



24 October 2008

The Honorable Cllr Obed Mlaba
Office of the Mayor of eThekweni
City Hall, West Street
Durban 4001
Republic of South Africa

Re: Forced relocation of shack-dwellers in Siyanda, KwaMashu

Dear Cllr Mlaba,

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

COHRE recently learnt of the threatened forced relocation of shack-dwellers in Siyanda in KwaMashu, to make way for the construction of a freeway in the area. According to a press statement by the newly-formed Siyanda branch of Abahlali baseMjondolo, at least 50 shacks have been demolished this year in the area by the eThekweni Municipality without notice, a court order or the provision of alternative accommodation. COHRE has learnt that eThekweni Municipality promised that all those displaced by the new MR577 freeway would be moved to newly-constructed houses in the Kulula Housing Project. Siyanda residents have now been informed that an unspecified number of families will be moved to eNtuzuma and placed in 'transit camps,' which consist of government-built shacks or temporary structures, ordinarily used for emergency housing. As eNtuzuma is further on the periphery of the city, transport costs will be much higher for families as they will be further from jobs and schools. At the same time, the Municipality has reportedly decided to move families from other areas like Umlazi and Lamontville, who are not affected by the freeway construction, into the newly constructed Kulula houses. This has understandably caused much confusion within the community, and the situation is extremely tense at present.

COHRE is disturbed with the trend in Siyanda, and in Durban in general, to use state repression against peaceful protestors legitimately airing their grievances against housing rights violations. In May this year, residents protesting shack demolitions in Siyanda marched to the Kulula project contractor's office to submit a memorandum of grievances, where they were fired upon with rubber bullets and sprayed with water canons by Durban Metro Police. During this incident five people, including a pregnant woman, were shot and injured, and subsequently arrested at the hospital for 'public violence.' The charges were eventually dropped against all of the protestors.

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On 15 September 2008, a peaceful protest held by affected Siyanda residents to air their grievances about the allocation process of alternative housing in Siyanda, was again met with a heavy Durban Metro police presence, with one police officer allegedly brandished a loaded weapon at the crowd, shouting that he would shoot them with live ammunition if they did not disband.

COHRE has maintained that the manner in which unlawful evictions of shack-dwellers has occurred in Durban is unacceptable, and people have been treated inhumanely and without dignity in the process. In terms of international human rights law, for evictions to be considered as lawful, they may only occur in very exceptional circumstances and all feasible alternatives must be explored. If and only if such exceptional circumstances exist and there are no feasible alternatives, can evictions be deemed justified. However, certain requirements must still be adhered to. These are:

1. States *must* ensure, prior to any planned forced evictions, and particularly those involving large groups, that *all* feasible alternatives are explored in consultation with affected persons, with a view to avoiding, or at least minimising, the need to use force.
2. Forced evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Governments must therefore, ensure that *adequate* alternative housing is available to affected persons.
3. In those rare cases where eviction is considered justified, it must be carried out in strict compliance with international human rights law and in accordance with general principles of reasonableness and proportionality. These include, *inter alia*:
 - Genuine consultation with those affected;
 - Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
 - Information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
 - Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
 - All persons carrying out the eviction to be properly identified;
 - Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
 - Provision of legal remedies; and
 - Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

In the past the eThekweni Municipality has not complied with the above principles, particularly with regard to obtaining a court order and providing adequate notice for evictions. On 6 October 2008, COHRE released a report on the situation in Durban entitled *Business as Usual? Housing rights and 'slum eradication' in Durban, South Africa*. The report found that unlawful evictions are commonplace in eThekweni Municipality, and while the Municipality is to be commended on building a considerable number of houses each year, the houses that are being built are often located so far out of town that living there is unviable for many of the urban working classes due to unaffordable transport costs to work, schools, and hospitals. The report also expresses serious concern about the size and quality of the houses that are being built and over the failure to provide adequate levels of basic services to shack dwellers while they wait for formal housing.

While COHRE approves of the provision of *adequate* alternative accommodation in the event of an eviction, we condemn the existence of so-called 'transit camps', which are found to be

highly inadequate and serve to destroy the already fragile socio-economic fabric of people's lives. COHRE also condemns the current practice that effectively entails moving people from their own well-located shacks into government shacks on the urban periphery, without any certainty of the time period they will be there, or indeed what permanent housing options will be made available to them in the future. If the Siyanda forced relocations are allowed to proceed it will only add to the excesses of the eThekweni Municipality documented in the recently released report, and roll back the significant recent progress made to improve relations between organised shack dwellers' and the eThekweni Municipality.

COHRE therefore urges the Municipality to immediately halt all forced evictions of shack dwellers within its jurisdiction, and to cease the use of violence against those peacefully and legitimately protesting against their housing rights violations. COHRE appeals to the Municipality to ensure that all Siyanda residents affected by the new freeway are provided with housing, as promised, in the Kulula Housing Project, and to investigate the allocation of these houses to other residents from outside Siyanda.

We look forward to your response and to an ongoing dialogue with the Municipality on the rights of its people to adequate housing. Thank you for your time and consideration.

Sincerely,



Salih Booker
Executive Director

cc.

The Honorable Lindiwe Sisulu
Minister of Housing

Dr Michael Sutcliffe
eThekweni City Manager