FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION

GENEVA

10 May 2021

Karim Ghezraoui
Officer-in-charge
Special Procedures Branch
Office of the High Commissioner for Human Rights

Dear Mr Ghezraoui

I refer to your correspondence dated 11 March 2021 attaching a joint communication from a number of Special Procedures Mandate Holders concerning the "alleged violations of the human rights of the affected communities and indigenous peoples in East Nusa Tenggara in the context of the 2009 Montara Oil Spill in the Timor Sea", your reference AL AUS 5/2020.

I attach the response of the Australian Government to this communication. I would be grateful if this could be transmitted to the relevant mandate holders.

Yours sincerely

Sally Mansfield.

Sally Mansfield
Ambassador and Permanent Representative
Australian Permanent Mission to the United Nations

Q 1: Please provide any additional information and/or comment/s you may have on the above-mentioned allegations.

The information provided by the Special Rapporteurs includes the following information:

"The AMSA responded by spraying over 180,000 litres of dispersants onto the oil's surface from 23 August 2009 to 1 November 2009. It is alleged that the Government provided no public information at the time of the decision to use dispersants. It is further alleged that the use of dispersants departs from Australia's preferred mechanical recovery method, adding to the toxicity level of the water." This paragraph is factually incorrect:

- AMSA regularly released information to the media and public on the observed extent of the oil spill and the response strategies that were applied, including the application of dispersants.
- Australia's National Plan (referred to as the National Plan for the Combat of the Pollution of the Sea by Oil and Other Noxious and Hazardous Substances at the time of the incident) does not privilege any response method over another, but rather emphasises in doctrine and practice the selection of the most appropriate method or methods for the situation. Australia has maintained a dispersant capability as part of the National Plan since its inception in 1973.
- Third, while the effective use of dispersants elevated oil concentrations at the point of application, the science is clear that these oil concentrations reduce rapidly to a point where they have no environmental effect. These actions did reduce the amount of persistent oil available to move with ocean currents on the water surface into Indonesian waters. Dispersants were only applied within Australian waters and in areas close to the Montara Wellhead.

Q 2: Please indicate measures taken by your Excellency's Government to ensure the victims of the alleged human rights violations committed by PTTEPAA and federal authorities have access to an effective, adequate and timely remedy, including reparation and adequate compensation.

In August 2016, a class action was launched in the Federal Court of Australia by Indonesian seaweed farmers seeking compensation from PTTEP Australasia. Neither the Commonwealth nor Northern Territory governments were named as co-respondents in the action. The Federal Court of Australia handed down a decision on 19 March 2021 finding that PTTEP Australasia breached its duty of care to the lead applicant (and other members of the class action) and that oil had damaged his seaweed crop, and he was awarded compensation.

Q 3: Please provide updated and comprehensive information on the impacts and damages of the oil spill on the environment and local communities, particularly those outside of the Commonwealth's territory.

Environmental monitoring in Indonesia's territory is a matter for the Indonesian Government. However, the Australian Government has consistently shared information about the Montara oil spill with Indonesian authorities. Throughout the response to the oil spill in 2009, the Australian Government provided regular updates about the type, amount and nature of the oil present in Indonesian waters and Australia's clean-up efforts.

The Australian Government conducted five operational monitoring studies and seven scientific monitoring studies in Commonwealth waters, which were implemented during the response to the

incident and which covered both short- and long-term environmental effects of the Montara oil spill. The reports from these studies are publicly available at: https://www.environment.gov.au/marine/marine-pollution/montara-oil-spill/operational-monitoring-studies and https://www.environment.gov.au/marine/publications/frinal-impact-assessment-montara-oil-spill.

An overarching report on all of the environmental studies undertaken is also available on PTTEP's website at: http://www.au.pttep.com/wp-content/uploads/2013/10/2013-Report-of-Research-Book-vii.pdf.

More generally, the Department of Agriculture, Water and the Environment currently supports two activities involving Australia cooperating with Indonesia on marine environmental management matters through the Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI), and the Arafura and Timor Seas Ecosystem Action (ATSEA) project.

Through these two forums, Australia has worked closely with Indonesia to help give effect to its objectives in the marine environment space.

Within Indonesia, Australia's **CTI funding** supported:

- development of a district-scale marine plan to guide the sustainable use of marine resources for social and economic benefits and biodiversity conservation, along with training and technical support for Rote-Ndao District, East Nusa Tenggara Province. (2015)

- an extension program to small-scale fishers in the Arafura Sea that improved livelihoods through improvements to fisheries productivity, fishing practices, post-harvest handling, storage and transportation, access to seafood markets in Indonesia and business management, piloted a 'ghost net' recovery and recycling program, created economic opportunities for women in the fishing industry, and supported the implementation of Indonesia's Fisheries Management Plan 718 (FMP 718). (2018)

- development and delivery of a curriculum for policy makers and managers to understand how coastal ecosystems, such as mangroves and seagrass, (sinks of Blue Carbon) may be included in national carbon inventories, and the technical and policy aspects associated with such an approach. (2018)

- Indonesia's establishment and hosting of the CTI Secretariat (based in Manado) – both technical and funding support.

Under Australia's membership of ATSEA, Australia assisted in the shaping of a Global Environment Facility (GEF) proposal led by UNDP Indonesia, providing both technical input and a commitment of almost $6.5M in co-financing – required by the GEF of all participating countries. This GEF funding supports $3.18M (USD) for nationally- based activities for Indonesia as well as benefitting from the additional $3.9M (USD) for regional activities.

Q 4: Please indicate measures taken by your Excellency's Government to ensure PTTEPAA complies with Australian as well as international environmental laws and human rights standards, including the right to life, health, right to a safe, clean and healthy environment and the right to food.

In February 2011, the Australian Government entered into a binding Deed of Agreement with PTTEP, the parent company of PTTEP Australasia (Ashmore Cartier) Pty Ltd (PTTEP AA), to implement the PTTEP AA Montara Action Plan (MAP) in respect of all PTTEP's Australian activities. The MAP, to

ensure all PTTEP's Australian operations met industry best practice standards, was subject to an 18-month monitoring program undertaken by independent experts.

The then-Minister for Resources and Energy also attached additional conditions to all offshore petroleum titles held by PTTEP and its Australian subsidiaries, and those that it had an interest in, at that time.

The then-Department of Resources, Energy and Tourism met quarterly with PTTEP to discuss their progress in implementing the MAP, and PTTEP was required to submit monthly reports to the department. In October 2012, Noetic Solutions Pty Ltd confirmed that PTTEP AA had met its obligations under the Deed of Agreement.

PTTEP AA was successfully prosecuted under the *Offshore Petroleum and Greenhouse Gas Storage Act* 2006 (OPGGS Act) in 2012, and fined $510,000 in the Northern Territory Magistrate's Court.

PTTEPAA has sold the Montara asset, but continues to operate in Australian waters. The company must comply with all Australian laws including the *Offshore Petroleum and Greenhouse Gas Storage Act* 2006 (OPGGS Act) under which oil and gas companies must meet a number of requirements before commencing offshore oil and gas activities in Commonwealth waters. This includes holding the appropriate permits, leases and licenses as well as having comprehensive environment and safety plans accepted by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

Q 5: Please advise about the steps taken by the Government to ensure that business enterprises such as PTTEPAA respect human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.

Australia has supported the UN Guiding Principles on Business and Human Rights (in line with the three pillars 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. As an OECD member country, Australia is also committed to the OECD Guidelines for Multinational Enterprises, and encourages all companies operating in Australia and Australian companies operating overseas to act in accordance with those principles.

The Australian Government has taken a wide range of actions related to businesses and respect for human rights issues:

- 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 Compacts 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 modem 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 modem 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

modem 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 modem 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 has developed a new five-year *National Action Plan to Combat Modern Slavery 2020-25*, which was launched in December 2020. 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 modem 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.

- From November 2017 to July 2019, Australia chaired 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

Q 6: In September 2017, the Australian Government published its report on the implementation of the recommendations of the Montara Commission of Inquiry. Please describe any additional efforts the Australian Government has made to implement the Montara Commission's recommendations since it submitted the 2017 report.

and

Q 7: Regarding all of the above, please provide information on any specific measures that have been put in place since the alleged incident to prevent similar human rights and environmental outcomes, such as the enforcement of the polluter pays principle.

Following the Montara incident, the Australian Government established a Commission of Inquiry which looked into the cause of the incident and the effectiveness of regulations in place at the time.

Following the inquiry, the government implemented a significant package of regulatory reforms to strengthen Australia's offshore petroleum legislative framework. These include amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act* 2006 (OPGGS Act) to:

- expand the safety regulator, National Offshore Petroleum Safety Authority, to become NOPSEMA as the single national offshore oil and gas regulator for safety, environment and well integrity
- create a Titles Administrator (the National Offshore Petroleum Titles Administrator)
- provide for a 'polluter-pays' obligation and associated third party cost-recovery mechanism
- broaden the insurance requirements to require maintenance of sufficient financial assurance as compulsory, rather than if directed by Government.
- include a statutory duty requiring titleholders to stop, contain, control and clean up a hydrocarbon spill, carry out appropriate monitoring of environmental impacts, and to remediate the environment where any damage has occurred.

A detailed summary of these regulatory reforms can be found in the 'Australian Government Report on the implementation of the recommendations from the Montara Commission of Inquiry' published on the DISER website: https://www.industry.gov.au/data-and-publications/montara-commission-of-inquiry.

Since then, the regulatory and operational environment for the offshore oil and gas sector has undergone a cycle of continuous improvement. A review of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 was undertaken in 2013-14; a review of the Well integrity regulations was done in 2014-15; and a comprehensive review of the safety regulatory regime was undertaken between 2018 and 2021. In addition, a review of the petroleum industry's decommissioning obligations and ongoing financial liability concluded in early 2021, and further legislative changes are currently under consideration.