

uTshani Fund

www.utshani.org.za

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12 September 2006

BY FAX AND EMAIL

Patricia Matolengwe
SA Homeless People's Federation-Section 21

Dear Patricia Matolengwe,

CONTROL OVER AND PERMISSION TO USE THE DHRC

It has been brought to my attention that you and other individuals continue to make use of the Derek Hanekom Resource Centre despite earlier requests that you desist from doing so without uTshani Fund's permission. I am also informed that someone has installed locks on the cob-house preventing uTshani from accessing it.

Please remove any locks you may have installed immediately and return all items belonging to the DHRC to their rightful places.

Should you or anyone else continue to enter the DHRC premises without permission, uTshani Fund will file a charge of criminal trespass.

Please be informed that uTshani Fund has granted sole right of access control to the DHRC to the Hazeldean Housing Association pending its final transfer to the HHA. Should you wish to make use of the DHRC you must make arrangements with them.

Sincerely,

Ted Baumann
Executive Director
Utshani Fund

cc: Nokuzola Mnyani, Matthew Walton

Established 1997 • Sec. 21 Reg. No. 97/10227/08

Directors: R Molokoane, P Magebula, E Baumann; M Mogotsi; S Bedderson; N Estevo; J Bolnick; E Benekane; A Florence; P Matsimela; M Swilling; P Assubuji

Registered as a nonprofit organisation: Registration No. 048/153/NPO

Utshani Fund and the 'SAHPF' in Cape Town: The Facts

May 2006

Recent months have seen much confusion about Utshani Fund's role and responsibilities in the City of Cape Town, where we have historically been involved in several greenfields developments as well as account administration for consolidation subsidies for members of the South African Homeless Peoples' Federation (SAHPF). This confusion arises as a result of developments in the SAHPF, described below.

This note seeks to clarify the situation for all stakeholders, especially our partners in provincial and local government. It is particularly important to understand the current situation and Utshani's position regarding subsidised housing developments in Cape Town initiated by the SAHPF, People's Dialogue, and Utshani Fund.

Background

In their Annual General Meeting of January 2006, the Members of Utshani Fund approved two crucial motions:

1. The first was to adopt a revised Articles of Association of Utshani Fund that end the policy of support for the South African Homeless Peoples' Federation. Utshani may now support any community group, individually or as part of a larger network, that practises
 - o The use of savings or other practical activities that bind poor people together and promote community-driven actions to address need;
 - o A primary role for women in community-based structures;
 - o A positive approach to engagement with government;
 - o Minimal hierarchy and no gatekeeping; and
 - o Accountability and transparency.
2. The second was to remove from Utshani Membership two individuals who had been involved in the secret formation in 2004 of a Section 21 Company called the "South African Homeless Peoples' Federation", which claimed to have inherited all the assets, projects, and other rights of the original SAHPF, and of Utshani Fund.

The effect of these changes is to enable Utshani Fund to 'pick and choose' which community groups and projects to support on the basis of development principles and practise rather than claimed organisational membership or affiliation. Utshani may now concentrate our scarce resources on community groups that practise the principles we support – and deny support to those who do not. This change from 'membership to practise' is a critical step for Utshani – and for the communities with whom we work.

Why the change?

This sea-change was the result of a lengthy period of natural evolution in the deep-rooted community mobilisation process that was the South African Homeless Peoples' Federation, a nationwide voluntary association that disbanded in 2005. To understand how this affected Utshani, consider our vision and mission.

Utshani Fund was established in 1995 as a fund for innovation in support of community-state partnerships around human settlement development. The purpose of these partnerships is not only to secure tenure and build housing. It is also to build stronger and more democratic community-based development practise, and to change the way poor households see themselves and their relations with other role-players in the development process. In the way we operate, we seek to empower ordinary women and men in informal settlements to see themselves as worthy of being decision-makers in their

own right – not just as clients of powerful people or governments who make decisions on their behalf. For this reason, Utshani is just as committed to helping achieve transparent and accountable communities and governance practises as we are to building houses.

Utshani Fund has been in the doldrums for the last few years, with little progress on housing delivery. Why? In the 1990s Utshani fell into the trap of becoming an alternative to the state housing subsidy system for a privileged minority of SAHPF members. Encouraged by certain SAHPF leaders, these households found it easier to demand loans from an NGO (Utshani) than to work patiently with government to secure state entitlements under a complex and people-unfriendly housing subsidy system. For such households, Utshani loans gradually became an alternative entitlement that made the state housing subsidy unnecessary. But without subsidies flowing back to replenish Utshani, we eventually ran out of money. This – plus consequent conflicts in the SAHPF over diminishing resources – led to Utshani's slowdown.

This process damaged our cash flow, but it also damaged our core mission of social change. Once they were housed courtesy of Utshani, some SAHPF members lost interest in saving, building community systems, and negotiating with government to secure subsidies to retire their loans. Instead, they turned their attention to other NGO resources, such as salaries, income-generation 'loans', and funding for non-housing needs. They sometimes did this with threats, demonstrations, and appeals to crude racialism, most of it aimed at the NGO – especially in Cape Town.

In Cape Town, this process was driven by the local SAHPF leadership, based at the well-known Victoria Mxenge development, which constructed an elaborate structure of control over resources, decision-making, and access to housing opportunities for ordinary SAHPF members all over the city. There is always an incentive for community leaders to position themselves as 'gatekeepers', controlling access to outside resources. One reason the SAHPF was founded was to combat this phenomenon by mobilising ordinary women savers to exercise their own decision-making rather than rely on 'leaders' to act as champions on their behalf.

Over the years it became clear that some Cape Town SAHPF leaders, who appeared to embrace this vision rhetorically, in practise sought gatekeeping power for themselves. They no longer sought to mobilise ordinary women into savings groups, or help them to identify and act on their development options. Instead, they positioned themselves as 'champions' of a passive mass of the poor, fighting on their behalf to extract resources from the NGO. In return for this 'delivery', these 'champions' could extract rewards: power and material benefits for themselves. Sometimes this fight could be very dirty.

By being too free with subsidy prefinance loans and other NGO resources, therefore, we had unconsciously reinforced the very conditions we sought to overcome. And as long as Utshani Fund continued to work through these leaders, we reinforced their position and thereby undermined our own development vision and mission.

The Cape Town situation was opposed by every thoughtful participant in the People's Dialogue/Utshani/SAHPF Alliance, many times, over many years. We sought patiently to bring the Cape Town SAHPF leadership back into the fold of democratic, transparent and accountable development practise based on the active participation of ordinary members. There were endless attempts to negotiate, including a two-year period of negotiated 'restructuring' of the entire SAHPF. The in-house character of this attempt to solve the problem is why things appeared to be 'fine' with the SAHPF in Cape Town, when they really weren't.

In early 2005, a majority of the SAHPF nationally, tired of the endless wrangling of the 'restructuring' process, decided to disband the SAHPF – which up to that time had been a voluntary association with no written constitution or firm membership rules – and to reform as the Federation of the Urban Poor (FEDUP), a non-membership voluntary network of independent savings groups with no leadership structure. They did this because they recognised that there was nothing to be gained by fighting over a name; and because they recognised that the *phenomenon of membership and leadership* was a major obstacle to progress in meeting the development needs of ordinary urban poor households.

The inevitable struggle over the SAHPF legacy in Cape Town

In mid-2005, Utshani received correspondence from a Section 21 Company with an address in Cape Town calling itself the "South African Homeless Peoples' Federation". This Company – which had been quietly formed in October 2004 without the knowledge or consent of the vast majority of SAHPF members nationally – claimed to be the authentic SAHPF, and demanded "the transfer of the federation assets and anything that belongs to the federation, to the federation". Utshani sought legal advice, and on this basis replied that we did not recognise this Company as the authentic SAHPF and would have nothing to do with it. We soon learnt that the "SAHPF-S21" had been formed by the Cape Town SAHPF leadership and a few sympathisers in other regions.

Naturally, this raised important questions for anyone who had dealings with the SAHPF and Utshani Fund in Cape Town – particularly provincial and local government: who was the SAHPF, and who spoke for ordinary members? Who is responsible for completing developments initiated by People's Dialogue, Utshani and the SAHPF? Who is entitled to participate in decision-making around these matters? Who "controls access" to serviced sites and subsidies allocated to the 'SAHPF'?

The SAHPF-S21 moved quickly to approach both the Province and the City to argue that they were the only legitimate inheritor of the SAHPF; that all subsidised housing projects currently supported by Utshani Fund were legally controlled by the SAHPF-S21; and that all loan repayments, subsidy releases to retire loans, and other finances due to Utshani Fund must be directed to the SAHPF-S21 instead. (Curiously, however, they also demanded that Utshani continue to support them with account administration and other technical services.)

There are no legal grounds for this, but in such matters law matters less than politics. Accordingly, the SAHPF-S21 embarked on a strategy of disruption and disinformation. For example:

- A pilot demonstration in partnership with the national Department of Housing to build 100 houses at the Ekupumleni project in Philippi was halted in March 2006 when the SAHPF-S21 contacted the Provincial Department of Housing to claim that the beneficiaries objected to it. (The truth is that a small group of pro-SAHPF-S21 households who had built large houses with Utshani loans at Ekupumleni several years ago objected, in NIMBY fashion, to having smaller houses with lower-income families living next door.)
- The SAHPF-S21 insists on control of the Kuyasa Consolidation Project in Khayelitsha, despite the fact that it had failed to allocate over 70 sites reserved for the SAHPF for several years, angering homeless households in the area and leading the City to approach Utshani Fund for a solution. The subsidies, approved in 2003, are now outdated, and cannot complete a finished house.
- The SAHPF-S21 insists on its right to control the Vusi Ntsuntsha development in Stock Road, a 1000-household site bought with an Utshani loan and the savings of homeless households in the area. The SAHPF-S21 approached the City arguing that it is the only legal Support Organisation for the project. Until this is resolved, the project cannot continue.
- The SAHPF-S21 seeks to obtain control of all subsidies for Cape Town held in trust by Utshani. This was despite the fact that the Cape Town SAHPF had ignored repeated requests from Utshani to complete these houses over several years previously. Again, the approved subsidies are now outdated – some have been sitting unclaimed since 1998 – and cannot complete a finished house at today's prices. Despite their claims to control, the SAHPF-S21 adopted the tactic of sending households wanting access to these subsidies to the Utshani offices and to the Western Cape Department of Housing.

It is important to note that in every one of these cases, it is not the ordinary beneficiaries of these projects who are raising objections – it is the leaders of the SAHPF-S21, who were housed via Utshani and the SAHPF years ago, and who do not live in the target communities.

The way forward

Given that we desire to place development activity in the hands of ordinary households, Utshani Fund has no desire to engage in a legalistic fight with the SAHPF-S21 over these issues. To do so would

simply disempower the grassroots households affected by these matters even further. We do not wish to dictate to or choose for anyone. Instead, we will make our principles clearly known to all stakeholders, who must make their own choices based on this:

1. Utshani Fund is not associated with the Section 21 Company called the "South African Homeless Peoples' Federation". We do not recognise this Company as the inheritor of the voluntary association formerly known as the SAHPF, and do not consider it to have any standing in housing projects involving Utshani. We do not recognise claim to membership or leadership position in the 'SAHPF' as a basis for entitlement of any kind.
2. Utshani will not continue with any disputed housing project in Cape Town, including administration of consolidation subsidies, until the status of the SAHPF-S21 is clarified with the City of Cape Town and the Western Cape Department of Housing, preferably by having the beneficiaries in question express their own wishes.
3. Should beneficiaries of any project wish the SAHPF-S21 to run it, we will formally terminate our involvement, return any allocated subsidies to the Western Cape Department of Housing, and hand over responsibility to the SAHPF-S21 to proceed with a new project application. In doing so, however, Utshani will act to recover and funds lent to the project in question. This also applies to existing arrangements concerning consolidation subsidies in Cape Town allocated to members of the SAHPF.
4. Utshani will continue with any housing project in Cape Town where the beneficiaries themselves are the main decision-makers, practise principles we support, and choose Utshani support. In doing so, Utshani will happily work with households who consider themselves followers of the SAHPF-S21 – but only as beneficiaries, and only if they practise the principles we support. Utshani is not obligated to serve or to cooperate with anyone based on claimed organisational affiliation and entitlement.



**TED BAUMANN
EXECUTIVE DIRECTOR
UTSHANI FUND**

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28 February 2006

BY FAX AND EMAIL

Pauline Houniet
People's Housing Process
Western Cape Department of Housing

Dear Pauline Houniet,

Utshani Fund and the SA Homeless People's Federation

It has come to our attention that persons claiming to represent the 'South African Homeless Peoples' Federation' are attempting to interfere with Utshani Fund's business with various provincial and local governments. This letter serves to clarify the situation.

1. Utshani Fund was established in 1997 to provide financial and technical services to a voluntary association known as the South African Homeless Peoples' Federation. Utshani's original Articles and Memorandum of Association did not, however, specify the SAHPF as the sole beneficiary of Utshani support.
2. In October 2004, a small group of SAHPF members secretly registered the South African Homeless Peoples' Federation as a Section 21 Company (2004/028661/02, hereafter "the SAHPF Company"). The company wrote to Utshani on 8 August 2005 to demand that Utshani hand over all assets "belonging to the Federation" to it.
3. The Utshani Board of Directors has considered this development, and after receiving legal advice, informed the SAHPF Company that Utshani was not obligated to recognise it as the inheritor of the assets of the voluntary association that was the SAHPF, and that Utshani would not do so. It is within Utshani's rights to determine whom it supports; in any case, Utshani's assets belong to ourselves as a registered company, and have never belonged to the SAHPF or anyone else. Furthermore, Utshani has informed the SAHPF Company that it would not support or engage with it in any way.
4. On 8 February 2006 the Members of Utshani Fund present at a legally convened Extraordinary General Meeting voted unanimously to remove Patricia Matolengwe as a Member because of her association with the SAHPF Company.
5. We have learnt that various persons associated with the SAHPF Company have approached government departments to insist that they deal only with the SAHPF Company on matters relating to debts, developments, and contracts entered into by Utshani Fund. There is of course no legal basis for this.
6. We wish to put on record the following:
 - 6.1. Utshani Fund is an independent Section 21 Company;
 - 6.2. All Utshani Fund's past business has been conducted on our own account. All moneys lent to individuals and groups and remaining unpaid are owed to Utshani Fund and not to any other organisation. All contracts entered into by Utshani Fund are between Utshani and the other party to the contract, and no other organisation has standing in such contracts unless specified.
 - 6.3. Utshani Fund does not recognise the SAHPF Company 2004/028661/02 as the inheritor of

Established 1997 • Sec. 21 Reg. No. 97/10227/08 • Directors:


R Molokoane, P Magebula, E Baumann; M Mogotsi; S Bedderson; N Estevão; J Bolnick; E Benekane; A Florence; P Matzimela; M Swilling

the identity of the voluntary association known as the South African Homeless Peoples' Federation. Any reference to the South African Homeless Peoples' Federation in any contract between Utshani and any other party, and/or in any documentation issued by Utshani Fund, is not to be taken as referring to the SAHPF Company;

- 6.4. No persons other than those employed by Utshani Fund and authorised to do so may speak on behalf of Utshani or enter into contracts on its behalf;
- 6.5. Any attempt by any person or entity not authorised by Utshani Fund to conduct business on our behalf, or to interfere in our affairs in any way, will be met with legal action.

With the above in mind, we kindly request all government departments to disregard attempts by the SAHPF Company to interfere in our affairs, and not to allow such interference to delay the conclusion of our business with you.

Sincerely,



Ted Baumann
Executive Director
Utshani Fund

cc: Ray Rughubar

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uTshani Fund



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22 August 2005
BY FAX (021) 371 6844

Zodidi Ndzena
South African Homeless Peoples' Federation (association incorporated under Section 21)

Dear Zodidi Ndzena:

DEMAND FOR TRANSFER OF ASSETS

I refer to your letter of 8 August 2005.

1. It is correct that the activities of uTshani Fund include co-operating with the South African Homeless Peoples' Federation ("the Federation").
2. However, uTshani Fund does not hold, and never has held, any assets on behalf of the Federation, whether in trust or otherwise. All funds and assets held by uTshani Fund are its own, to be used in accordance with its memorandum of association and its agreements with its funders.
3. None of those agreements contemplate or permit a transfer of any assets to your company.
4. Furthermore, uTshani Fund is by no means satisfied that your company is or represents the Federation, or has taken over the assets, liabilities and activities of the Federation as a going concern.
5. Unless and until uTshani Fund is satisfied that your company is, in effect, the Federation proper, uTshani Fund will not liaise or communicate with you concerning Federation business. In any event, even if your company is now the Federation for all practical purposes, this would still not entitle you to transfer or payment of any of the assets of uTshani Fund.
6. I note that you are currently using the fax number at the Derek Hanekom Resource Centre on your letterhead. Please cease and desist this immediately as you are not authorised to use this or any other resources associated with the DHRC.

Yours faithfully

Sincerely,

Ted Baumann
Executive Director
Utshani Fund

cc: Utshani Board
People's Dialogue Board