

Mandates of the Special Rapporteur on the situation of human rights defenders and the Working Group on the issue of human rights and transnational corporations and other business enterprises

Ref.: AL OTH 134/2023
(Please use this reference in your reply)

18 October 2023

Mr. Tristan Pascall,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 52/4 and 53/3.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. 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. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may 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 the attention of your company information we have received concerning a strategic lawsuit against public participation against a non-governmental organisation - South African Research Watch (SARW) - because of its independent work to report on human rights impacts that your company has allegedly caused.

South African Research Watch (SARW) is a non-governmental organisation based in Johannesburg. It monitors the conduct of state and corporate actors involved in the extraction of natural resources in Southern Africa, applying an inter-generational socio-economic lens to their research and paying particular attention to human rights and environmental impacts.

According to the information received:

In March 2021, SARW and two of its staff members received notice of a

First Quantam Minerals

lawsuit brought against it by the Canadian-headquartered mining company First Quantum Minerals (FQM) and Kansanshi Mining PLC, in which FQM holds an 80% stake, at the High Court in Johannesburg. The companies sought 1 million South African Rand in damages and unconditional apology from SARW in response to a report published by the NGO in December 2020, following two fact-finding visits to the companies' Kansanshi copper and gold mine in Solwezi, north-west Zambia. The report was the second of two studies carried out by SARW to examine the impact of the Kansanshi mine on the human rights of local communities, including the right to a clean, healthy and sustainable environment. Both reports concluded that the corporate social responsibility (CSR) projects implemented by the companies had been insufficient to offset negative impacts on the local environment and the communities' rights, such as their right to health. A draft of both reports was shared with the company by SARW prior to their publication, leading to the threat of legal action by the companies in each instance.

In May 2021, SARW submitted its intention to defend itself in the case, arguing that the suit brought against it by the companies constituted a strategic lawsuit against public participation (SLAPP) intended to intimidate and silence it. The case was eventually withdrawn by the company in December 2022, following consultations with SARW.

Without prejudging the accuracy of these allegations, we express our deep concern regarding the alleged acts of intimidation and criminalization of human rights defenders and the lack of protection against the human rights abuses that they have allegedly suffered at the hands of the company.

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 be grateful for your observations on the following matters:

1. Please provide any additional information or comments that may be relevant.
2. Please provide information on the human rights due diligence policies and processes established by your company to identify, prevent, mitigate and account for how they address their human rights impacts, in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please provide information on the remedial measures your company has taken, or plans to take, to address the negative human rights impacts caused by its activities, as such as intimidation of human rights defenders.
4. Please provide information on policies your company has taken or is considering taking to ensure the protection of human rights defenders.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a communication expressing similar concerns has been sent to Tendele Coal Mining (PTY) Ltd and to the governments of South Africa and Canada.

Please accept, Mr. Tristan Pascall, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Annex

Reference to international human rights law

In connection with the allegations detailed above and our connected concerns, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31). The guiding principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These guiding principles are based on the recognition of:

- a. "The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms";
- b. The role of business enterprises as specialised bodies or corporations performing specialised functions, which must comply with all applicable laws and respect human rights;
- c. The need for rights and obligations to be matched by appropriate and effective remedies when they are violated".

The guiding principles make clear that companies have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to companies on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The guiding principles have identified two main components of the corporate responsibility to respect human rights, which require "business enterprises to:

- (a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts" (guiding principle 13).

The commentary to guiding principle 13 notes that companies can be affected by adverse human rights impacts, either through their own activities or as a result of their business relationships with other parties (...) The 'activities' of business enterprises are understood to include both actions and omissions; and their 'business relationships' include relationships with business partners, entities in their value chain and any other non-State or State entities directly linked to their business operations, products or services".

To meet their responsibility to respect human rights, companies should have in place policies and procedures appropriate to their size and circumstances:

- (a) A political commitment to uphold their responsibility to respect human rights;

- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact;
- c) Processes to redress any adverse human rights impacts they have caused or contributed to. (guiding principle 15)

According to guiding principles 16-21, human rights due diligence involves:

- (a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise has caused or contributed to through its activities, or that are directly related to the operations, products or services provided by its business relationships;
- (b) Integrate the results of impact assessments into relevant business functions and processes, and take appropriate action in accordance with their involvement in the impact;
- (c) Monitor the effectiveness of the measures and processes adopted to address these adverse human rights impacts in order to know whether they are working;
- (d) Communicate how adverse effects are addressed and demonstrate to stakeholders - particularly those affected - that appropriate policies and processes are in place to implement respect for human rights in practice".

This process of identifying and assessing actual or potential adverse human rights impacts should include substantive consultation with potentially affected groups and other stakeholders (guiding principle 18).

Where an enterprise causes or is likely to cause an adverse human rights impact, it should take the necessary steps to end or prevent that impact. "The establishment of operational-level grievance mechanisms for those potentially affected by corporate activities can be an effective means of redress provided they meet certain requirements listed in principle 31 (guiding principle 22).

In addition, the guiding principle 18 and 26 underline the essential role of civil society and human rights defenders in helping to identify potential adverse human rights impacts related to business. The Commentary to principle 26 underlines how States, in order to ensure access to remedies, must ensure that the legitimate activities of human rights defenders are not obstructed. In its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It explains, for States and companies, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

In addition, we would like to refer your company to articles 6, 19 and 22 of the International Covenant on Civil and Political Rights which guarantee the rights to life, to freedom of opinion and expression, and to freedom of association.

Concerning article 6 of the Covenant, in its General Comment No. 36 (2018)

on the right to life, the Human Rights Committee held that the obligation of State parties to respect and ensure the right to life “extends to reasonably foreseeable threats and life-threatening situations” and that State parties may be in violation of article 6 of the Covenant “even if such threats and situations do not result in loss of life” (para 7). The Committee further stated that State parties must “take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence” and stated that “such persons include human rights defenders” (para 26). State parties to the Covenant must take “necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights” (para 53).

We would also like to strongly underline the 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, adopted by consensus by the UN General Assembly in 1998 and of which article 1 states 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.

Further to article 1 of the Declaration, we wish to refer to several provisions of the standard with particular relevance for the above-detailed allegations, notably article 6(b) of the Declaration, which holds that all persons have the right to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; article 6(c), which guarantees the right to study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and to draw attention to these matters; and article 9.5, which states that States shall conduct prompt and impartial investigations whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

We would also like to emphasise article 12 of the Declaration, which states that everyone has the right to participate in peaceful activities against violations of human rights and fundamental freedoms *and* that the State shall take all necessary measures to ensure the protection of any persons exercising their rights as referred to in the Declaration from violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action they are subjected to as a consequence.