

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
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19 September 2017

Dear Mr. Alan Hair,

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 and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 35/7 and 34/18.

In this connection, we would like to bring to your attention information we have received concerning alleged arbitrary detentions and misuse of criminal process against Ms. **Jennifer Moore** (a national of Canada) and Mr. **John Dougherty** (a national of the USA) when raising awareness about human rights impacts of Hudbay Minerals' operations in Peru. Taking into account the Company's Human Rights Policy and its solid engagement towards corporate social responsibility, we seek to receive your views on the allegations below and the actions taken to prevent this kind of occurrence that might exacerbate social unrest. Please note that a communication on this matter has been addressed to the Governments of Peru and Canada.

Ms. Jennifer Moore is a Canadian environmental human rights defender who works for the non-governmental organization Mining Watch Canada, as Program Coordinator for Latin America. Mr. John Dougherty is an American environmental human rights defender, journalist and filmmaker. He is the director of the documentary Flin Flon Flim Flam, which speaks about the activities of the Canadian mining company Hudbay Minerals, and the human rights impact of its operations in the Americas.

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 and in the city of Cusco, Department of Cusco. Peruvian civil organizations, community associations and local authorities supported the screening of the documentary.

On 20 April 2017, community leaders from the district of Chamaca were allegedly questioned by the police and representatives of Hudbay Minerals about this documentary. Moreover, the day after, Ms. Moore and Mr. Dougherty were surrounded and detained by 15 to 20 national police and immigration officers, allegedly without any arrest warrant. They were released after four hours but were charged with threatening national security and public order, as well as engaging in lucrative activities not permitted under their immigration status. On 23 April

2017, after the two human rights defenders had left the country, the National Superintendent of Migration issued a resolution that imposed a migratory alert against both human rights defenders in case of return to Peru.

While we do not wish to prejudge the accuracy of these allegations, we express serious concerns at the measures taken against Ms. Moore and Mr. Dougherty, which appear to be directly linked to their work in connection to the human rights impact of the operations of Hudbay Minerals through the exercise of their right to freedom of expression.

Without involving in advance a conclusion on the facts, we would like to draw the attention of Hudbay Minerals to the international standards and norms applicable to the matters described above.

We would like to make reference to the Guiding Principles on Business and Human Rights (A / HRC / 17/31). The Guiding Principles clearly outline that private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Guiding Principles clarify that The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.

In this connection, we recall that the Guiding Principles have identified two main components of 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" (Guiding 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 (Guiding Principle 15).

Each of these requirements is elaborated below:

Policy Commitment: Such policy must be approved by the company's senior management, be informed by human rights expertise (internal or external) and stipulate the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services. The statement of policy must be publicly available and communicated internally and externally, and reflected in operational policies and procedures necessary to embed it throughout the business enterprise (Guiding Principle 16).

Human Rights Due Diligence: The second main feature of the responsibility to respect is human rights due diligence, the procedures for which have been deemed necessary to “identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships” (Guiding Principle 18). Adequate human rights due diligence procedures must include “meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation” (Guiding Principle 18). To prevent and mitigate adverse human rights impacts, the findings of the human rights impact assessment should be effectively integrated across the relevant internal functions and processes of a company (Guiding Principle 19). Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise, and internal decision-making, budget allocations and oversight processes should enable effective responses to such impacts. Any response by a company to address its adverse human rights impacts should be tracked to ensure that it is effective. Tracking should be based on appropriate qualitative and quantitative indicators, and drawing on feedback from internal and external sources including affected stakeholders (Guiding Principle 20). In addition, information about activities taken to address any adverse human rights impacts, and how effective those actions have been, should be communicated externally (Guiding Principle 21).

Remediation: The Guiding Principles acknowledge that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”. Where a company identifies that it has “caused or contributed to adverse impacts” it “should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22). Business enterprises should establish or participate in operational-level grievance mechanisms “to make it possible for grievances to be addressed early and remediated directly” (Guiding Principle 29). Operational-level grievance mechanisms should reflect eight criteria to ensure their effectiveness in practice, as outlined in Guiding Principle 31: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue. Lastly, operational-level grievance mechanisms must not be used to preclude access by individuals and communities to judicial or other non-judicial grievance mechanisms (Guiding Principle 29).

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 or observations that you may have in relation to the above-mentioned allegations and concerns.
2. Please provide information about the measures that Hudbay Minerals has taken, or is considering to take, to ensure that its human rights policies (including the Code of Conduct), processes and practices are in line with the UN Guiding Principles on Business and Human Rights.
3. Please provide information as to what human rights due diligence has been undertaken by Hudbay Minerals and its subsidiaries operating in Peru to identify, prevent, mitigate and address adverse human rights impacts related to this case.
4. Please provide information about the implementation of the Community Response Mechanism at the local level and whether this mechanism satisfies the effectiveness criteria of Principle 31 of the Guiding Principles, to redress adverse human rights impacts.

We would appreciate receiving a response within 60 days.

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 you in order to clarify issues in question.

While awaiting a reply, we urge that all necessary measures be taken to halt the alleged violations and prevent their re-occurrence and, in the event that the company identifies that it has caused or contributed to adverse impacts, to provide for or cooperate in their remediation through legitimate processes

Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Sir, 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

David Kaye

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