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China

January 28, 2014

**Subject: Bank Loans Issued to Tongling Nonferrous Metals Group for  
El Mirador Copper Development**

Dear Mr. Hu Huai Bang:

We are writing in regards to China Development Bank's involvement with Tongling Nonferrous Metals Groups (TNMG). As you may know, Ecuacorriente is owned by Tongling Nonferrous Metals and China Railroad Construction Corp, being bought through a joint venture between the companies in 2010. Under Chinese ownership, Ecuacorriente announced in 2012 that it would begin developing El Mirador copper mine, which is located in one of the most biodiverse areas on the planet and home to many indigenous communities.

As Ecuadoreans, we view La Cordillera del Condor, where El Mirador is located, as a precious symbol of our nation and home. As a result, when the El Mirador mining contract was signed, hundreds of people protested by embarking on a two week march to Quito<sup>1</sup>.

We understand that China Development Bank has approved loans to Tongling Nonferrous Metals Group (TNMG). As fellow citizens of the Global South, we would like to draw your attention to how these bank loans to TNMG are enabling Ecuacorriente to pursue mining development in El Mirador, and how it may potentially cause serious problems among the local communities. Developing the copper mine would irreversibly devastate the region's fragile ecosystem and violate the legal rights of indigenous peoples to live, develop, and control their land and territory.

However, we understand that the Chinese government has issued the [Green Credit Directive](#), a 2012 policy which states that banks must consider the environmental and social impact of their loan candidates in approving or denying credit. The policy also states that banks must abide by international norms when investing abroad.

**We respectfully ask how China Development Bank is actively implementing the Green Credit Directive to resolve these problems in regards to your client, TNMG, and how your institution has modified its environmental and social risk assessment to this project.**

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<sup>1</sup> "In Ecuador, home truths for China", China Dialogue, August 2, 2012.

According to a report by the Contraloría General, Ecuador's supreme audit institution, legal irregularities found in the project indicated that the mining concessions are in fact invalid, and should be returned to the state<sup>2</sup>. Although TNMG is obligated to act upon the Contraloría General's report, there is no evidence that these recommendations have yet been followed. We would like to offer our support in informing you of these issues which you may not be aware, so that China Development Bank can appropriately assess TNMG's loan candidacy under the criteria of the Green Credit Directive.

### **Incomplete Environmental and Social Risk Assessment**

For instance, Article 19 of the Green Credit Directive states that banks must consider how "well clients have managed environmental and social risks as [an] important basis for credit funds appropriation". Recent research shows that Ecuacorriente has failed to carry out a fair and accurate environmental impact assessment for the Mirador Copper Project.

For example, the EIA lacks safety measures on two major environmental risks: clean disposal of toxic waste and protection of sensitive ecological areas. Community concern about toxic waste at the Mirador Copper Project was so strong that a coalition of NGOs raised a legal petition in regards to the lack of measures to ensure proper management of toxic materials<sup>3</sup>. Neither was there adequate information available on how Ecuacorriente will manage endangered species and forest areas<sup>4</sup>.

In terms of social risks, the EIA also neglects recognizing the presence of indigenous people in the project area, and omits certain impacted regions, presumably to portray a minimized effect on local communities. The Mirador Mining Project will have a direct impact on eight towns and an indirect impact on 170 households<sup>5</sup>. Although Ecuacorriente has claimed to have undertaken obligatory consultation activities, local communities have reported that no consultations about the project have taken place. Residents report that although Ecuacorriente contacted them to gather information from the region from local communities, these meetings were not consultations but fact finding visits by Ecuacorriente, in which residents were not asked about their opinions on potentially consenting to the mining project but about the region's geography.

Oversights in the EIA suggest the need to re-evaluate the Mirador project in order to fully account for all the environmental and social risks. As you know, these types of risks can easily become reputational risks or financial liabilities. The Green Credit Directive anticipates this issue in Article 19, stating that "where major risks or hazards are identified, credit funds appropriation can be suspended or even terminated". Several

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<sup>2</sup> Contraloría General del Estado. DIAPA-0027-2012. Informe General a la Gestión del Ministerio del Ambiente y otras instituciones relacionadas con los proyectos Mirador y Panatza-San Carlos. Quito, 28th of Abril 2004.

<sup>3</sup> "To get the gold, they will have to kill every one of us", Alexander Zaitchik. 10 de febrero de 2013. [http://www.salon.com/2013/02/10/to\\_get\\_the\\_gold\\_they\\_will\\_have\\_to\\_kill\\_every\\_one\\_of\\_us/](http://www.salon.com/2013/02/10/to_get_the_gold_they_will_have_to_kill_every_one_of_us/)

<sup>4</sup> "The case for Rights of Nature in face of the Mirador Open Pit Copper Mining Project", Global Alliance for the Rights of Nature, February 26, 2013.

<sup>5</sup> Environmental Impact Assessment for Phase Benefit Mirador Copper Mining Project Ecuacorriente SA ( ECSA), November, 2010 WALSH, paragraph 8.3 .3

studies have identified major risks and hazards in the project, and we have provided more information in the end notes and supplementary information section to clarify the issues at stake for your reference. **Given the high importance that the Green Credit Directive places on environmental protection, we would like to know if China Development Bank evaluates these kinds of risks, and if the decision to revoke lending to TNMG will be considered if they do not respond to these environmental and social concerns in a timely manner.**

### **Violations of Ecuadorian Laws**

Ecuacorriente would also violate Ecuadorean laws and regulations. Article 21 of the Green Credit Directive affirms that "Banking institutions shall strengthen the environmental and social risk management for overseas projects to which credit will be granted and make sure project sponsors abide by applicable laws and regulations on environmental protection, land, health, safety, etc. of the country or jurisdiction where the project is located". However, this has not been the case in the Mirador Copper Project.

For your reference, we have included an excerpt below of the Articles which are violated under the Ecuadorean Constitution, the supreme law of the country:

#### **❖ Ecuadorean Constitution<sup>6</sup>**

*- **Article 32:** "Health is a right guaranteed by the State and whose fulfillment is linked to the exercise of other rights, among which the right to water, food, education, sports, work, social security, healthy environments and others that support the good way of living."*

Waste and pollution generated by mining causes serious public health problems, which would negatively impact communities near the Mirador mining site<sup>7</sup>.

*- **Article 57.7:** "To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them. The consultation that must be conducted by the competent authorities shall be mandatory and in due time. If consent of the consulted community is not obtained, steps provided for by the Constitution and the law shall be taken."*

As mentioned earlier, local communities and indigenous populations have reported that Ecuacorriente has not consulted local communities on the copper mine's anticipated impacts, nor has it obtained their consent to the project. Local residents have also reported that Ecuacorriente has engaged in coercive tactics<sup>8</sup> in obtaining property rights.

<sup>6</sup> Constitución del Ecuador. 2008. [www.asambleanacional.gov.ec/documentos/constitucion\\_de\\_bolsillo.pdf](http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf)

<sup>7</sup> "Contraloría General Del Estado", Op. Cit.

<sup>8</sup> CEDHU. Intervención Minera a Gran Escala en el Ecuador y Vulneración de Derechos Humanos. Caso Corriente Resources. Quito, enero, 2011. <http://www.cedhu.org>

**- Articles 71 to 74:** *“Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes...The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.”*

The Rights of Nature guarantees that nature itself is a rights bearing entity with value separate from human use. It recognizes the ability for people to intervene on the behalf of nature should the activity of humans or corporations threaten its interests. According to the [Global Alliance for the Rights of Nature](#), “The Environmental Impact Assessment confirms the danger of extinction of three species of amphibians (*Allobates kingsburyi*, *Pristimantis phodostichus* and *Pristimantis incomptus*) and a reptile (*Enyalioides rubrigularis*), endemic of the zone of the Cordillera del Condor, in addition to other species considered vulnerable, that could also disappear with the open pit mining project when it eliminates the ecosystems that allow their existence. This does not only mean a direct violation to the Rights of Nature (Art. 71-73 of the Ecuadorian Constitution), but an effect on life itself, as well as the opportunities for creating alternative development activities such as tourism.”<sup>9</sup>

**- Article 282:** *“The State shall make laws for the use and access to land that must fulfill social and environmental functions. A national land fund, established by law, shall regulate the equitable access of campesinos to land. Large estate farming and land concentration is forbidden, as is the monopolizing or privatizing of water and sources thereof. The State shall regulate the use and management of irrigation water for food production, abiding by the principles of equity, efficiency and environmental sustainability.”*

Developing the copper mine would introduce toxic chemicals and heavy metals into waterways, causing mass poisonings to both inhabitants and the ecosystem. Moreover, because copper mining is a water intensive process, the project would over-exploit the area’s water sources. For instance, it is expected that the project would use approximately 140 liters per second, 24 hours a day. To supply the project’s high water usage, the project would be essentially monopolize most if not all available water sources.

**- Article 318:** *“Water is part of the country’s strategic heritage for public use; it is the unalienable property of the State and is not subject to a statute of limitations. It is a vital element for nature and human existence. Any form of water privatization is forbidden...The management of water shall be exclusively public or community-based. The public service of sanitation and the supply of drinking and irrigation water shall be provided only by legal entities of the State or communities.”*

Furthermore, the copper mine would likely result in the outflow of acidic water ([Acid Mine Drainage](#)) and leaches from tailings ponds to underground water basins and aquifers. The project area alone sits directly on 227 water sources, posing a serious

<sup>9</sup> Alianza Global por los Derechos de la Naturaleza. Op. Cit.

water and public health issue should even a portion of those water sources are contaminated<sup>10</sup>.

**- Article 319:** *“The State shall promote forms of production that assure the good way of living of the population and shall discourage those that violate their rights or those of nature; it shall encourage production that meets domestic demand and ensures Ecuador’s active participation in the global economy.”*

As an open pit mine, the copper project would infringe upon the rights of the indigenous people, Kumak Kawsay, as it will destroy their “organizing production” that is “recognized in the economy, including community, cooperative, public and private business, associative, family, domestic, autonomous and mixed-economy.” This could be caused by the water pollution, toxic runoff, forced displacement, or other impacts from the mine.

**- Article 411:** *“The State shall guarantee the conservation, recovery and integral management of water resources, watersheds and ecological flows associated with the water cycle. All activities that can affect the quality and amount of water and the equilibrium of ecosystems shall be regulated, especially in water replenishment sources and zones. The sustainability of ecosystems and human consumption shall be priorities in water use and development.”*

In the Cordillera del Condor, sixteen ecosystems would be dangerously altered by mining activity. As previously mentioned, the intensive water use inherent in copper mine development would imperil the quality and amount of water. Currently, the Mirador copper project does not prioritize needs of the ecosystem and human consumption in terms of water use, as it has not fully accounted for the enormous task of ensuring safe, prudent, and sustainable water management and replenishment. In other words, water quality and quantity of the region and its residents could be irreparably damaged.

In addition to the Ecuadorean Constitution, Ecuacorriente has violated a series of other laws and regulations in regards to the mining project. Information on the full list of all legal infringements can be found in the report, “Contraloría General Del Estado”, in addition to others, which can be found in the supplementary information with this letter.

## **Violations of International Norms**

Article 21 of the Green Credit Directive further affirms that international norms should be followed. “The banking institutions shall make promise in public that appropriate international practices or international norms will be followed as far as such overseas projects are concerned, so as to ensure alignment with good international practices”. The management of the Mirador Copper Project thus far violates a number of international laws and conventions, some of which overlap with violations to Ecuadorean law, including:

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<sup>10</sup> The case for Rights of Nature in face of the Mirador Open Pit Copper Mining Project”, Global Alliance for the Rights of Nature, February 26, 2013.

## ❖ **United Nations Declaration on the Rights of Indigenous Peoples**<sup>11</sup>

- Article 10, 29, 30 of the declaration state that a process of free, prior informed consent must be followed. Residents in areas impacted by the mining must occur.
- Article 18 affirms the right of indigenous peoples the right to participate in decision making matters which would affect their rights and livelihood.
- Article 26.2 declares the right of indigenous peoples right to own, use, develop and control the lands, territories and resources that they possess. Because the Mirador project could generate social and environmental problems the mining activity would directly result in forced displacements and jeopardize the ability of local households to sustain their livelihood.

In other words, mining activity in the region would likely dispossess indigenous peoples' of their right to "own, use, develop, and control" their land and territories. For example, the project already violates the ILO collective and territorial rights of the Shuar people, as they depend on the use of the region's natural resources and were not consulted in the project.

### **Conclusion**

China is becoming a leader in sustainable finance and development, even exceeding Western institutions in establishing new models of green finance. As such, we are interested in the Green Credit Directive as a compelling model to promote sustainable finance in Ecuador. We hope you will honor it.

To assist in implementing the directive, we would be happy to invite China Development Bank to a meeting and offer informal guidance on why El Mirador is a poor choice as a development project for both China and Ecuador. We would even be willing to give you more information for other projects that China Development Bank is considering for investment in Ecuador, per Article 15 of the Green Credit Directive, which states that "banking institutions can seek for support from an eligible, independent third party" in order to ensure due diligence where necessary. As Chinese companies familiarize themselves within the Ecuadorean market and laws, we strongly believe that it is necessary for Bank of China to seek the support of independent third parties, such as [Accion Ecologica](#), [CEDHU](#), [CDES](#), [INREDH](#), [RAMA](#), among others.

As you know, Ecuadorean people hold a history of battling foreign corporations in order to ensure that local communities are treated with respect and fairness, so we sincerely hope that banking institutions in China will not follow the same path of its Western counterparts. We believe that China Development Bank's implementation of the Green Credit Directive is a first step in this direction.

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<sup>11</sup> United Nations Declaration on the Rights of Indigenous Peoples, [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

For your reference, we have also reached out to other banks linked with loans to TNMG, inquiring about their processes for enforcing this policy. We understand Chinese New Year begins this week, so we appreciate your attention to this urgent matter.

Should you have any questions, please contact us any time. We would be very happy to meet and offer informal advice on El Mirador project, or other current and future investments in Ecuador.

Thank you in advance.

Sincerely,

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