

**Mandates of the Working Group of Experts on People of African Descent; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to education; 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 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on the human rights to safe drinking water and sanitation**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to education; 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 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 36/23, 35/7, 26/17, 37/8, 32/8, 33/9, 34/9, 33/1 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of **workers and families living on farms in the abaca plantations of the Japanese company Furukawa Plantaciones C.A. in Ecuador.**

According to the information received:

The Japanese company Furukawa Plantaciones C.A. based in Ecuador and with headquarters located in the province of Santo Domingo de los Tsáchilas, has as its main registered activity the 'cultivation of abaca, ramie and other textile fiber plants'. This company has imposed a system of working and living on the families – approximately 236 persons – who live in the farms located in the abaca plantations owned by the company. This system may constitute a form of servitude prohibited by international human rights standards. These practices have reportedly occurred since the company was established in the country in 1963, and Ecuador's Policy Management Secretariat has registered more than 200 people affected by the Furukawa Company.

Within the *haciendas* owned by Furukawa, the company has allegedly built camps for its workers, where entire families live, including women, children and older persons. The workers extract abaca fiber which are delivered to the Furukawa Company in exchange for low wages. On 30 October 2018, the Ministry of Labour conducted an inspection in seven camps. Most of these camps are located up to seven kilometres away from the public highway. Furukawa reportedly controls the access to properties through padlocked doors that only the company manages. The camps constitute of old buildings, in bad conditions, with poor illumination and ventilation. There is no electricity, clean water or sanitation. The structures are also in a precarious state with deteriorated walls, doors and leaking ceilings. Furthermore, there is a lack of separate space for food storage, waste disposal or drainage. Reportedly, these conditions are aggravated the further the camps are located from the road.

The people who live in the camps are mostly Afro-descendants and they work exclusively for Furukawa. The company is the sole beneficiary of the abaca fiber extraction: thus, the workers can only deliver the fiber to the company and cannot sell it or exchange it outside this company. Many of the people living in the camps are agricultural workers who are in charge of the main productive process carried out by Furukawa. It has also been reported that there are children and adolescents working in some of the camps. Reportedly, the further away the camps are located from the road, the less likely the boys, girls and adolescents are to access education. According to reports, people between 10 and 65 years are working in the plantations of the company Furukawa and several persons with disabilities reportedly also live in the company's *haciendas*.

Some of the inhabitants of the *haciendas* have not been legally identified by the Civil Registry of Ecuador. The *Dirección General de Registro Civil, Identificación y Cedulación* (General Directorate of Civil Registration, Identification and Issuance) issued the report 'Briagada Furukawa Plantaciones C.A.' on 27 December 2018, detailing that out of the 236 persons who live and work at the company Furukawa, 70 (30%) are not registered. Out of these, 59 are children.

Families living on the premises of the company Furukawa do not have access to basic services. They reportedly live in a situation of food insecurity and unhealthy conditions, lacking safe drinking water and access to public health services, particularly in cases of emergency due to camps' distance from public highways and Furukawa control of access to properties through padlocked doors that only the company manages. In these circumstances, workers and their families live in substandard housing conditions that do not meet the minimum standards as stipulated in international human rights law.

### *Forced evictions*

The vast majority of the population living on the haciendas are families without legal security of tenure of the land which exposes them to a high risk of forced evictions. The affected families have been living and working on the Furukawa property for several decades. The company has allegedly adopted the practice of leasing portions of land to avoid formalizing the labour relationship with the workers, using the figure of the contractor, whose legal status is regulated in the Civil Code of Ecuador (arts. 1920-1929). Contractors (at least one per camp) live on the haciendas and hire workers. Therefore, they are responsible for paying the workers and informing the tax administrators, who do have employment contracts with Furukawa.

It is reported that, generally and systematically, the contractors sign contracts without having read their clauses or understanding their content, or without being given a copy of the contract. They are threatened if they don't sign. Reportedly, these contracts can also be terminated at any time, and several contractors have been threatened by Furukawa staff with dismissals and evictions because of their organizational activities and the complaints made. The company has also used allegations of theft or other crimes to terminate contracts or to expel a worker and his or her family from the *haciendas*.

In exchange for leasing the land, contractors are reportedly required to pay a certain amount per hectare and an additional amount based on the quantity of fibre they produce. They are also obliged to deliver abaca fibre to Furukawa.

At the time of drafting the present communication, several contractors reported having been threatened by Furukawa staff with possible layoffs and evictions for organizing, denouncing and testifying to state institutions. Some of the workers referred to a past incident of a violent, forced eviction requested by Furukawa and carried out by the National Police in which several persons were allegedly injured and one of them died. However, the mostly illiterate employees housed at the *hacienda* do not recall further details about these allegations.

### *Working conditions*

The working hours at the Furukawa Company are from 5 or 6 a.m. until 4, 5 or 6 p.m., and in several cases from Monday to Saturday. The monthly salary varies depending on certain conditions, such as the age of the worker and his/her staff, a workers' state of health or the distance to be travelled to reach the fields. Workers at the plantations earn between USD \$ 160 and USD \$ 400 per month, depending on their productivity, which means that in some cases they receive less than half of the minimum wage established in Ecuador.

This does not constitute a decent wage which enables them to meet their basic needs and those of their families, namely food, clothing, housing, education and

health care. Wages is not properly to either overcome poverty and its root causes, nor to improve other living and working conditions.

In addition to working in the camps, the women living in the *hacienda* also undertake family and household chores. This work is not remunerated, but it provides for the subsistence of those working in the camps.

It has been reported that Furukawa does not comply with safety prevention and comprehensive risk management standards on plantations, and workers are exposed to a range of occupational diseases and accidents, caused by knives, machetes and the machines operated by workers, which in various occasions has resulted in mutilations. This is aggravated by workers' hindered access to healthcare emergency services outside the property, the lack of emergency services inside the property, and the difficulty for healthcare personnel to access to property to care for injured workers as a result of Furukawa's control through padlocked doors. Workers do not receive any sort of training or instructions. They also lack personal protective equipment provided by the company and work clothes. Families and workers lack fire-fighting tools, first-aid kits or resources for transporting ill individuals. Additionally, it has been reported that children are also affected by work-related accidents.

Allegedly, Furukawa expressly stated that abaca fiber workers living inside their farms are not employed by the company. Despite this, in order to carry out the labour inspection on 20 November 2018, officials of the Ministry of Labour had to request authorization from the company to enter their properties. Administrators hired by Furukawa opened the padlocked doors to the camps, and Chief of Staff Paul Bolaños and an external lawyer from Furukawa were present during the visit.

Following the recommendation included in a judgement issued on 9 January 2019 by the Ministry of Labour, Furukawa was closed on 18 February 2019 for a period of two months, with fines of USD 10,720 and USD 21,440. The reasons for such closure were the absence of affiliation and employment contracts, lack of payment of social benefits, lower payments than unified basic remuneration, inhumane working conditions, and child labour, among others.

Despite this temporary closure, the company remains active. Pre-camp inspections of this company were carried out without effective results beyond the imposition of fines.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our deep concern about the living and working conditions reportedly faced by families living on the plantations owned by Furukawa. In particular, we are concerned about allegations regarding labour exploitation, the lack of freedom of movement, the absence of basic services and healthy working conditions within the *haciendas* which negatively impact the health of workers. Concern is further expressed at Furukawa's

interference for workers to access healthcare services, notably in cases of emergency. We are also concerned about the lack of legal identification within the Civil Registry of a large number of people living and working on the Furukawa premises, leaving the affected persons in a vulnerable situation which is exploited by the company. Similarly, we would like to express our concern about the allegations of threats and coercion that the company exercises against workers and families living on the *haciendas*, including threats of dismissal and evictions, as well as the use of false accusations for various crimes in order to expel families from their current homes. We are particularly concerned that these practices carried out by the Furukawa Company may constitute a system of servitude and forced labour prohibited by international instruments ratified by Japan.

We are also concerned about the physical and mental integrity of people in a particularly vulnerable situation, such as girls, boys, adolescents, older persons and persons with disabilities, as a result of having suffered occupational accidents. Finally, we would like to express our concern about the possible structural racial discrimination practised by the Furukawa Company against these families, most of whom are of Afro-descendant origin.

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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please highlight the steps that the Government has taken, or is considering to take to protect against human rights abuse by business enterprises, domiciled outside its territory and / or jurisdiction, and to ensure that they respect human rights throughout their operations and their supply chain, in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please indicate what measures your Government has taken to eliminate labour exploitation, child labour, child exploitation and forced labour in the operations of Japanese companies operating abroad throughout their activities and their supply chain such as in the case of the Furukawa Company.
4. Please indicate what measures the Government has taken to ensure that Japanese companies operating abroad are not causing a contribution to abuses of international norms and standards that Japan has undertaken to

uphold, including with regard to the right to education, food, health and housing.

5. Please indicate what measures Your Excellency's Government has taken, or is considering to take, to help ensure that persons whose human rights are abused by Japanese business enterprises abroad have access to an effective remedy including by providing the option of bringing such cases before Japanese courts.

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

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations. We would also like to urge you to take effective measures to prevent the recurrence of such events, if they have occurred.

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

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## **Annex**

### **Reference to international human rights law**

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

We wish to draw your Government's attention to the obligations undertaken under international human rights instruments, to which Japan is a party. The Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations on December 10, 1948, contributes to international standards regarding the **elimination of all forms of slavery**. Article 4 states that "no one shall be subjected to slavery or servitude, slavery and slave trade are prohibited in all its forms." Recalling articles 3 of the UDHR and paragraph 1 of article 6 of the International Covenant on Civil and Political Rights, which guarantee the right of every person to life, liberty and security.

We would also like to draw your attention to Article 8 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan on 21 June 1979, which **prohibits slavery and the slave trade** in all its forms and states that no one shall be held in slavery or servitude. In addition, article 24 specifically recognizes the right of every child to the protective measures required by his or her status as a child. We would also like to draw your attention to the Human Rights Committee's general comment No. 25 on **liberty and security of the person**, as well as its general comment No. 17 on the rights of the child.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Japan on 21 June 1979 establishes extraterritorial obligations of States parties as stated by the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017). Accordingly, "extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective."

In this connection, we would also like to draw your attention to Article 7 of the ICESCR, which enshrines the **right of everyone to the enjoyment of just and favourable conditions of work**, including safe and healthy working conditions. In addition, ICESCR article 10 recognizes that **special measures of protection and assistance should be adopted on behalf of all children and young people**, who should be protected against economic and social exploitation. States should also set age limits below which paid employment of child labour should be prohibited and sanctioned by law.

We would also like to remind your Excellency of CESCR article 11.1 which states that 'the States Parties to the present Covenant recognize **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 this regard, article 12.1 of the Covenant stipulates that 'the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. It is the responsibility of States to ensure this right in all their territories. It is also the obligation of States to ensure that these rights are exercised 'without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (art. 2.2).

Moreover, article 12 of the Covenant and the Committee on Economic, Social and Cultural Rights' General Comment No.14, enshrine the **right to health** which encompasses a wide range of socio-economic factors that promote the conditions under which people can lead a healthy life, and extends that right to basic determinants of health, such as **food and nutrition, housing, access to clean drinking water and adequate sanitation, safe and healthy working conditions and a healthy environment**.

We recall the explicit recognition of the human rights to drinking water by the United Nations General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from **the right to an adequate standard of living**, protected, inter alia, by article 25 of the Universal Declaration of Human Rights, and article 11 of the ICESCR, on the right to an adequate standard of living and to housing. The Committee on Economic, Social and Cultural Rights, in commenting on the right to adequate housing in its general comment No. 4, stressed that the right to housing should not be interpreted in a narrow or restrictive sense, such as simply having a roof over one's head, but should be seen as the right to live in a place of safety, peace and dignity. The **right to housing** includes the guarantee of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. Indeed, housing is not adequate if it does not respect and take into account the expression of cultural identity.

We also consider it pertinent to refer your attention to General Comment No. 15 by the Committee on Economic, Social and Cultural Rights, which clarified that the right to water means that everyone has the **right to have sufficient, safe, acceptable, physically accessible and affordable water** for personal and domestic uses. In addition, the UN General Assembly (resolution 70/169) and the Human Rights Council (resolution 33/10) recognize that water and sanitation are two distinct but interrelated human rights. In particular, we recall the explicit recognition that "by virtue of the human right to sanitation, everyone, without discrimination, has the right to access, physically and economically, in all spheres of life, to sanitation that is wholesome, hygienic, safe, socially and culturally acceptable and that provides privacy and guarantees dignity, while reaffirming that both rights are components of the right to an adequate standard of living.

General comment No. 7 of the Committee on Economic, Social and Cultural Rights on forced evictions stipulates that **procedural protections are essential in**

**relation to forced evictions**, including, inter alia, genuine protection against evictions. Consultation, adequate and reasonable notice, alternative accommodation available within a reasonable time, and the provision of legal remedies and legal aid (operative paragraphs 15 and 15). 16). We also wish to draw your attention to the Basic Principles and Guidelines on Development-Based Evictions and Displacements, prepared by a former Special Rapporteur on adequate housing, which provides guidance on States' obligations before, during and after development-based evictions.

Similarly, this ICESCR establishes in article 13 that the **right to education** must be directed to the full development of the human person and the sense of his dignity, and must strengthen respect for human rights and fundamental freedoms.

In relation to **the right to food**, article 25 of the UDHR 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". On the other hand, article 11.1 of the ICESCR recognizes the right to food, and obliges States parties to take appropriate measures to ensure the realization of this right, including the adaptation of legislative and other measures to the maximum of their available resources, in order to achieve progressively, by all appropriate means, the full realization of the rights.

We take note that to date, Japan has neither ratified the Slavery Convention of 1926 nor the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956. Japan is, however, party to the following International Labour Organization (ILO) Conventions: Forced Labour Convention, 1930 (No. 29) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

We would also like to point out that article 32 of the Convention on the Rights of the Child (CRC), of which Japan is a party since April 22, 1994, recognizes the **right of the child to be protected from economic exploitation**, as well as from "perform any work that may be dangerous or interfere with their education, or that is harmful to their health or to their physical, mental, spiritual, moral or social development". In addition, article 36 of the CRC contains the obligation of the State to protect the child against all other forms of exploitation that are detrimental to any aspect of the child's welfare. We would also like to draw your attention to article 19 of the CRC, which states that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child against all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mistreatment or exploitation".

In addition, article 27 recognizes **the right of every child to an adequate standard of living** for their physical, mental, spiritual, moral and social development, while article 37 indicates the obligation of the State to ensure that no child is subjected to "torture or other cruel, inhuman or degrading treatment or punishment." In this regard, article 39 assigns the State the responsibility to take all appropriate measures to promote the physical and psychological recovery and social integration of children who are victims of exploitation or abuse or any other form of cruel treatment. This recovery will

take place in an environment that promotes health, self-respect and the dignity of the child. Paragraph 24 of General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child states that "States must pay special attention to ensuring that children and their representatives have effective procedures that take into account your needs...". When it is proven that the rights have been violated, there should be adequate reparation, including compensation, and, when necessary, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39 ".

Similarly, we would like to draw Your Excellency's attention to the governmental provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Japan on December 15 1995. Article 2(1) requires States Parties to **prohibit and eliminate any act or practice of racial discrimination against persons and/or groups on the grounds of race, colour, descent, or national or ethnic origin**. To this end, States must ensure that public authorities and institutions at the national and local levels act in the following manner to fulfil this obligation and must take special and concrete measures, in the social, economic, cultural and other spheres, to ensure the adequate development and protection of certain racial groups or persons belonging to these groups, in order to guarantee their full and equal enjoyment of human rights and fundamental freedoms (Art. 2.2). Article 5 of the Convention specifically mentions the right to housing, public health, medical care, social security and social services, to work under just and favourable conditions, and to education, among many others.

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

Businesses also have a responsibility to respect human rights, which requires them to have appropriate policies and procedures in place; such as a human rights due diligence process to identify, prevent, mitigate, and account for how they address their

human rights impact; and processes to redress all negative human rights consequences they have caused or contributed to causing. (Principles 11-24).

Finally, the Committee on the Economic, Social and Cultural Rights in its General Recommendation 24 (2017) states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.”.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.