

Cali, August 10th 2022

**Ms. Federica Donati**  
**Official in charge**  
**Special Procedures Subdivision**  
**OACDH**

**Ref: AL OTH 71/2022**

Dear Ms Donati,

We refer to the press statement released by the United Nations Human Rights Office of the High Commissioner on 4 August 2022 in relation to Colombia (the "**Statement**") ([here](#)).

We were very surprised and disappointed by the Statement which specifically referred to Smurfit Kappa, not least because it was published without affording Smurfit Kappa any opportunity to respond to the serious and wholly unsubstantiated allegations being made. While the Statement does not expressly link the alleged threats to our company, its operations or its employees, there is a clear implication being made, which is seriously damaging to our company's reputation. We consider this conduct to be capricious and unreasonable, especially in circumstances where we only recently received your letter on this matter and have not yet had any opportunity to respond. We asked you a series of important clarificatory questions on 2 August 2022, to which no response has yet been received. We would appreciate a prompt response to these questions.

Regardless of the intention behind the decision to release the Statement, its release was at best reckless and has caused harm to Smurfit Kappa, its business, its people and its reputation. We are very proud of our business and our people and what they have achieved in Colombia over several decades. We have a long track record of investment and of making positive contributions to the local communities in which our operations are located. We are not prepared to accept a situation where the Special Procedures implement their mandate in a manner which recklessly impugns Smurfit Kappa.

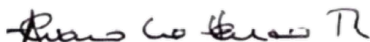
As the officer in charge of the Special Procedures Branch of the OHCHR, we expect you to relay our serious concerns and remind the Special Rapporteurs of the standards expected of them under the "*Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*" (the "**Code**"). In particular, the provisions of Articles 3, 6 and 8 should be brought to their attention.

The release of the Statement has undermined our confidence in the ability of the Special Procedures to undertake their work with the necessary *"impartiality, equity, honesty and good faith"* that is expected of them (as codified under Article 3 (e) of the Code). Article 3 (h) refers to maintaining and reinforcing the trust of all stakeholders. Smurfit Kappa is now undoubtedly a stakeholder in this process, however, the fact that the Special Rapporteurs deemed it appropriate to comment publicly on the unsubstantiated allegations has seriously impaired our trust in how the Special Rapporteurs will carry out their mandate with the appropriate degree of objectivity, fairness and impartiality that is expected. Engaging in such conduct indicates bias and an unwillingness to *"seek to establish the facts, based on objective, reliable information"* (as codified under Article 6 (a) of the Code) and approach matters with an open mind which could lead the Special Procedures process generally into disrepute and harm the reputation of the OHCHR. Article 8 (a) of the Code further provides that, in their information-gathering activities, Special Rapporteurs shall *"be guided by the principles of discretion, transparency, impartiality and even-handedness"*, and we have real concerns that these guiding principles will not be adhered to by the Special Procedures.

Notwithstanding the regrettable conduct of the Special Rapporteurs in publicly commenting on the unsubstantiated allegations at this stage of the process, we intend to continue engaging constructively with the UN Special Procedures process, and we will be responding fully to your letter in due course. However, in light of the Statement, we reiterate that we have real concerns about your ability to review the facts objectively, independently and impartially. In addition to the Code, we remind you of the Human Rights Council's resolution of 12 April 2011 ([HRC resolution 16/21](#)) which states, at paragraph 24, that *"The integrity and independence of the special procedures and the principles of cooperation, transparency and accountability are integral to ensuring a robust system of the special procedures that would enhance the capacity of the Council to address human rights situations on the ground."* We fully expect the Special Procedures to abide by those principles in the future and to give Smurfit Kappa the necessary opportunity to respond and set out our position before the Special Rapporteurs publicise their opinions on these matters.

In the meanwhile, we await your responses to the queries in our earlier email below.

Please forward a copy of this email to Ms Lawlor, Ms Hopenhaym and Mr Cali Tzay.



**Alvaro Jose Henao R.**

CEO

**Smurfit Kappa** Central Cluster

Colombia, Ecuador, Perú, Central America and the Caribbean