SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File Ref No: FS/1415/0057

In the matter between:

South African Human Rights Commission **Complainant**

(On behalf of Bokamoso Residents, QwaQwa)

And

Maluti A Phofung Local Municipality **Respondent**

REPORT

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1. Introduction

1.1. The South African Human Rights Commission (hereinafter referred to as the "Commission") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the "Constitution").

1.2. The Commission is specifically required to:

2.3. The Respondent is cited as the local government authority with jurisdiction over QwaQwa responsible for the delivery of basic municipal services to its residents.

3. Nature of Investigation

3.1. The investigation into this matter seeks to determine whether any one or more of the human rights listed in Chapter II of the Constitution (Bill of Rights), were violated during and after the eviction of Bokamoso residents in QwaQwa, Free State Province. The eviction took place on the 11 June 2014.

4. Background to the Complaint

4.1. On Tuesday, 10 June 2014, the attention of the Commission was drawn to imminent plans of the Respondent to evict unlawful occupiers of the remainder of Farm Bluegumbosch 199, Ha Tshohanyane, Bokamoso in QwaQwa.

4.2. The eviction followed the Constitutional Court decision to dismiss the application for leave to appeal made on behalf of Bokamoso residents. The application was dismissed on the basis that it bears no prospects of success. The eviction was initially ordered by the Free State High Court on the 17 August 2012.

4.3. The Chief of the Mabolela Traditional Council, Morena Tsolo Mopeli sought the intervention of the Commission in order to halt the eviction process pending a comprehensive assessment of the needs of the residents, their details and personal circumstances, the impact of eviction on vulnerable

In investigating the alleged violation, the methodology used by the Free State Office in conducting the investigation, involved a combination of *interview* and *physical inspection* techniques, namely:

6.1 Interview with Chief of Mabolela Traditional Council;

6.2 Interviews with Residents;

6.3 Interview with Respondent; and

6.4 *Inspection in loco* of the area.

6.1 Interview with Chief of Mabolela Traditional Council

6.1.1 On Tuesday, 10 June 2014, the Commission met briefly with Chief Tsolo Mopeli to discuss the impending eviction. It was agreed in that meeting that the Commission would engage with the Municipality with a view to halting evictions until such time that alternative accommodation had been secured for the residents.

6.1.2 Chief Tsolo Mopeli furnished the Commission with copies of the pleadings used in the High Court and the order dismissing the application made by the Constitutional Court on the 23 May 2014.

6.1.3 Due to lateness of the hour and in order to aid our investigations, the Commission requested a report from the Chief as he had to urgently return to QwaQwa.

6.1.4 On Wednesday, 18 June 2014, the Commission received a formal report from the Chief about the period leading up to the eviction and the aftermath of the eviction process.

6.1.5.7 Upon arrival of the Sheriff, he handed him a copy of the Commission's correspondence to the Municipality. After a brief meeting between the Sheriff and the Station Commander, the Sheriff told him and another community member that they could only stop the eviction if instructed to do so by the Mayor, Mr Vusi Tshabalala.

6.1.5.8 He subsequently contacted the Mayor who acknowledged receipt of the Commission's correspondence. The Mayor informed him that their lawyers had advised them to proceed with the eviction because the eviction order had been granted by the Court.

6.1.5.9 The Sheriff stated that the evicted people would be accommodated at a temporary shelter.

6.1.5.10 From then on, he went back to Bokamoso to report to the residents about the outcome of his deliberations with the Municipality, the Sheriff and law enforcement officials.

6.1.5.11 Residents expressed their disappointment upon hearing that the request to defer eviction by the Commission had been rejected by the Municipality.

6.1.5.12 Immediately thereafter, police vehicles entered Bokamoso and announced that because the Court had ruled against them living on this land, they must leave immediately otherwise they would be forcefully removed.

6.1.5.20 On Thursday, 12 June 2014, the evictees made their way to the Fire Department to find out more about the plans that had allegedly been made for alternative land.

6.1.5.21 He found deplorable conditions at the Fire Department where males and females were crowded together in one room. There was no water and toilets were blocked. Children couldn't attend school and some missed their exams as they were uncertain about where they would be resettled. Much of the furniture that was taken to the factory was damaged and some of the belongings of the evictees had been stolen.

6.1.5.22 Some of the evictees, who received shelter from families and friends for the night, arrived at the Fire Department on the 12th June and were told that they were no longer part of the evictees who need to be provided with alternative accommodation and land because they had other options of residence.

6.1.5.23 The Municipality took 41 households who slept at the Fire Department on the first night to a piece of land at Snake Park in Bluegumbosch for purposes of alternative accommodation.

6.1.5.24 Temporary accommodation provided by the Municipality was made up of old corrugated iron sheets belonging to the evictees and new corrugated iron sheets bought by the Municipality. These temporary shelters are three metres apart.

6.1.5.25 On Saturday, 14 June 2014, other evictees were moved to Makwane Youth Centre after the intervention of the MEC for Social Development, Ms Ntombela.

6.2.5.4 A communal tap was installed by the Municipality on the 13 June 2014.

6.2.5.5 They are all from impoverished backgrounds. They are mostly unemployed and rely on social grants.

6.2.5.6 They used to occupy RDP houses belonging to other people before they were allocated land by the Chief in Bokamoso.

6.2.5.7 They feel that the Municipality was inconsiderate and acted inhumanely by carrying out the eviction in winter during cold conditions in QwaQwa.

6.2.5.8 A voting station tent was erected in Bokamoso during the May national and provincial elections.

6.2.5.9 The Municipality has failed to inform them about plans to relocate them to an approved municipal site.

6.2.5.10 The Municipality promised to provide their children with counselling and has failed to fulfil this promise.

6.2.5.11 The MEC for Human Settlements visited the Snake Park area and promised them that government had found a site for them but couldn't state exactly where this was.

6.2.5.12 They have no information on the proposed relocation site identified by the municipality.

6.2.11.1 Houses were demolished in their presence and this left them devastated.

6.2.11.2 An elderly lady, and two males were hospitalised and a four months old baby suffered from diarrhoea immediately after the eviction.

6.2.11.3 Some evictees suffer from chronic illnesses and couldn't take their pills on time.

6.2.11.4 One of the evictees was looking after her daughter who had a one month old baby when the eviction took place.

6.2.11.5 They requested a temporary mobile clinic but they were told that mobile clinics had been assigned to other areas in the municipality.

6.2.11.6 Most of their belongings were taken to the QwaQwa Industrial Area for safekeeping.

6.2.11.7 No inventory of their possessions was taken when they were evicted.

6.2.11.8 Some of their possessions were stolen whilst in safekeeping at the Industrial Area.

6.2.11.9 Some lost their identity documents during the eviction and demolishing of houses.

6.2.11.21 All females at the shelter share the same mobile toilet. The mobile toilet is not designed to accommodate persons with disabilities.

6.2.11.22 All males also share the same toilet.

6.2.11.23 Other proper functioning toilets are used by the Social Workers.

6.2.11.24 One of the evictees was injured by a corrugated iron sheet during the eviction and has not received medical attention.

6.2.11.25 The municipality did not meaningfully engage with them.

6.2.11.26 They could not change their clothes for a week after they were moved to Makwane Youth Centre as their clothes were kept at the industrial area.

6.2.11.27 They were told that they would only stay at the Youth Centre temporarily and would then be moved to an alternative municipal site. No date of relocation was fixed and they are still in the dark.

6.2.11.28 The Methodist Church of South Africa was able to provide them with blankets and food.

6.2.11.29 Some evictees slept on the floor and on beds without mattresses.

6.2.12 The evictees accused government of abandoning them.

PHOTO 1 (CHIEF TSOLO MOPELI SHOWING THE EVICTION SITE TO INVESTIGATORS)

PHOTO 2 (BOKAMOSO AREA)

PHOTO 5 (ONE COMMUNAL TAP – SNAKE PARK)

PHOTO 6 (EVICTEES TEMPORARILY RELOCATED TO SNAKE PARK)

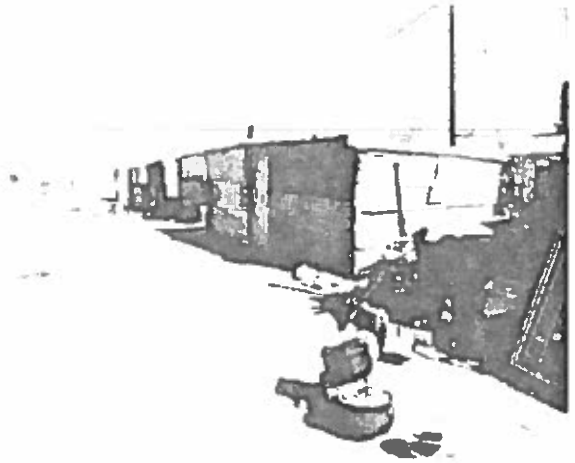

PHOTO 10 (EVICTEE WHOSE BELONGINGS WERE DAMAGED DURING THE DEMOLITION)

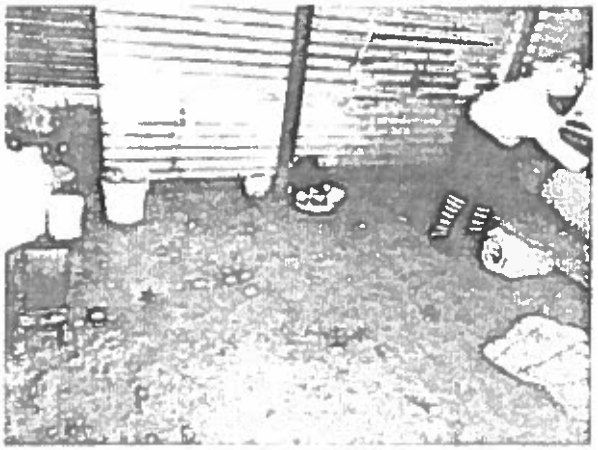

PHOTO 11 (EVICTEES AT MAKWANE YOUTH CENTRE HALL)

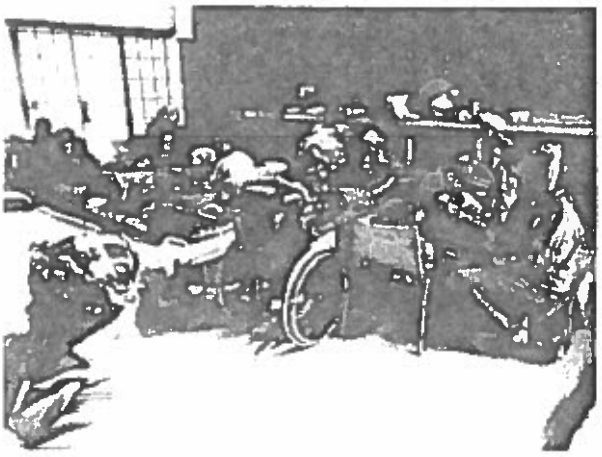

PHOTO 14 (BEDS WITHOUT MATTRESS)

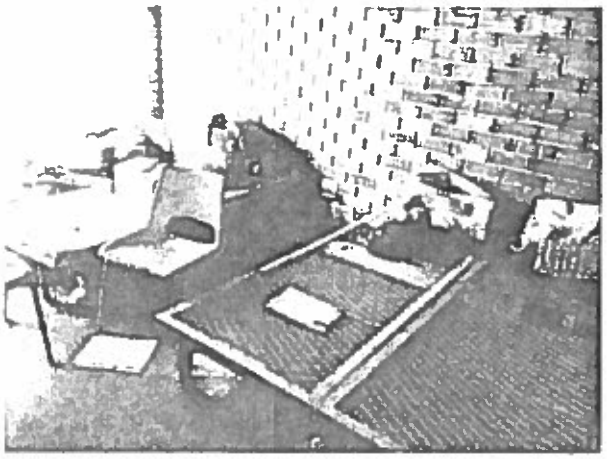

PHOTO 15 (SOME EVICTEES SLEPT ON THE FLOOR)

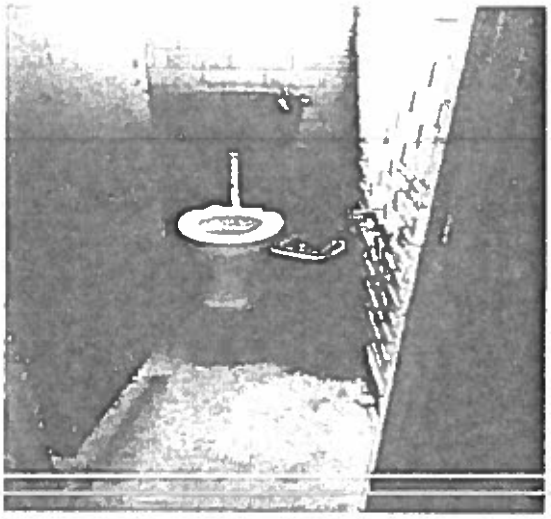

PHOTO 18 (LUNCH PROVIDED BY THE MUNICIPALITY)

6.5 Visit to Respondent Municipal Offices - Phuthaditjhaba

6.5.1 On the same day of the investigation, the investigating team paid a courtesy visit to the municipal offices of the Respondent with the intention of informing the Municipal Manager that the Commission had conducted investigations to look at the aftermath of the evictions.

v. Therefore it was clear that the occupants knew that they needed to vacate the said premises on or before 17 August 2012;

vi. Notice boards were also erected at the entrances of the said property, clearly indicating that the occupants were illegally occupying the property, that the court ordered that they should vacate the property and that they could apply for sites at the municipality;

vii. The occupants' application for leave to appeal was dismissed by the Free State High Court in Bloemfontein as well as their petition to the Supreme Court of Appeal;

viii. On 23 May 2014 the Constitutional Court of South Africa also dismissed with costs the occupants' application for leave to appeal;

ix. The said order was faxed to the respective attorneys of record, which included the unlawful occupiers' attorney on 26 May 2014. Therefore it was clear that the occupants were aware of the Constitutional Court's order since 26 May 2014;

x. Morena Tsolo Mopeli also had a meeting with the occupants on Sunday 8 June 2014 informing the occupants that they would be evicted on Wednesday 11 June 2014;

xi. The Constitutional Court did not order that any further notice should be given to the occupants before the date of eviction. However as a courtesy, the sheriff of Phuthaditjhaba was instructed to once again serve the said court order as well as erecting a notice board informing the occupants to vacate the property;

xix. The Municipality earmarked certain sites for the relocation of the occupants and same would be made available

xx. The Commission's availability to mediate the said matter at this late stage would not resolve this matter and any extension of time would only give the occupants further time to increase the amount of occupants and structures, causing greater problems.

6.6.4 On Tuesday, 17 June 2014, the Commission sent an allegation letter providing full details regarding the alleged violation to the Respondent and requested a response thereto within a period of 14 days.

6.6.5 The Commission required a detailed report from the municipality addressing the following:

i. Provision of alternative accommodation;
ii. Relocation plans to an approved municipal site;
iii. Access to basic municipal services;
iv. Interim services to be provided to evictees;
v. Protection of the rights of vulnerable groups; and
vi. Security of tenure for evictees.

6.6.6 The Commission did not receive the report within the stated period. Subsequent to this, a follow up letter was sent to the Respondent on the 17 July 2014. An additional period of 14 days was given to the Respondent to respond to the previous correspondence. The Commission did not receive any response.

7. Applicable Legal Framework

Article 20 (1) provides that "[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."

Article 27 obliges State Parties to take appropriate measures to assist parents and others responsible for the child to implement the child's right to an adequate standard of living, and in case of need, provide material assistance and support programmes, particularly with regard to, among other, housing.

7.1.5 United Nations Commission on Human Rights[5] (UNCHR)

The UNCHR affirmed that the practice of forced evictions is a gross violation of human rights, in particular the right to adequate housing (para 1) The UNCHR urged governments to:

i. Take immediate measures, at all levels, to eliminate the practice of forced evictions;

ii. Give legal security of tenure to all people currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups; and

Provide immediate restitution, compensation or appropriate and sufficient alternative accommodation or land to persons and communities that have been forcibly evicted. This has to be based

[5] Commission on Human Rights Resolution 1993/77: Forced Evictions, adopted on 10 March 1993

The international ideal for access to housing has been described by UNESCO in these terms:[8]

'The right to adequate housing should not be understood narrowly as the right to have a roof over one's head. Rather, it should be seen as the right to live somewhere in security, peace and dignity. This right has a number of components, including the following:

(i) Legal security of tenure: everyone should enjoy legal protection from forced eviction, harassment and other threats;

(ii) Habitability: housing must provide inhabitants with adequate space and protection from the elements and other threats to health;

(iii) Location: housing must be in a safe and healthy location which allows access to opportunities to earn an adequate livelihood, as well as access to schools, health care, transport and other services;

(iv) Economic accessibility: personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not compromised;

(v) Physical accessibility: housing must be accessible to everyone, especially vulnerable groups such as the elderly, persons with physical disabilities and the mentally ill;

(vi) Cultural acceptability: housing must be culturally acceptable to the inhabitants, for example reflective of their cultural preferences in relation to design, site organization and other features;

(vii) Availability of services, materials, facilities and infrastructure that are essential for health, security, comfort and nutrition, such as safe drinking water, sanitation and washing facilities.'

7.1.8 United Nations Special Rapporteur on Adequate Housing

[8] 'Poverty and Human Rights: UNESCO's Anti Poverty Projects.'

themselves to the people being evicted and formal authorisation for the eviction action.

ii. Allowing access, upon request, to neutral observers, including regional and international observers.

iii. The carrying out of evictions in a manner that does not violate the dignity and human rights to life and security of those affected.

iv. The taking of steps by states to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.

v. Ensuring that any legal use of force is in accordance with the principles of necessity and proportionality, as well as the basic principles on the use of force and firearms by law enforcement officials and any national or local code of conduct consistent with international law enforcement and human rights standards.

vi. Ensuring that evictions do not take place in bad weather, at night, during festivals or religious holidays, before elections, or during or just before school examinations.

vii. Ensuring that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. This includes

iv. Making special efforts to ensure the equal participation of women in all planning processes and in the distribution of basic services and supplies.

7.2 Regional Instruments

7.2.1 African Charter on Human and Peoples' Rights[9]

The right to housing is not explicitly provided for under this Charter. However, the African Commission on Human and Peoples' Rights has found this right, including a prohibition on unjust evictions, to be implicit in articles 14 (right to property), 16 (right to the best attainable state of physical and mental health) and 18(1) (protection of the family).

7.2.2 African Charter on the Rights and Welfare of the Child[10]

Article 20 provides that the primary obligation of parents is to secure conditions of living necessary to the child's development and in case of need, State Parties should take all appropriate measures to provide, material assistance and support programmes, particularly with regard to, among other, housing.

7.2.3 African Commission on Human and Peoples' Rights (ACHPR)

[9] 1981
[10] 1990

This right is an integral component of the right to have access to adequate housing.

The state has an obligation to ensure access to land for the homeless on a progressive basis.

7.3.1.3 The Right to Housing

Section 26(3) of the Constitution provides that "no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions." This section is aimed at ensuring that every person has access to adequate housing and the state may not interfere with such access unless justifiable.

Section 26(1) imposes a negative obligation upon the State and all other entities and persons to desist from preventing or impairing the right of access to adequate housing.

7.3.1.4 Children

Section 28 (1) (c) of the Constitution provides an unqualified right for every child to basic shelter. Where parents are unable to shelter their children, the Court in the *Grootboom* case[12] stated that the obligation falls to the state.

Children therefore have both an unqualified right to shelter; and a weaker (because qualified) but larger right of access to adequate housing.

[12] *Government of the Republic of South Africa and Other v Grootboom and Others* 2001 (1) SA 46 (CC)

The PIE Act sets out the procedures for evictions carried out by two groups of people: (1) an owner or person in charge; and (2) an organ of state.

An organ of state may institute proceedings, under section 6 of PIE, for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in sale of execution pursuant to a mortgage.

The organ of state is required to give notice to the owner or person in charge of the land before instituting eviction proceedings.

In deciding whether it is fair to grant an order for eviction, a court is required to consider the following:

i. The circumstances under which the unlawful occupier occupied the land and erected the building structure;

ii. The period the unlawful occupier and his or her family have resided on the land in question; and

iii. The availability to the unlawful occupier of suitable alternative accommodation or land.

7.4.2 The Housing Act[15]

The Housing Act defines housing development as:

[15] 107 of 1997

Section 2 of the Housing Act sets out the general principles applicable to housing development. They provide that national, provincial and local spheres of government must *inter alia*:

i. Give priority to the needs of the poor in respect of housing development; and

ii. Promote the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions.

Section 2 (1) (b) of the Housing Act requires all levels of government to consult meaningfully with individuals and communities affected by housing development.

7.4.3 The Municipal Systems Act[17]

The definition of basic municipal services according to the Act[18] is:

A municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.

Section 73(1) of the Act states that a municipality must give effect to the provisions of the Constitution and:

(a) "Give priority to the basic needs of the local community;

(b) Promote the development of the local community; and

[17] 32 of 2000
[18] Chapter 8 of the Municipal Systems Act

The process of emergency housing provision begins when the municipality identifies a case of exceptional housing need. The municipality is then required to identify one of the criteria outlined in the policy and must submit an application to the Provincial Department of Human Settlements (Emergency Housing Programme, 2009:63). The policy allows for municipalities to fund emergency housing responses through alternative means or bridge funding.

The policy allows for relocation or resettlement in case of evictions where households must be moved, and a suitable and available site exists for future development.

An eviction is specifically classed in the policy as an emergency housing situation.[21]

7.6 Case Law

The Constitution entreats the Commission to consider relevant *case law* in determining the nature and scope of a human right:

7.6.1 In ***Government of the Republic of South Africa and Others v Grootboom and Others*** the Constitutional Court set out the parameters of a "reasonable policy". A reasonable housing policy must be:

i. Comprehensive, coherent, flexible and effective;

ii. Have sufficient regard for the social, historic and economic context of poverty and deprivation;

[21] Department of Human Settlement "Emergency Housing Programme" 9 and 15

v. Whether there is a competing risk of homelessness on the part of the private owner of the property.[24]

7.6.3 In ***Residents of Joe Slovo Community, Western Cape v Thubelisha Homes,***[25] the Court authorised the eviction of a large group of occupiers subject to a set of strict requirements in relation to the State's provision of alternative accommodation. In this case the Court endorsed relocating the residents to Temporary Residential Units (TRUs) in terms of the Emergency Housing Programme. The Court prescribed that TRUs had to:

i. Be at least 24 square metres in size;

ii. Be accessible by tarred road;

Iii. Be individually numbered for identification;

iv. Have walls constructed of Nutec;

v. Have galvanized corrugated iron roofs;

vi. Be supplied with electricity by a prepaid electricity meter;

vii. Be located within reasonable proximity of communal ablution facilities;

viii. Make reasonable provision for toilet facilities, which may be communal, with waterborne sewerage; and

ix. Make reasonable provision for fresh water, which may be communal.[26]

[24] Para 39
[25] *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 454 (CC)
[26] para 7

The Constitutional Court pointed out that, in relation to the impact of eviction on people's privacy and sense of security:[29]

"Section 26(3) evinces special constitutional regard for a personal place of abode. It acknowledges that a home is more than just a shelter from the elements. It is zone of personal intimacy and family security. Often it will be the only relatively secure space of privacy and tranquillity in what (for poor people in particular) is a turbulent and hostile world. Forced removal is a shock for any family, the more so for one that established itself on a site that has become its familiar habitat."

7.6.5 In ***Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amicus Curiae),***[30] Sachs J wrote:

"The right to speak and to be listened to is part of the right to be a citizen in the full sense of the word. In a constitutional democracy dialogue and the right to have a voice on public affairs is constitutive of dignity. Indeed, in a society like ours, where the majority were for centuries denied the right to influence those who ruled over them, the 'to be present' when laws are being made has deep significance."

[29] *PE Municipality* para 17

[30] *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amicus Curiae)* 2006 (2) SA 311 (CC) para 627 ("New Clicks")

7.6.7 In **Joseph and Others v City of Johannesburg and Others,**[32] the Constitutional Court read sections 152 and 153 of the Constitution together with provisions contained in the Municipal Systems Act and the Housing Act, creating a public law "right to basic municipal services" and outlining the duty on local government to provide these services.

8. ANALYSIS

Factual and Legal analysis of the investigators are reported hereunder in respect of each human right violated:

8.1 Human Rights Violations

8.1.1 The Respondent is alleged to have violated the right to human dignity, housing, and access to information of the residents by its failure to mitigate the impact of eviction on vulnerable groups and not providing residents with adequate alternative accommodation, and by its failure to meaningfully engage with them.

8.1.2 The inspection *in loco* of the areas undertaken by the Commission gave credence to allegations made by the Chief of Mabolela Traditional Council. Interviews conducted with the evicted people confirmed allegations of inadequate alternative accommodation and lack of meaningful engagement.

The Right to Human Dignity

[32] See *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30

to adequate housing, people in rural areas need access to land to sustain themselves. The present complaint emanates from a former homeland which is located in a rural part of the Province.

8.1.9 The Commission's investigations established that the Respondent did not have adequate alternative accommodation for all the evicted people as a significant majority of them were temporarily relocated to a Youth Centre as the eviction had rendered them homeless. The Commission found that vulnerable people were also rendered homeless as a result of the failure of the Respondent to ensure that the eviction process would not lead to homelessness. This demonstrates that the Respondent failed to acknowledge the gravity of the situation by continuing with the eviction despite lack of sufficient alternative accommodation.

8.1.10 The eviction should not have resulted in the community of Bokamoso becoming homeless or vulnerable to the violation of other human rights. In making a decision to evict Bokamoso residents, the Respondent should have considered the viability of alternative accommodation. The investigations revealed that the Respondent failed to appropriately consider the viability of alternative accommodation and the temporary shelters provided were inadequate. The Commission finds that there was no compelling reason or need to evict the Bokamoso residents on the 11 June 2014 when there was at that stage inadequate alternative accommodation.

8.1.11 The Respondent had a duty to ensure that an eviction was carried out humanely. The eviction executed by the Respondent resulted in possessions and building materials being destroyed. No

Respondent. The Commission therefore finds that proper engagement did not take place prior to and after the eviction process. The dire consequences that resulted from the eviction would have been avoided had the municipality engaged with the evicted people. The engagement would have culminated in mutually acceptable solutions.

8.1.15 The location of alternative accommodation was also determined by the Respondent without consultation with the affected evictees. The Commission finds this approach unacceptable in light of the decision of the Constitutional Court in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes,*[34] where Sachs J denounced the "top-down" approach to engagement adopted by the State, in terms of which state officials would unilaterally make decisions without consultation or inclusion of the community.[35] The Commission finds that the Respondent failed to have due regard to the disruptive effects of relocation on the community and to the proximity of alternative accommodation to schools, and the evictees' places of employment.

8.1.16 The need for meaningful engagement between the Respondent and the evictees in this instance is derived from the following constitutional obligations of municipalities and the state:

i. To provide services to communities in a sustainable manner, promote social and economic development and encourage the involvement of communities and community organisations in matters of local government.[36]

[34] *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 545 (CC)
[35] Para 378
[36] Section 152(1) of the Constitution

9. FINDINGS

On the basis of the analysis in the preceding section, the Commission makes the following findings:

9.1. The Respondent has violated the right to human dignity of the evicted people by providing them with inadequate and unsanitary sanitation facilities;

9.2. The Respondent has violated the right of access to adequate housing of the evicted people by its failure to provide them with sufficient alternative accommodation that is habitable, accessible and located in close proximity to public amenities and job opportunities.

9.3. The Respondent's insufficient engagement with the community about a range of issues on consequences of eviction including alternative accommodation and relocation and the general lack of information about future resettlement plans upholds the complaint of a violation of the right of access to information.

10. Recommendations

In terms of the Human Rights Commission Act, 54 of 1994, the Commission is entitled to *"make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution."*

10.6 The Free State Department of Cooperative Governance, Traditional Affairs and Human Settlements is further directed to develop a human rights-based approach and plan to evictions to guide municipalities in the Province within a period of twelve (12) months. A copy of the plan should be submitted to the Commission for review.

11. Appeal

You have the **right to lodge an appeal** against this decision. Should you wish to lodge such an appeal, you are hereby advised that you must do so in writing **within 45 days of the date of receipt of this finding,** by writing to:

The Chairperson, Adv M.L. Mushwana
South African Human Rights Commission
Private Bag X2700
Houghton, 2041

SIGNED IN Johannesburg ON THE 8th DAY OF September **2014.**

Commissioner M. S. Ameermia
South African Human Rights Commission