

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/7, 28/11, 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged criminal charges, arbitrary detention and defamation campaigns against the human rights defenders, Ms. **Jennifer Moore** and Mr. **John Dougherty** following their awareness-raising activities about the human rights impact of the activities of the Canadian Company Hudbay Minerals in Peru.

While we welcome your Excellency's Government's extensive implementation of the Enhanced Corporate Social Responsibility Policy and the adoption of "Voices at Risk: Guidelines on Supporting Human Rights Defenders", we remain concerned at the information received.

Please note that a communication on this matter has been addressed to the management of the company, as well as to the Government of Peru.

Ms. Jennifer Moore is a Canadian national and an environmental human rights defender who works for the non-governmental organization Mining Watch Canada, as Program Coordinator for Latin America.

Mr. John Dougherty is a US national and an environmental human rights defender, journalist and filmmaker. He is the director of the documentary Flin Flon Flim Flam, which deals with the activity of the company Hudbay Minerals, and the human rights impact of its operations in the Americas, notably concerning environmental damages, the situation of human rights defenders and police repression during peaceful demonstrations.

Hudbay Minerals is a Canadian mining company.

According to the information received:

Between 15 April and 23 April 2017, Ms. Moore and Mr. Dougherty were in Peru to participate in the screening of the documentary *Flin Flon Flim Flam*. The documentary was screened for free at public meetings in the Chumbivilcas province, Department of Cusco, where one of the main mines operated by Hudbay Minerals is located. Peruvian civil society organizations, community associations and local authorities supported the screenings.

On 20 April, 2017, two police officers went to the hotel where Ms. Moore and Mr. Dougherty were staying in the city of Santo Tomas (Chumbivilcas) requesting information about them. Simultaneously, in the locality of Chamaca, community leaders were questioned by the police and representatives of Hudbay Minerals about the screening of the documentary. Later that day, the Chamaca authorities did not come to the scheduled screening, despite having originally said they would do so.

On 21 April 2017, during a public screening of the documentary at the Municipal Cultural Center of Cusco, two police officers entered the event, saying that they had received complaints that some "hippies" were making too much noise. When they left the Municipal Cultural Center around 8.20 p.m., Ms. Moore and Mr. Dougherty were, reportedly, surrounded and detained by 15 to 20 national police officers, most of whom were in civilian clothes, and immigration officers, allegedly without any arrest warrant. Ms. Moore and Mr. Dougherty were allegedly detained for four hours and they were recorded without explanation or consent on their part.

In the two months following their arrest, Ms. Moore and Mr. Dougherty's lawyers did not have access to the case file. However, it was later confirmed that Ms. Moore and Mr. Dougherty have been charged with the criminal offences of threatening national public and security order and participating in lucrative activities not permitted under their immigration status.

On 22 April, 2017, in the morning, the Ministry of Interior issued a public statement on its website saying that Ms. Moore and Mr. Dougherty were guilty of inciting communities to violence and threatening the internal order of the country. The statement also referred to demonstrations that took place in 2016 against environmental impacts provoked by Hudbay Minerals operations near the Constancia mine in Chumbivilcas,

Reportedly, Ms. Moore wrote to the Canadian Embassy in Lima seeking protection, but she has not received any answer.

On 23 April, 2017, after having left the country, the National Superintendent of Migration issued an undefined migratory alert against the two human rights defenders in case of return in Peru.

On 28 April, 2017, a search-and-capture poster with a picture of Ms. Moore, saying "looking for Jennifer Moore, Canadian," was observed at the police office at Cusco airport.

While we do not wish to prejudge the accuracy of these allegations, we express serious concerns over the alleged interference of the Canadian mining company Hudbay Minerals into the criminal charges and arbitrary detention against Ms. Moore and Mr. Dougherty, due to their work of human rights defenders, speaking out about the impact of the company activities.

We would like to draw the attention of your Excellency's Government to the international standards and norms applicable to the matters described above.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the measures taken by your Excellency's Government to ensure that Hudbay Minerals implements its responsibilities under international human rights laws, including the Guiding Principles on Business and Human Rights in its overseas operations.
3. Please provide information on the measures taken by your Excellency's Government to address allegations in this case within the framework of Canada's Enhanced Corporate Social Responsibility Policy as well as your "Voices at Risk: Guidelines on Supporting Human Rights Defenders".

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration. Furthermore, we may publicly express our concerns as, in our view, the information is sufficiently reliable and indicates a matter warranting immediate attention. The press release may indicate that we have been in contact with your Excellency's Government's in order to clarify issues in question.

Please accept, Excellency, the assurances of our highest consideration.

Surya Deva

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the International Covenant on Civil and Political Rights (ICCPR), ratified by Canada on May, 19 1976, and in particular articles 9, 14, 19 and 21, which establish the right to liberty and security of person, to the presumption of innocence until proven guilty according to law, freedom of expression and the rights to freedom of peaceful assembly and association. We remind the Government of your Excellency that these obligations, as interpreted by the Human Rights Committee in General Comment No. 34, imply not only the direct respect by all the authorities of the State for these freedoms, but also the protection against the acts of individuals or private entities that impede their enjoyment.

With regard to freedom of opinion and expression, we believe it also pertinent to refer to Human Rights Council resolution 12/16, which urges states to guarantee the right to freedom of expression by virtue of being a fundamental pillar of a democratic society. The resolution also underlines the importance of full respect for the freedom to disseminate information and the importance of access to such information for democratic participation, accountability and the fight against corruption. The resolution also urges states to ensure that victims of violations of the right to freedom of expression are able to bring effective remedies to effectively investigate threats and acts of violence and terrorist acts targeting journalists, including Situations of armed conflict, and bringing those responsible for those acts to justice, in order to combat impunity.

With regard to the rights to freedom of peaceful assembly and association, we also refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 where "States are urged to respect and Fully protect the right of all persons to peaceful freedom of association and assembly, including in the context of elections, and including persons embracing minority or dissenting convictions or beliefs, human rights defenders, persons Trade unions and other persons, including migrants, who seek to exercise or promote such rights and to take all necessary measures to ensure that any restriction on the free exercise of the right to freedom of peaceful assembly and association is in conformity with Their obligations under international human rights standards. "

In addition, we would like to draw the attention of your Excellency's Government to the fundamental norms set out in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Institutions to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In particular, we would like to refer to articles 1 and 2 which state that every person has the right to promote and seek the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has primary responsibility and responsibility duty to protect, promote and enforce all human rights and fundamental freedoms. In addition, we would like to refer to Human Rights Council resolution 22/6, which urges States to publicly recognize the important and legitimate role of human rights defenders in promoting human rights, democracy and the rule of law.

With regards to the State responsibilities in relations to Business and Human Rights, we would also like to draw attention to the Guiding Principles on Business and Human Rights (A / HRC / 17/31). The Guiding Principles clarify that under international human rights obligations "States must protect against human rights violations committed in their territory and / or their jurisdiction by third parties, including companies" (Principle 1). This requires States to "state clearly that all companies domiciled within their territory and / or jurisdiction are expected to respect human rights in all their activities" (Principle 2). In particular, this includes companies undertaking a due diligence process in the field of human rights to identify, prevent, mitigate and respond to the negative human rights consequences in which they may be involved, either through their Own activities or as a result of their commercial relations (Principles 17-21). This process of identifying and assessing actual or potential negative human rights consequences should include substantive consultations with potentially affected groups and other stakeholders (Principle 18). The Guiding Principles also emphasize that "States must ensure [...] that there is no obstacle to the legitimate and peaceful activities of human rights defenders" (the comment on Principle 26).

In this connection, we recall that the Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (Principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Principle 15).