

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE:
AL SGP 1/2019

27 March 2019

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 35/7, 34/21, 33/1 and 35/5.

In this connection, we would like to bring to the attention of your Excellency's Government the information we have received regarding alleged human trafficking and forced labor suffered by Indian migrant workers at the India-based timber company, Accurate Industries, which operates in the special economic zone of Nkok in Gabon, jointly owned by the Singapore-based company, Olam International.

According to the information received:

On April 2018, Accurate Industries, an India-based manufacturer, started operating in the Gabon Special Economic Zone (GSEZ) of Nkok. The company production is expected to make Gabon the leading timber producer in Africa and the world's second largest producer.

GSEZ started in 2010 in Nkok as a partnership between the Gabonese Government and Olam International, a Singapore-based company, with the support of the Africa Finance Corporation. GSEZ is a multi-sectorial industrial park of 1,126 hectares where about 80 factories processing timber are already in operation.

It is reported that Accurate Industries employs approximately 40 Indian migrant workers. These workers are hired through individual agents from Indian provinces such as Punjab and Odisha. No written contract is ever signed or given to the workers. Oral promises regarding salary and other benefits are often not fulfilled either.

Accurate Industries typically invites workers from India through an invitation letter to visit the company in Gabon and attend meetings, rather than to work in the GSEZ. It is alleged that none of these Indian workers have a valid work visa. They entered Gabon on a business or tourist visa and then employed by Accurate

Industries to work. Once their business or tourist visa expired, they were not provided with a work visa, placing them in an irregular immigration situation. In addition, the passports and identity documents of some of the workers were withheld by the employer upon their arrival in Gabon. These workers seem to have been lured to come to Gabon to work without written contract or valid work visa. As some of them have their passports and identity cards confiscated, they have been prevented from returning to India even in cases of medical needs or for family reasons.

Allegedly, workers employed by Accurate Industries have been subjected to labour exploitation which may amount to forced labour in line with the ILO indicators of forced labour: notably the deception around their employment; verbal violence and intimidation by Accurate Industries managers; retention of their identity documents; abusive working conditions; and excessive overtime, working from 8.00 a.m. to 8.00 p.m., seven days a week, with no holidays or daily rest; irregular payment of monthly salary to their bank accounts; withholding of salary to cover the cost of return airfare.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the alleged precarious working conditions of these Indian migrant workers in GSEZ as well as the deceptive manner in which they were allegedly hired and brought to work in Gabon illegally without a work visa. It should be noted that abuse of a position of vulnerability, deception, restriction of movement, isolation, physical violence, intimidation and threats, retention of identity documents and withholding of wages – which have allegedly been recorded in the present case – have been identified as possible indicators of forced labour by ILO.¹ The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. This situation could also amount to contemporary forms of slavery and human trafficking. We are also concerned by the restriction on their freedom of movement and the confiscation of their identity documents. According to this information, your Excellency's Government is allegedly failing to meet its international human rights obligations to protect the human rights of these workers. This is underscored by the obligations under the international human rights framework for your Excellency's Government to protect workers against human rights abuses by business enterprises domiciled in your country. This requires taking appropriate steps in relation to business enterprises to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudication.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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 be grateful for your observations on the following matters:

¹ https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations
2. Please highlight the steps that the Government has taken, or is considering to take to protect against human rights abuse by business enterprises at the GSEZ in Nkok, Gabon, which is jointly owned by a company domiciled in your territory.
3. Please highlight the steps that the Government has taken, or is considering to take, to ensure that business enterprises domiciled in its territory respect human rights throughout their operations, as set forth by the UN Guiding Principles on Business and Human Rights.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on the same matter has also been sent to the Governments of India and Gabon and to the involved companies (i.e., Accurate Industries and Olam International).

We may also publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention, as the human rights abuses are continuing. We also believe that all States and other stakeholders should be alerted to the potential of serious labour rights violations in special economic zones such as GSEZ if adequate oversight is not exercised by both home and host States. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Surya Deva
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Felipe González Morales
Special Rapporteur on the human rights of migrants

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and
consequences

Maria Grazia Giammarinaro
Special Rapporteur on trafficking in persons, especially women and children

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. 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 or 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.”

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Business enterprises, in turn, 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 (commentary to Guiding Principle 19). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

The Committee on the Economic, Social and Cultural Rights in its General Comment 24 (2017) states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.”.

In addition, we would like to draw the attention of your Excellency’s Government to Article 4 of the Universal Declaration of the Human Rights, which states that “no one shall be held in slavery or servitude; slavery and the slave trade shall prohibited in all their forms”. The ILO Forced Labour Convention, 1930 (No 29), ratified by your Excellency’s Government in 1965, in addition calls for the suppression of the use of forced or compulsory labour in all its forms within the shortest possible period. In particular, according to Article 2, forced or compulsory labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. A new Protocol to Convention No 29 passed by the International Labour Conference in 2014, also provides specific guidelines to governments and businesses on steps to end forced labour.

Furthermore, we would like to draw the attention of your Excellency’s Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency’s Government in September 2015 through which your Excellency’s Government is obliged to refrain from acts which would defeat or undermine the Protocol’s objectives and purposes, which include “to prevent and combat trafficking in persons...”

We also would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commission for Human Rights in July 2012. Principle 13 of these recommended Principles and Guidelines provides that “States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors”.

Finally, criteria and indicators of trafficking in persons for the purpose of labour exploitation should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/23/48/Add.4, appendix I and A/HRC/35/37).