

WARNINGS NOT HEEDED

— Death of an activist —



The story of Fikile Ntshangase and how warnings about assassination and intimidation of activists were ignored



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Death of an activist

THIS is the story of Mama Fikile Ntshangase, a dynamic and courageous mother, grandmother and retired teacher from South Africa's KwaZulu-Natal province, who was assassinated while preparing dinner in her home in the closing months of 2020.

In this report we detail the events leading up to the murder of Ntshangase and some of the most likely reasons she was killed.

But the story is not just about Mam' Fikile. Sadly, it echoes similar and increasingly common stories from marginalised communities around the world who have been driven from their land – or been forced to stay on the land and suffer the consequences – due to the avarice of corporate and political elites which often cloaks self-serving motives beneath the more noble clothing of the “national interest” or economic and social “development”.

Internationally, according to a Global Witness report, 212 land and environmental defenders were murdered in 2019, the highest number yet in a single year, and an average of more than four people a week.

Our report also describes the background to the assassination of Ntshangase, the concerns raised by this coal-impacted community and the warning bells that have been sounded previously. It concludes with some of the lessons learned and a set of recommendations to ensure human rights defenders are supported in their critical work, not only for their community, but also society at large.





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FOREWORD

By Bobby Peek, Director of groundWork, Friends of the Earth, South Africa

ON 22 October 2020, while sitting in the comfort of my lounge getting ready to wind down for the day, I saw a groundWork WhatsApp message with the devastating news: Mama Fikile Ntshangase has been shot. My first reaction was disbelief. In shock, not wanting to accept this, I paused. Maybe there was a miscommunication – not unusual when you’re not getting the message first-hand. Thoughts of “Bazooka” Radebe and Honduran environmental activist Berta Cáceres rushed to me. Both were murdered in March 2016 for their resistance to corporate plans of destruction of their community neighbourhoods.

Bazooka said no to mining, and Berta said no to big dams. This destruction is supported by elite politicians in the name of poverty reduction and development. Now it was Mama Fikile, someone close to groundWork and to all of those in the struggle. All she did was question if mining was the right option for her community. For this we insist she was murdered.

After the numbness wore off, the next few hours were a frenzy of trying to understand the reality that confronted us. We started thinking of how to pass the message on to the world. We started talking about who we addressed letters to calling for accountability. We told ourselves that we had to act to ensure that those responsible were brought to justice.

In the years prior, the South African Human Rights Commission – set up at the dawn of South Africa’s democracy to support constitutional democracy and which committed to promoting respect for, observance of, and protection of human rights for everyone without fear or favour – warned of mining and its impacts on communities and the reality that the current legal regime fails to safeguard human rights. Shortly thereafter after Human Rights Watch, the Centre for Environmental Rights, Earthjustice and groundWork released a report speaking of people’s fears as they resisted mining.

Over the next weeks and months, various organisations wrote letters to the President and the Commissioner of Police, and addressed international platforms such as the United Nations, but to no avail. Today, a year later, we are no closer to finding out the truth. The State has promised action. Police have spoken to activists about imminent arrests. Our letters have not been answered. Respondents hope we will go away. We will not.

Bazooka’s murderers are still out there. While seven men were convicted and imprisoned for the murder of Berta, her son makes it clear that those in jail are the poorest, and the oligarchic families who are part owners in the dam building company were never questioned.

This year Global Witness, in their annual report “Last Line of Defence”, and Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders, have asked questions about Fikile’s murder. As Ms Lawlor said, “These threats are often intended to intimidate, silence and stop human rights defenders from carrying out their work. There is no more direct attack on civil society space than the killing of human rights defenders.”

There is no more direct attack on our democracy than the murder of Mama Fikile and the silence of the State.

Are we now in the sunset years of our democracy so soon after 1994, as corporates and government collude to increase the wealth of the elite at the expense of the poor?

President Ramaphosa must read the story of Mama Fikile and he must act.



Fikile Ntshangase
(13/03/1957 – 22/10/2020)
(Image: Rob Symons)



Sikhosiphi “Bazooka” Radebe
(09/07/64 – 22/03/2016)
(Image: John Clarke)



Somkhele residents make their opposition known to the relocation of more homes and other mining impacts. (Image: Rob Symons)

DEVASTATED

Impacts of mining on the Somkhele community's homes, land and ancestral graves

THE first families were forced off their land around Somkhele just before the Tendele mining company opened its new anthracite coal mine in KwaZulu-Natal province in 2006. Since then, at least 225 families have been “resettled” and another 145 family groups now face a similar fate, as the ripple waves of mining spread further into a remote rural community which still bears the colonial designation of “Reserve No 3”.

For many decades, residents of this community immediately south of the Hluhluwe-iMfolozi Game Reserve have based their lives largely around subsistence agriculture, rearing cattle and goats or growing food crops where there is sufficient water.

Many residents have also been forced to seek work in towns and cities to earn enough income to support their families. So, while the arrival of the mining company offered the prospect of some new jobs closer to home, the coal mine also proved dev-

astating for those who had to watch their homes being demolished – as well as for many neighbours, who were allowed to stay but soon woke up to discover a foreign environment on their doorsteps.

Sabelo Dladla, one of the residents who felt so angry that he was willing to spearhead a legal battle with a major mining company, put it this way in a submission to the Pietermaritzburg High Court:

“I hate living next to this mine ... It has brought nothing but devastation and hardship,” he declared in an affidavit in 2018. “What was once a quiet rural setting alongside a wilderness area is now a vast industrial rock dump.”¹

But, as we shall see, strange and troubling events happened thereafter which caused Dladla and several other opponents to suddenly abandon their vociferous criticism of the mining company.

In his initial affidavit, Dladla described how several homesteads were cracking because of daily



Above: Many graves were relocated onto a slope which was eroded by rain, in some cases leaving body parts exposed. (Image: Rob Symons)

Left: Some residents cannot determine where their ancestors are buried as there are dozens of unmarked graves. Marble tombstones were also found piled up in an unused toilet block next to the graveyard. (Image: Rob Symons)

dynamite blasting at the open-pit coal mine. Several of his livestock had died or disappeared after wandering into mining land that had not been properly fenced off.

Residents lost access to fields for grazing their cattle as well as other natural resources, and they were worried about the risks to their health because of polluted air and water.

According to the plaintiffs, water resources in the surrounding area had also been polluted from the blasting, crushing and washing of coal, generating liquid waste that can contain mercury, arsenic, nickel and other toxic compounds.

Dladla said residents were facing water shortages after the mine sunk boreholes to supply its own needs. What little water was left in the Umfolozi River was channelled towards the mine's water pumps, leaving residents with "nothing".

Sheila Berry, a trustee of the Global Environmental Trust, said there had been an increasing number of complaints of respiratory disease, asthma and bronchitis among local residents, while daily dynamite blasting shook the ground for kilometres.

She said there had been a shocking lack of regard for the dead and for Zulu people's deep respect for their ancestors. Many graves were relocated onto a slope that was eroded by rain, in some cases leaving body parts exposed during 2018.

"Now some people cannot determine where their ancestors are buried, as there are dozens of unmarked graves. Marble tombstones for the graves have been piled in an unused toilet block next to the graveyard. No attention has been taken to match the gravestones with the graves when they were moved," Berry said in her court affidavit.

PORSCHE, BLACK ROCKS AND ESCALATING JOB CLAIMS

History of the mine and its owners

THE Somkhele anthracite coal mine is about 80km from Richards Bay harbour, a convenient port from which to ship out mountains of black rock products to overseas industrial customers, mainly in Brazil.

Coal was first discovered here in 1892, but large-scale mining only began in 2006 when Tendele Coal Mining (Pty) Ltd began operations at the new Somkhele mine.

This company is owned by Johannesburg-based Petmin Limited and Somkhele is now South Africa's largest producer of anthracite – a hard, jet black form of coal prized by the metals industry because of its high carbon and low ash content

The mine rips out roughly a million tons of coal from beneath Somkhele's soils every year, leaving the land scarred by cavernous mining pits and piles of waste rock clearly visible from satellite images on Google maps.

The company's most visible face is chief executive Jan Christoffel du Preez, who has accused several community members of "holding his company to ransom" and blocking "development".

Du Preez qualified as a chartered accountant with Deloitte & Touche and boasts about facilitating sev-

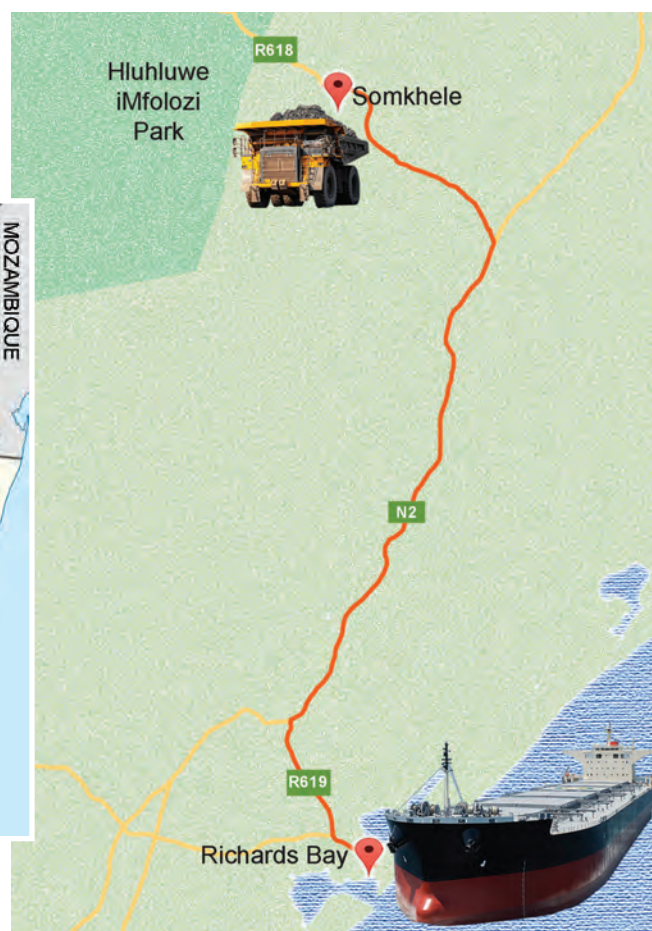
eral Broad-Based Black Economic Empowerment deals in mining and other industries. In a *Mining Weekly* profile in 2012, he listed his hobbies as sport, travel and hunting. He drove a Porsche and was a member of three clubs (River Club, Fancourt, and San Lameer). He disdained alcohol and disliked "dishonest people, lazy people and people with no passion".

During 2016, du Preez's total annual remuneration package with incentives was reported at just over R10 million, with three fellow executive directors receiving R9.6 million (Bradley Doig), R6.1 million (Bruce Tanner) and R2.75 million (Lebo Mogotsi).²

Prior to delisting from the Johannesburg Stock Exchange in June 2017, Petmin reported annual revenue of R1.2 billion. It had also declared dividends for seven years in a row and increased its shareholding in the Canadian-based North Atlantic Iron Corporation to 40%.



The Somkhele anthracite coal mine is about 80km from Richards Bay harbour.





At the time, it reported that 48% of its shares were held by institutions (including First Rand, Standard Bank, Investec, Old Mutual and the Government Employees Pension Fund). A further 16% of shares were listed as public with a 27% BBEE shareholding (including Dark Capital Group, Lebo Mogotsi, Lebone Resources, Imbasa Trust and Clidet 49). A further 12% was held by management (with 6.5% of shares owned by Du

Preez in 2014).

Patrick Bond from the University of Johannesburg observes, “Since Tendele mine began operations in 2007, easily R12 bn worth of coal has been dug, reaching a peak of nearly R1.7 bn worth in 2018. Over the past seven years, Petmin boasted an average net profit rate of nearly 10%, in part because royalties and taxes are so low – only around 15% of revenue.”

Top: The mining pits are surrounded by thousands of homesteads whose residents are not offered compensation as they are not classed as “directly affected”. (Image: Rob Symons)

Right: The mine rips out roughly a million tons of coal each year, leaving the land scarred by cavernous mining pits and piles of waste rock. (Image: Rob Symons)



Petmin balance sheets up to June 2020 reflect that it had lost R505 million due to Covid-19 shutdowns and lower demand from the South American iron ore sinter market and, in South Africa, loss of sales to Glencore Ferrochrome and Samancor Ferrochrome during April and May 2020. Of that, it claimed R100 million was lost because the mine could not expand into easily mineable coal under the community's houses.

In 2015, Petmin also completed a R350 million Broad-Based Black Economic Empowerment (BBBEE) deal in which 20% of the company's ordinary shares were transferred to the Mpukunyoni Youth Development Trust and the Tendele Economic Benefits Sharing Scheme Trust.

Of this minority 20% share, 80% would be held by the "youth development trust" and the remaining 20% by the employee trust. Significantly, the deal stipulated that at least one member of the local Traditional Council would be a permanent trustee of the youth trust, while at least 50% of the trustees would be "independent".

Mining companies in several parts of the country have frequently struck deals through traditional structures, acting as "custodians" of common land, rather than engaging with individual land occupants and home owners.

Petmin has also sought to portray itself as a major job creator and economic saviour, uplifting the lives of impoverished rural communities via jobs, training schemes and social investment projects. Over time, statistics on the number of jobs it provides to the community also appear to have been inflated.

Initially, the plan was to have just 168 jobs, but by 2008 the official figure had risen to 432. According to Petmin's 2015 annual report, the mine employed "more than 900 people" – though 600 of them were contractors. In 2018, the company told a High Court judge that it employed "over 1 000 people" but did not specify how many were contractors.

By late 2020 the figures escalated further, when the company claimed that the mine "employs (both directly and indirectly via service providers and contractors) approximately 1 600 people".

But earlier that year it told the Department of Mineral Resources that it had embarked on a Section 189 retrenchment and early retirement process in 2019 in which 76 staff left the mine and another 210 were put on short time.

In February 2020, another 100 staff were retrenched and there were plans to retrench another 600 employees by the end of 2020 – so it now remains unclear how many workers and contractors remain.

— FEEDBACK —

Responses from the mining company, government and Ingonyama Trust

IN response to a series of court cases, protest marches and opposition from within the community, Tendele has frequently sought to cast opponents to the mining as a "small minority" and to isolate leaders who have opposed or questioned further expansion and relocations.

Tendele strongly opposed a court application to interdict the mine for allegedly operating unlawfully and for reburial of ancestral remains without permits and often in unmarked graves.

In early 2018, Tendele chief operating officer Jarmi Steyn suggested that bonus payments and the future of the mine were in jeopardy "because of a few community members who choose to stand in the way of future economic development".

Two days later, a prominent anti-mining leader found a dead cat dumped on his front lawn and evidence of an attempt to set fire to his roof. Two years earlier, his vehicle had been set alight after he'd helped to organise a community march against the mine.

In late 2018, parent company chief executive Jan du Preez wrote to staff, lamenting that the company was under siege by mining opponents: "Who knows why?" he remarked. "We now have to stand together and fight together to obtain new mining areas, and we are also blessed that the Minister and his team is trying to resolve outstanding issues."

He was referring to Gwede Mantashe, the Minister of Mineral Resources, who set up a government "task team"³ to address continued opposition to the relocation of more Somkhele residents to make way for mining.

In September 2018, Mantashe embarked on a three-day fire-fighting mission to quell opposition to mining at three hotspots – Somkhele; the nearby Zululand Anthracite Colliery; and at Xolobeni in the Eastern Cape.

At Somkhele, Mantashe spent much of the morning meeting Du Preez and mine management. In the afternoon, he gave a speech to the local community at a local soccer field, but there was uproar when he tried to end the meeting without listening to the concerns of the people.



At least 225 families have been “resettled” and another 145 family groups now face a similar fate as the ripple waves of mining spread further around Somkhele. (Image: Rob Symons)

“These three visits dashed the hopes of many for open, honest and even-handed engagement with minister Mantashe,” commented Sheila Berry of the Global Environmental Trust.

“Like his predecessors, he has been brazenly pro-mining, and it was clearly a tactic on this tour to block genuine voices of communities impacted by mining. It has left many people dissatisfied that meaningful consultation with directly affected communities and the Minister is possible.”⁴

The Daily Maverick also reported that, on 17 April 2020, two armed gunmen entered the home of outspoken mining opponent Sabelo Dladla, asking for him by name.⁵

Fearing for his life, he went into hiding soon afterwards and in September he abandoned his vociferous anti-mining stance and signed an agreement with Tendele to drop all pending litigation against the company and also work towards the survival of the mine.

Robby Mokgalaka, groundWork’s coal campaign manager, has also documented similar pressure being exerted against several mining opponents in the Somkhele area.⁶ In one case, a family received threatening text messages. In another, a home was targeted by rifle fire late at night.

Mokgalaka believes Tendele has added to the divisions in the community by withholding up to half of the compensation payouts to residents who signed agreements to move.

“Those who have agreed to go have been told that they will only get the full amount when the others

agree to move. For me, the message that this sends is: ‘If you want the rest of the money, do something about it.’”

But Tendele’s perspective on relocation and compensation is based on mistaken assumptions about what counts as valuable, argues Dineo Skosana of the SWOP Institute at Wits University: “Tendele disregards that compensation is given in recognition of loss and... is not given to improve the lives of mining-affected communities, nor does it restore life to what it was before the changes brought about by mining. It is a mitigation cost and for this reason communities have the right to negotiate what they deem adequate for the disturbance of their lives.”

She writes that in its application to the High Court in May 2020, Tendele revealed their thinking



In one attack several bullets were fired at the home of a community member. (Image: groundWork)

on what they see as replaceable structures and items. This included “... among other things, an ‘upset allowance’ of R200 000 per household; R2 000 per household for trauma in uncovering and relocating graves; R15 500 for the graves of each household, plus a cow and goat; R5 000 for ritual purposes; and R2 750 for the kraal (isiBaya).”⁷

This completely misunderstands the deep meaning of the sacredness of both land and graves as a connection to the ancestors, she says, arguing that land is not simply a commodity for generating private wealth.

Questions have also been raised about the role of the Ingonyama Trust in leasing land in rural areas to mining companies and collecting mining royalties. Tendele Mine’s dealings with the trust remain largely secret and the benefits are not visible. For example, there is no information about specific payments from individual mining houses to the Trust in its 2018/2019 annual report, other than a consolidated revenue payment of just over R1 million from “contractual royalty revenue from mining activities”.

Researchers at the University of Cape Town’s Land and Accountability Centre (LARC) have also raised concerns around the dearth of certain information in the Trust’s annual financial statements to Parliament.

At a recent Nelson Mandela Foundation panel discussion, property lawyer and LARC associate Janet Bellamy said: “What we have found in reading the annual financial statements is that distributions to beneficiaries are vaguely reported.”⁸

Political analyst and violence monitor Mary de Haas says the Trust, through its board, not only contests the transfer to the government fiscus of mining royalties due to it “but acts as a virtual parallel gov-

ernment, itself issuing leases which are often cloaked in secrecy, and which trample on the legally protected rights to the land of the people living there, and on their security”.

“As mining companies or other business ventures have gained leases, the people living on it, and subsisting on it, have lost their land,” she wrote in a recent article in *Daily Maverick*.⁹

In a court case in the Pietermaritzburg High Court, the Trust has been accused of “extorting” rent from several rural communities in KwaZulu-Natal, without their informed and genuine consent.¹⁰

The applicants – including the Council for the Advancement of the South African Constitution (Casac) and Rural Women’s Movement – claim that: “Since 2007, and possibly earlier, the Ingonyama Trust and the Ingonyama Trust Board have been undermining the security of tenure of residents and occupiers of trust-held land in KwaZulu-Natal, and extorting money from them, by unlawfully compelling them to conclude lease agreements and pay rental to the Trust to continue living on the land.”

Casac executive secretary Lawson Naidoo also cited concerns raised by the High-Level Panel, chaired by former President Kgalema Motlanthe in 2017, stating that: “Significant income is generated for the Ingonyama Trust by such lease agreements. In the 2015/2016 period, rental income was R96 130 563. There is little evidence that the revenue generated by leases is used for the benefit of communities or their material well-being.”

Naidoo said the Ingonyama Board recently reported that 95.85% of its budget had been spent on “administration”, with only a small fraction going to rural development.

“What we have found in reading the annual financial statements is that distributions to beneficiaries are vaguely reported.”



THIS IS WAR

The court battle



Somkhele residents protest outside the Pietermaritzburg High Court in 2018. (Image: Rob Symons)

COMMUNITY members have mounted two main court challenges to open-pit coal mining operations in the rural Somkhele area. In the first case, heard in the Pietermaritzburg High Court in 2018, the Mfolozi Community Environmental Justice Organisation (MCEJO) and the Global Environmental Trust (GET) argued that the mine was operating illegally, with no valid environmental authorisation, no municipal planning approval, no waste disposal licence and no permits to relocate ancestral graves.

In their application, the community group and GET said that the rural environment had been changed forever since mining operations began there in 2006.

The applicants, represented by Durban environmental attorney Kirsten Youens, also presented evidence that several homesteads were cracking apart because of daily dynamite blasting.

However, Judge Rishi Seegobin dismissed the application, ruling that the mine was operating legally in terms of transitional agreements that allowed companies to continue operating without having to

apply for new licences following amendments to environmental and mining laws.

The Centre for Environmental Rights (CER), a legal watchdog group, later joined the application to contest Seegobin's decision, arguing that the judge erred in his ruling. He had also set a "chilling" legal precedent by awarding punitive legal costs against the community and GET, they said.

The appeal was heard in November 2020 by the Supreme Court of Appeal in Bloemfontein, with Advocate Tembeka Ngcukaitobi SC arguing for the applicants that mining companies are required to comply with environmental laws.¹¹

This was not an option, but a legal requirement, and the company's failure to comply with statutory requirements amounted to a violation of Section 24 of the Constitution, which guarantees everyone the right to an environment that is not harmful to their health or wellbeing and that is protected for the benefit of present and future generations.

Ngcukaitobi further argued that Seegobin incorrectly took the view that it was up to the Minister of Environmental Affairs and the Department of

Mineral Resources to determine the legality of Tendele's conduct – thereby undermining the jurisdiction and function of the courts.

He argued that the community was not asking the court to make an inference as to whether the environmental authorisations were granted. It was common cause that they were not. Rather, the question became: Was it lawful for Tendele to commence large scale mining without authorisation?

It was argued that rural people such as the Somkhele community were marginalised and left to fend for themselves. They were expected to exert their rights with their own resources and with the help of NGOs and this showed the complete dysfunctionality of the system.

Mining always pitted community members against each other because of the kind of arguments made by companies that jobs would be lost.

Ngcukaitobi said such arguments were a disguise to undermine the rule of law. Could the court just overlook the period of illegality? Or should there be consequences for the illegality? No one should benefit from an illegality, he said, and the court should therefore declare that the mine had been operating unlawfully.

By a majority judgement of 4–1, the Supreme Court dismissed the appeal. However, the GET legal team is preparing for one final round in the Constitutional Court, buoyed by the dissenting ruling from appeal court judge Ashton Schippers.

In a second case that was due to be heard by the North Gauteng High Court in October 2021 (but is now delayed pending a new court date), MCEJO has lodged an application to review and set aside Tendele's 2016 mining right for a 222km² area in the Mpukonyoni district.

The original expansion plan (now reduced by Tendele) required relocation of several families from their ancestral land but could affect thousands of families living in the area. Only those living within 500 metres of the blasting had been earmarked for relocation by the mine. The rest would remain and suffer the consequences.

In the interim, several families have been subjected to months of violence and intimidation and, in May 2020, Tendele tried to bring an urgent court application to force the families to accept their compensation offer, but later removed the matter from the court roll when the families opposed the application.

Tragically, Mam' Fikile was gunned down in her home before the court cases were settled. "She was strongly opposed to the tactics of Tendele coal mine and paid for it with her life," said Youens.

WHO IS MCEJO?

COMMUNITY concerns around the threat of coal mining in the Fuleni area led to the formation of the Mfolozi Community Environmental Justice Organisation (MCEJO) in 2015.

It was formed when another mining group (Ibutho Coal) initiated plans to mine in the neighbouring Fuleni area, which could result in up to 900 people being forced off their land and out of their homes.¹²

Robby Mokgalaka said large numbers of residents mobilised against the new mining threat at Fuleni and decided to form a community platform to push back.

Neighbouring residents of Somkhele were already living with the impacts of coal mining and had seen neighbours being ejected from their land. So, they began to see the value of forming a coalition with MCEJO to challenge further coal expansion in their area.

Mokgalaka said some community members already belonged to the Mpukonyoni Communal Property Association (MCPA), which was established to press for more economic benefits from the Tendele mine, along with compensation for cracks to their homes, lost grazing land and other mining impacts.

However, whereas the MCPA approach was mainly to push for more community benefits from mining, MCEJO aimed to push back strongly against expanded mining by Tendele and, towards the end of 2017, a new sub-structure of MCEJO was formed in Somkhele.

The following year – under the banner of MCEJO and GET – several residents mounted a High Court challenge against Tendele, arguing that the company was operating illegally for several reasons. Though the case did not succeed, GET is planning a final challenge in the Constitutional Court.

More recently – due to a complex combination of factors including pressure from fellow community members and the mine, along with death threats and intimidation from unidentified groups – the leadership of MCEJO in Somkhele has become divided and seven committee members signed a deal with the mine on 7 September 2020, agreeing to withdraw all pending court cases.

Mam' Fikile – one of two MCEJO sub-committee members who refused to sign this agreement with the Tendele mine – was shot dead six weeks later.

PROFILE OF AN ACTIVIST

Fikile Ntshangase (13/03/1957–22/10/2020)

TOUGH, principled and very outspoken, but also empathetic, nurturing and a loving mother. These are some of the terms that family and colleagues have used to describe the character of Zululand activist Fikile Ntshangase.

Ntshangase (née Xakaza) grew up in the KwaMaphumulo area, near Stanger, later training to be a teacher at the Appelsbosch Teachers Training College to help uplift her community and impart life skills to young minds.

Much of her career was spent teaching isiZulu to primary school children in the Empangeni and Esikhawini area, until she moved to her new home in the Ophondweni area 21 years ago, with her second husband John Mehlo Ntshangase.

Fellow activist Sheila Berry recalls meeting Ntshangase at the Pietermaritzburg High Court in 2018, where both women had gathered to support their legal teams in challenging the continued operations of the Tendele coal mining company.

“The name ‘Fikile’ in isiZulu means ‘to arrive’

and . . . oh boy . . . I soon discovered how apt her name was, because when Fikile arrived you knew all about it. She wanted to get things done now!

“She had very clear views and wanted action and solutions . . . We connected straight away – partly because we were both tea-lovers and would always bring our own thermos flasks to meetings to keep the tea hot.”

Ntshangase’s activism was evident from an early age when she became involved in student politics as a member of the National Union of South African Students (NUSAS), a non-racial student body that was vocal in denouncing apartheid.

According to Berry, her husband fully supported her work in politics, human rights and

women’s rights and they had a relationship which allowed Ntshangase to remain an independent and free woman in an often patriarchal rural environment.

Ntshangase was also closely involved in local church activities and loved dancing and singing in

“When Fikile arrived you knew all about it. She wanted to get things done now!”



Left: As a young student teacher, Fikile was a member of the National Union of South African Students.

Right: Fikile, holding her grandson Buyile, celebrate his first birthday at a local creche with women of the Ophondweni community. (Images: Malungelo Xakaza)



**Fikile with a group of fellow coal-affected community activists during a tour to Mpumalanga.
(Image: groundWork)**

the choir. When John died from cancer in June 2020 (just four months before Fikile was murdered), she put on a brave face.

“She would not show her distress and loneliness and preferred to deal with her grief privately.”

Yet, in her public dealings with authority Berry said she was uncompromising and outspoken – including at traditional authority meetings, where she asked hard questions and demanded straight answers.

Berry said Ntshangase was also a firm supporter of political diversity and presented a special certificate of appreciation to one of the local women who had helped to bring the African National Congress (ANC) into a traditional stronghold of the rival Inkatha Freedom Party (IFP).

“She was a person of high principle but also very discerning and cautious about blind allegiances.”



Her only daughter, Malungelo, said her mother had been an active member of the ANC in Esikhawini, but when she moved to Ophondweni she often battled to implement upliftment projects for local women as she was perceived by some to be recruiting people away from IFP.

She later became frustrated that the ANC in Ophondweni was not

as active as it was in more urban areas. People wearing ANC T-shirts were seen as “outsiders” and she later joined the National Freedom Party.

“There may have been other reasons why she left, but she told me that she saw little point in staying in an organisation that was not active in the area and where she could not express herself freely.”

Later, when about 20 local families were told they would have to move out to make way for Tendele’s mine expansion plan, Ntshangase went to talk to the affected families and also the neighbours who would not be relocated but were nevertheless impacted by mining on their doorstep.

Mokgalaka remembers Ntshangase as a very strong personality. They met in 2019, when Ntshangase was invited to participate in groundWork’s annual Coal Exchange tour, in which coal-affected communities from different parts of the country come together for a week to share experiences of their struggles and form a loose alliance to network and share ideas even beyond the formal exchange tours.

Ntshangase was one of two representatives from Somkhele who went on tour to the Middelburg area of Mpumalanga, where residents have to live with high levels of air pollution and other impacts of several Eskom power stations and adjacent coal mines.

“Mam’ Fikile was very vocal, warm-hearted, and she treated us all with respect. I remember her very much as a mature person who played a mother figure role. During the discussions, she was very principled and straightforward.

“She hated lies and dishonesty. For example, she would not hesitate to say ‘You are a liar’. She spoke



Members of MCEJO make their presence felt outside the Pietermaritzburg High Court in 2018 during a court interdict application against Tendele Mining. (Image: Rob Symons)

her mind rather than trying to be diplomatic.

“She had seen what happened to people relocated by mining. Many of them ended up with small houses and tiny patches of land. Some had almost become ‘beggars’ after they were relocated and she was concerned that members of her community should not end up compromising so much for so little,” said Mokgalaka.

Malungelo said that, while Ophondweni was several kilometres away from the existing mining area, residents could still hear and feel the almost daily dynamite blasting.

And when tap water ran short, residents found that the water they collected from their roofs and rivers was polluted by coal dust. All of this angered Ntshangase, who believed that there was no “genuine” negotiation with the community.

“People were just being told to sign documents and to move away. Nor was there any concern about the deep cultural issues concerning the exhumation of ancestral graves. She wanted to know what the government and chieftaincy was doing about such issues.”

Malungelo plans to remain in Ophondweni but believes the brutal murder of her mother has sent a chilling message to the community.

“Some of them are feeling that they might also end up like Mam’ Ntshangase . . . They want to save themselves and their children and just want to live in peace.”

Her message to the mining company is: “Just do right by the people. It is their land. They deserve so much more. But they (the company) don’t seem to be listening.”

ENVIRONMENT OF FEAR

Warnings by human rights watchdogs not heeded

FOR several years, human rights and environmental justice groups have been urging the government, the mining industry and other major stakeholders to protect community activists who face assassination, injury or intimidation for daring to speak out against the negative impacts of mining.

But these well-documented warnings appear to have been largely ignored and activists continue to be attacked and threatened.

Yet, not all these cases are documented or reported – as was highlighted in a research report published jointly in April 2019 by Human Rights Watch, groundWork, Earthjustice and the Centre for Environmental Rights.

In that report, entitled “We know our lives are in danger”, the four organisations documented several case studies from mine-affected communities in Limpopo, KwaZulu-Natal and North West provinces.¹³

“People living in communities affected by mining activities across South Africa are exercising their human rights to freedom of expression and peaceful assembly to advocate for the government and companies to respect and protect community members’ rights from the potentially serious environmental, social and health-related harms of mining. In many cases, such activism has been met with harassment, intimidation or violence,” the report warned.

“The origin of these attacks or threats are often unknown. So are the perpetrators, but activists believe they may have been facilitated by police, government officials, private security providers, or others apparently acting on behalf of mining companies. Threats and intimidation by other community members against activists often stem from a belief that activists are preventing or undermining an economically-beneficial mining project.

“In some cases, government officials or representatives of companies deliberately drive and exploit these community divisions, seeking to isolate and stigmatise those opposing the mine.”

One of the case studies involved community opposition to existing mines or new mines in the



Another activist murdered. Outspoken Xolobeni anti-mining activist Sikhosiphi “Bazooka” Radebe was assassinated more than five years ago but no one has been arrested for the crime.

(Images: John Clarke)

Fuleni and Somkhele areas, where several activists reported that they had experienced threats, physical attacks and damage to their property after speaking out against coal mining expansion.

In an email response to these reports, Tendele Coal Mining said they were “aware of claims of attacks, yet upon investigation and consultation with police, the information could not be verified or substantiated”.

The report spoke about “an environment of fear” in several communities, concluding with an urgent appeal to several government departments and the Office of the President to publicly condemn such attacks, threats, harassment and arbitrary arrests. It also urged government at all levels to “respect, protect and promote all human rights of activists across South Africa, including human rights defenders in mining-affected communities”.

Similar appeals were directed to senior SA Police leadership, government departments, municipalities, mining companies and the SA Human Rights Commission.

In a separate report, published in August 2018, the SA Human Rights Commission issued similar appeals to the government and other stakeholders. In its 100-page report, based on interviews and national hearings in three provinces in 2016, the commission directed several government departments to consider sweeping reforms and corrective measures to protect vulnerable communities who bear the brunt of mining’s numerous negative effects.¹⁴

The report, by Advocate Mohamed Ameerma (with panel members Janet Love, Lindiwe Mokate and Professor Tracy-Lynn Humby), noted that communities were often split between people who were directly affected by mining and those who were not. Those who refused to move to make way for mining were subjected to threats, harassment and intimidation from fellow community members, mining companies, traditional structures and police.

When people were relocated, some companies built new homes of superior structural quality compared to traditional homes, but they also needed to take account of the fact that communities were losing much more than simply the physical structure of a house.

They were also losing informal rights to communal land on which their livestock could graze and they could cultivate their crops, and free natural resources such as firewood, food, fencing poles, traditional medicine, grasses and reeds.

“Communities have often lived in an area for decades, if not centuries. The land, its history and the community composition form essential elements of a social structure that has become deeply entrenched into the lives and livelihoods of many.”

In one case involving a platinum mine, reimbursement for the loss of crops was paid into traditional authority trust funds for the joint benefit of several communities, but it was unclear whether tribal authorities had accounted for how these funds were spent.

The commission emphasised that community consent must be free of any form of manipulation, coercion or pressure, and found that communities are often denied enough time and information to make decisions.

Last year, communities scored a significant court victory to access more information about mining applications. In a ground-breaking judgment, the North-Gauteng High Court ruled that affected communities have a right to see applications for mining licences – cutting out miles of red tape that environmentalists, activists and civil society organisations had to wade through in the past to gain access to these details, often with limited success.

COLD BLOODED

The murder of Fikile Ntshangase

SIX weeks before she was murdered by unknown hitmen in her isolated rural home, Mam’ Fikile Ntshangase refused to sign a crucial agreement to pull MCEJO out of all court cases which threatened the mining company’s expansion plans.

Seven fellow MCEJO committee members – including the formerly outspoken activist Sabelo Dladla who had faced death threats from gunmen at his home – had just signed a “Binding Memorandum of Understanding” with Tendele. The effect of this agreement aimed to halt all court action against the company.

According to Robby Mokgalaka – who spoke to her just days before she was murdered – Ntshangase also refused to accept a substantial “bribe” to change her stance (as much as R350 000 according to a news report from GroundUp news agency).¹⁵

“She had been called by different people before she was killed,” said Mokgalaka. “She told me that she had been given an offer, but did not disclose the full amount to me. . . She was scared, but still hoping that everything would go away.”

But the pressure did not go away. She had already received several threatening text messages and planned to erect a fence around her property.

Three days before she was murdered, Mam’ Fikile also told close colleagues she was very uncomfortable as her dogs had been barking almost

non-stop the previous night. Finally, on the night of Thursday 22 October, three men came to her home in Ophondweni and asked her 13-year-old grandson for drinking water. They said they were afraid of dogs but wanted to “greet the elders”.

“One man remained in the passage and engaged her grandson and two younger friends from next door who had come to buy chips from the tuck shop Fikile ran from home,” reported Sheila Berry, who spoke to family members soon afterwards.

“The two hitmen went through to the lounge, ostensibly to greet Fikile. She was sitting at the table cutting onions for supper. She stood up when the men entered the lounge. They fired two shots into the front of her body and three into her lower back and buttocks as she fell to the floor. After the second shot was fired, the boys ran next door.”

Ntshangase was shot six times, with ballistics evidence suggesting that the final shot penetrated her brain and ensured her death.

In the immediate aftermath of the brutal killing, the mining company condemned violence or intimidation “in the strongest possible terms” while acknowledging that divisions in the community between those for and against mining “may have been a factor in the murder of Ms Ntshangase”.

It was a “very complicated situation”, the company said in a statement, given that the resettlement agreements with almost 90% of households would



Fikile Ntshangase.
(Image: Rob Symons)



Fikile is laid to rest near the Lutheran Cathedral in KwaMaphumulo.
(Image: Mukurukuru Media)

not be valid if some people were not willing to settle. “The relocation contracts already agreed cannot be fulfilled until agreement has been reached with all 145 households. This has created tensions between those who are looking forward to receiving compensation and moving to new areas, and those who have not yet done so.”¹⁶

The company lamented that it was being “held to ransom” by residents who were demanding exorbitant payouts to leave their homes to make way for more mining.

“I can tell you the Zulu king and the Office of the KwaZulu-Natal Premier go berserk. It’s mind-boggling how much we pay. It’s close to blackmail,” Tendele chief Jan du Preez told GroundUp.

But local author Bridget Pitt has questioned these assertions and noted that Ntshangase had become yet another martyr in the increasingly ruthless global fight to force rural communities to allow mining on their doorsteps.

“In a world governed by property rights, compensation for the structures alone may be legal, but can it be regarded as fair? And if so, is the market value a remotely relevant instrument?” she asked.

“How do you assess the value, for example, of a traditional hut (indlu yangenhla) built and rebuilt over centuries, where for generations a family has sustained contact with their ancestors, performed rituals that give meaning and purpose to their lives, found comfort from misfortune and celebrated joy... Is it really only worth the price of the mud, sticks and grass that constitute its housing?”¹⁷

Real wealth, she said, was the land beneath peoples’ feet. “And when they lose that, they lose the right to live on the land of their forefathers, they lose ancestral connections, they lose the springs that flow even in times of drought, the sweet summer grass, the trees that sheltered their goats from summer storms, the ground where their umbilical cords are buried, the view of the rolling hills that framed their childhoods, clean air and fertile soil.

“Even assuming that R750 000 (or whatever they receive) is adequate compensation for this loss, the only people who receive a payout at all are those so-called ‘directly affected communities’ who have to actually vacate their homes and lands for the mine.

“But the mines are surrounded by thousands of homesteads whose residents are not offered compensation as they are not classed as ‘directly affected’ ... As is the way of these things, those who benefit most from mining tend to be those whose daily lives are least impacted. I doubt that Du Preez and other managers are woken at night by blasting, or have to drink water contaminated by coal grit.”

And, while the mine may have created 1 600 jobs, it had also destroyed many rural livelihoods, including future tourism opportunities alongside the Hluhluwe/iMfolozi Game Reserve.

“Just who is blackmailing whom?” asked Pitt.

Shareholder activist Tracey Davies has raised similar questions and described Ntshangase’s murder as a tragic reminder of how little has really changed in South Africa, despite the recent “cacophony of corporate pronouncements on social and environmental responsibility”.

“Mining-affected communities in SA are expected to accept, and be grateful for, any compensation offered to them to leave their homes – and often their livelihoods and natural heritage – to make way for mining. But when they do not want to move it is not only the mining companies they must stand up to but often also the government officials and traditional leaders who put pressure on them to capitulate. Many in the mining industry and the mineral resources department appear to believe poor people without formal employment have no right to turn down any offer made to them.”¹⁸

In a joint media statement soon after the murder, groundWork, the CER and Action Aid said it appeared that further mining at Somkhele was supported by the provincial government and that communities had come under even further government pressure via the office of the Premier and provincial department of Cooperative Governance and Traditional Affairs (COGTA).

“This is the self-same government that claims to be a custodian for land reform to redress the land imbalance – while wilfully pushing to displace rural farmers from their family land from which they subsist Mines dangle incentives to impoverished community members with the inevitable consequences of stirring deep community divisions, which almost always lead to violence and deaths.

“In rural areas that are difficult to police, it takes someone with the determination and the courage of Mama Ntshangase to promote community solidarity and resistance in the face of these strategies. There are other leaders of this calibre in MCEJO and, if anything, the assassination of Mama Ntshangase has renewed their determination to step up the fight against exploitation by the mine.

Her attorney, Kirsten Youens, believes that Ntshangase’s legacy will continue to inspire environmental justice activists across the world: “Her strength in the face of adversity has now become a symbol of courage for young activists, even those who did not have the privilege of knowing this extraordinary woman.”

CHALLENGING IMPUNITY, BUILDING SOLIDARITY

We all have work to do

By Bobby Peek
Director of groundWork, Friends of the Earth,
South Africa

GUSTAVO Castro Soto, from Otros Mundos Chiapas, Friends of the Earth Mexico, was with Berta Cáceres the night she was gunned down and left for dead. The period thereafter was a living hell for him as he was hunted down by the Honduran state and those involved in the murder. He reflects on the successful resistance of people: “Defenders continue actively resisting in a way that has been and continues to be successful. Therefore, their actions are met with criminalisation and violence against the people, communities and groups. We face the huge challenge of changing resistance strategies and also building new local alternatives for a new life, different from the logic of capitalism.”

In 1992 the United Nations embraced the logic of neoliberal capitalism and corporations, and supported the trend towards privatisation and deregulation. At the World Summit on Sustainable Development, groundWork gathered partners from around the world and successfully pushed back and called for corporate accountability.

After years of campaigning and advocacy by social movements and civil society groups from across the planet, in 2014 the United Nations Human Rights Council approved a

proposal from the governments of Ecuador and South Africa and established an intergovernmental working group to elaborate on a legally binding treaty to regulate the activities of transnational corporations and other business enterprises with respect to human rights.

The demands made by NGOs, peoples movements, and community based organisations call for: primacy of human rights over trade and investment agreements; direct legal obligations at international

level for transnational corporations – to comply with international human rights law, international environmental law and international labour standards, as well as other relevant instruments approved at the international, regional and national level in the human rights framework; transnationals’ responsibility for human rights violations throughout their value chains; an international tribunal for transnational corporations – to enforce the Treaty when national courts and judiciary systems fail the people; the rights of affected communities at the centre of the whole process of negotiating and implementing the treaty and, above all, their right to say NO to any projects that might affect them; and protection from corporate capture – the treaty cannot allow transnational corporations to continue to write their own rules or even lobby against strong rules through their proxies and representatives.

But we have to do more than just demand a United Nations binding treaty on transnational corporations and human rights, or legal mechanisms at a national level to protect the people who live on the land and in neighbourhoods of community. It is going to need government to seriously consider what the paradigm for real development is. How do we hold government accountable for their facilitating of a situation that led to the death of Mama Fikile?

Mama Fikile’s murder and the lack of response from government, the continued operation of Tendele Coal Mining (Pty) Ltd, and recent

discord among those who have lived there peacefully, highlights the failure of the system, which is going to need more than governance instruments.

It is going to need a praxis of solidarity by all, from the President to the people tilling the soil. It is not growing the black elite called for by Mcebisi Jonas, ex Deputy Minister of Finance in South Africa, but rather ensuring that we create a culture of sharing and deep solidarity with affected peoples, based upon empathy and equity. We need a regener-

How do we hold
government
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ative economy, for as we face the scourge of climate change and the government and corporate scramble to keep capitalism and extraction alive under the guise of development, we are going to have mining intensified with corporates further dividing communities. Many more families and communities are going to mourn the loss of loved ones as mining expands to minerals for renewable energy.

We need a just transition that ensures that the global North and elite in the South reduce their consumption and pay their climate debt, starting with rehabilitation and clean-up of the toxic lands left by mining.

Therefore, as NGOs, activists and those in the struggle for environmental justice and a just transition, we must build:

- Community to community connectedness to learn from each other and build a platform of multiple resistances, and local, connected regenerative economies;
- Community to worker solidarity: Workers live in the community, and in the intensive migrant labour system in South Africa's mining industry, migrant workers become part of new communities. When workers lose their jobs, communities often suffer in various spaces – both in the areas where workers live, and in the workers' areas of

origin where they support family members;

- Worker to worker connectedness: As unions become weaker and corporates more exploitative, workers are left on their own. They must start working together to understand the complexity of shifting employment and create new forms of worker power;
- Worker to union solidarity: With the rights of formal labour weakening, and outsourcing and labour brokers running rampant, unions have to consider how they are going to shape the new industrialisation strategies and strengthen organising in these sectors. This means working with new forms of organising to build worker power;
- NGOs and peoples movement to worker and union connectedness, support and solidarity: South Africa is planning and rolling out industrial strategies that seek to shift our economy. Collectively, as a unified voice, we need to challenge these strategies to ensure they respond to a people's just transition that is based upon open environmental justice dialogue and an open democracy free of violence.

We have to commit to doing this in order to build a regenerative economy based on environmental justice and people needs, and not on the false promises of the extractive economic growth.

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This is the story of Mama Fikile Ntshangase, a dynamic and courageous mother, grandmother and retired teacher from South Africa's KwaZulu-Natal province, who was assassinated while preparing dinner in her home in the closing months of 2020.

In this report we detail the events leading up to the murder of Ntshangase and some of the most likely reasons she was killed. But the story is not just about Mam' Fikile.

Sadly, it echoes similar and increasingly common stories from marginalised communities around the world who have been driven from their land – or been forced to stay on the land and suffer the consequences – due to the avarice of corporate and political elites which often cloak self-serving motives beneath the more noble clothing of the “national interest” or economic and social “development”.

Internationally, according to a Global Witness report, 212 land and environmental defenders were murdered in 2019, the highest number yet in a single year, and an average of more than four people a week.

The report also describes the background to the assassination of Ntshangase, the concerns raised by this coal-impacted community and the warning bells that have been sounded previously. It concludes with some of the lessons learned and a set of recommendations to ensure human rights defenders are supported in their critical work, not only for their community, but also society at large.

