

The Inspection Panel

Report and Recommendation on Request for Inspection

Ecuador: Mining Development and Environmental Control Technical Assistance Project (Loan No. 3566-EC)

1. On December 13, 1999, the Inspection Panel (the "Panel") received a Request for Inspection (the "Request") related to the above-mentioned project. (Annex 1). The Panel registered the Request in the Panel's Register on December 17, 1999 ("Registration") as required under the Panel's *Operating Procedures*.¹ It also delivered a copy of the Request to the President of International Bank for Reconstruction and Development ("IBRD" or "the Bank").

A. THE LOAN

2. The Ecuador Mining Development and Environmental Control Technical Assistance Project is financed by the IBRD. The Board of Executive Directors approved the US\$ 14 million equivalent loan on October 21, 1993 and the Loan Agreement became effective on July 18, 1994. The Closing Date, initially June 30, 1999, has been extended to June 30, 2000.

B. THE PROJECT

3. According to the IBRD President's Memorandum and Recommendation (MOP), "the two major objectives of the project are to: (a) attract new private mining investment and support the systematic development of increased, yet environmentally sound, mineral production; and (b) arrest mining-related environmental degradation and mitigate the damage that results from the use of primitive and inadequate technology by informal miners."²

¹ See The Inspection Panel, *Operating Procedures* (August 1994) at paragraph 36.

² See IBRD, Memorandum and Recommendation of the President of the International Bank for Reconstruction and Development to the Executive Directors on a Proposed Loan in an Amount Equivalent to US\$ 14 million to Ecuador for a Mining Development and Environmental Control Technical Assistance Project (September 22, 1993).

4. According to the MOP, the Project includes three major components, namely Project Coordination; Sector Policy; and Management and Policy Implementation. The Policy Implementation component, in turn, encompasses eight sub-components, grouped into three different categories: (a) mining and environmental health; (b) geo-information; and (c) management of mining rights. The Request refers to the geo-information sub-component.

C. THE REQUEST

5. The Request was submitted by DECOIN (*Defensa y Conservación Ecológica de Intag* or Conservation and Ecological Defense of Intag), an Ecuadorian non-governmental organization, acting for and on behalf of persons living in the area known as the "Intag Area" and four representatives of the *Asociación de Caficultores Rio Intag* (Association of the Coffee Growers of Rio Intag). ("The Requesters.")
6. The Requesters claim that the communities they represent are likely to suffer material harm as a result of failures and omissions by the Bank in the design and implementation of the Mining Development and Environmental Control Technical Assistance Project in Ecuador. In particular, they claim that the public release of maps with mineral data collected under the Project's geo-information sub-component will attract mining companies and produce multifold negative impacts on their society and the local environment.
7. The Requesters claim that the development of mining activities in the Intag and surrounding areas, especially the Cotacachi-Cayapas Ecological Reserve and buffer zones, will, *inter alia*:
 - (a) have a destructive impact on protected areas and their buffer zones, which constitute critical natural habitats, pollute water sources and, more generally, threaten biodiversity in the area where they live;
 - (b) prevent local communities from continuing to work on their traditional farming, livestock and ecotourism activities, which are a major source of income in the region; and
 - (c) trigger grave social problems within their communities, such as prostitution, alcoholism and delinquency, caused by invasions of settlers, mineworkers, and informal miners.
8. The Requesters maintain that mining activities in these areas would be unavoidable should the geo-information maps and data reveal the existence of mining potential in the region. They claim that mining activities would result in significant conversion or degradation of areas designated as critical natural habitats, and would constitute a

violation of specific Bank policies and procedures. As examples of critical habitats, they mention the natural reserves of El Chocó and Cotacachi-Cayapas. The latter is recognized as one of the world's richest remaining natural habitats and one of the threatened "biodiversity hotspots."

9. The Requesters also state the Bank failed to achieve the standards imposed by its own policies and procedures regarding the preparation of an environmental assessment. According to them, the fact that the Project was screened as category "A" means that it is likely to have significant impact and, therefore, requires a rigorous environmental assessment. These requirements, they state, were not fully met. More specifically, the Requesters allege that Management:
 - (a) failed to consult and take into account the views of local communities and NGOs in preparing the environmental assessment;
 - (b) failed to consider endangered ecosystems;
 - (c) failed to take into account the possible impact of divulging the information contained in the mineral maps;
 - (d) failed to assess the institutional ability of mining authorities to protect the areas from possible invasions of "informal" miners;
 - (e) failed to assess the Project's impact on ecosystems in the northwestern Ecuador, focusing rather on the southern areas, on "totally different" ecosystems;" and
 - (f) failed to conform with Ecuadorian laws.
10. Finally, the Requesters claim that "the Bank has not monitored the [Project] carefully enough, and that lack of control and surveillance has done harm to the parties involved."
11. The Requesters' allegations could constitute violations of, *inter alia*, the following Bank Policies and Procedures:
 - OD 4.01 on Environmental Assessment;
 - OPN 11.02 on Wildlands, (now OP/BP 4.04 on Natural Habitats); and
 - OD 13.05 on Project Supervision.

D. THE MANAGEMENT RESPONSE

12. On January 18, 2000, the Panel received the Management Response to the above-mentioned Request for Inspection (Annex 2). Bank Management is of the view that it has complied with all operational polices and procedures applicable to the matters raised by the Request.
13. Initially, Management notes that "while the Request for Inspection addresses various concerns, they all relate to the thematic mapping (geo-information) sub-component of... the Project," thereby concluding that "[t]he execution of other components of the Project is not the subject of the Request."
14. Management states that the kind of mapping being used in the Project, namely a broad regional scale of 1:200,000, "is internationally recognized as a legitimate and basic, environmentally neutral, activity that is conducted by almost every government in the world." It claims that "most governments include national parks and protected areas in such regional thematic mapping surveys as a means of establishing environmental baseline data, even though mining is not permitted in these areas." Management claims further that the thematic mapping conducted by the project is fully consistent with international initiatives co-ordinated by the UNESCO, the International Union of Geological Sciences and other specialized agencies.
15. Management states that, in this Project, the thematic mapping will include the analysis of 38 elements, "most of no direct relevance for mineral exploration." It defends such mapping claiming that it is not mineral prospecting. It concedes, however, that the mapping, may be "useful to mining companies to help orient their exploration activities." Nevertheless, it maintains that "even under ideal conditions," substantial investments in prospecting and exploration, as well as legal and administrative clearance, would be necessary "before mining development could actually take place in areas where it is permitted by law."
16. In any event, Management contends, the Requesters cannot demonstrate actual or potential direct harm to their rights or interests as a result of the thematic mapping because the part of the Intag Valley where they reside was not thematically mapped by the Project. The mapping of adjacent areas, in turn, which includes the Cotachi-Cayapas Ecological Reserve, would not threaten anyone's fundamental rights.
17. Management maintains that the concerns raised by the Requesters are based on the following suppositions, believed to be erroneous:

- (a) that earth science reconnaissance is equivalent to mineral prospecting, and leads directly and inevitably to mining; and
 - (b) that the exploration of mining activities, where legal, would necessarily be inimical to traditional livelihoods.
- 18. Regarding the first supposition, Management asserts that the type of mapping being used in Ecuador is not designed to find or prospect directly for mineral deposits. According to Management, "similar thematic mapping and geo-chemical reconnaissance have previously been undertaken around and across the Cayapas-Cotacachi Ecological Reserve [...] The availability of these data has not led during these three decades to an invasion of the areas by mining companies or small scale miners."
- 19. The second supposition is said to be rather speculative, since "the impacts of mining activities may, under the right conditions, be positive." Management concedes that it is possible to speculate that some specific groups may have their economic interests impaired by the establishment of the mining industry. However, it would be equally possible to speculate the opposite. In Management's view, other members of the community might welcome the jobs and infrastructure that will follow investment by the mining industry.
- 20. Bank Management also denies that the Project will have any negative effect, actual or potential, on the protected areas listed by the Requesters, again stating that the thematic mapping conducted under the Project will not lead to mineral exploitation in those areas, even if a mineral deposit is eventually found. Management points out that Ecuadorian law prohibits mineral exploitation in protected areas and, even where it is allowed, "thorough and complete environmental impact statement[s] and consultation[s] with the local community are required." It also claims that the Project is helping local authorities to strengthen their regulatory capacity as far as mining activities are concerned.
- 21. Management lists eleven NGOs consulted "during Project preparation, appraisal and implementation." It denies that these organizations are non-representative, as alleged by the Requesters, and states that, in the Intag area, meetings were held with both governmental authorities and civil society representatives. National and regional authorities were informed about the mapping activities through formal meetings and the public through press article or conferences known as "popular assemblies." Management also claims that the consultation process related to the mapping activities has been enhanced since November 1999 and that further consultations will take place before the information gathered is eventually disclosed to the public in general. In the

specific framework of the geo-information sub-component, Management states that the necessary permits and approvals from the relevant governmental agencies were obtained by the project executing entity.

22. Management states that "[t]he Project as a whole is classified as an 'A' category project" principally as a result of other sub-components, and that "the Environmental Assessment prepared in 1992 quite properly focuses on the impacts and control of contamination generated by small-scale mining in Ecuador" as well as "other social and economic impacts on local communities." It adds that the nature of sub-components "such as mining information systems, mining cadastre, and geological and thematic mappings, were not considered to merit classification 'A' since they were in the nature of studies and information generation, that would not by themselves entail any diverse or significant environmental impacts." Management concludes that "[w]hile Bank staff should examine the entire Project as to its compliance with Bank policies, different components require different approaches."

E. ELIGIBILITY

23. For purposes of determining the eligibility of the Request and Requesters, the Panel reviewed the evidence submitted by the Requesters and Management, and visited Quito and the relevant Project areas. The Panel consulted with the Executive Director representing Ecuador and his staff.
24. During the field visit, Panel Chairman, Jim MacNeill, met with representatives of *Defensa y Conservación Ecológica de Intag* (Conservation and Ecological Defense of Intag, or DECOIN), the *Asociación de Caficultores Rio Intag* (Association of the Coffee Growers of Rio Intag) and with a large number of other Ecuadorian non-governmental organizations in Quito, Cotacachi and Apuela, as well as with local officials and individuals living in and around the Intag Area.³ These discussions confirmed that the Request was supported by these groups, local officials and individuals.
25. The Panel interviewed Bank Management and staff at Headquarters and in Quito and exchanged views with Ecuadorian Government and Project officials in Quito.⁴

³ The Panel Chairman was assisted by the Panel's Executive Secretary, Mr. Eduardo Abbott.

⁴ The Panel wishes to express its appreciation to the Bank Executive Director for Ecuador and his Alternate for their guidance and assistance. It wishes to thank the Government officials who gave freely of their time in Quito and with the representatives of NGOs and other local people who met with the Panel. It also wishes to thank PRODEMINTA and the World Bank Office in Quito for providing support during the field visit.

26. Paragraph 9 of the 1999 Clarifications⁵ mentions certain "technical eligibility criteria" that must be met, and the Panel concludes as follows:
- (a) Based on its field visit, the Panel is satisfied that the affected party consists of two or more persons with common interests or concerns and who are in the borrower's territory.
 - (b) The Request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the Requesters.
 - (c) The Request does assert that its subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately to it, thus demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.
 - (d) The matter is not related to procurement.
 - (e) The related loan has not been closed or substantially disbursed.
 - (f) The Panel has not previously made a recommendation on the subject matter.
27. The Panel is satisfied that the Requesters and the Request meet the technical eligibility criteria referred to in the 1999 clarifications to the Resolution.
28. According to the MOP, the geo-information component consists of "assisting CODIGEM in developing a specific data base for use by the minerals industry (US\$10.22 million) including: setting up a computer-based mining information system; supporting the systematic production of geological sheet mapping and thematic mapping work, using, as required, side-looking radar and/or airborne geophysics; producing detailed analyses of known ore districts geared to attracting new private investment in exploration and development."⁶
29. The MOP notes that: "More information than basic geology is required to develop a specific data base for use by the minerals industry. The thematic mapping work to be implemented by CODIGEM is aimed at producing interpretations of different data sets, to be published and made available in maps and descriptive and interpretative formats. Data sets to be developed and integrated would include analysis of satellite

⁵ The 1999 Clarifications to the Resolution are contained in the "Conclusions of the Board's Second Review of the Inspection Panel" dated April 20, 1999.

⁶ MOP at page 3.

imagery (remote sensing), aerial photography, geological information, structure, mineralization, geochemistry, geophysics, etc., with key areas being subject to field checking. Over the last decade digitized data-set manipulation -- considered in this sub-component -- has become possible through developments in computer hardware and software and is being used as a powerful tool in the petroleum and mining industries. The results of this work would provide guidance as to geological ternaries, which are prospective for the discovery of ore deposits. Additions to this data-set management work can eventually include infrastructure, surface waters, landslides, natural hazards, environmental data-including overlaps of natural and indigenous reserves -- etc., for multi-disciplinary usage."

F. CONCLUSIONS

30. The Request and Management Response contain conflicting assertions and interpretations about the issues, the underlying assumptions, the facts, compliance with Bank policies and procedures and harm. The Panel is neither able to address these conflicting statements in the period available to it to prepare and submit this report on eligibility to the Board, nor is allowed to do so pursuant to the 1999 Clarifications of the Resolution. The Panel can only address these issues during the course of an investigation.

G. RECOMMENDATION

31. In light of the foregoing, the Panel recommends an investigation into the matters alleged in the Request.

Attachments