

Mining companies have put pressure on protected natural areas in the indigenous territories

After establishing the ZRSC, a considerable number of mining claims overlapping with the reserved zone, either in whole or in part, which holders were individuals or legal entities with ties to the Canadian company, Dorato Resources Inc. and the Cardero Corporate Group, were immediately submitted to the Mining Concessions Bureau. Such mining claims required INRENA's favourable opinion for their subsequent approval. This institution systematically issued opinions against the approval of such mining claims:

“...for the Awajún population living in the lower areas of the Cordillera del Cónedor, it is necessary and essential to intangibly preserve the upper areas thereof in order to maintain their quality of life and cultural values, reason for which they have been supporting the establishment of the Ichigkat Muja - Cordillera del Cónedor National Park.”

(...)

“...the impacts that could be generated as a result of the mining exploration and exploitation activity would directly affect the objectives to conserve the Santiago Comaina Reserved Zone.”¹

In view of this scenario, MEM only decided to “suspend” mining claim procedures until the final area of the National Park was approved. Meanwhile, INRENA was urged to modify its first proposal in order to drastically reduce the proposed Park area. In November 2005, a Multi-Sectorial Government Committee pressed INRENA to declare the immediate compatibility of mining activities with the protected area, thus constituting the first step towards modifying and reducing the original proposal creating the National Park². This was carried out with the express purpose of assigning the “freed up” hectares to gold mining concessions.

In fact, as explicitly admitted by the Ministry of Foreign Affairs (***see Exhibit18***), it is noted that the Peruvian Government preferred to dismiss the protection of ancestral land and the rights of the Awajún and Wampís peoples, opting to encourage investments from mining extractive industries in an area of high ecological vulnerability, officially recognized as a priority zone of ecological conservation:

“b. INRENA undoubtedly bases its proposal on solid environmental and ecological grounds that this Ministry of Foreign Affairs shares and shall always support. However, in this case, such grounds need to be

¹ Report 487-2006-INRENA-IANP-DOANP, dated August 4, 2006 in the “Halcón 1” Mining Concession Dossier, District of El Cenepa (Emphasis has been added by us).

² Minutes of the last committee meeting held at the Ministry of Defence on November 8, 2005, with the attendance of the Ministry of Foreign Affairs, the Joint Chiefs of Staff, the Intendancy of Protected Natural Areas of INRENA, including the legal manager of the mining company, Afrodita, holder of numerous mining concessions in the Cordillera del Cónedor (SERNANP File, Ministry of the Environment).

evaluated, taking into consideration the need for Peru to secure the use of the natural advantage, offered by the presence of mineral wealth (gold) in the area. In this regard, reference is made to the (sic) mining complaints that could arise in the future (besides the already existing concessions, which would be excluded from the proposed National Park, as per INRENA).

(...)

d. If INRENA's proposal is approved, future mining development (and eventually forestry development) in our territory shall be impeded, while it is allowed and supported by Ecuadorian authorities in the border zone. In this regard, the classification of the National Park would imply consequential restrictions on the economic activity in Peru that do not correspond with the characteristics observed on the Ecuadorian side of the border, where intense mining activities are carried out and gold extraction techniques (adits) are applied, possibly leading to the illegal exploitation of resources on our side of the border. This would put our country at a disadvantage with regard to the mining activity being promoted in the Ecuadorian territory adjacent to the area of the proposed National Park.”³

While being pressured by the Multi-Sectorial Committee, INRENA was also directly pressured by the mining petitioners, who had submitted administrative legal remedies, demanding the approval of their mining claims, in spite of their location in an ecological reserve. One of the arguments used by the mining petitioners is based on the fact that an international treaty of superior legal hierarchy exists between Peru and Ecuador that obliges State Parties to encourage and promote mining exploitation in the border zone, which would override the provisions established in the environmental legislation on protected natural areas. For this reason, the mining petitioners argue that the extractive objective would be legally superior to the ecological conservation objective. It is worth mentioning that respect for the human rights of the indigenous peoples, who live in the area of influence of mining exploration areas, is not even considered in the analysis.⁴

Thus, INRENA backed down and issued a second classification proposal in which (without consulting the indigenous communities, without retracting any previous grounds and without contributing any new arguments justifying the modification of its first proposal) it proposed to reduce the Park to an area of 88,477.00 hectares, making an extensive area of land of the Awajún and Wampís peoples

³ Official Letter RE (SAA-SUD-APA-ECU) 2-9-B/9, dated January 18, 2006 and its Report attached thereto. Emphasis has been added by us.

⁴ The “Broad Peruvian-Ecuadorian Agreement on Border Integration, Development and Good Neighbour Relations” executed in the city of Brasilia on October 26, 1998 established the following in Section Eleven, Paragraph i) thereof: “Use mining resources, found in the border zones of the territories of both countries, in a coordinated manner, pursuant to the legal framework established by the Parties through a “Mining Integration and Complementation Treaty”. This Treaty was executed on August 11, 1999 and was ratified in Peru by means of Supreme Executive Order 047-99-RE, published on September 20, 1999.

available to the mining sector. This change in position was officially “welcomed” by MEM, indicating that:

“[mining] rights granted to third parties by this sector are no longer overlapping” which “shall encourage Peru to establish a ‘living’ border, with opportunities for a number of economic activities, such as mining, in the framework of environmental responsibility.”⁵

The reduction of the Park was made official by means of Supreme Executive Order 023-2007-AG, dated August 9, 2007, through which this mutilated National Park was created (**see Exhibits 9 and 10**). As a result, it provided INRENA with the opportunity to favourably approve the mining claims, which also allowed the Mining Concessions Bureau to consent the granting thereof.

This entire process shows a State that refuses to recognize the indigenous communities' ownership over their land, denying them legal protection, a State that reduces an extremely important protected natural area, on which such communities depend, by openly failing to comply with the commitments agreed upon with them, in order to solely favour private mining companies, thus constituting a discriminatory policy that violates the human rights of the Awajún and Wampís peoples.

The foregoing violates Article Fourteen of ILO Convention 169, since the establishment of the Ichigkat Muja National Park with a smaller area than that which was requested puts the entire environment occupied or used somehow by local indigenous peoples (Article 13.2 of the Convention) at risk. Furthermore, Article Fifteen (1) with regard to the rights of indigenous peoples to natural resources, existing on their land, is also infringed. The decision is currently the subject matter of a constitutional proceeding brought by the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDESEP) (the organization representing the indigenous peoples at a national level) against the State.

⁵ Official Letter 065-2007-MEM/MM, dated February 23, 2007 signed by the Vice-Minister of Mines.