

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the rights of indigenous peoples

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(Please use this reference in your reply)

22 July 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 43/16, 44/15 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning acts of harassment and intimidation targeting human rights defender and Misak indigenous leader Pedro José Velasco Tumiña and the activities of the Irish company Smurfit-Kappa in Colombia.

Mr. **Pedro José Velasco Tumiña** is a human rights defender, representative of the indigenous Misak people and the Movimiento de Autoridades Indígenas del Sur Occidente (AISO).

According to the information received:

Since 27 June 2021, members of the Misak and Nasa indigenous communities, organised in the Movimiento de Autoridades Indígenas del Sur Occidente (AISO), together with members of peasant and Afro-descendant communities, have been carrying out protests in the department of Cauca with the objective of recovering lands considered by the community members to be ancestral indigenous territory, but which are currently owned by the Irish company Smurfit-Kappa through its Colombian subsidiary Cartón de Colombia S. A. These actions have primarily taken place in the municipality of Cajibío and in rural areas near the cities of Popayán and Tambo.

The above-mentioned protests have been organised following the documentation by the communities and other groups of alleged negative human rights and environmental impacts resulting from Smurfit-Kappa's operations in Colombia. These alleged impacts, which are said to have resulted primarily from the company's alleged land-grabbing for the development of pine and eucalyptus plantations, include the over-exploitation of water and the contamination of water sources, resulting in reduced access to water for use by the communities; the reduction of soil quality; negative impacts on biodiversity; and the aggravation of social conflicts in the department. The communities have reportedly tried to establish dialogue mechanisms with the Colombian Government to address these issues, but without success.

In this context, Mr. Pedro José Velasco Tumiña has been subjected to multiple acts of intimidation, while other violations of the protesters' rights have also allegedly been perpetrated.

On 28 July 2021, following the filing of a complaint by Cartón de Colombia S.A., the Mobile Anti-Riot Squad (ESMAD), a special unit of the National Police, violently expelled approximately 70 peaceful protesters from indigenous, peasant and Afro-descendant communities from the company's property in the municipality of Cajibío. This included the use of tear gas by the police squad. Since this date, there have been several confrontations between units of the State security forces and peaceful demonstrators from the communities in different territories in the municipality, including on 2 August 2021, when the security forces allegedly fired directly at the demonstrators, resulting in the death of one person. These incidents reportedly gave rise to an atmosphere of high tension in the municipality.

At the end of August 2021, in this context of heightened tension, Mr. Velasco Tumiña received an anonymous call in which the caller identified the human rights defender as one of the leaders of the social movement in Cajibío and warned him to stop his activities or face "the consequences of what happens to your people and to you".

In the last days of November 2021, Mr. Velasco Tumiña reportedly received another anonymous call, in which the caller said that he knew Mr. Velasco Tumiña and that he should be careful, stating that "our sources tell us that they sent people to Cauca with your photo and identification card and they know what you're doing there" (*"nuestras fuentes nos dicen que enviaron gente hacia el Cauca con su foto y cédula y saben en que y dónde se mueve allá"*).

On 5 December 2021, Mr. Velasco Tumiña's Twitter account was hacked by unknown persons. The attackers changed Mr. Velasco Tumiña's profile to make it appear as if he were associated with armed groups.

During the last months of 2021, Mr. Velasco Tumiña also received multiple calls from the national police, in which the police sought information about his whereabouts and movements.

At the end of January 2022, Mr. Velasco Tumiña received a further anonymous call, in which the caller told him "you're from the Misak authorities, who are supplying [sic] the people of Cajibío, and the one who gives the people the idea of mobilizing on the land of Carton, stop this fucking shit, we have already warned you, we are going to disappear you, to clean you, you know" (*"usted es de las autoridades Misak, que esta suministrando de logista para la gente de Cajibío, y el que le mete la idea a la gente de posicionar sobre la tierra de Carton, detenga esa puta joda, ya le hemos advertido, lo vamos a desaparecerlo, a limpiarlo, ya sabe"*).

In May 2022, Mr. Velasco Tumiña travelled to Ireland to attend Smurfit-Kappa's AGM in Dublin. During the meeting, he took the floor to express his community's concerns regarding the alleged negative impacts of the company's activities on the human rights of indigenous peoples and others in the department of Cauca. On 17 May 2022, two days after his return to Colombia, the human rights defender reportedly received a message by phone from an unknown person saying "you already have a tombstone on your chest, Indian son of a bitch, for talking too much with foreigners" (*"ya tienes la lápida en el*

pecho indio hijueputa, por andar hablando de más con los extranjeros”).

At the time of writing, Mr. Velasco Tumiña has continued to receive anonymous calls two or three times a week.

Without implying in advance a conclusion on the above facts, we would like to express our deep concern for the safety of Mr. Velasco Tumiña, as well as for the safety of other human rights defenders participating in the land claims movement in the department of Cauca. We note with extreme concern the constant attacks, including assassinations, of human rights defenders and social leaders in the Cauca department, and note the statement issued by the Colombian Ombudsperson's Office in January of this year¹, in which the office documented the assassination of 22 human rights defenders in the department in 2021, making Cauca one of the departments most affected by this phenomenon in Colombia.

We are also concerned about the alleged undue use of force by the security forces in response to the peaceful protests of communities in Cauca.

Further to this, we wish to express our concern about the alleged broader negative human rights and environmental impacts related to the use of land in the department of Cauca by Smurfit-Kappa and its subsidiary Cartón de Colombia S.A.

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

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures your Excellency's Government has taken to ensure that Irish companies operating abroad are not causing or contributing to abuses of international human rights norms and standards that Ireland has undertaken to uphold.
3. Please describe the guidance, if any, that the Government has provided to Irish business enterprises on how to respect human rights throughout their operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, including the indigenous peoples, and remediating any negative impacts.
4. Please provide information regarding the measures that your Excellency's Government is taking, or considering to take, to ensure that those affected, by the overseas activities of private Irish companies have access to effective remedies as per the UN Guiding Principles.

¹ <https://www.defensoria.gov.co/es/nube/comunicados/10697/Un-total-de-145-1%C3%ADderes-sociales-y-defensores-de-derechos-humanos-fueron-asesinados-en-2021.htm>

5. Please provide information whether the Government has conducted, or is considering to conduct, any independent assessment of the effectiveness of the measures envisaged under the 2017-2020 National Action Plan on Business and Human Rights (NAP) to protect human rights defenders. Further, please indicate the actions taken, or being planned, by your Government to publish an updated NAP.

Please be informed that a letter on the same matter has also been sent to the Government of Colombia, as well as to representatives of Smurfit-Kappa and Cartón de Colombia S.A.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fernanda Hopenhaym
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 which declare that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and fulfil all human rights and fundamental freedoms.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. In this regard, Ireland has a duty to ensure that foreign businesses operating within its territory respect human rights by taking steps to prevent as well as investigate, punish, and redress abuses through legislation, regulations, policies, and adjudication. Furthermore, Ireland has an obligation to ensure access to effective remedial mechanisms for persons whose rights have been violated by business activities within its territory. States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights [...]" (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

We would also like to refer to the UN Declaration on the Rights of Indigenous Peoples adopted by the General assembly on 13 september 2007. Article one of the Declaration states that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human

Rights and international human rights law.

Article 32 (2) of the declaration further provides that the states shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.