

CARTA N° 309/2018

Lima, November 13, 2018

Mrs.
Malena Wåhlin
Researcher
SWEDWATCH
Present. -

We are pleased to contact you on behalf of the Association of Peruvian Agrarian Producers Guilds – AGAP, in order to send you our Executive Summary and Statement regarding the Report #92 of SWEDWATCH, about alleged negative impacts on human rights caused by agro export companies in Ica, Peru.

Likewise, we request you to publish the present letter, the Executive Summary and Statement on the SWEDWATCH website, as you offered on page 9 of the Report #92.

We thank you for the attention to the present.

Yours faithfully,



Ricardo Polis Labarthe
President

EXECUTIVE SUMMARY

Statement of the Association of Peruvian Agrarian Producers Guilds – AGAP regarding the Report #92 “To the last drop – Water and human rights impacts of the agro-export industry in Ica, Peru: the responsibility of buyers”

1. The Report of SWEDWATCH misleads readers by treating “Sendero Luminoso” as a “Maoist guerrilla organization” when in reality it is one of the most violent **terrorist organization** in the history, which caused many human and economic losses and the delay in Peruvian development for years.
2. The Report points out the problems of water and labor rights in the Ica valley without addressing them correctly and with a marked partiality, which may negatively affect the Peruvian agro-export sector that has been generating very positive impacts in the country.

Current context of the agro-export sector

3. Peru is governed by its Constitution, laws and the respect of international treaties. This legal framework, including the agrarian one, has allowed to recover an economic activity that has put Peru in the first places of the world suppliers of food.
4. The development of the agro-export sector has achieved the reduction of poverty in rural areas, the reduction of informality, the generation of formal employment, the inclusion of rural women in economic activities, the economic decentralization of the country, rural development and the improvement in the quality of life of thousands of Peruvians.
5. The Report does not add value in our efforts to solve the structural problems that afflict our country, such as informality and poverty, where the agro-export sector is a key success factor.
6. The report quotes the communication from Commissioner Mälstrom in which she expresses her concern about a supposed breach by Peru of its labor and environmental commitments, contained in the Commercial Agreement signed with the European Union in 2012. However, they do not mention the position of the Government of Peru regarding the communication (http://www.acuerdoscomerciales.gob.pe/images/stories/union_europea/2018/PosicionPeru-ComercioyDesarrolloSostenible.pdf) where our Government shows that it has not breached any of the obligations assumed in the Commercial Agreement.

Respect for labor rights in the agro-export sector

7. Companies in the agro-export sector are under a labor regime that has been ratified by the Constitutional Court of Peru, which analyzed its compatibility with the Conventions of the International Labor Organization – ILO. In this context, the right to freedom of association, among other labor rights, is fully recognized.
8. The fundamental rights recognized by the ILO, which are fulfilled by Peruvian legislation, are the following: freedom of association, effective recognition of the right to collective bargaining, elimination of all forms of forced and compulsory labor, effective abolition of child labor, elimination of discrimination in employment and occupation.

9. The workers of the agro-export sector have access to all the labor benefits established by Peruvian Law, such as legal bonuses, social security, vacations, Compensation for Time of Services, retirement fund, among others. In many cases, the agro-export companies that we represent provide monthly remunerations above the minimum and several other additional benefits.
10. In addition to complying with the labor standards of the country, the companies we represent voluntarily submit themselves to international certifications in socio-labor matters, recognizing the fundamental rights of their employees.
11. The Peruvian labor problem lies in the informal activity which does not pay any social benefit to its workers or comply with the law, considering that it reaches about 75% of salaried workers in Peru.

Water Resources Management

12. The agro-export companies that we represent are supervised and inspected in the use of water by the “Autoridad Nacional del Agua – ANA” and are also audited periodically by third parties regarding international certifications of first level that they fully comply.
13. Companies in the agricultural sector are obliged to have an environmental management instrument that provides mechanisms for evaluating the environmental impacts generated in their area of influence, the corresponding plans to mitigate or eliminate such impacts, as well as mechanisms of dialogue and citizen participation.
14. The distribution of water for the cities, the continuity of their supply throughout the day and during all the days of the year, as well as the quality of the mentioned resource is the responsibility of the public authorities (Central Government, Regional and Municipalities).
15. The problem of water in Ica has different dimensions and actors, having the high informality that exists in its use as the main risk factor, as well as the obstacles to investments in public hydraulic infrastructure. That is why it is necessary for the competent authorities to eradicate the informal use of the resource and to encourage public-private partnerships to execute investment projects in hydraulic infrastructure such as dams, pipelines, inter-basin transfers, among others.
16. We as Peruvians have many challenges to face and a long way to become a developed country. However, this will be achieved by building and strengthening public and private institutions, improving regulation and generating a better investment climate for the growth of economic activity that generates formal employment and increases the quality of life and the welfare of the population. The Peruvian agro-export sector has demonstrated its commitment and effectiveness in this country objective, becoming a strategic sector on which thousands of Peruvian families depend.

Lima, November 13, 2018

**Statement of the Association of Peruvian Agrarian Producers Guilds – AGAP regarding the Report #92
“To the last drop – Water and human rights impacts of the agro-export industry in Ica, Peru: the
responsibility of buyers”**

To begin with, we are surprised by the treatment provided by the Report # 92 prepared by SWEDWATCH, in conjunction with DIAKONIA and CODEHICA, and with funding from the Government of Sweden, regarding the terrorist organization Sendero Luminoso, which caused so much damage to our country for years. It is unacceptable that on page 15, which highlights the internal conflict that occurred in Peru, the Report points out that Sendero Luminoso is a "Maoist guerrilla organization" when in fact it is one of the most violent and aggressive terrorist organizations in history.

About this terrorist group, our President of the Republic, Martín Vizcarra, has stated that "the 25th anniversary of the capture of the main leader of this terrorist group, Abimael Guzmán, serves to remember all the negative that was Sendero Luminoso for the country and to make the promise to take the necessary actions in order to avoid that such an event may occur in our country in the future."

It is our duty to remind you that, according to the Directive (EU) 2017/541 of March 15, 2017 and others, "Acts of terrorism constitute one of the most serious violations of the universal values of human dignity, freedom, equality and solidarity, and enjoyment of human rights and fundamental freedoms on which the [European] Union is founded. They also represent one of the most serious attacks on democracy and the rule of law, principles which are common to the Member States and on which the [European] Union is based".

Also, it is incredible that in this section the Report treats the institutions of the Peruvian State of that time as an equal of this terrorist organization, we must clarify that our institutions defended the citizens of this scourge. We can not allow that this Report confuse the public regarding the terrorist acts that Peru suffered in those years of terror.

On the other hand, it is important to mention that AGAP and its members are governed by a Code of Conduct that, among its central points, establishes: the harmonization of legitimate business and productive interests seeking to contribute with a dignified life and sustainable development in society , on the basis of full respect for human rights; the efficient use of resources and respect for the environment as pillars for healthy and sustainable development; and, the generation of decent work, occupational health and safety are fundamental elements in the management of activities.

In this framework, we will respond the Report, which points out the problems of water and labor rights in the Ica valley without addressing them correctly, as it should have been done in such an important issue for Peru and for its citizens. Its marked partiality can affect an economic sector that generates very relevant impacts in the social and economic part of the country.

Likewise, on page 43 of the Report, it is mentioned that AGAP had the opportunity to read and comment the section on the labor rights situation in Ica. However, we must point out that we did not receive the full Report or enough time to review it. AGAP could not share information with SWEDWATCH in order to clarify several points addressed in the Report.

Current context of the agro-export sector

In Peru we are governed by a Constitution, laws and international treaties, which compliance is important for citizens and for the development of formal economic activities. Likewise, the fundamental rights of the people are enshrined in the Peruvian Constitution, as well as the recognition of the particular importance of the agricultural sector and its development.

Our current legal framework, including the specific one for the agricultural sector, has allowed us to recover on the economic activity, in this case the modern agricultural sector, which has placed Peru in the first places of the world food suppliers, as well as it has allowed the productive development of one of the most important sectors of the economy in terms of employment. This means that the sector has helped thousands of Peruvians who live in rural areas to overcome poverty.

As the results of the statistics show, the formality rate of the agricultural sector has increased from 16% in 2004 to 25% in 2017. This increase is considerably higher on the coast (an increase of 19 percentage points), where most of the companies from modern agro are located. The increase in formality between 2004 and 2017 is higher than the national average and other sectors such as services, mining, among others.

In addition, the Peruvian agro-export sector helps reducing poverty, which fell from 81.3% to 38.3% between 2004 and 2017. The fall was considerably greater on the coast: poverty in this region was reduced from 67% to 19%, in other words, it was reduced by 48 percentage points at the same period. The case of Ica is emblematic, since the poverty incidence rate has dropped considerably in recent years, arriving to 2.62% in 2017.

In summary, the development of this sector has achieved the reduction of poverty in rural areas, the reduction of informality, the generation of formal employment, the inclusion of rural women in economic activities, the economic decentralization of the country, rural development and the improvement in the quality of life of thousands of Peruvians.

Public and private institutions, the civil society and the private sector must seek to reduce the problems that afflict our countries drastically, for this it is essential to focus on fighting poverty and informality. The formal private sector, that includes the Peruvian agro-export sector, is an ally in this struggle for all the positive impacts it generates.

However, according to the objectives of SWEDWATCH, we understand that their studies are aimed at the reduction of poverty, as well as defending and guaranteeing the fundamental rights of the people, therefore, we are surprised by the bias of your report because we can't see you analyzing the structural problem, which is the informality that exists in the country and that affects the competitiveness of formal companies and also the labor rights of citizens.

Furthermore, the report quotes the communication from Commissioner Mälstrom in which she expresses her concern about a supposed breach by Peru of its labor and environmental commitments, contained in the Commercial Agreement signed with the European Union in 2012. However, they do not mention the position of the Government of Peru regarding the communication (http://www.acuerdoscomerciales.gob.pe/images/stories/union_europea/2018/PosicionPeru-ComercioyDesarrolloSostenible.pdf) where our Government shows that it has not breached any of the obligations assumed in the Commercial Agreement.

Water Resources Management

According to the Report, there is a problem of water scarcity that affects 40% of the world population, with agriculture being the activity that uses approximately 70% of the water. From these ideas it is inferred that "there is a responsibility among businesses operating in the agrarian sector to address water related risks that may affect profitability and are related to human rights risks". This shows the bias against investment and the agrarian sector. Leaving behind that the problem of water has different dimensions and actors, and that the high informality that exists in the use of water constitutes the main risk factor, as well as the obstacles to investments in public hydraulic infrastructure.

In this point, it is necessary to take into consideration that water constitutes the Nation's heritage, being a good for public use. In this sense, it is necessary to highlight that the administration and use of water resources is regulated by the specific rules of the matter, in this case, Law N ° 29338 - Law of Water Resources and its Regulation.

Considering this legal framework, public institutions (Regional and Local governments and other public institutions linked to the management of water resources) and privates (whether individuals, legal entities, peasant communities, etc.) exercise the rights conferred by law or by the corresponding license, permit or authorization.

In this regard, it is also necessary to take into account that the "Autoridad Nacional del Agua – ANA" is the public institution in charge of monitoring, supervising and inspecting the compliance of the regulations on water resources. The ANA has sanctioning faculties against those who do not comply with the norms, one of this infringements is the exploitation of the water resource without the corresponding enabling title, among others.

Additionally, it must be taken into consideration that ANA carries out different evaluations, such as water availability in the area, in order to issue an enabling certificate (license, permit and/or authorization). In this procedure the ANA verifies the quality, quantity and opportunity for the use to which it is intended. The aforementioned study must be done even in the case of the regularization of informal wells, in case that the well does not comply with the regulation it can be closed.

All agricultural producers, regardless of their size or the destination of their products, whether local market or export, must comply with this legal framework. It is the duty of the public authority to supervise and execute the corresponding sanctions. Moreover, in AGAP we encourage strict compliance with the regulations and the strengthening of public institutions.

On the other hand, it is necessary to take into consideration that the distribution of water for the cities, the continuity of their supply throughout the day and during all the days of the year, as well as the quality of the mentioned resource is the responsibility of the public authorities (Central Government, Regional and Municipalities). This is why it is very important to accelerate the development processes of hydraulic infrastructure projects, as well as the treatment of wastewater and re-use for the benefit of the population.

Likewise, agro-export companies are not only subject to the verification of their operations by the competent public institutions regarding the use of water, but they are also periodically audited by third parties in order to comply with international certifications of first level, according to the requirements of the markets.

Contrary to what was said on page 33 of the Report, it is necessary to point out that companies in the agricultural sector are obliged to have an environmental management instrument that provides mechanisms for evaluating the environmental impacts generated in their area of influence, the corresponding plans to mitigate or eliminate such impacts, as well as mechanisms of dialogue and citizen participation.

In conclusion, it is not possible to attribute the responsibility for water scarcity in Ica to the agro-export sector, since there are multiple actors, users of water and, above all, a high rate of informality in the use of this resource. This informal use do not comply with the provisions on water resources and environmental protection, unlike agro-export companies and the formal sector of the economy.

This is why we must work in order to achieve a high formality rate in the use of water and encourage the effective control by the competent authorities to eradicate the informal use of the resource. Likewise, public-private partnerships must be promoted to execute investment projects, such as dams, pipelines, inter-basin transfers, among others. In this sense, we consider important the efforts being made by the Regional Governments of Ica and Huancavelica to cooperate in a project that will facilitate water to Ica and also generate investments in Huancavelica.

Respect for labor rights in the agro-export sector

At this point, we must point out that the labor framework that governs companies in the agricultural sector and, therefore, agro-export companies, is completely constitutional and its legality has been fully ratified by the highest interpreter of the Constitution, the Constitutional Court of Peru. It should be noted that the Court analyzed the compatibility of this labor framework with the international commitments assumed by the Peruvian Government by signing the Conventions with the International Labor Organization-ILO.

We must emphasize that the fundamental rights recognized by this international organization have been included in the Peruvian legislation:

- Freedom of association and effective recognition of the right to collective bargaining, set forth in Article 28 of our Constitution.
- Elimination of all forms of forced and compulsory labor, included in article 23 of our Constitution.
- Effective abolition of child labor, included in the National Strategy for the Prevention and Eradication of Child Labor 2012-2021, approved by Supreme Decree No. 015-2012-TR.
- Elimination of discrimination in employment and occupation, included in Article 26 of our Constitution.

In this order of ideas, it is clear that the current labor framework that applies to the agro-export companies is perfectly compatible with our Political Constitution, as well as the ILO Conventions, by protecting all the fundamental rights recognized to workers. In this context, the formal companies of the agro-export sector are governed by this legal framework.

As the last statistics speaks as well, the impact of agro-export on the worker sector is extremely important. In 2017, the number of formal jobs generated by agricultural activity and agro-industry amounts to 809

thousand, having grown at a rate of 4.4% per year since 2004. It is also necessary to consider that 21 formal jobs are generated direct and 48 indirect for each million soles of additional production per company.

In this context, we must point out that the impact on the generation of formal work has benefited all the people who are part of the agro-export sector, as they can access to all the labor benefits established by Peruvian law. Contrary to what is indicated on page 38 of the Report regarding that “workers in the agricultural sector receive fewer rights and benefits than in other sectors”, it is important to clarify that workers in the agricultural sector receive all the labor benefits such as legal bonuses, social insurance, vacations, Compensation for Time of Services, retirement fund, among others.

As we have clarified the labor landscape under which the companies of the agro-export sector are governed, we must reject the assertions made in the preliminary report that was sent to us. The agro-export companies that we represent, besides complying with labor regulation, must offer a monthly remuneration above of the minimum and grant other additional benefits, in order to hire enough people to cover several activities that are required by the business.

We also reject that companies that we represent violate the right to freedom of association, the legal framework that governs them does not allow to do that and we have competent authorities, such as the “Superintendencia Nacional de Fiscalización Laboral–SUNAFIL” whose objective is to supervise and inspect the compliance of the labor regulation by all the employers in the country.

In addition to the foregoing, we want to point out that the agro-export companies are audited by the Peruvian authorities in labor matters and besides that, they voluntarily submit to Ethical-Labor Standards of international organizations that watch over the rights of the collaborators, such as the Ethical Trading Initiative - ETI and its Code, the GLOBALG.A.P. Risk Assessment on Social Practice or other certifications.

In this case, companies undergo rigorous second-party audits, carried out by certifying bodies, which verify compliance of occupational health and safety obligations, hours of work, salaries and benefits, freedom of association, business ethics and environmental issues, among others. The workers and the middle managers of the audited company are involved through interviews without identifying them in order to avoid any type of retaliation.

In summary, the companies in the agro-export sector that we represent comply with the labor standards of the country, as well as international certifications in socio-labor matters, recognizing the fundamental rights of their employees, including freedom of association, and in many cases pay higher salaries than the minimum.

However, in Peru 75% of the paid workers are still informal and, therefore, it is evident that the labor issue of the sector is found in informal companies that do not pay any social benefit to their workers or fulfill their obligations as employers. This is the structural problem that must be solved and on which the report of your institution should turn. We also must point out that the reduction of the informality in the country is a responsibility of our public authorities.

We as Peruvians have many challenges to face and a long way to become a developed country. However, this will be achieved by building and strengthening public and private institutions, improving regulation and generating a better investment climate for the growth of economic activity that generates formal employment and increases the quality of life and the welfare of the population. The Peruvian agro-export



sector has demonstrated its commitment and effectiveness in this country objective, becoming a strategic sector on which thousands of Peruvian families depend.

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