

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

CASE NO. 1874/2008

In the matter between :

ABAHLALI BASEMJO NDLO MOVEMENT SA

First Applicant

SIBUSISO ZIKODE

Second Applicant

and

PREMIER OF KWAZULU-NATAL

First Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT, HOUSING AND
TRADITIONAL AFFAIRS, KWAZULU-NATAL

Second Respondent

MINISTER OF HOUSING

Third Respondent

MINISTER OF LAND AFFAIRS

Fourth Respondent

NOTICE OF FILING AND SERVICE

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
DURBAN

AND TO:

WITS LAW, CLINIC

Applicants' Attorneys

c/o NICHOLS ATTORNEYS

Suite 115, Musgrave Park

18 Musgrave Road

Berear

DURBAN

(Ref: T. Nichols/cn/CAL043)

AND TO :

THE STATE ATTORNEY, KWAZULU-NATAL

3rd & 4th Respondents' Attorneys

6th Floor

Metropolitan Life Building

391 Smith Street

DURBAN

(Ref : Mr Dorkin/;80/000/134/08/AP7)

S I R S

PLEASE TAKE NOTICE that the abovementioned second respondent serves and files
evenly herewith the answering affidavit of MIKE MABUYAKHULLU and the confirmatory
affidavits of MFUNISELWA ELIJAH NKOSI and SINIDISIWE ZANDILE NYANDU

I ACKNOWLEDGE RECEIPT OF THIS DOCUMENT, ON BEHALF OF THE STATE ATTORNEY (KZN) WITHOUT PREJUDICE TO THE DEFENDANT(S)/RESPONDENT(S)/PLAINTIFF(S)/APPLICANT(S).

TIME RECEIVED: 10:07
DATE: 2008/04/03

SIGNATURE: [Signature]

RECEIVED COPY HEREOF

TIME: 10:25 AM DATE: 2008/04/03


SIGNATURE: [Signature]

"WITHOUT PREJUDICE"

Nichols Attorneys

PLEASE TAKE NOTICE FURTHER that the confirmatory affidavit of SINDISIWE ZANDILE NYANDU attached hereto is unsigned. A signed copy of the affidavit will be served and filed shortly.

DATED at DURBAN this 3rd day of APRIL 2008.

A handwritten signature in black ink, appearing to be 'S. Zandile', written over a horizontal line.

SECOND RESPONDENT'S ATTORNEYS

SHEPSTONE & WYLIE
Second Respondents
Scotswood
35 Allwal Street
Durban
(Ref : V. Nkosi/prove3228.13)

IN THE HIGH COURT OF SOUTH AFRICA
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SUBSISO ZIKODE

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Second Respondent

MINISTER OF HOUSING

Third Respondent

MINISTER OF LAND AFFAIRS

Fourth Respondent

SECOND RESPONDENT'S ANSWERING AFFIDAVIT


m/m

MB
m/m

I, the undersigned,

MIKE MABUYAKHULU

do hereby state under oath:

1.

I am the second respondent herein and am the Member of the Executive Council of the Province of KwaZulu-Natal responsible for Local Government, Housing and Traditional Affairs.

2.

The facts deposed to in this affidavit are within my knowledge, except where the contrary is indicated. I believe these facts to be true and correct. The legal submissions in this affidavit are made on the basis of advice sought and obtained by me and members of my department.

SUMMARY OF OPPOSITION

3.


I oppose the relief sought in these proceedings and submit that the KwaZulu-Natal Elimination and Prevention of Re-Emergence of Slums Act No. 6 of 2007 ("KZN Slums Act") is lawful and constitutionally valid. I believe it would assist this Court if I summarised, at the outset, the applicants' claims and my answers to those claims.

I draw attention to a critical misunderstanding by the applicants of the purpose and objective of the KZN Slums Act. The theme permeating the application is that the KZN Slums Act seeks to eradicate informal settlements and to banish occupants of such informal settlements so that they no longer have a place to live. This is incorrect. When viewed in its correct constitutional and statutory context, the purpose and objective of the KZN Slums Act is to improve and upgrade the living conditions in informal settlements so as to ensure that their occupants are able to secure better living and housing conditions. This is to give effect to and achieve the constitutional obligations in section 26 of the Bill of Rights, not to negate those obligations.

4.

The applicants' claims and my answers can be summarised as follows:

(a) The applicants claim that the KZN Slums Act exceeds the Province's legislative competence. I however submit that the KZN Slums Act falls within the constitutionally-sanctioned legislative competence of the Province. Further, I submit that the KZN Slums Act is consistent with and gives effect to the government's international law obligations, the Province's obligations set out in national housing policies and laws and the Province's obligations in terms of duly adopted housing laws and policies.


m/m

(b) The applicants claim in the alternative that the KZN Slums Act contravenes section 26(2) of the Bill of Rights, which obliges the state to take reasonable and progressive measures, within available resources, to achieve the progressive realisation of the right of access to housing. I submit that the KZN Slums Act is a measure designed to give effect to provincial obligations in section 26(1) and (2) of the Bill of Rights and national and provincial policies and laws on housing.

(c) The applicants claim in the alternative that sections 16 and 9(1)(a) of the KZN Slums Act are inoperative because they conflict with the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1997 ("PIE Act") and the Housing Act No. 107 of 1997 ("Housing Act").

(i) I submit that the provisions of section 16, which deal with the eviction of unlawful occupiers, specifically provide for eviction proceedings to be brought in terms of the PIE Act and are accordingly not in conflict with the PIE Act or the Housing Act.

(ii) I submit that section 9(1)(a) which provides that a municipality as part of its integrated development planning, and within its available resources, may take reasonable measures to achieve the progressive realisation of the right of access to adequate housing in section 26 of the Bill of Rights, does not conflict with the PIE Act or the Housing Act and further that the section is designed to give



Clause 19 of Resolution 55/2 recorded that the General Assembly resolved to:

8.

refer to the salient portions of those documents in this affidavit.
resolutions and related reports are made available to this court and to the applicants, and will
burden the papers in this application but will ensure that a bundle of these United Nations
Millennium Declaration on 8 September 2000, through Resolution 55/2. I do not want to
The General Assembly of the United Nations did this by adopting the United Nations
eight UN Millennium Development Goals which they sought to achieve substantially by 2015.
At the turn of the century, the member states of the United Nations committed themselves to

7.

SOUTH AFRICA'S INTERNATIONAL LAW AND POLICY COMMITMENTS

legislative milieu within which the KZN Slums Act must be understood.
with critical background information relating to the international and national policy and
Before responding to the answering affidavit, I believe it is necessary to provide this court

6.

related national and provincial housing laws and policies.
effect to the constitutional obligations in section 26 of the Constitution and

“By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the “Cities Without Slums initiative.”

9.

Goal Seven of the UN Millennium Development Goals, as it has come to be known, is entitled “Ensure environmental sustainability,” records this intention and these goals are available on the world web at <http://www.un.org/millenniumgoals/goals.html>.

10.

In 2005, the United Nations commissioned a report from the UN Millennium Project, a specialist, independent advisory body to the Secretary-General of the United Nations to report on progress made towards achieving the UN Millennium Development Goals. This report is entitled *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*. It records the crisis regarding slum housing conditions as follows (at page 11):

“About 900 million people are estimated to live in slum-like conditions characterized by insecure tenure, inadequate housing, and a lack of access to water or sanitation. The highest share of slum dwellers is in Sub-Saharan Africa and South Asia, accounting for more than 70 percent of the urban population in may cities.”

11.

The United Nations Millennium Development Goals Report of 2007, which was a further report commissioned by the United Nations to assess progress on the UN Millennium

The inception of democracy in South Africa brought with it complex, historically-accumulated socio-economic challenges with one of the key issues being the provision of adequate housing to a previously excluded majority of citizens. Government's approach to solving these challenges commenced, *inter alia*, with the adoption of the National Housing Act No. 107 of 1997. The Housing Act gives effect to government's primary housing objective which is to undertake housing development in the country to ensure integrated, stable and sustainable

13.

NATIONAL HOUSING ACT, 1997

turn next.

That forms the international law and policy background within which South Africa enacted its housing laws and policies, and in particular its approach to informal settlements, to which I

12.

The number of people living in slums and slum-like conditions in the world's cities is growing. Rapid rural-to-urban migration has produced massive slums in many developing countries, where inhabitants lack secure tenure to their land and may not have access to basic water and sanitation services. Between 1990 and 2001 the slum population grew in every region except North Africa and the CIS countries of Europe. An estimated 900 million people live in slum-like conditions, more than 250 million of them in South Asia, where roughly 60 percent of the urban population lacks secure tenure. In Sub-Saharan Africa more than 70 percent of the urban population is estimated to live in slums...".

"Improving the lives of slum dwellers"

Development Goals, records the lack of progress as follows (at page 26):

Thereafter the National Housing Code was approved by national government in April 2004, in accordance with section 4 of the National Housing Act. Broadly stated, it sets out government's policy on housing and the achievement of the constitutional obligations in section 26 of the Constitution. Chapter 12 of the National Housing Code deals with a key policy objective, which is the need to provide housing assistance in emergency circumstances.

15.

NATIONAL HOUSING CODE, 2004

The National Housing Act emphasises the need for integrated planning and development of housing strategies and policies amongst all three spheres of government and defines the inter-related legislative obligations on each of the three spheres of government. For example, section 9(1) of the Housing Act obliges municipalities, as part of their integrated development plans to take all reasonable and necessary steps, within the framework of national and provincial legislation to ensure that, *inter alia*, conditions that are not conducive to the health and safety of the inhabitants of their areas of jurisdiction are prevented and removed (section 9)(1)(a)(ii)). I return to specific sections of the Housing Act later.

14.

public and private residential environments, where communities have access to economic and other social forms of assistance and opportunities.

M/W

(a) Identification of communities that do not have access to basic municipal services to ensure that existing and potential emergencies are identified, risks assessed and appropriate contingency plans made;

Section 12.4.1.b of chapter 12 requires municipalities to engage in pro-active planning to identify possible emergency housing situations. These obligations include the following:

19.

Chapter 12 deals with the obligations placed on municipalities in section 9(1)(a)(ii) of the Housing Act to prevent and remove housing conditions which affect negatively the health and safety of the residents.

18.

Chapter 12 of the National Housing Code responds to the plight of persons in emergency situations with exceptional housing needs. This includes assistance to communities where living conditions have deteriorated to such an extent that they are intolerable and pose major threats to the health and safety of people resident therein and to surrounding areas.

17.

Again, I do not want to burden these papers with voluminous annexures but will ensure that a copy of chapter 12 is provided to this court and to the applicants, along with the documentation referred to previously. I refer to the salient parts of chapter 12 in what follows.

16.

(b) To include within municipal developmental priorities and objectives, the need to deal with existing and potential emergency situations; and

(c) Identification of alternative land to settle residents in existing and potential emergency housing situations; and

(d) Developing and implementing procedures to monitor land use, including illegal land invasion.

20.

The remainder of chapter 12 of the National Housing Code deals with mechanisms to provide adequate funding to municipalities to deal with existing and potential emergency housing situations, within their respective areas of jurisdiction.

21.

Further national policy developments included the adoption in September 2004 of a housing policy entitled *Breaking New Ground in Housing Delivery*. This document will be included in the bundle of documentation to be provided to this court and to the applicants. This policy sets out a comprehensive plan for the development of sustainable human settlements in the country.

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Section 3.1 of the *Breaking New Ground* policy analyses the reasons for the urgent need to eradicate informal settlements and to integrate residents of those settlements into sustainable human settlements. It provides:

"Informal settlements must urgently be integrated into the broader urban fabric to overcome spatial, social and economic exclusion. The Department will accordingly introduce a new informal settlement upgrading instrument to support the focused eradication of informal settlement. The new human settlements plan adopts a phased in-situ upgrading approach to informal settlements, in line with international best practice. Thus, the plan supports the eradication of informal settlements through in-situ upgrading in desired locations, coupled to the relocation of households where development is not possible or desirable. The upgrading process is not prescriptive, but rather supports a range of tenure options and housing typologies.

Where informal settlements are upgraded on well-located land, mechanisms will be introduced to optimize the locational value and preference will generally be given to social housing (medium density) solutions. Upgrading projects will be implemented by municipalities and will commence with nine pilot projects, one in each province building up to full programme implementation status by 2007/8..." (emphasis added).

Section 4.1 of the *Breaking New Ground* policy deals further with the policy response to informal settlements as follows:

"There is a need to respond positively and proactively to processes of informal housing development which are taking place across the country. A more responsive state-assisted housing policy, coupled to delivery at scale is expected to decrease the formation of informal settlements over time. There is however a need [to] acknowledge the existence of informal settlements and recognize that the existing housing programme will not secure the upgrading of informal settlements. There is also a need to shift the official policy response to informal

settlements from one of conflict or neglect, to one of integration and co-operation, leading to the stabilization and integration of these areas into the broader urban fabric" (emphasis added).

24.

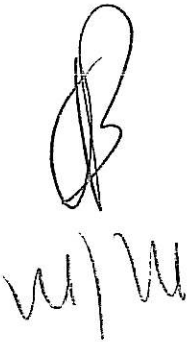
The policy adopted in respect of informal settlements contemplates an innovative funding mechanism for the upgrading of informal settlements to be implemented through a phased approach. This funding mechanism will be introduced on an area-wide basis, rather than on an individual occupant basis, to:

- (a) ensure that community networks are maintained;
- (b) minimise social disruption within informal settlements; and
- (c) enhance community participation in all aspects of the sustainable human settlement development solution.

25.

The phased funding mechanism for the upgrading of informal settlements will proceed as follows:

- (a) Phase 1 requires a survey of the informal settlement community to determine the housing and infrastructural needs of the community through a process of consultation and which will determine whether the land is suitable for in-situ upgrading;



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In accordance with its obligations in terms of the Housing Act, 1997, the Province enacted the

28.

KWAZULU-NATAL HOUSING ACT, 1998

Province, to which I turn next.

These national laws and policies have informed the content of housing laws and policies in the

27.

and sustainable housing opportunities.

ultimate objective of delivering security of tenure, the provision of socio-economic services

upgrading of informal settlements, through the phased approach described above, and with the

Breaking New Ground also provides a business plan (Business Plan 3) to facilitate the

spheres of government are required to work in partnership to upgrade informal settlements.

A critical policy obligation in *Breaking New Ground* is that national, provincial and municipal

26.

needs of the community which may take a variety of forms.

(c) Phase 3, the final phase, will focus on the development of housing in response to the

tenure for the entire community; and

(b) Phase 2 will focus on the provision of basic services, social amenities and security of

KwaZulu-Natal Housing Act, No. 12 of 1998 ("KZN Housing Act") to provide for sustainable housing development within the Province. Section 2 of the KZN Housing Act records that the purpose of the Act is to "provide for sustainable housing development in the Province within the framework of national and provincial housing policy."

29.

Section 2B of the KZN Housing Act, places obligations on me to determine provincial policy in the Province in accordance with the principles codified in section 2 of the Housing Act, the Housing Code and to promote the adoption of legislation to ensure effective housing delivery in the Province.

30.

In accordance with the KZN Housing Act, national housing laws and policies described earlier, as well as the country's commitment to the UN Development Millennium Goals, I initiated the development of and finally approved a provincial policy described as *KwaZulu-Natal Department of Housing: Eradication of Slums Strategy "Vision 2014"* on 20 April 2007. A copy of this policy is attached marked "MM1".

31.

Section 1, introduces this policy as follows:

"South African government has set targets with clear timeframes in accordance with [the] millennium development goals (MDG) plan and amongst these targets is to ensure eradication of extreme poverty and hunger by 2015 aligned with [the] eradication of informal settlements. The KwaZulu-Natal department of housing in aligning itself with millennium development goals set target to substantially

reduce informal settlements and slums in the province by 2010 and eradication of the latter by 2014.

The development of the eradication of slums strategy tends to outline the strategic approach in the eradication of informal settlements in the province. In developing the strategy, consultation has been undertaken with the key role-players, with the intentions to ensure unconditional contribution and participation towards the achievement of the objectives of this strategy".

32.

Section 2 of the policy provides the objective which is to "outline the mode and the platform for the provincial department of housing to eradicate informal settlements and measures to control continuation of informal settlements in KwaZulu-Natal".

33.

Section 3 of the policy provides an analysis of population and housing needs in the country and in the Province. In summary, the statistics available at the time of the adoption of the policy revealed the following:

(a) The Province has an estimated population of approximately 9.5 million people which makes it the most populated province in the country;

(b) The housing backlog in the Province is estimated at 872 277 households; and

(c) The Province has constitutional and statutory obligations to take reasonable legislative and other measures to ensure that everyone within the housing backlog has access to

adequate housing, including the 872 277 households.

34.

Section 4 of the policy provides an analysis, at the time the policy was adopted, of the informal settlements in the Province. That revealed the following:

- (a) Mid-term estimates in August 2006 illustrated various categories in need of housing and informal settlements which were identified as a critical priority in the housing backlog estimates.

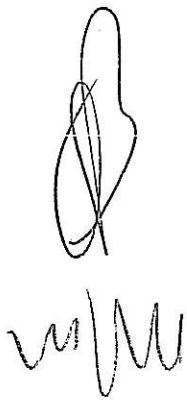
- (b) The provincial housing department and municipalities within the Province undertook a detailed assessment of informal settlements and households in 2006, as a parallel exercise to that undertaken by Stats South Africa, which indicated that approximately 210 721 households in the Province lived in slums and informal settlements.

- (c) Approximately 609 informal settlements were identified in the Province, and approximately 89 percent of those informal settlements were within the jurisdiction of the eThekweni Municipality.

35.

One of the key challenges identified in the policy is the lack of accurate statistics on slums and informal settlements in the Province. However, the available statistics revealed the following:

- (a) In the coastal region of the Province:

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mlm

- (i) eThekweni Municipality contained 547 informal settlements and slums with an estimated 153 000 households;
 - (ii) Ntshongwe District Municipality contained nine informal settlements and slums with an estimated 23 700 households; and
 - (iii) Ugu District Municipality contained ten informal settlements and slums with an estimated 13 000 households;
- (b) In the inland region of the Province:
- (i) Sisonke District Municipality contained five informal settlements and slums with an estimated 3 108 households;
 - (ii) Umhlanguleni District Municipality contained 28 informal settlements and slums with an estimated 15 099 households; and
 - (iii) Uthukela District Municipality contained six informal settlements and slums with an estimated 2 700 households; and
- (c) In the Northern Region of the Province:
- (i) Amajuba District Municipality contained two informal settlements and slums with an estimated 3 200 households; and
 - (ii) Uthungulu District Municipality contained two informal settlements and slums with an estimated 3 500 households.



enacted.

This is the policy framework within which the KZN Slums Act was initiated and ultimately

38.

housing developments.

new occupiers of informal settlements when existing occupiers are moved to more suitable improve the living conditions in informal settlements are often frustrated by the rapid influx of re-emergence of slums. This aspect of the policy is important because ongoing efforts to commits my department to adopt, *inter alia*, legislation on this issue to enforce and prevent the informal settlements are monitored, controlled and prevented. Section 15 of the policy Another important feature of the policy is to ensure that the re-emergence of slums and

37.

socio-economic services to such communities. provide not only the provision of sustainable housing settlements but also the provision of integration of informal settlements through establishing inter-departmental strategies to eradicated by 2014. Importantly, the policy also recognises the need to ensure and secure the give informal settlements priority to ensure that slums are substantially reduced by 2010 and The policy identifies the need for the Province to work in partnership with municipalities to

36.

A further policy forum also informed the provisions of the KZN Slums Act. This emerged from the inaugural meeting of the African Ministers' Conference on Housing and Urban Development held in Durban between 31 January to 4 February 2005. A copy of this Report is attached marked "MM12".

39.

The African Ministers' Conference had its genesis in the World Summit on Sustainable Development held in Johannesburg during 2002 in which discussions ensued between the Executive Director of UN-Habitat and various African housing Ministers on the need for a co-ordinated approach by African countries on issues dealing with housing and human settlements. These discussions were also informed and driven by the UN Millennium Development Goals.

41.

The African Ministers' Conference was held pursuant to those discussions and one of the issues addressed at the conference in Durban included the challenge of slums, the delivery of sustainable housing to occupants of those slums and the provision of related basic services to those residents.

(b) Governments must promote secure land tenure, within a pro-poor framework, and

cities housing plans;

(a) The upgrading of slums must be regarded as a central component of national, local and

with the challenge of slums in Africa guided by the following principles and priorities:

The Declaration ultimately adopted at the African Ministers' Conference (section 8.1.1) included a focus on the encouragement of slum upgrading programmes and the building of partnerships between countries implementing such programmes. In accordance with that, the African Ministers committed themselves to an enhanced framework (clause 8.1.2(ii)) to deal

43.

(d) The acknowledgment of the important role played by women in decision making.

(c) The participation of slum dwellers in decision-making by governments; and

(b) The need to acknowledge the rights of slum dwellers;

(a) The need for new responsive legislative frameworks;

Millennium Development Goals. Discussions focussed on four key areas:

Section 7.1 of the Report deals with the shelter and slums in the context of meeting the UN

42.

M/m

(a) Pietermaritzburg at the City Hall on 3 May 2007;

draft Bill were held in:

The KZN Slums Act was preceded by a province-wide consultative process. Hearings on the

45.

KZN SLUMS ACT: PUBLIC PARTICIPATION PROCESS

ultimately enacted.

KZN Slums Act was initiated, discussed and refined through a public participation process and
What I have described up to now forms the legislative and policy backdrop against which the

44.

slum targets.

(d) Cities must play a leading role in meeting the UN Millennium Development Goals

plans and strategies to reach those targets; and

(c) Governments, in consultation with all stakeholders, must set national slum targets,
taking into account the relevant UN Millennium Development Goals and also set out

undertake secure tenure campaigns;

- (b) Durban at the Kennedy Road Community Hall on 4 May 2007;
- (c) Port Shepstone at the Marburg Community Hall on 10 May 2007;
- (d) Stanger/KwaDukuza at the Luthuli Community Centre on 11 May 2007; and
- (e) in the Amajuba District Municipality at the Farleigh Community Hall in Newcastle on 5 June 2007.

46.

The public hearings were attended by the respondents' attorneys of record, members of the KwaZulu-Natal Portfolio Committee on Housing, the legal advisor and other officials of the KwaZulu-Natal Legislature and the Head of Department of the Provincial Department of Housing Ms Z Nyandu. I refer to the confirmatory affidavit of our attorney of record Mr.

MFUNISELWA ELIJAH NKOSI

47.

The KZN Slums Bill was revised based on comments received through the public participation process. In addition, the publication of the Bill for comment, elicited several written submissions, and most importantly, a query from the United Nation's Human Rights Council's Special Rapporteur on the Right to Adequate Housing as a Component of the Right to an Adequate Standard of Living Mr. **MILON KOTHARI**. This query was directed to me by the Director General of the Department of Foreign Affairs and a copy is attached marked

“MIM3”.

A handwritten signature consisting of a large, stylized capital letter 'B' above the initials 'M/M'.

The response my department received from the UN Special Rapporteur was a favourable one and the Special Rapporteur was satisfied that all of his concerns, reported to him by certain non-governmental organisations, had been satisfactorily addressed. The feedback from the UN Special Rapporteur was very positive and supportive of the KZN Slums Act. I refer to the

50.

“MM4” deals with the structure, objectives and content of the KZN Slums Act. “MM4” as it was drafted on my instructions, and incorporate its contents by reference. constitutional goals in section 26 of the Bill of Rights. I am familiar with the contents of forced evictions” and was a measure to address the UN Millennium Development Goals and particular, I pointed out that the KZN Slums Act had nothing to do with “ pointing to the objectives behind the Act as well as its legislative and policy basis. In “MM4”, I sought to explain and address the concerns raised by the Special Rapporteur by NYANDU, and a copy of this response is attached marked “MM4”. As is evident from I responded to that query through the Director-General of Housing in the Province, Ms.

49.

Rights.

As is evident from “MM3”, the UN Special Rapporteur sought responses from me on the basis of advice he had received from non-governmental organisations that the KZN Slums Bill contravened South African international law obligations and section 26 and 28 of the Bill of

48.

confirmatory affidavit of the Director General of Housing Ms. SINDISIWE ZANDILE NYANDU filed with my affidavit.

51.

This then forms the backdrop against which the KZN Slums Act was conceived, drafted and enacted. I now respond to specific allegations in the founding affidavit.

RESPONSE TO FOUNDING AFFIDAVIT

Ad paragraphs 5-8

52.

(a) I have no knowledge of the extent to which the first applicant in reality represents the interests of the residents of informal settlements beyond that described in the founding affidavit, and which appears to be limited to the areas of Durban and Pietermaritzburg in the Province, and accordingly deny this contention.

(b) I note that the National Department of Housing has engaged constructively with other non-governmental organisations, representing residents in informal settlements, and in particular refer to the agreements reached with the FEDERATION OF THE URBAN POOR ("FEDUP") in efforts to improve the standards of living and housing

I do not dispute these allegations, save to note that the members of the first applicants fears that the KZN Slums Act will result in their "evictions", without more, is unfounded. I have demonstrated the policy and legislative objectives underpinning the KZN Slums Act, central

54.

Ad paragraphs 13-16

I admit these allegations.

53.

Ad paragraphs 9-12

cannot admit these, and deny same.

of his authority to act on behalf of the first applicant and/or its members. I accordingly

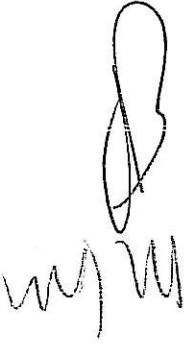
(d) The deponent does not provide any detail as regards the extent of its membership, nor

organisations in the Province.

(c) My department hopes to establish similar partnerships with non-governmental

Cape Town.

with FEDUP signed in September 2006 for the upgrading of informal settlements in conditions in Cape Town. These constructive engagements resulted in agreements



limited means alleged.

(a) I deny that the applicants only became aware of the KZN Slums Bill through the

56.

Ad paragraphs 20-21

settlements and slums in the Province.

progress being made towards the elimination and/or improvement of informal
requirement is necessary to ensure that the Province is able to monitor and assess the
upgrading of informal settlements and slums in areas within their jurisdiction. This
Province is required to report annually on the description, numbers and plans for the

(b) As is evident from section 11 of the KZN Slums Act, each municipality within the

results.

against available statistics referred to earlier, the accuracy of the exercise or of its
person or persons and provides no further detail on this exercise for me to assess,
The deponent does not state who is conducting this exercise, the qualifications of that

(a) I have no knowledge of the socio-economic profiling exercise the deponent refers to.

55.

Ad paragraphs 17-19

to which is the effort to improve the living conditions of the residents of informal settlements.

(b) I referred earlier to the public participation process preceding the enactment of the

KZN Slums Act. In particular, I note that the public meeting on the Bill held at the Kennedy Road Community Hall in Durban on 4 May 2007 was widely attended by members of the first applicant, including the second applicant.

(c) The public meeting on 4 May 2007 was preceded by a demonstration by members of the first applicant. Our attorney and members of my Department and the KZN Legislature were only able to get the meeting under control after they met separately with the second applicant, explained the contents of the Bill to him and commenced the meeting once it was clear that he understood that the fears of eviction without more were unfounded.

(d) Notwithstanding this separate meeting with the second applicant, the second applicant nevertheless incited and verbally interrogated governmental officials present at the public hearing. The second applicant appeared not to have shared the contents of his meeting with governmental officials with members of the first applicant.

(e) I refer to the confirmatory affidavit of our attorney NKOSI who was present at that meeting.

(f) In so far as the deponent makes reference to MARIE HUCHZERMEYER, an associate professor at the University of Witwatersrand, I attach marked "MMS" a

M/m

written submission received by Ms. HUCHEZERMAYER raising concerns with the

Bill.

(g) Attached marked "MM6" is a response to that written submission prepared on my instructions by our attorneys. I am familiar with the contents of that response and incorporate its contents by reference.

(h) I deny that the descriptions of "slums" and "elimination" are disrespectful in any way and refer to what I set out earlier on the international, national and provincial legislative and policy obligations which refer to these concepts.

(i) I dispute the remaining conclusions sought to be drawn in these paragraphs.

Ad paragraphs 22-23

57.

(a) I dealt earlier with the legislative and policy foundations of the KZN Slums Act.

(b) No periods have yet been prescribed for owners of land to institute eviction proceedings in terms of section 16 of the KZN Slums Act as the annual reports from the municipalities are yet to be provided. This will provide my Department with the

- (f) These obligations on private land owners are reinforced by the provisions of section 5, which is designed to ensure that private landowners do not profit from substandard upgrade living conditions in section 14 of the Act.
- (e) The provisions of section 16 of the KZN Slums Act must be read in the context of the Act as a whole, including its objectives and the role of municipalities in section 9, the establishment of transit areas in section 13 and the obligations on owners of land to upgrade living conditions in section 14 of the Act.
- (d) I deny that the purpose of such evictions is to leave residents of informal settlements without a place to live. The cornerstone of the KZN Slums Act, as I have demonstrated earlier, is in line with international, national and constitutional objectives to ensure access to adequate housing and to improve the living conditions of those who live in dangerous or substandard conditions.
- (c) I note that section 12 of the KZN Slums Act obliges municipalities to ensure that alternative land and buildings are located in reasonable proximity to economic centers in the Province. This is to ensure that residents of informal settlements are integrated into the urban settlement and socio-economic environment.
- information it needs to assess the present severity of the situation in the Province and to formulate policies and plans for the upgrading of the informal settlements in the Province, either through in-situ upgrades or where this is not possible, through relocation to other areas within the Province.

accommodation, section 6 which obliges a municipality to monitor and take steps to remedy substandard accommodation by private landowners within its jurisdiction, duties placed on private landowners in section 14 of the Act to upgrade land or buildings, duties placed on landowners in section 15 of the Act to prevent unlawful occupation of vacant land or buildings to ensure that informal settlements or slum conditions do not proliferate and the related offences in sections 20 and 21 of the KZN Slums Act.

(g) Save as is consistent with the foregoing, I deny each remaining allegation in these paragraphs.

Ad paragraphs 24-25

(a) I dealt earlier with the public meeting at the Kennedy Road Community Center.

(b) I have not seen the written submissions by the applicants and invite them to deliver a copy of these submissions.

(c) I do not dispute the remaining allegations in these paragraphs.

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(e) In any event, it is to be noted that the KZN Slums Act specifically refers to and

evictions without a court order.

(d) A copy of the affidavit filed on behalf of the eThekweni municipality in the court proceedings referred to in these paragraphs is attached marked "MM7". It is apparent from that affidavit that no reliance was placed on the KZN Slums Act to secure

informal settlements do not proliferate.

(c) We are advised that the eThekweni Municipality sought to enforce its policy against unlawful invasion of land to prevent the erection of shacks so as to ensure that

on the KZN Slums Act in justification of the alleged evictions.

(b) Our attorneys consulted with Mr. SAZI NGCOBO, who is a member of the Legal Services Department of the eThekweni Municipality and who is familiar with the court proceedings referred to in these paragraphs. Our attorney advises me that Mr. NGCOBO reports that no forced evictions were attempted and no reliance was placed

have no direct knowledge of these allegations, save in the respects which follow.

(a) The applicants have not joined the eThekweni municipality in these proceedings and I

requires that all and any evictions are to occur in accordance with the PIE Act.

(f) The provisions of the PIE Act provide a judicial safeguard to ensure that evictions are lawful, to prevent unlawful evictions and to ensure that all relevant factual circumstances are taken into account, including the needs of vulnerable groups specified in that Act, prior to a Court Order authorising evictions. This includes a consideration of whether a municipality has alternative accommodation which could be made available to those sought to be evicted.

(g) I dispute the remaining allegations in these paragraphs.

Ad paragraphs 28-30

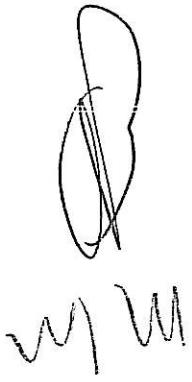
60.

I dispute these allegations and conclusions of law sought to be drawn in these paragraphs.

Ad paragraph 32

61.

I do not dispute these allegations.



(a) I dispute the interpretive gloss the deponent seeks to draw on the objects of the KZN Slums Act.

(b) I submit that it is clear from the background described in the opening sections of this affidavit that the cornerstone of the KZN Slums Act is to improve the living conditions of residents of slums and informal settlements, who by definition live in sub-standard and often dangerous conditions.

(c) I submit that these objectives are clear from a holistic analysis of the preamble, section 2 and section 3 of the KZN Slums Act as well as from the background legislative and policy obligations described previously.

(a) I dispute that the KZN Slums Act has solely the twin objectives of eliminating and preventing the re-emergence of slums and informal settlements.



(b) The cornerstone of the KZN Slums Act is to improve the living conditions of those who live in slums and informal settlements.

(c) I do not dispute the remaining allegations in this paragraph, save to note that the duties imposed in section 16 on owners or persons in charge of land or buildings are to ensure that owners do not profit from substandard accommodation and to ensure that slums do not proliferate.

Ad paragraphs 35-37

64.

(a) I dispute these allegations and conclusions.

(b) The KZN Slums Act is manifestly about housing, which is an area of concurrent national and provincial competence in Part A of Schedule 4 to the constitution.

(c) The deponent does not state the factual basis upon which the conclusions of law alleged in this paragraph are drawn.

(d) I submit that a proper construction of the KZN Slums Act demonstrates that it is in compliance with the national Housing Act and the KZN Housing Act and related policies and constitutional obligations in section 26 of the Bill of Rights.

Ad paragraphs 44-54

I dispute these allegations and conclusions of law.

66.

Ad paragraph 43

I do not dispute these allegations, save to note that the KZN Slums Act must be assessed, not in isolation, as the applicants seek to do in this paragraph but in the legislative and policy context described previously. I submit further that viewed in context, the KZN Slums Act is in fact designed to achieve the progressive realisation of the right of access to adequate housing as required in section 26(1) read with 26(2) of the Bill of Rights. The KZN Slums Act provides the legislative basis through which reasonable plans can be identified, assessed, formulated and implemented in the Province to improve the quality of housing in informal settlements and to eventually achieve, in line with international law commitments, the elimination or upgrading of slums and informal settlements.

65.

Ad paragraphs 39-41

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make a safe and sustainable in-situ upgrade impractical or impossible.

For example, where the densities of dwellings are too high or the numbers of residents alternatives will apply in the event that an in-situ upgrade is not possible or feasible, entire settlements or the temporary relocation of residents pending an upgrade. These not just to the in-situ upgrading of informal settlements but also to the relocation of It is clear from 13.3.2 of chapter 13, that the policy approach described therein applies

(b)

Chapter 13 of the Housing Code must be read in context with chapter 12 of the those codified in *Breaking New Ground*, and the provincial policies referred to earlier. Housing Code and the legislative and policy objectives described earlier, including

(a)

67.

Ad paragraph 55

I submit that the KZN Slums Act gives effect to the provisions and objectives identified in the national Housing Act, Chapters 12 and 13 of the Housing Code as well as the other international law commitments and policies described earlier.

(b)

I do not dispute these allegations.

(a)

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(a) I do not dispute these allegations.

69.

Ad paragraphs 67-72

(d) I respectfully add that the chapter 13 of the Housing Code must be read in the context of the related laws and policies I have described earlier.

(c) I submit that the KZN Slums Act facilitates and does not retard the objectives and goals referred to in this paragraph.

(b) I am advised and respectfully submit that such consultation is in any event a constitutional imperative and obligation.

(a) I do not dispute these allegations and note that each of the policy and legislative documents described earlier, envisage and contemplate consultation with affected communities.

68.

Ad paragraph 56-66

(b) The KZN Slums Act specifically incorporates the provisions of the PIE Act to ensure judicial oversight and control over unlawful evictions and to ensure that all relevant circumstances, including the needs of vulnerable groups in society, are considered prior to a court sanctioned eviction.

Ad paragraphs 73-78

70.

I dispute the conclusions of law sought to be drawn in these paragraphs and submit that for the reasons set out above there is no conflict with between the KZN Slums Act and the PIE Act.

71.

I deny that the applicants are entitled to the relief they seek and respectfully ask that the

application be dismissed.

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DEPONENT
C-16

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit duly signed and sworn to before me at *Cape Town* on this *end* day of *April* 2008, the regulations contained in Government Gazette No. R1258 dated 21 July 1972, as amended, having been complied with.

Handwritten signature
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Area: