

# centerforconstitutionalrights

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22 March 2010

Department of Rural Development and Land Reform  
184 Jacob Mare Street, Pretoria

Department of Justice  
Momentum Centre, 329 Pretorius Street, Pretoria

Dear Minister Gugile Nkwinti and Minister Jeffrey Thamsanqa Radebe,

We are writing to you from the Center for Constitutional Rights (CCR) a human rights organization based in New York, and Take Back the Land, a land rights organization based in Miami. As a part of an international monitoring delegation, a number of our attorneys and advocates met with the Rural Land Network of KwaZulu-Natal on March 4 and March 7, 2010 in the community of Nkwalini, KwaZulu-Natal. We spoke with a number of Nkwalini residents over two days because we had been informed that they were facing forced eviction from a local farmer. Based upon our observations, we are writing to express grave concern for the safety and the human rights of the Nkwalini residents. We urge you to fulfill your obligations under national and international law to protect the community members facing forced removal from their ancestral land.

As you may know, for the past five years Nkwalini has been struggling to hold onto the small area of land they have lived on for generations. In recent weeks, New Venture Farms owner Mark Chennells has escalated harassment of this community. We support the request that Nkwalini has made to your offices to resolve this situation immediately and ensure that the harassment and abuse stop.

During our visit, the community reported that New Venture Farms destroyed their housing in 2005 with the aid of police and private security. Left with no shelter, five community members died from exposure. They told us their children's school had been destroyed and the teachers chased away. Recently, during the week of March 1, 2010, New Venture Farm personnel impounded their cattle and asked that they pay unaffordable fees for the return of each cow.

This pattern suggests a long-term and ongoing campaign by New Venture Farms to intimidate Nkwalini residents and forcibly evict them from their land. Community members state that when they have asked to be protected from forced eviction and intimidation the local police have consistently intervened on behalf of the farmer. The community members understand that the intent behind this attempt to forcibly remove



them from their land is to establish a game reserve for tourists. Mark Chennells claim that he owns the land that the Nkwadini residents live on. However, despite requests for proof to support his statements that he purchased the land from a bank, Mark Chennells has never produced any documentation. The community contends that no bank holds title to their land so it is impossible for Chennells to have legitimately bought the land from a bank.

We urge you to resolve this situation and end the harassment of Nkwadini residents as you are obliged to do under Section 26(3) of the South African Constitution, which states:

*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.*

South African courts have upheld the government's duty in similar contexts<sup>1</sup>.

Furthermore, the South Africa constitution Section 39(1)(b) requires courts to look to international law when interpreting the constitution. The right to housing is enshrined in the Convention on the Eradication of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the International Convention on the Elimination of Racial Discrimination. South Africa has signed and ratified both. Moreover, as signatories to the treaty, the South African government cannot take any steps to contravene right to housing in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

We will continue to closely monitor the situation in Nkwadini. We appreciate your prompt attention to this matter. We look forward to hearing from you. Please contact us through Laura Raymond at the Center for Constitutional Rights at [lraymond@ccrjustice.org](mailto:lraymond@ccrjustice.org); 212-614-6459.

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<sup>1</sup> *Government of the Republic of South Africa v Grootboom and Others* 2000 (11) BCLR 1169 (CC) (section 26(3) prohibits arbitrary evictions); *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC) (in the absence of special circumstances, "it would not ordinarily be just and equitable to order eviction if proper discussions, and where appropriate, mediation, have not been attempted"); *President of the Republic of South Africa and Another v Modderklip Boerdery (pty) Ltd and Others* 2005 (8) BCLR 786 (CC) (land invasions should always be discouraged; where private landowner tried to evict community of 40,000 from land, and State idly stood by, Court found that State had to compensate landowner but also that community could not be evicted until some form of alternative accommodation was provided to them). Also lower court decisions found that the actions of the private party amount to an eviction in terms of the Extension of Security of Tenure Act – which provides a series of safeguards to farmers and others who are more affected by rural land disputes. *Ntshangase v The Trustees of the Terblanche Gesin Familie Trust* [2003- JOL 10996 (LCC) (the obstruction by an owner of an occupier from accessing grazing lands and a watering hole on his property that the occupier previously used for cattle constitutes an eviction); *Zulu v. Van Rensburg* 1996 (4) SA 1236 (LCC) (the impounding of cattle of an occupier constitutes an eviction which must comply with statutory requirements).

Respectfully,



Vince Warren, Executive Director  
The Center for Constitutional Rights



Max Rameaux  
Take Back the Land

*CC: Premier Dr. Zweli Mkhize, Pietermaritzburg, (South Africa)*  
*Abahlali baseMjondolo, Durban, South Africa*  
*Social and Economic Rights Institute, Johannesburg, South Africa*  
*Centre for Applied Legal Studies, Johannesburg, South Africa*  
*International Human Rights Law Clinic, American University, Washington DC, USA*  
*KwaZulu-Natal Provincial Legislature*  
*Amnesty International, London Headquarters*