

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 extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL OTH 2/2018

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Dear Mr. Mark Cutifani,

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 extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/7, 28/11, 35/15, 34/18, 36/15 and 34/5.

We are sending this letter under the communications procedure of the special procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals and other communications. The intervention can relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the situation of human rights defenders Mr. **Elias de Souza**, Ms. **Vanessa Rosa dos Santos**, Mr. **Reginaldo Rosa dos Santos**, Mr. **Lúcio Guerra Júnio**, Ms. **Partícia Generoso**, and Mr. **Lúcio da Silva Pimenta**, as well as their

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

families, some of whom have been subjected to acts of intimidation and death threats, allegedly for having brought legal proceedings to question the legality of a public hearing for the expansion of the mining project Minas-Rio, and ultimately suspending the hearing. We also wish to refer to information received concerning the alleged interference of a British company Anglo American and its subsidiary operating in Brazil, Anglo American Minerio de Ferro Brasil, with a judicial process involving the company, as well as to information received regarding the underlying environmental and social impact of the Minas Rio Project in the state of Minas Gerais in Brazil.

Please note that similar letters on this matter have been addressed to the Governments of Brazil and United Kingdom of Great Britain and Northern Ireland.

According to the information received:

a) Context

The Minas Rio Project is a large-scale iron ore mine located in the states of Minas Gerais and Rio de Janeiro, currently operated by Anglo American Minério de Ferro Brasil S.A. (Anglo American), a subsidiary of Anglo American Investimentos - Minério de Ferro Ltda, which in turn is a subsidiary of the British mining transnational Anglo American plc. The project, which began operations in 2014 and is at the moment undergoing its third phase of development, includes a mine, a beneficiation plant, a 525 kilometers pipeline and dedicated export facilities at the port of Açú. The third phase of development seeks to achieve an extraction rate of 56 million tons of iron ore a year, which allegedly poses a number of environmental and social concerns.

On 11 April 2017, a judge granted an injunction suspending a public hearing on the issue of the development of the third phase of the mine, on the basis that the convening of the hearing had been done with too short notice, insufficient outreach to the media, and without the necessary environmental assessments. On the same day, the company published a note on its website indicating that the suspension was harming the licensing process and putting at risk the continuity of the operations of the Minas-Rio Project.

Information started circulating thereafter on social media disclosing the names of the applicants in the case, and accusing them of harming the development of the project. From that moment onwards, the concerned human rights defenders – Mr. Elias de Souza, Ms. Vanessa Rosa dos Santos, Mr. Reginaldo Rosa dos Santos, Mr. Lúcio Guerra Júnior, Ms. Patrícia Generoso, and Mr. Lúcio da Silva Pimenta –, as well as their families, began to face different acts of intimidation and threats addressed to their communities, which continue to date, despite the fact that the hearing finally took place on 20 July 2017.

Mr. de Souza, Ms. Rosa dos Santos, Mr. Rosa dos Santos, Mr. Guerra, Ms. Generoso and Mr. da Silva Pimenta have denounced these acts before the

state police and have sought protective measures by the Protection Program for Human Rights Defenders of the state of Minas Gerais (PPDDH). However, as will be explained below, a number of shortcomings allegedly hinder the effectiveness of the measures granted.

b) Acts of intimidation, threats and specific protection measures granted

Mr. Elias de Souza and his family

Mr. de Souza, who is recognized as a leader and representative of the rural communities of Conceição do Mato Dentro in the state of Minas Gerais, was subjected to several threats and a defamation campaign after the suspension of the hearing regarding the expansion of the Minas Rio Project on 11 April 2017.

On 12 April 2017, Mr. de Souza was attacked and received a death threat from a resident of São Sebastião do Bom Sucesso district, possibly as a result of the tension within the community among those in favour of the mining project, and those who opposed it. Mr. de Souza submitted a complaint on that same day to the Civil Police, which led to investigations and interrogations of witnesses in the following months. These proceedings are still pending.

Other threats received by Mr. de Souza following the suspension of the hearing concerning the circulation of anonymous pamphlets entitled “Leader or Criminal” (*Líder ou Bandido*), which accused him of attempting to impede the economic development of the communities involved in the project. Similarly, vehicles he identified as possibly belonging to the company started circling and doing bootleg turns in front of his house late at night on a regular basis, making a lot of noise and raising dust aimed at further intimidating him.

In addition, his house, already damaged by the vibrations caused by explosions taking place at the mine, was stoned by unidentified persons one night. It is claimed that on several occasions unidentified persons have taken photographs of those entering Mr. de Souza’s house.

On 16 May 2017, the PPDDH granted protection measures in light of the above-mentioned threats to Mr. de Souza and his family. These measures consisted of the installation of surveillance cameras in his house and the award of financial aid amounting to \$540 reais per month [approximately 167 USD] during five months.

On 1 August 2017, after confirming that the threats had continued and were in fact worsened, PPDDH decided to transfer Mr. de Souza and his family to an undisclosed location to ensure their safety.

Ms. Vanessa Rosa dos Santos and Mr. Reginaldo Rosa dos Santos

Ms. Rosa dos Santos and Mr. Rosa dos Santos, who have been active in the protection of environmental human rights for many years, owned a farm located on grounds in which the slurry pipeline of the Minas Rio Project passed through. As a result of the noise, dust and lack of water caused by the pipeline project, they decided to resettle. However, they engaged in the struggle against the development of mining in their community, and started to receive threats. Among other acts of intimidation, Ms. Rosa dos Santos has received threats through text messages, and was once asked by a stranger whether she had a life insurance, adding: “do it fast, you will really need it”. They also found on a different day a note in their house, which said “We know it was you! For Anglo, always yes to step 3. Next.”

On 28 April 2017, Ms. Rosa dos Santos and Mr. Rosa dos Santos were harassed by a group of people while shopping. The group made reference to the suspension of the public hearing and the human rights activities of the five applicants of the judicial request. Allegedly, similar situations have happened on a number of occasions.

On 16 May 2017, the PPDDH granted protection measures to Ms. Rosa dos Santos and Mr. Rosa dos Santos consisting of the installation of surveillance cameras in their house and the allocation of financial aid of \$937 reais per month [approximately 290 USD]. In its decision, the PPDDH acknowledged that “the level of vulnerability of the couple is immense”.

Mr. Lucio Guerra Júnior and Ms. Patrícia Generoso

Mr. Guerra Júnior is the founder of the movement REAJA (Network of Articulation and Environmental Justice for the People Affected by the Rio-Minas Project) and as such has been active in defending environmental rights in the context of the Minas Rio Project since it began explorations in 2008.

On 11 April 2017, the day the public hearing was suspended, he was added to five different groups on social media, where he immediately started to receive threats. In one of these groups, a message referred to another human rights defender who was threatened for opposing a mining company, saying “look what happens when someone speaks against the mine”.

On 17 and 24 April 2017, Mr. Guerra Júnior received several random phone calls offering him funeral services.

On 20 July 2017, the day the public hearing concerning Minas Rio finally took place, an agent from the military police was seen observing his house for the whole day.

On 26 July 2017, Mr. Guerra Júnior again received an isolated phone call offering funeral services.

On 29 August 2017, the day of the most recent public hearing related to the licensing process of the mining project, Ms. Generoso received several threatening phone calls.

On 6 September 2017, after a colleague came to her house to discuss questions related to the mining project, Ms. Generoso received phone calls every 20 to 30 minutes, which suggests that her house was being monitored.

On the week of the 11 to the 15 September 2017, before Ms. Generoso travelled to Geneva to take part in a side event during the 36th session of the Human Rights Council, she received an increasing number of automated phone calls offering funeral services or just silent calls.

Since Ms. Generoso's trip to Geneva, the couple has continued to receive similar phone calls, not only on their mobile phones, but also on their landline at their other residence in the city of Belo Horizonte.

Mr. Guerra Júnior and Ms. Generoso filed a first complaint before the Public Ministry concerning these threats on 20 April 2017, and have on a number of occasions updated the authorities on the different ongoing threats they have received. To date, the case is still under investigation by the Public Ministry.

Mr. Guerra Júnior and Ms. Generoso did not receive protection measures by the PPDDH.

Mr. Lucio da Silva Pimenta

Mr. da Silva Pimenta was evicted from his home as a result of a judicial decision related to the development of the Minas Rio Project and now lives in a shed without running water or electricity. He has never received any compensation from the mining company. Mr. da Silva Pimenta was part of the group requesting the suspension of the public hearing. He has to date not received any threats.

c) Concerns regarding the limited capacity and lack of independence of the State authorities to effectively protect human rights defenders

According to the information received, several links exist between the Minas Gerais state Police and Anglo American, which may compromise its independence with regard to the protection of human rights defenders involved in activism against the mining activities of the company.

In this respect, it is alleged that Anglo American provided new trucks and refurbished the headquarters of the Military Police, the Military Police for

Transportation and the Military Police for the Environment, the costs of which were around 2,5 million reais [approximately 775.294 USD]. It is similarly claimed that the company will refurbish the headquarters of the Civil Police, that it is building a new jail in Conceição do Mato Dentro, and that it funded the construction of sixteen houses for agents of the Military and Civil Police.

Another source of possible bias allegedly stems from the fact that a well-known former high-ranking official of the Military Police is currently employed by the company to coordinate its security activities. The retired policeman is said to spend significant amounts of time at the premises of the Military Police with his former colleagues, which puts him in a privileged position to access the files and often listen to persons presenting complaints, such that confidentiality is not guaranteed. Furthermore, it is feared that this particular ex-officer still exercises leverage over his former subordinates and thus is in a privileged position to secure the interests of the company. In addition, two other former policemen are said to work now for the company, further raising concerns about the independence of the State police.

Given the fact that key institutions for the investigation of crimes and the implementation of protection measures, such as the Public Ministry and the PPDDH, depend on the action of Military and Civil Police, the lack of independence of these corporations is said to severely hinder the efficiency of their work. As a consequence, such an environment discourages human rights defenders from contacting and trusting the State authorities. This severely jeopardized their work.

d) Public hearings organized by the Human Rights Commission of the Legislative Assembly of the state of Minas Gerais

On 24 May and 29 August 2017, public hearings were organized by the Human Rights Commission of the Legislative Assembly of the state of Minas Gerais to discuss the threats received by human rights defenders in the context of the Minas Rio Project. Following these hearings, the Public Ministry of Minas Gerais and the Federal Public Ministry issued recommendations urging the state of Minas Gerais to oblige Anglo American to guarantee appropriate compensation for the persons relocated; to ensure the right of the affected people to participate in the surveys of land, social and property registries; and to safeguard the right of those affected to enjoy independent and freely chosen technical advice of a multidisciplinary character. The State and Federal Public Ministries similarly recommended Anglo American to anticipate and recognize the rights to compensation and participation, ensuring at least the parameters already established by the State environmental agency in the previous phases of the project.

On 9 October 2017, the government of the state of Minas Gerais replied to these recommendations arguing that the communities concerned are not facing

immitigable environmental damage, and thus that there is no obligation under Brazilian law to resettle them.

e) Environmental concerns

Water use and contamination

One of the critical environmental impacts of the project concerns the use of a water slurry pipeline to transport the processed powdered iron ore to an export port at in Açú, on the coast of the state of Rio de Janeiro. This pipeline is 525 kilometers long and passes through 32 municipalities (25 in the state of Minas Gerais and 7 in the state of Rio de Janeiro). Its construction was done in land that had to be expropriated, causing grave damage to agricultural livelihoods and to local ecosystems. Pastures were divided in two by a deep fissure where the pipeline passes. Erosion has reportedly increased. The construction of the port also counted on the expropriation of land, and has caused beach erosion, flooding, and pollution of local farmland by seawater.

It is alleged that the slurry pipeline uses 5,023 cubic meters of water per hour, and thus has significantly reduced the availability of fresh water for other uses, particularly agriculture, in the communities of Agua Quente, Passa Sete, Faustinos, Cabeceira do Turco, Tudo, Sapó, Gondo and Arrudas. Moreover, ammonia is added to the water in the pipeline to ensure that the powdered ore remains in suspension in the water and does not clog the pipe. Therefore, it is claimed that when there are leaks from the pipeline, this ammonia sums up to the pollutants that end up in local watercourses.

Waste disposal and the fear of tailings dam failure

The primary tailings dam of the Minas-Rio Project currently has a capacity of 370 million cubic meters of waste, which makes it one of the biggest in Brazil, and allegedly poses a risk to three communities located in areas where there would not be enough time for the authorities to intervene in case of an accident. The third step of the mining expansion plan envisages further heightening the dam. The communities concerned fear the consequences of possible dam failure, as has happened with other dams in the past. However, it is claimed that neither the state government nor the company consider the communities to be living on land directly affected by the mine. Therefore, these communities are not currently eligible for compensation or relocation.

Grave concern is expressed at the alleged acts of intimidation and threats against Mr. Elias de Souza, Ms. Vanessa Rosa dos Santos, Mr. Reginaldo Rosa dos Santos, Mr. Lúcio Guerra Júnior, Ms. Partícia Generoso, and Mr. Lúcio da Silva Pimenta, as well as their families, in relation to having brought legal proceedings to question the legality of a public hearing for the expansion of the mining project Minas-Rio. Finally, we

express our concern at the underlying environmental and social impacts of the Minas Rio Project in Minas Gerais.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your company to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above, as detailed in the **Annex on Reference to international human rights law** attached to this letter.

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 relevant information regarding the alleged links that exist between Anglo American and the different State Police authorities of Minas Gerais, and explain what measures were adopted by your company to prevent, investigate and sanction any act by your employees that compromises the capacity and independence of these corporations.
3. Please provide information regarding the assessments of environmental impact of the Minas Rio Project and explain how this development is deemed sustainable and beneficial for the populations affected by it.
4. Please provide information as to what human rights due diligence measures has been undertaken by Anglo American and its subsidiaries operating in Brazil to identify, prevent, mitigate and address adverse human rights impact related to this case, including the provision of access to an effective remedy, as set forth in the U.N. Guiding Principles on Business and Human Rights.
5. Please indicate what measures were adopted by the company to provide for or cooperate in their remediation, including for persons and families whose lands were expropriated or who were otherwise affected by the Minas Rio Project.

We would appreciate receiving a response within 60 days. Your company's response will be made available in a report to be presented to the United Nations Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence, and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

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

Anita Ramasastry
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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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 draw the attention of Anglo American to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), 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 Principles 11 to 24 and Principles 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. Moreover, the commentary of the Principle 11 states that "business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes

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" (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 is elaborated below:

Policy Commitment: The first of these requirements, a policy commitment, 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 major 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 against 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).

Finally, the Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts.

In particular, we would like to refer you to articles 3 and 19 of the Universal Declaration of Human Rights (UDHR) and articles 2, 6 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the right to an effective remedy, to life, liberty and security of person, and to freedom of opinion and expression.

With respect to the right to freedom of opinion and expression, we would wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognize its exercise as one of the essential foundations of a democratic society. Similarly, we would like to recall General Comment No. 31 of the Human Rights Committee, which observed that there is a positive obligation on States to ensure protection of individuals exercising Covenant rights, including the right to recourse to legal remedies and to freedom of expression, against violations by its agents and by private persons or entities, which includes the duty to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice and to redress the harm caused by non-state actors. A failure to investigate and bring perpetrators of such violations to justice could, in and of itself, give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). Moreover, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 4, stress the obligation to protect through judicial or other means all individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

Reference should also be made to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Of particular relevance are articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 5 (a), establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully; article 6 (b) and c) provides that everyone has the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance of these rights. article 12 (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

We recall Human Rights Council resolution 31/32, which in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development.