

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL
ZAF 1/2016:

31 May 2016

Excellency,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 26/22, 28/11, 25/2, 24/5, 25/18, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the assassination of environmental human rights defender, Mr. **Sikhosiphi Rhadebe**.

Mr. Sikhosiphi "Bazooka" Rhadebe was the founder and chairperson of Amadiba Crisis Committee advocacy group launched in 2007 to campaign for the rights of the residents of the Xolobeni community in the Eastern Cape, South Africa. ACC has been at the forefront of a campaign opposing open-cast mining of titanium in the Xolobeni area by Mineral Commodities Limited (MRC), a mining company registered in Australia.

According to the information received:

For several years, members of the Amadiba Crisis Committee (ACC), with the help of local residents, have reportedly resisted attempts by Mineral Commodities Limited (MRC), and its local subsidiary, Transworld Energy and Minerals (TEM) to access the titanium-rich Xolobeni coastal dunes, fearing that the mining venture would lead to their forced removal from their land and threaten their livelihoods.

In 2008, the mining company secured a mining licence from the Department of Mineral Resources. However due to protests by the ACC, the licence was revoked in 2011. MRC has filed a new application to mine in Kwanyana. The company needs the community to give its consent and to carry out environmental studies before a licence is issued. They have not been able to do this because ACC has blocked the area to those wanting to carry out such studies. This led to violence on 3 May 2015 where some community members who support the mining company shot at members of the ACC, injuring some of them. Similar shootings also took place in December 2015, without any police intervention.

In March 2016, Mr. Rhadebe was informed that his name, together with other ACC members was on a “hit list” of strong opponents to mining operations in Xolobeni. .

On 22 March 2016, at 8.30 p.m., two unidentified men arrived at the home of Mr. Rhadebe, claiming to be police officers. Mr. Rhadebe was subsequently taken to a car parked outside, where he was shot eight times. He died at the scene as a result.. An investigation into the murder of Mr. Rhadebe has reportedly been handed over to the Directorate for Priority Crime Investigation. Mr. Rhadebe is the fifteenth opponent of the mining venture to be killed, including other members of ACC.

Grave concern is expressed at the assassination of Mr. Rhadebe, which appears to be directly related to his role as chair of the ACC, his legitimate human rights work in the promotion of human rights, the protection of the rights of the Xolobeni community, and in this regard the exercise of his right to freedom of association and to freedom of expression in opposition to the mining operations in the area. Further concern is expressed that individuals expressing opposition to the mining operations in the community have been victims of repeated acts of intimidation, violence and assassinations.

While we do not wish to prejudge the accuracy of these allegations, we would like to stress your Excellency’s Government’s obligation to act with due diligence under international human rights law to investigate the case and hold accountable the perpetrators. We call for an independent and impartial investigation into the case and for steps to be taken to prevent further abuses against environmental activists and human rights defenders in South Africa.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Human Rights Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out into the alleged assassination of Mr. Rhadebe. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please provide the full details of any prosecutions which have been undertaken in this case.
3. Please provide information on any investigative, security and other measures taken following the violence of 3 May 2015 and December 2015. Please explain the justification for the lack of police intervention into these incidents.
4. Please provide information about whether any judicial inquiry or other investigation have been undertaken with respect to past 14 cases of assassination of opponents of the mining venture. If no such investigation has taken place, please explain why.
5. Please provide information about measures taken to protect members of the ACC and other opponents of the mining venture in the Eastern Cape, in particular those on the alleged “hit list”. Please also provide information about measures taken to protect the safety of Mr. Rhadebe’s widow and his son and whether any compensation will be provided to them.
6. Please indicate what measures have been taken to ensure that human rights defenders in South Africa are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
7. Please indicate which measures, including policies, legislation, regulations and adjudication, the Government has put in place to prevent, investigate, punish and redress human rights abuses related to the activities of business enterprises within its territory and/or jurisdiction.
8. Please indicate if the Government has provided any guidance to business enterprises operating in South Africa on their expected human rights due diligence process. Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights, Principles 17-21)

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that a letter addressing similar allegations and concerns as those mentioned above has also been sent to Mineral Commodities Ltd.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Dante Pesce

Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

John Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst

Special Rapporteur on the situation of human rights defenders

Christof Heyns

Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

The above mentioned allegations appear to be in contravention with Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by South Africa on 10 December 1998, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. The Human Rights Committee in its General Comment 6, para. 3, has said that it considers Article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts.

We also want to recall that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (resolution 1989/65 Economic and Social Council) also establish States' duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions. They also establish the obligation of States to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions. They further recall that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

We also would like to draw the attention of your Excellency's Government to article 19 of the ICCPR, guaranteeing the right to freedom of opinion and expression. As interpreted by the Human Rights Committee, the provision places an obligation on states to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC34). We further would like to stress that article 22 of the ICCPR guarantees that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

Furthermore, we would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;

We also note that Human Rights Council resolution 24/5 (operative paragraph 2) “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Finally, we would like to refer to the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in 2011 (resolution A/HRC/RES/17/4). The Guiding Principles are recognized as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. The Guiding Principles acknowledge the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.