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23 February 2006

Dr Mike Sutcliffe

City Manager
eThekweni Municipality
Fax: (031) 311-2170

Dear Dr Sutcliffe

We at the Freedom of Expression Institute are appalled at your office's apparent attempt to subvert the South African Constitution and the Regulation of Gatherings Act. We had written to you on the 16th February requesting information on the notification to you by Abahlali Base Mjondolo that they were planning to have a march on the 20th February. We have received no response from your office to that fax.

Allow us to recount the chronology of this application for your benefit.

- **3rd February 2006:** Abahlali handed in, to the office of the Chief Director of Metro Police, the necessary forms for the notification of a gathering (the march the organisation wanted to organise) in terms of the Regulation of Gatherings Act. Note that this was well in advance of the 7-day notification period required by the Gatherings Act. The Chief Director indicated to them that you would make the decision about whether the organisation could march. He also did not accept the form from Abahlali's Lungisani Jama and Mnikelo Ndabankulu, telling them it was not necessary. He did, however, make notes of the details of the proposed march and asked them some questions regarding its organisation.
- **9th February:** Mnikelo Ndabankulu went to a meeting at the Metro Police offices, as per request from Metro. He was informed by Inspector Stevenson that you had said Abahlali could not march but that they should hold a rally instead. This was conveyed verbally and there was a refusal from Metro to reduce that decision to writing.
- **9th February:** Abahlali's S'bu Zikode sent your office a fax requesting a response to their notification.
- **15th February:** We wrote to you requesting information about the progress of the notification by Abahlali.
- **16th February:** Abahlali received a fax from Metro Police informing them that permission had been denied for them to march on 20th because they had not supplied certain necessary information. All the information that was asked for in this fax *had* been supplied in the original form, which the Chief Director of Metro had refused to accept.
- **17th February:** Abahlali faxed the form of notification, but changed the date of the march to the 27th. Clearly, the delay from the authorities had forced them to abort the event for the 20th and to shift it to a later date.

EXECUTIVE COMMITTEE: Mabalane Mfundisi (Chairperson), Na'eem Jeenah (Deputy Chairperson), Andre Keet, Raymond Louw, Graham Bailey, Verne Harris, Kate Skinner, Tawana Kupe

EXECUTIVE DIRECTOR: Jane Duncan ORGANISER MEDIA & ICT's: Virginia Setshedi FINANCE MANAGER Gail Snyman
OFFICE ADMINISTRATOR: Pinky Magau RECEPTIONIST & LIBRARIAN: Gertrude Tsoku

- From the 10th February to this morning, I had been calling various officers at Metro as well as your office to get some clarity about the march. No such clarity has been forthcoming. We also have received no reply to our fax.
- Mr S'bu Zikode keeps getting sent between your office and Metro Police with no one in either place accepting responsibility for conveying any information to him.
- I just spoke to your secretary – a few minutes ago – who told me that she thinks “Legal is dealing with the matter” and “I think they are in touch with the organisers”. Of course, no one is in touch with the organisers. She also informed me that you were out of the office for the rest of the day and she would therefore not be able to pass on my message to you before tomorrow.

The conduct of the officials of eThekweni Municipality in this matter is extremely disturbing and smacks of an arrogance and disdain for the people the municipality should serve. Not to mention that it is unconstitutional and illegal.

The Constitution states, “Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions”. The Regulation of Gatherings Act No 205 of 1993 (“Gatherings Act”) gives effect to this fundamental right.

We hope that your office and the eThekweni Metro Police understand the provisions of the Regulation of Gatherings Act. The Act neither empowers your office nor the police to “deny permission” for a gathering (or march) to take place. Nor does it empower your office to instruct people *how* they should protest (by, for example, telling them to have a rally rather than a march). Indeed, all the Act requires of the applicants is “notification”, not the seeking of “permission”. That your office and Metro Police are interpreting the Act in the latter manner violates not only the legislation but also the Constitution. In fact, Abahlali having fulfilled all the requirements required of them in the Act, they are now entitled to march on the 27th February and their waiting for a response from your office is simply a courtesy on their part.

Section 5 (1) of the Regulation of Gatherings Act only permits the prohibition of a gathering (or march, in this instance) if there is a “...threat that a proposed gathering will result in serious disruption of vehicular or pedestrian traffic, injury to participants in the gathering or other persons, or extensive damage to property, and that the Police and the traffic officers in question will not be able to contain this threat...”. Unless you can provide written “credible information on oath” (as per the Act) that such threat exists, we believe that Abahlali is legally within its rights to march on Monday, 27th February.

We are concerned that an organisation that represents some of the poorest people in your city is so flagrantly denied their right to free expression and with such impunity. It is quite telling that Abahlali applied for their march 17 days ahead of the date of the event but your authorities responded 4 days before the event to ask them for more details. It was because of this delay on your part that Abahlali was forced to reschedule the march to the 27th February. And by today, 23rd February, one working day before the march, neither your office nor Metro Police has informed Abahlali of any decision. Surely you do not expect that the organisation can, in this short space of time (assuming you reply to them today), train marshals, brief their members, organise all the logistics, make payments for arrangements, etc. Since this cannot reasonably be expected of the Shack Dwellers Movement, one can only assume that your office is deliberately delaying this process in order to subvert Abahlali’s constitutional right to gather and protest.

The Constitution guarantees everyone the right to administrative action that is lawful, reasonable and procedurally fair. Your repeated delays and last minute information are both unfair and unreasonable; your notification of the prohibition of the march was given only 2 working days before the date of the march, which is manifestly unfair.

It is of extreme concern to us that the officials of a municipality are this disrespectful of our Constitution, laws and citizens. We hope that you realise that if this intransigence results in violence, it will be the responsibility of your office to accept blame. For surely those who have followed the letter of the law cannot be blamed for your disregard.

We hope to receive an urgent reply from your office.

Yours sincerely

Na'eem Jeenah
Head: Anti-censorship Programme

Simon Delaney
Head: Legal Unit