

ECUADOR

Ecuador has based its economy on the extraction of natural resources. This process has arbitrarily used, abused and polluted the environment, and established an economic model characterised by external dependence, growth in internal and external debt, and the destruction of ecosystems. The recent introduction of the Ecuadorian Mining Law inaugurated a new episode in this story, which has characterised Ecuador since the country was founded: namely, basing economic development on a single commodity and degrading its natural resources.

Mining law in Ecuador is anti-constitutional

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Ecuador's new Constitution of 2009 reflects many gains made by the country's peoples. The Mining Law, also passed in 2009, promptly neutralises many of these gains. Examples of constitutional provisions violated by the new law include: rights of Nature (Article 72); the country's pluri-national character and its well-being – that is, *sumak kawsay*, which implies living in harmony with oneself, society, and nature (Article 275); collective rights (Article 57); the government's duty to ensure food sovereignty (Article 281); the state's responsibilities concerning non-renewable natural resources (Article 313); the human right to water (Article 12); the priority of water (Article 318); the precautionary principle (Articles 73, 397); the obligation to give precedence to environmental protection in cases of doubt (Article 395); people's right to participate and be consulted (Article 400); the right to resist (Article 98). There are many others.

These constitutional violations have created a law that systemically favours mining companies in the following ways:

- **National treatment** The Mining Law grants foreign individuals and companies “the same treatment as that granted to any other national individual or company”. This is what transnational companies demand in all free trade treaties. Any advantages granted to national companies must also be granted to foreign companies.
- **Public utility** Fundamental human rights, such as the right to food and water, and existing activities may be overruled if the government declares land to be of public utility. This allows the expropriation of land without the consent of its owners, however long they have lived there.
- **Servidumbres¹** These violate the collective rights of nationalities, peoples, and communities

¹ This is a legal term for the rights held over another person or thing, such as the right to pass through a house or garden; right of way.

recognised by the Constitution. The law ignores the ancestral rights of owners and occupants of land, territories and buildings, which can be expropriated without their consent, so as to guarantee rights and access to the mining companies. The law even makes it optional for mining companies to seek the agreement of the owners of land and territory; they are not obliged to do so, and can expel the owners as and when they judge convenient.

- **Participation and consultation** This will take place only after concessions have already been granted for mining projects. It cannot be a genuine consultation, for people will be dealing with a *fait accompli*. The law says that a community's demands will be taken into account by the sustainable mining projects, but there will be no room for dissent. This does not accord with the provisions of the Constitution, which while not binding companies

Ecuador's indigenous movements campaign against new mining law

GRAIN

The Confederation of Indigenous Nationalities of Ecuador (CONAIE), which represents 90 per cent of Ecuador's indigenous peoples, is strongly opposed to the new mining law. It says that it is based on a model of large-scale extraction and will benefit only foreign mining companies, while damaging the environment, polluting water resources and plundering the natural wealth of the country. "From the point of view of the social movements, and the indigenous movement in particular", says Marlon Santi, President of CONAIE, "Correa's socialism is not socialism at all.... He waves the flag of socialism, but he does other things."

In January 2009 the indigenous movements organised nationwide protests against the new law. People from indigenous, environmental, human rights and peasant organisations took part in various actions in 11 provinces. Participation was particularly strong in the central highlands, where about 9,000 indigenous people closed down the PanAmerican Highway. Humberto Cholango, the head of Ecuarrunari, an association of Quechua peoples from the Andes highlands and the largest member organisation within CONAIE, said at the time that President Rafael Correa had raised hopes when he took office in 2006, but that he had been incapable of understanding the country's indigenous people. "We do not accept that a government that says it is in favour of marginalised people should not take their views into account when it makes laws. It's inconceivable that laws as important as those on mining or food sovereignty should be passed without public debate, or that they should contain articles that run counter to the constitution itself, which enshrines the rights of nature", he said. The mobilisation provoked an angry response from President Correa. "Where does the biggest danger to the citizen revolution lie? In the infantile left, the infantile pro-indigenous movement and the infantile ecological movement, which have become active again, holding meetings to push for an uprising against mining", he said.

Ivonne Ramos, the president of one of the country's leading NGOs, Acción Ecológica, which Correa tried unsuccessfully to close down earlier this year, believes that a new wave of criminalisation is affecting environmental and human rights defenders across the country. She says that many of those now facing charges were granted amnesty by the National Constituent Assembly in March 2008. In particular, community leaders linked to organisations opposed to large-scale mining have been targeted, she says. Various members are charged with organising terrorism. Overall, Ramos foresees a much more "restrictive" environment for groups like hers over the next few years.

Ramos referred to the new food sovereignty law as evidence of how Correa's policies concentrate economic power. She says that the legislation, approved in April 2009 after a presidential veto, promotes agro-industry and favours powerful economic groups. It also opens the door to Terminator seeds, agrofuels and the legalisation of shrimp farming in coastal mangrove forests. Even the solidarity vouchers provided to the poor, she says, will favour the monopolistic economic groups that control nearly the entire national food chain. "When the people receive their vouchers", she explained, "they will be able to buy products in the big supermarkets at a reduced price. So the benefit is ultimately channelled to these powerful economic groups."



to accept the results of a consultation, does at least make it obligatory to hold one before the project is implemented.

- **Special treatment for indigenous peoples** The new law violates not only the Constitution but also international treaties and conventions on collective rights signed and ratified by Ecuador. The “special treatment” refers to the rights of communities, peoples and nations to be consulted, in accordance with article 398 of the Constitution, but it ignores article 57 of the Constitution, which guarantees the collective rights of communities, peoples and nations.

- **Criminalisation** The law establishes protection for mining companies and introduces various sanctions against “any disruption that prevents mining activities”. The mining companies can define what “disruption” is. This permits the criminalisation of individuals, communities and even authorities who oppose, criticise or denounce the mining companies or take any other initiative that could be construed by the companies as “disruption”.

- **Freedom to prospect** The law gives mining companies the right to prospect on land belonging to individuals or communities without their permission. This article takes away protection given to rural populations and attacks the right to property and collective rights guaranteed by the Constitution.

- **A step backwards on environmental matters** The law ignores the progress made on


environmental matters in Ecuadorian legislation. The Mining Law requires only an Environmental Impact Study (EIS) to be carried out, while the Environmental Management Law stipulated that environmental licences should be granted only to projects with an Environmental Management System, of which the EIS forms just one part.

All of this, in addition to the provisions for granting concessions, the unrestricted nature of the concessions, and the lack of independence of the regulatory bodies, means that the Ecuadorian mining law is riddled with unconstitutional provisions.

The well-known Chilean economist and jurist Julian Alcayaga had this to say about the Ecuadorian mining law:

“The law’s accommodating attitude towards mining activities and the scope given to foreign investors leads me to think that this law was drawn up by the same people that gave us the Chilean Mining Law, which we inherited from Pinochet and his Minister of Mines, José Piñera: that is, the transnational mining companies.”

“We were given all the riches of the world, but all they bothered about was the gold”

from *The Country of Cinnamon* by William Ospina 



INTERVIEW

Roger Moody is an expert on mining and mining transnationals. He has spent years uncovering the facts about how mining companies operate. He edits the Mines and Communities website, which exposes the social, economic and environmental impacts of mining, particularly as they affect indigenous and traditional communities.

In Ecuador and India, we see indigenous communities mobilising powerfully to try and stop mining projects that they see as damaging to their way of life and belief systems. Is this part of a global trend? Have local communities become more active in recent years in the struggle to defend their territories?

RM: No question. When I started working with a global network of mining-affected communities with Minewatch back in 1990, we were working on around 30 major struggles a year. Part of the reason for this was that we didn’t know about isolated communities who hadn’t yet “internationalised” their experiences. That began to change between 1990 and 1995, as not only Minewatch but larger