

Check against delivery



Statement by Mr. Surya Deva

Vice Chairperson, Working Group on the issue of human rights and transnational corporations and other business enterprises

At

The Canadian House of Commons' Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development

23 March 2021 (via Zoom)

Mr. Chair

Thank you very much for inviting the UN Working Group on Business and Human Rights to share views about the role and powers of the Canadian Ombudsperson for Responsible Enterprise (CORE).

The Working Group has a mandate to promote the effective dissemination and implementation of the UN Guiding Principles on Business and Human Rights (UN Guiding Principles). We work with States and other stakeholders to discharge this mandate. If requested, we can “provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights”.

Access to remedy for business-related human rights abuses is an important component of the UN Guiding Principles. As the Working Group clarified in its 2017 report to the UN General Assembly, affected rights holders should be able to secure an effective remedy, not merely access to a remedial mechanism.¹

While effective judicial mechanisms are at the core of ensuring access to remedy, state-based non-judicial grievance mechanisms such as the CORE also have an important role to play. However, several conditions should be satisfied to allow the CORE to fulfil this role effectively. The CORE should meet the effectiveness criteria stipulated in Principle 31 of the UN Guiding Principles.

In addition, I would like to reiterate our recommendation made in the 2018 report on the country visit to Canada. We had recommended the Canadian Government to ensure that the CORE “is well resourced ... so that it can provide effective and timely remedies and recommendations for complaints. Furthermore, the Office should have total independence from the Government, undertake meaningful investigations and have the investigatory powers to summon witnesses and compel stakeholders to produce documents ... to fully address human rights abuses”.²

¹ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/72/162 (18 July 2017), para 15.

² Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada, A/HRC/38/48/Add.1 (23 April 2018), para 79.

This recommendation made three years back is very much relevant even today.

Moreover, the mandate of the CORE should not overlap significantly with other non-judicial grievance mechanisms such as the Canadian National Contact Point. For example, if the CORE mostly adopted collaborative approaches of facilitating dialogue and mediation, it might end up duplicating what the National Contact Point should be doing.

I also think that the CORE should not have the mandate to advise Canadian companies, because this may create a potential conflict of interest if it were to deal with complaints against these very companies.

In short, if a core objective of the CORE were to provide effective remedies and hold Canadian companies accountable for their overseas human rights abuses, it would need more powers to fulfil this objective. The CORE should have the power to investigate, compel documents and testimony, and enforce its recommendations against companies. With such powers, the CORE would not only be able to remediate but also prevent human rights abuses linked to overseas operations of Canadian companies.

Mr Chair

I will also take this opportunity to encourage the Canadian Government to develop a National Action Plan on Business and Human Rights. Similar to regulatory initiatives unfolding in Europe, it should enact a comprehensive mandatory human rights due diligence legislation covering business activities both inside and outside Canada. Only then, Canada would be able to claim rightfully global leadership in promoting business respect for human rights.

I look forward to our dialogue today. The Working Group also welcomes further opportunities to engage the Government of Canada as well as the CORE in promoting responsible business conduct in line with the UN Guiding Principles.

Thank you.