

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL OTH 57/2023

(Please use this reference in your reply)

26 October 2023

Dear Mr. Bakke,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 53/3, 46/7, 52/4, 51/16 and 51/19.

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. We are part of the special procedures system of the United Nations, which has 59 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.

In this connection, we would like to bring to your attention information we have received concerning the violation of the human rights of members of the Native Community of Santa Clara de Uchunya, in the Ucayali region of Peru, where human rights defenders and workers have been affected in the context of the activities of a Peruvian palm oil company, Ocho Sur P. SAC. The parent company of Ocho Sur P. SAC is Peruvian Palm Holdings¹, based in Bermuda. The main investors of the company are Anholt Services USA Inc., owned by Kattegat Group and AMERRA

¹ https://www.scribd.com/document/480030351/SELLO-Escrituras-Publicas-de-Ocho-Sur#from_embed

Capital Management LLC, both domiciled in the United States. The products of the company Ocho Sur P. SAC are purchased, among others, by a company domiciled in the Netherlands, Bunge Loders Croklaan, two companies domiciled in Spain, Lasenor Emul and Lípidos Santiga S.A, a company domiciled in Belgium, Vandemoortele NV and two companies domiciled in Japan - Nisshin Oillio Group Ltd. and Meiji Holdings Co. Ltd.

According to the information received:

The Native Community of Santa Clara de Uchunya, district of Nueva Requena, province of Coronel Portillo, Ucayali region, Peru, is a Shipibo-Konibo Indigenous community of about 450 people. Its territory is located just over two hours from the city of Pucallpa and on the banks of the Aguaytia River. Most of the community's activities include fishing and fruit gathering.

Ocho Sur P. SAC is a Peruvian palm oil producer in the Ucayali region that belongs to Grupo Ocho Sur, Peru's second-largest palm oil producer. The company Ocho Sur P. SAC was created in 2016, following the liquidation of Plantaciones de Pucallpa SAC, and sold at auction in Indonesia to Ocho Sur P. SAC.² The personnel of these two companies are the same, and they have exactly the same activity and production areas. The company **Plantaciones de Pucallpa SAC** was founded by businessman Dennis Melka and was part of the Melka Group. Dennis Melka was also one of the seven directors of Peruvian Palm Holdings until 2019. The assimilation between the two companies has also been made by the Roundtable on Sustainable Palm Oil (RSPO) in a document dated on February 26, 2021, and by the Attorney General's Office in a criminal investigation for environmental crimes against Dennis Melka and 30 other businessmen (EXPO 88-2017).

Indigenous Peoples' right to lands and territories

The territory that the Santa Clara de Uchunya Native Community has traditionally used has an area of 86,717 hectares, of which 218.52 hectares were legally titled as community property by the Peruvian State in 1986 and a territorial extension of 1,544 hectares was granted to them in 2022. However, the remaining 84,238 have not been legally titled by the State.

On the other hand, the company Plantaciones de Pucallpa SAC, now Ocho Sur P SAC, has used and deforested 7,216 hectares of the Indigenous ancestral lands for their palm plantations. These lands were first occupied by 222 external parties, who received ownership of these lands through false certificates of possession. Subsequently, according to the information received these external parties sold the land to Plantaciones de Pucallpa SAC. This lack of legal security in relation to the land traditionally occupied by the community has led to a phenomenon of land trafficking and major deforestation. It is alleged that more than 25,000 of the 86,717 hectares of the community's ancestral territory have been occupied and deforested by third parties.

² <https://web.archive.org/web/20210401062700/https://www.thejakartapost.com/adv/2016/06/23/public-auction-of-real-properties-and-plantations-in-the-provinces-of-coronel-portillo-and-padre-abad-department-of-ucayali.html>

In 2016, the Santa Clara de Uchunya Native Community filed an *amparo* lawsuit before the Constitutional Court against the Regional Directorate of Agriculture of Ucayali (DRAU) and the company Plantaciones de Pucallpa SAC, alleging that those property certificates in favour of 222 civilians disregard the Community's collective property rights. In 2022, the Constitutional Court declared the lawsuit inadmissible (case N°03696-2017-PA/TC), however, it urged the DRAU to continue with the demarcation procedure of the Community's territory. In this context, in May 2022, the Native Community of Santa Clara de Uchunya was granted the certificate of registration of its first territorial extension title for 1544.2025 hectares.

Additionally, on May 22, 2023, the Preparatory Investigation Court ordered to file and indictment against Ocho Sur P SAC, represented by its Chief Operating Officer Serge George Verhaert and his attorney José Renzo Puyen Rivera for aggravated usurpation of territories that are within the territorial expansion legally titled in favour of the community in 2020. This is the first time that a criminal accusation has been made against Ocho Sur P SAC, and not its predecessor Plantaciones de Pucallpa SAC, for alleged dispossession of ancestral territory. (EXP N° 00102-2022-58-2406-JR-PE-01)

Indigenous Peoples' Rights to Self-Determination and Free, Prior and Informed Consent

Despite the negative impact suffered by these exploitation activities on their ancestral territories, the Peruvian State has never held prior, free, and informed consultations with the Santa Clara de Uchunya Community in order to obtain their consent, even after the approval of Law No. 29785 names the Law on the right to prior consultation of indigenous or native peoples, recognized in the Convention 169 of the International Labour Organization (ILO) and its regulations approved by Supreme Decree N°001-2012-MC.³

For its part, the company has never held consultations with the community to evaluate the impact that its operations could have on them. On the contrary, the company would have generated division within the community with the objective of overcoming any resistance to its operations and of achieving greater control and expansion in the community's ancestral territory. Particularly, in recent years the company has internally divided the community by approaching various leaders, but not the representative institutions of the community, in addition to allegedly carrying out defamation and stigmatization campaigns against the official leader of the community and organisations that support it. This has affected the internal structure of the Native Community, and leaders have denounced the illegality of an election of a new Board of Directors. (EXP N°000048-2022-35-2406-JR-CI-01).

Additionally, complaints have been received from 20 leaders of being expelled from the community allegedly as retaliation due to their complaints about contamination in their territory by the company.

³ https://www.culturacusco.gob.pe/wp-content/uploads/2017/07/DERECHO-A-LA-CONSULTA-PREVIA_2020_publicaci%C3%B3n.pdf

Deforestation of forests and contamination of water sources.

Since the company Plantaciones de Pucallpa SAC began operations in 2012 in the Native Community, now the company Ocho Sur P SAC, it is reported that some 7,000 hectares of forests have been deforested without environmental and forestry licenses. In 2016, the Roundtable on Sustainable Palm Oil (RSPO) made public that the company Plantaciones Pucallpa SAC deforested more than 5,000 hectares of land, including virgin forest, violating the organization's standards.

Likewise, in a hearing held on 9 March 2022, at the request of the Attorney General's Office, the Fourth National Preparatory Investigation Court of Lima decided to include the companies Plantaciones de Pucallpa SAC and Ocho Sur SAC in the criminal investigation for environmental crimes against Dennis Melka and 30 other businessmen, for allegedly committing crimes against forests to the detriment of the indigenous community of Santa Clara de Uchunya and the Peruvian State. The company Plantaciones Pulcallpa S.A.C. is accused of having destroyed, burned, damaged, and cut down forests and other natural forest formations. This process continues in its preparatory investigation phase before the First Specialized Corporate Supraprovisional Prosecutor's Office against Organized Crime in Lima (Prosecutors Folder 88-2017).

The company had not complied with forestry and environmental legislation, in particular, it does not have a soil qualification study, a soil change authorization and an environmental certification to carry out its economic activities. For these facts, in 2015, the General Directorate of Agricultural Environmental Affairs (DGAAA) of the Ministry of Agriculture ordered the immediate suspension of the company's activities. The company reportedly continued its operations despite this order. The Environmental Evaluation and Oversight Agency (OEFA) has never sanctioned the company.

It is also alleged that as a result of the palm oil activity in the community, water lagoons have been contaminated, particularly the Cocha Garza lagoon, and rivers have been diverted, causing droughts and floods.

Attacks and intimidation of defenders

As highlighted in the communications AL PER 9/2020 and AL PER 8/2022, Indigenous leaders and defenders have suffered threats, intimidation, acts of harassment, and attacks since 2014 for demanding respect for environmental and territorial rights. In particular, the leaders of the Native Community, **Mr. Carlos Hoyos Soria** and **Efer Silvano Soria**, and the lawyer **Ms. Linda Vigo** have been criminalized. In addition, human rights organizations that provide technical assistance to the Native Community and an independent journalism portal have reported that they have received notarized letters from the company Ocho Sur P SAC. For these two previous communications, responses from the State were not received.

Labour situation of the workers of Ocho Sur P SAC

According to the information provided, the workers of Ocho Sur P. SAC do not have adequate safety materials and equipment to protect themselves from work-related risks, violating safety and hygiene standards at work, in addition to not adopting the necessary preventive measures to avoid the generation of risks inherent to the work they do. Additionally, according to the information received, people with tuberculosis would work in the company, who allegedly cohabit in overcrowded conditions, without receiving adequate medical treatment or access to medical assistance, causing the spread of this infectious disease.

Without prejudging the accuracy of these allegations, we express our deep concern regarding the adverse impact that palm oil economic activity has on human rights, and with which your company has business relationships.

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the human rights due diligence policies and processes established by your company to identify, prevent, mitigate, and remedy adverse human rights impacts of its investment activities, not only prior to investigating but also on an ongoing basis once invested in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs). Please clarify how your company requires investees to conduct human rights due diligence in order to respect human rights and the environment, including those of Indigenous Peoples and human rights defenders.
3. Please provide information on any steps taken by your company or any steps that it is considering to ensure the protection of human rights defenders, journalists, and groups that may be in situations of vulnerability, such as Indigenous Peoples.
4. Please provide information on the measures that your company has taken or is planning to take to address the concerns mentioned and to ensure that affected stakeholders have access to effective remedies and can obtain adequate remedy for the negative human rights impacts caused or contributed to by its investment activities. Also, provide information about measures implemented against deforestation occurred across its business relationships.

5. Please describe the measures that your company has taken or is planning to take to prevent the recurrence of such situations in the future.
6. Please provide information on whether your company publicly discloses how it is addressing human rights risks and impacts connected with its investment activities.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company 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.

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 company to clarify the issue/s in question.

Please be informed that a letter on this subject matter has also been sent to those business enterprises that are involved, including Ocho Sur P. SAC, Peruvian Palm Holding, Anholt Services, Bunge Loders Croklaan, Lasenor Emul, Lípidos Santiga S.A, Vandemoortele Lipids NV, Nisshin Oillio Group Ltd., and Meiji Holdings Co. Ltd, as well as to the home-States of all involved companies the Governments of United Kingdom, United States of America, Japan, Spain, Netherlands, Peru and Belgium.

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

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

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment
of a safe, clean, healthy and sustainable environment

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay
Special Rapporteur on the rights of Indigenous Peoples

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights standards

In connection with the allegations detailed above and our connected concerns, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31). The Guiding Principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These Guiding Principles are based on the recognition of:

- a. "The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms";
- b. The role of business enterprises as specialised bodies or corporations performing specialised functions, which must comply with all applicable laws and respect human rights;
- c. The need for rights and obligations to be matched by appropriate and effective remedies when they are violated".

The Guiding Principles make clear that companies have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to companies on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require "business enterprises to:

- (a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts" (Guiding Principle 13). (Guiding Principle 13).

The commentary to Guiding Principle 13 notes that companies can be affected by adverse human rights impacts, either through their own activities or as a result of their business relationships with other parties (...) The 'activities' of business enterprises are understood to include both actions and omissions; and their 'business relationships' include relationships with business partners, entities in their value chain and any other non-State or State entities directly linked to their business operations, products or services".

To meet their responsibility to respect human rights, companies should have in place policies and procedures appropriate to their size and circumstances:

- (a) A political commitment to uphold their responsibility to respect human rights;
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact;
- c) Processes to redress any adverse human rights impacts they have caused or contributed to. (Guiding Principle 15)

According to Guiding Principles 16-21, human rights due diligence involves:

- (a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise has caused or contributed to through its activities, or that are directly related to the operations, products or services provided by its business relationships;
- (b) Integrate the results of impact assessments into relevant business functions and processes, and take appropriate action in accordance with their involvement in the impact;
- (c) Monitor the effectiveness of the measures and processes adopted to address these adverse human rights impacts in order to know whether they are working;
- (d) Communicate how adverse effects are addressed and demonstrate to stakeholders - particularly those affected - that appropriate policies and processes are in place to implement respect for human rights in practice".

This process of identifying and assessing actual or potential adverse human rights impacts should include substantive consultation with potentially affected groups and other stakeholders (Guiding Principle 18).

Where an enterprise causes or is likely to cause an adverse human rights impact, it should take the necessary steps to end or prevent that impact. "The establishment of operational-level grievance mechanisms for those potentially affected by corporate activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Guiding Principle 22).

In addition, the Guiding Principle 18 and 26 underline the essential role of civil society and human rights defenders in helping to identify potential adverse human rights impacts related to business. The Commentary to Principle 26 underlines how States, in order to ensure access to remedies, must ensure that the legitimate activities of human rights defenders are not obstructed. In its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It explains, for States and companies, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

We would also like to draw your attention to the United Nations Declaration on the **Rights of Indigenous Peoples**, which reflects existing legal obligations arising from international human rights treaties. We would also like to refer to Article 26 of the UN Declaration on the Rights of Indigenous Peoples which recognises the right of indigenous peoples to the lands, territories and natural resources which they have traditionally owned, occupied or used and that States shall ensure the legal recognition and protection of these lands, territories and resources with due respect for their customs, traditions and land tenure systems. On the other hand, Article 32 provides that " States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development,

utilization or exploitation of mineral, water or other resources." We would also like to draw attention to Convention 169 of the International Labour Organisation (ILO), in particular articles 6, 7, 14, 17 and 18, which, among other aspects, state the obligation to consult freely and in good faith, to guarantee the effective protection of the rights of indigenous peoples over the lands they traditionally occupy.

Furthermore, we would like to recall the United Nations **Declaration on the Rights of Peasants and Other Rural Workers**. According to Article 1, paragraph 2, the Declaration applies to all persons engaged in small-scale or artisanal agriculture, planting of crops, animal husbandry, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of farmers. In addition, Article 18.1 of the Declaration states that "Peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their lands, and of the resources that they use and manage."

We would also like to draw your attention to Article 19 of International Covenant on Civil and Political Rights (ICCPR), that enshrines the right of everyone to **freedom of expression**, which includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print or in the form of art. We would like to emphasise article 21 of the ICCPR which guarantees the **right to freedom of peaceful assembly**.

We would also like to remind you the rights of **human rights defenders**, as enshrined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Both the United Nations Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples have noted an alarming increase in attacks and criminalisation against indigenous defenders, especially in the context of large-scale development projects and the defence of their lands and territories (A/HRC/37/51/Add.2, A/HRC/39/17).

Also, on 8 October 2021, the Human Rights Council adopted resolution 48/13 recognising the right to a clean, healthy and sustainable environment. In addition, the Framework Principles on Human Rights.

The full texts of the above-mentioned human rights instruments and standards are available at www.ohchr.org or can be made available upon request.