

**COMPLAINT PRESENTED TO THE OFFICE OF THE COMPLIANCE ADVISOR /
OMBUDSMAN (CAO)**

Re: International Financial Corporation Project No. 27961 in Colombia

Presented by:

The representatives of the *Comité por la Defensa del Agua y el Paramo de Santurbán*. The Committee is located in the city of Bucaramanga, Department of Santander, Colombia (see map in Annex 20), is made up of 40 civil society organizations that in turn represent about seventy-five thousand (75,000) persons, and can be contacted at the following address: Avenida González Valencia, #58-20, barrio Conucos de Bucaramanga, Santander, Colombia.

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With the support of:

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Bucaramanga, Washington, June 13, 2012.

Mrs. MEG TAYLOR, Vice-president Compliance Advisor / Ombudsman (CAO)

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Receive our cordial greeting. We address you respectfully as Colombian citizens and representatives of the *Comité por la Defensa del Agua y el Paramo de Santurbán*, and as those affected by the project of the International Finance Corporation (hereinafter IFC), Project Number 27961, to be implemented in Colombia by the firm Greystar Resources Ltd., now *Eco Oro Minerals Corp.* (hereinafter “the Company”). Based on what is grounded below, we hereby present the CAO with this complaint regarding said project.

1. Summary

In March 2009, the IFC invested funds to develop the Angostura mining project through the purchase of shares in the company. As we will show in detail through this report, we believe that during the financing process, the IFC violated the policies of that entity and permitted violations of the Performance Standards as mentioned below.

First of all, the IFC violated the provisions of its Policy on Social and Environmental Sustainability, as it invested in the project without having a Social and Environmental Impact Assessment, as that policy requires.¹ The IFC categorized the project as B, while it should have been category A given the magnitude of its impacts. In addition, it failed to perform an adequate assessment of the client’s capacity and commitment as required by the IFC Social and Environmental Policy.

Secondly, the IFC was remiss in its duty of due diligence and did not ensure that the company complied with some of its Performance Standards. In particular, the IFC failed to ensure that the client complied with Performance Standards 1,² 4,³ and 6,⁴ since the project violates the Colombian Constitution and environmental and mining laws. In addition, the Impact Assessment is inadequate and incomplete. The project is located within a critical ecosystem, and the IFC failed to ensure that the client truly identifies the affected community and includes in its review process the cumulative impacts that would occur in the mining district where the project is located. The latter is significant, since this mining district has an area of 70,000 hectares and has sparked great interest in other mining companies, which could result in even greater social and environmental impacts.

¹ International Finance Corporation, Policy on Social and Environmental Sustainability. April 30, 2006.

² International Finance Corporation, Performance Standard 1. System of Social and Environmental Management and Assessment. April 30, 2006.

³ International Finance Corporation, Performance Standard 4. Community Health and Safety. April 30, 2006.

⁴ International Finance Corporation, Performance Standard 6. Biodiversity Conservation and Sustainable Management. April 30, 2006.

Once the IFC had invested in the project, the Colombian Government through the Ministry of Environment, Housing and Land Development (MAVDT from the Spanish), currently the Ministry of Sustainable Development, concluded in May 2011 that the project was nonviable and declined to issue the Environmental License.⁵ Following a review of the Environmental Impact Assessment presented by the company to the Ministry, the latter recognized as serious and irreparable the impacts that the project would have in an area of high ecological importance, where there is a legal prohibition to carry out mining activities, as is the case of the *Santurban Paramo*. Despite the pronouncement of the MAVDT and the ongoing open opposition to the project in Colombia, the IFC is still an important shareholder in this project.

Given the violation of policies and Performance Standards by the company in this project, as shall be shown herein, the social and environmental impacts and outcomes will be very serious for a community of nearly two million persons living around 20 municipalities. Therefore, it is essential for the CAO to intervene in order to assess and remediate the situation.

2. The Complainants

The *Comité por la Defensa del Agua y el Paramo de Santurbán*, hereinafter “the Committee,” is a coalition of social, union, environmentalist, and student individuals and organizations in the metropolitan district of Bucaramanga. This Committee was created in response to an initiative to open a gold mine in the *Santurban Paramo* on behalf of the IFC client company. The Committee, made up of 40 organizations from the metropolitan district of Bucaramanga,⁶ was formed in 2009 to head and promote the social movement to protect the *Santurban Paramo* as a key water source for the region, since over two million Colombians depend on it.

Actions Taken by the Complainants:

In February 2010, several member organizations of the Committee⁷ were warned of the potential risks of mining in the *Santurban Paramo*. Since then, various joint activities have been carried out to address the threats that the project would pose to the community of Bucaramanga and the region. Other organizations and stakeholders started to join what today is known as the *Comité por la Defensa del Agua y el Paramo de Santurbán*.⁸ At the same time, meetings were held with the different neighborhoods of the city and areas benefitting from the Metropolitan Aqueduct of

⁵ Ministry of Environment, Housing and Land Development, Resolution 1015 of 2011, May 31, 2011 (Annex 19).

⁶ *Fundaexpresión, CPDM, Asociación Central Ecológica de Santander, CORPHUS, ANDES, Liga de Usuarios, Corporación Cindar, Liga de Usuarios, Corambiente, Corporación CIP, Corporación Espacio Abierto, CUT Santander, Sintraempas, Corporación Atrévase, ASDEUIS, CORDESCO, Asociavita, Sindicato Metropolitano Acueducto, Minga Comunera, Comités de Base Popular, Asociación Extra, CUDERC, COCUZA, Colectivo de Abogados, Luis Carlos Pérez, Juventudes, Iniciativas, SDER, FESAMIN, Compromiso, Sintra Metalúrgicos, Veeduría La Lupa, Fundación Ambiental Ekox, Asociabita, Sintracap, Adan, Comité Magisterial, Sindicato Coca-Cola, O.C.E.-UIS (representative to the Academic Council), Sociedad Santandereana de Ingenieros, Movimiento Cívico Conciencia Ciudadana, Dean of the Faculty of Environmental Chemistry at the Universidad Santo Tomás, and Sociedad de Mejoras Públicas.*

⁷ *Corporación Compromiso, Corambiente, Cordesco, Fundaexpresión, and La Central Ecológica de Santander.*

⁸ The following organizations joined the Committee: *Central Unitaria de Trabajadores (CUT) of Santander, Liga de Usuarios de los Servicios Públicos Domiciliarios, Comité Universitario por el Agua, the Departmental Congress through members Roberto Schmalbach and Carlos Alberto Morales, Sociedad de Ingenieros de Santander (SSI), Sociedad de Mejoras Públicas de Bucaramanga (SMPB), Universidad Santo Tomás, Faculty of Environmental Chemistry and Architecture, and Federación Nacional de Comerciantes (FENALCO) of Santander.*

Bucaramanga, inviting members of the *Juntas de Accion Comunal* (JAC), businesspersons, neighborhood organizations and religious communities.

Several **forums**⁹ and **marches** have been organized. On May 20, 2010, NGOs of the Province of Soto in Santander, many of which are Committee members, requested a public hearing within the process of the environmental license application with the Ministry of Environment, Housing and Land Development.¹⁰ On June 5, 2010, the first march against the mining project was organized by the Aqueduct Union, the *Corporación Compromiso, Fundaexpresión* and others, and 150 persons participated. On October 5, 2010, there was a second march in favor of water for Bucaramanga, with some 5,000 persons attending. On November 18, 2010, there was a third march of protest and resistance against the Angostura mining project. According to *Vanguardia Liberal*, the most important newspaper in the region, this march saw the participation of some 8,000 persons. On February 25, 2011, the Great March of Water for Bucaramanga was held, convened by FENALCO Santander and the Committee, and 50,000 persons attended. Likewise, the Committee convened the civic march of March 16, 2012, where once again the department of Santander made it clear that it was opposed to the project, with some 30,000 participants.

To date, the Committee has also held **workshops**,¹¹ used **legal strategies**,¹² prepared **public instruments**,¹³ prepared the *Pliego Verde*,¹⁴ collected **75,000 signatures backing it**, and **delivered it to the Ministry of Environment**.¹⁵

The Committee has also attended **public hearings** and **legal and constitutional citizen participation meetings**,¹⁶ thus proving the interests of communities, citizens and even the

⁹ On August 26, 2010, the *Sociedad de Ingenieros de Santander* (SSI) held an international forum on mining and paramos, with over 400 persons in attendance. On March 9, 2012, the *II Foro Riqueza Hídrica vs Minería Subterránea* was held (URL: <http://salvemoselaguaylavida.drupalgardens.com/content/ii-foro-riqueza-h%C3%ADdrica-vs-mineria-subterranea>).

¹⁰ Public hearing request by the NGOs of the Province of *Soto Santander* within the process of requesting the Environmental License for the Angostura Project (Annex 1).

¹¹ On June 2, 2011, the Governor of Santander, Horacio Serpa, and Assembly President Roberto Schmalbach invited the municipal authorities, council members and leaders of *Soto Norte*, and the *Comité por la Defensa del Paramo de Santurbán*, the CAS, the CDMB, and other social organizations, to set up a work table to seek alternatives for municipal development in the sub-province of *Soto Norte*.

¹² I) Establishment of third parties intervening in the administrative process of the environmental license application for the Angostura mining project, Dossier 4706, from the Ministry of Environment, Housing and Land Development. II) Writ for the protection of fundamental constitutional rights filed by and awarded to the *Comité por la Defensa del Paramo de Santurbán*, requesting a new public hearing due to the difficulties that arose at the hearing of November 21, 2010. Finally, the ruling so instructed and the Ministry convened the second hearing.

¹³ The Committee presented the Ministry with nine papers reviewing the nonviability and negative impacts of the Angostura mining project at the public hearings of 2010 in the application process for the Environmental License, as contained in Dossier 4706 of the Ministry of Environment, Housing and Land Development.

¹⁴ Gathering signatures for the *Pliego Verde* was an initiative that began in 2010 and lasted until March 2011. The 75,000 signatures backing the *Pliego Verde* were presented at the same time as the papers that could not be read at the public hearing of March 4, 2011 (Annex 2). The *Pliego Verde* stated: "We the undersigned entirely reject open-air mining in the *Santurban Paramo* and demand that the paramo be preserved for water production for this and future generations." See: <http://xa.yimg.com/kq/groups/15750330/129096637/name/pliego+verde+produccion.pdf>.

¹⁵ See: <http://salvemoselaguaylavida.drupalgardens.com/content/el-pueblo-lo-dijo-y-tiene-la-raz%C3%B3n>.

¹⁶ Referendum on the question "Do you agree that the essential ecosystems in the Santander water cycle be declared public utility resources of common interest for their protection?" Unfortunately, the process produced no fruits due to State negligence, since although in the department of North Santander the Tribunal accepted and declared the consultation constitutional (Annex 3), the authorities in charge of the referendum voting failed to fulfill their duties and the elections were never held. On the other hand, the Administrative Court of Santander rejected the referendum via its Decision 2011-0058900. See: *Diario La Opinión. Agoniza la consulta popular por el Paramo de Santurbán*. Cúcuta, October 14, 2011. URL (accessed May 16, 2012): http://www.laopinion.com.co/noticias/index.php?option=com_content&task=view&id=383053&Itemid=31.

industrial sector¹⁷, bringing the issue to public view and elevating it to a national debate. The sectors have unanimously stated their opposition to all mining projects that might affect the paramos.

3. Requested Actions

1. This case is legitimate, as it meets the criteria established by the CAO for this type of complaint.¹⁸ The capacity of the complainants as affected parties and stakeholders in the Angostura Project was acknowledged during the environmental license procedure by the Colombian Ministry of Environment, Housing and Land Development. Other State entities, including the Judicial Branch, have made the same acknowledgement. In addition, there is evidence that this IFC-funded project could have significantly adverse social and environmental outcomes in the future for the complainants. Finally, there is evidence of violation of IFC Policies and Performance Standards, and of the Colombian Constitution and laws.

2. We hereby state that we do not seek negotiation or mediation with the company in this complaint process. Instead, we request that the CAO perform an audit to objectively verify and assess the IFC financing process No. 27961 for non-compliance with its policies and Performance Standards and with Colombian and international legislation, and to decide whether environmental and social consequences can be determined due to this financing, in consistency with the goals and mission of the IFC and its own policies.

3. We hereby request that our identities remain confidential throughout this complaint process. As will be seen below in this document, the undersigned are in a situation of vulnerability and threats that could grow if the identity of the signatories were to be made known.

4. We hereby request a review of the IFC decision to invest in the firm Greystar Resources Ltd., now *Eco Oro Minerals Corporation*, for the Angostura Project.

4. Project description

In 1994, the firm Greystar Resources Ltd. purchased, from private parties,¹⁹ mining rights in the territory of the *Santurban Paramo* located in the Municipalities of Vetas and California in the Santander Department.²⁰ The company began its exploration work in 1995 and has continued it for

¹⁷ The Chamber of Commerce of Cúcuta, via official letter dated March 4, 2010, asked President Juan Manuel Santos “Not to grant environmental licenses to companies seeking to participate in exploiting gold deposits in the *Santurban Paramo*, as this would pose a threat to the natural reserves of Santander and North Santander, and to the aqueducts of these capitals, and could cause serious ecological and health damages to the communities and the regional ecosystem.” On its behalf, the Santander Section of the *Federación Nacional de Comerciantes* (FENALCO), which represents over 500 businesspersons from 28 sectors of the economy, sent the President of the Republic a letter dated January 13, 2011, expressing concern with and opposition to the Angostura mining project.

¹⁸ CAO, Operational Guidelines, April 2007, section 2.2, page 14.

¹⁹ The sellers were José Rangel Lizcano and Crisanto Peña Gálvez, who sold the rights they had held since 1979 on December 16, 1994.

²⁰ Information available in Dossier LAM 4706 of the Ministry of Environment, Housing and Land Development.

over 15 years. The Financing Summary states that Greystar purchased 30,000 hectares²¹ in concessions. However, the *Instituto Colombiano de Geología y Minería* (INGEOMINAS) informed that the Angostura Project covers six (6) mining entitlements, including concession contracts and mining exploitation licenses, for a total of 56,491 hectares.²² Based on the findings of the intensive drilling program completed in 2008, the company established that available resources would average 511 thousand ounces of gold and 2.5 million ounces of silver per year.²³ Base on this estimate, the IFC invested funds in the Angostura mining project in March 2009, by purchasing shares in the company. The IFC described this investment project as a study to determine the feasibility of the mining project. However, it is clear that the IFC is investing in the mining project itself and not just in preparing a study, as it also covers the impacts of the project itself.

Initially, the IFC invested a total of nearly US\$ 11.4 million to complete the mine's Environmental Impact Assessment,²⁴ expected to be prepared in late 2009 and early 2010.²⁵ Later, during the production phase, the IFC could consider other mechanisms to continue financing the company.

On August 28, 2008, eight months prior to the IFC investment, the company began its Environmental Impact Assessment for the Angostura Project for the area granted in the Mining Concession Contract No. 3452.²⁶

On December 22, 2009, the company submitted its Environmental Impact Assessment to the MAVDT.²⁷ The Environmental Impact Assessment it presented was for a much smaller area than the entire project, covering only Concession Contract No. 3452 of February 18, 2007, which according to the *Instituto Colombiano de Geología y Minería* covers an area of 5,244 hectares.²⁸ Therefore, a large part of the supposed area of Angostura was not included in the EIA, which demonstrates that the fact that the IFC purchased its client's shares before it had prepared and presented the EIA **was counterproductive.**

The MAVDT returned the study with Decision No. 1241 of April 20, 2010, indicating that the company should prepare a new assessment considering that "the ecosystem called 'Santurban Paramo' is an area that has been excluded from mining, since in accordance with domestic law,

²¹ IFC, Greystar Summary of Proposed Investment. Available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/0/DF15489BFDE959D6852576BA000E2D0C> (accessed on March 7, 2012).

²² Mining entitlements: 1) No. 3452 for the technical exploration and exploitation of a deposit of gold, silver, zinc chromium, copper, tin, lead, manganese, precious metals, associated metals, and other licensable materials in an area of 5,244.8584 hectares. 2) No. 22346 for the construction, assembly and technical exploitation of precious metals and other licensable materials, for an area of 1,184 hectares and 1,165 m². 3) No. EJ1-163 for the exploration and exploitation of an associated gold deposit and other licensable materials in the municipalities of Cucutilla, Pamplona and Surata, with an area in of 8,424 hectares and 6,596 m². 4) No. 0127-68 for the technical exploitation of a gold and silver deposit with an area of 3,4590 hectares. No. 0101-68 for the technical exploitation of a gold and silver deposit with an area of 5,6575; and No. 6979 for the exploitation and appropriation of gold mineral in California and Surata for an extension of 3999815 hectares (Annex 4). INGEOMINAS, Letter addressed to Mrs. Diana Marcela Zapata, Director of Environmental Licenses, Permits and Processes of the Ministry of Environment, Housing and Land Development, dated August 28, 2010 and filed as Number 4120-E1-80963.

²³ IFC, Greystar Summary of Proposed Investment. Available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/0/DF15489BFDE959D6852576BA000E2D0C> (last accessed on March 7, 2012).

²⁴ IFC, Summary of the Investment Proposal: Greystar Angostura Project, ID 27961.

²⁵ Ibid.

²⁶ Greystar Resources, "Chapter 1: Environmental Impact Assessment – Angostura Project," December 2009.

²⁷ Ibid.

²⁸ Ingeominas, letter addressed to Mrs. Diana Marcela Zapata, Director of Licenses, Permits and Procedures of the MAVDT, and dated June 18, 2010.

mining in paramos is forbidden.”²⁹ In consequence, since April 2010 the Colombian authorities have made it clear that the Angostura mine whose development is being sought in the *Santurban Paramo* is nonviable.

In the same way, the technical concept paper of the *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga* (CDMB),³⁰ issued that same month, concluded that the EIA was incomplete and therefore could not be authorized. The criteria used to reach this conclusion included the lack of detailed information on: matters of transcendence for the project such as the hydrogeology of the area to be affected; the design and potential impacts of the access route to the project; the neutralization of cyanide-polluted waters; and the lack of a design for the mine dump.³¹

In December 2010, the State Attorney General’s Office issued a pronouncement on the location of the Angostura Project, saying that: “in view of the applicable environmental and mining legislation, this is a nonviable project.” This is why the Attorney General asked the Minister of the Environment, Housing and Territorial Development to “study the possibility of not granting the requested environmental license.”³²

In March 2011, the State Comptroller also emphasized that “Greystar Resources Ltd., should comply with Decision 1241 of April 20, 2010, issued by the Ministry of Environment, Housing and Land Development, by which it is instructed to consider the *Santurban Paramo* as an area that is excluded from mining activities,” and that “it should consider total exclusion of mining in the paramos, due to their unique ecosystem features, extreme fragility, ecological importance, and environmental services.”³³ In its letter to INGEOMINAS, in addition to mentioning Decision 1241 of 2010, the Comptroller made reference to the Constitution, environmental and mining legislation, and jurisprudence of Colombia.

Finally, on May 31, 2011, the Ministry of Environment, Housing and Land Development issued a statement on the environmental viability of the proposed project. Based on the features of the ecosystem where the project was supposed to be developed, the Ministry denied the environmental license requested by the company. The Ministry textually stated that:

“...regarding the areas pertaining to the bio-climatic level and specifically with regard to some of the sectors that would be intervened for project implementation (PAD Angostura, PAD Paez, Mongora dump and the areas programmed for dams, particularly the sector of the El Pajarito lake, and the complex of glacier lakes in the area), catalogued by the Company as areas of medium fragility and in some very localized sectors as low fragility, it gave them this score from the viewpoint of environmental management as ‘areas of intervention with restrictions’ and as ‘areas of intervention’, which as the CDMB has

²⁹ Ibid.

³⁰ Ministry of Environment, Housing and Land Development, Resolution 1015 of 2011 (Annex 19). The *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga* (CDMB) is the local environmental authority in charge of implementing the policies, plans, programs, and projects on environment and renewable natural resources, in accordance with the guidance issued by the Ministry of Environment, Housing and Land Development. See: www.cdm.gov.co.

³¹ *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga*, Environmental Impact Assessment Concept Paper or the Angostura Project Owned by Greystar Resources Ltd. SIC 17343,” April 13, 2010 (Annex 5), available in Resolution 1015 of 2011 (Annex 19).

³² State Attorney General’s Office.

³³ Ibid.

*stated on this matter, this Ministry believes is inconsistent with the information reported in the baseline and observed during the assessment visit, regarding the high sensitivity and significance of these geographic areas from an ecological standpoint, which makes them classifiable as areas of exclusion.*³⁴

The Ministry also said that:

*“The inevitable, irreversible nature of these impacts, along with the high degree of fragility and low level of resilience of the paramo areas, and the extreme fragility of high Andean forests, mean that from a management viewpoint these remaining impacts belong to a category of low to medium manageability, and not as the company categorized them by placing them at a level of manageable.”*³⁵

“This Ministry believes that, as can be seen from these considerations, technically the Angostura Project is environmentally nonviable in the way its development and environmental management have been structured, since it is located in a highly sensitive, environmentally fragile ecosystems, in an eco-region that the State has prioritized for conservation, preservation and restoration, as is the case of the Santurban Paramo ecosystem and the Andean ecosystem, this prohibits the development of anthropic activities such as mining exploitation in such areas, because should such activities be carried out, they would generate negative, inevitable, irreversible impacts with a very low possibility of environmental management.” (boldface added)

The Ministry of Environment, Housing and Land Development stated that it evaluated the environmental license request carefully, having ascertained beforehand the possible effect that Angostura Project development could have on the paramo ecosystem and water supply and that, as a consequence of that assessment, it determined that: *“Of the area of the project’s direct influence (6155 ha), 85.5 % (5261.8 ha) has soils that are characteristic of the paramo and sub-paramo thermal level, and the remaining 14.5 % (893.2 ha) of the Andean thermal level (cold climate).”*³⁶

The MAVDT was sufficiently clear in establishing that the non-viability of the project is based on the features of the site where it was supposed to be implemented, that is, in areas of paramo ecosystems.

However, since denial of the license does not annul any mining entitlements, and since therefore the company still **holds the same**, it can reapply for a new environmental license. In fact, this is what it will do, as in March 2011 the company, now called *Eco Oro Minerals*,³⁷ announced its commencement of feasibility studies for underground mining in the same area where the Ministry has already denied it a license.³⁸

4.1. Social and Environmental Impacts

³⁴ Ibid, p. 86.

³⁵ Ibid, p. 96.

³⁶ Ibid, p. 79.

³⁷ Greystar Resources Ltd. Press Release of August 16, 2011. Available at: <http://www.eco-oro.com/News-and-Media/News-Details/2011/Greystar-Changes-Name-to-Eco-Oro-Minerals-Corp/default.aspx> (last accessed on May 14, 2012).

³⁸ Greystar Resources Ltd. Press Release of August 11, 2011. Available at: <http://www.eco-oro.com/News-and-Media/News-Details/2011/Greystar-Awards-Contracts-and-Sets-Time-Line-for-Angostura-Feasibility-Study/default.aspx> (last accessed on May 14, 2012).

The primary impacts that could be caused by open air or underground mining projects in areas with *Santurban Paramo* ecosystems include:

- Affecting the supply and quality of water in the region, on which some two million persons depend. The *Santurban Paramo* is of vital importance to the Santander region and all inhabitants downstream of the paramo. Currently, water generated at the paramo supplies the aqueducts of urban centers in over 20 municipalities in the North Santander and Santander departments, as well as the irrigation districts, a thermoelectric plant, and the farming sector.

The municipalities that depend on water from the *Santurban Paramo* include Bucaramanga and its metropolitan district, with about one million inhabitants. The Metropolitan Aqueduct of Bucaramanga captures a large percentage of its waters from the sub-basin of the Surata River (up to 78% in critically dry periods) with an average flow rate of 2,301 liters per second. That is why historically they have carefully monitored the behavior of the water bodies that flow from the *Santurban Paramo*, such as the Vetas, Surata and Charta rivers, important streams such as El Salado, Pajaritos, Mongora, Paez, Angostura, La Baja, Monsalve, and over 35 lakes that form part of the *Santurban Paramo*'s lentic regulatory complex, which ultimately drain into the Surata River that carries the water to the Bosconia Plant.³⁹

- In its Environmental Concept Paper on the project, dated April 2010, the CDMB acknowledges the probability of “indirect socio-environmental impacts on the population.” This paper observes with concern that the company’s assessment “does not reflect the people’s feelings and opinions regarding its implications and ways to prevent, mitigate, restore, correct, or compensate these damages.”⁴⁰ It also stated that “the process of open air exploitation and the industrial treatment system cause environmental losses in water, landscape, biodiversity, and decreased quality and quantity of environmental supply. Many will disappear forever, thus affecting the downstream inhabitants and depriving future generations of their enjoyment.”⁴¹ Although there are unsustainable activities in the paramo that should be controlled, the magnitude of the Angostura Project would cause significantly more serious impacts.

- The EIA states that large-scale mining would displace the current small-scale mining within the direct area of influence, which employs over 80% of the workforce in this area according to the company’s own calculations. Other impacts in that report include raises in the local cost of living, complete transformation of the farming culture due to the arrival of new immigrants to the area, the development of inequality, competition for water and disincentives for local farm production. Likewise, there would be a drop in farming as a land use, competition from the mining business, and greater vulnerability among the poorest of the poor, particularly due to negative impacts on food security.⁴²

³⁹ Metropolitan Aqueduct of Bucaramanga, Technical Report to the Chamber of Representatives for debate regarding Proposal No. 034 of September 22, 2010 – Questionnaire on issues caused by the intervention of small and large-scale mining in the paramos and water production areas, and implications for income from royalties, versus potential damages in those areas. August 10, 2011 (Annex 6).

⁴⁰ CDMB, “Environmental Concept Paper on the Environmental Impact Assessment for the Angostura Project by Greystar Resources Ltd. SIC 17343,” April 13, 2010 (Annex 5). See also Resolution 1015 of 2011 (Annex 19).

⁴¹ CDMB, “Environmental Concept Paper on the Environmental Impact Assessment for the Angostura Project by Greystar Resources Ltd. SIC 17343,” April 13, 2010. See Resolution 1015 of 2011 (Annex 19).

⁴² Greystar, “Chapter 5: Environmental Impact Assessment – Angostura Project,” December 2009.

- The risk of benefitting from the internal displacement of the local population that occurred due to the armed conflict, without any signs of government or company efforts to return farm production and land to affected communities, or to offer economic alternatives or compensations for the land. The project could worsen this situation, making it irreversible.
- Risk of inadvertently compensating persons or groups who were the authors of human rights violations, through security agreements.⁴³
- Risks to the personal safety and right to freedom expression of those opposing the project. Some of the organizations and individuals involved in the demonstrations of the past two years have been the targets of smear campaigns (calumnies) and stigmatization through **local and national press**, pointed out as “false apostles of environmentalism,”⁴⁴ and the more serious false accusation of being “intermediaries of the guerrilla.” On September 22, 2010, the journal “*El Frente*” published an editorial comparing “certain environmentalist groups that used to form part of the armed groups opposing the government.”⁴⁵ Another editorial, published in the same newspaper on November 13, 2010, accused environmentalist groups of being subsidized by “foreign governments to obstruct this type of project.”⁴⁶ On August 16, 2011, General Pedro León Soto, Commander of the Second Division, said that the demonstrations against the company *Eco Oro* “are attractive to the guerrilla,” mentioned the *Ejército de Liberación Nacional*, and claimed that “this will be a favorable environment for the area to be retaken by bandits.”⁴⁷
- Decreased capacity for climate change mitigation and adaptation. According to the *Instituto de Hidrología, Meteorología y Estudios Ambientales* (IDEAM), a study of paramo vulnerability to global climate change found that potential impacts expected over the 2011 – 2040 period are very high, as much of the paramos would be drier than they are now. The paramo area of Northeastern Santander would have drier conditions even than High Andean ecosystems, which is the area located from 2,000 to 2.700 meters above sea level (masl).⁴⁸ The Angostura mining project would worsen this situation even further, due to its destruction of the area.
- Loss of biodiversity. In just three localities of the Vetas Municipality, part of the *Santurban Paramo* complex, there is a total of 42 bird species belonging to seven families, the most abundant of which is the *Trochillidae* hummingbird. Five of these 42 species have a high conservation priority and are especially vulnerable to the loss of habitat.⁴⁹ Furthermore, according to a Concept Paper by the Ecosystems Department of the Ministry of Environment, Housing and Territorial Development, requested as part of the environmental license process for the Angostura Project, the drastic changes, whether natural or anthropic (burning, grazing, farming, or mining activities) have

⁴³ MiningWatch Canada and CENSAT – *Agua Viva*, “Land and Conflict: Extraction of resources, human rights and corporate social responsibility: Canadian firms in Colombia,” September 2009. Available at: http://www.interpares.ca/en/publications/pdf/Land_and_Conflict.pdf

⁴⁴ *El Frente* newspaper, editorial, “Suspicious debates against mining companies,” September 22, 2010 (Annex 7).

⁴⁵ Ibid.

⁴⁶ *El Frente* newspaper, editorial, “Greystar Resources, a company with a Santander heart,” November 13, 2010 (Annex 8).

⁴⁷ *Noticiero Caracol Radio*, version for the Santander department, recording, August 16, 2011 (Annex 9).

⁴⁸ IDEAM – MAVDT. Study of the vulnerability and adverse impacts of climate change on the high Andean paramos and wetlands of Colombia. Technical report. Mentioned in: Ministry of Environment, Housing and Land Development, Department of Ecosystems, Memorandum 2100-3-131081 of March 17, 2011. Important Considerations on the Paramos (Annex 10).

⁴⁹ The Migratory Yellow-Billed Cuckoo (*Coccyzus americanus*), the Yellow-Billed Teal or Paramo Duck (*Anas flavirostris*), the Torrent Duck (*Merganetta armata*), the Rusty-Faced Parrot (*Hapalopsittaca amazonina*), and the Flame-Winged Parakeet (*Pyrrhura calliptera*).

negative impacts on the biotic component of the soil and, therefore, on their evolutionary process and state of conservation.⁵⁰ Therefore, the substantial change that would derive from the project would negatively affect the conservation status of the paramo, increasing current impacts.

- Impacts on agriculture and forest resources: the project would also cover areas of Vetas, which are areas of agricultural and agroforestry development. Impacts anticipated by the company from this situation include a drying trend in the municipalities, reduction in forest buffer areas due to migratory pressures, erosion of soils and increased vulnerability to flooding and landslides, desertification and degradation of Andean ecosystems, and impacts on “basins, micro-basins, streams and lakes that are also catalogued as environmental protection areas in the land-use planning of the California municipality.”⁵¹
- Violation of minimal required standards for treating acid water, drainage from tunnels and leachates from dumps, waste water, erosion control, and stabilizing embankments and mitigation measures for soil saturation and landslides.⁵²

4.2. Considerations on the *Santurban Paramo*, an area to be affected by the Angostura Project

The paramo ecosystems are “geographic islands,” not continual ecosystems, and therefore extremely fragile, which is recognized in the international environmental standards. They provide Colombian society with key ecosystem services such as safe water, since 70% of the Colombian population is supplied from sources that spring from paramos. They are biodiversity habitats and carbon sinks, and therefore are essential to climate change mitigation.

Paramos provide substantial fresh water that is consumed by millions of inhabitants in the capital cities and Andean towns, and are major sources of irrigation for farm production. Andean cities fed by basins from wetlands and high Andean wetland systems include Merida and San Cristobal in Venezuela; Bucaramanga, Bogota, Cali, Tunja, and Medellin in Colombia; Quito and Cuenca in Ecuador; and Cajamarca and Piura in Peru. Colombia has approximately 1,600,000 ha of paramo located in the three ranges and the Sierra Nevada of Santa Marta, from whence the country’s main rivers spring.

In particular, the *Santurban Paramo* complex, part of the *Reserva Forestal Protectora Nacional Río Algodonal*, covers nearly 82,664 hectares between 3,000 and 4,290 masl,⁵³ and includes 20 municipalities located between the departments of Santander and North Santander.⁵⁴ Thirty-five percent of the total Santurban complex has intervened areas.⁵⁵ This relatively high level of natural

⁵⁰ Ministry of Environment, Housing and Land Development, Ecosystems Department, Memo 2100-3-131081 of March 17, 2011. Important Considerations on the Paramos (Annex 10).

⁵¹ CDMB, “Environmental concept paper on the Environmental Impact Assessment for the Angostura Project by Greystar Resources Ltd. SIC 17343,” April 13, 2010 (Annex 5).

⁵² CDMB Resolution 1248 of October 22, 2010, confirmed in Resolution 271 of January 25, 2011, by which Greystar is penalized for violating these standards.

⁵³ Morales M., Otero J., Van der Hammen T., Torres A., Cadena C., Pedraza, Rodriguez N., Franco C., Betancourt J.C., Olaya E., Posada E., and Cardenas L., 2007. Atlas of Colombian Paramos. *Instituto de Investigaciones Alexander Von Humboldt*, Bogota, 208p, Sector Cordillera Oriental. Paramos District of the Santander Complex, Santurban jurisdiction. Available at: http://www.paramo.org/files/recursos/02_juris_santurban.pdf

⁵⁴ Abrego, Arboledas, Cachira, Cacota, Chitaga, Cucutilla, La Esperanza, Labateca, Mutiscua, Pamplona, Pamplonita, Salzar, Silos, Toledo, Villa Caro, California, Charta, Surata, Tona, and Vetas.

⁵⁵ Morales, *et al.*, *op. cit.*, p. 23.

ecosystem alteration is related to the anthropic intervention found in this area, especially due to mining development. We should point out that despite the existence of mining, so far it has only been small-scale mining, and that Angostura would be the first large-scale mining project.

The significance of the geological formations in the Santurban complex area is due to its dependence on the existence, distribution and dynamics of water, both on the surface and underground.⁵⁶ In fact, these complexes are part of watersheds that give rise to international water bodies.⁵⁷ In accordance to the Colombian *Instituto de Hidrología, Meteorología y Estudios Ambientales* (IDEAM) the Santurban complex is an important part of the fluvial star formed by the Caribbean, Magdalena–Cauca and Orinoco hydrographic areas, and is divided into the areas of the Catatumbo, Medio Magdalena, and Arauca rivers, and into seven hydrographic sub-zones, especially those of the Zulia, Lebrija and Chitaga rivers.⁵⁸

The *Santurban Paramo* complex is of vital importance to Colombia, because it is part of the Surata and Vetas river basins that supply the aqueducts of the urban centers in the municipalities of Cucuta, La Zulia, Abrego, Ocaña, Arboledas, Cachira, Cacota, Chitaga, Cucutilla, La Esperanza, Labateca, Mutiscua, Pamplona, Pamplonita, Salazar, Silos, and Villa Caro in North Santander, and Bucaramanga, California, Charta, Surata, Tona, and Vetas in Santander, as well as the irrigation districts, a thermoelectric plant, and the farming sector, benefitting more than two million people.

The paramos have immense value for biodiversity conservation due to the unique species inhabiting them, many of which are endemic. In addition, the concentration of organic matter in the soils of paramo ecosystems enables them to store carbon in greater proportions than would be possible of plant mass in those same paramo areas and even more than tropical jungles.⁵⁹ Therefore, paramo ecosystems are essential as carbon sinks,⁶⁰ making their conservation essential to addressing the effects of climate change. In consequence, the Colombian State created the “*Programa Piloto Nacional Integrado de Adaptación*” for high mountain ecosystems, islands of the Colombian Caribbean and human health (INAP),⁶¹ as the first pilot project on climate change adaptation in Colombia and the world.

In general, paramos are ecosystems that are adapted to conditions of water stress, low temperatures, low availability of nutrients, mechanical stress, and energy stress, but are not adapted to high intensity disturbances such as those caused by anthropic activities like mining.⁶²

⁵⁶ Ibid, p. 42.

⁵⁷ According to the Atlas of Colombian Paramos by the *Instituto de Investigaciones Alexander Von Humboldt*, the Cordillera Oriental Sector, Paramos District of the Santander *El Almorzadero* Complex is a particular situation that is seen in the paramos of the Sierra Nevada of the Cocuy, Almorzadero, Sumapaz, and Chingaza (the latter included on the Ramsar list).

⁵⁸ Morales M., Otero J., Van der Hammen T., Torres A., Cadena C., Pedraza., Rodríguez N., Franco C., Betancourt J.C., Olaya E., Posada E., and Cardenas L., 2007. Atlas of Colombian Paramos. *Instituto de Investigaciones Alexander Von Humboldt*. Bogota, 208p. Cordillera Oriental Sector. Paramos District of the Santander Complex, Santurban jurisdiction. p. 42. Available at: http://www.paramo.org/files/recursos/02_juris_santurban.pdf

⁵⁹ Community of Andean Nations (CAN), Paramo Information Mechanism. Taken from: Robert Hofstede, The paramos in the World; their Diversity and Inhabitants, in: Hofstede, Robert, Patricio Mena and Pool Zegarra (Eds.), 2003. Available at: <http://www.paramo.org/node/1763> (accessed on July 26, 2010).

⁶⁰ According to Art. 1, Section 8 of the United Nations Framework Convention on Climate Change, “A sink is any process, activity or mechanism that absorbs greenhouse gases, an aerosol or a precursor of a greenhouse gas in the atmosphere.”

⁶¹ To know more about the project and why one of its central issues is high montane ecosystems, see: <http://www.cambioclimatico.gov.co/adaptacion-inap.html>

⁶² Vargas, Orlando. *¿Por qué los páramos son ecosistemas particularmente vulnerables frente a impactos intensivos como la minería? Una perspectiva científica – ecológica*. Memoirs of the Regional Workshop on Mining and Paramos from a Sustainable Development Perspective, Seat of the Andean Community Secretary General, Lima, Peru, March 10-11, 2009.

Under natural conditions, all ecosystems are adapted to a regime of disturbances (natural fires, wind erosion and icy rain, animal disturbances, etc.), but in the case of paramos, disturbances are infrequent, because when they occur they significantly affect the plant cover.⁶³ The panorama of impacts on paramo ecosystems due to stress regimes⁶⁴ and disturbance regimes⁶⁵ is serious.

The environmental, technical and water conditions of the paramo ecosystem mean that an open air or underground mining project in these ecosystems poses a real risk of causing serious, irreversible environmental and social impacts. So far, these elements have not been taken into account in the IFC's assessment for financing.

“The hydrological parameters that are affected the most by mining are soil functions associated with water regulation. Even minor disturbances (e.g., compacting with machinery) affect their structure, because these soils are very fragile and have no mechanical resistance. The most serious thing is that once the edaphic structure has collapsed, the loss of functions (filtration capacity and water-holding capacity) is irreversible. This has to do with elements such as organic material and organo-metallic complexes, structures that are generally very porous but that when dried out lose their hydraulic capacities, and even become hydrophobic. In consequence, the key to assessing impacts on the hydrological services of paramos is in the structure and function of their soils. That is why plant cover loss in the paramos is so delicate, because it leaves soils uncovered and exposed to drying out. In practice, what this means is that restoring the hydrological functions of soils cannot be ensured simply by replacing some of the plant cover. Likewise, removing soils results in irreversible impacts because in addition to drying, their structure is destroyed (due to the aforementioned condition of low mechanical resistance). Other aspects that should be assessed when studying paramo hydrology in mining contexts are:

(a) impacts on the hydrology of slopes caused by works such as building roads, with effects such as accelerated drainage; (b) the need to characterize aquifers and underground flows exhaustively; (c) afforestation with pine and its effects on soil filtration capacity and water-holding capacity; and (d) the effects of climate change on the hydrological functions.”⁶⁶

None of this is unfamiliar to environmental authorities. The CDMB Environmental Concept Paper dated April 2010 within the project's environmental license process before the Ministry of

⁶³ Ibid.

⁶⁴ According to the *Instituto de Investigación de Recursos Biológicos Alexander von Humboldt*, “Stress is any environmental factor that harms organisms and thereby limits their growth... In general, the major sources of stress in many ecosystems are: heat, water, herbivores, and pollution... if the limits of tolerance to stress are exceeded and their adaptation capacity is surpassed, permanent damage or death ensues. The main stress factors for paramos are: low and high temperatures (heat stress), freezing water (water stress), soil mobility (mechanical stress), low photosynthetic radiation (energy stress), and presence of oligotrophic soils (nutritional stress).” In the magazine “*Colombia has paramos*,” No. 1/2011, p. 58.

⁶⁵ According to the *Instituto de Investigación de Recursos Biológicos Alexander von Humboldt*, disturbances are decisive in ecological dynamics, being one of the factors that trigger the process of succession. Disturbances are any relatively discrete event in time that breaks the structure of populations, communities or ecosystems and changes resource availability and physical environments. In the magazine “*Colombia has paramos*” No 1/ 2011, p. 58.

⁶⁶ de Bert Viebre, *¿Por qué los paramos son ecosistemas particularmente vulnerables frente a impactos intensivos como la minería? Una perspectiva científica desde la hidrología*. CONDESAN – Andean Paramo Project. In: Memoirs of the Regional Workshop on Mining and Paramos from a Sustainable Development Perspective. Seat of the Andean Community Secretary General, Lima, Peru, March 10 – 11, 2009. Available at: http://www.infoandina.org/sites/default/files/recursos/memorias_taller_mineria_paramos_lima_marzo_2009_.pdf

Environment, Housing and Land Development, stresses that the area of the Angostura Project is considered an “area of ecosystem importance” according to the 2007 Land Use and Environmental Management Plan for the Surata River Sub-Basin. These areas are of high ecological value and need to be kept free from anthropic activities, and should be used for conservation and protection of natural resources with a special emphasis on water resources.”⁶⁷ The company itself also recognized in its EIA for the Angostura Project that “according to the environmental zoning for the Land-Use Planning of [the municipality of] California [where the project is located], the paramo and high Andean forest areas located North of the municipality occupy an extension of 1,192 ha and are areas of special environmental significance due to their fragility and ecological function that favors the generation of water flows. The Angostura Project will cover nearly 1,000 ha of the paramo area in the municipality of California. This means that it will occupy soils that are currently used for protection, are of great environmental significance and are very fragile.”

5. Violations of Policies and Procedures

5.1. Violations of the IFC Policy on Social and Environmental Sustainability

5.1.1 The IFC Invested prior to the Project’s Environmental and Social Impact Study

In accordance with the paragraph 15 of the Policy on Social and Environmental Sustainability, the IFC’s inspection that should be conducted **before** deciding on a project includes three key components: i) all social and environmental risks and impacts of the project assessed by the client; ii) the client’s commitment and capacity to handle expected impacts, including the client’s social and environmental management system; and iii) the role of third parties in ensuring that the project complies with all Performance Standards.

Despite the above, the IFC invested eight months before the company completed the Environmental Impact Assessment for the Angostura Project, and two years before knowing whether or not the MAVDT would approve the EIA submitted by the company. Therefore, the IFC invested in a project that, as demonstrated in the review by the Colombian Ministry of Environment, and as several Colombian authorities had noted previously, would generate immense adverse environmental and social impacts, thereby violating the provisions of the Policy on Social and Environmental Sustainability.

5.1.2 The IFC Categorized the Project Incorrectly

In accordance with the IFC Policy on Social and Environmental Sustainability, as part of its social and environmental inspection, the IFC should use a system of social and environmental categorization that: i) reflects the magnitude of the impacts, understood as an outcome of the client’s Social and Environmental Assessment; and ii) specifies the IFC’s institutional requirements to publicly disclose specific project information prior to submitting projects for approval by its Board of Directors. In this way, Category A refers to projects with environmental and social impacts of greater magnitude, and Category B refers to projects with lower-magnitude, limited, manageable impacts.

⁶⁷ CDMB, “Environmental Concept Paper on the Environmental Impact Assessment for the Angostura Project by Greystar Resources Ltd. SIC 17343,” April 13, 2010 (Annex 5).

The IFC investment in the Angostura mining project violated this Policy by categorizing the project as “B” when it should have been categorized as “A.” In effect, the impacts associated with the Angostura mining project are not limited adverse impacts, a fact that the IFC would have known had it categorized the project after the EIA had been concluded and reviewed. Contrary to what the company says, although the project is being proposed for a very specific site, the impacts it would cause are neither reversible nor easily manageable using mitigation measures. This is even what the Ministry of Environment stated in its Resolution by which it denied the environmental license requested by the company, as discussed in Section 4.

Neither are the displacement of the area’s small-scale mining, and other serious impacts that the company would have on the local farming society, limited adverse impacts. In its Environmental Concept Paper of April 2010 on the project, the CDMB even noted with concern that the company study “does not reflect the people’s feelings and opinions regarding its implications and the ways to prevent, mitigate, restore, correct, or compensate these damages,” as mentioned above.⁶⁸

5.1.3 The IFC Failed to Perform an Adequate Assessment of its Client’s Capacity and Commitment

The IFC failed to perform an adequate social and environmental inspection that would also enable it to verify the eligibility of the applicant company. In addition to being an IFC requirement, it is also essential in this case because the company has been fined for violating the Colombian law and lacks experience with this type of mining.

In effect, the company’s violation of the Colombian environmental law was reiterated and therefore penalized by the CDMB. Through Resolution 488 of 2006, the CDMB filed a penalization procedure against the firm Greystar Resources Ltd. as the executor of the Angostura mining project in the California municipality, due to a violation of CDMB Resolution No. 568 of June 4, 1997, by which it established the Environmental Management Plan for mining exploration by the firm Greystar Resources Ltd.

Subsequently, via Resolution No. 488 of May 23, 2006, a preventative measure was imposed that consisted of suspending all mining exploration activities relating to the Angostura Project in the municipality of California until all things that were demanded by the environmental authority had been fulfilled.

Finally, given the recurring violations and omissions by the company, the CDMB once again penalized the firm Greystar Resources Ltd. through Sanction Resolution No. 1248 of October 2010, due to violation of national environmental law.⁶⁹

On the other hand, being a junior firm, it is not known whether this same company would be the one to develop the project in the future and the one that would have to comply with the IFC

⁶⁸ CDMB, “Environmental Concept Paper on the Environmental Impact Assessment for the Angostura Project by Greystar Resources Ltd. SIC 17343,” April 13, 2010 (Annex 5).

⁶⁹ According to the penalization, the company changed the final disposal system for drilling slurry from surface platforms; had not completed the septic systems for most sites that needed such systems; and the SNETE was not working, apparently due to a lack of personnel to operate it, and therefore direct dumping was being used without any treatment. This is a system that treats effluents from the tunnels (mine drainage and drilling returns inside the tunnel). In the field there are no environmental documents or logs for environmental intervention and follow-up of the runoff, and these activities have not been implemented although the tunnel has progressed more or less 50% of what was scheduled (Annex 11).

directives. This is a matter to be attended to, since “*Junior firms frequently have poor performance in terms of environmental and social standards, and have less motivation than large companies to relate suitably with local communities, adequately plan the site’s environmental management and implement sustainable development practices,*” according to Michael Dougherty who wrote on the growing participation of junior firms in mining exploration in 2011.⁷⁰

For example, in the Marlin mine OF Guatemala there were a series of sales among junior mining firms until the medium-sized company Glamis Gold developed the project and then sold it to the company Goldcorp. In fact, prior to production there was already a conflict around this mine, and there was even one death due to police repression.⁷¹ Furthermore, the EIA that said company prepared lacked proper grounding and the prior, free, informed consent of the affected indigenous communities, and this deepened the conflict which has continued even after the mine was sold.⁷² Although the IFC had invested in that mine, the company Goldcorp returned the loan and therefore did not have to follow the Bank’s guidelines.

5.2 Violations of Performance Standards

5.2.1 Performance Standard No. 1, Social and Environmental Assessment and Management System

a) Project failure to comply with Colombian laws and regulations

In accordance with paragraph 3 of the introduction to the Performance Standards [TN: now paragraph 5], “In addition to meeting the requirements under the Performance Standards, clients must comply with applicable national law, including those laws implementing host country obligations under international law.” Furthermore, according to Performance Standard 1, Section 4, the client’s mandatory Social and Environmental Assessment should take into account all pertinent social and environmental risks and impacts, including the matters identified in IFC Performance Standards 2 through 8, and in the applicable laws and regulations of the jurisdictions where the project operates regarding social and environmental issues, including laws that States must follow by virtue of international law.

Even before the project was proposed, Colombian law was quite clear in forbidding all types of mining activities in paramo ecosystems. In effect, the Colombian Constitution of 1991 establishes the obligation to conserve paramo ecosystems (articles 8, 58, 79, 80, 333, and 334). In addition, Law 99 of 1993, which regulates the national environmental protection system, establishes the specific obligation to protect the paramos as a national environmental principle. The Colombian mining code, law 685 of 2011, in consonance with these obligations, expressly prohibits mining in paramo ecosystems. Furthermore, the Colombian Constitutional Court recognized paramos as mining exclusion areas in the mining code due to their features and of their constitutional and international protection.⁷³

⁷⁰ Michael L. Dougherty, “The Global Gold Mining Industry, Junior Firms, and Civil Society Resistance in Guatemala,” *Bulletin of Latin American Research*, 2011.

⁷¹ Halifax Initiative, “The World Bank and Extractive Industries – The Divisive ‘Demonstration Impact’ of the Marlin Mine,” June 2005.

⁷² *Ibid.*

⁷³ Colombian Constitutional Court, rulings C-339 of 2002 (Annex 12) and C-443 of 2009 (Annex 13).

Since the Environmental Impact Assessment was submitted and the initial environmental license was requested, both the Colombian Ministry of Environment, Housing and Land Development and the company were aware of the legal prohibition against developing any type of mining project in areas with paramo ecosystems. As mentioned above, since the beginning of the environmental license application process, the Ministry of Environment, Housing and Land Development informed the firm Greystar Resources Ltd. of the prohibition against the proposed project, being in constitutionally, legally and internationally protected paramo areas and therefore excluded from mining. This point was underlined in the Ministry's Technical Concept Paper No. 594 of April 2010, which led to the devolution of the Environmental Impact Assessment that same month.

Now, although the company is now considering changing the project type to underground mining, this activity is also nonviable, since the prohibition is against all types of mining.⁷⁴

Therefore, given that from the beginning it was clear that the project would be implemented in paramo areas and that these areas are set aside for protection by local, national and international norms, the IFC should have verified this situation and not authorized the investment.

b) The Impact Assessment is inadequate

The project impact assessment of the violates Performance Standard 1 – Social and Environmental Assessment and Management System, for two reasons: first because the assessment was conducted in a fragmented way; and second because neither the company nor the IFC considered the cumulative impacts of this project plus any other projects that it could encourage in the area, towards the development of a mining district.

In accordance with section 5 of Performance Standard 1 – Social and Environmental Assessment and Management System, risks and impacts should be reviewed in the context of the project area of influence. This includes, where pertinent, the primary project site(s) and any related facilities that the client (including its contractors) might develop and control. The above includes areas such as corridors for power transmission, tubing, construction fields, related facilities not financed as part of the project, the area that might be affected by cumulative impacts from planned development that is additional to the project, any existing conditions or projects at the time of the Social and Environmental Assessment, and areas that might be affected by development impacts although they were not planned, but that can be foreseen because of the project and may occur subsequently or in a different location.

According to the summary of the IFC Social and Environmental Review, the Angostura Project financed by the IFC failed to comply with what is required by section 5 of Performance Standard 1 – Social and Environmental Assessment and Management System, because the following elements were lacking assessment:

b.1) All of the primary project site(s) controlled by the firm Greystar Resources Ltd.

⁷⁴ Let us bear in mind what was mentioned above, that Resolution No. 1015, by which the environmental license for the Angostura Project was denied, determined that: "It was precisely based on the findings of the review of the Environmental Impact Assessment and of the visit to the project's area of influence and the protected ecosystem, that this Ministry determined the environmental nonviability of implementing the Angostura gold and silver mining project, located in the jurisdiction of the California and Vetas municipalities in the Santander department and, consequently, denied the environmental license requested by the firm Greystar Resources Ltd." (Annex 19).

In the assessment for financing, it is necessary to examine all mining entitlements and concessions owned by the firm Greystar Resources Ltd. that are now or are expected to become part of the mining project. This applies not only in the municipalities of Vetás and California (the project's area of direct influence where there are nine titles⁷⁵) but throughout the area, in order to discard the possibility that these titles affect present paramo ecosystems in the *Santurban Paramo* complex.

The IFC assessment should include all areas of all mining concession contracts owned by the company, since this is how the true impacts of the entire proposed project can really be assessed, especially taking into account that the Environmental Impact Assessment submitted to the Ministry of Environment, Housing and Land Development was based solely on the area of the Concession Contract No. 3452, leaving out the areas of the other titles, and also because, as the IFC is aware and is contained in the Summary of the Environmental and Social Assessment, "there are expansion plans," which were not assessed.

b.2) All project-related infrastructure (including that of its contractors)

These include corridors for power transmission, tubing, canals, tunnels, relocation and access routes, transition or elimination areas, construction fields, and in general all facilities whose viability and existence depend solely on the project and whose goods and services are essential to its satisfactory operation.

The firm Greystar Resources Ltd., is currently requesting an environmental license application through the Ministry of Sustainable Development for supplementary infrastructure in Angostura, under a different environmental license process from that which ended in the Resolution of the Ministry of Environment, Housing and Land Development that denied the license. The procedure for environmental license NDA 07374 assesses the layout for a 230 Kw power line to supply electricity for mining exploitation under the firm Greystar Resources Ltd. This infrastructure project shares a portion of the area of influence characterized in the Environmental Impact Assessment for mining exploitation presented by Greystar Resources Ltd. to the MAVDT in December 2009. Furthermore, the licensing procedure for the supplementary infrastructure states that the "Area of Direct Socioeconomic Influence" (ADSEI) includes the districts of each of the municipalities of direct influence through which the four alternative power lines pass: Matanza, Surata, California, Vetás, Charta, and Bucaramanga. Since the power line for which the license is requested is directly related to the Angostura mining project, and the route would also affect more thousands of persons, the population that is actually affected by Angostura may be even greater than what was initially calculated.

According to information supplied by the company, which should be verified, there are four alternatives for the project, two of which include excluded areas and all of which include areas of restricted intervention.⁷⁶

The supplementary infrastructure also includes building two dams in the basin of the *El Salado* stream. The first is in the main current of the *El Salado* stream, which affects an area of 7.4 ha, with a dike height of 30 m, a crest of 3,376 masl and a storage capacity of 600,500 m³. The second

⁷⁵ 3452, 020268, EJ1-164, 6979, 0127-68, 13921, AJ5-143, 22346, AJ-142. Source: Colombian Mining Cadastre. Available at: <http://www.cmc.gov.co:8080/CmcFrontEnd/consulta/busqueda.cmc> (accessed June 15, 2011).

⁷⁶ Dossier NDA 0737, Environmental Assessment of Alternatives. Transmission Lines for the Angostura Project, September 2010, p. 30 (Annex 14).

dam is in Pajarito lake, in the same area as the *El Salado* stream and immediately East of the aforementioned dam upstream, with a dike height of 20 m, a crest of 3,525 masl, and a water storage capacity of 506,800 m³. However, at the preparatory meeting for the Environmental Public Hearing (February 21, 2011) the company publicly announced its intention to build a single dam. It will also build a truck workshop with a 720 m² office building, explosives magazine, administrative facilities, a laboratory, tire deposit and storage, mess hall, kitchen, guard house, etc. In addition, there will be a permanent camp with an 80-person capacity, in addition to the 384 m² military camp with a 40-person capacity.

The above demonstrates that these works are directly related to the project. Therefore, to process an environmental license application separate from the “supplementary infrastructure” for the benefit of the Angostura Project is a fragmented assessment of the mining project. This violates what was established by the IFC, which requires including all project elements within the same assessment. For this reason, the true area and scope of the entire project is currently undetermined.

b.3) Impacts due to nearby mining developments and projects associated with the project, and lack of strategic, sectoral and regional assessment

In the indirect area of influence of the Angostura Project and its supplementary infrastructure, several mining projects are planned that would put pressure on the aquifer recharge deriving from the paramo ecosystems, the Santurban complex paramo ecosystems themselves, and the communities that depend on them.⁷⁷ *Eco Oro* and at least five other companies already have concessions assigned or in process for a minimum of 70,000 hectares in the area of the Angostura Project.⁷⁸ In its corporate presentation of December 2011, the company *Eco Oro* advertized its project as a “tip of the iceberg” project,⁷⁹ while other companies such as AUX Canada Acquisition Inc. (formerly Ventana Gold),⁸⁰ Galway Resources,⁸¹ CB Gold,⁸² AuRo Resources,⁸³ and Calvista Gold⁸⁴ mention discovering Angostura when advertizing their projects to other investors. According to the IFC, “A successful project of this size would probably cause more significant foreign interest in the Colombian mining sector.”⁸⁵ Therefore, one should take into account the potential cumulative impacts on the district as part of an assessment of this or any other project in the area.

In fact, the companies AUX, Galway Resources and AuRo Resources obtained their mining rights in Santurban prior to the IFC investment. The company Ventana Gold (now AUX Canada Acquisition Inc.) received its mining rights in Santurban in 2006, when exploration activities were just beginning.⁸⁶ The company, which now belongs to the Brazilian Eike Batista,⁸⁷ has 4,591 ha of

⁷⁷ Comptroller, Leyhat Warning Function (Annex 15).

⁷⁸ *Eco Oro Minerale*s: Angostura Project and up to 30,000 hectares of concessions; Galway Resources.

⁷⁹ *Eco Oro Minerale*s, “Corporate Presentation,” December 2011.

⁸⁰ Ventana Gold, “Preliminary Assessment: *La Bodega* Project, Department of Santander, Colombia,” Samuel Engineering Inc., November 8, 2010.

⁸¹ Galway Resources, corporate presentation, “Galway’s California-Vetas Gold Projects, Santander State, Colombia” obtained from the Web site of Galway Resources on January 17, 2011.

⁸² CB Gold & First Source Resources Inc., “Technical Report on the Vetas Gold Project, Colombia: NI 43 -101 Report,” Hrayr Agnerian, M.Sc (Applied), P.Geo., Scott Wilson Mining, May 31, 2010.

⁸³ AuRo Resources Corp., “Developing Gold Projects in Colombia’s Richest Gold Regions,” November 2011.

⁸⁴ Calvista Gold, “Prospectus,” April 25, 2011.

⁸⁵ IFC, “Anticipated Development Impact of the Project,” obtained from the IFC Web site on January 17, 2011.

⁸⁶ Ventana Gold, “Preliminary Assessment: *La Bodega* Project, Department of Santander, Colombia,” Samuel Engineering Inc., November 8, 2010.

mining concessions divided into two projects: *La Bodega* and *Cal Vetás*,⁸⁸ and is now preparing to exploit approximately 3.5 million ounces of gold, in addition to any silver and copper resources that are found.⁸⁹

The companies White Gold Corporation and *Empresa Minera Reina de Oro Ltda.* purchased mining rights in the area in November 2007 that since 2010 belong to Galway Resources, a junior mining firm.⁹⁰ This situation shows that the Angostura Project has sparked much speculation regarding its size, assuming that it will be a much larger project than it is.

Likewise, AuRo Resources, known locally for its subsidiary *Oro Barracuda*, began explorations in 2007. This company has 14,000 hectares of contiguous entitlements with the block of mining concessions where *Eco Oro* operates, and another 18,734 hectares in the area between the departments of Santander and North Santander.

The other companies operating in the area identified for this complaint received mining concessions in Santurban after the IFC invested in the area. In fact, the Canadian firm CB Gold started to purchase titles and commence exploration activities on its Vetás project in 2009.⁹¹

In addition, being an IFC investment that seeks to promote mining investments in Colombia in general, the Angostura Project is a bad precedent for the area and the country, because it promotes projects in violation of Colombian, international and IFC norms. Furthermore, considering that there are also mining concessions in other parts of the country that are located in an estimated 108,972 hectares of paramo through 391 mining entitlements in 22 different areas,⁹² the repercussions would be worse. The cumulative impacts of these projects, and of any other that are under development or planned for development in paramo ecosystems or that affect the services and benefits of the Santurban complex, should be taken into account by the IFC. As a consequence of this, the IFC should have requested a strategic, sectoral and regional assessment in accordance with section 9 of Performance Standard 1 that establishes, among other things, that in exceptional circumstances a strategic, sectoral and regional assessment can be requested. The absence of this assessment shows a violation of that Performance Standard by the company and a lack of stringency on behalf of the IFC.

c) Lack of effective community participation guarantees

The IFC failed to ensure that the client had correctly identified the affected populations and, as a result thereof, that it had consulted with them sufficiently, in accordance with what is required in section 12 of IFC Performance Standard 1 – Social and Environmental Assessment and Management System.

c.1) On community participation and community consultation

⁸⁷ Financial Post, “Ventana Accepts Sweetened Bid from Brazil Billionaire,” February 14, 2011.

⁸⁸ Ventana Gold Corp, “Management’s Discussion and Analysis for the Quarter ended December 31, 2010.”

⁸⁹ Ventana Gold, “Preliminary Assessment: *La Bodega* Project, Department of Santander, Colombia,” Samuel Engineering Inc., November 8, 2010.

⁹⁰ Galway Resources Ltd., “Technical Report on the Vetás Gold project, Department of Santander, Colombia: NI 43-101 Report,” James G. Lavigne, M.Sc., P.Geo., Roscoe Postle Associates Inc., August 16, 2011, p6-4.

⁹¹ CB Gold & First Source Resources Inc., “Technical Report on the Vetás Gold Project, Colombia: NI 43-101 Report,” Hrayr Agnerian, M.Sc. (Applied), P.Geo., Scott Wilson Mining, May 31, 2010.

⁹² *El Espectador*, “Minería Amenaza Paramos,” January 25, 2011.

As persons who are affected by the project, we believe that the communities were not adequately consulted and lacked suitable opportunities to participate in the assessment and approval process. The above has even been confirmed in various reports, as follow.

The *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga* (CDMB) noted with concern in its Environmental Concept Paper on the project issued on April 13, 2010, that the company “did not reflect the people’s feelings and opinions on its implications and on how to prevent, mitigate, restore, correct or compensate these damages.”⁹³ In fact, in 2008 the vice-president of Greystar at that time stated that “the people already fear for their water,”⁹⁴ despite which no action was taken to address this situation. On the other hand, the company has provided “little information to the communities on its plans regarding the scope of the mining project, while short-term social initiatives are promoted that scarcely prepare the community to face future social, environmental and economic impacts, both during mine growth and at the final stages and closing of the mine.”⁹⁵

Due to the potential impacts of project implementation, the inhabitants of Bucaramanga and its metropolitan district, and nearly 40,000 inhabitants of municipalities surrounding the project, stated that they also have a legitimate interest in this project because they would be affected by it. In November 2010, citizens of Bucaramanga and other municipalities attempted to participate in the public hearing held by the Ministry of Environment, Housing and Land Development within the framework of the environmental licensing process for the Angostura Project in the municipality of California. Although this was the only opportunity for public debate on the issue, since these people have no other place to make their positions heard, they were once again unable to participate in it.⁹⁶

As a result of a constitutional proceeding for the protection of human rights (*acción de tutela*) lodged by various organizations and 238 citizens,⁹⁷ some of which are part of the Petitioner Committee for this complaint, a judge instructed the Ministry of Environment to hold a second public hearing to provide stakeholder guarantees. That hearing was held in Bucaramanga on March 4, 2011, and had to be suspended due to problems of order, as many stakeholders who were registered to participate would not have been able to do so. The MAVDT sought no other time or mechanism to hold the hearing after that date.

Added to the above are the calumnies that complainants have been subject to, which have adversely affected their opportunities to express themselves and hold a significant consultation in spaces of public debate on the project.

⁹³ CDMB, “Environmental Concept Paper on the Environmental Impact Assessment for the Angostura Project by Greystar Resources Ltd. SIC 17343,” April 13, 2010 (Annex 5).

⁹⁴ MiningWatch Canada and CENSAT – *Agua Viva*, “Land and conflict: Extraction of resources, human rights and corporate social responsibility: Canadian firms in Colombia,” September 2009.

⁹⁵ MiningWatch Canada and CENSAT – *Agua Viva*, “Land and conflict: Extraction of resources, human rights and corporate social responsibility: Canadian firms in Colombia,” September 2009.

⁹⁶ *Vanguardia Liberal*. *Ambientalistas no llegaron a la audiencia en California*. Sunday, November 21, 2010. URL (accessed April 22, 2012): <http://www.vanguardia.com/historico/83208-ambientalistas-no-llegaron-a-la-audiencia-en-california> (Annex 8).

⁹⁷ This lawsuit was brought by the *Asociación Defensora de los Animales y la Naturaleza* (ADAN), *Corporación Compromiso*, *Corporación para el Desarrollo Sostenible de las Comunidades* (CORDESCO), *Sindicato de Trabajadores y Empleados de Servicios Públicos Autónomos e Institutos Descentralizados de Colombia* (SINTRAEMSDES), *Corporación para la Liberación Animal* (CORFAUNA), *Asociación Cultural y Ambiental – ZUA QUETZAL*, *Corporación Verde Limpio*, and two hundred thirty-eight (238) citizens.

Considering the above, the project as was presented to the IFC has not taken the affected population into account in the assessments made by the IFC.

5.2.2 Performance Standard 1, Section 4

The project assessment did not contain adequate information on social risks with regard to safety. The Impact Assessment of this IFC–financed project violates section 4 of Performance Standard 1 on the Social and Environmental Assessment and Management System, which establishes that “The client will conduct a process of Social and Environmental Assessment that will take into consideration, in a comprehensive fashion, all of the project’s potential risks (including labor, health and safety). This assessment shall be done based on current information, including an exact project description and the basic pertinent social and environmental data.”

It is important to bear in mind that this project is proposed for an area where there was an armed conflict since the time that the firm *Eco Oro Minerales* arrived.⁹⁸ This is contained in the summary of the IFC’s social and environmental review of the company, which states that “Since [2003] no significant event has occurred that would impact the security of the area. The armed forces control the area and maintain a significant presence in the project area and surrounding regions, thereby contributing to the stability of the region.”⁹⁹ In addition, in its project justification, the IFC says, “Colombia has shown significant progress in attending to matters of security”¹⁰⁰ as a reason to legitimize its initial investment in the Colombian mining sector with the purchase of shares in Greystar, now *Eco Oro*. However, we believe that the assessment of this aspect of the project was too superficial and that further information is needed on violent acts in the area since 2003. In fact, in 2004 there were bombings in the rural communities of the area:

*“The return of Greystar to the area [in 2003] was preceded by a series of military operations, including one particularly extensive martial campaign. The Berlin operation was carried out to keep the FARC’s “Arturo Ruiz” mobile column from moving into Catatumbo, where presumably the AUC disputed control over 55,000 hectares of high-quality cocaine production. Despite the lack of official information beyond media and Army reports, it is clear that the local population was seriously affected by this operation, including lack of communication, food transport and displacement in the region during 59 consecutive days. In 2004, there were reports of Air Force bombings in rural and indigenous communities as part of the government’s military campaign against the guerrillas, and apparently on this occasion the same occurred. Community testimonies confirm that the bombs affected members of the civilian population.”*¹⁰¹

Although installing the armed forces facilitated the company’s return, as stated in the Summary of the IFC’s Social and Environmental Review, it is not certain that violence has ended in this area due to military presence.

⁹⁸ MiningWatch Canada and CENSAT – *Agua Viva*, “Land and conflict: Extraction of resources, human rights and corporate social responsibility: Canadian firms in Colombia,” September 2009.

⁹⁹ IFC, “*Resumen de la Revisión Social y Ambiental de la IFC del Banco Mundial*,” Greystar Resource Ltd. #27961.

¹⁰⁰ IFC, “Greystar: Summary of Proposed Investment.” URL (accessed January 17, 2011): <http://www.ifc.org/ifcext/spiwebsite1.nsf/c9aba76ed1df1938852571c400727d66/df15489bfde959d6852576ba000e2d0c?opendocument>

¹⁰¹ MiningWatch Canada and CENSAT – *Agua Viva*, “Land and conflict: Extraction of resources, human rights and corporate social responsibility: Canadian firms in Colombia,” September 2009.

*“There have been reports of selective assassinations, threats and displacements by armed, masked men, presumably paramilitaries, in the area of Greystar’s Angostura Project around Mohan, Turbay and Cachirí in the Surata municipality, where the population has been accused of collaborating with the guerrilla. The existence of minefields exacerbates a situation that already poses risks for this population.”*¹⁰²

In addition, a 2007 report of Colombia’s *Defensoría del Pueblo* (Ombudsman Office) and its Early Warning System reveals that:

*“Once again there is an apparent interest on behalf of illegal armed groups to recover control of the land and population in this area and to seek through violent means to impose themselves both on rural areas and on urban centers and municipal seats. The current context has to do with a strategic repositioning of guerrilla fronts and regrouping of paramilitary structures in an attempt to recover their old corridors of mobility and insert themselves into regional socioeconomic dynamics.”*¹⁰³

This contradicts company claims that there have been “no significant events that impact the security of the area” since 2003. Therefore, this means that the IFC failed to act with due diligence during the social and environmental assessment of the project to determine the security risk level for the inhabitants in the area of influence.

5.2.3 Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resources Management

The financing process violated the provisions of IFC Performance Standard 6, which states that this type of project shall not be implemented in habitats that are considered critical. According to specialized studies and information contained in the *Integrated Biodiversity Assessment Tool* (IBAT),¹⁰⁴ the area of the mining project contains at least six endangered fauna species as defined by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). These species are:

1. *Tremarctos ornatus* (Spectacled Bear), currently catalogued as vulnerable. According to the IUCN,¹⁰⁵ mining poses an additional, substantial threat to this species.¹⁰⁶
2. *Tapirus pinchaque* (mountain tapir or woolly tapir), currently catalogued as endangered. According to the IUCN, a mining project in Peru threatens the small remaining population.¹⁰⁷
3. *Mazama Rufina* (Little Red Brocket or Ecuador Red Brocket), considered Near Threatened since 1996. According to the IUCN, mining poses an additional threat to this species and has left it without its habitat in Colombia.¹⁰⁸
4. *Odocoileus virginianus* (White-tailed Deer), catalogued as Near Threatened since 1996.

¹⁰² Ibid.

¹⁰³ *Defensoría del Pueblo*, Early Warning System, *Informe de Riesgo No. 026-07*, October 13, 2007 (Annex 16).

¹⁰⁴ According to the IFC procedural manual, p. 42 of the Spanish version, the IBAT is its official source of such information.

¹⁰⁵ International Union for Conservation of Nature (IUCN).

¹⁰⁶ See: <http://www.iucnredlist.org/apps/redlist/details/22066/0> (accessed December 10, 2011).

¹⁰⁷ See: <http://www.iucnredlist.org/apps/redlist/details/21473/0> (accessed December 10, 2011).

¹⁰⁸ See: <http://www.iucnredlist.org/apps/redlist/details/12914/0> (accessed December 10, 2011).

5. *Puma concolor* (Cougar, Puma, Mountain Lion, Mountain Cat, Catamount, or Panther), considered Near Threatened since 2002.
6. *Vultur gryphus* (Andean Condor), considered Endangered since 1970. This is Colombia's national bird.

Given the importance of paramo ecosystems, there have been many initiatives to conserve them due to their vulnerability, fragility and critical state. This has been translated into various levels of protection, both nationally and internationally, the most important of which are mentioned below.

Paramos Protection in Colombia

Colombia has several commitments to conserve paramo ecosystems, contained in international treaties¹⁰⁹ and in the 1991 Constitution of Colombia.¹¹⁰ Paramo ecosystems are considered areas that are excluded from mining in the Constitution, and has been reiterated by the Constitutional Court since 2002 through rulings C-339 of 2002 and C-443 of 2009, and recently in ruling C-036 of 2011.¹¹¹

The mining law also contains a prohibition against mining in these ecosystems in accordance with applicable law 685 of 2001.¹¹² This means that all types of mining are prohibited. The Constitution of Colombia establishes specific obligations for the State to protect the environment and natural wealth of the country, and to conserve the paramos. These obligations are especially contained in the following constitutional provisions: Art. 8, Art. 58, Art. 79, Art. 80, Art. 333, and Art. 334. Article 79 of the Constitution clearly establishes, among other things, that “it is the duty of the State to protect the diversity and integrity of the environment, **conserve areas of special ecological importance** and promote education towards these ends” (boldface added). Article 80 of the Constitution states that “the State shall prevent and control factors of environmental degradation.”

The Constitutional Court of Colombia determined that the paramo ecosystem is one of the areas of special ecological importance,¹¹³ and that therefore the State has the constitutional obligation to conserve areas of paramo ecosystems especially. These constitutional mandates give the State concrete obligations, such as:

1. Conserving and ensuring the ecological intangibility of the entire Santurban complex, as an ecosystem of special ecological importance. The Court established that “*the mandate to **conserve areas of special ecological importance** derived from article 79 of the Political Constitution imposes an obligation to ensure their intangibility. Therefore, **the only admissible uses are those***

¹⁰⁹ Such as the Convention on Biological Diversity, the Ramsar Convention on Wetlands of International Importance, and the Convention on Climate Change.

¹¹⁰ 1991 Constitution of Colombia, Art. 8, Art. 58, Art. 79, Art. 80, Art. 333, and Art. 334.

¹¹¹ Constitutional Court of Colombia. Ruling C-336 of 2011. M.P. Luis Ernesto Vargas Silva.

¹¹² Article 34 of the Colombian Mining Code (Law 1382 of 2010 reforming the former Mining Code) expressly establishes areas where no mining activities may be carried out, including paramo ecosystems. This exclusion derives from constitutional obligations and is therefore precedent to that law and in accordance with prior pronouncements of the Constitutional Court. Art. 34 of the Colombian Mining Code reads: “Areas that are excludible from mining: No mining exploration and exploitation works may be carried out in areas declared and delimited in conformity with applicable law as areas of natural resource and environmental protection and development. Said areas of exclusion shall include those that are constituted as such and those that are constituted in conformity with applicable provisions as... paramo ecosystems...”

¹¹³ Constitutional Court of Colombia, Ruling C-339 of 2002. M.P. Jaime Araujo Rentería (Annex 12).

*which are compatible with conservation and this proscribes their exploitation, because areas of special ecological importance are subject to a more intense protection regime than the rest of the environment*¹¹⁴ (boldfacing added). Therefore, activities with irreversible damages that could destroy the ecosystem are incompatible with the constitutional obligation to conserve the paramos.

2. Adopting effective measures in areas of special ecological importance such as paramos, to counteract threats of destruction or irreversible damage. The Constitutional Court of Colombia has stated that the obligation to conserve implies environmental declaration and delimitation based on technical, social and environmental studies **and adopting effective measures on behalf of the authority**. Concretely it said that:

*“it deems therefore necessary for the Constitutional Court to exhort the Ministry of Environment, Housing and Land Development, as well as the regional autonomous corporations and cognizant environmental authorities, to fulfill the various environmental duties under their charge and, on the one hand, promote the declaration and delimitation of areas excluded from mining and, on the other, adopt effective measures to protect the environment in general and areas of special ecological importance such as paramos”*¹¹⁵ (boldfacing added).

International Recognition

The World Bank Group was aware of the importance of paramo ecosystems long before the permit application for the Angostura Project. Several of its programs even established that paramo ecosystems needed to be conserved due to their vulnerability, primarily against climate change effects that might arise in the future. To ensure their preservation, the World Bank, through the Global Environment Facility (GEF), has financed several projects whose purpose is paramo conservation.

Thus, for example, in 2005 the GEF financed the project “Integrated National Adaptation Pilot Project: High Mountain Ecosystems, Colombia’s Caribbean Insular Areas, and Human Health (INAP),¹¹⁶ whose purpose was to support Colombia’s efforts to formulate programs and apply pilot adaptation measures and policies to address climate change impacts. This GEF-funded project responded to national priorities after examining of the consequences of climate change and identifying high montane ecosystems in the Northern Andes as the country’s most vulnerable ecosystems to the expected impacts of climate change. Another project related to the Colombian paramos and supported by the World Bank through GEF is “Conservation and Sustainable Use of Biodiversity in the Andes”¹¹⁷ that sought to increase the conservation, understanding and use – from 2001 to 2007 – of global important biodiversity such as that represented by the Colombian Andes, particularly in high montane habitats such as paramo ecosystems.

On a regional scale, the GEF has financed the Andean Paramo Project through the *Consortio para el Desarrollo Sostenible de la Ecorregión Andina* (CONDESAN), which promotes paramo conservation in Venezuela, Colombia, Ecuador, and Peru. In 2009, CONDESAN coordinated the

¹¹⁴ Constitutional Court of Colombia. Ruling T- 666 of 2002. M.P. Eduardo Montealegre Lynett.

¹¹⁵ Constitutional Court of Colombia. Ruling C-443 of 2009 M.P. Humberto Sierra Porto (Annex 13).

¹¹⁶ http://www.unep.org/climatechange/adaptation/Portals/133/documents/AdaptationKnowledgeDay_AngelaAndrade.pdf

¹¹⁷ For more information, see: <http://www.humboldt.org.co/iavh/historico/item/87-conservaci%C3%B3n-y-uso-de-la-biodiversidad-en-los-andes-colombianos>

Second World Congress on Paramos (PARAMUNDI) where participants concluded, “For reasons of higher interest and common wellbeing, mining of all types should be excluded from the paramos, taking into account the context, legal codes and sovereignty of each country.”¹¹⁸

Since the GEF, World Bank and IFC belong to the same financial group, this information should have been taken into account by the IFC when identifying and assessing social and environmental impacts in the project area of influence. Furthermore, the IFC should have considered the accumulated impacts should a mining district develop in the area, as well as the implications of promoting such investments on a national scale in a country that contains 48% of the region’s paramos. However, this was not done. To the contrary, the IFC ended up investing in a project that would seriously, irreversibly affect a strategic, vulnerable environmental area that the World Bank Group has identified as subject to conservation.

Considering, in addition, that this project represents the starting point for a mining district to form in the departments of Santander and North Santander, development of this project can be expected to continue causing uncertainty. It could also set a precedent that would mean significant reversals for Colombia in its intension to conserve these ecosystems. We believe that since mining concessions have been granted in several paramo areas and other fragile ecosystems in the country, the company’s success with the Angostura Project would be a terrible beginning for the destruction of the paramos and source of water for millions of Colombians who depend on this ecosystem for their water supply. So far, the costs that Colombia would incur from this have not been put in the balance with the anticipated economic benefits.

VI. Conclusions

As this document has demonstrated, there is evidence that significant, irreversible, adverse social and environmental impacts could occur in the future as a consequence of implementing the IFC-financed mining project No. 27961 in Angostura. In particular, the project would be implemented in an area where mining is prohibited under Colombian and international norms, being essential to supplying fresh water for at least two million persons, and to mitigating climate change. Furthermore, the project would cause serious local socio-economic impacts and irreversible loss of key ecosystems for biodiversity and climate change mitigation and adaptation.

Likewise, there are indications that the IFC did not fully comply with its policies. Particularly with regard to the Policy on Social and Environmental Sustainability, the IFC invested before it had an EIA for the project, categorized it as B when it should have received category A, and failed to perform an adequate assessment of the client’s capacity and commitment in accordance with the requirements of the IFC Social and Environmental Policy.

The IFC was also remiss in its due diligence and failed to ensure that the client fulfilled Performance Standards 1, 4 and 6, since the project is not in compliance with Colombia’s Constitution and environmental and mining laws, the impact assessment is inadequate and incomplete, the project is located in a critical ecosystem, and the IFC failed to ensure that the

¹¹⁸ Memoirs of the Second World Congress on Paramos (PARAMUNDI), available at: <http://www.paramo.org/content/memorias-paramundi-2009-ii-congreso-mundial-de-paramos>

client had really identified the affected community and included in its review process the cumulative impacts that a mining district would have on the project area.

Therefore, our expectation is that the CAO will intervene in this situation, accept our complaint and determine that the IFC failed to address the social and environmental issues in its project examination process and that, as a consequence, the social and environmental outcomes of the assessment that could be caused by the project contradict the expected effects contained in the provisions of both the Social and Environmental Policy and the Performance Standards.

Therefore, implementation of this project would work against what the IFC seeks to achieve through its investments. Since the IFC continues to be a shareholder in this project, it is important to consider whether or not it is advisable to keep its money in this project. Therefore, it is our expectation that through this complaint the IFC will be able to decide whether or not to continue its financial backing for this project.

VII. Annexes

1. Public Hearing request by NGOs of the *Soto Santander* province in the Environmental License application process for the Angostura Project.
2. The *Pliego Verde* Initiative that gathered 75,000 support signatures.
3. Ruling by the Court of North Santander that acknowledged the constitutionality of the referendum with the question “Do you agree that ecosystems that are essential to the Santander water cycle should be declared public utility goods and of common interest their protection purposes?”
4. INGEOMINAS, list of mining entitlements pertaining to the Angostura mining project.
5. *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga*, Environmental Concept Paper on the Environmental Impact Assessment for the Angostura Project by Greystar Resources Ltd. SIC 17343,” April 13, 2010.
6. Metropolitan Aqueduct of Bucaramanga, Technical Report given to the Chamber of Representatives for debate pursuant to proposal No. 034 of September 22, 2010. Questionnaire on issues caused through the intervention of small and large-scale mining in the paramos and water producing areas, and implications for income to be obtained from royalties versus potential damages to those areas. August 10, 2011.
7. *El Frente* newspaper, editorial, “*Debates sospechosos contra empresas mineras*,” September 22, 2010.
8. Compilation of press releases.
9. News recording, *Caracol Radio*, version for the Santander department. Recorded on August 16, 2011.

10. Ministry of Environment, Housing and Land Development, Ecosystems Department, Memo 2100-3-131081 dated March 17, 2011. “Consideraciones importantes sobre los páramos.”
11. CDMB penalization of the firm Greystar Resources due to the company’s recurring violations and omissions, via Penalty Resolution No. 1248 of October 2010, due to non-compliance with national environmental laws.
12. Ruling C-339 of 2009 by which the Constitutional Court of Colombia acknowledged that paramo areas are excluded from mining in the Mining Code by virtue of their features and their constitutional and international protection.
13. Ruling C-443 of 2010 by which the Constitutional Court of Colombia acknowledged that paramo areas are excluded from mining within the Mining Code by virtue of their features and their constitutional and international protection.
14. Environmental Assessment of Alternatives for Supplementary Infrastructure in the Angostura Project. Dossier NDA 0737.
15. Comptroller warning served to the firm Leyhat.
16. Pueblo, Early Warning System, *Risk Report No. 026-07* of October 13, 2007.
17. Concept paper of the *Instituto de Hidrología, Meteorología y Estudios Ambientales* within the Environmental License application process for the Angostura Project.
18. Technical Concept Paper by the Ministry of Environment, Housing and Land Development for the construction and operation of the transmission line and Angostura Substation for the Angostura gold and silver mining project.
19. Ministry of Environment, Housing and Sustainable Development. Resolution 1015 of 2011, May 31, 2011. Available at: <http://www.aida-americas.org/sites/default/files/Ministry%20of%20Environment%20Resolution%20denying%20permit.pdf>
20. Maps of Bucaramanga.

5.