

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on extrajudicial, summary or arbitrary executions**

Ref.: AL ZAF 4/2023  
(Please use this reference in your reply)

18 October 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 52/4, 53/3 and 53/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a pattern of retaliation and attacks against human rights defenders.

**ALL RISE** is a woman-led legal centre working for climate and environmental justice, based in KwaZulu-Natal Province. They provide legal advice on matters relating to the environment and climate change, comment on proposed legislation connected to the subject, work to raise public awareness, and provide education on environmental law. They work with directly affected communities, including members of the Mfolozi Community, whom they have represented since November 2018 in litigation against the expansion of the Somkhele Coal Mine. The Mfolozi Community is organised in the **Mfolozi Community Environmental Justice Organisation**, whose former Vice-Chairperson, the woman human rights defender Ms. **Fikile Ntshangase**, was assassinated in October 2020. The killing of Ms. Ntshangase was the subject of a communication addressed to your Excellency's Government on 9 December 2020 (AL ZAF 3/2020), to which we regret no response has been received.

The **Helen Suzman Foundation**, founded in 1993, promotes democracy, rule of law and human rights in South Africa, conducting strategic litigation and advocacy, and seeking justice for state crimes, including during the apartheid era.

The **Socio-Economic Institute of South Africa (SERI)** works to combat poverty and inequality and pursue the fulfilment of socio-economic rights through engagement with communities, social movements and other human rights organisations. They conduct research, advocacy and litigation in the public interest.

The **South African Informal Traders Forum (SAITF)** is an association representing informal traders in South Africa.

The **Abahlali baseMjondolo Movement SA** is a grassroots movement of shack dwellers and urban poor in South Africa. It was founded under the slogan "land, housing, dignity".

**South African Research Watch (SARW)** is a non-governmental organisation

based in Johannesburg. It monitors the conduct of State and corporate actors involved in the extraction of natural resources in Southern Africa, applying an inter-generational socio-economic lens to their research and paying particular attention to human rights and environmental impacts.

According to the information received:

*Concerning harassment and intimidation of ALL RISE and its staff*

As a result of its role representing the Mfolozi Community, ALL RISE and its members have faced retaliation from multiple actors.

In October 2020, Ms. Kirsten Youens, an ALL RISE lawyer working with the Mfolozi Community, received a call from the Zulu Royal House in which she was accused of preventing members of the Mfolozi community from attending a meeting called by the Zulu King. When she communicated her clients' wishes that all meetings be arranged through their legal representatives, she was called a liar and accused of being confused. In the same month, a group of unknown persons violently disrupted a meeting between ALL RISE and the Mfolozi Community Environmental Justice Organisation. The group attempted to prevent those present from leaving and threatened them with violence.

In October 2021, the Chief Operating Officer of the Somkhele Coal Mine addressed a letter to the Minister of Mineral Resources and Energy and members of the Department of Mineral Resources and Energy in which he made delegitimizing statements as to the work and character of ALL RISE, listing details of the applicants in the case they were representing along with details of the organisation's funders. This letter was subsequently widely disseminated on WhatsApp, including among the community affected by the mine.

In May 2022, the Pretoria High Court, considering the application brought by the Mfolozi Community Environmental Justice Organisation, found in favour of the community members in their case against Tendele Mining Company, invalidating a mining right that had been granted to the company to permit the expansion of its operations at the Somkhele mine. In the same month, the Mpukunyoni Traditional Council and other respondents in the case issued a statement accusing ALL RISE of gross human rights violations and demanding information on its sources of funding.

In March 2023, the mining committee of Mpukunyoni Traditional Council issued a press release accusing ALL RISE of dividing and destroying the community and being responsible for conflict there, as well as the loss of employment and poverty. Also in March 2023, the committee filed a complaint against Ms. Youens with the Legal Practice Council, accusing her of lying to her clients.

Since at least May 2023, Ms. Youens and ALL RISE have been the subject of harassment on social media by a coal mining industry figure, with particular focus in posts targeting them placed on the organisation's funding.

Concerning smears and intimidation targeting the Helen Suzman Foundation (HSF) and its staff

In June 2022, the Helen Suzman Foundation filed a court challenge contesting the constitutionality of a decision by the Minister of Home Affairs to terminate the Zimbabwean Exemption Permit (ZEP), under which Zimbabwe nationals had been granted permission to live, work and study in South Africa. In response to the court action, the Minister for Home Affairs issued a statement citing the litigation by the Helen Suzman Foundation as “a perfect example of the destructive role that some non-governmental organisations (NGOs) are capable of” and stating that “South Africa is now under the dictatorship of some of the NGOs with some having faceless and dubious funders”. The Minister further accused the HSF of a “desperate bid to blackmail the nation”.

Since the launching of the court case and the Minister's statement, the HSF and its employees have been targeted with stigmatising statements, intimidation and threats online. These have included statements alleging that groups are keeping HSF staff and their family members under surveillance, and threats of a sexual nature against at least one female member of the organisation. This harassment has continued following the ruling by the Gauteng High Court of 28 June 2023 finding the decision by the Minister to terminate the ZEP unconstitutional, in particular from far-right groups.

Concerning delegitimizing and intimidatory statements against the Socio-Economic Institute of South Africa (SERI) and the South African Informal Traders Forum (SAITF)

In July 2022, with the assistance of SERI, the South African Informal Traders Forum filed a successful complaint with the Johannesburg High Court against an order from a city Councillor from the Mayoral Committee for Economic Development for the eviction of 400 informal traders from the city's De Villiers trading area. Following the court's ruling, the Councillor in question issued a series of delegitimizing and intimidatory posts on social media targeting the organisations. In these posts, the Councillor accused the groups of instrumentalising locals and being aligned with unspecified vested interests. The posts contained the phone numbers of two SERI staff and led to further abusive and aggressive messages against the organisations from social media users. As a result, SERI were forced to temporarily close their offices for the security of their staff members.

Concerning attacks against members of the Abahlali baseMjondolo Movement SA

Since August 2022, four members of the Abahlali base Mjondolo Movement have been killed, leaving 24 members of the grassroots group assassinated since 2009. Of the 24 killings, only two have seen criminal convictions. Human rights defenders belonging to the movement have also faced threats, harassment and smear campaigns.

Concerning an alleged SLAPP against South African Research Watch (SARW)

In March 2021, SARW and two of its staff members received notice of a lawsuit brought against it by the Canadian-headquartered mining company First Quantum Minerals (FQM) and Kansanshi Mining PLC, in which FQM holds an 80% stake, at the High Court in Johannesburg. The companies sought 1 million South African Rand in damages and unconditional apology from SARW in response to a report published by the NGO in December 2020, following two fact-finding visits to the companies' Kansanshi copper and gold mine in Solwezi, north-west Zambia. The report was the second of two studies carried out by SARW to examine the impact of the Kansanshi mine on the human rights of local communities, including the right to a clean, healthy and sustainable environment. Both reports concluded that the corporate social responsibility (CSR) projects implemented by the companies had been insufficient to offset negative impacts on the local environment and the communities' rights, such as their right to health. A draft of both reports was shared with the company by SARW prior to their publication, leading to the threat of legal action by the companies in each instance.

In May 2021, SARW submitted its intention to defend itself in the case, arguing that the suit brought against it by the companies constituted a SLAPP intended to intimidate and silence it. The case was eventually withdrawn by the company in December 2022, following consultations with SARW.

Without wishing to prejudge the accuracy of the information received, we express our serious concern at the alleged acts of retaliation against the human rights defenders, which we fear demonstrate a broad and worrying pattern of a deterioration of the environment for defending and promoting the human rights of vulnerable and marginalised communities in South Africa. We express particular concern at the alleged delegitimizing statements targeting human rights defenders in the aftermath of court judgements challenging the compatibility of the actions of state actors with their human rights obligations, and the impact of such statements on the security of defenders and on respect for human rights in the country more broadly. We further stress our worry at the allegations of retaliation against human rights defenders raising concerns about the human rights and environmental impact of companies, notably in the extractive industries and through strategic lawsuits against public participation (SLAPPs) and smears. Finally, we underline our extreme concern at the fatal attacks against members of the Abahlali baseMjondolo Movement SA and the high levels of impunity that reportedly surround these killings.

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/or comment(s) you may have on the above-mentioned allegations.

2. Please provide detailed information on the steps by your Excellency's Government to promote the legitimacy of the work of human rights defenders among State actors and more broadly in society. If no such steps have been taken, please indicate a forum wherein we may engage your Excellency's Government as to the development of such measures.
3. Please provide detailed information as to measures put in place to ensure that attacks against human rights defenders, including killings, physical attacks, as well as strategic lawsuits and online and offline harassment, are investigated and the perpetrators brought to justice. As with question 2, if no such steps have been taken, please indicate a forum wherein we may engage your Excellency's Government as to the development of such measures.
4. Please provide information on the steps that were taken to conduct independent, prompt and effective investigations, medical examinations, and judicial or other inquiries into the killings of four members of the Abahlali base Mjondolo Movement. If no inquiry has taken place or if inquiries have been inconclusive, please explain why.
5. Have investigations conducted into these killings been guided by the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, commonly known as the Minnesota Protocol?

We would appreciate receiving a response within 60 days. Past 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 note that a communication expressing similar concerns has also been sent to the Government of Canada, and to Tendele Coal Mining (PTY) Ltd and First Quantum Minerals.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Damilola S. Olawuyi  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

## Annex

### Reference to international human rights law

In connection with the allegations detailed above and our connected concerns, we would like to refer your Excellency's Government to articles 6, 19 and 22 of the International Covenant on Civil and Political Rights, ratified by South Africa on 10 December 1998, which guarantee the rights to life, to freedom of opinion and expression, and to freedom of association.

Concerning article 6 of the Covenant, in its General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, the Human Rights Committee held that the obligation of State parties to respect and ensure the right to life "extends to reasonably foreseeable threats and life-threatening situations" and that State parties may be in violation of article 6 of the Covenant "even if such threats and situations do not result in loss of life" (para 7). The Committee further stated that State parties must "take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence" and stated that "such persons include human rights defenders" (para 26). State parties to the Covenant must take "necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights" (para 53).

We would also like to strongly underline the principles set forth in 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, adopted by consensus by the UN General Assembly in 1998 and of which article 1 states 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.

Further to article 1 of the Declaration, we wish to refer to several provisions of the standard with particular relevance for the above-detailed allegations, notably article 6(b) of the Declaration, which holds that all persons have the right to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; article 6(c), which guarantees the right to study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and to draw attention to these matters; and article 9.5, which states that States shall conduct prompt and impartial investigations whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

We would also like to emphasise article 12 of the Declaration, which states that everyone has the right to participate in peaceful activities against violations of human rights and fundamental freedoms *and* that the State shall take all necessary measures to ensure the protection of any persons exercising their rights as referred to in the Declaration from violence, threats, retaliation, *de facto* or *de jure* adverse

discrimination, pressure or any other arbitrary action they are subjected to as a consequence.

In addition to the Declaration on Human Rights Defenders, we would like to highlight the recommendations for States included in the report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises concerning business and human rights defenders (A/HRC/47/39/Add.2).

To conclude, we would like to recall Human Rights Council resolution 38/12, which calls on States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors, to investigate any such alleged acts, to ensure access to justice and accountability, and to end impunity where such violations and abuses have occurred.