

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Working Group on discrimination against women and girls

Ref.: AL JPN 1/2022
(Please use this reference in your reply)

5 July 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/4, 44/15, 49/13, 42/16, 43/16, 43/36, 42/10 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of trafficking in persons, including children, for purposes of forced labour, affecting tenant farmers and their families in tobacco farms in Malawi, as well as the related lack of accountability and access to effective remedy for victims of these serious human rights violations and serious crimes, including contemporary forms of slavery**. According to the information received, companies headquartered in Japan and which source tobacco leaves harvested in Malawi either directly or through their subsidiaries could be involved in these allegations.

According to the information received:

Background

According to the Malawi Investment and Trade Center, tobacco leaves sourced from Malawi can be found in blends of nearly every cigarette smoked in industrialized nations. The country is one of the top 5 producers of burley tobacco in the world. Malawi's economy relies heavily on tobacco production and its export. Burley leaf production alone from Malawi makes up 6.6 percent of the world's tobacco exports and accounts for over 50% percent of Malawi's foreign earnings. Most of this tobacco is produced in small scale farms.

The key actors in the tobacco sector in Malawi are: 1) the contract farmers, who are predominately owners of tobacco farms; 2) tenant farmers and their families, who are employed by contract farmers to work on their land and live on the farms; 3) leaf buyers, who purchase tobacco leaves from contract

farmers through pre-arranged contracts; and 4) multinational cigarette manufacturers, who purchase tobacco leaves from leaf buyers and sometimes directly from contract farmers. The main leaf buyers in Malawi are Limbe Leaf Tobacco Company Limited and Alliance One International.

All tobacco sold in Malawi is processed through licensed tobacco auction houses under the Auction Holdings Limited, a public company in Malawi, which owns two subsidiary companies that purchase tobacco through the auction: Malawi Leaf Company and Tobacco Investment Limited. The tobacco market in Malawi is regulated by the Tobacco Commission of Malawi, which, among other responsibilities, oversees the implementation of the minimum legal tobacco prices. The Commission is, however, composed of members of the tobacco industry in Malawi, who may allegedly have conflicts of interest in relation to the regulation of the industry.

Trafficking for purposes of forced labour, worst forms of child labour, and unjust working conditions

We have been informed that over 7,000 tenant farmers and their families, including over 3,000 children (aged between 3 and 17 years), work in tobacco farms in Malawi under unlawful and exploitative conditions, including forced labour and exposure to extremely hazardous working conditions which disregard safety regulations at the place of work. Many of the workers are originally from the southern region of Malawi and have allegedly been trafficked for the purposes of forced labour to the farms located in the northern and central regions of Malawi. It is further alleged that children have been trafficked for the purpose of forced labour on the tobacco farms.

According to the information received, which indicates that the conditions are systemic throughout the tobacco growing sector in Malawi, tenant farmers and their families are targeted for recruitment to work for contract farmers. From the information received, when the tenant farmer (usually a man) is recruited, his family (including his wife and children) also accompanies him and works on the farm. Tenant farmers are allegedly recruited by deceptive means and abuse of the position of vulnerability arising from the poverty and limited literacy and education of many tenant farmers and their children.

It is alleged that tenant farmers are reportedly deceived about working and living conditions, the nature of their agreements with contract farmers and the payment they will receive. According to information received, the working relationship between tenant farmers and contract farmers is established through loose oral arrangements, written contracts are not usually provided, and there are difficulties in enforcing the informal agreements made. Through these arrangements, tenant farmers agree to harvest tobacco and to provide it to the contract farmers in exchange for a percentage of the purchased price. According to the information received, this percentage and price is unilaterally determined by the contract farmer, as is further explained below.

It is alleged that workers are unable to leave the farms because of threats of punishment/reprisals for any complaints made. In addition, the remoteness of farm locations and distance to their home place would seriously hamper the possibility of return.

The situation described in the information received falls within the definition of trafficking in persons under article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and it is also a form of forced labour as defined in the ILO Forced Labour Convention, 1930, N°29, article 2.

Regarding the tenancy system in Malawi, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) also observed that: “Over a number of years, the Committee has been raising the issue of forced labour in tobacco plantations pursuant to allegations from various workers’ organizations, including the International Trade Union Confederation (ITUC).” The Committee recognized the commitments made by Malawi to abolish this practice and the recognition of the tenancy system as, “a gross violation of human rights as it was designed during an era when human rights were not respected.” Regarding Malawi’s commitments, the Committee noted, “the Government’s information in its report that, in order to abolish the tenancy system, consultations have been held. As a result, the Employment (Amendment) Bill has been drafted and submitted to relevant authorities for adoption.” They also urged “*the Government to ensure that the Employment (Amendment) Bill will be adopted, without delay, in order to ensure the protection of tenant labourers against the debt mechanisms that may result in debt bondage*”.¹

In addition, trafficking and forced labour can negatively impact physical and mental health and exposure to toxic chemicals can have adverse impacts to human health, including reproductive health.

Indicators of debt bondage in the relationship between tenant farmers and their families and contract farmers, and of trafficking for purposes of forced labour

The practice of debt bondage, also known as bonded labour, is one of the four practices similar to slavery or forms of servitude that are addressed in the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, of 1956.

Determination of payment and tobacco purchase price

Allegedly, the final payment that the tenant farmer receives for the harvested tobacco would be determined by the price the tobacco is finally sold for in the auction managed by the publicly owned Auction Holdings Limited. According to information received, the price and quantity of tobacco the contract farmers sell to leaf buyers is determined previously in an arrangement between leaf buyers and contract farmers. The price established in this arrangement should be compliant with the minimum legal price set by the Government of Malawi. However, according to information received, contract farmers are consistently paid less than the price originally established in the arrangements and below

¹ Observation (CEACR) - adopted 2018, published 108th ILC session (2019), at [Comments \(ilo.org\)](https://www.ilo.org/public/libdoc/iloorg/2019/02/1902001.pdf)

the minimum price. Tobacco prices can vary and be reduced if the tobacco quality is graded lower. It is alleged that the grading of the tobacco is completed by the Tobacco Commission, who allegedly manipulates the grading process to deliberately reduce the price to the benefit of leaf buyers and multinational corporations, who buy the tobacco in the auction. The price of tobacco is then determined at a lower price than the minimum stipulated by the Government and, as a result, the final percentage payment that tenant farmers receive is considerably reduced.

Accommodation and access to food and tools

Upon arrival at the farms (which are usually located in remote areas), tenant farmers and their families are reportedly required to build their own houses with materials found in the nearby forests. Reportedly, houses are not equipped with electricity or running water. Moreover, tenant farmers and their families are completely reliant on contract farmers on food, water, or access to health services and medication. While tenant farmers and their families are reportedly given a small quantity of maize to feed the family during harvest season, rations would be insufficient and, according to information received, malnutrition seems to be common. In addition, after the harvesting season, tenant farmers are allegedly required to pay for food provided by contract farmers. The cost of the food is then allegedly deducted from final payment to tenant farmers. According to this information, in some instances, tenant farmers and their families have no other option but to borrow money in the form of loans from contract farmers in order to pay for extra food, basic household necessities or medical costs. These loans are reportedly concluded at exorbitant interest rates, which can exceed 100% per annum.

In addition, before the growing season starts, contract farmers reportedly provide tenant farmers with the necessary tools required to grow and harvest tobacco. These include agricultural tools, tobacco seeds, fertilizers and pesticides. Tenant farmers are in turn allegedly required to reimburse contract farmers for the use of these tools at the end of the season. It is alleged that the cost incurred for the tools or the food is not previously discussed with tenant farmers and they are only informed of the deduction in their payment when the season is over. In some cases, according to the information received, due to the cost of these deductions, it is alleged that tenant farmers do not receive any payment and are therefore trapped in a perpetual situation of debt bondage.

Understanding the effect that this dependency on the employer may have, in creating a situation of debt bondage, the Special Rapporteur on trafficking in persons, especially women and children, clearly stated in her report to the Human Rights Council in 2017 that: “Workers are not compelled to make use of stores or services operated in connection with an undertaking. Where access to other stores or services is not possible, employers ensure that goods and services are sold or provided at fair and reasonable prices, without the aim of indebting or otherwise coercing the workers concerned” (A/HRCH/35/37, para. 66).

The situation of debt bondage in which workers find themselves combined with the remote locations and isolation of the farms, and as a result their limited freedom of movement, would seriously hinder the possibility of

workers leaving this situation, seeking assistance, or submitting complaints to law enforcement authorities.

Child labour, including in its worst forms

According to the information received, children of tenant farmers are expected to work in the tobacco farms and do not receive any payment. Reportedly, children from 3 to 4 years old are involved in picking and carrying tobacco leaves, as well as in cleaning and maintenance activities. Children from 5 years old onwards are allegedly required to assist with picking and carrying as well as sewing the leaves, and sometimes also in ploughing the fields and grading and packing harvested tobacco leaves. Children aged 6 years old and onwards are reportedly required to perform the same functions as adults. During the most labour intensive periods, during tobacco harvesting, tenant farmers and their families, including children, allegedly usually work seven days a week from 6 am to midnight. Outside of the peak period, families reportedly usually work 6 days a week for twelve hours a day. Work in tobacco farms is known to be hazardous and physical injuries and diseases can be caused by exposure to toxic chemicals or sharp cutting tools. In addition, exposure to toxic chemicals, which are found in highly hazardous pesticides can have adverse impacts on children's health, including reproductive health.

Weather conditions in which tobacco is cultivated can also cause dehydration, exhaustion or heatstrokes.

In this context, we would like to recall the obligations arising from Article 33 of the Convention on the Rights of the Child on the prohibition of economic exploitation of children, ILO Minimum Age Convention, 1973, N° 138 and ILO Worst Forms of Child Labour Convention, 1999, N° 182. Regarding the implementation of the Minimum Age Convention, in 2018, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) observations on Malawi noted, “that according to the findings of the 2015 National Child Labour Survey (NCLS), 38 per cent (over 2.1 million) children aged 5–17 years are involved in child labour. About 55 per cent of these children are engaged in hazardous work. While noting the measures taken by the Government, the Committee expresses its, “*deep concern* at the significant number of children involved in child labour in Malawi, including in hazardous conditions. *The Committee therefore urges the Government to take the necessary measures to ensure the progressive elimination of child labour and to provide information on the results achieved.*”²

The Committee also made observations in relation to the implementation of the Worst Forms of Child Labour Convention, 1999, N°182, and in 2019 the Committee noted specifically in relation to the tobacco sector that, “Child labour in this sector occurs mainly due to the tenancy system, whereby children of the tenants working in tobacco estates engage in child labour, often in hazardous work in the fields.” While the Committee commended Malawi on the efforts undertaken to eradicate these practices, information received for this communication indicates that these practices have not been eradicated and continue to be systemic in the country and in the tobacco sector.

² Observation (CEACR) - adopted 2018, published 108th ILC session (2019), [Comments \(ilo.org\)](https://www.ilo.org/public/libdoc/ceacr/obs/obs2018/obs2018001.pdf)

We recall the Committee's call to Malawi, "[...] *to continue to provide concrete information on the number of children who have been prevented or withdrawn from engaging in this type of hazardous work, and then rehabilitated and socially integrated.*"³

The reported situation of children in remote areas where the tobacco farms are located and the conditions of work to which they are subjected, including long working hours, also raise concerns regarding children's access to education under article 28 of the Convention on the Rights of the Child and the right to the enjoyment of the highest attainable standard of health, enshrined in article 24 of the Convention and article 12 of the International Covenant on Economic, Social and Cultural Rights.

Discrimination against women

According to the information received, contracts between tenant farmers and contract farmers are only concluded with the male member of the family. While the female spouses of tenant farmers are allegedly required to work on the tobacco farms, in order to meet the targets imposed by the contract farmer at the beginning of the season, they reportedly do not receive any payment for the work completed, and the contractual arrangements or discussions on working conditions reportedly do not include women farm workers. If proven, this arrangement leaves women farm workers in a precarious position.

Both the Special Rapporteur on trafficking in persons, especially women and children, and the Working Group on discrimination against women and girls have highlighted the harmful consequences on the rights of women of the discrimination against rural women, especially in relation to lands rights and security of tenure over the land. In her report to the Human Rights Council on trafficking in persons in the agriculture sector, the Special Rapporteur on trafficking in persons, especially women and children, highlighted, "that gender inequality in land ownership and in security of tenure over land, contributes to poverty, dependency and risks of violence, including trafficking of women and girls for all purposes of exploitation, in particular, forced labour, sexual exploitation and forced marriage" (A/HRC/50/33, para 4). She also expressed concern that, "Practices such as payment of wages to the male head of a family, where several family members are employed as agricultural workers, increase the isolation, dependency and vulnerability of women migrant workers to exploitation" (A/HRC/50/33, para 7). The Working Group on discrimination against women and girls highlighted in their position paper on *Insecure land rights for women threaten progress on gender equality and sustainable development*, that "In the absence of secure tenure rights, women may be ejected from their home upon the death of a husband, lack recourse when an abusive partner kicks them out, be excluded from decisions about the sale or lease of their land, have no claim to compensation when the land is taken by an investor, corporation, or the government, or lose access to firewood, fibers, food or medicine from forests which are designated as conservation areas."

³ Observation (CEACR) - adopted 2019, published 109th ILC session (2021)

Obligations of due diligence: tobacco companies operating in Malawi or sourcing tobacco leaves from Malawi

Companies operating in Malawi or sourcing tobacco leaves from farms located in Malawi are aware or ought to be aware of the working conditions and allegations of forced labour and child labour, as well as allegations of trafficking in persons. In 2019, the US Customs and Border Protection issued a Withhold Release Order (WRO) on tobacco produced in Malawi and products containing tobacco produced in Malawi (in 2020 and 2021, the WROs were partially modified to allow imports from Premium Tobacco Malawi Limited, Limbe Leaf Tobacco Company Limited and Alliance One International).

Business and human rights: supply chain management and due diligence

According to the information received, the tobacco companies, including British American Tobacco PLC and its subsidiaries, and Imperial Plc and its subsidiaries, have taken delivery of tobacco grown in Malawi directly or through their subsidiaries. Other companies that are known to produce or source tobacco leaves from Malawi are Philip Morris International and Japan Tobacco Group.

According to information received, the tobacco industry in Malawi is structured and operates in an unusually opaque and anti-competitive manner with the purposes of driving tobacco leaves prices down and below both the minimum legal price and the fair market price (based on the price of tobacco leaves in neighbouring countries). According to information received, leaf buyers use their dominant position in the market to unilaterally impose their purchasing conditions and prices on contract farmers prior to the auctioning process, and act in a collusive manner during tobacco auctions to ensure prices are kept low. In addition, it is alleged that leaf buyers impose a loan system on contract farmers similar to the one that contract farmers impose on their tenants, regarding provision of agricultural inputs, which also exacerbates the position of vulnerability of contract farmers in relation to leaf buyers.

These practices can have a negative impact on the conditions of work in tobacco growing farms.

Access to effective remedies

Additionally, the opacity in the relations between the companies and their sourcing of tobacco leaves from Malawi farms, can contribute to the vulnerability of workers to abusive working conditions, including trafficking for purposes of forced labour, and can limit access to effective remedies, including compensation and access to adequate health services.

Tenant farmers and their families on Malawi tobacco farms have low levels of literacy and live in remote rural areas. These issues, together with the lack of transparency in relation to the supply chains and the companies involved, can pose considerable challenges to accessing all available remedies, including the operational grievance mechanisms of companies who supply tobacco from Malawi.

In this regard the Special Rapporteur on trafficking in persons, especially women and children, has expressed her concern about failures to ensure the right to effective remedies, and the lack of due diligence and transparency in supply chains. In her report on Trafficking in Persons in the Agriculture Sector: Human Rights Due Diligence and Sustainable Development, the Special Rapporteur said: “Difficulties include overcoming procedural and jurisdictional barriers, meeting evidential requirements in criminal proceedings, discharging the burden of proof and limited opportunities for collective redress, as well as lack of awareness of domestic and international laws relating to trafficking for forced labour and the rights of victims. In the agricultural sector, the above-mentioned difficulties are often exacerbated owing to the remoteness of work settings and limited access to legal assistance” (A/HRC/50/33, para. 47). The Special Rapporteur also highlighted the importance of human rights due diligence in supply chains, to achieve the objectives of decent work and effectively prevent trafficking in persons (para. 36).

Previously, in her report to the General Assembly, the Special Rapporteur expressed her concern about access to remedies and recalled that, “The publication of a list of suppliers and subcontractors, as well as parent company subsidiaries, would be key to allowing external stakeholders and workers to hold companies or “economic employers” higher up the supply chain to account. Workers along the chain must be informed of the relationship that their companies may have with each company or economic employer along the supply chain” (A/74/189, para. 39).

The rights of human rights defenders

We are further concerned about allegations that human rights defenders have not been given access to the tobacco farms in order to exercise proper oversight and human rights due diligence across the tobacco supply chain, and to provide assistance to persons at risk of trafficking for forced labour and to victims of other related human rights violations.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern that measures are not being taken to prevent trafficking in persons for purposes of forced labour, or child labour, and related human rights violations, or to assist and protect victims of trafficking in persons for purposes of forced labour. We are gravely concerned that the State’s positive obligations of prevention, assistance and protection are not being met, and that further, there are no effective investigations into allegations of trafficking in persons for purposes of forced labour, leading to a lack of accountability for this serious human rights violation and serious crime, and continued impunity.

We are also concerned at the alleged failure to prevent related violations of the rights to education and to the highest attainable standard of health, discrimination against women workers, and consequent impact on poverty and livelihoods of tenant farmers and their families.

In this connection we note that the following company domiciled within your territory and/or jurisdiction is potentially involved, including through their supply

chains in Malawi, in the alleged human rights violations detailed in this letter: Japan Tobacco Group. We note that we have written to this company to seek its responses to these allegations. While this company has been brought to our attention we note that this is not an exhaustive list and that others domiciled within your territory and/or jurisdiction may also be implicated.

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. In regard to the above allegations, please indicate the actions taken, or being planned, by your Excellency's Government to implement the relevant provisions in the 2022-2025 National Action Plan on Business and Human Rights (NAP), specifically the "Measures Related to Domestic and Global Supply Chains and Promotion of Human Rights Due Diligence Based on the UNGPs". In particular, please provide detailed information on the steps taken, or being considered, to "publicize the NAP and raise awareness of human rights due diligence to Japanese business enterprises operating overseas via Japanese embassies, consulates, and overseas offices of government-related entities". In addition, please indicate the actions taken or planned by your Excellency's Government to strengthen the provisions in its NAP through explicit references to extraterritorial jurisdiction.
3. Please indicate the steps that your Excellency's Government has taken, or is considering taking, to ensure effective access to domestic judicial mechanisms for victims of business-related human rights abuses, including for overseas victims of serious human abuses such as those alleged in the present letter.
4. Please indicate the steps that your Excellency's Government has taken, or is considering taking, to ensure that business enterprises domiciled in its territory and/or jurisdiction establish effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.
5. Please provide information on the measures taken by your Excellency's Government to prevent diseases due to chemicals reportedly used by business enterprises domiciled in its territory and/or jurisdiction and ensure the right to health, including reproductive health, of all the reported workers, including women and children.

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.

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.

We may 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. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that letters expressing similar concerns have been sent to the Governments of Malawi, United Kingdom of Great Britain and Northern Ireland and United States of America, as well as to companies involved in the abovementioned allegations.

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

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

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

Michael Fakhri
Special Rapporteur on the right to food

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. We would like to particularly bring your Excellency's attention to the human rights obligations under international human rights instruments and under customary international law binding on Japan.

It is well established that the international human rights law obligations of States apply extraterritorially. Under international treaty law, this is a question of the scope of application of the treaty itself, a matter of treaty interpretation. In this regard, it is worth noting that under the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan in 1979, the scope of application is a matter of interpretation of the notion of "territory and jurisdiction" in its article 2 (1). The Human Rights Committee has long and consistently affirmed a disjunctive interpretation of these two concepts, and that that the Covenant applies extraterritorially in situations where the State exercises jurisdiction in the form of effective control over territory or power over an individual (see General Comments no. 31 para. 11 and no. 36 para. 63).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Japan in 1979, provide an explicit basis for extraterritorial obligations. All rights recognized by the ICESCR should be understood in conjunction with its Article 2, Para 1, which reads "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Thus, it explicitly establishes an obligation of international cooperation.

In addition, the Committee on the Economic, Social and Cultural Rights has indicated 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." (General Recommendation 24 (2017)).

With regard to the obligations incumbent on Japan under customary international law, it is worth noting that no restriction in terms of their scope of applicability exists, comparable to those enshrined in treaty law. Thus, as a starting point, there is a presumption *against* the territorial limitation of these obligations. In this regard, we note that the Universal Declaration of Human Rights (UDHR) contains no explicit jurisdictional limitations. At the very least, the scope of applicability of customary international human rights law obligations must be understood to similar scope of application as those within the two Covenants. This finds support in the following three considerations: First, the ICCPR and the ICESCR are treaty codifications of human rights contained in the UDHR. Second, the affirmation that human rights obligations apply extraterritorially enjoys not only consistent affirmation

by the relevant treaty bodies, but more generally from global and regional human rights monitoring bodies. This has been accepted by the International Court of Justice with respect of the ICCPR. Third, that human rights obligations are not territorially limited has been accepted, implicitly and explicitly, by States.

We would like to refer to the Slavery Convention of 1926, which calls for the complete abolition of slavery in all its forms and to article 4 of the Universal Declaration of 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". We would also like to recall Article 5 of the Slavery Convention which calls upon States to take appropriate measures to prevent forced or compulsory labor involving conditions similar to slavery.

We would also 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), to which your Excellency's Government acceded in 2017, whereby your Excellency's Government is obliged to refrain from acts that would frustrate or undermine the objectives and purposes of the Protocol, which include preventing and combating trafficking in persons, including for the purpose of forced labor or labor exploitation. The Protocol also recalls States' obligations of cooperating with social actors, including civil society, to establish and implement programmes and policies to prevent trafficking in persons, and protect and assist victims of trafficking, when appropriate (articles 6 and 9).

In relation to the State's obligations to prevent and protect victims of trafficking, we would like to recall the obligation of due diligence. In this regard, States have a positive obligation to protect individuals from human rights violations committed by private actors. Due diligence obligations have been articulated in areas applicable to trafficking in persons, including the right to life, violence against women and gender discrimination, along with a number of specific obligations relevant to trafficking.

We would also like to remind your Excellency's Government of its obligations under articles 2 and 6 of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by your Excellency's Government in 1985, which requires States Parties to take all appropriate measures, including legislation, to suppress all forms of trafficking in women. We recall in this case, your Excellency's government obligations under article 11 on women's rights in the field of employment and the right to equal remuneration for work of equal value, and article 14 of the Convention which compels States to take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families and take all appropriate measures to eliminate discrimination against women in rural areas to ensure the right to, among others, access to adequate health care facilities, enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Following CEDAW General Recommendation 34 on the rights of rural women and general application of Article 2 of the same Convention "States parties should regulate the activities of domestic non-State actors within their jurisdiction (...) and to eliminate discrimination by any public or private actor, which extends to acts of

national corporations operating extraterritorially. States parties should uphold extraterritorial obligations with respect to rural women by, inter alia: not interfering, directly or indirectly, with the enjoyment of their rights; taking regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing or abusing the rights of rural women outside their territory; and ensuring that international cooperation and development assistance, whether bilateral or multilateral, advance the rights of rural women outside their territory. Appropriate and effective remedies should be available to affected rural women when a State party has violated its extraterritorial obligations” (CEDAW/C/GC/34, para 13).

We also recall CEDAW General Recommendation 38 on trafficking in women and girls in the context of global migration (CEDAW/C/GC/38), in particular recommendations to address socioeconomic injustice, including through elimination of social structures which limit women’s autonomy and access to key resources (para. 51), as well as measures aimed at strengthening women’s labour rights, enshrined in para. 54 and measures to prevent and address trafficking in all business operations and public procurement and corporate supply chains (para. 63).

The Convention on the Rights of the Child, ratified by your Excellency's Government in 1994, in its article 32, obliges its States Parties to protect the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. States Parties shall adopt legislative, administrative, social and educational measures to ensure the application of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall, in particular: (a) Fix a minimum age or ages for employment; (b) Provide for appropriate regulation of hours and conditions of work; (c) Provide for appropriate penalties or other sanctions to ensure the effective implementation of the present article.

We also recall General Comment of the Committee on the Rights of the Child, No. 16 (2013), on State obligations regarding the impact of the business sector on children’s rights (CRC/C/GC/16). In particular and referring to the informal sector and family economies, the Committee on the Rights of the Child recalls that: “States must regulate working conditions and ensure safeguards to protect children from economic exploitation and work that is hazardous or interferes with their education or harms their health or physical, mental, spiritual, moral or social development.” (para. 37) The Committee also reminds States about the extraterritorial application of the Convention and obligation to protect the rights of children also in the context of businesses extraterritorial activities, “under the Convention, States have the obligation to respect and ensure children’s rights within their jurisdiction. The Convention does not limit a State’s jurisdiction to “territory”. In accordance with international law, the Committee has previously urged States to protect the rights of children who may be beyond their territorial borders. It has also emphasized that State obligations under the Convention and the Optional Protocols thereto apply to each child within a State’s territory and to all children subject to a State’s jurisdiction” (para. 39)

We would also like to draw your attention to Article 8 of the International Covenant on Civil and Political Rights which prohibits slavery, the slave trade, servitude and forced labor.

We would like to highlight Article 7 of the International Covenant on Economic, Social and Cultural Rights which recognizes the "right of everyone to the enjoyment of just and favourable conditions of work". These conditions must guarantee, among other things, remuneration that provides all workers, at a minimum, a decent living for themselves and their families, safe and hygienic working conditions, rest, leisure and reasonable limitation of working hours and periodic vacations, as well as remuneration for public holidays. We wish to also recall article 12 of ICESCR, coupled with its article 2.2 which recognizes the States' obligations to the right on everyone, to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) stresses that the right to health is defined not only as the right to timely and appropriate health care, but also to "the underlying determinants of health, such as access to safe and potable water [...] and environmental conditions [...]" (para.11). In this regard, WHO defines social determinants of health, as the non-medical factors that influence health outcomes, that is "the conditions in which people are born, grow, work, live, and age"⁴. In addition, CESCR emphasizes that, "the right to healthy natural and workplace environments", comprises "the requirement to ensure an adequate supply of safe and potable water and basic sanitation" as well as "the prevention and reduction of the population's exposure to harmful substances such as [...] harmful chemicals". It also indicates that "[t]he prevention, treatment and control of epidemic, occupational and other diseases [...] requires the promotion of social determinants of good health, such as environmental safety" (General Comment No. 14, paras. 15 and 16). CESCR also recognizes the right to sexual and reproductive health as an "integral part of the right to health" and stresses the core obligation of States to "ensure, at the very least, minimum essential levels of satisfaction on the right to sexual and reproductive health" (General Comment No. 22, paras. 1, 11 and 49). The rights set forth in the Covenant apply to all persons.

Article 25 of the Universal Declaration of Human Rights recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Article 11 (1) of ICESCR recognizes "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." In interpreting this provision, the Committee on Economic Social and Cultural Rights stressed in its General Comment No. 12 that the core content of the right to adequate food implies, inter alia, the availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well- functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand (para. 12).

While Article 11 (1) is subjected to progressive realization to the maximum of States available resources, article 11 (2), provides "the fundamental right to freedom from hunger and malnutrition", which is of immediate application.

The ILO Forced Labor Convention, 1930 (No. 29), ratified in 1932, further calls for the abolition of the use of forced or compulsory labor in all its forms at the earliest possible date. In particular, according to its Article 2, forced or compulsory labor is defined as "any work or service which is exacted from any person under the

⁴ World Health Organization, "Social determinants of health", available at: www.who.int/health-topics/social-determinants-of-health#tab=tab_1.

menace of any penalty and for which the said person has not offered himself voluntarily". We also recall the ILO Convention on the Worst Forms of Child Labour Convention, 1999 (No. 182), ratified on 2001, which prohibits any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (article 3) and the ILO Minimum Age Convention, 1973, N° 138 also ratified in 2000. We also wish to remind your Excellency of your obligations under the ILO Equal Remuneration Convention, 1951 (n°. 100), ratified by your Excellency's Government in 1967.

In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Principles and Guidelines states that "States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or non-State actors".

We would like to draw your Excellency's attention to the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children in her reports on trafficking in persons in the context of business activities. We would like, in particular, to draw special attention to the latest report to the Human Rights Council on "Trafficking in persons in the agriculture sector: human rights due diligence and sustainable development", (A/HRC/50/33), which contains specific recommendations in the context of agriculture, and A/HRC/35/37 and A/74/189 on "Access to remedy for victims of trafficking for abuses committed by businesses and their suppliers".

In the context of the alleged facts, we would like to highlight that the fundamental inequalities that characterize the global political economy are also present in the extractivism economy. We would like to draw your attention to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on "Global extractivism and racial equality" (A/HRC/41/54). In this report, the Special Rapporteur stresses how the obligations concerning racial equality and non-discrimination enshrined in the international human rights framework must be central to reform, regulation and evaluation of the extractivism economy. The report also argues that it is clear that the socioeconomic and political devastation that characterizes many resource-rich nations in the global South is the product of a global extractivism economy that is deeply rooted in structural inequality. The Special Rapporteur elucidates how poverty and underdevelopment are the predictable result of centuries of economic structuring in which colonial powers have integrated colonial territories and their economies into the global markets under conditions of economic dependency, in collaboration with national elites in the global South and at the expense of the vast majority of their populations. In the global South, proceeds from the natural resource sector often accrue to the personal fortunes of the ruling elite instead of contributing to overall national well-being. The informal functioning of a State's extractivism apparatus enables public officials to make use of their positions for personal financial gain.

The report goes on to outline the applicable legal framework, including elucidating that Declaration on the Granting of Independence to Colonial Countries and People is among the important statements that Member States have made to repudiate colonialism. In its first two articles, the General Assembly declares the following important principles of decolonization: the subjection of peoples to alien

subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation; all peoples have the right to self-determination; and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Moreover, the report of the Special Rapporteur outlines how the two treaties at the foundation of the international human rights system – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – both begin (in art. 1) by enshrining the equal right to self-determination of peoples, the equal rights of all peoples freely to dispose of their natural wealth and resources, the equal rights of all peoples not to be deprived of their respective means of subsistence, and the obligations of all States parties to promote and respect the realization of the right to self-determination. In the Declaration on the Right to Development, the General Assembly explains (in art. 1 (2)) that the right of peoples to self-determination includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. It further articulates the following duties of great importance in the context of extractivism: States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights. The duty to promote the right to development also applies to transnational corporations (E/CN.4/1334, para. 109).

The report of the Special Rapporteur further highlights how the Declaration on Permanent Sovereignty over Natural Resources is also vital for understanding the baseline for equal relations within the extractivism economy. It is stated in article 1 of the Declaration that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of their national development and of the well-being of the people of the State concerned. It is stated in article 2 that the exploration, development and disposition of such resources, as well as the importation of the foreign capital required for these purposes, should be in conformity with the rules and conditions that the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities. It is stated in article 5 that the free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality. It is stated in article 7 that any violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace.

We would like to also highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. 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.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. 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.

Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

Finally, 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.