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FROM: T Nichols

OUR REF: T Nichols/CN/ CAL 043

No. of pages including this page: **Date: 13th JUNE 2008**

Dear Sirs

RE: SHACK DWELLERS ASSOCIATION

We refer to the above matter and transmit herewith the Applicant's Replying affidavit.

Yours faithfully

T H Nichols
NICHOLS ATTORNEYS
Email : trudie@nicholslaw.co.za

IN THE HIGH COURT OF SOUTH AFRICA
(DURBAN AND COAST LOCAL DIVISION)

CASE NO: 1874/08

In the matter between:

ABAHLALI BASEMJONDOLO MOVEMENT SA	First Applicant
SIBUSISO ZIKODE	Second Applicant

and

PREMIER OF KWA-ZULU NATAL	First Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR HOUSING, KWA-ZULU NATAL	Second Respondent
MINISTER OF HOUSING	Third Respondent
MINISTER OF LAND AFFAIRS	Fourth Respondent

APPLICANTS' REPLYING AFFIDAVIT

I, the undersigned –

SIBUSISO ZIKODE

SI.

do hereby make oath and say that –

1 I am an adult male residing at Kennedy Road Informal Settlement, 268 Kennedy Road, Clare Estate, Durban. I am the President of the first applicant and am duly authorised to depose to this affidavit on the first applicant's behalf. I am also the second applicant in these proceedings.

2 The facts contained herein are, unless otherwise stated or indicated by the context, within my own personal knowledge and to the best of my belief both true and correct.

3 I have read the answering affidavit filed on behalf of the second respondent in these proceedings and wish to reply thereto insofar as is necessary. This affidavit will not deal with all the allegations made in the second respondent's answering affidavit and its failure to do so should not be construed as an admission thereof.

4 For convenience the KwaZulu-Natal Department of Housing, for which the second respondent is responsible, shall be referred to as "the Department."

5 Before responding to the specific allegations made in the second respondent's answering affidavit I wish to deal in general terms with the second respondent's contention that the Slums Act was promulgated in

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response to Target 11 of the Millennium Development Goals and the Department's *"Eradication of Slums Strategy 'Vision 2014'"* adopted on 20 April 2007 ("the Eradication of Slums Strategy") as well as the second respondent's contention that the Slums Act "gives effect to the provisions and objectives identified in Chapter 13 of the National Housing Code" and is accordingly a measure that will improve the lives of people living in informal settlements.

6 In dealing with the second respondent's above contentions I shall make reference to a Report produced by the Centre on Housing Rights and Evictions ("COHRE") entitled *"Business as usual? Housing Rights and Slum Eradication in Durban, South Africa."*

7 COHRE is an international non-governmental research and advocacy organisation, with offices on 5 continents. COHRE monitors housing rights internationally. The purpose of COHRE reports into housing rights in cities is firstly, to establish a clear understanding of what is happening with regard to housing rights and secondly, to propose positive recommendations to improve the situation. In South Africa COHRE has already produced reports on Johannesburg (2005) and Pietermaritzburg (2007). A copy of COHRE's Report on Durban is attached hereto as "A." I shall make particular reference to Chapters 4 and 5 of the COHRE

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Report which are entitled *"Slum Clearance in Durban" and "Forced Evictions and Other Housing Rights Violations"* respectively.

8 The COHRE Report was published by COHRE under the auspices of Jean Du Plessis. Du Plessis' confirmatory affidavit is attached hereto as Annexure "B". The COHRE Report is in its final draft form and has not yet been released to the public. It was completed on 30 May 2008. It was accordingly not available at the time of the drafting and filing of the founding papers in this matter.

9 I respectfully submit that the second respondent and his Department have misinterpreted Target 11 of the United Nations Millennium Development Goals. That target does not call for the "eradication of slums" but "the achievement of a significant improvement in the lives of at least 100 million slum dwellers by 2020." As the second respondent appears to recognise, this is only approximately 10% of the world's slum dwelling population.[1]

10 That it is mistaken to construe Target 11 of the Millennium Development Goals as requiring the eradication of all slums by 2020, was pointed out by Professor Huchzermeyer - widely regarded as the leading academic expert on housing in South Africa[2] - in her strongly critical submission on

[1] Paragraph 10 of the second respondent's answering affidavit records that in 2005 900 million people were estimated to be living in slum like conditions.
[2] COHRE report, p 48.

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the Slums Bill.[3] Professor Huchzermeyer stated as follows in this regard –

> "Presumably, the idea for the Bill was derived from the unfortunate rhetoric of slum eradication. This rhetoric stems from a mistaken interpretation of Target 11 of the Millennium Development Goals. This target to "improve the lives of 100 million slum dwellers by 2020" is unwittingly also referred to as the "cities without slums target." This stems from the unfortunate slogan of Cities Alliance. It was intended merely as a normative statement: "cities should not have slums" but in several countries has tragically been translated into a target ... The UN when endorsing this target ... was fully aware that it is impossible to achieve cities without slums by 2020. It appears that this needed to be better communicated to national and provincial governments in South Africa, which in their zeal seemed to have pulled apartheid legislation off the shelf and are proposing conservative and repressive measures to wipe slums off the surface of our cities and clamp down harshly on attempts at their re-emergence."[4] (emphasis added)

11 The second respondent's answering affidavit makes reference to the communication from the United Nation's Human Right's Council's Special

[3] Professor Huchzermeyer's submission on the Bill is Annexure "MM5" to the second respondent's answering affidavit.
[4] At p 3.

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Rapporteur on the Right to Adequate Housing – Mr Miloon Kothari – in relation to the Slums Bill and to the response of the Department thereto. The second respondent states that upon receipt of this response the Special Rapporteur was "satisfied that all his concerns had been addressed" and was "very positive and supportive of the KZN Slums Act."[5] The Special Rapporteur advises that these statements are blatant untruths.

12 The Special Rapporteur was not satisfied that his concerns around the Slums Bill – which by the time of the Department's response had already been promulgated - had been addressed. Nor was he at any stage supportive of the Slums Act. On the contrary the Special Rapporteur has always objected to the content of the Slums Act and called into question its consistency with the South African Constitution and international human rights instruments. This is confirmed in the affidavit of the Special Rapporteur, attached hereto as Annexure "C", to which further reference will be made below.

13 The Special Rapporteur conducted a mission to South Africa during April 2007 and produced a report thereon which was presented at the seventh session of the United Nations Human Rights Council on 29 February 2008. A copy of that report is attached hereto as Annexure "D."

[5] Second Respondent's Answering Affidavit, p 23, para 50.

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14 In that report the Special Rapporteur states the following in respect of the second respondent's response to his communication on the Slums Act –

> "The Special Rapporteur appreciates the extensive reply submitted by the Government. He believes nonetheless that the consistency of this Act with constitutional provisions, relevant Constitutional Court judgments, and international human rights obligations should be examined further.
>
> In this context the Special Rapporteur notes that there may have been a misunderstanding, as to how to respect international commitments, such as the Millennium Development Goals, that may have led to efforts being directed to the eradication of slums rather than the improvement of the lives of slum dwellers. The Special Rapporteur is concerned that such legislative developments may weaken substantive and procedural protection concerning evictions and increase exemptions for landlords. They may even result in criminalising people facing eviction."[6] (emphasis added)

15 The above is confirmed in Special Rapporteur's affidavit attached hereto as Annexure "C."

[6] At p 16, paras 48 – 49.

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16 The Department's "Eradication of Slums Strategy" – which informed the conception and promulgation of the Slums Act - is predicated on the same mistaken interpretation of Target 11 of the Millennium Development Goals. Its introductory paragraph states as follows –

> "The KwaZulu-Natal department of housing in aligning itself with millennium development goals set target (sic) to substantially reduce informal settlements and slums in the province by 2010 and eradication of the latter by 2014."[7]

17 The Department's "Eradication of Slums Strategy" proposes to achieve this "through the construction of housing units at a larger scale in the shortest period to substantially reduce slums by 2010 and eradication by 2014."[8]

18 The second respondent estimates the number of households living in slums and informal settlements in KwaZulu-Natal to be 210 721.[9] This is incorrect. The COHRE Report notes that according to the South African Cities Network - an initiative of the Minister for Provincial and Local Government and nine city municipalities, in partnership with the South African Local Government Association - the number of households without formal shelter in Durban grew from 150 390 in 2001 to 213 465 in

[7] Section 1 thereof.
[8] Section 8.1 thereof.
[9] Second Respondent's Answering Affidavit, p 16, para 34(b).

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2004.[10] The COHRE Report notes that this is a 41.94% increase and that during the same period, viz from 2001 to 2004, there was only a 3.31% increase in people with formal housing in Durban.[11]

19 The number of households without formal shelter in Durban would obviously be significantly higher today. This is due to inadequate housing provision to which further reference will be made below. It is also due to population growth, increasing urbanisation and changing household dynamics (such as the drop in household size from close to 5 people per household to below 4 per household).[12] The COHRE Report puts the number of households currently living in slums and informal settlements in Durban alone at approximately 250 000 (1 million people) and notes that there is, in addition to this, a significant so-called latent demand for housing from people living in over crowded formal housing.[13]

20 The COHRE Report notes that in 1994 the Durban Metropolitan Council committed itself to build between 16 000 and 24 000 low cost houses annually through the national subsidy system in order to overcome the housing backlog.[14] In the years since 2001 the eThekwini Municipality ("the City") has been unable to achieve even the minimum of 16 000 per

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[10] p 98.
[11] p 98.
[12] p 99.
[13] p 98.
[14] p 94.

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year.[15] Even if the City is now able to reach its minimum target of 16 000 houses per year it will plainly be unable to house the 250 000 households presently living in its slums and informal settlements by 2014.

21 It is therefore unsurprising that the City admitted in 2006 that "the 2014 target is unrealistic" and that "if the best annual rates of delivery were doubled it would take until 2020 to overcome the current housing backlog."[16] In 2007 the City Manager stated that "a 90% elimination of the housing backlog would be achieved by 2022."[17] It is submitted however that even these projections are unrealistic.[18]

22 The COHRE Report offers the following more sobering projection –

> "If we take the higher estimate of 250 000 shacks, assume that the City will reach its full target of 16 000 houses a year and factor in the average increase in the number of households without formal shelter of just over 9000 a year, add in a modest estimate of the latent demand at 100 000 then it becomes clear that it will take at least 50 years to clear the backlog. If, as is widely expected, the calculation of the backlog is too low and the City fails to reach its target every year it could easily be significantly longer than this."[19] (emphasis added)

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[15] See the table on p 97-98.
[16] p 96.
[17] p 96.
[18] See p 96.
[19] p 98.

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23 Seen in this context the second respondent's target to eradicate slums in the entire Province of KwaZulu-Natal by 2014 is, with respect, pure fantasy. Unfortunately such fantasy is not harmless. The effect of the Department's "eradication of slums" rhetoric and policy is that informal settlements are regarded as temporary aberrations, imminently to be cleared away, making it unnecessary and indeed irrational to service or otherwise improve them in the interim. The further effect of this policy is that the focus is on building as many houses as quickly as possible and on reducing the number of shacks as quickly as possible rather than on the more consultative, time-consuming and ultimately more sustainable upgrading processes mandated by Chapter 13 of the National Housing Code.

24 The COHRE Report makes the following findings in this regard -

> "All the rhetoric about the imminent eradication of shacks has four very worrying consequences. The first is that shack settlements now all appear (erroneously) to be temporary with the result that it seems irrational to invest in their development. The second is that the criticism from shack dwellers about the material conditions in which they live tends to be very quickly dismissed on the grounds that eradication is imminent and so reality gets displaced by

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fantasy. The third is that housing projects are being rushed in an attempt to meet impossible deadlines with the result that their construction and location, as well as the consultation around the developments, is often very poor. Finally, there is an increasing perception that the primary point of the City's Housing Policy is to eradicate shacks rather than to secure housing rights."[20]

25 "Eradication of slums" rhetoric is not new. In 2001 the City adopted a "Slum Clearance Policy" which had an immediate and drastic effect on the levels of basic services provided to informal settlements. For instance in response to the City's Slum Clearance Policy, the City's Electricity Supply Policy declared that –

> "In the past (1990s) electrification was rolled out to all and sundry. Because of the lack of funding and the huge costs required to relocate services when these settlements are upgraded or developed, electrification of informal settlements has been discontinued."[21]

26 As stated in the applicants' founding affidavit, in six out of the sixteen informal settlements inhabited by members of the first applicant a minority of households have some access to electricity. The remaining ten informal settlements have no electricity at all. Furthermore the 7000

[20] p 96.
[21] p 95.

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residents of the Kennedy Road Informal Settlement depend on just 5 communal standpipes for their water supply, and 106 pit latrines and 3 chemical toilets for sanitation.

27 On his visit to South Africa the Special Rapporteur was extremely concerned at the lack of basic services, such as water, sanitation and electricity in informal settlements. The Special Rapporteur's report recorded the following in this regard –

> "The Special Rapporteur visited a number of settlements throughout the country where many residents had no access to water, electricity or sanitation. Organisations and individuals highlighted the urgent need for social services and facilities. In Durban, for example, the Special Rapporteur visited the Kennedy Road and Foreman Road settlements, where no upgrading or service provision has taken place. Lack of access to electricity, sanitation and water and lack of protection against hazards such as shack fires, has serious consequences for the health and well-being of residents. This situation is compounded by tenure insecurity and the threat of forced eviction. It was clear to the Special Rapporteur that these conditions fall far short of safe and sustainable living conditions."[22] (emphasis added)

[22] p 15.

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28 The further effect of "eradication of slums" rhetoric and policy – that success becomes measured by how many shacks are eliminated rather than on how many people's lives are improved - is equally deleterious. The COHRE Report finds the following in this regard –

> "...there is a strong government tendency to evaluate the success of housing policy and practice by counting the number of houses that have been 'delivered.' This tendency is driven by an assumption that the provision of a formal house automatically marks an improvement in the general circumstances of the beneficiaries. It was striking, however that – with only one exception – those policy experts not directly employed by the state who were interviewed for this project all argued that this approach is fundamentally mistaken. Mark Misselhorn, CEO of Project Preparation Trust in Durban lamented, for example that: 'success is measured in terms of the number of new houses being built instead of the number of sustainable housing opportunities being created or protected.' He noted that 'People just can't live in relocation sites because there is no work there' and suggested that policy success should rather be measured by the discernable degree of 'improvement in people's lives.'"[23] (emphasis added)

[23] p 60-61.

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29 The COHRE report argues that in order for housing developments to be sustainable, and compliant with international human rights obligations, it is crucial to recognise that the housing question is not reducible to the provision of a house –

> "... there have consistently been times when shack dwellers have actively resisted forced removal from shacks to houses – whether because their shacks were better located in terms of work, schools and communities, or because the proposed new housing (or its associated rates and services) were simply unaffordable. The question of geographic space – of where people live – is often as important as the kind of structures in which people live. The question of social space is equally important. A person who can live with dignity in a particular community may not be able to survive when isolated from those social networks..."[24] (emphasis added)

30 It is widely recognised that a key problem with formal housing developments throughout the country is that they tend to be located on the urban periphery. The COHRE Report finds that this has catastrophic consequences for the poor -

> "Numerous research projects have shown that although people with better jobs and incomes usually do well in relocation sites, poorer

[24] p 31.

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people often suffer a calamitous drop in income, and struggle to access schools, clinics, policing and so on. This can be associated with increased risks of depression and family violence. COHRE's findings in the relocation housing developments visited during the research for this report were very similar. It was very striking that in the peripheral developments, people with good jobs tended to be happy with the move from a shack to a house. People with no work, or a precarious livelihood, however, often experienced the relocation from a better located shack to a house on the urban periphery as disastrous.

Across the country it has not been unusual for people to abandon relocation houses and move back to better located shacks or to refuse to leave shacks for relocation houses, as often happened under Apartheid and has often happened with forced removals to peripheral relocation sites the world over. For example, in the low cost housing development of 'France' in Imbali, outside Pietermaritzburg, more than 100 houses built at a cost of over 2 million have been vacant ever since their completion in 2002. The intended 'beneficiaries' have refused to take occupation or transfer on the grounds that the houses are too far away from

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Pietermaritzburg and from their present settlements close to the city."[25]

31 The National Department of Housing recognised the above problems and in its "Breaking New Ground" policy adopted in 2004 formulated impressive solutions to deal with many of them. Breaking New Ground recognised *inter alia* that "there had been a slow down in housing delivery, that the spatial location of housing programmes had largely conformed to apartheid segregation, that the pernicious effects of this had not been moderated by the simultaneous development of transport and other infrastructure at the relocation sites, and that the 1.6 million houses that had been built had not become valuable assets to the poor because people simply didn't have the income to pay for services and taxes."[26]

32 The Breaking New Ground document stated that -

"The dominant production of single houses on single plots in distant locations with initially weak socio-economic infrastructure is inflexible to local dynamics and changes in demand. <u>The new human settlements plan moves away from the current commoditised focus on housing delivery towards a more responsive</u>

[25] p 79 – 80.
[26] COHRE report, p 82.

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mechanism which addresses the multi dimensional needs of sustainable human settlements."[27] (emphasis added)

33 Breaking New Ground adopted a number of new policies and interventions in order to deal with some of the problems hampering sustainable housing delivery. These included *inter alia* expanding the scope of the housing mandate, collapsing housing subsidy bands and developing a rural housing instrument. In relation to informal settlements Breaking New Ground adopted a policy in terms of which informal settlements were to be upgraded *in situ* in partnership with affected communities, and in terms of which relocations were to be permitted only as a last resort. This policy approach was given effect to and made binding on provincial and local government in Chapter 13 of the National Housing Code. Both Breaking New Ground and Chapter 13 of the National Housing Code have been widely praised by housing policy experts and academics, including Professor Huchzermeyer. The COHRE report summarises Chapter 13 of the National Housing Code as follows –

"Under Chapter 13 of the Housing Code municipalities can apply for a community based or area based subsidy that is not linked to individual households but is based on the actual cost of improving an informal settlement. The Programme has no ceiling for the cost of purchasing and rehabilitating land. It encourages municipalities

[27] P 2.

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to stop relocating informal settlements from expensive or geotechnically unsuitable land to new housing developments on the outskirts of cities and towns. Instead it enables already occupied land to be made habitable, even if technically and economically deemed unsuitable. Relocation is treated as a very last resort, and in such cases, funding can be applied to purchase land in close proximity to the existing informal settlement. The Programme includes funding for interim services and for community empowerment. The Programme is based on the following principles –

- Informal settlements should not be seen as a housing problem but as a far more complex problem.

- Even if some think that upgrading rewards unlawful occupiers, all informal settlements should be dealt with under the Informal Settlement Upgrading programme.

- The target should be to improve peoples' lives.

- Informal settlements dwellers should be central to initiatives to improve their lives.

- Every effort should be made not to destroy people's fragile livelihoods.

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- The constitutional rights of informal settlements dwellers must be respected, particularly where relocation is being considered."[28]

34 The COHRE Report points out that there is a fundamental contradiction between Breaking New Ground with its focus on a holistic, consultative and supportive process and "slum eradication" measures –

> "Breaking New Ground takes inadequate housing as the fundamental problem and seeks to take action to develop more adequate housing. 'Shack eradication' takes shack settlements as the fundamental problem and seeks to get rid of them. The distinction between these two approaches lies in the fact that, in the absence of other viable options, shacks are the most adequate housing currently available to millions of people. In some circumstances they are more adequate housing options than small, poorly constructed houses in peripheral relocation projects. For many people they are also the only option for accessing the city or setting up an independent household in the city. Using coercive and security strategies to forcibly eradicate shacks will inevitably result in the housing conditions of millions of people being worsened. The only way to get rid of shacks without doing major damage to the

[28] p 84-85.

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well-being of millions of people is to develop better alternatives in terms of cost, location, services and the quality of the structures."[29]

35 The Slums Act does not require municipalities to implement Chapter 13 of the National Housing Code, nor is the Slums Act predicated on an approach which accords with the principles and procedures stipulated in Chapter 13. On the contrary the provisions of the Slums Act are in fundamental conflict with Chapter 13 of the National Housing Code. For example s 11(1)(d) of the Slums Act requires municipalities to submit annual reports to the second respondent containing "recommendations as to which slums, if any, are suitable for upgrading and improvement to address the shortage of housing."

36 The effect of s 9, s 11, s 12 and s 13 of the Slums Act, read together, is to give municipalities an open-ended discretion whether to upgrade or relocate informal settlements, and in the latter event whether to provide alternative accommodation at all. The Slums Act offers municipalities no guidance whatsoever as to how to exercise this discretion in a manner which will be compliant with the provisions of the National Housing Act, the National Housing Code and the Constitution.

37 The second respondent's contention that the Slums Act gives effect to the provisions and objectives of Chapter 13 of the National Housing

[29] p 88.

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Code is accordingly manifestly incorrect. It is submitted that not only are s 9, s 11, s 12 and s 13 of the Sums Act in conflict with the provisions of the National Housing Act and the National Housing Code but to the extent that they fail to give municipalities appropriate guidance as to how to exercise their discretion in a manner that will protect fundamental rights, they are unconstitutional. The applicants will seek leave to amend the relief sought in their notice of motion accordingly.

38 What the Slums Act does mandate is the institution of eviction proceedings - on a massive scale. This in itself precludes the implementation - or even consideration - of in situ upgrades in respect of many informal settlements. This is in direct conflict with Breaking New Ground and the provisions of Chapter 13 of the National Housing Code.

39 In essence the Slums Act is a measure which seeks to achieve the patently unrealistic goal of "eradicating slums" by 2014 through means which are manifestly coercive and which threaten to infringe rather than promote the constitutional right of access to adequate housing. The threat of infringements of s 26 of the Constitution looms larger when regard is had to the unlawful evictions and shack demolitions which are regularly carried out in the Province of KwaZulu-Natal. These will be referred to in detail below.

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40 The COHRE Report expresses concern about the unreality of the Slums Act's purpose and its coercive nature in the following terms -

> "There is a fundamental contradiction in what government is saying about housing. On the one hand it acknowledges that the backlog is growing, but on the other it says that 'slums' will soon be 'eradicated.' If it is assumed that this is not simple dishonesty or outright denialism, then it can only be concluded that the plan is to 'eradicate slums' via coercive strategies as well as via building houses. This appears to be the best reading of the Slums Act."[30]

41 I now turn to deal with the specific allegations made in the second respondent's answering affidavit.

42 AD PARAGRAPHS 1 AND 2

42.1 Save to dispute that the contents of the second respondent's answering affidavit are true and correct in all respects I admit the contents of these paragraphs.

43 AD PARAGRAPHS 5(b) and (c)

43.1 I deny the contents of these paragraphs.

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[30] p 91

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43.2 Section 16 of the Slums Act mandates the institution of eviction proceedings without any consideration of whether eviction would be appropriate or just and equitable in any particular case. Thus the institution of eviction proceedings would be mandatory in terms of s 16 of the Slums Act even if a private land owner was prepared to allow unlawful occupiers to remain on his or her land for the foreseeable future. Similarly the institution of eviction proceedings would be mandatory even if there was no available land on which the potential evictees could live. This is in conflict with the very purpose and spirit of the PIE Act.

43.3 Mandating the institution of eviction proceedings flies in the face of the National Housing Code's injunction that eviction proceedings are to be instituted only as an option of last resort. It also flies in the face of the duty on provincial and local government to implement Chapter 13 of the National Housing Code to upgrade informal settlements. Indeed it precludes a consideration of upgrading which - as a matter of law - is the option of first resort.

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43.4 The Slums Act does not require municipalities to provide alternative accommodation in the event of eviction – even in the short term. It is submitted that it is now established that there is a constitutional duty on the state to provide at least temporary emergency accommodation to people who will be rendered homeless as a result of eviction.

43.5 Other than the fact that eviction proceedings must be instituted – which in itself precludes the implementation of Chapter 13 of the National Housing Code – what is to be done with the relevant informal settlement is left entirely to the discretion of the various municipalities. Moreover the Slums Act gives no guidance to municipalities as to how to exercise this discretion in a manner which will be compliant with national legislation and which will protect the constitutional rights of people living in informal settlements.

43.6 Furthermore, I am advised and respectfully submit that s 26 (2) of the Constitution requires all organs of state to engage meaningfully with individuals and communities whom they may be considering bring eviction proceedings against. I am further advised that the decision to evict may only be taken after meaningful engagement has failed to produce mutually

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acceptable solutions to disputes between the state and people with insecure rights to land. Indeed, the requirement of meaningful engagement exists to minimise the possibility that the state will seek to remove people from their homes against their will, or at all.

43.7 Section 16 of the Slums Act requires municipalities to institute proceedings for the eviction of all unlawful occupiers within its area of jurisdiction, should the owner or person in charge of the land occupied fail to do so within a period specified by the second respondent. It also requires that municipalities evict unlawful occupiers from land they own within a period specified by the second respondent.

43.8 This renders the constitutional requirement of meaningful engagement nugatory. Any engagement conducted between municipalities and unlawful occupiers would only happen after a decision to evict had already been taken by the second respondent, since the Slums Act makes municipalities mere instruments of the second respondent's will. Engagement in these circumstances can hardly be considered genuine or meaningful.

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43.9 Having regard to the above, I am advised that s 16 of the Slums Act is in conflict with s 26 (2) of the Constitution and falls to be declared invalid on this ground alone.

43.10 Further legal argument will be presented in this regard at the hearing of the matter.

44 AD PARAGRAPHS 7 TO 12

44.1 As stated above the second respondent and the Department have fundamentally misinterpreted Target 11 of the Millennium Development Goals which requires not the "eradication of slums" but "a significant improvement in the lives of at least 100 million slum dwellers [worldwide] by 2020."

44.2 For the reasons set out above it is submitted that the policy foundation of the Slums Act constitutes irresponsible denialism which retards rather than promotes both Target 11 of the Millennium Development Goals and the progressive realisation of the right of access to adequate housing in terms of s 26(2) of the Constitution.

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44.3 To the extent that they conflict with the above the contents of these paragraphs are denied.

45 AD PARAGRAPHS 13 AND 14

45.1 It is correct that the Housing Act requires municipalities to take all reasonable and necessary steps to ensure that conditions not conducive to the health and safety of the inhabitants of their areas of jurisdiction are removed. It is submitted however that the Slums Act which mandates the institution of large-scale eviction proceedings and provides no clear indication of where, if anywhere, potential evictees will be allowed to live, will plainly not achieve this. Moreover as stated above the second respondent's "Eradication of Slums" policy on which the Slums Act is based has had the direct effect that basic services such as water, sanitation and electricity are not provided to informal settlements. This promotes conditions which seriously threaten the health and safety of the residents of informal settlements in violation of the provisions of the National Housing Act, the National Housing Code and the Constitution.

45.2 Save as above the contents of these paragraphs are not disputed.

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46 AD PARAGRAPHS 15 TO 20

46.1 I admit the contents of these paragraphs to the extent that they accurately reflect the provisions of Chapter 12 of the National Housing Code.

46.2 The purpose of Chapter 12 of the National Housing Code is to deal with emergency housing situations such as those caused by natural disasters or where people – due to circumstances beyond their control - are threatened with imminent eviction or their homes are threatened with imminent demolition.

46.3 Chapter 12 does not detract from Chapter 13 of the National Housing Code which has as its purpose the upgrading of informal settlements *in situ* in partnership with affected communities in order to establish sustainable human settlements.

46.4 To the applicants' knowledge neither Chapter 12 nor Chapter 13 of the National Housing Code have ever been implemented by the second respondent in partnership with a municipality in the greater Durban or Pietermaritzburg areas.

B.Σ.

47 AD PARAGRAPHS 21 TO 23

47.1 As stated above "Breaking New Ground" is an overarching policy document produced by the National Department of Housing in 2004 which adopted a number of new policies and interventions in order to deal with some of the problems hampering sustainable housing delivery.

47.2 In relation to informal settlements Breaking New Ground adopted a policy in terms of which informal settlements were to be upgraded *in situ*, in partnership with affected communities, and in terms of which relocations were to be permitted only as a last resort. This policy approach was given effect to and made binding on provincial and local government in Chapter 13 of the National Housing Code.

47.3 The second respondent quotes section 4.1 of the Breaking New Ground document which provides *inter alia* that "there is a need to acknowledge the existence of informal settlements and recognise that the existing housing programme will not secure the upgrading of informal settlements." (emphasis added)

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47.4 This is precisely why National Government introduced the comprehensive and fully funded informal settlement upgrading programme in Chapter 13 of the National Housing Code. It is striking that neither the second respondent's "Eradication of Slums" policy nor the Slums Act are predicated on Chapter 13 of the National Housing Code. Moreover neither the "Eradication of Slums Policy" nor the Slums Act recognise that the implementation of Chapter 13 is mandatory or require municipalities to plan and act accordingly.

47.5 Save as above the contents of these paragraphs are not disputed.

48 AD PARAGRAPH 24

48.1 The principles set out in this paragraph constitute the legal and policy basis upon which National Government has determined that informal settlements shall be dealt with. These principles will plainly not be achieved by mandating the institution of eviction applications on a massive scale. Nor will they be achieved by granting municipalities an unfettered discretion as to how to deal with informal settlements.

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48.2 Save as above the contents of this paragraph are not disputed.

49 AD PARAGRAPH 25

49.1 The phases referred to in this paragraph are dealt with in far more comprehensive detail in Chapter 13 of the National Housing Code and have been referred to in the applicants' founding affidavit.

49.2 Save as above the contents of this paragraph are not disputed.

50 AD PARAGRAPH 26

50.1 Meaningful consultation with the residents of informal settlements is indeed the cornerstone of Breaking New Ground and Chapter 13 of the National Housing Code. In spite of this the Slums Act makes no provision for municipalities to engage in consultation with the residents of informal settlements. This is in direct conflict with the provisions of the National Housing Act, the National Housing Code and the Constitution.

50.2 Save as above the contents of this paragraph are not disputed.

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51 AD PARAGRAPHS 28 AND 29

51.1 The contents of these paragraphs are not disputed.

52 AD PARAGRAPHS 30 TO 32

52.1 As submitted above the second respondent's "Eradication of Slums" policy constitutes irresponsible denialism which retards rather than promotes Target 11 of the Millennium Development Goals and the progressive realisation of the right of access to adequate housing in terms of s 26(2) of the Constitution.

52.2 The second respondent's "Eradication of Slums" policy seeks to achieve its patently unrealistic target of eliminating all slums in the Province by 2014 by building more houses more quickly. Breaking New Ground recognised in 2004 that the existing housing programme would not secure the upgrading of informal settlements and for this reason introduced Chapter 13 of the National Housing Code. Notwithstanding this the second respondent's "Eradication of Slums" policy is not predicated on the principles and processes mandated by Chapter 13 of the

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National Housing Code. Indeed the second respondent's policy does not contain a single reference to Chapter 13 of the National Housing Code.

52.3 The second respondent's Department did not consult with the applicants in any form or manner in relation to the conception or adoption of its "Eradication of Slums" policy.

53 AD PARAGRAPH 33

53.1 I have no knowledge of the figures referred to in this paragraph and can accordingly neither admit nor deny them.

53.2 If it is correct that the housing backlog in the Province of KwaZulu-Natal is 872 277 households, it could be cleared by 2014 if 145 379 houses were built per year. Considered from a different angle - if municipalities in the Province built an extremely ambitious 50 000 houses a year the current backlog would be cleared by 2025. This is without taking into account either population growth or increasing urbanisation.

53.3 The above underlines the unreality of the second respondent's "Eradication of Slums" policy on which the Slums Act is based.

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54 AD PARAGRAPH 34

54.1 I dispute the figures in this paragraph. As stated above available figures indicate that the number of households without formal shelter in the City of Durban alone in 2004 was 213 465. The COHRE Report estimates that 250 000 households (1 million people) presently live in slums and informal settlements in Durban alone (without taking into account the so-called latent demand).

54.2 As the COHRE Report notes it will take upwards of 50 years for the City of Durban alone to clear its housing backlog. The second respondent's claim that it can eradicate slums in the entire Province of KwaZulu-Natal by 2014 is accordingly pure fantasy.

55 AD PARAGRAPH 35

55.1 The figures set out in this paragraph come to a total of 217 307 which does not tally with the figure of 210 721 provided by the second respondent in the preceding paragraph. In any event it

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is submitted that the COHRE Report demonstrates that the number of households living in slums and informal settlements in KwaZulu-Natal is significantly higher than either the 210 721 or the 217 307 contended for by the second respondent.

56 AD PARAGRAPH 36

56.1 The second respondent's "Eradication of Slums" policy contains no reference to either "sustainable housing settlements" or "the provision of socio-economic services to communities" as contended in this paragraph.

57 AD PARAGRAPH 37

57.1 The Slums Act seeks to "prevent the re-emergence of slums" through mandating the institution of eviction proceedings on a massive scale and clamping down harshly on the formation of new informal settlements. These are coercive and repressive measures which threaten to violate the constitutional rights of thousands of poor people. The second respondent fails to recognise that slums will expand as long as housing delivery lags behind the rate of household formation and that in

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the absence of other viable options, shacks are the most adequate housing currently available to millions of people.

58 AD PARAGRAPHS 39 TO 43

58.1 I do not dispute the contents of these paragraphs. I note however that the Conference resolved that the upgrading of slums must be regarded as a central component of national, local and cities housing plans.

59 AD PARAGRAPH 45

59.1 I admit that hearings on the Slums Bill were held in Pietermaritzburg at the City Hall on 3 May 2007 and in Durban at the Kennedy Road Community Hall on 4 May 2007. I have no knowledge of whether the further hearings referred to in this paragraph were held.

59.2 The hearings held in Pietermaritzburg and Durban were grossly inadequate in a number of respects and certainly did not constitute meaningful consultative exercises.

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The Pietermaritzburg Hearing

59.3 The Pietermaritzburg hearing was not advertised in the informal settlements in the area with the result that only an estimated ten people attended. These attendees were from the Ash Road Informal Settlement and from Eastwood and the Willow Gardens Complex. They were informed of the meeting not through any provincial government channel but by Daniel Bailey who works at the COHRE office in Pietermaritzburg. Bailey only heard about the meeting three days before it was scheduled to take place. I refer to Bailey's confirmatory affidavit attached hereto as Annexure "E". I refer further to the confirmatory affidavit of Filippo Mondini, attached hereto as Annexure "F". Mondini was present at the meeting and upon being informed of it by Bailey did his best to spread the word in some of the informal settlements in the area. It was however not possible to for significant numbers of people to make arrangements to be present at the meeting on such short notice.

59.4 At the meeting the attendees pointed out that the low turn out was due to the absence of proper notice by the Department, and that as a result the meeting lacked legitimacy and ought to be postponed. The officials from the Department admitted that

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the advertising of the meeting had been problematic but refused to accede to the attendees' request for a postponement.

59.5 During the meeting many attendees objected to the use of the term "slum" in the Bill stating that they considered it to be disrespectful and uncaring. Attendees raised particular concerns about the eviction procedures mandated by the Bill and the Bill's reference to "transit camps." Attendees wanted to know where these transit camps would be located and who would be moved and when. Attendees had further concerns about the programs running parallel to the Bill, specifically the housing program, and expressed concern that the slow pace of delivery would compound the effects of the Bill.

59.6 In response to the above, the Department's attorney, Mr Nkosi, stated that the attendees' questions and comments were not pertinent to a discussion of the Bill. Nkosi stated that the second respondent would ensure that no-one would be worse off as a result of the Bill and further that decisions about the content of the Bill would be dependent on a judgment call by the second respondent. The Department then closed the meeting.

<u>The Durban Meeting</u>

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59.7 The Durban meeting was held at the Kennedy Road Informal Settlement on 4 May 2007. I had received two weeks notice of the meeting and was therefore able to ensure that the first applicant's Durban members were present at the meeting in large numbers. I was personally present at the meeting.

59.8 Officials of the Department and their attorney, Mr Nkosi, arrived at the meeting with a massive police presence. In what can only be interpreted as an attempt to intimidate us, police officers patrolled our settlement on foot while no less than 10 police vehicles encircled its boundary and a police helicopter circled overhead. We felt like the Department had come to put out a riot, not have a meeting.

59.9 Prior to the commencement of the discussion on the Slums Bill, the members of the first applicant, including myself, raised concerns with the Departmental officials about illegal evictions and shack demolitions recently carried out by the City. We also raised concerns about government's failure to provide basic services such as water, electricity and sanitation to informal settlements in the area. The Department's officials refused to

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engage with us on these issues stating that they were only there to discuss the Slums Bill.

59.10 During the meeting the Departmental officials imposed a rule that no one could speak at the microphone unless they could first cite the section of the Bill about which they intended to make a comment. When speakers could not first cite a section of the Bill, they were asked to refrain from further comment and to be seated. This was particularly unfair in circumstances in which many people had heard a summary of the Bill only moments before they were asked to respond, and there were not enough copies of the Bill to go around. More fundamentally it made speaking a "legal language" a prerequisite for voicing questions or concerns and prevented people from commenting on the Bill as they saw fit. In the result many people were denied the opportunity to express their views and open and inclusive discussion on the Bill was effectively stymied.

59.11 Attendees who were allowed to speak objected to the use of the terms "slum", "eliminate" and "eradicate" in the Bill. They stated that residents of informal settlements lived in communities deserving of upgrade, that they had been waiting for many

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years for this to happen and that they did not want to leave their homes.

59.12 Objections were raised to the fact that the stated purpose of the Bill was to eliminate the places where people live. Speakers noted that, despite this, the Bill did not specify when and where people would be relocated or when or how communities would be upgraded.

59.13 Objections were raised to the Bill's reference to "transit camps." Speakers wanted to know why people would have to leave their homes to live in a camp. They also wanted to know where these camps would be located and who would be moved into them and when.

59.14 In response the Departmental officials and Mr Nkosi stated that many of the above issues were not pertinent to a discussion of the Bill or fell outside the domain of the provincial legislature. They stated that questions and objections which related to when, where and how evictions and upgrades would take place ought to be taken up with local government once the Bill had been promulgated. They gave verbal assurances that no-one

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would be left homeless as a result of the Bill. The Department then closed the meeting.

59.15 The members of the first applicant present at the meeting, including myself, found the official assurances that the Bill would not lead to homelessness fundamentally unsatisfactory. We were also unconvinced that our rights would be protected by appealing to local government not to evict us after the Bill was promulgated. This was not least because local government had evicted people and destroyed shacks in numerous communities in the last year, including Motala Heights and Juba Place. In both those instances the evictions were carried out without a court order and left people homeless. Further reference will be made to this below.

59.16 Overall we were extremely concerned at the effect the Bill would have on our constitutional rights and the quality of our lives and felt that the Durban meeting amounted to little more than the Department going through the motions of "public participation" for the sake of form. In truth the Department sought to impose the Bill on us not discuss it with us.

60 AD PARAGRAPH 46

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60.1 I admit that the officials referred to in this paragraph were present at the Pietermaritzburg and Durban meetings. I refer to what I have above regarding the manner in which those officials conducted the meetings.

61 AD PARAGRAPHS 47 TO 50

61.1 I have no knowledge of whether the Bill was revised through comments received during the so-called public participation process. I note however that the Slums Bill did not change significantly from when the first applicant's members, including myself, first had sight of it in March 2007 to when it was promulgated on 2 August 2007. Clearly it was not revised based on the comments received from the first applicant – which the second respondent denies having received – or those received from Professor Huchzermeyer.

61.2 As stated above the Special Rapporteur did not – in response to the Department's answer to his communication - state that all his concerns in relation to the Slums Act had been satisfactorily addressed. Nor did the Special Rapporteur give "very positive and supportive feedback" in respect of the Slums Act. The

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Special Rapporteur states that these contentions are blatant untruths. This is confirmed in his affidavit attached hereto as Annexure "C".

61.3 In his affidavit the Special Rapporteur states that he has never supported the Slums Act in any manner and has on the contrary always objected to its content and called into question its consistency with the South African Constitution and international human rights instruments. The Special Rapporteur refers in his affidavit to his report on his mission to South Africa presented at the seventh session of the United Nations Human Rights Council on 29 February 2008 in which he raised a number of concerns with the Slums Act. These included the fact that the Act does not consider the availability of support to find alternative housing solutions for evictees; the fact that the Act suggests that municipalities have no obligation to provide alternative land or buildings for the relocation of persons living in slums; and the fact that the Act does not provide for consultation with affected persons as is required in terms of *inter alia* the Breaking New Ground Policy.

61.4 The Special Rapporteur concluded his report by recommending that a halt be called on provincial bills regarding the eradication

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of slums and evictions until all national, provincial and local legislation, policies and administrative actions have been brought into line with constitutional provisions, relevant Constitutional Court judgments and international human rights standards that protect the human right to adequate housing and freedom from forced evictions.

61.5 To the extent that they conflict with the above the contents of these paragraphs are denied.

62 AD PARAGRAPH 55(a)

62.1 The first applicant's socio-economic profiling exercise is conducted through a standard form questionnaire administered through the branch committee or the settlement committee of the informal settlements which are affiliated to the first applicant. By way of example a copy of the questionnaire completed in respect of the Putans Hill Informal Settlement in Durban is attached hereto as Annexure "G."

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63 AD PARAGRAPH 55(b)

63.1 Section 11 of the Slums Act - read with the other relevant provisions referred to above - does not require municipalities to act in accordance with the provisions of the National Housing Act or Chapter 13 of the National Housing Code. On the contrary the effect of these provisions is to grant municipalities an open-ended discretion as to how to deal with informal settlements. Moreover the Slums Act provides municipalities with no guidance as to how to exercise this discretion in a manner which will protect constitutional rights. I refer to what I have stated above in this regard.

64 AD PARAGRAPHS 56(a) - (e)

64.1 As stated above, prior to the commencement of the meeting on the Slums Bill, members of the first applicant, including myself, raised concerns with the Department's officials about illegal evictions and shack demolitions recently carried out by the City. We also raised concerns about government's failure to provide basic services such as water, electricity and sanitation to informal settlements in the area. These are legitimate grievances which we were entitled to raise with the

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Department's officials. Nonetheless the Department's officials refused to engage with us on these issues stating that they were only there to discuss the Slums Bill.

64.2 I deny that the situation was "out of control." I deny further that Nkosi made me "understand that the fears of eviction without more were unfounded." I object to the patronising tone of this statement. The members of the first applicant, including myself, had legitimate concerns with the Slums Bill. Neither the Department's officials nor Nkosi did anything to meaningfully address these concerns at the Durban meeting.

64.3 I deny further that I "incited" Departmental officials at the meeting. I, and others who were allowed to speak, asked questions and raised concerns in relation to the Bill. The second respondent appears unable to accept questioning and criticism in the democratic spirit in which it is intended.

64.4 I refer further to what I have stated above in relation to the Durban meeting.

65 AD PARAGRAPHS 56 (f) – (g)

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65.1 Professor Huchzermeyer is widely regarded as the leading academic expert on housing in South Africa. I submit that the Department's response to Professor Huchzermeyer's written submission failed to come to grips in any meaningful way with the extremely serious concerns she raised in relation to the Slums Bill.

66 AD PARAGRAPH 56(h)

66.1 I dispute the contents of this paragraph.

66.2 People at the so-called hearings in Pietermaritzburg and in Durban objected strongly to the Bill's use of the term "slum" stating that they considered it to be disrespectful and uncaring.

66.3 The first applicant objected to the term "slum" in its written submission on the Bill in the following terms –

> "The Bill uses the terms 'slum' in a way that makes it sound like the places where poor people live are a problem that must be cleared away because there is something wrong with poor people. ....In America black community organisations have opposed the use of the word 'slum' to

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describe their communities because they say it makes it sound like there is something wrong with them and their places rather than the system which makes them poor and fails to develop their places. They also say that once a place is called a slum it is easy for the rich and governments to say that it must be 'cleared' or 'eliminated' but if a place is called a community then it is easier to say that it must be supported and developed."[31] (emphasis added)

66.4 Professor Huchzermeyer was of the view that the Slums Bill needed to be re-named. She said the following in this regard In her written submission -

"Elimination and prevention of re-emergence of slums is harsh language that signals measures of repression and control, and, irrespective of its content, will result in widespread fear among households who find themselves without alternatives to the shack or other inadequate quarters they inhabit. The title of the Bill needs to be compared to the careful wording in national legislation "Prevention of Illegal Eviction from and Unlawful Occupation of Land Act" and "Extension of Security of Tenure Act" which were enacted to give meaning to the Constitutional Right to

[31] At p 2-3.

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Housing. The Bill's name needs to be aligned with the Constitution. It should also be aligned with the intentions stated in the National Department of Housing's current programme "Comprehensive Plan for the Creation of Sustainable Human Settlements: Breaking New Ground" which also represents a careful interpretation of the state's obligation in relation to the constitutional right to housing."[32] (emphasis added)

66.5 Other experts are of the same view. The COHRE Report quotes Diane Scott on the use of the term "slum" as follows –

"The word 'slum' connotes a perception of something anomalous....an affront to expectations of what is appropriate. This term came to be used in modernist planning discourse to describe those areas that should be removed from the planned formal city. The existing Indian and African residential areas in Durban in the early part of the twentieth century exhibited these 'illegal and inappropriate' characteristics, and it was these areas that became the object of slum clearance in the name of rational planning."[33]

[32] P 7.
[33] p 14-15.

66.6 Evidently these legitimate concerns about the Bill's use of the term "slum" were simply ignored by the second respondent.

67 AD PARAGRAPH 57(b)

67.1 I deny that the Slums Act provides for or will result in "in situ upgrades or where this is not possible relocation to other areas in the Province." I refer to what I have stated above in this regard.

67.2 Not only do Breaking New Ground and Chapter 13 of the National Housing Code permit relocations only as a last resort but they require relocations to be effected in as close proximity as possible to the site of the existing informal settlement. The Slums Act does not reflect this requirement either.

68 AD PARAGRAPH 57(c)

68.1 Section 12 requires municipalities to ensure that alternative land or buildings are located in reasonable proximity to economic

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centres only if they decide to make such alternative land or accommodation available. Nothing in the Slums Act requires municipalities to make alternative land or accommodation available even where an eviction will patently result in homelessness. This is unconstitutional.

69 AD PARAGRAPH 58(b)

69.1 The first applicant's written submission on the Slums Bill was personally handed to Tim Jeeboth, the Chairperson of the Portfolio Committee on Housing on 21 June 2007. It is attached hereto as Annexure "H." Evidently the second respondent paid no regard to it.

70 AD PARAGRAPH 59

70.1 The COHRE Report's findings on unlawful evictions carried out in the Province of KwaZulu-Natal are extremely disturbing. These findings are contained in Chapter 5 of the COHRE Report which is entitled *"Forced Evictions and Other Housing Rights Violations."*

70.2 This Chapter opens as follows –

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"The eThekwini Municipality denies that it carries out forced evictions. However Mahendra Chetty of the *pro bono* social justice orientated Legal Resources Centre in Durban told COHRE that –

> The City, as a matter of regular and consistent practice, acts in flagrant breach of the law. I have never come across one incident where the City has acted in accordance with the law in terms of section 26 of the Constitution or the PIE Act. I do not know of one instance where the City has carried out an eviction with a court order."[34]

70.3 COHRE's own research found that unlawful evictions are a regular practice in Durban and that they take three key forms. The first is when "new shacks" are demolished, the second is when people are rendered homeless during upgrades and relocations and the third is when people are forcibly removed to relocation sites.[35]

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[34] p 114.
[35] p 115.

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70.4 On the demolition of "new shacks" the COHRE Report found the following –

> "Because the municipality is committed to 'slum clearance' and so takes the 'elimination' of shacks rather than the securing of housing rights to be its project, no new shacks are allowed to be constructed in informal settlements, no new settlements can be founded and no shacks can be extended or structurally improved by their occupants. When new shacks are built or existing shacks are extended or improved the Municipality assumes for itself a right to demolish these shacks. Neither COHRE nor anyone interviewed for this project is aware of a single instance where any of these demolitions were conducted in terms of PIE."[36] (emphasis added)

70.5 Shacks are regarded as "new" even when they have been rebuilt after being destroyed by fire and even when they are extended to create more space for a growing family. Most often this happens when the children of the original residents reach adulthood and form their own partnerships or have their own children. In these instances the family does not consider the extensions to the original shack to mean that it is a new shack

[36] p 115

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but the Land Invasions Unit will often assume that it is now a "new shack" and destroy it in its entirety.[37]

70.6 The COHRE Report notes that –

> "The City's ban on new shacks has no basis in law and results in worsening already severe overcrowding. Given that over crowding is one of the key definitions of a 'slum' this policy is actually producing 'slums."[38]

70.7 It is clear from the Court papers attached to the second respondent's answering affidavit as Annexure "MM7" that the City considers itself entitled to demolish these shacks without court orders. Indeed the COHRE Report notes that a recent advert by the City for the position of Land Monitor Officer details the duties as follows –

> "Report any new land invasions or erection of illegal structures within informal settlements by telephoning the Land Invasions Unit to demolish."[39]

70.8 There is no mention of PIE or any court process.

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[37] p 116.
[38] p 116.
[39] p 115, footnote 538

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70.9 The COHRE Report finds that during relocations of informal settlements a considerable proportion of people are routinely left homeless –

"People are rendered homeless during relocations when they are not on the housing lists. Sometimes this is because they don't qualify for a subsidy because they are under 21 years old, are single people without dependants or do not have ID books. People are also left homeless during relocations because they arrived in the settlement after the housing list was drawn up. However the main reason why people are rendered homeless is that the housing lists only include shack owners and do not include shack renters. When people on the housing list are being moved out of a shack to be given houses in a relocation or upgrade site their shacks are immediately destroyed and their buildings materials pulverised. Sometimes the remains are also burnt. But very often other people, not on the housing list, were living in those shacks and are left homeless."[40] (emphasis added)

[40] p 117.

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70.10 The COHRE Report records that shack renters tend to be poorer than shack owners and that the result of the above is therefore anti-poor and anti-women.[41]

70.11 The COHRE Report finds that as many as 40% to 50% of the occupants of an informal settlement may be rendered homeless during a relocation by virtue of the above.[42]

70.12 Of course if such people attempt to build a new shack on the same site or elsewhere it will be demolished.

70.13 The COHRE Report found as follows in this regard –

> "Where people are left homeless as a result of relocations they sometimes sleep in the open, hidden in the bush or on the site of their destroyed home. In both cases, but particularly in the former, people are placed at tremendous risk of crime and sexual assault. People do sometimes try and rebuild on the same site or elsewhere but they do so at the risk of assault by the police and Land Invasions Unit and having their new structures immediately demolished on the basis that they are new. This happened in Motala Heights

[41] p 117.
[42] p 118.

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and people left homeless after the Juba Place relocation had their new shacks destroyed by the Land Invasions Unit..."[43]

70.14 Both the Motala Heights and Juba Place Informal Settlements are affiliated to the first applicant and I have personal knowledge of the suffering experienced by those residents who had their shacks demolished and were rendered homeless as a result.

70.15 Some of the people evicted illegally from Juba Place went to live in Penary Ridge informal settlement. When I visited Penary Ridge after the eviction I found 20 people, including women and children, huddled into a wooden shed no more than around 25 m^2 in area, and with no access to water, electricity and no privacy at all.

70.16 The evictions at Motala Heights and Juba Place also caused a great deal of hardship to people living in Penary Ridge, since the influx of evictees resulted in severe overcrowding. The state's response to this was to simply demolish the evictees' homes again.

[43] p 118

70.17 This is precisely why the implementation of Chapter 13 of the National Housing Code is so important – for – as previously noted it specifically seeks to ensure that all residents in an informal settlement are housed in upgrades or new developments irrespective of whether or not they qualify for subsidies.

70.18 The COHRE Report also found that in many cases relocations carried out by the City became forced removals. In those cases people were given a simple choice between relocation or demolition or coerced in various ways to accept relocation. The COHRE Report notes that "clearly if the choice is between demolition, and thereby being rendered homeless, and relocation, then the relocation is a forced removal."[44] COHRE found further that "the kinds of coercion pointed to by interviewees included threats of withdrawal of state grants and threats of violence or expulsion for the community prior to relocation"[45]

70.19 The threat of widespread violations of the most fundamental constitutional rights looms large when the Slums Act – which mandates the institution of evictions proceedings on a large

[44] p 121.
[45] p 121.

scale, clamps down harshly on the formation of new informal settlements and fails to give effect to Chapter 13 of the National Housing Code – is passed in this context. Indeed the violence of the Slums Act has already been felt by the occupiers of the Siyathuthuka Informal Settlement in Sea Cow Lake. The COHRE Report records the following –

"On 1 October 2001, the Slums Act came into legal force. By 4 October the first Slums Act eviction in Durban had taken place in the Siyathuthuka Informal Settlement in Sea Cow Lake. Fifty families were detained at gun point while their homes were demolished. They were left homeless. Following this a protest by 400 people was held; in the course of this protest a number of people were badly injured by the police and 11 protesters were arrested. Lennox Mabaso, spokesperson for the Provincial Minister of Housing , told the Mercury that 'We want to reiterate that it is illegal to erect new shacks at this stage, because it contravenes the Prevention of Emergence of Slums Act, which states that, as from 1 October, any shacks erected would be considered illegal.' Couglan Pather, the Head of the eThekwini Housing Department told the Sunday Tribune that, in keeping with the Slum Clearance Act, the municipality did not allow the

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building of new shacks, and it was those newly built shacks that had been targeted. 'The old shacks can stay until we find low-cost housing to accommodate these people....The municipality will take down only new structures.'"[46]

70.20 The COHRE Report records further that –

"At the time of writing some Municipal and Provincial officials were telling the media that all shacks built after October 2007 were, as a result of the Slums Act, illegal and subject to demolition. This has no basis in law."[47]

70.21 Louisa Motha is a resident of the Annet Drive Informal Settlement and a member of the first applicant's Secretariat. Ms Motha was present when, during the unlawful demolition of shacks in Annet Drive in January 2008, David Coetzee of the Land Invasion Unit stated that the Slums Act entitled the Unit to act as it did. Ms Motha was also present in the Durban High Court when the City's advocate – whose name she did not get – relied orally on the Slums Act in an attempt to oppose the application by the occupiers of Annet Drive for an order interdicting the City from demolishing further shacks or

[46] p 57.
[47] p 115.

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attempting to evict the occupiers without a court order in terms of the PIE Act. Ms Motha's further confirmatory affidavit is attached hereto as Annexure "I".

70.22 To the extent that it conflicts with the above the contents of this paragraph are denied.

71 AD PARAGRAPH 62

71.1 I dispute that the "cornerstone of the Slums Act is to improve the living conditions of residents of slums and informal settlements." The cornerstone of the Slums Act is to eliminate slums and prevent their re-emergence. The Slums Act is not truly concerned with housing at all, let alone adequate housing within the meaning of the Constitution and international human rights instruments. The Slums Act will have the effect of worsening the housing conditions of thousands of people – all of whom constitute the poorest of the poor.

72 AD PARAGRAPH 65

72.1 I dispute the allegations in this paragraph. For the reasons set out above I submit that the Slums Act is an irrational and

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repressive measure which will retard rather than promote the progressive realisation of the right of access to adequate housing in terms of s 26(2) of the Constitution.

73 AD PARAGRAPH 66

73.1 I dispute that the Slums Act gives effect to the provisions and objectives identified in the National Housing Act, the National Housing Code and international law commitments. For the reasons set out above the Slums Act is in fundamental conflict with all these measures.

73.2 Further legal argument will be presented in this regard at the hearing of the matter.

WHEREFORE the applicants pray that it may please the above Honourable Court to grant the relief as prayed for in the Notice of Motion, as amended.

SIBUSISO ZIKODE

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and sworn to before me at Durban on this the 6 day of JUNE 2008 the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

Commissioner of Oaths

ANGELA GAY NESS-HARVEY
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S.I.