

July 20, 2022

The Honorable Antony J. Blinken
Secretary of State
U.S. Department of State
2201 C. St., NW
Washington, DC 20520

Dear Secretary Blinken:

We write to express our support for the Peaceful Resistance La Puya in its legitimate struggle to defend the health and water of Guatemala's San José de Golfo and San Pedro Ayampuc communities from the *Progreso VII Derivado* gold mining project, owned by U.S.-based Kappes, Cassiday & Associates (KCA). We also write to express concern about the potential for renewed aggression against the La Puya movement, connected to KCA's ongoing international arbitration suit against the government of Guatemala and the related court-ordered consultation process. We ask for the U.S. Embassy's support to ensure an effective response in the case of any aggression or repression targeting land defenders, or efforts to manipulate the consultation process.

KCA began investing in the *Progreso VII Derivado* project in 2008, then became its sole investor in August 2012 amid growing community concern about the project's potential to further diminish and contaminate scarce water supplies. Despite aggression from mine employees, private security, and the police, defenders from affected communities organized as the Peaceful Resistance La Puya and have maintained a protest camp at the mine's entrance since March 2, 2012.

In 2015, the Guatemalan Supreme Court of Justice ordered KCA to suspend mine operations for lack of prior consultation with affected communities. For this and other reasons, KCA is now suing Guatemala under the terms of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) for more than \$400 million before a supranational arbitration tribunal, a branch of the World Bank called the International Centre for Settlement of Investment Disputes (ICSID). We are troubled that mining companies are increasingly resorting to this type of arbitration when projects are blocked due to legitimate opposition from communities seeking to defend their water, a healthy environment, and their rights to land and self-determination.

Guatemala's legal defense in the arbitration outlines many of the concerns raised by the Peaceful Resistance La Puya and recognizes the legitimacy of their struggle. The government's brief includes how the company's investment in the mine *increased* after the community set up its permanent resistance camp, and how the company, coordinating with national police, used aggression and threats in its successive attempts to dismantle community resistance. The legal defense also makes extensive reference to evidence of the mine project's illegality, which La Puya has denounced for years. This includes how KCA's Environmental Impact Assessment was so incomplete and deficient that "it should not have been approved"¹, how the company violated

¹ ICSID Case No. ARB/18/43, Guatemala's Counter-Memorial, December 7, 2020.

around 50% of its environmental obligations, and how it lacked the necessary municipal construction license and, as a result, operated illegally from the start.

We wish to convey our support for the legitimate efforts of the Peaceful Resistance La Puya to protect critical water supplies and community health. Despite violent repression, the community defenders' tireless, peaceful resistance is helping inform the government's legal defense in its dispute with KCA in various ways as described. It is imperative that these communities not be confronted with further acts of aggression, police repression, or legal persecution. We remain concerned about the safety of the members of the Peaceful Resistance La Puya and will stay vigilant as the arbitration process moves forward.

Additionally, we are aware of the imminent start of a community consultation process about *Progreso VII Derivado*, led by the Guatemalan Ministry of Energy and Mines and based on Constitutional Court order, files 3207-2016 and 3344-2016. Such consultation processes must be carried out with the utmost respect for communities' right to participate freely and safely. Several of our offices wrote previously to express concern about reports from the State of Exception in the municipality of El Estor² while a similar court-ordered consultation process was ongoing. That declaration gave the military special powers to enforce a strict curfew, conduct arrests and house raids without warrant, and suspend basic constitutional guarantees, all of which are not conducive to a good faith consultation process.

Like the land defenders in El Estor, members of the Peaceful Resistance La Puya have suffered intimidation, criminalization, and aggression for years. Being aware that the U.S. Embassy in Guatemala is paying close attention to this and other mining projects in the country, we call on the State Department to ensure that the Embassy advocates for communities' free participation in the consultation process and speaks out against any aggression or repression targeting land defenders. Similarly, it should publicly and through diplomatic channels express support for the full participation of the communities most affected by KCA's mining project throughout the entire consultation process and with full respect for the Constitutional Court's decision.

Finally, based on evidence from the government's legal defense brief submitted to the ICSID panel regarding the illegality of KCA's project, we urge that the U.S. Embassy in Guatemala refrain from providing support to the company should it be requested. We also request information about what due diligence or guardrails the State Department has in place to avoid providing services to a company when it is acting without respect for the law, environmental protections, and the free, prior, and informed consent of those affected.

Sincerely,



Jesús G. "Chuy" García
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress



Cori Bush
Member of Congress

² https://chuygarcia.house.gov/sites/evo-subsites/chuygarcia-evo.house.gov/files/wysiwyg_uploaded/Guatemala%20State%20of%20Exception%2011-30-2021_0.pdf

Congress of the United States
Washington, DC 20515



Joaquin Castro
Member of Congress




Raúl M. Grijalva
Member of Congress



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Member of Congress



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Member of Congress



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Rashida Tlaib
Member of Congress



Norma J. Torres
Member of Congress