

Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises

REFERENCE:

15 May 2017

Dear Madam,
Dear Sir,

I am writing to you on behalf of the United Nations Working Group on Business and Human Rights. The Working Group is mandated by the Human Rights Council to promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights for implementing the United Nations "Protect, Respect and Remedy" Framework.ⁱ

We are encouraged by the decision of the Australian Government to launch an inquiry into enacting a modern slavery law in Australia and would like to offer our observations in connection with this initiative.

The International Labour Organization (ILO) estimates that 21 million people worldwide are victims of forced labour, the vast majority of whom are exploited by private individuals or enterprises.ⁱⁱ Modern slavery is one of the major business-related human rights challenges of our times and requires urgent attention by governments and businesses globally. As highlighted by Australian civil society and business leaders, it is also an issue that involves Australian companies both at home and abroad through their global supply chains.ⁱⁱⁱ

The Guiding Principles make it clear that States must protect against human rights abuse within their territory and/or jurisdiction by business enterprises. This requires taking appropriate steps to prevent, investigate, punish and remediate such abuse through effective policies, legislation, regulations and adjudication. Moreover, States should clearly set out the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations, including throughout their supply chains. Government action to incentivize business respect for human rights in supply chains may include a range of measures, including disclosure requirements and penalties (civil, administrative and/or criminal) for slavery-related offenses committed domestically as well as abroad.

Regulations that require business enterprises to report on how they address their human rights impacts are important for fostering respect for human rights by business enterprises. The UN Guiding Principles highlight that where the nature of business operations or operating contexts pose a significant risk of negative human rights

Members of the Joint Standing Committee
on Foreign Affairs, Defence and Trade

impacts, a mandatory reporting requirement to communicate how a business addresses its human rights impacts can be appropriate. Due to the seriousness and prevalence of forced labour across different sectors and countries, the Working Group also considers that mandatory due diligence elements requiring reporting on risks and how they are mitigated would be particularly appropriate.

A major contribution of the UN Guiding Principles is the clarification that the responsibility to respect human rights requires that business enterprises:

- a) (Not only) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- b) (But also) 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.

The Guiding Principles clarify that business enterprises' human rights due diligence should cover both these aspects. It is also important to note that the corporate responsibility to respect human rights as clarified in the Guiding Principles applies to all business enterprises, regardless of their ownership, sector or size.

The Working Group has previously welcomed legislative efforts in other countries aimed at ensuring better protection against business-related human rights violations both domestically and in global supply chains. Such efforts include developments specifically aimed at addressing modern slavery, such as the 2015 UK Modern Slavery Act and the 2017 Indonesian Ministerial Regulation to protect against human rights abuse in the fishing industry, as well as legislation aimed at addressing business-related human rights abuse generally, such as the 2017 French duty of vigilance law.^{iv}

The Working Group encourages the Committee to look to the UN Guiding Principles as it considers enacting a Modern Slavery Act and urges Australia to demonstrate leadership by joining the growing group of States that have taken legislative steps to strengthen protection of human rights in domestic economies and global supply chains. It is essential that such efforts are aligned with international standards, notably the UN Guiding Principles and relevant ILO conventions and recommendations. Moreover, the Working Group would like to suggest that Australia looks to prior legislation and implementation and build on existing good international practices. It is also critical that there is coordination and collaboration between governments to ensure coherence and an international level playing field in order to most effectively tackle common challenges and plug gaps in existing efforts.

The Working Group would also like to note that all governments need to consider the full range of internationally recognized human rights when seeking to meet the State's duty to protect against human rights abuse involving business enterprises. Efforts to address forced labour are laudable and necessary, but governments should also take steps toward full implementation of the Guiding Principles, including through the development of national action plans.^v We are pleased that Australia has committed to developing a national action plan and look forward to the outcome of that process.

Effective responses to modern day slavery are an important contribution to global efforts toward sustainable supply chains and economic activities in which the human rights and dignity of all are respected. We wish you all the best in your inquiry into the establishment of a Modern Slavery Act for Australia and stand ready to provide further input and advice if needed.

Yours faithfully,

Michael K. Addo
Chair-Rapporteur

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

cc: Senator the Hon George Brandis QC

Encl. ment.

ⁱ <http://www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>.

ⁱⁱ <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm>.

ⁱⁱⁱ <https://business-humanrights.org/en/inquiry-into-establishment-of-a-modern-slavery-act-in-australia>

^{iv} [http://www.ohchr.org/Documents/Issues/TransCorporations/2017-03-](http://www.ohchr.org/Documents/Issues/TransCorporations/2017-03-23_INFONOTEFRANCESUPPLYLAW.pdf)

[23_INFONOTEFRANCESUPPLYLAW.pdf](http://www.ohchr.org/Documents/Issues/TransCorporations/2017-03-23_INFONOTEFRANCESUPPLYLAW.pdf).

^v The Human Rights Council has also encouraged all States to develop a national action plan or other such framework to implement the Guiding Principles (res. 26/22, OP2). The Working Group has developed guidance for States to support such efforts:

http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.