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South Africa: Failure to conduct impartial investigation into Kennedy Road violence is leading to further human rights abuses

Amnesty International deplores the continuing failure of the South African authorities to investigate impartially and fully human rights abuses which occurred during and after armed violence at the Kennedy Road Informal Settlement (Kennedy Road) in Durban last September. This despite repeated calls since October for an independent and impartial commission of inquiry into the surrounding circumstances and extent of the violence and its aftermath.

The attack by a group of armed men which began during the night of 26 September resulted in at least two deaths as well as injuries to others in Kennedy Road. Homes were damaged and individuals and families were displaced or fled, either as a result of being directly attacked or from fear of being attacked.

The violence appears to have occurred within a complex national and local context relating to policies and possible differences of opinion over the future of informal settlements, in which an estimated 10 percent of South African households are located. Ensuring meaningful participation by affected communities in development planning is consistent with South Africa's human rights obligations and is recognized in South African domestic law, through the role of municipal ward committees or other bodies. Amnesty International is concerned that the issue of the political control over the direction of development for Kennedy Road may have formed part of the motivation for the violent attack.

The activities of the community based economic and social rights movement, Abahlali baseMjondolo (Abahlali), and the affiliated Kennedy Road Development Committee (KRDC) have been disrupted by the violence and the lives of their leaders and supporters placed at risk. Furthermore the threats against and displacement of the KRDC members from Kennedy Road in September has undermined their ability to continue as a partner with the eThekweni (Durban) Municipality's Housing Department in a development "upgrade project" for the residents of the settlement. These consequences are particularly worrying in view of media and other reports that in the weeks prior to the violent attack at Kennedy Road, governing party officials at provincial and local levels were expressing a determination to dissolve these community based organizations.

As a consequence of the authorities' failure to conduct a full and impartial inquiry and to publicly and unequivocally condemn the apparently politically motivated violence which occurred in September, the lives of human rights defenders and government critics have been placed at risk. Furthermore, the confidence of the targeted groups in the impartiality and effectiveness of the criminal justice response to the violence has been undermined.

In October Amnesty International raised its concerns about the violent incidents in late September and the official response to them in letters to the Premier of KwaZulu-Natal Province, Dr Zweli Mkhize, and the provincial Minister for Transport, Community Safety and Liaison, Mr Willie Mchunu. Amnesty International expressed particular concern that credible information from its own inquiries indicated that:

- There had been a significant delay in the police response to calls for assistance made by members of the KRDC and Abahlali during the night of 26 September;
- During that night armed men appeared to be looking for specific individuals and members of specific organizations, including from the KRDC and the President and Deputy President of Abahlali;
- The men also used language which identified targets to be removed from Kennedy Road in ethnic terms, as “amaMpondo ”(Xhosa-speakers) or as non-Zulus; and
- Some of the eight individuals arrested by police on 27 September in connection with the violence may have been arrested not on the basis of a reasonable suspicion of having committed an offence, but due to their links with Abahlali.

Furthermore, Amnesty International expressed concern that public comments made by officials, in the immediate aftermath of the violence, about Abahlali and its leaders, including the president, S'bu Zikode, could have the effect of inappropriately criminalising a whole organization and making its members vulnerable to threats of violence. The Office of the Premier acknowledged receipt of Amnesty International's letter, but the organization has not yet received a more substantial reply to its concerns.

To the organization's knowledge there has been no explanation from the police regarding their apparent absence from Kennedy Road from around midnight on 26 September to approximately 06:30 on 27 September. They had been in the area briefly prior to midnight in response to a complaint of “fighting”, but then subsequently failed to respond to calls for help from members of Abahlali concerned about the intentions of a group of armed men who had come into the community hall where they were conducting a meeting. During the hours after midnight two people, Mthokozisi Ndlovu and Ndumiso Mnguni, whose affiliations are not known to Amnesty International, were fatally assaulted and others were injured.

Eight people were arrested on the morning of 27 September when the police returned to Kennedy Road. Five others were arrested over the following two weeks. All 13 of those arrested were supporters of Abahlali. All appeared to have a specific ethnic profile as Xhosa-speakers originally from the Eastern Cape Province.

The state has the primary legal obligation to investigate crime, and it is entirely appropriate for the state to investigate fully the deaths of Mthokozisi Ndlovu and Ndumiso Mnguni and the injuries of other unnamed individuals. At the same time the state also has a duty to protect all persons within its jurisdiction from violence, whether from public or private actors. To Amnesty International's knowledge, the police have not arrested or charged anyone in connection with the actions of a group of 500 people, who, according to police information, were armed with pangas (machetes) and demanding the arrest of the eight Abahlali supporters on 27 September at Kennedy Road. Following the arrest of the eight, this group of armed individuals went on a rampage, throwing petrol bombs and apparently intending to burn down the arrested men's shacks, according to police information.

That the homes of all 13 arrested men were destroyed was acknowledged in open court by the police Investigating Officer on 19 October and 4 November, during hearings on their bail application. The homes of other Abahlali and KRDC leaders were also damaged or destroyed at various times from late September and these crimes remain unaddressed. The apparent unwillingness of the relevant authorities in investigating these crimes, along with an atmosphere of official denunciation of the victims' organization, has discouraged Abahlali members, supporters and others perceived to be supporters from lodging formal complaints with the police concerning continuing threats of violence made against them.

Of further concern is the lack of action in response to the threatening activities of demonstrators outside and inside the Durban Magistrate's Court at the time of hearings in October and November on the bail application for the accused. Testimony and other evidence which Amnesty International has gathered indicate that the demonstrators, some of whom

were wearing the insignia of the ruling African National Congress party, made specific threats of violence against a range of individuals, including members of Abahlali and of faith-based organizations supporting them, human rights monitors and, indirectly, against the accused should they be released on bail.

The sense of licence surrounding the activities of the demonstrators was also evident in their displaying of posters in the presence of the magistrate during bail application proceedings on 26 October and 2 November. The posters denounced the president of Abahlali as a “leader of killers” and called for life sentences for the accused. It appears that no effective steps were taken by court officials on 26 October to stop this conduct, which could amount to incitement or contempt of court and contribute to undermining the right to fair trial for the accused. On 2 November the magistrate asked the court orderlies to tell the poster-holders to take them down or leave the court.

By early December the bail application proceedings had extended over eight separate hearings from 8 October onwards. The presiding magistrate, concerned by the inability of the prosecutor and investigating officer to state in court which of the specific charges individual defendants were facing, insisted that an identification parade should be held. The parade was finally held on 21 November, after the majority of the accused had appeared in court eight times already. During the hearing on 27 November the prosecuting authorities made a simple confirmation of the various charges against each accused. During this hearing and previous ones, the prosecuting authorities did not indicate which evidence it was relying upon to support the charges.

At the conclusion of the hearing on 27 November, the court agreed to withdraw all charges against one of the defendants, Simbongile Magaqana. Seven others were granted conditional bail,¹ and the remaining five were remanded back in custody for further investigation.² The charges still under investigation against the remaining 12 accused range from property crimes and public violence to murder. A hearing scheduled for 11 December, on the application for bail of the five men still in remand custody, did not take place due to the failure of the prosecutor and investigating officer to appear in court. The hearing was adjourned until 22 January 2010.

Amnesty International is concerned that the current response by the authorities to the events at Kennedy Road in late September is not addressing the causes which may have led to the violence, nor ensuring to all those affected their access to effective and impartial legal remedies and protection of their rights to freedom of association and freedom of expression.

The authorities have ignored widespread calls for a commission of inquiry into the circumstances of the violence. The call, first made by Abahlali, for an official state inquiry, was strongly supported by Church leaders and a range of other civil society organizations. More recently, in view of the lack of government response, the Church leaders announced their intention to establish an independent inquiry into the Kennedy Road events.

Amnesty International believes that a thorough, open and impartial inquiry could have important benefits for the protection of human rights both locally and in other areas of South Africa. This is especially in view of current concerns and protests over the failures of some local government authorities to deliver access to basic services in poor communities.

In regard to the events at Kennedy Road in late September and subsequently, it is vital to clarify if there has occurred any infringements by state or non state actors of the rights to freedom of expression or association or other human rights abuses committed against any person on the basis of their perceived or actual ethnic or cultural identity or political affiliation.

¹ They are Simvumile Limaphi, Thokozani Mtwana, Thobuxolo Mazeke, Sibulelo Mambi, Zamandla Mazeke, Nkosisizwe Njiyela and Fundisile Nkoyi.

² They are Khaliphile Jali, Zandisile Ngutyana, Situtu Koyi, Sicelo Mambi and Samkeliso Mkokelwa.

Amnesty International reiterates its call made to the authorities in October to ensure that the human rights of all residents of Kennedy Road, including those who have been displaced by the violence, are fully protected; that victims of human rights abuses have access to impartial and effective remedies and the perpetrators of those abuses are brought to justice.

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