

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 situation of human rights defenders; the Working Group on the use of mercenaries; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: OL
OTH 3/2015:

7 July 2015

Dear Mr. Oei, and Mr. Wijaya

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the situation of human rights defenders; Chair-Rapporteur of the Working Group on the use of mercenaries; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 26/22, 19/10, 25/18, 24/13, and 26/12. In accordance with its mandate from the Human Rights Council, the Working Group on the issue of human rights and transnational corporations and other business enterprises is authorized to “seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises” in order to, inter alia, promote the effective and comprehensive implementation of the United Nations Guiding Principles on Business and Human Rights¹.

In this connection, we would like to bring to your attention information we have received concerning **allegations relating to the beating, abduction and murder of a 22 year old Indonesian farmer, youth worker and trade unionist**. He had been working closely with Friends of the Earth Indonesia (WALHI), to try to resolve land disputes arising from the business activities of paper mill company, Asia Pulp and Paper (APP), a member of the Sinar Mas Group of companies and he was a member of Tebo Farmers Union (SPT) and part of a network of people monitoring the paper mill's controversial activities in the forestry and agriculture sector. His farming community has been engaged in a decade-long conflict over the ownership of 2,000 hectares of farmland with Wira Karya Sakti (WKS), a pulpwood supplier owned by APP.

¹ A/HRC/RES/17/4, para. 6

According to the information received:

On 27 February 2015, (Mr) **Indra Pelani** and (Mr) **Nick Karim** of Friends of the Earth Indonesia (WALHI), were travelling together on a motorcycle to a rice harvest near the village of Lubuk Mandarsah, Central District of Ilir, Tebo, Jambi Province. When they attempted to pass a check post at a pulpwood acacia plantation owned by Wira Karya Sakti (WKS), they got into an argument with private security officers who became violent. Mr Pelani was severely beaten while Mr Karim managed to flee to get help. When Mr Karim returned with approximately 30 villagers, Mr Pelani had disappeared and the security guard on duty denied all knowledge of the incident. Mr Pelani was found dead on 28 February 2015 during a police search. His severely beaten body had been dumped just over five kilometers from the site of the attack with his hands and feet bound with rope and a t-shirt stuffed in his mouth. It has been stated in the press that seven officers of the Rapid Reaction Unit (Unit Reaksi Cepat) of APP's security force have surrendered themselves to the police for beating **Mr Indra Pelani** to death. It is also alleged that this is not the first time the parent company APP has been connected to violence. In 2010, police allegedly killed a farmer during a rally protesting land that was taken over by APP, and in 2012 a man was alleged to have been found dead in a canal in an area owned by another APP supplier company.

Serious concerns are expressed about the alleged beating, abduction and murder of Mr Pelani and violence against Mr Nick Karim. Concern is expressed that the murder and violence are directly related to their activities in defense of human rights and the environment. Concern is also expressed because this is not the first time the parent company APP has allegedly been connected to incidences of violence.

We have written to the Government of Indonesia to express our concerns about, and to request more information on, the allegations described above.

While we do not wish to prejudge the accuracy of these allegations, we would like to take this opportunity to draw your attention to the applicable international human rights norms and standards. Please refer to the Reference to international human rights law Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Are the facts summarized accurate?
2. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

3. Has APP received any guidance from the Government of Indonesia on its corporate responsibility to respect human rights, specifically on its expected due diligence process, in line with the UN Guiding Principles on Business and Human Rights?
4. Please indicate any remedial action taken by APP vis-à-vis the deceased's family.
5. How is APP meeting its responsibility to respect human rights in a way that complies with international human rights standards? Does it have a policy commitment (approved at the most senior level of the company) that is reflected in its operational policies and procedures?
6. Please explain what APP is doing to carry out its human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts. How does the company track the effectiveness of its measures to prevent and mitigate adverse human rights impacts, including through consultation with affected stakeholders?
7. What operational-level grievance mechanisms has APP established or participated in to address the grievances identified above early and remediate them directly? What is the company doing to ensure that the allegations raised in this letter are being addressed in a way that is compatible with human rights and puts the safety, concerns and rights of the workers first?

We would appreciate receiving a response within 60 days. Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Oei, and Mr. Wijaya, the assurances of our highest consideration.

Margaret Jungk
Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Elzbieta Karska
Chair-Rapporteur of the Working Group on the use of mercenaries

John Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michel Forst
Special Rapporteur on the situation of human rights defenders

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights (UDHR);
- The UN Guiding Principles on Business and Human Rights;
- The UN Global Compact principles;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights; and
- The United Nations Declaration on Human Rights Defenders.

In particular, we would like to remind you that APP, as a private actor and business enterprise, has certain responsibilities as outlined in the Guiding Principles on Business and Human Rights. The responsibility to respect human rights is a global

standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. The UDHR (article 3) and the International Covenant on Civil and Political Rights (article 6.1) also guarantee the right of every individual to life and security and not to be arbitrarily deprived of life.

Following years of consultations that involved Governments, civil society and the business community, the Human Rights Council unanimously adopted in June 2011 the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31).

The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- (a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

The corporate responsibility to respect human rights covers the full range of rights listed in the UDHR, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It also includes the respect of the eight International Labour Organization core conventions, also envisaged in Principle 4 of the UN Global Compact, which states that business enterprises should uphold the elimination of all forms of forced and compulsory labour. The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.

Business enterprises are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes, or may contribute, to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution,

rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

The Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

The Guiding Principles require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

Each of these is elaborated below, with regard to the context of this case.

Policy Commitment:

The first of these requirements, a policy commitment, must be approved by the company’s senior management, be informed by human rights expertise (internal or external) and stipulate the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services. The statement of policy must be publicly available and communicated internally and externally and reflected in operational policies and procedures necessary to embed it throughout the business enterprise (Guiding Principle 16).

Human Rights Due Diligence:

The second major feature of the responsibility to respect is human rights due-diligence, the procedures for which have been deemed necessary to ‘identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships’ (Guiding Principle 18). Adequate human rights due diligence procedures must include ‘meaningful

consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation’ (Guiding Principle 18).

To prevent and mitigate against adverse human rights impacts, the findings of the human rights impact assessment should be effectively integrated across the relevant internal functions and processes of APP. (Guiding Principle 19). Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise, and internal decision-making, budget allocations and oversight processes should enable effective responses to such impacts.

Any response by APP to address its adverse human rights impacts should be tracked to ensure that it is effective. Tracking should be based on appropriate qualitative and quantitative indicators, and drawing on feedback from internal and external sources including affected stakeholders (Guiding Principle 20). In addition, information about activities taken to address any adverse human rights impacts, and how effective those actions have been, should be communicated externally (Guiding Principle 21).

Remediation:

The Guiding Principles acknowledge that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”. Where APP identifies that it has “caused or contributed to adverse impacts” it “should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Business enterprises should establish or participate in operational-level grievance mechanisms “to make it possible for grievances to be addressed early and remediated directly” (Guiding Principle 29). Operational-level grievance mechanisms should reflect eight criteria to ensure their effectiveness in practice, as outlined in Guiding Principle 31: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue.

Lastly, operational-level grievance mechanisms must not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access by individuals and communities to judicial or other non-judicial grievance mechanisms (Guiding Principle 29).

