



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 1 September 2020

A/TO: Businesses

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DE/FROM: Beatriz Balbin  
Chief  
Special Procedures Branch

A handwritten signature in blue ink that reads "Beatriz Balbin".

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REF:

PAGES: 5 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

COPIES:

OBJET/SUBJECT: **Questionnaire from the Special Rapporteur on the situation of human rights defenders**

Please find attached a questionnaire from the Special Rapporteur on the situation of human rights defenders available in English (original language) French, and Spanish (unofficial translations). In the online version of the questionnaire, available in OHCHR website, the Arabic and Russian versions (unofficial translations) will also be uploaded.



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**Mandate of the Special Rapporteur on the situation of human rights defenders**

1 September 2020

Dear Madames and Sirs,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolution 43/16.

I would like to inform you that I will dedicate my next thematic report to the issue of killings of human rights defenders. This report will be presented at the 46<sup>th</sup> session of the Human Rights Council in March 2021.

Accordingly, I am seeking the views and inputs of Members and observer States, National Human Rights Institutions, United Nations agencies, funds and programmes, international and regional organizations, civil society, including non-governmental organizations and other relevant stakeholders as well as businesses and International Financial Institutions.

Please complete the questionnaire below, and kindly submit it electronically to [defenders@ohchr.org](mailto:defenders@ohchr.org) no later than **5 October 2020**, with the subject line: "Human Rights Defenders mandate: Submission to the Questionnaire". There is a word limit of 2500 words per questionnaire.

The questionnaire and a concept note on the report is also available in English (original language), Arabic, French, Russian and Spanish (unofficial translations) on the website of the Office of the High Commissioner for Human Rights: (<https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>).

All submissions received in accessible Word formats will be published in the aforementioned website, unless the submitter clearly indicated that they did not wish to have their input be made publicly available when submitting their response.

I sincerely hope that you will be able to take part in this consultation and submit the completed questionnaire, which will substantively inform the forthcoming report.

Please accept the assurances of my highest consideration.

A handwritten signature in black ink that reads "Mary Lawlor".

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Businesses

**Questionnaire for Businesses by the  
UN Special Rapporteur on the situation of human rights defenders  
Mary Lawlor, September 2020**

**Contact Details**

Please provide your contact details in case we need to contact you in connection with this survey. Note that this is optional.

Type of Stakeholder (please select one)	<input checked="" type="checkbox"/> Business
Name of Stakeholder	Anglo American
Name of Survey Respondent	██████████ ████████████████████
Email	██ ██
Telephone	████████████████████ ████████████████████
Address	██
Can we attribute responses to this questionnaire to your Business publicly?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Comments (if any):

**Questions**

**Anglo American PLC Response to the UN Special Rapporteur on the Situation of Human Rights Defenders questionnaire for business.**

- How do you ensure free, prior and informed consent with the affected community before you undertake extractive mining, hydroelectric dams, logging etc.?**

The Anglo American Social Way 3.0 (Social Way) is an integrated set of policies and processes required for social performance at Anglo American operations that guides all our work with our host communities. Our Social Way is publicly available [here](#). The Social Way requires that we obtain and retain Free Prior and Informed Consent (FPIC) with indigenous groups. This task states that the process of FPIC should be documented in the Community Engagement Plan, with evidence of an FPIC agreement where consent is given.

In cases where national legislation or legal precedent require a site to develop a specific type of FPIC related plan and agreement, those national requirements may replace the method outlined in the Social Way as long as they satisfy the requirements of the Social Way and communities agree they represent consent.

The FPIC agreement outlines the agreed terms under which sites activities can proceed. The agreement must be signed or otherwise validated by legitimate representatives of the site and the community. The agreement typically includes the following provisions:

- Commitments made by both parties,
- Description of site activities and (potential) adverse impacts,
- Duration of the agreement,
- Procedures for renewal, termination, renegotiation or withdrawal of consent,
- A mutually agreed grievance/dispute-resolution process,
- What might happen under possible future scenarios; e.g. if there are changes to the agreed site design and activities,
- Economic terms and conditions (e.g. compensation, benefit sharing),
- Other terms and conditions as mutually defined or recognised.

If consent is not given during the initial process, the site shall follow the indigenous community's wishes regarding whether FPIC for the same or similar activities may be sought again later. Conditions for this should be outlined in the Community Engagement Plan.

It's worth stating that at Anglo American the FPIC agreement is not the end of the FPIC process. Engagement with indigenous communities throughout the Life of Asset is carried out to ensure that commitments made are delivered and that consent is maintained and/or renewed. Our FPIC Guidance is publicly available [here](#)

The approach described in this question is aligned with relevant international standards and good practice, including the **International Finance Corporation's (IFC) Performance Standard 7 (IFC PS7)** and the **International Council on Mining and Metals Position Statement on Indigenous Peoples**.

**2) What mandatory human rights and environmental due diligence measures do you implement to assess the impact your operations may have on the affected communities?**

Our Social Way is aligned with international standards on human rights which include respect for human rights through the UN Guiding Principles on Business and Human Rights (UNGPs) and the Voluntary Principles on Security and Human Rights (VPs). Human rights due diligence is embedded as part of this and includes an Assurance Framework through which compliance is assessed annually.

Within the Social Way there is a Social and Human Rights Impact and Risk Analysis (SHIRA) tool which provides a comprehensive, cross-functional assessment of social and human rights impacted annually. The SHIRA includes a prioritisation rating that reflects the UNGP process. There is focus on impacts to rights holders as opposed to only business risk.

The SHIRA is guided by the mitigation hierarchy of avoiding, minimising, mitigating, remediating and offsetting/compensating. In addition, the SHIRA tool is guided by the hierarchy of controls of elimination, substitution, engineering, separation, administration, and PPE. The SHIRA is based on a vulnerability assessment that assesses both systemic and site-related vulnerabilities. It is informed by stakeholder engagement and external reporting through platforms such as community engagement forums. The SHIRA incorporates the principles and objectives of human rights due diligence (HRDD) into its methodology. However, it does not replace the full HRDD process required by the UNGPs as it does not include the rights of all rights holders.

In 2018, in collaboration with Europe Conflict and Security (ECAS) Consulting, a specialist organisation focussing on human rights, we conducted an independent Group-wide HRDD process, whose recommendations has informed our Five-Year Human Rights Action Plan. While our current approach to HRDD is robust and largely aligned with the UNGPs, we recognise that there is room for improvement. In

this regard we are currently running a HRDD gap analysis process that is nearing completion. The outcomes will provide guidance on HRDD for some of our business relationships and human rights defenders.

From a supply chain perspective, our due diligence measures are guided by our Responsible Sourcing Standards (RSS) for Suppliers. The RSS is a supplier code of conduct that outlines our minimum expectations. Participation in our responsible sourcing standard is a mandatory requirement for suppliers and is embedded in our supplier management processes and contracting arrangements. Suppliers are required to:

- Commit to responsible business practice by committing to our Responsible Sourcing requirements, detailed in the RSS, as a pre-condition to supply Anglo American,
- Complete a self-assessment questionnaire (SAQ), the SAQ is required during supplier registration, qualification, updates and sourcing events,
- Provide evidence of a third-party assessment, we can also request a supplier to conduct a new third part assessment if we determine there is a need,
- When a risk has been identified, including a breach to the RSS, suppliers are required to develop corrective action, timelines and provide feedback on progress.

The RSS is aligned with best practice including the UNGPs, the VPs and the Conventions of the International Labour Organisation (ILO)

Our **Safety, Health and Environment (SHE) Way** is a management system framework that describes our systemic approach to the management of SHE risks and opportunities and how this integrates into our business processes. Guided by the SHE Way, each Anglo American business and operation must determine SHE-related risks and opportunities which need to be addressed through our SHE management system. Once risks and opportunities are identified, control strategies are developed which are monitored and evaluated through assessments, audits and management reviews. The SHE Management System is an ongoing system that is continually seeking to improve our SHE performance. Our SHE Way provides guidance on the identification of SHE -related impacts in our external environment, including communities. While the SHE Way is largely focused on SHE risks and impacts within our operations, it also recognises that the external environment, inclusive of communities, can be impacted by our operations similar to how our operations can be impacted by the external environment.

**3) Do you have a human rights policy, which recognises the legitimacy of human rights defenders and has a proper right of access to remedy clearly articulated?**

As mentioned in question two, we have a Group Human Rights Policy that is aligned with the UNGPs, the VPs and recognises all internationally recognised human rights. As a supporter of the UNGPs we accept our responsibility to respect human rights and address adverse human rights impacts with which we are involved in.

We do not yet have a dedicated policy on human rights defenders. However, we appreciate the role of human rights defenders in safeguarding human rights, the rule of law, and healthy, functioning markets. In our human rights policy, we commit explicitly to paying special attention to the rights of potentially vulnerable groups. Human rights defenders can also be vulnerable if they are marginalised. The outcomes of our ongoing HRDD process will inform any future policy or protocol concerning human rights defenders.

**4) If a human rights defender(s) or his/her organization is threatened in connection with your operations, what steps do you take to help protect them?**

We are part of the Business Network on Civic Freedoms and Human Rights (the Business Network). As part of our commitment to the Business Network, Anglo American is a signatory of the Business Network Statement on Supporting Civic Freedoms, Human Rights Defenders and the Rule of Law. Our commitment to this statement aligns with our core values of safety, care and respect, integrity and accountability. To read the full statement to which we are a signatory, [click here](#).

As a signatory of the statement, we have committed to work to find effective ways that businesses can positively contribute to situations where civic freedoms and human rights defenders are under threat. We

also recognise that as a company working across various jurisdictions, there is no single way to protect human rights defenders and, in many cases our approach to protecting human rights defenders is determined by the context and our relationship with critical stakeholders. Regardless of the approach, we are always guided by our values which respect human rights and therefore recognise our duty to protect and advocate for human rights defenders, especially if the threats are in connection with our operations.

**5) Do you accept the legitimate right to defend human rights and if a human rights defender is killed for opposing your companies' activities and/or its adverse impact, are you in principle ready to publicly condemn it? (Please share examples)**

We have a strong commitment to human rights. Respect for human rights is stated explicitly in our Code of Conduct and reflected in our core values of safety, care and respect, integrity and accountability. As mentioned previously, we are currently running a HRDD gap analysis process that will give guidance to a human rights defenders' protocol.

In instances where human rights defenders have been attacked in connection with our operations, we have condemned the attacks.

**6) Could you please share good practices (evidence-based) that have proved effective to: a) respond to death threats against defenders promoting and defending human rights from the adverse impact of your Business operations and b) to prevent them from escalating) into the killing(s) of human rights defenders?**

As a member of the Business Network on Civic Freedoms and Human Rights, we use the platform to learn from the experiences of other companies and share our own experiences. We believe that platforms like the Business Network enable continuous improvement and the learning of good practice.

By way of an example, a situation involving Human Rights defenders arose in Brazil, in 2017. Minas Rio is an iron ore mine located in the state of Minas Gerais. The operation is surrounded by nine communities namely Gondó, Beco, Sapo, Cabeceira do Turco, Sapo, Turco, Água Quente, Passa Sete and Jassém. Between 2016-2017, Minas Rio applied for mine extension licenses and planned to hold a public consultation with regards to these on the 11<sup>th</sup> of April 2017. A group of Human Rights Defenders successfully applied for an injunction to stop this consultation on procedural grounds and the assembly of 600 people had to be cancelled at the last minute. Shortly after, Anglo American Brazil communicated the reasons for the cancellation on its Facebook page and through internal communication channels to employees. In the internal communication the names of the human rights defenders were listed. The names were sourced from the injunction which had been made public. The human rights defenders felt that the publication of their names endangered their lives. This was a significant learning incident for our operations in Brazil as we had not had this type of situation before. After several engagements with local authorities, the Special Rapporteur and community members, Anglo American Brazil undertook the following practices:

- Contracted an external consultancy, ECAS consulting, to conduct a human rights due diligence process with special focus on human rights defenders.
- Established a Coexistence Committee with communities. The Committee is a formal consultative forum for dialogue between representatives of the community and Anglo American,
- Issued a public statement condemning any intimidation and threats to the safety of the human rights defenders,
- An internal investigation was conducted on the allegations of threats to the lives of the human rights defenders,
- The provision and support of human rights training for local law enforcement

The Coexistence Committee has been successful with over 85 meetings held and over 1000 people attending, with more than 90% of participation from families in the affected communities. The Committee's roles include acting as channel between the communities and the operation, building trust and transparency and working together to mitigate the impacts of the operation on local communities. It has provided a better channel of communication. Through a participatory process, the Committee has designed and implemented our Optional Relocation Programme, which addresses the issue that the human rights defenders were

advocating for originally. Through the involvement of the human rights defenders and communities, the programme provides support for relocations, inclusive of livelihood restoration for 36 months, training courses, R\$50 000 for adaption aid, 24 months basic food baskets and assistance with moving expenses. In 2019, 10 families had been relocated because of this programme. In addition to Optional Relocation Programme, the Committee also designed and implemented mitigation programmes for community members who chose to remain in their community instead of being relocated. This programme included the refurbishment of houses and the provision of community services, including the building and support of a healthcare facility. Through the Committee, we work together with community members to mitigate the potential impacts of our operation.

We would like to thank you again for the opportunity to respond to this Questionnaire. Please do not hesitate to get in touch if you have any further questions. We would be happy to arrange a virtual meeting to discuss further.

Yours sincerely,

**Hermien Botes**

Head of Sustainability Engagement  
Anglo American

**Sikhulekile (Khule) Duma**

International & Government Relations Specialist  
Anglo American

In this response, references to "Anglo American", the "Anglo American Group", the "Group", "we", "us", and "our" are to refer to either Anglo American plc and its subsidiaries and/or those who work for them generally, or where it is not necessary to refer to a particular entity, entities or persons. The use of those generic terms herein is for convenience only and is in no way indicative of how the Anglo American Group or any entity within it is structured, managed or controlled. Anglo American produces group-wide policies and procedures to ensure best uniform practices and standardisation across the Anglo American Group. Such policies and procedures constitute prescribed minimum standards only. This response does not seek to address non-managed / non-operated companies or entities in which we have an interest.