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Ecuadoran Government Will Modify Laws to Favor Mining

By Luis Ángel Saavedra

It has become customary for large transnational mining companies to pressure governments to modify national legislation to suit company interests. However, this was not expected to happen in Ecuador since its Constitution specifically protects the rights of nature and is very clear on the control the state must have of extractive activities as well as on the state's share of earnings from this industry.

A history of pressures

Mining transnationals have a long history of interfering with governments to get them to change their laws, on some occasions supported by their own governments, as in the case of Canadian firm Barrick Gold, which operates in Honduras. Jennifer Moore, Latin America program coordinator at MiningWatch Canada and contributor to the Center for International Policy (CIP), wrote that the Canadian government set up a program to help establish a legal framework for Canadian mining firms' operations; the principal beneficiary was Barrick Gold.

Likewise, in Argentina, foreign mining companies, working alongside national mining firms, are pressuring the government in the northern province of Mendoza to reduce legal controls in protected areas and natural reserves such as Laguna del Diamante in the San Carlos region, site of the province's largest water reserve.

In Colombia, the situation is more serious since pressures are applied not only in the legal arena but also on the population to cause them to leave. In 1996, it was alleged that the mining bill was written by a lawyer from the Canadian firm Corona Goldfields. That bill aimed to facilitate expropriation of lands belonging to campesinos and small-scale miners and eliminate exploitation restrictions in natural reserves.

Campesino mobilization was able to stop the bill, but, in 2001, Ley 685 was passed. Lawyers from CEMEX, HOLCIM, and Ladrillera Santafé prepared the bill, providing consultation, including on pertinent regulations. The companies benefitted because the law prioritizes land for mining, even in natural reserves, protected areas, or ancestral lands of indigenous and Afro Colombian communities. Concessions granted based on this law have forced dozens of communities to abandon their lands.

Kinross pressures Ecuador

Although the Ecuadoran government is involved in developing large-scale mining projects, the exploitation contract with Canadian firm Kinross Gold Corporation has been on hold since early 2012, and, in mid-February, Minister of Nonrenewable Natural Resources Wilson Pastor warned that Ecuador

would not sign an agreement with the mining transnational, which wants to exploit gold in the Fruta del Norte project in the Amazonian province of Zamora Chinchipe in southern Ecuador.

In late 2011, Kinross signed a preliminary agreement with Ecuador that included payment of up to 8% in royalties and a percentage of the profits from the project. However, after signing the preliminary contract, the transnational rejected some of the terms already agreed to. In February 2012, after learning of the mining transnational's new demands regarding the increased royalties to be paid by the company and the reduced taxes, Minister Pastor said he could not sign the final agreement because the demands were excessive.

"There are things we cannot accept because we cannot force a law or change a law," said Pastor. Kinross' response was emphatic. "I want to make it very clear to the whole world that we will not proceed unless we have a better agreement in economic terms," said Kinross CEO Tye Burt. Thus, negotiations broke down.

The stalled negotiations with Kinross will not keep the government from moving forward in negotiations with Chinese transnational Ecuacorriente (ECSA), which was a subsidiary of Canadian firm Corriente Resources, for copper exploitation in the C ndor Mirador project in Zamora Chinchipe province and with IAMGOLD, which plans to develop the Quimsacocha gold and copper mine in Azuay province, in addition to a contract with Canada's International Minerals, which will exploit gold and silver in R o Blanco in the same province.

Ecuador's Constitution and the Mandato Minero (mining mandate), passed by the Asamblea Constituyente in 2008, stipulate that the state must obtain larger economic benefits when it grants concessions for extracting natural resources such as oil, gold, silver, and copper. Under these provisions, the ECSA contract, signed March 5, giving the company access to copper reserves estimated at 5 billion pounds, the company will pay the Ecuadoran state 52% of revenues, which include the 12% Impuesto al Valor Agregado (IVA), the Impuesto a la Renta, profits, and other royalties.

It was hoped that signing the ECSA contract would encourage the other companies to sign, but Kinross refused to do so; on the contrary, it intensified its lobbying efforts to achieve its goals, including mobilizing the company's top management to pressure the Ecuadoran government to make adjustments aimed at smoothing the way for signing the contract.

On July 19, Kinross vice president in Ecuador Eduardo Flores said that he expected to close negotiations with the state within the next few weeks. He made this announcement after the national government decided to change the existing mining-policy framework and send the Asamblea Nacional a package of reforms to the mining law (Ley de Miner a) and the internal tax law (Ley de R gimen Tributario), which, according to the Constitution, sets a 70% windfall-profits tax based on the higher price on the international market.

In addition, the government has agreed that the tax can be paid after companies have written off their investments. "How can we talk about extraordinary profits if they still have money invested? What Kinross has asked for is reasonable, and we are preparing a legal amendment so that any extraordinary earnings will go to amortize the investment," said President Rafael Correa.

Minister of Strategic Sectors Jorge Glas said that these changes will be made in less than two months.

The government announcement also drew a reaction from ECSA, which said that it would request changes to its contract to bring it in line with the benefits given to Kinross. What the government has not explained, however, is how it will make the changes so that they do not violate the Constitution, since reducing the state's share of a company's earnings is explicitly prohibited. Environmental and human rights organizations are preparing to file complaints alleging that the announced reforms are unconstitutional.