

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 human right to a clean, healthy and sustainable environment and the Special Rapporteur on the human rights to safe drinking water and sanitation

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(Please use this reference in your reply)

6 March 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human right to a clean, healthy and sustainable environment and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 52/4, 53/3, 55/2 and 51/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged acts of intimidation of the human rights defenders Ms. Mayerly López Carreño and Mr. Hernán Alberto Morantes in the context of their work to protect human rights from potential negative impacts of mining activities in the department of Santander, Colombia, in the context of the development of a project owned by Aris Mining Corporation, domiciled in Canada, and the United Arab Emirates state-owned company MDC Industry Holding Company LLC.**

Ms. **Mayerly López Carreño** and Mr. **Hernan Alberto Morantes** are human rights defenders and members of the **Comité para la Defensa del Agua y el Páramo de Santurbán**, a broad coalition of more than 40 organisations created in 2009 to protect human and environmental rights in the context of mining activity in the Santurbán Páramo, in the department of Santander, Colombia. The Santurbán Páramo basins supply water to 1.3 million people in seven municipalities in the region and the Metropolitan Area of Bucaramanga.

According to the information received:

On 18 October 2024, a peaceful demonstration was organised by the Comité para la Defensa del Agua y el Páramo de Santurbán in the city of Bucaramanga, in the Santander department of Colombia, with the participation of approximately 20,000 people.

On 27 November 2024, the Colombian Minister for the Environment and Sustainable Development, Ms Susana Muhamad, announced that a public consultation would be held to define a Temporary Reserve Zone for renewable natural resources in the Santurbán Páramo. Since then, the Comité para la Defensa del Agua y el Páramo de Santurbán has actively supported this initiative, which is ongoing at the time of writing.

On 4 December 2024, a digital pamphlet from a group calling itself the “Soto Norte Resistance Committee” began to circulate on Facebook. The pamphlet stated that: “Because of the Temporary Reserve Zone affecting farmers, businessmen and miners; violations of the Escazú Agreement by Minister Susana Muhamad; [and] because of the interference of opportunists disguised as environmentalists”, the sites of El Tanque and El Mortiño would be “closed from 9 December” and that “strangers to the province will be prohibited from entering”. The pamphlet also named four people, including Ms. López Carreño and Mr. Morantes, declaring them *persona non grata*, stating: “they want to take over the province's gold by force”. The pamphlet was shared by several people with alleged links to mining in the Santurbán Páramo and particularly the Soto Norte Project, owned by MDC Industry Holding Company LLC (Mubadala), and the Canada-based company Aris Mining Corporation. MDC Industry Holding Company LLC is a fully owned subsidiary of Mubadala Investment Company PJSC, a UAE-state owned sovereign wealth fund. Those who shared the pamphlet reportedly included a former mayor of the municipality of California and a close relative of the current mayor, as well as the legal representative of the mining company CALIMINEROS, which has a formalisation subcontract with Sociedad Minera de Santander S.A.A (MINESA), co-owned by MDC Industry Holding Company LLC and Aris Mining. The human rights defenders have reported these events to the Colombian Attorney General's Office.

The pamphlet of 4 December 2024 is reportedly not the first instance in which Ms. López Carreño and Mr. Morantes, as members of the Comité para la Defensa del Agua y el Páramo de Santurbán, have been the targets of intimidation. On 21 October 2021, pamphlets were reportedly published in which the organisation, Ms. López Carreño and Mr. Morantes were labelled “enemies of progress in Santander” and accused of being responsible for “the deterioration of the country's heritage”.

Without wishing to prejudge the accuracy of the information received, we wish to express our serious concern at the alleged intimidation of Ms. López Carreño and Mr. Morantes, which we fear to be directly linked to their work to protect human rights, including the rights to water and to a clean, healthy, sustainable environment, in the context of the development of the Soto Norte mining project by MDC Industry Holding Company LLC and Aris Mining Corporation.

In connection with these serious concerns, we would like to refer your Excellency's Government to international human rights instruments and standards relevant to these concerns, cited in the Annex on Reference to international human rights law attached to this letter.

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 advise the steps taken to ensure that Your Excellency's Government encourages respect for human rights in line with the UN Guiding Principles on Business and Human Rights, including by requiring businesses to conduct human rights due diligence. As part of this response, please provide information on the human rights due diligence measures adopted by MDC Industry Holding Company LLC to prevent, identify and remedy any adverse human rights impacts of its activities, or that of its subsidiaries or subcontractors, in the department of Santander, Colombia, in particular on the rights of human rights defenders as well as measures to protect the human right to a clean, healthy and sustainable environment in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please provide information on steps taken by Your Excellency's Government to encourage businesses to establish and/or participate in operational-level grievance mechanisms, in line with the UN Guiding Principles, to effectively address the adverse human rights impacts caused by and/or contributed to by business through their operations.
4. Please provide information on the measures Your Excellency's Government is taking or considering taking to ensure that persons affected by the activities of commercial enterprises domiciled in your jurisdiction have access to redress in your country, through judicial or extrajudicial State mechanisms.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on this subject matter has also been sent to Aris Mining Corporation and MDC Industry Holding Company LLC (Mubadala) business enterprises, as well as to the Government of Colombia and the Government of Canada.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Astrid Puentes Riaño
Special Rapporteur on the human right to a clean, healthy and sustainable
environment

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would first like to draw the attention of your Excellency's Government to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular, article 1, which states that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and article 2, which provides that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

We would further like to make specific reference to article 9 of the Declaration on Human Rights Defenders, which holds that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the Declaration, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights, as well as to article 12 of the Declaration, which states that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone exercising their rights under the Declaration against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action.

In addition, we wish to recall Human Rights Council resolution 31/32, which in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development. In this context, we would also like to refer to general comment No. 26 of the Committee on Economic, Social and Cultural Rights, on the connections between land and the rights guaranteed in the International Covenant on Economic, Social and Cultural Rights (E/C.12/GC/26). In the General Comment, the Committee cites the UN Declaration on Human Rights Defenders, reiterating the State duty to respect human rights defenders and their work, including where it connects with struggles over land. The Committee further clarified that the State duty to protect requires States to take proactive actions to ensure economic, social and cultural rights are not infringed upon by the activities of businesses and investors either at home or abroad.

We also recall to your Excellency the explicit recognition of the human rights to safe drinking water and sanitation by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR. Furthermore, in its general comment No. 15, the Committee on Economic, Social and Cultural Rights (CESCR)

clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. The human rights to water and sanitation require that water is continuously available, insufficient quantity for drinking, personal hygiene and domestic uses.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. 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.

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 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).

We wish to underscore that the Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

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.

Further, we refer to the Working Group on business and human rights' report on ensuring respect for human rights defenders (A/HRC/47/39/Add.2) which highlights the need for addressing the adverse impact of business activities on human rights defenders and unpacks for States and business the normative and practical implications of the Guiding Principles on Business and Human Rights in relation to protecting and respecting the vital work of human rights defenders.

We would also like to refer to Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 29 July 2022, which recognize the right to a clean, healthy and sustainable environment as a human right.

Further, we would like to draw Your Excellency's Government's attention to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles state that states must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (principle 1); States must establish a safe and enabling environment in which individuals or groups of individuals and organs of society concerned with human rights or environmental issues can operate free from threats, harassment, intimidation and violence (principle 4), States must respect, protect and fulfil human rights to ensure a safe, clean, secure, clean, healthy and sustainable environment (principle 2); and States must ensure effective enforcement of their environmental standards against public and private actors (principle 12). ”

It should be noted that, based on international law, the Maastricht Principles aim to clarify the content of States' extraterritorial obligations to realize economic, social and cultural rights in order to promote and give full effect to the purposes of the Charter of the United Nations and international human rights. [...] All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. Each State has the obligation to realize the economic, social and cultural rights of all persons within its territory to the maximum extent of its capabilities. All States also have extraterritorial obligations to respect, protect and fulfill economic, social and cultural rights.