The Amazon Community of Social Action "CASCOMI" (by its acronym in English) is an Ecuadorian indigenous and peasant organization created for the defense of collective rights and nature. CASCOMI was established in 2014 and it is part of the Confederation of Native Nationalities of the Ecuadorian Amazon "CONFENIAE" (by its acronym in English).

asdecomi@gmail.com

The organization of the Shuar Arutam indigenous people was established in 2003 to defend the land, culture, and way of living of the Shuar Arutam. It is conformed by 10,000 people who belong to the Shuar nationality. Its territory is located in the Cordillera del Condor, in the southeast of Ecuador.

numitsakimp@gmail.com

CHINESE COMPANIES IN THE ECUADORIAN MINING SECTOR: THE CASES OF THE MIRADOR AND SAN CARLOS PANANTZA PROJECTS
We write this letter from the parishes of Tundayme, San Miguel de Concha and Santiago de Panantza, located at the South of the Ecuadorian Amazon. In our parishes, there are two copper mining projects: Mirador and San Carlos Panantza. Since 2010, Mirador is owned by Chinese companies Tongling Nonferrous Investment Co. Ltd. (TNMC) and China Railway Construction Corporation Limited (CRCC), which make up the company Ecuacorrentes S.A. (ECSA). Since 2012, new mining concessions with Chinese financing were also granted to the company Explorcobres S.A. (EXSA) thus creating the San Carlos-Panantza project.

We want to start by telling you that our living spaces are very beautiful, surrounded by mountains and rivers impregnated with the presence of our ancestors, and that our identity is linked to the territory. Therefore, any interference in our space not only has implications in our present and future, but also puts at risk everything we have built in the past.

We imagine that many of the Chinese institutions to which we address in this document do not know of our existence or of these mining projects. We also imagine that the Chinese institutions, given the geographical distance and the difference of language and culture, do not know Ecuador in depth. Therefore, let us tell you that Ecuador is a very special country; it is a world pioneer in recognizing multiculturalism and the Rights of Nature in its Constitution. In addition, given the profoundly democratic nature of the
Ecuadorian political system, indigenous peoples and social movements are essential actors to give legitimacy and viability, in the long term, to the decisions of the governments in power.

We also want to inform you that our peoples are opposed to these mining projects. In the few years of existence of these projects, they have already provoked violence, evictions, abuses and have negatively transformed our environment and our lives, not only because of the destruction of the environment, but also because they have impoverished us economically.

We believe that the Chinese government, particularly the entities that authorize operations abroad, as well as the Chinese companies and banks that have supported these projects, are co-responsible for what is happening in our territories. We hope that the information we share in this document will help you to reconsider your intervention, and specifically we ask you to do the following:

- Accept our invitation to visit our territory and check on-site what is stated in this document. We will be happy to coordinate the meetings, and adapt ourselves to your time and availability.
- Conduct a comprehensive assessment of the social and environmental damage, and design a comprehensive plan to compensate for damages to people and the environment. We suggest that such evaluation be carried out by independent entities with international credibility.
- Be open to consider the closure of the Mirador project and stop the San Carlos-Panantza project.

Certainly, we will continue to exercise the right to resistance and mobilization - which are rights enshrined in the Constitution of Ecuador - in order to recover our territory and achieve reparation for damages. However, we hope that with your support and understanding we can, hopefully very soon, use our energy to make our own dreams come true.

Sincerely,

Luis Sánchez Shimirayceta
President of the Amazonian Community
Condor Mirador Mountain Range (CASCOMI)

Vicente Numi Tsankip
President of the Organization of the Pueblo
Shuar Arutam

A Bit of Context

The Condor mountain range is known for its variety of habitats and micro-habitats, very different from the rest of the Andes. It is estimated that the Condor mountain range is home to more than 600 species of birds, including 14 species belonging to categories threatened with extinction, 120 species of amphibians and 99 species of reptiles. In each hectare of the mountain range a more than 220 species of trees have been found.

The Shuar people have inhabited these territories for hundreds of years. The Shuar have lived ancestrally of the use of the resources of the Amazonian forest practicing hunting, gathering, fishing, agriculture and raising animals as main activities for their subsistence. The Shuar maintain a close physical and spiritual relationship with the Amazon rainforest, source of their sustenance and place of experience of their spirituality.1

The Shuar Arutam community is made up of 10,000 people, belonging to the Shuar nationality. Its territory is located in the Condor mountain range, in the extreme southeast of Ecuador, between the Kuankus and Cenepa rivers, and bordering the south with Peru. It has a territorial surface of 200,000 hectares and was created between 2001 and 2003, in the first Assembly with leaders of 60 Shuar Centers.2

All the biodiversity and ancestral knowledge of indigenous and peasant communities of the Condor mountain range in the Amazon region is gradually being devastated by the extractive megaprojects of natural resources. In Ecuador, there are two mining projects that since their concession (now in the hands of Chinese companies) have generated resistance from the Amazonian communities. These are:

2. Ibid.

Forced eviction - Tundayme - sept 2015

2- Ibid.
The Mirador Project

Mirador is a megaproject of copper and gold mining that is expected to extract 60,000 tons of rock a day from an open pit mine 1,000 meters deep and 15 kilometers in diameter. The project is located at the border area between Ecuador and Peru. In 2010, TNMC and CRECCC acquired 96% of the shares of Corrientes Resources (Canadian company) for an amount of USD 655 million and established the Chinese consortium Ecuacorrentes (ECSA). In March 2012, ECSA signed a contract with the Ecuadorian government to develop the Mirador mining project.

The Mirador project is one of the most conflictive projects and one that has generated the most resistance in the history of the country. Only three days after the signing of the contract with ECSA in 2012, a massive march was mobilized from El Pangui (the canton where the Mirador project is located) and traveled almost 360 km on foot to Quito, the capital of Ecuador. The march ended with the delivery of a letter to the Chinese Embassy in Quito. In the letter, local communities demanded the exit of Chinese companies from the Mirador project. A few months later, several leaders of social organizations presented an injunction argue that the contract with ECSA violated the Human and Nature Rights contained in the Constitution of Ecuador.*

The San Carlos-Panantza Project

The San Carlos-Panantza project comprises an area of 41,760 hectares, located at the parishes of San Miguel de Concha and Santiago de Panantza, in the canton of San Juan Bosco and Limón Indaiza, in the province of Morona Santiago. The company pretends, mainly, the obtaining and exploitation of copper, whose concession belongs to China Exploradores S.A. (EXSA), and according to the data of the official website of the Ministry of Mining, the project will be valid for approximately 25 years. For the extraction, the company plans to build two open pit mines in which it will process 500,000 tons of copper a day, generating large amounts of waste and using thousands of liters of water every day.

Eviction and Dispossession of Livelihoods of Local Communities

The installation of these mining extraction projects has been a nightmare for indigenous and peasant families who have been forced to abandon their lands. These facts have attracted the attention of United Nations rapporteurs, national and international human rights organizations, local governments, state accountability agencies, the media and social organizations.

The current situation of several communities is precarious since they do not have clean access to water sources (one of the main causes of their health problems). The Yanúa Kin community is an example of this situation where crops, animals and homes were destroyed and contaminated due to soil and sediments thrown by the company to the Waywapi, Tundayme and Kimi rivers. People who depend on the Tundayme river also present problems due to the diversion of the river channel. These facts violate the precepts of the Mining Law (Article 8).

For all of these reasons, on October 21, 2015 CASCOMI accused ECSA for alleged crime of terrorism. Despite the insistence of the families to clarify the responsibility of the company, the prosecutor of El Pangui dismissed the complaint, arguing that after a year of investigation no evidence for conviction has been found. CASCOMI believes that the decision of the prosecutor has not adhered to due process and is analyzing options to take the complaint to Ecuadorian upper and international courts.

Notes:
1. The Ministry of Mines and Petroleum and of Non-Revenue have published in 2013 and 2015 respectively, have been used as legal instruments that have proven to be effective in verifying the violation of the human rights to the communities of four Shuar centers (Nankints, Tsuntsuim, San Pedro, Kutukus). This includes injuries caused by incendiary bombs, harassment of Shuar by the police, confrontation with the public forces; the Shuar leaders Freddy Taish (2013) apparently killed by police, and the Shuar Arutam community is made up of 10,000 people, belonging to the Shuar nationality. Its way of life is closely related to the land and wildlife, agriculture and raising animals as main activities for their subsistence. The Shuar maintain a close relationship with the spirit world, their worldview is very important for them, and their spirituality. 1
2. Dr. Jeniffer Jaramillo, “Families of the Ecuadorian Amazon,” June 2014.
3. The Ministry of Mines and Petroleum and of Non-Revenue have published in 2013 and 2015 respectively, have been used as legal instruments that have proven to be effective in verifying the violation of the human rights to the communities of four Shuar centers (Nankints, Tsuntsuim, San Pedro, Kutukus). This includes injuries caused by incendiary bombs, harassment of Shuar by the police, confrontation with the public forces; the Shuar leaders Freddy Taish (2013) apparently killed by police, and the Shuar Arutam community is made up of 10,000 people, belonging to the Shuar nationality. Its way of life is closely related to the land and wildlife, agriculture and raising animals as main activities for their subsistence. The Shuar maintain a close relationship with the spirit world, their worldview is very important for them, and their spirituality. 1
Evictions in the San Carlos-Panantza Project Area

On August 11, 2016, the eight families that made up the Shuar Nankints community (San Juan Bosco canton), were evicted by a contingent of approximately 2,000 police and military personnel, in order to give way to the works of the mining company EXSA. On November 21, 2016, a group of Shuar people occupied the mining camp installed in the Nankints area, located in the Santiago de Panantza parish in San Juan Bosco canton, a day later they were evicted by military forces. On December 14, the Shuar Nankints people decide to leave their territory, and in this context, a policeman was killed and seven police officers and two Shuar were injured. For this episode, military groups, helicopters and war tanks were mobilized to the conflict zone. On the same day, former President Rafael Correa decreed the state of emergency in the province. Since the declaration of the state of emergency and the military incursion in the San Juan Bosco canton, at least 35 Shuar families belonging to the communities of Nankints, San Pedro, Kutukus, and Tsuntsuimi have been forced to leave their territory. According to Jesus Domingo Nayash Pinchupu, Trustee of the Tsuntsuimi community, and Rodolfo Chumpi, professor of San Pedro de Purunys, approximately 508 people have been displaced.

The Mirador and San Carlos-Panantza Projects Violate Ecuadorian Laws and Community Rights

Some examples of the violations that occurred:

- The number of concessions exceeds the extension allowed by Constituent Mandate N° 6 (Mining Mandate, 2008). ECSA has 4 concessions - which has been observed by the Comptroller General of the State. According to Article 4 of the Mining Mandate, the same owner cannot have more than three mining concessions.

- The mining easements should not have been established in indigenous territories. ECSA has obtained the declaration of mining easements over indigenous territories (territory under collective title in favor of CASCOMI). The Constitution of Ecuador (Art 574) and the Constitutional Court ruling in No O10O-SIN-CC, of March 2010, state that no servitude can be constituted on indigenous lands, characterizing them as inalienable, indefeasible and indivisible.

- There must be no mining activity in areas with high ecological value. The Quimi Valley, Tundayame, El Gusmi and part of the Pangui (where the Mirador project is developed) are part of the Cordillera del Condor, a biodiversity reserve of 150 km² in area, in which there are 16 ecosystems that regulate water for the region, in addition to the 227 water sources that have been registered in protective forest. The Ministries of Mines and Petroleum and of Non-Renewable Natural Resources, the National Mining Directorate and the Zamora Chinchipe

Regional Directorate did not observe the Arts. 3 (3) and 12, as well as Final Provision No. 1 of the Mining Constituent Mandate, because they did not apply the Ministerial Agreement 172 that defines the procedure to carry out the evaluations of concessions that include springs and water sources and for not having declared the extinction without compensation, of the mining areas Cungrém 19 East, Cungrém 18 East, Mirador 1 Este and Mirador 2 East, located within the Protector Cordillera del Condor which is a protected forest for environmental reasons.

- The mining projects affects the access and quality to water. The current situation of several communities is precarious since they do not have clean water or access to water sources (cause of many of their health problems) as is the case of the Yanúa Kin community whose crops, animals, and homes were destroyed and contaminated due to the earth and sediments thrown by the company to the Waywayme, Tundayame and Kimi rivers. People who depend on the Tundayame river also present problems due to the diversion of the riverbed, thus disregarding the mining law (Article 81).

- Non-compliance with prior consultation with the community. The Ecuadorian state has allowed ECSA and EXSA to replace the free and informed prior consultation with socialization and information mechanisms such as the one developed in Tundayame on November 5, 2010. In Ecuador, the consultation is a state obligation, the breach of this obligation makes the Mirador and San Carlos-Panantza projects “unenforceable and will cause the nulity of the respective contracts” according to the Environmental Management Law, Art. 28. The Ecuadorian Constitution (Art. 577) recognizes and guarantees to communes, communities, indigenous peoples and nationalities, free and informed prior consultation, as well as Article 81 of the Citizen Participation Law; the ruling of the Constitutional Court to the unconstitutional demand of the Mining Law (Odgment 09-HN, 03/18/2010), Inter-American jurisprudence, ILO Convention 169 (Article 6.2), and the United Nations Declaration on the Rights of Indigenous Peoples.

- The project invades national security areas (border line). The Mirador project is within the national security border area, which violates both the provisions of the Ecuadorian Constitution, the National Security Law (Articles 39 and 40), and the Mining Law (Art. 26 and Art. 32).

- Part of the concession is in areas where there is tangible and intangible cultural heritage. The Ministry of the Environment did not respect the Mining Law (Article 26), the Organic Law of the General Comptroller of the State (Article 77) and the Constitution of Ecuador (Article 380), when granting the advanced exploration license of the Mirador Project-North, despite

On March 21, 2005, the Ministry of the Environment, through Ministerial Agreement No 157, declared the Cordillera del Condor as an “area of protection forest and vegetation” meaning the declaration and definition of the forest and Vegetation Reserve in areas of the Cordillera del Condor because they contribute to the conservation of the watersheds, the river basins and the preservation of the forest, 11.4.

On June 25, 2011, the Ministry of the Environment, through Ministerial Agreement No 157, declared the Cordillera del Condor as a Maintenance Zone for National Security MAE, Ministerial Agreement 157, forests of the Cordillera del Condor in the Gualace canton, preamble and Art. 1. It also appears in the record of Forests and Vegetation Protection of Ecuador of 2011.
there being a report on archaeological studies of 2006\(^7\) (made by the mining company of that time) in which it was recommended to carry out deeper archaeological studies for the existence of cultural heritage.

- The declaration of the state of exception in 2016 in Morona Santiago. This extreme measure was taken by the presidency of the country and lasted for 60 days. The state of emergency limited several constitutional rights, including the right to free movement. Article 6614 of the federal law on human rights and opinion (Article 6662) the right to associate and meet (Article 6613) and the right to the inviolability of the home (Article 6622) it was absolutely disproportionate for the purposes that were foreseen, because it failed to comply with the proportionality, necessity and reasonableness parameters set forth in the Constitution. The military and police personnel in the area served to keep the mining camp in operations and continue the exploration phase of the San Carlos-Panantza mining project.\(^20\)

- Persecution of human rights defenders and limitation of association rights. Decree 16 and 739 published in 2018 and 2019 respectively, have been used as legal instruments that have diminished the right to association and have served to establish control over social organizations.

- Violence and affections to life and physical integrity. The CONFENIE (Confederation of Indigenous Nationalities of the Ecuadorian Amazon), CONAE (Confederation of Indigenous Nationalities of Ecuador) and FISCH (Interprovincial Federation of Shuar Centers)\(^21\) have been able to verify the violation of the human rights to the communities of four Shuar centers (Nankints, Tautsurm, San Pedro, Kutukus). This includes injuries caused by incendiary bombs, high-caliber bullet wounds, more than 80 children, pregnant women and adolescents forced to leave their homes, and more than 60 children who lost access to education in their respective establishments.

- Three deaths of communal leaders. These large mining projects have already claimed the lives of three indigenous leaders. Professor Shuar Bosch Bosma was killed (2009) as a result of a confrontation with the public forces, the Shuar leaders Freddy Tash (2013) apparently killed by soldiers, and the murder of José Tendero (2014) for which two ECSA employees had been accused. In addition, several communities and organizations leaders that oppose the mining project have been persecuted by ECSA security personnel and have been criminalized for defending their territory. These facts have been denounced at the Inter-American Commission on Human Rights.\(^22\) They have also been exposed during the Ecuadorian Universal Periodic Reviews in 2012 and 2017 in front of the Unites Nations Human Rights Council.\(^23\)

- Violations of workers’ rights. ECSA has generated unrest among workers in the surrounding communities due to mistreatment, lack of adequate reparation, illegal dismissals, and accidents in the work place. These actions have breached the principle of job stability protected in Arts. 33 and 326 of the Ecuadorian Constitution. On May 10, 2014, ECSA’s management dismissed two workers and technicians in retaliation to their demands for working condition improvements. Before these news, the workers committee ‘Katamundi’ joined with 150 workers took over the mining camp protesting for the violations of their rights. Then, in May 2016, ECSA dismissed more than 15 workers, although ECSA paid the respective liquidations for the years of service, they did not recognize reparation for work-related illnesses and accidents to which some of the workers were entitled.

**Non-compliance with the Chinese guidelines in the Mirador and San Carlos-Panantza Projects**

Several Chinese state entities have promulgated guidelines to steer the environmental and social behavior of banks and Chinese companies when granting financing or developing projects abroad. Although these guidelines are not mandatory, they do contain principles and recommendations highly relevant to the problems that have arisen in the Mirador and San Carlos-Panantza projects, for example in relation to: i) comply with international best practices; ii) the comprehensive assessment of environmental and social risks; iii) compliance with the human rights of communities and workers; and iv) the delivery of complete and timely information and proactive communication with the community.

Unfortunately, the Chinese guidelines have not been taken into account by the Chinese financiers of these projects, which are the Development Bank of China, the Bank of China, the Bank of Exports and Imports of China and the Industrial and Commercial Bank of China, nor by the Chinese contractors TNMC and CCCRC. To illustrate the lack of implementation of the Chinese guidelines, we have selected some articles of the Green Credit Guideline (Chinese Banking Regulation Commission, 2012); the Guidelines on Environmental Protection in Investment and External Cooperation (Chinese Ministries of Commerce and Environment, 2013); the Social Responsibility Guide for Chinese Contractors (International Association of Chinese Contractors, 2012) and the Corporate Social Responsibility Guidelines for Mining Companies Abroad (China Chamber of Commerce for Imports and Exports of Metals, Minerals and Chemicals, 2014).
### About compliance with Ecuadorian laws and international best practices:

**Green Credit Directive (Art. 21)**

- **Social Responsibility Guide for Contractors (Literal 3.3)**
- **Guidelines on Environmental Protection in Investment and External Cooperation (Arts. 5, 9, 18)**
- **Corporate Social Responsibility Guidelines for Mining Companies Abroad (Arts.: 2.4.5; 2.7.1; 2.7.13)**

#### Chinese Guidelines

- **Comments on the implementation of Chinese Guidelines**
  - Chinese banks must ensure that project sponsors comply with laws on environmental protection, land, health, safety, etc.
  - Chinese companies should periodically publish on the implementation of the laws and regulations of the host country.
  - Chinese companies should train employees on the laws of the host country, good international practices, and the environmental and social policies of the companies with the aim of achieving full compliance with them.
  - Chinese mining companies must respect the right to free, informed and prior consent of local communities and indigenous peoples; obtain respective environmental permits; and respect cultural heritage and not carry out new explorations in protected sites.

#### Relevant Considerations in Chinese Guidelines

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### About delivering complete and timely information, and proactive communication with the community:

**Social Responsibility Guide for Contractors (Literals: 3.5; 36 y 47)**

- **Corporate Social Responsibility Guidelines for Mining Companies Abroad (Arts.: 2.4.1; Art. 2.4.3: y 2.4.13)**

#### Chinese Guidelines

- **Comments on the implementation of Chinese Guidelines**
  - Establish a plan to restore livelihoods, compensate people fairly.
  - Protect the legal rights of Chinese and foreign workers.
  - Respect the human rights of employees.
  - Develop a commitment policy and a due diligence process to identify, prevent, mitigate and resolve adverse impacts on human rights.
  - Establish a grievance mechanism that is legitimate, accessible, predictable, fair, transparent and compatible with rights.

#### Relevant Considerations in Chinese Guidelines

- **Implement a plan to restore livelihoods, compensate people fairly.**
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### About the comprehensive assessment of environmental and social risks:

- **Chinese banks must perform “complete, thorough and detailed” due diligence, monitor and control the environmental and social risks of the project.**
- **Several Ecuadorian organizations have written to Chinese banks at least three times requesting that they conduct a due diligence process, but never received a response.**

#### Chinese Guidelines

- **Comments on the implementation of Chinese Guidelines**
  - ECSA and EXSA have violated several Ecuadorian laws and international human rights instruments, for example: Mining Law, Arts. 19, 26, 32, 36, 81; Mining Mandate, Arts. 4; Law on Environmental Management, Art. 28; Ecuadorian Constitution, Art. 33, 57, 313 and 323; Law of Citizen Participation, Art. 81; Work Code, Art. 4, Article 14 letter C of Executive Decree 1040; Convention 169 of the International Labor Organization, Art. 6.2; United Nations Declaration on the Rights of Indigenous Peoples, Arts.10, 18, 262, 29 and 30.
  - The project EIA includes a “Negotiation and Land Use Program” that was to be guided by the Performance Standards of the International Financial Corporation (The IFC is the private arm of the World Bank). The IFC standard was not implemented.
  - Indigenous and peasant communities did not give their consent to the Mirador and San Carlos-Panantza project in their territories.
  - ECSA’s EIA did not recognize the presence of indigenous peoples in the areas of direct and indirect impact of the project.
  - The fact that ECSA has violated several Ecuadorian laws and best international practices shows that companies have failed to train their employees. Nor have companies informed the public about their compliance.

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- **Implement a plan to restore livelihoods, compensate people fairly.**
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- **Comments on the implementation of Chinese Guidelines**
  - Establish multi-stakeholder communication mechanisms (including NGOs) to guarantee their participation and access to information, and respond to the opinions and suggestions of the actors.
  - Publish payments made to government institutions.
  - ECSA has not created mechanisms for communication and access to information, nor has it responded to letters and requests for meetings of numerous organizations.
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Conclusions

The Mirador and San Carlos-Panantza mining projects have not brought the promised benefits to the affected local communities. On the contrary, these projects have brought poverty, dispossession, confrontation and death, and continue to operate illegally and immorally because:

- Chinese companies and banks involved in the project have not respected the Ecuadorian Constitution and several national laws.
- Chinese companies and banks involved in the project have ignored Chinese environmental and social guidelines promulgated by several Chinese state agencies, and Chinese regulatory bodies have failed to ensure their implementation.
- Chinese companies and banks have disrespected international human rights protection treaties and have ignored international best practices, although they have pledged to respect them.

As a result, the Ecuadorian government and Chinese entities face serious financial and reputational risks, and should take responsibility for the economic, social and environmental damages that they have caused to local communities.