

Mandates of the Working Group of Experts on People of African Descent; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Ref.: AL OTH 65/2024

(Please use this reference in your reply)

18 April 2024

Dear Mr. Kargl-Simard,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human right to a clean, healthy and sustainable environment; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 45/24, 53/3, 55/2, 52/4, 51/16 and 54/10.

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 60 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 your attention information we have received concerning the situation of escalating violence, including by the security forces, and the misuse of criminal law against environmental human rights defenders in the context of environmental consultations for mining projects in Ecuador. In particular, it refers to the communities of Las Pampas and Palo Quemado, Sigchos canton, Cotopaxi Province, in relation to the La Plata mining project - operated by the Ecuadorian company La Plata S.A., which is owned by the company Atico Mining Corporation based in Canada. Additionally, the information refers to communities in

Adventus Mining Corporation

the canton of Las Naves, province of Bolivar, in relation to the Curipamba-El Domo project, concessioned to the company Curiming, owned by Salazar Resources Ltd. and Adventus Mining Corporation, both of which are Canadian companies. Atico Mining Corporation and Adventus Mining Corporation receive funding from Singapore-based Trafigura Pte Ltd., while Atico Mining Corporation has also received a loan from Export Development Canada.

According to the information received:

With the alleged aim of unblocking the execution of several mining projects paralysed by social conflict, on 31 May 2023, the then President of the Republic of Ecuador, Guillermo Lasso issued an Executive Decree No. 754. This Decree reformed the Regulations to the Organic Environmental Code, incorporating the “*Citizen participation process for environmental consultation in the environmental regularisation process*,” which would allow for the execution of the environmental consultation process on resource extraction projects with an impact on the environment.

On 13 June 2023, the Confederation of Indigenous Nationalities and Peoples of Ecuador (CONAIE) filed a complaint with the Constitutional Court for the unconstitutionality of Executive Decree No. 754 (number 51-23-IN), together with a request for precautionary measures on the grounds that the application of the Decree constituted a serious and imminent threat of violation of the human rights of Indigenous Peoples, including free, prior and informed consent.

On 9 November 2023, the Constitutional Court of Ecuador, in its ruling N°51-23-IN/23, declared Executive Decree No. 754 unconstitutional for violating the principle of legal reserve by regulating by decree the right to free, prior and informed consultation or indigenous consultation on environmental matters. However, the ruling allowed the application of Decree No. 754 as long as the environmental authority complies with the guidelines and standards defined by the Constitutional Court for the provisional application of the decree, including the non-application to communes, communities, Indigenous Peoples and nationalities. It also urged the National Assembly to pass a law on the right to free, prior and informed consultation of indigenous communes, communities, peoples and nationalities within a maximum period of one year.

La Plata Project

The **Ecuadorian company La Plata S.A.** has a mining concession for the La Plata project, located in the communities of Palo Quemado and Las Palmas, Canton Sigchos, which extends over 2,222 hectares to exploit sulphides lodged in volcanic rocks. La Plata S.A. is owned by the Canadian company Toachi Mining Inc., which in turn is owned by the Canadian company Atico Mining Corporation.

The mining project is located within the parishes of Palo Quemado, with around 1500 inhabitants, and Las Pampas, with around 3000 inhabitants. The two communities are made up of peasants, Indigenous Peoples, montubios, among others. The members of these two communities maintain strong ties and roots

with the land and natural resources, as they depend on the water of the river and the land for their survival and means of subsistence, producing milk, cheese, naranjilla, organic panela, among others. The communities have never been consulted in a free, prior and informed manner in relation to this project, neither at the time of the granting of the mining concession in 2000 nor in the different updates of the title. However, the communities have spoken out against this project because of the adverse effects it will have on their way of life, the detrimental and toxic impacts on their human rights to healthy, clean and sustainable environment, including water and land, and therefore on their livelihoods. Consequently, the efforts to put the La Plata project into operation have led to a situation of conflict between the company and the members of the communities, exacerbated by division and tension within the communities themselves, the latter of which has been promoted by the company. Allegedly, the company have created a group of community members called a “Committee Pro Development of Palo Alto,” to act in favour of the company.

Based on the application of Executive Decree No. 754, on 19 June 2023, the Ministry of Environment, Water and Ecological Transition (MAATE by its initials in Spanish) initiated the environmental consultation processes in Palo Quemado and Las Palmas, prior to issuing an environmental licence to continue with the exploitation phase of the project. This led to the reactivation of the socio-environmental conflict.

MAATE announced the start of the environmental consultation procedure only through social media and not through a public, open and inclusive prior notification. The information presented on the project referred only to its supposed economic benefits, providing only partial information on its environmental impacts. Furthermore, the consultation process excluded a large part of the community and/or its representative institutions and consulted mainly those in favour of the project.

During the consultation, which was attended by military and police officers, incidents were recorded, in which at least five people were reportedly injured. Peasants also reported being subjected to threats, harassment and other acts of violence by armed groups with alleged links to the mining company. Given the situation of violence, the consultation could not be finalised, and the environmental licence was not granted.

For this reason, MAATE called for a new environmental consultation, scheduled to resume on 16 March 2024. During the week of 5 to 10 March, the members of the community reportedly received threats to their physical integrity, had their motorbikes seized and were threatened on the access roads to the Palo Quemado community with the alleged aim of generating fear in the community prior to the consultation. These acts were allegedly committed by paramilitary groups linked to the mining company. On 14 March, some 500 soldiers were deployed in the Palo Quemado area.

On 15 March 2024, the Ministry of Energy and Mines issued a *Manual for the operationalisation of free, prior and informed consultation, contained in number 7 of Article 57 of the Constitution of the Republic of Ecuador for the*

issuance of administrative measures in mining concessions. The document apparently accelerated the imposition of mining projects and would contravene the legal conditions provided for in the current Constitution and the Constitutional Court ruling that provides for the regulation of this right by means of an Organic Law.

In this context, on 16 March 2024, MAATE resumed the environmental consultation again. On March 18, 2024, the military and police entered the communities of Palo Quemado and Las Pampas and additional confrontations were recorded. In addition, more than 70 people from the communities of Palo Quemado and Las Pampas were accused of the crime of terrorism by the provincial prosecutor's office.

Due to this situation of conflict, on 25 March 2024, the Head Judge of the Multicompetent Unit based in the Sigchos canton ordered the provisional suspension of the environmental consultation on the La Plata project following a protective action with precautionary measure filed by the mayor of Sigchos. In the context of increased tensions, at least 20 people were reportedly injured by the security forces, and the authorities reported that members of the security forces were also injured. On 28 March, the Ministry of Environment issued a communiqué stating that the citizen participation process for the environmental consultation will be provisionally suspended due to the court order. In addition, the hearing for protective measures scheduled for Tuesday 2 April 2024 was suspended, as well as the hearing scheduled for 9 April 2024.

Project Curipamba - El Domo

The Canadian company Curimining S.A. has seven gold and copper mining concessions for the Curipamba- el Domo project, covering a total of 21,537 hectares, located in the Las Naves canton in the Bolivar Province. The company is owned by Salazar Resources Ltd. and Adventus Mining Corporations, both Canadian. Based on Executive Decree No. 754, MAATE carried out an environmental consultation in June 2023 and the environmental license was granted in January 2024, despite the opposition of the communities to the project and the social conflict that it generated. Similarly, to the consultation in Palo Quemado, MAATE announced the consultation through social media and was aimed exclusively at people linked to the company. It is also alleged that there was a lack of accurate and complete information on environmental impact, lack of transparency, harassment and threats, with 13 peasants injured and two people arrested in the context of the environmental consultation. In addition, six defenders of nature were accused by the mining company Curimining S.A. for the crime of illicit association in the context of the environmental consultation and were sentenced by the Criminal Court of the province of Bolivar on Thursday 21 March 2024 to three years in prison and to pay a fine of ten basic unified salaries.

Without wishing to prejudge the accuracy of these allegations, we wish to express deep concern with regard to those human rights abuses in which your company may be involved.

In relation to the above allegations, please find attached the **Annex of references to international human rights law** which summarises some relevant international instruments and principles.

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to try to clarify the allegations brought to our attention. In this regard, we would be very grateful to have your cooperation and your observations on the following issues:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the human rights due diligence policies and processes established by your company to identify, prevent, mitigate and account for how they address their human rights impacts of their activities, in accordance with the UN Guiding Principles on Business and Human Rights. Please clarify which process your company and its subsidiaries have in place to conduct human rights due diligence, in order to respect human rights, including those of human rights environmental defenders and Indigenous Peoples, and how these processes ensure meaningful consultation with those potentially people affected by their activities.
3. Please provide information on the measures that your company has taken or is planning to take to address the concerns mentioned and to provide remedial measures to address the negative human rights impacts caused by its activities, including through the establishment of an effective operational-level grievance mechanism in line with the guiding principle 31.

We would appreciate receiving a response within 60 days. After this deadline, this communication and any response received from your company, or other responses, will be made public through the communications reporting [website](#). They will also be made available subsequently in the regular report to be submitted to the Human Rights Council.

We may publicly express our concerns in the near future, as we believe that the information we have received is sufficiently reliable to indicate that there is an issue that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with you to clarify the relevant issues.

Please be informed that letters on this matter will also be sent to the Governments of Ecuador, Canada and Singapore, to the companies La Plata S.A., Salazar Resources Ltd., Atico Mining Corporation and Trafigura Pte Ltd., related to the above-mentioned allegations.

Please accept, Mr. Kargl-Simard, the assurances of our highest consideration.

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management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law

In relation to the allegations, without wishing to prejudge the facts alleged, we would like to draw your attention to the UN Guiding Principles on **Business and Human Rights** (A/HRC/17/31). The Guiding Principles were unanimously endorsed by the Human Rights Council in June 2011. These Guiding Principles are based on the recognition of:

- "a. The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business as a specialised organ of society that performs specialised functions and 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 case of non-compliance".

The Guiding Principles make clear that business enterprises have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to business on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require "business enterprises to:

- (a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts" (guiding principle 13).

The commentary to 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 (...) The 'activities' of business enterprises 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".

To meet their responsibility to respect human rights, companies should have in place policies and processes appropriate to their size and circumstances:

- (a) A political commitment to meet their responsibility to respect human rights;

- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (Guiding principle 15)

According to guiding principles 16-21, human rights due diligence involves:

- (a) Identifying and assessing actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.
- (b) Integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action in accordance with their involvement in the impact;
- (c) Track the effectiveness of the measures and processes adopted to address these adverse human rights impacts in order to know whether they are working;
- (d) Communicate externally how adverse impacts are addressed, particularly when concerns are raised by or on behalf of affected stakeholders. This process of identifying and assessing actual or potential adverse human rights impacts should include substantive consultation with potentially affected groups and other stakeholders (guiding principle 18).

Where an enterprise causes or is likely to cause an adverse human rights impact, it should take the necessary steps to end or prevent that impact. "The establishment of operational-level grievance mechanisms for those potentially affected by corporate activities can be an effective means of redress provided they meet certain requirements listed in principle 31 (guiding principle 22).

In addition, principle 18 emphasizes the critical role of civil society and human rights defenders in identifying the potential adverse human rights impacts of business. The commentary to principle 26 emphasizes that States, in order to ensure access to remedy, must ensure that the legitimate activities of human rights defenders are not impeded. In its 2021 Guidance on the protection of human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights stressed the urgency of addressing the adverse impacts of business activities on human rights defenders. It highlighted the normative and practical implications of the Guidelines for States and companies to protect and respect the vital work of human rights defenders.

The Working Group outlined in its guidance illustrative steps that business enterprises should take to ensure that strategic litigation against public participation (SLAPP) is not used to silence the voices of human rights defenders, for example by:

1. Be aware of and demonstrate a commitment to the rights of human rights defenders through policies and procedures relating to human rights due diligence or impact assessments.

2. Not expose human rights defenders to undue risk, for example, by initiating frivolous legal proceedings, including SLAPPs, or by reporting them to the authorities as a means of intimidation. Recognise that SLAPPs are not only wrong in terms of operating on a principled basis but are incompatible with the activity of human rights defenders.
3. Use leverage in business relationships to ensure that respect for human rights defenders is developed and maintained.
4. Recognise that human rights due diligence is a tool for greater coherence. Conduct human rights due diligence in which community leaders and human rights defenders are an important expert resource as part of human rights due diligence processes, enabling companies to understand the concerns of affected individuals and communities on the ground.
5. Continuously improve human rights due diligence policies and processes through regular and open engagement with affected stakeholders, civil society organisations, human rights defenders and trade unions, and be transparent about the management of potential and actual impacts.
6. Adopt a preventive approach by actively monitoring risks against HRDs, adopting an open and inclusive approach to stakeholder and worker participation, especially with those most at risk.
7. Be as transparent as possible in responding to concerns raised by defenders, as well as about human rights risks and reprisals faced by defenders and how the company has addressed them. This information should be produced in a way that respects the wishes of human rights defenders and also protects them from reprisals.
8. Design and implement an operational-level grievance mechanism that addresses the greatest risks to defenders, can protect confidentiality, provide anonymity and is accessible through multiple channels.
9. Have clear protocols in place to address attacks against human rights defenders. This includes designating individuals responsible for receiving, investigating and responding to complaints regarding threats against human rights defenders, and learning lessons to avoid a repetition of the same behaviour.

We would like to refer to the United Nations Declaration on the Rights of **Indigenous Peoples**, adopted by the General Assembly on 13 September 2007. In particular we would like to refer to article 7.1 on the right to life, physical and mental integrity, liberty and security of indigenous individuals; article 3 on the right to self-determination and their political status and freely pursue their economic, social and cultural development; article 32 on the obligation to obtain their free and informed consent prior to the approval of any project affecting their territories and other resources, particularly in connection with the development, utilisation or exploitation

of mineral, water or other resources; and article 28 on the right to redress by means that may include restitution or, where this is not possible, just and fair compensation for lands that have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

We would also like to draw to your attention article 30 of the UN Declaration on the Rights of Indigenous Peoples which provides that no military activities shall take place on the lands or territories of indigenous peoples, unless justified by a relevant public interest or unless otherwise freely agreed with, or requested by, the indigenous peoples concerned; States shall consult effectively with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, before using their lands or territories for military activities. Finally, article 12.1 stipulates that indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; states shall provide redress through effective mechanisms, which may include restitution, established in conjunction with indigenous peoples, for cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs (article 11.2).

We would like to draw your attention to the thematic report submitted to the Human Rights Council by the Working Group on the use of mercenaries in July 2019 (A/HRC/42/42), which covers the relationship between private military and security companies and the extractive industry from a human rights perspective. In that report the working group highlighted the human rights risks particularly in situations of armed conflict where private security personnel, employed or contracted to support an extractive operation, might carry out military-style operations themselves or with the support of the State. The group reaffirms the human rights and humanitarian law obligations and responsibilities of private military or security companies and their personnel providing services to an extractive company in a context of armed conflict (see paragraphs 28 and 38).

We would also like to draw your attention to the fundamental norms set out in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised 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 realisation of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and fulfil all human rights and fundamental freedoms.

Furthermore, we would like to refer to article 12, paragraphs 2 and 3, of the Declaration, which stipulates that the State shall ensure the protection, by the competent authorities, of everyone, individually and in association with others, against any violence, threats, retaliation, discrimination, denial in law or in fact, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in this Declaration.

We would also like to draw your attention to the obligations established in Convention 169 of the International Labour Organisation (ILO) concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Ecuador on 15 May 1998, in

particular articles 6, 7, 14, 17 and 18, which state, among other aspects, the obligation to consult freely and in good faith, to guarantee the effective protection of the rights of indigenous peoples over the lands they traditionally occupy.

We would also like to recall the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. According to article 1, paragraph 2, the Declaration applies to any person engaged in small-scale or artisanal agriculture, crop planting, animal husbandry, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of peasants. In addition, article 18.1 of the Declaration states that "peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their land and the resources they use and manage". Furthermore, article 18(2) provides that "States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment".

We would also like to draw your attention to article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides that everyone shall be entitled to a **fair and public hearing by a competent, independent and impartial tribunal** established by law in the determination of his rights and obligations in a suit at law. Article 19 of the same Covenant enshrines the right of everyone to **freedom of expression**, which includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print or in the form of art.

Moreover, the UN General Assembly as well as the Human Rights Council recognised 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 core obligations of States under human rights law regarding the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 states that "States should establish a safe and enabling environment in which individuals, groups of individuals and organs of society concerned with human rights or environmental issues can operate without threat, harassment. Finally, we would like to highlight that Ecuador has ratified the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean on 21 May 2020. The Agreement entered into force on 22 April 2021.

Finally, we wish to draw the relevance of the Declaration on the Right to Development (GA resolution 41/128). Article 1 of the Declaration provides that the "right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." This right "implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources." (Article 1(2)). Article 2(3) of the Declaration further provides that "States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the

well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”

We also refer to the Guidelines and recommendations on the practical implementation of the right to development developed by the Special Rapporteur on the right to development (A/HRC/42/38). The Guidelines urge States to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. They further recommend (para. 37) that States should respect the right of indigenous peoples to self-determination to fulfil the right to development. The Guidelines also recommend (para. 45) that all actors, including institutions, businesses and investors, who produce information about development projects should provide that information transparently. Specifically:

- (a) Information about development projects should be shared with the affected communities as a matter of priority, in the language of those communities and in accessible formats. The information might need to be translated into local and indigenous languages;
- (b) Information should be shared in a format that is accessible to target populations.

We would like to draw your attention to the thematic report submitted to the United Nations General Assembly by the Special Rapporteur on the right to development (A/78/160) which examined the role of businesses in realising the right to development. The Special Rapporteur recommended, among others, that business can play a critical role by ensuring that development projects in which they are involved promote – rather than undermine – cultural development not only of the present generation but also future generations. Businesses must ensure that such projects are not only responsible and sustainable but also conducted only after obtaining a social licence from the affected communities through their active, free and meaningful participation (para. 60).