

# Poor left out of the equation

## Slums Act no solace to the dispossessed

Daily News Tuesday February 3 2009

*“Engagement is a two-way process in which the City and those about to become homeless would talk to each other meaningfully in order to achieve certain objectives. There is no closed list of the objectives of engagement.” Yacoob J<sup>1</sup>*

ON TUESDAY January 27, 2009 Judge President Mr Justice Vuka Tshabalala delivered judgment in favour of the government that he believed was ultimately in the interest of the poor.

The judgment, in fact, secured the perimeters around any hope for a list of the objectives of engagement for the poor.

The applicants, Abahlali Basejondolo Movement of SA and Sibusiso Zikode, did not challenge legislation that was called the “Social Equality, Justice, Elimination and Prevention of Re-Emergence of Homelessness, Unemployment and Poverty Act” but the KwaZulu Natal Elimination and Prevention of Re-Emergence of Slums Act 6 of 2007 (“the Slums Act”).

The Slums Act specifically mentions co-operation between tiers of government and consultation with traditional council and the affected municipalities.

There is no reference to co-operation or consultation between the government and the poor.

It seems that the consultant of the Slums Act pieced together for the government,

---

<sup>1</sup> *Occupiers of 51 Olivia Road, Berea Township and Others v City of Johannesburg and Others* 2008 (3) SA 208 (CC) at paragraph 14

a tapestry of colonial and apartheid hegemony over the poor from the Natives Land Act 27 of 1913, Prevention of Illegal Squatting Amendment Act 24 of 1952, the Slums Act: Demolition of Slums of 1934, among other laws.

The government of the Union of South Africa claimed the Natives Land Act 27 of 1913 was enacted to prevent friction between Blacks and whites, but its main intention was to dispossess Blacks of land and provide cheap labour to white farmers.

The ANC, then known as the South African Native National Congress, failed to prevent the draconian legislation.

The divide between poor and rich, black and white and the source of cheap labour were all intertwined in land laws.

Post-apartheid, the plight of the poor inhabitants of the informal settlements is rooted in the history of dispossession of land laws from the 1600s.

We expunged a myriad of evil laws, much to our credit. Yet, by the stroke of a pen, can infuse the evil of such laws into one Act.

### **Vulnerable**

However, the judge president has spoken.

At paragraph 36 of his judgment, he says: “This Court finds that the Slums Act constitutes a reasonable legislative response to deal with the plight of the vulnerable in our society.”

In allaying the concerns of the poor, Tshabalala JP confirms the government's arguments that national legislation, like the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), Housing Code, and the Housing Act 107 of 1997 provide the necessary legislative protection.

It makes no sense to promulgate the Slums Act.

"There can be no conflict if the Slums Act is actually endorsing the PIE Act and other national legislation," (at paragraph 37 of the judgment).  
Is endorsement required?

In *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at 237, Sachs J eruditely expresses the concerns of the poor:

"Thus, PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interests in a principled way and to promote the constitutional vision of a caring society based on good neighbourliness and shared concern. The Constitution and PIE confirm that we are not islands unto ourselves."

The aspect of ubuntu within the legislative context was explained gracefully by Jajbhay J in the *City of Johannesburg v Rand Properties (Pty) Ltd and Others* 2007 (1) SA 78 (W) at 97:

"In South Africa the culture of *ubuntu* is the capacity to express compassion, justice, reciprocity, dignity, harmony and humanity in the interests of building, maintaining and strengthening the community.

"*Ubuntu* speaks to our interconnectedness, our common humanity and the responsibility to each that flows from our connection...It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community, that such a person may be a part of. In South Africa *ubuntu* must become a notion with particular resonance in the building of our constitutional democracy."

It is respectfully submitted that Judge Sachs's human interdependence, respect and concern, and Jajbhay's *ubuntu* will not resonate through the Slums Act in building an integrated, better and just society.

Rich slumlords, some well connected politically, must be relieved that they are protected by the Slums Act.

The many thousands who live in squalid conditions in the inner cities and suburbs, paying exorbitant rentals; families who lost their beloved ones, some decapitated by dysfunctional lifts, will not benefit from the Slums Act.

Debating housing crises, slum clearance and overcrowding, Lord Balfour of Burleigh in 1934 said: "The only object in examining the mistakes of the past is to see to what extent one can profit for the future."<sup>2</sup>

*Dr Sayed Iqbal Mohamed is the chairperson, Organisation of Civic Rights*

Website: [www.ocr.org.za](http://www.ocr.org.za)

For advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451

---

<sup>2</sup> *Slums and Overcrowding*: HANSARD, 21 March 1934 Vol 91 300-64 at 310.