Mandates of the Special Rapporteur on extreme poverty and human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL OTH 36/2020

30 April 2020

Dear Mr. Reiter,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/19, 35/7, 34/9 and 42/5.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. I am part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. 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. 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.

The Special Rapporteur on extreme poverty and human rights was invited by the Spanish government to visit Spain from 27 January to 7 February 2020. The purpose of the visit was to report to the Human Rights Council on the extent to which the Government's policies and programmes relating to extreme poverty are consistent with its human rights obligations and to offer constructive recommendations to the Government and other stakeholders. During my visit, he met with government officials; activists, civil society, and academics; and people affected by poverty in urban and rural

areas. The Special Rapporteur on extreme poverty and human rights conducted visits to Galicia, the Basque Country, Extremadura, Andalusia, Catalonia, and Madrid.

We write to bring to the attention of Driscoll's, Inc. and its affiliated companies information that we have received, and directly observed, concerning the situation of agriculture workers living in migrant settlements in Huelva, specifically those working in the strawberry industry. These conditions are among some of the worst we have seen in the world.

According to the information received:

Strawberries are a 500 million euro industry in Spain, and a large part of that crop is grown in Huelva. The procedure of contratación en origen has enabled employers to recruit seasonal workers outside Spain to harvest strawberries in Huelva pursuant to bilateral agreements. Workers are recruited for the duration of the harvest before returning to their country at the end of the seasonal contract, in accordance with a signed repatriation agreement. Some migrant workers remain in Huelva year-round.

Workers in this sector are protected by the Huelva Province Collective Agreement, a 2018 labor agreement between the Huelva Business Association and worker representatives from Confederación Sindical de Comisiones Obreras. The Huelva Collective Agreement sets comprehensive standards for work days, minimum pay, hours, time off, housing, and for preventing and reporting harassment and sexual assault. The Huelva Collective Agreement provides for free housing, stipulating that the workers should be able to live with dignity.

Yet thousands of workers are living in unsafe conditions, in ramshackle shelters and bungalows built out of used agriculture materials and sheet metal, many kilometres away from water, and without electricity or adequate sanitation. They are frequently located far from urban centres, with no transportation available, leading to frequent isolation. Many workers have lived in these areas for years and can afford to pay rent, but landlords and accommodation providers will not accept them as tenants. They can earn as little as 30 euros per day, and have almost no access to any form of government support. These conditions are widespread and well known, including to government officials.

There are numerous accounts of non-compliance with Spanish labour law including with regard to the number of hours, non-payment of overtime, and absence of a rest day for weeks on end. Agricultural workers are often deceived as to the terms of their employment: with promised 6.5 hour work days extending to 10 hours; fixed-term contracts changed from three months to a discretionary termination of employment; and promised salaries of 39-40 euros per day decreasing significantly, with lapses in payment. Workers are not guaranteed a minimum income because they are not paid for weather-dependent non-working

days. Migrant agricultural workers are generally prevented from joining trade unions.

Workers also report unsafe work environments, including a lack of adequate equipment for crop treatment and unsafe pesticide practices. Employment contracts do not specify termination dates and can be cancelled at any time, resulting in workers being sent home (including for pregnancy) and discouraging reports of abuses. Workers have reported numerous cases of discrimination, mistreatment, harassment, assault sexual extortion, and rape.

The largest strawberry producer in Huelva is Driscoll's and its associated companies. Driscoll's is a US multinational and the global market leader for fresh berries. The company has been linked to Huelva's berry industry for more than twenty years, including through partnership with Alconeras and Interfresa. It works with multiple growers in Huelva, covering hundreds of hectares and involving thousands of fruit pickers.

Driscoll's has a set of labor standards that "apply to all workers in our supply chain, with no distinction," and that focus on "providing protection to the most vulnerable employees of our enterprise, particularly those workers who are migrant and work on a seasonal basis." Driscoll's Standards are based on the International Labor Organization (ILO) Conventions and Recommendations, the Sedex Members Ethical Trade Requirement (SMETA), the Global Social Compliance Program (GSCP) standard, and the Business Social Compliance Initiative (BSCI) standard.

Driscoll's standards include zero tolerance for coercion, abuse, and harassment; and health and safety conditions posing immediate risk to life and limb. They guarantee access to sufficient clean toilet facilities and potable water and worker accommodation that "shall be clean, safe, [and] meet the basic needs of workers;" "wages and benefits [that] meet or exceed legal minimums, industry standards, and/or applicable collective agreements"; "freedom to choose to establish…free and independent workers' organizations without interference or reprisals"; and a "strict prohibit[ion] [on] the use of verbal, physical, or psychological threats and abuse or harassment of any kind, sexual or otherwise."

Driscoll's has pledged to ensure implementation of these Standards across the globe, and that implementation "will include site assessments and third party audits." Driscoll's further states that where local labor laws exceed the company's Standards, those laws will be respected and followed.

While we do not wish to prejudge the accuracy of the above-mentioned information, we would like to draw the attention of Driscoll's, Inc., and its affiliated companies to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) Driscoll's, Inc., and its affiliated companies may have on the above-mentioned allegations.

2. What steps are Driscoll's, Inc. and its affiliated companies taking to ensure that the workers in its supply chain have safe and adequate housing, and what results have been achieved?

3. What steps are Driscoll's, Inc. and its affiliated companies taking to ensure that the workers in its supply chain have access to water and sanitation, and what results have been achieved?

4. What is the minimum salary for workers in Driscoll's, Inc. and its affiliated companies' supply chain in Spain?
   a. What steps are Driscoll's, Inc., and its affiliated companies taking to ensure that the workers in the supply chain are making an adequate salary?
   b. What actions have Driscoll's, Inc. and its affiliated companies taken in response to reports of underpayment, delayed payment, and nonpayment of salaries?
   c. What actions have Driscoll's, Inc. and its affiliated companies taken to ensure that the terms under which workers are recruited in their home countries are consistent with the reality in Spain?
   d. What progress has been achieved on this issue?

5. What steps have Driscoll's, Inc. and its affiliated companies taken to enforce limits on hours worked?

6. Please explain what human rights due diligence steps – in line with the UN Guiding Principles on Business and Human Rights – were undertaken by Driscoll's, Inc. and its affiliated companies to identify, prevent, mitigate and account for its adverse human rights impacts, particularly with regards to migrant agricultural workers.

7. What steps are Driscoll's, Inc. and its affiliated companies taking to prevent gender-based violence, exploitation, and sexual assault within the workforce?

a. What steps have Driscoll's, Inc. and its affiliated companies taken in response to reports of widespread abuses of strawberry workers in Huelva and what progress has been achieved?
b. How many cases are Driscoll's, Inc. and its affiliated companies aware of and what action has been taken in response?

8. In light of the COVID-19 pandemic and a reported increase in the number of migrant agricultural workers being recruited to work in Spain this season, what steps are Driscoll's, Inc. and its affiliated companies taking to ensure that these workers have adequate accommodation, work their agreed hours, are fairly compensated for their work, and are protected from harassment, discrimination, and exploitation?

9. Please explain what measures Driscoll's, Inc. and its affiliated companies have taken, or are considering taking, to ensure that the individuals affected by allegations raised in this letter have access to complaint mechanisms without retaliation.

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.

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 be informed that a letter on the same subject has also been sent to the Governments of Spain.

Please accept, Mr. Reiter, the assurances of our highest consideration.

Philip Alston
Special Rapporteur on extreme poverty and human rights

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

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Léo Heller
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex
Reference to international human rights law

International human rights standards and core labour standards apply to all migrants. Moreover, the core international human rights conventions contain non-discrimination clauses, which ensure that each of these instruments applies to non-citizens. We are deeply concerned that these protections are not being applied to migrant workers in Huelva.

The allegations above would constitute violations of the International Covenant on Economic, Social and Cultural Rights (1966), ratified by Spain in 1977, which guarantees just and favourable working conditions (Article 7). Under the Covenant, Spain has pledged to respect, protect and fulfil the rights to fair wages and equal remuneration for work of equal value without distinction of any kind, with equal pay for equal work; a decent living for themselves and their families; safe and healthy working conditions; and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The information reported, if true, would suggest that these rights are not being enforced when it comes to migrant agricultural workers in Huelva. We are gravely concerned about the lack of action to address the situation to date.

We would also refer Driscoll's, Inc., and its affiliated companies to several International Labour Organisation (ILO) conventions that Spain has ratified, protecting the rights of workers, including on freedom of association (No. 87 and 98), the prohibition of forced labour (No. 29 and 105), and non-discrimination (No. 100 and 111). In particular:

- ILO Convention No. 97 on migrant workers (revised), ratified by Spain March 21, 1967, stipulates that States must "apply to immigrants lawfully within their territory treatment that is no less favourable than that which they apply to their own nationals," particularly as regards remuneration, working hours, overtime, paid holidays, membership of trade union organisations and entitlement to the benefits offered by collective agreements, housing and social security.
- ILO Convention No. 100, ratified by Spain on November 6, 1967, mandates equal remuneration for men and women for work of equal value.
- ILO Convention No. 129, ratified by Spain on May 5, 1971, requires State Parties to maintain a system of labor inspection in the agricultural sector, whatever the type, form or duration of the contracts involved. The inspections should cover working hours, wages, weekly rest and holidays, safety, health and welfare, and the employment of women, children and young persons, for the purpose of identifying violations and abuses.
- ILO Convention No. 141 on rural workers' organisations, ratified by Spain April 28, 1978, establishes the right of such workers to join organisations of their choosing without previous authorization.

Spain is also a State Party to the Convention for the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Discrimination Against Women. These provide for the rights to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work, and to just and favourable remuneration. Under the latter, Spain has agreed to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave. We are gravely concerned that women have reported being fired and sent home for pregnancy. The UN Committee on the Elimination of Discrimination Against Women in its General Recommendation 19 found that "Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention."

François Crépeau, the former UN Special Rapporteur on the human rights of migrants, found that temporary migration programmes can have negative consequence in terms of human rights, including access to economic and social rights, the right to family and protection from exploitation, as they are inflexible to the needs of migrant workers, and give unequal power to employers. The Special Rapporteur also found that migrant women risk being the victims of multiple discrimination and are generally more dependent on their employers, putting them at greater risk of abuse and exploitation.

Considering these human rights at stake, we would like to specifically bring to your attention the UN Guiding Principles on Business and Human Rights (contained in A/HRC/7/31), which the Human Rights Council unanimously adopted in 2011 following years of consultations with Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standards for all States and businesses with regard to preventing and addressing the risk of business-related human rights impact. The Guiding Principles clearly outline that private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid causing or contributing to adverse human rights impacts, not only through their own activities, but also as a result of their business relationships with other parties. Such a responsibility refers to internationally recognized human rights, including, at a minimum, "those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work." Guiding Principle 15 further provides that in order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights.

Such 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. It must be publicly available and communicated internally and externally and

reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

(b) *A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.*

This process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence should cover actual and potential human rights impacts that they may cause or contribute to through their own activities, or which may be directly linked to their operations, products or services by their business relationships.

(c) *Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.*

Where a company identifies that it has "caused or contributed to adverse impacts" it "should provide for or cooperate in their remediation through legitimate processes". The Guiding Principles further provide that a business enterprise "should establish or participate in effective operational-level grievance mechanisms" in order to make it possible for grievances to be addressed early and remediated directly.