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Dear Sirs and Mesdames

Request for urgent intervention on the closure of civic space and attacks against human rights defenders in South Africa

1. We, the undersigned civil society organisations and Human Rights Defenders (HRDs), write this urgent appeal to submit to your attention the increasing pattern of suppression of civil society groups and human rights defenders in South Africa.
2. Over the past months, state and non-state actors in South Africa have used repressive measures to restrict public freedoms in order to limit the role of civil society and HRDs. The situation is increasingly becoming worse for those working to defend the rights of migrants and refugees, those working to defend land and the environment, as well as anti-corruption activists. There is widespread impunity in relation to the attacks, intimidation and even killings of HRDs combined with increased hostility by state actors towards civil society groups and HRDs.
3. Representatives from the Southern African Human Rights Defenders Network (Southern Defenders)¹ and Asina Loyiko² have therefore undertaken to illustrate to you some of the incidents which require your attention. We seek urgent intervention

¹ [Southern Defenders](#) embodies an ironclad commitment to protecting HRDs in the face of attacks and shrinking civic space.

² [Asina Loyiko](#) is a collaborative civil society campaign aimed at discouraging the use of litigation to silence and intimidate activism discouraging the use of litigation to silence and intimidate activism.

in investigating and addressing the violations of human rights and the rapid shrinking of civic space in South Africa.

Summary of Facts: Harassment, intimidation and attacks on civic space and Human Rights Defenders

4. We have alarmingly witnessed a growing trend of attacks on activists and lawyers in the public interest law sector, who work to defend, protect, and promote human rights and democracy.
5. In recent years, the right to freedom of expression has been increasingly violated by state and non-state actors. For instance, HRDs who exercise their right to freedom of association and expressions have been met with [SLAPP Suits](#)³ by powerful corporations in an attempt to silence and discourage them from continuing their activism.
6. Furthermore, the worsening incidents of [xenophobic harassment](#) and violence against immigrants in the country, particularly against those of African and South Asian descent, is putting those defending the rights of migrants, refugees and asylum seekers at heightened risks, with threats to their lives and properties. The lack of investigation and prosecution of xenophobic-related attacks and failure to guarantee the protection of migrants in South Africa threatens the operation of civic space.
7. HRDs working to advance and exercise constitutional rights and freedoms are faced with threats against their lives, harassment and bullying by corporates and government officials. Increasingly, intimidation tactics take the form of hate speech and vitriolic and defamatory statements made on social media. While the anonymity of online comments protect those who make such statements, there are real-life, dangerous and even fatal consequences for those who are threatened.
8. In this letter, we set out examples of attacks faced by some civic society movements in the space, such as ALLRISE, Southern African Resource Watch (SARW), the Socio-Economic Rights Institute for South Africa (SERI), the South African Informal Traders Forum (SAITF), Helen Suzman Foundation (HSF) and Abahlali baseMjondolo activists.
9. What follows, are notable examples of attacks on HRDs but there are undoubtedly many others, some of which may be unreported due to fear of reprisals. We wish to state, at the outset, that these do not represent all the incidents which require careful

³ Strategic Litigation Against Public Participation.

and urgent attention, noting that there is also underreporting of such incidents due to fear of further reprisal.

Attacks against ALL RISE (2020 – 2023)

10. ALL RISE is a climate change and environmental justice centre led by three women human rights defenders. ALL RISE represents the Mfolozi Community Environmental Justice Organisation (MCEJO) in litigation that is opposing the Tendele Coal Mine, principally known for its Somkhele Coal Mine in the KwaZulu-Natal province in South Africa. Since 2020, MCEJO and ALL RISE have experienced resistance from multiple actors, including the mining company, the Zulu Royal House, the Ingonyama Trust Board and other Traditional Leaders in the area.
11. Threats and attacks have become [part of life in many mining-affected communities around South Africa](#). According to the Global Initiative against Transnational Organized Crime, in KwaZulu-Natal alone, [more than 50 mining-related killings and attempted killings](#) occurred between 2016 and 2020, often related to land issues and conflicts with traditional authorities.
12. In October 2020, the attorney working on the Tendele Coal Mine matter, Ms Kirsten Youens, received aggressive telephone calls from the Royal House and the Ingonyama Trust Board, making various false accusations. In the same month, a contingent of aggressors (discovered to be organised by the mining company) disrupted a meeting ALL RISE was having with MCEJO at the Riverview Country Club in Mtubatuba. The group attempted to lock the doors of the room to prevent them from leaving. Several of their party assaulted members of MCEJO and made threats of bloodshed.
13. In October 2021, the Chief Operating Officer (COO), on behalf of the Chief Executive Officer (CEO) of the mine, sent a letter to the Minister of Mineral Resources and Energy and leaders of the Department of Mineral Resources and Energy two days ahead of the hearing of the judicial review application. This letter was also disseminated widely to some members of the community via WhatsApp. The letter made false allegations about tensions mounting in the area due to unrest caused by retrenchments and gave details of the applicants, their attorneys and funders. In listing the applicants, their representatives, and funders in the letter to the Minister and disseminating it to other parties, the COO effectively put many lives at risk and could have very easily incited violence against members of ALL RISE.
14. In February 2022, an attorney, Dennis Sibuyi, who represents the Traditional Leadership and others who are respondents in the case, sent a threatening letter to

Kirsten Youens prior to a legal march that MCEJO planned to hold. Furthermore, in May 2022, Mr. Sibuyi, on behalf of his clients, released a press statement accusing ALL RISE of “gross human rights violations”. 32 civil society organisations responded to this in an open letter dated [2 July 2022](#).

15. In June 2022, a journalist wrote an article that accused Kirsten Youens of being the main instigator and driver of the court judgment that found Tendele to be in breach of the law, accusing her for being the reason why thousands of jobs were lost.
16. In July 2023, the COO of the mine distributed a WhatsApp message to an undisclosed person in the community labelling MCEJO as an enemy that wants to close the mine and stated that jobs and business opportunities would be lost because of “this enemy”. On 15 August 2022, ALL RISE wrote a letter to the South African Human Rights Commission to report the intimidation and violence.
17. Recently the mining company published false and defamatory statements on its website accusing Kirsten Youens and MCEJO of “wanting to close the mine” and not having a mandate to bring the case.
18. On 1 March 2023, the mining portfolio of the Traditional Leadership of the Mpukunyoni area sent out a press statement penned by Tendele mine management accusing ALL RISE of “trying to destroy the mine” and of “dividing and destroying the community”.
19. Also, in March 2023, the same committee filed a complaint with the Legal Practice Council against Kirsten Youens, accusing her of lying to her clients. The content of the complaint is utterly false and defamatory. Ms Youens has until 12 April to put her response to the Legal Practice Council.
20. Ms Youens, as an attorney at ALL RISE, together with MCEJO, have been falsely accused, threatened, and intimidated endlessly for exercising their constitutional right to access courts and to have their dispute resolved by application of law decided in a fair public hearing before a court. This intimidation has caused further divisions and tensions within the same community.

SARW SLAPP suit and ongoing litigation (2021)

21. In May 2021, the Southern African Resource Watch (SARW) lodged a notice of intention to defend a SLAPP suit action brought against the organisation by a Canadian mining company, First Quantum Minerals (FQM). The lawsuit accuses SARW, and two employees, of defamation linked to a report published by SARW concerning the

company's operation of the Kanshanshi Mine in Zambia. In the report, SARW, a non-profit organisation that monitors corporate and government conduct in extracting natural resources in Southern Africa, provided constructive criticism against the FQM operational practices, particularly matters relating to the impacts of their activities on the environment and on adjacent communities.

22. The report, titled "First Quantum Minerals Corporate Governance and Social Responsibility: KANSANSHI MINE," found that FQM's CSR programmes are not transforming the lives of mining communities and that the company lacks commitment towards sustainable inclusive development and social justice. Following interactions with all key stakeholders in Zambia, including FQM, and in collaboration with Zambian civil society organisations and mining-affected communities, including monitoring of the Corporate Social Responsibility (CSR) of FQM in Solwezi District in the Northwestern Province of Zambia, the report revealed disparities between what FQM claims to have done and the reality on the ground. FQM was allowed to respond to the report, however they failed to do so and instead instituted legal proceedings against SARW, which has impacted SARW's public interest work.

Attacks against the Helen Suzman Foundation (2022)

23. In June 2022, Home Affairs Minister, Dr. Aaron Motsoaledi, attacked the Helen Suzman Foundation (HSF) for filing a court case challenging the Home Affairs department's decision not to extend the Zimbabwean Exemption Permit (ZEP). HSF is dedicated to promoting constitutionalism, rule of law and human rights in post-apartheid South Africa through its research, publications, litigation and submissions to the South African Parliament. In a statement released by the Minister, scathing comments were made against HSF; amongst other things, the Minister remarked that "South Africa is now under the dictatorship of some of the NGOs with some having faceless and dubious funders. Their ultimate aim is to assist in the dislodgement of the government of the day from power by all means available."
24. The HSF foundation has faced more threats and intimidation from Put South Africa First, a movement that propagates anti-foreigner, anti-illegal immigrant sentiments. The group planned a demonstration attempting to intimidate the HSF into withdrawing the ZEP application. The purported convenor of this group's latest email to the Director of HSF, Nicole Fritz, included vulgar statements and threats of surveillance. In addition, a coordinated campaign of harassment and threat has been directed at HSF, its employees and family members of employees on [social media](#) for its actions in support of those on the ZEP. This sort of harassment and intimidation ought, too, to be condemned.

Attacks against SERI and SAITF (2022)

25. Throughout July 2022, the Socio-Economic Rights Institute for South Africa (SERI) together with the South African Informal Traders Forum (SAITF), were subjected to threats of violence and cyberbullying on Twitter by Councillor, Nkululeko Mbundu, a party representative for Action SA and Member of Mayoral Committee for Economic Development in the City of Johannesburg.
26. This came after SERI successfully obtained an urgent court order that reversed the illegal eviction of 400 informal traders in Johannesburg. Councillor Mbundu had falsely asserted that SERI “used locals as a front” in the case and implied that SERI and SAITF constitute “a syndicate with big vested interests”. Xenophobic groups and individuals incited by Councillor Mbundu’s tweets began circulating pictures and cell phone numbers of SERI staff, threatened to burn down SERI’s offices, and threatened to kill the lawyers who represented SAITF and harm other staff members at SERI.
27. As a result, SERI was forced to temporarily close its offices, as the lives of many of their staff members were endangered for simply working to safeguard the rights of every person, as guaranteed in South Africa’s Constitution.
28. In its press briefing, SERI called on Councillor Mbundu and the City of Johannesburg to denounce threats of violence and harassment, and to refrain from making statements that incite or endorse violence against any person and any group. However, both Councillor Mbundu and his political party, ActionSA, have stood in defence of his actions. The City of Johannesburg distanced itself from the remarks of Councillor Mbundu and confirmed that it had since “launched an investigation to ascertain who or what went wrong in the operation and essentially why the Constitutional Court order was not properly looked at”.
29. The use of Twitter to make these allegations resulted in hostile Twitter messages targeted at SERI which constitute hate speech and cyberbullying. Councillor Mbundu did nothing to discourage nor condemn the statements, and instead, he continued to fuel them. The implications of using public statements of this nature to incite violence must be condemned as they have little regard for human life and perpetuate violence, intimidation and harassment against activists and civil society organisations.
30. Since the attacks against SERI and SAITF, SERI filed complaints with the police and the Information Regulator, and both investigations are pending. Furthermore, SERI continues to investigate the threats it received from various social media accounts, and

it will consider further steps. This behaviour must be immediately addressed, to the extent that the Councillor, ActionSA and the City of Johannesburg must truly understand the dangerous effect of these actions and must show true remorse. The disregard for all human life must be condemned and curtailed.

Repression and attacks on Abahlali baseMjondolo activists (2022)

31. Abahlali baseMjondolo (Abahlali/AbM), is a mass democratic, grassroots social movement of shack dwellers and the poor in South Africa that was founded in 2005. Guided by its slogan “Umhlaba. Izindlu. neSithunzi”, which translates to “land, housing and dignity”, AbM fights to promote and advance the interests and dignity of the shack dwellers and the poor in South Africa.
32. Since it was founded in 2009, AbM has lost 24 members (3 women and 21 men) to killings committed by both state and non-state actors. More recently, on 20 August 2022, two gunmen invaded the eKhenana Commune (eKhenana), a branch of Abahlali and opened several shots at the home of Lindokuhle Mnguni and his partner, Sindiswa Ngcobo, killing Lindokuhle on the scene and leaving Sindiswa seriously injured. The gruesome murder of Lindokuhle, who was the chairperson of the eKhenana Commune, marked the fourth killing of AbM members in the past year.
33. Other than killings of its members, AbM has also, since its establishment, been subjected to several attacks that include unlawful evictions, judicial persecution, harassments, and smear campaigns. The movement has filed several complaints with various departments of the government including the police, however little has been done in resolving their complaints. For instance, within the context of the increasing repression in eKhenana and prior to the killings of Ayanda Ngila, Nokuthula Mabaso and Lindokuhle Mnguni, a report (attached as annexure “A”) documenting the threats faced by the activists with a number of recommendations was submitted to the South African Human Rights Commission. However, no intervention nor any communication was initiated by the SAHRC, until Nokuthula Mabaso was murdered.
34. Out of the 24 killings of Abahlali activists, only two criminal convictions have been secured. This clearly indicates widespread impunity for attacks against HRDs in South Africa.

Previously reported matters

35. In October 2020 Ms. Fikile Ntshangase, an environmental and land rights leader opposing the expansion of Tendele mine was assassinated. This sent shock waves

across the civic space as organisations came together to condemn the attack. groundWork⁴, an non-profit environmental justice organisation which seeks to improve the quality of life of vulnerable people in South Africa, wrote to the Presidency to call for an urgent investigation and to arrest and put on trial those responsible for the murder. To date, groundWork has not obtained a response from the Presidency. See letter attached as annexure “**B**”.

36. In November 2020, organisations collectively addressed a letter to the UN Special Rapporteurs on the situation of HRDs, and Human Rights and the Environment. This was part of actions in response to the assassination. See letter attached as annexure “**C**”.
37. On 09 December 2020, Special Rapporteurs on human rights defenders, on issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and on extrajudicial, summary or arbitrary executions, wrote to President Ramaphosa in response to our letter. This letter sought to bring the attack to the attention of the Presidency and thoroughly detailed the facts surrounding the assassination. The Special Rapporteurs expressed grave concerns to the “chilling effect that these attacks might have on other human rights defenders and their legitimate work protecting their land and livelihoods”. The Special Rapporteurs emphasised that the threats and intimidation of HRDs “discourage them [HRDs] from exercising their rights for fear that non-State actors may harass them” and stressed the President’s obligation to act with due diligence under human rights law to investigate the case and hold those perpetrators accountable. Furthermore, the Special Rapporteurs called 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. See the letter attached as annexure “**D**”.
38. This letter also referred to the killing of activist Bazooka Hadebe. Bazooka Hadebe, an activist opposing a proposed titanium mine in Xolobeni, in the Eastern Cape. He was shot eight times, in his own house in front of his family, by two men posing as police officers. He was protecting his family’s farming and grazing land which the proposed mine was set to take away from them, thus depriving them of their livelihoods. There have not been any arrests made in the case as well.
39. It has been three years since the Special Rapporteurs made recommendations that the President investigate the killings and expedite the prosecution of those responsible,

⁴ [groundWork](#) has been working with communities in Fuleni and Somkhele since 2014 and seeks to protect and advance the right as contained in section 24 of the Constitution of the Republic of South Africa.

however, we are yet to see such an investigative report. Despite multiple calls for action as illustrated above, no arrests have been made.

40. Having realised that the government was not taking the incident and the safety of the community seriously, the community of Somkhele, supported by community organisations around the country, hosted a protest which called on the provincial Minister of Police to ensure proper investigation and prosecution. Their action was a desperate outcry for the government to protect community people seeking to ensure their environmental rights in terms of section 24 of the South African Constitution. groundWork has also written a [letter](#) to Minister Naledi Pandor to seek intervention in these matters.
41. In an effort to create more awareness on the issues, groundWork is planning to have a national protest in October 2023 to once again to bring this to the attention of the Minister of Police and the Presidency.

Conclusion and Request for Intervention

42. As the Asina Loyiko Campaign and the Southern African Human Rights Defenders Network:
 - 42.1. We condemn the attacks and murders of Lindokuhle Mnguni, Nokuthula Mabaso, Ayanda Ngila and the many other leaders and members of AbM. These acts of violence are proof that activists in South Africa are still oppressed and are hindered from exercising their constitutional rights and freedoms as guaranteed under a constitutional democracy.
 - 42.2. We condemn the attacks against ALL RISE, SARW, SERI, SAITF, HSF and AbM on the basis that everyone has a right to access courts in terms of section 34 of the Constitution and to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court. SERI and AbM have taken steps to report the intimidation, threats of violence and the violence against the activists to the South African Police Services (SAPS). Active steps have not been taken by the SAPS to meaningfully address the threats or even prosecute those guilty for the atrocious actions. The 22nd of October marked the two-year anniversary of the murder of environmental activist Fikile Ntshangase for opposing the expansion of Tendele Coal Mining in Somkele. Fikile was a member of MCEJO. To date, no arrests have been made. This reflects the failure of our criminal justice system, law enforcement agencies and prosecutorial agencies to protect human rights defenders in our

land. Furthermore, the government's silence on attacks against human rights defenders is deafening, and a damning reflection of our criminal justice system.

- 42.3. Activists and lawyers who are human rights defenders working in public interest law should be able to exercise their constitutional rights and freedoms without being subjected to threats against their lives, harassment and bullying by corporates or government officials, and intimidation on social media. Human rights defenders should be able to exercise their constitutional rights without fear of losing their lives or facing threats to their persons or associations.
43. In light of the pattern of attacks against civil society organisations and human rights defenders, this urgent appeal calls on both the African Commission on Human and People's Rights and the United Nations Special Rapporteurs' to urgently intervene in investigating and addressing the violations of human rights broadly and the rapid shrinking of civic space in South Africa. As mentioned above, the attacks on the various organisations do not cover all harms and threats faced by HRDs but make a cross section of examples of challenges faced by HRDs in the space.
44. We accordingly request the following:
 - 44.1. A meeting with the addressees of this letter and civil society organisations, including community organisations, facing repression and attacks in South Africa and, more specifically, those discussed herein;
 - 44.2. For the Special Rapporteurs' to investigate the attacks discussed herein and to produce a report that reflects the tactics used to shrink civic spaces in South Africa and, more specifically, the repression faced by human rights defenders in South Africa and to provide recommendations;
 - 44.3. For the SAHRC to investigate the attacks on the activists and to produce a report making binding recommendations;
 - 44.4. A meeting with the President of South Africa and the relevant law enforcement and prosecutorial agencies to determine how far they are with the pending investigations on attacks against SERI, AbM and Fikile Ntshangase and to provide information on steps taken to deal with the threats of violence as well as the on-going threats;

44.5. For the Special Rapporteurs' to consider additional mechanisms which would be useful to civil society organisations in South Africa and to share those mechanisms and reporting channels through educational and information sharing sessions while offering space for anonymity.

45. We look forward to receiving your response.

Yours faithfully,

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Supported by:





State-sanctioned repression continues

Assaults and the assassination of prominent AbM leader at eKhenana

*Update to 27 October 2021 Independent Accredited Monitor Report
prepared by Jared Sacks¹*

*Submitted to the South African Human Rights Commission
on 29 September 2022*



Figure 1: The funeral of Lindokuhle Mnguni

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Summary

Since October 2021 when I submitted my initial report, repression of residents of eKhenana informal settlement in Cato Manor, Durban, has only increased. Despite numerous calls to investigate the repression that occurred prior to the 27 of October, there has been little or no progress from authorities. Despite submitting the previous report, there had been no response from the SAHRC until after March 2022 when I submitted a follow-up report subsequent to the assassination of Ayanda Ngila. The SAHRC however now claims to be investigating the matter.

As it currently stands, three leaders of Abahlali baseMjodnolo at eKhenana (Ayanda Ngila, Nokuthula Mabaso and Lindokuhle Mnguni) have been assassinated in three separate incidents in which they were targeted by gunmen. There have been some limited arrests in the case and a few of the gunmen remain at large; the police seem to continue to drag their feet with regards to this investigation.

Finally, it has emerged that there is a criminal syndicate operating in the Cato Crest / Cato Manor area. The assassinations of Ngila, Mabaso and Mnguni seem to be linked to this syndicate which is involved in a few different activities: 1) “shack farming” (the illegal renting out shacks by slumlords), 2) the provision of illegal electricity to shack dwellers, and 3) the control of government tenders linked to housing developments in the area. All these activities are reportedly backed up by “heavies” who ensure people pay monthly fees for the above. This new development indicates that the violence and the assassinations will likely continue as long as this syndicate continues to maintain power in the area.

Below I will provide more information into exactly what has taken place since October 2021.

November 2021

In October and November 2021, AbM President S’bu Zikode apparently spoke directly to the Minister of Police, Bheki Cele, who promised to get the provincial commissioner of police to take action. Cele has further publicly claimed to be pumping the most resources into the province to deal with the violence in general. Yet as far as the movement is concerned, there has been no action on the ground at all. It seems that despite the increased resources, there is a lack of political will to take this matter on.

On the 23rd of November, after months of pressure, SAPS in Cato Manor arrested three of the six people said to be responsible for burning the homes of two women in eKhenana. Unlike eKhenana residents who were held without bail for up to six months only to have their cases withdrawn, these three individuals (Nkosingiphile Nsele, Sibusiso Mdluli and Mthandeni Mfeka) were immediately granted bail when the matter came before the magistrate. No bail conditions were imposed on them. Upon their release, AbM claims that the three individuals returned to eKhenana and let off gun shots into the air to intimidate residents. No further action was taken after this.

January 2022 – Municipality resurrects eviction application

In December 2018, the Socio-Economic Rights Institute (SERI), under instruction from residents of eKhenana brought an interdict application against the eThekweni municipality after it destroyed the homes of residents and attempted to evict them from the property without a court order. The matter

was postponed and in the meantime the City continued to try to evict residents. In February 2019, residents brought an urgent interdict based on the continued attempts to evict them and the court granted them the interdict on an interim basis. In April 2020, after further repeated attempts to evict residents, SERI brought another urgent interdict and contempt of court application. The matter was then settled and the City undertook to refrain from further demolitions and evictions.

Cocurrently with this, the City instituted eviction proceedings in July 2019. These proceedings were later put on hold. In January 2022 however, the City resurrected their eviction application that had lain dormant for almost three years, attempting to remove residents to Umkomazi 40 km away from the city.

While the eThekweni Municipality has the legal right to institute eviction proceedings, the timing of the matter is questionable. One might ask: Why resurrect the matter now when the repression of residents is at an all time high? Why is there so much effort to evict residents but virtually nothing in terms of protecting them? It is worth noting this within the context of the continued repression.

March: Attacks and first assassination

6 March 2022 – Violent attack on eKhenana settlement

On Sunday 6 March, residents hosted an Abahlali baseMjondolo general assembly. A few hundred movement members were present coming from all over KZN. At approximately 16h00, after the meeting was adjourned and visitors had gone, a mob of people allegedly assaulted a number of residents of eKhenana. Two residents, Langa Mbunguzana and Siniko Miya,² were rushed to hospital with serious injuries after having been attacked with an axe. The communal kitchen in the settlement was also vandalised. AbM claim that the mob responsible was led by Khaya Ngubane, the son of Samson (NS) Ngubane.³

The following day, after sustained pressure, Miya and Mbunguzana were eventually permitted to open a criminal case against the attackers. The case number is CAS 58/3/2022. However, even though the attackers have been identified and their locations known, SAPS failed to enact the immediate arrest of those responsible. A few months later, after the assassinations had already taken place, the case has finally proceeded against Khaya Ngubane.

8 March 2022 – Assassination of Ayanda Ngila

Abahlali baseMjondolo members and residents at eKhenana allege that, at 15h00 on the 8th of March, Khaya Ngubane once again returned to eKhenana settlement to lead another attack on eKhenana residents. A group of residents were together attempting to fix an irrigation pipe in their communal farm when the four gunmen entered the settlement. All of them were reportedly armed. They shot at residents who fled.

They specifically targeted eKhenana AbM branch chairperson Lindokuhle Mnguni who they attempted to pursue through the settlement. He was able however to run to safety.

2 Miya spend six months in jail with other AbM members in 2021 for fabricated murder charges which were later dropped.

3 See my 27 October 2021 monitor report which details the role of NS Ngubane in the false arrest of a dozen members of Abahlali baseMjondolo and the continued repression of residents of eKhenana. NS Ngubane seems to be the key figure pulling strings to ensure Cato Manor SAPS enacts these arrests. He has also been seen in meetings with the head magistrate at Durban Magistrate Court prior to bail being rejected or hearings being postponed for AbM members.

When they were not able to find Mnguni, they turned on deputy chairperon of eKhenana, Ayanda Ngila. He was targeted and chased, with the gumen shooting at him in the process. Ngila attempted to hide by the chicken-run in the centre of the settlement. However the attackers soon found him and shot him multiple times again leading to his death. It is concerning that SAPS did not take the previous attack on the 6th of March seriously. If they had done so and arrested Khaya Ngubane and his alleged accomplices, the murder of Ngila may have been averted.



Figure 2: Ayanda Ngila speaking at an AbM event. Credit Abahlali baseMjondolo

In the days following the murder

In media reports, a SAPS spokesperson claimed to be looking for the attackers who they say are now nowhere to be found. Residents of eKhenana report that they have not seen any ‘manhunt’ taking place. Residents claim that the alleged killers were seen in the streets near eKhenana on the following day, the 9 of March 2022. On 17 March 2022, a Sunday Times journalist interviewed Khaya Ngubane and his father Samson Ngubane inside his home in Cato Manor. The journalist later revealed this information to Abahlali activists

Allegations that a person wanted for murder has been able to walk the streets in broad daylight and openly conduct interviews with a journalist in his home indicates that Cato Manor SAPS is at best not taking this matter seriously or at worst actively protecting the alleged culprits.

It was many months later that Khaya Ngubane was eventually arrested for Ngila’s murder. On 18 May 2022, Khaya Ngubane appeared in court for his bail hearing regarding the murder of Ngila. He was only denied bail when the investigating officer opposed his release and testified that the murder of Nokhuthula Mabaso, a state witness in Ngila’s murder, was killed the week before. (More on Mabaso’s assassination below).

11 March 2022 – SAPS Allegedly kill AbM member in eNkanini settlement

Only a few days later, less than 2 km from eKhenana informal settlement, there was another alleged attack on AbM members. This time it occurred in the much larger eNkanini informal settlement in Cato Crest where the movement is also active.

AbM alleges that at around 23h00 that evening a large contingent of police came to the settlement. Reportedly, the police were masked in balaclavas, their name-tags covered and their number plates on their vehicles removed. Residents report that they did not recognise the police officers and therefore think they had not come from the local police station. A masked person reportedly pointed out 4 residents, who were then arrested. Police also are said to have assaulted a range of community members, including children. It is common cause that when Siyabonga Manqele, the husband of a woman who was being arrested, returned home around 02h00 that morning, police tried to arrest him; as he was trying to flee, police shot him with live ammunition and killed him. The police then dispersed other residents with stun grenades and tear gas.

In news reports that followed the incident, a police spokesperson confirms that police shot Manqele in the back as he was fleeing. They claim the matter is under investigation and that the CAS number for the incident is 107/03/2022. Police have not addressed why an unarmed person was shot in the back. Nor have they explained why the operation occurred without officer identification and why vehicles had their number plates removed.

I have not been able to follow up on the progress with this case against the police.

May: Second assassination



Figure 3: Nokuthula Mabaso speaking at AbM event. Credit Nomfundo Xolo

On 5 May 2022, Nokuthula Mabaso had reportedly just left a meeting at the eKhenana community hall to check on the food she was cooking at home. As she emerged from her home, two men

cornered her and shot her seven times. This took place in full view of her children. The men fled and she died there on scene. The police reportedly never arrived when they were called. Instead, AbM members had to go to the police station to “fetch” them and bring them to the crime scene. Mabaso was a state witness in the assassination of Ngila and it is widely thought that her assassination was due to this fact.

Abahlali baseMjondolo claimed that the perpetrators of the murder were well-known elders in the community, Samson (NS) Ngubane and his brother Mhlanganyelwa Ngubane. Despite AbM claiming to know their whereabouts, they complained that the police failed for months to enact the arrest of the two.

However, finally, on the 26 July 2022, a full two months after the murder, Samson Ngubane (who is a pastor that leads a Zionist church in Mayville) as well as his brother Mhlanganyelwa Ngubane were later arrested for their involvement in Mabaso's assassination. They are the father and uncle of Khaya Ngubane respectively and it seems logical that they had a clear motive to go after one of the witnesses in Ngila's assassination.

On 6 September 2022, with hundreds of members of Abahlali baseMjondolo protesting outside the courthouse, both accused were denied bail.

August: Third assassination



Figure 4: Lindokuhle Mnguni speaking at a workshop. Credit Siya Mbhele.

On 20 August 2022, in the early morning, Lindokuhle Mnguni was killed when two gunmen entered the settlement.

Mnguni had been living in a safe house since Ngila's murder in March, only returning to eKhenana for meetings where large numbers of AbM members were present. On that evening, after a late meeting in the settlement, he decided to sleep at his home for the first time in months and leave first thing in the morning. He rationalised that no one from outside eKhenana knew he was there and so he would be safe. This however, turned out not to be the case.

The gunmen entered eKhenana in the early hours when everyone was asleep. CCTV footage installed by AbM after the assassination of Mabaso and Ngila show the gunmen searching the settlement for their target. They began community hall but didn't find anyone there. They then went to the communal kitchen where one movement leader often stays. But no one was there either. After about 20 minutes or so, they eventually found Mnguni at his home where he was sleeping with his partner at his side. They fired more than a dozen shots, killing Mnguni and critically injuring his partner they thought was also dead. CCTV footage show them fleeing the settlement. Mnguni's partner was rushed to the hospital and survived. But Mnguni himself died at the scene. AbM says the gunmen are identifiable from the CCTV footage and known to community members. They were reportedly part of the group of four gunmen led by Khaya Ngubane that assassinated Ngila in March.

The murder of Mnguni has been widely condemned with a civil society letter authored by over 130 organisations including Amnesty International calling for a national-level investigation. However, as of late September, the gunmen still have not been arrested and AbM reports that police have failed so far to interview all witnesses and conduct a proper investigation.

Wider Context: Cato Crest housing syndicate

From discussions with residents of eKhenana, with residents of other informal settlements in the area, as well as discussions with investigative journalists who have looked into the recurring violence in Cato Crest / Cato Manor, there seems to be clear indication that a well-organised housing and service delivery syndicate has been in operation within the area for at least the past ten years.

The recent arrest on 24 May of the ANC councillor for Cato Crest (Ward 101) Mkhapheni Mzimuni Ngiba, has underlined this. Ngiba was a long-time councillor of the area and was known in the community as a dangerous strongman. In 2021, another local ANC member, Siyabonga Mkhize, was nominated by the ANC to run in the local elections for the ward, effectively displacing Ngiba. However on 1 November 2021, just days before the elections, Mkhize and his bodyguard were assassinated. After the assassination, Mkhize went on to win the election posthumously. In March 2022, by-elections were held for the ward, which Ngiba won. On 24 May 2022, almost a year after Mkhize's death, Ngiba was finally arrested for the murder and was charged along with three other men.

What has emerged since that arrest are credible allegations that Ngiba has been a key figure behind a housing syndicate in Cato Crest. For example, his people allegedly sell electricity connections in Cato Crest shack settlement for R300 and then charge another R120 each month to maintain that connection. If someone fails to pay, Ngiba's heavies will force payment and disconnect the resident. Something similar occurs with shack farming in the area. Anyone who fails to pay rent to the syndicate will be removed from the settlement. Ngiba also is reportedly linked to various government housing developments in the area through a corrupt tender process.

Why is this relevant to Abahlali baseMjondolo? The movement of shackdwellers living in a number of shack settlements in Cato Crest presents a significant threat to the profits and continued

dominance of this housing syndicate precisely because AbM opposes the illegal sale and rental of shacks and opposed the commodification of electricity provision in the settlements where it operates. This effects the syndicate's power to conduct their business in the area. In 2013, this resulted in the assassination of a few of its leaders in Cato Crest including Nkululeko Gwala, who was AbM chairperson for their Cato Crest branch. Gwala's assassination followed the killing of ANC anti-corruption campaigner Thembinkosi Qumbelo in Cato Crest. Abahlali members have indicated to me that these murders are likely linked to Ngiba and the housing syndicate.

The eKhenana matter seems to be linked to this syndicate because the land where the 2018 occupation took place was reportedly designated for a housing development which the syndicate seems to have an interest in. The Ngubane family (also high profile ANC members) is reportedly connected to Ngiba and had interests specifically in this piece of land.

If the above is true, what this shows is that the situation at eKhanana is potentially far more dangerous than we had previously thought. The syndicate is apparently quite powerful in the area, with strong links to the local taxi boss, to the local police at Cato Manor police station as well as within the local municipality. This implies that all residents of eKhenana are likely under continued threat.

However, more research needs to take place into this syndicate and exactly what it does, what its business interests are and who it is connected to. Unfortunately, without high-level intervention nationally, it seems unlikely that police investigators will be able to illuminate this for us. Thus a proper independent inquiry into this syndicate will be necessary to end the repression currently taking place at eKhanana as well as the movement Abahlali baseMjondolo more generally.

Summary

The above update confirms the following:

1. There is a relentless campaign of repression taking place at eKhenana informal settlement. I had warned in the previous report that the situation is extremely volatile and could result in severe injury or even death. As predicted, the situation did get worse leading to the hospitalisation of a large number of residents, the re-arrest of several activists with seemingly unfounded allegations against them, and the assassination of three AbM leaders at eKhenana: Ayanda Ngila, Nokuthula Mabaso and Lindokuhle Mnguni.
2. The repression seems to be coordinated by a group of people linked to the Ngubane family among others within the Cato Manor area. While members of the Ngubane family have been arrested, others who have been involved in the assassinations – part of a much larger network – are still on the loose. This syndicate is allegedly linked to a prominent local ANC political politician named Mzimuni Ngiba.
3. The Ngubanes as well as others linked to this syndicate seem to hold a significant amount of sway at the local police station at Cato Manor, within the local municipality and even within the court system. The syndicate is also involved with the local taxi industry which is allegedly where some of the hitmen behind the assassinations are coming from.
4. The repression is being expanded by the re-emergence of a municipal PIE Act eviction application to remove the residents from the settlement. When taking the other incidents into account, it gives the impression that the eviction application is somehow politically linked to the ongoing repression.

5. The recent deadly police operation at eNkanini, another informal settlement nearby, may be unrelated to what has been taking place at eKhenana. However, the fact that so many incidents are happening that have targeted AbM members does make one question whether there is a connection. One might ask: Why are SAPS arresting so many AbM members? Why are SAPS dragging their feet in terms of arresting and investigating those linked to the assassinations. As I wrote in my previous report, evidence is emerging that the arrests that took place are part of a strategy to punish AbM members through the judicial process. Given that the arrests ultimately failed to stop the movement (they were all thrown out due to lack of evidence), it seems likely that those seeking to repress the movement have moved on to targeted assassinations.

Further recommendations

I have been told that the local office of the SAHRC is investigating the matter. However, so far, nothing has come of this. I believe this needs to be prioritised and escalated to a fully funded inquiry similar to that which the SAHRC held in response to the July 2021 Durban uprising. I therefore I recommend that the SAHRC urgently request that the relevant government departments take the following actions:

1. **Inter-Ministerial Investigation.** The SAHRC should request that the multi-disciplinary Task Team of the inter-Ministerial Committee on political killings in KwaZulu-Natal, with the support of the Hawks and the Special Investigating Unit (SIU), urgently investigate the assassinations of members of Abahlali baseMjondolo as well as the wider spate of killings that have been occurring in the Cato Crest area in eThekweni (Durban). The Moerane Commission played a productive role in stopping the unyielding violence in the nearby Glebelands hostels. A similar investigation should occur into the murders and assassinations in Cato Crest.
2. **Minister Ronald Lamola and Minister Bheki Cele intervene.** The SAHRC should request that the national ministers of justice and the police to intervene and specifically ensure the following:
 - a) The Minister of Police should appoint a dedicated police team who are specifically not linked to the local Cato Manor police station but preferably hail from outside the province. This team should focus on the Cato Manor and Cato Crest area to protect the residents of eKhenana and eNkanini from further violence. The patrol should also be tasked with arresting anyone linked to the murder and repression of AbM leaders and activists.
 - b) The Minister of Police should transfer the investigation of the current murder and assault cases to an investigator from outside the province, since reports indicate that Cato Manor SAPS and other police in the province are possibly compromised.
 - c) The Minister of Police should appoint a national level investigator to conduct a wide-ranging investigation into the Cato Crest housing syndicate. The investigation should take place at the national level taking the matter out of the hands of local structures.
3. **IPID must take action.** The SAHRC should follow up on the Independent Police Investigative Directorate's (IPID) case concerning the police operation that took place at eNkanini settlement on the 11 March 2022 as well as claims of collusion, bias and false arrest by members of Cato Manor Police Station.
4. **Judiciary must investigate.** The SAHRC should ask the Magistrate's Commission to investigate the conduct of Edmund Ngubane, the Acting Chief Magistrate of the Durban Magistrate Court. Edmund Ngubane's relationship with NS Ngubane should also be probed in terms of possible conflict of interest.
5. **Municipality must provide services to the community.** The SAHRC should write to the eThekweni Council requesting that they stop refusing to provide water, sanitation and high

mask lighting to eKhenana and eNkanini shack settlements. During interviews with residents, this has emerged as some of their primary social and safety related demands.

Further to the above, I recommend:

1. **That the SAHRC approach the media.** This would include sending out a press statement which calls attention to the repression at eKhenana and eNkanini and calls on the relevant government departments to act.
2. **That the SAHRC institute its own independent inquiry. This should be tasked** with investigating the violence and assassinations at eKhenana as well as the repression that has allegedly taken place since 2018 at the hands of government, including by the municipality's Anti-Land Invasion Unit, eThekweni Metropolitan Police as well as the Cato Manor SAPS. The inquiry should also investigate the reported housing syndicate that has been operating in Cato Crest and its link to institutions of the state including but not limited to the eThekweni housing department.



"B"

groundWork

Environmental justice action

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Tuesday, 27th October 2020

The President
Honourable Mr Cyril Ramaphosa
c/o Minister Jackson Mthembu
glory@dpme.gov.za

Minister of Police
Honourable General Bheki Cele
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Ms Tina Monica Joemat-Pettersson
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Chairperson of the South African Human
Rights Commission
Professor Bongani Christopher Majola
c/o Adv Tseliso Thipanye
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Your Excellency, President Ramaphosa, and the Honourable General Bheki Cele

Request for speedy and urgent investigation to arrest and put on trial those responsible for the murder of Mama Fikile Ntshangase

On Thursday evening, the 22nd of [October, Mama Ntshangase was brutally gunned](#) down in her home west of Mtubatuba, KwaZulu-Natal, near the Somkhele Coal Mine, owned by Tendele Coal Mining (Pty) Ltd, a subsidiary of Petmin. We believe that this was an assassination of a community member who was vocal in her concerns about the operations of the Tendele Coal Mine. It is reported that she was unwilling to sign an agreement with the mine to withdraw the current court cases in relation to existing and future mining operations (Gauteng Division, Pretoria:82865/18 and SCA: 1105/2019) and for their continued operations and proposed expansion plans. The incident has been widely [reported in the global press](#).

I address this letter to you on behalf of The Groundwork Trust ([groundWork](#)). We have been working with the community in both Fuleni and Somkhele since 2014, as they have sought to secure their rights to an environment that is not harmful to their health and well-being and at the same time to secure ecologically sustainable development. groundWork is a member of [Friends of the Earth International](#), a decentralised group comprising autonomous organisations with a shared analysis of the root causes of today's most pressing environmental problems, and who envision a

Trustees: Farid Esack, Joy Kistnasamy, Judy Bell, Patrick Kulati, Richard Lyster, Mawande Mazibuko



society of interdependent peoples living in dignity, wholeness and fulfilment, in which equity and human and peoples' rights are realised. Friends of the Earth International has 73 member groups globally, who collectively have over 2 million members and supporters around the world, with the majority of these members in the global South.

We believe, for the law to be effective, it must be implemented swiftly to ensure those responsible have little time to cover up their actions. We call on the Minister of Police to give this murder the urgent attention it deserves. It is critical that the Minister is seen to be acting for the safety and in the interest of the community, as people currently are living in fear. In April 2019, a coalition of NGOs, including groundWork, working with [Human Rights Watch](#), released a report on the [Environment of Fear in South Africa's Mining-Affected Communities](#), calling on all National Government Agencies, including the Office of the President, to “ensure that law enforcement authorities impartially, promptly, and thoroughly investigate any allegations or incidents of attacks, threats and harassment against community rights defenders and the wider community, for exercise of their rights to freedom of expression, assembly and protest, and adopt a plan that would address the failure to adequately investigate such cases”. Just prior to this report, in August 2018, the South African Human Rights Commission released a [scathing report, titled “National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa](#), stating that the government is responsible for the harm done to mining-affected communities because of its “failure to monitor compliance, poor enforcement, and a severe lack of coordination”. This report also focused on the Somkhele area.

Our concern about a delay in investigation and justice is premised on previous experiences when community activists have been killed, as in the case of Sikhosiphi "Bazooka" Rhadebe, and for which [justice is never forthcoming](#). In [Somkhele, in April 2020](#), two families were attacked by gunmen and the family houses were riddled with bullets from the assailants. Despite various leads having been provided to the police, no one has been brought to book.

We believe, as a result of the lack of commitment from the South African Police Service, Ms Ntshangase paid with her life for protecting her rights and the rights of her community.

We therefore call upon the Minister to respond to this violence and to ensure:

1. that police swiftly investigate the murder and other violent threats in the Somkhele area, to prevent further loss of life;
2. that the necessity for a referral to the Directorate for Priority Crime Investigation (“the Hawks”) is assessed;
3. that increased protection is provided for other community people who have challenged the operations and expansion of Tendele’s Somkhele mine; and
4. that a report on the progress of the investigation is made public.



Furthermore, we think it is critically important for open democracy that the President places the necessary political will behind this investigation, so that people are encouraged to believe in positive outcomes to democratic practice in South Africa, rather than fear that engaging with their democracy places their lives at risk.

We thank you in advance and would appreciate a speedy and substantive response to our correspondence.

Time is of the essence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Peek'.

S. (Bobby) Peek
Director



30 November 2020

Ms. Mary Lawlor

Special Rapporteur on the Situation of Human Rights Defenders

Prof. David Boyd

Special Rapporteur on Human Rights and the Environment

By email: urgent-action@ohchr.org;
defenders@ohchr.org

Dear Special Rapporteurs Lawlor and Boyd,

RE: ASSASSINATION OF COMMUNITY ACTIVIST MRS FIKILE NTSHANGASE

We write to you in urgent and worrying times for the ideals of open democracy and justice, and the vulnerable state of South Africa's constitutional democracy.

On Thursday evening, 22 October 2020, at about 18h30, human rights and community activist, 63-year old Fikile Ntshangase, was murdered at her home where she lived with her young grandson. Three gunmen entered Mrs Ntshangase's house and shot her six times. She died at the scene. Mrs Ntshangase was the vice-chairperson of the Mfolozi Community Environmental Justice Organisation (MCEJO) sub-committee in Somkhele, in the KwaZulu-Natal (KZN) province, and a prominent critic and leader against the proposed expansion of a coal mine in the area. The mining operation is owned by Tendele Coal Mining (Pty) Ltd (Tendele) and has been operational since 2007.

One of the court challenges that seemingly placed a price on Mrs Ntshangase's life is MJECO's pending review application of Tendele Coal's 2016 mining right in respect of a 222 km² area, granted in 2016. Mrs Ntshangase's home falls within this area where the mine is currently aggressively pushing to expand its operations. This review is due to be heard by the North Gauteng High Court in March 2021. A second court challenge brought by MCEJO, regarding the unlawfulness of the operations of the Tendele coal mine, was heard in the Supreme Court of Appeal on 3 November 2020, with judgment reserved.

To date, no suspects have been arrested for Mrs Ntshangase's murder.

Factual background

Tendele's coal mining operations have caused untold destruction of the environment and the homes and livelihoods of the residents of Somkhele. Several community activists opposing the mine in KZN, said they have experienced threats, physical attacks, and damage to their property that they believe are in response to their opposition to Tendele coal mine. These and other threats to the human rights of community members opposing the mine were documented in a report published by the [Centre for Environmental Rights](#), [groundWork](#), [Earthjustice](#), and [Human Rights Watch](#) in April 2019.¹

Over the past few months, tension has been rising in the community about the proposed expansion of Tendele's operations, and MCEJO's opposition to that expansion.

Recently, Tendele was pushing for an agreement to be signed between MCEJO and Tendele to the effect that MCEJO would withdraw its court challenges against Tendele's planned expansion of its coal mine at Somkhele. Mrs Ntshangase refused to sign the "agreement", which certain of her fellow sub-committee members signed, purportedly doing so on behalf of MCEJO.

It is reported that Mrs Ntshangase had warned sub-committee members that they had no power to make decisions on behalf of MCEJO and that the "agreement" only benefited Tendele and themselves. She also refused to attend any of the secret meetings that the MCEJO sub-committee members held with Tendele. In the aftermath of her murder, several media publications have reported that days before her brutal killing, Mrs Ntshangase stated her intention to write an affidavit, revealing that sub-committee members had spoken to her about payment of R350 000 in return for her signature.

Tendele has publicly characterised MCEJO's legal challenge as a threat to the mine's continued existence, stating that, with the current mining area depleted, it needed to expand its mining area, or face closure. The expansion requires relocation of 145 families from their ancestral land. 21 families refused to agree to the terms of the relocation (19 of them are MCEJO members). Many of these families have lived on their land for generations. Tendele mine paid half of the compensation for relocation to the families that agreed to the relocation offer and promised to pay the balance as soon as the other families agreed to be relocated. In so doing the mine is inciting conflict within the Somkhele community.

Tendele cannot commence any operations in the new mining right area until these families agree to Tendele's "compensation" offer and sign relocation agreements. These families have been subjected to months of violence and intimidation. Despite the clear volatility of the situation, Tendele has accused these families of "*holding the Mine, its ... employees and many families who have signed [relocation] agreements and indeed the entire community to ransom*". Tendele carried out its relocation campaign

¹ Available at <https://www.hrw.org/news/2019/04/16/south-africa-activists-mining-areas-harassed#>.

even while these families were receiving anonymous death-threats and gunmen opened fire on one of the families' homes.

In May 2020, Tendele tried to bring an urgent court application to force the families to accept its compensation offer, but abruptly removed the matter from the court roll when the families opposed the application.

Tendele has embarked upon a campaign to effectively pit the State, the local Ingonyama Trust Board,² traditional leaders, along with fellow community members, against these families to pressure them into signing relocation agreements. Tendele requested the Member of the Executive Council (MEC) for Transport, Community Safety & Liaison in KZN, MEC Ntuli, and department officials to set up a "task team", because *"the two court cases opened by MCEJO against the mine remain a threat and needs [sic] to be withdrawn"*. This Task Team has since described its role to include *"deliberat[ing] on the court cases which pose a threat"*. In July 2020, the Department of Community Safety and Liaison sent a staff member, apparently from its Civilian Secretariat arm (which is conspicuous in its absence whenever the threat of violence looms), to persuade community members to negotiate with the mine and ignored their appeal for security in their area, as they feared for their lives.

It is against this backdrop that the pro-mining lobby stepped up its campaign during the recent months. On 15 October 2020, two sub-committee members, accompanied by two known hitmen, tried to disrupt a MCEJO executive committee meeting with community leaders that included Mrs Ntshangase. One sub-committee member tried to lock the doors, and a prominent leader was assaulted. A criminal case is being opened. This leader, who works in another area, has been warned that his life will be in danger if he is seen in the vicinity of Somkhele. Billy Mnqondo, a founding member of MCEJO, reports that one of the hitmen kept saying *"kuzochitheka igazi"* (there will be bloodshed). His appeal to the police is: *"[m]ake sure that the criminals who murdered our comrade are caught and go to jail. Mam Ntshangase was killed for standing up for what is right. This is wrong and cannot go unpunished."*

Since then, after MCEJO members thought it only proper to approach the office of the Ingonyama King Goodwill Zwelithini about their struggle, they have come under even further government pressure via the office of the KZN Premier and the provincial Department for Co-operative Governance and Traditional Affairs. This is the self-same government that claims to be a custodian for land reform to redress historical

² Ingonyama Trust Board is responsible for the administration of the affairs of the Ingonyama Trust. The Ingonyama Trust was established in 1994 by the erstwhile KwaZulu Government in terms of the KwaZulu Ingonyama Trust Act, (Act No 3KZ of 1994) to hold all the land that was owned or belonged to the KwaZulu Government. The mandate of the Trust is to hold all this land for the "benefit, material welfare and social well-being of the members of the tribes and communities" living on the land. The sole trustee to land under Ingonyama Trust is His Majesty the King Zwelithini Goodwill kaBhekuzulu - <https://www.ingonyamatrust.org.za/>.

land dispossession – while wilfully pushing to displace rural farmers from their family land from which they subsist.

For the South African government and traditional authorities to actively assist Tendele in its efforts to orchestrate a withdrawal of MCEJO's court review application, is abhorrent to our Constitutional order. Without access to court and the freedom to protect their rights and the rights of fellow community members, local community activists' right to dignity, environmental health, and access to justice, are illusory.

A pattern of threats and intimidation in mining-affected communities

The strategies used by Tendele are sadly typical of many companies operating in impoverished rural communities in South Africa. Mining companies dangle incentives before impoverished community members with the inevitable consequences of stirring deep community divisions, which almost always lead to intimidation, violence and, sometimes, deaths. In rural areas that are difficult to police, it takes someone with the determination and the courage of Mrs Ntshangase to promote community solidarity and resistance in the face of this clear power imbalance.

In its media statement in response to Mrs Ntshangase's "*coldblooded*" murder, the South African Human Rights Commission has highlighted the following concern:³

"this matter links to larger, systemic issues in South Africa, a lack of adequate enforcement mechanisms of existing legislative frameworks by the relevant State departments, particularly the Department of Mineral Resources and Energy. Closing the legislative gaps and ensuring the enforcement of legislation negates the need for the community to lobby for accountability and justice and removes conflict within communities. This prevailing tension exists because the mine did not follow due process and diligence, which is illegal, and they have not been held to account by the relevant State departments, as with a myriad of other cases. This has created the need for community mobilisation and has also left gaps open for bribery and corruption. These scenarios would be avoided if the State ensured that there were no gaps in the legislation, the existing legislation was enforced and that economic activity does not always take precedence over human lives."

³ <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2486-media-statement-sahrc-condemns-and-is-deeply-shocked-by-the-murder-of-human-rights-defender-fikile-ntshangase>

The duty upon the South African government to provide a safe environment for the exercise of constitutional rights

There are other leaders of this calibre in MCEJO and, if anything, the assassination of Mrs Ntshangase has renewed their determination to step up the fight against exploitation by the mine. We stand by all defenders of land and environmental rights, and will act to defend their Constitutional rights to life, dignity, free speech, access to justice, access to food and water, and an environment not harmful to health or wellbeing. The South African government must ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms, in reality, in accordance with the Constitution of the Republic of South, 1996, the African Charter on Human and Peoples' Rights, and the Declaration on Human Rights Defenders.

Request

We respectfully request that you investigate the issues set out in this letter and call on the South African government to ensure the protection of the human rights of all communities opposing mines. In the event that you consider it an appropriate response to the situation, and that it is within your mandate to do so, we also respectfully request that your offices formally endorse and monitor the calls from the South African Human Rights Commission. Extracted from the above statement, these demands are as follows:

The South African government must create and sustain a safe environment for the exercise of constitutional rights by taking the following steps:

- a) The SAPS must ensure that the investigation into the murder of Mrs Ntshangase is thorough, fair and swift and that justice is served on those responsible for such a horrendous act.***
- b) The State must ensure greater enforcement of existing mining legislation, and penalties and accountability for mining companies that do not comply.***
- c) The State must provide greater support to communities that are impacted by human rights violations from the private sector, particularly mining companies.***
- d) South Africa's state security cluster must act upon the allegations of threats against the activists in the area and those opposed to mining activities that will impact negatively on communities' environmental rights. The lives of human rights defenders and whistle-blowers must be protected as they play a vital role in holding private and public sectors accountable for rights violations.***

Thank you in advance for your consideration of these issues of vital importance; both for justice for Mrs Ntshangase and her family, and the protection of other community activists in mining-affected locations who remain at risk of harm.

Please contact our representatives below if you have any questions or require further information.

- Kirsten Youens – Youens Attorneys, MCEJO’s legal representative; kyouens@youensattorneys.co.za
- Robby Mokgalaka – [groundWork](http://groundwork.org.za), Friends of the Earth, South Africa; robs@groundwork.org.za
- Simphiwe Sidu – [Southern Africa Human Rights Defenders Network](http://southernafricadefenders.africa); ssidu@southernafricadefenders.africa
- Timothy Lloyd - [Centre for Environmental Rights](http://cer.org.za); tlloyd@cer.org.za

This is a joint submission endorsed by the following organisations:

- [groundWork](http://groundwork.org.za), Friends of the Earth, South Africa
- [Centre for Environmental Rights](http://cer.org.za)
- [Centre for Applied Legal Studies](http://calegals.com)
- [Lawyers for Human Rights](http://lawyersforhumanrights.org)
- [Southern Africa Human Rights Defenders Network](http://southernafricadefenders.africa)
- [Legal Resources Centre](http://legalresourcescentre.org)
- [Socio Economic Rights Institute](http://socioeconomicrights.org)
- [Richard Spoor Attorneys Inc.](http://richardspoor.com)
- [ALL RISE, Attorneys for Climate and Environmental Justice](http://allrise.org)

END

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

9 December 2020

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.”