

**A Submission to the Director General
National Department of Housing
Attention: Mr. R Thatcher**

on

The Rental Housing Amendment Bill, 2006

by

**The Socio-Economic Rights Project of the Community Law Centre
University of the Western Cape**



Community Law Centre

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For further information, please contact:

Dr. Lilian Chenwi
Community Law Centre
University of the Western Cape
Private Bag X17
Bellville 7535
Tel: 021 959 2950/3603
Fax: 021 959 2411
Email: lchenwi@uwc.ac.za

I. INTRODUCTION

1. The Community Law Centre (the Centre) at the University of the Western Cape is a research and educational institute working towards realising the democratic values and human rights enshrined in South Africa's Constitution. The Centre focuses on the needs and status of particularly vulnerable groups such as children, women, and people who are poor and living in poverty.
2. The Socio-Economic Rights Project of the Centre works towards contributing to the protection and promotion of socio-economic rights. The Project seeks to use socio-economic rights framework as a tool to improving the living conditions of people living in poverty generally.
3. One of the Project's areas of research is housing rights. The Project has thus engaged extensively in research on housing rights in South Africa, made submissions to Parliament in this area, and has intervened as amicus curiae in some cases on housing rights and evictions, such as, *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC); *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd and Others* 2005 (8) BCLR 786 (CC); and *City of Johannesburg v Rand Properties (Pty) Ltd and Others* (currently before the Supreme Court of Appeal).
4. We welcome the opportunity to comment on the Rental Housing Amendment Bill, 2006 (hereinafter referred to as 'Rental Housing Bill'). Our concern regarding the Rental Housing Bill is set out in the subsequent paragraphs.

II. THE RENTAL HOUSING BILL

6. The Rental Housing Amendment Bill aims to address certain implementation problems which have been encountered since the promulgation of the Rental Housing Act 50 of 1999.

Clause 2 of the Rental Housing Bill (Amending section 4 of the Rental Housing Act)

7. Clause 2(d)(ii) of the Rental Housing Bill (amending section 4(5)(d)(ii) of the Rental Housing Act) provides for the repossession of rental housing property after '*having first obtained a ruling by a Tribunal,*

made in accordance with the applicable provisions of any regulations made in terms of section 15(1) or an order of court made after considering all the relevant circumstances' (emphasis added).

8. The repossession of rental property, especially in an instance where the property is being occupied by someone, is technically and in fact an eviction, as the person living in such rental property will have to be evicted in the course of repossession.
9. It appears that this provision is intended to complement the proposed narrowing of the application of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 as regards tenants, proposed under clause 3 of the the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2006.
10. We note that clause 5 of the Rental Housing Bill (amending section 13 of the Rental Housing Act provides that '*a ruling of the tribunal is deemed to be an order of a magistrate's court in terms of the Magistrates' Courts Act 32 of 1944 and shall be enforced in terms of that Act'* (subsection 13).
11. Notwithstanding subsection 13 above, we submit that a tribunal is not as institutionally equipped as a court based on the fact that court judges clearly have more appropriately broad experience of administration of justice and equity than members of a tribunal. The procedures of a tribunal are obviously not similar to those of a court and may not offer the same protection as a court would in an action (in this case, an eviction proceeding) that has such serious consequences.
12. We therefore submit that a ruling from a tribunal in the context of eviction cannot be equated to a court order as contemplated in section 26(3) of the Constitution.
13. Section 4(5)(d)(ii) of the Rental Housing Act should therefore read:

(ii) repossess rental housing property having first obtained an order of court made after considering all the relevant circumstances.

- **A court should be the only institution to make an order, after considering all the relevant circumstances, allowing for the repossession of rental housing property.**
- **In the alternative, a tribunal could be allowed to make such a ruling in this context if and only if its ruling is subject to confirmation by a court.**