

INRENA recognized the impossibility of performing mining activities in Awajún territory, but favourably approved the mining claims and the reduction of the Ichigkat Muja Park.

In the case of the indigenous territory of the Awajún and Wampís peoples, the incompatibility of extractive activities with the existence of these indigenous peoples is reasonably obvious, due to the highly vulnerable geographic and ecological characteristics of such territory that should dissuade against any and all large scale extractive activities. In accordance with Conservation International (private institution that prepared the technical dossier justifying the first Park proposal) and INRENA, the area is a “Hotspot” of worldwide importance, owing to the varying altitudinal gradient that is home to endangered and vulnerable species of national and international importance, as well as a multitude of endemic species, containing 1/6th of all the plants on the planet in less than 1% of land, rendering it the most diverse and plentiful region on the planet¹. Based on the statements made by the State through INRENA in its first National Park proposal (**see Exhibit 2**), this area consists of:

“One of the most dynamic forests, reason for which it is also unstable and fragile when threatened by any physical or natural phenomena or the direct action of man” rendering it “necessary and essential for the Awajún population, living in the lower areas of the Cordillera del Cóndor, to intangibly preserve the upper areas thereof, in order to maintain their quality of life and cultural values.”²

Declaring the intangibility of the upper areas of the Cordillera del Cóndor is essential, as stated by INRENA, because their mountains serve as headwaters for the main tributaries of the Marañón Basin (Cenepa, Comaina, Campana Ravine, Achume River, etc.) and:

“Any activity carried out shall alter the water regime of the basin and affect the environmental flow, thus putting the conservation of biodiversity and the availability of resources for the lower areas of the Cordillera del Cóndor at risk.”³

In addition, this shall also seriously, irremediably and irreversibly affect the indigenous populations, already impacted by the mining exploration and exploitation activities.

¹ “Hotspot” is a term coined by the British ecologist, Norman Myers, in 1988 referring to critical eco-regions that are home to a high percentage of biodiversity and which are considered the environmental emergency rooms of the planet. The Hotspot of the “tropical Andes”, where the Cordillera del Cóndor is located, has been named the “epicentre of worldwide biodiversity”.

² Official Letter 487-2006-INRENA-IANP-DOANP dated August 4, 2006, in the “Lahaina 13” Mining Concession Dossier, District of El Cenepa (Emphasis has been added by us).

³ Report 116-2007-INRENA-IANP-DOANP dated March 6, 2007, included in the Dossier on the “Vicmarama 10” and “Maravilla 6” mining concessions as well as others.

Although INRENA is aware of this extreme level of ecological and human vulnerability and in spite of having continuously and categorically spoken out against performing extractive activities in the Cordillera del Cóndor (as observed in the different dossiers regarding the awarding of rights to mining petitioners⁴), such entity strangely and surprisingly changed its position, adopting a favourable opinion without completely retracting any of its previous technical arguments.

Therefore, in the “Halcón 1” mining claim, for example, after recognizing that *“mining claims overlap with a interconnecting system of ravines that form part of the headwaters of the Cenepa River, which could be impacted by the activity and could affect the native communities and population that use them, if their water is contaminated with the waste resulting from the activity,”* INRENA favourably approved the proposal, concluding that *“due to the characteristics and importance of the ecosystems overlapping with the mining claims, mercury and cyanide must be handled with special care, in strict accordance with applicable regulations.”*⁵

INRENA indicated the following in another dossier, insofar as its initial opinion is concerned:

*“The Lahaina 17 and Lahaina 20 mining claims, which are less than 1 kilometre from the Ichigkat Muja National Park, in addition to the Lahaina 1, Lahaina 2, Lahaina 3 and Lahaina 17 claims, which are less than 10 kilometres therefrom, are situated in its Buffer Zone, on a group of rivers that empty into the Cenepa River, continuing on into the Tuntanain Communal Reserve downstream; for this reason, the development of mining activities in such claims implies an increased probability of contamination. If we also take into consideration the year-round precipitations in this zone and the fact that the contaminants generated would be quickly carried away by water towards the Tuntanain Communal Reserve, we believe that it is advisable to issue an unfavourable opinion, given that the activities carried out in the Buffer Zone must not put compliance with the conservation objectives of the Protected Natural Area at risk.”*⁶

However, in an example of extreme inconsistency, after adding a new argument advising against the mining activity in the area (*“due to the constant and abundant precipitations during the entire year, which are typical of this area, and the steep terrain [greater than 50%] runoff, resulting from the rain, could transport contaminants generated by the mining activities towards the*

⁴ In order to reach this conclusion, the following mining dossiers have been studied: Lahaina 13, Halcón 1, Cenepa 4, Maravilla 6, Vicmarama 10, Pamina, Maravilla 18, Apu, Campana 1, Vicmarama 11, Oro Grande 1 and Lahaina 1.

⁵ Report 566-2008-INRENA-IANP-DOANP in the “Halcón 1” Mining Concession Dossier, District of El Cenepa.

⁶ INRENA Report 941-2007-INRENA-IANP-DOANP, dated January 8, 2008, “Lahaina 1” Mining Concession Dossier, District of El Cenepa (Emphasis has been added by us).

Tuntanain Communal Reserve, if an eventual mining exploitation activity is improperly managed”) and in spite of failing to retract any of its previous technical arguments, INRENA subsequently changed its position, adopting a “favourable opinion”, indicating that “due to the possibilities of contamination, it is necessary to perform a study in the environment of the buffer zones of both protected natural areas before proceeding to the exploration stage, in order to define the areas of risk and levels of incompatibility with the mining activities.”⁷

Finally, by issuing a second National Park proposal, in which the protected area was reduced, INRENA categorically stated that the mining activity **would cause significant impacts** on the area, which had to be “mitigated”:

“Mining exploitation shall cause impacts on the ecosystems of the border region. Such impacts, such as contamination, need to be mitigated with a plan aimed at maintaining a balance between the economic benefits obtained and the conservation of ecological and cultural processes, by means of bi-national mechanisms.

Point B.2 of Exhibit 5, Programs of the Bi-National Border Region Development Plan of the Broad Peruvian-Ecuadorian Agreement on Border Integration, Development and Good Neighbour Relations, indicates that areas, which development requires careful planning to preserve and recover their fragile ecological balance, exist in the border region, including the zones that would no longer form part of the Protected Natural Area...⁸

In relation to the execution of the prospecting activities of Afrodita and Dorato Resources Inc., the State has not only violated national legislation (Section Two of the General Mining Act) but also Article Seventeen of Convention 169, which establishes that “the State shall prevent persons not belonging to these people from taking advantage of their customs or their lack of understanding of the laws in order to secure the ownership, possession or use of the land belonging to them.”

In summary, the Peruvian Government decided to explicitly and systematically favour extractive activities to the detriment of both the conservation of natural resources, as well as the rights to life and health of the indigenous populations that inhabit these areas, without providing any technical or legal arguments justifying its change in position regarding the compatibility of the mining activities with these ecologically vulnerable areas.

⁷ INRENA Report 158-2007-INRENA-IANP-DOANP dated April 30, 2008, “Lahaina 1” Mining Concession Dossier, District of El Cenepa.

⁸ Official Letter 198-2007-INRENA-IANP-DOANP dated March 22, 2007; INRENA issued a second proposal reducing the size of the Park.