

EXECUTIVE SUMMARY



LARGE-SCALE MINING IN ECUADOR AND HUMAN RIGHTS ABUSES

The Case of Corriente Resources Inc.



in collaboration with:
Rights & Democracy
International Centre for Human Rights
and Democratic Development

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Introduction

Over the past decade, a serie of social conflicts has arisen in Ecuador, as a result of the growing presence of actors seeking to develop large-scale mining in the country. These mining endeavors have been encouraged by legislative and economic measures put in place by national governments and international organizations. Mining companies’ activities have led to numerous episodes of human rights abuses, and have given rise to an important national debate on the promotion of large-scale mining in Ecuador.

It is in this context that we are presenting the executive summary of the report, “Large-Scale Mining in Ecuador and Human Rights Abuses: The Case of Corriente Resources.” The full report was prepared by the Ecuadorian Ecumenical Commission for Human Rights¹ (*Comisión Ecuémica de Derechos Humanos – CEDHU*) with support from the International Federation for Human Rights² (FIDH) and its Ecuadorian member organizations, the Regional Foundation for Advisory Services in Human Rights (*Fundación de Asesoría Legal – INREDH*)³ and the Ecuadorian Center for Economic and Social Rights (*Centro Ecuatoriano de Derechos Económicos y Sociales – CDES*)⁴, and from the Canadian organization Rights & Democracy.⁵ The United States-based organizations Environmental Defender Law Center (EDLC)⁶ and Environmental Law Alliance Worldwide (ELAW)⁷ also provided important support in the drafting of this report. The present executive summary of the full report reviews the activities of Corriente Resources Inc., a Canadian mining exploration company⁸ which, through its subsidiaries, operated in the Amazonian provinces of Morona Santiago and Zamora Chinchipe during the period from 2000 to 2010.

Methodology

The report essentially followed the methodological guide for Human Rights Impact Assessment of Foreign Direct Investments developed by the Canadian organization Rights & Democracy.⁹ The research team used the guide’s human rights framework, based on the following principles: participation; transparency (access to information); non-discrimination; the indivisibility of human rights; and the need to hold accountable those actors involved for their responsibility in the events that were analyzed.

The writing of the report began at the end of 2009 and concluded in November 2010. During field work, the research team carried out interviews, meetings, and on-site observations. In the Morona Santiago and Zamora Chinchipe provinces, interviews were conducted both with individuals and organizations who have objected to large-scale mining and with those who

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1. www.cedhu.org. Founded in 1977.
2. www.fidh.org. Founded in 1922.
3. www.inredh.org. Founded in 1993.
4. www.cdes.org.ec. Founded in 1999
5. www.dd-rd.ca. Founded in 1988.
6. www.edlc.org
7. www.elaw.org
8. Described further in the section presenting the case. This section explains that the subsidiaries are fully owned by Corriente Resources. When we refer to Corriente Resources, we are referring to Ecuacorriente and all other subsidiaries in Ecuador.
9. Rights & Democracy. *Getting it Right: A Step-by-Step Guide to Assess the Impact of Foreign Investment on Human Rights*, November 2008, www.dd-rd-ca/site/publications/

have been in favor of mining projects.¹⁰ In addition, representatives of Corriente Resources and people connected to the company, as well as local and national authorities, were interviewed. After information had been gathered from the field, it was corroborated with bibliographical and textual information.

To analyze allegations of existing or potential human rights violations, the incidents that occurred were contrasted with human rights standards enshrined in treaties, the Ecuadorian Constitution, jurisprudence, and other relevant legal instruments. Consequently, reference will be made to the international human rights system, the regional system, and the national constitutional system.

The responsibilities of all actors involved in the mining projects under investigation have also been taken into account.

First, the Ecuadorian State has the fundamental obligation to respect, protect, and promote human rights. Furthermore, States also have extraterritorial obligations with regard to their companies' activities beyond the States' territorial limits. There is indeed a growing consensus within the United Nations system, as cited most recently by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, that "home States" should ensure parent companies based on their territory or jurisdiction do not violate human rights when operating abroad.¹¹

Secondly, companies also have the responsibility to respect all human rights at all times in their operations. The Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises has confirmed that companies have a "basic responsibility" to respect human rights, "without regard to the State's duties."¹² Companies must respect the national laws of the country where they operate, as well as international standards, when these are more stringent than local laws. To meet this obligation, companies need to act with due diligence and take the necessary measures, including positive measures, to help prevent the companies' negative impacts on human rights.¹³

Selection of the case to be studied

It is important to note that Corriente Resource's projects are not the only projects called into question by local populations under allegations of human rights violations. Nevertheless, the team that prepared the report considered that an analysis of one specific case would contribute to highlight elements to help bringing attention to and prevent human rights violations that other communities in Ecuador and elsewhere could experience, as a result of similar projects.

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10. In order to arrange interviews with individuals and organizations in favor of large-scale mining, the research team contacted Ecuacorriente, specifically Ian Harris, Senior Vice President of Ecuacorriente. In an interview conducted on July 24, 2009, in Quito, Harris provided the team with names of individuals and organizations.

11. See for example CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12).

12. United Nations, Economic and Social Council, Report of the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, 2008, A/HRC/8/5, pp. 54 and 55.

13. *Ibid.*, p. 55.

The selection of the Corriente Resources case was based on the following considerations:

- During the period that it has operated in Ecuador, Corriente Resources Inc. has employed a range of methods to publicize its commitment to “social responsibility” and to fulfilling the highest international mining standards. Corriente Resources’ slogan has been “a fair treatment” (“*trato justo*”). According to the Ecuadorian State, Corriente has complied with all requirements provided for under Ecuadorian legislation, which justified granting Corriente with the authorisation, in July 2009, to pursue its activities previously suspended in 2006 (following the social protests in provinces where it operates).
- Along with other corporations’ operations, Corriente Resources’ activities are part of a gold and copper mining district in Ecuador’s southern Amazon region, in the provinces of Morona Santiago and Zamora Chinchipe. To illustrate this mining district’s political and geographic importance, we could mention that in Zamora Chinchipe alone, approximately 400,000 hectares, accounting for nearly 50 percent of the province’s total area, have been granted in concession to mining companies. The principal mining concessionaires have been the Canadian companies Corriente Resources and Kinross (formerly Aurelian).
- One of Corriente Resource’s projects, the Mirador project, is currently in the advanced exploration stage, and is set to be one of the first projects to begin large-scale mining in the country.

Large-scale metal mining in Ecuador

Small-scale metal mining has historically been carried out in the region, as one of the elements of Spanish colonization. Currently, some communities in the Andean highlands, the coastal region, and the Amazon basin continue to pan for gold using traditional methods. However, small- and medium-scale mining’s importance for the State, measured in terms of annual concession fees, continues to be minimal. According to information from the Ministry of Energy and Mines (*Ministerio de Energía y Minas*), during the past seven years small-scale mining’s contribution to gross domestic product failed to exceed 0.35 percent.¹⁴

Institutional promotion of large-scale metal mining began in the 1990s, after the Mining Law was passed and implemented in 1991. Initially, mining companies’ obligations to the State were gradually reduced. In 2000, legal reforms instituted a series of changes to mining-related laws, including eliminating deadlines for applying for concessions and doing away with severance taxes paid by companies.

In the 1990s, this state policy encouraged the arrival of foreign companies to Ecuador and the awarding of mining concessions. By April 2007, these concessions extended over an area of 2.8 million hectares, of which 45.6 percent were for metal mining.¹⁵ Exploration studies determined that the greatest mining potential is located in the Amazonian provinces of Morona Santiago and Zamora Chinchipe. In early 2010, the National Secretariat for Planning and Development (*Secretaría Nacional de Planificación – SENPLADES*) announced that among the priorities for national investment were projects held by the Cónдор Gold company and the Canadian firms Corriente Resources and Kinross (formerly Aurelian), located in these two provinces.¹⁶

Political and legal framework for mining in Ecuador

The implementation of policies designed to attract foreign investment, combined with a lack of state oversight of these projects, has given rise to a situation of social conflict, prompting multiple episodes of human rights violations. This state of affairs has also fostered a social debate on the appropriateness of promoting large-scale mining in the country.

Beginning in 2005, a series of protest activities against large-scale mining took place throughout Ecuador, including in the Zamora Chinchipe and Morona Santiago provinces. Social mobilizations have been carried out by indigenous communities, peasant farmer communities, and both urban and rural populations. Public authorities, including representatives of parish boards, municipalities, and provinces, have also participated.

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14. Paúl Cisneros, “El diálogo minero en el Ecuador: ¿Señales de una nueva relación entre comunidades, empresas extractivas y Estado?,” *Documento de trabajo No. 012* (Quito: Observatorio Socio Ambiental, Facultad Latinoamericana de Ciencias Sociales, September 2008), p. 5.

15. *Ibid.*

16. There is currently a multi-sectoral working group in the Ministry of Energy and Non-renewable Resources (*Ministerio de Energía y Recursos no Renovables*), responsible for what is known as the “copper belt” in the southeast of the country.

During and after some protest mobilizations, there have been reports of numerous cases of repression, judicial harassment, and criminalization targeting both social leaders and the general population. In 2008, the National Constituent Assembly responded to this repression by granting amnesties to participants in the protests, shelving hundreds of investigations and criminal proceedings.¹⁷ The move effectively acknowledged the legitimacy of peoples’ struggles to defend their territory and nature.

Canadian presence in the mining sector

More than half of the mining companies in the world are listed on stock exchanges in Canada.¹⁸ Canadian companies participate in approximately 50 percent of mineral exploration ventures in the worldwide, with some 6,000 projects in more than 100 countries.¹⁹ In Ecuador, Canadian capital makes up more than 90 percent of investments in the nascent metal mining sector’s exploration operations.²⁰

In 2007, the United Nations Committee on the Elimination of Racial Discrimination expressed its concern over, “adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada,” and recommended that the Canadian government, “take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada.”²¹

The Canadian parliament has considered legislation on corporate responsibility of Canadian companies outside Canada, in response to a series of social and environmental conflicts involving Canadian mining companies’ overseas operations. One such case was the 2009 murder of Mexican leader Mariano Abarca, who had requested police protection for threats in which a Canadian mining corporation appeared to be involved. In another case, Ascendant Copper company (now known as Copper Mesa Mining) was responsible for human rights abuses against peasant farmers in Imbabura, Ecuador. However, on October 27, 2010, the Mining Ethics Bill, known as Bill C-300, was defeated in the Canadian House of Commons, with 140 Members of Parliament voting against and 134 in favor.²²

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17. National Constituent Assembly, Resolutions issued on March 14, 2008 and July 22, 2008.
18. Canada, The Canadian Trade Commissioner Service, *Canada in the World of Mineral Exploration*, (March 2003), p.2.
19. Ibid.
20. Interview with the Canadian Ambassador in Ecuador, Andrew Shisko, Quito, November 10, 2009.
21. “Concluding Observations of the Committee on the Elimination of Racial Discrimination,” CERD/C/CAN/CO/18, Canada, May 25, 2007, par.17.
22. “Ethical Mining Bill Defeated after Fierce Lobbying,” *The Globe and Mail*, October 28, 2010, www.theglobeandmail.com

Corriente resources' activities in Ecuador

Corriente Resources Inc.

Corriente Resources Inc. was created in 1983, in the province of British Columbia, Canada, under the name of “Coronado Resources Inc.” In 1990, the company changed its name to “Iron King Mines Inc.,” and finally, in 1992 it became known as “Corriente Resources Inc.”²³

Until 2003, Corriente Resources engaged in acquiring properties, locating and confirming the existence of bodies of commercial ore, and subsequently selling the properties to other entities.²⁴ In recent years, Corriente has focused on the exploration and development of its concessions in the Mirador and Panantza – San Carlos projects, in what is known as the “Corriente Copper Belt” in southern Ecuador.²⁵

Corriente Resources owns 100 percent of shares in the following four companies incorporated in Ecuador:²⁶ EcuCorriente S.A.; ExplorCobres S.A.; PuertoCobre S.A.; and Proyecto Hidroeléctrico Santa Cruz S.A. (Hidrocrúz).²⁷

In January 2008, Corriente began to search for a company with the technical and financial resources needed to develop its projects.²⁸ In December 2009, an offer was negotiated with the Chinese conglomerate CRCC-Tongguan:²⁹ the conglomerate agreed to make an offer to purchase all of Corriente’s stock at a price of \$8.60 Canadian dollars in cash for each common share,³⁰ for a total of \$679 million Canadian dollars.³¹ Based on this agreement, on May 28, 2010, CRCC-Tongguan acquired 96.9 percent of Corriente’s common shares.³² On July 21, Corriente’s stock was taken off the New York Stock Exchange.³³ On August 4, 2010, CRCC-Tongguan acquired 100 percent of Corriente’s common shares, and their stock was delisted from the Toronto Stock Exchange,³⁴ making the CRCC-Tongguan consortium complete owner of the company’s projects.

As of December 2009, Corriente Resources had spent \$94 million and \$10.6 million Canadian dollars, respectively, on its Mirador and Panantza – San Carlos projects, including acquisition,

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23. Corriente Resources Inc., “Annual Information Form for the Fiscal Year Ended December 31, 2009,” March 23, 2010, p. 5.

24. *Ibid.*, p. 6.

25. *Ibid.*, p. 6.

26. Corriente Resources Inc., “Annual Information Form for the Fiscal Year Ended December 31, 2009,” March 23, 2010, p. 4.

27. *Ibid.*, p.5.

28. *Ibid.*, p. 7.

29. *Ibid.*, p. 8. The conglomerate is made up of Tongling Nonferrous Metals Group Holdings (Tongling) and China Railway Construction Corporate Limited (CRCC).

30. *Ibid.*, pp. 1 and 8.

31. “China Railway, Tongling Offer \$679 Million for Corriente,” *The Financial Post*, December 28, 2009, www.financialpost.com/story.html?id=2385968

32. Corriente Resources Inc., “CRCC-Tongguan Investment (Canada) Co., Ltd. Acquires Approximately 96.9% of Corriente Resources Inc.,” www.corriente.com

33. Corriente Resources Inc., “CRCC-Tongguan Investment (Canada) Co., Ltd. Completes Compulsory Acquisition and Delists Corriente Resources Inc.’s Common Shares,” www.corriente.com

34. *Ibid.*

exploration, and development costs.³⁵ The company had 252 employees³⁶ and held exploitation rights to 24 mining concessions in Ecuador.³⁷

Subsidiaries of Corriente Resources

Corriente Resources Inc.³⁸ held the following wholly-owned subsidiaries in Ecuador:³⁹

EcuaCorriente S.A (ECSA): Incorporated in Ecuador on December 22, 1999, with the business objective of conducting all stages of mining operations and any other activities allowed by Ecuadorian law. According to information from EcuaCorriente and from the Ecuadorian Ministry of Mines and Petroleum (*Ministerio de Minas y Petróleos*), ECSA holds 11 concessions in Zamora Chinchipe province, covering a total area of 9,230 hectares⁴⁰, which together make up the Mirador project.

ExplorCobres S.A (EXSA): Incorporated in Ecuador on September 23, 1993, also with the business objective of conducting all stages of mining operations. EXSA holds 13 concessions in Morona Santiago province, seven of which have been suspended. The remaining six make up the Panantza – San Carlos project, which extends over an area of 14,000 hectares. In addition, EXSA has applications underway for two other mining concessions in the same province, comprising 3,080 and 1,360 hectares each.

Hidrocrúz S.A: Incorporated in Ecuador on January 18, 2007, as a subsidiary of Corriente Resources. Its business objective is to develop, operate, and administer electricity, drinking water, and sewage projects. EcuaCorriente has confirmed that Hidrocrúz plans to develop a hydroelectric project in the Santa Cruz area of the canton of El Pangui, in Zamora Chinchipe province, to supply the Mirador mining project with electric power.

PuertoCobre S.A: Created in Ecuador on October 10, 2006. Its business objective is the construction and operation of dry ports and river ports, as well as deep-water ports for international transfer of cargo and containers. PuertoCobre plans to operate in the province of El Oro in Ecuador’s coastal region. According to EcuaCorriente, copper concentrate from the Mirador project will be shipped through this province.

Corriente Resources owns 100 percent of the shares in these four Ecuador-based companies.⁴¹ In addition, on June 18, 2007, Corriente Resources created Q2 Gold Resources Inc. in Canada. This autonomous exploration company was given 6,872 hectares from four of Corriente’s Ecuador concessions, in the cantons of El Panqui and Yantzaza, in Zamora Chinchipe province. Q2 Gold operates in Ecuador under the name of MidasMine S.A., and shares offices in Quito with Corriente’s subsidiaries.

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35. Corriente Resources Inc., “Annual Information Form for the Fiscal Year Ended December 31, 2009,” March 23, 2010, p. 8.

36. *Ibid.*, p. 24.

37. *Ibid.*, p. 10.

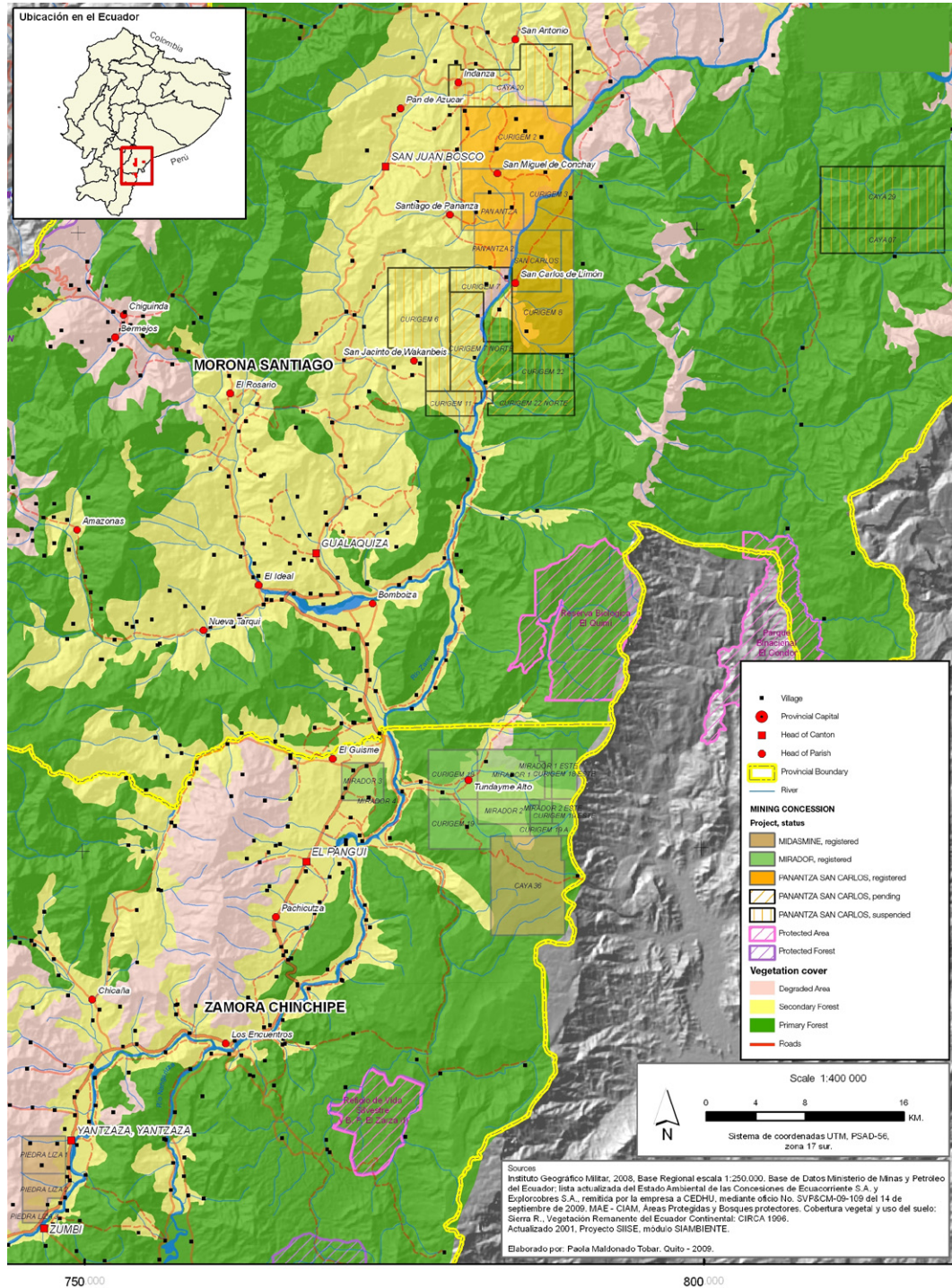
38. Interview with Ian Harris, Representative of EcuaCorriente S.A. Quito, July 22, 2009.

39. Information obtained from the web site of the Superintendency of Companies of Ecuador (*Superintendencia de Compañías de Ecuador*), <http://www.supercias.gov.ec/consultas/inicio.html>

40. Corriente Resources Inc. *Mirador Copper-Gold Project. 30,000 TPD Feasibility Study.* Ecuador, 2008, p. 1.

41. *Ibid.*, p. 4.

CORRIENTE RESOURCES' CONCESSIONS IN NATURAL AREAS IN THE PROVINCES OF MORONA SANTIAGO Y ZAMORA CHINCHIPE



The province of **Morona Santiago** covers an area of 24,062 square kilometers⁴² and is inhabited by 137,254 people.⁴³ The province is made up of the following cantons: Morona, Gualaquiza,

42. <http://www.moronasantiago.gov.ec/up/rpublico/Turismo4.pdf>

43. Ecuador, National Institute of Statistics and Census (*Instituto Nacional de Estadística y Censos-INEC*), *Proyección poblacional para 2010*, <http://www.inec.gov.ec/web/guest/inicio>

Limón Indanza, San Juan Bosco, Santiago, Sucúa and Huamboya, Logroño, Pablo Sexto, Palora, Taisha, and Tiwinza. Morona Santiago's geography is primarily composed of Amazon basin lowlands to the east, and highland jungle to the west. A significant part of Sangay National Park, declared a Natural World Heritage Site by UNESCO, is in Morona Santiago province. The eastern mountain range is the highest. The highest peaks are El Altar (5,319 meters) and El Sangay (5,230 meters). Other lower ranges include Condorzazo, Huamboya, Logroño, Cruzado, and Patacocha. The Kutucú mountain range lies to the east, together with the Upano River. The *Cordillera del Cóndor*, a region rich in biological diversity that has historically been contested by Ecuador and Peru, lies in the southeast of the province.

The province of **Zamora Chinchipe** covers an area of 10,566 square kilometers⁴⁴ and has a population of 88,778 inhabitants.⁴⁵ It comprises the following cantons: El Pangui, Yantzaza, Zamora, Nangaritza, Chinchipe, Yacuambi, Centinela del Cóndor, Palanda, and Paquisha. Located at the confluence of the Zamora and Bombuscara Rivers, the province is rich in natural scenery and plant and animal species. Podocarpus National Park, in the southeast of the province, is made up of cloud forests extending from Loja in the west to Zamora in the east. The park's 146,200 hectares contain numerous bird species and rivers. The park has more than 100 lakes, innumerable waterfalls and gorges, and countless plant and animal species.⁴⁶

The ***Cordillera del Cóndor (Condor Mountain Range)*** is one of the most diverse and least studied areas of the border between Ecuador and Peru. It is located in the eastern branch of the Andes and in the lowlands of the Ecuadorian and Peruvian Amazon. Its 150 kilometers span Sangay National Park in Ecuador and Cordillera Azul National Park in Peru. In Ecuador, it extends across the provinces of Morona Santiago and Zamora Chinchipe. The *Cordillera del Cóndor* region includes the Coangos River basin in the north and the Nangaritza River basin in the central part of the range. Likewise, the range extends from the Zamora River in the west to the Santiago River. Known for its important biological diversity,⁴⁷ the *Cordillera del Cóndor* region encompasses 16 ecosystems, from amazon forests in the lowlands to plateaus at higher altitudes. Its singular geographic and topographic characteristics have allowed unique biological niches to develop. It is estimated the ***Cordillera del Cóndor*** has 4000 plant species and between 300 and 400 bryophytes species ⁴⁸.

The *Cordillera del Cóndor* is essential for the Amazon basin's water regimes and flora. Low level clouds cover causes humidity into the diverse ecosystems⁴⁹, which favors the formation of watershed, streams and rivers feeding into important amazonian rivers such as el Marañón⁵⁰.

44. Government of the province of Zamora Chinchipe, <http://zamora-chinchipe.gov.ec/>

45. Ecuador, National Institute of Statistics and Census (*Instituto Nacional de Estadística y Censos-INEC*), *Proyección poblacional para 2010*, <http://www.inec.gov.ec/web/guest/inicio>

46. Arcoris, <http://www.arcoiris.org.ec/areas/podocarpus.php/>

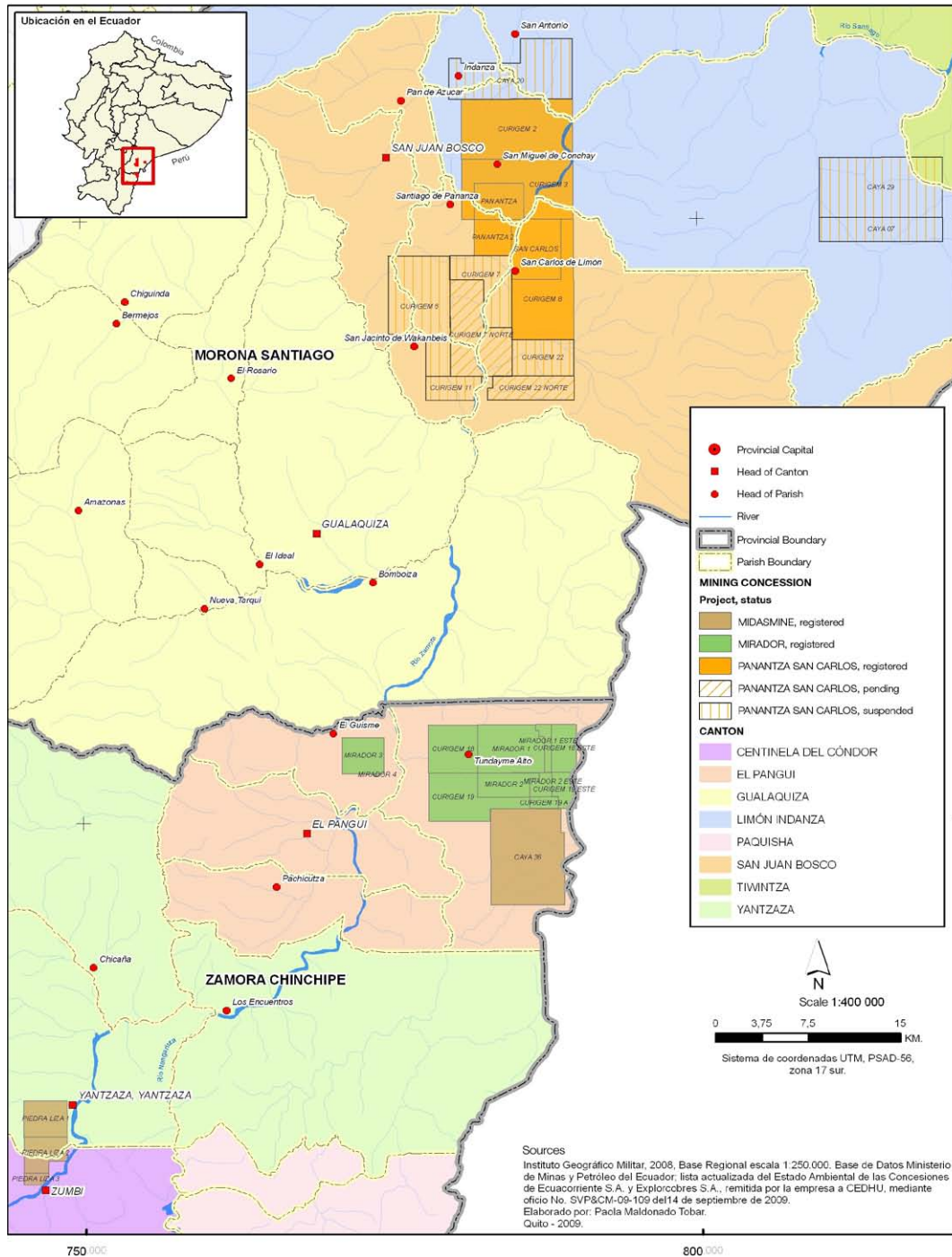
47. David A. Neill (principal investigator), "Botanical Exploration of the Cordillera del Cóndor. Region of Ecuador and Peru: Project Activities and Scientific Findings, 2004-2007," (Missouri Botanical Garden), <http://www.mobot.org/MOBOT/research/ecuador/cordillera/pdf/EntireEnglishReport.pdf>

48. *Ibíd.*

49. *Ibíd.*

50. Alfredo Luna, biólogo integrante del Equipo Rapid Assessment Program (Evaluación Biológica Rápida) de Conservación Internacional, para la Cordillera del Cóndor, realizada en 1993.

CORRIENTE RESOURCES' CONCESSIONS IN MORONA SANTIAGO Y ZAMORA CHINCHIPE



Corriente Resource’s main projects in Ecuador are the Mirador project and the Panantza – San Carlos project. The Mirador project, developed by Corriente subsidiary Ecuacorriente (ECSA), is currently in the advanced exploration stage. The Panantza – San Carlos project, whose exploration is being conducted by ExplorCobres (EXSA), was suspended on November 7, 2007, as a result of local opposition to the project.⁵¹

51. See ExplorCobres statement EXSA-GG07-01, January 25, 2007, addressed to the governor of Morona Santiago province. Also see chapter 3 of this report.

The Mirador Project is located in the rural parishes of Tundayme and El Güisme, in El Pangui canton, Zamora Chinchipe state. The concessions comprising the project cover a total of 9,230 hectares.

This project originated in the mid 1990s, when Billiton Ecuador B.V. began an exploration program on several concessions, including Curigem 18, Curigem 19, and Caya 36. In August 2001, Billiton transferred its rights to these areas to Gatro Ecuador Minera S.A. (GEMSA). GEMSA, in turn, subdivided Curigem 18 into three concessions: Curigem 18; Curigem 18 East; and Mirador 1. It also subdivided Curigem 19 into Curigem 19 and Mirador 2. In June 2003, GEMSA transferred its rights to the Mirador and Mirador 2 areas to Ecuacorriente S.A.⁵²

The Curigem 18, Curigem 19, and Caya 36 concessions, in turn, were registered to the company Curigem S.A., which was later renamed ExplorCobres.⁵³

The Panantza – San Carlos Project is located in the cantons of Limón Indaza and San Juan Bosco in Morona Santiago province. The concessions comprising this project cover approximately 14,000 hectares.

In addition, the company MidasMine S.A. holds four concessions for exploration and possible exploitation of gold, bringing its total holdings to 6,872 hectares⁵⁴.

Corriente Resources’ social responsibility policy

Corriente Resources has adopted a code of conduct to be followed by employees of its subsidiaries in Ecuador. Among other issues, the code makes reference to sustainable development and social responsibility. On the question of sustainable development, the code establishes that employees must apply environmental and health protection measures in order to meet the requirements of applicable legislation, permits, and the company’s health, safety, environmental, and community policies.

On the issue of social responsibility, the code establishes that the company’s employees are required to:

- Respect the culture, traditions and values of both the individuals and groups affected by the operations of Corriente Resources or its subsidiaries Ecuacorriente, ExplorCobres, PuertoCobre, or Hidrocruz;
- Minimize risks to the environment in which Corriente Resources or its subsidiaries work, and recognize communities as stakeholders;
- Commit to consultation and communication;

52. Ecuacorriente S.A., “Estudio de Impacto Ambiental – Proyecto Mirador,” December 2005, p. 2-1. Note: This study is not available in digital form. The research team obtained a printed version from the company. Available at the CEDHU library.

53. Gatro Ecuador Minera S.A. (GEMSA), registered with the Superintendency of Companies (*Superintendencia de Compañías*), has changed its name twice, first through resolution number 04.Q.IJ.T838 of May 6, 2004, when it changed its name to Curigem S.A., and then through resolution number 06.Q.IJ.2533, when it was renamed ExplorCobres S.A.

54. In addition to its two primary projects, Corriente Resources’ web page cites five exploration targets, all located in the province of Morona Santiago: 1) San Miguel/La Florida, 2) San Luis, 3) San Marcos, 4) Sutzú, and 5) La Dolorosa. Corriente Resources Inc., www.corriente.com/copper_assets/copper_assets.php

- Participate in the sustainable social, economic and institutional development of the communities in which Corriente or its subsidiaries operate; and
- Integrate the company’s objectives with local, regional and national objectives.⁵⁵

The company has established a tree plantation project in the Mirador project area, to reforest and restore areas that could be altered by the project. Ecuacorriente has also developed a botanical garden in the same area, to contribute to the knowledge and conservation of ecosystems and representative elements of local flora. In addition, the botanical garden is intended to help mitigate certain social and environmental impacts on forests and plant populations during the development of the Mirador project.⁵⁶

Between August and September 2009, upon request by the company, a team from the Corporate Engagement Project of CDA Collaborative Learning Projects⁵⁷ (CLP) visited Ecuacorriente installations to “help corporate managers better understand the impacts of corporate operations on local people and societies.”⁵⁸

In their report, the “Corporate Engagement Project” team advised Ecuacorriente that “from a community perspective, the ECSA company-community engagement is perceived as: favoring certain groups over others; focused on individuals who have land or already have the capacity to provide local content; working with people or groups that may lack representative legitimacy; communicating mining information mainly to those who are already pro-mining; presenting information that is biased towards positive impacts; giving work to those who are most disruptive.”⁵⁹ These conclusions, as will be demonstrated, come in support of the investigation team’s conclusions in relation to the rights to consultation and participation.

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55. Corriente Resources Inc., “Código of Conducta,” Ecuador, April 2009, p 9.

56. Ecuacorriente S.A., “Proyecto Mirador – Mirador Norte, Fase de exploración avanzada, Plan de Manejo Ambiental,” April 2009, p. 67. Visit to the

57. A project of the non-profit organization CDA Collaborative Learning Projects, <http://www.cdainc.com/cdawww/default.php>. In the words of the team that was in Ecuador: The Corporate Engagement Project (CEP) is a collaborative effort that engages multinational corporations operating in areas of socio-political tension, instability, or conflict. Its purpose is to help corporate managers to better understand the impacts of corporate operations on local people and societies. Based on this perspective and analysis, the Corporate Engagement Project helps companies develop practical management approaches to local goals, and ensure that companies establish productive and positive relations with local communities. Corporate Engagement Project, “Field Visit Report, Operator: Ecuacorriente S.A. (ECSA), Ecuador, August-September 2009,” (CDA Collaborative Learning Projects), p.1.

58. Corporate Engagement Project, “Field Visit Report, Operator: Ecuacorriente S.A. (ECSA), Ecuador, August-September 2009,” (CDA Collaborative Learning Projects), p.1.

59. *Ibid*, p.2. Available on the website of CDA Collaborative Learning Projects: www.cdainc.com

Human Rights abuses: summary of findings, conclusions, and recommendations

This section summarizes the relationship between Corriente Resources' activities and their impact or potential impact on human rights, based on the following issues that were identified:

First, the **lack of participation** of affected individuals in environmental management and **lack of an adequate consultation** process with indigenous peoples regarding the occupation of their lands and territories, and the environmental risks presented by Corriente's projects.

Secondly, the **land acquisition program** implemented by Corriente for the Mirador project. The report details this program's **impact on peasant farmer and indigenous communities' rights to remain on their land, to have adequate housing, and to secure their livelihoods**. Likewise, the report analyzes environmental impacts expected to affect the exercise of the human right to water.

Thirdly, the **repression and criminalization** directed at men and women for opposing these mining projects in the provinces of Zamora and Morona Santiago. This repression has taken place against a backdrop of a broader process of resistance against metal mining throughout the country, especially where exploratory mega-projects are being developed. The repression and criminalization of those who defend their territories and communities has occasioned, in turn, a series of violations of fundamental human rights. Abuses have been committed against the rights to physical and personal integrity, the right to liberty and security of the person, freedom of expression, human dignity, due process guarantees, and others.

At the root causes of these issues is: i) the corporate activities that affect or could affect the rights of local populations; and ii) the Ecuadorian State's inability or lack of willingness to assess and monitor mining projects and their impacts are the root causes of these violations. This situation is indicative of the broader failure of the State to comply with and enforce the Ecuadorian Constitution and international treaties under the United Nations system and the Inter-American System for the Protection of Human Rights.

Finally, the summary presents the main **conclusions and recommendations** of the report. These intend to contribute to the national debate on the social and political viability of mining in Ecuador, and its impact on the protection of human rights for all. It is hoped that these conclusions will help prevent human rights violations that could be engendered by large-scale mining.

Right of individuals, communities and peoples to be consulted and participate in decisions that affect them

The Ecuadorian State has authorized mining exploration for the **Mirador Project** without meeting its obligation to consult with affected communities and peoples. Meanwhile, from 2000 until the present day, Ecuacorriente has responded to the absence of the Ecuadorian State by using inappropriate methods to present its mining exploration activities. These efforts to persuade peasant farmer and indigenous communities have resulted in the violation of the right of self-determination of peoples and the right to consultation in environmental management.⁶⁰

Lack of indigenous consultation

States have a non-delegable duty to carry out consultations with affected communities, according to the following recommendations and legal instruments: the Ecuadorian constitution (in force at the time of Corriente’s activities); international treaties signed by Ecuador; recommendations issued by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR); and recommendations by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. States have the obligation to obtain the free, prior and informed consent of those communities affected by mining projects. Consequently, States should refrain from awarding mining concessions until they have fulfilled their obligation to consult with indigenous peoples, especially when there are indigenous lands lacking land titles.

The research process carried out during the study demonstrated that the Ecuadorian State has failed to establish adequate consultation and participation mechanisms, allowing Ecuacorriente to conduct its community relations without any official oversight. One example of this is the agreements signed with the ZamoraCchinchiipe’s Shuar Federation (*Federación Shuar de Zamora Chinchipe*).⁶¹

Regardless of the company’s intent, such situation has engendered divisions within the affected communities and peoples. In the absence of the necessary safeguards, it could easily lead to human rights violations.

Lack of participation in environmental management of affected individuals

The research process also led us to conclude that local populations (in both towns and rural areas) have not participated in decisions related to the environmental management aspects of Ecuacorriente’s projects⁶², although it is an obligation of the State as per Ecuador’s Environmental Management Law, expressly states that the State’s failure to comply with environmental consultation procedures makes the activity in question impossible to execute, and thereby renders the respective contract null and void. In the case of the Mirador project, the company held events to publicly present the Environmental Impact Assessments. However, as ELAW has indicated, detailed information was not provided at these events, making it impossible for affected communities to offer informed opinions on the environmental management of the project.

60. See the second section, chapter 1, 1.4, 1.5

61. See the full report, second section, chapter 1, 1.3.

62. See the full report, second section, chapter 1, 1.2.

The lack of consultation (and the attendant opposition expressed by affected groups) was one of the Ecuadorian government’s reasons for reverting some mining concessions to the State, through the 2008 “Mining Mandate.”⁶³ Despite this mandate, Corriente Resources’ concessions have remained intact. Rather, the State has facilitated the development of Corriente’s activities, by granting a series of permits and authorizations: the Mirador Project Environmental Management Plan, advanced exploration stage (2009); the Panantza – San Carlos Project Environmental Management Plan, advanced exploration stage (2009); archaeological research permits for the Mirador project; water use permits for advanced exploration (2009); environmental impact assessments; environmental permits to develop PuertoCobre projects; and other authorizations and permits.

During the investigation process, none of the different governmental authorities met could provide clear indications as to how they intended to carry out their obligation to consult with indigenous peoples and affected individuals in relation to mining projects.

It is only in November 2010 once the exploration phase of the Mirador Project was completed that the State convened for the first time a public hearing to discuss the project.

Right to land and territory

Our analysis of problems related to land rights revealed that the State has awarded thousands of hectares of mining concessions for large-scale mining on indigenous and peasant lands, without involving those affected by the concessions. This has exacerbated pre-existing conflicts over land tenancy in the region. Furthermore, the State has failed to establish a clear and reliable system to guarantee individual and collective properties or land holdings in regions with significant levels of social conflict and economic interests, such as Morona Santiago and Zamora Chinchipe.

By adding thousands of hectares of land to its concessions and areas of influence, Ecuacorriente has heightened the vulnerability of hundreds of families, who are affected by the sale of their land and by displacement.

Land sales and purchases

In the specific case of Ecuacorriente, the Ecuadorian State has failed to intervene in the land purchase process undertaken by the company.

In its Environmental Management Plan, Ecuacorriente presented a land acquisition procedure based on principles such as transparency and equity. Nevertheless, in practice the company’s land purchase process has been characterized by individualized negotiations, causing discontent and conflicts between several local inhabitants, as revealed in interviews and letters sent to Ecuacorriente. The company has recognized that this land purchase process was difficult and that irregularities took place.⁶⁴

63. See chapter 3 of the full report, on repression and criminalization as a response to social protest.

64. This was recognized by the company and further confirmed by individuals in interviews carried out during the investigation process. See the full report, second section, chapter 2, 1.4.

EcuaCorriente’s interest in buying land has fomented a process whereby private individuals buy land titles or land holdings from local families hoping to earn profits by selling the lands to the company. Further exacerbating this situation is the fact that numerous communities in the Amazon region still lack land titles or legal security for their lands, as described in chapter 2 of the full report: “EcuaCorriente’s land acquisition and land use program.”

Displacement of families and communities

EcuaCorriente’s infrastructure projects, and other activities required for mining exploitation, entailed the displacement of numerous families from their land, including two villages and their surrounding areas.

In Zamora Chinchipe province, all 19 families inhabiting the hamlet of San Marcos have been displaced, as have families from the parish boards of Tundayme and El Quimi.⁶⁵

Peasant farmer families have had to abandon their rural way of life, their autonomous agricultural occupations, and their food self-sufficiency. In spite of the dramatic effects of the company’s plans on the fate of numerous families, the Government did not analyze the land purchase plan, monitor the execution of the plan, or consider alternatives to displacement.

Like earlier mining regulations, current mining regulations promote involuntary displacement, by declaring all stages of the mining process to be “in the public interest.” In addition, these regulations allow mining companies to place restrictive easements as needed, which goes against fundamental rights such as the right to housing.

Right to water

While the failings of the Mirador Project’s Environmental Impact Assessment (EIA) and Updated Feasibility Study were detailed by ELAW scientists and the scientist William Sacher, these shortcomings were not taken into account by State authorities who approved them. According to these experts, the Environmental Management Plan included in EcuaCorriente’s EIA lacks the following elements: information on project follow-up, evaluation, and monitoring; contingency plans; partial closure plans; and mine closure and mine abandonment plans, along with the respective schedules and budgets. The Updated Feasibility Study also fails to present detailed plans, schedules, or budgets for the proposed changes to the project.

According to information in the Updated Feasibility Study,⁶⁶ the construction of the mine support infrastructure⁶⁷ will affect water levels of the Wawayme and Tundayme Rivers. This will in turn have repercussions on “the physical, chemical, and biotic environment of those rivers’ drainage basins.”⁶⁸ For example, flora and fauna could be altered, and numerous native species could be displaced.⁶⁹

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65. See the full report, chapter 2, 1.4, and the map of Corriente Resources’ concessions.

66. *Ibid.*

67. Support infrastructure includes a grinding mill, camps, offices, workshops, warehouses, mineral processing plants, as well as water collection for domestic use and sanitation. The presence of this infrastructure implies water level reductions in streams near each of the construction sites. These streams are tributaries of the Wawayme and Tundayme Rivers.

68. According to inhabitants of El Pangui, the Quimi River (which is not mentioned in the Environmental Impact Assessment) will also be affected. Collective interview in Gualaquiza, April 24, 2010.

69. *Ibid.*

EcuaCorriente considers that during mine operations, the most significant impacts on water quality in the region will stem from the tailings management facility and waste dumps.⁷⁰ According to scientists with Environmental Law Alliance Worldwide (ELAW), what makes large-scale mining projects particularly dangerous in tropical areas are the risks brought by torrential tropical rains.⁷¹ Because these risks are so difficult to manage, ELAW scientists maintain that it is essential to keep water contaminated by tailings and waste dumps from coming into contact with rivers and streams.⁷² The tailings management facility proposed by EcuaCorriente is a central part of the company’s strategy to prevent rivers and streams from becoming polluted.⁷³ However, ELAW indicates that the EIA presented by EcuaCorriente lacks sufficient information on this prevention strategy.⁷⁴

Furthermore, EcuaCorriente’s EIA fails to analyze the consequences of a potential accident in the tailings management facility. According to ELAW, an accident of this kind could cause an environmental disaster of catastrophic proportions, with serious ramifications for the region’s water resources.⁷⁵ Finally, one of the most serious flaws in EcuaCorriente’s EIA is the lack of information on the fate of the mine pit after mine closure and its implications for water pollution.⁷⁶ According to EcuaCorriente’s EIA, the open mine pit could flood after the mine is closed. However, the EIA also reveals that the company has not analyzed the potential and likely impact that mine pit flooding could have on water in the region.⁷⁷

Ecuadorian environmental authorities have approved an incomplete and seriously flawed EIA for the Mirador project. Beyond its direct effects, the Mirador project authorization could set the standard for EIAs for mining projects of equal or greater magnitude. The rights of local individuals and communities could be violated if this standard is applied to other projects, such as Panantza – San Carlos, in Morona Santiago province; Fruta del Norte, in Zamora Chinchipe province; and Quimsacocha and Río Blanco, in Azuay province.

Repression and criminalization

The criminalization of local inhabitants has occurred in two contexts: i) protests and mobilizations; and ii) certain families’ resistance to leaving land EcuaCorriente requires for its projects.

Local inhabitants’ discontent, and the resulting social conflict and protests against large-scale mining, are closely tied to the following factors: lack of participation by affected populations; absence of a dialogue process; absence of prior and effective consultations with the local population; extractive companies’ presence on indigenous and peasant lands without consulting local inhabitants; and particularly the failure to conduct free, prior and informed consultations with indigenous groups.

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70. EcuaCorriente S.A., “Estudio de Impacto Ambiental Ampliatorio Proyecto Mirador,” pp. 8-28, 29, 30.
71. Environmental Law Alliance Worldwide (ELAW), *Guidebook for Evaluating Mining Project EIAs*, (Eugene, USA: 2007), p. 27. Available on the Environmental Law Alliance Worldwide website, <http://www.elaw.org/mining-eia-guidebook>
72. *Ibid.*
73. *Ibid.*
74. Environmental Law Alliance Worldwide (ELAW), *Observaciones al Estudio de Impacto Ambiental del Proyecto Minero Mirador*, (Ecuador: January 2010), p. 3.
75. *Ibid.*, p.12.
76. Environmental Law Alliance Worldwide, *Observaciones al Estudio de Impacto Ambiental del Proyecto Minero Mirador*, (Ecuador: January 2010).
77. EcuaCorriente S.A., “Estudio de Impacto Ambiental Proyecto Mirador,” 2006, pp. 8-72.

Since 2006, massive protests have taken place against Ecuacorriente’s and other companies’ mining operations. Social mobilizations have been carried out by indigenous communities, peasant farmer communities, and both urban and rural populations. Public authorities, including representatives of parish boards, municipalities, and provinces, have also participated. Inhabitants of the two affected provinces have carried out high-profile mobilizations, both in regional protests in southern Ecuador and in nation-wide protests in 2009. These national mobilizations were directed against the passage of the new Mining Law and the Water Law drafted by the government.

A variety of mechanisms have been used in response to local people’s opposition to mining operations, in some cases by public officials, and in other cases by representatives of the company.⁷⁸ Judicial and administrative measures, including criminal charges, trials, and imprisonment, have been employed at times. Extrajudicial measures have also been used, including violent repression; intimidation; physical and psychological attacks; and discriminatory and stigmatizing invective. These tactics have contributed to a process of criminalization against those who oppose Ecuacorriente’s activities and large-scale mining in general.⁷⁹

Repression, and administrative and judicial proceedings targeting mining opponents, have led to violations of these opponents’ fundamental rights, placing them in a situation of extreme vulnerability.⁸⁰

Failure of the State to Intervene

For the most part, neither the persons who have manipulated the justice system to quell resistance to mining activity, nor those who have repressed and attacked inhabitants and communities, have been held accountable to victims. The victims are almost always unfamiliar with judicial principles and lack the economic resources needed to pay for their legal defense.

In several prominent cases, the justice system has been utilized to target mining opponents, including local leader Rodrigo Aucay;⁸¹ the mayor of Limón, Tarquino Cajamarca;⁸² and other social leaders. Furthermore, the State has failed to open investigations to identify the perpetrators of abuses committed against Salvador Quishpe,⁸³ former national legislator and current Zamora prefect. The State has shown even less concern for the situation of the Belezaca Vintimilla family,⁸⁴ who have been subjected to a series of trials and physical aggression by alleged security forces acting on behalf of the company for resisting eviction from the farm where they live.

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78. See various cases presented in the full report, second section, chapter 3, sections 1 and 2.
79. This process of criminalization was also discussed in Canada on several occasions. For examples, see: “Canadian CEO Denies Abuses at Mine Project,” *Ottawa Citizen*, January 18, 2007, www.canada.com/ottawacitizen; “Bullets Fly over Canadian-owned Mine,” *Toronto Star*, November 23, 2009, www.thestar.com
80. See the full report, second section, chapter 3, 1. and 2.
81. Preliminary investigations conducted by the Yantzaza Prosecutor General’s Office (*Fiscalía*): 103-06; 104-06; 107-06; 108-06; 115-06; 119-06; 120-06; 01-07; 02-07; 09-07; 016-07; 017-07; 076-07; 024-07; 072-07, 096-06, 098-07. See the second section of the full report, chapter 3, 1.2.
82. Investigation Number 55-2007, currently under the responsibility of the Méndez Prosecutor General’s Office (*Fiscalía*) in the province of Morona Santiago. See the second section of the full report, chapter 3, 1.1.
83. Interview with Salvador Quishpe. El Pangui, June 28, 2009. Criminal Complaint Number 103-2006 filed with Jorge Luis Valdivieso (Zamora Criminal Prosecutor, based in Yantzaza). See the second section, chapter 3, 1.2.
84. See the Belezaca Vintimilla case in the second section, chapter 3, 2. Judicial proceeding number 057-07, available in “Intervención minera a gran escala en Ecuador y vulneración de derechos humanos, caso Corriente Resources,” Appendix, www.cedhu.org

The National Constituent Assembly has already recognized that the justice system has been used to intimidate leaders opposing the extractive industry, when the Assembly granted a general amnesty to people targeted by criminal investigations and judicial proceedings related to the defense of their territories. Despite this precedent, the criminalization of inhabitants and human rights defenders in the context of mining activities continues.

Recommendations

➔ On the rights of individuals, communities and peoples to be consulted and to participate in decisions that affect them:

To government authorities:

- There have been widespread violations of the affected individuals’ right to participate in environmental management. It is therefore **recommended that the Ecuadorian State invalidate the Mirador project’s environmental permit**, in accordance with the Environmental Management Law. In addition, **mechanisms** should be established to **guarantee affected groups’ prior and informed effective participation**, both for mining projects and for the possible impacts of water use permits granted to mining companies.
- It can be inferred from the interviews conducted that free, prior, and informed consultation of indigenous peoples were not performed. Therefore, the Ecuadorian State has the **obligation to suspend Corriente’s operations until such time as the State carries out consultations with local inhabitants in an appropriate manner**.
- More broadly, the **State should refrain from granting licenses or permits for any large scale mining activities which would affect ancestral territories, until such time as the State obtains inhabitants’ free, prior and informed consent**. To comply with this recommendation, **it is essential that the State recognizes indigenous ownership of ancestral lands that still lack land titles**.
- Furthermore, we are concerned about contradictory findings of the Ecuadorian Supreme Court that declared the Mining Law constitutional,⁸⁵ which can increase the lack of trust that communities affected by mega-development projects have in the Ecuadorian judicial system. In this sense, we recommend the Ecuadorian courts to comply with its duty to protect fundamental rights protected by the Ecuadorian Constitution and international treaties.

The consultation process should be conducted in an appropriate manner and protect the integrity of indigenous peoples. To ensure this, **the State should prevent mining concessionaires from signing cooperation agreements with indigenous communities affected by their projects**, until such time as the State carries out prior and adequate consultations with these communities.

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85. The Court nevertheless identified criteria for the consultation: the flexible nature of the consultation process; the prior nature of the consultation; the public and informed nature of the consultation; the recognition that the consultation is not accomplished simply by providing information or publicizing the measure; the obligation to act in good faith; the obligation to publicize the process and to use a reasonable time period for each stage of the process; the prior and mutually agreed terms of the procedure; the prior and mutually agreed establishment of the subjects of the consultation; respect for the consulted peoples’ social structure and systems of authority and representation; the systematic and formalized nature of the consultation; the consulted peoples’ opinion has special legal implications; the State’s non-compliance with this obligation renders null and void those procedures and measures adopted.

To the companies:

- **The companies – including the Chinese conglomerate CRCC-Tongguan – should refrain concluding agreements with indigenous communities until they have not been duly consulted by the Ecuadorian government**

To the Chinese conglomerate CRCC-Tongguan:

- **CRCC-Tongguan should avoid any complicity with human rights violations and operate in compliance with national and international human rights standards. The conglomerate should accordingly act with due diligence, and refrain from beginning any operation associated with Corriente Resources’ projects in Ecuador without first taking into account the requirements of Ecuadorian and international human rights law .**

➔ **On the right to land and territory:**

To government authorities:

- **Put in place procedures to review and evaluate existing mining projects** in the country, including Ecuacorriente’s projects. These procedures should meet standards for large-scale mining applied in the country of origin (where the parent company is based), as well as national and international human rights standards. In addition, these procedures should provide a mechanism for independent monitoring of project implementation and compliance with social and environmental laws.
- **Conduct a comprehensive and independent analysis of the Cordillera del Cóndor hydrological regime**, and the verifiable biological, social, and environmental functions that it provides for the region and the country. Government authorities should set the highest international environmental protection standards for activities that could affect this water regime.
- Through the Ministry of the Environment (*Ministro del Ambiente*), **freely and publicly release Environmental Impact Assessments submitted by mining companies**, along with the criteria used to approve the Mirador project’s original EIA.
- **Fully apply the Mining Mandate.** The Mandate established that mining concessions must revert to the state if any of the following violations occur: lack of prior consultation; concessions granted near water sources; and concessions encompassing natural protected areas, protective forest belts, or buffer zones.
- **Undertake an independent review of Ecuacorriente’s land acquisition practices.** The current situation of persons who sold their lands to the company should be examined, in order to carefully evaluate the impact on affected individuals’ living conditions and right to housing.
- **Guarantee legal security for ancestral lands**, by granting collective land titles for land holdings that have not yet received titles. In addition, government authorities should establish an effective mechanism to issue land titles for peasant farmer land holdings.

- **Review land titles** granted to companies when their concessions are located in zones inhabited by groups with insecure land tenure. This review takes on added importance when inhabitants lack legal security for their lands, as in the case of the Belezaca Vintimilla family and others who have been identified during the preparation of this report. Furthermore, government authorities should refrain from granting further concessions on lands lacking legal security of tenure.
- Require the Chinese conglomerate CRCC-Tongguan to **present an environmental and social impact assessment for independent analysis**. Demand that the conglomerate **refrain from** establishing any kind of **relation with affected communities**, either directly or through its subsidiaries, **until** their projects have not been subject to **due consultation** carried out by the State.

To the States of origin (previously Canada and now China):

- Through laws, political and administrative measures, the States of origin should ensure that companies whose parent companies are under their jurisdiction respect human rights in their overseas operations. In addition, the obligation to protect implies that the countries of origin (Canada or China) **allow victims** in Ecuador **access to the judicial remedial mechanisms**, when for reasons outside of their control, they are unable to obtain reparations from national justice systems.

To mining companies in general:

- **The population living in regions where concessions are granted, and particularly the legal aspects of their land tenure situation, should be treated very cautiously by mining companies. In case of doubt, companies should refrain from beginning mining projects in these areas.** Furthermore, they should not contribute to dividing indigenous populations who hold collective property rights.

➔ **On the issue of repression and criminalization:**

To government authorities:

- **Ensure that all types of threats and harassment against human rights defenders come to an end.** This includes judicial harassment (such as the use of criminal legislation); administrative measures; and media-oriented tactics. To this end, government authorities should act in compliance with the recommendations issued in March 2006 by the Inter-American Commission on Human Rights; the United Nations Declaration on the Rights of Indigenous Peoples; and the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.
- **Institute mechanisms of coordination and cooperation between the justice system and the indigenous traditional system of conflict resolution**, in order to fully guarantee the rights of indigenous peoples.
- **Conduct independent, immediate, exhaustive, and impartial investigations into the reported incidents to identify the perpetrators.** If companies have been complicit in

these incidents, the Ecuadorian State should support the necessary processes for the national justice system to examine the companies' responsibility, in order to allow the victims to obtain redress for abuses suffered

- **Judicial officers, in turn, should fulfill their obligation to apply the law. Their actions should take into account not only domestic criminal law, but also the primacy of constitutional provisions and international instruments** on human rights and the environment. Furthermore, judicial officers should take into account the amnesties granted by the National Constituent Assembly to people who had been criminalized for defending their territories and Nature, and consider the political and legal elements that motivated these amnesties. **In cases in which investigations and judicial and administrative proceedings against inhabitants and social organizations lack credible evidence, these proceedings should be suspended immediately.** Rather, the Justice Ministry (*Ministerio de Justicia*) and the Ombudsman's Office (*Defensoría del Pueblo*) should investigate the consolidation of a national pattern of persecution against human rights defenders, as per the jurisprudence of the Inter-American Commission.

- **Government authorities should protect the fundamental rights of individuals and families in situations of extreme vulnerability, as in the case of the Belezaca Vintimilla family, whose right to housing is seriously threatened.** To this end, the Ministry of Justice (*Ministerio de Justicia*), and the Ombudsman's Office (*Defensoría del Pueblo*) should ensure that due process rights are respected in all judicial and administrative actions against the aforementioned family. In addition, we urge these government bodies to take immediate measures to guarantee protection, reparations, and redress in such cases.

- **In the process of reform of the Penal Code currently underway, incorporate the guarantees that human rights defenders need to carry out their work in the country,**⁸⁶ pursuant to the commitments made on November 3, 2009 by the Ecuadorian State at the Inter-American Commission on Human Rights, Hearing Number 21 on Human Rights Defenders.⁸⁷

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86. In Hearing Number 21 of the 137th Regular Period of Sessions of the Inter-American Commission on Human Rights (available at: www.cidh.org), the representative of the Ecuadorian State recognized that the Penal Code in force was anachronistic. He further recognized that the penal code has gone through a series of makeshift adjustments throughout its history, which makes it impossible to apply, inadequate, and ineffective. The representative stated that an Organic Code of Criminal Procedure is being drafted, which would eliminate various offenses that have been used to criminalize human rights defenders from the penal code. For example, acts of terrorism would no longer be listed as a separate criminal offense, but would be established as an aggravating factor for other offenses. Unpermitted possession of a weapon would no longer be classified as a criminal offense, but rather would be classified as a minor offense. The crimes of rebellion and offending the Ecuadorian president would be eliminated from the penal code. The crimes of offending public officials and authorities in the course of their duties would also be eliminated. Likewise, the criminal offense of contempt would be eliminated, and only contempt of court would be classified as a criminal offense. Malicious accusation, malicious prosecution, and slander published abroad would no longer be classified as offenses in the penal code. Holding unauthorized parades or public demonstrations would be eliminated from the penal code. Unjustified entrance into security zones would no longer be classified as a criminal offense, and would rather be classified as a minor offense. This law is being drafted by the Ministry of Justice (*Ministerio de Justicia*) through its Office of the Under Secretary for Legislative Development (*Subsecretaría de Desarrollo Normativo*). Once completed, the draft law will be sent to the National Assembly for debate and approval.

87. See Hearing Number 21 of the 137th Period of Sessions of the Inter-American Commission on Human Rights (Unit for Human Rights Defenders), available at: www.cidh.org

***To the companies, particularly Corriente Resources
(now the conglomerate CRCC-Tongguan):***

- **Refrain from using the national justice system to file unfounded administrative or criminal complaints**, as a way to persuade persons resisting their projects.
- **Refrain from intervening in areas inhabited by indigenous peoples, unless these groups have given their prior, free, and informed consent** to the project in question.
- **Refrain from hiring indigenous people or peasant farmers as security forces**, given that the circumstances in which these hirings have taken place have led – directly or indirectly – to human rights violations.

Final considerations

The concessions in the areas of the Mirador and Panantza – San Carlos projects were held by at least four different companies before they were acquired by Corriente Resources. While we documented the irregularities committed by the Ecuadorian State and Corriente Resources, we witnessed the multimillionaire negotiations for transfer of stock from Corriente to the Chinese consortium CRCC-Tongguan. This transfer of operations is actually common practice of exploration companies known as “juniors.” In Ecuador, “juniors” continue to negotiate mining concessions and lands, violating local inhabitants’ rights without assuming responsibility for the harm caused by their actions.

In light of these human rights violations, and to prevent the exacerbation of social conflicts and the escalation of violence, **we therefore recommend that the State and Ecuadorian society, especially local inhabitants and indigenous peoples**, make the efforts necessary to begin a far-reaching debate on the implementation of large-scale mining and its real costs for the country.

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- Juan Xavier Trejo P, Trejo Rodriguez and Associates Law Firm LLP (*Trejo Rodríguez & Asociados Abogados Cía. Ltda*). Legal consultant hired by Ecuacorriente. Quito, 10 November, 2009.
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89. The Council for Responsible Mining (Consejo de Minería Responsable – CONMIN) is a non-profit group made up of the main Canadian mining companies in Ecuador (Kinross-Aurelian, Iamgold Ecuador S.A, International Minerals Corporation – IMC, Ecuacorriente S.A., Ecometals and Curimining).

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Province of Zamora Chinchipe

Canton of Zamora, canton seat

- James Salcedo, President of the Zamora Chamber of Mines (*Cámara de Minería*). Zamora, August 3, 2009.
- Ángel Awak, leader with FEPNASHZ. Zamora, August 3, 2009.
- Dalila Calva, “11 de Julio” Small-Scale Mining Cooperative (*Cooperativa de Minería Artesanal “11 de Julio”*). Zamora, August 3, 2009.
- Rubén Nanchiap. Zamora, August 3, 2009.
- Segundo Larreátegui, lawyer for Salvador Quishpe. Zamora, August 3, 2009.

Canton of Yantzaza, canton seat

- Carlos Guamán, Vice Mayor of the Municipality of Yantzaza. Yantzaza, August 4, 2009.
- Prosecutors (*Fiscales*) from Yantzaza. Yantzaza, August 4, 2009.

Parish of Los Encuentros

- Members of the Los Encuentros Parish Board. Los Encuentros, August 4, 2009.

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- Inhabitants of El Pangui. El Pangui, June 28, 2009.
- David Loja. El Pangui, August 5, 2009.
- Narciza Camaño. El Pangui, August 5, 2009.
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- Doctor with Ecuacorriente. El Pangui, November 7, 2009.

Parish of Tundayme, canton of El Pangui

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- Gladys León, San Marcos neighborhood, November 7, 2009.
- María Aucay, Tundayme Parish seat. Tundayme, August 6, 2009.
- Alejandro Herrera. Tundayme, November 7, 2009.
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Parish of El Güismi, canton of El Pangui

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Province of Morona Santiago

Canton of Macas

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- Adriano Ankuash. Macas, August 8, 2009.

Canton of Gualaquiza

- Inhabitants of Gualaquiza. Gualaquiza, June 28, 2009.
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Parish of Bomboiza

- Leaders and members of the Ayantas community. Ayantas, August 5, 2009.
- Inhabitant of Valle El Quimi. Valle del Quimi, August 6, 2009.
- Miguel Arce. Valle El Quimi, August 6, 2009.

Parish of Panantza, canton of San Juan Bosco

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- Member of the Panantza Parish Board. August 7, 2009.

Canton of Limón, canton seat

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Canton of Sucúa

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- Sara Torres, lawyer. Sucúa, August 8, 2009.

Province of Ontario (Canada)

City of Ottawa

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Province of Zamora Chinchipe

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- Visit to Valle El Quimi, August 6, 2009.
- Visit to the Tundayme August 6, 2009.
- Visit to Machinaza Alto, August 5, 2009.

Province of Morona Santiago

- Visit to Shuar indigenous community in the Canton of Limón. Limón, June 26, 2009.
- Visit to Ecuacorriente installations. Gualaquiza, August 6, 2009.
- Visit to the Parish of Panantza, August 7, 2009.
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Coordination:

Comisión Ecuémica de Derechos Humanos, CEDHU
International Federation for Human Rights, FIDH

With the collaboration of:

Rights & Democracy
Centro de Derechos Económicos y Sociales, CDES
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Francisco Hurtado, Zamora river



in collaboration with:

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Over the past decade, a series of social conflicts has arisen in Ecuador, as a result of the growing presence of actors seeking to develop large-scale mining in the country. These mining endeavors have been encouraged by legislative and economic measures put in place by national governments and international organizations. Mining companies' activities have led to numerous episodes of human rights abuses, and have given rise to an important national debate on the promotion of large-scale mining in Ecuador.