



**30 July 2020**

**TO:**

**Mary Lawlor**

United Nations Special Rapporteur on the Situation of Human Rights Defenders

Email: [defenders@ohchr.org](mailto:defenders@ohchr.org)

**Rémy Ngoy Lumbu**

Special Rapporteur on Human Rights Defenders, African Commission on Human and Peoples' Rights

Email: [remyngol@gmail.com](mailto:remyngol@gmail.com);

**Dr Solomon Ayele Dersso**

Chairperson, African Commission on Human and Peoples' Rights and country lead on South Africa

Email: [Solomon.dersso@gmail.com](mailto:Solomon.dersso@gmail.com)

**RE: CONTINUED INTIMIDATION AND HARASSMENT BY THE SOUTH AFRICAN NATIONAL DEFENCE FORCE AGAINST RESIDENTS OF HAPPINESS VILLAGE**

1. It is with grave concern that the International Commission of Jurists (ICJ) and the Southern Africa Human Rights Defenders Network (SAHRDN) bring to your attention the continued intimidation, humiliation, harassment and assault by the South African National Defence Force (SANDF) of residents of Happiness Village, situated on the outskirts of Johannesburg.
2. The residents of Happiness Village are legally represented by Lawyers for Human Rights in a number of legal matters arising from attempts by the SANDF and the local government municipality (Ekurhuleni Municipality) to unlawfully evict them from their homes, first on Marievale military base and now from Happiness Village.
3. SAHRDN and ICJ have been providing various forms of support for the residents in their fight to vindicate their rights since early 2018. Significantly for the context of this letter this has included, amongst other things:<sup>1</sup>

---

<sup>1</sup> See most recently "JOHANNESBURG: Ongoing Human Rights Violations And Disregard Of The Rule Of Law By The South African National Defence Force Against The Marievale Community" (8 June 2020): <http://www.southernafricadefenders.africa/2020/06/08/johannesburg-ongoing->

- 3.1 Facilitating an meeting for a community representative, Mr Chris Koitsioe, with Mr Rémy Ngoy Lumbu, Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples' Rights, in November 2018 in Nouakchott, Mauritania.
  - 3.2 Facilitating a site visit to Happiness Village for former United Nations Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, on his visit to South Africa in November 2019.
4. In this context, and in light of the below information, we call on the United Nations Special Rapporteur on the Situation of Human Rights Defenders and the African Commission on Human and Peoples' Rights Special Rapporteur on Human Rights Defenders to take the following measures and any other they deem necessary to ensure the protection of the human rights of residents of Happiness Village:
- Call on the SANDF, the Minister of Defence and Military Veterans and on the Ekurhuleni Municipality to desist from any further evictions, relocations, intimidation, harassment, humiliation and assault of the Marievale community residents;
  - Call on the SANDF, the Minister of Defence and Military Veterans and the Ekurhuleni Municipality to immediately lift and ensure the non-recurrence of restrictions on the movement on Happiness Village residents;
  - Call on the President of South Africa, as the Commander in Chief of the SANDF, to take appropriate action to ensure that the human rights violations that the residents of Marievale have suffered at the hands of the SANDF on a continuous basis since 2017 be investigated, and that appropriate action be taken to ensure access to justice and effective remedies for the residents; and
  - Call on the Parliamentary Portfolio Committee on Defence and Military Veterans to ensure the accountability of the Minister of Defence and Military Veterans for the human rights violations to which the SANDF has subjected the residents on a continuous basis since 2017.

### **Brief Background**

5. The residents of Happiness Village live under trying circumstances as a result of the forcible eviction of approximately 600 among them from their previous place of residence on the Marievale military base by the SANDF in November and December 2017. Many of the residents at the military base had lived there for over a decade at the time of eviction. Some were former SANDF officers and employees.
6. In May 2018, the High Court declared the evictions unlawful because they had taken place without a court order and without any consideration of the impact they would have on the residents' livelihoods and access to housing.<sup>2</sup> As such, the evictions from the Marievale military base had been in contravention of the South African Constitution and international human rights law which protects the right to adequate housing, which, in turn, includes protection of legal

---

[human-rights-violations-and-disregard-of-the-rule-of-law-by-the-south-african-national-defence-force-against-the-marievale-community/](#)

<sup>2</sup> *Rex and Others v Mnister of Defence and Military Veterans and Others* (22663/2018) [2018] ZAGPPHC 348 (9 May 2018) available: <http://www.saflii.org/za/cases/ZAGPPHC/2018/348.html>.

security of tenure against forced evictions. Video footage shows the violent nature of the eviction which led to devastating psychological harm, including multiple subsequent suicides.<sup>3</sup>

7. In its written submissions to the High Court the SANDF had argued that, "there [are] no real constitutional rights or issues that the applicants [want] to protect". Moreover, during the eviction soldiers had told residents that "the Constitution does not apply to the army".<sup>4</sup> An SANDF spokesperson had told the media that, "Constitution or no Constitution ... the department of defence and the military is exercising its right to ensure that a military base remains a military base".<sup>5</sup> The SANDF's legal representatives had also repeated in open court, in a hearing attended by observers from the International Commission of Jurists, that "the Constitution does not apply" to the military.
8. Rejecting these claims, the Court ordered the SANDF to restore the residents' occupation on the premises of the military base and/or provide "temporary adequate alternative accommodation" where this was not possible. It also specifically ordered the SANDF to refrain from "harassing, threatening and intimidating" the residents and "not to restrict their movement to and from the Military Base".<sup>6</sup>
9. In September 2019 the municipality attempted to have meetings with the residents to encourage them to consent to the relocation. These meetings deliberately excluded the residents' lawyers, leading to some residents refusing to engage with the municipality. In South Africa in accordance with the principle of "meaningful engagement" established by the Constitutional Court,<sup>7</sup> such meetings are legally required prior to evictions. Furthermore, the residents have a right to legal representation during these engagements.
10. Despite the existing court orders, there are currently no residents living on the military base from which they were initially evicted. Those evicted are now residents of Happiness Village adjacent to the military base from where they were evicted.
11. Moreover, further evictions of residents both from the military base itself and from Happiness Village and its surrounds have taken place in contravention of multiple court orders. While it has not provided evidence for this claim, the SANDF maintains that Happiness Village and its surrounds are part of the

---

<sup>3</sup> ENCA Checkpoint "The Army vs The People" (30 May 2018): <https://www.youtube.com/watch?v=il9G8H1FYaI&t=14s>.

<sup>4</sup> S Sidu & TF Hodgson "Marievale residents take on military and get some relief" (11 May 2018): <https://mg.co.za/article/2018-05-11-00-why-must-court-be-best-defence-from-defence-force-dark-arts/>.

<sup>5</sup> R Akoob "Marievale residents say SANDF is illegally evicting them from military base" (30 November 2017): <https://www.thedailyvox.co.za/marievale-residents-say-sandf-illegally-evicting-military-base-rumana-akoob/>.

<sup>6</sup> *Rex and Others v Minister of Defence and Military Veterans and Others* (22663/2018) [2018] ZAGPPHC 348 (9 May 2018) available: <http://www.saflii.org/za/cases/ZAGPPHC/2018/348.html>, para 11.

<sup>7</sup> *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC) ; 2008 (5) BCLR 475 (CC) (19 February 2008) available: <http://www.saflii.org/za/cases/ZACC/2008/1.html>. See also *Melani and Others v City of Johannesburg and Others* (02752/2014) [2016] ZAGPJHC 55; 2016 (5) SA 67 (GJ) (22 March 2016) available: <http://www.saflii.org/za/cases/ZAGPJHC/2016/55.html>.

military base. These evictions have continued during the COVID-19 pandemic, in contravention of regulations banning the execution of eviction orders during “lockdown” which are still in force,<sup>8</sup> and against the recommendations of both the United Nations Committee on Economic, Social and Cultural Rights,<sup>9</sup> and the United Nations Special Rapporteur on the Right to Adequate Housing.<sup>10</sup>

12. In May 2020, in addition to some continued evictions from both the military base and Happiness Village, the SANDF and the municipality made attempts to pressure residents into consenting to relocations by signing relocation forms provided by the municipality. Though some residents signed these forms, and some have since moved to Duduza, others have refused to do so in the absence of a relocation plan.
13. With the assistance of Lawyers for Human Rights, the residents again approached the High Court, which, in turn, granted them an order on 21 May 2020 once again declaring the evictions unlawful and interdicting the SANDF from: “evicting or seeking to evict” the residents; “intimidating, threatening and/or assaulting” the residents; “causing any further damage” to residents property; and “preventing the [residents’] access to the property”.
14. These residents continue to live in Happiness Village, pending a relocation plan which has not yet been devised by the local government municipality. The municipality itself requested until 10 December 2020 to develop an adequate relocation plan before it could return to Court.
15. On a site visit on 29 May 2020 involving Lawyers for Human Rights, legal representatives of the SANDF and the municipality and an observer from the International Commission of Jurists, the SANDF again committed to refraining from intimidating and harassing residents into relocating. SANDF agreed to the process by which relocation would only occur upon the completion of a relocation plan and the agreement of the residents.

---

<sup>8</sup> Regulation 36 of the “Alert level 3 lockdown regulations” reads:

“36. (1) Subject to subregulation (2), a person may not be evicted from his or her land or home during the period of Alert Level 3 period.

(2) A competent court may grant an order for the eviction of a person from his or her land or home in terms of the provisions of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998): Provided that an order of eviction may be stayed and suspended until the last day of the Alert Level 3 period, unless a court decides that it is not just and equitable to stay and suspend the order until the last day of the Alert Level 3 period.”

Regulations available: <https://www.gov.za/coronavirus/alert-level-3#evictions>. All government regulations and directions aimed at addressing COVID-19 are available here:

<https://www.gov.za/coronavirus/guidelines>.

<sup>9</sup> CESCR has recommended that States impose a moratorium on evictions in the context of the measures they are taking to respond to the COVID-19 pandemic, see, E/C.12/2020/1, para. 15, available:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2020%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2020%2f1&Lang=en).

<sup>10</sup> “Housing, the front line defence against the COVID-19 outbreak,” says UN expert (18 March 2020):

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>.

## **The Present Situation: Harassment, Intimidation, Humiliation and Assault**

16. In the absence of an authorization to evict and relocate the residents, the SANDF appears to have taken the approach of trying to intimidate, harass and even assault the residents to pressure them into leaving. Its abusive attempts, which have been ongoing, have escalated during July 2020. On the instructions of the residents, Lawyers for Human Rights are therefore again approaching court to end what residents describe in their written submissions to the court as an ongoing "siege of Happiness Village" by the SANDF.<sup>11</sup> The following examples illustrate the unbearable living environment currently imposed by the SANDF on the residents of Happiness Village.
17. The residents of Happiness Village were all instructed to stay in their homes and when they attempted to leave their homes they were sometimes randomly subjected to questioning and harassment. This restriction was only lifted on the morning of 29 July 2020 after Lawyers for Human Rights had begun the process of initiating litigation.
18. Between 21 July 2020 and 29 July 2020, a community leader, Mr Chris Koitsioe, was been ordered to stay in his home and prevented from leaving by armed soldiers if he attempted to do so. To ensure that he did not leave his home, four soldiers, on average, were stationed nearby effectively policing his home.<sup>12</sup> This happened despite an undertaking by SANDF lawyers to Lawyers for Human Rights that these soldiers would be removed. Although Chris Koitsioe was not been given an explicit reason for this, he overheard SANDF soldiers say that it was because the SANDF has not been able to evict and relocate residents because of him. This restriction was only lifted on the morning of 29 July 2020 after Lawyers for Human Rights had begun the process of initiating litigation. Chris was also told by the SANDF, without reason, that he can no longer keep goats without their permission, which will severely compromise his livelihood.
19. The residents' ability to leave the area and travel to the nearby town for work, to go to shops, or for any other activity is being restricted by trenches and a fence that has been erected. Up until 29 July 2020, after Lawyers for Human Rights had begun the process of initiating litigation, it was not possible to leave the area without passing through a checkpoint at which three to four soldiers are stationed. Lawyers for Human Rights' written submissions to the court confirm that, as examples, Mr Zedh Mankge, Mr John Magane, Mr Peter Shabalala and Mr David Matladi, were prevented from leaving the village to go to work by soldiers.
20. The same checkpoint is also used to police people coming into the village. This continues to date despite the initiation of litigation by Lawyers for Human Rights. Journalists have been prevented from entering the area to report on these events,<sup>13</sup> and on 25 July 2020 the SANDF initially refused to grant access

---

<sup>11</sup> An urgent hearing is likely to occur on Friday 31 July 2020.

<sup>12</sup> This is confirmed under oath by LHR attorney Louise Du Plessis in the residents founding affidavit in the newly initiated court process.

<sup>13</sup> K Mutandiro "SANDF cuts Happiness Village off from the world, places community leader under house arrest" (26 July 2020): <https://www.groundup.org.za/article/sandf-cuts-happiness-village-world-places-community-leader-under-house-arrest/>.

to the area to the residents' legal representatives from Lawyers for Human Rights.<sup>14</sup> Access was granted to lawyers only under guard of armed SANDF officers; on the same occasion, Bishop Paul Veyenne, who provides spiritual counselling and pastoral care to the community was denied access for some time.

21. The SANDF has conducted military training exercises on an open field within meters of Happiness Village. A notable exercise of this nature occurred on 20 July 2020: it began at midnight when an estimated 20-30 soldiers participated in exercises which included the throwing of practice hand grenades, smoke grenades and the discharging of firearms. They were "shooting explosives like in a battlefield", according to Mr Chris Koitsioe. "It's terrifying and we can't sleep", said Ms Gracinda Mazivi.<sup>15</sup>

22. Residents are subjected to harassment and humiliation by the SANDF officers on a seemingly ad hoc basis. This has included the following:

- Generally rough and aggressive treatment falling short of assault of residents when they are outside of their homes by the SANDF officers;
- SANDF officers have closed "tuck shops", which are informal businesses run by Happiness Village residents, and relied on for staple foods and other items. As of this week, after closing all other shops, Ms Lucinda Ziyanda and Mr Tete Motsepe were warned by the SANDF that their shops must also close or they would be forced to close them. This restriction appears to have been lifted on the morning of 29 July 2020 after Lawyers for Human Rights had begun the process of initiating litigation;
- SANDF officers throwing practice grenades directly at residents, which is traumatic given the loud noise and smoke emitted when they explode;
- At least one resident, Mr Isaac Manigue, was physically assaulted by the SANDF officers for being outside of his home while subjected to xenophobic comments from officers. "They said I was a foreigner and yet I was refusing to leave the place", he said; residents have also been subjected to a range of forms of what Mr Chris Koitsioe describes as "military discipline" or "military punishment". One example is that a resident was forced by the SANDF officers to lie down in the middle of an open field and "pray to his God".

### **Brief Legal analysis**

23. The forced evictions of residents from Marievale military base and Happiness Village amount to patent violation of their right to adequate housing under

---

<sup>14</sup> The lawyers were later allowed to enter but only after the SANDF's lawyers had been contacted and on the condition that they only speak to Mr Chris Koitsioe – this despite the fact that they act as the legal representatives for the majority of Happiness Village's residents. This is confirmed under oath by LHR attorney Louise Du Plessis in the residents founding affidavit in the newly initiated court process.

<sup>15</sup> K Mutandiro "SANDF cuts Happiness Village off from the world, places community leader under house arrest" (26 July 2020): <https://www.groundup.org.za/article/sandf-cuts-happiness-village-world-places-community-leader-under-house-arrest/>.

section 26 of the South African Constitution,<sup>16</sup> as well as pursuant to the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>17</sup> They are also in complete disregard of several judgments and orders of the High Court of South Africa, and thus contravene the rule of law.

24. The continued intimidation, harassment, humiliation and assault of the residents appears to be targeted at securing the residents eviction "through the back door",<sup>18</sup> in defiance of court orders, and in further violation of the right to adequate housing.
25. The restrictions on the movement of residents, including the erection of checkpoints and the confinement of residence to their homes violates their rights to freedom of movement protected by the South African Constitution,<sup>19</sup> the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.<sup>20</sup>
26. The intimidation, harassment, humiliation and assault of the residents amount to violations of the residents' rights to liberty and security of person and may also amount to cruel, inhuman and degrading treatment or punishment in violation of the South African Constitution,<sup>21</sup> the African Charter on Human and Peoples' Rights, International Covenant on Civil and Political Rights,<sup>22</sup> and of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such conduct also violates the residents' right to human dignity protected by the Constitution.<sup>23</sup>

---

<sup>16</sup> Constitution of South Africa, s 26(3).

<sup>17</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 28 July 2020], Article 11; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22, available at: <https://www.refworld.org/docid/47a70799d.html> [accessed 28 July 2020].

<sup>18</sup> See *Motswagae and Others v Rustenburg Local Municipality and Another* (CCT 42/12 <http://www.saflii.org/za/cases/ZACC/2013/1.html>), para 16: "It is probable, as a matter of inference from the offer of alternative accommodation together with the deliberate interference with peaceful occupation of their homes, that the municipality sought to achieve the eviction of the applicants through the back door. This is not permissible."

<sup>19</sup> Constitution of South Africa, s 21.

<sup>20</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 28 July 2020], Article 12.

<sup>21</sup> Constitution of South Africa, s 12.

<sup>22</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 28 July 2020], Article 7.

<sup>23</sup> Constitution of South Africa, s 10.