

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
AL ZAF 2/2017

3 January 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 35/15, 34/18, 34/9, 34/5 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the killing of human rights defender, Mr. **Sibonelo Patrick Mpeku**.

Mr. Mpeku was the Chairperson of the local Sisonke Village branch of Abahlali baseMjondolo and a member of Abahlali's KwaZulu/Natal Provincial Council. Mr. Mpeku worked to defend the rights of shack dwellers to basic services and political participation in Sisonke Village.

Abahlali baseMjondolo is a grassroots movement of poor shack dwellers in Durban, Pinetown, Pietermaritzburg and other parts of the province and of the Western Cape. The movement advocates for the rights of people living in shacks including access to decent housing, services and education. Its members have allegedly been the targets of ongoing intimidation, physical attacks and reported killings since 2007.

According to the information received:

On 19 November 2017, Mr. Mpeku was killed when he was forcibly taken from his shack and allegedly stabbed to death by unknown assailants in the informal settlement of Sisonke Village in the province of KwaZulu-Natal. No arrests have been carried out in connection with the killing. Reportedly other people affiliated with the organization, Abahlali baseMjondolo, were killed by unknown assailants on the same day.

Since the Sisonke Village branch of Abahlali baseMjondolo was created in November 2014, Mr. Mpeku had allegedly been subjected to frequent death threats and intimidation by local politicians. It has been alleged that Mr. Mpeku

had reported these threats in writing to the Councilor of the area and to the Lamontville Police Station. He allegedly received no response to his letters and reports.

Grave concern is expressed at the killing of Mr. Mpeku which in all appearance seems to have been carried out in direct retaliation against his legitimate and peaceful work in defence of human rights in South Africa. Grave concern is also expressed at allegations that other people, affiliated with the organisation Abahlali baseMjondolo, were also killed on 19 November 2017, as it is likely that these persons were killed as a result of their link with an organisation which advocates for the human rights of people living in shacks including access to decent housing, basic services and education.

Particular concern is expressed at allegations that although Mr. Mpeku had repeatedly been subjected to death threats and intimidation by local politicians since 2014, the reports he filed with the local Councillor and Lamontville Police Station received no follow up and no investigations were undertaken.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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

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

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any ongoing investigations into the killing of Mr. Mpeku including information on the entities or persons responsible for conducting the investigation, whether anyone has been arrested or prosecuted, and the status of any on-going trial.
3. Please provide information on why, although Mr. Mpeku reported the threats he had allegedly been subjected to since 2014 to the Lamontville Police Station and the local Councillor, the reports were allegedly ignored and no investigation was undertaken.
4. Please indicate what measures are in place to ensure that individuals and groups who are in danger of extra-legal, arbitrary or summary executions,

including those who receive death threats, are provided with effective protection through judicial or other means.

5. Please indicate what measures have been taken to ensure that human rights defenders in South Africa are able to carry out their legitimate work, in particular in relation to economic, social and cultural rights, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
6. Please indicate what measures have been taken to ensure that the right to adequate housing as well the access to basic services of the shack dwellers living in the informal settlement of Sisonke Village are guaranteed and protected.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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 accept, Excellency, the assurances of our highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Michel Forst
Special Rapporteur on the situation of human rights defenders

Philip Alston
Special Rapporteur on extreme poverty and human rights

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:

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which South Africa ratified on 10 December 1998, and in particular to articles 6, 19, 21 and 22 which guarantee the right to life, the right to freedom of expression, the right of peaceful assembly and the right to freedom of association.

In its General Comment No. 31, the Human Rights Committee observed that there is a positive obligation on States to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities, which includes the duty to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice and to redress the harm caused by non-state actors. A failure to investigate and bring perpetrators of such violations to justice could, in and of itself, give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). Moreover, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, stress the obligation to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

Furthermore, we would like to remind your Excellency's Government of the duty to guarantee "[e]ffective protection through judicial or other means" to "individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats", according to Principle No. 4 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

We would also like to refer to Human Rights Council Resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law.

In addition, Human Rights Council resolution 31/32 in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development.

We would like to refer your Excellency's Government to the fundamental 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. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

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

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 12 (1), which provides for the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms;
- article 12 (2), which provides that The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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 present Declaration.

Concerning the possibility that the killing of Mr. Mpeku might also be related to his legitimate human rights activities for the protection of the right to adequate housing of the shack dwellers of Sisonke Village, we would like to appeal to your Excellency's Government to ensure the right to adequate housing in accordance with article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This article recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing includes guarantees of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. According to the Committee, "the right to housing should be ensured to all persons irrespective of income or access to economic resources."