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Edificio del Palacio de Justicia de Bogotá, D.C.
Calle 12 No. 7-65.
Bogotá
Colombia

London, 29 June 2009

Dear Sirs and Madame,

Re: Acción de Tutela DOMINICO y otros contra el Ministerio del Interior y de Justicia y otros, case # T-2315944

Law of free, prior and informed consent for minority groups: consultation for mining exploration by Muriel Mining Corporation in Urada Jiguamiandó indigenous reserve and others.

The Bar Human Rights Committee of England and Wales is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

We are contacting you at the Constitutional Court of Colombia to request the revision of the verdict delivered on 27 May 2009 by the Civil Branch of the Supreme Court of Justice, in case # 11001-22-03-000-2009-00110-02, whose presiding magistrate was Justice Jaime Alberto Arrubla Paucar. This case is presently registered with the Constitutional Court as *DOMINICO y otros contra el Ministerio del Interior y de Justicia y otros*, case # T-2315944.

We consider that this is a unique opportunity to resolve a question of Colombian constitutional law which is of the utmost importance for the recognition of human rights of indigenous peoples: the right to prior consultation in accordance with their own customs and decision-making processes.

On 16 January 2009, Emberá indigenous communities from the Urada Jiguamiandó reserve (department of Chocó), afro-descendent communities from the Humanitarian Zone in Pueblo Nuevo located in the River Jiguamiandó valley and members of the indigenous community of the Murindó reserve (Antioquia) submitted an action of protection (*acción de tutela*) against the Ministry of the Environment, Housing and Territorial Development and others¹ for violation of collective rights to prior consultation and to participation, existence, cultural identity, autonomy, and cultural and social integrity of indigenous and afro-descendent communities.

The basis of their action is that the right to consultation must be observed

- (1) prior to the concession of any extractive licence in indigenous territory; and
- (2) in accordance with the customs of the community in question, respecting their own decision-making processes.

In February 2005 the Muriel Mining Corporation was granted licences to explore gold, copper and the sub-product of the latter, molybdenum, in 16,006 hectares of land within the framework of the "Mandé Norte" project, in the municipalities of Carmen del Darién, Chocó and Murindó, Antioquia. In spite of the fact that all these licences were granted for lands which belong to indigenous and afro-descendent communities under collective titles, the action submitted states that the Muriel Mining Corporation did not notify any of these communities or engage in prior consultation with them before the application or following the concession of the licences.

On 3 January 2009 the Muriel Mining Corporation commenced exploration on the *ellausakirandarra* (*Careperro / Cerro Cara de Perro / Dog-Face Hill*) hill, which belongs to the Urada Jiguamiandó reserve and is a sacred place for the Emberá communities, without having engaged with these communities in accordance with their customs and own decision-making processes.

The action submitted by the aforementioned communities contends that the only manner of carrying out consultation and reaching consensus regarding a project of such significance is through meetings with the maximum authority of the community and the lower councils of the reserves, and that this never took place. Furthermore, the action contends that the Ministry of the Interior did not take the views of local authorities into account and that indigenous authorities such as the organisation CAZIMBA (*Cabildo mayor de indígenas de la zona del bajo Atrato y del Urabá Chocoano*), which did not have the authority to make decisions, acted in the case of the aforementioned lands.

¹ Ministry of the Interior and Justice, Ministry of Defence, National Army, Ministry of Mines and Energy and ministerial agency Colombian Institute of Geology and Mining (INGEOMINAS), Ministry of Social Protection and the Muriel Mining Corporation.

These mining activities exert an adverse effect on the right to physical and cultural integrity of the people, given the spiritual importance of the primary site of exploration and the sacred hill *ellausakirandarra*. It is also important to note the absence of any social or environmental study related to the project, particularly in light of the fact that the area is a forest reserve.

Taking into consideration the importance of this case in regard to the recognition of the Colombian Constitutional Court of the right to physical and cultural integrity of tribal and indigenous peoples, we respectfully request your participation in the process before the Constitutional Court by supporting appropriate protection of collective rights to prior consultation and participation in line with the international and national law of free, prior and informed consent for minority groups.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Mark Muller', written in a cursive style.

**Mark Muller QC, Chairman
Bar Human Rights Committee of England and Wales**