

CONDOR- MIRADOR MINE CASE

(BY THE MINING PROJECT OPEN " LOOKOUT ")

a. Facts of the case :

i . Geographic location and context (as may be necessary to understand the case) .

The Ecuadorian State, March 5, 2012 , through the Ministry of Non-Renewable Natural Resources (" Department of Resources") signed in the city of Quito, the first contract mining large-scale enterprise Ecuacorriente SA (ECSA) , which enables the exploration and production of copper, principally through the open technique , in one of the mega-diverse and fragile ecosystems , such as the area of the Cordillera del Condor.

This mining project known as " Mirador " is located in the Cordillera del Condor, specifically in the province of Zamora Chinchipe , in the canton The Pangui , Tundayme parish .

The state signed the contract with the company Minera Farm Ecuacorriente SA (ECSA) , which is the Ecuadorian subsidiary of the Canadian company Resources In current for a period of 30 years and guaranteed renewal for the same additional term.

The contract gives the company an area of 2895 hectares , which corresponds to the area called " Mirador 1" to run mining operations. Besides " Mirador 1" , ECSA will conduct " related " in an area of 2815 hectares and an additional area of 510 acres called " protection area " . The contract, together with the environmental license , which authorize the ECSA Mirador Mining Project make a pit depth of 1.25 km , it is 10 times deeper than the height of Quito 's Basilica church.

The Mirador Mining Project refers specifically to the mining concession named " Mirador 1 (cumulative)" , which is made up of the grant " Mirador 1" and " Viewpoint 2 " since Ecuacorriente SA since 2010 , has become the owner of a total of 11 mining concessions in the province of Zamora Chinchipe , covering more territory than the Mirador Mining Project.

Note that in the judgment of first instance, determined that the project area , as established by the Ministry of Environment in a ministerial agreement , was not protected zone , so it could not be anything fancy , as noted the constitution . Recently , however, the Comptroller conducted an audit project , establishing the contrary view : mining project areas are located in the Bosque Protector of the Cordillera del Condor.

ii . How was the situation before the intervention extractive or violation of rights.

The Cordillera del Condor area where out is going to take the Mirador mining project, is a mountainous formation shared between Peru and Ecuador . According to the same environmental impact study for the operational phase of the Mirador Project (operational phase EIA) , conducted by the consulting Walsh Environmental Scientists and Engineers (Walsh EIA) , " is a fragile ecosystem and known for having a high biodiversity of fauna species " , specifically , the project is within what is known as a tropical rainforest.

Both Walsh and Conservation International (90) have determined that the area to run the project is a Hotspot (term that defines a global level , 15 tropical areas maintain at least a third of the

Earth's diversity is at serious risk of extinction).

Conservation International in the year 1993 , at a Rapid Biological Assessment concluded that this area represents the largest area of sandstone mountains and most diverse of the Andes Regarding the flora, contains the greatest wealth of all vascular plants in South America, many still unknown scientifically , exceeding 4000 species of vascular flowers. It has 6 endemic species and plant a forest in good condition and high diversity.

Regarding the fauna contains species Mirador Amazonian and Andean origin . It is the habitat of endemic and endangered species. Within the project area , there is an endemic species of amphibian own Ecuador and two regional species that are already endangered .

In sum , both flora and fauna, the project area contains unique , endemic and unknown species that depend on this ecosystem to exist.

Finally, with respect to the sources and freshwater watersheds present in the vicinity of the mining project, Mirador is located specifically in the micro - basins and Wawayme Tundayme rivers originating in the foothills of the Cordillera del Condor. These rivers are used for irrigation and agricultural areas for direct human consumption and are habitat of animals and plants and are used for consumption by plants and animals.

Conservation International, describes the ecosystem of the Cordillera del Condor is supported by the large water cycle that constitutes thus explains that there begin to form rivers destined towards the Amazon.

Already in 2000, the same Ministry of Environment determines that the Cordillera del Condor " not only has a high species richness, but has significant rates of endemism well " and the March 23, 2005 , through the Ministerial Decision No. . 137, declares the Cordillera del Condor as a " forest area and protective vegetation " to solve " the need for the declaration and delimitation of protective forest and vegetation in areas of the Cordillera del Condor , considering that contribute to soil conservation and wildlife , are located in areas that control the preservation of watersheds , and are located in the Ecuador - Peru border Oriental area , which is of strategic importance for national security " , restricting any activity incompatible with the purpose as a protective area , incorporating it into the national system of protected forests .

The conclusion of the rapid biological assessment of the international conservation area of the Cordillera del Condor area represents the largest sandstone mountains and most diverse of the Andes

iii . Chronological narrative of events .

The February 24, 2012 , the MAE by Resolution No. 256, approved the Environmental Impact Assessment (EIA) for the operational phase of metallic minerals Mirador Mining Project , and grants environmental license to Ecuacorriente SA for mining . The EIA was submitted by ECSA through consultants Walsh Environmental Scientists and Engineers (hereinafter " Walsh"), which consists of two documents: one , filed November 26, 2010 that " EIA 2010 " will be called

, and other document consisting responses to comments made by the Ministry of Environment , filed May 24, 2011 , which " EIA 2011 " was called .

Note that in the environmental license for the Exploration Phase , the Ministry of Environment determines , among others, that Ecuacorriente must submit a series of reports for the prevention of adverse impacts on flora and fauna , however the Environmental License does not determine the deadline for submission of such documents.

The March 5, 2012 , the Ecuadorian State, through the Ministry of Non-Renewable Natural Resources (the " Ministry of Resources") signed in the city of Quito, Contract Mining Exploitation Ecuacorriente respect Mirador Mining Project .

Opposite the concession granting of the environmental license for the exploitation phase Mining Project " Mirador " , a protective action was raised for the rights of nature and the rights to life and tell people water . A demand, were attached to the trial judge about 26 annexes containing supporting documents.

The protective action was rejected in first instance and without taking into account either the arguments or the evidence presented by the petitioners bitter .

b . Determining damages :

i . Damage to nature : specification and testing .

The single award and signing of mining in the terms agreed , opens the door to a series of threats and dangers to nature and its inhabitants, both directly and indirectly affected area . However, since we can already identify:

a) Lack of adequate environmental consultation to take into account the criteria of pluralism and multiculturalism that characterize the area.

b) Experience has shown the tendency to extinction species of amphibians and reptiles.

c) have not been established appropriate management programs and wildlife rescue to start phase.

d) have not been established clear program or rescue programs flora.

e) No action protocols developed if snakes are to avoid killing them.

f) There is detailed in the EIA process aguary treatment of potentially polluting perjudicares health and aquatic life.

g) is not defined in the EIA tailings pools and their environmental and social impacts are analyzed.

h) The annual operating plan for mitigation of acid rock , the MAE determined that the method used should be developed to mitigate this impact . The EIA determined a method (EPA) has been described as old by E -Tech International .

i) Although the contract gives the company exclusive right to benefit , smelt, refine , market and sell the minerals, has not been subjected to the corresponding MAE EIA.

j) the environmental impact of other activities such as road construction camps , ports , inter alia, for the operation of the mine is identified .

ii . Damage to persons , groups or communities : specification and testing .

As areas of direct social impact , it will be determined EIA eight towns : The Quimi , Machinaza Alto, San Marcos , Las Maravillas, Tundayme , Etsa (Shuar) and Churuvia (Shuar) Quimi

Valley , in the parishes of Pangui and Bomboiza . As indirect impact areas , 10 villages have been established centers: The Parish Pangul , Certero , Chuchumbleta , Palmira , Paquintza , Pangul , San Andres , Santa Cruz , Santiago Pati Swirl Swirl 1 and 2 .

The social impact area comprises at least the Canton The Pangui and Gualaquiza , although Walsh EIA does not count the towns impacted regionally, regionally recognized that induced impacts and / or synergistic activities of the project will be received in the socioeconomic and political dynamics. however , it appears that at least the Mirador Mining Project will have a direct impact on environmental and social 390 homes and an indirect impact on 170 households. Finally , note that it has created conflicts and tensions between diverse social groups living in the area (colonists and Shuar indigenous communities) due to the presence of the mining project .

iii . Impact assessment in the future.

Industrial or large scale mining involves removing vegetation and topsoil , then dynamite the rock and finally all the material is removed until the reservoir. The material is what leads to processing centers. Waste materials resulting from the extraction and processing of material not normally revert recovery where this activity took place.

Thus, the same EIA for the exploitation phase identifies industrial mining as the main threat to the conservation of the area within human activities that could affect it.

Direct impacts are identified as :

- a) Contamination of soil and water .
- b) Pollution and nuisances in the air.
- c) Total elimination of plant cover .
- d) Elimination of tropical rainforest in not less than 2000 hectares.
- e) In 17 years , the mine will generate 144 million tons of waste rock , ie generate approximately 5 times the waste generated by the city of Quito each year.
- f) The only plant I just overflow will take to start the mining operation jeopardizes shelters endemic, endangered and even unknown to science , since the total habitat of the species of amphibians and reptiles will be removed .
- g) endemic plants including many unknown to science is desbrazaran e (EIA determines it recognizes this reality in determining the need for a group of botanists to rescue)
- h) Termination of unique species and lose little studied species information , so not even known whether or not endangered
- i) The expected levels of contamination is of high impact , particularly in relation to the counts present in the watershed area.
- j) Change in the social and cultural dynamics : colonization increased , change in habits that affect family life and indigenous groups.
- k) Increase use human waste .
- l) Damage to the Shuar people sacred places such as waterfalls
- m) Water pollution with mercury, and consequently of the population consuming fish or water in the area.
- n) Pollution by acid drainage Tanduyme , Quimi Wawayme and rivers. And aquatic ecosystems, river faunal life even other animals such as birds that feed on fish will be afectaos . IN the EIA is determined that this contamination in water will cause a high impact (4 on a scale of 5) .

o) the water quality of rivers that are used for agriculture or human consumption will be affected.

c . Determination of Responsibility:

i . Responsible for public action or / and omission : specify if state governments public entities .

There is state responsibility, to provide environmental license and sign an operating agreement that jeopardizes the right to the conservation of nature and of endemic or endangered , and the right to reparation of nature , allowing the signing the contract even though there is in several important aspects of prevention and mitigation of environmental pollution enough information or details of the methods used.

It is also responsible for the lack of motivation in the judicial decisions on protective action filed , denying effective judicial protection .

ii . Responsible for private action or / and omission : specific company names , companies or non-state subjects (private police or paramilitary) .

Ecuacorriente SA (ECSA) , is responsible for the various aspects not guarantee the prevention or mitigation of environmental damage as transcendental acid drainage , building relavaras or redemption of endemic species, unknown and endangered , that violate the rights of nature.

iii . Judicial accountability : specify whether the case was filed in court , if there was impunity , if it was possible or not the execution of the judgment.

In 2013 (January to July) protective action in favor of the rights of nature and people showed up.

In first and second instance claim was rejected by court judgments lacked motivation, denying effective remedy .

d . Determination of repair and full restoration : To determine the measures to be implemented to ensure the integrity of the repair and restoration :

i . Restoration (DDN)

Restore areas began to be affected by the clearing of vegetation .

However, as it has not even started properly with the phases of mining copper in order to conserve nature , water sources , flora and fauna of the area, ask at least the suspension of the project.

ii . Repair (HR)

As measures to repair the damage caused so far determined :

iii . compensation

Persons directly affected , as they have suffered decline in your lifestyle .

iv . Rehabilitation (including psychosocial)

Promote with suitable measures, spaces for the reunion of indigenous groups and settlers , as there is further fragmentation of the social fabric of the area.

v . Satisfaction measures (sanctions not impunity)

At least be forced to perform an alternate EIA among other things, detail how pollution treatment aspects of acid drainage . Otherwise due responsibility is established.

The respective processes to judicial officials who failed in their duty to protect the rights of nature and people motivated by not issuing judgments is made.

vi . Measures to not repeat

The State does not endanger biodiversity, water sources , or ancestral territory of indigenous peoples or with the authorization , granting signature or projects with similar characteristics.

e . Claim : what requests the Ethics Tribunal:

i . Declares that damage.

That the Court declare that the mining project, the described features , runs a real and imminent nature, flora and fauna, water sources and danger, as well as the social dynamics of the Shuar people , it is already beginning to be affected .

ii . Declares that no violation of the rights of nature and human rights of individuals, groups and peoples.

Declaring that violate direct and imminent nature rights and the rights of people, specifically the right to water . In addition , to declare that the characteristics of the project, not consistent with the legal principle and lifestyle Ecuadorians agreed sumak Kasaw , it breaks the harmony that exists in the region between Pachamama and humans.

iii . Summon rights recognized in international human rights instruments (declarations, conventions , principles) and national instruments (Constitution).

It has undermined the rights of the nature referred to and breached the duty to respect and ensure that the State has, under Articles . 3 12-34 , 97, 250 , 258, 275 , 283, 320 , 340, 385, 387 of the Constitution.

It has violated the rights to a decent life and water, referred to in art. 66.2 and 12 of the Ecuadorian Constitution and art. 4 of the American Convention on Human Rights.

Finally it has violated the right to effective judicial protection , in accordance with art. 8 and 25 of the American Convention on Human Rights .

iv . To declare that there is responsible for violation of the rights of nature and humans.

Declare the Ministry of nonrenewable resources as responsible for allowing a project of such characteristics that threatens the rights of nature.

Flag , the State , through the Ministry responsible for ECSA as a serious violation of the rights of nature and people .

Tests and Annexes

- Ecumenical Human Rights Commission (CEDHU) and International Federation of Human Rights, " Intervention Large Scale Mining in Ecuador and Violation of Human Rights " . Case Corriente Resources . December 2010 in

- WALSH ENVIRONMENTAL SCIENTISTS AND ENGINEERS, ENVIRONMENTAL IMPACT STUDY FOR OPERATING PHASE OPEN MINING PROJECT OF COPPER MINING AREAS VIEWPOINT VIEWPOINT 1 - VIEWPOINT 2 Ecuacorriente SA (ECSA) , November, 2010 , PDF, Figure 2.1 -

- Sacher , William, "Revision partial review of the environmental impact study for the benefit phase . Mirador Copper Project mining company Ecuacorriente " Ecuador , Ecological Action, Quito , December 2011

- Mining contract awarded by the Ministry of Non-Renewable Natural Resources on behalf of the company Ecuacorriente SA , Public Deed No. 925.1 " Signing Ecuacorriente " . Quito, March 5, 2012 . Hereinafter " Contract Mining " , in dating has changed the numbers cited in alphabetical to numeric.
- Final report of the management audit project management and environmental dl the state would control overall , September 24, 2013 .
- Decision of First Instance on 18 March Twenty Fifth Court Civil Court of Pichincha .
- Judgment on appeal in the First Civil Division , Commercial, Leasing and Residual of the Provincial Court of Pichincha , dated June 20, 2013 .