

A CHRONICLE OF DECEPTION

Peru



ATTEMPTS TO TRANSFER THE AWAJUN BORDER TERRITORY IN THE
CORDILLERA DEL CONDOR TO THE MINING INDUSTRY

Research team of the Organization for the Development of
the Border Communities of El Cenepa (ODECOFROC)

IWGIA report 5

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Report 5
IWGIA – 2010

IWGIA Report: A Chronicle of Deception

Attempts to transfer the Awajún Border Territory in the
Cordillera del Cóndor to the Mining Industry

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Editorial Production: Alejandro Parellada

Graphic Design: Jorge Monrás

Cover Photo: Huampami, February, 2009 - Photo: Marco Huaco

Printing: Tarea Gráfica – Lima

Translation: Sylvia Fisher Carrasco

ISBN: 978-87-91563-73-7 – **ISSN:** 0105-4503

Index: 1. Indigenous Peoples – 2. Awajún People – 3. Indigenous Peoples and Territory – 4. Indigenous Peoples and Mining. I. Title. II. Series.

Geographical Area: Latin America, Peru

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Prologue

In late September 2006, at the beginning of Alan García's second term as president, the Defense Committee of the Peruvian Congress held a meeting to discuss the permeability of the border with Ecuador along the *Cordillera del Cóndor* (Condor Mountain Range). Both the Minister of Foreign Affairs, José Antonio García Belaúnde, and the Minister of Defense, Allan Wagner, attended. The issue was understood as the threat to Peruvian sovereignty posed by informal resource extraction activities executed in Ecuador. Minister Wagner made a statement that defined a basic policy against the indigenous peoples of the area: "*The new concept in the world implies moving from defensive security to corporate security*"; in other words, from the security provided by armies to the security provided by companies, always ignoring the indigenous presence, in this case, the presence of the Awajún and Wampís peoples. Other alternatives were ignored, even one that had proven to be viable.

For Peru, this was an alternative that primarily considered the indigenous presence along the border with Ecuador. Although some ministers would ultimately prefer to ignore it for practical purposes, the territory in question is indigenous. It belongs to communities that believe the problem may not be the actual permeability of the border, but rather the border itself, due to its dividing effect on the communities, in other words, the indigenous populations. In any case, the communities on the Peruvian side of the border had been adjusting to the military action in the "*defensive security*" phase. In contrast with these government officials, the army had not only been taking into consideration the indigenous presence, but had also counted on it to defend the border. The State, when making its presence known in the region, which at first was only military in nature, was unable to disregard the indigenous communities that were familiar with and dominated the area. Moreover, the Awajún and Wampís communities cooperated on the condition that indigenous ownership be recognized through the registration of communal properties and that they receive military training.

Ever since Peru ratified Convention 169 of the International Labor Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries in late 1993, which came into force in early 1995, the right of indigenous populations to consultation "*in good faith*", "*through appropriate procedures and in particular through their representative institutions*", "*with the objective of achieving agreement or consent*" to "*legislative or administrative measures which may affect them directly*" (Article 6 of the Convention) has existed in the Peruvian legal system, a fact that could certainly strengthen the aforementioned agreement practice in the border region. Nevertheless, an event occurred around that time, reinforcing such practice even more. At the beginning of 1995, which coincided with the entry into force of Convention 169, another armed border conflict with Ecuador broke out, a dispute in which Peru received the decisive military support of the Awajún people. Peru also received the support of the indigenous communities in the subsequent negotiations with Ecuador, which led to the final demarcation of the border in 1998, thus complying, for this purpose, with the provisions set forth in Convention 169, although it is not expressly stated in this manner.

The Border Treaty or the Broad Peruvian-Ecuadorian Agreement on Border Integration, Development and Good Neighbor Relations of 1998 contains provisions with respect to the indigenous presence: "*The Parties shall give priority to the following lines of action: (...) Develop environmentally sustainable studies and projects to improve the*

living conditions of the native communities, together with the active participation of their inhabitants" (Article 11.I; Ecuador had ratified Convention 169 a few months before). It also contained additional lines of actions on extremely sensitive topics that did not specifically take the indigenous presence into consideration: *"Use the mining resources found in the border areas of the territories in both countries in a coordinated manner, pursuant to the legal framework established by the Parties through a Mining Integration and Complementation Treaty"* (Article 11.i), an instrument that was agreed upon and diligently ratified by both parties thereafter in 1999. Among the supplementary commitments to the Broad Agreement guaranteed by the Heads of State of Argentina, Brazil, Chile and the United States of America, one was included that affected the Awajún and Wampís territory. It consisted of the establishment of an *"ecological protection zone under the sovereignty and jurisdiction of the respective State"*, which contemplated the indigenous presence, though not in terms of consultation or participation: *"The members of the native communities of the region may freely transit through the ecological zones"* (Binding View of the Heads of State of the Guarantor Countries of the Protocol of Peace, Friendship and Boundaries of 1942, Points 7 and 8, 1998).

The indigenous communities in Peru were consulted on the agreements with Ecuador, in addition to some other subsequent regulations; these could no longer be regarded as agreements with the army. In 1997, and in view of the Border Treaty that would ultimately be referred to as the Broad Agreement (agreement that was extended based on the Protocol of Peace, Friendship and Boundaries of 1942), the government invited the representatives of the affected indigenous communities to a meeting at Torre Tagle, the viceregal palace in Lima that serves as the current headquarters of the Ministry of Foreign Affairs, not only to supply information, but to also begin negotiating the Treaty on the basis of respect for the land rights of the indigenous populations. At this meeting, the area corresponding to the ecological protection zone of the Cordillera del Cóndor, the Ichigkat Muja National Reserve, was profiled in order to obtain consent from the indigenous populations for the assignment of rights. As a protected zone, the Cordillera del Cóndor could not be registered as community-owned land, but the negotiators made sure that it would continue being indigenous territory, with consequent participation in its management; communal property would be awarded land titles in the rest of the territory, already titled land would be expanded and communal reserves would be created under the management of the communities themselves. The dependence of the river basin lowlands with respect to the highlands due to water flow and sanitation, as well as the need for extensive areas to dispose of and renew resources, constitute factors that require these land management assurances. The agreements were formalized in writing by means of the proper instruments. A debate and agreement process regarding the land ensued in the community meetings with the presence and commitment of government institutions.

The government reported on the imminent Border Treaty with Ecuador, but failed to mention specific details that could affect the indigenous communities. It especially withheld information on Paragraph "i" of Article 11: *"The Parties (Peru and Ecuador) shall give priority to the following lines of action: (...) Use the mining resources found in the border areas of the territories in both countries in a coordinated manner, pursuant to the legal framework established by the Parties through a Mining Integration and Complementation Treaty"*. In fact, the government had already been granting mining concessions in the Cordillera del Cóndor for nearly five years. With the benefit of such paragraph from the Broad Agreement, which therefore contradicts Convention 169, the conjunction of interests between a development policy through natural resource extraction and the greedy scheme of mining companies to cause devastation without mitigation was conjured up in order to subvert the State-indigenous agreement, the Torre Tagle

Pact, as it may be referred to. On one hand, the establishment of the Ichigkat Muja National Reserve or Park came to a halt so that it could be reduced in size; on the other, the process to award land titles to indigenous properties slowed down and the expansions were postponed. Mining concessions increased and strengthened. The National Institute of Natural Resources (INRENA), a government institution which played an important role in providing information to the communities for the ratification of the Torre Tagle Pact, resisted this development; however, this resulted in a reconfiguration of powers in order to cement the claims of mining companies with respect to the rights of the indigenous populations.

The Ministry of Energy and Mines (MEM) took over not only the promotion, but also the supervision of mining concessions, including all matters relevant to their impact assessment. For the sake of appearances, a Ministry of the Environment was created in 2008, although it had no control over these processes. In this subversive context of the Torre Tagle Pact, the statement made in 2006 by Allan Wagner in his capacity as Minister of Defense made sense: *"The new concept in the world implies moving from defensive security to corporate security"*, in other words, the security of the occupation of the border area by mining companies, whether Peruvian or foreign, instead of indigenous peoples. The government is neither concerned with having violated the Torre Tagle Pact as a result of land invasion and destruction of indigenous resources, nor does it care about violating a constitutional provision: *"within fifty miles of the borders, foreigners may not acquire or possess, for any reason whatsoever, mines, land, forests, water, fuel or energy sources, directly or indirectly, individually or in partnership, under penalty of forfeiture to the State, the right thus acquired"* (Article Seventy-One). This article also indicates the following exception: *"the case of public need expressly declared through a supreme executive order"*; nevertheless, the government avoids the commitment of these statements when it comes to maintaining the indigenous communities as uninformed as possible with respect to threats against their rights as a result of the deliberate and systematic in compliance with the Torre Tagle Pact.

Mining companies are all set to gain access through neighboring territories and establish themselves in the Cordillera del Cóndor, destroying resources, ravaging land and polluting water until it is literally poisonous as a result of the toxic wastes produced by their activities. Indeed conditions for true genocide are brewing, as evidenced in recent experiences. The government does not ignore them, but rather promotes them. During the first half of 2008, an attempt was made to conclude activities by enacting a series of executive orders with the objective of significantly weakening indigenous community consultation procedures and almost completely dismantling the mechanisms established to protect their properties. Opposition of this magnitude to the Pact with the communities and the Broad Agreement with Ecuador cannot be kept a secret once its consequences become apparent in the eyes of indigenous inhabitants. The neighboring country, Ecuador, is complacent and cooperative, despite the fact that complicity clearly violates its own new constitution; however, the indigenous communities have not resigned themselves to suffer the assault of the mining industries and other extractive companies. This context of devastation and destruction explains why the Awajún and Wampís peoples rose up against the government reaction, which led to the events in Bagua on June 5, 2009, a massacre for which neither political, nor military responsibilities have been assumed, or, worse still, a massacre upon which neither politicians, nor military officials have reflected. Impunity has allowed this. Some executive orders contrary to the guarantees of indigenous rights have been repealed, which is significant; however, the path to destructive development, the concept of corporate security and the subsequent policies with genocidal consequences have remained unchanged.

The Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on September 13, 2007, with the favorable vote of Peru, contributing to a majority of nearly one hundred fifty States, indicates the following in the first paragraph of Article Thirty-Seven: “*Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honor and respect such treaties, agreements and other constructive arrangements.*” Whether or not the Torre Tagle Pact is a *treaty*, could be subject to discussion, but it is undoubtedly an *agreement* or *constructive arrangement*, and for this reason, the Awajún and Wampís peoples are entitled to strict compliance and redress for any and all damages produced by the breach of such rights. It is therefore essential to review the entire UN Declaration on the Rights of Indigenous Peoples to see the long list of pending rights violated on a daily basis by the Republic of Peru and extractive companies.

To remind the Peruvian Congress, justice and the government of such international obligations to some indigenous peoples is to address absolutely deaf ears, plugged ears as a result of the worst communication barrier between human beings: racism. Constitutively racist as it continues to be, the Republic of Peru does not only fail to behave in *good faith* with the indigenous populations, as required by Convention 169 and the most elementary sense of political honesty, but is doing so as a real *rogue state* at the service of *rogue corporations*, as a criminal State and accomplice of criminals, an accomplice of companies with their own names and confusing identities and an accomplice of the neighboring State. Will it ever answer for crimes that may constitute nothing less than actual genocide?

Ponder the definition of Paragraphs “b” and “c” of Article Two of the Convention on Prevention and Punishment of the Crime of Genocide, in addition to the same paragraphs of Article Six of the Statute of the International Criminal Court: “*genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (...) causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (...)*”. Peru ratified the Convention in 1960 and the Statute in 2001, with Ecuador ratifying the aforementioned documents in 1949 and 2002, respectively.

I hope that this prologue has fulfilled its purpose. The title of the report that follows, *A Chronicle of Deception* must by now be understood. It actually deals with much more than one deception: Peru deceived the Awajún and Wampís peoples; Peru and Ecuador deceived the international community, which fortunately is no longer made up solely of States that are complacent or in other words, accomplices. The report provides a complete chronicle and thorough analysis of the relationship between Peru and the Awajún peoples with mining interests in between.

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Introduction

“With Alan García, a new era of doing away with the indigenous peoples has begun.”¹

This report argues and demonstrates that the Peruvian government acted in bad faith by modifying the original proposal to create the Ichigkat Muja National Park agreed upon with the Awajún and Wampís communities of the Cenepa River Basin, an area that includes the *Cordillera del Cóndor* (Condor Mountain Range), which this protected natural area intended to conserve. It also proves that the Peruvian government acted in this manner in order to benefit mining interests and a group of mining entrepreneurs, who maintain strong political ties with senior government officials. As a result, the territory of these peoples has been threatened, and their rights, not to mention the national and international laws that protect them, have been challenged.

The Peruvian government has opted to implement a development model strongly based on the expansion of oil and mining exploration frontiers at the expense of indigenous rights. Satisfactory institutional and regulatory mechanisms that truly guarantee the collective rights of the indigenous peoples, affected by projects authorized by the central government, have not been created during this period. However, as recognized by the United Nations Committee on the Elimination of Racial Discrimination (CERD) on other occasions, *“development objectives are no justification for encroachments on human rights, and that along with the right to exploit natural resources, there are specific, concomitant obligations towards the local population.”²*

In this regard, it is worth mentioning that the Committee has expressed, in a number of documents, that the Convention applies to indigenous and tribal populations and requires State Parties “to recognize and protect the rights of the indigenous peoples to own, develop, control and use their communal land, territories and resources...,” as well as their right to participate in **and consent to** activities that could affect their rights and to receive restitution by means of the right to “just, fair and prompt compensation”.³ In harmony therewith, the Committee has also stated, *“that all appropriate measures need to be taken in order to combat and eliminate such discrimination”* against indigenous tribal peoples. CERD General Recommendation XXIII points out that one of the most serious threats the indigenous and tribal populations have been dealing with is the loss of land and resources for resource exploitation, observing that these threats are directly related to the preservation of their cultural and historical identity.

The Cordillera del Cóndor forms part of the traditional land of the Awajún and Wampís peoples, as recognized by the Peruvian government on repeated occasions, including the process in the framework of which the proposal to create the Ichigkat Muja National Park was defined. Nevertheless, the State proceeded to reduce its area in order to accommodate the mining sector, introducing an intolerable risk on the land of the Awajún and Wampís peoples in a clandestine manner.

By proceeding in this manner, among others, it has been established that Article Twenty-Seven of the International Covenant on Civil and Political Rights (ICCPR)

has been violated. With respect to the scope of this article, the United Nations Commission on Human Rights (UNCHR) has declared that, “When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that may affect them...”⁴ The special considerations with respect to the decisions adopted by the State in indigenous territories form part of the elements that guarantee their collective ownership, incompliance with which violates this right.

In this regard, the Inter-American Commission of Human Rights (IACHR), in application of the provisions set forth in the American Convention on Human Rights, has determined⁵ that: “[the indigenous peoples] need to be consulted at the early stages of the plan... and not only when the need arises to obtain approval from the community.”

The Special Rapporteur on Indigenous Peoples has also stated that the obligation of prior consultation constitutes a State obligation, even when it affects untitled land:

*“25. (...) The fact that the area is located outside of a comarca [registered, n.a.] does not justify the lack of full application of the right to free, prior and informed consultation. Regardless of the legal aspect the land and natural resources in question could have in the scope of municipal law, **when a project has a significant impact on the life or existence of indigenous communities**, as is the case with the flooding of areas, where inhabitants live and carry out activities for their survival, as well as the resettlement of its members, consultation shall be conducted in order to obtain consent from the affected communities **before the project is approved**, as established in Articles Ten and Nineteen of the United Nations Declaration, as well as ILO Convention 169.”⁶*

The obligations to consult do not only involve the State, but also render private business responsibilities enforceable, as recalled by the Special Rapporteur on Indigenous Peoples in reference to Panama, given that companies are required to act in accordance with the international standards of human rights, which in this case also form part of national legislation.

Finally, with respect to mining concessions granted by means of administrative procedures not previously consulted, it is worth making reference to the statement emphasized by the Special Rapporteur in the case of the Chilean constitutional reform:

*“6. The obligation of the States to consult indigenous peoples prior to adopting legislative, administrative or political measures, which may directly affect their rights and interests, is firmly based on international human rights law. **Failure to comply with consultation regulations or the execution thereof, without observing its essential characteristics, compromises the international responsibility of the States.** Furthermore, in countries such as Colombia or Costa Rica, failure to consult or comply with its essential requirements, **implies the invalidity of public law, insofar as procedures, acts and adopted measures are concerned.**”⁷*

Therefore, it is highly unlikely that administrative procedures have nothing to do with these obligations undertaken by the highest level of the Peruvian government.

This situation serves as a basis for the claims made by the indigenous organizations that led to massive demonstrations in 2008 and 2009, in addition to a prolonged strike, which culminated in the bloody events of Bagua (June 5), when the government violently intervened to clear a highway blocked by Awajún and Wampís contingents.

The problem persists insofar as the government is unwilling to recognize that the decisions made violate indigenous rights, as well as the right of the rest of the citizens to transparency in its actions. Although a committee was set up to review indigenous demands, including an agenda agreed upon with the government in 2001 that none of its sectors have attempted to pursue, there is little confidence that truly enforceable agreements will result from this process, with so many indigenous officials and leaders under legal persecution. In this regard, it has become necessary to document the case demanding the restoration of the proposal to create the Ichigkat Muja National Park and the cancellation of the mining concessions in order to prevent the State from continuing to make decisions in a clandestine manner with respect to issues that are both particularly important to the indigenous peoples and have the potential to bring about serious consequences for the communities of the Awajún and Wampís peoples of the Cenepa River Basin.

The Cordillera del Cóndor and the Cenepa River Basin

"The true gold is the Cordillera just as it is. Don't they realize that?"

The *Cordillera del Cóndor* (Condor Mountain Range) is an isolated branch of the *Cordillera Real Oriental* (Eastern Mountain Range), which reaches an altitude of nearly 3,000 m.a.s.l. in the region. The Cenepa River or *Senep*, as referred to by members of the Awajún and Wampís peoples, in whose territory the Cordillera is located, flows from its peaks.

The Cordillera del Cóndor has attracted the attention of biologists and environmental scholars due to its geological characteristics and the particularity of its vegetation, in addition to being the only representative sample of the Montane Forest of the Cordillera Real Oriental. "Tepui" type formations, which are actually characteristic of the Guiana Shield, are found in this area, a Pleistocene refuge of the Marañón River. Tepuis are plateaus with vertical walls, where sandstone soils and a high concentration of vascular plants are predominant. In 1996, the area was identified as a "priority zone for the conservation of national biodiversity" in the document entitled "*Diversidad biológica del Perú – Zonas prioritarias para su conservación*" (Biological Diversity of Peru – Priority Zones for its Conservation) prepared by the National Institute of Natural Resources (INRENA)⁸.

The particularity of the area, its status as a "hotspot" and its role in the water cycle of the Cenepa River Basin substantiate the importance to protect and conserve this ecosystem.

The Cordillera del Cóndor also forms part of a section of the international border between Peru and Ecuador. This stretch of border between both countries was tardily delimited after the war of 1941 and the signing of the Rio de Janeiro Protocol of 1942. In this difficult-to-access area, characterized by continuous cloud cover, the instructions contained in the Protocol with respect to the delimitation led to differing interpretations among the joint demarcation committees. The instructions mentioned the existence of a *divortium aquarum* between the Zamora and Santiago rivers; nevertheless, it was later established that there were two: one between the Zamora and Santiago rivers and another between the Cenepa and Santiago rivers. Furthermore, the Cordillera del Cóndor was not even mentioned in Article Seven of the Protocol. As a result of the unenforceability of the Protocol, this portion of the border, which was itself a natural frontier, remained undemarcated until 1998. The postponed delimitation of the border has allowed the Awajún people of the Cenepa River Basin to enjoy certain territorial stability only interrupted by armed conflicts and, currently, by mining projects.

The Cordillera del Cóndor also marks the border historically negotiated between the traditional land of the Shuar and Awajún indigenous peoples located on the northern and southern flanks, respectively. Both populations form part of the Jivaro culture and language family. The Shuar, which constitute one of the indigenous nationalities of the Republic of Ecuador, have a population of approximately 110,000 people distributed among more than 500 centers, located in the Provinces of Morona Santiago, Zamora-Chinchipe and Pastaza. As per the last Peruvian census (2007), the Awajún people have a population of 55,328 inhabitants in 281 communities located in various provinces of four different regions in Peru: Amazonas, Cajamarca, Loreto and San Martín. The Wampís territory is located to the east of the Cordillera del Cóndor, on the Peruvian side thereof; its sixty-one communities occupy the middle and upper reaches of the Santiago River in the Province of Condorcanqui and the Morona River in the Province of Datém del Marañón (Loreto) with a population of 10,133 inhabitants.

The Cenepa River Basin is found in the region of Amazonas, Province of Condorcanqui and District of El Cenepa. This basin has formed part of the Awajún territory from time immemorial, and there are a total of forty-two communities and fourteen hamlets. Only one community and one hamlet pertain to the Wampís people. The 2007 census estimated a population of 8,474 inhabitants. The capital of the district is Huampami (220 m.a.s.l.), where the only concentration of non-indigenous population in the basin is found (around ninety non-indigenous inhabitants).

The Continued Awajún Occupation in the Cenepa River Basin

The continued occupation of the western Amazon region on both sides of the Peru-Ecuador border by the Jivaro peoples, whom ethno-historians refer to as the “Jivaroan complex”, is well-documented and established. Historic Jivaro-speaking populations also occupied extensive areas in highland regions found in current Peruvian and Ecuadorian territories.⁹ Whereas the Andean Jivaros have disappeared and their languages are no longer in use, the Amazon Jivaroan complex (Awajún, Wampís, Achuar and Shuar) preserves its territorial location to a large extent, maintains its enormous cultural vitality and, in general, experiences significant demographic growth.

Due to its location, the Amazon Jivaroan complex had contact with different pre-Hispanic peoples, maintaining relationships with populations on the northern Peruvian coast, as embodied in the iconography and mythology. These contacts were facilitated by the existence of passages in the mountain range, which reaches lower altitudes in this region, the continuity of the climate in some areas and the extreme proximity between the headwaters of rivers on the coast and in the jungle. Hocquenghem argues that the influence of the Sicán, a culture that developed arsenical bronze, reached the present-day area known as Bagua around the ninth century A.D. Mythical references to these contacts seem to be expressed in the Jivaro tradition, which alludes to clashes with the *Yuk Iwa*.¹⁰ The discovery of objects from diverse cultural traditions in the Awajún territory reflects the existence of material trade flows involving metal objects found in Shamatak and on the banks of the Comaina River, in the upper reaches of the Cenepa River Basin, as reported by Guallart (1990: 39; 1997: 88-90).

The Inca Empire never obtained control of the current Awajún territory, although it was able to maintain an administrative hold over some Palta and Guayacundo segments of the Andean Jivaroan complex through military means and political alliances. The Inca conquest of the Guayacundo people occurred during the reign of

Inca Yupanqui, after the occupation of Cajamarca in the mid-fifteenth century. In order to secure this zone, exhausting wars were subsequently fought during the reign of Huayna Cápac.¹¹ The chronicles describe the difficulties the Incas faced in their attempts to conquer the Jivaro peoples known as the Bracamoro and Rabona. These attempts were first made from the southwest around 1490. On this occasion, the Incas sailed down the Marañón River in rafts. A contingent reached the Cenepa River and the Kumain, Kampanak and Numpatkaim rivers to the foot of the Cordillera del Cóndor, where they fought against the ancestors of the Awajún people. Another contingent sailed down the Chinchipe River, where it was ultimately resisted by the Bracamoro and the Xoroca. At the time of the civil wars between Huáscar and Atahualpa, around 1520, an Inca army advanced once again from the north towards the Chinchipe River; however, after attempting to occupy the area of the Jivaroan Bracamoro, the Inca army failed and “retreated, fleeing from the fury of the men dwelling in such area”, as documented by Cieza de León. The Bracamoro mentioned in the chronicles are referred to as the Pakamuru in Awajún tradition.

The first Spanish expedition into Bracamoros took place in 1536, as ordered by Pizarro, and resulted in the founding of the short-lived town of Jerez de la Frontera in the area surrounding *Pongo de Rentema* (Rentema Gorge) at the confluence of the Marañón and Chinchipe rivers; it was later refounded as Nueva Jerez de la Frontera. The towns of Ávila, Perico and Chirinos were subsequently established as Spanish settlements. When the Spanish founded Jaén, Hispanic conquistadores had already made advances into the region from both the north and the south. They penetrated the Zamora River Basin from the north, where they founded the short-lived town of Bilbao in 1541. Other early expeditions in the region were made in the direction of the Yacuambi River, where Zamora de los Alcaldes, now known as Macas, was established. Based on these conquests, the Spanish crown established the *Gobernación de Bracamoros* (Government of Bracamoros) and the *Gobernación de Yahuarzongos* (Government of Yahuarzongos), which were subsequently consolidated into one.

According to early colonial documents, the populations living in the Awajún territory were referred to by different names, such as Xoroca (headwaters of the Numpatkeim and Marañón rivers upstream from the confluence of the Chinchipe River up to the Cenepa River), Huambuco, Cungarapa (Nieva River) and Guiarra (in the lower and middle reaches of the Santiago River). Indigenous people living in Shushunga are later referred to as Tontón, neighbors of the Xoroca. In the case of the term Guiarra, this word implies a corruption of the term Shuar(a), which was broadly used among the Jivaro to identify different segments of this Amazonian group. Totón is associated with the locality of Tutumberos, name that an Awajún settlement still goes by.¹² The Huambuco, known by the Awajún as Wámpuku, were, according to oral tradition, tall and dark-skinned with curly hair; they were formerly known as Shuwashiwag.

Sixteenth-century documents do not refer to the Awajún by this name. The term Aguaruna or Ahuarunes, which supposedly refers to the male practice of weaving, began to appear in documents dating back to the first half of the eighteenth century. Maldonado’s map published in 1750 locates the Ahuarunes on the right bank of the Santiago River near its confluence with the Marañón. The term Antipas, by which the Awajún were also referred to in historical documents, is primarily used in the nineteenth century and is derived from the name of a local leader, Nantip (Institute of Common Good, 2009). In any case, according to Awajún tradition, it seems that many names were used to refer to the ancestors of all the local groups that are currently identified as Awajún. Those families originating from the upper and lower Cenepa are known as Antashiwag and Pinchushiwag, respectively.

Even today, the Jivaro peoples, including the Awajún and Wampís, bear a reputation of being warlike, which is based on their firm decision to defend their land. The ability to establish alliances with different local groups in order to defend their territory is one of their most distinguishing characteristics.

Gold: Motivation to Conquer the Land of the Jivaro Peoples

The early interest of the Crown in controlling the Jivaro region was largely related to the discoveries of gold deposits, which resulted in a model of extractive occupation. The first mines were identified by the Spanish in the region of Zamora in 1556, which led to new discoveries and settlements; *encomiendas de indios* (grants of Indians for the purpose of tribute collection and labor extraction) were granted to work these mines. The cities of Valladolid and Loyola were successively founded the following year at the headwaters of the Chinchipe River, in addition to Santiago de las Montañas along the Santiago River, Santa María de Nieva at the confluence of the Nieva and Marañón rivers and Sevilla del Oro and Santa Ana de Logroño de los Caballeros in Yahuarzongos to the north. As in the west, these settlements and towns were quite unstable.

The area became more important when the Spanish discovered the Cangasa and Iranbiza gold mines in the Santiago River Basin on tributaries that originate in the *Cordillera del Cóndor* (Condor Mountain Range), where it is said that extracted gold has 23 carats. In addition to these mines, deposits such as Zamora, Valladolid, San Francisco and Nambija were also found in the area. There were seventy-one *encomiendas* in the *Gobernación de Bracamoros-Yahuarzongos* (Government of Bracamoros-Yahuazongos) in 1571, with a total of 22,270 Indians.

The indigenous populations, living in the areas where the Spanish made their “discoveries” and founded cities, became subject to the *encomiendas* (Colonial labor system implemented by the Spanish), and the *encomendero* (holder of the *encomiendas*) would receive the right to collect tributes, which indigenous inhabitants were forced to pay starting at the age of 14, as “free” vassals of the King of Spain. In order to subjugate the indigenous population, the *encomenderos* and authorities used soldiers and the so-called “*indios de lanza*”, warriors from other indigenous towns that had become allies of the Spanish. The tribute was paid in kind or through personal services, mainly as gold or in the form of work to extract it. Since censuses, official inspections and tribute assessments were not carried out until much later, the arbitrariness in the collection of tributes and the exploitation of Indian labor were significant, including the fact that children, who did not meet the minimum age requirement, were forced to work. Attempts to conquer were resisted time and again, but the repeated epidemics, such as the smallpox and measles of 1589, helped drastically wipe out the Jivaro population in some areas to such an extent that the President of the *Real Audiencia de Quito* (Royal Audience of Quito) stated the following in 1603: “*It is unfortunate that almost all the natives have died,*” referring to the Yahuarzongo area (Cuesta, 1989: V, 448).

Abuse and mistreatment gave way to constant escapes, which resulted in armed raids, and local rebellions, such as those recorded in the region of the Cangasa and Logroño mines in 1569 and 1579, respectively. A general uprising of various local allied Jivaro groups took place in 1599 to expel the Spanish. Attacks on different Spanish towns, such as Logroño and Sevilla del Oro, occurred almost simultaneously with the participation of the Jivaros from the Morona and Santiago rivers, interrupting communication between Santiago de las Montañas and the cities of the *Real Audiencia de Quito*. The Jesuit historian Velasco wrote about this *tradición* (a combination of fiction and history that forms a kind of historical anecdote), in which

rebels poured molten gold in the mouth of an encomendero, in response to his unbridled greed for this precious metal.

After the general uprising, some areas completely shut off to the presence of the Spanish until almost the end of the Colonial period, as was the case with Zamora, Logroño and Sevilla del Oro, which blocked the way to the Marañón River from the north. The Jivaro continued harassing the inhabitants of the Spanish settlements along the Santiago River, and the Cangasa mines remained closed.

Nevertheless, it was crucial for the Crown and the encomenderos to recover the Cangasa and Zamora mines and restore safety to the access routes and transit, all within the Jivaro territory. For this reason, the Spanish made numerous attempts to recover and secure entry into the Cangasa mines throughout the seventeenth century. In 1678, 1692 and 1695, the Spanish invaded the region of Cangasa, seeking to establish a route through the Cenepa and Cucuasa rivers and reopen communication with Loja. The Spanish took many prisoners from among the Jivaro during these raids, particularly women and children, who were handed over to the authorities for their personal use. The Jivaro of the Cenepa River Basin, in the areas of Cangasa and Suririsa, reacted by strangling their own children in order to prevent them from being taken by the Spanish.¹³

Afterwards, the area between the left bank of the Santiago River and the Cenepa River Basin remained closed to traffic and was no longer used by the Spanish; the Awajún living in the Cenepa River Basin recovered their autonomy. The Spanish continued trading with some limitations on the Marañón River from the region of estates in the Uctubamba Valley to the west until *Pongo de Manseriche* (Manseriche Gorge), although they did not found new Spanish settlements until much later in the republic.

On the eve of Peruvian independence, the resistance of some Jivaro groups was finally crushed from Cuenca (Ecuador), and communication, although fragile, to the Marañón River via the Santiago River was able to be reestablished. Despite their interest in axes and iron spearheads made available along this route, the Jivaro population continued rejecting the establishment of outsiders among them as they feared the diseases they would bring.

Throughout the nineteenth century, gold mining to the north of the Marañón River attracted the interest of the authorities once again, to such an extent that by the end of the century, President Andrés Bello had acquired a mining concession with some partners in order to work the alluvial gold deposits on the banks of its tributaries; nevertheless, the Jivaro, who staged several attacks in 1894 on the towns where miners and rubber tappers lived, resisted the occupation of the area, making transit along the Marañón River difficult. In the west, landowners from Uctubamba and Chachapoyas attempted to make way to the Marañón – Amazonas rivers through Awajún territory, leading to repeated confrontations and relative progress along the border with the establishment of a road and some trade posts. This continued resistance explains why the Jivaro territory to the west of Pongo de Manseriche did not succumb to raids aimed at recruiting rubber workers during the rubber boom.

Later, around 1930, the area of the Chirinos and Chinchipe rivers became an attractive site for mining, and the region experienced a gold mining boom; however, the technology used limited the continuity of the exploitation, and gold veins were progressively abandoned. Nonetheless, speculations were made regarding the gold potential of the entire disputed region during the war of 1941. George McBride, the North American geographer in charge of the aerial photography studies to demarcate the border, indicated the following in his final report issued in 1949: "Further east, along the western, northern and eastern foothills of the Cordillera del Cóndor,

there are gold deposits that, at some time, yielded good profits, but are now mostly abandoned. Some believe that these deposits constitute potential wealth in the disputed regions, which may be compared to the forecasted oil production. Others believe that the gold deposits are almost completely exhausted (McBride, 1996:119). While old gold veins dating back to colonial times were no longer intensively exploited along the Cenepa, Santiago and Marañón rivers, alluvial gold was being extracted on a small scale without using mercury (Serrano Calderón de Ayala, 1995).

Interest in gold mining in the Cordillera del Cóndor was sparked in the late 1970s, when a high-grade gold vein was rediscovered in the area of Nambija (Ecuador) on the westernmost flank of the Cordillera, specifically sites that were previously exploited by the Incas. As a result of these findings, miners raced to the region. Nevertheless, as superficial veins became exhausted, miners advanced to the northeast in the direction of the slopes of the Cordillera del Cóndor. The sandstone shafts in the area of Nambija suffered a massive collapse soon afterwards. This caused mining companies associated with large corporations to enter the region, thus displacing small-scale miners, who advanced in large numbers to the northeast along the border, scattering throughout the lower Nangaritza in the Machinaza, Río Blanca and El Zarza sectors, following routes to border posts and rivers.

Indigenous Patterns of Land Occupation in the Cenepa River Basin

The landscape of the Awajún territory is heterogeneous. It consists of land dissected by several mountain ranges of varying altitude and length that suddenly rise up, giving way to the so-called *pongos* (gorges) at rivers, thus impeding river navigation. Valleys of different sizes can be found where these mountain ranges or mountain chains cut into the land.

The land in the region of the Cenepa River Basin presents a capricious topography that includes relatively broad inland valleys, such as the Numpatkeim Valley, and narrow canyons, where cultivable land is not always found along stretches of river. In the lower Cenepa River, land is less rugged, except for the emergence of the *Cordillera de Huaracayo* (Huaracayo Mountain Range). Nevertheless, it is estimated that only 6% of the surface of the basin has a capacity for agriculture, either arable or for perennial crops. The Cenepa River has a length of 185 kilometers.

The traditional pattern of the Awajún settlement is based on the organization of local groups around a powerful man, surrounded by his daughters, sons-in-law and families allied by endogamous marriage ties. These local groups form what Ph. Descola and A. Taylor refer to as an endogamous nexus.

The war of 1941 had some implications on land occupation patterns, especially the restrictions on access to the upper reaches of the *Cordillera del Cóndor* (Condor Mountain Range); although this geographical barrier separated the Awajún and Shuar territories, the Awajún families in the Cenepa River Basin did not have to travel to congregate within the Peruvian territory.¹⁴ Moreover, the war brought Peruvian authorities to the decision to nationalize the region, which resulted in an increased military presence and new cultural factors. The District of El Cenepa was created that same year, and new camps, garrisons and military posts were also established. Catholic missionaries were invited to settle in the region of the upper Marañón, thus refounding the locality of Santa María de Nieva, which attracted some traders. The Summer Institute of Linguistics was also subsequently invited to conduct studies on the Aguaruna language and to train bilingual teachers.

The first bilingual schools in the Cenepa River Basin were established in the 1960s and helped promote the formation of population centers or communities con-

sisting of families that traditionally lived in a more dispersed fashion. The location of the schools was selected by implementing strategic criteria to include different segments of the valley.

The population concentrated near the lower and middle reaches of the Cenepa and Canga rivers. This process became evident at a later date and was less intensive further up, above the Cenepa River and its main tributaries, the Comaina and Numpatkeim rivers. However, the number of communities in the lower, middle and upper Cenepa River is similar at present, with the most populous communities located in the middle reaches of this waterway.

The Awajún families within an endogamous nexus rotate the location of their homes and agricultural fields within the same geographical area, in other words, a sub-basin. The low density of traditional settlements and this pattern of movement normally allow soil fertility to be periodically recovered, while families retain access to old fallow land, where they maintain fruit trees and other valuable species.

With the establishment of communities around schools and some other services, such as health posts, a good part of the more visible production activity takes place in the areas surrounding the communities, the size of which greatly varies, ranging from 50 to 3,000 inhabitants. Therefore, small farms for food production, some cash crops (bananas, cocoa) and some grasses are generally found half an hour from dwellings or a little farther, while animal breeding and raising (chickens, fish) take place in a closer vicinity. The establishment of communities and the concentration of the population tend to deplete the availability of wildlife for hunting more quickly. For this reason, the existence of extensive communal land and "reserves" is important.

The significant abandonment of areas occurs periodically, in accordance with a territorial mobility strategy, thanks to which access to wildlife is renewed, as hunters are forced to walk greater distances to hunt. This is the dynamic behind the establishment of hamlets in communities and the founding of new communities, in addition to the periodic relocation of families within the traditional territorial space that also allows internal conflicts to be resolved. Based on this strategy, the wildlife stock is renewed. This logic requires the existence of an indigenous territory beyond the existence of communities with titled land limited to population centers.

It is worth noting that there has been a progressive movement to reoccupy the upper reaches of the basin and to regroup the population in the Cenepa River Basin over the last few decades. This process has been influenced and facilitated by the expansion of the education system, but is still somewhat limited due to the existence of antipersonnel mines in some zones, which were set up during the international conflict in 1995, period during which the Awajún (as was the case with the Wampís along the upper Santiago River) were forced to move south.

Due to its extremely steep profile, the area of the *Cordillera de Cóndor* (Condor Mountain Range) constitutes a zone subjected to fairly non-intensive use. As agreed upon, this is precisely the area that was to be ceded for the creation of the Ichigkat Muja - Cordillera del Cóndor National Park. Farming is performed at the bottom of the valleys; nevertheless, the layer of soil on the rugged mountainsides is quite thin and is subject to extensive erosion, given its 4,000 mm of annual rainfall and steep slopes. The Cordillera del Cóndor is a culturally protected site, where the fragility of the environment corresponds to the sacred nature of many of its elements. This area has special cultural significance for the Jivaro peoples and the Awajún in particular.

Mount Kumpanam (a tepui-type formation) constitutes the central element of the Cordillera del Cóndor, reaching an attitude of 3,280 feet from its base, and its peak is generally covered with clouds. It is located at the foot of the Comaina River, which forms part of the Cenepa River. It is believed that this mountain, which according to the Awajún mythological tradition was a person, is extremely powerful, on which

thunder and rain depend. It is said that 5 *tijai*, or masters of the mountains, who take care of the water, clouds, animals and plants, live inside. Thanks to the tradition that “their ancestors” (fathers, grandfathers and forefathers) have passed down from generation to generation, the Awajún know that Mount Kumpanam is a reserve and that it should remain as such. Abundant wildlife and impressive biodiversity exist on its slopes. It is said that the largest number of frogs (key indicator of biodiversity), bird and tiger species are found here; local fish species, such as *bujurquis* and *bagres*, swim in the small streams that originate in this area and reproduce in the crystal-clear water of nearby springs. There are also numerous chonta palm trees. The water originating from Kumpanam is clear, unpolluted and feeds the streams, along which families live in communities. For this reason, respect is traditionally given to the mountain that gives life. The Awajún believe that the power of this “mysterious” mountain is such that it can move if disturbed.

There are a number of sacred waterfalls (*tuna*) on both Mount Kumpanam and other elevations of the Cordillera del Cóndor. Men visit these waterfalls starting in their youth to have a vision and purify themselves. They stay there for various days, fasting and drinking *toé* until they have their vision. The vision allows them to gain power, see their lives as they are going to happen in the future and find out whether they are going to be leaders or warriors and whether they will be able to face challenges. This power is transmitted to human beings at the waterfalls, especially the cascades situated in the Cordillera del Cóndor and Mount Kumpanam.

The traditional ritual practices that shape a person, which form part of the education process of the Awajún people, have been revalued over the last few years, as evidenced in different documents produced in the last decade by Awajún indigenous organizations. Sacred waterfalls, where religious visions are experienced, are also places of worship for Evangelicals. Culturally protected sacred zones may not be directly appropriated by individuals, and for this reason, the term “reserve” is used, providing open access to all the communities. This is also the case with Mount Tuntanain, which was recently declared a Communal Reserve.

Many of the so-called *cuevas de guácharos* or oilbird caves (*tayu*), which are inherited from generation to generation and form part of the topographical memory of the indigenous inhabitants of the region, are located on the slopes of the Cordillera del Cóndor, often near the banks of rivers and streams. These caves play an important role in social interactions, since owners extend an annual invitation to capture birds.¹⁵

The existence of these culturally reserved areas of significant biological and cultural value constitutes an important element in the land management strategy of the Awajún people. Reserves such as this one guarantee the sustainability of the Cenepa River Basin due to their role in fauna reproduction and their water production function. This also applies to the *Cordillera de Tuntanain* (Tuntanain Mountain Range), which was recently declared a communal reserve; it separates the Cenepa River Basin from the Santiago River Basin and is considered a culturally reserved space by the communities of both basins. Its role in ecological stability is even more important when the narrow Cenepa Valley has continuously supported a relatively dense population. Without the intangible protection of the upper reaches of the basin and the headwaters of all its rivers, the basin would not be able to ensure sustainability.

Awajún Land and the Border

The existence of an undemarcated section of the Peru-Ecuador border and the absence of a non-indigenous population in the region gave the Cenepa River Basin and its

indigenous inhabitants an important role in the national security strategy, even more significant than in the area of the Santiago River, where a small mestizo population that was somewhat more deeply-rooted and more easily accessible had settled.

The Peruvian government established an unwritten “pact of mutual cooperation” with the Awajún population in 1940 through the army, which clearly remained in force until after the war of 1995.

Thanks to the heavy presence of indigenous peoples, who are intimately familiar with their land, the Peruvian army could count on invaluable logistical support and a steady supply of staples, consisting mainly of yucca and banana, in addition to meat and dried fish for their camps set up in remote locations.¹⁶ Likewise, the Awajún and Wampís youth constituted the main source of recruitment in order to cover the many military posts and camps along the border and establish and maintain roads. The pact also allowed the army, as well as the authorities, to benefit from the loyalty of the local population, thus receiving timely warnings regarding military infiltrations from Ecuador. This support was even more important in the Cenepa River Basin, since the border is located in a zone of extremely limited access, where dirt roads are the only alternative to helicopter flights. Moreover, as pointed out by the army, the Awajún and Wampís played a key role providing fundamental logistical and military support in both the confrontations of 1981 and 1995.¹⁷

The relationship resulting from the pact with the Peruvian Army was not without tension and abuse, given that the military presence in the area limited the indigenous population’s freedom of movement, subordinated the indigenous inhabitants to military power and subjected them to abuse, particularly against women. However, from the perspective of the communities and their leaders, the pact symbolized the possibility of channeling their demands through a representative, requiring their traditional land to be respected in a context in which governments promoted the colonization of the Amazon region. After all, the Awajún people had already experienced the impact of colonization frontiers along the highway, since the 1940s, and along the North-Peruvian Oil Pipeline, at the beginning of the 1970s, given that a wave of colonization from the highlands to the western section of the territory, in addition to a few colonies promoted by the army, had resulted in land invasions and ongoing conflicts.¹⁸ By attempting to prevent colonization, the Awajún and Wampís sought to secure territorial and socio-environmental stability, as well as territorial integrity and autonomy. In practice, and taking into consideration the existence of an undemarcated section of the border, the fact that the zone was under military control prevented the left bank of the Marañón River to the southeast of the *Cordillera del Cóndor* (Condor Mountain Range) from being colonized.

It may be said that this pact, which responded to different interests with a common purpose, paid off for a number of decades, since the Cenepa River Basin has remained a valley where there are no settlements of outsiders and where it has been possible to maintain territorial integrity and secure environmental stability. New factors and alliances now threaten this land.

The Continuing Search for Legal Certainty of the Territory

Just over a dozen (14) reserves were established in favor of families in the entire Awajún territory before 1974, based on Supreme Executive Order (Decreto Supremo) 03 published in 1957, which was implemented at a very late date.¹⁹ Immediately after enacting the Native Communities Act in 1974, Awajún leaders protested in order to achieve the legal recognition of their land. During the first few years the law was applied in the 1970s, eighteen communities in the Cenepa River Basin were registered

and fourteen were awarded land titles. Since then, the Awajún people have been on an ongoing search to ensure the legal certainty of their land.

The first registrations and land titles awarded in the Cenepa River Basin roughly correspond to locations where bilingual schools had been established. Although most communities registered and awarded land titles in the initial period after 1975 are found in the middle and lower reaches of the Cenepa River, land titles were also granted to some communities located upstream from the confluence of the Cenepa River and the Comaina River, as was the case with the Shaim community. The first land titles awarded had something in common: they represented attempts to protect land on the banks of major rivers, in which surroundings schools had been established. The objective was not only to conserve their right to fish and pan for alluvial gold, but to preserve access and the right to inland areas.

The slow progress to register and award land titles to communities in the Cenepa River Basin during the 1980s raised concerns that eagerness to colonize would encourage the invasion of the Awajún territory in the Cenepa River Basin, since no new community had been registered and only three of the previously registered communities had been awarded land titles. The extension and improvement of the rural road from Imacita especially increased the risk that settlers would trickle down towards the Cenepa River Basin, since the confrontations between Peru and Ecuador, as a result of the so-called *Falso Paquisha* (False Paquisha) in 1981, gave rise to the emergence of the theory of “*fronteras vivas*” or “living borders” and the support of colonization.

In fact, the government of Fernando Belaúnde proposed founding Ciudad Democracia in the *Cordillera del Cóndor* (Condor Mountain Range) where the False Paquisha post had been located. Awajún and Wampís leaders had to demonstrate their diplomatic skills in order to enforce their pact with the national army and convince authorities that there was no better defense of the border than the stability of indigenous occupation; hundreds of young people from this local population had completed their military service in regional camps. Awajún leaders pointed out to the authorities that the establishment of population centers consisting of settlers, which would require permanent logistical support from the army and the State to survive in a remote environment, considered unfavorable for the establishment of commercial plantations, did not offer any guarantees and, on the contrary, ran the risk of becoming conflict-ridden.²⁰ Ultimately, government plans for border colonization in the Cenepa River Basin did not materialize.

Awajún leaders and their organizations subsequently sought to expand the coverage of communal land titles by registering new communities situated on the banks of rivers and including interior spaces highly valued for their abundance of resources and sites of special cultural significance.

As a result of the Cenepa War of 1995 between Peru and Ecuador, voices were raised in favor of colonizing the border area, and the value of colonization to establish “living borders” was brought up once again, ignoring the preexistence of an indigenous territory and population, as well as the agro-ecological conditions of the zone. In response thereto, and with the idea that the pact with the Peruvian Army could crumble once the border issue with Ecuador was settled, Awajún leaders and organizations actively promoted land titling programs, since numerous areas of the Awajún territory in the Cenepa River Basin had yet to obtain legal certainty. These efforts produced results between 1997 and 1999, when a large number of communities were registered and awarded land titles in order to guarantee the integrality of the Cenepa River Basin, close gaps in the territory and allow fuller access to the area’s resources and biodiversity. A total of 158,910 hectares in the Cenepa River Basin had been awarded land titles by 1999. The awarding of land titles to some

communities, in addition to the expansion of more than a dozen old communal land titles, was still pending.

The Cordillera del Cóndor, Biodiversity and the Cenepa River Basin

The region of the *Cordillera del Cóndor* (Condor Mountain Range) is an isolated eastern extension of the main Andean chain. It is approximately 150 kilometers long, runs from north to south and has a maximum altitude of around 2,900 m.a.s.l. The headwaters of several basins of great importance to the Marañón-Amazonas river system, considered to be vital for existence in the indigenous territories along the Peru-Ecuador border, are found in this area.²¹ The Nangaritza River originates on the northwestern side of the border and forms the Santiago River that also receives several tributaries from the southwestern side thereof. The Comaina, Sawientza and Numpatkeim rivers, which emanate from the same flank, flow toward the Cenepa River, the headwaters of which are composed of an array of numerous streams that descend from the peaks of the Cordillera del Cóndor.

The enormous value of biodiversity in the Cordillera del Cóndor is largely associated with its geological origin and the isolated nature of this sub-Andean mountain range. The Cordillera is mostly comprised of Tertiary and Mesozoic sediments consisting of sandstone and limestone, resulting from the erosion of the old Guiana and Brazilian Shields. These sediments were deposited on the western side of the South American continent during the Mesozoic and early Tertiary periods, before the Andes rose up and folded, concurrently emerging with the *Cordillera Andina* (Andean Mountain Range) starting in the Miocene epoch (25 million years) and the late Pliocene epoch in the last 4 to 5 million years. In the Cordillera del Cóndor, the sedimentary strata extend from the early Jurassic formation, with limestone and volcanic intercalations, to the Tena formation of the Paleocene and early Eocene epochs, formed by red clay. At the same time, the Hollin sandstone formation, deposited as a result of the erosion of the Guiana Shield, forms a layer of no more than 150 meters dating back to the Cretaceous period, but which mostly emerged in the last 10 million years. This very complex geological history is responsible for the existence of intrusive igneous formations that contain deposits of gold, copper and other minerals, as well as the so-called Zamora granitic batholiths, which is the result of major volcanic and tectonic events in the Jurassic period that injected extremely large granite plutons and huge volcanic masses at various levels.

The Cordillera del Cóndor, like other sub-Andean mountain ranges, is among the world's most diverse areas in biological terms. Studies conducted by different institutions and scientific projects carried out in the Cordillera have revealed an unexpected bio-geographic connection between it and the Guiana Shield. This is reflected in the existence of plateaus or isolated "tepui"-type sandstone mountains and the presence of a significant number of vascular plant genera in the Cordillera del Cóndor, possibly the largest concentration of vascular plant species, genera considered to be disjunct from those found in Guyana.

These plateaus occur in fragments of varying size and altitude, variables that also affect the density and height of the vegetation found in these areas. Mount Kumpaná or Kumpaná Muja is one of these tepuis that present an extraordinary diversity of flora and some fauna. Due to these important characteristics, researchers have stated that the Cordillera del Cóndor could have the richest flora of any area of similar size anywhere in the Neotropic. Studies conducted by the Missouri Botanical Garden in connection with Peruvian and Ecuadorian scientific institutions documented 1,900 vascular species, 300 to 400 bryophytes and a considerable number of new species to science as of 2007.

The combination of diverse geological substrata and forest humidity throughout the entire year make the Cordillera del Cóndor a very unique place, where seventeen different types of vegetation with significant ecological variability have been distinguished. Biodiversity studies exhibit numerous “noteworthy records”, due to the rarity of the species found, the existence of new species, the breadth of range, threatened species or the importance of species for conservation. The rare insectivorous plant, *Drosera sp.*, has been identified in the exposed sandstone formations of the high Comaina River.

Tropical Premontane Rainforest, Tropical Wet Forest and Tropical Premontane Wet Forest predominate in the Cordillera del Cóndor. The zone has an annual rainfall of 3,000 mm, reaching 4,000 mm in the foothills of the Cordillera with an average annual temperature of 25 °C. Tropical Premontane Rainforest covers the left bank of the Cenepa River and the eastern portion of the Cordillera del Cóndor. It is located between 600 and 700 m.a.s.l. Tropical Montane Rainforest can be found in the peaks of the Cordillera del Cóndor above 2,000 m.a.s.l.; the climate is typically rainy and semi-warm.

In the upper reaches of the Cordillera del Cóndor, between 1,700 m.a.s.l. and 2,900 m.a.s.l., the vegetation does not exceed 15 meters in height, due to the strong winds and shallow soils over limestone, particularly in the so-called transitory cloud forests at the edge of the hills. In spite of this, scholars have found species pertaining to eighty-three families (145 genera, 228 different species) in the high forest of the Cenepa River Basin.

Although large game species are not abundantly found in the middle and lower Cenepa River Basin, a wealth of species was identified in the Cordillera del Cóndor and upper Cenepa and Comaina river basins, in comparison with similar habitats of equal altitudinal location. It is worth noting the presence of some endangered and vulnerable species, amounting to a total of nineteen species of mammals in different categories of threat. In terms of birds, five new species have been found in Peru. A significant number of day and night lepidopteran species, including a new species to science, has also been recorded. Furthermore, various endemic tree frog species have been documented in the Cordillera del Cóndor.

A wealth of species was discovered in areas consisting of clear and black waters, as well as lentic environments, which were found to be in good condition when conducting the studies, given that variations in ichthyofauna are associated with altitude. The studies detected a considerable presence of otters, which reflected the abundance of fish in the upper reaches of the Cenepa river basins and their tributaries.

The network of rivers, streams and brooks makes its way through the deeply dissected mountain system. Water originating in the Cordillera del Cóndor constitutes a fundamental part of the subsystems of the Cenepa and Santiago river basins, which also contribute significant volumes of water and sediment to the Marañón River.

Due to the limestone and sandstone structure, the presence of these formations and the vast network of rivers and streams, hundreds of culturally significant waterfalls are found in the region. These formations also create caves of great importance for speleology and the local population. These caves, within which you can walk for days, are accessed by long, narrow “chimneys” measuring 60 to 80 meters deep. Nests built by *guácharos*, more commonly referred to as oilbirds, are found in these caves, which were previously used as secondary burial sites, given that the Jivaro peoples believed that these locations were linked to their ancestors.

Due to these characteristics and conditions, the Cordillera del Cóndor is a site of great value for conservation, given the importance of the existence of the sub-Andean mountain range featuring geological and biological characteristics considered

to be enormously relevant for research, the Amazon Basin and the continent, as well as its role in maintaining the water cycles inherent to the Cenepa and Santiago river basins. This is a point of encounter, where conservation interests from a global perspective, interests associated with the national conservation strategy and the conservation priorities of the Awajún and Wampís communities in Peru and the Shuar people in Ecuador coincide, as observed when comparing the following maps.

Thus, having established the conditions for the final demarcation of the border along the Cordillera del Cóndor, the idea to create a protected area with the purpose of conserving the significant biodiversity and contributing to the stability and security of the border was reconsidered.

The Establishment of the Santiago-Comaina Reserved Zone

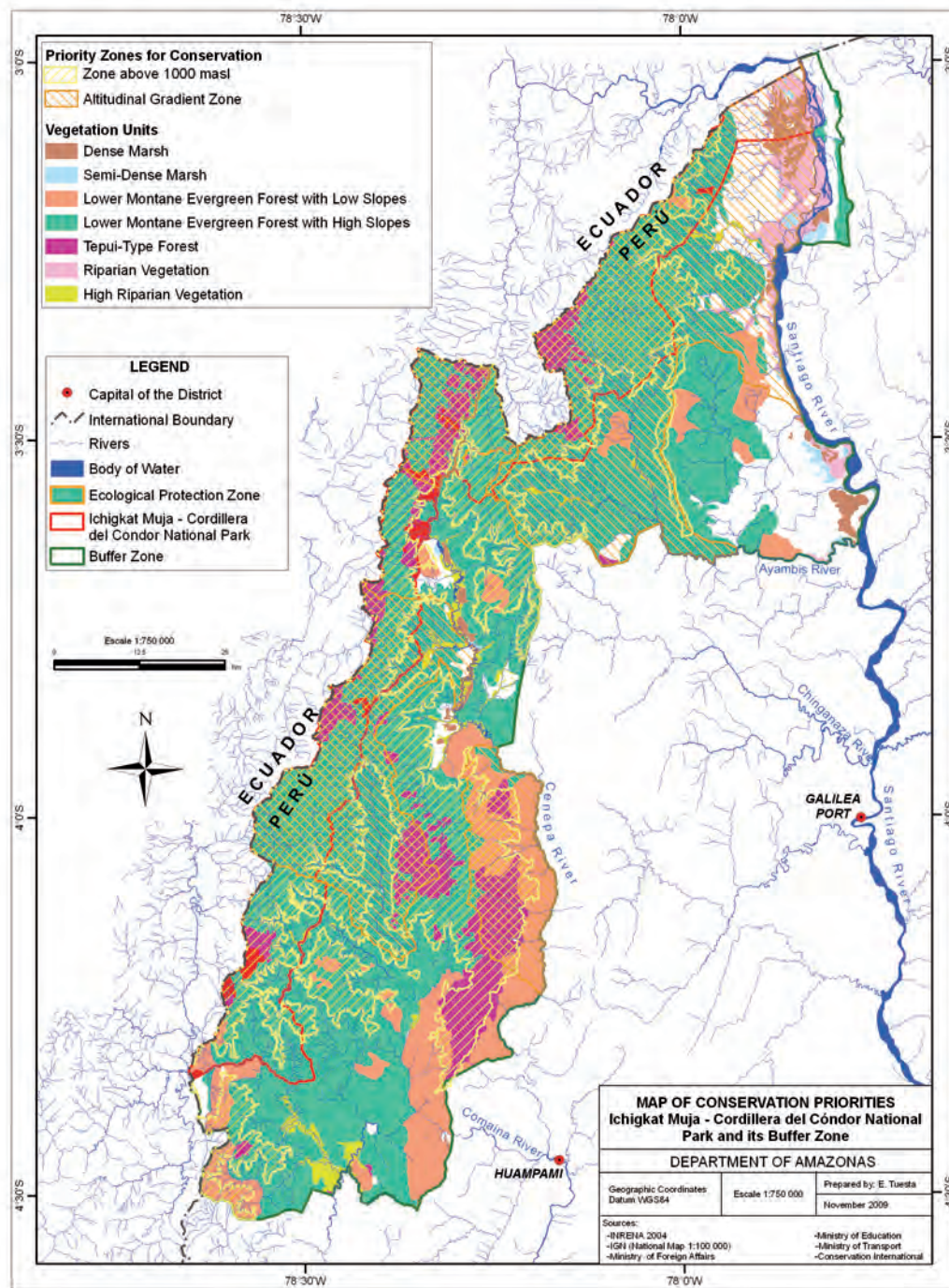
The peace talks that followed the Cenepa War of 1995 concluded in 1998 with an agreement to delimit the border in the sections not yet demarcated. The peace agreements in this area included the commitment to establish an “ecological protection zone” on both sides of the border, in accordance with Binding View 7, issued by the presidents of the four guarantor countries of the Rio de Janeiro Protocol (Argentina, Brazil, Chile and the United States of America).²² The initially defined ecological protection zone covered part of the direct headwaters of both the Cenepa River and the Coangos River, precisely the area that had been the scene of the bloodiest clashes in the war of 1995, which included the zone known as Tiwintza or Tiwientza.

The ecological protection zone reflected an idea put forth by some conservation organizations at the beginning of the decade in relation to the establishment of a reserved zone in the peaks of the *Cordillera del Cóndor* (Condor Mountain Range). This idea had been proposed by Peru to Ecuador in 1992 and left to be studied; however, talks broke off, due to the fighting that erupted in 1995.

During the course of the conflict in Peru and Ecuador, voices were also raised, proposing the idea to settle the border demarcation issue by establishing a reserved zone. The proposals alternatively included the establishment of a reserve for conservation, in accordance with the biological studies that had been conducted on both sides of the border, a biosphere reserved zone or a multiethnic and bi-national reserve in the undemarcated area, which would delimit the boundaries and serve as a nucleus for integration.

With these elements on the diplomatic negotiating table in the second half of 1997, the Peruvian Ministry of Foreign Affairs summoned the Awajún and Wampís organizations from the five Marañón river basins to a meeting at Torre Tagle in Lima. The organizations were informed of the conditions being discussed with Ecuador to end the border dispute. Indigenous leaders learned of possible future highway routes and the option to establish an ecological protection zone on a portion of the border, thus simultaneously ensuring that their land rights would be respected and guaranteed.

The Santiago-Comaina Reserved Zone was decreed in 1999 and expanded in 2000 to cover 1,642,567 hectares, this time at the request of the organizations.²³ This area needed to be classified in order to create a national park within its boundaries on the eastern flank of the peaks of the Cordillera del Cóndor, based on the studies carried out until such date by environmental institutions, in accordance with strict regulations in order to protect the Cenepa-Comaina River Basin. Shortly afterwards, the Peruvian government legally created the Ecological Protection Zone, as established by Binding View 7, which was included in the proposal to create the Cordillera del Cóndor National Park. In June of that same year, Ecuador created the El Cóndor



Map 1
 Map of conservation priorities in Cordillera del Cóndor

Bi-National Park in the Coangos River Basin (Executive Order 936), adjacent to the Peruvian Ecological Protection Zone. Likewise, Ecuador also established the Cordillera del Cóndor Protected Forest, the El Zarza Wildlife Refuge and the El Quimi Biological Reserve.

The Santiago-Comaina Reserved Zone was under the authority of the National Institute of Natural Resources (INRENA) pertaining to the agricultural sector. It covered a broad area that not only included the border and the Cordillera del Cóndor but also the communities of the Cenepa and Santiago river basins on the understanding that it would serve to carry out a land-use planning process within the framework of which the land titling and community expansion process would conclude and protected natural areas would be created in the most environmentally vulnerable zones.

The Reserved Zone also included an area of the border, where some mining claims and concessions were located that the State had started granting in 1993, without taking into consideration the fragility of the mountainous region along the border, its potential impact on the rest of the river basin or the fact that such claims and concessions were found in Awajún territory. These mining claims had been granted without previously informing or consulting the Awajún communities, holders of the border territory, despite the fact that Convention 169 of the International Labor Organization (ILO), which requires consultation, was ratified by Peru in December 1993.

Although some of these mining claims had been granted prior to the establishment of the Reserved Zone, they were still subject to the opinion of INRENA insofar as the compatibility of the mining activity was concerned, since the creation of a national park was proposed along the border. Nevertheless, the holders of the mining claims intended to give priority to their mining interests over environmental interests, indigenous rights and national security from the beginning.

In order to move forward with the protected natural area establishment and land-use planning process, INRENA received support through the project of the International Tropical Timber Organization (ITTO) entitled “Bi-National Peace and Conservation in the Cordillera del Cóndor”, in addition to technical assistance from Conservation International. INRENA’s project entitled “Indigenous Management of Protected Areas in the Peruvian Amazon” (PIMA) financed by the World Bank, the purpose of which was to build capacities for the management and conservation of protected areas, complemented the scheme. The ITTO project was executed in Ecuador through *Fundación Natura*, in agreement with the Ministry of the Environment of that country.

The Land Agreement and the Creation of the National Park

The commitments established as a result of the peace agreements with Ecuador in the ecological protection zone and the plans to establish a protected area on the remaining peaks meant that registering the *Cordillera del Cóndor* (Condor Mountain Range) as community-owned land would be impossible, although it would not cease to form part of the indigenous land. Based on the assurances given to the Awajún and Wampís organizations by the Peruvian Ministry of Foreign Affairs, they adjusted their expectations with respect to the cadastral inscription of their land.

Shortly after the Santiago-Comaina Reserved Zone was created, the communities of the Cenepa River Basin held a formal meeting in October 1999 with the attendance of the representatives of the National Institute of Natural Resources (INRENA) to analyze this measure and establish their position with respect to the land-use planning process. The minutes signed by the community representatives established

that the expansion of and awarding of land titles to communities should be finalized before classifying the protected natural areas for the creation of the National Park and the communal reserves that would be established in the untitled areas bordering the communities.²⁴ These arrangements reflected the fact that once peace agreements with Ecuador had been established and the border military conflict had died down, state institutionality, which had been strictly in the hands of the Peruvian Army, would be extended along the border.

Starting in 2002, INRENA, with the technical assistance of Conservation International and the participation of the communities within the Santiago-Comaina Reserved Zone, began developing an intensive process to generate information in order to finish identifying the most vulnerable zones and the existing threats to local biodiversity; document the indigenous rights and cultural values of the area; and promote a process of institutional strengthening. Furthermore, a joint participatory process was also executed in order to design management tools and ensure the sustainable use thereof, based on land-use planning, as well as to establish a local technical and administrative structure to co-manage the protected natural areas.²⁵ The project included a professional interdisciplinary team and a team of indigenous intercultural liaison officers.

As part of a highly organized process, the organizations agreed to cede the area proposed for the National Park, as per the following commitments: 1. Participation of the communities and their organizations in the land-use planning process concerning the Reserved Zone and determination of the boundaries of the Ichigkat Muja National Park and its management plan, together with the environmental authority; 2. Consolidation of communal land ownership, by handling the requests to expand some communities and registering and awarding land titles to others so that this protected natural area would completely border the communities; 3. Creation of the Tuntantain and Kampankis Communal Reserves by the environmental authority to be managed by the surrounding communities through management committees and management plans.

A series of consensuses was achieved through numerous workshops with the participation of the Cenepa and Santiago communities and three large meetings with the participation of local indigenous organizations. Thus, agreements were reached with respect to the categories of the protected areas. It was also resolved that the category offering the highest level of protection would be granted to the entire Cordillera del Cóndor, in other words the classification of "National Park", while the Tuntanain and Kampankis zones would be "Communal Reserves", which are direct-use protected areas.²⁶

The boundaries of the Park, to be named "Ichigkat Muja - Cordillera del Cóndor", were also agreed upon. In the words of the former President of the Organization for the Development of the Border Communities of El Cenepa (ODECOFROC), "the purpose of the process to establish Park boundaries was to exclude the land, [where] ancestors...had their small farms and did their *mitas* (mandatory labor as a tribute to the Inca government). The indigenous intercultural liaison officers were going to guide project staff along national park boundaries to the land used by the ancestors. The territory beyond that was going to be the national park" (Cárdenas *et. al*, 2008:47), which coincided with the area that the communities always considered a "reserve". The area designated for the Park was consistent with the protection zones at the headwaters of the Cenepa and Comaina rivers, as well as the headwaters of some of the tributaries to the right of the Santiago River along its course through Peruvian territory. Since this area is considered to be the traditional land of the Awajún and Wampís peoples, it was ceded for the establishment of a protected natural area with the highest level of protection, due to its role in the conservation of the water cycle of the Cenepa and Santiago river basins.

Therefore, the communities adapted to the requirements of the State in order to provide legal certainty to the border, while respecting the agreements reached in Brasilia in 1998 and ensuring the protection of their land rights.

Finally, in March 2004, the representatives of the native communities situated within the Santiago-Comaina Reserved Zone, involved in the proposal of the Cordillera del Cóndor National Park, gave their consent to create the Ichigkat Muja - Cordillera del Cóndor National Park and its Management Plan by means of a formal instrument, in the presence of INRENA and the Special Project for the Awarding of Rural Land Titles and Land Surveys (PETT).²⁷ The instrument established that “the boundaries of the Cordillera del Cóndor National Park correspond to the boundaries of the communities that have been awarded land titles and the boundaries mentioned in the expansion requests. Once the native communities have been expanded and all land titles have been awarded thereto, the free areas and the zones granted under assignment of use agreements to the communities requesting expansions and land titles will be incorporated into the National Park, thus respecting the ancestral rights of the communities and providing them with greater legal protection for the future, commitments that are specified in the document creating the National Park.”

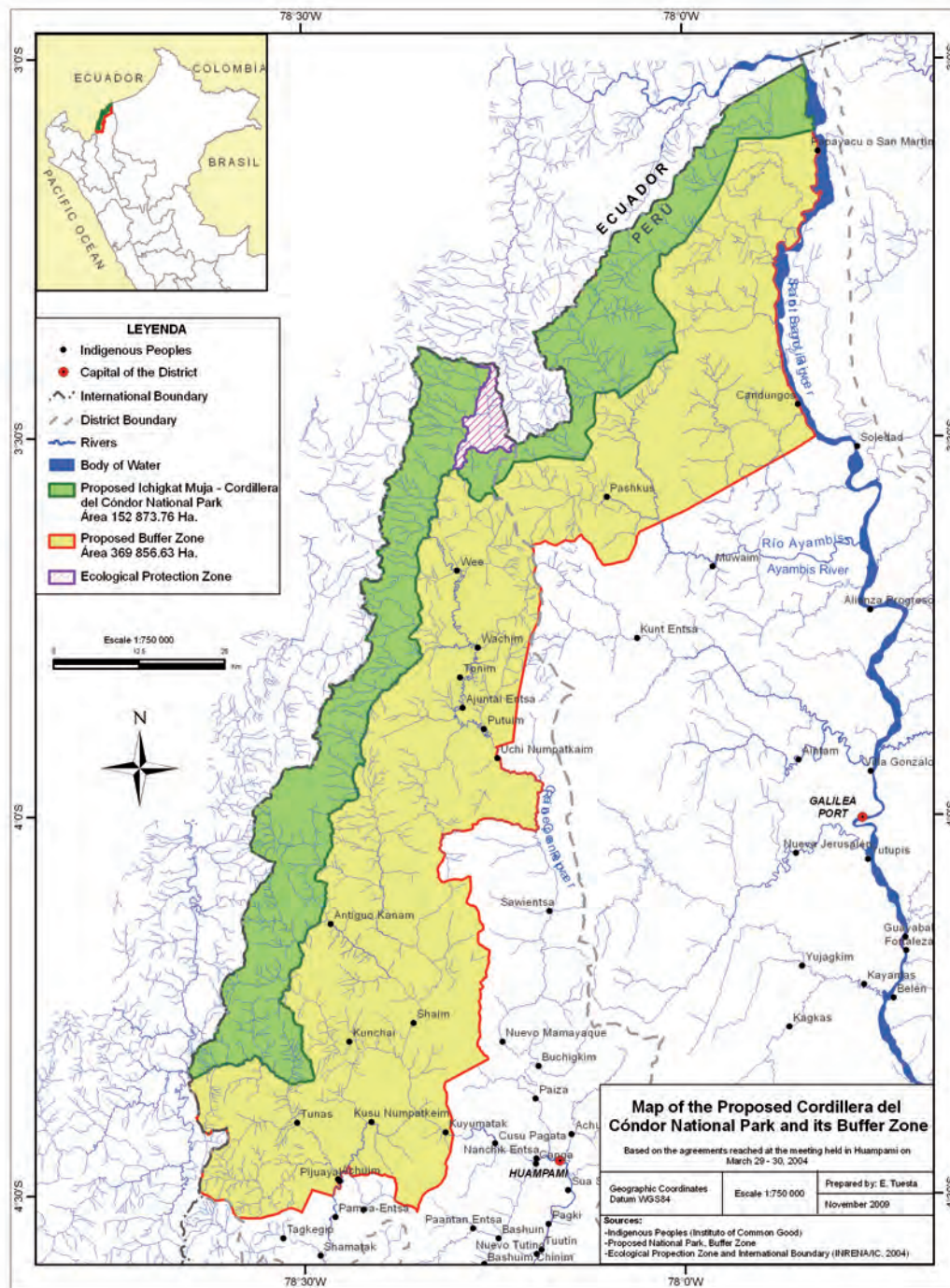
The proposal to create the National Park in the Cordillera del Cóndor and its Buffer Zone agreed upon with the communities and their organizations was submitted to the Ministries of Foreign Affairs and Defense in 2004 for their opinion on national security, in compliance with the Brasilia Agreements; neither sector issued an opinion until 2006.

In the meantime, mining interests resorted to various forms of lobbying and pressure to thwart the creation of the Ichigkat Muja National Park, to be established on 152,873.76 hectares, and the land agreement that the State had made with the Awajún and Wampís peoples to finally stabilize the border with Ecuador along the Cordillera del Cóndor.²⁸

The first signs of non-compliance by the State became evident in its delay in completing the expansion and land titling process. The indigenous organizations had updated the request to expand nineteen communities and award land titles to three new ones, within the framework of the land-use planning process of the Reserved Zone. They began presenting files, prepared with the technical assistance of the Institute of Common Good (IBC) in 2000, first to PETT and then to the Commission for the Official Registration of Informal Property (COFOPRI), entity that assumed the duties of awarding land titles and performing land surveys in 2007. Nevertheless, only two communities had been registered by 2004 (Kunchai and Kuyumatak), where only forest and protection areas had been demarcated; likewise, the demarcation of eight expansions had been settled, with the issuance by the Regional Agricultural Bureau of the resolution approving the drawing delimited by COFOPRI and the delivery of the assignment of use agreements still pending. In all other cases, it was noted that they were fairly unwilling to fulfill the commitment undertaken by the State, which constitutes an inalienable right to register and obtain land titles for the ownership of indigenous territory.²⁹

Frustration with Agreements favoring Secret Commitments with the Mining Sector

The establishment of the Santiago-Comaina Reserved Zone placed the area under the authority of the National Institute of Natural Resources (INRENA), entity appointed to assume the land-use planning process and the creation of protected natu-



Map 2
Map of the proposed Cordillera del Cóndor National Park and its buffer zone

ral areas. Mining concessions granted by the National Institute of Concessions and Mining Cadastre (INACC) after 1993 were located within the area designated for the establishment of the Cordillera del Cóndor National Park. INRENA issued a technical opinion in 2001, declaring the incompatibility of the mining activity with the characteristics of the *Cordillera del Cóndor* (Condor Mountain Range) proposed as a National Park when Compañía Minera Afrodita requested authorization to explore and exploit thirty-nine of its mining concessions.

In the immediate future, the company planned to perform one hundred hours of helicopter flight time, presumably through a service contract with the army, for which the following was required: the construction of various heliports; the excavation of three ditches measuring 200 meters long by 50 to 60 meters deep by 2 meters wide; three diamond boreholes measuring 1,000 meters each, for which three platforms to locate the machinery were required; and the construction of dirt roads providing access for the entry of three crews that would take geochemical samples from rivers and streams in the Cenepa and Comaina river basins. Considering that these activities were incompatible with the natural conditions of the Protected Natural Area, and in application of the “precautionary principle”, INRENA dismissed this authorization, indicating that the area was fragile and unstable in geological terms and that the planned mining operations would imply destroying the vegetation cover that captures moisture and disrupting surface watercourses, in addition to groundwater and surface water quality.³⁰

Compañía Minera Afrodita began taking steps with the Ministry of Energy and Mines (MEM) to obtain an exploration permit in three of its border concessions in 2004. Pursuant to the Environmental Regulations for Mining Exploration Activities (Supreme Executive Order – Decreto Supremo 038-98-EM), the company was only required to submit an Environmental Impact Statement (EIS) and not an Environmental Impact Assessment (EIA) to obtain authorization to perform exploration activities, since the Afrodita Project was classified as type B.³¹ In accordance with these requirements, the request was supposed to include maps with UTM coordinates of the location of the project and potentially affected areas (in addition to indicating whether it was located in a protected natural area or within a buffer zone), the schedule of mining activities, environmental control systems during exploration and recovery plans for impacts caused.

The EIS of the Afrodita Project initially submitted in August 2004 was very nimbly aimed at circumventing requirements or precautions with respect to the impacts in the area of influence of the project and avoiding current obligations for projects to be carried out within a protected natural area. The purpose of their description of the flora, fauna and other characteristics of the local environment was to avoid characterizing the fragility of the region.

Not only did it not include a plan to mitigate possible exploration effects, but it barely stated “having knowledge of being within a reserved zone”, with which it attempted to undermine the technical opinion issued by INRENA. In this regard, it added the following: “Since this zone is supervised by the army and is a mined border area, it apparently *does not fall under the control of the Reserved Zone in question*”. The Bureau of Mining-Related Environmental Affairs (DGAAM) of MEM made some observations and petitions for additional information and submitted the request to INRENA, as required. Over several months, INRENA insisted that if Afrodita or any mining company was to operate in the reserved zone, its activities “should not jeopardize the objectives to create it” and reiterated the need to present technical and legal guidelines for a proper revision, opinion and approval procedure for the environmental assessments of mining projects in protected natural areas.

Resolutions adopted during the Coordination Meeting for Mining Exploration in the Cordillera del Cóndor

On November 8, 2005, at 9:30 a.m., a coordination meeting was held at the premises of the Ministry of Defense to discuss the mining exploration issue in the Cordillera del Cóndor, adopting the following resolutions with the attendance of the representatives mentioned hereunder:

- 1) Ministry of Energy and Mines
 - a) Dr. Ana Lucía Quenallata
 - b) Walter Sánchez, Engineer
 - c) César Pinedo, Engineer
- 2) National Institute of Natural Resources
 - a) Ricardo Gutiérrez, Engineer
 - b) Ricardo Jon Ilap, Engineer
 - c) Miriam García, Engineer
- 3) Ministry of Foreign Affairs
Minister Counselor C. Yrigoyen
- 4) Joint Chiefs of Staff
Peruvian Army
Major Jorge Espinoza
- 5) Ministry of Defense
Rear Admiral
Oscar Anderson Machado
- 6) Compañía Minera AFRODITA
Jorge Bedoya Torrico

a. Resolution One

The National Institute of Natural Resources shall issue a report to the Bureau of Mining-Related Environmental Affairs of the Ministry of Energy and Mines before Friday, November 11, 2005, including the favorable technical opinion for the mining exploration carried out by Compañía Minera AFRODITA in the Cordillera del Cóndor.

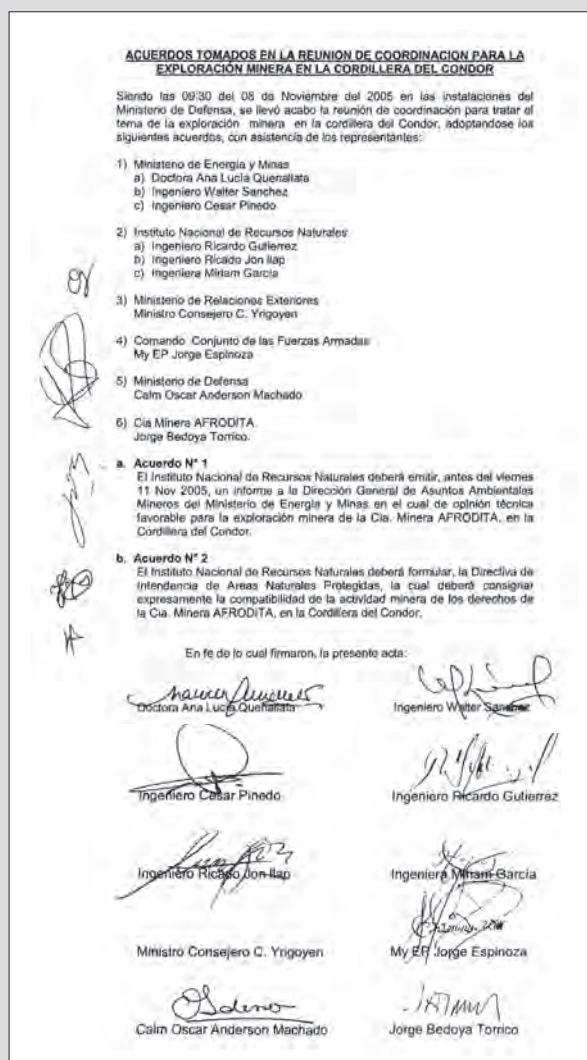
b. Resolution Two

The National Institute of Natural Resources shall set up the Executive Committee of the Intendancy of Protected Natural Areas, which shall expressly establish the compatibility of the mining activity corresponding to the rights held by Compañía Minera AFRODITA in the Cordillera del Cóndor.

In witness whereof, we have hereunto set our hands.

(signed) Ana Lucía Quenallata
 (signed) César Pinedo, Engineer
 (signed) Ricardo Jon Ilap, Engineer
 (no signature) Minister Counselor C. Yrigoyen
 (signed) Rear Admiral Oscar Anderson Machado

(signed) Ricardo Gutiérrez, Engineer
 (signed) Miriam García, Engineer
 (signed) Peruvian Army Major Jorge Espinoza
 (signed) Jorge Bedoya Torrico



INRENA and DGAAM subsequently conducted a field inspection in March 2005; it was verified that the company had previously drilled in the zone without authorization, and damage to the forest cover was also corroborated. Based on several reports, the Intendancy of Protected Natural Areas (IANP) prepared a document to establish technical and legal conditions in order to commence activities,³² non-compliance with which would lead the IANP to believe that the mining activity in the reserved zone, and, to a lesser extent, in the area designated for the Park, was incompatible.

Due to this experience, Compañía Minera Afrodita launched a campaign aimed at questioning the legitimacy of the environmental policies implemented by INRENA and undermining the technical authority of the project of the International Tropical Timber Organization (ITTO) with the purpose of affecting the establishment of the National Park. Furthermore, the mining company and its legal advisors designed a strategy to convince the Ministries of Foreign Affairs and Defense that the best guarantee for border integrity was through the development of mining activities along the frontier, claiming that the Park could not prevent informal Ecuadorian miners from gaining access thereto.

The Organization for the Development of the Border Communities of El Cenepa (ODECOFROC) has documented the process by means of which the mining company sought the intercession of MEM, the Joint Chiefs of Staff, the Ministry of Defense and the Ministry of Foreign Affairs in order to force INRENA to amend its technical opinion and issue a favorable one for the mining project.³³ Various meetings were held by an intersectoral committee starting in July 2005 with the participation of Bedoya Torrico, manager of Afrodita, in order to define the border policy and the fate of the Ichigkat Muja National Park.³⁴ During the last of these meetings held in November 2005, the participants demanded that INRENA “issue a favorable opinion” for the mining activity within a term of three days and “expressly declare the compatibility of the mining activity of Compañía Afrodita in the Cordillera del Cóndor” (see fax). A few days later, Bedoya Torrico arrogantly requested the Head of INRENA in writing “to comply with the resolutions adopted in the meeting held on November 8, 2005” (letter dated October 22, 2005).

This unacceptable political interference, which forced the technical opinion under INRENA’s sphere of competence to be amended, paid off in January 2006, when this body finally changed its initial position in favor of the interests of Afrodita. INRENA still emphasized the need to subject these mining operations to a monitoring program and specific environmental requirements, since the Afrodita concessions granted before the creation of the Reserved Zone were located in an ecologically vulnerable area (until it was decided to declare it a National Park, the highest category of protection in the Peruvian system of protected areas).

Nevertheless, the gap had been forged. . Six days later, the Ministry of Foreign Affairs responded, after more than a year, to the intersectoral consultation regarding the classification of the Reserved Zone, expressing its disapproval of the creation of the National Park in the area requested by Afrodita. Without detracting from the “solid environmental and ecological grounds” on which INRENA based its proposal to create the Park, the Ministry expressed its opposition, indicating that “by establishing an intangible area, future mining development would be prevented”. The Ministry of Defense noted that the clandestine entry of Ecuadorian miners could not be controlled, as a result of the creation of the Reserved Zone, as if its creation and that of th

Therefore, Compañía Minera Afrodita was able to recommence exploration activities, this time under an option agreement with Goldmarca Ltd., a Canadian enterprise that operated on the Ecuadorian side of the border in association with

a company pertaining to the conglomerate of industries of the Ecuadorian Army (Ecuadorian Army Industry Bureau - DINE) and that could provide Afroditá with access from the north to the Cordillera del Cóndor.³⁵ Meanwhile, Afroditá was operating from the campsite at the Tambo Surveillance Post of the Peruvian Army in Peru.

However, the imminent enactment of a supreme executive order approving the classification of the Santiago-Comaina Reserved Zone, also triggered an avalanche of mining claims along the border and a real war between the various groups of mining companies, several of which have benefited from the current agreement with the Canadian company, Dorato Resources Inc., through Dorato Perú S.A.C.

The reduction in the area designated for the Ichigkat Muja National Park was only sanctioned in August 2007. The original area was reduced by 69,829 hectares, leaving all the headwaters of the Comaina, Numpatkeim and Sawientisa rivers, which are tributaries of the Cenepa River, unprotected. By means of Supreme Executive Order 023-2007-AG, the partial classification of the Reserved Zone, creating the Ichigkat Muja – Cordillera del Cóndor National Park (88,477 hectares) and the Tuntanain Communal Reserve (94,967 hectares), was established.³⁶ The area of the properties of Minera Afroditá and those that Carlos Ballón Barraza obtained in 2006 were conveniently excluded from the National Park, all of which were subsequently acquired by the Canadian company, Dorato Resources. Everything indicates that mining interests played a part in the reclassification of the Reserved Zone and the hindrance of the expansion and land titling process, thanks to political ties.

This frustrating result was the consequence of an inclusive process in which the State, recognizing the land rights of the Awajún and Wampís peoples, agreed to organize the land-use planning process with the local population, using valuable inputs of biological research and participatory mapping to establish a conservation area, and thereby close off the border in compliance with the Brasilia Agreements.

For an indigenous population that has spent energy on and put their trust in this process, the result has been perceived as overt deception, by which the area they had consciously ceded to the Peruvian nation to establish a national park, and which would provide stability to the international border with Ecuador, has unconstitutionally become a transborder mining zone in the hands of foreign interests. At the same time, the State failed to register and award land titles to indigenous property, thus putting an end to this formalization process, as well as the process to expand the communities of the Cenepa River Basin. The consequences of the mining activity in the area of the headwaters of the Cenepa River, specifically in the zone where the group of rivers forming the basin originates, will impact the entire population of the basin to the extent that the water cycle, the runoff processes and the quality of water, which supplies an entire district, will be affected.

As if that were not enough, in December 2007, Perupetro S.A. signed a contract with the company, Hocol Perú S.A.C. for the exploration and exploitation of hydrocarbons in Block 116 on an area measuring 853,381 hectares that overlapped with the Awajún and Wampís communities, which had previously participated in the land-use planning process of the Santiago-Comaina Reserved Zone and the Tuntanain Communal Reserve. The lack of confidence in the future is already reflected in the problems of regional governance and the lack of credibility of government authorities.

Caught up in its desire to establish a protected area along the border to finance a new stage thereof, even at the expense of reducing the Ichigkat Muja Park, the local people consequently rejected Conservation International and lost faith in this conservation ally. In the eyes of the State, INRENA's technical credibility was also greatly affected because its high-ranking officials subordinated themselves to economic

interests that contradicted conservation needs. Finally, the proposal that modified the National Park did not change the scientific reasoning that fully justified the creation of the original area along the entire Cordillera del Cóndor whatsoever.

The intervention of the Ministries of Defense and Foreign Affairs, which led to the modification of the Ichigkat Muja National Park, was accompanied by a speech that seemed to express a change in paradigms in relation to border security that had not thus far been explicit, thus favoring mining along the frontier. Before the Congress and in the presence of the Minister of Foreign Affairs, the Minister of Defense stated the following with respect to the region of the Cordillera del Cóndor in September 2006: “the new concept in the world implies moving from defensive security to **corporate security**”.³⁷ Even in this context it is still surprising that private interests, which contradict the peace agreements with Ecuador, the country’s environmental policy and the covenants arduously prepared by the Peruvian government with the indigenous populations living along the border, were allowed to intervene in the decisions of the State. In the case of the border with Ecuador, mining now dictates border policy to such an extent that, as noted by the Awajún community members, most of whom have served in the Peruvian Army, “It seems that the army is here to make the lives of the mining companies, including foreigners, easier. Why does the army get involved? Is it legal to support the mining sector?”

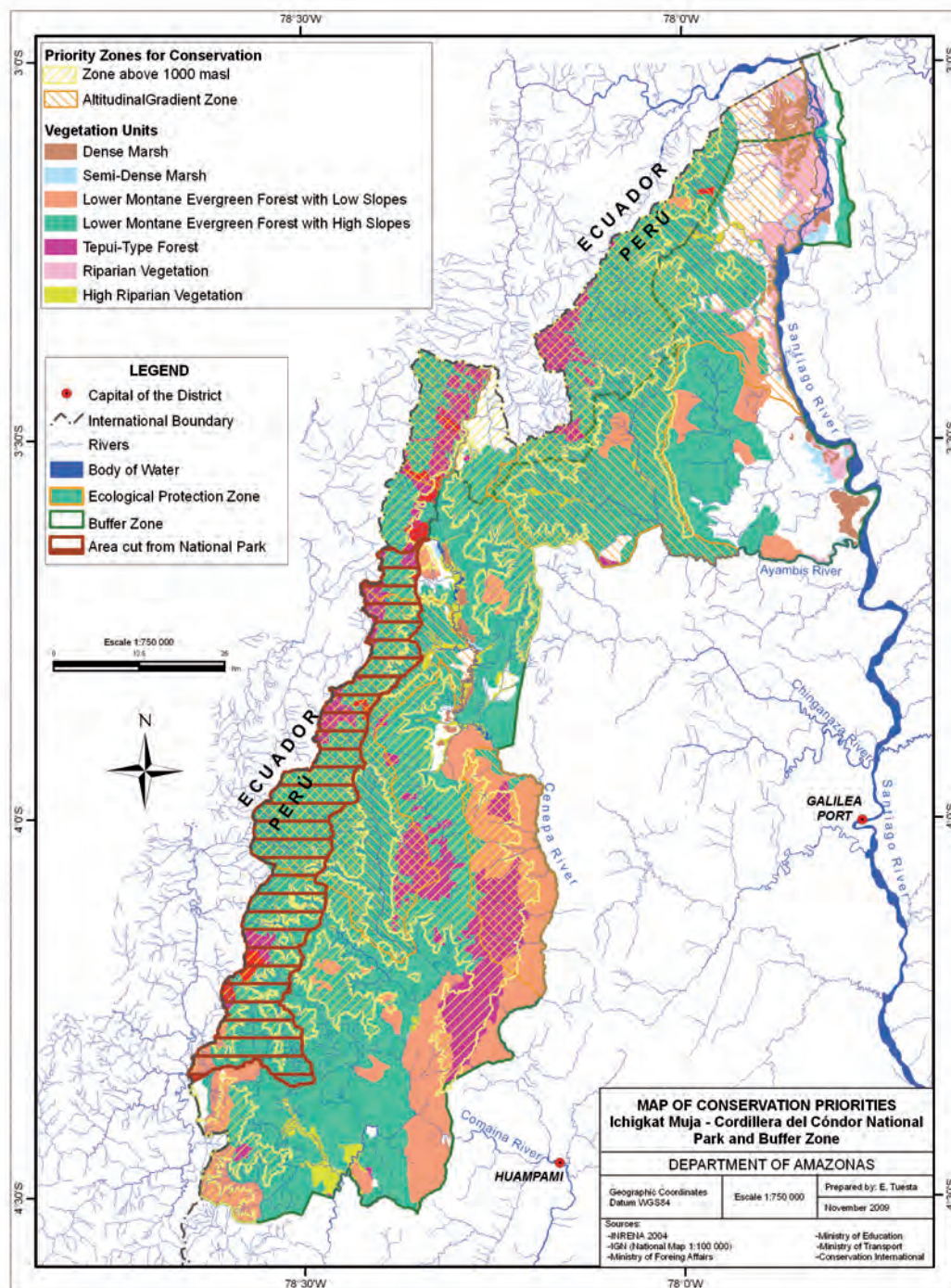
Gold in Peace Negotiations

Army officers, who have carried out tasks in the largely undemarcated border zone of the *Cordillera del Cóndor* (Condor Mountain Range), have continuously recognized the support provided by the Awajún and Wampís communities in times of war and peace. In a remote area such as the Cordillera, which is difficult to access, the support of the local inhabitants has proven to be decisive not only because of their intimate knowledge of the land to be traveled, but also in terms of food support.

The text written by Coronel Eduardo Fournier Coronado (1995), *Tiwintza con Z. El Conflicto Peruano – Ecuatoriano 1995* (Tiwintza with a Z. The Peru-Ecuador Conflict of 1995) is eloquent, referring not only to the support provided by the civil population and the draftees but also detailing the actions undertaken by Awajún and Shuar Wampís volunteers who formed a military corps referred to by the army as “The Yachis”. He specifically states that these volunteers, “with their invaluable support of our troops’ logistical activities, contributed to the evacuation and final victory of the Cenepa River Basin, many of whom gave their lives” (Fournier Coronado, 1995:89). It is recognized that they also played an important role in identifying mines, the presence of the enemy soldiers and even poisoned water sources.

Shortly after the fighting, the General Command of the Peruvian Army paid tribute to the participation of the indigenous inhabitants in the Cenepa Conflict. At a ceremony held on May 2, 1995 at the Army General Headquarters, a battalion marched, “ratifying with their presence that the native communities are always ready to defend their homeland, as they did in the recent conflict, where they provided their knowledge and skills for the benefit of our army and Peru, while others gave their lives for national sovereignty” (Fournier Coronado, 1995:91).

At this time, the indigenous leaders of the Awajún and Shuar Wampís communities highlighted the fact that they died for land that no one wanted to guarantee them and claimed the right to participate in the peace process and the future demarcation of the border.³⁸ That is how the following statement made by one of the Awajún leaders was understood: “We are doing everything we can, but I hope that legislators do not forget later on down the road.”³⁹ The invitation to the leaders of the indigenous organi-



Map 3
 Map of conservation priorities - Ichigkat Muja, Cordillera del Cóndor National Park and buffer zone

zations from the five basins of the upper Marañón by the Ministry of Foreign Affairs in 1997 to inform them in advance of the terms of the Peace Agreements seemed to reflect not only gratitude for their support in the conflict and previous military episodes, such as the confrontation that occurred in 1981, but also an attitude of respect and recognition of their rights as indigenous peoples.

However, during the peace agreement negotiations, mining interests interfered to such an extent that some believed that, just as the war of 1941 had responded to the interests of foreign companies in the oil fields discovered shortly before (McBride, 1996:130), it was mining interests that had sparked the confrontation in the conflict of 1995.

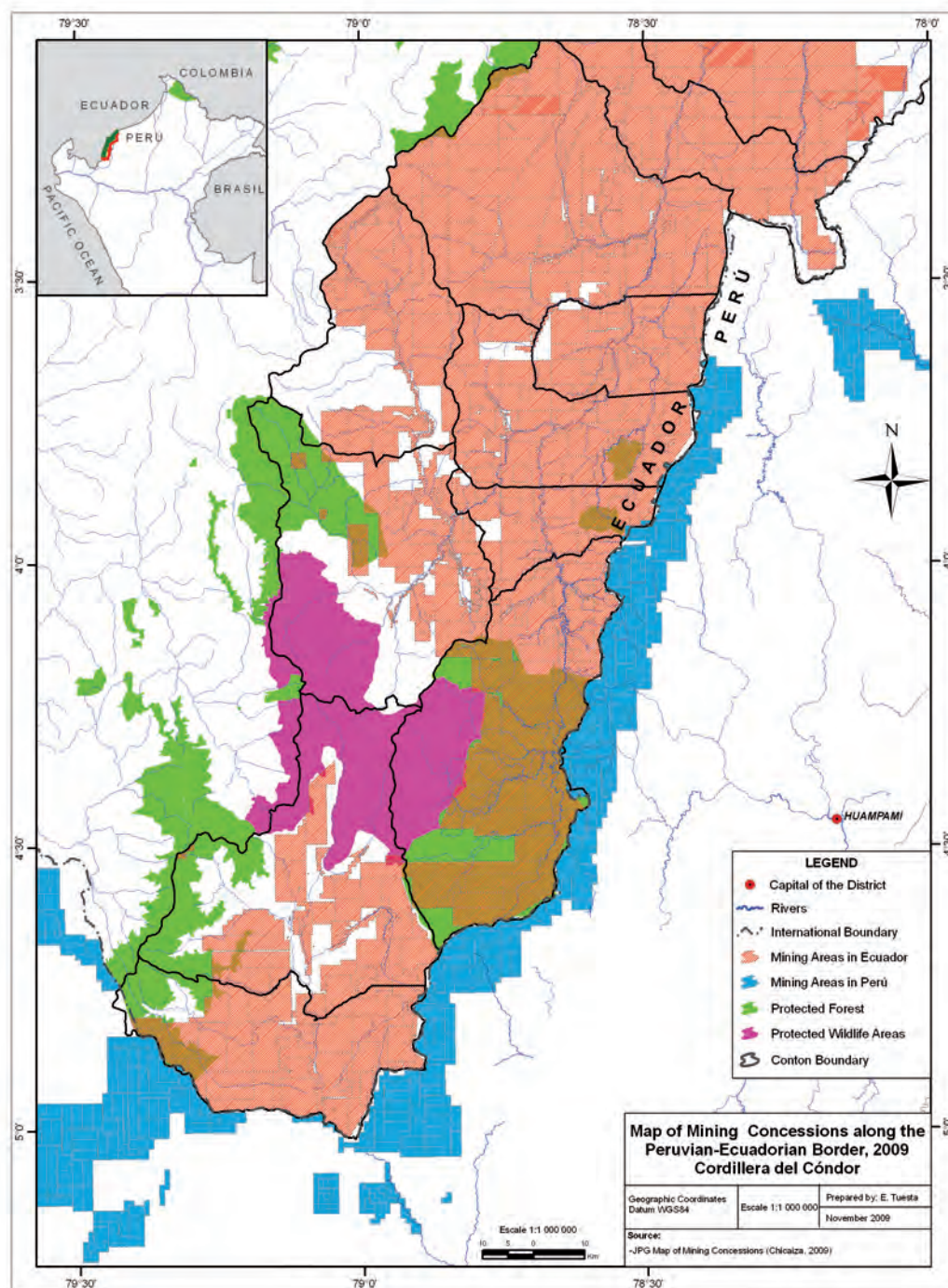
Both countries reformed their mining legislation in the early 1990s, thus affecting mining conditions along the borders. By 1995, some important gold and copper mining concessions already existed on the Ecuadorian side of the Cordillera del Cóndor, while on the Peruvian side, the first concessions of Compañía Minera Afrodita, formerly known as Metales & Finanzas S.A., were already registered. Initial geological studies showed that the Cordillera del Cóndor formed part of the Zamora batholith, where the existence of gold and copper had been verified. Furthermore, gold extraction activities had been underway for a number of decades in the area of the Chinchi River, west of the Cordillera del Cóndor, which started to draw the attention of big mining companies in the 1970s.

At the time of the peace talks in Brasilia, mining did not form part of the substantive issues discussed at a diplomatic level, with the exception of the highly publicized topic of the possible interconnection between the Peruvian and Ecuadorian oil pipelines to create common interests and establish stronger ties among business groups in both countries. Nevertheless, Heading III of the Broad Peruvian-Ecuadorian Agreement on Border Integration, Development and Good Neighbor Relations, regarding the strengthening of bilateral cooperation, stated that the parties would give priority to the coordinated use of “mining resources found in the border areas of the territories in both countries”. The proposed Mining and Energy Integration and Complementation Treaty (Supreme Executive Order – Decreto Supremo 046-99-RE) was signed less than a year later and only two months after the Santiago-Comaina Reserved Zone was created.

Over time, it became evident that mining agreements were not incidental and that peace agreements had become essential thereto (Peruvian, Ecuadorian and international), interests that aimed to develop a kind of transborder mining along several frontiers that had, until recently, been in dispute, as was the case in Chile and Argentina.

As noted in the report issued by Mining Conflict Watch in July 2008, the highest number of concessions granted by Peru in the previous three years corresponded to border areas with Ecuador in the regions of Piura, Cajamarca and Amazonas, which seems geared to be a major “transborder mining district”. For now, the Chinese mining consortium, Zijin, has acquired thirty-five concessions with 28,000 hectares on the Peruvian side of the border (Piura), adjacent to the concessions granted to the same company by Ecuador, and has easily obtained the publication of a supreme executive order, declaring the public need to develop the mining activity in this area (Supreme Executive Order 024-2008-DE). A number of other concessions in that same region seem to be related to this group and mining project. The project is referred to as Río Blanco in Peru, while in Ecuador the company, Rioblan, belongs to the Monterrico Metals Group, parent company of Río Blanco, which majority shareholder is Zijin.⁴⁰

The same inflation of mining concessions is observed further east in the region of Cajamarca, where one of the two major mining groups with interests in the Cordill-



Map 4
Map of mining concessions along the Peru-Ecuador border, 2009

era del Cóndor has numerous concessions. Until recently, Jorge Bedoya and Compañía Minera Afrodita held sixty mining claims in the Provinces of Namballe, San Ignacio and San José de Lourdes, which border a highly auriferous zone in southern Ecuador; such claims are now registered to Carlos Ballón Barraza. It is interesting to note that the Peruvian Congress conducted an investigation in 2002, which associated mining interests (specifically those of Afrodita and Newmont) with the violent conflicts that erupted in the community of Naranjos that year. On that occasion, both mining companies had signed agreements with various Awajún communities of that area in order to facilitate prospecting. The congressional report confirmed that the community members reacted to the unlawful awarding of land titles in favor of settlers of communal areas under assignment of use agreements with the State and to the repeated neglect of judicial and police authorities, who were supposed to oust the squatters. The report also implied that the conflicts were most likely spurred on by the mining interests of Afrodita / Bedoya.⁴¹

The mining concessions on the Peruvian and Ecuadorian side of the Cordillera del Cóndor face each other. On the Ecuadorian side, it has been confirmed that important gold discoveries in the deposit known as Fruta del Norte were made by Aurelian Resources Inc., a Canadian company that transferred its thirty-nine concessions with 95,000 hectares and its shares to another Canadian company, Kinross Gold Corporation, in September 2008. Although the project is not in production, exploration is at an advanced stage. Mining concessionaires on the Peruvian side have tried to take advantage of this discovery in order to find international partners.

There are also other gold and copper mining projects on the Ecuadorian side of the border, some of which have been developed based on concessions originally granted to a military company that partnered with Canadian mining companies in the 1990s. Although these concessions were subject to a moratorium while awaiting the approval of a new Constitution and a new mining law throughout 2008, they have been approved by the current government. Only Dynasty Metals & Minerals, which has two deposits along the Ecuadorian border, is in the process of installing a ball mill for one of them in Zaruma. With feasibility studies still pending, its other project, Jerusalén, which has an estimated useful life of only eight years, is located near the Afrodita project; Jerusalén is projected to exploit underground mines that are expected to produce 100,000 ounces / year of gold. As in the case of Peru, mining concessions are found in the traditional Shuar territory, although only some of them are developed in areas that have been awarded land titles, since Ecuadorian legislation does not grant land titles to communes along the border. Gold mining along the frontier has recently met with some resistance in Shuar communes and organizations.⁴²

Facing the concessions granted to Afrodita, informal miners exploit adits through contracts entered into with these companies and process the ore carried on the backs of *extractores* or informal workers at a score of small mills. This activity dates back to the 1980s.

For the last ten years, the Ecuadorian government has been working on incorporating the small-scale mining carried out in the region of Zamora into the formal sector, but it has not been able to control its unorganized development or its environmental impact on the contamination of soils and rivers. Both small-scale mining and corporate mining interests are favored in this case, thanks to the easy access to the zone of the Cordillera del Cóndor by means of highways and unpaved roads and the existence of electricity distribution networks; meanwhile the mountains on the Peruvian side are much more rugged, and there are no access roads to the headwaters of the Cenepa River from the Marañón. This explains why mining concessionaires on the Peruvian side are interested in securing access from Ecuador.



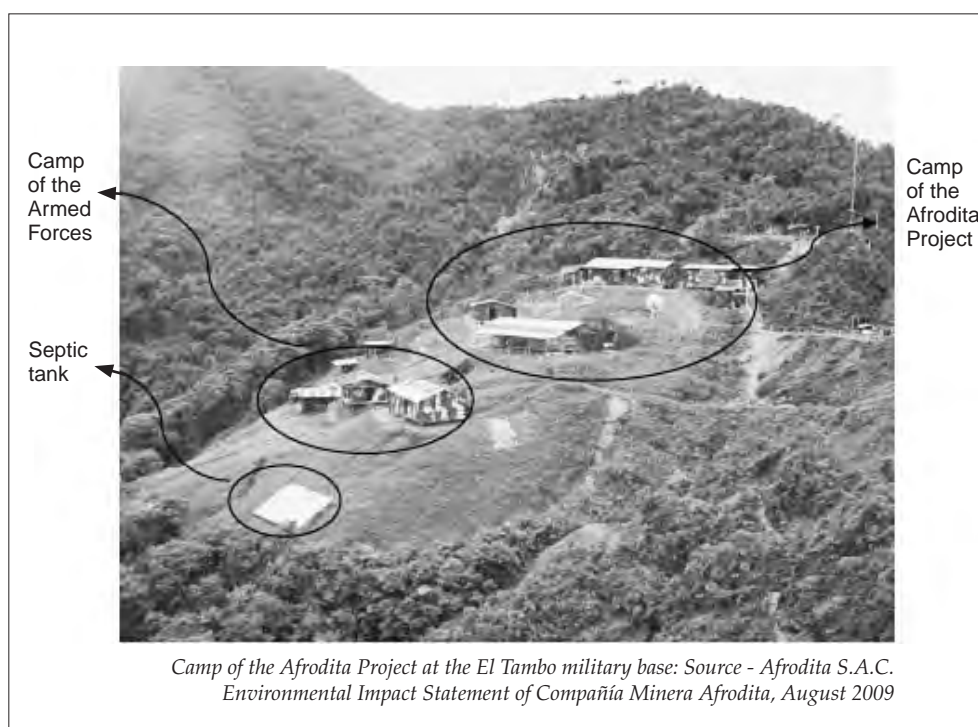
Mine entrances made by Ecuadorian informal miners

The fact is that transborder mining creates a situation in which national interests are subordinated to mining interests, which gives way to transnational interests, a context in which the rights of the local populations rapidly diminish when faced with the magnitude of economic interests. In this case, mining interests have caused the Peruvian government to ignore all the agreements made with the Awajún and Wampís indigenous peoples for land-use planning and environmental conservation, claiming the need for mining activities to be equally developed on both sides of the border for reasons of national security. Nevertheless, “national” mining interests are associated with transnational interests, which are also linked to operations across the border.

In this case, the Peruvian interest in mining along the border has the potential to reintroduce conflict into a region in which peace had been restored with the peace agreements of 1998. The consequences of a potential increase in conflicts, as well as the impacts of environmental contamination will fall on the shoulders of the Awajún and Wampís communities, in whose territory the mining concessions are found. This is compounded by local social conflicts resulting from the modification of the Ichigkat Muja National Park and the position taken by García’s government with respect to communal property, expressed in the theory of “the dog in the manger”. All this creates risks that are not being properly assessed by the Peruvian government.

So far, mining has been able to impose its interests not only over indigenous rights but also over sustainable development, conservation and national security policies in the battle for the Cordillera del Cóndor.

The modification of the original proposal for the Ichigkat Muja National Park challenges the identification made by the environmental authority of the priority zones for conservation in 1996. It also questions the technical role of such authority by imposing the obligation to declare the compatibility of the mining activity with this zone, identified as a conservation priority, and delegitimizing INRENA’s attempt to establish minimum conditions for authorizing mining exploration. Furthermore, it also distorted the views of the Ministry of Foreign Affairs



by subordinating border security and the conservation policy to these interests, when it spoke out against the implementation of the original proposal to create the Ichigkat Muja – Cordillera del Cóndor National Park and stated the following:

“INRENA has undoubtedly based its proposal on solid environmental and ecological grounds that this Ministry of Foreign Affairs shares and always supports. Nevertheless, in this case, such grounds must be evaluated, while also considering the need for Peru to benefit from the natural advantage offered by the presence of mineral wealth (gold) in the area. In this regard, it is worth making reference to the mining claims (sic) that could result in the future (apart from the already existing concessions that, according to the statement made by INRENA, would be excluded from the proposed National Park).”⁴³

In this case, such decision has been accompanied by the decision to successively offer all types of assistance to Compañía Minera Afrodita and the Canadian company, Dorato, including the use of military facilities at the Tambo Surveillance Post and the Chávez Valdivia garrison as sites to establish their mining operations, in addition to helping them procure the services of military helicopters, without the authorities revealing the terms under which such agreements were executed.

Growing Unrest

The Awajún and Wampís communities of the Cenepa River Basin have voiced their opposition to the mining activity in the *Cordillera del Cóndor* (Condor Mountain Range) since 2001 at different meetings and assemblies and through the documentation submitted to competent national and regional authorities.

They have also made complaints on repeated occasions due to the river pollution resulting from this activity. These complaints have recently been confirmed by the

General Bureau of Environmental Health (DIGESA), without informing the local population of the results of the water studies conducted.⁴⁴ The complaints not only include the protest due to the granting of concessions and operating permits without effectively consulting the communities, with the knowledge that such communities were opposed thereto, but also the attempts that have been made to misinform and divide them and their local organizations.⁴⁵

Given this situation, in November and December 2008, the communities of the Cenepa River Basin agreed to perform an inspection of the Cordillera del Cóndor; they found that the mining company, Afroditá, was carrying out activities along the border on behalf of the Canadian company, Dorato, from a camp set up at the Tambo Surveillance Post, without an effective exploration permit. Having warned the aforementioned company that it should refrain from performing works and entering the communities, the indigenous inhabitants from different communities of the Cenepa River Basin decided to detain a group of workers in Huampami, the district capital, in 2009. They also informed the Office of the Prime Minister, by means of an open letter, that the company had attempted to enter their communities, despite warnings, and that attacks carried out by the company dated back several years, reason for which they expected an apology and told the Prime Minister that they trusted he would be willing to dialogue. They subsequently proceeded to release the workers. The Vice-Minister of Mines at that time informed the authorities and community members, who attended a meeting at the Chávez Valdivia military garrison, that Dorato was not registered, that Afroditá did not have any agreements in place with Dorato and that the concessions granted would be cancelled, if it was established that a foreign company had violated the Constitution, statements that turned out to be untrue. Hence, the Organization for the Development of the Border Communities of El Cenepa (ODECOFROC) submitted its request to cancel the concessions held by Afroditá and Carlos Ballón Barraza in April. The Regional Organization of Indigenous Peoples of the Northern Amazon (ORPIAN) established a deadline of fifteen days for the company to abandon the area.

The demand to restore the original proposal to create the Ichigkat Muja National Park and respect the agreements reached by the State with the Awajún and Wampís communities and their organizations, including the awarding of land titles and the expansion of communities, as well as the non-performance of the mining activities in the Cordillera del Cóndor, served as grounds for the platform based on which local indigenous organizations called for a demonstration and strike in 2008 and again in April 2009.⁴⁶ The perceived importance of these issues explains the massive support the demonstrations and strike had in the communities of these two indigenous peoples over a period of fifty-three days until the government ordered the rural road to be violently cleared.

The unfortunate events of Bagua have only deepened the frustration and unrest of the Awajún and Wampís communities. Although their demands in relation to the Cordillera del Cóndor are considered in the agenda of the National Coordination Group for the Development of Amazonian Peoples and its roundtable discussions, strong government commitments regarding the reestablishment of the original proposal to create the Ichigkat Muja National Park, prior consultation for mining and oil activities and the community land titling and expansion process have not been achieved. Worse still, arrested community members and leaders are still being held responsible for the deaths at Station 6 of the North-Peruvian Oil Pipeline, in addition to various leaders who are being persecuted and harassed, including the President of ODECOFROC.

In fact, a criminal complaint has been filed against the President of ODECOFROC, the Awajún leader Zebelio Kayap, by the State Attorney, for the alleged crime of kidnapping, with an impending arrest warrant issued, in spite of the fact that

this leader was not present when the delegation sent by the mining company was detained as a result of the collective decision of the community.⁴⁷ This event needs to be considered in light of the policy of systematic criminalization of the social protest implemented by the current government through the enactment of several executive orders in July 2007 to amend the Criminal Code. These orders were aimed at characterizing different legitimate expressions of social disagreement⁴⁸ as criminal behavior and preceded the enactment of the executive orders that sparked the massive Amazon indigenous protest in August 2008, which was resumed in April 2009 with the tragic consequences now known around the world.

During the conflict, and while the roundtable discussions were in session, the Peruvian Army continued supporting the mining company, Afrodita, in the preparation of its Environmental Impact Statement (EIS) with its helicopters and the use of the military facilities in the border region. All this created a situation of growing unrest that was irresponsibly handled by the authorities and provoked by mining interests. Although the mining issue in the Cordillera del Cóndor appears to the public as an isolated local conflict, the handling thereof is clearly aimed at breaking the response capacity of the Awajún communities and organizations and to open their territory up to large mining investments. A community leader did not indicate the following in vain in August 2009: *"We feel cornered. People live here, not animals, as they say, 'the dog in the manger'. We do not want them to destroy us;"* Another leader also made the following statement: *"They want to make us disappear by taking away our power and ability to do things."*

Corporate Lobbying

Neither private mining exploration, nor exploitation works could be performed within a 10-kilometer long stretch along the international borders of Peru until 1992. The new Constitution enacted in 1993 continued to establish restrictions solely for foreign companies or those national enterprises in partnership with foreigners. That same year, mining claims located in the region of the *Cordillera del Cóndor* (Condor Mountain Range), specifically in an undemarcated area along the border with Ecuador, were submitted. Such claims belonged to individuals and Peruvian companies, such as Metales & Finanzas (Metalfin), which formed part of the Hochschild Group. As a result of operations between 1996 and 1997, Metalfin created Compañía Minera Afrodita S.A. and transferred a portion of its equity thereto, as well as all of its mining claims in the Cordillera del Cóndor. Compañía Minera Afrodita became a closely held corporation, also known as a S.A.C., in 1998, with Jorge Bedoya Torrico as its majority shareholder.

Meanwhile, as a result of the peace agreements, Peru established the Santiago-Comaina Reserved Zone by means of a supreme executive order; the land of the native communities, in addition to the mining claims and concessions of Metalfin, were included in its 1,642,567 hectares, while waiting for the Reserved Zone to be spatially planned and categorized. The creation of the Reserved Zone legally implied that mining activities should be subject to the prior opinion of the National Institute of Natural Resources (INRENA). In 2001, INRENA issued an opinion against the execution of the exploration activities that could lead to mining exploitation along the Cordillera del Cóndor, in the area in which the National Park was foreseen to be created, an opinion which was maintained for many years.⁴⁹

In view of the impending creation of the Ichigkat Muja National Park and the declaration of incompatibility issued by INRENA, Compañía Minera Afrodita implemented a strategy attacking the technical viability of the National Park and the

institutional capacity of the environmental authority and questioning the impact of the creation of such protected area along the border, insofar as national security is concerned, proposing instead that gold mining at a corporate level offered the best guarantees. This strategy included intensive lobbying activities with the defense and foreign affairs departments, even when Compañía Minera Afrodita had executed an "option contract" with the Canadian company, Goldmarca Ltd., which also maintained a partnership with the Ecuadorian Army Industry Bureau (DINE) for the exploration of a gold concession established on the Ecuadorian side of the border.

At the beginning of 2006, Compañía Minera Afrodita had managed to convince the Ministry of Foreign Affairs and the Defense Department to reject the original proposal to create the National Park, formally approve the presence of the mining industry along the border and recommend the reduction of the area set aside for the Park. This occurred in spite of the poor environmental record of the main shareholder of Minera Afrodita, Jorge Bedoya Torrico, who was in charge of an important concession in the region of La Rinconada through Corporación Ananea in Puno, case in which its responsibility in the contamination of the Ramis River was confirmed by the Mining Environmental Bureau in 2006, in addition to registering the highest fatal accident rate.⁵⁰ Furthermore, Bedoya did not pay any of the fines which were levied by the Ministry of Energy and Mines (MEM) for one reason or another. He declared bankruptcy, but soon after he became a member of the Peru Chapter of the Bi-National Plan with Ecuador, where he began searching for a partner for a million-dollar mining operation along the border.

The decision to reduce the National Park by 69,829 hectares led to an avalanche of new mining claims in the area of the Cordillera del Cóndor and the emergence of new mining interests along the border, such as those of Carlos Ballón Barraza, a mining entrepreneur associated with the Cardero Group of Canada, where the aforementioned individual had worked since at least 2005, mainly identifying potential areas for mining investment. Ballón managed to obtain several dozen mining claims and concessions between 2006 and 2007. During that year, when general elections were held, Ballón Barraza became a member of the team in charge of the Government Plan for the Peruvian political party known as the Popular American Revolutionary Alliance (APRA), specifically the mining chapter, led by Abel Salinas, a collaborator of Cardero Perú S.A.C.⁵¹

As there were no obstacles in the Cordillera del Cóndor and without being subject to the approval and oversight of INRENA, the establishment of new business partnerships for mining exploration and exploitation in the area became possible. In April 2007, the Canadian company, Dorato Resources Inc., a member of the Cardero Group, registered its subsidiary, Dorato Perú SAC, in Peru with a capital of US\$ 30. In January of that same year, Ballón stopped questioning Afrodita's mining claims, which were pending legal awarding as concessions; at the same time, Afrodita also gave up challenging the fact that holders of some rights were front men for companies registered in Ecuador. Two attorneys from the law firm, Estudio Ehecopar García EIRL, were listed as shareholders of Dorato Perú S.A.C., while another member from the same firm, who dealt with Ballón's legal issues, as well as those of Cardero in Peru, was listed as the legal representative.⁵²

The characteristics of the transfer operation from Afrodita to Dorato are quite complex, given that they entailed a number of arrangements with different parties, through a variety of associations and purchase schemes.

In order to make the strategy of transferring all the mining claims in the Cordillera del Cóndor to the subsidiary of Dorato Resources Inc. viable, Compañía Minera Afrodita cancelled its option contract with Goldmarca Ltd. in 2007, result-

ing in a lengthy arbitration proceeding, the costs of which were covered by Dorato Resources Inc. Then, in October 2008, Dorato Resources Inc. acquired all the shares owned by Afrodita, through its subsidiary in Peru, gaining control over the seven properties owned by Compañía Minera Afrodita, registered to such company or Jorge Bedoya Torrico, with a total of 5,008 hectares. The agreements between Dorato Perú and Minera Afrodita were finalized in December 2008, the latter receiving US\$ 3 million in cash and US\$ 8,600,000 in common shares, US\$ 2 million and US\$ 7,700,000 of which it has respectively paid off. Having become the property of Dorato Perú S.A.C., Afrodita symbolically transferred its rights and assets thereto (including its mining concessions) for US\$ 100. The mining assignment agreement and a private agreement, which terms are unknown, were simultaneously signed; termination of the latter will automatically cause the same to occur to the former.

As of October 2007, Dorato began formalizing the acquisition of the mining concessions and claims registered to various individuals with ties to Ballón Barraza by means of five contracts. Two of these option contracts were directly executed by Dorato Resources Inc. of Canada with Carlos Ballón of Cardero Perú S.A.C. for the transfer of three groups consisting of forty-six mining claims (concessions by the name of "Lahaina" and "Maravilla") covering 38,527 hectares in the northern region of what Dorato refers to as the "Cordillera del Cóndor Property". By means of a separate contract, the Canadian company acquired another group of eighteen mining claims, known as "Vicmarama" with 14,500 hectares, registered to a third party. Although the mining claims were directly negotiated with Dorato Resources Inc., by Carlos Bedoya Barraza, who at that time declared being the holder thereof, such change in ownership was only registered with the Peruvian authorities in February 2009.

The objective of the legal scheme used in the acquisitions was to avoid any and all obstacles so that a foreign mining company could operate along the border and all negative consequences that could possibly reveal the nature of the operation. The company that became holder of the mining claims for exploratory purposes is registered in Peru and its shares are 100% Peruvian (both attorneys at the Echecopar law firm). Jorge Bedoya is still the General Manager at Dorato and continues to hold the position of Manager of Afrodita. Likewise, Compañía Minera Afrodita, acquired by Dorato, assigned its rights for "strictly exploratory purposes". Should this scheme fail, Compañía Minera Afrodita would be held harmless in order to continue managing its concessions and implement some other transfer model in the future.

The contract between Dorato and Afrodita has been prepared by applying a circular logic, which aims to distinguish Dorato Perú S.A.C. (100% subsidiary of the Canadian company, Dorato Resources Inc.) from Afrodita S.A.C., which total number of shares has also been acquired by Dorato Perú (the subsidiary), and yet make them interchangeable. We are dealing with an artificial formula to differentiate between Afrodita, Dorato Perú and Dorato Resources Inc., with the objective of taking advantage of the most suitable nationality in different contexts and opportunities. In fact, they are all the same to such an extent that reference has been made to the exploration results of Afrodita in documents pertaining to Dorato Resources, and some executives of Dorato Perú and Afrodita have even gotten their papers mixed up in public. Furthermore, Dorato Perú has recognized that it is a subsidiary of Dorato Resources in a public communiqué.

Without a doubt, the Canadian company, Dorato Resources Inc., through Dorato Perú S.A.C., is currently the main mining concessionaire within the 50-kilometer long stretch of the Cordillera del Cóndor, where companies in partnership with foreigners are prohibited from carrying out operations, unless a supreme executive order is countersigned by the Cabinet, as established in the Peruvian Constitu-

tion. Therefore, the operation in the Cordillera del Cóndor has become part of the Cardero Group, a corporation consisting of four companies in Canada, engaged in the exploration and development of gold, uranium, silver, zinc and lead deposits in Argentina, Mexico and Peru. In relation to the Cordillera del Cóndor and Dorato, the Cardero Group also states that it is engaged in the “exploration of a large number of mining claims in the Cordillera del Cóndor in the northern region of Peru”. This business group has also indicated that it has the “first mover” advantage in world class areas in the Ecuadorian gold district.

Dorato Perú S.A.C. – Afrodita carried out exploration activities in 2008 without obtaining authorization from the Mining Environmental Bureau and established its camp at the Tambo Peruvian border post. In spite of the foregoing, the former Vice-Minister of Energy and Mines stated the following in January 2009: “Dorato does not exist for us,” warning that if it was proven that a foreign company was operating a mine or had purchased a mine within 50 kilometers of the border, without the corresponding supreme executive order, the concessions would be returned to the State and not to their prior holders (January 22, 2009).⁵³ A formal request to revoke the mining concessions in the Cordillera del Cóndor was submitted in April 2009, but the competent entity has refrained from responding or acting in accordance with the Constitution. In order to avoid becoming liable for the penalty of forfeiture as a result of breaching Article Seventy-One of the Constitution, Compañía Minera Afrodita registered the termination of its mining assignment agreement with Dorato Perú S.A.C. on June 9, 2009 and informed the Geological, Mining, and Metallurgical Institute (INGEMMET). All other cases remain pending.

Mining Risks in the Cordillera del Cóndor

The risks of mining development in the *Cordillera del Cóndor* (Condor Mountain Range) are proportional to the characteristics of its fragility and importance for the biodiversity, preservation of life and environmental health of the basins that originate in the Cordillera (in particular, the Cenepa River) and depend on the strategy implemented and technology used.⁵⁴

The information provided by the institutions that have helped gather scientific data on the Cordillera del Cóndor leaves no doubt about the impact that any level of intervention in the area could have on water flows, water quality, ground stability and biotic components, without taking into account the impact on the living conditions of the population of the basin, which has been occupied since before the formation of the Peruvian nation. This is an extreme case, where no mining activity should exist, since no mitigation measures would be able to prevent the impact on the basin, regardless of the type of intervention. The National Institute of Natural Resources (INRENA) has stated the following:

“...for the Aguaruna population living in the lower reaches of the Cordillera del Cóndor, it is necessary and essential to protect the upper reaches of the Cordillera in order to maintain their quality of life and cultural values, reason for which they have supported the establishment of the Ichigkat Muja – Cordillera del Cóndor National Park.”

(...)

“...the impacts that could be generated as a result of the mining exploration and exploitation activity would directly affect the conservation objectives of the Santiago-Comaina Reserved Zone.”⁵⁵

The small-scale mining undertaken by illegal miners that enter the zone, in addition to the exploration activities, have caused impacts on the quality of water, as evidenced in the technical inspection performed in January 2009 by the pertinent authority in the area of the Afrodita concessions.⁵⁶ The analysis of the runoff effluent from the wastes of adits reworked by Afrodita demonstrated parameter values of acidity, Total Soluble Solids (TSS), Pb, Zn and Fe that exceeded the maximum permissible limits at various points in 2005, as established in Exhibit 1 of Ministerial Resolution 011-96-EM / VMM, which was also corroborated in a verification report conducted by the corresponding authority in January 2009.

The most drastic environmental impact resulting from mining activities in the Cordillera del Cóndor is related to the events which occurred on the Ecuadorian side of the border in 1993 in the area of Nambija, on the western side of this mountain range, when massive extraction activities, at the hands of informal miners, brought down a large section of mountains. In this case, operations were being performed in adits that had converted the mountains into beehives. As in the region of the headwaters of the Cenepa River, a zone affected by the collapsing of hundreds of adits, the ground was extremely fragile, due to the limestone soils. The event, which killed nearly 300 people, occurred after the rainy season and following a small earthquake. Soil moisture in the upper reaches of the Cordillera del Cóndor is known to be quite considerable, since its peaks act as “moisture interceptors”; in any case, the area is almost always covered by clouds with heavy annual rainfall. In fact, according to an inspection carried out by environmental authorities in April 2005, water was leaking in recent galleries, where Compañía Minera Afrodita had carried out exploration activities.⁵⁷ The company’s Environmental Impact Statement (EIS) had also anticipated that, “the surface will neither collapse, nor cave-in, due to the topography of the project area...”, despite presenting extremely shallow to shallow soils, with high rainfall and steep slopes, factors that promote the risk of erosion and which previously conducted studies related to disturbance patterns, such as landslides and the erosion of river beds when vegetation is disturbed.

The risks of the mining activity in the Cordillera del Cóndor increase with the lack of willingness to assume social and environmental responsibility, as demonstrated by the current concessionaires. The “Afrodita Project”, by means of which Compañía Minera Afrodita requested authorization from the Bureau of Mining-Related Environmental Affairs (DGAAM) to perform exploration activities starting in 2004, provides some elements in order to assess both potential impacts and the negligible attitude of mining companies insofar as environmental responsibility is concerned.

It is worth highlighting the water issue. The project did not make any reference to the bodies of water in its original EIS. It only indicated that spring water would be used during the exploration phase, “reason for which rainwater would not have to be used (sic)”.⁵⁸ Upon requesting more information on the use of water in this phase (technical observation N1 93-05 INRENA-OGATEIRN / UGAT), the company ruled out any impact on the water network by making reference to the Nanagaritza River, which flows into the Santiago River Basin, in spite of the fact that Afrodita concessions are located at the headwaters of the Comaina River. Springs or *ojos de agua* to be used on the Peruvian side of the border supply the Cenepa River Basin, where the drilling mud would be dumped. In fact, the company ended up declaring that it would use between 3,000 and 5,000 liters of “reusable” water at each of its seventeen boreholes over a period of two months, in addition to 200 liters of water a day for domestic use. According to the company, it had been monitoring the water (without indicating which basin) and took six samples that had

yet to be sent to a laboratory. In order to meet the requirement for authorization to use the water, the company subsequently submitted a request to the Irrigation District of Bagua, which granted such petition without further processing.

The project included the establishment of seventeen diamond drilling platforms.⁵⁹ The company indicated that it would establish mud pits measuring 3 x 2 meters x 1.5 meters deep on each side of the platforms, without making reference to the issue of possible overflows caused by high rainfall or their effects on a zone characterized by steep slopes and highly permeable soils. Exhibit 4 on substance handling safety contained technical information on some of them (FSF Boretex, FSF-2000, FSF Liquid Pac Plus, FSF-MAX GEL, etc.), which included substances to stabilize boreholes, viscosifiers, emulsifiers, etc. The section on the identification of health hazards merely stated that first aid, in the case of acute or chronic overexposure, consisted of making sure that the affected person “breath quickly and contact a physician”, in spite of the fact that neither the mining camp, nor the Peruvian military camp offered medical services. Afterwards, the company submitted a certificate from a Peruvian company that had been hired to remove chemical substances from the area, including the bentonite produced during drilling, gaining access to such area through Ecuador.

The report with observations made by the Office of Transectoral Environmental Management, Assessment and Information of Natural Resources (OGATEIRN) of INRENA with respect to Afrodita’s EIS points out evident omissions of information, detailing the need to specify data on ground characteristics, types of threats, potential impacts of each activity, mud effluent management with design specifications for the collecting ponds, geo-referencing of intervention sites, closure operations, etc. From a technical and responsible perspective, the study concluded that a baseline to monitor the operation, specifically the exploration activities to be developed in areas identified by INRENA as conservation priorities, was required.⁶⁰

The different reports issued by INRENA noted the following risks: slope destabilization, changes in the natural landscape, impacts on the vegetation cover that captures moisture, soil loss in areas to be explored and roads, pollution of water sources, disruption of groundwater and surface water, impacts on the basin, migration of fauna due to the noise caused by operations and helicopter flights, etc. One of the reports dramatically pointed out that open pit exploitation in the Cordillera del Cóndor should not be allowed in the future.⁶¹

Most of the observations made by INRENA were not corrected and were not incorporated as requirements by the Bureau of Mining-Related Environmental Affairs (DGAAM) when it approved the project, since the project to reduce the Park was already underway, a situation that turned out to be beneficial for the Afrodita Project, given that it allowed such project to avoid an INRENA inspection. In general terms, the company insisted on pointing out that the conditions proposed to improve environmental management and exploratory operation safety were not enforceable. The trouble is that the manager of Compañía Minera Afrodita had a history of causing serious environmental impacts in the region of Puno, where the Regional Mining Environmental Bureau verified the liability of his company, Consorcio Ananea, in the contamination of the Ramis River the following year (2006).⁶²

The social impact of mining development in the Cordillera del Cóndor is not discussed in the EIS submitted by Compañía Minera Afrodita in 2004, although the documentation establishes that the nearest community (Antiguo Kanám) is 5 kilometers from the camp where activities were to be implemented. The company has insisted in all documents that the impact of exploratory operations is localized and has always avoided the requirement to define the area of impact, supposedly

limited to 3.5 hectares. The company has always tried to deny the fact that operations in the upper reaches necessarily impact the entire basin, where the communities are found. Among the observations made by INRENA to the request for authorization to carry out exploration activities in the so-called Afrodita Project, the need to delimit the area of impact from an environmental and social perspective was emphatically stated.

Several documents also show that the authorization to carry out mining activities contradicts the agreements previously established by the State with the local population. They also call attention to the compliance with the public involvement procedure to not only inform the population of the scope of mining exploration but to also determine the participation of the communities in environmental monitoring, since the company obtained authorization from Awajún leaders in 2004, after informing them that the activities would be limited to “the gathering of rocks from the ground for analysis”, although it included the execution of diamond drilling.⁶³

The new EIS submitted by Compañía Minera Afrodita in August 2009 for operations lasting six months neither met the guidelines proposed by INRENA, given that the area is extremely fragile, nor properly defined the area of impact of the project, only pointing out the area where vegetation would be directly affected and where earthworks would take place, as if impacts were only localized.

The Context of Socio-environmental Conflicts in Peru

Peru has entered into a stage aimed at considerably intensifying the extractive activities in the Amazon region. Since 2004, more than 53 of the 75 million hectares (in other words 70% of the aforementioned total area) representing the Peruvian Amazon have been covered by hydrocarbon blocks, including Protected Natural Areas, territories for indigenous peoples living in voluntary isolation and territories, land titles for which have been awarded to native communities. Furthermore, mining activities have also increased considerably. While investment in worldwide exploration grew by 90% and quadrupled in Latin America between 1990 and 1997, it increased twentyfold in Peru.⁶⁴ The land occupied by the mining sector between 2002 and 2008 rose from 7,452,233 hectares to more than 17 million hectares.

As per the Ombudsman's Office, more than 50% of the social conflicts in Peru are due to socio-environmental causes and 71% are associated with mining activity. These conflicts are directly related to the lack of respect for the rights of the local communities and the explicit attitude of the government and the mining industry, perceiving the communities as an obstacle to promote investment.

Furthermore, despite the steady improvement in standards and conditions for the development of mining and hydrocarbon activities since the 1990s, the State has shown no political will and continuously reveals its institutional inability to oversee, prevent and mitigate environmental contamination (Ombudsman's Office, 2007; World Bank, 2005). This is reflected in the lack of trust in and credibility of government institutions associated with the mining issue; for this reason, the population resents the fact that they are on the side of the companies rather than the side of the citizens and that they withhold information regarding potential or real contamination.

The emblematic cases of oil exploitation in the Corrientes River, where such activity affected the land of the Achuar, Kichwa and Urarina peoples, in addition to the situation in La Oroya, constitute extreme and alarming examples of this inability and unwillingness. In the case of the Corrientes River, thirteen years

after environmental regulations entered into force in 1993, the State forced the corresponding party to remedy the severe contamination caused, which is reflected in the presence of lead and cadmium in the blood of the locals and the serious environmental damage, establishing the obligation to re-inject production water. Ten years after implementing the legislation, the State recognized that it had conducted inadequate environmental oversight, given that it had failed to carry out field inspections, despite continuing complaints from the local population.

In the case of the metallurgical complex of La Oroya, which was privatized 15 years ago, the company, Doe Run, has obtained four extensions of the initially agreed upon Environmental Compliance and Management Plan (PAMA). Meanwhile, the studies conducted by the Ministry of Health reveal that the children of La Oroya Antigua have an average of 21 micrograms of lead per deciliter of blood in their system, with some reaching as many as 65 mg; the maximum permissible limit, as per the World Health Organization (WHO), is 10 mg/ dl.

The fact that the authority in charge of promoting investment in mining is also authorized to determine environmental feasibility, through the approval of Environmental Impact Assessments (EIAs) and Environmental Impact Statements (EIS), weakens the supervisory role of the State, with the Ministry of Energy and Mines thus assuming both the role of judge and jury. Therefore, the studies designed to seriously assess the environmental and social sustainability of the activity become little more than an administrative formality. The creation of the Ministry of the Environment in 2008, which is not authorized to review or approve EIAs, not even when inspecting mining and oil activities, does not constitute significant progress. Furthermore, the Ministry of Energy and Mines (MEM) also retains the authority to regulate environmental standards.

This context creates a situation of helplessness on the part of citizens with respect to large mining interests, which is intensified by the acts of corruption involved in the granting of concessions. The case, for which a complaint was filed in 2008, associated with the concession of five oil blocks evidences the degree of existing corruption in the Board of Directors of Perupetro, which has led some analysts to argue that the logic behind the accelerated rate at which concessions are granted is not only the result of a commitment to an investment promotion policy but of opportunities for personal gain, through kickbacks. The case of the modification of the original proposal to create the Ichigkat Muja National Park, which was not consulted with the indigenous communities, causes concern that political and economic ties have unethically played a role in the sensitive decisions made by the State.

Violated Rights and the Need for Precautionary Measures

In August 2009, the Organization for the Development of the Border Communities of El Cenepa (ODECOFROC) presented a Request for Urgent Action to the United Nations Organization in its Seventy-Fifth Session in order to avoid imminent and irreparable damage to the Awajún and Wampís Peoples living in the Border District of El Cenepa, Province of Condorcanqui, Department of Amazonas.⁶⁵

The instrument stated the following: "The attention of the Committee is required, due to the fact that the Peruvian government has failed to fulfill its obligations to protect indigenous land, has violated the indigenous right to participate in decisions related to the development model promoted by the State in such territories and has violated the right to consultation, to which the peoples inhabiting this area are entitled, rendering them invisible and thus excluding them and dis-

criminating against them. Furthermore, by allowing mining exploration works to be carried out with the intention of authorizing exploitation activities, the rights of the Awajún and Wampís peoples to life, health, ethnic identity and free self-determination are seriously, imminently and irreversibly threatened.”

“The situation is urgent and extremely serious because the area, in which these mining exploration and subsequent exploitation activities are to be carried out, is ecologically vulnerable and includes several basin headwaters situated in high mountainous areas, from which water resources descend and on which the Awajún and Wampís communities depend for their survival and physical and cultural reproduction.” Furthermore, “a consistent pattern of socio-economic discrimination to the detriment of the Awajún and Wampís peoples also persists”, with the company owning the concessions having publicly expressed its will to recommence its exploration works, “indicating that the only legal framework it recognizes is the State’s mining legislation.”

“These actions constitute a violation of the obligations assumed by Peru pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination, specifically referring to equality in the eyes of the law insofar as the enjoyment of rights established in Article Five are concerned, particularly the rights to own property (5d, paragraph v) and the right to public health (5e, paragraph iv) in addition to the right to security of person (5b) and the right to equal participation in cultural activities (5e, paragraph vi).

The facts submitted for the consideration of the UN Committee on the Elimination of Racial Discrimination (CERD) that represent a violation of rights are as follows:

1. The area assigned to mining interests constitutes the ancestral land of the Awajún and Wampís peoples, who were neither consulted, nor from whom consent was obtained.
2. The Peruvian Government has impeded and hindered the awarding of land titles to the Awajún and Wampís peoples.
3. The Peruvian Government has failed to comply with its obligation to protect the right of the Awajún and Wampís peoples to a healthy and stable environment by refusing to preserve and protect both the biodiversity and the environment present in their territories.
4. Mining companies have put pressure on the protected natural areas in the indigenous territories.
5. The government body known as the National Institute of Natural Resources (INRENA) recognized the impossibility of performing mining activities in Awajún territory, but favorably approved the mining claims and the modification of the Ichigkat Muja Park.
6. The State neither has the political will, nor the institutional capacity to prevent or mitigate the environmental contamination of indigenous territories.
7. Mining rights are granted while explicitly and openly ignoring the right to consultation and self-determination of the Awajún and Wampís peoples.
8. The impending threat of serious conflicts shall continue, subsequently affecting human rights.

9. Recent incidents of conflict have been caused due to a lack of consultation.
10. International observations and recommendations made to Peru have yet to be accepted by the government.
11. The Awajún and Wampís peoples, living in the Department of Amazonas, have endured constant discrimination, insofar as their enjoyment of economic and social rights is concerned.
12. A policy of impunity has been implemented with regard to the violence committed by the police forces against the Awajún and Wampís indigenous peoples.
13. Serious racist and denigrating statements have been repeatedly made against the indigenous peoples by public figures, journalists and the mass media, which have been encouraged or tolerated by the government.
14. Indigenous peoples have rights to land and health, as stated in international law.
15. The national mining legislation is legally incompatible with indigenous rights.

Legal Actions Undertaken and Current Situation

A healthy environment constitutes the basis of the existence of the Awajún and Wampís peoples and the guarantee of future generations to come. Hence, even before the establishment of the Republic of Peru, these indigenous communities mounted an unwavering defense of their land and embarked on an ongoing quest for its legal certainty..

These peoples are absolutely certain about the need to conserve their land in order to ensure the health of the Cenepa River Basin and its inhabitants. This is expressed in cultural values and traditions concerning the sacredness of this area and in the current traditional conservation patterns thereof through different cultural precepts and practices. This has also been confirmed by the scientific studies conducted by different well-known institutions such as the Missouri Botanical Garden and the studies for the establishment of a protected natural area carried out by Conservation International, the National Institute of Natural Resources (INRENA), etc.

With the emergence of the mining threat in the *Cordillera del Cóndor* (Condor Mountain Range) and the risk of affecting this area, which plays a critical role in maintaining the biological cycles of the Cenepa River Basin, the Awajún and Wampís communities have mounted a sustained defense of their right to be consulted and to have their views respected, ensuring their right to health and legality. These organizations have taken measures and filed documented complaints since 2001 with respect to the mining concessions in the Cordillera del Cóndor and the risk of impact on the protected natural area agreed upon with the State. After the original proposal to create the Ichigkat Muja National Park was modified and the class action suit was brought by the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSEP) against Supreme Executive Order (Decreto Supremo) 023-2007-AG in September 2007, the organizations of the native

communities of the Cenepa River Basin forwarded numerous documents guaranteeing their rights to the company, the Ministry of Energy and Mines (MEM), the environmental authority, district and provincial municipalities, Congress and the regional government of Amazonas.

More specifically, the Organization for the Development of the Border Communities of El Cenepa (ODECOFROC) pursued the following legal actions in 2009:

- Administrative complaints filed with MEM:
Submitted on April 13, 2009
These complaints refer to three of the many mining concessions in the Cordillera del Cóndor registered to Compañía Minera Afrodita, Carlos Ballón Barraza and Víctor Álvarez Martínez, which were all transferred to Dorato Resources Inc. and Dorato Perú S.A.C.
Based on the three complaints filed, one has been rejected by means of a resolution, claiming that Compañía Minera Afrodita registered the termination of its mining assignment agreement with Dorato Perú S.A.C. at the Public Records Office on June 9, 2009.
 - Urgent Appeal to the Special Rapporteur, James Anaya
Submitted on June 17 in Bagua
 - Urgent Action submitted to the United Nations Committee on the Elimination of Racial Discrimination (CERD)
Submitted on August 3 and 11 to CERD in electronic and printed format, respectively
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Request

1. Cancellation of Concessions

The concessions granted in the *Cordillera del Cóndor* (Condor Mountain Range) are located on the land of the Awajún and Wampís peoples. The Peruvian government has recognized this fact for a long time. Nevertheless, the concessions granted and the numerous mining claims processed that are situated in the Cordillera del Cóndor have not been subject to consultation, as mandated by Convention 169 of the International Labor Organization (ILO) and Legislative Resolution 26253, and as established in the United Nations Declaration on the Rights of Indigenous Peoples.

The national mining legislation cannot contradict the indigenous rights recognized by international covenants signed by the Peruvian government. The right to consultation is a permanent right that even applies to the five concessions granted before ILO Convention 169 was ratified by the Peruvian Congress, since they are located in territories of the Awajún and Wampís peoples, as recognized by the State. If these areas were not recognized, registered and awarded land titles in favor of the Awajún and Wampís peoples, it was because the zone was in dispute with Ecuador, and the national authorities claimed that the area required military control. Likewise, these concessions also interfere with the environmental policy of the Peruvian government, which identifies the Cordillera del Cóndor as a priority area for conservation.

The Ministry of Energy and Mines (MEM) claims that the granting of concessions need not be submitted to consultation, as mandated by ILO Convention 169, because concessions do not have significant impacts, since their holders are required to subject their mining projects to the approval of Environmental Impact Assessments (EIAs) and Environmental Impact Statements (EIS). These administrative instruments only require evidence of having informed the affected local communities by means of a “public involvement” procedure. In addition to contradicting the inalienable right to timely and informed consultation conducted in good faith, this argument is false or illusory. This is evidenced by the fact that the mere existence of five concessions in the Cordillera del Cóndor was used to justify the modification of the original proposal to create the Ichigkat Muja – Cordillera del Cóndor National Park, with regard to which the indigenous communities were not consulted.

Most of the mining concessions and claims located in the Cordillera del Cóndor originated as a result of the announcement that the original proposal to create the Ichigkat Muja – Cordillera del Cóndor National Park was going to be modified, as evidenced in the documentation that reveals that different petitioners took action once law firms informed them of the decision made by the State to reduce it.

Regardless of the magnitude of the mining activity, the procedures to be used and the mitigation plans to be implemented, its impacts on the Cordillera del Cóndor will be irreparable, affecting its role in the conservation and sustainability of water flows, which depend on the conservation of vegetation that retains moisture, thus sustaining the entire Cenepa River Basin, the headwaters of which are entirely located in the Cordillera. As established by the National Institute of Natural Resources (INRENA), “...impacts that could be generated as a result of the mining exploration and exploitation activity will directly affect the conservation objectives of the Santiago-Comaina Reserved Zone.”⁶⁶

Based on the ground and soil characteristics, stripping generates the imminent risk of erosion and landslides, which also produces the risk of silting the narrow wa-

terways of the headwaters of rivers and generating flood cycles, in addition to affecting the vegetation cover. Even exploration activities carried out by a mining company and the limited illegal extractive activity were found to acidify water, affecting the local ichthyological fauna and increasing the parameters of Total Soluble Solids (TSS), Pb, Zn and Fe above maximum permissible limits. For this reason, INRENA ruled, at such time, that the exploration of these mining concessions was “incompatible with the natural conditions of the Protected Natural Area” and opposed such activities “by applying the precautionary principle”.⁶⁷ It also stated the following:

“...for the Aguaruna population living in the lower reaches of the Cordillera del Cóndor, it is necessary and essential to protect the upper reaches of the Cordillera in order to maintain their quality of life and cultural values, reason for which they have supported the establishment of the Ichigkat Muja – Cordillera del Cóndor National Park.”⁶⁸

The Awajún and Wampís communities of the Cenepa River Basin have the right to live in a healthy environment.

2. Investigation of Irregularities

Different irregularities have been detected in relation to the modification of the original proposal for the Ichigkat Muja – Cordillera del Cóndor National Park. These have influenced the results of the consultation process conducted by the State with the Awajún and Wampís communities and their organizations for the classification of the Santiago-Comaina Reserved Zone since 1999 and have unfairly favored mining interests. The following is demanded as a minimum:

- An investigation into the participation of the representative of a mining company (Afrodita) in the meetings held by the multi-sectoral committee established to analyze issues concerning environmental and border policies between July and November 2005 and including the following departments: Agriculture, Defense and Foreign Affairs. In any case, these meetings were not convened by native and indigenous communities, which were also stakeholders with rights over the area in question. Based on these meetings, an agreement was reached that the National Institute of Natural Resources (INRENA) should declare the compatibility of the mining activities, a non-technical decision which resulted in the measure to reduce the National Park without consulting the corresponding communities.
- An investigation into the possible political interference of the Executive Branch in the decision to modify the proposal to create the Ichigkat Muja - Cordillera del Cóndor National Park by virtue of the close political ties between the majority mining concessionaire of the area and the governing party.
- An investigation into the terms of the agreements established between Compañía Minera Afrodita S.A.C. and/or the company, Dorato Perú S.A.C. and the Ministry of Defense by virtue of which the former used the Tambo Surveillance Post as a mining camp and the Chávez Valdivia garrison as a center of operations, as well as the terms of access for cargo flights with military helicopters, which constitute public resources and merit transparency.
- An investigation into the reasons why Compañía Minera Afrodita was not sanctioned for having carried out exploration activities consisting of diamond drilling at seven platforms before obtaining authorization, a fact that

was noted in the technical report prepared by the pertinent authority and approved by the Mining Control Department (Report 530-2005-MEM-DGM-FMI/SM). Furthermore, an investigation is also requested into the reasons why the company has not been sanctioned for having failed to comply with the recommendation made in 2005 to plug, dispose of and remediate nine adits and nine deposits that constitute environmental liabilities found in the concessions granted to Compañía Minera Afrodita within the term pursuant to Law, which have been found in the same condition during the technical inspection performed by the Supervisory Board for Investment in Energy and Mining (OSINERGMIN) in January 2009, which established that the company had continued to use the old adits.

- An investigation into why the ownership of the concessions held by Compañía Minera Afrodita has not suffered any consequences, given that it has been verified, as stated by the Minister of Foreign Affairs García Belaúnde to the Congress in September 2006 and as denounced by several Awajún soldiers, that the manager of Compañía Minera Afrodita was involved in trafficking across the border, by means of which Ecuadorian miners entered Peru by paying a “toll”. Furthermore, after having filed a complaint against the entry of Ecuadorian miners in order to pressure the State to support Peruvian mining companies, this same individual admitted to authorities that he had executed an agreement with Ecuadorian mining cooperatives and the Ecuadorian Army in order to gain access to his concession through Ecuador.
- An investigation into the reasons why the Awajún and Wampís communities of the Cenepa River Basin have not been duly informed of the proof of contamination that affects the quality and characteristics of the water found at the headwaters of the Cenepa River, as determined by the technicians of the Ministry of Energy and Mines (MEM) and OSINERGMIN.

3. Reestablishment of the Legal Conditions prior to the Modification of the Original Proposal of the Ichigkat Muja – Cordillera del Cóndor National Park

The proposal to create the Ichigkat Muja – Cordillera del Cóndor National Park was the result of a long consensus and knowledge-building process with the participation of the Awajún and Wampís peoples within the framework of activities led by the environmental authority, the National Institute of Natural Resources (INRENA), which was responsible for classifying the Santiago-Comaina Reserved Zone.

As part of this process, the Awajún and Wampís peoples agreed that this part of their traditional land would be designated a protected natural area in order to contribute to the peace process, providing stability to the recently demarcated border, and to protect an ecologically vulnerable area that has such significant value for the conservation and the environmental health of the Cenepa River Basin. In this same context, it was determined that it would be advantageous to classify the entire region of the *Cordillera del Cóndor* (Condor Mountain Range) a “National Park”, which constitutes a type of indirect-use area of intangible protection, in other words, where natural resources are prohibited from being extracted and the environment may not be modified, only allowing non-manipulative scientific research and tourist, recreational, educational and cultural activities under properly controlled conditions. National parks are specifically created in areas that constitute representative samples of the great ecological units of the country, which protect the ecological integrity of one or more ecosystems, associations of flora and fauna, successional and evolutionary processes and landscape and cultural characteristics.

The determination of the area to be included in the category of National Park was the result of important scientific research conducted by independent institutions and INRENA as part of the PD 3 / 00 Rev.2(F) Project: "Bi-National Peace and Conservation in the Cordillera del Cóndor, Ecuador-Peru (Peruvian Component)". Furthermore, the decision to modify the original proposal to create the Ichigkat Muja - Cordillera del Cóndor National Park was not the result of scientific research or even a technical report evaluating the consequences of such reduction in terms of conservation of the Cordillera and protection of the Cenepa River Basin. The reduction was based on the same technical and scientific grounds on which INRENA relied to propose the creation of the National Park, protecting all the peaks of the Cordillera del Cóndor with an area of 152,873 hectares.

The re-establishment of the legal conditions prior to the modification of the original proposal to create the Ichigkat Muja - Cordillera del Cóndor National Park, in which preparation the communities participated, would favor the preservation of the rights of the Awajún and Wampís peoples while maintaining their rights to land and health.

4. Expansion and Awarding of Land Titles to the Awajún and Wampís Communities bordering the Ichigkat Muja - Cordillera del Cóndor National Park

The Peruvian government has failed to fully comply with its obligation to acknowledge the ancestral ownership of the Awajún and Wampís peoples over their traditional land, even though they have been requesting such recognition since at least 1977.

A meeting was held in 1999 in relation to the *Cordillera del Cóndor* (Condor Mountain Range), a gathering in which the entities responsible for classifying the Santiago-Comaina Reserved Zone participated and at which the Awajún and Wampís peoples agreed to the creation of the National Park on this part of their traditional land, provided that actions aimed at finalizing the expansion of their communities in order to obtain complete contiguity thereto, would commence in parallel with the determination of the area to be demarcated for the protected natural area. Thus, a technical cooperation agreement was signed, and spatial and socio-economic information was gathered; however, the State did not complete the expansion of nine communities. The communities pending expansion, in accordance with the demarcation proposal are as follows: Ajuntai Entsa, Kusu Numptkeim, Pagki, Sawienta, Tagkegip, Tunas, Tunim, Uchi Numptkaim and Wée. The area of these expansions amounts to 67,185 hectares, with which the land-use planning process of the Cenepa River Basin could conclude, once the Ichigkat Muja National Park has been restored to its originally proposed area and boundaries.

The obstacles imposed by the government to obtaining land titles for indigenous territories are motivated by the interest to grant them in concession to hydrocarbon, forestry and mining companies under the unconstitutional thesis that untitled land is free and, therefore, fully available to the State. It is unfeasible for the Commission for the Official Registration of Informal Property (COFOPRI) to assume that the communities will continue funding the process to register property and award land titles thereto with costs above market prices.

Furthermore, it is also unrealistic for COFOPRI to require the State to hand over assignment of use agreements to communities, by means of which the ownership of areas (for which the State does not award land titles, given that they consist of soils with a major land use capacity of F (for forestry) or X (for protection)) would be legally registered and titled.

5. Precautionary Measures to protect the Cenepa River Basin against Irreversible Events

As long as concessions are not cancelled and the *Cordillera del Cóndor* (Condor Mountain Range) is registered in the Cadastre of Areas Restricted to the Mining Activity, precautionary measures will be required in order to protect the Cenepa River Basin against irreversible events that could result from mining interventions such as sampling and prospecting (which are liable to be carried out by reusing adits that Compañía Minera Afrodita has not plugged, disposed of or remedied) due to exploration and exploitation activities that have or have not been approved, since the institutional capacity to monitor interventions in the area is extremely limited.

The Supervisory Board for Investment in Energy and Mining (OSINERGMIN) and the State Attorney's Office specialized in Environmental Issues of the Judicial District in and for Amazonas are required to conduct periodic inspections of the zone to verify compliance with their recommendations. Furthermore, the District Municipality of El Cenepa, in which jurisdiction the headwaters of the Cenepa River in the Cordillera del Condor are found, is also required to assume the responsibility of preventing environmental damage by coordinating with communal and national authorities.

In order to prevent Ecuadorian miners from illegally entering Peru to work on the Peruvian side of the Cordillera del Cóndor, the Ministry of Foreign Affairs is required to discuss the need to control the entry of Ecuadorian informal miners and the environmental impacts of their activities with Ecuador through diplomatic channels. There is no evidence that the Ministry of Foreign Affairs has discussed this issue, which threatens border stability and the environmental health of the area, with senior-ranking officials. Moreover, this issue potentially causes personnel in charge of the military posts in the area to behave in an illegal manner, a problem that has been the subject of various complaints made by the Organization for the Development of the Border Communities of El Cenepa (ODECOFROC), a congressional investigation and a disciplinary procedure that led to the removal of personnel, found responsible for illegally charging a "toll" in order to allow informal miners to enter Peru, by the Ministry of Defense in September 2009.

Once the National Park is restored to its original boundaries and area, indigenous park keepers must be trained in how to control and prevent the entry of informal miners.

6. Consultancy for the Population in order to maintain their Traditional Mercury-Free River Mining Practices

Since at least the 1930s, indigenous inhabitants of the Cenepa River Basin have sporadically carried out alluvial gold panning activities along the rivers of the Cenepa River Basin, as well as other rivers in the region, with the objective of obtaining seasonal income. This activity has traditionally been performed without using mercury, thus ensuring that rivers do not become polluted. In recent years, however, mercury has begun to be used in the region in order to recover gold more efficiently and productively, thus losing the knowledge to process panned gold without mercury in a number of communities.

Alternative technologies that are able to recover particles smaller than 60 microns currently exist, but the region lacks information and training tools. There are also initiatives in favor of mercury-free small-scale mining that reward producers of gold not amalgamated with mercury ("Fair-Minded" gold certificates) through

fair trade markets; gravity-flotation concentration, the manual selection concentration or other alternative technologies are implemented to obtain this mercury-free gold. These alternative technologies also prevent mercury from evaporating in the recovery process, putting the health of not only the *extractores*, or informal miners, but their families at risk.

Communities are required to receive consultancy in order to recover and implement traditional and alternative technologies, respectively. Furthermore, professional consultancy is also essential in order to help organize indigenous alluvial gold producers and render them eligible to form part of a fair trade network for their product.

7. Participatory Study on Economic Alternatives for the Cenepa River Basin based on Biodiversity Conservation and Recovery

The Cenepa River Basin currently covers fifty-four indigenous settlements that form part of the Awajún and Wampís communities that have been awarded land titles. Based on the characteristics of the land, the area presents limitations for intense farming or logging. In addition to their production intended for family sustenance and local trade, and together with their seasonal alluvial gold extraction, the families of the Awajún and Wampís communities have a small surplus (poultry, bananas, peanuts and maize), in exchange for which they obtain cash income to meet family expenses and investments.

The Organization for the Development of the Border Communities of El Cenepa (ODECOFROC) has promoted a project in recent years to recover old family plantations of cocoa in order to improve them and introduce new varieties with which families may increase their income when these plantations are in production. Furthermore, the aforementioned organization has also promoted the establishment of fish farms as well as the revegetation of *purmas* or fallow land with valuable timber species, fruit trees and non-timber species, which have the potential to improve nutrition and create additional income in the future. There are also programs that encourage the in situ conservation of biodiversity, especially species with high nutritional value.

A participatory study needs to be carried out, by means of which financial alternatives may be identified for community families that contribute to biodiversity conservation and recovery, while offering the potential to strengthen local nutritional sources and generate additional income. Such a study must be designed with the participation of organizations from the beginning as part of its methodology. ○

Notes

- 1 The quotes come from comments made by community leaders at a meeting held by the Organization for the Development of the Border Communities of El Cenepa (ODECOFROC) on August 18, 2009.
- 2 *Concluding Observations, Suriname*, CEDRCDR / C / 64 / CO / 9 (April 28, 2004).
- 3 General Recommendation XXIV: Reporting of Persons belonging to Different Races, National / Ethnic Groups or Indigenous Peoples.
- 4 Concluding Observations of the Human Rights Committee: Chile, March 30, 1999; Paragraph 22.
- 5 *Case of the Saramaka People v. Suriname*, *supra*, Paragraph 134.
- 6 This is so because (45) “Under the applicable criteria of international law, the rights of ownership of indigenous peoples over land and natural resources **are not limited to areas, as are the comarcas, already titled or delimited by the State in favor of these peoples**. Regardless of the provisions set forth in the internal legal system, international law establishes that indigenous peoples have rights to land and natural resources that they have traditionally used or occupied and that the State has the obligation to recognize and protect them. The Inter-American Court of Human Rights has recognized these rights and the corresponding obligation of the States to protect them, **establishing that the traditional ownership of land is protected as a right to property**, by virtue of Article Twenty-One of the American Convention on Human Rights. Furthermore, in terms similar to those set forth in ILO Convention 169, Convention 107 establishes in Article Eleven thereof that, “the right of ownership, collective or individual, shall be recognized in favor the members of the populations concerned over the land traditionally occupied by them.”
- 7 “International Principles Applicable to the Consultation in relation to Constitutional Reform on the Rights of Indigenous Peoples in Chile”. United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Liberties of Indigenous Peoples, April 24, 2009. Highlighting and emphasis has been added by us. This, which is asserted in relation to a process aimed at producing constitutional regulations, such as a draft reform of the Chilean Constitution, can for that very reason be stated not only with respect to the regulation that modified the original proposal to create the Ichigkat Muja National Park and the regulations that approve mining concessions in that area, but also with respect to infra-constitutional Executive Orders (Decretos Legislativos) issued by the government that were neither consulted with the indigenous peoples in general, nor with the Awajún and Wampís.
- 8 Document approved by means of Supreme Executive Order (Decreto Supremo) 010-99-AG.
- 9 Hocquenghem (s/f; 1999), Espinoza Soriano, (2006), Taylor & Descola (1981); Taylor (1994a, 1994b).
- 10 Guallart associates these clashes with “Mochica” advances that may have occurred between 300 B.C. and 800 A.D., although these mythical or historical events may have occurred along the Santiago River, according to tradition (Guallart, 1990: 47-50).
- 11 Hocquenghem s/f: 39.
- 12 Other Jivaro names mentioned in colonial documents are the Xiroa and the Xibaro (in present-day Shuar territory), which are also derived from the term Shuar, as well as the Chapico that occupied the Alto Pastaza (possibly the ancestors of the present-day Achuar, which is probably derived from the term *chapi* or Yarina palm tree).
- 13 Guallart, 1990: 90. It is said that the Spanish found up to forty children that had been strangled by their own mothers, an extreme measure to prevent them from being captured and enslaved.
- 14 However, the Wampís were indeed forced to choose whether to stay on one side of the Cordillera del Cóndor or the other depending on the respective occupations of the Peruvian and Ecuadorian armies.
- 15 The caves inhabited by guácharos (*Steatornis carpiensis*) or oilbirds constitute limestone formations found in several locations of the Awajún and presumably Wampís territory. The caves are well-known for the value placed on the capture of guácharos when they are oily in March. Each cave is owned by a male, who passes it on to his descendants in the form of an inheritance. The owner of the cave invites other men to catch guácharos, or may allow other people to use it, if requested.
- 16 The pact also had an individual dimension. The head of each detachment had to strengthen his relations with neighboring populations and their leaders, which often times resulted in the opportunity to benefit from access to the alluvial gold panned by the Awajún and Wampís community members that they purchased at bargain prices.
- 17 See subsequent sections and Fournier Coronado (1995: 80-91).
- 18 In the early 1970s, the Ministry of Agriculture and the Ministry of Defense implemented the Alto Maraón Colonization Project, including the Nueva Nazareth Pilot Plan that considered the creation of the Imacita River Port in the midst of Awajún territory.
- 19 A total of 14 reserves were established in the entire territory of the Awajún people.
- 20 The transport by helicopter of the first forty-five settlers was reported in December 1981. They were supplied tools and seeds and supported by the Belgian Cooperation. The plan did not last long.
- 21 The first part of this section is closely based on the Missouri Botanical Garden, 2008; <http://www.mobot.org/MOBOT/research/ecuador/cordillera/introduccion.shtml>
- 22 “Each party shall constitute an ecological protection area under the sovereignty and jurisdiction of the respective state, in the zones and perimeters established in the enclosed sketch. Both ecological

zones shall have the same name, shall be adjacent to each other and shall coincidentally be located in the area comprising the common border.”

- 23 The “Santiago-Comaina Reserved Zone” was created by means of Supreme Executive Order (Decreto Supremo) 005-99-AG with an area of 863,277 hectares. It was expanded by means of Supreme Executive Order 029-2000-AG. The expansion decreed in 2000 extended the Reserved Zone to the District of Morona in the region of Loreto to include the *Cordillera de Kampankis* (Kampankis Mountain Range).
- 24 Minutes of the “Resolutions adopted at the Meeting of Community Leaders of the Cenepa Sector with respect to the Santiago-Comaina Reserved Zone”, Mamayaque, October 6, 1999.
- 25 International Tropical Timber Organization (ITTO). Fundación Natura, Conservation International, 2006: 95.
- 26 The meetings and workshops entailed lengthy discussions due to the distrust some organizations and communities had with regard to the guarantees offered by different environmental protection entities.
- 27 “Minutes of the Meetings to present the Proposal of the Cordillera del Cóndor National Park”, Huampami, March 29 and 30, 2004.
- 28 The Buffer Zone of the Park covered 369,666.76 hectares. This overlapped with areas demarcated in favor of the Awajún and Wampís native communities in the Cenepa and Santiago river basins, which made these communities key players in the Cordillera del Cóndor conservation and protection strategy.
- 29 The Commission for the Official Registration of Informal Property (COFOPRI) currently claims that the stakeholder shall be required to finance a budget of S/. 385,588.74 in order to carry out the cadastral inscription of 67,185 hectares that are estimated to be pending demarcation for land titling. (Official Letter 606 - 2008 - COFOPRI/DFINT, April 22, 2008).
- 30 Letter 438-2001-INRENA-J-DGANP, signed by the Head of the National Institute of Natural Resources INRENA, on November 9, 2001.
- 31 Projects are classified in categories defined by the intensity of the activity and the area directly affected by their implementation. Category B involves the construction of twenty drilling platforms or less (in this case seventeen) with access ways and facilities for exploration not exceeding 10 hectares. No authorization was previously requested, in spite of the fact that exploration activities had been carried out with semi-heavy equipment in 2003 and 2004, drilling holes and building roads under an option agreement with the company, AngloGold.
- 32 Guideline 002-2005-INRENA-IANP, as well as a Resolution of the Intendancy’s Office (026-2005-INRENA-IANP).
- 33 The company claimed that the Reserved Zone was “established in violation of the Broad Peruvian-Ecuadorian Agreement on Border Integration, Development and Good Neighbor Relations... “reason for which, it had to be revoked.
- 34 This unusual situation did not go unnoticed by the Ministry of Agriculture which questioned why an individual participated in meetings with the different sectors to define government policy, thus rendering “the results of these meetings unable to be considered valid proposals for the policies in question, ultimately becoming specific views of Minera Afrodita S.A.C.”
- 35 The company later changed its name to Ecometals in Ecuador. Afrodita was still registered as property of Goldmarca Limited – Ecometals in the audited financial statements of Goldmarca Limited as of December 2007, after it had changed its name to Ecometals (<http://www.ecometalslimited.com/assets/pdf/EMI.2008.pdf>).
- 36 As a result thereof, the reserved zone pending final classification comprised 398,449.44 hectares in the *Cordillera de Kampankis* (Kampankis Mountain Range) where the establishment of a communal reserve, which creation is still pending, was proposed.
- 37 “Removal of Army Officers charging ‘Toll’ for Gold Trafficking along the Border with Ecuador”, www.agenciaperu.com/actualidad/2006/sep/wagner_oro.html
- 38 See *Ideele*, February-March, 1995.
- 39 Cited in *Somos*, *El Comercio* newspaper (February, 1995).
- 40 http://www.cooperacion.org.pe/modulo/boletin/boletin_117.pdf
- 41 www.congreso.gob.pe/congresista/2001/Iguerrero/paginas/fiscalizadora0.html
- 42 www.ecoportal.net/content/view/full/87600
- 43 Official Letter RE (SAA-SUD-APA-ECU) 2-9-B/9. Opinion on the proposal to create the Ichigkat Muja - Cordillera del Cóndor National Park, January 18, 2006, addressed to the Intendant of Protected Natural Areas of the National Institute of Natural Resources (INRENA).
- 44 These studies have determined that water seepage in the adits, worked both by Afrodita and informal miners that entered Peru from Ecuador in order to gain access to the company’s concessions, as well as the runoff originating from earthworks, generate extremely acid water “due to the typical weathering of the area where rain is intense” (Report prepared by Mining Expert David Romero Ríos, Engineer, on April 11, 2004, approved by the Mining Control Department). Such studies concluded that “abandoned underground mining works exist in the area of the Comaina 1 concession of Compañía Minera Afrodita S.A., in addition to signs of environmental contamination” (Report 530-2005-MEM-DGM-FMI/SM). In accordance with the information provided by the non-commissioned officer in charge of the Tambo Surveillance Post, this would cause fish to die and those, who drink this water, to get sick.

- 45 The company has recently sought to enter into agreements with a similar organization created by the government after the events of Bagua of June 5 “to support the company’s activities in its exploratory phase”, as evidenced in its new request and the Environmental Impact Statement (EIS) submitted to the Bureau of Mining-Related Environmental Affairs in August 2009. In 2006, the communities found it necessary to replace the authorities of their organizations that had agreed to grant temporary authorization for exploration activities based on fraudulent information that explained that they would only carry out prospecting activities when they had already performed and were prepared to carry out diamond drilling at more than a dozen platforms.
- 46 The demonstration called for by the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSEEP) and its affiliated organizations generally demanded the repeal of a series of executive orders, which had not been consulted with the indigenous communities and which threatened the communal system and collective rights, in addition to the massive granting concession process in the Amazon region for the oil industry. The Awajún and the Wampís communities rejected the concession of Block 116 in favor of Hocol that overlaps with a number of communities and the Tuntanain Communal Reserve.
- 47 This procedure, pursued by the State Attorney’s Office, is still pending, although none of the persons detained by the indigenous community have rendered his or her statement before such Office or have provided accusatory statements against such leader.
- 48 The Inter-American Court of Human Rights has expressed the following: *“Criminalizing the legitimate social mobilization and social protest, whether through direct repression of the demonstrators or through an investigation and criminal prosecution, is incompatible with a democratic society, in which persons have the right to express their opinion.”*
- 49 This strong view and the open opposition of the Awajún led the mining company, Newmont, which had commenced activities in the area in 2000, to abandon their plans.
- 50 www.minem.gob.pe/archivos/dgaam/publicaciones/evats/puno/puno7.pdf
- 51 See the institutional website of Cardero Resources (www.cardero.com/i/pdf/Presentation_14Nov2008.pdf). Its connections with the mining company, Corriente Resources, which operates in Ecuador and which employed Ballón as the Vice-President for South America, undoubtedly provided Cardero Resources with privileged geological information, since the numerous deposits registered to such company, mostly acquired in 2006, are located opposite of the so-called Fruta del Norte Project, the most important gold discovery in the *Cordillera de Cóndor* (Condor Mountain Range) on the Ecuadorian side of the border.
- 52 Dorato does not appear as a company in the Registry of Mines, but one of its shareholders, an employee of the law firm, Estudio Echecopar García EIRL, is registered therein.
- 53 The agreement drawn up in English and registered in Canada includes a clause that establishes that Dorato shall be in charge of obtaining the executive order authorizing the presence of a foreign company along the border.
- 54 The lack of studies that thoroughly describe the anticipated actions and interventions, the mitigation measures and the potential impacts constitutes one problem hindering the clear understanding of the possible impact and risks of the projects along the border. The course of the exploitation phase is understood to an even lesser extent, although the company has reported that exploitation operations would be carried out in an open pit, using the cyanide method as shown in a video recorded and distributed by Jorge Bedoya Torrico to several authorities in 2005. Some open pit mining deposits are being developed in Panintza under the responsibility of Ecuacorrientes on the left bank of the Zamora River on the Ecuadorian side of the border (http://www.corriente.com/media/PDFs/financials/CTQ_2007_AR_complete.pdf). It is believed that Afrodita-Dorato operations would process the ore on the Ecuadorian side of the border, although there is no evidence of any business arrangements or official agreements in this regard.
- 55 Report 487-2006-INRENA-IANP-DOANP dated August 4, 2006 in the “Halcón 1” Mining Concession File, District of El Cenepa.
- 56 The report prepared by Expert David Romero Ríos, Engineer (who previously performed an inspection in 2004) indicated the following: “Minera Afrodita is taking advantage of the environmental liabilities in all areas through systematic sampling” (January 22, 2009).
- 57 Report prepared by Rosaura I. Minaya, Engineer included in the Afrodita Project File of the records of the National Service of Protected Natural Areas (SERNANP) (April 2005).
- 58 They probably meant river! (Afrodita File 1415, Bureau of Mining-Related Environmental Affairs, opened in August 2004).
- 59 Before obtaining authorization, the company established and drilled at seven platforms, measuring 6 x 4 and 4 x 4 meters, performing earthworks and clearing, but they were not sanctioned. Furthermore, it carried out exploration activities throughout 2008 without a new permit (Official Letter 034-2009 forwarded on January 23 by the Vice-Minister of Mines, Felipe Isas to the President of the Organization for the Development of the Border Communities of El Cenepa - ODECOFROC and to the Provincial Mayor of Condorcanqui pointing out that the mining company, Afrodita, neither had exploration nor exploitation permits). At the end of the exploration activities in 2007, the Supervisory Board for Investment in Energy and Mining (OSINERGMIN) did not carry out a closure inspection, as required, which was only recently performed in January 2009.
- 60 Since this area is quite fragile, the report requested an environmental assessment including the design of a monitoring system.

- 61 The National Institute of Natural Resources (INRENA) also pointed out the following with regard to some mining claims that were cancelled because they were located in the buffer zone of National Park: "the execution of mining activities in such mining claims is associated with a high probability of contamination" as they are less than 10 kilometers from the park, specifying the following: "We also need to consider that this is an area with constant rain throughout the year and that the contaminants generated would be quickly carried by the water to the Tuntanain Communal Reserve" (INRENA Report 941-2007-INRENA-IANP-DOANP issued on January 8, 2008. "Lahaina1" mining concession file).
- 62 <http://www.minem.gob.pe/archivos/dgaam/publicaciones/evats/puno/puno7.pdf>. The Organization for the Development of the Border Communities of El Cenepa (ODECOFROC) pointed out this issue to the Ministry of Energy and Mines (MEM) in an Official Letter forwarded on November 28, 2005. The communities and their organizations filed complaints on several occasions with respect to the existence of impacts due to exploration activities. One of these complaints led to an investigation by MEM (MEM Report - Official Letter 530-2005-MEM-FMI/SM, date May 18, 2005, informing the National Institute of Natural Resources - INRENA that the investigations of Empresa Minera Afrodita S.A.C. would continue "as there is evidence of environmental contamination"), in addition to a query conducted by the State Attorney. In one case, the company argued that the fish had probably died because of the use of *barbasco* or fish poison..."
- 63 Document submitted by Compañía Minera Afrodita and inserted in Afrodita File 1415, Bureau of Mining-Related Environmental Affairs (DGAAM) opened in August 2004.
- 64 Report "Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru", World Bank, April 11, 2005. Executive Summary.
- 65 Document prepared by the Development of the Border Communities of El Cenepa (ODECOFROC) and the Racimos de Ungurahui Working Group.
- 66 Report 487-2006-INRENA-IANP-DOANP dated August 4, 2006, in: "Halcon 1" mining concession file, District of El Cenepa.
- 67 Letter 438-2001-INRENA-J-DGANP, from Prieto Celi, Engineer, Head of the National Institute of Natural Resources (INRENA) to Tomás Guerrero of Compañía Minera Afrodita, on November 9, 2001.
- 68 Report 487-2006-INRENA-IANP-DOANP dated August 4, 2006, in: "Halcon 1" mining concession file, District of El Cenepa (emphasis has been added by us).

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