

Ecuador: Mining and the Right of Way

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By Jennifer Moore
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Indigenous leaders delivered a lawsuit in Quito last Tuesday before Ecuador's Constitutional Court asking that the country's new mining law be declared unconstitutional. The case is the next step that the Confederation of Indigenous Nationalities of Ecuador (CONAIE) is taking to try to put the brakes on large scale metal mining which has achieved unwavering support from President Rafael Correa's administration.

“The burning issue in our province and on our ancestral territories is mining,” said Angel Awak, President of the Shuar Federation of Zamora Chinchipe. “It is going to contaminate the rivers and result in social conflict.”

Ecuador has been an oil producer for more than forty years. Now that oil reserves are running low, the Correa administration views metal mining as a future source of state revenues. However, even before any large scale project has reached production, indigenous and non-indigenous communities alike are divided over whether it will result in net benefits or net destruction.

CONAIE's lawsuit alleges that the mining law is unconstitutional for having failed to consult with indigenous organizations whose territories will be affected by the activity. It also criticizes as “absurd” a final disposition in the law that defines it as superior to others.

“The constitution clearly states that organic laws (the highest category of laws in Ecuador before international conventions and the political constitution) can only include those that regulate personal rights or norms pertaining to state institutions,” explained Lawyer Wilton Guaranda from the Regional Human Rights Advisory Foundation in Quito, and one of the signatories on the case.

With this legal status, Guaranda believes that the mining law becomes a “barrier” limiting judicial decisions and the development of new laws, such as those to regulate water and nature.

Awak's biggest concern is water, a right achieved in the 2008 political constitution that Ecuadorians overwhelmingly approved in September and that government representatives affirmed this week during the Fifth World Water Forum in Turkey.

“Mining companies consume millions of liters of water,” said Awak, “which effectively privatizes it.” He envisions that the precious resource could become scarce and speculates that they will end up having to buy back water from the companies. “We will struggle so that our water is not privatized.”

However, Canadian companies situated in Awak's home province and hoping to develop some of Ecuador's biggest gold and copper deposits have already secured government approval. The same day that CONAIE presented its lawsuit, both Vancouver-based Corriente Resources and Toronto-based Kinross announced that they have received notice from the Ministry of Mines and Petroleum to resume exploration work following a suspension on all large scale mining.

From chaos to closer alignment between Correa and Canadian interests

"The rules of the game are clear for everyone now," Undersecretary of Mines Jose Serrano said speaking to Reuters. "The mining decree has been fulfilled...it can't be revived."¹

But what is most clear is the importance of Canadian investment to Correa.

All large scale mining was suspended last April when the National Constituent Assembly passed a mining decree that ordered the Ministry of Mines and Petroleum to revoke most mineral concessions for reasons such as failure to consult with communities, or for overlap with protected natural areas and sources of water. It also gave the government 180 days to rewrite the mining law.

At the time, Correa met with Canadian investors and explained that the decree was necessary "to put the sector in order," which had been open to speculation and weak regulation since legal reforms were implemented following a World Bank sponsored study in the 1990s.

But in addition to the controversy that the new law has generated, application of the mining mandate has also been limited. Most notably, Copper Mesa Mining (formerly Ascendant Copper Corporation) in the northwestern Intag valley lost two of its main concessions for failure to consult with local communities. In contrast, companies such as IAMGOLD, Corriente, Kinross, and International Minerals maintain key holdings in the south despite heated conflicts over similar complaints.

In the case of Corriente Resources, its suspension dates back to late 2006 when violent repression of local protests was carried out by state security forces making use of company installations. With such issues yet to be fully investigated and Corriente now on the verge of selling its project to an industry senior, Correa continues courting Canadian business leaders.

With assistance from the Canadian Embassy, investors met with Correa in February to discuss how to deepen relations across various sectors including mining, tourism and hydroelectric generation - also necessary for large scale mining. Correa gushed to the national press afterward saying that "Canada has always been a good friend of Ecuador."

In a possible new offense to delegitimize the CONAIE, he added that he has invited Canadian Ambassador Christian Lapointe to bring indigenous leaders from Canada to Ecuador "so that they can testify for themselves, because here some of the leaders of our ancestors have taken up the flag of anti-mining." He called such leaders "false" adding "they are just radical indigenous leaders,"² even if they represent about 90 percent of first peoples across Ecuador.³

"In the mining sector," he added, "they are the best investments, they respect the environment and our laws the best."⁴ This simplistic claim is backed up with images of Ecuador's small scale and artisanal mining sector which is short on investment and environmental controls, and long on devastating impacts to rivers and local communities.

Top-of-the-line technology will prevent any future disasters, he argues, echoing industry promises while calling activist concerns over water contamination "absurd."⁵

Foolproof technology?

But groups protesting large scale metal mining have heard these promises before.

“We will use the latest technology...[and] The steel being used meets international norms...which will diminish the risk of rupture in case of seismic movements,” recalled Quito-based environmental organization Accion Ecologica in a press release entitled: “You were warned, the OCP spill confirms that secure technology does not exist.”⁶

The privately-owned Heavy Crude Pipeline (OCP) was built in 2003 after years of multi-sector opposition. As another major contract that benefitted Canadian investors, the OCP faced its first major accident on February 25. The company says a tremor caused the spill which dumped approximately 14,000 barrels of oil into the Santa Rosa river in Orellana Province.

The pipeline travels from the Amazon region to the coast, crossing 94 seismic fault lines and 6 active volcanoes.⁷ Designed to boost oil production previously limited by the capacity of the state-owned SOTE pipeline, Canada's EnCana was the country's biggest investor at the time of its construction with a 31.4 percent share in the \$1.2 billion project.⁸

For lawyer Wilton Guaranda “the accident is clear evidence that the geographic and natural conditions of Ecuadorian territory are not compatible with such a highly contaminating and toxic activity.” He added that the CONAIE is considering a lawsuit against the OCP consortium.

“This event should be cause for reflection so that a much more critical examination takes place of the natural reality of Ecuadorian territory to really determine the costs and benefits of [mining],” said Guaranda, “not just in relationship to the environment but alsowith regard to its social dimensions to know whether or not in the long term it will provide us with the opportunity for development and progress, or if this will become a barrier so that we have to obtain international loans or other debts in order to recuperate the nature that has been affected.”

So far, Minister of Mines and Petroleum Derlis Palacios has congratulated company remediation efforts while asking social organizations to be “a little more objective with the hope that certain communities or leaders don't try to benefit from this misfortune by making a business out of it.”⁹

Good living before big business

But for communities living in constant conflict over mining whose benefits and protections are stacked on the side of big business, leaders like Angel Awak are trying to avoid unnecessary risk.

Awak sees greater potential in ecotourism and micro-credit programs for small farmers over the long term and adds that their wealth and well being is in their territory: “When the Shuar have territory, they have everything they need, they can hunt, they can fish, they have the river and all of the elements that are necessary for the Shuar to live well. This is what we want to defend so that our youth are also conscious of this and work to defend the natural environment.”

Explaining that this is what “Sumak Kawsay” or right living means for the future of the Shuar nation, he said the government should be behind them.

“We are not saying anything beyond the law. Rather we are demanding that our rights be respected within the framework of the constitution,” he said, noting that Sumak Kawsay is a central principle of Ecuador's new Carta Magna.

However, given Correa's current stance and his likely success in upcoming national elections at the end of April, social-environmental conflicts over mining are anticipated to grow with groups promising to halt projects at the local level. A response from the Constitutional Court to the CONAIE's lawsuit is anticipated within six to twelve months.

The interview with Angel Awak was recorded by Melaina Spitzer.

Notes:

1. Reuters, 10 Mar 09 “Ecuador lifts ban on miners, sees them as priority”
2. President Rafael Correa, National Radio Address, 31 Jan 09
3. Kintto Lucas, IPS 22 Jan 09, “Los indigenas vuelvan al camino de la protesta”
<http://www.ipsnoticias.net/nota.asp?idnews=91081>
4. El Comercio, 19 Feb 09 “Ecuador desea la inversion Canadiense”
5. President Rafael Correa, National Radio Address, 18 Oct 08
6. See: <http://www.biodiversidadla.org/content/view/full/47723>
7. Lorna Li, June 25th 2007, “Ecuador's OCP Pipeline – A False Promise of Wealth”
8. Dr. Leslie Jermyn, 2002 “In Whose Interest? Canadian interests and the OCP crude oil pipeline in Ecuador”
9. EFE, Mar 5th 2009 “El ministro Palacios habla del buen manejo en la solución al derrame de crudo en la Amazonia”