



Brussels-Geneva-Paris, 31st of March 2010

Mr. Herman Van Rompuy

Permanent President of the European Union

Mrs. Catherine Ashton

High Representative of the European Union for Common and Foreign Security Policy
and Vice-President of the European Commission

Mr. Karel De Gucht

EU Trade Commissioner

Mr. Jose Luis Rodríguez Zapatero

Spanish Presidency of the EU

Cc Member States of the European Union

Subject: Continuation of attacks against defenders of economic, social and cultural rights in Guatemala.

In follow up to the communication sent by CIFCA and the Observatory for the Protection of Human Rights Defenders (OBS), a joint program of the International Federation for Human Rights (FIDH) and the World Organization against Torture (OMCT), on the 5th of February 2010, we would like to express our **deep concern for the persisting climate of tension and violence in the region of San Marcos/Guatemala, occurring in the context of serious criticism against the procedures of the Spanish transnational enterprise Union FENOSA and its regional subsidiary agency, DEOCSA.**¹

On the 22nd of March 2010, three unknown people were caught while, apparently, trying to remove two electric transformers in a community of the department of San Marcos, Guatemala. According to the information received, in order to prevent this, the community population retained these persons who presented themselves as envoys of the company Cobra. Allegedly, this company is hired by Deocsa/ Union Fenosa to charge the energy bills. Shortly after, around 250 policemen arrived to the village, fired tear gas **and killed at least one member of the community**, Mr. Santiago Gamboa, a leader of the Resistance Front in Defense of Natural Resources and Indigenous Peoples Rights-FRENA. Another 6 people were hurt and 8 were arrested.

Since October 2009, **several assassinations and acts of violence have taken place against leaders and member of the movement that denounce the activities of Deocsa/Union Fenosa.**² In San Marcos, one of the regions in Guatemala where the Spanish enterprise operates, there is an ongoing 'State of emergency' since 22nd December 2009. The state of emergency was proclaimed by the Guatemalan Government³ due to the conflicts and tensions provoked by DEOCSA and the mother

¹ In April 2009 Union Fenosa was absorbed by its principal stockholder Gas Natural in Spain.

² Among others Victor Gálvez, Evelinda Ramirez, Octavio Roblero.

³The last prolongation of the State of Prevention was made on the 17th of March. See Governmental Agreement 8-2010.

enterprise Union FENOSA.⁴ However, instead of resolving the conflict, the suspension of the constitutional rights and guarantees of the population has increased the level of tension and violence.

We express our concern towards the claim that Union Fenosa has accumulated several accusations of human rights violations by numerous national and international civil society organizations, outside of Spanish territory.⁵

Considering the imminent risk of an increase in the number of killings and acts of violence and taking into account the declarations of the, Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, that the role of the States is to ensure that enterprises that operate in zones of conflict respect human rights. Furthermore, the enterprises have the obligation to respect all human rights in their operations, thus also ensuring that they are not accomplices to human rights abuses.⁶

Recalling the **Declaration of the EU Swedish Presidency and the Spanish Presidency on the compromise to promote and put in practice the UN frame on protection, respect and effective remedies** (see annex).

Taking into account the Chapter 1 of Title V of the Treaty of the European Union, which establishes that the EU external action must be guided by the principles of democracy, rule of law, human rights and fundamental freedoms as well as the democratic clause that rules the relationship between the EU, Central America; the EU Guidelines on protection of human rights defenders; the ILO Convention 169 and the regular report of the ILO Commission of Application of Norms.

We call for the European Union and the Spanish Presidency to:

- Promote and support a prompt and serious investigation of the abovementioned crimes as well as the prosecution of those responsible, thus avoiding that they remain in impunity. Furthermore, make a plea to the General Attorney of Guatemala, that these cases be transferred to the section on human rights in the General Attorney's Office.
- Remind the Government of Guatemala of the limited temporality of a proclaimed State of Emergency. Demand that the effective measures be adopted for its suspension in the department of San Marcos; So-doing ensure that the foreseen constitutional rights and guarantees are re-established. Request that the Government of Guatemala adopts the measures necessary to avoid the criminalization of human rights defenders.
- Promote an active application of the measures of protection towards human rights defenders foreseen in the EU guidelines for human rights defenders, especially in those cases where the situation of tension and conflict is associated with the presence of a European enterprise.
- Promote that the representatives of the EU visit the area and meet with the affected organizations and communities, in order to obtain first hand information about the situation and the different visions of the conflict from all parties of civil society. Thus being able to offer relevant measures of protection in prevention of further assassinations and acts of violence.

⁴Frequent and long lasting power cuts together with the excessive costs of the service have been factors that have contributed to the social discontent in the department, leading to social protest and legal complaints by the population.

⁵ Only in the last five months of 2009, the National Commission for Electric Energy (CNEE) received 90 358 legal complaints against the two local affiliations of Union FENOSA; DEORSA and DEOCSA (Prensa Libre, 21-7-09). On the 29th of November 2009, there was a popular and communitarian consultation in the municipality of Malacatán, in which 23.127 persons voted against the presence of the company. For international cases see also the conclusions of the Permanent Peoples Tribunal o del 12 y 13 de October de 2007 el Tribunal Permanente de los Pueblos (TPP) on the contractual violations of the Union FENOSA en Nicaragua, among others violations of labour rights, altered bills, power cuts and other human rights violations caused as a consequence of the lack of electricity. In the case of Colombia, see the publication "The Powerful & the Powerless A Case Study of Unión Fenosa's Electricity Monopoly in Colombia," by the European Coalition for Corporative Justice, September 2009.

⁶Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie, "Business and Human Rights: Towards the putting into practice of the framework of "protect, respect and effective remedy", United Nations Document A/HRC/11//13, 22nd of April 2010

- Insist on the situation in San Marcos and the extreme vulnerability of the human rights defenders in this region to be tackled in the so-called “filter group” of the EU missions in Guatemala, giving follow up to the attacks against human rights defenders.
- Demonstrate to the public both in Guatemala as well as in Europe, the obligation of European transnational companies to comply with norms of Corporate Social Responsibility, respect human rights in third countries, including the respect for human rights defenders and condemn the cases of attacks and human rights violations.
- Promote that both the Government of Guatemala as well as the Spanish Government use their influence in order for Union FENOSA to consider suspending all operations in the department of San Marcos, until a long-term and participatory solution to the current conflict has been reached.
- Request for CICIG to contribute to the investigations of these assassinations with its expertise and experience, and in the case considered pertinent, assume the investigation themselves.

We look forward to your reply.



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President CIFCA
Copenhagen Initiative for Central
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Souhayr Belhassen,
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Eric Sottas
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