

10 April 2019

Ms Bennoune
Mr. Surya Deva
Mr. Fernand de Varennnes
Mr. David Kaye (USA)

Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10
SWITZERLAND

Your Ref: AL OTH 13/2017

By post and e-mail: registry@ohchr.org

Dear Ms Bennoune, Mr Deva, Mr de Varennnes and Mr Kaye

Statement from Special Procedures (Reference AL OTH13/2017)

We refer to your statement dated 26 March 2019, published on your website, which disappointingly contains a range of inaccuracies and misstatements and shows a complete disregard to the facts involved as noted in previous correspondence and re-iterated below.

We therefore consider that your actions in this matter constitute a fundamental misuse of your position and undermine the integrity of the OHCHR.

Your lack of response, dialogue and breach of your Code of Conduct

I refer to my letters to you dated 11 September and 3 and 28 November 2017, and the letter from our Chief Executive, Helen Gordon, to you dated 18 August 2017 in response to your letter dated 21 July 2017.

Your 21 July 2017 letter raised concerns regarding the proposed redevelopment of the Seven Sisters Indoor Market ("the Market") and its impact on the human rights of those affected by it. The letter requested information in relation to a number of areas of concern to you. Your letter requested a response within 60 days. On 27 July 2017, before we had been given the opportunity to respond, you published a statement highlighting the concerns raised in your 21 July 2017 letter. Helen Gordon's response to you, dated 18 August 2017, set out a comprehensive and detailed response to you, expressed our dissatisfaction at the fact that you had published a statement without waiting for us to respond to your letter and advising that we considered you to be in breach of your own General Principles of Conduct of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council ("Code of Conduct").

Our letter dated 11 September 2017 noted that you had not responded to our 18 August 2017 letter yet you intended to appear on Channel 4 News to discuss the matter the following day. We asked you not to make any such appearance or further comment until such time as you had responded to our letter, conducted a fair investigatory process and allowed us time to respond to this. You ignored our letter and appeared on Channel 4 News on 26 October 2017.

Our letter dated 3 November 2017 communicated our dissatisfaction with this action and asked you to respond to our 18 August 2017 letter.

We wrote to you again on 28 November 2017 expressing concern that no response had been received to our 18 August 2017 letter, despite the passage of over 3 months.

You wrote to us on 8 May 2018, acknowledging receipt of our letters. You did not respond to the queries raised in relation to the concerns raised as to how your previous approach breached the Code of Conduct but stated that you were not required to investigate allegations and reserved the right to make statements raising concerns as you saw fit.

Our letter to you, dated 5 February 2019 pointed out that your 8 May 2018 letter did not address in any way the evidence supplied to you in our letter to you dated 18 August 2017 demonstrating that human rights have been central to the processes surrounding progression of the scheme, nor did it seek to explain why you are not in breach of your Code of Conduct in this matter. The letter confirmed to you that the Inspector issued his report recommending the progression of the CPO on 9 January 2018, and the Secretary of State for Housing, Communities and Local Government confirmed this decision on 23 January 2019 and that the rationale for both decisions contained detailed analysis of how the human rights of those affected have been taken into consideration and how they are outweighed by the benefits of the scheme to the wider community.

We asked you to confirm, with specific examples, on what basis you considered that progression of the scheme may not guarantee the full respect of the human rights of the people concerned.

Our 5 February 2019 letter concluded by requesting that, should you seek to publish any report or expression of view on this matter in future, you conduct this in accordance with your Code of Conduct and seek to base your conclusions on a professional and impartial analysis of evidence and facts which we confirmed we expected to include a consultation with us. We confirmed that we would undertake to engage openly, constructively and expeditiously with any requests for engagement from you.

You did not respond to this letter.

Copies of the correspondence referred to in this letter are attached.

On 26 March 2019 you issued a statement on the matter. The statement included the following paragraphs: -

"In addition, the companies involved in the redevelopment have an independent responsibility to respect all internationally recognised human rights under the UN Guiding Principles on Business and Human Rights. This entails, among others, carrying out human rights due diligence to identify, prevent, mitigate and account for adverse impacts on the human rights of affected communities."

The experts also expressed concern at renewed reports of inadequate consultation and representation of traders in the decision-making process, insufficient consideration given to their views and concerns, and obstacles placed in the way of traders expressing their views about the project.

"We urge all relevant parties to guarantee the human rights, including cultural rights, of the people affected and to ensure that all planning and consultation processes related to the redevelopment give due consideration to the opinions of the representatives selected by the traders, to guarantee effective consultation."

The statement was made without any reference to, or consultation with, us. The statement contains no allegations of specific detail to allow us to investigate them. The statement suggest that you have made no effort to review the information provided to you in our letter dated 18 August 2017, nor the rationale for the decisions made in relation to the CPO in January 2018 and 2019, which address in detail the comprehensive efforts to ensure that the human rights of the affected communities have been considered and respected.

Having been a stakeholder in the area for 15 years, Grainger is committed to the long-term success of the Seven Sisters regeneration scheme, including the Market, which is unique to the area, and sits firmly at the heart of our plans. As well as delivering new homes and jobs, our scheme includes a brand new, purpose-built indoor market.

Securing the traders' future

We are conscious that the development is opposed by some traders, and we have therefore worked hard to understand and address those concerns throughout the process. To better support the traders and allay their concerns, we have made several promises, secured by legal agreement, to relocate all licensed traders to a temporary indoor market located just 60m away, before returning them to the new purpose-built market. In addition, we have put in place a package of financial support for the traders, which includes a rent-free period, rent reductions, and guaranteed rents for up to five years.

Our commitment to consultation

We have worked closely with traders for many years and continue to do so, including through the Future of the Seven Sisters Indoor Market Steering Group, comprising eight traders who were chosen by market traders to represent them established in 2016. To date we have held 21 meetings and through this forum, traders have been able to raise issues that we have responded to. This includes, for example, agreeing a location for the temporary market and increasing the benefits and financial commitments that will be given to traders through the amended section 106 agreement. We have also held numerous drop-in sessions, one to one meetings and 'all trader' meetings. We will shortly be consulting with traders on the design of the new market, to ensure it retains the authenticity of the current market, while also ensuring appropriate levels of ventilation, heating, improved circulation, safety and space.

This month, we began taking traders on a site tour of the new temporary market, and of the 40 traders that have visited so far, all have expressed their satisfaction with the space and support the move, with many requesting to move early.

Summary

In summary, we are working hard, and working closely with the traders to make sure their needs are met and our development supports their needs. Wildly unbalanced and inaccurate media reports and statements such as the one issued by you on 26 March 2019 that show complete disregard to the facts and provisions only serve to drive more confusion and concern for traders and the local community in Seven Sisters.

As stated in our 18 August 2017 letter, and referred to above, mandate-holders such as yourselves are required to adhere to a Code of Conduct. In particular, we note that:

- (i) Article 3 of the Code of Conduct provides that mandate-holders shall *“(a) act in an independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts ...; (e) uphold the highest standards of efficiency, competence and integrity, meaning, in particular, though not exclusively, probity, impartiality, equity, honesty and good faith; (f) neither seek nor accept instructions from any Government, individual, governmental or non-governmental organisation or pressure group whatsoever; ... (h) be aware of the importance of their duties and responsibilities, taking the particular nature of their mandate into consideration and behaving in such a way as to maintain and reinforce the trust they enjoy of all stakeholders.”*;
- (ii) Article 6 of the Code requires mandate-holders to *“(a) always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources, that they have duly cross-checked to the best extent possible”* and *“(b) take into account in a comprehensive and timely manner, in particular information provided by the State concerned on situations relevant to their mandate”*;
- (iii) Article 8 emphasises that mandate-holders shall, in their information-gathering activities, *“(a) be guided by the principles of discretion, transparency, impartiality, and even-handedness”*; *“(c) rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up”*; and *“(d) give representatives of the concerned State the opportunity of commenting on mandate-holders’ assessment and of responding to the allegations made against this State, and annex the State’s written summary responses to their reports”*; and
- (iv) Article 12 requires mandate-holders to *“base their conclusions and recommendations on objective assessments of human rights situations”* and *“show restraint, moderation and discretion so as not to undermine the recognition of the independent nature of their mandate or the environment necessary to properly discharge the said mandate”*.

In light of the foregoing please can you confirm how you have: -

- 1. Conducted a professional, impartial assessment of facts;
- 2. Sought to establish the facts, based on objective, reliable information emanating from relevant credible sources, that you have duly cross-checked to the best extent possible;
- 3. Taken into account in a comprehensive and timely manner, information provided by the State concerned on situations relevant to your mandate;
- 4. Been guided by the principles of discretion, transparency, impartiality, and even-handedness;
- 5. Relied on objective and dependable facts based on evidentiary standards that are appropriate;
- 6. Given representatives of the concerned State the opportunity of commenting on mandate-holders’ assessment and of responding to the allegations made against this State;

7. Based your conclusions and recommendations on objective assessments of human rights situations and shown restraint, moderation and discretion so as not to undermine the recognition of the independent nature of your mandate.

We find it striking that you are expressing concern at reports of inadequate consultation and insufficient consideration given to the views and concerns of stakeholders when this is precisely how you have dealt with us in this matter.

As noted above, we therefore consider that your actions in this matter constitute a fundamental misuse of your position and undermine the integrity of the OHCHR.

Consequently, we are passing details of this matter, including the previous correspondence to Michelle Bachelet Jeria, the United Nations High Commissioner for Human Rights and Coly Seck, President of the United Nations Human Rights Council and asking them to investigate your actions as detailed above.

Yours sincerely



Adam McGhin
Group General Counsel
for Grainger plc

Encs