



## Ardura SAS

# Proposals to the UNWG on the Extractive Sector, Just Transition and Human Rights

(for the 78th session of the United Nations General Assembly)

### 0.- Introduction

#### Gratitude

Ardura SAS thanks the "Working Group on the Issue of Human Rights and Transnational Corporations and Other Businesses" (UNWG) for the call made to a broad set of actors to make contributions on the "Extractive sector, just transition and human rights" with the purpose of nurturing a report that will be presented at the 78th session of the United Nations General Assembly. In this document, proposals are made to the UNWG so that, together with those received from other actors and after analyzing their part, be submitted to the consideration of the General Assembly.

#### Ardura SAS's description

Ardura S.A.S. is a Colombian consulting company for private companies and public institutions in the management of non-technical challenges, including those related to human rights. That is the Mission. Ardura's work is mainly inspired by the United Nations "Guiding Principles on Business and Human Rights", the "Voluntary Principles on Security and Human Rights", the "Performance Standards" of the International Finance Corporation, the "Global Compact" formulated by the United Nations and ISO 26000.

### 1.- Proposals to the UNWG

Taking note of the purpose and context described in the UNWG call, and aware of the possibility of referring not to all the questions, but only to some of them, Ardura makes the following points in relation to the issues in which it wants draw your attention. As always in Ardura, the background and the form, is constructive and does not disqualify the work that others do. Ardura SAS is willing to confront its reflections with the ideas and perspectives of other social actors, even contradictory ones.

**Facing question 1** [How can States best promote human rights-compliant energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs (for example, inter alia, design, approval, financing, implementation and reporting of energy transition programs)?]:

- **Consider positive and negative impacts of electricity generation with fossil fuels.**
  - States can promote energy transition policies that carefully consider, on the one hand, A) the risks and **negative** impacts of electricity generation with fossil fuels supported by the UNGPs, including the effects on greenhouse gas

- emissions, but also B) the opportunities and **positive** impacts of electricity generation with these fuels that will be lost given the decision to make the energy transition.
- Ardura invites the UNWG to consider the possibility that some of the guidelines that it submits for consideration of the 78th General Assembly refer to the negative impacts that the energy transition generates on citizens who are currently employees of the companies that produce the fossil fuels that will be substituted, in their families, in the unions that represent them, in the employees of the contractors, subcontractors and suppliers of these companies, in the citizens of the regions in which they operate via the economic activity that the operation of these companies induce, in the royalties that they generate and are aimed, primarily, to the citizens of the same regions and in the collection of local and national taxes that allow the State to progress in the realization of all human rights. It is very unlikely that the alternatives that will replace the production of fossil fuels will generate, in quantity and quality, the direct and indirect jobs, taxes and economic activity of the companies that are dedicated to producing fossil fuels. Less is the case, of course, the royalties paid by mining and oil & gas companies but not by the companies that will replace them.
  - The negative impacts on human rights arising from the energy transition must be taken into account, including the risk of energy poverty. These negative impacts do not take place in the places where fossil fuels are consumed, but rather in the places where they are produced, which, frequently, as in the case of Colombia, are countries with considerably lower levels of development and well-being, lower than those of the countries that consume them and with frankly higher levels of poverty and lower human development.
  - **Standards.** States can also promote energy transition policies that ensure that activities that replace the production of fossil fuels meet rigorous human rights standards, as clearly stated in the UNGPs, including environmental, labor, occupational safety and health aspects, land, physical security and relations with communities, including ethnic minorities.
  - **Self-regulation with independent verification.** States can also promote, through policies, the adoption of self-regulation mechanisms with independent verification that are applicable to companies that replace the production of fossil fuels. By way of example, for the coal producing sector, the emblematic initiative is Bettercoal, and, also by way of example, for mining in general, the emblematic initiatives would be Towards Sustainable Mining, which is making its way in some 15 countries, including Colombia, and those of ICMM. We invite the UNWG to consider the possibility of including in its report to the General Assembly guidelines that promote the adoption of self-regulatory mechanisms with independent verification that are equivalent for companies that replace the production of fossil fuels, including ISO 14000 and ISO 45000, applicable to all economic sectors.
  - **Management of opportunities and positive impacts as well as risks and negative impacts.** States can promote, also through policies, the management of risks and negative impacts on human rights in accordance with the UNGPs in all economic sectors, including those that replace the production of fossil fuels. At the same time, States can promote the management of opportunities and positive impacts of all economic sectors, which can be done with support in the Sustainable Development Goals and in one of the sections of the Responsible Business Conduct (RBC) that OECD promotes.
  - **Multi-stakeholder initiatives.** States can promote the creation and strengthening of initiatives involving multiple stakeholders to improve performance in human rights. Such is the case of the “Human Rights and Coal Working Group” (GTDHyC), as well as the “Mining and Energy Committee on Security and Human Rights” (CME), the “Colombian Guides on Human Rights and International Humanitarian Law”, “Pact Global Red Colombia”, the “Mining Dialogue Group” (GDIAM), the “Human Rights, Gold and Copper Working Group”, the “Human Rights and Hydrocarbons Working Group” and the “Human Rights Working Group and Electric Power”, initiatives that operate in Colombia. There would be value in States promoting this type of organization in sectors that replace the production of fossil fuels.
  - **Laws.** States can issue laws that affect the due diligence in human rights that companies must carry out, inspired by pillars 2 and 3 of the UNGPs. Ardura is concerned, however, about the possibility that these laws are discriminatory (for example, for some companies instead of all), and the possibility that these laws ignore the very notorious advances that the UNGPs represent on the discussion of responsibilities between States and companies, which would lead to laws that make unbalanced demands in human rights between companies and the State, or alien to the capacities and competences of the private and public sectors and, finally, the so-called “normative fetishism”: the apparently deep-rooted belief that the issuance of laws solves problems regardless of the use of other mechanisms that affect society’s culture or without taking care of building capacity to enforce the law. At the same time, Ardura is confident that the UNWG will be able to present to the General Assembly an appropriate perspective to successfully address these concerns regarding the content of these laws and the capacities of States to enforce them.
  - **Mining formalization.** Ardura is aware of the importance of artisanal and small-scale mining for the generation of income for population groups of various sizes in a good number of regions of Colombia and the world, even in cases in which they do not

comply with the current legal provisions, including environmental, labor, occupational health and safety, the payment of taxes, royalties and surface canon. However, given the risk of violation of human rights, it is imperative that States develop mining formalization strategies that resolve these gaps, supporting these small businessmen and artisanal miners so that they comply with legal provisions and diligently respect the rights of the concerned citizens. The risks of child labor, precarious work and the enjoyment of the right to a clean, healthy and sustainable environment, which concern the UNWG -and Ardura- are undoubtedly considerable in non-formal artisanal and small-scale mining: its formalization would tend to address those risks appropriately.

- **Fight against illegal mining.** Nothing is achieved by ignoring the existence of organized armed groups and organized criminal groups that are mainly engaged in illegal activities, including the illegal exploitation of mineral deposits. Ardura is not mixing illegal mining with informal and small scale mining, to which the preceding point refers. Ardura is, rather, pointing out that illegal mining is an activity in which human rights are exposed and violated and that, for those risks and certainties, regulation is not enough, either due to lack of capacity or will of States. It is imperative that States develop a set of political, legal, administrative, coercive, criminal, technological, and cultural tools that allow them to effectively confront illegal mining. Otherwise, the achievements in human rights would be marginal. After all, illegal mining is almost always associated with child labor, precarious work, modern slavery, serious impacts on the environment, effects on ethnic minorities and restricted access to land, dimensions that worry the UNWG -and Ardura-.

**Regarding question 7:** [How can energy transition public policies, programs, plans and activities in a State have adverse impacts on human rights outside its territory or jurisdiction (including supply chain and sourcing issues? )? What measures could reasonably correct this situation?]:

- Energy transition has, indeed, adverse impacts on countries that export fossil fuels: thanks to these fuels, these countries, including Colombia, receive foreign direct investment, taxes and royalties that generate development and well-being in broad groups of the population, generate employment, increase the demand for goods and services and contribute to enabling the State to effectively comply with its human rights duties.
- Therefore, **the energy transition in which the world has engaged produces clear negative effects on countries that export fossil fuels:** it deprives them of the opportunities and positive impacts that this activity generates, and it does so outside the territories or jurisdictions in which those that generate or have generated greenhouse gases (GHG). Such is the case of Colombia, which emits, according to the best available estimates, 0,66% of the world's total GHG, without mentioning that 59% of that figure originates from AFOLU; not in the use of fossil fuels<sup>1</sup>.
- To reasonably correct this situation, Ardura suggests to the UNWG to include in its report to the General Assembly guidelines so that the **transition is smooth, that it occurs in the longest possible time**, and that the States that emit the most GHGs compensate the adverse effects to those that emit very little.

**In response to question 9:** [What role should extractive sector companies play in integrating human rights into ongoing energy transition plans and programs to address adverse human rights impacts? Please provide examples if possible]:

- **UNGPs and, partially, RBC.** Companies, both current producers of fossil fuels and those that will replace them, must progressively incorporate the UNGPs into their management and add the management of positive impacts as proposed by the Responsible Business Conduct (RBC) promoted by the OECD.
- **Self-regulation with independent verification.** Companies, both current producers of fossil fuels and those that will replace them, can adopt self-regulatory mechanisms with independent verification such as those mentioned above. We invite the UNWG to consider the possibility of including in its report to the General Assembly guidelines that promote the adoption of self-regulatory mechanisms with independent verification that are equivalent for sectors that replace the production of fossil fuels, including ISO 14000 and ISO 45000, applicable to all economic sectors.

<sup>1</sup> The "3rd Biennial Update Report on Climate Change", built by the Government of Colombia with data from 2018, indicates that total country emissions were 303 million tons of CO2 equivalent, 59% of which correspond to AFOLU. For their part, absorptions were estimated at 24 million tons, a figure that does not include those due to forest lands that remain as such (natural forest) because there is no information representative on the possible rate of carbon sequestration in them. 303 million tons would barely be 0,66% of the world total of that year which, according to World Bank figures, were 46.132 million tons.



- **Multi-stakeholder initiatives.** Companies, both current producers of fossil fuels and those that will replace them, should seriously consider participating in, or creating, multi-stakeholder initiatives for improving performance on human rights, such as the “Working Group Human Rights and Coal” (GTDHyC), and the others referred to above.
- **Laws.** Companies, both current producers of fossil fuels and those that will replace them, should consider the possibility of participating in the discussion of the legal provisions that define or regulate business due diligence in the area of human rights, inspired by pillars 2 and 3 of the UNGPs and ensuring that state obligations in this area are enshrined in a coherent manner with Pillar 1 and, as far as it is concerned, with Pillar 3 of the UNGPs.
- **Mining formalization.** The companies, both the current producers of fossil fuels and those that will replace them, should seriously consider the possibility of supporting the efforts that the State undertakes for the mining formalization.

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