

## **The State neither has the political will, nor the institutional capacity to prevent or mitigate the environmental contamination of indigenous territories**

An additional structural factor that impedes the commencement of extractive activities in the indigenous land is the lack of effective controls to oversee and prevent environmental contamination. According to the Special Report entitled “*Socio-Environmental Conflicts resulting from Extractive Activities in Peru*” issued by the Ombudsman’s Office indicates the following:

*“Throughout history, the Peruvian Government has not been able to prevent contamination or its adverse effects on the health and quality of life of its inhabitants. Both the levels of contamination in the cities, rivers, lakes, ocean and the more than 800 existing mining environmental liabilities, as well as the management of renewable and non-renewable natural resources, reveal this serious limitation. This situation continues, in spite of the seventeen years that have elapsed since the approval of the Environmental Code in 1991. The strengthening of environmental institutionality and the improvement of regulations are apparently perceived by some political sectors as barriers to or additional costs on top of investments, making them more costly, less competitive and, finally, discouraging them and driving them away.”<sup>1</sup>*

The World Bank reached similar conclusions, pointing out that “**political will is still too weak** to handle the mining environmental problem and to resolve the contradiction perceived between promoting and regulating the mining activity”, in spite of some recent government measures aimed at improving environmental control, thus indicating that:

*“Insofar as environmental management is concerned, MEM **still has to establish itself as an efficient and neutral entity with sufficient credibility** for the approval of environmental impact assessments and the subsequent granting of licenses,” possibly improving the existing institutional structure for environmental management in Peru in order to reduce “**the likely conflict of interests**” with an institution such as MEM, which has the mandate to both regulate and promote the mining activity.”<sup>2</sup>*

This lack of political will explains the lack of adequate public institutionality to oversee compliance with environmental legislation in Peru, in spite of the recent creation of the Ministry of the Environment. Different entities have pointed out the intrinsic weakness of environmental assessment instruments (Environmental Impact Assessments, Sworn Environmental Statements, etc.) which constitute

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<sup>1</sup> Special Report “Socio-Environmental Conflicts resulting from Extractive Activities in Peru”, Ombudsman’s Office, version as of April 16, 2007, Page 29.

<sup>2</sup> Report: “Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru”. World Bank, April 11, 2005. Executive Summary (Emphasis has been added by us).

prior requirements in order to authorize mining activities, but are not suitable to prevent or handle the contamination produced by extractive activities.

The different environmental disasters caused by mining activities in the field and city, including protected natural areas, such as the case with the Bahuja Sonene National Park constitute the consequences of this situation, without considering the paradigmatic case of impact on the Achuar indigenous people living along the Corrientes River, which is also being analyzed by the United Nations Committee on the Elimination of Racial Discrimination (CERD) and is very well-known and feared by the Awajún and Wampís native communities of El Cenepa.