

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

Ref.: AL OTH 72/2022
(Please use this reference in your reply)

22 July 2022

Dear Mr. Smurfit,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. I am part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. I am sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of the company 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 qué 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 Cajibio, 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 Cajibio, 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 es 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 lapida en el pecho indio hijueputa, por andar hablando de mas con los extranjeros").

At the time of writing, Mr. Velasco Tumiña continues 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 Ombudsman'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.

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.

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.

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>

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 provide information about the human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate and remedy adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights.
3. Please provide information on steps taken by your company to establish operational-level grievance mechanisms, in line with the UN Guiding Principles, to address adverse human rights impacts caused by your company throughout your operations globally.
4. Please provide information on the remediation measures your company has taken, or plans to take, to address adverse human rights impacts caused by your operations or those of your subsidiaries, particularly on human rights defenders and indigenous peoples.

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

This communication and any response received from your company 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.

Please accept, Sir, 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.

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.

We would like to draw your attention to the Guiding Principles on business and human rights (A/HRC/17/31). The Guiding Principles were unanimously approved in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultations involving governments, civil society and the business community.

These Guiding Principles are based on the recognition of:

- a. "The current obligations of States to respect, protect and fulfill human rights and fundamental freedoms;
- b. The role of companies as specialized organs of society that perform specialized functions and that must comply with all applicable laws and respect human rights;
- c. The need for rights and obligations to be accompanied by adequate and effective remedies in the event of non-compliance".

The Guiding Principles have been established as the authoritative global standard for business to prevent and address negative business-related consequences on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, transnational and otherwise, regardless of their size, sector, location, ownership and structure. It exists independently of the ability and/or willingness of States to meet their own human rights obligations and does not reduce those obligations. This is an additional responsibility to that of complying with national laws and regulations for the protection of human rights.

Principles 11 to 24 and Principles 29 to 31 provide guidance to companies on how to meet their responsibility to respect human rights and to provide redress when they have caused or contributed to adverse effects. The commentary to Principle 11 states that "Businesses should not undermine the ability of States to meet their own human rights obligations, nor take any action that could undermine the integrity of

judicial processes”.

Two main components of the corporate responsibility to respect human rights have been identified in the Guiding Principles, requiring that “businesses: a) Prevent and address adverse human rights impacts from their own activities consequences when they occur; b) Try to prevent or mitigate the negative consequences on human rights directly related to operations, products or services provided by their business relationships, even when they have not contributed to generating them.” (Guiding Principle 13).

To fulfill their responsibility to respect human rights, companies must have policies and procedures in place that are appropriate to their size and circumstances, including:

- a) A political commitment to assume its responsibility to respect human rights;
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact;
- c) Processes that make it possible to repair all the negative consequences on human rights that they have caused or contributed to causing. (“Guiding Principle 15).

This process of identifying and assessing actual or potential negative human rights consequences should include substantive consultation with potentially affected groups and other stakeholders (Guiding Principle 18).

Also, Principle 22 provides that "if companies determine that they have caused or contributed to causing negative consequences, they must repair them or contribute to their repair by legitimate means." “The establishment of grievance mechanisms at the operational level for those potentially affected by business activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Commentary to Guiding Principle 22).

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly (ref. A/73/163). In the report, the Working Group noted that “The Guiding Principles make it clear that companies have an independent responsibility to respect human rights and that, to do so, they must exercise human rights due diligence. When speaking of due diligence, reference is made to the processes that all companies must incorporate in order to identify, prevent, mitigate and justify how they correct the potential and real adverse effects on human rights caused totally or partially by their activities, or linked directly with its operations, its products or the services provided by its business relationships”. Due diligence on human rights.

Due diligence in human rights matters implies a) Identifying and evaluating the real or potential adverse effects on human rights that the company has caused or contributed to causing through its activities, or that are directly related to the operations, products or the services provided by your business relationships; b) Integrate the results of impact assessments into relevant company functions and processes, and take appropriate action based on their share of the impact; c) Monitor

the effectiveness of the measures and processes adopted to counteract these adverse effects on human rights in order to know if they are working; d) Communicate how adverse effects are being addressed and demonstrate to stakeholders—particularly those affected—that adequate policies and processes are in place to enforce respect for human rights in practice.”