

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL JPN 4/2019

10 September 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; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/7 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged criminal complaint of extortion against Mr. Walter Dionicio Sánchez Ramos, which appears to be linked to his work in defense of the human rights of workers and families affected by the activities of the Japanese company Furukawa Plantaciones C.A. in Ecuador.**

Mr. **Walter Dionicio Sánchez Ramos** is a human rights defender and representative of more than 100 families of agricultural workers and ex-workers, exceeding 400 people, who are members of the Asociación Esperanza por un Nuevo Amanecer (Hope for a New Dawn Association) and whose rights have been affected by the company Furukawa Plantaciones C.A. The precarious situation of the families living in the farms located in the abaca plantations owned by the company was the subject of a joint communication sent by Special Procedures mandate holders to your Excellency's Government on 3 April 2019 (AL JPN 2/2019). We would like to thank your Excellency's Government for the response dated 13 June 2019, however we regret that no specific information was provided as to what measures your Excellency's Government had taken to eliminate labour exploitation, child labour, child exploitation and forced labour in the operations of Japanese companies operating abroad throughout their activities and their supply chain. We also remain concerned given the new information received in connection to the above mentioned joint communication.

According to the information received:

In March 2018, Mr. Sánchez Ramos, as the legal representative of the 100 families, along with 12 people affected by the activities of the company Furukawa Plantaciones C.A., presented the case before the Office of the President of Ecuador. The complaint is currently being handled by the National Department of Policy Management (Secretaría Nacional de Gestión de la Política).

Between 30 October and 20 November 2018, the Ministry of Labour carried out inspections in the camps of the company Furukawa Plantaciones C.A., following the complaints lodged by Mr. Sánchez Ramos addressing the working and living conditions of the families, including children, adolescents, women and older

persons, who live and work in the farms owned by the company Furukawa Plantaciones C.A.

On 23 November 2018, the General Manager of the company Furukawa Plantaciones C.A. filed a criminal complaint against Mr. Sánchez Ramos for the crime of extortion before the Office of the Prosecutor of Santo Domingo de los Tsáchilas, under the preliminary investigation number 23010181811606. On 26 November 2018, two officers of the National Police interrogated Mr. Sánchez Ramos and demanded to see his identity document, without explaining the reasons for the interrogation.

On 15 February 2019, the Ministry of Labour suspended the activities of Furukawa Plantaciones C.A. for a period of 60 days and imposed a fine on the company due to serious non-compliance with labour standards, including the absence of affiliation and employment contracts, non-payment of social benefits, lower payments than the unified basic remuneration, inhumane working conditions, and child labor. Following the suspension of its activities, the company threatened families living within the company's private property with possible layoffs and evictions.

On 18 February 2019, the Office of the Ombudsman released a public report, in which it concluded that families living in the farms owned by Furukawa Plantaciones C.A. had been held in servitude. In addition, the National Department of Policy Management ordered the company to guarantee the stay of families living in the 23 registered camps of Furukawa Plantaciones C.A.

On 8 March 2019, during a meeting between workers and managers of the company, Mr. Sánchez Ramos' name was reportedly mentioned in the context of his activities as the legal representative of the affected families. According to information provided by the workers present at the meeting, the managers referred to Mr. Sánchez Ramos in a threatening tone, alluding that he would be silenced through a 40-year prison sentence or die.

On 12 April 2019, Mr. Sánchez Ramos was informed by the Prosecutor that the General Manager of the company Furukawa Plantaciones C.A. filed a criminal complaint against him for extortion.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our deep concern about the criminal procedure initiated against Mr. Sánchez Ramos, as well as the harassment and threats against him and the families living within the company's private property, which appear to be a direct result of Mr. Sánchez Ramos' activities in defense of the human rights of the people who live and work in the farms owned by the company Furukawa Plantaciones C.A. We express further serious concerns about the chilling effect that such criminal proceedings may have on human rights defenders speaking up about adverse business impacts on human rights. We also reiterate

our serious concern about the risk of evictions faced by the workers' families living inside the camps of Furukawa Plantaciones C.A.

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 highlight the steps that the Government has taken, or is considering to take to protect against human rights abuses by business enterprises domiciled outside its territory and /or jurisdiction, including to protect human rights defenders speaking up about adverse business impacts on human rights, in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please indicate what measures the Government has taken to ensure that companies with Japanese capital operating abroad are not causing or contributing to abuses of international norms and standards that Japan has undertaken to uphold, including with regard to the right to adequate housing.
4. Please indicate what measures the Government has taken, or is considering to take, to help ensure that persons whose human rights are abused by Japanese business enterprises abroad have access to an effective remedy including by providing the option of bringing such cases before Japanese courts.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a letter with a similar content has been sent to the Government of Ecuador and to the company Furukawa Plantaciones C.A.

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.

Elżbieta Karska

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of Your Excellency's Government on the international standards and norms applicable to the matters previously exposed.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Japan on 21 June 1979, establishes extraterritorial obligations of States parties as stated by the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017). Accordingly, “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 this connection, we would also like to draw your attention to General comment No. 7 of the Committee on Economic, Social and Cultural Rights on forced evictions, which stipulates that **procedural protections are essential in relation to forced evictions**, including, inter alia, genuine protection against evictions. Consultation, adequate and reasonable notice, alternative accommodation available within a reasonable time, and the provision of legal remedies and legal aid (operative paragraphs 15 and 15). 16). We also wish to draw your attention to the Basic Principles and Guidelines on Development-Based Evictions and Displacements, prepared by a former Special Rapporteur on adequate housing, which provides guidance on States' obligations before, during and after development-based evictions.

We would also like to draw attention to the **United Nations Guiding Principles on Business and Human Rights** (A/HRC/17/31). The Guiding Principles clarify that according to international human rights obligations "States must protect against human rights violations committed within their territory and/or jurisdiction by third parties, including business" (Guiding Principle 1). This requires States to "clearly state that all companies domiciled in their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). "In compliance with their obligation to protect, States must: (b) Ensure that other laws and regulations governing the creation and activities of companies, such as commercial law, do not restrict but rather encourage respect for human rights by companies; (d) Encourage and if necessary require companies to explain how they take into account the impact of their activities on human rights. (Guiding Principle 3). States should also take appropriate measures to ensure, through appropriate judicial, administrative, legislative or other appropriate channels, that when such abuses occur in their territory and/or jurisdiction, those affected have access to effective redress mechanisms" (Principle 25). The Guiding Principles also emphasize that "States must ensure [...] that no obstacles are placed in the way of legitimate and peaceful activities of human rights defenders" (commentary on Guiding Principle 26).

Businesses also have a responsibility to respect human rights, which requires them to have appropriate policies and procedures in place; such as a human rights due diligence process to identify, prevent, mitigate, and account for how they address their human rights impact; and processes to redress all negative human rights consequences they have caused or contributed to causing. (Principles 11-24).

The Committee on the Economic, Social and Cultural Rights in its General Recommendation 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.”.

We would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 9 paragraph 1, which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 9, paragraph 3 (c), which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment,

violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Finally, we would like to refer to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.