



AN INVESTIGATION REPORT ON SOMKHELE/MPUKUNYONI VIOLENCE ALLEGATIONS

Committee Details	
Name of Committee	Portfolio Committee on Community Safety and Liaison
Name of Department	Department of Community Safety and Liaison
Date	08 July 2020
Chairperson	Hon.N. B Mthethwa
Researcher	Nokulunga Zondi

INTRODUCTION/BACKGROUND

This report is based on a pre-oversight investigation conducted on the matter tabled by Global Environmental Trust (GET) an NGO promoting the wise use of the natural environment to ensure that biodiversity is maintained for the wellbeing of all, and by Mfolozi Community Environmental Justice Organisation (MCEJO) a grassroots organisation committed to protecting their ancestral land for current and future generations. The matter was tabled to the committee on Community Safety and Liaison on the 22 May 2020, seeking intervention of the committee, on the violence erupting in the Somkhele/Mpukunyoni communities in Zululand associated with the Tendele mine.

Furthermore, it is noted that the situation in Somkhele/Mpukunyoni has a long history dating back to 2007 but, in the last few weeks, it is alleged that the violence and threats have reached untenable levels with gunmen threatening the lives of MCEJO activists and Ophondweni residents resisting pressure by Tendele Coal Mining (Pty) Ltd to make way for the expansion of the open cast coal mining operations. A strong group within the so-called Directly Affected Community (DAC) are rejecting the meagre compensation the mine has paid to Somkhele residents in the past and are refusing to make way for the mine.

The committee facilitated a preliminary investigation on the cases at the grassroot level on the allegations presented and convened meetings and interviewed the KwaMsani Police Station Commander, community representatives from Ophondweni, Emalahleni, traditional leadership and the Community policing forum structures in the region. The focus of the investigation focuses on the criminal aspect and police service conduct, as the matter of the mine is sub judice “a legal matter or controversy that has come under the jurisdiction of a court”. The actions of the committee rest mainly on executing its oversight mandate over the Department of Community Safety and Liaison.

PRELIMINARY LITERATURE REVIEW

South Africa is the world's seventh-largest coal producer, and a leading producer of a wide range of metals, including gold and platinum.^[2] It holds over 80 percent of the world's platinum reserves, producing almost 200 tons in 2017, with a total revenue of over 9 billion South African Rand (about US\$660 million).^[3] Although mining takes place throughout South Africa, most of the country's platinum mines are concentrated in Limpopo and Northwest provinces, while 60 percent of coal deposits are in Mpumalanga.^[4] The Minerals Council of South Africa estimates that, in 2015, mining directly employed 457,698 people in South Africa, representing just over three percent of all those employed nationally.^[5]

The mining sector and the Government of South Africa point out that mining is essential for economic development, but they fail to acknowledge that mining comes at a high environmental and social cost, and often takes place without adequate consultation with, or consent of, local communities.

Under the South African Constitution, as well as under the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR), both of which South Africa has ratified, South Africa is obligated to respect and protect the rights to freedom of opinion, expression, information, association, and peaceful assembly. As the UN Special Rapporteur on human rights and the environment has explained, governments also have obligations to "protect the life, liberty and security of individuals exercising those rights."^[255] Governments should also guarantee meaningful participation in public affairs, access to information, and access to remedies for violations of human rights.

International and regional norms also require that South Africa protect and enable the work of human rights defenders, including by deterring threats, assaults, and harassment, investigating and responding to threats or acts of violence and, where appropriate, punishing those responsible and providing adequate remedy for victims.^[256]

FINDINGS

Discussions – Station Commander KwaMsani Colonel Nkosi

The Station Commander reported that he was approached by the Ophondweni community representatives requesting the Station Commander to convene a meeting and address the affected communities of Ophondweni about the proposed removal from Ophondweni so that mine could expand. The Station Commander gave them a response and then consulted different stakeholders (i.e. Community Safety and Liaison, Community representative, the mine, the Traditional Leadership and the transport industry from Ophondweni) about the proposed meeting.

Colonel Nkosi confirms that the unrest at Ophondweni is around the expansion of the mine. He also stated that the majority of the Ophondweni community have accepted the offer of R400 000 per family and R8000 for grave exhumation. There are around 19 homesteads that are against the offer, alleging that the move will affect their livestock and that the area of relocation will not accommodate them. He stated that there are two meetings that have been held with the affected community. He further advised that the communities that have agreed to take the offer are now intimidating those families that have not agreed. He also reported that the mine has commenced a retrenchment of 34 rangers. By the end of September all staff will be retrenched and the mine closed for operation. Further to that the retrenched rangers are damaging the property of the mine by burning the trucks. He indicated that the mine is running out of funds.

Following those meetings, the community require another meeting where the Station Commander will address the community. The Station Commander indicated that he felt that the matter was beyond his scope of work, due to that his core function is crime combating, crime prevention and crime investigation and bringing Safety and security to all people from KwaMsani policing area. Colonel Nkosi stated that he submitted a report to Ms Makhaye from Community Safety and Liaison. He further reported that the matter is sub judicare. The Station Commander further indicated that he had advised the mine to stop operating at night because they cannot protect them.

Interventions by the Station Commander:

- Formed a Task Team of two police officers to look into the matters of safety and security against the forced removal of Ophondweni community.
- Held a series of meetings with the stakeholders to address.
- Tasked police officers to commence patrol three times a day around the area of Ophondweni.
- Tasked crime intelligence in the area, however there was no success in this move.
- There are four cases opened and recorded at the station under the supervision of the station commander. The cases reported were: housebreaking-159/4/2020, attempted murder -214/2/2020, intimidation -33/5/2020 and attempted murder – 215/04/2020. However, no arrest has been made thus far.

COMMUNITY REPRESENTATIVES

- A meeting was convened with the following community representatives Mr Gumede (Induna and captain KwaMsane police station) from Emalahleni, Mr Mlungwana (Chairperson Emalahleni, Mr Ngcobo Chairperson Ophondweni, and Mr Mkhwanazi (Induna).
- They reported and concurred with statements that the issues are around the expansion of the mine. There are divisions amongst the community between those who are willing to move and those against the move. It was noted that there are 67 affected homesteads and of those 60 have signed and 7 have not signed. The seven that have not signed were said to be not directly affected by the move. They further stated that the seven family are not within the 350 metres from the pit. It was alluded that those 7 families have made a higher demand of 5 million and could not reach an agreement. These members were said to have joined the MCEJO organisation to advance their case out of disagreement. The community members reported that MCEJO is misleading the community.

Induna Gumede also stated that the community together with the traditional structure were properly consulted and a reasonable offer was made. The community were also allocated a place where they will be moved and were satisfied. It was said that the mine is ready to exhume the grave site and pay for that process. The traditional leadership felt that the community that is against the move is causing unnecessarily delays in the process. It was also mentioned that 34 rangers have been retrenched, public transport will be affected and workers will lose their jobs should the mine close its operations. The retrenched rangers are also causing unrest in the operations of the mine, and burning trucks. There are operators that are interfering with the functioning of taxi routes and people will lose contracts with the mine.

The community members requested the station commander to address the Ophondweni community, provide a safety plan for the affected communities and provide progress on the investigation of the cases reported. They also requested the Station commander to also assist with the Ophondweni removal. However, the commander has not addressed the community.

Furthermore, it was mentioned that there has been shooting at kwaMthethwa residence but could not be confirm that it is mine related. The traditional leadership intervened and assisted the family and a case was opened. Mr Ngcobo confirmed the intervention by KwaMsani Police Station to patrol area. However, he indicated that they are not satisfied, as it only occurs once a day, as opposed to three times a day that was promised. They further stated that they are not happy with police service and cases are not followed accordingly. They reported and escalated the matter to the MEC of Community Safety and Liaison on the police service delivery. Lastly, they request a meeting to be convened at the Municipal chamber and discuss the matter with the other parties (MCEJO Organisation).

COMMUNITY POLICING FORUM

- Mr Mdlalose District Chairperson of CPF reported that the he is aware of the cases lodged at the KwaMsani Police Station. He indicated that his understanding of the

cases lodged were those of intimidation. Further to that he stated that they formed a Task Team to deal specifically with these cases. This Task Team was to be supervised by the Station Commander who would monitor cases. He further stated that up to now there have been no arrests that have been made in relation to these cases.

Mr Mdlalose mentioned that the new expanded mining area (Ophondweni) has no CPF structure formed yet. However, it is under the authority of the Induna (Mkhwanazi). Mr Mkhwanazi has met with the Station Commander to engage on the process of forming a structure.

Mr Ntombela, CPF Chairperson of Machibini area. Machibini area is the previously mined area. Mr Ntombela concurred with most of the things that were stated by Mr Mdlalose. He further indicated that the mine and money are the main causes of divisions amongst the community. He alluded to the fact that the government is not giving enough support and proper engagement on these issues. He also stated that another factor causing the division is that the community has benchmarked with the successes and challenges from the previous sites.

He further stated that government is responsible for the harm done to mining-affected communities because they fail to monitor compliance, poor enforcement, and there is severe lack of coordination. To backup this statement, he referred to a matter of the old mine site at Somkhele. Where one homestead who refused to be relocated and is left in isolation, exposed to the operation of the mine. That house watches daily as clouds of dust from that blasting vibration, and floodlights that could cause harm.

CONCLUSION

Whilst no de facto strategy exists that will completely satisfy both parties, quite conceivably, compromises can be reached if: community consultation between the parties is significantly improved; regional governments assume a leadership role in coordinating the efforts of international agencies; appropriate compensation packages are provided to impacted communities; and ultimately eliminating any possible criminal elements in the process.

POINTS FOR THE COMMITTEE TO CONSIDER

- The portfolio committee to intervene and facilitate an oversight visit to the KwaMsani Police Station to follow up on the recorded cases and to investigate the complaints of poor service delivery.

REFERENCES

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