



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
GENEVA

16 September 2020

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 20 July 2020 from Special Procedures mandate holders relating to serious risks posed to the enjoyment of human rights of affected populations arising from the proposed Frieda River gold and copper mine (“Sepik Development Project”) in Papua New Guinea. (Ref# AL AUS 2/2020).

I refer to the joint communication dated 20 July 2020 from the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; 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 right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expressions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the human rights of 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 five requests included in the communication.

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

According to publicly available information, PanAust is incorporated in Australia but fully owned by Guandong Rising Assets Management Co Ltd (GRAM), a Chinese State Owned Enterprise. Following acquisition by GRAM for \$1.4 billion the company was delisted from the Australian Stock Exchange according to a 12 June 2015 market release from the Australian Securities Exchange.

In 2019, Highlands Frieda Limited (Highlands Pacific Limited) sold its 20 per cent equity in Frieda River Limited to Cobalt 27 which on-sold it to PanAust, according to a Cobalt 27 presentation to the PNG Stock Exchange and media reporting. PanAust is now the sole company to have interests in the Sepik River Development project.

Australia has been supporting the active participation of women in community consultations on the development of the project. Under the Papua New Guinea Women and Extractives project, funded by the Australian Government with in-kind support from Frieda River Ltd., women in seven communities in the vicinity of the mine have received financial literacy and leadership training, which has improved the representation and participation of women in negotiations. Through the project, community leaders in the Frieda River area agreed that:

- ten women representatives from the seven communities will attend the Frieda River Community Leaders Forums;
- the President of the Frieda River Women's Association is an Executive Board Member of the Landowners Association;
- a woman will be appointed to the Board of the Representative Company; and
- a woman from each of the clan groups will be elected to sit on the three clan sub-committees that represent communities in mine agreement-making processes.

This training and representation help to give a voice to women and to ensure that their priorities, in terms of the benefits and costs of mine development, are fully taken on board.

Australia is also working closely with the Government of Papua New Guinea and other donors to implement development programs which strengthen legal systems with the intention of protecting human rights in PNG and assisting it to meet its obligations under relevant international human rights instruments.

Q2) Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to uphold its extraterritorial obligations to protect against human rights abuses by business enterprises within its jurisdiction, and ensuring that business enterprises within its territory conduct effective human rights due diligence to identify, 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 has supported the UN Guiding Principles on Business and Human Rights (in line with the three principles of the 2008 UN 'Protect, Respect and Remedy' Framework on Business and Human Rights) since their inception in 2011, and encourages businesses to apply the Guiding Principles in their operations in Australia and abroad. Australia is also a signatory to the OECD Guidelines, and encourages all companies operating in Australia and Australian companies operating overseas to act in accordance with those principles.

The Australian Government does not accept that it owes human rights obligations extraterritorially with regards to individuals outside of its effective control.

With respect to Australian companies operating abroad, the Australian Government has little or no control over their actions, nor the law of the countries in which such actions may be occurring.

Notwithstanding the absence of an extraterritorial obligation to do so, the Australian Government has taken a wide range of actions to ensure that businesses act responsibly and respect human rights both at home and abroad:

- Australia has endorsed or supported a range of international initiatives that require reporting by companies on human rights related issues. These initiatives include the Global Reporting Initiative, UN Global Compact Communication on Progress, Extractive Industries Transparency Initiatives, Kimberly Process and Voluntary Principles on Security and Human Rights.
- In addition, Australia's Modern Slavery Act 2018 (MSA) aims to ensure business enterprises identify and address modern slavery risks associated with their global business activities. The MSA is the strongest legislation of its kind in the world and requires entities operating in Australia with over AU\$100 million annual consolidated revenue to prepare annual statements on their actions to address modern slavery risks within their global operations and supply chains, including their due diligence and remediation processes. The Australian Government has established a dedicated Modern Slavery Business Engagement Unit (the Unit) within the Australian Border Force to oversee the implementation of the MSA and [reports annually to Parliament](#) on the Unit's work. Through the Unit, the Australian Government is proactively collaborating with business and civil society to build reporting entities' capacity to address modern slavery risks, including by developing detailed guidance which draws on the Guiding Principles. In a world first, the MSA also requires the Australian Government to prepare statements on its own actions to address modern slavery risks in its procurement and investment activities. In this way, the Australian Government is also using its market influence as a significant procurer to engage with suppliers and drive business action on modern slavery. The Australian Government publishes all statements under the MSA on its [Online Register for Modern Slavery Statements](#), which was launched on 30 July 2020.
- Australia is currently developing a new National Action Plan to Combat Modern Slavery, which will cover the period of 2020-2024. This builds on the previous National Action Plan to Combat Human Trafficking and Slavery 2015-2019. Developed in consultation with civil society, academia and business, the new National Action Plan will drive Australia's strategic response to these crimes and solidify Australia's position as a global leader in combatting modern slavery.
- The Australian Government is currently chairing the Voluntary Principles Initiative on Security and Human Rights (VPI). The Initiative promotes principles that guide extractives companies in maintaining the safety and security of their operations, whilst also ensuring human rights standards are adhered to in their relationships with local communities. Verification processes apply to all members of the VPI to ensure their compliance with the Voluntary Principles.
- Australia co-convenes the Financial Sector Commission on Modern Slavery and Human Trafficking, which aims to strengthen the role of the global financial sector in fighting modern slavery and human trafficking.

- Australia is a co-chair of the Bali Process Government and Business Forum and endorses the 'AAA' (Acknowledge, Act, and Advance) recommendations by Ministers at the Ministerial Conference & Senior Officials Meeting held in Bali, in August 2018.
- Australia is playing a leadership role in Alliance 8.7. Named for Sustainable Development Goal Target 8.7, this global partnership assists all UN member States, UN agencies and businesses to promote joined up action to eradicate forced labour, modern slavery, human trafficking and all forms of child labour.
- Foreign Minister Payne announced on 24 September 2018 that Australia would join the EU-led initiative, the Global Alliance to End Trade in Goods Used for Capital Punishment and Torture.

Q3) Please indicate what measures your Excellency's Government has taken to ensure that Australian companies operating abroad are not causing or contributing to abuses of international human rights norms and standards that Australia has undertaken to uphold. Regarding the above, specific measures taken to ensure dam safety, pollution control and environmental worker and indigenous rights are respected and protected in the present case.

As per the response to question two, the Australian Government does not accept that it owes human rights obligations extraterritorially with regards to individuals outside of its effective control.

The Australian Government believes that business and respect for human rights go hand-in-hand. Businesses must comply with all Australian laws, including those in place to implement our international human rights obligations.

Australia has a range of laws and regulations, enacted at both the federal government and state and territory government level, which provide direct or indirect protection against human rights abuse, including by business enterprises. They include laws prohibiting the commissioning or involvement in international crimes; equality and anti-discrimination laws; anti-bribery and corruption laws; privacy laws; labour laws; environmental laws; native title laws; and occupational health and safety laws, among others.

A number of these laws apply extraterritorially to Australian companies, including foreign bribery and other offences under the Commonwealth Criminal Code, including those prohibiting the crimes of trafficking and slavery. The MSA also requires large Australian companies and other entities operating abroad, as well as the Australian Government, to prepare annual statements detailing actions to identify and address modern slavery risks in their global operations and supply chains.

In addition, the federal Australian Government and each state and territory government has procurement guidelines that take into account human rights related matters. These may include consideration of the presence of slavery and/or human trafficking in supply chains; 'dishonest, unethical or unsafe' supplier practices; privacy considerations; sustainability; and indigenous employment and supplier use. On 30 July 2020, the Australian Government launched a free [online procurement toolkit](#) to support Government procurement officers to identify and address modern slavery risks.

Australia has supported the UN Guiding Principles on Business and Human Rights (in line with the three principles of the 2008 UN 'Protect, Respect and Remedy' Framework on Business and Human Rights) since their inception in 2011, and encourages businesses to apply the Guiding Principles in their operations in Australia and abroad. Australia is also a signatory to the OECD Guidelines, and encourages all companies operating in Australia and Australian companies operating overseas to act in accordance with those principles.

The Australian Government provides guidance on business and human rights through specific programs for businesses operating at home and abroad by certain government agencies and support of the Australian Human Rights Commission (AHRC), which provides guidance on the UN Guiding Principles for business. The AHRC and the UN Global Compact Network Australia convene an annual national dialogue with representatives of a number of Australia's biggest companies, NGOs, government agencies, investors and academia to discuss ways to prevent and address the involvement of Australian companies in adverse human rights impacts in Australia and abroad.

Q4) Please indicate specific initiatives taken to ensure that those affected by business-related human rights abuses within your jurisdiction and/or territory have access to effective remedy.

Australia has a National Contact Point (AusNCP) within the Department of the Treasury to conciliate complaints against businesses and promote responsible business conduct in accordance with the OECD Guidelines for Multinational Enterprises. Complaints can be made to the AusNCP about a foreign or Australian multinational enterprise operating in Australia or an Australian multinational enterprise operating overseas. In some cases, it will be appropriate for the AusNCP to work with another NCP in the handling of the matter.

Q5) Regarding all the above, please provide information on any specific measures taken to ensure dam safety, pollution control and environmental, worker and indigenous rights, are respected and protected in the present case.

The Government of Papua New Guinea may be able to provide further information on specific measures relating to dam safety, pollution control and environmental, worker and indigenous rights in the present case.

Yours sincerely,



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

