



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION

GENEVA

4 April 2019

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 13 February 2019 from Special Procedures mandate holders regarding alleged human rights violations associated with the Dipidio gold and copper mine (Ref# AL AUS 1/2019).

I refer to the joint communication dated 13 February 2019 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 right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; 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, through the Australian Embassy in Manila, has monitored developments related to the allegations against OceanaGold made in the Institute for Policy Studies and Mining Watch Canada Report. OceanaGold has responded to the allegations, and further information about the company's management of environmental and social issues in the Philippines is available in its annual Sustainability Report 2017.

The Australian Ambassador to the Philippines and embassy officials have been briefed by OceanaGold on several occasions. Officials from the embassy visited the mine site in October 2017, at the invitation of OceanaGold.

OceanaGold's operations, and those of 22 other metallic mines, were suspended on 8 February 2017 by then Department of Environment and Natural Resources Secretary Designate¹ Gina Lopez. OceanaGold has appealed the suspension and under Philippine Administrative Order No.2011-22 is able to continue operations while this process is underway. Secretary Designate Lopez took a strong stance against all mining and issued Administrative Order No2017-10 banning open pit mining in the Philippines.

The Government of the Philippines has acknowledged that illegal mining is a significant issue in the Philippines and has caused damage due to the poor environmental and social practices used. The Government is taking steps to address this. Illegal mines are present in Nueva Viscaya near Didipio. In relation to your letter's reference to OceanaGold's 'total opacity on the possible use of cyanide...in its mining activities', it is our understanding that OceanaGold does not use cyanide.

The New People's Army Communist Party of the Philippines (CPP-NPA) is listed by the Australian Government for targeted financial sanctions, pursuant to its obligations under United Nations Security Council resolution 1373 (2001). The Philippine Government has also petitioned the judiciary to proscribe the CPP-NPA as a terrorist organisation under its domestic legislation. Australia notes that the Philippine Government has been active over many years in efforts to counter the CPP-NPA's activities, including through military operations. The Australian Government is unaware of any links between the mining activities of OceanaGold and military operations in Nueva Viscaya.

Q2) Please highlight the steps that Your Excellency's Government has taken, or is considering to take, to protect against human rights abuses by business enterprises, including the company, and ensuring that business enterprises domiciled in its territory respect human rights throughout their operations, 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 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 respect human rights 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 \$3 million;
- domestic laws on employment conditions, and criminal offences for serious misconduct such as forced labour, slavery and torture;

¹ The Secretary is required to be confirmed by the Committee of Appointments to be officially recognised.

- 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 National Contact Point (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;
- 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 overseas subsidiaries of companies, domiciled in its territory, have access to remedies, including in Australia.

Further to the steps and measures outlined in the response to question two, Australia has a NCP within the Department of the Treasury to further the effectiveness of the OECD Guidelines for Multinational Enterprises. The Guidelines include recommendations for conduct in relation to human rights, disclosure, industrial relations, environment, combatting bribery, consumer interests, technology, competition and taxation. The Australian NCP promotes responsible business conduct and provides 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.

The Australian NCP has not received a complaint in relation to OceanaGold Corporation.

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