

Ms. Beatriz Balbin  
Chief  
Special Procedures Branch  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
Palais Des Nations  
1211 Geneva 10  
Switzerland

Dear Madam

**Re: Joint Communication of 17 October 2018 from Special Procedures mandate holders regarding the response to the 2015 Doce River disaster (Ref# AL AUS 4/2018).**

I refer to the joint communication dated 17 October 2018 from 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 the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the rights of indigenous people; and the Special Rapporteur on the human rights to safe drinking water and sanitation, which accompanied your letter of the same date.

The Australian Government notes the concerns expressed in the joint communication and provides the following information in response to the three requests included in the communication.

**Q1) Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.**

The Australian Government has monitored developments following the disaster and continues to do so, principally through the Australian Embassy in Brasilia.

The former Australian Ambassador to Brazil was briefed by BHP (then BHP Billiton) on several occasions, including in the aftermath of the disaster. He visited the site of the mine collapse in April 2018 at the invitation of BHP. The Ambassador also discussed the matter with relevant Brazilian federal government officials. All parties indicated that they would act and negotiate in good faith to address and work through the issues related to remediation, the welfare of the affected communities and the desirability of recommencing operations at the mine, which was the primary source of employment and economic activity in the region. The Australian Government has not been a party to these complex negotiations.

In addition, the Government's National Contact Point (NCP) is working together with its UK and Brazilian counterparts to respond to a complaint received in March 2018 (see Q3 below).

**Q2) Please highlight the steps that the Government has taken, or is considering to take to protect against human rights abuse by business enterprises, including BHP Billiton, and ensuring that business enterprises domiciled in its territory conduct effective human rights due diligence to identify, prevent, mitigate and account for how they**

**address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.**

Australia believes that business and respect for human rights go hand-in-hand. Australian businesses must comply with all Australian laws, including those in place to implement Australia's international human rights obligations.

Australia has supported the UN Guiding Principles on Business and Human Rights since their inception in 2011. The Australian Government implements the UN Protect, Respect and Remedy Framework, and actively encourages businesses to apply the Guiding Principles.

The Australian Government has taken a wide range of actions to ensure that Australian businesses act responsibly and observe their human rights obligations both at home and abroad. These include:

- domestic laws on anti-discrimination, which prohibit discriminatory conduct by Australian and international businesses in Australia;
- domestic laws on privacy, which establish a mechanism for protecting individuals' personal information, and apply to private sector organisations with an annual income greater than AU \$3 million;
- domestic laws on employment conditions, and criminal offences for serious misconduct such as forced labour, slavery and torture;
- introduction of the *Modern Slavery Bill* to the Parliament in June 2018, which will establish a requirement for business enterprises to report on their actions to address modern slavery in their operations and supply chains;
- establishment of a Business Engagement Unit to raise business awareness of modern slavery in supply chains, and provide support and advice to business enterprises regarding modern slavery reporting;
- assisting with the launch of the Financial Sector Commission on Modern Slavery and Human Trafficking at UNGA73, which aims to strengthen the role of the global financial sector in fighting modern slavery and human trafficking (Australia will host a regional meeting of the Commission in early 2019);
- a commitment to encourage compliance with the OECD Guidelines for Multinational Enterprises through the activities of Australia's NCP;
- announcement in 2018 that Australia would join the EU-led Global Alliance to End Trade in Goods Used for Capital Punishment and Torture;
- membership of the Voluntary Principles on Security and Human Rights to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights (BHP, as well as Australian companies Rio Tinto, Woodside Energy, Oil Search, Newcrest Mining and PanAust are members of the initiative);
- Australia's Aid-for-Trade program which supports projects that help deliver Sustainable Development Goal 8 – Decent Work and Sustainable Economic Growth
  - for example, Australia's partnership with the International Labour Organization's Better Work Program is improving workplace standards, including wages, working hours, maternity leave and labour relations, for 1.7 million workers in 1,750 factories in Bangladesh, Vietnam, Indonesia and Cambodia, about 80 per cent of whom are women. At the same time, the program has increased productivity in participating factories by up to 22 per cent, and profitability by up to 25 per cent;



- implementation of Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-2019;
- Australia's co-chairing of the Bali Process Government and Business Forum, including the August 2018 Ministerial Conference & Senior Officials Meeting where the Forum endorsed the AAA (Acknowledge, Act, and Advance) recommendations by Ministers, which set out a pathway for government and business to jointly contribute to the eradication of modern slavery through raised awareness, policy guidance (on supply chain transparency, ethical recruitment and redress mechanisms), strengthened legislation, and implementation of ethical business practices;
- leadership (with the US and the UK) on Alliance 8.7 (named for Sustainable Development Goal Target 8.7) to assist all UN member States to eradicate forced labour, modern slavery, human trafficking and all forms of child labour; and
- provision of funding to the Global Compact Network Australia (GCNA), which brings together Australian signatories to the UN Global Compact advance corporate sustainability and the private sector's contribution to sustainable development—including human rights as one of its leadership groups.

**Q3) Please provide information regarding the measures that your Excellency's Government is taking, or considering to take, to ensure that those affected by the activities of BHP Billiton's overseas subsidiaries have access to effective remedies as per the UN Guiding Principles.**

Further to the steps and measures outlined in the response to question 2, Australia has set up a National Contact Point (NCP) within the Department of the Treasury to further the effectiveness of the OECD Guidelines for Multinational Enterprises. This includes promoting responsible conduct and providing a mediation and conciliation platform for helping to resolve specific instances of alleged non-observance of the Guidelines.

When an NCP receives a complaint, it makes an initial assessment of whether the issue raised warrants further examination. If the issue does warrant further examination, the NCP will offer assistance to help resolve the issue which can include facilitating access to consensual and non-adversarial means of resolution, such as conciliation or mediation.

The NCP will conclude the process by issuing a public statement detailing the process and making recommendations as appropriate on the implementation of the Guidelines.

In March 2018, IndustriALL and Building and Wood Workers' International filed a specific instance complaint regarding the Fundão Dam collapse against BHP Billiton and Vale to the NCPs of Australia, the United Kingdom and Brazil. Consistent with the Implementation Procedures of the OECD Guidelines, the Brazilian NCP is leading the handling of the matter. The Australian NCP has agreed to provide all reasonable support to the Brazilian NCP in resolving this complaint.

### ***Conclusion***

I trust the above information will be of assistance to the Special Procedure mandate holders. I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and the Australian Government's strong human rights record.

Yours sincerely



Sally Mansfield  
Ambassador and Permanent Representative  
Australian Permanent Mission to the United Nations  
Australian Delegation to the Conference on Disarmament