

Brussels, 7th of June 2011

Baroness Ashton

High Representative for Foreign Affairs and Security Policy

Vice-President of the European Commission

We, the undersigned members of the European Parliament, are writing to you as E.U. High Representative for Foreign Affairs, to express our profound concern regarding the serious violation of the right to prior consultation for the indigenous peoples of Guatemala and Colombia and the impacts that this has in their survival as peoples protected by international law. In this context, national and transnational corporations have begun to operate in indigenous territories which have resulted in serious human rights violations which have been denounced before national authorities and in some cases before the Inter-American Human Rights System. In some cases these investments have been aided by free trade agreement frameworks, by mechanisms for clean development or by private financing by European companies.

According to the *Declaration of the Presidency of the European Union*¹ regarding the need to fully respect the human rights of indigenous peoples and the *Resolution of the Development Council of 30 November 1998 regarding indigenous peoples within the framework of development cooperation of the Community and Member States*, the Commission was required to present a report which was made public in 2002². In light of the fact that the Resolution of 1998 affirmed the 'integration of the issue of indigenous peoples as key in all levels of development cooperation, including political dialogue with associated countries; and pursuant to the commitment of the European Commission in its report, to *support national initiatives which aim to promote recognition and respect for the rights of indigenous peoples*, we request that the **High Representative for Foreign Affairs and Security Policy** makes a statement and acts by:

- Informing on how it has engaged in follow-up to the resolution in relation to respecting *the right of indigenous peoples to choose their own models of development*, which includes the *right to oppose projects* which affect their way of life, biodiversity and the environment and which increase their vulnerability to natural disasters and social conflict;

¹ Declaration of the EU Presidency, Agenda Pt 4, 57th UN Commission on Human Rights, 19 March – 27 April 2001.

² Report of the Commission to the Council, 11 June 2002, regarding progress of work with indigenous peoples [[COM \(2002\) 291](#)] – not published in Official Journal

- Informing on how the UN Declaration on the Rights of Indigenous Peoples, the adoption of which was supported by the European Union in 2007, has been included as a conceptual framework during the follow-up to this resolution;
- Informing on how it has overseen the protection of this right in light of the objections expressed by indigenous communities in regions in Colombia and Guatemala in which European investments are present; and in particular on how the right of indigenous peoples to give their well-founded opinion in relation to the negotiation of the Association Agreements between Central America and the European Union, and the Trade Agreement between Colombia and the European Union.
- Informing on how the issue of the right to consultation of indigenous peoples has been included in the political dialogue with Guatemala and Colombia;
- Asking the Guatemalan and Colombian States to stop the criminalization of the struggle of indigenous people for the defence of their territories and guarantee fair and impartial access to justice;
- Informing on how the EU is carrying out a process of consultation with representative organisations of indigenous peoples from Guatemala and Colombia, in the construction of the new *Country Strategy Papers 2014-2020*, in order to include the collective rights of indigenous peoples, particularly the right to prior consultation, in line with the articles of the UN Declaration on the Rights of Indigenous Peoples (2007).
- Requesting that the Government of Guatemala follow up on legislative initiatives regulating consultations, when the creation of such initiatives includes the active participation and support of those indigenous peoples who will be subject to the proposed regulations, and when these respect international conventions, the Constitution of the Republic and the Agreement on Identity and Rights of Indigenous Peoples.
- Through political dialogue, urge the Guatemalan government, in the case of the recent evictions carried out in Valle del Polochic, to observe international norms governing indigenous rights; as well as the reform of the ownership and use of the land to facilitate the access of those working the land to it and other resources, as established in the Guatemalan Peace Accords³.
- Urge the Colombian government to urgently comply with the recommendations of various UN mechanisms on the critical situation of indigenous peoples, and with the orders of the Colombian Constitutional Court, specifically Ruling 004 (2009) and Sentence T-769 (2009).

³ The Socio-economic and Agrarian Agreement, the Agreement on Identity and Rights of Indigenous Peoples, and the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict.

The undersigned Members of the European Parliament consider that the European Union must speak out regarding the seriousness of the situation in Colombia and Guatemala. We ask the High Commissioner to meet with the delegation of indigenous peoples from Guatemala and Colombia who will be visiting Brussels between 20 and 24 June 2011, to further discuss the situation of indigenous peoples in these two countries and to consider other actions which could be taken by the bodies of the European Union in this regard.

Sincerely,

1. Oriol Junqueras, MERCOSUR Delegation
2. Barbara Lochbihler, Human Rights Committee
3. Bart Staes, Andean Community Delegation
4. Franziska Keller, Development Committee
5. Helmut Scholz, International Trade Committee
6. Paul Murphy, International Trade Committee
7. Nikolaos Chontis, Economic and Monetary Affairs Committee
8. Richard Howitt, Human Rights Committee
9. Jürgen Klute, Committee on Economic and Monetary Affairs
10. Raül ROMEVA I RUEDA, Central America Delegation
11. Keith Taylor, International Trade Committee
12. Maria Eleni Koppa, Foreign Affairs Committee
13. Heidi Hautala, Human Rights Committee
14. Ana Gomes, Human Rights Committee
15. Kriton Arsenis, Environment, Public Health and Food Safety Committee
16. Catherine Grèze, Development Committee
17. Jean Lambert, Employment and Social Affairs Committee
18. Jörg Leichtfried, Human Rights Committee
19. Evelyn Regner, Andean Community Delegation
20. Eva-Britt Svensson, Women's Rights and Gender Equality Committee
21. Marita Ulvskog, Industry, Research and Energy Committee
22. Åsa Westlund, Environment, Public Health and Food Safety Committee
23. Anna Hedh, Civil Liberties, Justice and Home Affairs Committee

24. Olle Ludvigsson, Employment and Social Affairs Committee
25. Göran Färm, Budgets Committee
26. Ulrike Lunacek, Foreign Affairs Committee
27. Raimon Obiols, Foreign Affairs Committee
28. Frieda Brepoels, Foreign Affairs Committee
29. Martin Häusling, Rural Development and Agriculture Committee
30. Martin David, Chair of the Cariforum-EU Delegation
31. Gabriele Zimmer, Development Committee
32. Eva Gro Joly, Chair of the Development Committee
33. Marie-Christine Vergiat, Human Rights Committee
34. Nicole Kiil – Nielsen, Foreign Affairs Committee
35. Ivo Belet, Industry, Research and Energy Committee
36. Charles Goerens, Development Committee
37. Willy Meyer, Foreign Affairs Committee
38. Rui Tavares, Delegation to the Euro-Latin American Parliamentary Assembly
39. Franziska Brantner, Committee on Foreign Affairs

Appendix: background and case studies in Guatemala and Colombia

In the case of Guatemala, there is serious concern about the 'Regulations for consultation processes under Convention 169 of the International Labour Organisation (ILO) regarding indigenous and tribal peoples in independent countries', presented by the Guatemalan government on 28 February. The Ministry of Labour and Social Welfare developed these regulations without prior consultation with the indigenous groups affected by these very regulations. In the document presented by the government, 6 April was set as the deadline to receive observations and suggestions from interested parties⁴; however, this consultation process should have been ongoing since the stage of formulation of the regulations, as stipulated in Convention 169. The Indigenous Council of Western Guatemala has presented an appeal for legal protection declaring that their fundamental right to consultation has been violated and that the procedure employed by the President of the Republic is illegal⁵. The United Nations Special Rapporteur on Fundamental Liberties and Rights of Indigenous Peoples⁶ is also of the opinion that *the text presented serious limitations and gaps in relation to the content concerning the State's obligation to consult indigenous peoples in accordance with ILO Convention 169, the U.N. Declaration on the rights of indigenous peoples and other international instruments to which Guatemala is party*".

To date, 50 community consultations have taken place in good faith in Guatemala, during which 750,000 people have expressed that they are opposed to mining and⁷, however these consultations have not been recognised as binding by the Constitutional Court of Guatemala and therefore national and transnational corporations have begun to operate in indigenous territories which has resulted serious human rights violations of the right of indigenous people to be freely, informed and beforehand consulted. Examples of such cases include the following:

The Maya Mam communities against the Canadian company Goldcorp, financed in part by European pension funds; Kaqchikel communities from San Juan Sacatepequez against the Gutemalan company Cementos Progreso, in which the Swiss company Holcim has interests; the forced eviction of the Maya Q'eqchi' communities from their land in order to cultivate African Palm destined for the

⁴ Statement from Ministry of Labour and Social Welfare of Guatemala, 24 February 2011.

⁵ Appeal for Legal Protection presented before the Extraordinary Tribunal for Legal Protection of Guatemala, 23 March 2011

⁶ Letter from the Special Rapporteur on the Rights of Indigenous Peoples at the request of the Office of OHCHR in Guatemala in response to the request of Mr. Ricardo Cajas Mejía, Exectuvie Director of the Mayan Organisations of Guatemala, 1 March 2011.

production of biofuels⁸, the case of the extension of contract 2-85 awarded to the French company Perenco⁹ without having consulted the affected communities about the implications, impacts and benefits of said extension¹⁰; the case of communities Maya Anjob´ales y Chuj from the municipality of Santa Cruz de Barillas, Huehuetenango where the State of Guatemala have approved hydroelectric projects to the company ENEL Guatemala S.A., a subsidiary of the Italian company Gruppo ENEL. There is also an investment from a Spanish company, Hidralia Energ´ia in one of these projects¹¹

In the first case, on 20 May 2010, the Inter-American Commission on Human Rights granted precautionary measures to the Maya Mam, requesting the suspension of the company's activities in that region; however the company continues to operate. This is due to the lack of political will on the part of the Guatemalan State to respect the recommendations of international bodies which reflects the context of human rights violations suffered daily by leaders of these communities, as well as the criminalization of the struggle of indigenous peoples in the country¹².

In the case of Colombia, despite the fact that Colombia has ratified ILO Convention 169 (under Law 21, 1991) the UN High Commissioner for Human Rights, the United Nations Special Rapporteur on the Rights of Indigenous Peoples (James Anaya), the UN Permanent Forum on Indigenous Issues and the Colombian Constitutional Court have expressed serious concerns about the violation of the right to Prior Consultation for the indigenous peoples of Colombia¹³. For the National Indigenous Organisation of Colombia (ONIC), the lack of fulfillment of this right is a contributing factor in the risk of extinction of more than half of the indigenous peoples in the country. The Constitutional Court ordered the State to create 34 safeguarding plans and a national programme of guarantees in Ruling

⁷ See information collated by Pastoral Commission Peace and Ecology (COPAE) <http://www.resistencia-mineria.org/espanol/>.

⁸ See letter expressing our consternation addressed to the Unit for Central America and Mexico of the European External Action Service on 24 March 2011.

⁹ This company operates the only oil pipeline in Guatemala which communicates the Xan and Rubelsanto oilfields with the Piedras Negras terminal on the atlantic coast of Guatemala.

¹⁰ On 28 April, at least 53 communities published another letter addressed to the Mayor and to members of the Municipal Council for Development (COMUDE), in which they refused to endorse the Mayor's declaration supporting the extension of the 2-85 contract to Perenco.

¹¹ "Buscando el Futuro", Guatemalan Human Rights Defenders Protection Unit and el Observador, 24 September 2010, Guatemala.

¹² According to information from the Assembly for the Defence of Natural Resources (ADH), there are more than 50 cases of denouncements made by company representatives and/or persons related to the companies, and judicial persecution of indigenous leaders promoting the rights of their communities in the departments of Quich´e, Huehuetenango, San Marcos y Quetzaltenango

¹³ See (i) Report of the UN High Commissioner, 3 February 2011 - A/HCR/16/22, (ii) Report of the Special Rapporteur on the Rights of Indigenous Peoples, the situation of indigenous peoples in Colombia, 8 January 2010, (iii) http://www.un.org/esa/socdev/unpfii/documents/Colombia_press_release_2010_es.pdf, (iv) Constitutional Court Ruling 004 (2009)

004 of 2009. The date for the application of this ruling has now passed, without having been fully implemented.

In an emblematic case, the Colombian Constitutional Court ordered the suspension of the exploratory phase of the Mandé Norte mining Project (Sentence T-769, 2009), until an adequate process of prior consultation has been carried out, leading to the free, prior and informed consent of the affected Embera people. Nevertheless, the Colombian government has not shown the political will to comply with sentence T-769, on the contrary the Interior and Justice Ministry have asked the Court to revoke it. The communities involved have also denounced that those people who opposed the mining project were accused of being part of the Guerrilla forces, thereby stigmatizing them and placing their lives at risk. As one of the main investors, the Anglo-Australian company Rio Tinto¹⁴ will continue to have a 70% option on the exploratory phase of the Project, which is cause for concern given the lack of clarity as to whether the Court's ruling in terms of human rights will be complied with.¹⁵

Special Rapporteur Anaya has asked the Colombian State to *"harmonize public policy on development within the country, especially concerning "mega projects" for resource extraction, agroindustrial infrastructure, and tourism, with the rights of indigenous peoples related to lands and natural resources, in line with the dispositions of ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples."* Nevertheless, the National Development Bill 2010-2014 and the Trade Agreement between the EU and Colombia, promote extractive industry and agroindustrial development projects. The ONIC agreed an exceptional consultation process for the section on Indigenous Peoples in the Development Plan; however, neither the draft of the Bill nor the Trade Agreement between the EU and Colombia were consulted with indigenous peoples. We consider that the European Union has an urgent responsibility to act, taking into account that Special Rapporteur Anaya has asked the Colombian State to invite the Special Adviser to the UN Secretary General on the Prevention of Genocide¹⁶ to carry out a visit to the country.

It is encouraging that the *Country Strategy Papers* 2007-2013 and their intermediate revisions for Guatemala y Colombia recognise indigenous peoples as an especially vulnerable group because of

¹⁴ Rio Tinto will have an option to buy 70% of the mine, from the United States company Muriel Mining Corporation. See article at: <http://londonminingnetwork.org/2011/01/rio-tinto-plays-musical-chairs-at-mande-norte/>

¹⁵ The ONIC and Human Rights Everywhere are preparing a full study on the impacts of mining in indigenous lands in Colombia which will be presented during their visit to Brussels in June 2011

¹⁶ Report of the Special Rapporteur on the Rights of Indigenous Peoples, the situation of indigenous peoples in Colombia, 8 January 2010

the serious human rights violations they suffer because of armed conflict (in the case of Colombia), because of high levels of poverty and exclusion, and because of the lack of prior consultation with regards to several pieces of legislation. Nevertheless, we observe with extreme concern that the *Papers* and their revision do not mention the systematic violation of the right to prior consultation in cases of economic projects in indigenous lands as an underlying factor for this vulnerability.