

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 rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: OL
OTH 17/2016:

31 May 2016

Dear Mr Victor Caruso,

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 rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 26/22, 28/11, 26/12, 25/2, 24/5, and 25/18.

In this connection, we would like to bring to your attention information we have received concerning the assassination of the environmental human rights defender, Mr. **Sikhozi Rhadebe**.

Mr. Sikhozi “Bazooka” Rhadebe was the founder and chairperson of Amadiba Crisis Committee, an advocacy group launched in 2007 to campaign for the rights of the residents of the Xolobeni community in the Eastern Cape, South Africa. ACC has been at the forefront of a campaign opposing open-cast mining of titanium in the Xolobeni area by your company, Mineral Commodities Limited (MRC).

According to the information received:

For several years, members of the Amadiba Crisis Committee (ACC), with the help of local residents, have reportedly resisted attempts by Mineral Commodities Limited (MRC), and its local subsidiary, Transworld Energy and Minerals (TEM), to access the titanium-rich Xolobeni coastal dunes, fearing that the mining venture would lead to their forced removal from their land and threaten their livelihoods.

In 2008, the mining company secured a mining licence from the Department of Mineral Resources. However due to protests by the ACC, the licence was revoked in 2011. MRC has filed a new application to mine in Kwanyana. The company

needs the community to give its consent and to carry out environmental studies before a licence is issued. They have not been able to do this because ACC has blocked the area to those wanting to carry out such studies. This led to violence on 3 May 2015 where some community members who support the mining company shot at members of the ACC, injuring some. Similar shootings also took place in December 2015, without any police intervention.

In March 2016, Mr. Rhadebe was informed that his name together with other ACC members, was on a “hit list” of strong opponents to mining operations in Xolobeni.

On 22 March 2016, at 8.30 p.m., two unidentified men arrived at the home of Mr. Rhadebe, claiming to be police officers. Mr. Rhadebe was subsequently taken to a car parked outside, where he was shot eight times. He died at the scene as a result. An investigation into the murder of Mr. Rhadebe has reportedly been handed over to the Directorate for Priority Crime Investigation. Mr. Rhadebe is the fifteenth opponent of the mining venture to be killed, including other members of ACC.

Grave concern is expressed at the assassination of Mr. Rhadebe which appears to be directly related to his role as chair of the ACC, his legitimate human rights work in the promotion of human rights, the protection of the rights of the Xolobeni community, and in this regard the exercise of his right to freedom of association and to freedom of expression in opposition to the mining operations foreseen by Mineral Commodities Ltd and its local subsidiary in the Xolobeni area. Further concern is expressed that individuals expressing opposition to the mining operations in the community have been victims of repeated acts of intimidation, violence and assassinations.

While we do not wish to prejudge the accuracy of these allegations, we would like to take the opportunity to draw your attention to the applicable international human rights norms and standards, cited in the **Reference to International Human Rights Law Annex** attached to this letter.

In addition, 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 and/or any comment(s) you may have on the above-mentioned allegations.
2. How is Mineral Commodities Ltd (MRC) meeting its responsibility to respect human rights? Does it have a policy commitment (approved at the most senior level of the company) that is reflected in its operational policies and procedures?

3. Please explain what MRC is doing to carry out its human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts in its operations and business relationships (as per the Guiding Principles on Business and Human Rights, Principles 17-21), in general and specifically to its operations in the Xolobeni area.

3. Please explain whether MRC has conducted meaningful consultations with potentially affected groups and other relevant stakeholders such as human rights defenders and civil society organizations (including ACC) in order to identify, prevent, mitigate and address its potential adverse human rights impacts in relation to its mining operations in the Xolobeni area.

4. Please indicate whether MRC has established or participates in any operational-level grievance mechanism to address and remediate the grievances expressed by the affected community in the Xolobeni area and by ACC.

5. Please indicate what measures your company has taken to ensure that the affected community in the Xolobeni area and human rights defenders are able to raise their concerns and grievances about MRC's mining operations without fear of threats or acts of intimidation and harassment of any sort.

6. Please indicate if MRC has received any guidance from the Government of South Africa on its corporate responsibility to respect human rights, and specifically on its expected human rights due diligence process.

We would appreciate receiving a response as soon as possible. Your response will be made available in a report to be presented to the Human Rights Council for its consideration and publicly available at the following website in due course: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>

We would like to inform you that a letter addressing similar allegations and concerns as those mentioned above has also been sent to the Government of South Africa.

Please accept the assurances of our highest consideration.

Dante Pesce

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

John Knox

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights (UDHR);
- The International Covenant on Civil and Political Rights (ICCPR);
- The UN Guiding Principles on Business and Human Rights;
- The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
- The UN Declaration on Human Rights Defenders.

First, we would like to remind you that MRC, as a business enterprise, has human rights responsibilities, as outlined in the UN Guiding Principles on Business and Human Rights. The Guiding Principles were unanimously endorsed by the Human Rights Council in 2011 (resolution A/HRC/RES/17/4). They are recognized as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. The Guiding Principles clarify that 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 corporate responsibility to respect human rights covers the full range of rights listed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the eight International Labour Organization core conventions. 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.

The Guiding Principles 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:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) 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
- (c) 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:

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). This due diligence process should involve meaningful consultation with potentially affected groups and other relevant stakeholders (including human rights defenders and civil society organizations) 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 the 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 the 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 the company identifies that it has "caused or contributed to adverse impacts, they 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. Guiding Principle 31 outlines that all non-judicial grievance mechanisms should be: (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.

In addition, the following international standards are of particular relevance to the application of the corporate responsibility to respect human rights:

Articles 1, 2 and 3 of the Universal Declaration on Human Rights (UDHR) provide for the rights to equality, non-discrimination of any kind and the right to life. Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by South Africa on 10 December 1998, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

States have the duty to investigate, prosecute, and punish all violations of the right to life. The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts.

In addition, article 19 of the ICCPR guarantees the right to freedom of opinion and expression. As interpreted by the Human Rights Committee, the provision places an obligation on States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC34). Similarly, article 22 of the ICCPR guarantees the right to freedom of association, and the UN Human Rights Council reminded States of their obligation to “ respect and fully protect the rights of all individuals to assemble peacefully and associate freely... human rights defenders... seeking to exercise or to promote these rights” (A/HRC/RES/24/5, OP2).

Finally, we would like to refer to 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. In particular, articles 1 and 2 the Declaration 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.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.