

Request for review to Canada's National Contact Point under the OECD Guidelines for Multinational Enterprises:

Regarding mining activities by Corriente Resources Inc. and CRCC-Tongguan Investment (Canada) Co. Ltd. (Corriente-CRCC) in the province of Zamora Chinchipe, Ecuador

Submitted July 25, 2013

Notifiers:

The International Federation for Human Rights (FIDH), the Ecumenical Human Rights Commission of Ecuador (CEDHU) and MiningWatch Canada on behalf of a group of nine people affected by the Ecuadorian operations of Corriente Resources and CRCC-Tongguan Investment (Canada) Co., Ltd., Canadian subsidiaries of the Chinese consortium CRCC-Tongguan. The notifiers have requested that their names remain confidential.

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Table of Contents

| | |
|--|-----------|
| TABLE OF CONTENTS | 2 |
| APPENDICES | 3 |
| I. INTRODUCTION | 4 |
| II. ADMISSIBILITY | 5 |
| A. CORRIENTE-CRCC: INFORMATION ABOUT THE CANADIAN-REGISTERED COMPANY | 5 |
| B. INTEREST OF THE NOTIFIERS FILING THE COMPLAINT | 7 |
| C. COMPETENCY OF THE CANADIAN NCP | 7 |
| D. PREVIOUS CONTACT BETWEEN THE PARTIES AND PARALLEL PROCEEDINGS | 8 |
| E. APPLICABILITY OF THE REVISED 2011 OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES | 12 |
| III. CURRENT AND FORESEEABLE HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF THE MIRADOR PROJECT | 12 |
| A. LACK OF RESPECT FOR RIGHT TO PRIOR CONSULTATION OF GENERAL POPULATION BASED ON ENVIRONMENTAL RISKS AND LACK OF FREE, PRIOR AND INFORMED CONSENT OF INDIGENOUS POPULATION | 13 |
| B. VIOLATIONS OF PROPERTY RIGHTS, INDIGENOUS PEOPLES' RIGHTS TO LANDS AND TERRITORIES, AND THE RIGHT NOT TO BE FORCIBLY DISPLACED | 15 |
| C. VIOLATION OF INDIGENOUS PEOPLES' RIGHTS AND CREATION OF SOCIAL DIVISIONS | 18 |
| D. INVOLVEMENT OF THE COMPANY IN STATE REPRESSION OF SOCIAL PROTEST AND VIOLENCE AGAINST THOSE OPPOSED TO THE INTRODUCTION OF LARGE SCALE MINING | 19 |
| E. RISK OF IMPACTS ON BIODIVERSITY AND ECOLOGICAL INTEGRITY IN THE CÓNDROR MOUNTAIN RANGE, VIOLATION OF THE RIGHT TO WATER AND THE RIGHTS OF NATURE | 21 |
| F. POOR WORKING CONDITIONS | 24 |
| IV. CORRIENTE-CRCC'S FAILURE TO COMPLY WITH THE OECD GUIDELINES | 24 |
| A. VIOLATION OF CHAPTER IV OF THE GUIDELINES: VIOLATION OF HUMAN RIGHTS INCLUDING COMMUNITY PROPERTY RIGHTS, THE RIGHT OF INDIGENOUS PEOPLES TO THEIR LANDS AND TERRITORIES, AND THE RIGHT TO FREEDOM FROM DISPLACEMENT..... | 24 |
| B. LACK OF MEANINGFUL STAKEHOLDER ENGAGEMENT..... | 25 |
| C. VIOLATION OF GENERAL POLICIES AND GENERAL PRINCIPLES OF THE GUIDELINES | 26 |
| D. VIOLATION OF CHAPTER VI: ENVIRONMENTAL IMPACTS..... | 28 |
| V. CONCLUSIONS AND PETITIONS | 29 |

APPENDICES

1. CEDHU and FIDH in collaboration with Rights & Democracy, “Large-Scale Mining in Ecuador and Human Rights Abuses: The Case of Corriente Resources Inc.,” January 2011.
2. Business & Human Rights Resources Centre, “China Railway response regarding allegations of human rights abuses related to the activities of its subsidiary Corriente Resources in Ecuador,” March 21, 2011.
3. National Constituent Assembly, Constituent Mandate No 6 known as the Mining Mandate, April 18, 2008.
4. CEDHU and Acción Ecológica, Lawsuit for alleged breach of the Mining Mandate filed before the Ecuadorian Constitutional Court, July 2012.
5. Ministry of the Environment, Response to CEDHU regarding inquiry pertaining to lack of permit for mineral processing phase of the Mirador project, March 20, 2013.
6. Engineer Patricio Viteri Díaz former Community Relations Manager for ECSA, Communication to executive members of ECSA regarding the company’s Land Acquisition Process, April 10, 2007.
7. “Private Contract” signed by Engineer Leonardo Elizalde Calle in representation of Ecuacorriente S.A. with contractor Raúl Agustín Ochoa Araujo, February 15, 2004.
8. Manuel Sánchez Segarra, Coordinator of Farmers at risk from Ecuacorriente’s operations in Tundayme, “Open Letter for Media in the provinces of Morona Santiago and Zamora Chinchipe,” about events taking place during the week of May 20, 2013.
9. Collective for the Defense of the Cónдор Mountain Range, “Amenaza de desalojo de comunidad Shuar por proyecto minero,” June 27, 2013.
10. Jim Kuipers, PR for e-tech international, “Evaluation of the stability of installations for the management of tailings and estimation of financial surety for the Mirador project,” February 2012.
11. La Hora, “Trabajadores de ECSA exigen el ‘trato justo’,” October 30, 2012.

I. INTRODUCTION

As described in FIDH and CEDHU's 2010 report *Large-scale Mining in Ecuador and Human Rights Abuses: The Case of Corriente Resources Inc.* (see Appendix 1), since the Mirador project began to the present day, Corriente-CRCC activities have had negative impacts on local communities and have placed the environment at risk in the county of El Pangui, in the province of Zamora Chinchipe, Ecuador (See Appendix 1).¹

These negative impacts are due, on the one hand, to the lack of adequate information and participation of affected communities in planning and decision-making, as well as the lack of adequate studies regarding potential environmental impacts.

In particular, in the context of irregularities in the Company's land acquisition program carried out by its Ecuadorian subsidiary Ecuacorriente, the property rights of the communities and indigenous peoples were breached, along with their right to freedom of movement and circulation (including through violent evictions), the right to prior consultation of the general public in the area as per Ecuadorian law, and the rights of indigenous peoples to prior, free and informed consent with regard to the use of their lands and territories.

Further, the Company has fostered social divisions within the communities, selectively entering into agreements with particular groups and has participated in state repression against those defending their lands and territories from large-scale mining.

Thus, the actions of the Company have affected, and continue to affect, the rights of the communities and indigenous peoples, and their opportunity to maintain their livelihoods, thereby affecting their economic, social and cultural rights.

FIDH, CEDHU and MiningWatch Canada believe that the Company, through the activities of its subsidiaries in Ecuador, has not respected the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises nor has it fulfilled its responsibilities to prevent adverse environmental risks, nor has it respected and ensured the safety of local communities. Neither has it complied with its own Corporate Social Responsibility commitments, through which it committed to "provide a sustainable future in communities where we work," to "contribute to the care and preservation of the environment,"² and to "value and respect local cultural heritage, build relationships based on honesty, openness and mutual trust, and support local communities and their development [...]."³

The Notifiers of this request affirm that they have read and understood the norms and procedures of the Canadian NCP. They also affirm their willingness to commit to dialogue in good faith and initiate a constructive collaboration with the counterpart.

Considering the OECD Guidelines, they request that the Canadian NCP:

- Reply to the notifiers acknowledging receipt;
- Carry out an initial assessment and determine that the issues raised are relevant to the implementation of the Guidelines and merit further examination, thus admitting the Complaint;

¹ FIDH and CEDHU Large scale mining in Ecuador and human rights violations: Corriente case (*Intervención Minera a Gran Escala*)

² Corriente code of conduct and Health, Safety, Environment and Community Policy, available at http://www.corriente.com/media/PDFs/corp_governance/HealthSafetyENG.pdf.

³ *Ibid.*

- Once the initial assessment is complete, that the NCP open an investigation into Corriente-CRCC's activities in Ecuador and facilitate a dialogue between the parties to resolve the indicated matters; and
- Based on its investigation, that the NCP make recommendations to Corriente-CRCC, to assure that the company respect the human rights of the affected communities, including that the company desist from mining in Ecuador, given its serious risks and impacts on human rights and the environment, both current and long term.

II. ADMISSIBILITY

It is our belief that this case falls within the mandate of the National Contact Point (NCP) under the OECD Guidelines for the following reasons:

A. *Corriente-CRCC: Information about the Canadian-registered company*

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Corriente Resources Inc. was established in 1983, in British Columbia, Canada, under the name "Coronado Resources Inc." In 1990, the company changed its name to "Iron King Mines Inc" and in 1992, to "Corriente Resources Inc." (*Corriente*). Since 2003, Corriente engaged in the acquisition of properties, location and confirmation of the existence of bodies of commercially viable mineral deposits, and the selling of properties to other entities for subsequent development.

Corriente has 4 subsidiaries in Ecuador: Ecuacorriente, S.A. (ECSA); ExplorCobres, S.A. (EXSA); PuertoCobre, S.A.; and Proyecto Hidroeléctrico Santa Cruz, S.A. (Hidrocrúz).

The so called *Corriente Copper Belt* includes four copper and copper-gold porphyry deposits in the Amazonian provinces of Zamora Chinchipe and Morona Santiago, including: Mirador, Mirador Norte, Panantza, and San Carlos.

The respective status of its copper assets are as follows: Mirador and Mirador Norte are ready to enter production for which the company has signed the first contract for large-scale mining in Ecuador with the Ecuadorian government; the Panantza-San Carlos project has had an environmental license for advanced exploration since March 17, 2011; and San Miguel, La Florida, Sutzú, San Marcos, San Luis and Dolorosa projects are described on the company's website as *Exploration Targets*.

Mirador project affects peasant and shuar indigenous communities in the county of El Pangui, in the Amazonian province of Zamora Chinchipe. It is managed by CRCC-Corriente's subsidiary Ecuacorriente (ECSA) and covers a surface of 9,320 hectares.

From December 5, 2006 until March 2009, Ecuacorriente's activities were suspended due to the social upheaval that its presence had provoked in the county of El Pangui.⁴⁵ It restarted its activities in 2009 even though the Mining Mandate, approved by the National Constitutional Assembly (*Asamblea Nacional Constituyente*) in April 2008, had ordered the extinction of mining concessions located in water resources and that had not ensured prior consultation of affected communities, such as concessions held by Corriente. In spite of this double impediment to its operations, the Company continued with its land acquisition plan, which had been initiated in 2001, during the period of suspension.

In January 2008, Corriente began looking for a company with the technical and financial resources to purchase the Company and its projects. In December 2009, the Chinese consortium CRCC-Tongguan made an offer to acquire Corriente at a price of \$8.60 CAN per share, paid in cash for a total of \$679 million CAN. CRCC is the China Railway Construction Corporation Limited and Tongguan refers to Tongling Nonferrous Metals Group Holdings Co., Ltd., a Chinese-government owned company mainly involved in copper extraction and processing. On December 30, 2009, CRCC-Tongguan Investment (Canada) Co., Ltd. (CRCC-Tongguan Canadá) was incorporated in British Columbia in order to purchase Corriente Resources.

Based on this agreement, CRCC-Tongguan Canada acquired 96.9% of Corriente's common shares on May 28, 2010, and on June 21, Corriente ceased to list on the New York Stock Exchange (NYSE). On August 4, CRCC-Tongguan Canada acquired 100% of the common shares of Corriente, and Corriente ceased to list on the Toronto Stock Exchange. Corriente Resources Inc. is now a subsidiary of CRCC-Tongguan Investment (Canada) Co., Ltd. **We refer to both Canadian companies, Corriente Resources and CRCC-Tongguan Investment (Canada) Co., Ltd. as 'Corriente-CRCC'.**

According to information published in the Ecuadorian press, ECSA obtained the Environmental License for the mineral exploitation phase for the Mirador project on February 24, 2012, following approval of its respective Environmental Impact Assessment study. On March 5, 2012, ECSA and Ecuador's Ministry of Non-Renewable Natural Resources, representing the Government of Ecuador, signed a contract to develop the Mirador project. The contract grants the Company the exclusive right to prospect, explore, exploit, beneficiate, melt, refine, commercialize and to sell all mineral deposits existing and extracted from the concession area, despite Company only having obtained the environmental licence for mineral production and not for the beneficiation phase. The contract period is for 25 years (extendable up to 60 years).

It is worth noting that Mr. Li Dongqing signed the contract with Ecuador's Ministry of Non-Renewable Natural Resources on behalf of ECSA.⁶ Furthermore, until at least January 2010, Mr. Li Dongqing was Chief Executive Officer (CEO) of CRCC-Tongguan Investment (Canada) Co., Ltd.⁷ and, at the date of acquisition of the Company, he was President of Corriente Resources.⁸

In light of this information, the present request is filed against the Canadian entity Corriente – CRCC, which holds the subsidiary ECSA that operates the Mirador project and that is causing the human rights impacts referred to in this request. It is clear that, as 100% holder of the Ecuadorian entity ECSA and with shared management across subsidiaries, Corriente-CRCC has

⁴ EcuadorInmediato.com, "Ecuacorrientes acepta suspensión de actividades en amazonía de Ecuador," December 6, 2006, online: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=45202&umt=ecuacorriente_acepta_suspension_actividades_en_amazonia_ecuador

⁵ Corriente Resources, Press Release, "Corriente Receives Official Notice that All Suspensions Are Lifted," March 17, 2009

⁶ Contrato de Explotación Minera, Ministerio de Recursos Naturales y la Compañía Ecuacorrientes S.A., March 2012.

⁷ Assignment and Assumption Agreement addressed to CRCC-Tongguan Investment (Canada) Co., Ltd., January 25, 2010.

⁸ Corriente Resources, Press Release, "Appointment of New Officers," June 2, 2010; http://www.corriente.com/media/PDFs/news/2010/nr20100602_CORRIENTE-NR_2947862_1.pdf

the ability to direct ECSA's activities. Corriente-CRCC is, thus, directly linked to ECSA and responsible for the violations of the Guidelines referred in this request. In the present case, Corriente should have taken the necessary steps, including directing its Ecuadorian subsidiary to prevent ECSA from breaching the Guidelines and to ensure that its operations are also in line with other International Standards.

B. Interest of the notifiers filing the Complaint

Nine affected individuals, principally from the county of El Panguí in the province of Zamora Chinchipe are submitting this complaint. They are represented in this request for review by the following co-notifiers:

FIDH

The International Federation for Human Rights, created in 1922, includes 178 human rights organizations from around the world and works internationally to protect human rights as they are defined in the 1948 Universal Declaration and later international documents. In particular, FIDH promotes respect for economic, social and cultural rights in the context of globalization. FIDH has been actively advocating for the establishment of a strengthened framework applicable to non-state actors.

CEDHU

The Ecumenical Human Rights Commission of Ecuador promotes human rights in Ecuador from a holistic perspective through coordinating with national social movements and with international human rights organizations. CEDHU carries out its objectives through investigation, complaints and mobilization of public opinion.

MiningWatch Canada

MiningWatch Canada addresses the urgent need for a coordinated public interest response given mineral policies and practices in Canada and around the world that threaten public health, water and air quality, fish and wildlife habitat and community values. With technical and strategic expertise from across Canada, MiningWatch Canada carries out and/or supports the monitoring, analysis and advocacy necessary to affect the behavior of industry and public decision-makers.

C. Competency of the Canadian NCP

This Request is being filed with the Canadian NCP given that there is no NCP in Ecuador where the issues have arisen. According to point 7 of the Canadian NCP procedural rules, in such a case “*the request for review may be submitted to the NCP in the MNE’s home country, if the home country adheres to the Guidelines.*” The Notifiers therefore understand that the Canadian NCP has the power to investigate this case, given CRCC-Tongguan’s two corporate entities registered and located in the province of British Columbia, Canada, and referred to here as Corriente-CRCC.

Furthermore, the lack of a NCP under the Guidelines in China, where CRCC-Corriente’s parent company is domiciled, further justifies the presentation of this Request before the Canadian NCP.

As indicated in comments prepared by the OECD Investment Committee (the *Commentary*), in relation to matters that arise in non-adhering countries (point 39) and as noted in paragraph 2 of the Concepts and Principles chapter, businesses “*are encouraged to observe the Guidelines wherever they operate, taking into account the particular circumstances of each host country.*” In

the event that Guidelines-related issues arise in a non-adhering country, home country NCPs will take steps to develop an understanding of the issues involved.”⁹

D. Previous contact between the parties and parallel proceedings

The existence of parallel proceedings does not prevent the NCP from responding to a Request. According to the Implementation Procedures of the OECD Guidelines: *“When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned.”¹⁰*

The Notifiers and the people they represent, have made various efforts seeking, on one hand, to dialogue with the Company, and, on the other, to resolve the issues through a number of legal proceedings filed in Ecuador, as described in this section.

Regarding attempts to resolve the dispute with the Company, FIDH and CEDHU, in close collaboration with those affected by the Mirador project, have made various attempts during the last three years to address with the Company measures that would prevent harm and remedy negative impacts to the environment and human rights of the local communities. All earlier efforts to resolve the dispute with the Company have so far failed.

In June 2009, FIDH informed Corriente of its intention to support the communities through development of a human rights impact assessment of the Mirador project. On June 29, 2009, FIDH representatives met with ECSA in Quito. At this time, FIDH contacted the Company, presented the research project and the information gathered therein. In a second attempt, FIDH met again on November 2009 with representatives of ECSA in Quito and visited the mine site. Company representatives seemed to cooperate and provided information in regard to FIDH’s questions, as well as key documents, such as an environmental impact assessment that the Company had completed.

Besides trying to work with the Company, FIDH and CEDHU have tried to dialogue with government authorities, including the Ministry of Non-Renewable Natural Resources, the Ministry of Environment, the Canadian Embassy in Ecuador, the Peoples’s Secretariat and the Ombudsman’s Office, both during and after the research process, in order to alert them to actual and potential human rights violations resulting from the Mirador project and to prevent further social and environmental impacts. Contact was maintained even after the publication of the report, informing them in May 2011 of the eviction of a campesino family.

Prior to the publication of the report, FIDH representatives met with ECSA in Quito to discuss the main findings of the report. FIDH incorporated elements provided by the Company into the report. At the time of publication of the report, the CRCC-Tongguan consortium acquired Corriente. FIDH sent the report to the new President, Mr. Zhongyi Sheng and ECSA, requesting a meeting.

In January 2011, two workshops were organized in Quito to release the report and discuss the main findings and recommendations. Representatives of government officials, media, the

⁹ Implementation Procedures of the OECD Guidelines For Multinational Enterprises, para. 39, available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>

¹⁰ Procedure Guide for Canada’s National Contact Point for OECD Guidelines for MNEs, para. 26, (May 2011), available at http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/procedures_guide_de_procedure.aspx=eng&view=d.

business community (companies and business associations) and the general public attended. Unfortunately, ECSA did not respond to the invitation from FIDH and CEDHU to participate in the workshops, nor to the request for a meeting. Later in 2011, FIDH translated the executive summary of its report into Chinese and tried again to meet with representatives of the Company. These requests were ignored.

A response in Chinese, however, was provided to the Business & Human Rights Resource Centre, which contacted the company prior to publication of information regarding Corrientes' alleged human rights abuses related to its activities in Ecuador. The company's answer did not provide any explanation whatsoever, rather the company claimed to be unaware of any indigenous rights violations of (See Appendix 2).

Additionally, over the last few years, civil society organizations in Ecuador have filed the following complaints, including administrative and legal actions against CRCC-Corriente's Mirador project:

- In 2007 at its 127th session of hearings, civil society organizations in Ecuador (CDES, CEDHU, DECOIN) presented a report to the Inter-American Commission on Human Rights.¹¹ The report explicitly denounced EcuCorriente's participation in several episodes that threatened the physical integrity of people, all occurring in 2006, in addition to other human rights abuses. For example, these included, the Ecuadorian military's detention of several people opposed to mining, using Company vehicles and the mine site as the place where people were held. In the mining camp, the military spearheaded a series of physical abuses against detainees, among those, a public official of the province of Zamora Chinchipe.
- On October 26, 2011, CEDHU sent correspondence to the Ministry of Non-Renewable Natural Resources requesting compliance with the Mining Mandate, which was passed on April 18, 2008 by the National Constituent Assembly (See Appendix 3). Article 1 of the Mining Mandate ordered the extinguishment, revocation and suspension of mining concessions in the exploration phase that had not made investments for the development of the project up to December 31, 2007; that had not submitted their environmental impact study; and that had *not carried out prior consultation of affected communities* [emphasis ours] as per Ecuadorian law. Similarly, Article 3 of the Mandate ordered the extinguishment without financial compensation of mining concessions granted inside protected areas, protected forests and buffer zones defined by the competent authority, and those areas that affect watersheds and other sources of water. Article 4 of this decree ordered the extinguishment without financial compensation of mining concessions where more than three (3) concessions have been awarded to a single individual or spouse, or legal entities and their related companies [...].

The Mirador project fits several criteria for the cancellation of a mining concession according to the Mining Mandate. Consequently, CEDHU sent a letter to the Ministry of Non-Renewable Natural Resources claiming that, to date, no mining concessions had been revoked in relation to projects for lack of prior consultation (Art. 1 of the Mining Mandate), such as in the case of the Mirador Project; that neither had Article 3 of the Mandate been applied, which called for the annulment of concessions situated in headwaters and other sources of water, as is also the case of the Mirador Project; and

¹¹ Centro de Derechos Económicos y Sociales (CDES), CEDHU, Defensa y Conservación de Intag (DECOIN) and Acción Ecológica, "Informe sobre la Situación de las Personas y Pueblos Afectados por las Actividades Mineras y Petroleras en el Ecuador." Presented during the 127th Ordinary Sessions of the Inter American Commission on Human Rights, March 2, 2007.

that neither had Article 4 been applied to cases such as CRCC-Corriente's concessions, where a company held more than three concessions.

The Minister of Non-Renewable Resources responded stating that the Mining Mandate "had been applied according to law in a timely manner and ceased being in effect once the new, secure and equitable legal framework for the mining sector was published in the Mining Law."¹² The response failed to provide any explanation for lack of prior consultation with regard to mining projects and to its location in water resources.

- In 2012, CEDHU and Acción Ecológica, an environmental justice NGO in Quito, filed a lawsuit with the Constitutional Court alleging breach of the Mining Mandate and requesting that it safeguard constitutional rights (See Appendix 4). The lawsuit claims that non-compliance with Article 3 of the Mining Mandate would allow companies to develop their projects without meeting legal requirements and threaten the rights of nature (enshrined in the Constitution of Ecuador since September 2008). Such a failure to comply would also threaten the right of the population to live in a healthy environment, free of pollution. The lawsuit describes how the lack of implementation of the Mandate violates the rights of the Ecuadorian population to prior consultation regarding projects with serious environmental impacts. Furthermore, it highlighted procedural irregularities in the process of implementing the Mining Mandate, given that it is not up to the Ministers of Mines, Petroleum and Non-renewable Natural Resources; nor of the Secretary of Mines, nor of National and Regional Directors of Mining (as representatives of the executive government), to decide whether the Mining Mandate is in effect, but rather a responsibility of legislative bodies, as the relevant authorities to determine which mining concessions fall under the Mandate. The Constitutional Court decision on this case is still pending.
- Additional complaints were filed with Ecuador's Comptroller General, who then issued a preliminary audit report. In 2011, at the request of several community actors, including CEDHU, the Auditor General undertook an environmental audit, reviewing management practices and activities of the Ministries of Environment, Non-Renewable Natural Resources and other institutions involved in the Mirador and Panantza-San Carlos mining projects. In February 2012, the Comptroller General issued a preliminary report. Among other things, this report concluded that the Mirador project area contains headwaters and other sources of water, that the number of mining concessions exceeded the legal limit of three; that there had been no dissemination of the EIA nor of the environmental audit, the latter of which had deficiencies; and that the impact studies for the exploration and processing phases did not take into account the location of the waste rock dump or tailing ponds. To date, the Auditor General has not yet issued a final report.
- Faced with the imminent commencement of operations at the Mirador Project, on January 15, 2013, Ecuadorian organizations united in defence of the Cónдор mountain range and filed a lawsuit calling for the protection of the rights of nature with the Twenty-Fifth Civil Court of the province of Pichincha. The lawsuit called for the suspension the Mirador Project and argued that the Mirador Project, including the mining concession, the environmental license and mining contract signed between the Ministry of Non-Renewable Resources and ECSA violate the rights of nature and the right to water as set out in the Constitution of Ecuador. With regard to the rights of nature, Article 71 states: "*Nature, or Pachamama, where life is produced and*

¹² The Mining Law was approved by an interim legislative committee in January 2009.

proliferates, has the right for its existence to be fully respected, and to maintain and regenerate its vital cycles, structures, functions and evolutionary processes."¹³

The Constitutional Court rejected the lawsuit, arguing that the State, through the Ministry of the Environment, had conducted environmental conservation feasibility studies in order to prevent negative impacts on the ecosystem from mining activities.

- In August 2012, in time for the third periodic review of Ecuador by the United Nations Committee on Economic, Social and Cultural Rights, CEDHU presented an alternative report. Among the issues raised, the report stated that Ecuacorriente had bought several farms, displacing families from their land in the rural parishes of Tundayme and Quimi, and even causing the displacement of the entire town of San Marcos due to the construction of infrastructure required for mining activities, forcing peasant families to abandon their rural life, their independent agricultural work and their self-sufficiency in terms of food production. The report also highlighted how, despite the dramatic impact of the company's plans on the fate of several families, the government had not analyzed the land purchasing plan, nor did it monitor the implementation of the plan, nor did it order the company to find alternatives to displacement.¹⁴
- Finally, as part of its periodic review of Ecuador in November 2012, the United Nations Committee on Economic, Social and Cultural Rights expressed concern "*about the criminal investigations and convictions of social and indigenous leaders who have taken part in public demonstrations against legislation proposed by the government concerning water management, as well as against the development of projects that would have an impact on natural reserves (...)* The Committee is concerned that the state party lacks sufficient mechanisms for consensus-building around natural-resource development activities that would provide a way of reconciling them with the vision that indigenous peoples and nationalities have of development. The Committee recommends that the state party establish robust safeguards for the rights to freedom of assembly and to participate in peaceful demonstrations and that it regulate the use of force by law enforcement officers in connection with public demonstrations."¹⁵

None of the above-mentioned attempts have been successful. Rather, based on the pretext of economic interest and national development, expressed either explicitly or vaguely by judicial, administrative or legislative authorities, the Ecuadorian government is allowing the development of projects such as the Mirador project at the expense of human rights and serious and irreversible impacts on nature.

The Notifiers believe that that, irregardless of parallel proceedings cited above concerning different aspects of the Mirador Project, the process before the Canadian NCP shall contribute to the resolution of particular issues explained in this Request, give voice to affected communities, particularly those that have been forcibly displaced from their lands, and that a statement from the Canadian NCP under the Guidelines could compel the Company to respect human and indigenous peoples' rights, including to free, informed, prior consultation and consent.

¹³ Unofficial translation.

¹⁴ CEDHU, Alternative report for the third periodic review of Ecuador by the United Nations Committee on Economic, Social and Cultural Rights, August 30, 2012, available at: <http://bibliotecacedhu.com/imagenes/libros/10477.pdf>

¹⁵ Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on the third periodic report of Ecuador as approved by the Committee at its forty-ninth session (14–30 November 2012), E/C.12/EQU/CO/3

E. Applicability of the revised 2011 OECD Guidelines for Multinational Enterprises

Several of the incidents described in this complaint took place before the OECD Guidelines were revised in 2011. Other incidents took place afterwards. Considering that the violation of the Guidelines is ongoing, these constitute continuing and systemic harms and it is our opinion that the 2011 Guidelines should be applied.

III. CURRENT AND FORESEEABLE HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF THE MIRADOR PROJECT

The issues raised here are taken from facts and evidence based on field research, interviews with rights holders and interested parties (government, Corriente-CRCC, and community representatives), and an analysis of documents related to the Mirador project (such as social and environmental impact studies for the exploration phase, court proceedings, public complaints, newspaper articles, etc.).

The activities in question in this complaint are far from trivial, given that this is the first large-scale mining operation in Ecuador and a showcase project for the industry. Furthermore, the project is likely to cause irreparable harm, especially if we take into account that the exploitation contract has a 60-year duration that could be extended. Moreover, Mirador is the first project of many being planned in the C ndor mountain range by the same Company and others, such that the impact could be even larger.

Large-scale open pit mining poses serious threats to the environment and health of the population, including to water quality, loss of wildlife, human relocation, loss of cultural identity and religious sites, destruction of the visual landscape, noise pollution, loss of agricultural land and forests. These impacts have substantial implications for land use, since it is extremely difficult, if not impossible, to restore an open-pit mine to its previous state.

The Mirador project entails a series of breaches of national and international standards, including Corriente’s own voluntary social and environmental commitments. It is worth noting that the Company’s own website states a commitment to respect human rights. According to its Code of Conduct, *“Through mining, (the Company shall) help to provide a sustainable future in communities where we work. Contribute to the care and preservation of the environment. Set high ethical standards as daily business practice. Respect and be considerate of all others.”*

Corriente’s Health, Safety, Environment and Community Policy, also states that: *“Through the development of natural resources Corriente shall contribute to an enhanced standard of living for people and improved health and safety in the communities we operate. We are also committed to responsible environmental stewardship. To ensure we reach these objectives Corriente will: Minimize risks to environment, health and safety and ensure compliance with government and World Bank requirements. Develop, implement and maintain systems for environmental, health and safety standards. Ensure that both employees and contractors follow these systems. (...) Value and respect local cultural heritage. Build relationships based on honesty, openness and mutual trust. Support local communities and their development by giving preference to local people for jobs and seeking a supply of goods and services from within the community.”*¹⁶

¹⁶ Corriente code of conduct and its Health, Safety, Environment and Community Policy, available at http://www.corriente.com/media/PDFs/corp_governance/HealthSafetyENG.pdf

However, in practice it is clear that Corriente-CRCC has neglected its own commitments by failing to take necessary steps, by not creating any kind of mutual trust between Company and communities, and by threatening human and indigenous peoples' rights, as is explained in greater detail below.

A. Lack of respect for right to prior consultation of general population based on environmental risks and lack of free, prior and informed consent of Indigenous population

Environmental Consultation

Local peasant and indigenous communities within the area of influence of the Mirador project have not been adequately consulted regarding the environmental management of ECSA's project.

In 2004 and 2005, the Company organized so-called *socialization* meetings at which it presented certain elements of the Mirador project, providing partial information regarding its Environmental Impact Assessment (EIA). However, as pointed out in the FIDH-CEDHU report, the incomplete information provided to the affected communities made it impossible for them to participate effectively in the process regarding the project's environmental management and its potential impacts.¹⁷

According to expert analysis, the approved EIAs for the exploration phase of this project are also insufficient. According to the Environmental Law Alliance Worldwide (ELAW) technical team, neither the initial nor the complementary EIAs for the Mirador project's exploration phase contain a detailed analysis of its potential consequences. For example, it lacks information regarding the implications of acid drainage from the pit, waste dumps and tailings pond proposed for the project. Neither do the EIAs detail what prevention, control and mitigation measures before and after the Mirador project's operations. ELAW's analysis agrees with the views expressed by another expert in atmospheric sciences, hydrology and hydraulics who reviewed Ecuacorriente's EIA for the exploration phase.¹⁸

During the exploration phase, the Company held a series of public meetings without the involvement of the government. The information provided to affected communities during these meetings was partial and incomplete.

Only in November 2010, after intense social conflict and once the exploration phase of the Mirador project had finished did the government finally called for a *socialization* process in order to discuss the project. A significant part of the affected population, however, opposed this process, as it did not include all affected populations. For this and other reasons, these initiatives cannot be considered to represent an adequate consultation process. The so-called *socialization* process consisted of exhibition forums without interaction with the audience; invitations were sent with little advance warning, which prevented affected people from attending the meetings. Finally, the planning of these meetings did not take into consideration the context of the affected peasant communities and indigenous peoples, making use of highly technical documentation and failing to provide information in the Indigenous language of the community.

¹⁷ See FIDH-CEDHU report, *Supra* 1.

¹⁸ Acción Ecológica. Revisión crítica parcial del estudio de impacto ambiental para la fase de beneficio del Proyecto minero de Cobre Mirador de la empresa Ecuacorriente, Ecuador, 2011.

Since 2010, there have been no other attempts to organize socialization meetings, distribute information or enter into dialogue with the communities.

The Company currently holds an environmental license for the production phase, but no information has been shared with affected communities about the license. Communities have obtained information through media reports. The Notifiers understand that consultations regarding the production phase were also insufficient. After the Company's change of corporate address on March 28, 2011, its website does not contain information about the current status of the Company's projects. Additionally, the government has not provided updated information.

On November 30, 2012, CEDHU requested information on the status of the license for the mineral-processing phase from the Ministry of the Environment. On March 20, 2013, the Ministry responded: "*This Ministry has not granted the environmental license for the mineral processing phase for the Mirador mining project in the province of Zamora Chinchipe. To date, however, it has received favorable reports regarding the Environmental Impact Study in the licensing process*" (See Appendix 5).

It should be noted that the United Nations Committee on Economic, Social and Cultural Rights has also expressed concern about lack of adequate consultation and consent in its 2012 review of Ecuador: "*The Committee reiterates its concern about the failure to undertake consultations as a basis for obtaining the free, prior and informed consent of indigenous peoples and nationalities for natural resource development projects that affect them. (...) The Committee is concerned that the objectives of the State party's efforts to disseminate information, establish permanent consultative offices and organize tours through areas surrounding proposed mining and hydrocarbons development project sites are confined to the socialization of these projects and that these activities fail to engender an intercultural dialogue that would serve as a basis for obtaining the consent of indigenous peoples and nationalities and respect their right to be consulted (...) The Committee urges the State party to engage in consultations regarding mining and hydrocarbon resource exploration and development that allow the peoples and nationalities concerned to freely decide whether or not to give their consent for a given project and that provide sufficient opportunities and time for deliberation and decision-making, as well as for the implementation of cultural safeguards and compensatory remedies. These consultations should be conducted in accordance with the community consultation procedures that have been developed and with the resulting decisions.*"¹⁹

In Ecuador, consultation is a state obligation. Under the Environmental Management Law, failure by the government to respect its obligation to consult on environmental aspects, renders the activity "*unenforceable and constitutes grounds for revocation of the respective contracts.*"²⁰

In addition to the government of Ecuador's failure to meet its state obligation to consult, the Company entered into a number of selective and conditioned agreements with particular communities. This led to division within communities and exacerbated social conflict. This is far from having reached appropriate commitments with communities or aligning with Ecuadorian policy regarding consultation and its intentions.

¹⁹ Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on the third periodic report of Ecuador, *Ut Supra* 12.

²⁰ Article 20 of Environmental Management Law (*Ley 37/1999, DE GESTIÓN AMBIENTAL. RO 245, 30 DE JULIO DE 1999*).

Therefore, neither the government nor the Company held adequate consultations. Neither the peasant communities nor the residents of villages within the area of Mirador area consulted in accordance with the laws that have been mentioned.

Free prior and informed consent

Moreover, the free, prior and informed consent of affected indigenous communities, as enshrined in the Ecuadorian Constitution, the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169, which specifically address indigenous and tribal peoples' rights, and that have been ratified or endorsed by Ecuador, has not been obtained. These populations have neither been given meaningful opportunities to express their views in relation to planning and decision making related to the Mirador Project, which undeniably has a significant impact on them.

Various international instruments, such as the United Nations Declaration of on the Rights of Indigenous Peoples and the ILO Indigenous and Tribal Peoples Convention No. 169, have been ignored, which recognize the rights of Indigenous peoples to self-determination and self-government; to their lands, territories and resources; and to their survival and development, respecting the ancestral life of indigenous peoples in their territories. Respect for the rights of indigenous peoples, especially those related to their lands, territories and resources, is essential to ensure continuity and survival, given their close relationship, including spiritual, with their environment.

Also, when it comes to land with abundant biodiversity, such as that affected by the Mirador project, there is a deep relationship between cultures, indigenous practices, sustainable development and respect for the environment.

B. Violations of community rights to property, indigenous peoples' rights to lands and territories, and the right not to be forcibly displaced

The analysis carried out by FIDH and CEDHU about problems related to the rights to land revealed that mining concessions overlap with campesino and indigenous lands. Infrastructure and construction projects associated with ECSA's Mirador project, as well as other activities necessary to mining production, have brought about human displacement, including the disappearance of a community, violating the right to land and property of the campesino and indigenous communities, as we explain below.

In the province of Zamora Chinchipe, more than fifteen campesino families from the community of San Marcos in the parish of Tundayme have been displaced, along with roughly another 25 families from other parts of the same parish. These families have been obliged to abandon their homes and lands, and along with this, their rural way of life, autonomous agricultural activities, food self-sufficiency and their identification with the forests, rivers and nature.

Since 2001, the Company's has been carrying out a Land Acquisition Plan theoretically based in principles of transparency and equity. However, in practice, it has been characterised by **individual and bilateral negotiations**, causing discontent and conflict between the families in the parish of Tundayme, as shown by a letter from the manager responsible for the Company's Land Acquisition Plan (See Appendix 6). Furthermore, the establishment of an unequal and individualised system of negotiation with peasant families, characterised by a lack of transparency and information, contributed to diminishing the population's chances of defending

their rights, which were already in a vulnerable situation given their lack of means to secure and protect land rights.

Furthermore, ECSA's interest in acquiring the land fostered a process whereby individual brokers acquired ownership and possession over lands of local families to resell them to the Company (See Appendix 7 for ECSA's agreement with an intermediary for the acquisition of lands).

The Company itself has acknowledged that this land acquisition process has been characterised by certain irregularities, such as lack of transparency regarding the quantity and value of parcels of land and absence of adequate consultation with the affected populations and communities. This has resulted in marked differences on prices for land located in the same area and with similar characteristics. The Company's Land Acquisition Plan referred to above and found in Appendix 6 lead by a former Ecuacorriente Community Relations Manager and the Coordinator of the affected peasant families expressed that, while the Municipal Government of El Pangui valued land at USD 1,000 per hectare in 2006, in several cases the Company negotiated a price of USD 400 per hectare and in others USD 3,000 per hectare, generating a feeling of frustration in the disadvantaged families. (See Appendix 6)

Despite the dramatic effects of CRCC-Corriente's plans on the fate of these families, the Ecuadorian government did not analyse the company's land acquisition plan, nor monitor the plan's implementation. For its part, the Company did not demonstrate that it had considered any alternatives to displacement. Moreover, the resettlement process was carried out without prior disclosure of adequate information or consultation with the displaced persons. Neither was an assessment of the current living conditions of the resettled families carried out. (See Appendix 8 for a copy of an open letter from a representative of the affected families)

Additionally, it is important to highlight that many communities and families in the Amazon region **lack formal title and legal security for their lands**, which makes it difficult to defend their rights to these lands from the risk of displacement as a result of this project.

This is the case of a campesino family from the county of El Pangui, which following various legal proceedings filed by the company, was displaced in May 2011 on the basis that they could not prove administrative title to the land that they had been using for some 15 years. Prior to their eviction, the family faced harassment and physical assaults, including the attempted murder of one family member by employees of the Company, who sought to force the family to leave the site. The eviction of this family whose lands were not titled, entails a serious violation of their property rights, given that according to Ecuadorian law, the Amazonian campesino population has the right to possess their farms as long as they are occupied, which in this case was for 15 years.

Another case which illustrates the disadvantage of people without legal title to their lands, is that of an elderly Shuar indigenous woman who was violently evicted from ancestrally occupied land in the village of San Marcos, rural parish of Tundayme, county of El Pangui. The land manager for the Shuar indigenous community 'Kim' in the aforesaid parish complained about this situation to the Commissioner for the Zamora Chinchipe People's Ombudsman. The complaint alleges that ECSA tried to appropriate the community's lands in violation of the human rights of the Shuar indigenous people. According to Ecuadorian law, indigenous peoples have ancestral possession of their lands, giving them as a result legal protection over such lands that have ancestrally belonged to them, as well as the natural resources found within (water, forests, fauna,

etc). The eviction of this elderly Shuar indigenous woman ignored the legal protection of her rights.

The eviction of indigenous and campesino populations, given their special relationship with nature and natural resources and their rural ways of living, not only entails a breach of their property rights, but also further implies violations of their economic, social and cultural rights, including the right to food, the right to housing, the right to health, as well as their cultural and ethnic values. These communities inhabit a healthy territory, with diversified agricultural production, which is multicultural and mega-diverse, and their priority is the preservation of water, soil, forest and their ways of life.

Furthermore, international law recognises the right of indigenous peoples to land, territory and resources that they have traditionally owned, occupied, or otherwise used or acquired, and that they shall not be forcibly removed from their lands or territories, and that “*no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.*”²¹ As explained in the previous section, the Ecuadorian state failed to fulfill its responsibility to obtain the free, prior and informed consent of the affected indigenous population.

The above examples reflect violations of property rights and rights to land and territory, which in turn have negative impacts on the living conditions of people in the area of influence of the Mirador project, for whom land is a fundamental to their life and identity.

These risks are exacerbated by legal insecurity over land ownership in this area given lack of formal title, and lack of information provided to the communities in relation to the mining concessions that affect their land, as referred to in the FIDH-CEDHU report (See Appendix 1). It is foreseeable, therefore, that these impacts will continue to arise if the Mirador project continues to be developed, with adverse repercussions for the lives of the population and their means of subsistence. This is particularly the case for indigenous peoples who, given the threat to their rights to land and territory, are also experiencing the infringement of rights concerning their relation to the land that are recognised in international law, such as access to a secure, adequate and accessible food supply, given that they are being denied the possibility of maintaining their traditional agricultural practices.

This was further demonstrated when, only a few weeks prior to filing this Request, the Nankitsa indigenous community in the province of Morona Santiago, where Corriente-CRCC also works, issued an alert (See Appendix 9). They reported that on 25 June 2013, police and military vehicles, together with a representative of the Ministry of Non Renewable Natural Resources and the provincial governor arrived in their community and requested that the residents abandon the area, arguing that the land belongs to the Company. Members of the community refused to leave the area. This illustrates once again the ongoing risk that communities in the area face of being forcibly displaced as a result of the company’s operation, as well as the likelihood that the mining activities will continue to provoke and aggravate conflict and lead to further serious violations of indigenous and human rights.

Finally, this situation, fuelled by the Company’s land acquisition process and its non-transparent practices, breaches the Guidelines that state in Chapter II, Article 7 that enterprises should: “*Develop and apply effective self-regulatory practices and management systems that foster a*

²¹ ILO Indigenous and Tribal Peoples Convention No. 169.

relationship of confidence and mutual trust between enterprises and the societies in which they operate.”

C. Violation of Indigenous peoples' rights and creation of social divisions

In the Environmental Impact Assessments (the initial of 2005 and supplementary of 2006) undertaken by the company for the exploration phase do not reflect the special treatment that shuar communities, settled within the concession area of the Mirador project, require as indigenous peoples and holder of specific rights.²²

ECSA did not present specific information regarding the vulnerability of affected indigenous peoples nor regarding the potential social, environmental and cultural impacts that the Mirador project could have on them. As explained in the FIDH-CEDHU report, the Company demonstrated an absolute lack of understanding of indigenous peoples rights and livelihoods, according to both international and national standards.

The Company did not pay necessary attention to the interests and rights of indigenous peoples, and failed to adopt specific measures to protect their rights, arguing that it would provide “non-discriminatory treatment” with regard to the rest of the population. The information process was thus performed without considering the directly or indirectly affected indigenous communities, least of all considering the need to present information in their language.

The development of relations on the basis of respect for indigenous communities affected by the Mirador project would have required that, prior to beginning mining activities, the Company identify and understand the complexities and social, economic, cultural and political specificities, as well as the historic context, of the Shuar indigenous peoples settled in the area.

Moreover, in 2009, ECSA signed agreements with a number of indigenous belonging to the Zamora Chinchipe Shuar Federation (*Federación Shuar de Zamora Chinchipe*). In exchange for a sum of money, this Shuar Federation committed to supervise and protect Ecuacorriente's lands, to support the Company in all its activities and to help promote a positive image of the Company.

The selective nature of this agreement, which seeks to protect the interests of the Company, has affected the capacity of Shuar indigenous communities to remain united and the possibility that they might have to reach a consensus that would enable them to protect their rights. Furthermore, this has provoked divisions and serious conflicts between the Shuar people, affecting their right to self-determination.

Entering into agreements that obligate certain indigenous communities to support it, in a context of social conflict in particular given opposition to the project by other groups within the population, is unacceptable practice. Moreover, the fact that the Company enters this kind of agreements is questionable, given that this is a responsibility of the State.

According to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya,²³ *“The primary and substantive rights of indigenous peoples that may be implicated in natural resource development and extraction (...) include, in particular, rights to property, culture, religion, and non-discrimination in relation to lands,*

²² EIA studies of 2005 and 2006, Proyecto Mirador Ecuacorriente S.A.

²³ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, on its Study on Extractive and Energy Industries <http://unsr.jamesanaya.info/study-extractives/index.php/en/report-2012-hrc>

territories and natural resources, including sacred places and objects; rights to health and physical well-being in relation to a clean and healthy environment; and rights to set and pursue their own priorities for development, including development of natural resources, as part of their fundamental right to self-determination.

(...) By their very nature, the rights that are potentially affected by natural resource extraction entail autonomy of decision-making in their exercise. Accordingly, the consultation and consent standard that applies specifically to indigenous peoples is a means of effectuating these rights,

(...) Furthermore, it is important to comprehend that the consultation and consent standard is not the only safeguard against measures that may affect indigenous peoples' rights over their lands, territories and natural resources, among others. Such additional safeguards include but are not limited to the undertaking of prior impact assessments that provide adequate attention to the full range of indigenous peoples' rights, the establishment of mitigation measures to avoid or minimize impacts on the exercise of those rights.

(...) Consultation and consent and related safeguards are instrumental to securing indigenous peoples' rights in the face of extractive industries that operate or seek to operate on or near their territories, but understanding the reach of those underlying substantive rights and the potential impacts on those rights must be a starting point for solving the many questions that arise in this context.”

In view of the above, it is clear that the lack of identification of indigenous populations and the resulting breach of safeguards to ensure their rights to consultation and free, prior and informed consent, also implied the violation of the rights mentioned in paragraphs above, particularly considering the particular relationship that indigenous peoples maintain with nature and natural resources, as recognized in various international instruments.

Finally, this lack of identification of indigenous families and populations, the fostering of social division through selective agreements with a particular Shuar federation, and the consequent lack of adequate participation in relation to the development of the Mirador project on their lands and territories augmented opposition to the project from various local, regional and national indigenous organizations.

D. Involvement of the Company in state repression of social protest and violence against those opposed to the introduction of large scale mining

Social opposition to large-scale mining has been widespread and ongoing. From 2005 to the present time, events and mobilizations have taken place demonstrating opposition to large-scale mining in the country, and in particular in the province of Zamora Chinchipe and the area in which CRCC-Corriente operates. A series of rights violations have taken place, including to rights to freedom of expression, association and organization, committed not only by police and members of the Ecuadorian military, but by Company employees and security personnel. This is the case of CRCC-Corriente in the southern Amazon, which has participated and provided support to various incidents of repression and criminalization against the mobilized population.

In light of the social convulsion, the Ecuadorian government at this time decided to suspend the company's activities on December 5, 2006.²⁴ However, despite the suspension, the Company continued operations in the area.

²⁴A number of news articles mention this suspension, such as:
http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=45202&umt=ecuacorriente_acepta_suspension_actividades_en_amazonia_ecuador

During the same month of December 2006, given evidence that Ecuacorriente continued its activities despite the government-ordered suspension of the project, the population of the county of El Pangui opposed to mining activities carried out a protest march to the mine site, which was intercepted by military forces in the area.

During these episodes of conflict, as reported in the FIDH-CEDHU report, Ecuacorriente provided vehicles and contracted a helicopter to detain several protesters. It also made its mine camp available to be used as a base for detention of the protesters who were then mistreated. As mentioned in the report filed before the IACHR in 2007,²⁵ one of the detainees that suffered mistreatment on this occasion was and continues to hold public office.²⁶

In 2009, a national level mobilization took place due to the passing, without prior consultation, of the Mining Law. Also in 2009, protests in the Amazonian region increased, in particular among the Shuar community in the provinces of Morona Santiago and Zamora Chinchipe, who protested against the government's proposed water law and its policy of promoting large-scale mining. As of today, the government's proposed water law has not been debated in the National Assembly.

In 2010, national level protests continued against the government's proposed water law, which also has relevance to large-scale mining operations. In response, there has been serious repression and criminalization of social protest and judicialization of various indigenous and peasant leaders. In late 2011, the Office of the Ombudsman released a report reporting on the criminalization of social protest, demonstrating numerous cases in which campesino and indigenous people who are opposed to large-scale mining had been victims of criminalization as a result of their protests. Several of these were associated with protests against CRCC-Corriente's Mirador and Panantza-San Carlos projects in the southern Ecuadorian Amazon.²⁷

Various local, regional and national indigenous organizations continue to oppose the Mirador project, including the Confederation of Indigenous Nationalities of Ecuador (CONAIE by its Spanish acronym), the Confederation of Indigenous Nationalities of the Ecuadorian Amazonas (CONFENIAE by its Spanish acronym), the Ecuadorian Kichwa Confederation (ECUARUNARI by its initials in Spanish), the Shuar Indigenous Associations of El Pangui, Uwents and Bomboiza, as well as the Assembly of the Peoples of the South.

Representatives of the CONAIE have repeatedly expressed their worries regarding the risks that large-scale mining poses to the environment, water and human and indigenous rights.

The first Social Mining Forum took place in Ecuador in December 2011, alerting to serious risks arising from mining activities, particularly to water and the environment.

Then, upon the initiative of CONAIE, on 8 March 2012, a 2-week march crossed the country protesting against large-scale mining. The march initiated in El Pangui, in the province of

²⁵ Centro de Derechos Económicos y Sociales (CDES), CEDHU, Defensa y Conservación de Intag (DECOIN) and Acción Ecológica, "Informe sobre la Situación de las Personas y Pueblos Afectados por las Actividades Mineras y Petroleras en el Ecuador," *Supra* 8.

²⁶ Centro de Derechos Económicos y Sociales (CDES), CEDHU, Defensa y Conservación de Intag (DECOIN) and Acción Ecológica, "Informe sobre la Situación de las Personas y Pueblos Afectados por las Actividades Mineras y Petroleras en el Ecuador," Presented during the 127th Ordinary Sessions of the Inter American Commission on Human Rights, March 2, 2007.

²⁷ Report of the Ombudsman office (*Defensoría del Pueblo*) regarding the criminalization of social protest, December, 2011. See media release at http://www.lahora.com.ec/index.php/noticias/show/1101250712/-/Defensor%3%ADa%3A_Gobierno_intimida_lucha_social_.html#.Uej-xxb07Zs

Zamora Chinchipe, and arrived in Quito on March 22, 2012. Although numbers vary, media estimate that hundreds of persons participated in the march.

In 2012, it was also reported that military forces, in cooperation with the Company and using Company vehicles, threatened and impeded the freedom of movement of local shuar indigenous people. This situation was the subject of a complaint filed with Ombudsman's office in the province of Zamora Chinchipe.

Furthermore, reports have been made about other violent acts perpetrated against those opposing the Mirador project who are suffering from the psychological effects and consequences of these incidents. For example, on May 24, 2012, a citizen of Chinese nationality employed by Corriente-CRCC is reported to have physically attacked a Shuar employee of the Company. The president the "Certero" Shuar community filed a formal complaint with the Ministry of Labour Relations denouncing the situation created by the Company in the rural parish of Tundayme, county of El Pangui, and requested the Ministry's intervention in order to prevent similar situations in the future. The victim also filed its own complaint explaining the facts to the Delegate of the People's Secretariat of Zamora Chinchipe.

E. Risk of impacts on biodiversity and ecological integrity in the Cónдор mountain range, violation of the right to water and the rights of nature

The Cónдор mountain range is one of the most biodiverse regions on the planet with a large number of species that are at risk from the Mirador Project. According to data published in January 2013 by the Fundación Pachamama,²⁸ this open-pit industrial mining project will eliminate all the vegetation and the topsoil at the site, an area of tropical rainforest within the Cónдор mountain range that is in a good state of conservation; as well as destroying 4,000 species of vascular plants, which may represent the greatest natural wealth in all of South America; destroying habitat of native species of amphibians and reptiles that are at risk of extinction in an area of 9,000 hectares in the buffer zone of the *Protected Forest of the Cónдор mountain range*.²⁹

It should be stressed that the impact assessment studies carried out by the Company regarding impacts on the rights of nature were inadequate. Nonetheless, the project threatens life cycles, as acknowledged in Corriente-CRCC's own environmental impact assessment (EIA).

Along these lines, it is important to note that in 2008 Ecuador became the first country to include the rights of nature in its Constitution, stating that nature, or *Pachamama*, where life is reproduced and created, has the right to full respect for its existence, maintenance and regeneration of its cycles, structures, functions and evolutionary processes. Open-pit mining implies serious environmental impacts, putting in jeopardy the integrity of the environment given that it results in the complete transformation of a given area often with irreparable impacts.

The Mirador Project entails serious risks to the project area, part of the Cónдор mountain range in the Amazonian province of Zamora Chinchipe. Independent of the actions of the Ecuadorian state, CRCC-Corriente should have recognized that the Mirador project violates nature rights as

²⁸ "Request for protection of the rights of Nature with regard to the Mirador Project," January 18, 2013, available online: <http://pachamama.org.ec/accion-de-proteccion-contra-el-proyecto-minero-mirador-por-violacion-de-los-derechos-de-la-naturaleza/>

²⁹ Equipo Jurídico INREDH, "Large Scale Mining in Ecuador", online: http://www.inredh.org/index.php?option=com_content&view=article&id=550:la-extraccion-minera-a-gran-escala-en-el-ecuador&catid=73:ddhh-ecuador&Itemid=144

recognized in the Ecuadorian Constitution, a legal norm that supersedes all other legal and administrative provisions, including concession contracts or licenses awarded by the state.

In addition, the Cónдор mountain range gives rise to numerous water sources and aquifers, for which reason the Mirador project will have particular impact on the human right to water. The project is specifically located in the microwatersheds of the Tundayme and Wawayme rivers, which start in the Cónдор mountain range and may be affected by “acid mine drainage” (AMD), among other potentially serious impacts on water supplies as a result of open-pit mining. It is worth noting that in 2008, faced with the presence of mining companies in socially and environmentally highly sensitive areas, the National Constitutional Assembly issued the Mining Mandate (See Appendix 3), which, among other things, ordered the cancellation of mining concessions overlapping with water supplies, as is the case of the company’s concessions in the Cónдор mountain range.

According to experts quoted in the FIDH-CEDHU report, both the company’s Environmental Management Plan and EIA for the exploration phase lack the following elements: information on groundwater and surface water in the area of the project, information on a preventive strategy to avoid water contamination, as well as plans for project oversight, evaluation and monitoring; contingency plans; partial closure plans and plans for mine closure and abandonment of the mine with associated timetables and budgets. As highlighted by the Environmental Law Alliance Worldwide (ELAW), neither does the supplementary EIA for the Mirador project include detailed plans, schedules or budgets in relation to proposed changes to the project.³⁰

Pursuant to information in the supplementary EIA, construction of the support infrastructure for the mine will affect water flow and reduce the natural level of the Wawayme and Tundayme rivers, which are used for human water consumption. This will have repercussions for “*the physical and biotic environment of these rivers and their drainage basins.*”³¹ For example, the air, flora and fauna may be altered and numerous native species could be displaced.

According to scientists from ELAW, large-scale mining projects are particularly dangerous in tropical regions given risks that arise from torrential waters and rains. Given the enormous difficulty of managing such risks, ELAW considers that it is essential to prevent water that is contaminated from waste and landfill management from coming into contact with rivers and streams. The waste management facility proposed by ECSA is a central part of its strategy to prevent the pollution of rivers and streams. According to ELAW, however, ECSA’s EIA does not contain sufficient information regarding the prevention strategy.

What is more, ECSA’s EIA does not analyze the consequences of a potential accident in the waste management facility. According to ELAW, an accident of this type could cause an environmental disaster of catastrophic proportions, with serious ramifications for the region’s water resources. Finally, one of the more serious defects of ECSA’s EIA is the lack of information regarding the ultimate fate of the mine after closure and its implications for water contamination. According to ECSA’s EIA, the quarry or mine pit could be flooded after closure of the mine, but the EIA itself reveals that the Company has not analyzed the potential or probable impact of such flooding on the region’s water resources.

In addition, independent technical studies presented to the government of Ecuador in March 2012 point out that ECSA’s EIA does not cover all the real potential impacts of its mining activities. A study presented by E-Tech to the Ministry of the Environment at the latter’s request

³⁰ FIDH-CEDHU report, *Ut supra* 1

³¹ Supplementary Environmental Impact Assessment for the advanced exploration phase, 2006.

notes that: *“The evaluation of alternatives in EIAs regarding the production and processing stages does not contain sufficient detail for a true comparison of alternatives, does not clearly define numerical values nor alternatives, does not evaluate other potentially important options and is not based on an exhaustive analysis of the potential environmental impacts of each alternative before selection one (...) none of the EIAs for the production phase covers all the possible contaminants of concern (...) no information is provided on the level or specific type of contaminants (...) the information is not sufficiently complete to allow for a reasonable analysis of the Mirador project’s production and processing phase.”*³²

As well, there is a significant difference in the estimation of financial guarantees for the closure of the Mirador project. While the initial EIA for the exploration phase estimates that rehabilitation and closing of the mine will cost \$55 million USD, an expert from e-tech international estimates, as of 2012, that the financial guarantee should be some ten times higher at \$568 million USD. The report further states that the EIA for the exploration phase lacks sufficient detail to properly calculate these costs (See Appendix 10).

Furthermore, a study by NGO Acción Ecológica³³ notes that the supplementary EIA for the Mirador project states that the main impacts of the project are of *“low relevance.”* However, the NGO observes that studies of projects with similar characteristics provide revealing data about the severe impact these might have on:³⁴

- Land use: irreversible impact, close to source, localized;
- Landscape: irreversible impact, close to and remote from source, extensive;
- Archeological value: irreversible impact, close to source, localized;
- Terrestrial fauna and flora: irreversible impact on habitats, ecosystems, native species and diversity; and
- Water: *“The main impact on water quality during operation will come from the depositing of tailings and waste rock, as a result of an increase in suspended solids and the potential production of acid mine drainage. For both, perimeter water diversion channels will be constructed, but the water will drain onto the pit and tailings and what is not captured by the diversion channels will be contaminated by acid mine drainage and suspended solids.”*³⁵

Finally, it is worth noting that the United Nations Committee of Economic, Social and Cultural Rights raised similar concerns in its report: *“about the environmental impacts produced by mining and agribusiness projects, in particular its impact on the enjoyment of the right to water in rural areas. The Committee recommends that the state party establish measures to protect the environment and take specific steps to protect the enjoyment of the right to water in the context of the development of mining and agribusiness projects. The Committee is concerned about the process of land purchases by companies and their impact on rural property. It is also concerned about housing conditions in hazardous areas where there is no guarantee of the provision of basic services and the effects of the phenomenon known as “land trafficking” by the state party. The Committee recommends that the state party develop property plans that protect peasant ownership of land and establish mechanisms to prevent forced sales in rural areas. The Committee recommends to the state party that the processes of relocation of families living in areas of risk are carried out in accordance with principles of due process and that it provides*

³² Free translation. E Tech, *Resumen de Consideraciones Ambientales y Económicas Relacionadas con el Proyecto Mirador en la República de Ecuador*, 26 March 2012, available at <http://www.etechinternational.org/2011ecuador/2012/ResumenFinaldeProyectoMirador.pdf>

³³ Acción Ecológica, *El Enclave Minero de la Cordillera del Cóndor*, Ecuador, Marzo 2010, at

<http://cdhal.org/sites/cdhal.org/files/doc/document/enclave-minero-cordillera-del-condor-enclave-minero-cordillera-del-condor.pdf>

³⁴ *Ibid.*

³⁵ *Ibid.*, page 10.

full information on the conditions of relocation. The Committee recommends that the state party establish mechanisms to monitor the process of eviction and relocation and its impact on the enjoyment of the right to housing taking into account General Comment No. 4 and General Comment No. 7.”³⁶

F. Poor working conditions

Given these circumstances, and given the lack of information and dialogue, the precarious working conditions that the company offers its employees and growing social conflict has led various ECSA workers to stop company operations in protest (See Appendix 11).

IV. CORRIENTE-CRCC’S FAILURE TO COMPLY WITH THE OECD GUIDELINES

As explained up to this point, the Company’s activities in relation to the Mirador Project have serious consequences in several respects, including workplace safety, peasant and indigenous communities’ human rights, including lack of prior consultation and consent and rights to land and territories, as well as inadequate reporting of risks to the environment in an area of extraordinary biodiversity.

Corriente-CRCC, as the two Canadian entities holding the Ecuadorian subsidiary ECSA, which manages the Mirador Project in Ecuador, should respect the OECD Guidelines for Multinational Enterprises adopted on May 25, 2011 wherever they operate. As such, Corriente-CRCC should have performed adequate due diligence to avoid its subsidiary’s impacts on human rights, should have directed ECSA to improve its practices and to mitigate and/or prevent their adverse impact on the rights of the local populations affected by the Mirador project.

A. Violation of Chapter IV of the Guidelines: violation of human rights including community property rights, the right of Indigenous Peoples to their lands and territories, and the right to freedom from displacement

Chapter IV of the Guidelines in section 2 and 3 states that companies should avoid causing or contributing to negative human rights impacts. Even if they do not contribute to those impacts, companies should seek to prevent or mitigate any adverse impacts that they are linked to through their supply chains or other business investments.

Chapter IV recommends that businesses:

“Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. (Chapter IV, 1)

Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur. (Chapter IV, 2)

³⁶ Committee on Economic, Social and Cultural Rights, Concluding observations, *Ut Supra* 12.

Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts. (Chapter IV, 6)."

The Commentary outlines that enterprises should in all cases be guided by the internationally recognised rights expressed, among others, in the following human rights instruments: the international Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, the 1998 Declaration on Fundamental Principles and Rights at Work of the International Labour Organisation and other relevant instruments.

Paragraph 40 of the Commentary additionally acknowledges that: *"companies can impact on virtually all internationally recognised human rights. In practice, some human rights may be more vulnerable than others in certain sectors or contexts and are therefore subject to more intense attention (...) companies should respect the human rights of persons belonging to specific categories or populations that deserve special attention, when they may have a negative impact on these rights. In this context, the United Nations instruments have clarified the rights of indigenous peoples, persons belonging to national or ethnic minorities (...)."*

Thus, according to the Guidelines, companies should pay particular attention to vulnerable populations and ensure that their operations are developed in conformity with international instruments that protect indigenous peoples' rights, including the International Labour Organization Convention 169 on the rights of Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples.

In practice, it is well known that mining activities frequently affect the human rights of particularly vulnerable populations, such as indigenous peoples' rights to their lands and territories, and that consequently these should be subject to particular care on the part of businesses. The above-mentioned facts demonstrate that CRCC-Corriente has not fulfilled its obligations to respect indigenous peoples's rights, which were not even correctly identified.

Finally, as we have documented above, the forced eviction of families in the context of the Mirador project has entailed the breach of the property rights of local communities, including indigenous peoples' rights to their lands and territories, further threatening their economic, social and cultural rights, such as the right to food, right to housing, right to health, as well as their cultural values and their ethnic identities, enshrined in the Ecuadorian Constitution and instrumental instruments, upon which their livelihoods and ways of life depend. Furthermore, the company fostered social divisions among the Shuar population of Zamora Chinchipe further violation their right to self-determination and their right to free, prior and informed consent.

B. Lack of meaningful stakeholder engagement

The General Principles of the Guidelines (14) set out that enterprises should: *"Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities."*

As it has been documented in this Request, the Company did not respect local communities' rights to prior consultation as provided in Ecuadorian law, nor it respected indigenous peoples' rights to a right to free, prior and informed consultation as already mentioned. By not doing so, the company has not respected the Guidelines by not engaging in meaningful stakeholder engagement with all affected communities in order to both identify the full scope and severity of

human rights, social and environmental impacts, and to take into account the views of the affected communities. The Company should have adopted measures to engage with all affected communities and provide them real consultation opportunities in order to express their views.

C. Violation of the General Policies and the General Principles of the Guidelines

The General Principles set out common ground that is valid for all the specific chapter recommendations and indicate a range of important obligations for businesses, including respect for internationally recognised human rights standards.

Violation of the Guidelines' General Policies: Due Diligence

While not respecting the Guidelines explained in the above section nor the rights of the campesino and indigenous communities to land and property, the Company has also breached the General Principles in which they recommend that companies perform due diligence to identify, prevent, mitigate and account for how they will address their actual and potential adverse impacts:

“10. Enterprises should: (...) Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.”

Due diligence is meant to identify risks, as well as to prevent and address them. This process has also been set out by the United Nations Guiding Principles on Business and Human Rights, as endorsed by the Human Rights Council in its resolution 17/4 of June 16, 2011, indicating that businesses must act with due diligence to avoid infringing on human rights.

According to the Commentary, due diligence covers acts and omissions. It therefore also covers the lack of measures identified to adequately prevent breaches of the Guidelines. When a company has, or is likely to have, an adverse impact on human rights, paragraph 19 of the Commentary states that it *“should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.”*

The Company has failed to undertake the adequate due diligence set forth by the Guidelines. It should have taken measures to avoid infringing the human rights of local populations affected by

its operations in the context of the Mirador project. It is clear that, the company did not take any steps to ensure respect for indigenous communities in the area of its project, and that the nature and extent of due diligence was not appropriate to the particular circumstances of the Mirador project, as required in the Guidelines. Additionally, although some of the violations discussed above relate to events taking place prior to May 2011 when the new OECD Guidelines were revised, the Company should have had knowledge of the human rights violations taking place, particularly given publication of FIDH-CEDHU's human rights investigation of the Mirador project, which was published in January 2011 and translated in both English, Spanish, French and Chinese and distributed to company representatives in Ecuador, Canada and China.

In this sense, the Commentary clearly states: *“Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities (...)”*.

Moreover, the lack of engagement with local communities means that their views were not taken into account in relation to planning of the Mirador project, further demonstrating that the Company did not perform the adequate due diligence process required by the Guidelines.

The facts set out in this Request demonstrate Corriente-CRCC's failure to seek to prevent human rights abuses and carry out comprehensive human rights and environmental studies for the Mirador project, and thus, to meet this obligation to perform adequate due diligence and take measures necessary to pay particular attention to the situation of indigenous populations, who were not even correctly identified, and the consequent breach of the indigenous peoples' and communities' rights to lands, territories and property, displacing them from their homes and lands and depriving them of their ways of life and livelihood.

Violation of the Guidelines' Concepts and Principles: Local Policies

Again, as a result of violating national and international norms protecting the rights of the campesino and indigenous communities, the Company has breached the General Principles of the Guidelines, according to which: *“Businesses should:*

“Take fully into account established policies in the countries in which they operate, and take into consideration the views of other interested parties (Chapter II)”

According to this principle, Corriente-CRCC should have taken into consideration the importance and hierarchy of rules violated at local level, starting with the Ecuadorian Constitution, and at the international level, given that the Company's activities violate important international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169.

The Principles also recognise that: *“Some matters covered by the Guidelines may also be regulated by national law or international commitments. Obeying domestic laws is the first obligation of enterprises.”*

At the national level, the Company has breached the Guidelines' recommendation to obey domestic laws pertaining to various rights enshrined in the Constitution of the Republic of Ecuador. Fundamental rights are at grave risk, such as the right to property, to work and occupational activities, to food and culture, and the right that indigenous and peasant communities have to maintain their cultural identity, all of which are granted in domestic legislation that CRCC-Corriente has failed to respect:

- Regarding the communities rights to participation, including the right to choose their way of living in accord with their concept of development or “sumak kawsay” (indigenous cosmo-vision conveying the relationship between human well being and the protection of nature) (Art. 14);
- The right to prior consultation in general, in violation of the Constitution (Art. 398) and the Environment Management Act (Ley de Gestión Ambiental),
- In relation to the right to prior consultation of indigenous peoples, afro-descendents and montubios, regarding the implementation of public policies that could affect them (Art. 57, N. 7);
- Also in relation with the “good living or sumak kawsay” and the right to live in a healthy and ecologically-balanced environment (Art. 23, N. 6 of the Constitution),
- The right to property in all of its forms (private, communal, associative, cooperative and others) is guaranteed in the Constitution (Article 321);
- With regard to indigenous populations, the rights to lands and territories, established in the Constitution as a guarantee that indigenous communities have to their ancestral lands and territories, as well as the right to not be displaced from these (Article 57: sections 5 and 11). In this same Article, section 4, the character of communal lands as not subject to periods of time limitations, which cannot be transferred, confiscated, nor divided. The right to free, prior and informed consent has also been violated, which should take place within a reasonable period of time regarding plans and programs of exploitation and commercialization of non-renewable natural resources that are found within indigenous lands and that could affect them environmentally or culturally (Article 57, section 7);
- The right to food (Art. 13), which stipulates that individuals and collectives have secure and ongoing access to food that correspond with their diverse identities and traditional cultures;
- The right to water (Art. 12), which is a fundamental right that cannot be renounced and is essential for life;
- The right to live in a health and ecologically balanced environment (Art. 23, section 6);
- The right to work (Art. 33), as a social and economic right, as well as the right to adequate and dignified housing (Art. 37); and
- The right to health (Art. 32) as linked to the right to food, water, work and the right to live in a healthy environment.

D. Violation of Chapter VI: Environmental impacts

Chapter VI of the Guidelines sets out that:

“Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to

conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

(...) provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise,

(...) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

Further, paragraph 3 of the Commentary recognises that “*there should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development (...) indeed, links among economic, social, and environmental progress are a key means for furthering the goal of sustainable development.*”

Large-scale mining causes irreversible damage to the environment, through processes of deep excavation, necessitating the removal of layers of soil that often implies clear-cutting, burning of vegetation, removal of native vegetation, etc. It is particularly environmentally destructive when it takes place within a tropical forest.³⁷

By developing only partial and incomplete EIAs, as described above, the Company has not taken, as prescribed by the Guidelines, “*due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.*”

Additionally, the lack of information provided to the local communities affected by the Mirador project that has been described above, implies a breach of chapter VI of the Guidelines, that recommends the provision of adequate, measurable, verifiable and timely information on the potential environment, health and safety impacts as well as engagement in communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

V. CONCLUSIONS AND PETITIONS

As described above, although the focus of this Request is the failure to comply with the Guidelines, the Company has also breached Ecuadorian national law, international law, as well as the United Nations Guiding Principles on Business and Human Rights, demonstrating its unacceptable behaviour on the basis of multiple standards.

In this Request, the applicants confirm that they have read and understand the rules and procedures of the Canadian NCP, and undertake to enter into talks in good faith and establish a constructive collaboration with the counter-party.

Therefore, in view of the OECD Guidelines, the Notifiers request to the Canadian NCP that:

First:

- Admit this Request for Review and declare that the matters presented in it are related to the Guidelines; and
- After an initial assessment, state that the issues raised merit further examination.

³⁷ ELAW, Overview of Mining and its Impacts, available at <https://www.elaw.org/files/mining-eia-guidebook/Chapter1.pdf>

Subsequently, make recommendations and facilitate a dialogue between the parties on the matters set out below:

- That an independent evaluation take place of the situation of the families and individuals who have been forcibly displaced and in some cases physically assaulted as a result of the Mirador Project;
- That state intervention be requested in order to ensure that the Company provides adequate compensation to the families and individuals whose rights have been violated;
- That access be granted to the area of the Mirador project for affected populations and the organizations representing them, so that they can carry out their own studies into the environmental and hydrological status of the affected area affected; and
- That adequate, up-to-date information be provided on the current state of the Company's actions with respect to its copper assets and projects in the C6ndor mountain range in the provinces of Zamora Chinchiipe and Morona Santiago. All information should be translated into the language of the affected people;
- That the Company respect the rights of the campesino and indigenous communities, including their property rights and their right not to be displaced; and
- That CRCC-Corriente desist from mining in Ecuador, given its serious risks and impacts on human rights and the environment, currently and in the long term.

We also request that the NCP uses all means at its disposal to:

- Ensure that the Company genuinely commits to this process and takes part in mediation;
- In the event that mediation fails, conduct any investigations necessary so as to have the most detailed information possible, find solutions and make recommendations for the issues set out in this Request for Review;
- Where appropriate, declare that the Company has breached the Guidelines;
- Make recommendations so that in future the Company's operations respect the Guidelines; and
- Include an appropriate follow up mechanism that will help to improve corporate accountability with regard to implementation of the recommendations that shall be included in the Final Statement.

NOTE: REQUEST FOR CONFIDENTIALITY

In accordance with the procedures of Canada's NCP and point 14.1 on confidentiality and transparency, in order to protect the individuals represented by the Request for Review from any attack or reprisal, and with due regard to the serious problem of the criminalization of social protest in the context of the Mirador Project, the NCP is requested not to publicly divulge the identity of these individuals, nor the identity of those whose cases are set out in this Request for Review.

NOTE: PROCEDURE, TRANSPARENCY AND PUBLICITY

FIDH, CEDHU and MiningWatch Canada request that during the procedure the NCP maintains a suitable balance between confidentiality of information that could be sensitive for the Company and the need for transparency of information received by both parties. Transparency is essential for establishing a genuine dialogue within the framework of the proceedings, as is the due predictability of the proceedings (as detailed in the Canadian NCP's rules of procedure); in this respect, the NCP is requested to:

- Communicate systematically and punctually on the progress of the proceedings, enabling the parties to be aware of and react to information provided in the course of the proceedings by the other party;
- Announce publicly on its website that this Request for Review has been submitted;
- Publish, where appropriate, the result of the initial evaluation and the admissibility criteria; and
- Publish its final report.

In addition, FIDH, CEDHU and MiningWatch Canada request that the NCP set specific deadlines for the parties to respond to communications during the proceedings, in order to avoid delays that might obstruct or frustrate the process.