

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 OTH 9/2019

27 March 2019

Dear Mr. Shingal,

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.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning alleged human trafficking and forced labor suffered by Indian migrant workers in your company, which operates in the Special Economic Zone of Nkok in Gabon.

According to the information received:

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

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

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 1126 hectares where about 80 factories processing timbers are already in operation.

It is reported that your company 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.

Your company typically invites workers from India through an invitation letter to visit the company 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 your company 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 your company 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 the GSEZ as well as the deceptive manner in which they were hired and brought to work in Gabon 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.² 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

² https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf

concerned by the restriction on their freedom of movement in the GSEZ and the confiscation of their identity documents by your company.

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. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations
2. Please provide information on how Accurate Industries' current practice of hiring and employing workers in GSEZ (e.g., no written contract, no valid work visa, no holidays, irregular payment of salary, unjustified deductions from salary, verbal abuse, confiscation of travel documents, etc.) is in line with the applicable laws of India and Gabon.
2. Please provide further information on what measures have been taken by your company to align your business operations with national laws as well as international labour standards, ensuring respect and protection of labour rights of all employed workers, including migrant workers?
3. Please provide information as to what human rights due diligence steps, as set out in the United Nations Guiding Principles on Business and Human Rights, have been undertaken by your company to identify, prevent, mitigate, and remedy the negative human rights that your company could have caused or contributed to.
4. Please provide information on any steps taken to establish any company-level grievance mechanism to address adverse human rights impacts caused or contributed to by your company. Please also indicate measures taken to address potential barriers faced by migrant workers in using such a mechanism, if any, and how Accurate Industries cooperates in the remediation of human rights abuses by the relevant judicial or non-judicial mechanisms.

This communication and any response received from your company 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 subject has also been sent to the Governments of Gabon, India and Singapore as well as to 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 the 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 company to clarify the issues/s in question.

Please accept, Mr. Shingal, 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 draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), after years of consultations involving governments, civil society and the business community.

The Guiding Principles have been established as the global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. They apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights.

"The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (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).

To fulfill their responsibility to respect human rights, business enterprises should have 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;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."(Guiding Principles 15)

In this connection, we recall that Guiding Principle 22 states that 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”. The Guiding Principle 20 states that business should track the effectiveness of their response. Tracking should: a) be based in appropriate qualitative and quantitative indicators; and b) draw on feedback from both internal and external sources, including affected stakeholders.

The Guiding Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy.

We would also like to draw your attention to other international human rights standards that clarify the rights of migrant workers and non-citizens alike. Article 7 of the International Covenant on Economic, Social and Cultural Rights, recognizes the “right of everyone to the enjoyment of just and favourable conditions of work”. Such conditions must ensure, inter alia, remuneration, which provides all workers, as a minimum, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holiday. The rights in the Covenant apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation (Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 30). The Article 13 of the mentioned Covenant provides for the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Furthermore, we would like to draw your attention 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 be prohibited in all their forms”, as well as the 8 of the International Covenant on Civil and Political Rights, which prohibits slavery, the slave trade, servitude and forced labour.

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).