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## GENERAL NOTICE

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### NOTICE 3609 OF 2007

#### THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

#### TERMS OF REFERENCE

#### INQUIRY INTO EVICTIONS, REPOSSESSIONS AND HOUSING

##### A) Rationale for the Inquiry

The SAHRC received a complaint from the Displaced Rate Payers Association from the KATHORUS area complaining about the evictions that were taking place in their area. They allege that they are being evicted without due process being followed in terms of service and notification of the eviction proceedings. They further allege that these evictions occur despite them having made payment arrangements with the banks. They marched on the offices of the SAHRC and presented a petition in which they wanted to enlist our assistance as they allege the Department of Housing is doing nothing to ensure that their right to housing is being adequately protected.

The SAHRC has in the past also received similar complaints from the residents of Ennerdale and Lawley. Due to the systemic nature of the complaints the SAHRC proposed to conduct an inquiry to look into these issues and to come up with findings and recommendations to address these problems affecting mostly the underprivileged and marginalised South Africans.

##### B) Background:

1. In terms of section 184 of the Constitution of the Republic of South Africa, the South African Human Rights Commission has a mandate to
  - (a) Promote respect for human rights and a culture of human rights;
  - (b) Promote the protection, development and attainment of human rights; and
  - (c) Monitor and assess the observance of human rights in the Republic of South Africa.
2. The South African Human Rights Commission has the power, in terms of section 184(2) of the Constitution read with section 9 of the Human Rights Commission Act No.54 of 1994:
  - (a) Investigate and to report on the observance of human rights;
  - (b) Take steps to secure appropriate redress where human rights have been violated.
3. The Bill of Rights (Chapter 2 of the Constitution) guarantees *inter alia*:-

Section 9      The right to Equality;

Section 10: The right to human dignity;

Section 12: Freedom and security of the person;

Section 25: The right to property

Section 26: The right to housing -

(1) Everyone has the right to have adequate housing

(3) 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.

Section 28: Children's rights

Section 33: The right to just administrative action: and

Section 34: Access to courts.

C)

Definitions:

"Act" - refers to Human Rights Commission Act No. 54 of 1994.

"Constitution" - refers to Republic of South African Constitution Act No. 108 of 1996.

"Chairperson" - refers to the Chairperson of the South African Human Rights Commission or a person to the South African Human Rights Commission as created by the Constitution;

"Commission" - refers to the South African Human Rights Commission as created by the Constitution.

D)

Terms of Reference:-

- I. To investigate the observance of Human Rights during the process of evictions specifically in the areas of Kathorous, Ennerdale and Lawley relating to:
  - 1.1 Service of court process and notification of eviction proceedings in particular the allegations of the non service by the affected evictees.

- 1.2 The sale in auction of the repossessed houses, including selling of repossessed houses for nominal amounts, selling of houses to the sheriffs who carried out the evictions, and refusing to allow the original owners to buy back their houses;
  - 1.3 The role of financing banks! institutions and Estate Agents in selling occupied houses, including selling houses after payment arrangements have been made with the owners;
  - 1.4 The conduct of the SAPS! Metro Police and the sheriffs of treating the evictees in an inhumane manner.
  - 1.5 The role of Government and the Ministry of Housing in particular in providing housing for the evictees who have been evicted and whose houses have been repossessed.
2. To consider the causes! reasons for the failure linability to pay the mortgage bonds by the evictees. further ascertain whether:-
  3. To further ascertain whether :-
  - 3.IThe promotion and protection of human rights has been realised by public and private role-players such as the Department of Housing, the Banking Association, the Board of Sheriffs and the Estate Agents Affairs Board.

E)

Rules and Procedures:

1. The investigation and inquiry will be conducted in terms of the rules of procedure promulgated in terms of *section* 9(6) of the Human Rights Commission Act No. 54 of 1994 published in Gazette Number 17457 of October 1996.
2. The *Commission* will call all for submissions from specific parties including institutions, organisations and individuals on any matters referred to in terms of reference of this investigation and inquiry. Although submissions will not be requested from the general public, the Commission envisages that the recommendations it will issue, based on the submissions of the representative organisations, will benefit the public at large.
3. The said submissions shall be lodged with or posted to the offices of the Commission at any of the addresses mentioned below.

The Legal Services Programme of the Commission will assist persons in formulating the said submissions shall be in writing and must disclose the name, address and other contact details of the deponent. Anonymous submissions will not be entertained.

Where, however, the deponent does not wish to have his or her name published, the Commission will respect that wish together with disclosures made under the cover of the Protected Disclosures Act No. 26 of 2000. Such confidential submissions however, will not be able to form the basis of the findings.

4. The closing date for the submissions is the 30<sup>th</sup> September 2007. However, the HOP Legal Services may at his discretion consider late submissions.
5. The Commission may furnish any person who has been referred to or likely to be referred to in those submissions, with a copy thereof. Such copy may be accompanied by a written notice requiring such person to:-
  - 5.1 submit a written response to the allegations/submission to the Legal Department of the Commission within 14 days of the delivery of such written notice; and
  - 5.2 appear before a panel of the Commission at a public hearing to be held on a date to be announced in the Government Gazette, in order to respond to the allegations against him or her.
6. The Commission may invite to the hearing specific individual organisations, institutions and any other interested parties to make documentary and or oral submissions and testimony at the public hearing. Such testimony shall be given under oath or affirmation.
7. Pursuant to the provisions of the Act, a panel will preside over the Public Hearing and the Chairperson of the Commission or a person designated by him/her. The panel will consist of 5 (five) persons, three of whom shall be members of the Commission.
8. The panel may subpoena any person in possession of any information or documents relevant to the hearing to appear before the panel and give testimony.
9. The person referred to in 5, *supra*, shall be entitled to be represented by his/her legal representative and shall give his/her testimony under oath or affirmation.
10. At the conclusion of the hearing the panel will make findings and recommendations.
- \1. Such findings and recommendation will-be made public.

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**SOUTH AFRICAN HUMAN RIGHTS COMMISSION  
JOHANNESBURG**

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**BY POST:**

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**BY HAND**

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