

Bernardo Arévalo de León
President of the Republic of Guatemala

Ing. Victor Hugo Ventura Ruíz
Minister of Energy and Mines

Lic. Edvin Danilo Mazariegos Can
Vice Minister of Sustainable Development

Gabriela García-Quinn
Minister of Economy

Nelvi Elidi Quiñonez Alvarado
Mayor of the Municipality of San Pedro Ayampuc

Yessica Claudeth Palencia Pérez
Mayor of the Municipality of San José del Golfo

April 12, 2024

Dear President Arévalo and authorities,

The undersigned organizations, based in Canada, the United States and Guatemala, focus on social and environmental justice and human and Indigenous peoples' rights. For many years, we have maintained a collaborative relationship with the Peaceful Resistance La Puya in the municipalities of San José del Golfo and San Pedro Ayampuc. In March 2024, La Puya celebrated its twelfth year of defending water, health and the right to live in a healthy environment, exercising their right to self-determination as Maya Kaqchikel and Xinka Indigenous Peoples.

In order to operate the mine, the U.S. company Kappes, Cassidy & Associates (KCA) colluded with the National Civil Police to repress La Puya and force the Progreso VII Derivado gold mine into operation in May 2014. After the Supreme Court of Justice suspended work on the mine in 2016, KCA initiated a lawsuit for more than US\$400 million against Guatemala in the World Bank arbitration tribunal, the International Centre for Settlement of Investment Disputes (ICSID) and under the terms of the United States-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR).

We write today to urge your administration to fully respect the rights, customs and traditions of the people that make up the Peaceful Resistance La Puya as they participate in the Constitutional Court ordered consultation. The process is still in the design stage, a necessary step ahead of starting the pre-consultation phase.

We are concerned about the various ways that KCA and its representatives may try to pressure the Guatemalan government, including by using the pending decision in the high-stakes arbitration process to insist on having a more active role in the consultation than what is appropriate. This is unacceptable, particularly considering KCA's self-interest, as KCA has the most to gain by the re-opening of the mine and furthermore operated the mine illegally in Guatemala, albeit only from 2014-2016 and through the use of intimidation and repression carried out in coordination with the National Civil Police.

Self-determination is an intrinsic right and practice of Indigenous Peoples, which is being recognized in the Constitutional Court's ruling. In this context, the consultation process must be carried out between the government and the people based on their customs and traditions, and with respect for the self-determination of the Maya Kaqchikel and Xinka communities. Their rights must be respected in all phases of the process, from the design to the exchange of information and in the decision-making process. As is the case in the consultation between the State of Guatemala and the Xinka Parliament of Guatemala, the role of the company should be limited exclusively to providing information about the mining project.

It is also important to remember that the government's own legal defense in the international arbitration filed by KCA recognizes the legitimacy of La Puya's struggle against KCA's mine. In fact, the Guatemalan state developed a large part of its legal arguments based on the documentation, reasoning and studies that the communities of La Puya developed over many years in collaboration with technical experts, lawyers and allied organizations. It recognizes that at the heart of La Puya's struggle is the defense of water, a vital liquid to ensure health and life. Furthermore, the government acknowledges in its submissions to the arbitration panel that KCA's project never should have operated, given the illegalities and irregularities in the licensing and operations. For example, Guatemala's legal defense points to KCA's deplorable environmental impact study, arguing that it should never have been approved. It also highlights the company's violation of environmental regulations and its lack of a construction license to build the mine. Government lawyers even called community members to be witnesses before the arbitration tribunal.

As a result, allowing KCA's participation in the consultation would be doubly perverse; in addition to being the most self-interested and biased actor in favor of the resumption of the Progreso VII Derivado project, it has always operated illegally, flaunting the country's regulations, using intimidation and repression to impose the mine, and now speculating on the possibility of earning hundreds of millions of dollars through international arbitration. In the words of the Constitutional Court in its June 2020 ruling, the KCA project was suspended for "[having] given rise to a serious climate of conflict that has put the lives and safety of the inhabitants of those municipalities at risk." As such, the only role that the company should play in this process is to provide all the information it has on the mining project, in due course and as required by the Maya Kaqchikel and Xinka communities in order that they may exercise their right to self-determination.

We urge the government to respect the decision of the Constitutional Court, the customs, traditions and self-determination of the Maya Kaqchikel and Xinka communities, and to be consistent with what has been argued before the arbitration panel, thus limiting the role in the consultation of this company that has shown so much disdain for the communities of San Pedro Ayampuc and San Jose del Golfo and is now trying to extort hundreds of millions of dollars from the Guatemalan people.

We are grateful for your attention to these matters and attentive to the next steps in the consultation process.

SIGNED:

Guatemala

ACCSS
ADIPROVA
AJSAMAJ
AMENA
AMERINDIA GUATEMALA
ASERJUS
Asociación Maya Uk'ux B'e
Asociación de Mujeres Indígenas Santasta Maria Aamismaxaj
Asociación de Mujeres Madre Tierra
Asociación Mujeres Unidas
Asociación de Mujeres de Petén Ixqik
Asociación Q'anil
Asociación Pop No'j
Colectivo Baja Verapaz
Colectivo CLR
Colectivo MadreSelva
Colectivo Rosa Luxemburgo
El Colectivo Vida Independiente de Guatemala
Comité de Mujeres Activas
Comité Mujeres Soñadoras
Comisión Familia Cristiana (CFC)
Consejo del Pueblo Maya (CPO)
Coordinadora de Comunidades Afectadas por Trecsa
Escuela Mama Maquin
FOSS
IRIPAZ
La Cuerda
Kaqchikel taq Molaj

Movimiento de Mujeres con Poder Constituyente
Movimiento de Mujeres Indígenas Tz'ununija'
Movimiento Político Semilla
Mujeres con Valor Construyendo un Futuro Mejor (MUVACOFUM)
Oblatas del Corazón de Jesús
Red Guatemalteca Mujeres Positivas en Acción
Otra Guatemala Ya

International

Adoratrices de la Sangre de Cristo Región de EEUU Oficina de JPIC
Alianza de Organizaciones Guatemaltecas, Asociadas por lo Justo / Just Associates - Jass Mesoamérica
Atlantic Regional Solidarity Network, Canadá
AZ Immigration Alliance, EEUU
Chicago Religious Leadership Network on Latin America (CRLN), EEUU
Comité para los derechos humanos en América Latina, Québec, Canadá
Denver Justice and Peace Committee, EEUU
Earthworks, EEUU
Guatemalan Human Rights Commission (GHRC), EEUU
Guatemala Research Group, University of Northern British Columbia, Canadá

Institute for Policy Studies - Global
Economy Program, EEUU
InterReligious Task Force on Central
America, EEUU
Maritimes-Guatemala Breaking the Silence
Network, Canadá
MiningWatch Canada
Montreal Elders for Environmental Justice,
Québec, Canadá
Plataforma Canada - Guatemaltecos
Exiliados por Terrorismo de Estado
Protection International, oficina para
Mesoamérica

Red Internacional de Solidaridad con
Guatemala, Suiza
Red Latinoamericana de Mujeres
Defensoras de Derechos Sociales y
Ambientales
Rights Action, Canadá/EEUU
Robinhood Cove Fund, EEUU
SoCal 350 Climate Action, EEUU
Todos por Guatemala Canadá
US-El Salvador Sister Cities, EEUU
Witness for Peace Solidarity Collective,
EEUU