

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 NLD 3/2023

(Please use this reference in your reply)

26 October 2023

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; 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.

In this connection, we would like to bring to the attention of your Excellency's Government 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 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 Lodders 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

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

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>

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 an 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.

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. In 2022, the Constitutional Court declared the *amparo* lawsuit inadmissible since individuals and entities allegedly involved in the events did not participate in the proceedings. However, the Court urged the DRAU to proceed with the territory demarcation procedure for the Community, considering that there are strong arguments that could substantiate environmental damage in the area. In that context, in May 2022, the Native Community of Santa Clara de Uchunya received the certificate of registration for its first territorial expansion title, covering an area of 1,544 hectares, from the Pucallpa Zonal Office of the National Superintendence of Public Registries (SUNARP) (EXP No. 03696-2017-PA/TC).

Additionally, on May 22, 2023, the Preparatory Investigation Court ordered to file an 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 an 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.

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 investigation for environmental crimes against Dennis Melka and 30 other businessmen, for allegedly committing crimes against forests to the

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

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 water shortages 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 Netherlands-based companies have 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 on the measures the Government of your Excellency has taken, or is considering taking, to ensure that business enterprises domiciled in your territory and/or jurisdiction respect human rights in all their activities, including with regard to their supply chain.
3. Please provide information on concrete progress made by the Government of your Excellency in requiring or encouraging business enterprises domiciled in your territory and/or jurisdiction to implement human rights due diligence processes, in accordance with the UN Guiding Principle on business and human rights, including with regard to their supply chain.
4. Please provide information on the measures the Government of your Excellency has taken against deforestation in the context of business activities.
5. Please provide information on the steps the Government of your Excellency is taking or considering taking to ensure that individuals affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country through judicial or extrajudicial State-based mechanisms.

We would appreciate receiving a response within 60 days. Past 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.

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 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 Holdings, Anholt Services USA Inc., AMERRA Capital Management LLC, Bunge Lodens Crocklaan, Lasenor Emul, Lípidos Santiga S.A, Vandemoortele 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, Japan, Spain, United States of America, Peru and Belgium.

Please accept, Excellency, 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 law

In connection with above alleged facts and concerns, we would like to draw your attention 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) after years of consultations with governments, civil society and the business community. Guiding Principle 1 reiterates the State duty to "protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." Guiding Principle 2 requires states to "set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations." In addition, Guiding Principle 3 reaffirms that States should, inter alia, provide effective guidance to business enterprises on how to respect human rights in all their activities and encourage companies to disclose how they manage the human rights impacts of their operations, and to compel them to do so where appropriate. The commentary to Guiding Principle 13 notes that business enterprises can have negative impacts on human rights, either through their own activities or through their business relationships with other parties "a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services." In addition, under Guiding Principle 26, States "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."

In addition, Principle 18 emphasizes the critical role of civil society and human rights advocates in identifying the potential adverse human rights impacts of business. The commentary to principle 26 emphasizes that States, in order to ensure access to remedy, must ensure that the legitimate activities of human rights defenders are not impeded.

It is also important to recall that the Committee on Economic, Social and Cultural Rights, in its general recommendation 24 (2017), states that "The extraterritorial obligation to protect requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective."

We would also like to draw the attention of your Excellency's Government 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." In addition, Article 18(2) states that "States shall take appropriate measures to ensure that peasants and other persons working in rural areas enjoy, without discrimination, a safe, clean and healthy environment."

We would also like to draw the attention of your Excellency's Government to Article 19 of International Covenant on Civil and Political Rights (ICCPR) 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 your Excellency's Government of the State's duty to protect **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). On this issue, the former Special Rapporteur on the rights of indigenous peoples, Ms. Victoria Tauli-Corpuz, has recommended to States to ensure that indigenous communities affected by development projects and those defending their rights are not stigmatized, and "recognize that their concerns are legitimate components in a process aimed at securing sustainable development" (A/HRC/39/17, para. 91.b).

We would also like to draw attention to the Framework Principles on Human Rights and the **Environment** detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles provide that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States must respect, protect and fulfil

human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States must ensure effective enforcement of their environmental standards against public and private actors (Principle 12).

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 and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out the core obligations of States under human rights law regarding the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 states that "States should establish a safe and enabling environment in which individuals, groups of individuals and organs of society concerned with human rights or environmental issues can operate free from threats, harassment, intimidation and violence."

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). This obligation is implicitly, but clearly, derived from a set of rights and duties enshrined in the global human rights framework, under which States are obliged to respect, fulfil and protect recognized human rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and clean water, adequate housing and safe and healthy working conditions. The obligation to prevent exposure is reinforced by national and regional recognition of the right to a safe, clean, healthy, and sustainable environment, including clean air. The existence of the State obligation to prevent exposure is reinforced by the right to full respect for the bodily integrity of the individual, which contributes to a context in which everyone should have the right to control what happens to their bodies (see A/HRC/39/48). Taken as a whole, international human rights clearly establish the duty of your Excellency's government to prevent exposure to hazardous substances and wastes.

We wish to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights which enshrines the **right of everyone to the enjoyment of the highest attainable standard of physical and mental health**. The right to health is also guaranteed by Article 25 of the Universal Declaration of Human Rights, which refers to the potential of the individual, the social and environmental conditions affecting the health of the individual, and health services. General Comment 14 of the Committee on Economic, Social and Cultural Rights describes the normative content of Article 12 of the International Covenant on Economic, Social and Cultural Rights and the legal obligations undertaken by States parties to respect, protect and fulfil the right to physical and mental health. In its General Comment No. 14, paragraph 11, the Committee on Economic, Social and Cultural Rights interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information(...)". In addition, the Committee on Economic, Social and Cultural Rights has affirmed that "corporate activities can adversely affect the enjoyment of Covenant rights" including adverse effects on the right to health, standard of living, and the natural environment, and has reiterated "the obligation of States Parties to ensure that all economic, social and cultural rights laid

down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities." (E/C.12/2011/1, para. 1).

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.