

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
AL ZAF 3/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/16, 37/8 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the assassination of woman human rights defender, Ms. Fikile Ntshangase, an environmental and land rights leader opposing the expansion of a coal mine in the region of KwaZulu-Natal.**

Ms. Fikile Ntshangase was a land and environmental woman human rights defender and Vice-Chairperson of a sub-committee of the Mfolozi Community Environmental Justice Organisation (MCEJO), a long-standing environmental organization challenging the mining rights and expansion of a coal mine in Somkhele, in the region of KwaZulu-Natal. She was publicly outspoken about the mine's damages to the livelihoods of local communities and advocated for proper consultation and compensation for the use of their lands.

According to the information received:

Tandele Coal Mining Limited (hereinafter "Tendele") is a local subsidiary of Johannesburg-based Peptim Limited, which owns and operates a coal mine in Somkhele, in KwaZulu-Natal, since 1997. The company has been looking to expand to areas allegedly covered by their mining rights in the past years.

Since the beginning of 2016, there has been growing opposition against the coal mine by the residents in Somkhele. This opposition has, among other things, taken the form of peaceful marches, which have each ended with a Memorandum of Grievances presented to relevant authorities and stakeholders, such as The Cooperative Governance and Traditional Affairs (COGTA), the mine management and the Department of Mineral Resources.

Local communities and MCEJO have appealed the mine's expansion out of fear that the mining venture would lead to their forced eviction and threaten their livelihoods. The first appeal aimed to ban the company from operating until they appropriately complied with the National Environmental Management Act, which regulates environmental governance. The communities lost this appeal in August 2018 and were granted leave to appeal to the Supreme Court of Appeals in 2019. The second appeal (SCA 1105/2019) was heard on 3

November 2020, however the judgement is reserved. The local communities have also filed appeal 82865/18 to the North Gauteng High Court, which aims to review the mining right that Tendele was granted in 2016 for a further expansion of 222km², and which will allegedly relocate families, many of which have lived there for generations. The appeal is due to be heard in March 2021.

In the last months, the local community has noticed tension over the proposed expansion of Tendele's operations. Reportedly, when members of the community have resisted attempts to relocate them, mine management have sent letters to all its employees and subcontractors, depicting members of the community as those "who are fighting to close down the mine", and forewarned that their future bonuses are unlikely to be paid due to lack of income. Furthermore, the company's employees allegedly delivered letters to locals with intimidating messages such as "it is regrettable that your households' are holding the mine, its 1,500 employees and many families that have signed contracts and indeed the entire Community to ransom". Other members of the community have received death threats from unknown numbers through text messages.

On 7 June 2020, the human rights defender received at least two calls in the early morning threatening her to death. She denounced these calls to the local police.

On 7 September 2020, representatives of Tendele approached members of the local community with an agreement to withdraw the current court cases in relation to existing and future mining operations. The agreement was signed by 7 members of MCEJO, purporting to act on behalf of the organization, and Tendele's CEO. Ms. Ntshangase reportedly refused sign it and warned other members of the organization of the risks of doing so.

On 15 October 2020, a group of aggressors allegedly disrupted an organizational meeting that members of MCEJO, including Ms. Ntshangase were holding. A community member recognized one of the aggressors as a hitman.

On 22 October 2020 at about 18:30, three gunmen allegedly arrived to Ms. Ntshangase's house in the west of Mtubatuba, near the coal mine, where she lives with her 11-year old grandson. They allegedly forced themselves into the home and shot her 6 times, killing her.

While we do not wish to prejudge the accuracy of these allegations, we would like to express grave concern at the assassination of Ms. Ntshangase, which appears to be related to her role opposing the extension of the Somkhele coal mine, her legitimate human rights work in the protection of the rights of the her community, and the exercise of her right to freedom of expression in opposition to the mining operations in the area. We also remain concerned at the chilling effect that these attacks might have on other human rights defenders and their legitimate work protecting their land and livelihoods. Threats and intimidation discourage them from exercising their rights for fear that State and non-State actors may further harass them.

In this vein, we would like to stress to 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 killings of environmental and land rights defenders in South Africa.

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

As 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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the measures taken by your Excellency's Government to conduct an effective, prompt, impartial and independent investigation into the killing of Ms. Nsthangase. If no investigation has taken place, please explain why.
3. Please indicate what steps have been taken to ensure that people who have lost their lands, livelihoods or suffered any other economic or cultural impacts due to the mining activities are compensated adequately and have access to effective remedy.
4. Please indicate the steps that your Excellency's Government has taken, or is considering to take to ensure that business enterprises operating in its territory establish effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.
5. Please indicate the steps that the Government has taken, or is considering to take, to ensure the implementation of the United Nations Guiding Principles on Human Rights, such as (i) setting out clearly the expectations that all businesses respect human rights throughout their operations, including human rights due diligence and (ii) taking appropriate steps to ensure the effectiveness of domestic judicial mechanisms with respect to business-related human rights abuses.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

Please be informed that a similar letter on the same subject has been sent to the company involved in the abovementioned allegations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Agnes Callamard
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 extralegal, 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.

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. 6 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 nongovernmental 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.”

Furthermore, we wish to recall concerns expressed by the Working Group on the use of mercenaries over the lack of transparency with regard to the actors engaged in securing extractive operations and their respective roles, responsibilities and chains of command. The ambiguity surrounding the provision of security services in the extractive industry reinforces the lack of accountability and the unchecked power experienced by victims of human rights abuses and violations with respect to extractive corporations and their affiliates, including private military and security companies (A/HRC/42/42). In addition, the Working Group on the use of mercenaries has called on States to ensure that personnel of private military and security companies who have committed acts of sexual and gender-based violence are investigated and brought to justice, including in relation to crimes committed in previous years whether at home or abroad, and that effective remedies are accessible to women, girls, men, boys and LGBTI victims of human rights abuses by private military and security companies (A/74/244).

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.

Finally, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”