

**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**

Ref.: AL OTH 92/2023

(Please use this reference in your reply)

18 July 2023

Dear Mr. Starace,

We have the honour to address you as CEO and General Manager of Enel, 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.

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. We are 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. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we 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 your company 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

Enel Colombia

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.

Your company, 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 the 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 provide detailed information on the human rights due diligence policies and processes established by Enel to identify, prevent, mitigate, and account for how they address the potential negative impacts on human rights and the environment that the Hydroelectric project, through your subsidiary, could cause or contribute to, as set forth in the UN Guiding Principles on Business and Human Rights (UNGPs).
3. Please provide information on any consultations by your company or its subsidiaries with the affected communities prior to the approval of the El Quimbo hydroelectric project, and whether their free, prior and informed consent was sought and received, particularly concerning any potential relocation and social, cultural and environmental impacts.
4. Please provide details on the measures taken by your company to undertake environmental and human rights assessments regarding the impacts of the hydroelectric project in line with international standards, and any plans to adopt appropriate mitigation and protections measures.
5. Please provide information on the measures taken to ensure that Enel subsidiaries and its entire supply chain apply human rights due diligence. In addition, please clarify whether your company has policies, procedures and training that focus on, and set clear expectations for, respect for human rights and the environment.

6. Please provide information on operational-level grievance mechanisms that your company has established, or participated in, to address adverse impacts on human rights and the environment, including on affected communities, caused by your company or its subsidiaries.
7. Please provide information on the measures taken to ensure that impacted residents have adequate access to basic social services and ensure the realization of the right to food. Please provide information on any remedial measures that your company has taken, or has planned for the affected populations, due for example to the loss of access to livelihood sources caused by the hydroelectric project, owned by your company's subsidiary.
8. Please describe the measures your company has taken or plans to take to prevent situations like this from recurring in the future.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company 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.

Please be informed that a letter on this subject matter has been also sent to the Government of Colombia, Enel Colombia, as well as to the Government of Italy, home-States of your companies.

Please accept, Mr. Starace, 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 attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultations with governments, civil society and the business community. 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. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore, we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of the principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. (...) Business enterprise’s “activities” are understood

to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13). Principles 17-21 lay down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to guiding principle 25).