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Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the letter sent by the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to food and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences dated May 22<sup>nd</sup>, 2018 – AL DEU 1/2018.

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith the answers of the Federal Foreign Office to the a.m. letter

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Permanent Mission of the assurances of its highest consideration.



Geneva, July 20th, 2018



To the  
Office of the High Commissioner for Human Rights  
Palais Wilson  
Geneva

1.

**“Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.”**

The German government is aware that, in the context of the difficult socio-economic situation in Zimbabwe, unacceptable practices like child labour and violations of international human rights standards in the tobacco business do occur. Germany condemns any form of child labour, and emphasizes that all states have the duty to protect human rights and thus prevent human rights violations and that all companies have the responsibility to ensure the end of harmful practices like child labour.

Curverid Tobacco (Private) Ltd, a sales agent for Contraf Nicotex Tobacco GmbH which is headquartered in Germany, is one of the larger companies purchasing tobacco in Zimbabwe. Human Rights Watch (HRW) published a report in April 2018, entitled “A Bitter Harvest – Child Labour and Human Rights Abuses on Tobacco Farms in Zimbabwe”. CNT/Curverid are mentioned several times in the report. According to information provided by CNT/Curverid, the company cooperated with both the UNHCHR and HRW. In a meeting with the German Ambassador in Harare, it expressly welcomed the opportunity to work with both institutions in order to inform them about the work they are doing in Zimbabwe, in particular regarding the standards they are applying.

CNT/Curverid confirmed adhering rigorously to the standards for Sustainable Tobacco Programme (STP). This includes applying whatever standard is the strictest, whether a local or an international one. According to the company, CNT/Curverid have developed a three-tier auditing system to audit the Zimbabwean farmers they work with: audits by field managers, by regional managers, and by agronomy managers. These are all employed by CNT/Curverid. According to the company, if a farmer does not comply with CNT/Curverid standards, and does not change his/her farming methods to comply with these standards, the contract will be ended.

The company publishes a quarterly brochure to inform farmers about their standards, including on their safeguards against child labour, which is distributed. Every farmer is given a copy of the magazine and each farmer must read it and train his farm workers. In this brochure, the Shona language is often used as it is the native tongue of the overwhelming majority of the population in the tobacco-growing region. Additionally, cartoons are used to better train illiterate workers.

Germany appreciates CNT/Curverid’s expressed interest in engaging with UNHCHR and HRW to explain their counter-measures and to help raise awareness.

2.

**“Please provide information on existing measures taken by your Excellency’s government to protect against human rights abuses by companies, including ensuring that the companies within your territory and/or jurisdiction implement their responsibility to respect human rights as set forth by the UN Guiding Principles on Business and Human Rights.”**

German law covers many of the aspects addressed in the UN Guiding Principles on Business and Human Rights. Under German jurisdiction, laws on child protection, on social protection, on non-discrimination as well as labour law shall prevent companies from human rights abuses.

Germany has ratified the ILO core conventions as well as many other ILO conventions such as C081 on Labour Inspection and C129 on Labour Inspection in Agriculture. These conventions have been implemented through national laws. Germany is a state party to the International Covenant on Civil and Political Rights as well as to the International Covenant on Economic, Social and Cultural Rights. The German government is currently considering a ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The provisions of both Covenants are mirrored in national law.

With the transposition of Directive 2014/95/EU on disclosure of non-financial and diversity information by large companies into a national law Germany is contributing to the improvement of availability of information about CSR issues, this may also include social, labour and human rights aspects depending on the materiality assessment of the reporting company.

In order to implement the UN Guiding Principles on Business and Human Rights, the German government has taken several measures. Most prominently, it has adopted a National Action Plan on Business and Human Rights (NAP) in 2016. It includes around 50 measures that the government itself commits to implementing in order to strengthen the state duty to protect. Moreover, the NAP also clearly states the German government’s expectation towards German companies concerning their responsibility to respect human rights and to exercise human rights due diligence. Human rights due diligence includes respect for the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights as well as the ILO core conventions. The German government expects all enterprises to introduce the process of corporate due diligence described below in a manner commensurate with their size, the sector in which they operate, and their position in supply and value chains. This applies especially when they operate in countries that fail to ensure effective enforcement of human rights due to the lack of an effective governance structure and the enforcement of rule of law. People who are affected by human rights violations thus lack access to effective remedies.

The NAP lists five core elements of human rights due diligence: a human rights policy statement, procedures for the identification of actual or potential adverse impact on human rights, measures to ward off potentially adverse impacts and review of the effectiveness of these measures, reporting and a grievance mechanism. Progress in the corporate implementation of the elements of human rights due diligence will be reviewed by means of an annual survey conforming to current scientific standards, beginning in 2018 (“monitoring”). The aim is that at least 50 % of all enterprises based in Germany with more than 500 employees will have incorporated the elements of human rights due diligence into their corporate processes by 2020. Enterprises which have not adopted particular procedures and measures should be able to explain why they have not done so (the ‘comply or

explain' mechanism). If fewer than 50 % of the enterprises defined above have incorporated the elements of human rights due diligence into their corporate processes by 2020 and the target is thus missed, the German government will consider further action, which may culminate in legislative measures. The recent coalition agreement states: "We are working towards the consistent implementation of the National Action Plan on Human Rights and the Economy (NAP), which also includes public procurement. If an effective and comprehensive review of the NAP in 2020 finds that the voluntary commitment of companies is insufficient, we will introduce appropriate legislation at national level and advocate EU-wide regulation."

3.

**“Please provide information on additional steps taken by your Excellency’s government to protect against human rights abuses by this company as a state-owned enterprise, including by requiring human rights due diligence as set forth by the UN Guiding Principles on Business and Human Rights.”**

Contraf Nicotex Tobacco GmbH is not a state-owned enterprise. Therefore, no eventual additional steps that could possibly apply to state-owned enterprises are applicable.

#### 4.

**“Please indicate any 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 in accordance with the UN Guiding Principles on Business and Human Rights.”**

Germany’s judiciary works independently and efficiently. Anyone who considers that his or her rights have been infringed in Germany by the actions of an enterprise can make claims before the civil courts. Anyone, moreover, who considers that his or her rights have been infringed abroad by the actions of a German enterprise, can bring an action in Germany, normally at the court with local jurisdiction for the registered office of the enterprise.

Germany’s international civil procedure law also contains additional provisions whereby the German courts may be seized of matters relating to certain offences committed abroad, provided that a sufficient domestic connection can be demonstrated (e. g. specific jurisdiction for tort under section 32 of the German Code of Civil Procedure). German civil procedure law contains mechanisms that facilitate access to German civil courts. Litigants of limited means, for example, can obtain legal aid. Following a means test and an assessment of the prospects for a successful action, beneficiaries have their court costs and their own lawyer’s fees paid in full or in part, depending on their degree of need. Litigants who are not German nationals can also receive legal aid for German court proceedings. All legal entities based in the European Economic Area – victims’ associations, for example – can also receive legal aid if they fulfil the conditions set out in the German Code of Civil Procedure. The German Code of Civil Procedure also provides for collective remedies in the form of joinder of parties and consolidation of claims.

Enterprises, moreover, may be held liable under the Regulatory Offences Act for conduct in breach of criminal law on the part of their management, including company-related violations of human rights, for which they may be fined up to €10 million. Higher fines may be imposed if, in addition, the economic benefit derived from the offence is being disgorged.

The German government is in the process of producing a multilingual information brochure on access to justice and the courts for injured parties, which gives potentially affected persons an easy-to-follow summary of the remedies available to them under German civil procedural law.

One of the core elements of human rights due diligence laid down in the German National Action Plan are grievance mechanisms. For the early identification of (actual or potential) adverse impacts, enterprises should either establish their own grievance procedures or play an active part in external procedures. Such procedures may, for example, be established by sectoral associations. The mechanism should be structured to match the target group. Accordingly, the target group should be consulted when the procedure is being devised. When new mechanisms are established as well as when existing mechanisms are used, care should be taken to ensure that they provide a fair, balanced and predictable procedure which is accessible to all those who might be affected (for instance by eliminating linguistic or technical barriers). As an extra measure, consideration should be given to the creation of offices with which complaints can be lodged anonymously.

The procedure should provide maximum transparency for all stakeholders and should comply with international human rights standards. Existing complaints offices within an enterprise or its environment should be screened for compliance with the criteria defined above. The grievance

mechanism of each enterprise and its whole process of corporate due diligence should be subjected to regular practice-based reviews to assess their effectiveness.

Besides its efforts to implement the UN Guiding Principles on Business and Human Rights, Germany is also a supporter of the OECD Guidelines for Multinational Enterprises and has a National Contact Point (NCP). The NCP acts as an extra-judicial complaints mechanism in cases brought to its attention by trade unions, non-governmental organisations, other associations, and individuals with regard to alleged violations of the OECD Guidelines by multinational companies acting on or from German territory. The NCP is based at the Federal Ministry for Economic Affairs and Energy. In accordance with the affirmations in the 2015 G7 Summit Declaration and the National Action Plan for Business and Human Rights (NAP, 2016-2020), the German NCP was reorganised in 2016 and assigned directly to the Director-General for External Economic Policy at the Economic Affairs Ministry. It was also equipped with additional staff and given its own budget.