Between Praxis and Paralysis: The Relationships Between Legal NGOs and Social Movements

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Recent critiques of those who work with/write about social movements have both focused questioning about the integrity of the relationship between middle-class activists/academics/NGOs and social movements. These critiques have often come from middle-class academics and activists who have worked with social movements in the past and who criticize the representation of ‘the Poor’ and social movements (e.g. Desai, Sinwell, Böhmke, McKinley). Meanwhile, neo-Critical Legal Studies (CLS) scholars (e.g. Madlingozi, Pieterse) question the relevance of a rights-based approach for achieving social change.

This paper will examine the tensions and benefits that emerge from the nexus between social movements and ‘support organisations’, in particular those using a rights-based approach and offering legal services, working together on socio-economic rights advocacy, research and litigation in South Africa. It argues that the critique clouds the real potential of such relationships, as well as their complexity.

Between praxis and paralysis there is in fact a broad spectrum of highly nuanced and negotiated relationships among legal organisations and social movements.

The legal NGO Socio-Economic Rights Institute of South Africa (SERI) takes the stance that – given the lack of genuine participatory democracy, local level account ability and significant change to the lives of poor South Africans – all efforts by poor people, communities and social movements to organise around these issues, should be supported. Instead of fear or paralysis what is required is entering into “messy” collaborations and ongoing interrogation. However, those individuals, communities and social movements who are holding government to account are fighting for not only a greater cause, but also struggle for material improvements to their and their families’ quality of life.

A brief overview of the current socio-economic/political context in South Africa

Since the African National Congress (ANC) came into power in 1994 with its post-apartheid promise of a better life for all, outlined in its Reconstruction and Development Programme (RDP), there have been some successes in improving the lives of formerly dispossessed South Africans. However, with its shift to neoliberal policies in the Growth, Employment and Redistribution (GEAR) strategy in 1999, many of these gains have been lost and the government has failed to establish a truly democratic state that promotes and achieves social justice and substantive equality for all.

South Africa is a middle-income country with impressive resources and infrastructure. It is also one of the most unequal societies in the world with inequality increasing since 1994, and suffers from pervasive structural poverty and extremely high unemployment levels.

While pro-poor government spending has increased over the years - with billions pumped into the education and health systems, grants and transfers to local government for rolling out infrastructure and subsidising basic services, and housing for poor beneficiaries – this spending has often been extremely inefficient and ill-targeted.

Instead, apartheid geography and spatial inequality in towns and cities persist and the housing backlog has increased. Yet the government continues to build (limited) houses far from social amenities and economic opportunities and evict others/relocate people to temporary holding camps. Other critical issues include the gentrification of inner cities, as well as the wide-scale bank repossession of township houses and eviction of poor families. Free basic services (subsidised water, sanitation and electricity) are national policy imperatives, however they are a local government competence. This decentralisa-
Social movements in post-apartheid South Africa

Around 1999 a number of post-apartheid ‘new social movements’ emerged in response to the implementation of the government’s neoliberal economic policies. These post-apartheid social movements largely comprised community-based organisations (CBOs) and included the Anti-Privatisation Forum (APF) and the Landless Peoples Movement (LPM) in Johannesburg, the Western Cape Anti-Eviction Campaign (AEC) in Cape Town and the Concerned Citizens Forum (CCF) in Durban.

For communities to mobilise against ANC councillors, policies and democratic rule was unprecedented, and these movements received attention both locally and internationally. Initial actions were largely reactive and sought to ameliorate the worst and immediate excesses of government policy, such as evictions and disconnections from water and electricity (Tissington et al 2008).

Critiques of social movements and cross-class collaborations

Recent critiques of cross-class collaboration between these social movements and middle-class activists/intellectuals have tended to place blame on both sides. Unsurprisingly, social movement critics are mostly those with first-hand experience, and their writing exhibits the frustrations, not only with the way in which they interact (or do not interact) with poor people’s movements, but also with the strategies of the movements themselves, and their failure at sharing their ideological direction effectively or at all (Walsh 2008; Böhnke 2010; Sinwell 2010).

According to Sinwell, the “Left has tended to assume that movements like the APF automatically challenge neoliberalism because the face of the forum’s leadership is anti-neoliberal” (Sinwell 2010). Instead of a romanticised depiction of social movements they are rather the potential sites for collaboration. It is the “friction between various forces” that Walsh argues “can open up the most unlikely spaces for change” (Walsh 2008: 267).

A deeper understanding of the relationships and dynamics between social movements and ‘allied professionals’ or ‘support organisations’, is undoubtedly necessary and important.

References

- Diani defines a social movement as ‘a network of informal interactions between a plurality of individuals, groups and/or organisations, engaged in a political or cultural conflict, on the basis of a shared collective identity’ (1992: 13). Social movements emerge when there is a pervasive mood of dissatisfaction among poor people, when formal institutions of governance are “insufficiently flexible” to respond to their problems (Della Porta and Diani 1999).

Figure 1: Macassar Village occupiers affiliated to Abahlali baseMjondolo protest in downtown Cape Town (May 2009). Photo: AbM
References (cont.)

On the one hand Walsh (2008: 256) argues, “middle-class activists, academics, aid workers and the Poor engage in sometimes damaging interactions and patronages”. On the other hand, Bond (2008: 273) states how “often it is the work of solidaristic intellectuals and progressive service organisations (sometime misnamed ‘NGOs’) to assist in strategising the terrain, connecting the dots, and liaising with others like-minded in potentially allied organisations.”

The urban-based shack-dweller movement, Abahlali baseMjondolo (AbM), has most recently come under fire for its alleged misrepresentation of its politics, as well as its relationship with academics, lawyers and other “sympathetic intellectuals’ who reinforce a “romanticised myth” about the movement (Böhmke 2010a; Sinwell 2010). Much of this criticism has been in the wake of attacks on the movement and its leaders in Kennedy Road in September 2009, which occurred with the alleged complicity of the police and local ANC branch structures (Böhmke 2010; Chance 2010). These attacks which left two people dead and forced an estimated thousand people from their homes, have come under scrutiny from a number of individuals, and are subject of a current court case. Sinwell (2010) argues that the “Left needs to be careful not to over-romanticise their contribution to a more democratic South Africa”, referring to social movements like AbM. He appears troubled about the lack of direction within current movements and argues that “the demand to think, speak and act on behalf of oneself does not necessarily challenge the neoliberal status quo.” He also expresses the “danger that focusing solely on repression and police brutality arouses emotions, thereby blurring our vision and hiding the nature of the movements themselves” (Sinwell 2010).

Social movements have historically expressed distrust towards middle-class academics and NGOs. According to an APF statement in 2003 the “humanitarian concern” of NGOs was accused of “creating the moral framework for the conduct of capitalism”, their emergence as a “neoliberal innovation.” While NGOs provided resources to communities it was argued, they “disempower or misrepresent the very people they assist” (APF 2003). These attitudes towards middle-class ‘do-gooders’ earning good salaries in donor-funded NGOs are understandable. Legal NGOs, as opposed to development or community organisation NGOs, have an added dimension in that they deal with rights as currency and the legal system as terrain. While a “middle-class activist’s” involvement is potentially philanthropic, an NGO’s involvement is usually more instrumental, in that they are dedicated to a specific task and are capable of carrying it through in a sustainable way. However, NGOs are important as they can assist in strategising the terrain, connecting the dots, and liaising with others like-minded in potentially allied organisations.

Critiquing a rights-based approach

Critiques of a rights-based approach are important as they raise important “sites of friction” or “new terrains of action” (Walsh 2008: 256) for socio-economic rights. More practically, they highlight some of the key issues that confront social movements working with legal NGOs in South Africa.

A central critique is that the rights discourse is entrenched within the liberal framework and “formulated, interpreted, and enforced by institutions that are embedded in the political, social, and economic status quo”, it serves to reinforce the status quo as opposed to being transformative in nature (Pieterse 2007: 797). McKinley (2010) further argues that there is a fundamental danger in an “uncritical acceptance of a purely legalised, rights-based approach/discourse to solving socio-economic injustice and inequality” in that it implies that a struggle can only “mitigate the injustice and inequality inherent in the capitalist elations but never move beyond this towards a revolutionary change in political, economic and social relations”.

According to Roithmayr (2010), the liberal perspective is that when human rights aspirations are not being fulfilled it is because a sound idea suffers flawed implementation. In contrast a radical critique of human rights suggests the entire rights project is flawed, because it legitimises neoliberalism and leaves in place the class structure that reproduces racial inequality in South Africa.

Madlingozi (2006: 8) argues that liberal analyses do not engage in any critical structural analysis of the system that reinforces inequality and structural poverty. Linked to this is the fear that the rights discourse in fact demobilises the radical, counter-hegemonic action of social movements and can have an unwelcome effect on their ability to engage in “extra-institutional actions” - e.g. direct protest action or civil disobedience (Madlingozi, 2007: 89).

Furthermore, it takes time and resources away from other mobilisation, as litigation is lengthy, expensive and intensive. This criticism has been levelled against the APF in the Mazibuko water rights challenge. However it has been shown that the litigation has the potential to reinvigorate movements and even impact broader struggles (despite a loss in court) (Dugard 2010).

Figure 2: Leaders of the shack dwellers movement Abahlali baseMjondolo celebrate their victory over the KwaZulu-Natal Slums Act in the South African Constitutional Court (14.10.2009). Photo: ABM

The role of the judiciary in enforcing rights claims

If communities and social movements choose a rights-based approach, their claims may very well end up in a court before a judge. Two arguments relating to the role of the judiciary revolve around legitimacy and competence i.e. what standing do judges have to make the kind of decisions they do, and are they well-placed and capable of making these kind of decisions. Dugard (2009) argues that as an institution, the judiciary has failed to advance transformative justice in critical systemic ways.

The judiciary has not warmed to its role as adjudicator of socio-economic rights claims, particularly those by poor people asking them to provide alternative accommodation, more water per month, access to sanitation

Figure 2: Leaders of the shack dwellers movement Abahlali baseMjondolo celebrate their victory over the KwaZulu-Natal Slums Act in the South African Constitutional Court (14.10.2009). Photo: ABM
etc. These all have budgetary implications for the state, are perceived to interfere too heavily with terrain of the separation of power between the judiciary, legislature and executive, and often require some kind of ‘content judgment’. The Constitutional Court, particularly, has been the most uncomfortable with this role and has implicitly stated that it will not rule on ‘minimum core’ obligations of the state (Liebenberg 2010: 163-183), while the lower courts appear more willing to engage with and interpret socio-economic rights appeals.

The reality is that courts rely on the state for the implementation of its decisions and being aware of this dependence has been vague in the definition it has given to these rights (Wilson 2010: 33). The hesitancy of judges to give content to rights is of concern to legal scholars and, more importantly, those trying to claim socio-economic relief through the courts. Pieterse (2007: 797) points to ‘counter-transformative tendencies’ of the judiciary and a dearth of progressive and bold judges, but also writes: “constitutional, legislative, or judicial articulations of socio-economic rights, in response to the demands of social movements, create a space for the audible expression of need, and as such have the potential to stimulate legal developments that lead to more encompassing definitions of rights” (Pieterse 2007: 822).

Lack of access to justice for the poor remains a fundamental barrier to transforming the ‘paper rights’ of the Constitution to reality for millions in South Africa. This is manifest in the elitist and alienating nature of the court system, the difficulties in accessing affordable, high-quality legal representation in the specialised field of socio-economic rights, the high costs of appeals and lengthy time span of cases. This critique is often advanced by those individuals, community-based organisations and social movements who struggle to access the law and engage in litigation.

While there may be legal NGOs and pro bono lawyers in large towns and cities, there is very little assistance available for those living in rural areas and small towns. Another problem relates to the type of lawyers and institutions required to facilitate access to justice around socio-economic rights. Conflicts between social movements on the one hand, and traditional legal services lawyers on the other, are often attributed to differing political orientation, understandings of class, social change and analyses of systemic inequality and oppression (Shah and Elsesser 2010: 1).

Moving beyond the critiques

For legal NGOs as well as social movements, there needs to be a shift to a praxis approach to using the law for social change (Wilson 2009; Dugard 2010). According to Madlingozi (2006: 8-9; 21):

“Legal academics can only play a role in progressive politics […], if they become part and parcel of the lives of those who are in the subaltern and periphery. Through participatory action research, legal academics can contribute to the solution by revealing the ideological distortions in society, by debunking assumptions, demystifying the law and human rights and by exposing the contingent and reified nature of inequalities.”

He further states that legal academics have the ability to expose the limits of law as a tool for social change by showing that the law imposes limits on the scope of democracy and can serve to depoliticise and remove crucial issues from the public agenda (Madlingozi 2006: 21).

Critically important is the recognition that the law is contested terrain that is constantly in flux and shaped by actors, mostly those with power and access to resources and legal expertise. In this sense, the court is just another “political venue” (Shah and Elsesser 2010: 4) and rights are less “established facts” than potentially useful “political resources.” Shah and Elsesser raise a number of important and pertinent points about the role of lawyers in community and social movement struggles including the need for:

• accountability, self-scrutiny and honest reflection around power dynamics between lawyers and communities;
• ensuring that rights are not mobilised in a purely individualistic way but focus on positive collective impact;
• ensuring the law is not viewed as a solution but rather as a ‘tactical tool’;
• stressing that winning is not everything (and often losing can be beneficial as part of a larger strategy);
• recognition that lawyers (and legal cases) often take up a lot of space and power can gravitate to lawyers so as to be vigilant about “managing and passing along power”.

Mckinley (2010), speaking from a social movement/community activist perspective, argues that “we need work/activism that combines a tactical legal approach with strategically defined grassroots struggles for more systemic change.” He recognises that the law is a “double-edged sword” and whereas oftentimes activists are drawn in on highly unfavourable terms e.g. arrest for protests which are deemed illegal, high bail posted etc, the law can be a “useful tool/medium to expose, defend and push back misuse, oppression and reaction” i.e. by getting interdicts against evictions.

For Pieterse, it is critical that the translation of socio-economic rights should not be a top-down process and he proposes an important role for litigants, activists, and social movements “in ensuring that conceptually empty socio-economic rights are awarded content ‘from the bottom up’” (2007: 829).

References (cont.)


Figure 3: 51 building committees linked to the Inner-City Resource Centre represent 8,000 poor tenants, many of them migrants, and fight against water and electricity cut-offs and evictions in the inner city of Johannesburg. Photo: K. Teschner, Miserere, 2010

Abahlali baseMjondolo Press Statement, “Once Again the Name of Our Movement is Being Abused by the NGOs” (14 May 2010). URL: <www.abahlali.org/comment/reply/6702>

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The Concerned Citizens Forum (CCF) was formed as a loose network of organisations in July 2001 in Durban to mobilise and coordinate residents and community-based organisations (CBOs) around evictions and services cut-offs in working-class urban areas, particularly Bayview and Westcliff, in the “Indian” township of Chatsworth (Dwyer 2004: 1). In practice, this involves a rethinking of how lawyers and social movements engage as well as a sober and creative reflection how courts and legal struggles can be used to effect social change.

**Between praxis and paralysis: experiences from SERI’s work with social movements**

The NGO SERI uses a rights-based approach and supports individuals, communities and social movements who are attempting to hold the state (mostly local government) accountable for service delivery. The organisation provides an explicit platform for rights-based campaigns by Abahlali baseMjondolo (ABM), the Anti-Privatisation Forum (APF), the Coalition Against Water Privatisation (CAWP) and the Informal Settlements Network (ISN). While these social movements work broadly on issues relating to access to land, housing and basic services, they employ very different strategies and tactics and have different leadership formations, organisational structures and decision-making processes which require different forms of engagement.

The relationship between SERI and these social movements takes various guises and is not purely one of ‘legal services provider’. However, legal advice and litigation capability appears to be one of the most sought after forms of assistance. While social movements are engaged in proactive campaigns around issues of land, housing and basic services there is a never-ending barrage of evictions, demolitions and cut-offs that social movements members face on a daily basis. For most legal NGOs in South Africa it is this defensive litigation that consumes much of their time and there is desire to move away from providing legal assistance on these cases. Desai (2008: 277) argues that while fighting evictions from shacks in court, are important defensive battles, “one can see how they do not advance a broader anti-capitalist struggle”.

There is a tendency of the ‘middle-class Left’ to criticise community-based movements because they are either ‘unstrategic’ or even ‘counter-revolutionary’. Thus, how do social movements move past this to more proactive and collaborative struggles that change the status quo?

SERI believes that defensive litigation can provide a very useful ‘way in’ to more proactive campaigns. One answer to the above question lies in coordinating more effectively around defensive legal issues together with social movements, other legal NGOs and pro bono legal services providers. The stakes are high when 400 inner city residents are facing imminent eviction, for example, however realistically it is very difficult to resuscitate an eviction order if there has been notice and some engagement. In this case what is needed is for a lawyer to be involved further in advance to challenge an application, or for there to be education and training on the applicable eviction law/procedure and how social movement/community leaders can access the courts and defend eviction applications without lawyers.

However, this would not change the fact that there is a fast-tracked process of gentrification occurring in the inner city or a local authority who sees no place for the poor there. Nor does this change the government’s market-driven approach to housing and the lack of redistribution of land in urban areas. Further, this does not change the property clause in the Constitution. SERI, together with those movements it supports, is involved at all these levels of engagement through its litigation, training, research, advocacy and policy engagement. SERI believes that cultivating relationships between lawyers/researchers and activists/communities/social movements, based on shared visions of injustice, transformation and social change, can be beneficial.

There is a broad spectrum of highly nuanced and negotiated relationships that occur not only between SERI and the social movements it works with but also for SERI in relation to the different movements and their ideological differences with each other.

**Unpacking the terrain between paralysis and praxis**

Social movements are engaging in legal struggles and proactive rights-based approaches because they produce results, which are not being gained elsewhere. In this process there are new terrains being navigated around issues relating to the strategy and tactics of social movements, leadership structures, the role of litigation and the legal process, and the ever-present question which relates to how social movements and legal NGOs work together most effectively in the struggle for the realisation of socio-economic rights for all, participatory democracy and government responsiveness.

An element of the critiques against social movements, particularly ABM, revolves around their so-called “turn to the law.” Böhmke (2010) questions the significance of ABM’s defeat of the KwaZulu-Natal Slums Act in the Constitutional Court. What this assertion inadequately recognises is that the Slums Act court case challenged a piece of legislation that legalised repressive and unlawful practices in the province, and was about to be replicated throughout the country. The victory in the Constitutional Court prevented this – although its effects are not obvious anywhere (that is the point). Interesting to note is that the lawyers representing ABM were initially hesitant to take on the challenge and did so on the insistence of the movement.

A further site of critique relates to social movements’ championing of *in situ* informal settlement upgrading, which Sinwell argues “essentially earns the right for the poor to remain in shacks and upgrade them” (Sinwell 2010). Statements which Sinwell argues “allows the government off the hook in brick and mortar delivery and is sly World Bank orthodoxy” (Böhmke 2010: 54). These assertions show a lack of understanding of the housing crisis, the nature of the government’s upgrading of informal settlement policy and implementation in particular, as well as dismissal of calls by shackdwellers to provide them with land and services vs. houses in far-flung areas.

Relationships between social movements themselves are by no means clear. For example, SERI supports both ABM and ISN and works with the latter’s Alliance partners SDI and CORC occasionally. ABM and ISN (through its affiliation to SDI) are ideologically opposed and do not work together closely even though they both advocate for *in situ* upgrading.


7 Interestingly, SDI publicly supported ABM’s challenge to the Slums Act in 2009. According to the coordinator of the secretariat, “SDI’s partnership with the State does not erase the contestation between those who want slum-free cities at all costs and those who want slum-friendly cities as a precondition for their incremental elimination. It simply locates the debate within the National and Provincial departments rather than the courts”. J Bolnick, SDI letter to The Witness (24 February 2009). URL: <www.witness.co.za/index.php?option=com_content&articleid=20089>

8 The Informal Settlement Network (ISN) is an alliance of national-level organisations of informal settlement dwellers. Since 2009, ISN, often in partnership with local authorities, has been planning incremental informal settlement upgrades. URL: <www.sassdialliance.org.za/isn/>

9 Abahlali baseMjondolo Press Statement, “Once Again the Name of Our Movement is Being Abused by the NGOs” (14 May 2010). URL: <www.abahlali.org/comment/reply/6702>

10 ABM attended an ISN meeting in late 2009, accepting an offer of solidarity after the attacks, however never agreed to join the ISN. Abahlali baseMjondolo Press Statement, “Once Again the Name of Our Movement is Being Abused by the NGOs” (14 May 2010). URL: <www.abahlali.org/comment/reply/6702>

11 The Concerned Citizens Forum (CCF) was formed as a loose network of organisations in July 2001 in Durban to mobilise and coordinate residents and community-based organisations (CBOs) around evictions and services cut-offs in working-class urban areas, particularly Bayview and Westcliff, in the “Indian” township of Chatsworth (Dwyer 2004: 1).
AbM has been highly critical of SDI in the past and recently issued a press statement which stated that they have a “completely different politics to SDI” and “do not believe that progress will come by friendship and loyalty to an oppressive government”, but rather believe that the poor have a “duty to resist oppression” and to organise and build “our own power against the rich, against the politicians and against that part of civil society that think that it has a natural right to represent the poor”.

The ideological and other differences around informal settlement upgrading, as an example, are apparent, also between civil society organisations and development NGOs, government officials within departments and between spheres of government, between the National Support Upgrading Programme (NUSP) and the Department of Human Settlements, among lawyers etc. This highlights the need for a much broader approach to be taken. SERI believes that people organise in different ways depending on their context and can learn from each other and help strengthen each other.

**Role of social movement leaders and leadership structures**

Another terrain of contestation revolves around the leadership structures of social movement and community-based organisations and how these impact on the working relationship between social movements and legal NGO. Often strong working relations are forged between professionals within NGOs and activists in movements/CBOs. It is important that these relationships are not founded on patronage or top-down exploitation. It is also important to recognise that leaders, particularly when they are ‘elected’ or ‘deployed’ in a movement, will be subject to internal organisational squabbles and disciplinary measures and that may jeopardise ongoing campaigns (or court cases). There may even be the suspicion that certain activists are being targeted for reasons other than those put forward by the leadership, possibly disagreement over ideological/political differences. Those professionals supporting social movements had to tread a fine line in these instances.

A recent study of the role of the Concerned Citizens Forum (CCF) in Mpumalanga Township, Durban from 1999 to 2002, raises important insights into certain models of cross-class collaboration between grassroots activists and middle-class intellectuals, with important lessons for those working with social movements. The CCF’s executive leadership comprised outsiders and activists – “city-based intellectuals” - and township youth activists in mobilising roles on the ground. This core group of city based activist-leaders had access to resources and acted as central organisers, initiators and transmitters of information between groups and individuals (Dwyer 2008: 12). According to Siwisa (2008: 933), this led to the township youth activists feeling exploited and forced to “rally troops” without human and material resources. He argues that the differences between the leadership and grassroots activists can best be explained by differences in “political ideologies and consciousness” with a vast social gap between CCF core leadership (Leftist, university-educated intellectuals with secure employment) and youth activists (high school drop-outs with a history of unemployment) (2008: 932). He believes this lack of understanding and connection between the leadership and grassroots activists was partly responsible for the CCF activities not displaying “any coherent, cohesive and extensive mobilisation in the township” (Siwisa 2008: 937). Another site of contestation and negotiation is around the motivating role that professional, political and material gains play in social movements, and the way in which support organisations advance these interests. Siwsa argues that personal gain by certain individuals appeared to be motivating factors behind organised unrest in Mpumalanga township rather than anti-neoliberal, CCF-linked politics (2008: 937). The role of local politics and individual material and political aspirations of local leaders, and the extent to which those organising and mobilising for something greater in social movements (i.e. resisting neoliberal policies) can/ will ignore messy relationships for a foothold in a township/settlement (or to continue with an important court case), are important to problematise further. Should we be concerned if a social movement activist is engaging legal NGO lawyers to assist a particular settle-

References (cont.)


Figure 4&5: Shack dwellers from Piessang River, Durban, organised in the Federation of the Urban Poor (FEDUP) show their discontent over the unfulfilled promises of the Housing Minister. Photo: A Ley
ment community, in order to advance himself politically and become a councillor in that ward? What if he acts as a gate-keeper to certain actions/allegations against the state (so as not to alienate himself from his party)? These are questions that must remain at the forefront of those working with social movements.

SERI has been aware of allegations against it that it pays social movement leaders to bring cases to the organisation (which is obviously untrue), as well as allegations against social movement leaders that they charge clients before bringing a case to the NGO lawyers. Securing free and good lawyers for eviction/disconnection/upgrading cases is a big boost for social movement leaders who sometimes have political and material aspirations outside of the movement. Support organisations and NGOs are often brought into these internal struggles and should be aware of the politics and dynamics of the movements/leaders they work with.

**Litigation and legal process**

There are valid critiques of a rights-based approach in relation to social movements advocating for structural change. One fear articulated by social movement critics is that they will get held up by pointless and counterproductive legal battles which will take away their focus and resources from “furthering the march towards revolution”.

However, in SERI’s experience, taking up a legal strategy can be a catalyst for better organisation and communication between leaders and members. A court case, especially one that gets media coverage, can galvanise a movement’s leadership and members in the face of demobilisation. Litigation is a process that requires strong leadership and honing of strategy and tactics. Writing about the loss of the Mazibuko caso case in the Constitutional Court, Dugard (2010: 95) argues: “initial feedback suggests that the judicial defeat has neither deterred the campaign nor discouraged further uptake of proactive litigation by the APF... the Mazibuko rights-based mobilisation has already indirectly impacted, and continues to impact, broader struggles in South Africa.”

Another criticism of lawyers working with poor people is the process of “legal storytelling” that occurs between attorneys and litigants, attorneys and advocates, advocates and judges, judges and litigants etc. (Gilkerson 1991-92).

Often, clients aim to be pure and virtuous when they tell their story to lawyers, and in a sense this kind of relationship is inevitable, albeit often detrimental to a case. The obvious argument against the kind of relationship is that it pays social movement leaders to bring cases to the organisation (which is obviously untrue), as well as allegations against social movement leaders that they charge clients before bringing a case to the NGO lawyers. Securing free and good lawyers for eviction/disconnection/upgrading cases is a big boost for social movement leaders who sometimes have political and material aspirations outside of the movement. Support organisations and NGOs are often brought into these internal struggles and should be aware of the politics and dynamics of the movements/leaders they work with.

**Power and resources**

A donor-funder organisation like SERI has human and material resources which are often desperately needed by those organising and mobilising on the ground. The most sought after assistance is legal assistance in urgent situations where there has been a negative infringement of rights, as well as access to information and education on the law, legislation, jurisprudence, policies, development in government departments etc. This is particularly so for grassroots leaders, but also for community members who rely on them for assistance. While SERI staff members get invited to attend national and local government meetings, legal workshops, technical and planning conferences etc., these doors are often not open to grassroots activists who nonetheless crave the kind of information gleaned from these encounters. What is needed much more is to link in the grassroots activists to what legal NGO workers are privy too i.e. taking information down and engaging over issues so as to elevate them back up.

The obvious argument against the kind of relationship outlined above is that it creates dependence; that communities and organised movements become reliant on NGOs and middle-class activists (who in turn rely on this reliance for their jobs and donor funding). Criticism against this kind of collaboration fails to recognise the desire for those involved in grassroots struggles to be self-reliant and able to resist evictions, organise marches, educate community members, engage with government and the media on their own terms. These terrains are, however, not favourable to the poor. They are difficult to access even for well-funded and educated NGOs and professionals! Finding ways to align power and resources to ensure accountability of those with power and resources opens up many opportunities for social movements and legal NGOs.

One of SERI’s recent experiences of this has been in the involvement with activists and community members in Balfour, Mpumalanga, where community members and leaders involved in protests in 2009 and 2010 faced criminal charges. SERI went to Balfour and assisted a clearly overworked Legal Aid SA lawyer to deal with the over 40 criminal cases, which resulted in most charges being dropped or people being put through the ‘diversion programme’. Apparently the prosecutor was ‘ruffled’ because she had not even read the dockets of the public violence, malicious damage to property and arson cases. In this case, SERI merely showing that there was outside interest in non-political cases and an interest in people’s rights, as well as access to information and education on the law, legislation, jurisprudence, policies, development in government departments etc. This is particularly so for grassroots leaders, but also for community members who rely on them for assistance. While SERI staff members get invited to attend national and local government meetings, legal workshops, technical and planning conferences etc., these doors are often not open to grassroots activists who nonetheless crave the kind of information gleaned from these encounters. What is needed much more is to link in the grassroots activists to what legal NGO workers are privy too i.e. taking information down and engaging over issues so as to elevate them back up.

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TRIALOG 104 is the hundredth printed and delivered issue of TRIALOG to date, including the four double issues (13/14, 23/24, 95/96 and 102/103). We thank the members and supporters of the TRIALOG Vereins or an...