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Sent via electronic mail

Re: Query regarding EDC's support to Ecopetrol and Pacific E&P

21 September 2016

Dear Mr. Daignault

Our organisations are writing to express serious concerns regarding EDC financing for oil companies active in the Rubiales and Quifa blocks in Colombia. Until recently, both blocks were operated by the Canadian company Pacific Exploration & Production Corp. (hereinafter Pacific E&P) under an association contract with majority state-owned Colombian enterprise Ecopetrol S.A (hereinafter Ecopetrol).

In 2014, EDC provided Pacific E&P (then known as Pacific Rubiales Energy Corp.) with financing for its Colombian operations.¹ This year, EDC provided Ecopetrol with between CDN\$250 and \$500 million in financing for working capital and/or general corporate purposes.² Ecopetrol confirms that it signed a US\$300 million credit facility with EDC on 16 May 2016.³ This financing was provided days before Ecopetrol assumed exclusive control of operations in the Rubiales field. The Quifa field is still operated by Pacific E&P under a contract of association with Ecopetrol.

On 12 July 2016, FIDH (International Federation for Human Rights), CCAJAR (Jose Alvear Restrepo Lawyers' Collective) and PASO International (Project for International

1 On 7 May 2014, EDC provided Pacific Rubiales between \$50 and \$100 million in loans as support for procurement of Canadian goods and services. EDC, Individual Transactions Information, www.edc.ca

2 EDC, Individual Transactions Information, www.edc.ca

3 Ecopetrol, "Ecopetrol firma crédito bilateral internacional por USD\$300 millones", 17 May 2016, <http://www.ecopetrol.com.co>

Accompaniment and Solidarity in Colombia) published the results of an in-depth investigation, *The Human Cost of Oil: A Human Rights Impact Assessment on the Activities of Pacific Exploration & Production Corp. in Puerto Gaitán*, which relies on a community-based human rights impact assessment methodology. The investigation examines the human rights impacts associated with oil activities in the Quifa and Rubiales fields.

It is regrettable that a representative of EDC, which has an office in Bogota, did not attend a multi-stakeholder roundtable organized prior to the official launch of the report to discuss its findings.

Please find enclosed a copy of the report (in Spanish) as well as an English translation of the executive summary. The report is based on government and court documents, interviews with numerous stakeholders including national authorities, companies, union representatives and public institutions, as well as nearly 600 surveys and interviews conducted with local residents, workers and indigenous communities living within or on the outskirts of the Quifa and Rubiales fields.

Both fields are located in the municipality of Puerto Gaitán. The municipality, which produces over half of Colombia's oil, is overwhelmingly poor. Residents lack access to education and health care, and unemployment is pervasive. The area is home to approximately 12,500 people and includes the traditional territories of indigenous peoples, primarily the Sikuani people.

The arrival of oil companies in Puerto Gaitán in the 1990s, and the beginning of oil production around 2000, coincided with a marked increase in social conflict in the area. The Colombian national human rights institution describes Puerto Gaitán as 'insecure' due to the presence of illegal armed groups. Violence in the area became more acute following a major strike by Pacific E&P workers in 2011. The following year, the Colombian organisation CINEP (Centre for Research and Popular Education) registered 32 targeted killings in Puerto Gaitán, a dramatic increase from previous years.

The Colombian government lacks the institutional capacity and political will to effectively enforce provisions that govern business activity, including those designed to protect human rights. In addition, the Colombian state has a demonstrated record of employing unjustified force to quell social protest regarding private sector investment. These conditions persist despite legal commitments made to improve working conditions, protect labour rights, ensure environmental protection and promote corporate social responsibility under the Canada-Colombia free trade agreement, which came into force in 2011.

It's not surprising, given this challenging context, that oil operations in Puerto Gaitán are associated with human rights abuse. *The Human Cost of Oil* reveals a pattern of human rights violations associated with the operations of Pacific E&P, Ecopetrol and subcontracted firms. These violations affect indigenous peoples' and workers' rights, collective land rights, the right to a healthy environment, as well as civil and political

rights. Some of these violations are summarized below.

With respect to indigenous rights, the report reveals that:

- On 16 December 2015, the Colombian Constitutional Court ordered that Pacific E&P immediately suspend activities in part of the Quifa block. The court found that the Sikuani indigenous people, whose territory is affected by the company's operations, were not adequately consulted about the company's activity and its potential impact, in violation of their fundamental rights.
- In addition, the investigation found that other consultations involving affected indigenous communities did not include the participation of the Ombudsman's Office or the Inspector General's Office, in contravention of legal requirements.

The report highlights the Colombian state's failure to effectively monitor compliance with environmental licenses and to sanction non-compliance. It also identifies important gaps in the regulatory framework, especially with regard to water reinjection. In particular:

- Data collected in 2015 reveals that the volume of wastewater discharged by Pacific E&P into the Rubiales creek was 47% in excess of that authorized in the company's environmental licenses.
- Between April 2013 and May 2016, the National Seismological Network and the Colombia Geological Service recorded 976 earthquakes in the area. This unprecedented seismic activity coincides with an increase in oil production and water reinjection in the Quifa and Rubiales fields. Neither the state nor the companies involved assessed the risk of increased seismic activity related to water reinjection prior to beginning oil operations.
- People who reside within the Rubiales and Quifa fields report a decrease in available ground water, which they link to wastewater reinjection. Eighty percent of the 238 residents surveyed also report that local sources of water became polluted after oil extraction began. Almost 50% of interviewees indicated that water pollution has affected their daily water consumption.

The report also documents repeat labour rights violations by Pacific and its subcontracted partners:

- Interviews and documentary research confirm the use of illegal outsourcing. Over seventy percent of workers surveyed (92% of whom were subcontracted) undertook operations that the authors of the report qualify as "core permanent activities," applying criteria established in Colombian legislation and jurisprudence, and employed by the International Labour Organization.
- Roughly 80% of personnel surveyed reported that their employers discourage free and voluntary union membership, and expressed fear of retaliation were they to join the USO union.
- Analysis by the ENS (Escuela Sindical Nacional) reveals that contracts between Pacific E&P, subcontracting firms and the UTEN union contravene national and

international standards with regard to freedom of association and the right to collective bargaining.

Finally, the report addresses the criminalization and repression of social protest, acts of surveillance and limitations on freedom of movement in Puerto Gaitán. It also documents the failure of the Colombian judicial system to act swiftly and impartially to address these issues. In particular:

- Allegations involving the victimization of Pacific E&P and its subsidiaries are efficiently investigated by public law enforcement authorities. Those related to allegations of murder and physical aggression against demonstrators by public security forces languish.
- Illegal intelligence-gathering activity, including surveillance, by private security companies and Pacific E&P intimidated union leaders and hindered the free movement of trade unionists, community leaders and local residents.
- Opaque cooperation agreements exist between oil companies (Pacific E&P and Ecopetrol) and the public prosecutor's office, the national police and various units of the public security forces. One such agreement formalizes collaboration between Ecopetrol and the public prosecutor's office in the investigation of criminal offences linked to the oil industry. In addition, Pacific E&P provided US\$58 million to Colombian national security forces between 2009 and 2015.

Two days after EDC approved financing for Ecopetrol, members of a local association that seeks to defend human rights and the environment in relation to oil operations in Puerto Gaitán received renewed death threats. Héctor Sánchez, Alex Castrillón, Hugo Mejía, Nesler Gonzales, Claudia Fierro Camacho and Neiret Escobar, as well as their relatives, received death threats on 16 May 2016 stating that they were “obstructing the work of other people and of the companies”.⁴

An extensive public record regarding conditions in Puerto Gaitán and the very serious risks to human rights and the environment posed by oil investment in the area was available at the time that EDC approved loans to Ecopetrol and Pacific Rubiales.

1. Was EDC aware of these risks when it approved financing for Ecopetrol and Pacific Rubiales? How did EDC evaluate Ecopetrol and Pacific Rubiales' due diligence procedures to prevent, mitigate and remedy past, actual and/or potential negative human rights and environmental impacts linked to oil extraction in the Quifa and Rubiales oil fields?
2. What, if any, assurances were made to EDC by Ecopetrol and Pacific Rubiales regarding the prevention, mitigation and remediation of human rights abuse and environmental harm?
3. What measures has EDC taken or will it take in light of the information contained in the attached report?

⁴ Unofficial translation. FIDH, “Colombia: Amenazas contra Héctor Sánchez Gómez y varios líderes comunitarios de Rubiales y Cuernavaca”, 23 May 2016, <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/colombia-amenazas-contra-hector-sanchez-gomez-y-varios-lideres>

4. What measures has EDC taken or will it take in light of information regarding recent death threats against community leaders who are critical of EDC's clients operations?

We look forward to your response.

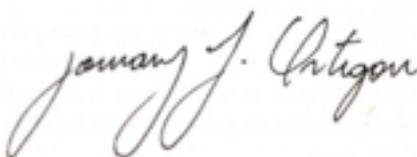
Sincerely,



Karyn Keenan
Director, Above Ground



Antoine Bernard
CEO, FIDH (on behalf FIDH President, Dimitris Christopoulos)



Jomary Liz Ortega Osorio
President, CCAJAR



Neil Martin
Director, PASO International