

Civil society unites against corporate censorship and bullying

Companies that have scant regard for precious environments and the communities that live in them are not afraid to adopt bullying tactics to silence their critics. Civil society organisations have recognised that standing together is essential if they are to defend the right to speak the truth, freely and in the public interest.

On the evening of 22 March 2016, two unknown men impersonating police officers arrived at the house of Sikosphi Bazooka Rhadebe in Mbizana, Pondoland. They proceeded to shoot Rhadebe several times, leaving him dead in front of his son.

At the time, Rhadebe was the chairperson of the Amadiba Crisis Committee, representing a Pondoland community who have been defending their land and livelihoods from a proposed titanium sand mining project at Xolobeni — a project proposed by ASX-listed Australian mining company Mineral Commodities Resources (MCR).

That same year, Christine Reddell and Tracey Davies, attorneys from nonprofit law clinic Centre for Environmental Rights, began to scrutinise the Tormin operation of MRC subsidiary Mineral Sands Resources near Lutzville on the West Coast.

In September 2016, environmental authorities executed a search warrant at the Tormin site as part of a criminal investigation; in March 2017, the Cape High Court confirmed that Mineral Sands Resources had expanded its operations without the required environmental authorisation. The lawyers also found a company that was attempting to expand that environmentally destructive operation and set about objecting to the expansion — no doubt steps that did not suit the company's plans.

As part of that work, Reddell and Davies, with West Coast activist Davine Cloete, made a presentation to a small group of people at the University of Cape Town's Summer School in January 2017 — speaking about the company's environmental impacts and its alleged failure to comply with environmental laws.

Four months later, Mineral Sands Resources sued Reddell and Davies for R250,000 and Cloete for R500,000 for allegedly defaming the company and its directors during that presentation at UCT. This case is being vigorously defended and will undoubtedly eventually be defeated.

This is not the only case of defamation or other legal action in South Africa aimed at silencing, intimidating and discouraging activists and critics of extractive projects — particularly extractive projects that pose a grave risk to natural resources and livelihoods from those resources.

MRC itself has in the past two years sued a West Coast journalist and a local newspaper for comments perceived to be critical of its operations — and another attorney and two activists for statements critical of its controversial attempts to mine at Xolobeni on the Wild Coast.

We also have examples of companies threatening civil society organisations with litigation, mining companies that are procuring interdicts against whole communities for protesting against the damaging activities of those mines and mining companies facilitating the arrest of community activists for protesting against their activities, even when that protest is peaceful.

As pressure mounts globally on companies to hold them accountable for their impact on natural resources, companies are increasingly using litigation against activists and environmental organisations.

In 2016, Canadian logging company Resolute Forest Products sued Greenpeace, Stand. Earth and various staff members for their criticism of the environmental impacts of the company's logging practices. Most of these cases have since been dismissed.

In August 2017, American pipeline company Energy Transfer sued Greenpeace and Banktrack for \$900-million for alleged violations of racketeering legislation. That claim was dismissed in February 2019. Since 2018, oil corporation Exxon — facing its own litigation regarding its climate liability — has lashed out by subpoenaing and suing not only environmental activists and organisations, but public officials.

Strategic lawsuits against public participation, popularly known as “SLAPP” suits, typically target civil society and community activists, journalists, whistleblowers, and everyday people who exercise their constitutional rights. SLAPPs masquerade as ordinary civil cases, but their true purpose is to censor, intimidate and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition.

The lawsuit can also take a toll on the defendant's reputation and morale. In many cases, SLAPP bullies hope that the lawsuit will end in a binding settlement that muzzles the critic's future rights to free speech.

Even worse, there is what is known as the broader “chilling effect”: SLAPP suits are also aimed at sending a message to all activists that resisting that company, and others like it, poses a personal risk.

Most SLAPP suits are eventually dismissed, but it doesn't have to succeed to meet its goal. The goal is not justice, but retaliation. Even a meritless lawsuit can drag on for years, draining a defendant's resources through costly and time-consuming litigation.

Abusive corporate tactics like this are unacceptable in a constitutional democracy that recognises and protects the right to freedom of speech. Moreover, it is also unacceptable to grant mining rights and approvals to companies that use these kinds of tactics. The series of lawsuits brought by MRC has been drawn to the attention of Mineral Resources Minister Gwede Mantashe, but the minister has been silent, instead choosing to attend a promotional visit at the Tormin mine in early 2019.

Lawsuits, despite their chilling effect and the devastating financial impact that an adverse judgment against activists can have, are nothing compared to the physical threats and intimidation many community activists and their families face every day.

As recently as April 2019, the Centre for Environmental Rights, with environmental justice organisation groundWork and international partners Human Rights Watch and Earthjustice,

published a report detailing the fear and intimidation many activists in mining-affected communities deal with on a daily basis.

And of course, we will not forget Comrade Bazooka Rhadebe, who paid the ultimate price for his activism at Xolobeni in 2016. As we stand here today, no one has been arrested for his murder.

As civil society organisations launch a new joint advocacy campaign known as Asina Loyiko (We Have No Fear) — United Against Corporate Bullying, we say the following: Constitutional rights matter. Freedom of speech matters. Civil society organisations and community activists are a vital part of our democracy and crucial in keeping corporates accountable. This is particularly so when it comes to defending our natural resources, and particularly where our regulatory agencies are under-resourced, or politically compromised.

We will not be silenced, and together we will defend the right to speak the truth, freely, and in the public interest. **DM**

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