



To:

Hon. Cyril Ramaphosa, President of South Africa

CC:

Mr. Bhekokwakhe "Bheki" Hamilton Cele, Minister of Police

Ms. Mmamoloko "Nkhensani" Kubayi, Minister of Human Settlements

Adv. Shamila Batohi, National Director of Public Prosecutions, National Prosecuting Authorities

Board

Ms. Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders

Ms. Elina Steinerte, Chair-Rapporteur, UN Working Group on arbitrary detentions

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

Mr. Balakrishnan Rajagopal, UN Special Rapporteur on the right to adequate housing
Prof. Nils Melzer, UN Special Rapporteur on torture and other cruel and inhuman treatments

Hon. Rémy Ngoy Lumbu, Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa

Hon. Mudford Zachariah Mwandenga, Commissioner, Working Group on Economic, Social and Cultural Rights at the African Commission on Human and Peoples' Rights.

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S'bu Zikode
*Abahlali baseMjondolo,
South Africa*

Chris Grove
Executive Director

6 December 2021

Your Excellency,

We write on behalf of ESCR-Net - International Network for Economic, Social and Cultural Rights. We are a global network consisting of over 280 organizations and advocates across 75 countries, devoted to achieving economic, social, cultural and environmental justice through human rights.

We are writing to you to express our deepest concerns regarding the ongoing attacks on the human rights defenders from ESCR-Net member, Abahlali baseMjondolo in the eKhenana Commune, Durban, in the eThekweni Municipality.

According to reliable information, a total of at least ten Abahlali baseMjondolo human rights defenders from the eKhenana Commune in the Cato Crest settlement, in Durban, have faced criminalization throughout 2021.

On 23 October 2021, Abahlali baseMjondolo branch secretary in the eKhenana Commune, Maphiwe Gasela and Phumelele Mkhize were arrested and charged with assault after sympathizers of the ruling African National Congress (ANC) allegedly assaulted Phumelele Mkhize, along with three other women from the eKhenana Commune, namely: Snothando Mkhize, Nomlindelo Madlala and Nomfundo Mhlongo. The two women were subsequently released on bail on 25 October 2021. The bail conditions for the two women prevented Maphiwe Gasela and Phumelele Mkhize from returning to their community, and on 26 October 2021, the homes of the two women were burnt to the ground.¹ Allegedly, when the two women reported the incidents, the Durban police initially refused to open an investigation or even visit the site.²

Maphiwe Gasela had previously been arrested in May 2021 on trumped up charges of conspiring to kill witnesses to the murder of Vusi Shandu. Mr. Shandu was murdered in the Cato Manor township in March 2021.³ Abahlali baseMjondolo Deputy President, Mqapheli Bonono and Siniko Miya had also been arrested and accused along with Maphiwe Gasela. However, the charges were dropped on 4 October 2021.⁴ According to Abahlali baseMjondolo, Mqapheli Bonono and other Abahlali baseMjondolo leaders have faced death threats since the case was dropped and are currently hiding outside the community due to ongoing concerns about their safety.

In connection with this case, Abahlali baseMjondolo branch leaders Ayanda Ngila, Lindokuhle Mnguni and Landu Shazi had faced trumped up murder charges regarding the murder of Vusi Shandu. During the arrest, shots were allegedly fired at Landu Shazi by non-uniform police officers. He also suffered a broken leg during the arrest and was allegedly threatened by police while in the hospital. On 21 May 2021, a state witness confessed to having borne false witness against the defendants.⁵ All charges were withdrawn against the three Abahlali baseMjondolo leaders on 29 September 2021.⁶

¹ Chris Makhaye and Nomfundo Xolo (8 November 2021): Trouble in the promised land, New Frame, Can be found here: <https://www.newframe.com/trouble-in-the-promised-land/?fbclid=IwAR1uN6e3igbNWdgUniyrmPpNkz-3BOMXj-dY-vmkQ'TTLoenKOkFLc9O0sYs>

² Erik Naki (29 October 2021): Abahlali baseMjondolo members living in fear, The Citizen, can be found here: <https://www.citizen.co.za/news/south-africa/2890810/abahlali-basemjondolo-living-in-fear/>

³ Pavan Kulkarni (4 October 2021): Charges against leaders of Shack Dwellers' movement in South Africa dropped, Peoples Dispatch. Can be found here: <https://peoplesdispatch.org/2021/10/04/charges-against-leaders-of-shack-dwellers-movement-in-south-africa-dropped/?fbclid=IwAR0GImg2mjKILcwJ5FeeMIDHXRbxvJVGJDuBYjHPevChGS5NXOfQPmpm17c>

⁴ Chris Makhaye and Nomfundo Xolo (5 October 2021): Freed activists vow to hold the state to account, New Frame, Can be found here: <https://www.newframe.com/freed-activists-vow-to-hold-the-state-to-account/?fbclid=IwAR0h7Zqun8UP8XLH1fscG3-WhoMrUc3iKiEVFB0fbolDmWyfN2hWpVvr09k>

⁵ Pavan Kulkarni (4 October 2021): Charges against leaders of Shack Dwellers' movement in South Africa dropped, Peoples Dispatch, Can be found here: <https://peoplesdispatch.org/2021/10/04/charges-against-leaders-of-shack-dwellers-movement-in-south-africa-dropped/?fbclid=IwAR0GImg2mjKILcwJ5FeeMIDHXRbxvJVGJDuBYjHPevChGS5NXOfQPmpm17c>

⁶ Chris Makhaye and Nomfundo Xolo (29 September 2021): Wrongfully accused Abahlali three set free at last, New Frame, Can be found here: <https://www.newframe.com/wrongfully-accused-abahlali-three-set-free-at-last/>

On 21 October 2021, Nokuthula Mabaso, Thozama Mazwi and Sindiswa Ngcobo were released on bail after spending two weeks in Westville prison.⁷ The three women leaders from the eKhenana Commune had been charged with assault after intervening when an ANC linked woman allegedly attacked a migrant man with boiling water in June of 2020.

Several of the human rights defenders have been unjustly incarcerated for considerable amounts of time during this process. Notably, Ayanda Ngila, Lindokuhle Mnguni and Landu Shazi spent 6 months in prison as a result of trumped-up murder charges.⁸

These incidents point to an orchestrated assault on the leadership and residents of the eKhenana Commune seemingly being carried out in collusion between the Cato Manor police, the local ANC branch and the eThekweni municipality.⁹

Attempts to criminalize human rights defenders from the eKhenana Commune appear to be part of a wider pattern of constant, ongoing attacks by state and corporate actors directed at the shack dwellers movement, Abahlali baseMjondolo and its settlements.¹⁰

Since the movement was founded in 2005, Abahlali baseMjondolo activists have faced severe state repression in the form of threats, criminalization, torture in police custody, forced evictions, slander campaigns and assassinations.¹¹ Since its foundation, 18 leaders and supporters from the movement have been killed.¹² Over the years, several of the movement's leaders have had to go into hiding for fear of suffering attacks, including the co-founder and president, Sibusiso (S'bu) Innocent Zikode.¹³ In 2014, ESCR-Net sent a collective letter to the Government of South Africa to raise concerns

⁷ Chris Makhaye and Nomfundo Xolo (8 November 2021): Trouble in the promised land, New Frame, Can be found here: <https://www.newframe.com/trouble-in-the-promised-land/?fbclid=IwAR1uN6e3igbNWdgUniyrmPpNkz-3BOMXj-dY-vmkQTTLoenKOkFLc9O0sYs>

⁸ Chris Makhaye and Nomfundo Xolo (29 September 2021): Wrongfully accused Abahlali three set free at last, New Frame. Can be found at: <https://www.newframe.com/wrongfully-accused-abahlali-three-set-free-at-last/>

⁹ Erik Naki (29 October 2021): Abahlali baseMjondolo members living in fear, The Citizen, can be found here: <https://www.citizen.co.za/news/south-africa/2890810/abahlali-basemjondolo-living-in-fear/>

¹⁰ Noam Chomsky et al (14 October 2021): Solidarity with the eKhenana land occupation, New Frame. Can be found here: <https://www.newframe.com/solidarity-with-the-ekhenana-land-occupation/>

¹¹ Abahlali baseMjondolo (5 October 2018): Abahlali to march against state repression, threats and assassinations. Can be found here: <http://abahlali.org/node/16776/>

¹² <https://www.newframe.com/a-just-society-will-be-first-prize-for-sbu-zikode/>

¹³ Forum för levande historia (2021): Per Anger Prize to Human Rights Defenders: 2021: S'BU INNOCENT ZIKODE. Can be found here: <https://www.levandehistoria.se/english/anger-prize-human-rights-defenders/prize-winners/2021-sbu-innocent-zikode>

regarding the killings of leaders of Abahlali baseMjondolo.¹⁴ Nonetheless, seven years later the state repression continues unabated and largely with impunity.¹⁵

The repression of Abahlali baseMjondolo human rights defenders is taking place in the context of their struggle for housing rights and basic services for some of the most marginalized communities in South Africa, in the face of apparent government neglect and frequent corruption allegations.¹⁶ According to the World Bank, South Africa remains one of the most unequal countries in the world, following the formal end of apartheid more than 25 years ago¹⁷ with staggering levels of unemployment, particularly among youth, and high levels of food insecurity.¹⁸

In response to government failure to provide housing and basic social services, the most marginalized and impoverished people are occupying unused land throughout South Africa. The communities organize in order to find ways to sustain themselves and their families and advocate with local authorities to gain access to basic services such as sewage and running water.¹⁹ These land occupations are often met with violence and evictions from State and corporate actors that look to build for-profit housing where the settlements are located.

The eKhenana Commune was established on two hectares of land in Cato Manor, Durban, by three families. The Commune currently houses 109 families, many of which moved to the commune after facing evictions from rented lodgings in the surrounding areas. These families are looking to build a sustainable community based on self-sufficiency for the residents of the commune.²⁰

However, since its creation, the eKhenana Commune and its residents have faced ongoing attacks and attempts at evictions from the local authorities and private security companies. Evictions are often violent, at times involving the use of live ammunition against unarmed residents as well as the burning of shacks and destruction of property.

¹⁴ ESCR-Net (2014): South Africa: Protect leaders of shack-dwellers from attacks. Can be found at: <https://www.escr-net.org/node/365715>

¹⁵ Erik Naki (29 October 2021): Abahlali baseMjondolo members living in fear, The Citizen, can be found here: <https://www.citizen.co.za/news/south-africa/2890810/abahlali-basemjondolo-living-in-fear/>

¹⁶ Naledi Sikhakhane (14 April 2021): A just society will be first prize for S'bu Zikode, New Frame, Can be found here:

<https://www.newframe.com/a-just-society-will-be-first-prize-for-sbu-zikode/>

¹⁷ The World Bank website: <https://www.worldbank.org/en/country/southafrica/overview#1>

¹⁸ Anna Majavu and Nomfundo Xolo (19 August 2021): Community at the heart of hunger struggle in SA, New Frame. Can be found here: <https://www.newframe.com/community-at-the-heart-of-hunger-struggle-in-sa/?fbclid=IwAR2EL6DMeAqWYkEB-6eyVGmYITRUzRI2VQonqUqIc5WnZ1hIb4-maCkGIk>

¹⁹ Anna Majavu and Nomfundo Xolo (19 August 2021): Community at the heart of hunger struggle in SA, New Frame. Can be found here: <https://www.newframe.com/community-at-the-heart-of-hunger-struggle-in-sa/?fbclid=IwAR2EL6DMeAqWYkEB-6eyVGmYITRUzRI2VQonqUqIc5WnZ1hIb4-maCkGIk>

²⁰ Nomfundo Xolo (13 August 2020): eKhenana residents are tilling for freedom, New Frame, Can be found here: <https://www.newframe.com/ekhenana-residents-are-tilling-for-freedom/>

These evictions frequently happen without a court order, in violation of the Prevention of Illegal Eviction and Unlawful Occupation Land Act 19 of 1998. Since the establishment of the eKhenana Commune, 29 demolitions have taken place. Evictions were even carried out despite a moratorium on evictions during a 21-day COVID-19 related lockdown in 2020, issued by Minister of Justice and Correctional Services Ronald Lamola on 26 March 2020.

On 27 December 2019, Abahlali baseMjondolo had won an interdict in the Durban High Court in Durban, KwaZulu-Natal to prevent the municipality from carrying out illegal evictions. This was reaffirmed on 24 April 2020, since the municipality had continued evictions in violation of the interdict and the moratorium.²¹

During the lockdown alone, four attempted evictions have taken place in the eKhenana Commune, of which community members were able to resist three. However, on 15 April 2020, 13 homes were demolished by Calvin and Family Security Services, the Metro anti-land invasion unit and another unknown private security company. Each demolished home housed approximately five persons and among those affected were two disabled teenagers and 15 toddlers.

In the eThekweni Municipality in Durban alone, illegal and violent mass evictions of shack dwellers during the COVID-19 lockdown affected around 900 people. Allegedly, the eThekweni anti-land invasion unit, the private security company Calvin and Family Security Services, the South African National Defense Force, the Durban Metro Police and the South African Police Service (SAPS) have been among the actors carrying out the illegal evictions.²²

We wish to recall that the Government of South Africa has an obligation to promote, respect, protect and fulfill human rights in accordance with international standards and national laws.

Specifically, as a State Party to the International Covenant on Civil and Political Rights (ICCPR), South Africa is obligated to uphold the following human rights, among others: the right to life; freedom from torture and other cruel, inhuman or degrading treatment or punishment; the right to liberty and security of person, including freedom from unlawful or arbitrary arrest or detention; and the right to due process.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) to which South Africa is a State Party, obligates States to recognize the right to an adequate standard of living including adequate housing, water, sanitation, and food. State Parties are obligated to take appropriate steps to ensure the realization of these rights.

²¹ Chris Makhaye and Nomfundo Xolo (8 November 2021): Trouble in the promised land, New Frame, Can be found here: <https://www.newframe.com/trouble-in-the-promised-land/?fbclid=IwAR1uN6e3igbNWdgUniyrmPpNkz-3BOMXj-dY-vmkQTTLoenKOkFLc9O0sYs>

²² Alice Draper, Graham Philpott, David Ntseng and Mark Butler (23 June 2020): Durban shack dwellers illegally evicted, New Frame, Can be found here: <https://www.newframe.com/ethekweni-shack-dwellers-illegally-evicted/>

We also recall the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which establishes the obligations, among others, to take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, or any other arbitrary action as a consequence of his or her actions to defend and promote human rights. This includes prohibiting criminalization of human rights defenders, a well-known abuse of criminal justice systems aimed at suppressing dissent. Such criminalization has been condemned by international human rights bodies.²³

The African Charter on Human and Peoples' Rights, to which South Africa is a State Party, obligates States to recognize, through legislation and other measures, the rights to equality before the law and equal protection by the law; the right to life and integrity of person; the rights to liberty and freedom of person, including freedom from arbitrary detentions; the right to due process of law; the right to equal access to public services and the right to their economic, social and cultural development.

Given the gravity of the situation, we call on the government of South Africa to:

1. Put an immediate end to the attacks on Abahlali baseMjondolo members and ensure an enabling environment for human rights defenders generally in South Africa.
2. Conduct prompt, thorough, independent and impartial investigations into the allegations of attacks on residents in the eKhenana Commune, including the burning of houses of Abahlali baseMjondolo branch secretary Maphiwe Gasela and Phumelele Mkhize, and hold those responsible to account.
3. Ensure the physical and mental integrity of human rights defenders in South Africa, including by ensuring the protection of human rights defenders receiving death threats including against Abahlali baseMjondolo Deputy President Mqapheli Bonono and other movement leaders. Conduct prompt, thorough, independent, and impartial investigations into these allegations and hold those responsible to account.
4. Put an immediate stop to illegal forced evictions in South Africa. Conduct prompt, thorough, independent, and impartial investigations into allegations of excessive use of force against shack dwellers by the eThekweni anti-land invasion unit, the private security company Calvin and Family Security Services, the South African National Defense Force, the Durban Metro Police, the South African Police Service (SAPS) and other state and non-state actors. Responsible parties must be held accountable.
5. Progressively take ambitious steps, utilizing maximum available resources, to provide adequate housing and access to basic services for all South Africans, including residents of informal settlements and land occupations.

²³ See, for instance, Criminalization of Human Rights Defenders, Report, Inter-American Commission on Human Rights, 2015, available at: <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>

We look forward to hearing of any progress made on these issues.

Respectfully,

Chris Grove, Executive Director, ESCR-Net