

Mandates of 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; the Special Rapporteur on the right to food; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL ZAF 3/2023
(Please use this reference in your reply)

31 July 2023

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the right to food; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 53/3; 46/7, 49/13, 52/4 and 51/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the intended realization of a large-scale mining project (La Colosa) in Cajamarca (Tolima, Colombia), a municipality with a long-standing agricultural tradition and surrounded by a crucial ecosystem in the region. La Colosa is a project of AngloGold Ashanti Colombia – a branch of the global mining company AngloGold Ashanti with headquarters in South Africa. The South African Government is one of the largest single investors in this project through its Public Investors Corporation.

The realization of this megaproject in Cajamarca would contravene the ban on mining activities in moorland ecosystems enshrined in the Páramos Law (1930/2018), and pose a serious threat to the realization of fundamental human rights such as the rights to food, water, and the right to a healthy environment, with serious repercussions for the livelihood and food sovereignty of the local and neighboring populations. It would further fail to acknowledge the rural communities' right to meaningful and equal participation, seriously affecting their livelihood and disregarding their cultural identity.

Particular concerns regarding the intimidation of various human rights defenders opposing the project have been raised by the UN independent human rights experts in communication letters addressed to AngloGold Ashanti Colombia, AngloGold Ashanti South Africa and to the Government of South Africa – in November 2021 (OTH 254/2021; OTH 253/2021, ZAF 5/2021).

According to the information received:

Background

Cajamarca is a municipality situated in the Tolima department, covering an area of 500 km² and inhabited by around 20,000 people, with 99.8% of its population residing in rural areas. Agriculture and livestock activities account for approximately 23.3% and 29.8% of land use, respectively. Cajamarca has

earned the name of the "agricultural pantry" due to its longstanding tradition of agricultural production and occupation of its residents and their cultural identity. The municipality of Cajamarca is part of the Chilí-Barragán and Los Nevados páramos (high moors) ecosystems, as well as the Central Forest Reserve (CFR). These páramos play a crucial role in the natural environment, serving as a vital water source for various cities and contributing to the cultural identity of the region. Despite its advantageous location and protected status, the region faces water scarcity issues due to droughts, which have been further exacerbated by the impacts of climate change.

The people living in this region are primarily peasants, small scale and family farmers, who identify themselves based on their livelihoods, culture, and politics. They rely on agricultural activities to meet the basic food needs of themselves and their families. However, they also resort to working in the local agroindustry for a living.

Cajamarca municipality is located on the foothills of the central mountain range, creating a unique environment with varying temperatures between 1,500 and 3,800 meters above sea level. This geographical diversity allows Cajamarca to cultivate a wide range of crops, including red beans, tomatoes, potatoes, arracacha, avocados, gulupa, and coffee. The agricultural output of Cajamarca not only meets the food demands of its local population but also supplies the larger domestic markets in cities such as Ibagué, Bogotá, Cali, and Armenia. The water sources in Cajamarca play a crucial role in supporting food production in downstream municipalities as well.

La Colosa is a project of AngloGold Ashanti (AGA), a company headquartered in South Africa. It is planned as an open-pit mine centered in Cajamarca that would produce an estimated 30 tons of gold per year.¹ This would be the company's highest-producing project and among the 10 largest precious metals mines in the world. The infrastructure required for the project includes the open pit mine, a tailings dam for chemical waste, water treatment plants, a connection to the national electric system, and a pipeline for the transport and processing of the gold. The project is in its exploratory phase.

In 2008 the company AngloGold Ashanti Colombia made its first request to the Ministry of the Environment of Colombia for permission to extract from the Central Forest Reserve. By 2009 AngloGold Ashanti Colombia had concluded 19 contracts with the Colombian Government for mining concessions in Cajamarca, amounting to a territory of 30,440 hectares where 69% of the entire municipality lived and cultivated land.

While there have been exploratory studies for decades, there is no history of large-scale mining in the region. In 2001, the Colombian Mining Code² declared all mining projects – in every manifestation and phase – to be in the “public utility and social interest”.³

¹ Unidad de Planeación Minero-Energética, *Plan Nacional De Desarrollo Minero Con Horizonte A 2025. Minería responsable con el territorio*, December 2017.

² The Mining Code (Law 685/2001) regulates the conclusion of mining contracts in the country.

³ Law 685/2001, art. 13.

In 2011, the Comptroller General of Colombia issued a formal warning regarding the negative effects of AngloGold Ashanti Colombia's water concessions in Cajamarca. These concessions posed a threat of worsening the existing droughts in the region. In response to this warning, the Corporación Autónoma Regional del Tolima (CORTOLIMA), the environmental authority of the department, declared that the groundwater in the Coello riverbed, which was the primary water source for the La Colosa project, was depleted.⁴ Drawing on the assessments of water scarcity, the departmental administrative tribunal of Tolima ordered a precautionary measure, which led to a court order instructing the National Mining Agency to suspend two of AngloGold Ashanti Colombia's mining titles in 2013.⁵

In 2013, the Colombian Government categorized La Colosa as a “Project of National and Strategic Interest.”⁶ This designation implies that additional measures aimed at procedural fast-tracking and legal security are put in place to facilitate the smooth and timely implementation of the project. This may entitle the company to execute private and/or administrative evictions, unilaterally establish compensation amounts; and allow judges to issue summary judgments in expropriation disputes.⁷ This priority designation has allegedly left little or no opportunity for affected communities to defend their rights.

The mining project has generated substantial resistance from the local community, as they firmly believe that it would severely disrupt the municipality's traditional agricultural practices and the fundamental way of life that sustains their livelihoods over the years.

In 2013, the municipality of Piedras (Tolima), where the tailings dam of La Colosa were planned to be built, held the first *consulta popular* referendum related to their approval of the mining activities in their municipal territory. The overwhelming majority of the citizens of Piedras (98.8%) voted against it.⁸

In 2015, the Colombian Congress passed Law 1753/2015, which prohibited the exploration and extraction of non-renewable natural resources in *páramo* zones. The La Colosa project is therefore in contradiction with national administrative and legislative efforts to delimit the *páramo* ecosystems. The intended efforts to protect the *páramos* were delayed by the authorities. By the time the relevant resolutions protecting the *páramos* were issued in 2016 by the Ministry of the Environment and Sustainable Development, the company had already secured mining concession contracts within the zone in question.

On 26 March 2017, the municipality of Cajamarca held a *consulta popular over the realization of the La Colosa project*. 6,296 people cast ballots (out of a total of 16,314 registered voters), and 98% (6,165) voted against the mining

⁴ CORTOLIMA, Resolution No. 1765 “Por la cual se declara el agotamiento del Recurso Hídrico Superficial de la Cuenca del Río Coello”, April 20, 2011.

⁵ Tribunal Administrativo del Tolima, Collective Action, File No. 2011-00611-00, May 20 2016; and CG3-145 and GLN-095, No. VSC 0958 of Nov. 8, 2013; No. 000796, Aug. 28, 2013.

⁶ CONPES 3762 del 2013 “Lineamientos de política para el desarrollo de Proyectos de Interés Nacional y Estratégicos –PINES”.

⁷ Law 388 of 97, art. 58-71.

<https://www.registraduria.gov.co/En-consulta-popular-celebrada-hoy,10769.html>.

project. Consequently, the Cajamarca Municipal Council adopted the results and issued Municipal Agreement 003 of 27 April 2017, banning mining activities in the municipality. In the same year, AngloGold Ashanti Colombia communicated that it was “forced to make the unfortunate decision to stop all activities related to the project, and with them the related employment and investment, while it waits for certainty related to mining activity in the country and in Tolima.”⁹

In 2018, the Constitutional Court stated that a *consulta popular* initiated by a local government could not unilaterally intervene in decisions regarding the extraction of subsoil resources in municipalities. This was a shift from a 2016 decision of the Constitutional Court which had ruled that a properly conducted local *consulta popular* could be used to challenge mining concession contracts approved by the national government. AngloGold Ashanti Colombia has since relied on the 2018 Constitutional Court ruling and subsequent rulings to try to nullify the Municipal Agreement adopting the Cajamarca *consulta popular* results.¹⁰

On the basis of the *consulta popular* results, the Cajamarca social movements petitioned the National Mining Agency to declare void all mining concession contracts in the municipality of Cajamarca. The National Mining Agency denied this request on two grounds. Firstly, the company had “vested rights” (*derechos adquiridos*), and the Agency could not unilaterally void mining titles. According to article 58 of the Colombian Constitution, “private property and the other rights acquired in accordance with civil laws are guaranteed and may neither be disregarded nor infringed by subsequent laws.” The same article establishes that “(w)hen in the application of a law enacted for reasons of public utility or social interest a conflict between the rights of individuals and the interests recognized by the law arises, the private interest shall yield to the public or social interest. Property has a social dimension that implies obligations. As such, an ecological dimension is inherent to it.” Secondly, the National Mining Agency argues that municipal *consulta popular* results are only binding on municipal authorities and do not have any effect on national institutions. According to the Decree 4134 of 2011, the National Mining Agency has the general duty to “fully manage the mineral resources owned by the State and to promote the optimal and sustainable use of mining resources in accordance with the applicable regulations.” This decree does not explicitly include a rule that allows the prohibition of mining activities based on a municipal agreement, such as the *consulta popular*.

Following the *consulta popular*, the company initiated a process to cancel 10 of the 19 mining titles which it had and consolidate others. Several of the mining titles have since been suspended by judicial order. Three of the original 19 titles are still in place, which cover 14,529,06 hectares or 28% of the total land of Cajamarca. The communities living within the territories at the heart of the contracts were not consulted at any stage of the issuance of or adjustments to these titles.

⁹ <https://www.anglogoldashanticolombia.com/portfolio/la-colosa/>; see also AngloGold Ashanti Official Press Release, April 2017: <https://www.anglogoldashanticolombia.com/comunicado-oficial-la-colosa/1719/>.

¹⁰ Including SU-085/2015, C-053/19, and T-342.

In 2019, CORTOLIMA revoked AngloGold Ashanti Colombia's two water concessions for the project. CORTOLIMA declared that it would not grant any authorizations for the use of natural resources related to mining activities in Cajamarca. All previous authorizations issued before the *consulta popular* had to be reviewed and revoked if necessary. Additionally, CORTOLIMA required that all pending requests be examined to ensure compliance with the results of the *consulta popular*.

In the same year, a civil society organization, representing the entity that organized the *consulta popular*, the Corporación Cajamarca Despensa Hídrica y Agrícola, filed a "contractual controversy" with the district administrative tribunal (Cundinamarca). The aim was to invalidate AngloGold Ashanti Colombia's three remaining mining concession titles. The main argument in this lawsuit centered around the impossibility of fulfilling the contractual purpose of the mining titles, which is mineral extraction. The Cundinamarca Tribunal dismissed the contractual case in a summary judgement (*sentencia anticipada*) asserting that the statute of limitations required the case to have been filed by 2015, despite the fact that the object of the contract was contested only in 2017 by the *consulta popular*.

In July 2020, AngloGold Ashanti Colombia filed a lawsuit against CORTOLIMA's resolutions that canceled their two water concessions for the La Colosa project. The company argued that the resolutions were no longer valid since their legal basis was nullified by the Constitutional Court's ruling in 2018. They claimed that the concessions should be reinstated to continue with the exploration.

In September 2020, the Consejo de Estado of Colombia reviewed two of AngloGold Ashanti Colombia's suspended mining titles based on water scarcity concerns and confirmed the ongoing environmental threat to water sources. It ordered the continued suspension of all mining activities related to the contracts until AngloGold Ashanti Colombia was able to demonstrate to CORTOLIMA and the National Mining Agency that they would implement an alternative plan that does not endanger the Coello River and its tributaries.

Despite the results of the popular vote of 2017, AngloGold Ashanti Colombia and the Colombian Government have allegedly not demonstrated any willingness to halt the project, notwithstanding community opposition, the documented environmental limitations, and legal and procedural constraints. Moreover, evidence suggests that drilling and other activities carried out during the exploration phase of the mining project have provoked water pollution, deforestation, and threats over endemic species' habitats and ecologic areas of national relevance such as the Andean moorlands.

Civil society and grassroots opposition to the project

Since 2007, when the public became aware of AngloGold Ashanti Colombia's presence and plans in the area, civil and grassroots opposition to the project has been steadily growing. This opposition not only reflects human rights and environmental related concerns specific to the project, but also to the extractive development model as a whole. The Environmental and Peasant Committee of Cajamarca and Anaime (Comité Ambiental y Campesino de

Cajamarca y Anaimé), is a coalition of grassroots organizations, which has mobilized dissent to the mining project in a variety of ways, including by promoting the *consulta popular*.

The individuals and organizations that advocated for the *consulta popular* in Cajamarca have allegedly been subject to defamatory statements and intimidating actions by employees of AngloGold Ashanti Colombia. Some have received anonymous death threats, allegedly by non-state paramilitary groups, serving as private security, with links to illegal mining. In 2011 and 2013 there were particularly grave incidents of community members involved in the opposition to the mine being (incorrectly) signaled as members of guerrilla groups.¹¹ Likewise, in 2019 community leaders received threats by paramilitary groups.¹² Consequently, many of them have been forced to leave Cajamarca due to security concerns.

On a broader scale, community leaders involved in human rights activities have allegedly faced various forms of repression, including violence, forced displacement by non-state paramilitary groups, and the militarization of the municipality. There are allegations that these actions have been financed by the company. Despite the difficulties to prove the relationship between mining companies and armed conflict in many territories in Colombia, the volume “Colombia adentro” of the Final Report of the Colombian Truth Commission (CEV) examines the link between gold mining projects executed by transnational companies, including AngloGold Ashanti Colombia and forced displacement, confinement, and processes of de-territorialization of ethnic communities in Antioquia and the Pacific Region. According to its findings, the CEV states that illegal armed groups served as private security groups for the opening and sustaining of large-scale regional projects related to mining and energy extraction.¹³

Without prejudging the accuracy of the information received, we wish to express our serious concern that if the Cajamarca mining project is developed, it is likely to impact the traditional practices, the source of economic livelihood and well-being as well as the cultural identity around peasantry that Cajamarca’s local communities have appropriated since the 1930s. This will have serious implications on the full enjoyment of human rights of the affected populations, such as the rights to food, water, and a safe, clean and healthy environment. In addition, the efforts to install the large-scale open pit gold mine operation in the traditionally peasant territory of Cajamarca could potentially change the economic, cultural, and social configuration of the region from one centered around agriculture to one focused on mining.

We are also concerned that the infrastructure required for the project – including the open pit mine, a tailings dam for chemical waste, water treatment plants, a connection to the national electric system, and a pipeline for the transport and processing of the gold – would aggravate the already-existing water scarcity of the Tolima department. In addition, the existing water resources of Cajamarca are indispensable for food production in downstream municipalities of the region.

¹¹ See El Nuevo Día, Campesinos de Anaimé Amenazados por ‘coincidencias’ <http://www.elnuevodia.com.co/nuevodia/tolima/regional/112789-campesinos-de-anaimé-amenazados-por-coincidencias>

¹² See Contagio Radio, Amenazan promotores de consulta popular en Cajamarca, Tolima.

¹³ See: CEV Informe Final - Colombia adentro – Antioquia p. 181 and Pacífico p. 147.

The consequences of the project are particularly concerning given the rising rates of food insecurity, which affect not only Cajamarca but other parts of the country as well. In the face of this crisis, reinforcing local farming emerges as one of the most resilient solutions, making the potential impact of the mining project even more critical.

We are deeply worried that the reduced availability and adequacy of food could lead to an increase in child malnutrition and overall food insecurity; exacerbate the vulnerability of lower-income households to falling into poverty; and lead to internal displacements in the event of a hunger crisis, or if evictions were to occur to the extent permitted by law or forced displacements by armed actors.

We also express our deep concern at the alleged cases of stigmatization, intimidation, and repressive measures against environmental and human rights defenders by the company. Similarly, we are profoundly worried about the ongoing security concerns of human rights defenders that are being obliged to leave their territories out of fear of reprisals.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and standards 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 the steps that your Excellency's Government has taken or is considering to take, including policies, legislation, and regulations to uphold its obligation to protect against human rights abuses by South African businesses such as AngloGold Ashanti, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), in accordance with the UN Guiding Principles on Business and Human Rights. These include abuses of the rights to food; water; a safe, clean and healthy environment and the rights of human rights defenders.
3. Please describe the guidance, if any, that your Excellency's Government has provided to AngloGold Ashanti on how to respect human rights throughout its 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, and remediating any negative impacts
4. Because of your Excellency's role as the largest single investor in this project through its Public Investors Corporation, please provide

information regarding additional steps taken to protect against human rights abuses by business enterprises that are owned or controlled by the State, including, by requiring human rights due diligence and meaningful consultation with potentially affected stakeholders, and to remedy any negative impacts.

5. Please kindly provide information on how your Excellency's Government ensures that business enterprises under its territory and/or jurisdiction respect the work of human rights defenders, specifically in light of the recommendations provided to States in the report of the Working Group on business and human rights on the adverse impact of business activities on human rights defenders (A/HRC/47/39/Add.2).
6. Please provide information regarding any measures that your Excellency's Government is taking or considering taking to ensure that people affected by the activities of AngloGold Ashanti, including overseas activities of the company or its subsidiaries, have access to effective remedies, including guarantees of non-repetition of the alleged allegations, in line with the UN Guiding Principles on Business and Human Rights.

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.

Please be informed that a letter on this subject matter has been also sent to the Government of Colombia, as well as to the companies AngloGold Ashanti Colombia and AngloGold Ashanti South Africa.

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

Damilola S. Olawuyi
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

Michael Fakhri
Special Rapporteur on the right to food

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law and standards

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards and authoritative guidance on their interpretation.

We would like to refer to article 25 of the Universal Declaration of Human Rights, which states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

We would also like to draw the attention of your Excellency's Government to its obligations under article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Colombia in 1969, which recognizes the right to everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. In addition, the Committee on the Economic, Social and Cultural Rights has indicated that "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)).

ICESCR requires States to "take appropriate steps to ensure the realization of the right to food" (article 11(1)). According to general comment 12, the obligation to respect existing access to adequate food requires State parties to refrain from taking any pressures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive human-right holders of their access to adequate food. In interpreting this provision, the ICESCR stressed that the core content of the right to adequate food refers to the possibilities either for feeding oneself directly from productive land or other natural resources or for well-functioning distribution, processing, and market systems (para. 12). It entails both the economic and physical availability of food, as well as the sustainability of food access for both present and future generations (para. 7). The ICESCR further requires States to pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means that ensure their livelihood and food security, including access to land (para. 15). Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by means at their disposal, States have the obligation to fulfill that right in a more urgent manner (para. 1).

Furthermore, we would like to recall that the UN Human Rights Council, in recognizing the right to a clean, healthy, and sustainable environment as a human right, has affirmed that "States have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental

challenged, and to take measures to protect the rights of all”.¹⁴ We would like to highlight that on 8 October 2021, the Human Rights Council adopted resolution 48/13, recognizing the right to a clean, healthy, and sustainable environment. Moreover, 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 as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. In this regard, we also wish to recall the report of the UN Special Rapporteur on Human Rights and the Environment on “A healthy biosphere and the right to a healthy environment” (A/75/161), in which the Rapporteur indicated that “indigenous peoples and local communities and peasants can make enormous contributions to the conservation, protection, restoration and sustainable use of ecosystems and biodiversity, when empowered to do so, through recognition of their rights. Thanks to their traditional knowledge, customary legal systems, and cultures, they have proved effective at conserving nature”.¹⁵

The Inter-American Court of Human Rights reasoned that the enjoyment and exercise of a large number of human rights are deeply linked to the protection of the environment and recognized that the right to a healthy environment is key to the enjoyment of other fundamental rights, defining it as an autonomous human right. The Court emphasized that the right to a healthy environment is expressly recognized by article 11 of the Protocol of San Salvador and should also be considered for inclusion among the economic, social, and cultural rights protected by article 26 of the American Convention. The violation of this autonomous right to a healthy environment can affect other human rights, in particular the right to life and personal integrity, as well as many other rights, including the right to health, water, and housing, and procedural rights, such as the right to information, expression, association, and participation.

In addition, on 28 July 2010, the United Nations General Assembly adopted a resolution explicitly recognizing that access to safe drinking water and sanitation is a human right. In September 2010, the Human Rights Council (resolution 15/9) expressly reaffirmed that safe drinking water and sanitation is a human right derived from the human right to an adequate standard of living, which is closely related to the right to the highest attainable standard of physical and mental health and the right to life and human dignity. This resolution was adopted by consensus. The human right to water means that everyone has the right to a sufficient quantity of water, of acceptable quality, physically accessible and affordable for personal and domestic uses, including sanitation. In this regard, the Committee on Economic, Social and Cultural Rights has clarified in its general comment n.15 (2002) that everyone's water supply must be continuous and sufficient for personal and domestic uses. Such uses typically include drinking, sanitation, washing, food preparation and personal and domestic hygiene. Some individuals and groups may require additional water resources because of health, climate and working conditions. The Committee also affirms that a people may not be deprived "of its own means of subsistence" and States parties should ensure sufficient access to water for subsistence agriculture and to ensure the subsistence of individuals relying on it.

¹⁴ Res. 46/13, 2021

¹⁵ A/75/161, para. 57

We would like to furthermore draw your attention to the UN Guiding Principles on Business and Human Rights (A/HRC/17/31). The UN Guiding Principles on Business and Human Rights are the authoritative global standard of conduct to prevent, mitigate and remedy adverse human rights impacts of business activities. They were unanimously endorsed by the Human Rights Council in June 2011. The Guiding Principles clarify that, in accordance with international human rights obligations, 'States must protect against human rights abuses committed within their territory and/or jurisdiction by third parties, including business enterprises' (guiding principle 1). This requires States to 'clearly state that all companies domiciled in their territory and/or jurisdiction are expected to respect human rights in all their activities' (guiding principle 2). In fulfilling their duty to protect, States should: (a) Enforce laws that have the purpose or effect of enforcing respect for human rights by companies, businesses and other business enterprises; and (b) Ensure that other laws and regulations governing the creation and activities of companies, such as commercial law, do not restrict but rather promote respect for human rights by companies; (c) Effectively advise companies on how to respect human rights in their activities; (d) Encourage and if necessary require companies to explain how they take into account the human rights impact of their activities (guiding principle 3).

The comment to principle 11 states that "Businesses should not undermine the ability of States to meet their own human rights obligations or take actions that may undermine the integrity of judicial processes". In their report on business and human rights in the conflict and post-conflict context, the UN Working Group on Business and Human Rights emphasizes that the "principles are articulated around the concept of proportionality: the greater the risk, the more complex the (due diligence) processes. Therefore, "since the risk of gross human rights violations is higher in conflict-affected areas", "State action and corporate due diligence should be increased accordingly", calling on companies to apply "enhanced" conflict-sensitive due diligence. Companies are not neutral actors: their presence is not without impact. Even if companies do not take sides in the conflict, the consequences of their activities will necessarily influence the dynamics of the conflict. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require that enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities and address those impacts when they occur; and (b) Seek to prevent or mitigate adverse human rights impacts directly related to their operations, products or services provided through their business relationships, even where they have not contributed to them (guiding principle 13). States should also take appropriate measures to ensure, through appropriate judicial, administrative, legislative, or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy" (guiding principle 25). The Guiding Principles also emphasize that "States should ensure [...] that the legitimate and peaceful activities of human rights defenders are not hindered" (Comment to guiding principle 26).

We would like to refer to the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) and recommendations contained therein elaborating on the duty of States to protect against human rights abuses involving those business enterprises that they own or control. This includes the following considerations:

88. *All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is*

distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.

94. *States, as primary duty bearers under international human rights law, should lead by example. To show leadership on business and human rights requires action and dedicated commitment on many fronts. It also includes using all the means at the disposal of States to ensure that the enterprises under their ownership or control fully respect human rights throughout their operations. There is untapped potential for State-owned enterprises to be champions of responsible business conduct, including respect of human rights. The Working Group calls on States and State-owned enterprises to demonstrate leadership in this field.*

We would also like to draw the attention of your Excellency's Government to the following articles of the Declaration on Human Rights Defenders: article 5(b), which establishes the right to form, join, or participate in non-governmental organizations, associations, or groups; article 6(a) and (c), which establishes the right to know, obtain, and possess information about human rights, and to study and discuss whether human rights are being observed, both in law and in practice; and article 12, which provides that the State must ensure the protection of everyone against any threat, reprisal, or pressure resulting from the exercise of the rights authorized by the Declaration, as well as the right to effective protection of the laws when reacting to or opposing, by peaceful means, activities that cause violations of human rights and fundamental freedoms. In addition, we would like to refer to Human Rights Council resolution 22/6 which urges States to publicly recognize the important and legitimate role played by human rights defenders in the promotion of human rights, democracy and the rule of law, as well as resolution 13/13 of the same Council which urges States to take concrete steps to end threats, harassment, violence and attacks by States and non-State entities against those engaged in the promotion and protection of human rights and fundamental freedoms for all.

Similarly, we would like to recall the International Covenant on Civil and Political Rights (ICCPR) ratified by Colombia in 1967, especially in relation to articles 2 and 9 which guarantee the rights to life, liberty and security of person, as well as articles 12, 19, 21 and 22 which establish the obligation to guarantee freedom of opinion and expression, freedom of assembly and freedom of association, respectively. The right to security of a 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 underlined 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 (CCPR/C/GC/35 para. 9). Similarly, in its general comment 36 on the right to life set out 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 persons in vulnerable situations whose lives are at particular risk due to pre-existing patterns of violence. This includes human

rights defenders (CCPR/G/GC/36, paras. 23 and 53). Furthermore, article 22 of the ICCPR and article 20 of the UDHR protect the right to associate freely with others, including the right to form and join associations. In his report to the Human Rights Council, the Special Rapporteur on the rights to freedom of peaceful assembly and of association reaffirmed that given their interdependence and interrelatedness with other rights, freedom of peaceful assembly and of association constitute a valuable indicator of the extent to which States respect the enjoyment of many other human rights" (A/HRC/20/27 para. 12).

We would lastly like to refer your Excellency's Government to the 1998 Guiding Principles on Internal Displacement, which are based on international human rights and humanitarian law. Principle 5 states that all authorities shall respect their obligations under international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to displacement. Principle 6 states that every human shall have the right to be protected against being arbitrarily displaced from his or her home or habitual place of residence. We would like to draw particular attention to principle 9, which highlights that States are under a particular obligation to protect against the displacement of indigenous people and minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands.