



4 July 2007

Mr Sibusiso Ndebele
KwaZulu-Natal Premier
Premier's Office
Provincial Government of KwaZulu-Natal
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Dear Premier Ndebele

URGENT: KZN Elimination and Prevention of the Re-emergence of Slums Bill

The Centre on Housing Rights and Evictions (COHRE) is an international human rights non-governmental organisation based in Geneva, Switzerland, with offices throughout the world. COHRE has consultative status with the United Nations and Observer Status with the African Commission on Human and Peoples' Rights. COHRE works to promote and protect the right to adequate housing for everyone, everywhere, including preventing or remedying forced evictions.

COHRE wishes to express its deep concern about the recent approval by the KwaZulu-Natal (KZN) Legislature of the *KZN Elimination and Prevention of Re-emergence of Slums Bill, 2006*. This is in our view a totally inappropriate piece of legislation which represents a giant step backwards in national efforts to improve slum dwellers' lives, and which should be urgently reconsidered.

The underlying purpose of the Bill frustrates the terms and intent of the national Department of Housing's *Comprehensive Plan for the Creation of Sustainable Human Settlements: Breaking New Ground*. By passing the Bill, the Provincial Legislature of

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KwaZulu-Natal has instantly reduced the tenure security of millions of South Africans by making it mandatory for land owners and municipalities to instigate eviction procedures wherever people are unlawfully occupying land or buildings. We wish to remind you that this was one of the objectives of the Apartheid State's *Prevention of Illegal Squatting Act, 1951*.

According to our analysis the *KZN Elimination and Prevention of Re-emergence of Slums Bill* both duplicates and is in contradiction with key provisions of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act No 19 of 1998 ("PIE"). In addition, we wish to point out to you that given that housing is an area of concurrent national and provincial legislative competence, the compulsion on owners to bring eviction proceedings effectively amends PIE. In so doing, we would argue, the *KZN Elimination and Prevention of Re-emergence of Slums Bill*, is unconstitutional by virtue of section 146 of the South African Constitution, which establishes criteria for determining how conflicts between national and provincial legislation in areas of concurrent competence shall be dealt with. (We refer you specifically to section 146(2) (b) and (c).)

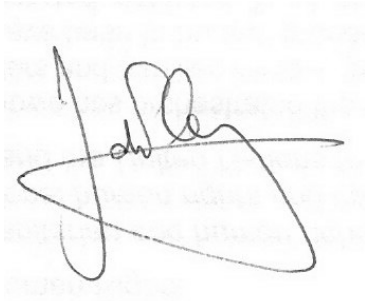
Further, we wish to point out that the *KZN Elimination and Prevention of Re-emergence of Slums Bill* is likely to be in conflict with international law, as well as international instruments that South Africa has ratified. One example is the African Charter on Human and Peoples' Rights. We wish to remind you that the African Commission on Human and Peoples' Rights, in 2002, found that the African Charter guaranteed the right to adequate housing, including the prohibition on forced eviction (see SERAC and CESR v. Nigeria, ACHRP 2002). Similar obligations are guaranteed by the Constitution of the Republic of South Africa and any forced evictions undertaken as a result of implementing this Bill, may therefore be in violation of the Constitution of the Republic of South Africa, in particular Sections 26(1), 26(2), 26(3) and 28(1).

Our understanding is that while the *KZN Elimination and Prevention of Re-emergence of Slums Bill* has been passed, it has not yet been Gazetted. We assume that this means that you have not yet, in your capacity as Premier of KwaZulu-Natal, assented to it; and that you are still considering whether or not to do so. We respectfully urge you to take into account the points made above and to seriously reconsider the wisdom of this legislation. We also respectfully refer you to section 121 of the Constitution which says that if the Premier has any doubts about the constitutionality of a provincial bill, s/he must refer it back to the legislature for reconsideration.

We look forward to your response and an ongoing dialogue with your office and government on the rights of its people to adequate housing. We would be more than willing to convene a meeting of relevant experts to assist you in your analysis and consideration of the Bill.

We are very grateful for your time and consideration in dealing with these very important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jean du Plessis', with a large, sweeping flourish underneath.

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