been normalised in terms of not reflecting the urgency of contextualised social justice struggles. In relation, they are struggles perceived as hijacked not only by professionals but specifically by lawyers and NGOs who are not always able to act consistently on behalf of the welfare of residents (SJC 3).

What, then, in light of these characteristics of the informal settlements, do activists perceive as the actions required to secure contextualised social justice?

(Framing) Actions

Framing

The depiction of SJCs as involved in a struggle again 'frames' (Benford and Snow, 2000) understandings of rights as only attained by addressing the broader political context of social justice. Key framing themes include the following.

There is a strong association that the SJCs have with the prognosis of the problems (Benford and Snow, 2000) of Kenya as requiring revolutionary ideology and struggle. As noted by Clouzeau (2019) the Social Justice Centre Working Group's logo is a raised fist and SJCs members often wear red berets in reference to Thomas Sankara and Fidel Castro. MSJC's office, for example, is adorned with quotes from radicals like Malcolm

X and Che Guevara. Not only do members call each other 'comrades', but there is also a symbolic link made to the Mau Mau movement's anti-colonial resistance. Finally, meetings end with SJC members singing the 'Wimbo Wa Mapambano', which is an anthem of struggle with a hand on the heart, and a fist in the air: a performance of rights as political struggle.

A key motivational frame (Benford and Snow, 2000) appears to be in identifying aspects requiring behaviour change. There is the need for activists to establish control over their own circumstances, as a means for both self- and community improvement. Local conditions and experiences become something of a value, whereby 'insiders' are given the mantle of expert in contrast to 'outsider' NGOs and others. Specific practices include use of a participatory action research. SCJ members are encouraged to actively participate in the gathering of data and information rather than being dependent upon outsiders. A key building block is to use participatory approaches not to extract data but instead raise community awareness on the issues. A mainstay has been community dialogues as an important vehicle for getting legitimacy but also for community empowerment. Most notably, in a context of widespread fear and public fatigue about EJK, community dialogues appear critical in kick starting the idea of documenting for and from the community of their experiences (see MSJC, 2017). Other SJCs may use dialogues slightly differently, for example, as mediating between reformed criminals and the police.

SJCs base their goals on the wider objectives of social justice, though they also articulate their needs in various campaigns through the lens of human rights. Sometimes it may be important when partnering with NGOs to reframe issues in terms of human rights to speak a similar language. Another strategic use is when it comes to applying for grants, where human rights are deployed. There is also clear reference to human rights when SJCs talk about 'violations', 'monitors', as well as 'capacity building', 'mapping out' and refer to human rights standards (activists in Clouzeau, 2019). Human rights standards are commonplace when pursuing actions through legal channels because human rights 'is what the police will use, the judges will use and what you will be judged against' (ibid.). It is also in the campaign work of the SJCs, where activists can use human rights standards in order to draw upon their legitimacy of standards as benchmarks for holding duty bearers to account. These frames therefore underpin varied modes of working to achieve programmatic objectives (Benford and Snow, 2000).[8] There is not the space to provide detail of these campaigns. But one salient point is that rights and the law can be wielded to highlight issues as violations and with standards bringing visibility and legitimacy.

Blended Approaches: When 'Civil' Meets 'Political' Society

SJCs adopt constitutional rights in their campaigns (such as the right to life used in campaigning on EJK, see MSJC, 2017). In relation,

demonstrations and protests carry banners referring to these constitutional rights. When deciding whether to frame the specific issue as a human rights one, the SJCs prefer to refer to the Kenyan Constitution. This preference, they say, because international human rights legal standards appear abstract and distant from the realities of the slum, and from a conception of rights-holders (various SJCs, interviews) who have to fight for rights in specific contexts. Similarly, constitutional socio-economic rights (article 43) has featured prominently in providing focus to state failure to meet needs. Use of rights standards shows up in SJC modes of working, but also as a tool within a broader holistic approach to social justice, as follows.

One of the main campaigns for area SJC1 concerns the erratic supply, disproportionate cost and safety of water in this area. The issue of water touches on strong vested interests of the slum economy, with cartels controlling supply, sometimes linked directly to politicians or bureaucrats. The vested interests make change through rights alone problematic:

> But we are still pushing to have clean water in the taps. Every person deserves clean water. *Article 43* of our *Kenyan Constitution* tells us that we deserve clean, adequate, safe water for drinking. But it's totally the opposite. In Matopeni, where I come from, we get water for a few hours on Sunday. Either at 3-5AM. And we think this is a privilege because before "*hawakuwa wanapata maji*" Translation: "*They did not have any water.*" Other places get water for a full day, once a week, usually on Fridays alone. So we don't know what happens. Others get water at night. We are still following up. It's a campaign that we launched this year in July and it's still underway, asking the Ward Administrator and Nairobi Water, what is really happening that some people don't get water.
>
> (SJC 1)

So, constitutional standards, especially article 43, were integral to the campaign, which provides clarification of duties and identification of duty bearers. These are deemed strategically useful as a means to provide legitimacy and advance their cause. Kayole SJC was approached by Matopeni ward residents to organise a community dialogue on the water crisis. The delicate balance of interests concerned how the local county political representative was actively involved in organising a water cartel around bore holes drilled by government using World Bank funding. This representative in the Nairobi county government has local youth and a water cartel to gain control over the water taps. The result was that the cartel deliberately created water scarcity for their own commercial purposes, for private gain. Initially, in response there was a SJC courtesy call to the local administrative office of Nairobi Water Company during the COVID-19 pandemic when there was a government campaign

promoting hand washing and social distancing. But as the crisis continued, nine activists from different SJCs went to Kayole as part of *Maji ni Haki* campaign started by MSJC and Kayole SJC (MSJC, 2019a,b). They organised a sit-in in the Water Company premises invoking right to water, to demand that the company restore water to pipes in the Kayole area. A company employee called Kayole police station and the activists were arrested with charges of illegal assembly and incitement.

The example shows how activists can use human rights standards and especially so in sensitive local contexts surrounding (sometimes violent) cartel interests. Human rights are deemed necessary but insufficient, which leads to occasional direct action in order to change the status quo. Though charges were later dropped, it reflects the intricacy of the problem, which is the subject of an ongoing campaign. The SJC work reflects a delicate negotiation with local interests spreading out to nodes in government. But some SJC areas deem the issues and context even more delicate, requiring collaborative approaches with some other actors because 'agitation doesn't work well with them' (SJC II).

Perhaps the greatest achievement to date is the passionate and consistent focus upon EJK and where significant inroads can be illustrated. Some areas report quite significant drops in EJK after the Saba Saba marches and additional dialogue events (SJC 3). But as significant as documenting outcomes of the work, is the critical need to recognise the overall achievements of building a movement in a highly precarious situation and using this to overcome fear to address issues so prescient in the informal areas. MSJC in early 2020 hosted the UN Special Rapporteur on Extra Judicial Executions and used the occasion to pay a courtesy call to the Pangani Police station OCS (MSJC, 2020). These community dialogues function often as a catalyst for exchange of information, for example, where OCPD's profess not to know details of EJE. All areas had brought about community level events and 'dialogues' involving actors such as state ones: *Nyumba Kumi* (local neighbourhood watch sanctioned by government), OCPD and the OCS, police officers and the local administration; the Office of the Director of Public Prosecutions, Directorate of Criminal Investigations, KNHRC; as well as INGOs, International Justice Mission, Rights, Amnesty; as well as parents, youths and EJE survivors.

Partnerships with political parties are less apparent. However, one exception concerns that SJCs have created partnerships with small political parties that have been defending human rights, such as Ukweli Party of Kenya that is led by activist Boniface Mwangi. Women in SJCs have organised training with the United Green Party, to help them write a petition to parliament on EJE and present the Petition in Parliament Committee that relate with police reforms. In July 2020 during Saba Saba march, women in the SJCs petitioned Mathare Member of Parliament, Hon. Anthony Oluoch regarding EJE in Mathare.

Discussion

The following key issues have emerged from the chapter. First, SJCs have sought to build a movement that mobilises, and in a way that first and foremost empowers themselves and their communities. In a historical context of existential threats, community-owned and led empowerment is a necessary step in any attempts to *localise human rights* (Destrooper, 2016). In relation, the emphasis upon collective power, participatory action research and generating their own data collection is also important for ownership.

Second, this mobilisation compels a new role for NGOs, and also state governance, and one in which it is important to recognise resource and power imbalances with the grassroots. This shift would ideally then involve the 'move closer to the ground' and to change to more participatory methodologies (Lettinga and Troost, 2015). Shifting to an enabling and capacity building role is therefore one intended to reduce inequalities. But as we can see, there are lingering tensions and this is not an easy issue to resolve. A starting point is the kind of self-awareness and acknowledgement of inequalities that are reflected in the chapter. This appears in line with other examples in which emphasis is placed upon *genuine partnership in human rights work* between communities and NGOs and other organisations (Madlingozi, 2010). There isn't any neat binary between global and local, particularly given that many (inter-) national level organisations are go-betweens, bringing the kinds of important resources mentioned. Dislodging dominant patterns of knowledge, and associated political economy of funding and hierarchy that is still very difficult, but offers a glimpse of a decolonised human rights. In all these endeavours, the urban scale provides closer proximity to the needs and desires of diverse communities.

Third, there isn't necessarily any neat separation also between 'civil' and 'political' society and which shouldn't be an exaggerated divide. In other words, SJCs show a sophisticated use of human rights as tools, but which they perceive cannot substitute for political struggle and mobilisation. Activists must work within the often highly delicate local situation, and vested interests and local authorities, and in which, appeal to outside actors can certainly bring support, resources and protection. As such, activists oscillate between both 'societies' – the 'political' and the 'civil' but seek to balance the opportunities and demands of each. We would clearly caution against any assumption that local residents are rejecting human rights. What we see instead is a practice of adapting and adjusting rights to fit broader struggles over urban context. The key point therefore is that rights are in need of claiming, and in doing so, they are *strategically adapted to enable political action*.

Fourth, it has been shown that an essential starting point and motivation for the SJCs is to deal with socio-spatial context. It is, after all,

this context of the 'slum' city in which law and rights are suspended, or, simply ignored by urban authorities and policy makers, who often collude with influential property developers and the police force in spaces deemed 'criminal' and 'illegal'. Human rights are therefore being urbanised in a double sense. First, they are strategically adapted to framing mobilisation struggles in and over the city. But then, second, the post-colonial characteristics of urban life have an enduring imprint which exposes the limitations of human rights. In both these senses an *urban politics of rights is a critical means of delivering a more emancipatory city.*

Conclusion

With the high levels of precarity, including ever-present threats of eviction, and almost complete lack of public services, and police brutality, it is not surprising that SJCs have prioritised mobilising against immediate threats. Perhaps they will begin to contribute to more emancipatory urban planning, which remains scare and requires a more genuine attempt by duty-bearers to connect with the grassroots through genuine postcolonial practices. We hope that in the years to come the movement will continue to grow and exert even greater shaping power over cities. In finding that shaping power, however, human rights present some limitations for the postcolonial world. Understanding these limitations led one of the authors to participate in the quest to build a broader social justice movement. This is a shared vision steeped in experiences of poverty and place that are perceived to play such an important role in determining how and why 'problem people' are treated differently. The efforts reflected here in building a movement are a potentially significant step towards de-centring long established patterns of thought and action, in other words, contributing to de-colonising human rights discourse and practice in the post-colonial city. There may be distinctions and tensions in the inter-play of human rights, social justice and the urban, but arguably this is broadening the set of ideas associated with each.

Notes

1 **Dedication**: We dedicate the chapter to a great friend and comrade of the Social Justice Centre movement, Henry Ekal Lober 'Turu', founder member of Mathare Social Justice Centre, a pastoralist from Lokichogio, Turkana and urban dweller in Mathare, Nairobi. In memory of his resilience, hope and love for a dignified life. Your memory lives on in the struggle for social justice.
2 A notable source which the chapter draws upon is Clouzeau's (2019) Masters dissertation based on their internship at MSJC.
3 Some organisations can therefore take on more than one approach, for example, Abahlali baseMjondolo, a movement for squatters in South Africa, combine radical autonomy *and* strategic access to rights claims to fight for housing provision (Pithouse, undated).

4 The current leaders and coordinators of MSJC, Dandora Community Justice Centre and Kamkunji SJC, for example, are all from the Bunge era.
5 This is a police related Facebook page that promotes targeting of individuals for EJK.
6 Examples include, Kevin Gitau was arrested by a 'killer cop' in February 2019 and driven all night long in a Probox car but was released after a Twitter campaign. Sadly, he was killed by the same officer on April 16th. MSJC. (November 4, 2017). Another concerned the detention of an MSJC activists, see 'Thank you for your support to ensure the release of JJ our field mobilizer and office coordinator!' https://www.matharesocialjustice.org/ accessed, July 2, 2020.
7 As a SJC Working Group activist put it in another study: 'You are innocent until proven guilty, that one is for the rich. But in Mathare, it's like you are guilty until proven innocent' (in Clouzeau, 2019).
8 This is the third stage of Snow and Benford's approach in which programmatic activities are conceived to deliver the desired changes.

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Part 4

Mechanisms of mobilisation

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9 Resisting marginalisation in the global city

Eking out a legal right to public presence in the City of Cape Town

Marius Pieterse

Introduction

Around the world, recent years have seen the rescaling of state power, its entwinement with private power and the accompanying repositioning of national governments, cities, (global and local) capital and (global and local) citizens. Among these shifts and the concomitant fragmentation of power, 'interrelationships among scales [of power] are continually fixed, struggled over and reworked by particular social actors pursuing specific political, social, economic and ecological goals' (Purcell 2006, p. 1929 – see also Curtis 2016, p. 463; Porras 2009, p. 546). Traditionally conceived as substantive guidance for and limits to (national) state power, human rights frameworks operating at different scales have been instrumental in these struggles, while rights are themselves being repositioned and transformed in different contexts and at different scales.

In particular, many city governments around the world have in recent years found themselves gaining significant power and autonomy, as state power at the national scale has devolved and decentralised while global governance space has become more friendly to subnational participation (Aust 2015, pp. 269–270; Oomen and Baumgärtel 2018, pp. 627–628; Porras 2009). Simultaneously, at a local scale, this power and autonomy has been contested and clawed back by the growing significance of both private capital and civil society as actors in everyday urban governance (Curtis 2016, pp. 476–477; Porras 2009, pp. 546, 584; Purcell 2002). The dynamics of urban life, the contours of urban citizenship and the content of human rights in different cities are differently impacted depending on how both these vertical power relations (between urban local government, national and regional governments) and horizontal power relations (between urban local government, the private/corporate sector and civil society) play out and interact with other existing power structures (Bulkeley et al. 2018, pp. 715–716; Purcell 2002).

High-profile examples of progressive and rights-based urban governance around the world have presented much cause for optimism and have lent compelling weight to calls for increased devolution of state power

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to urban local government (see Curtis 2016, pp. 464–465; Oomen and Baumgärtel 2018; Oomen and Van den Berg 2014; Russell 2019). But a number of scholars have cautioned that there is nothing inherently just and progressive about local governance, and that urban autonomy can as easily be steered towards repressive or exclusionary ends, or be captured by private class or economic interests inimical to the broader realisation of human rights (Aust 2015, pp. 265–268; Bulkeley et al. 2018, pp. 715–717; DeFilippis 1999, pp. 986–987; Purcell 2006; Russell 2019, pp. 994, 1007). Indeed, there are strong links between the global trend towards devolution of power and the concomitant rise of autonomous urban governance, on the one hand, and forces of economic globalisation and private capital, associated with the stratification of labour and property markets, and with increased urban segregation and inequality, on the other (Curtis 2016, pp. 465–467; DeFilippis 1999; Porras 2009; Purcell 2006, pp. 1921–1923). Accordingly, the content of human rights and the manner in which they are enacted and invoked in cities are shaped not only by the legal architecture of domestic human rights regimes but also by the peculiarities of horizontal and vertical power relations within particular cities (Mitchell 2003, p. 42; Oomen 2016; Oomen and Baumgärtel 2018). For instance, in some 'human rights cities', the interests of vulnerable urban residents are advanced (against either or both nation states and private capital) by local government, acting in partnership with civil society and residents and invoking national or international human rights norms as expressions of local autonomy and/or as guiding principles for the local pursuit of progressive policies and projects (Oomen 2016; Oomen and Van den Berg 2014; Russell 2019). Elsewhere, in contrast, national governments, residents and civil society may invoke rights, either as legal rules or as moral or political claims, against the oppressive governance practices of city governments and their private-sector partners (Garcia Chueca 2016; Oomen and Van den Berg 2014, p. 166; Pieterse 2018).

Moreover, human rights standards' open-endedness, abstract formulation and context-specificity mean that they are capable of different interpretations and modes of invocation or realisation, not all of which are always equally progressive. Even self-proclaimed 'human rights cities', or cities where local government has explicit human rights obligations under domestic law, may ascribe to interpretations of rights that impose less rather than more obligations on their governments (Grigolo 2017; Oomen and Van den Berg 2014), and/or that favour the rights-based interests of certain urban residents (such as middle-class, tax-paying consumers) over others (such as homeless people, drug users or informal workers) (Grigolo 2016, 2017; Pieterse 2017). This could lead to a denial of the 'right to have rights' and a diminution of the contours of urban citizenship (Holston 1999; Pieterse 2017). On the other hand, more radical understandings of rights advanced by residents, social movements or civil society can enhance community participation in urban governance

and broaden the contours of urban citizenship by valorising different ways of being in the city (Garcia Chueca 2016; Grigolo 2017; Holston 1999). The upshot is that the legal, political and social context of their invocation and vindication in particular cities can cause human rights norms to acquire a peculiar local urban character (see Grigolo 2016; Porras 2009, p. 546).

This chapter zooms in on such urbanisation of constitutionally guaranteed domestic human rights in an adversarial local governance context. The focus is on the City of Cape Town in South Africa, often called one of the most unequal cities in the world (Sithole Hungwe 2017). The city's Metropolitan Local Government enjoys constitutionally enshrined autonomy and it is constitutionally bound, legally accountable for and ostensibly committed to the realisation and observance of a wide range of human rights. Yet, as will be discussed below, local party politics have interacted with neo-liberal forces to steer much of the city's governance energy towards enhancing urban competitiveness and 'global city' aspirations, which benefit private capital and wealthy residents but brutally side-line the urban poor. At the same time, the city's severe spatial inequality has lent a particular spatial justice and 'right-to-the-city' edge to human rights activism in Cape Town. This, as will be shown, has interacted with party-political cleavages between national and local government, a history of rights-focused political struggle, a strong tradition of strategic, rights-based litigation in civil society and the extensive, justiciable human rights framework provided by the national Constitution, to produce a range of right-to-the-city-infused constitutional challenges to some local government practices in the city.

As will be discussed, court judgments resulting from these challenges have interpreted conventional constitutional rights in new and innovative ways that resist the privatisation of public space, affirm the social function of public property and begin to construct a new, legally enforceable, right of marginalised residents to urban public presence. This right, produced from the particularities of Cape Town's local political struggles, opens up new possibilities for legally enforcing habitation-related dimensions of the right to the city (see Mitchell 2003, p. 19; Purcell 2002, 2006) in South African cities.

Urban Autonomy and Human Rights in South African Cities

Struggles over the urban form are typically at the centre of both urban autonomy and the right to the city (DeFilippis 1999, p. 980; Mitchell 2003, p. 5). Urban local governments use state power to shape public urban space in implementing various policy objectives. Private capital attempts to remake such space in ways that maximise profit and ease financial flows. Residents, in turn, are constantly producing and reproducing space in the course of their everyday pursuit of a range of individual

ends. Urban rights can be produced during any of these processes or in instances where they come into conflict (Grigolo 2016; Mitchell 2003, pp. 18, 74, 81).

South Africa's eight biggest cities are governed by so-called 'metropolitan' municipal councils, which enjoy significant constitutional autonomy alongside considerable statutory powers and responsibilities. The exact scope and content of this autonomy need not concern us here (for discussion see Pieterse 2019a), though it notably encompasses bylaw-making authority alongside full executive and administrative control over a number of functional areas that shape the urban public environment, such as municipal planning, regulation of public places and control of public nuisances (section 156 read with schedules 4B and 5B of the Constitution of the Republic of South Africa, 1996). Municipalities have the 'right to govern' these functional areas on their 'own initiative' (section 151(2) of the 1996 Constitution), in cooperation with and subject to oversight and support from national and provincial governments (sections 41, 139 and 154(1) of the 1996 Constitution). This municipal autonomy is substantively animated by section 152 of the 1996 Constitution, which enjoins local government to 'provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner; to promote social and economic development; to promote a safe and healthy environment and to encourage the involvement of communities and community organisations in the matters of local government'.

The South African Constitution contains a fully justiciable Bill of Rights, which includes a wide array of civil and political as well as socio-economic rights. These rights are closely modelled on international human rights law, and courts must take the international-law-meaning of rights into account when interpreting the Bill of Rights (s. 39(1)(b) of the 1996 Constitution). A number of the rights in the Bill of Rights (notably the right of access to adequate housing (s. 26(1)-(2)), the guarantee against arbitrary eviction (s. 26(3)), the right to freedom of movement (s. 21); the right to environmental protection through measures aimed at securing sustainable development (s. 24(b)), the right of equitable access to land (s. 25(5)) and the determination that equality 'includes the full and equal enjoyment of all rights and freedoms' (s. 9(2))) lend themselves to progressive appropriation by urban social movements (Coggin and Pieterse, 2012; Pieterse 2017, pp. 20–21).

The Constitution determines that all organs of State at national, provincial and local levels must 'respect, protect, promote and fulfil' the rights in the Bill of Rights (s. 7 of the 1996 Constitution). There is thus no question that a broad range of human rights apply in South African cities, and local government policy across the country typically expresses explicit commitment to rights-based governance. But, as will be illustrated below, this is not to say that rights are always adhered to in urban governance practice, or that there are no conflicts over their meaning and application.

Because of its roots in the anti-Apartheid struggle, South African civil society is active, well-networked and well-resourced, especially in urban areas. It has become closely entwined with the country's equally active (and equally urban-based) public interest litigation sector and this coalition has, since the end of Apartheid, often rallied around constitutional rights and regularly resorted to rights-based litigation (Madlingozi 2014). Civil society's rights-orientation, the justiciability of the Bill of Rights against local government and the general dysfunctionality of public participation fora at local government level (see Pieterse 2018) has meant that conflicts over human rights in South African cities are often mediated by courts – 'the Bill of Rights … has provided an outlet for the marginalised to assert their citizenship within the urban fabric of South Africa' (Coggin and Pieterse 2012, p. 258). In particular, ever since the landmark case of *Government of the Republic of South Africa v Grootboom* (2001) enjoined government at all levels to respond to the emergency needs of inhabitants of a Cape Town informal settlement, urban local government has been the site of the overwhelming majority of litigated socio-economic rights disputes, meaning that the South African jurisprudence around these rights has acquired a distinct urban character (Pieterse 2018).

Party Politics, Neo-liberal Governance, Inequality and Displacement in Cape Town

Within a context of overstretched human and financial resources, South Africa's metropolitan governments negotiate constant tensions and trade-offs between, on the one hand, creating liveable, business- and investment-friendly cities that can compete in the global economy and, on the other hand, addressing pressing social problems like poverty, homelessness and lingering spatial segregation on the basis of race and class (Lemanski 2007). In Cape Town, these trade-offs and tensions have a strong party-political edge. South Africa's erstwhile liberation movement, the African National Congress ('ANC') has, since 1994, always comfortably won the country's national elections, as well as most provincial and local elections. However, the Metropolitan Council in the City of Cape Town has for the last two decades mostly been run by the Democratic Alliance ('DA'), the national opposition party. While the DA has more recently also gained control of the Western Cape Provincial government, is in charge of several smaller municipalities (mostly in the Western Cape) and has even for a brief period governed a number of other metropolitan areas in coalition with other parties (see Pieterse 2019b), it is closely associated with Cape Town in the public consciousness, and the city very much remains its flagship.

Whereas the Constitution establishes an elaborate system of cooperative governance between national, provincial and local spheres (chapter 3 of the 1996 Constitution) which often irons out political tensions where

spheres are controlled by different political parties (Cameron 2014; Pieterse 2019b; Resnick 2014), Cape Town has through the years been the site of much party-political grandstanding and conflict (Olver 2019, p. 16). More importantly, the city bears out that 'politically divided authority certainly provides impetus for autonomous urban action and encourages city governments to test the limits of their functional autonomy' (Pieterse 2019a, p. 132). Through the years, the Metropolitan Council has often crossed swords with national government over matters ranging from road tolling to electricity provision, and has more than once successfully gone to court to protect its constitutionally demarcated governance turf from national intrusion (see cases discussed in Pieterse 2019a).

The DA is generally regarded as having more distinctly business-friendly, neo-liberal leanings than the ANC (McDonald and Smith 2004). But apart from this, it lacks a strong policy platform and its election campaigns tend to centre on the ANC's governance-shortcomings (Pieterse 2019b, pp. 59, 66). In line with this, the DA perceives (effective, 'clean' and business-friendly) 'good' governance as its main selling point to its target audience of middle-class voters, and aims to visibly display this through the manner in which Cape Town is governed (Anciano and Piper 2019, p. 33; Olver 2019, pp. 16, 53–54; Pieterse 2019b). It channels the overwhelming bulk of its resources and expertise towards managing Cape Town (Anciano and Piper 2019, p. 33), which is indeed popularly regarded as South Africa's 'best managed' city (Cameron 2014; Resnick 2014).

The manner in which these middle-class-oriented good governance aspirations have manifested in control over and management of public space in the city, has however been contentious. Keen to paint Cape Town as a 'global city', to attract service firms and foreign investment, and to exploit its reputation as one of the world's foremost tourist destinations, the city's local government politicians and policy documents typically emphasise urban competitiveness, investor-, tourism- and business-friendliness, alongside ostensible commitment to the developmental goals prescribed by the 1996 Constitution (Anciano and Piper 2019, pp. 85–86; Lemanski 2007; McDonald and Smith 2004; Olver 2019, p. 53). Through the years, significant local government efforts have been directed towards ensuring that the look, feel and functioning of the central business district and its immediate surrounding suburbs (most of which are picturesquely nestled between the Table Mountain range and the ocean) live up to these aspirations. As in other cities around the world, associated governance initiatives have more often than not been pursued in partnership with the local private and business sectors. But such co-governance has been politically controversial in Cape Town, with especially the city's property development and real estate industries perceived as being 'uncomfortably close' to the DA, the metropolitan government and some of its senior officials (Anciano and Piper 2019, pp. 12–14, 85; Lemanski 2007, pp. 455–458; McDonald 2008, p. 9; Olver 2019, pp. 53–54, 125–159).

Regardless, the many public space management initiatives pursued by the so called 'Cape Town Partnership' between local business and government, have attracted much praise for 'regenerating', 'beautifying' and 'cleaning up' the central business district and previously somewhat run-down surrounding suburbs like Sea Point and Woodstock (Lemanski 2007, pp. 451–452). But, as has been observed in relation to similar initiatives elsewhere, these regeneration initiatives have typically entailed a significant measure of privatisation of urban management functions and of public space. More perniciously, the Capetonian measures have often come under fire for scapegoating and unfairly targeting 'urban undesirables' such as homeless people, beggars, street children, sex workers, informal street traders and drug addicts, all of whom have in various ways been 'discouraged' by the measures from being present in the inner city and surrounds (Lemanski 2007, pp. 456–458, McDonald 2008, p. 8; Miraftab 2007, pp. 610–612).

Just as with the displacement of poorer residents through processes associated with gentrification (which also abound in Cape Town, where international real estate demand is very strong and average property prices are far higher than in other South African cities – see Donaldson et al. 2013; Lemanski 2007; Sithole Hungwe 2017), such 'erasure' of the urban underclass in the course of 'broken window'-style urban management is common in many 'global cities' (see Mitchell 2003, pp. 170–174) and is also problematised in other South African cities (see Kilander 2019; Lemanski et al. 2008). But it takes on far harsher dimensions in Cape Town, where demographic patterns, Apartheid history, the real estate market and the topography of the Table Mountain range have combined to make the city the most racially and class-segregated city in South Africa, and one of the most unequal and most segregated in the world (Lemanski 2007; Lemanski et al. 2008; McDonald 2008, p. 9; Miraftab 2007; Sithole Hungwe 2017). While the face of 'global' Cape Town is sophisticated, beautiful, upper-class and (mostly) white, the city's black and desperately poor majority are for the most part relegated to living in the so-called Cape Flats, a desolate stretch of sandy plain near-completely hidden from the 'global city' by the mountain. Life in 'the Flats', home of South Africa's highest rates of violent crime, drug addiction and HIV infection, is light years removed from life in the 'city bowl', to which, thanks to the mountain, the Flats are very poorly connected (see Lemanski 2007; McDonald 2008, p. 9).

While the Metropolitan Council also pursues several progressive policies aimed at social upliftment (Lemanski 2007, pp. 453–454), both it and the DA are regularly accused of being 'anti-poor', both in rhetoric and in their practice of urban governance (see Farr and Green 2020). In particular, there is a sense that senior local government officials, the national DA leadership, the local business sector, property developers and well-to-do residents are conspiring in various ways to sabotage the city government's

policy commitments to overcoming Apartheid's legacy of spatial segregation and injustice through municipal planning and affordable housing development, in their joint belief that there is no place for the poor in the inner city (Lemanski 2007; Miraftab 2007; Olver 2019, pp. 157–159). More than just political rumour, this seeming unholy alliance has been noted and lamented by the Cape High Court (*Adonisi* 2020, paras 440, 478, 483), and is also on record for having been at least partly behind a high-profile fallout between the DA and Cape Town's spatial-justice-championing former mayor Patricia De Lille, who controversially resigned in late 2018 after having been expelled from the party (Olver 2019, p. 234).

It is then perhaps unsurprising that civil society in Cape Town displays a far more distinct leaning towards spatial justice issues than is the case in other major South African cities (Diani et al. 2018). Cape Town-based and -focused organisations such as the closely-affiliated Ndifuna Ukwazi (www.nu.org.za; @NdifufunaUkwazi) and Reclaim the City (www.reclaimthecity.org.za; @ReclaimCT) actively resist the continued exclusion of Cape Town's poor from the inner city and surrounds, and campaign for access to well-located affordable housing, improved public transport, improved access to public space and the active pursuit of spatial justice by the Metropolitan Council. Reclaim the City's interim constitution, for instance, expresses a commitment to 'undo the legacy of a segregated and unequal apartheid city' and to 'resist and prevent unjust practices by government and all sources of private property power', so as to 'realise a city in which there is just and equal access to well-located land [and] the working-class, poor and unemployed have decent and affordable homes to live in' (www.reclaimthecity.org.za).

The Ndifuna Ukwazi/Reclaim the City coalition has close connections to public interest litigation firms (especially the Cape Town branch of the Legal Resources Centre, a South African public interest lawyering stalwart) and its international network includes organisations like the Global Platform for the Right to the City (www.right2city.org). It typically employs a range of street-level opposition tactics such as public protest and building occupations (Pillay and Sendin 2017), alongside appeals to national government to discipline the city leadership and regular resort to rights-based litigation. Through the years, it has threatened and pursued legal challenges against the validity of different urban management policies, property development deals and other administrative decisions in the city, based on a range of rights guaranteed by the Bill of Rights in the 1996 Constitution.

Resistance to Urban Exclusion in the Cape High Court

While all of South Africa's metropolitan governments regularly find themselves responding to rights-based legal challenges pertaining to service delivery failures and the practice of urban evictions (see

Pieterse 2018), it is Cape Town that has been the site of the overwhelming bulk of legal challenges over governance of public space and use of public property in urban South Africa. This is in no small part due to the peculiarities of local civic activism and local party politics in the city, where urban management, access to the inner city and the prevailing conditions in the townships on the Cape Flats are heavily politicised (see also the judgment of the Cape High Court in the matter of *Beja v Premier of the Western Cape* (2011), which grew from ANC-backed opposition to a much-maligned DA township sanitation project involving provision of unenclosed toilets). Over the last two decades, the Cape High Court has decided a number of legal challenges against the matrix of private/public urban co-governance practices that exclude and displace poor Capetonians from the inner city. The resulting judgments have upheld challenges against attempts by private or public entities to 'cleanse' public space of 'urban undesirables', have vindicated the social value of public property and public space in Cape Town, and have begun to elaborate the city government's public responsibility towards residents when it comes to use of publicly owned land.

The first of these judgments, *Victoria & Alfred Waterfront v Police Commissioner, Western Cape*, boldly disrupted conventional understandings of what counts as 'public space' in the first place. While occupying a significant stretch of outside space along the Cape Town harbour front and containing some public amenities (such as a post office and the embarkation point for a public ferry to Robben Island), the Victoria and Alfred Waterfront (hereinafter 'V&A Waterfront'), a mixed-use entertainment, retail, residential and business precinct that is one of Cape Town's most celebrated 'public' spaces and tourist attractions, is privately-owned and managed. Much like a suburban shopping mall, access to the precinct, and its patrons' behaviour, is subtly monitored and policed by private security guards. In late 2003, the V&A Waterfront's owners sought an interdict forbidding two particularly troublesome beggars from entering the precinct, or alternatively from begging and harassing visitors there.

What seemed at first like a cut-and-dry private trespass case unexpectedly turned into a right-to-the-city dispute when the Legal Resources Centre was admitted as an amicus curiae, and raised the constitutional rights of the beggars in defence of their presence at the Waterfront. In upholding these arguments, the Cape High Court indicated that it was not prepared to exclude beggars from an area it regarded as for all intents and purposes constituting a suburb of Cape Town. Recalling South Africa's Apartheid past in which black people's access to cities was legally restricted, and warning that contemporary urban management should not reinvoke this history, the Court found that the V&A Waterfront functioned as a public space regardless of its legally private character. While the Court was willing to order that the beggars refrain from harming or threatening visitors and employees, and that they should leave the

premises of individual restaurants when requested by those in charge to do so, it felt that denying them access to the precinct altogether would infringe their constitutional right to freedom of movement as well as their constitutional right to life, which the Court understood as encompassing a right to a livelihood. Given the patently public function of the precinct, these rights were found to outweigh the rights conventionally flowing from private property ownership (*V&A Waterfront* 2004 – for discussion, see Coggin and Pieterse 2012, pp. 271–273; Kilander 2019, p. 85; Pieterse 2017, p. 130).

Marginalised urban inhabitants' right to public presence in the city was to receive a further boost with the 2009 judgment in the case of *Sex Worker Education and Advocacy Task Force v Minister of Safety* and Security (2009). The applicant NGO (commonly known by its acronym, SWEAT) is South Africa's most vocal advocate for the rights of sex workers. While sex work is illegal in South Africa, the criminal prohibition thereof is seldom enforced. Instead, street-based sex workers in many South African cities regularly find themselves the target of municipal bylaw enforcement and associated police harassment, aimed at removing them from public view in 'respectable' areas (see Bonthuys 2012; Pieterse 2015). In Cape Town, this pattern intensified prior to South Africa's hosting of the 2010 soccer World Cup, when the city's political leadership became particularly anxious to present a respectable version of the city to visitors. As part of an intensified urban management campaign, the police would routinely arrest Cape Town's sex workers on loitering, nuisance and similar bylaw contravention charges and briefly detain them in holding cells, only to later release them without charge (Bonthuys 2012).

Despite the (il)legal status of sex work, SWEAT successfully obtained an interdict against this practice. The Cape High Court affirmed that the arrests did not serve the purpose of enforcing the criminal law, and instead functioned only to harass sex workers and drive them out of public space, thereby targeting a vulnerable social group in an illegitimate attempt at 'social control'. This was found to infringe the sex workers' constitutional rights to dignity and to freedom and security of the person, thereby warranting interdictory relief (*Sex Worker Education and Advocacy Task Force* 2009 – for discussion see Pieterse 2015, p. 497; Pieterse 2017, pp. 180–185).

A decade later, a group of homeless people obtained an interdict against the local government's similar use of municipal bylaws against them. In terms of City of Cape Town's 'Streets, Public Places and Prevention of Noise Nuisances Bylaws' (2007), a range of activities, such as erecting structures or making fire in public spaces, are deemed municipal offenses (see Kilander 2019, pp. 81–82). As has been pointed out in relation to similar regulations elsewhere, such provisions have a devastating impact on homeless people, whose necessarily public existence and satisfaction of

survival requirements are effectively criminalised thereby (Mitchell 2003, pp. 170–173; Waldron 1991). Assisted by a pro bono lawyer, the applicants in *Gelderbloem and Others v City of Cape Town* successfully interdicted the metropolitan police from harassing them, fining them and confiscating their belongings in terms of these bylaws, based on their constitutional rights to access to housing and dignity (*Gelderbloem* 2019 – for discussion see Kretzmann 2019; Shoba 2019). A review of the constitutionality of the bylaws is pending.

Two further judgments, decided roughly a decade apart, add to the above trio of cases affirming urban outcasts' right to be publicly present in Cape Town, by further safeguarding public, and publicly owned, urban space against further privatisation. Both played off in Sea Point, a high-density suburb directly adjacent to the Cape Town central business district. Once a somewhat run-down and seedy (if spectacularly beautiful) strip, the neighbourhood has significantly gentrified over the last two decades. Due to its central location and cosmopolitan feel, it is currently one of Cape Town's most sought-after areas, and contains one of the city's most celebrated and diverse public spaces, a popular promenade surrounded by a strip of parkland, stretching for several kilometres.

It was the fate of this promenade that was at the centre of *Sea Front for All v MEC Environmental and Development Planning, Western Cape* (2011). A local community association successfully challenged administrative decisions by city government officials and the Western Cape Provincial Government, which granted environmental authorisation to a private developer to redevelop a public pavilion at one end of the promenade, by turning it into an upmarket hotel. The mooted development, which was motivated as an urban regeneration initiative, would have had the effect of usurping part of the promenade into the private grounds of the hotel.

The Cape High Court found that the official granting the authorisation failed to apply her mind to the effect that the mooted development would have on public space, and failed to consider all the possible alternative uses for the site, including the option of letting it remain as public open space. Elaborating on the importance of 'democratic' public space, its scarcity in Cape Town and the history of the promenade as one of few non-racial public spaces in the city (even during the apartheid years), the Court described the promenade as 'one of the few open spaces in Cape Town which seems to evoke the sense that social equality sought by democracy is in fact being fostered there' (*Sea Front for All* 2011, para 40). Noting that the area had much improved over recent years and that there was thus no real need for further gentrification in Sea Point, the Court opined that a decision to change the land use of such important space should not have been taken lightly, and certainly not without extensive public consultation and attaching proper weight to the public purpose currently served by the promenade. The official's decision was

accordingly set aside under administrative law, thereby effectively blocking the redevelopment.

Finally, the Cape High Court recently overturned a decision by the Western Cape Provincial Government to sell a government-owned site, containing disused school buildings in central Sea Point, to a private organisation for significant profit. The mooted sale of the so-called 'Tafelberg' site had for more than a year been heavily disputed and politicised, with Reclaim the City protesting that the property was ideally suited for the development of well-located affordable housing in accordance with the local and provincial government's constitutional mandates and spatial planning objectives. Provincial and city government officials' opposition to the development of the site for public housing was however reflected in the minutes of Council proceedings, with one official going so far as to state on record that there was 'no room for' low-cost housing in the inner city and surrounds. With public backing from the DA, the provincial government approved the sale of the property, despite Reclaim the City's housing campaign and the opposition of the (ANC-affiliated) National Minister of Housing, who also urged that the property be used for developing public housing stock.

In setting aside the sale, the Court read together the constitutional obligations to progressively realise the right to 'have access to adequate housing' and to 'foster conditions which enable citizens to gain access to land on an equitable basis' (respectively sections 26(2) and 25(5) of the 1996 Constitution) so as to constitute an obligation on the State to overcome Cape Town's legacy of spatial apartheid (*Adonisi* 2020, paras 36–37). Noting that Cape Town's housing policies had thus far instead enabled gentrification and displacement of poor residents by giving preference to private, top-end developments in the inner city and surrounds, the Court found that the State had to use all of the resources at its disposal, including the well-located inner-city land that it owns, towards fulfilment of its constitutional obligations (*Adonisi* 2020, paras 100–102). City and provincial government officials' opposition to low-cost housing development in the inner city was described as incompatible with these obligations (*Adonisi* 2020, paras 440–441, 478, 483). This, together with deficiencies in the public participation process followed prior to the sale, as well as non-compliance with the Constitution's cooperative governance obligations (in that the National Minister's concerns and attempts at invoking mediation processes in terms of intergovernmental relations legislation were ignored), was found to render the sale voidable, and the Court accordingly set it aside.

Reflections

This chapter has shown that, in spite of legal and constitutional obligations to progressively realise socio-economic rights, the metropolitan government in the City of Cape Town has consistently preferred a

narrow interpretation of its human rights obligations and has more often than not used the autonomy granted to it by the national Constitution to favour the rights of businesses and middle-class residents at the expense of the urban poor. This has contributed to a pre-existing wedge between the metropolitan council, civil society and poorer communities in the city.

Given this hostile local urban governance context, civil society organisations and marginalised residents in Cape Town have reached out to three national-level, institutional structures or frameworks in their attempts to assert human rights in the city. First, they had a potential ally in a national government politically opposed to the City government and keen to invoke the national Constitution's intergovernmental relations framework to ensure that the city's political leadership adheres to the substantive demands of the national Constitution. Secondly, the justiciability of the civil, political and socio-economic rights in the Constitution allowed resort to the judicial process in asserting and enforcing a right to urban presence. Thirdly, in addition to being mandated to align their interpretation of constitutional rights to international law, South African judges are empowered to consider a broad array of sources in giving content to rights and South African constitutional adjudication is deliberately oriented towards societal transformation (see Langa 2006; Moseneke 2002). This has meant that the local branch of the High Court was receptive to right-to-the-city-type arguments.

Over a near 20-year period, the judgments of the Cape High Court discussed in the previous section have persistently broken down the public/private divide inherent to much neo-liberal urban governance and have consistently safeguarded poor and vulnerable Capetonians from forces seeking to dismantle their already tenuous foothold in the inner city. Not only has the Court robustly protected urban outcasts from the use of public power to quash their habitation and appropriation of public space (*Sex Worker Education and Advocacy Task Force* 2009; *Gelderbloem* 2019), it has extended this protection to operate also in privatised public space (*V&A Waterfront* 2004), while simultaneously providing protection against the privatisation of public space (*Sea Front for All* 2011; *Adonisi* 2020) and insisting that public property be applied towards public, rather than private, benefit (*Adonisi* 2020).

In doing so, the Court has relied on different, often previously un-enumerated, aspects of constitutional rights to equality, dignity, life, freedom of movement, freedom and security of the person, access to housing and property. Its interpretation and application of these rights have consistently transcended their conventional understandings. Instead, the Court has explored the intersection and horizontal dimensions of these rights and the value of democracy, within a particular understanding of their spatial and geographic dimensions (Coggin and Pieterse 2012; Pieterse 2017). The result is the beginning of construction of 'new rights' to urban

public presence, to the appropriation of public urban space and to the social function of urban property, all of which are unique to the urban (and, arguably, specifically the South African urban) context.

These 'new rights' correspond in many ways to recent normative developments in international human rights law (reflected, for instance, by the European Charter for the Safeguarding of Human Rights in the City (2000), the UN Human Rights Council Advisory Committee Report on the Role of Local Government in the Promotion and Protection of Human Rights (2015) and the Report of the UN Special Rapporteur on Adequate Housing as Component of the Right to an Adequate Standard of Living, 2020). Moreover, they resonate with what Marc Purcell calls a 'right to inhabit' urban space (Purcell 2006), itself a component of the elements of habitation and appropriation inherent in Henri Lefebvre's classical understanding of the 'right to the city' (see generally Lefebvre, 1996; Mitchell 2003; Purcell 2002, 2006). While recent years have seen several scholarly explorations of the interaction between the right to the city and the invocation of 'conventional' legal rights in cities (see Garcia Chueca 2016; Mitchell 2003; Purcell 2002, pp. 101–102; Tavolari 2016), perhaps especially in South Africa (see Coggin and Pieterse 2012; Huchzermeyer 2018; Pieterse 2017), the 'public space' judgments of the Cape High Court are among preciously few concrete examples of the 'legalisation' of the right to the city in the world. In vindicating the right to inhabit public urban space, the judgments discussed here create a legal foothold for the everyday assertion of the right to the city, the concomitant production of pro-poor public space, the broadening of urban citizenship and the democratisation of global cities (Grigolo 2016; Pieterse 2017; see also Purcell 2006).

Despite the developments discussed here, the City of Cape Town and its partners seemingly remain resolute to pursue their vision of an 'orderly', middle-class, 'global' city. For instance, there has been controversy over recent attempts by private security guards to police after-hours presence on the city's upmarket beaches, while both the South African Human Rights Commission and the Western Cape High Court have in recent months lambasted the Cape Town metropolitan police's brutal eviction of informal settlers and the removal of homeless people to guarded tented camps as part of the City's COVID-19 response (see Cruywagen 2020; Davis 2019; Farr and Green 2020). But the judgments discussed here have significantly altered balances of power in such matters, with city authorities backing down or about-turning in most of these recent clashes, arguably in no small part due to the knowledge that the state of the law is against them.

Moreover, while for the most part originating from the particular hostilities in Cape Town, the national reach of legal precedent has meant that that social movements in other South African cities could build on these victories. Indeed, similar interpretation of constitutional rights

have been asserted in relation to the rights of shack-dwellers in Durban (see *Abahlali baseMjondolo Movement SA v Premier, KwaZulu Natal* 2010) and informal traders in Johannesburg (see *South African Informal Traders Forum v City of Johannesburg*, 2014), and have similarly been vindicated in court.

While its local government may in many ways be described as hostile to the rights of marginalised urban residents, Cape Town is nevertheless a city where human rights are transforming in response to urban autonomy and the globalisation of urban governance. The 'urbanisation' of poor South Africans' rights to life, dignity, freedom and security of the person, access to housing and equality; born from struggle against a partly autonomous local government bent on their suppression; has served to safeguard not only their dignity and livelihoods but also to advance their urban citizenship, and that of marginalised residents in other South African cities.

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10 Human rights mobilisation in São Paulo's policy response to COVID-19

Pedro Vormittag

Introduction

In São Paulo, Brazil, the Pacaembu Stadium is a soccer arena run by the City Hall. It was inaugurated in the heart of one of the country's richest regions, as an art-deco postcard inspired by the Berlin Olympic Stadium where Jesse Owens memorably won a gold medal in the 1936 Olympic Games. Over its 80 years old history, Pacaembu has witnessed countless soccer matches and pop music concerts, most of which with over 70,000 people worth of paying audience. However, maybe the most impressive record in its trajectory has only taken place recently, as its carefully cut grass welcomed a 200 beds emergency field hospital for Sars-CoV-2 patients.

In Brazil, the COVID-19 pandemic prompted consequences beyond the realm of epidemiology, providing context for the dynamics of Brazilian politics. The fierce discussion held among State authorities, health-care experts and civil society about the correct policy responses to the pandemic triggered a discursive battle with deep political implications for the President of Brazil, State Governors and Mayors. A standpoint which bears particularly useful insights into how such discursive battle played out is the one of human rights in the urban landscape: its legitimacy as a moral value, its appropriateness as a policy compass, its essential content in the concrete case of making policy to fight the pandemic. Focusing on this particular case-study, this chapter delves into the human rights mobilisation of São Paulo City Hall's policy responses to the COVID-19 pandemic, arguing that the case of São Paulo illustrates how different human rights discursive choices made by state authorities informed the practice of such a phenomenon.

Human rights, cities and COVID-19

Despite the recent phenomenon of the pandemic, it has already become established in scholarship that 'the COVID-19 pandemic in itself threatens the enjoyment of human rights, most prominently the right to life and the right to health. It also highlights how human rights are

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interdependent while at the same time reflecting competing interests that are sometimes hard to reconcile (Spadaro 2020)'. Moreover, scholars have been associating a human rights-based approach to the policy effort against the pandemic as a relevant proxy for distinguishing populist from non-populist discourse in public health (Scheinin and Molbæk-Steensig 2021, p. 19), pointing out that denialism towards the reality of the virus or the unwillingness of governments to address the suffering brought about by it is unacceptable from a human rights standpoint. The case of Brazil's Bolsonaro emerges in that discussion as a text-book example of how the lack of human rights-based policies against COVID-19 aggravates the epidemiological problem as well as the social consequences of the diseases (ibid, p. 20; Kirkpatrick and Cabrera 2020).

The story of the COVID-19 pandemic is also one about people in cities. According to the United Nations, cities have borne the brunt of the crisis (United Nations 2020b). In the context of urban areas, the pandemic imposed some of its most severe consequences, especially in the early days of outbreaks, when non-pharmaceutical interventions such as social distancing policies were the fundamental tool to fight and prevent COVID-19. A rising research agenda focuses on the patterns of intergovernmental interaction in the policy effort against global health emergencies such as the COVID-19. Faced with the challenge of COVID-19, many local governments came up with alternatives to the approaches enacted by governments at all levels, from national, federal or central instances to local, regional, state or municipal instances. About 90% of the reported cases happened in urban areas (United Nations 2020a, p. 5), and a generous portion of the collective action that addressed the pandemic's challenges was led by governments and, especially, subnational governments. From New York City to Nairobi and São Paulo, Mayors played a significant role in enforcing critical dimensions of the overall national policy response.

It was not long before it became clear that the pandemic was an urban phenomenon. While the outbreaks imposed overwhelming hardships for human rights everywhere, the virus thrived predominantly in large unequal urban communities – and such an unprecedented landscape provided an exceptional stage for local and State governments to thrive or fail in their politics and policy. Wuhan, China, the first urban area hit by Sars-CoV-2, the policy response was led by China's central government, but its implementation was the responsibility of the provincial and local governments (UNCDF 2020, p. 4).

On the one hand, over the past decades, the rise of decentralised paradigms of governance and a shift in the international human rights agenda from codification towards realisation was already bestowing upon cities the burden of realising human rights (Oomen 2016, p. 2). On the other hand, in 2020, such a historical process was stretched to its limits,

as the emergency solution for a pandemic – a global problem by definition – was framed primarily in terms of local actions, such as social distancing, lockdowns and other limitations in the right to the city.

Human rights in law, cities and beyond

The concept and handling of human rights in this chapter

A concept of human rights

Our hypothesis is that the human rights discourse contained within the policies that São Paulo City government enacted to fight the pandemic provides insights into the dynamics of Brazil's local and national politics. The analytical key to grasping such discourse is to frame human rights beyond its explicit manifestation in written law, but as *language-structure*, following O'Byrne's (2012a, 2012b) concept. By using sociology in order to understand human rights, it becomes possible to study it as a language, 'an institutional framework within which meanings are negotiated and practices formalised (2012a, p. 832)', while also enabling the study of power struggles inherent in such negotiation of meaning and even how specific actors operate within that framework (ibid). By mobilising such a sociological approach, therefore, we can frame more accurately how each political actor engaged – the City Hall, the City Council, the federal government and civil society – made the choices for policies and words in the midst of a fierce political struggle during the pandemic.

Also, from the standpoint of human rights theory, this chapter associates the concept of human rights to a social-constructionist perspective, in which human rights is a social institution and, as such, is framed in history, culture and politics, following Waters (1996) general definition.

Human rights and discourse analysis

To operationalise the approach to human rights as a social institution, we employ critical discourse analysis. In our effort, São Paulo's policy response to the pandemic and its human rights component are framed as discursive events. Such a framing of human rights in terms of discourse is long and rich in scholarship. Grigolo (2019, p. 8), for instance, argues that the very process of signifying human rights and attributing human rights meaning to a given social fact is a discursive process. Borrowing theoretical ground from Foucault (2008) and Bourdieu (2014), Grigolo links the concept of human rights to discourse, stressing the importance of apprehending the social conditions of discourse production as a fundamental input to discourse analysis at large (Bourdieu 2014, p. 15). At the same time, Grigolo also notes how Bourdieu and Foucault (2008,

p. 19) acknowledge discourse as both descriptive and constitutive of social reality.

In studying the practice of human rights by states – namely São Paulo City Hall, a local government institution – the concept of discourse can also be useful in allowing the identification of discourse in *public policy*. Operationalising the notion of discourse in policy studies, Schmidt's (2008, 2010) discursive institutionalism identifies discourse as a set of ideas and their context, which manifest either as *policies* proposed by policymakers; or as *programmes* that gather paradigms orienting policies; or as *philosophies* that convey worldviews which orient policies and programs. Fischer (2003) frames the very notion of public policy as a discursive construct, invoking the concept of discourse in an effort to bring policy studies closer to the reality of politics and away from an excessively objectivist approach of empiricism (p. 68) which would render policy analysis useless.

But it is through the lens of Fairclough's (1992) *text-oriented critical discourse analysis* (TODA) that it is possible to better grasp the human rights substance contained in *language*, in this case, the legal text of São Paulo's policy responses. In Fairclough, discourse is necessarily tied to language, whereas Foucault's concept of discourse entails many other manifestations of social institutions. Despite such meaningful differences, crucial theoretical assumptions of TODA, such as the role of intertextuality as a crucial shaper of meaning and the power of discourse to constitute reality while also describing it are contributions from Foucault's (1971) early archaeological work. In Fairclough's TODA, moreover, critical discourse analysis focuses on discursive events as its unit of analysis, which are essentially three-dimensional. As such, *discursive events*, the object of critical discourse analysis, take the form of a piece of *text*, where language elements of discourse are more obviously assessed; while also being part of a *discursive practice*, where the circumstances of text production and distribution are perceivable and part of a *social practice*, where one is able to draw information about the social, cultural and institutional circumstances of discursive events (p. 4).

Fairclough's critical discourse analysis has been successfully employed in studying the human rights discourse in the context of Brazilian politics. Cavalcanti and Ferreira (2020) have parsed the human rights content of President Jair Bolsonaro's speeches by combining Fairclough's (1992, 2003) and Laclau and Mouffe (2015) analytical tools to conclude that, at least in the selected corpus, President Jair Bolsonaro is actively trying to attribute new meaning to human rights through discourse.

In this inquiry, we are dealing primarily with the human rights behaviour of a governmental actor, namely São Paulo City Hall. It is useful to emphasise that, while the concept of human rights mobilised in this study encompasses the discourse, the language and practice of human rights beyond its explicit manifestation in written law, this study does

rely on legislation as one crucial empirical input for the assessment of São Paulo's policy responses to the COVID-19 pandemic. In this methodological approach, therefore, analysing written municipal legislation is useful, not as the exclusive substance of human rights discourse, but as one of the ways through which one particular state actor – the São Paulo city government – speaks human rights as a language.

The politics and policy of localising human rights

This chapter bases the issue of localising human rights on two fundamental theoretical perspectives. First, while we do not forfeit the vast scholarship on the human rights mobilisation by urban actors, such as social movements and right to the city advocates analysed in Friendly (2017), Landy (2013), Stammers (1999) and Riethof (2017), this study looks at the local mobilisation of human rights in the context of COVID-19 from the standpoint of duty-bearers, namely São Paulo City Hall. The crucial inspiration comes from Ulrich (2011) and the research on the challenges of integrating human rights within mainstream bureaucratic cultures (p. 338). In particular, this chapter relies on the premise that human rights localisation is a matter of 'building a human rights perspective into public policy making and administrative procedures at all levels of governance (p. 337)'. Ulrich's perspective becomes suitable when dealing with the concrete challenges of realising human rights in the context of the local governance of a developing country. Moreover, the case in point, a big city (São Paulo) in a developing country (Brazil), presents the particular challenge of localising human rights within a political context in which the scepticism of which Ulrich (p. 341) talks about is the official ideology of the federal government.

In this sense, this study offers contributions to the framing of how human rights is practised in the realm of public administration, by the hand of policymakers and street-level bureaucracy. This 'top-down approach' to the localisation of human rights focuses specifically on its practice on contexts not explicitly demanded by written administrative law. Ulrich links such perspective with the broader research agenda on the mainstreaming of human rights, also mentioning how the focus on human rights integration has not been particularly looked at through the lenses of human rights localisation:

> Given the central role attributed to policy makers, public office holders and other actors in positions of power, this overall agenda may be described as a top-down approach to the localisation of human rights, and it may accordingly be argued that a comprehensive human rights strategy requires a combination of bottom-up and top-down strategies with a central focus on the grey zone in between where actions may or may not succeed in linking up.
>
> (Ulrich 2011, p. 343)

Our effort, therefore, merges research agendas on the phenomenon of mainstreaming human rights, looking into the practice of human rights by a governmental actor (a 'duty-bearer'), and the localisation of human rights, by focusing on São Paulo as a human rights city

Second, once the duty-bearer in point is a city government, this Chapter also uses the concept of human rights cities as laid out by Oomen and Baumgärtel (2014), as 'an urban entity or local government that explicitly bases its policies, or some of them, on human rights as laid down in international treaties, thus distinguishing itself from other local authorities (p. 710)'. The concept shifts the centre of the human rights discourse from its enunciation in written law to its realisation in public policy, rising urban landscapes and the street-level bureaucracy of their governments to prominence. This study's focus on human rights realisation within public policies, thus beyond the legal codification process that is typical of national legislative bodies, also singles out the city as the preferred locus of observation, once 'cities increasingly form the level at which rights need to be realised (Oomen and Van Den Berg 2014, p. 166)'. Similar to the concept of human rights here invoked, human rights cities are not a formal concept, but also a social institution, a practice (Grigolo 2019, p. 14). Throughout the discourse analysis deployed, the concept of human rights cities will also arise in the form of one of the Foucaultian orders of discourse to inform the enunciative modalities of São Paulo's policy response to COVID-19.

Social theory and public policy scholarship have noticed that globalisation and contemporary urbanisation have been transforming cities into privileged places for autonomous policy-making in transnational agendas. Besides human rights realisation, other meaningful examples are climate change and economic development (Barber 2013). Among the reasons for that trend, cities in different national realities can be very similar in many of their challenges and opportunities (ibid, p. 40). It is within that context that recently Koh (2018) has invoked the example of US cities in resisting in counterstrategy against Donald Trump's policy to withdraw from the Paris Climate Agreements, drawing from the concept of transnational legal process (Koh 1996), modernly defined as 'a hybrid body of international and domestic law developed by a large number of public and private transnational actors (Koh 2018, p. 6)'. Similarly, when it comes to human rights in the urban landscape, cities rise to prominence, among other reasons, for being perceived as an instance of government particularly close to issues and communities around which human rights are mobilised (Grigolo 2019, p. 14). The growing trend is to see cities as the main stage of development and inequality. The context of the COVID-19, a global problem with profound local implications, proved to be a privileged opportunity for cities to engage in policies aligned to international human rights law consensus but divergent from national policies towards the disease.

Methodology and data

The empirical input for our discourse analysis comprises 491 pieces of municipal legislation enacted by City Hall between March and October 2020 with the specific goal of tackling the pandemic. In order to better grasp the meanings within that corpus, a compilation of the shorthand notes for 114 City Council plenary floor sessions held within that timeframe helps the interpretation of the political struggles that culminated in actual policy. The municipal legislation's data was collected from São Paulo City Hall's official legislation portal, a website for cataloguing the whole body of norms that governs the City's administration. The corpus includes Municipal Laws (statutory norms produced by the City Council and enacted by the Mayor); Decrees (administrative measures enacted by the Mayor); Ordinances (or 'Portarias', administrative measures issued by the City Hall's Departments and Secretariats); Normative Instructions (administrative measures issued by Secretaries); Resolutions (administrative measures issued by the City's collegiate organs); Notices and Announcements, (or 'Comunicados' and 'Anúncios', messages formalised by the City's Departments); Technical Notes (technical messages formalised by the City's Departments); Internal Orders issued for internal management of the City's administration; Legal Opinions issued by the Secretariat of Justice or the Office of the City Attorney General. The Legislation Portal from which the corpus was collected is run by the Secretariat of Civil House ('Secretaria da Casa Civil'), the City's department with the mandate to engage in dialogue with the City Council and manage the norms that govern the City's administration. The shorthand notes were collected from São Paulo City Council's newly inaugurated database of City Council people's speeches, SPRegistro Consulta. The corpus includes Ordinary Sessions, Extraordinary Sessions and Free Tribune sessions.

Before diving further into this Chapter, it is essential to acknowledge that so far, there is not enough evidence to assess the long-run impact or effectiveness of the policies enacted by any governmental actor against COVID-19. At this point, there is not enough data to assess if São Paulo's policy effort did mobilise human rights to its fullest extent possible.

Finally, it is also crucial that the Author clearly states his positionality as an observer of Brazilian and São Paulo's politics. The Author of this study has spent time working as a policy-maker at São Paulo City Hall, at the Secretariat of Human Rights and Citizenship and at the Secretariat of Sports and Leisure, between 2017 and 2019, and has also been a registered member of the Party of Brazilian Social Democracy (PSDB), Mayor Bruno Cova's political party.

São Paulo as a human rights city

While the Brazilian Constitution does not explicitly mention human rights as a municipal attribution, the competency for the realisation of a number of fundamental rights is either shared with municipalities or

attributed exclusively to city governments. Federal, State and Municipal governments share the powers 'to provide for health and public assistance, the protection and safeguard of handicapped [sic] persons' and 'to fight the causes of poverty and the factors leading to substandard living conditions, promoting the social integration of the unprivileged sectors of the population (Supreme Federal Court)'. However, it is in the exercise of municipalities' competence to legislative on 'matters of local interest' (ibid) that cities like São Paulo exercise the bulk of their human rights mobilisation.

The first formal acknowledgments of human rights as an informative framework of São Paulo City Hall's policymaking date back to the early 1990s. In 1991, Mayor Luiza Erundina's administration (1989–1993), the first under the new constitutional regime, created the Special Advisory for Human Rights and Citizenship with the mandate to inform policies for women, black people, elderly people, disabled people, children, youth and 'other segments of the populations vulnerable to social discrimination.' Throughout the following administrations, virtually every Mayor authorised substantial improvements to the City's human rights policy framework, from right-wing Paulo Maluf's (1993–1997) support to legislation including 'Basic Human Rights studies' in the curricula of São Paulo's schools, to Mayors José Serra (2005–2006) and Gilberto Kassab (2006–2013) enactment of human rights realisation policies such as the Reference Center for Human Rights in the Prevention against Racism and the City's Commission for the Eradication of Child Labour. It was in 2012, however, under Mayor Fernando Haddad's administration (2013–2017) that São Paulo's Human Rights Commission and the City's Department of Participation and Partnerships were merged to form the Secretariat of Human Rights and Citizenship (SMDHC), currently the highest level of governance of São Paulo City Hall human rights policy.

Under the leadership of SMDHC, the governance of São Paulo's human rights policy refers to international human rights law and relies heavily on international partnerships. The organising Decree for SMDHC explicitly determines that the City's human rights policy must observe 'the international covenants which Brazil is a signatory' and authorises the establishment of partnerships 'public and private entities, national and international, with a view to promoting projects aimed at the realisation of human rights, citizenship and social participation, in the areas related to their attributions'.

SMDHC acts in partnership with the Secretariat of International Relations (SRI) to manage São Paulo's commitment to many international human rights treaties and global city networks, such as the United Cities and Local Governments Committee on Social, Inclusion, Participatory and Human Rights and the 'Rainbow Cities' network. The City Hall also has an established tradition of partnerships with international organisations in policy implementation, such as Technical

Cooperation Agreements (e.g. the partnership with UNICEF for policies for vulnerable children and adolescents in urban areas, in the context of the Urban Centres Platform).

From a political perspective, São Paulo's tradition in international human rights policymaking has historically laid context for the City's engagement in world affairs, sometimes contrasting with the Federal government's approach. Among the most recent examples on the health-care front, São Paulo commits to the Paris Declaration against the HIV-AIDS pandemic, which aims at achieving the 90-90-90 Targets and positioning cities on a trajectory towards getting to zero new HIV infections and zero AIDS-related deaths (Covas 2019).

São Paulo's policy responses to COVID-19

Actions by São Paulo City government

The first confirmed case of Sars-CoV-2 in Brazil happened in São Paulo in late February (Rossi and Oliveira 2020). Although the World Health Organisation still had not labelled the spread of Sars-CoV-2 as a pandemic at the time, São Paulo's Secretariat of Health (SMS) was engaged in structuring and preparing for an unknown event as early as January 10. As the ultimately responsible for governing on matters of local interest in São Paulo, the City Hall enacted strict social distancing measures as early as March, when the first municipal rules suspended on businesses such as stores,[1] markets, service providers, allowing only for take-out or delivery services. Ordinances consolidated individual recommendations for essential services,[2] and demanded that hand sanitisers were made available in every essential service business still operating. On the health-care front, the Secretariat of Health issued a plethora of specific, technical norms with instructions for primary health care in the City's public hospitals.[3] São Paulo City Hall made a 35 million BRL investment in the construction of two emergency Field Hospitals in the Pacaembu Stadium and in the Anhembi Conventions Center, run by Albert Einstein Beneficent Society, a Social Organisation (OS), with 2,000 (two thousand) low complexity beds destined exclusively to COVID-19 patients.[4]

The Secretariat of Human Rights and Citizenship played a transversal role across the entire set of policies enacted against COVID-19, by both enacting its own policies and providing human rights orientation in the policymaking process by other branches of the City's administration, specially through Normative Instructions and Ordinances with recommendations to other branches of the city government. For instance, through a set of Ordinances, SMDHC issued specific orientations for dealing with COVID-19 in nursing homes and preventing infections in older persons.[5] Mindful of more vulnerable demographic groups, the Secretariat of Health issue technical documents with specific recommendations for

preventing and controlling the virus in disabled people, invoking the Brazilian Law of Inclusion (Federal Law 13146/2015), which imposed on the Brazilian State – federal, state and local governments – the responsibility for human dignity of the disabled person throughout all of their life.

The City's educational system anticipated school vacations,[6] while making sure students at home would keep getting the food supply they were entitled to in school,[7] also structuring some level of curricula continuity in future, socially distanced sessions.[8] In September, as Mayor Covas considered the reopening of schools, again the Secretariat of Human Rights and Citizenship was called took action, signing a Public Note[9] with the City's Council for the Rights and Children and Adolescents (CMDCA, a social participation instance with budgetary powers for child-care policies), stating that 'the right to life is inviolable according to our Constitution and the Statute of the Children and Adolescent and for these reasons we defend that the reopening of public and private schools be postponed to a moment in which the minimum criteria established by the World Health Organisation is met (São Paulo 2020)'. In the meantime, the Secretariat of Education designed a focalised emergency policy for providing parents with the money to buy the food that their children would get while in school.[10] The organising Normative Instruction for the policy referred to São Paulo's Municipal Policy Plan for Early Childhood. With the input of UNICEF, SMDHC also issued specific protocols to Tutelary Councillors[11] (elected street-level bureaucracy entitled with the mandate to enforce welfare policies for children and adolescents).

Almost as intensive as the immediate health related measures, the economic relief effort led by the City Hall also addressed the side effects of social distancing measures on lives and livelihoods, echoing the approached endorsed in UN's human rights risk assessment. Garbage collectors were kept being paid[12] and allowance duties for social rent housing were put on hold.[13] Aware of the negative impact that stay at home measures have on domestic violence indicators, the City's administration started demanding from future contractors that at least 5% of its personnel was composed of women participants in the 'There is a Way Out' program ('Tem Saída'),[14] a previously existing policy for women victims of domestic violence, while also creating an emergency focalised policy of rent subsidies for poor women victims of domestic violence. Tax debts were temporarily suspended.

Interaction with other city stakeholders

In early April, the City Hall formalised its participation in the Solidary City Project,[15] a basic supplies and foodstuff donation program led by São Paulo's civil society to help the most vulnerable people in the face of the pandemic. The Executive Secretariat of the project was entitled

to SMDHC, and its Managing Committee was made of representatives from the city government, private and non-profit sectors. The project management was funded both by the City's budget and private donations. Private donations were targeted through the focalising framework of the previously existing Food Bank Program under the management of São Paulo's Secretariat of Labor and Economic Development (SMDET). The organising Decree of Solidary City authorised the City Hall to perform a partnership with the Red Cross for boosting the initiative's storage or distribution capacity, and placed the program – and its Managing Committee – as the manager of the donations made through a Public Call Notice issued under the very Municipal Decree that declared a state of emergency in the City. Also in the context of the Solidary City Program, the Secretariat for Disabled People (SMPED) engaged in active listening with the NGO's that manage the City's programs for disabled people and upgraded the City's BSL (the Brazilian sign language) app, providing quality information on COVID-19 for deaf people. As previously mentioned, the City Hall's participation in the Solidary City was regulated in a Decree that put together a Management Committee[16] made of almost 20 of Brazil's leading non-profit organisations. The Secretariat of Health also established a Technical and Scientific Committee composed by publicly known physicians.

In order to bolster the political support of the City's policy effort, a number of ad hoc participatory fora was enacted, to provide the City Hall with political and technical advice. A Technical Desk,[17] composed by professional associations and unions such as the government employees union ('SINDSEP'), professional associations of nurses ('COREN' and 'SEESP'), physicians ('CRM' and 'SIMESP'), community health agents ('Sindicomunitário'), physiotherapists and occupational therapists ('Crefito') pharmaceuticals (CRF), as well as the Brazilian Bar Association ('OAB'), was put together for the discussion and monitoring of the development of the pandemic and with the explicit goal of ensuring collective support to the effort of fighting COVID-19. A Chamber of Institutional Integration[18] was assembled for consolidating dialogue between public authorities, including the Mayor's top aides, such as the Chief of Staff, and the Secretaries of Government, Justice and Health, and the leadership of the city's legislative body, and the whole body of Councilmen from the Municipal Audit Court ('TCM'). Among the several ad hoc participatory fora were also the Inter-Secretariat Executive Group,[19] which served as a quick-response cluster within the City administration for planning and monitoring São Paulo's response. The Secretariat of Sub-prefectures put together a Data Management Group[20] for the analysis and proposition of indicators to support the decision-making process regarding the funerary services, composed by professors from the University of São Paulo (USP), the Federal University of ABC (UFABC) and the State University of São Paulo (UNESP).

The Secretariat of Transportation (SMT) assembled a Task Force[21] to address preventive and repressive measures against COVID-19 in the city's public bus system, made of staff from SMT, the City Hall public company that provides the bus system (SPTrans) and the city's contractors ('Grupo Local de Distribuição'). When the time came to regulate Federal Law 14017/2020 that provided emergency economic relief for the cultural industry, the City Hall gathered a Commission for Monitoring and Execution[22] the city's compliance to the statue, made of civil society representatives and government representatives.

As for the transparency policies, the City Hall imposed on each public and private hospital in the city the duty to provide information on the number of operational and occupied ICU beds, as well as the suspected and confirmed COVID-19 cases through a digital platform, on a daily basis.[23] The City Council enacted a Municipal Law[24] regulating the City Hall's compliance to data privacy principles, such as the anonymity of data, simple language and establishing the City Hall's obligation to publish updated information on the overall indicators of the pandemic, such as the number of suspected cases, the amount of PPE, tests and ICU beds available, prevention protocols, the number of daily burials, among others.

São Paulo City Parliament

Complementary analysis from the City Council's floor meetings indicates that the parliamentary body of São Paulo city engaged in the policy-making process of responding to COVID-19 on the local level, providing commentary and policy recommendations to the city government. The Mayor's legislative agenda conquered the Council's support in the overwhelming majority of votes, which does not necessarily indicate the chamber's proportional support to each and every one of the policies enacted, but rather that the city parliament followed the historical success rate pattern laid seen in Brazilian national parliament (Limongi 2007). The most insightful evidence on the Councilmen and Councilwomen's thoughts on the City Hall's policies against COVID-19 is drawn from the lack of consistent and procedural opposition to the city government's bills addressing the pandemic during debates held on the chamber's floor. Notable exceptions include the left-wing opposition to the re-opening of schools, mostly voiced by representatives of the Socialism and Liberty Party (Partido Socialismo e Liberdade – PSOL), such as Councilmen Celso Gianazzi. On the right-wing side, Councilman Rinaldi, from President Bolsonaro's former party PSL – Social Liberal Party (Partido Social Liberal), engaged in criticism of the City Hall's strict social distancing enforcement policies. Meaningful criticism was also drawn after Mayor Covas' experimental policy of expanding limitations to the circulation of vehicles based on their licensing plates, especially by Councilmen Camilo Cristofaro, from PSB – Brazilian Socialist Party.

Throughout the timeframe analysed, research on the City Parliament's discussions log indicates that the policy debate which most actively mobilised Councilmen and Councilwomen dealt with the implementation of a Universal Basic Income (UBI) policy provided by the municipality. After a national debate led by Jair Bolsonaro's opposition at Brazil's National Congress managed to enact a monthly emergency stipend for the country's poorest citizens, the agenda spread across state and municipal politics. Months after it was sanctioned into law by President Bolsonaro, São Paulo's parliament engaged the policymaking of its own monthly emergency aid. In São Paulo, however, unlike the initial debate held in Brasília, the merit of the policy was never seriously challenged by either political forces in Parliament. Rather, it was the authorship of the city's stipend policy and the amount of money that should be made available for each citizen that triggered partisan struggle between city government-aligned lawmakers and the opposition. Albeit UBI policies were the historical and most distinctive talking point in the agenda of one of the opposition's most prominent lawmakers, Councilman and former Senator Eduardo Suplicy, the bill wounded up approved in the terms of the city government's choices, due fundamentally to formal legislative initiative rules on the topic, which required it to be proposed by the city government only.

Human rights discourse in São Paulo's policy response to COVID-19

Critical discourse analysis provides the theoretical tools for understanding the complexity of political discourse through language. When it comes to policy enacted in written law, drawing from Fairclough's social theory of discourse enables us to see the dialectical relationship between discourse and social structure, as they both constitute each other. Using Fairclough's (1992) three-dimensional approach to discourse analysis, São Paulo's policy response to the pandemic can be framed as a discursive event. The political and ideological struggle that followed the country's social unrest over the unpredictability of COVID-19 constitutes its social practice, and the municipal legislation that enacted São Paulo's response is one of its discursive practices, which is textually expressed in the selected corpus.

The social practice

Like previously mentioned, the works of Cavalcanti and Ferreira (2020) have helped understand the context that defines the social practice within which human rights play a key role in Brazilian political dynamics. O'Byrne (2019) lays the investigative groundwork for the hypothesis that what he calls neopopulism – the ideology of leaders like

Donald Trump and, in this chapter, Jair Bolsonaro – is engaged in a 'war on human rights' rooted in its commitment to deglobalisation. At the heart of the 'war on human rights', the discursive struggle to change the meaning of human rights towards 'a signifier for a broader culture of inclusion that puts 'the Other' on a par with everyone else (p. 11)'. Ever since 2019, Brazilian Federal government under President Jair Bolsonaro has slammed human rights discourse as 'globalist' and 'leftist' conspiracies (Casarões 2020, p. 83). The hostile rhetoric is ranted especially in international fora, as Brazil's several actions targeting 'non-governmental organisations and humanitarian activists' and reversing Brazil's vote on reproductive health rights and gender issues (ibid, p. 84) illustrates. The efforts of Brazilian courts and National Congress to resist the Federal government's 'anti-rights agenda' that would 'put vulnerable populations at greater risk' have been duly noticed by experts (Human Rights Watch 2020, p. 83).

In the case of the COVID-19 pandemic, Brazil's Federal Government downplayed the seriousness of the pandemic and faced strong international and domestic backlash. Health-care experts have criticised Brazil's lack of seriousness (The Lancet 2020), as the Federal Government's discourse framed the hazards of COVID-19 fundamentally in terms of the economic downturn prompted by the social distancing measures to prevent and control the spread of the disease, to the detriment of immediate health-related concerns.

As background context, the Brazilian constitution frames access to health as a fundamental right and also bestows upon municipalities the burden of providing primary attention and basic health care. The policy arrangement reached above the average results, as Brazil's Unified Health System ('SUS' or 'Sistema Único de Saúde') vastly did manage to provide primary health care to citizens on the local level, an impressive accomplishment even for developed world standards (Varella 2019). Nevertheless, only now, more than thirty years after federal legislation started setting the standards of SUS, would the health-care structure of São Paulo face its toughest test.

The discursive practice

On a second, discursive practice-driven analysis, while the corpus shows no significant manifest intertextuality with São Paulo's human rights law (as different Decrees and Municipal Laws refer mostly to the policy effort itself), the politics of São Paulo's policy response to the COVID-19 pandemic cannot be properly understood without a careful look into the *constitutive intertextuality – or interdiscursivity –* that characterises the discursive practice of the legislation that enacted it. For Fairclough, the concept of interdiscursivity relates to how a given discursive event draws its meaning from external orders of discourse, following Foucault's (1971, p. 15)

definition for the term. Such interdiscursivity draws from two different orders of discourse: the dynamics of contemporary Brazilian politics and São Paulo's policy framework as a human rights city.

In April, when Brazil's toll of COVID-19 related deaths exceeded that of China, President Jair Bolsonaro ranted an aggressive response in a press conference on the topic after being told the news: 'So what? I am sorry. What do you want me to do? I am Messiah, but I don't do miracles', Bolsonaro (2020). In another press conference, when asked how many people had already died from the disease in Brazil, the President's angry answer was that he was not a 'gravedigger'. Just a few days after, Mayor Bruno Covas issued a Decree formalising an official 3-day mourning period in São Paulo for the victims of COVID-19, as the city beat the record of 1,000 deaths from Sars-CoV-2.

When talking about the dynamics of discursive distribution and consumption, Fairclough (p. 85) sets precisely the example that government departments usually produce text in a way that anticipates their distribution, transformation, consumption and their potentially multiple audiences. In that sense, while São Paulo's bureaucracy was indeed the 'addressee' (those directly addressed, ibid, p. 87) of the legislation that enacted the municipality's response, other stakeholders such as Brazilian national media played the part of 'hearer' (those not addressed directly, but assumed to be part of the audience), to the extent that it reported on the City's policies to the public. At the same time, both the media and public opinion also functioned as of 'over-hearers' (those who do not constitute part of the 'official' audience but are known to be de facto consumers), to the extent that the difference between the approaches from São Paulo and Brasília was noted and commented on in Brazil's media outlets.

Again, with Fairclough (p. 80), the interpretation and consumption of a discursive practice is a multilevel or 'bottom-up-top-down' process. Lower-level units of the discourse help inform the interpretation of its higher-level units and vice-versa. In the case of the legislation that enacted São Paulo's policy response to COVID-19, the interpretation of lower-level units, such as every individual Ordinance and Decree, relied on predictions about the meaning of higher-level units that existed before them, such as São Paulo's vast array of previously established human rights policy framework.

When it comes to the corpus' coherence as the feature of a text whose constituent parts are meaningfully related (ibid, p. 83), São Paulo's previously established commitment as a human rights city shaped the interpretation of the legislation that enacted the City's policy response to COVID-19, providing the city's bureaucracy with ideological assumptions that overcame ambivalences in the text. In that sense, the analysed 491 pieces of legislation became additions to a previously existing 'chain of speech communication' (in Bakthin 1986, p. 94) about human rights

law and language in the city's policies. Even more significantly, in terms of distribution, the corpus was communicated as part of a stable and already established network of municipal regulations.

The text

Finally, on a text-driven dimension, a detailed look at the corpus' choices of grammar, cohesion and, especially, vocabulary explains how São Paulo City Hall made the political choice of mobilising human rights in their policy response against COVID-19. While President Bolsonaro refused to wear a mask in public and failed to enforce such preventive measure among his supporters, Mayor Covas took the opportunity to issue Decrees 'recommending' masks to the citizens of São Paulo, even though municipalities have no powers to enforce such measures under the Brazilian constitution. Further Decrees also recommended that private businesses allowed employees over 60 years old to stay at home, and that grocery stores made sure that products were delivered fully packaged to customers. The choice for recommendations, rather than impositions or any other enforceable statement, could suggest the City's willingness to fill a policy vacuum left by the Federal government in one of the most crucial dimensions of the human rights impact of COVID-19.

To the extent that it did have constitutional enforcement powers, however, the City Hall issued continuous norms imposing the use of masks for passengers and employees of the City's public transportation system, urban cleaning and infrastructure contractors, garbage collection service employees contractors and general administrative contractors. As the ultimate responsible for governing on matters of local interest in São Paulo, the City Hall enacted strict social distancing measures as early as March, when the first municipal rules suspended in-person activities on businesses such as stores, markets, service providers, allowing only for take-out or delivery services. Ordinances consolidated individual recommendations for essential services, and demanded that hand sanitisers were made available in every essential service business still operating.

Conclusions

The São Paulo City Hall mobilised the human rights discourse in its policy responses to the COVID-19 pandemic, both as a political statement of opposition against Brazil's Federal government approach to the very same challenge, and as a tool for the legitimisation of the city's administration choices. A particular focus on the social practice dimension of the discursive event shows significant interdiscursivity as evidence of the city government's engagement with its own previous human rights legislation. Conditions put in place before the outbreaks, such as Jair Bolsonaro's hostile rhetoric against the human rights discourse, and

São Paulo's international positioning as a human rights city helped the City's engagement in a more explicitly human rights-based discourse as a critical informative input of his politics. The human rights discourse was mobilised not only as a policy compass – a philosophy, following Schmidt's (2008) terminology – but also as a political statement.

At the end of the day, São Paulo city government engaged in the effort of addressing the pandemic from its multiple dimensions, from immediate health-care actions to an economic relief agenda and *ad hoc* participatory fora in its policymaking process, virtually complying with the majority of the United Nations' human rights risk assessment concerns. Because of the multilevel, 'bottom-up-top-down' nature of discourse interpretation and consumption, the human rights mobilisation in São Paulo's punctual policy response to COVID-19 also culminated in the strengthening of the City's broader status as a human rights city as one of its side effects.

While São Paulo City Hall prioritised the health-care effort of the response to COVID-19, to the detriment of the economic impact of such measures in the lives and livelihoods of Brazilians living in São Paulo, the Federal government did the exact opposite, prioritising the health of Brazil's economy, to the detriment of the immediate health-care emergency. One could argue that both Covas and Bolsonaro's choices are correlated with the public's perception of the different administrative responsibilities of each public authority. On the one hand, Bolsonaro's Federal government is overwhelmingly perceived as the ultimate responsible for the country's economic policy – unemployment, purchasing power, exchange rates. On the other hand, Covas' City Hall, along with State and other City governments, are tasked with health-care (e.g. the availability and quality of hospitals), education (the management of school's closures) and matters of regional or local interest (issuance of permits and licenses). To a relevant extent, Mayor Bruno Covas had his sights set in his reelection campaign later in 2020, and so did President Bolsonaro acted considering the electoral impact of his choices in his 2022 reelection bid.

From the standpoint of discourse analysis, to a certain extent, the moment of COVID-19 offered a unique opportunity of what Fairclough (1992, p. 230) regards as a 'moment of crisis', moments in which practices which would normally be naturalised be seen as more visible, making the sampling of the corpus more intuitive. In São Paulo, the relevance of its previously established policy framework as a human rights city was brought to the spotlight by an unprecedented pandemic, a humanitarian crisis and a political contest. One could reasonably argue that other historical framings would not drive enough scholarly attention, as such moments 'make visible aspects of practices which might normally be naturalised, and therefore difficult to notice; but they also show change in process, the actual ways in which people deal with the problematisation of practices' (Fairclough 1992, p. 230).

Finally, it is remarkable to notice that the Federal's Government opposite approach to the global health emergency happened despite the vast and multiple and complex connections of the Brazilian national state with the international human rights system, a policy legacy of previous federal administrations. On the other hand, the concentrated effort made by São Paulo City Hall against Sars-CoV-2 turned out to also bolster São Paulo's status as a human rights city. As previously mentioned, Fairclough's view of as a multilevel process in which not only higher-level units orient the interpretation of future lower-level units of discourse, but also the other way around was perceivable.

The future holds new discourses and social practices in the face of COVID-19, in a growing plethora of intertextuality contexts. As for now, the only undisputed truth is that the potential and limitations of human rights mobilisation in urban contexts must not be taken for granted. It is time both practice and scholarship learned the lesson offered by the history of COVID-19 in our time.

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