

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

REFERENCE: SPB/SHD/UH/II

18 December 2017

Excellency,

I am writing to you on behalf of the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) regarding the Australian Government's decision not to proceed in developing a national action plan (NAP) on business and human rights at this time.

The Working Group is mandated by the United Nations 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 (UNGPs), the global authoritative standard for the respective obligations and responsibilities of States and business enterprises in preventing and addressing business-related human rights abuse.

We have previously written to members of the Joint Standing Committee on Foreign Affairs, Defence and Trade of the Parliament of Australia in the context of the inquiry into enacting a Modern Slavery Act in Australia, as we welcomed this initiative (Open letter, 14 May 2017). We have taken note of the recent Parliamentary Committee report and do appreciate the Government's plan to introduce a legislation in 2018 to deal with modern slavery in supply chains.

However, the proposed modern slavery legislation as well as other measures to eliminate modern slavery (such as the Bali Process) should not be seen as a substitute for developing a NAP on business and human rights. As we had noted in our May 2017 letter, "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. While efforts to address forced labour are laudable and necessary, governments should take steps toward full implementation of the UNGPs, including through the development of national action plans."

His Excellency
Mr. John Paton Quinn
Ambassador
Permanent Representative
Permanent Mission of Australia
to the United Nations Office and
other international organizations in Geneva

We were pleased to observe the Government of Australia establishing a Multi-Stakeholder Advisory Group on the Implementation of the UNGPs in June 2017. The engagement of small and medium-sized enterprises as part of the process was also a welcome aspect. The Advisory Group recommended unanimously in August 2017 that Australia should develop a NAP, in line with international standards. It was encouraging to see the strong engagement by a range of Australian stakeholders, including business, supporting the recommendation of the Advisory Group.

As part of our efforts to promote the UNGPs, we are calling on all States to develop NAPs on business and human rights as such plans can provide an important policy tool for a coordinated and comprehensive approach to implementing State obligations. The Working Group has also developed guidance to support States in this regard. Equally, the United Nations Human Rights Council in a number of resolutions (most recently in resolution 35/7 of 22 June 2017) has encouraged “all States to take steps to implement the Guiding Principles, including by developing a national action plan or other such framework”. An increasing number of governments are heeding this call to action, including in the Asia-Pacific region. For example, at the recent United Nations Forum on Business and Human Rights in Geneva (27-29 November 2017), we heard commitments from the Governments of Malaysia and Thailand that they are taking steps to develop NAPs to implement the UNGPs.

We appreciate Australia’s support for our mandate to promote implementation of the UNGPs, so we were disappointed by the Government’s decision not to proceed with a NAP at this time. As Australia is set to begin its term in the Human Rights Council in 2018, we had hoped to count Australia among the governments that are showing leadership in advancing implementation of the UNGPs through concrete steps.

We have noted the disappointment expressed by Australian civil society organizations and some Advisory Group members to the Government’s decision not to proceed with developing a NAP at this time. This view was also shared in meetings in Sydney that I had with some of the Advisory Group members and other stakeholders during an academic visit in the first week of December 2017.

The Advisory Group established by the Government has several experts known globally for their important work on business and human rights. We would encourage the Government of Australia to continue dialogue with these experts and other stakeholders, in order to find ways to move forward in developing a NAP. We also stand ready to provide further input and advice if needed.

The Working Group would also like to take this opportunity to address a misconception that business actors are hesitant for a stronger Government leadership in the business and human rights field. In fact, a series of recent consultations – including the annual Australian Dialogue on Business and Human Rights co-convened by the Global Compact Network Australia and the Australian Human Rights Commission – show a general support for the development of a NAP from Australian businesses. Global business organizations such as the International Chamber of Commerce and the International Organization of Employers have also been calling on governments in all regions to develop NAPs. In short, what we are seeing is that businesses in Australia

and in other parts of the world are calling on States to develop NAPs to set out clear expectations for responsible business conduct at home and abroad.

The Working Group once again welcomes the commitment of the Australian Government to explore ways to step up implementation of the UNGPs. We very much hope that the Government will resume its dialogue with business and civil society on the development of a NAP, and we look forward to our continued collaboration in this regard.

Kindly note that, in the spirit of transparency and open multi-stakeholder dialogue on this important issue, this letter will be made available to the public and posted on the Working Group's website.

Please accept, Excellency, the assurances of our highest consideration.

Surya Deva
Chairperson
Working Group on Business and Human Rights

cc: Hon Julie Bishop, Minister of Foreign Affairs