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OHCHR

From: Cartón de Colombia
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Ref: AL OTH 71/2022

Response to the UN Special Procedures' Joint Communication dated 22 July 2022

1. Executive summary

- 1.1 This letter responds to the UN Special Procedures' joint communication dated 22 July 2022 (the *Joint Communication*), which requested Cartón de Colombia S.A.'s (*Cartón de Colombia*) response to allegations relating to the position of human rights defenders in Colombia, as well as information on Cartón de Colombia's human rights due diligence measures, operational grievance mechanisms, and remediation measures to address human rights impacts.
- 1.2 We wish to make clear at the outset that Cartón de Colombia emphatically deplores the fact that threats may have been received by Mr Velasco Tumiña. However, there is no link between such threats and Cartón de Colombia, and we unequivocally reject any implication that Cartón de Colombia is responsible for the threats. Indeed, we are not aware of what, precisely, Mr Velasco Tumiña's relationship with the Misak community is, or the extent of his involvement in the events referred to in the Joint Communication.
- 1.3 Cartón de Colombia is (and has always been) fully committed to respecting the human rights of all communities in the areas in which we operate. The allegations in the Joint Communication simply do not reflect the reality of Cartón de Colombia's commitment to human rights, our contribution to local communities and our environmentally sustainable management of the natural and commercial forests where we operate.
- 1.4 Indeed, the Joint Communication is premised on information which is plainly incorrect, unreliable and lacking in objectivity. The account of events set out in the

Joint Communication does not reflect the reality of the situation on the ground, and it is apparent that the information that has been provided to, and subsequently relied upon by, the UN Special Procedures in preparing the Joint Communication is wholly inaccurate and misleading.

- 1.5 Importantly, the incidences referred to in the Joint Communication were not “*peaceful*”. Since July 2021, individuals or groups allegedly representing the Misak community have, under the pretext of recovering ancestral land, unlawfully intruded on Cartón de Colombia property and caused criminal damage to protected and richly diverse ecosystems.¹
- 1.6 The Misak community has never communicated its concerns to Cartón de Colombia – and despite our many attempts since the first intrusion in July 2021, the Misak community (assuming the individuals or groups involved in the intrusions indeed represent the Misak community, which is not clear) has refused to engage with us, instead choosing to continue to intrude on our land and cause further damage.
- 1.7 We also note here that, in light of the UN Special Procedures’ conduct of this matter to date, Cartón de Colombia has concerns about whether the UN Special Procedures will carry out their mandate with the appropriate and required degree of objectivity, fairness and impartiality that is expected. This response is provided in good faith and in the expectation that the UN Special Procedures will, indeed, review the facts objectively, independently and impartially.
- 1.8 This response is structured as follows.
 - (a) Section A: Cartón de Colombia’s concerns about the UN Special Procedures’ approach to date.
 - (b) Section B: Cartón de Colombia’s long-standing and continuing positive contribution in Colombia.
 - (c) Section C: Response to allegations in the Joint Communication.
 - (d) Section D: Specific requests for information.
 - (e) Section E: Concluding remarks.

¹ A video was recently posted by a news outlet on Twitter which we became aware of when it was linked to Smurfit Kappa on Bloomberg’s online news feed, clearly showing the intruders on Cartón de Colombia’s land causing damage to the forests – see [here](#)

2. Section A: Cartón de Colombia's concerns about the UN Special Procedures' approach to date

- 2.1 Before responding to the specific allegations and requests in the Joint Communication, we would like to set out our concerns regarding the approach that the UN Special Procedures have taken to date in respect of this matter.
- 2.2 We received the Joint Communication on 22 July 2022. Shortly thereafter, on 2 August 2022, we wrote to the UN Special Procedures seeking clarification on a number of points so that we could respond fully and in a timely manner to the Joint Communication. Despite two further emails and three unanswered phone calls (where we left a voicemail message) from us, we have not received any response from the UN Special Procedures to our clarificatory questions, nor indeed any of our communications (not even to acknowledge receipt, which we requested).
- 2.3 One of the points on which we sought clarification on 2 August 2022 was the timing of the UN Special Procedures' press release, referred to in the Joint Communication. Specifically, we asked whether we would have an opportunity to respond to the Joint Communication first, and whether we would have an opportunity to review and comment on the draft press release.
- 2.4 We were surprised and disappointed, therefore, that two days later, on 4 August 2022, the UN Special Procedures released [the press statement](#) without affording Cartón de Colombia any opportunity to respond to the serious and wholly unsubstantiated allegations being made. While the press 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 had only recently received the Joint Communication and had not yet had any opportunity to respond.
- 2.5 The release of the press statement has undermined our confidence in the ability of the UN 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 of Conduct for Special Procedures Mandate-holders of the Human Rights Council, the *Code*).
- 2.6 Article 3(h) of the Code refers to maintaining and reinforcing the trust of all stakeholders. Cartón de Colombia is now undoubtedly a stakeholder in this process, however, the fact that the UN Special Procedures has deemed it appropriate to comment publicly on the unsubstantiated allegations has seriously impaired the trust that we place in how the UN Special Procedures will carry out their mandate with the

appropriate and necessary 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). Article 8(a) of the Code further provides that, in their information-gathering activities, UN Special Procedures shall “*be guided by the principles of discretion, transparency, impartiality and even-handedness*”. We have real and serious concerns that these guiding principles have not been, and will continue not to be, adhered to by the UN Special Procedures.

- 2.7 We had communicated these concerns by letter to the UN Special Procedures dated 10 August 2022, but the UN Special Procedures failed to respond. We have not received any communication from the UN Special Procedures since the Joint Communication was sent to us on 22 July 2022.
- 2.8 Notwithstanding these concerns, we intend to engage constructively with the UN Special Procedures process, and we provide this response to the Joint Communication in good faith and in the full expectation that the UN Special Procedures will review the facts objectively, independently and impartially, as they are expected and required to do so.

3. Section B: Cartón de Colombia’s long-standing and continuing positive contribution in Colombia

- 3.1 Cartón de Colombia is a leading manufacturer of paper-based packaging and has proudly operated in Colombia since 1944. We currently employ approximately 7,400 people in Colombia, comprising approximately 3,094 direct employees and 4,306 contractors. Given that for every direct employee, it is estimated that three indirect jobs are created, many others have also obtained employment indirectly by virtue of Cartón de Colombia’s operations in the region.
- 3.2 Cartón de Colombia’s forestry division is present in 35 municipalities in six departments in Colombia (Cauca, Valle del Cauca, Quindío, Risaralda, Caldas and Tolima). Cartón de Colombia has rightful and legally binding titles over 67,000 hectares of land in Colombia; 42,000 hectares are planted with commercial forests, 22,000 hectares are preserved and managed as natural forests, and 3,000 hectares are used for infrastructure.
- 3.3 In respect of Cajibío, in the Cauca municipality, specifically (to which the Joint Communication relates), Cartón de Colombia owns 37 farms with a total area of 2,745 hectares: 684 hectares of protected natural forests, 1,874 hectares of commercial forestry plantations (pine 92%; eucalyptus 8%), 53 hectares dedicated to research, and 134 hectares dedicated to other uses such as roads, water streams, pasture and

rocky land. Additionally, there are 93 hectares owned by third parties, with forestry plantations, with whom Cartón de Colombia has third party supply contracts.

3.4 Since 2003, all of Cartón de Colombia’s forestry areas are certified by the Forest Stewardship Council (known as *FSC*), an internationally recognized non-profit and multi-stakeholder organization which promotes environmentally appropriate, socially beneficial and economically viable management of the world’s forests.²

3.5 In order to receive FSC certification, Cartón de Colombia must comply with each of the following principles:

- (a) comply with all applicable laws, regulations and nationally-ratified international treaties, conventions and agreements;
- (b) maintain or enhance the social and economic well-being of workers;
- (c) identify and uphold indigenous peoples’ legal and customary rights of ownership, use and management of land, territories and resources affected by management activities;
- (d) contribute to maintaining or enhancing the social and economic well-being of local communities;
- (e) efficiently manage the range of multiple products and services of the Management Unit³ to maintain or enhance long term economic viability and the range of environmental and social benefits;
- (f) maintain, conserve and/or restore ecosystem services and environmental values of the Management Unit, and shall avoid, repair or mitigate negative environmental impacts;

² See FSC website: <https://fsc.org/en/about-us>.

³ “Management Unit” is defined by the FSC as “A spatial area or areas submitted for FSC certification with clearly defined boundaries managed to a set of explicit long term management objectives which are expressed in a management plan. This area or areas include(s): • all facilities and area(s) within or adjacent to this spatial area or areas under legal title or management control of, or operated by or on behalf of The Organization, for the purpose of contributing to the management objectives; and • all facilities and area(s) outside, and not adjacent to this spatial area or areas and operated by or on behalf of The Organization, solely for the purpose of contributing to the management objectives.” See FSC Principles and Criteria for Forest Stewardship, available [here](#).

- (g) have a management plan consistent with its policies and objectives and proportionate to scale, intensity and risks of its management activities. The management plan must be implemented and kept up to date based on monitoring information in order to promote adaptive management. The associated planning and procedural documentation must be sufficient to guide staff, inform affected stakeholders and interested stakeholders and to justify management decisions;
 - (h) demonstrate that progress towards achieving the management objectives, the impacts of management activities and the condition of the Management Unit, are monitored and evaluated proportionate to the scale, intensity and risk of management activities, in order to implement adaptive management;
 - (i) maintain and/or enhance the high conservation values in the Management Unit through applying the precautionary approach; and
 - (j) management activities conducted by or for the organization for the Management Unit must be selected and implemented consistent with the organization's economic, environmental and social policies and objectives, and in compliance with the principles and criteria collectively.⁴
- 3.6 Cartón de Colombia must also comply with the FSC's 70 criteria which sit under each of these 10 principles.⁵
- 3.7 We draw the UN Special Procedures' attention in particular to FSC's principle 3 which states that: "*The Organization shall identify and uphold indigenous peoples' legal and customary rights of ownership, use and management of land, territories and resources affected by management activities*". Since 2003, Cartón de Colombia has had 19 independent audits carried out by the FSC. The FSC has never given a corrective action, recommendation or expressed any concern regarding Cartón de Colombia's conduct towards indigenous communities.
- 3.8 Indeed, as recognized by the FSC, Cartón de Colombia has been a long-term contributor and investor in local communities and has enjoyed positive relations with local communities, including several indigenous communities in the area around our operations.

⁴ FSC Principles and Criteria for Forest Stewardship, available [here](#).

⁵ *Ibid.*

- 3.9 Cartón de Colombia has focused on the creation of sustainable local communities through education, income generation and job creation, good citizenship, and environmental management. This approach, as well as cooperative ventures with local authorities on road building and road maintenance, has played a key role in the improvement of living conditions for the rural communities around Cartón de Colombia's forestry operations. For example:
- (a) In Cajibío, more than 2,000 families have benefitted from Cartón de Colombia's long-term focus on education projects, sustainable economic growth initiatives, and territorial development projects. In the last three years, Cartón de Colombia has invested more than USD 7 million in Cajibío in respect of sustainable agricultural and forestry production, maintenance of public roads, infrastructure development, economic reactivation and other social initiatives in the Cauca municipality.
 - (b) *Education:* Cartón de Colombia owns and operates three high schools called Agricultural and Forestry Technical Institutes (ITAFs), located in the Cajibío and El Tambo municipalities of Cauca and in the Darién municipality of Valle del Cauca. In Cajibío, this institution has taught students from 29 different communities and has historically presented the best scores of the region in the national standardized tests. In the past 35 years, 556 students have graduated, 50 of them with scholarships for higher education and currently there are 200 students enrolled in the institute. We have also trained 145 people in entrepreneurship courses and have worked on improving standards for the care of children. Overall, 1,271 students have graduated from these three schools.
 - (c) *Income generation:* To support the local economy, we offer technical support to 472 people and associations, to improve their infrastructure and productivity in their entrepreneurial initiatives. As part of this, we train them on management and commercial capabilities which allows them to sell their products in formal markets and be part of the supply chain of bigger organizations in the sugar cane, coffee growing and dairy sectors.
 - (d) *Territorial development:* Cartón de Colombia has contributed to the design and implementation of local development initiatives, with a focus on sustainable communities, based on the shared vision of the territory, the strengthening of participatory processes, planning and territorial management. Last year we worked together with 296 community leaders and 964 students and teachers in a training program where we taught them how to

approach government institutions and use their programs and resources to solve local community needs.

3.10 Many of our voluntary community-oriented programs have specifically benefitted indigenous communities in the area around our operations. For example:

- (a) In 2009, we collaborated on an income generation, organizational strengthening and cultural identity project with the indigenous reserve of the Kurak Chak, which is predominately comprised of members of the Misak indigenous community. This involved the construction and operation of a small sugar refinery (*trapiche*) with a cost of COP \$69 million (approximately USD 35,000). As part of this project, we built capacity for sugar cane growing and sugar cane loaf (*panela*) production with organic practices as well as administrative processes. Health promotion and disease prevention workshops were organized. A cultural exchange meeting of the indigenous people was sponsored, during which the younger generation of community members learned about various ancestral practices and cultural principles. We were also able to help members of the Misak community become actively involved in regional meetings to define programs and projects for the sugar loaf sector in the region – before this project, the Misak community and this *trapiche* were not considered as producers in the region. The entire project was implemented respecting the indigenous approach.
- (b) Cartón de Colombia has carried out different projects and activities with the Nuestra Señora Candelaria de la Montaña indigenous reserve, part of the Emberá Chami ethnic community, located in the Riosucio municipality, in the Caldas department. We helped them obtain official recognition by the Ministry of the Interior as an indigenous organization. We also worked with them on strengthening the economic productivity of some projects they had with strawberries and milk. With our help, they were able to reach the required quality to comply with the standards of certification of good agricultural practices. This allowed them to join the program of Productive Alliances of the Ministry of Agriculture and consolidate their commercial relations with important national food companies. Additional programs carried out with the Emberá Chami include good citizens programs, continuing education programs for adults, environmental management programs and maintenance of public roads. In respect of one environmental protection program, we designed and installed 21 rural sanitation systems, and isolated several micro-watersheds. In 2021, we also expanded the natural forests protection areas and planted 40,000 trees. The same year, we signed an agreement where 15 hectares of productive land in the Mogan farm were allocated to expand the

natural protection to the water that supplies four aqueducts. As part of the agreement, the Nuestra Señora Candelaria de la Montaña indigenous reserve permitted the construction of 30 kilometers of internal roads on Cartón de Colombia's farms, located in the area of influence of the reserve. This agreement was endorsed by the local environmental authority, Corporación Autónoma Regional de Caldas.

- (c) Over the last two years we have been working with the Yanaconas indigenous community, part of the Río Blanco Ancestral Reservation in the Cauca municipality. They have lived in the village of La Catana, in the Sotará municipality, since 1999, when the Río Blanquito council was established, near Cartón de Colombia's commercial forestry plantations. As part of the dialogue, we installed 10 bio-filters for wastewater treatment and repaired the school rooms in La Catana public school. Members of the Yanaconas community visited our forestry nursery in Restrepo, Valle, and decided to implement, with our technical guidance, a forestry project in their territory with the purpose of establishing and maintaining a high-density commercial plantation for the production of sawn timber. We are also working on productive projects that they consider strategic, such as fish farming, pig farming, laying hens, and broilers. They are also strengthening food security with the installation of home gardens called "chacras".
 - (d) In the north of Cauca, in the Suarez municipality, Cartón de Colombia strengthened the local Nasa ethnic community heritage by sponsoring two levels of musical training for 15 youngsters of the Nasa Cerro Tijeras Reservation. We also worked with 10 local coffee growers and producers to help them increase the quality of their product. As part of the program, a tour was organized to a specialized coffee laboratory to help them develop continuous improvements programs and projects which included new coffee dryers.
- 3.11 These examples illustrate how we have, over many decades, enjoyed positive relations with several indigenous communities in the area around our operations (including the wider Misak community), working closely together, peacefully and with mutual respect, to improve the communities' living conditions.
- 3.12 In light of this long-standing commitment to the local areas in which we operate and our successful track record in respect of our engagement with local indigenous communities, Cartón de Colombia deeply regrets that a minority of individuals or groups purporting to represent the Misak community have, under the pretext of recovering ancestral land, carried out criminal acts which have adversely impacted

the local community's fundamental right to work and live peacefully. We provide more detail in the next section.

4. Section C: Response to allegations in the Joint Communication

- 4.1 The allegations being advanced in the Joint Communication are factually incorrect and entirely without merit. It is apparent that the information that has been provided to, and subsequently relied upon by, the UN Special Procedures in preparing the Joint Communication is wholly inaccurate and misleading.
- 4.2 It is simply not right to characterize the incidences referred to in the Joint Communication as "*peaceful*". To be clear, on 27 July 2021, individuals or groups allegedly representing the Misak community unlawfully invaded 10 Cartón de Colombia properties in Cajibío, in the Cauca municipality, causing irreparable damage to protected and richly diverse ecosystems.
- 4.3 Specifically, the intruders caused the following damage:
 - (a) 205 hectares of commercial forests and seven hectares of protected natural forests were set on fire, the latter of which the company had identified 285 species of flora and fauna, which served as protection for the Carrizal river from which more than 1,000 families draw their water supply;
 - (b) 115 hectares of adult forestry plantations were felled;
 - (c) 191 hectares of juvenile plantations were torn down or permanently damaged with machetes;
 - (d) two research projects were damaged, resulting in the loss of considerable work undertaken by the academic and scientific community; and
 - (e) roads were blocked, threatening the free mobility of the inhabitants of the area.
- 4.4 A video was recently posted by a news outlet on Twitter which we became aware of when it was linked to Smurfit Kappa on Bloomberg's online news feed, clearly showing the intruders on Cartón de Colombia's land causing damage to the forests – see [here](#).
- 4.5 Cartón de Colombia reported the intrusion and damage to the police and local authorities in order to protect the personal safety of our employees, the local community, the forests and the local ecosystems.

- 4.6 We enclose with this response a police report dated 12 March 2022⁶ which was obtained as a result of a freedom of information request made by a journalist unconnected with Cartón de Colombia or Smurfit Kappa Group plc (the **Group**). We understand from that police report that an urgent request was raised by the police on 28 July 2021 to the Governor’s Office in Cauca, the Regional and Municipal Ombudspersons, and the Regional Prosecutor to seek their support in establishing a direct and reliable communication channel with the protestors and organizers of the intrusion that would allow for an effective resolution, prevent further damage, and avoid the use of force or coercive measures.⁷ However, no response was received, and on 29 and 30 July 2021, the police, acting in accordance with the law and its constitutional mandate to defend the right to private property and the right to work, entered Cartón de Colombia’s premises and lawfully removed the intruders.
- 4.7 A number of further unlawful intrusions resulting in criminal damage to Cartón de Colombia’s land by individuals or groups allegedly representing the Misak community have occurred since July 2021, namely in August 2021, September 2021, October 2021, April 2022, July 2022 (including on the very same day we received the Joint Communication) and September 2022 – most recently just a few days ago, on 15 September 2022.
- 4.8 The police report dated 12 March 2022 details some of these further intrusions and the damage caused. Notably, it refers to the incident that occurred on 2 August 2021, which is also referred to in the Joint Communication. The police report states that a group of approximately 30 intruders, who were seen causing damage by cutting down trees with machetes and chainsaws, used handmade weapons (metallic shields, makeshift rocket launchers, metallic tubes, Molotov cocktails, slings) and blunt instruments (rocks, poles, marbles) to injure police personnel. A flying-type improvised explosive device was thrown by one of the intruders and hit a police officer in the neck, causing a severe injury which needed urgent hospital attention. We understand that the injured police officer was intubated in intensive care for two weeks. As a result, ESMAD was required to use the “*least lethal*” measures to repel the attacks.⁸

⁶ See enclosure 1.

⁷ This was later confirmed in a letter from Cajibío’s mayor to Cartón de Colombia, in which the municipality committed to summon a meeting of all interested parties to address all grievances.

⁸ We understand that ESMAD’s gear and instruments are closely reviewed by the Ombudsman’s office prior to commencing action. That includes verification that non-lethal instruments will be used. Cartón de Colombia is unaware of any indication that this procedure was not properly followed and/or that ESMAD’s

- 4.9 In this regard, the Joint Communication says that on 2 August 2021 “*police forces fired directly at demonstrators, resulting in the death of one person*”. However, according to the police report,⁹ the police did not use lethal force on our property to dispel the intruders. The person who was found deceased many hours later was not found on Cartón de Colombia property. We understand that the circumstances surrounding the death of that individual is under ongoing investigation by the Attorney General’s Office (to which we are not a party).
- 4.10 Unfortunately, due to the current social situation in Colombia, these incidences are not uncommon: other large companies and, in some cases, private owners in Colombia have been targeted by groups or individuals claiming ancestral rights to land and causing criminal damage. The Colombian President, Mr Gustavo Petro, who is supportive of indigenous communities, recently spoke out against such intrusions and criminal damage, in particular stating that, “*As a government, we are willing to settle the historical debt that exists in Colombia with those who want to access, through dialogue, but not through violence, this process of democratization of property. People who promote this type of act move away from the objectives that the President of the Republic has set for access to these properties.*”¹⁰ We fully agree with this.
- 4.11 The invasions of Cartón de Colombia’s land violated the company and the community’s right to work and live peacefully. These invasions also breached the company’s constitutional right to own private property. On several occasions, the intruders have caused serious, irreparable damage to sections of the natural and commercial forests, by cutting down trees, starting forest fires, half-cutting and “ringing” trees on the edge of public roads (which has the enormous potential of causing death or serious injury to road users), and blocking the roads with felled trees. It is entirely reasonable and proportionate for Cartón de Colombia to report these intrusions and damage caused to the police in order to protect the personal safety of our employees, the local community, the forests and the local ecosystems. Cartón de Colombia continues to be willing to engage in a constructive dialogue with the Misak community about their concerns. Cartón de Colombia will not, however, tolerate trespassing on, or damage to, its property, and it will continue to report such

members were in breach of their obligation not to use lethal weapons or force in the conduct of their actions. See Art 19 of Decree 003 of January 2021, [here](#).

⁹ See enclosure 1.

¹⁰ See press release dated 30 August 2022, at enclosure 2.

incidences to the police, in accordance with its right to do so under the law, should incidences continue.

- 4.12 It is important to understand that the Misak indigenous community has never communicated its concerns to Cartón de Colombia – and despite our many attempts since the first intrusion in July 2021, the Misak community (assuming the individuals or groups involved in the intrusions indeed represent the Misak community, which is not clear) has (until very recently – see paragraph 4.17 below) refused to engage with us at all, instead choosing to continue to intrude on our land and cause further irreparable damage.
- 4.13 Cartón de Colombia published a number of press releases condemning the intrusions, and expressly invited all parties to engage in a meaningful dialogue and called urgently for effective alternatives to promote peaceful co-existence through mutual respect for legal and constitutional rights. These calls for respect of the rule of law and a peaceful resolution were publicly supported by others, including the Peasant and Afro Descendants Communities group,¹¹ Fedemaderas (the National Federation of Wood Industries),¹² ITAF Parent Association,¹³ CPMF (a forestry think tank),¹⁴ 180 local contractors,¹⁵ 170 forestry workers,¹⁶ and the Municipal Council of Cajibío,¹⁷ a democratically elected body representing all inhabitants within its jurisdiction.
- 4.14 After many meetings with local communities, and local and national authorities, a dialogue meeting took place in Cajibío on 27 October 2021. The meeting was led by the Vice Ministry of the Interior and was attended by representatives from the Ministry of the Environment, the Ministry of Defense, the National Land Agency, the Office of the Attorney General, the Office of the Ombudsman, the Mayor of Cajibío and the Governor of Cauca, as well as leaders representing the different local

¹¹ See enclosures 3 and 4.

¹² See enclosure 5.

¹³ See enclosure 6.

¹⁴ See enclosure 7.

¹⁵ See enclosure 8.

¹⁶ See enclosure 9.

¹⁷ See enclosures 10 and 11.

communities. Importantly, representatives from the Misak community were invited, but they did not attend.¹⁸

- 4.15 During the meeting, Cartón de Colombia called for all illegal activities against its property to stop and stated that only through dialogue with the appropriate legal institutions and local communities would it be possible to find ways to promote a peaceful co-existence based on mutual respect for legal and constitutional rights. The different community leaders also expressed their opposition to the allocation of any land to indigenous people in the municipality, and against the expansion of existing or creation of new indigenous reserves. A number of community leaders defended Cartón de Colombia's presence in the municipality and expressed gratitude towards the company because of ongoing social projects and commitment to education.
- 4.16 Further, the UN Special Procedures should be aware that the Group accepted Mr Velasco Tumiña's request to speak at its Annual General Meeting (*AGM*) in April 2022 (this was despite the fact that the Group was under no obligation to do so)¹⁹ and responded to the concerns raised by Mr Velasco Tumiña constructively (see the Group's press statement dated 29 April 2022,²⁰ which was read out during the *AGM*). Indeed, it was not clear then – and is still not clear now – what precisely Mr Velasco Tumiña's relationship with the Misak community is, and to what extent he represents the views and concerns of the Misak community.
- 4.17 Since the Joint Communication was received, we understand that two meetings have been held in the Irish embassy in Colombia. The first meeting was attended by two individuals purporting to represent the Misak community, including Mr Velasco Tumiña, and members of other social organizations. The second meeting was attended by the same two individuals purporting to represent the Misak community (including Mr Velasco Tumiña), representatives from the EU and the Javeriana University. Cartón de Colombia was not invited to attend these meetings. The two

¹⁸ Note that a second meeting was organized by the Cauca Governor's Secretary on 31 May 2022. Again, Misak community representatives were invited but did not attend. The meeting started with an introductory speech from the Governor's Secretary but was later postponed because members of the Peasant and Afro communities wanted a representative from the National Land Agency present. The Governor's Secretary agreed to call a new meeting, which is in the process of being arranged.

¹⁹ Mr Velasco Tumiña is not a verifiable shareholder in the Group, nor was he a valid third-party proxy – the Group was therefore under no legal obligation to allow him to speak at the *AGM*. Nevertheless, the Group voluntarily accepted his request to speak.

²⁰ See enclosure 12.

individuals purporting to represent the Misak community are requesting that representatives from the Javeriana University act as mediator, and the Irish ambassador and representatives from the UN and EU are present as witnesses. The process for the dialogue is currently being discussed. We also understand that the representatives from the Javeriana University are seeking a Misak elder's confirmation that Mr Velasco Tumiña and the other individual purporting to represent the Misak community indeed have the mandate to represent the Cajibío Misak community in this dialogue.

- 4.18 These discussions are at a delicate stage. We are concerned that the UN Special Procedures' involvement in this matter could risk jeopardizing this dialogue with the Misak community, which, for a long time, we have been calling for. Cartón de Colombia is hopeful that the dialogue will proceed, that a peaceful resolution can be reached, and ultimately that it will put an end to the illegal activities against our property.

Allegations regarding threats received by Mr Velasco Tumiña

- 4.19 The Joint Communication refers to alleged multiple instances of acts of intimidation towards Pedro José Velasco Tumiña, who is described as “*a human rights defender and indigenous representative of the Misak people and of the movement of Indigenous Authorities of the South West (AISO)*”.
- 4.20 Cartón de Colombia emphatically deplores the fact that threats may have been received by Mr Velasco Tumiña. However, there is no link between such threats and Cartón de Colombia, and we unequivocally reject any implication that Cartón de Colombia is responsible for the threats. That is a serious allegation which is entirely without merit.
- 4.21 As noted above, we are not aware what precisely Mr Velasco Tumiña's relationship with the Misak community is, or the extent of his involvement in the intrusions and damage to Cartón de Colombia's property.
- 4.22 Importantly, neither Cartón de Colombia nor the Group were aware of any threats received by Mr Velasco Tumiña until now: the first that we were informed of such threats was in the Joint Communication, despite Mr Velasco Tumiña having had ample opportunity previously to raise his concerns regarding his personal safety. Mr Velasco Tumiña made no reference to these threats when he attended and spoke at the Group's AGM in April 2022 (during which he was afforded a significant amount of time, almost 30 minutes, to speak and ask questions), nor even during private discussions with representatives of the company before the meeting.

- 4.23 We note that Mr Velasco Tumiña has never been an employee of Cartón de Colombia (or any company within the Group) and has never been contracted in any way to provide services to Cartón de Colombia. Consequently, Cartón de Colombia cannot be held accountable for the well-being of Mr Velasco Tumiña. We do not accept that Cartón de Colombia has any obligation “*to take all necessary measures to protect the rights and freedoms*” of Mr Velasco Tumiña, as requested in the Joint Communication, in circumstances where there is no link between the threats received by Mr Velasco Tumiña and Cartón de Colombia.
- 4.24 Unfortunately, such incidences are not rare in Colombia. Indeed, the Joint Communication expressly refers to the January 2022 statement of the Colombian Ombudsman’s Office “*which documented the assassination of 22 human rights defenders in 2021, making Cauca one of the departments most affected by this phenomenon in the country*”. The Joint Communication also refers to communications sent to the Government of Colombia by several UN Special Procedures mandate holders in relation to allegations of acts of harassment and threats against human rights defenders and the killing of indigenous authorities in the departments of Cauca and Tolima.²¹ These communications highlight the fact that such incidences unfortunately do occur in Colombia, involving different community leaders, and allegedly committed by an array of non-state actors closely connected to Colombia’s long internal conflict.
- 4.25 We share the UN Special Procedures’ concern about the safety of human rights defenders in Colombia, but we emphasize again that there is no link between the threats that Mr Velasco Tumiña, nor any other individual subject of inquiry by the Special Procedures, may have received and Cartón de Colombia.

Allegations regarding alleged impacts of Cartón de Colombia’s operations

- 4.26 We consider that the allegations in the Joint Communication regarding the alleged impacts of Cartón de Colombia’s operations are not adequately explained or set out in sufficient detail. We requested that the Special Procedures set out their specific concerns and the allegations in more detail so that we could respond fully, but they did not do so. As a result, it is difficult for us to respond to such allegations in a meaningful way.
- 4.27 However, we do wish to make the following two points.

²¹ UN Special Procedures Letter to Colombia, Ref AL COL 9/2021, 16 November 2021 (available [here](#)); UN Special Procedures Letter to Colombia, Ref AL COL 3/2022, 10 March 2022 (available [here](#)).

- 4.28 Firstly, we emphatically reject any allegations asserting any illegality regarding our acquisition of land in Colombia.
- 4.29 In Colombia, there is special legislation for officially recognized indigenous communities.²² A community may ask the government to recognize their territory as a reserve if they have collective ownership of the land and follow their traditional culture. These officially recognized communities occupy approximately 34 million hectares, which is equivalent to one third of the Colombian territory (114 million hectares).
- 4.30 According to the Colombian Constitution, indigenous reserves in Colombia assign indigenous communities inalterable and inviolable control of reserved land in perpetuity and ensure their right to establish indigenous forms of governance through local councils, led by indigenous governors.
- 4.31 Indigenous people that do not live in indigenous reserves and do not have official recognition of their collective tenure rights are treated as landowners with the same rights and duties as any other private landowner in Colombia.
- 4.32 Cartón de Colombia began lawfully acquiring land in Cajibío 52 years ago from legitimate property titleholders, who had previously dedicated the land to agriculture and the grazing of livestock.
- 4.33 Prior to Cartón de Colombia's acquisition of this land, there was no indigenous community inhabiting the Cajibío municipality. The first indigenous communities came to Cajibío in 1994, when the Colombian government awarded properties to a number of families from the Paez community after a natural disaster occurred in the Paez territory, another area of the Cauca municipality. Other indigenous families from the Misak community then acquired properties in the municipality from private landowners.
- 4.34 In 2002, the government officially recognized some indigenous reserves in Cajibío. None of these recently created reservations overlap with Cartón de Colombia's land: all of Cartón de Colombia's land in Cajibío falls outside of the officially recognized indigenous reserves in the area.

²² Colombia has enacted various legal instruments to regulate the relationship between the national government and traditional indigenous communities, in particular with regards to land ownership, political structure and the application of national laws to indigenous territories. See, e.g., [Law 89 of 1890](#); [Law 60 of 1916](#); [Law 135 of 1961](#) (Arts 29 and 94); [Law 31 of 1967](#); and [National Decree 1953 of 2014](#).

- 4.35 As noted above, in order to receive FSC certification (which Cartón de Colombia has received for the last 19 years), Cartón de Colombia must comply with the FSC's principles and criteria.²³ FSC Principle 3 states that: “*The Organization shall identify and uphold indigenous peoples’ legal and customary rights of ownership, use and management of land, territories and resources affected by management activities*”. The criteria which sit under principle 3 requires Cartón de Colombia to, *inter alia*:
- (a) through engagement with indigenous peoples,²⁴ identify their rights of tenure, their rights of access to and use of forest resources and ecosystem services, their customary rights and legal rights and obligations, that apply within the Management Unit, and also identify areas where these rights are contested;²⁵
 - (b) recognize and uphold the legal and customary rights of indigenous peoples to maintain control over management activities within or related to the Management Unit to the extent necessary to protect their rights, resources and lands and territories;
 - (c) recognize and uphold the rights, customs and culture of indigenous peoples as defined in the United Nations Declaration on the Rights of Indigenous Peoples (2007) and ILO Convention 169 (1989); and
 - (d) through engagement with indigenous peoples, identify sites which are of special cultural, ecological, economic, religious or spiritual significance and for which these indigenous peoples hold legal or customary rights. These sites shall be recognized by the organization and its management, and/or protection shall be agreed through engagement with these indigenous peoples.

²³ FSC Principles and Criteria for Forest Stewardship, available [here](#).

²⁴ As per indicators 3.1.1 to 3.1.3 and 3.2.2 to 3.2.4 of the FSC's “*Normas para la Certificación Forestal Voluntaria de Plantaciones en Colombia Bajo el Esquema del FSC*”, this engagement includes, *inter alia*, (a) the need for an informed discussion within an effective participatory process regarding the applicable legal framework to forest plantations; (b) the execution of agreements for the use of land and access to ecosystemic resources, where applicable; and (c) discussions on land management and control, including dispute settlement mechanisms.

²⁵ As per indicators 3.1.4, 3.2.1 and 3.25 of the FSC's “*Normas para la Certificación Forestal Voluntaria de Plantaciones en Colombia Bajo el Esquema del FSC*”, Cartón de Colombia maps the different areas subject to its jurisdiction along with the titleholders of adjacent properties in order to guarantee that no overlap is present between the different titles at stake.

- 4.36 Cartón de Colombia complies with all of the FSC principles and criteria, including principle 3 and the criteria relating to the rights of indigenous people. As noted at paragraph 3.7, since 2003, Cartón de Colombia has had 19 independent audits carried out by the FSC. The FSC has never given a corrective action, recommendation or expressed any concern regarding Cartón de Colombia's conduct towards indigenous communities and our compliance with principle 3 and the criteria set out above.
- 4.37 Secondly, the allegations regarding the environmental impacts of our operations which are alluded to in the Joint Communication are completely unfounded and we wholly refute them.
- 4.38 In Colombia, there is a policy of reaching zero deforestation of natural forests by 2030. The commercial forestry plantations established by Cartón de Colombia over the last 52 years in Cajibío, certified by the FSC since 2003, comply with this policy. Forestry plantations, when technically and properly designed, established, managed and harvested (which 52 years of applied research has taught Cartón de Colombia to do), protect the soil against erosion, regulate water currents, capture CO₂, produce legal and sustainable wood that replaces wood from natural forests, and generate quality employment in the field. Our leadership, knowledge and expertise in the area of forestry has been recognized by the FSC for almost 20 years.
- 4.39 Again, we emphasize that Cartón de Colombia complies with all of the FSC principles and criteria, including those relating to environmental impacts, namely:
- (a) principle 1: comply with all applicable laws, regulations and nationally-ratified international treaties, conventions and agreements;
 - (b) principle 6: maintain, conserve and/or restore ecosystem services and environmental values of the Management Unit, and shall avoid, repair or mitigate negative environmental impacts;
 - (c) principle 7: have a management plan consistent with its policies and objectives and proportionate to scale, intensity and risks of its management activities. The management plan must be implemented and kept up to date based on monitoring information in order to promote adaptive management. The associated planning and procedural documentation must be sufficient to guide staff, inform affected stakeholders and interested stakeholders and to justify management decisions;
 - (d) principle 8: demonstrate that progress towards achieving the management objectives, the impacts of management activities and the condition of the Management Unit, are monitored and evaluated proportionate to the scale,

intensity and risk of management activities, in order to implement adaptive management.²⁶

4.40 Cartón de Colombia's compliance with these principles has been audited and verified by the FSC for the last 19 years.

4.41 We further note that the damage caused by the intrusions to Cartón de Colombia's land described in detail above has, in fact, caused significant adverse environmental impacts. In September 2021, the Regional Environmental Authority, on Cartón de Colombia's request, carried out a technical visit to assess the damage caused by the intruders. The Regional Environmental Authority's report noted, *inter alia*, the following:

- (a) the fires have caused a loss of biodiversity since, in the areas where burning occurred, herbaceous plants, ferns, mosses, bushes and trees have died, causing the loss of native species and wildlife;
- (b) the fires have caused the loss of fertile and productive soil, increasing the risk of flooding and erosion, since, in the absence of vegetation, it does not act as a filter and water retainer, and runs down the slopes dragging material (ash, soil, etc), which ends up in water sources; and
- (c) the pollution caused by smoke from forest fires poses a significant risk to human health and the environment, increasing the risk of respiratory diseases and decreased lung function.

5. Section D: Specific requests for information

Human rights due diligence

5.1 The Joint Communication requests information on the human rights due diligence measures that Cartón de Colombia has taken to prevent, identify and remedy adverse human rights impacts of our activities, in accordance with the UN Guiding Principles on Business and Human Rights.

5.2 The Group and every Group entity, including Cartón de Colombia, is (and has always been) fully committed to respecting the human rights of all communities in the areas in which it operates. This commitment is instilled across the Group's business, from the boardroom to the factory floor, and throughout its operations and supply chain. As a responsible business, the Group supports global human rights and labor

²⁶ FSC Principles and Criteria for Forest Stewardship, available [here](#).

standards, and checks that its suppliers also adhere to such standards. The Group is committed to the application of the principles expressed in the UN Guiding Principles on Business and Human Rights, and the Fundamental Principles and Rights at Work developed by the ILO in all of the countries in which it has a presence.

- 5.3 The Group's commitment to human rights is formalized through our [Code of Conduct](#), [Social Citizenship Policy Statement](#) and [Supplier Code of Conduct](#).
- 5.4 The Code of Conduct applies to the Group's Board of Directors, officers and employees, as well as all individuals, entities, agents or anyone acting on the Group's behalf. The Code of Conduct is available in 21 languages, including Spanish, to ensure accessibility and worldwide compliance.
- 5.5 The Code of Conduct takes account of the following international conventions and codes:
- (a) UN Declaration on Fundamental Human Rights;
 - (b) Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises;
 - (c) UN Global Compact; and
 - (d) International Labor Organization Declaration on Fundamental Principles and Rights at Work (core conventions).
- 5.6 Each Group entity, including Cartón de Colombia, and its employees and contractors are required to apply the Code of Conduct, as well as abide by the laws and practices of their industry and the jurisdiction in which they operate. In Colombia specifically, the Code of Conduct is explained and signed by every new Cartón de Colombia employee as part of their onboarding. In addition, all Forestry Division contractors are contractually obliged to comply with the Code of Conduct. Contracts are periodically audited to verify contractors' compliance with the Code of Conduct.
- 5.7 The Social Citizenship Policy Statement supplements the Code of Conduct and reflects the Group's commitment to upholding internationally recognized human rights, including the UN Guiding Principles on Business and Human Rights. In particular, we draw the UN Special Procedures' attention to the following sections of the Social Citizenship Policy Statement:

“Indigenous Peoples

SKG will abide by the principles in the United Nations Declaration on the Rights of Indigenous Peoples. In particular, in accordance with Article 10 of

the Declaration, indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

“Community engagement and involvement

SKG has some 370 manufacturing plants in over 30 countries. We recognise that our plants, wherever situated, are a part of their local environment and community. As a socially responsible organisation, we are committed to developing a constructive and mutually supportive relationship with the host communities in whose domicile we are privileged to operate. As a consequence, appropriate community engagement, activity and involvement is both encouraged and promoted. This would include consultation on proposed major projects that will have a significant impact on local communities. Apart from managing the business, a key element of each Plant Manager’s role is to represent the Company within the local community and contribute to its development. ...”

- 5.8 The Supplier Code of Conduct requires that those who seek to do business with the Group respect and comply with the principles expressed in the UN Declaration of Human Rights and the International Labour Organization Declaration on Fundamental Principles and Rights at Work in all countries in which the suppliers have a presence. That means that the Group’s suppliers: support freedom of association and collective bargaining; prohibit child labour and forced labour; treat employees humanely; respect employee contributions; provide fair compensation with no disciplinary wage deduction; encourage continuous training and development; and promote community involvement. The Group’s suppliers are requested to join the UN Global Compact initiative and Sedex (the Supplier Ethical Data Exchange) and they are required to align their sustainability policies and targets with their material UN Sustainable Development Goals. Some suppliers are also audited on human rights, labour practices and environmental impact.

Grievance mechanisms

- 5.9 The Joint Communication also requests information on the steps taken by Cartón de Colombia to establish operational-level grievance mechanisms to address adverse human rights impacts.
- 5.10 Since 2019, the Group has provided an external independent enhanced reporting channel and case management process called “Speak Up” which is incorporated into the company’s Code of Conduct. The Group truly values all stakeholders, including

its employees who report potential concerns that need to be addressed within the company. The company is committed to ensuring that every employee, and stakeholder has the opportunity to report wrongdoing or potential wrongdoing and when doing so, feels supported and has no fears of retaliation or reprisal. Speak Up provides the opportunity to ask questions and raise concerns about ethics, compliance or the Group's Code of Conduct in absolute confidence. Speak Up is administered by an independent company (NAVEX), is available 24 hours a day, seven days a week, and can accommodate calls in most languages (including Spanish). The Group uses NAVEX's EthicsPoint case management application to support the administration of Speak Up; EthicsPoint is hosted on NAVEX's secure servers and is not part of the Group's website or intranet. Once a question or concern is received, there is a comprehensive process in place for the management of the concern raised, to ensure that reviews are conducted and that appropriate actions are taken where necessary. In addition, the Audit Committee of the Group Board receive regular updates on cases raised via Speak Up. There have been no concerns or questions raised through Speak Up relating to the human rights of indigenous people.

- 5.11 In addition to Speak Up, since 2002, Cartón de Colombia has had an "Internal Grievance Mechanism" in place (which was updated in 2008, 2017 and 2019). The Internal Grievance Mechanism is available to any third party affected by the forestry operations of Cartón de Colombia.
- 5.12 If a concern or issue cannot be resolved immediately, the multinational insurance company AON is engaged to act as an independent mediator with the aim of finding a solution to address the complainant's concerns. After discussion, and once both parties are content with the proposed solution, they move to execute a formal agreement. Compliance with the agreement then falls within the remit of the relevant Cartón de Colombia employee in charge of supervising the operation within the specific area of the alleged impact.
- 5.13 To date, Cartón de Colombia has not received any complaint through its Internal Grievance Mechanism relating to any alleged human rights violations, land ownership disputes, or land distribution issues.

Remediation measures

- 5.14 Finally, the Joint Communication requests information on the remediation measures Cartón de Colombia has taken, or plans to take, to address adverse human rights impacts caused by our operations or those our subsidiaries, particularly on human rights defenders and indigenous peoples.

- 5.15 However, as noted above, Cartón de Colombia emphatically rejects any assertion that our operations have caused adverse human rights impacts – on human rights defenders and indigenous peoples, or otherwise – that would require remediation.
- 5.16 We reiterate that since 2003, Cartón de Colombia has had 19 independent international audits. The independent auditors have never given a corrective action, recommendation or expressed any concern regarding Cartón de Colombia’s conduct towards indigenous communities, or indeed in respect of any human rights-related issue.
- 5.17 Nevertheless, as explained above, Cartón de Colombia has policies and due diligence procedures in place to mitigate the risk of a human rights violation occurring. It also has established grievance mechanisms in place so that if a human rights-related complaint was raised, it could be investigated and addressed.

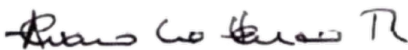
6. Section E: Concluding remarks

- 6.1 We take the issues raised in the Joint Communication very seriously. However, the allegations set out in the Joint Communication are, put simply, factually incorrect, and entirely without merit.
- 6.2 We emphasize again that there is no link between the threats which may have been received by Mr Velasco Tumiña and Cartón de Colombia, and we unequivocally reject any implication that Cartón de Colombia is responsible for the threats.
- 6.3 Since July 2021, there have been a number of unlawful intrusions resulting in criminal damage to Cartón de Colombia’s land by individuals or groups allegedly representing the Misak community. These intruders are not “*peaceful demonstrators*”. On several occasions, the intruders have caused serious, irreparable damage to sections of the natural and commercial forests, by cutting down trees, starting forest fires, half-cutting and “ringing” trees on the edge of public roads, and blocking the roads with felled trees. It is extremely sad and disappointing that a minority of individuals or groups purporting to represent the Misak community have carried out these criminal acts, which have adversely impacted both Cartón de Colombia’s and the local community’s fundamental right to work and live peacefully.
- 6.4 Cartón de Colombia remains open to engaging in a peaceful, meaningful and constructive dialogue with the Misak community about their concerns (assuming the individuals or groups involved in the intrusions indeed represent the Misak community, which is not clear), but we will not tolerate trespassing on, or damage to, our property, and we will continue to report such incidences to the police, in accordance with our right to do so under the law, should incidences continue. We are

hopeful that the dialogue mediated by the Javeriana University will proceed, that a peaceful resolution can be reached, and ultimately that it will put an end to the illegal activities against our property.

- 6.5 Further, for the reasons given in this response, we emphatically reject both any allegations asserting any illegality regarding our acquisition of land in Colombia, and the allegations alluded to in the Joint Communication regarding the environmental impacts of our operations. Such allegations are completely unfounded, and we wholly refute them.
- 6.6 Finally, we reject any assertion that our operations have caused adverse human rights impacts – on human rights defenders and indigenous peoples, or otherwise – that would require remediation. Independent auditors have never given a corrective action, recommendation or expressed any concern regarding Cartón de Colombia’s conduct towards indigenous communities, or indeed in respect of any human rights-related issue.
- 6.7 Nevertheless, Cartón de Colombia has policies and due diligence procedures in place to mitigate the risk of a human rights violation occurring, and established grievance mechanisms in place so that if a human rights-related complaint was raised, it could be investigated and addressed. It is clear, therefore, that Cartón de Colombia has acted, and continues to act, in accordance with the UN Guiding Principles on Business and Human Rights.
- 6.8 We hope that this detailed response to the Joint Communication is of assistance to the UN Special Procedures. We will continue to engage with the UN Special Procedures in a constructive and transparent manner, on the basis that they carry out their mandate with the appropriate degree of objectivity, fairness and impartiality that is expected. If the UN Special Procedures require any further information, please do not hesitate to contact us.

Kind regards,



Alvaro Jose Henao R.

CEO

Smurfit Kappa Central Cluster

Colombia, Ecuador, Perú, Central America and the Caribbean