

## 8 Decolonising human rights

### The rise of Nairobi's Social Justice Centres<sup>1</sup>

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#### 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.

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. SJC’s 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 of 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 SJC’s 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 SJC’s. 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 SJC’s 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 SJC's 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 web-pages. Furthermore, one of the authors is an activist who is a founding member of the SJC's 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 SJC's directly.<sup>2</sup>

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 under-development 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.<sup>3</sup> 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 SJC's 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 SJC's, 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 SJC's 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 SJs.<sup>4</sup> 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 SJs.

The Bunge movement expanded by establishing chapters in various settlements with grassroots chapters and platforms as far away as Mombasa city. Attention was drawn 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 SJs? Several inter-related issues can be identified and that help us contextualise human rights encounters across urban space.

### *How SJs Operate*

The main objective of the SJs 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, SJs' 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 SJs 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. SJC 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. SJC activists blocked traffic by sitting on the road outside the City Mortuary and were eventually teargassed and dispersed by police.

SJC 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,<sup>5</sup> 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, SJC 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).<sup>6</sup>

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'.<sup>7</sup> 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 SJs 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 SJs 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 were 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 SJC as involved in a struggle against ‘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 SJC has 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 SJC 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).<sup>8</sup> 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 SJC's 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 SJC's, 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 SJC 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 SJC 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 SJC 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 SJC petitioned Mathare Member of Parliament, Hon. Anthony Oluoch regarding EJE in Mathare.



## Discussion

The following key issues have emerged from the chapter. First, SJC's 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, SJC's 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 SJC's 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 SJs have prioritised mobilising against immediate threats. Perhaps they will begin to contribute to more emancipatory urban planning, which remains scarce 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.

## References

- Benford, R. D. and Snow, D. A. (2000) 'Framing Processes and Social Movements: An Overview and Assessment', *Annual Review of Sociology*, 26, 611–639.
- Benit-Gbaffou, C. and Oldfield, S. (2015) 'Claiming Rights in the African City: Popular Mobilisation and the Politics of Informality in Nairobi, Rabat, Johannesburg and Cape Town, in Parnell, S. and Oldfield, S. (eds.) *The Routledge Handbook on Cities of the Global South*. Oxon and New York: Routledge: 281–295.
- Blomley, N. (2003) 'What?' to 'So What?: Law and Geography in Retrospect,' in Holder, J. and Harrison, C. (eds.) *Law and Geography: Current Legal Issues*, vol. 5. Oxford: Oxford University Press: 17–33.
- Carmalt, J. (2018) 'For Critical Geographies of Human Rights,' *Progress in Human Geography*, 42 (6), 847–861.
- Chatterjee, P. (2004) *The Politics of the Governed: Reflections on Popular Politics in Most of the World*. New York: Columbia University Press.
- Clouzeau, M. (2019) 'A New Model for Activism: A Study of the Social Movements Against Extra-Judicial Killings in Nairobi's Informal Settlements', unpublished MA dissertation, University of Oslo.
- Destrooper, T. (2015) 'Reconciling Discourses on Women's Rights: Learning from Guatemalan Indigenous Women's Groups', *Journal of Human Rights Practice*, 7 (2), 223–245.
- Gachichi, G. (2014) 'The Study of Grassroot Social Movement in Kenya, Case Study of Bunge La Mwananchi (People's Parliament)', University of Bagamoyo, Nairobi.
- Gordon, L. R. (2014) 'Disciplinary Decadence and the Decolonisation of Knowledge', *Africa Development*, XXXIX (1), 81–92 (Council for the Development of Social Science Research in Africa).
- Government of Kenya (2007) *Kenya Vision 2030: A Globally Competitive and Prosperous Kenya*, Nairobi.
- Harvey, D. (2008) *Rebel Cities*. London: Verso.
- Japan International Cooperation Agency and County Government of Nairobi (2014) The project on integrated urban development master plan for the city of Nairobi in the republic of Kenya, final report, Nairobi.

- Jones, P. S. (2012) 'Mind the Gap: Access to ARV Medication, Rights and the Politics of Scale in South Africa,' *Social Science and Medicine*, 74, 28–35.
- Jones, P. S. (2021) 'Economic and Social Rights and the City', in K. Young and M. Langford (eds.) *Oxford Handbook on Economic and Social Rights*. Oxford: Oxford University Press (forthcoming).
- Jones, P. S., Kimari, W. and Ramakrishnan, K. (2017) 'Only the People Can Defend This Struggle: The Politics of the Everyday, Extrajudicial Executions and Civil Society in Mathare, Kenya', *Review of African Political Economy*, 44, 559–576.
- Kimari, W. (2016) We Do Not Want Any More Masters: Ruins, Planning and the "messy labours" of the Urban Poor. *Mambo!*, XIV (5), 1–6.
- Kimari, W. and Rasmussen, J. (2010) *Setting the Agenda for Our Leaders from Under a Tree: The People's Parliament in Nairobi*. Ottawa: Institute of African Studies, Carleton University: 131–159.
- King, A. (2009) *Postcolonial Cities*. Binghamton: State University of New York.
- Lettinga, D. and Troost, L. (2015) 'Justice Over Rights', in *Can Social Justice Bring Human Rights? Twelve Essays*. Amsterdam, Netherlands: Amnesty International: 71–79.
- Levitt, P. and Merry, S. (2009) 'Vernacularization on the Ground: Local Uses of Women's Rights Peru, China, India and the United States', *Global Networks*, 9 (4), 441–461.
- Madlingozi, T. (2010) 'On Transitional Justice Entrepreneurs and the Production of Victims', *Journal of Human Rights Practice*, 2 (2), 208–228.
- Manji, A (2015) 'Bulldozers, Homes and Highways: Nairobi and the Right to the City', *Review of African Political Economy*, 42 (144), 206–224.
- McFarlane, C. (2012) 'Rethinking Informality: Politics, Crisis, and the City', *Planning Theory and Practice*, 13 (1), 89–108.
- MSJC (2017) 'Who Is Next? A Participatory Action Research Against the Normalization of Extra-judicial Executions in Mathare' (Mathare Social Justice Centre, <https://www.matharesocialjustice.org/who-is-next/> accessed, June 15 2019).
- MSJC (2019a) 'Maji Ni Uhai Maji Ni Haki: Eastlands Residents Demand their Right to Water. A Participatory Report' (<https://www.matharesocialjustice.org/maji-ni-haki-campaign-for-water-justice/>, accessed October, 2019).
- MSJC (2019b) <https://www.matharesocialjustice.org/social-justice-centres-working-group/rethinking-transitional-justice-as-a-site-of-social-justice-struggles/>
- MSJC (2020) 'War Against the Poor and Youth' (<https://www.matharesocialjustice.org/eje-campaign/war-against-the-poor-and-youth-video-of-un-special-rapporteur-agnes-callamard-solidarity-visit-to-mathare/>, accessed, 12 October, 2020).
- Mutua, M. (2001) 'Savages, Victims, and Saviors: The Metaphor of Human Rights', *42 Harvard International Law Journal*, 201, 201–248.
- Muongano Support Trust, Slum Dwellers International (SDI), University of Nairobi, Dept. of Urban and Regional Planning University of California, Berkeley, Dept. of City & Regional Planning (2012) Mathare Zonal Plan/ Nairobi, Kenya: Collaborative Plan for Informal Settlement Upgrading.
- Oomen, B. (2016) 'Introduction', in Oomen, B. et al. (eds.) *Global Urban Justice*. Cambridge: Cambridge University Press.
- Pithouse, R. (no date) 'The Shack Settlement as a Site of Politics' (<https://www.ru.ac.za/media/rhodesuniversity/content/politics/documents/The%20Shack%20Settlement%20as%20a%20Site%20of%20Politics.pdf>, accessed June 2015).

## **Interviews**

Coordinators SJs (no particular order):

Mathare Social Justice Centre, September 21, 2020.

Githurai Social Justice Center, September 29, 2020.

Dandora Community Social Justice Center, September 28, 2020.

Kayole Social Justice Center, September 26, 2020.

Co-founder Mathare Social Justice Centre, April 21, 2015.



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