

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; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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18 July 2023

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; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 52/4, 44/15, 46/7 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the attempt on the life of human rights defender Alirio Perdomo**, one of the leaders of the Association of People Affected by the El Quimbo Hydroelectric Project (ASOQUIMBO). The El Quimbo Hydroelectric Project is owned by the Italian company Enel, through its subsidiary Enel Colombia, and is located upstream of the Betania dam, also owned by Enel.

Mr. **Alirio Perdomo** is a human rights defender, an artisanal fisherman and one of the leaders of the ASOQUIMBO. Mr. Perdomo is also president of the Association of Calender Fishermen of the Magdalena River. For many years, he has participated in several peaceful actions in denouncing the environmental impact of the hydroelectric, in affected zones. He is a recognised defender of the human rights of fishermen affected by the dam El Quimbo in the department of Huila.

The Italian company Enel, through its subsidiary Enel Colombia, is the major shareholder of the El Quimbo Hydroelectric Power Plant. The Hydroelectric Power Plant is located about 90 kilometers from the city of Neiva and 12 kilometers from the mouth of the Paez River with the Magdalena River, upstream from the Betania Hydroelectric Power Plant, with Enel also being its main shareholder.

The El Quimbo Hydroelectric Power Plant makes use of the waters of the Suaza and Magdalena rivers, has an installed capacity of 400 MW and an average generation of 2,216 Gwh/year, which supplies close to 4% of the Colombian energy demand.

Its reservoir occupies an area of 8,586 hectares in six municipalities. Only inhabitants of those six above-mentioned municipalities are considered, as per the environmental impact study, as directly affected by the Project. However, in practice, inhabitants of several other municipalities are indirectly affected, including impacts on their fishing (due to the lack of oxygen in the water and high sedimentation between dam and dam) and agricultural activities. The Project reportedly caused a

radical reduction in the fish population in the river, with serious impacts on the livelihoods of fishermen in the affected municipalities, consequences on the ecosystems, as well as on the right to food and to a clean, healthy and sustainable environment of their populations.

According to the information received, in its environmental impact study, the El Quimbo Hydroelectric Power Plant did not take into account the cumulative impact on the Magdalena River, as this is the second dam with a reservoir on the river in the department of Huila. As an example, the El Quimbo Hydroelectric Power Plant did not include the Betania reservoir, located 12 kilometers apart, as part of the area of direct influence.

Since the request for licenses for the Project, the populations of the affected municipalities have organized themselves in ASOQUIMBO to defend their human rights in the face of the development of El Quimbo.

According to the information received:

In September 2019, Mr. Alirio declared before the Hobo municipal ombudsman that he was the victim of threats through phone calls, like other members of the Hobo fishermen's organization.

On 28 March 2023, Mr. Perdomo reportedly recorded a video to document and alert Colombian authorities about the fish mortality allegedly resulting from the operations of the Betania Dam and the El Quimbo Hydroelectric Project, due to lack of oxygen in the water and high sedimentation between dam and dam, and its effects on artisanal fishermen in the region.

A few hours after recording the video, while Mr. Perdomo was driving to the center of Hobo municipality after his day's work, he was intercepted by two unknown individuals who shot the human rights defender before fleeing, leaving Mr. Perdomo wounded in the ear. Mr. Perdomo was reportedly taken to the University Hospital in the city of Neiva after alerting some fellow fishermen of what had happened.

On 29 March 2023, Mr. Perdomo was reportedly released from the hospital. He then published the aforementioned video on social media. Subsequently, he rendered a statement regarding the victimizing act before the Neiva Ombudsman and requested protection measures before the National Protection Unit, his risk being assessed as ordinary. He is currently displaced with his family nucleus in the city of Neiva Huila.

El Quimbo Hydroelectric Project

In 2008, the El Quimbo dam was given as a concession by the Colombian government to the Colombian company EMGESA S.A. E.S.P., currently owned by the Italian company Enel, through its subsidiary Enel Colombia. Allegedly, throughout the process of design, construction and operation of the El Quimbo hydroelectric project, there have been a series of irregularities during the environmental licensing process, as well as during the process of filling the dam and its start-up, with serious social and environmental impacts.

Additionally, the General Controller of the Republic of Colombia published two reports regarding the serious environmental situation that the department of Huila was facing due to the construction and the commissioning of the dam. In its latest compliance audit report of December 2020, it qualifies as inefficient the effectiveness of the internal control of the National Agency for Environmental Licenses -ANLA- in charge of issuing and monitoring compliance with environmental licenses, since it does not have mechanisms that mitigate or eliminate the risks detected and that prevent compliance with the obligations contained in the license and its modifications. In the year 2020, according to the Comptroller's report, the environmental license had 29 modifications regarding different topics.

In April 2023, in the context of a political control hearing before the Fifth Commission of the House of Representatives regarding the roadmap for monitoring the impacts of the El Quimbo hydroelectric project, the minister of the Environment reportedly announced several measures in response to the non-compliances found and the possible negative consequences of the project for the environment and the population. In this regard, identified challenges are the fulfillment of the announced commitments and that currently, the communities do not know in detail the road map announced by the Ministry of the Environment.

According to the information received, there continues to be reports of fish mortality and negative impacts on the right to food, and to a clean, healthy and sustainable environment, among other rights, as a consequence of the El Quimbo Hydroelectric Project operations, and a re-evaluation of environmental impacts and an environmental management plan with emerging impacts was reportedly requested.

Likewise, we have received information about the persistent non-compliance with the environmental compensations agreed in the environmental license through resolution 0899 of 15 May 2009 in charge of the company Enel.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our deep concern about the attempt on Mr. Perdomo's life, which appears to be directly linked to his work in defense of human rights. We underline our concern for the safety of Mr. Perdomo, as well as for the safety of other human rights defenders participating in the collective defense of the human rights of communities allegedly affected by the El Quimbo Hydroelectric Project. We are also concerned about the negative human rights impacts that the Hydroelectric project El Quimbo might have caused to the environment, and to affected stakeholders with regards to their right to a healthy environment and their right to food. We are also equally concerned about the lack of effective redress mechanisms for affected stakeholders as a consequence of the hydroelectric project.

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 highlight the steps that your Excellency's Government has taken, or is considering to take, to protect against negative impacts of Italian business enterprise activities on human rights and the environment, ensuring that business enterprises domiciled in its territory and/or within its jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights and the environment throughout their operations, as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs).
3. Please indicate the steps that Your Excellency's Government has taken, or is considering taking, to ensure that business enterprises domiciled in your territory and/or jurisdiction, including those with operations outside your territory, establish and participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse impacts on human rights and the environment, and in this particular case, on the right to food that they have caused or contributed to.
4. Please indicate the steps that Your Excellency's Government has taken, or is considering taking, to implement the commitments outlined in its 2021 Second National Action Plan on Business and Human rights in relation to Italian companies operating abroad.
5. Please describe the guidance, if any, that the Government of Italy has provided to business enterprises on how to respect human rights and the environment throughout their operations, in line with the UNGPs.
6. Please provide information regarding measures that your Excellency's Government has taken, in response to the recommendation provided in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Italy in 2021, in particular on Italian enterprises' operating overseas.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

Please be informed that a letter on this subject matter has been also sent to the Government of Colombia, as well as those business enterprises that are allegedly

involved in El Quimbo Hydroelectric Project, including Enel and Enel Colombia.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment
of a safe, clean, healthy and sustainable environment

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your government's attention to the international standards and norms applicable to them.

We would like to refer to articles 6, 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Italy on 15 September 1978, which establish the rights to life, security of the person and freedom of expression.

The right to security of person refers to protection against physical or psychological injury, or physical and moral integrity, and obliges States parties to take appropriate measures to protect individuals from foreseeable threats to their life or physical integrity from any State or private actor. As the Human Rights Committee has emphasized in its general comment 35, States parties should respond appropriately to patterns of violence against certain categories of victims, such as intimidation of human rights defenders.¹ Likewise, in its general comment 36, regarding the right to life established in article 6 of the ICCPR, the Human Rights Committee notes that the duty to protect the right to life requires States Parties to adopt special measures of protection for vulnerable persons whose lives are at particular risk due to pre-existing patterns of violence. This includes human rights defenders.

With respect to article 19 of the ICCPR, which guarantees the right to freedom of expression, including the right to disseminate information and ideas. As stated by the Human Rights Committee, the obligation to respect freedom of expression is binding on each and every State party as a whole. In fulfilling this obligation, States parties must ensure that individuals are protected from acts by private persons or entities that interfere with the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are enforceable as between private persons or entities.²

We would also like to draw the attention of your Excellency's Government to the fundamental norms set forth in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. 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 realization 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, as well as article 12, paragraphs 2 and 3, which stipulate that the State shall ensure the protection of everyone against any violence, threats, retaliation, discrimination, denial in law or in fact, pressure or any other arbitrary action as a consequence of the lawful exercise of the rights referred to in this Declaration.

¹ CCPR/C/GC/35 paragraph 9

² CCPR/C/GC/34/ paragraph 7

Finally, we would like to refer to the Guiding Principles on Business and Human Rights³ adopted by the United Nations Human Rights Council in June 2011. The Guiding Principles are based on the recognition of the obligations of States to respect, protect and fulfil human rights, as well as the role of business as specialized organs of society that must respect human rights, and the need for rights and obligations to be accompanied by adequate and effective remedies in the event of non-compliance. They affirm that States must protect against human rights violations committed within their territory and/or jurisdiction by third parties, including companies.

In addition, we would like to refer to the International Covenant on Economic, Social and Cultural Rights, ratified by Italy the 15 September 1978. The Committee on the Economic, Social and Cultural Rights has indicated that the “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.” (General comment 24 (2017)).

Finally, the United Nations General Assembly as well as the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/76/300 and A/HRC/48/13. In addition, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out the basic obligations of States under human rights law with regards to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 stipulates that “States should establish a safe and enabling environment in which individuals, groups of individuals and bodies of society concerned with human rights or environmental issues can act without threats or harassment.”

³ A/HRC/17/31