

Criminalization of resistance against mining in Ecuador

FIAN Fact sheet, October 2013
Kimsakocha - Loma Larga

Location: The Kimsakocha wetlands are located in the south of Ecuador, 30 kilometres from the city of Cuenca, the third largest in the country. They are situated between 3,500 and 2,900 meters above sea level in the parishesⁱ of Victoria del Portete and Tarqui - Cantón Cuenca, in the province of Azuay.

Problem: Mining exploration in an area with a fragile ecosystem and water sources for agriculture and consumption for 2,000 families. The Ecuadorian government has criminalized community leaders for their resistance against mining.

Communities: Belong to the parishes of Victoria del Portete and Tarqui with populations consisting of indigenous and peasant families.

Claimants: Affected communities, IAMGOLDⁱⁱ and INV metalsⁱⁱⁱ, Ecuador, Canada and Sweden.

Violations: Criminalization of community leaders and mining concession given without free, prior and informed consent from the communities.

Ecuador

Ecuador is situated in the northeast of South America and borders with Colombia and Peru. The population is 15 million, of which 17% are indigenous and 13% are Afro-Ecuadorians^{iv}. The human development index is 0.724 (2012)^v, below the average for Latin America (0.741). For the current government, the mining industry is a significant part of the macroeconomic strategy to combat poverty and make social investments. In 2012 the government announced five strategic, mega mining projects, among them Kimsakocha. According to the Mining Chamber of

Ecuador, the mining reserves in the country amounted to 217,600 million dollars.^{vi}



In 2008, Ecuador passed a new constitution, among the most progressive in the world with respect to economic, social and cultural rights which includes matters such as food sovereignty, good living and environmental rights. Despite having such an advanced constitution with regard to human rights, United Nations bodies, the Inter-American Human Rights System as well as international human rights organizations have drawn attention to certain problems which characterize the current situation in Ecuador: criminalization of human rights defenders and community leaders^{vii}, restrictions of

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freedom of speech and press^{viii}, megaprojects that threaten access to land and natural resources essential for the survival of indigenous communities^{ix}, peasants and other rural populations.

They have also drawn attention to the approval of Executive Decree 16 tending to impede the work of human rights NGOs in the country^x.

Ecuador approved a new Mining Law^{xi} in order to manage, regulate and control mining in the country. Indigenous and peasant organizations expressed concern saying that the law promotes large-scale mining, favours transnational corporations and will affect water supplies and rural economies^{xii}. They argued that the development of the Law was a thoughtless process and demanded that binding consultation processes should be developed before mining activities take place^{xiii}.

Kimsakocha

35 water systems derive from Kimsakocha (three lakes in Kichwa) with 87% of the water volume used on productive activities, mainly irrigation, domestic use and fishing as well as pasture for livestock. At present, around 2,000 peasants and indigenous families benefit from the water.^{xiv}

The different communities in the area are engaged in small scale dairy farming with this activity being a major source of revenue for peasants and indigenous families. Indigenous communities have land titles that were issued in the city of Cuenca, on 4 July 1891 to over 300 people which state that Alto Sombreras, an area consisting of 10,000 hectares (containing

Kimsakocha) is indigenous community property.

Mining project: Concession and exploration^{xv}

In 2000 without free, prior and informed consultation with the communities involved^{xvi}, the government awarded IAMGOLD the concession to explore Kimsakocha, with the advanced exploration phase starting in 2003. Over five years, IAMGOLD invested 40 million USD to drill 60,000 meters of rock and set a deposit of 3.3 million ounces of gold in reserves. During 2007 and 2008 it carried out pre-feasibility studies and began the final stage to define the layout of the mine in order to commence production in 2011^{xvii}.

In June 2012, the company IAMGOLD sold the Kimsakocha Project and its concession rights to the company INV Metals with IAMGOLD maintaining 40-45% of the shares^{xviii}. Immediately after, INV Metals announced that it would launch an aggressive exploration programme worth \$15 million.^{xix} INV Metals renamed the project “Loma Larga” and recently completed the first part of exploration drilling which included 12 perforations.^{xx} According to company studies, Kimsakocha contains over 3.3 million ounces of high grade gold valued at approximately \$30 million.^{xxi}

Impact on communities and mobilization

Indigenous and peasants communities argue that they have begun to suffer changes in agricultural production due to the company’s exploration phase due to groundwater suffering deviations which

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change in soil texture. This is due to the effects on the composition and structure of vegetation, changes in the direction of runoff water, trampling of natural vegetation, soil compaction and increased erosion^{xxii}.

From the beginning, the people of the parishes of Tarqui and Victoria del Portete opposed the mining activities and have performed a series of actions to express their rejection to the mining.

In July 2007 a popular uprising in the Province of Azuay organized by the Union of Community Water Systems of Azuay (hereinafter UNAGUA) and the Federation of Farming Organizations of Azuay (FOA) was carried out obtaining agreements for roundtables with the Minister of Energy and Mines of the time. The roundtables were able to bring together leaders of the community water systems of Azuay and President Rafael Correa who reaffirmed that he would suspend mining concessions if there were evidence that these concessions were over water sources and had been unduly awarded.

In November 2007 the Minister of Energy and Mines ruled that the company IAMGOLD would be obliged to yield 3,220 hectares of its mining concessions in order to preserve water. However, the communities felt cheated because they felt that the amount was insufficient to protect Kimsakocha and they decided to restart their protest actions.^{xxiii} Subsequently, the communities announced regional and then national mobilizations.

On 2 October 2011, the water users in the communities of Victoria del Portete and Tarqui participated in a popular consultation. 92% of those asked voted against the Kimsakocha mining. The consultation was attended by international observers, the ombudsman's office and human rights organization.^{xxiv}

Criminalization of public protests

Table: In 2012, the UN Committee on Economic, Social and Cultural Rights expressed concern regarding the investigations and criminal convictions against social and indigenous leaders that have taken part in public demonstrations at the time of the Government Party's bill on the administration of water and the development of projects which generate impacts on natural reserves such as the case of the Kimsakocha Lake. The Committee added that its concern is that in Ecuador there are insufficient mechanisms for social dialogue regarding the extraction of natural resources for harmonizing with the worldview of the development of these populations and indigenous nationalities.^{xxv}

On 8 January 2009, during a protest against the Mining Law in the province of Azuay, Carlos Pérez, Chairman of UNAGUA (at that time), was arbitrarily arrested by the special police (GOE)^{xxvi}, who also were attacking women, elderly and children.

4 May 2010, communities held a march in defence of water, where again Carlos Pérez was detained along with other members of the UNAGUA, Federico Guzmán and Efraín Arpi on charges of sabotage and terrorism. Initially the three were sentenced to one year in prison but on 9 August 2012 they were sentenced to eight days in prison due to it being a selfless struggle to protect the water. 21 March 2013, those sentenced

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appeared before the First Criminal Court of the Azuay Province to serve their sentence. The leaders were joined by 300 peasants as well as leaders of the Confederation of Indigenous Nationalities of Ecuador (CONAIE)^{xxvii}.

“Resistance will not end, we will not give up, even if we are in prison we will keep fighting,” said Carlos Pérez upon surrendering himself to serve his sentence. “This is called the criminalization of the struggle,” said Delfín Tenesaca, chair of ECUARUNARI, member of the Confederation of Indigenous Nationalities of Ecuador

Impact on human rights

The state has failed to fulfil its obligation to respect human rights by passing legislation such as the Mining Law that creates conditions for violating the right to territory of indigenous peoples and their right to food and related rights. There was no pre legislative consultation for communities potentially affected by the law to express their position. The state also violated its obligation to respect upon



granting the mining concession to IAMGOLD without conducting a prior and informed consultation with the communities concerned.

The state has failed in its obligation to protect human rights, through the legal actions to prosecute community leaders on charges of sedition and terrorism for expressing their rejection against mining. The state has also taken no action to protect communities from the effects that the exploration phase may have on its territory.

The state failed in its obligation to guarantee by its failure to provide an adequate process of prior consultation with the communities to speak out about projects that may affect their rights to water, land and food sovereignty. Although Ecuador has one of the world's most advanced constitutions in terms of recognition of ESCR, they are not implemented and the government is pushing a series of legislative measures that facilitate ESCR violations of indigenous, peasant and other rural communities.

The Swedish pension fund regulation is not consistent with Swedish human rights obligations.

Until the middle of 2013, Swedish pension funds invested 46 million Swedish crowns (5 million Euros) in the company IAMGOLD.^{xxviii} The fund regulation states that investments should take ethical and environmental matters into account without compromising the profitability of the investment.^{xxix} This and the lack of consideration for human rights standards when deciding on fund investments are inconsistent with international obligations regarding human rights undertaken by Sweden.

According to the Maastricht Principles, Sweden is obliged to take measures to prevent their actions contributing to violations of economic, social and cultural rights in third countries. One such measure is to carry out prior studies on the risks and

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potential offshore impacts of policies, laws and practices, on the enjoyment of ESCR. The regulation of Swedish pension funds does not reflect this obligation because there is no provision prohibiting investments from contributing to the violation of human rights in third countries: also a prior assessment of the risks and potential impacts on human rights is not required. Although the investment in the company IAMGOLD has dropped dramatically (689,000 Swedish crowns / € 75,000 in June 2013^{xxx}) investment continues to date.

Support for communities

Since 2010, FIAN International and FIAN Ecuador have accompanied the communities of Victoria del Portete and Tarqui. In these years there have been constant visits to the area and meetings held with communities and leaders to coordinate joint actions.

In November 2012, Carlos Pérez, Chairman of FOA at that time reported the criminalization of the resistance against the Kimsakocha mining, before the Inter-American Commission of Human Rights^{xxxi}.

In November 2012, the peasants' leader Lizardo Zhagui and Enith Flores^{xxxii} from FIAN Ecuador presented the Kimsakocha case at the UN meeting of the Committee for Economic, Social and Cultural Rights.

The Committee calls upon the State party in the field of exploration and mining and hydrocarbon operations, to perform enquiries including free expression of consent regarding the admissibility of a project, sufficient space and time for reflection and decision making as well as measures to safeguard cultural integrity and repair. Consultation processes should respect the protocols from already developed community consultations and decisions arising thereof^{xxxiii}.

In September 2013 FIAN International, FIAN Sweden and FIAN Ecuador made a joint visit to the area, supported by the Federation of Farming and Indigenous Organizations of Azuay. The communities felt that very little can be done nationally to stop mining in their area, due to the attitude shown by the government. For this reason they feel that the only alternative for them is to call international attention to the case.

Community demands

- Prevent the exploitation of minerals in the Kimsakocha wetlands.
- Prevent further criminalization of community leaders.
- Develop productive activities with public policies that promote the participation of farming economies, respecting their right to food and food sovereignty.

FIAN is an international human rights organization working for the worldwide implementation of the human right to adequate food. FIAN has a consultative status with the Economic and Social Council of the United Nations (ECOSOC). This fact sheet was published in November 2013 by FIAN's international secretariat and the Swedish section as part of Hungry for Justice project, with financial aid from the EC. The views expressed here do not reflect its position.



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- ⁱ According to the Code for Territorial Organization, Autonomy and Decentralization, the Ecuadorian government is organized territorially in regions, provinces, cantons and rural parishes, February 2011, Page 39
- ⁱⁱ <http://www.iamgold.com/>
- ⁱⁱⁱ <http://www.invmetals.com/s/Home.asp>
- ^{iv} Instituto Nacional de Estadísticas y Censos, *Censo de Población y Vivienda [National Institute of Statistics and Census, Population and Housing Census] 2010 (CPV)*.
- ^v <http://www.datosmacro.com/idh/ecuador>
- ^{vi} <http://www.telegrafo.com.ec/economia/item/la-reserva-minera-de-ecuador-llega-a-217-000-millones.html> (revised 21 October).
- ^{vii} Review the Second Inter-American Commission Report on the situation of Human Rights Defenders in the Americas. <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>
- ^{viii} Review the reports of the Special Rapporteur for the Freedom of Speech, contained in the Annual Inter-American Commission Reports on Human Rights. <http://www.oas.org/es/cidh/informes/anales.asp> (revised 20 September 2013)
- ^{ix} UN Special Rapporteur on the Rights of Indigenous Populations, Report on the Advances and Challenges in the Implementation of Constitutional Guarantees for Indigenous Populations in Ecuador. <http://unsr.jamesanaya.org/special-reports/observations-on-the-progress-and-challenges-in-implementing-the-guarantees-of-the-constitution-of-ecuador-on-the-rights-of-indigenous-peoples-2010> (revised 20 September 2013)
- ^x <http://www.hrw.org/es/news/2013/08/12/ecuador-graves-restricciones-la-sociedad-civil> (revised 19 September 2013)
- ^{xi} http://www.mineriaecuador.com/Download/ley_mineriaec.pdf (revised 20 October 2013)
- ^{xii} El Comercio, <http://www.elcomercio.com/noticias/Indigenas->

[anuncian-protestas-Ley-Minera_0_6602745.html](http://www.elcomercio.com/noticias/Indigenas-anuncian-protestas-Ley-Minera_0_6602745.html) (consulted 24 October 2013).

^{xiii} El Comercio, http://www.elcomercio.com/noticias/Grupos-campesinos-anuncian-movilizaciones-minera_0_169184878.html (consulted 24 October 2013).

^{xiv} Bonilla, 2013: 45-47.

^{xv} The information related to the corporations involved was shared with them and joint comments were presented in notification on 30 October 2013.

^{xvi} The companies claim that since the start of the project, participants from the local communities in the areas directly and indirectly affected by the project have been involved in consultation processes.

^{xvii} El Comercio, http://www.elcomercio.com/negocios/proyectos-mineros-estancaron_0_731327078.html (consulted 29 October 2013)

^{xviii} <http://www.invmetals.com/s/NewsReleases.asp?ReportID=532135&Type=News&Title=INV-Metals-To-Acquire-The-Quimsacocha-Project-From-IAMGOLD> (revised 21 October 2013)

^{xix} <http://www.invmetals.com/s/NewsReleases.asp?ReportID=532135&Type=News&Title=INV-Metals-To-Acquire-The-Quimsacocha-Project-From-IAMGOLD> (revised 21 October 2013)

^{xx} <http://www.juniorminingnetwork.com/junior-miner-news/news-releases/735-tsx/inv/18925-inv-metals-provides-loma-larga-update.html#.UmTCSXDla-G> (revised 21 October 2013)

^{xxi} <http://www.invmetals.com/s/Home.asp> (revised 21 October 2013)

^{xxii} Guerrero, 2009: 35-45. IAMGOLD and INV Metals claim that there is no scientific evidence to support the alleged impacts on the water or soil.

^{xxiii} Pérez, Carlos "Agua u Oro, Kimsakocha, la resistencia por el agua" [Water of Gold, Kimsakocha, resistance for water], Universidad Estatal de Cuenca [State University of Cuenca], 2012, Page 144.

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^{xxiv} <http://www.conflictosmineros.net/contenidos/12-ecuador/8580-con-veedores-internacionales-se-inicia-resistencia-a-mineria> (revised 20 October 2013)

^{xxv}

http://tbinternet.ohchr.org/_layouts/treatybodyexterna/Download.aspx?symbolno=E%2FC.12%2FEUCO%2FCO%2F3&Lang=en (revised 23 October 2013)

^{xxvi} Grupo de Operaciones Especiales de la Policía Nacional. [National Police Special Operations Group]

^{xxvii}

<http://www.fian.org/es/biblioteca/multimedia/quimsac-ocha-criminalizacion/> (revised 23 October 2013)

^{xxviii} <http://www.ap1.se/sv/Finansiell-information-och-press/Vardepappersinnehav/Innehav/Post.aspx>;
http://www.ap4.se/Upload/FinansiellaRapporter/AP4.AktieOchAndelar_2012_12_31docx.pdf;
<http://www.ap3.se/SiteCollectionDocuments/Forvaltning/Innehav/2012/Equity%20Holdings%2031%20Dec%202012%20Webb.pdf>;
<http://www.ap7.se/PageFiles/92/2012/%C3%85rsber%C3%A4ttelse%202012%20AP7%20Aktiefond%20Bilaga%20Innehav.pdf>
(revised 23 October 2013)

^{xxix}

<http://www.regeringen.se/content/1/c6/19/75/00/9d1d5d0d.pdf> (revised 23 October 2013)

^{xxx}

<http://www.ap3.se/SiteCollectionDocuments/Forvaltning/Innehav/2013/Equity%20excl%20Swedish%20holdings%20%20June%202013%20webb.pdf>

^{xxxi} Ecuador Hearing entitled Situation of defenders of human rights and the environment in Ecuador
<http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=129> (revised 23 October 2013)

^{xxxii} Flores Enith, FIAN Ecuador Training and Communication Programme.

^{xxxiii}

http://tbinternet.ohchr.org/_layouts/treatybodyexterna/Download.aspx?symbolno=E%2FC.12%2FEUCO%2FCO%2F3&Lang=en (revisado el 23 de octubre de 2013)