



Protected Areas and Indigenous Territories

Three Case Studies and Some Conclusions

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Table of contents

List of abbreviations	3
Introduction	4
1. Protected Areas and Indigenous Territories: the issues, international context, legal principles	5
2. Case studies of Izabal/Livingston (Guatemala), Mojanda (Ecuador) and Lachiguiri (Mexico)	8
2.1 Izabal/Livingston	8
2.2 Mojanda	12
2.3 Lachiguiri	17
3. Conclusions	24
Appendix	25

List of abbreviations

AVANCSO	Asociación para el Avance de las Ciencias Sociales en Guatemala
CBD	Convention on Biological Diversity
CENAMI	Centro Nacional de Ayuda a las Misiones Indígenas
CONAFOR	Comisión Nacional Forestal
CONAIE	Confederación de Nacionalidades Indígenas del Ecuador
CONAP	Consejo Nacional de Áreas Protegidas
CONASUPO	Compañía nacional de Subsistencia Popular
CONIC	Coordinadora Nacional Indígena y Campesina
CTI	Circunscripciones Territoriales Indígenas
ECUARUNARI	Ecuador Runakunapak Rikcharimuy,
EED	Church Development Service
FICI	Federación Indígena y Campesina de Imbabura
FUNDAECO	Fundación para el Ecodesarrollo y la Conservación
ILO	International Labour Organization
INDA	Instituto Nacional de Desarrollo Agrario
INTA	Instituto Nacional de Transformación Agraria
IUCN	International Union for Conservation of Nature
JADE	Justicia Ambiental, Empoderamiento Comunitario y Equidad Social para la Conservación de la Región Sarstún-Motagua
LGEEPA	Ley General del Equilibrio Ecológico y la Protección al Ambiente
PA	Protected Areas
PANE	Patrimonio de Áreas Naturales Protegidas
PES	Payment for Environmental Services
PIC	Prior and Informed Consent
PROFAFOR	Programa Face de Forestación
RECOSSMO	Región de Conservación y Desarrollo Sostenible Sarstún-Motagua
REDD	Reducing Emissions from Deforestation and Degradation
SER MIXE	Servicios al Pueblo Mixe
SIGAP	Sistema Guatemalteco de Áreas Protegidas
SNAP	Sistema Nacional de Áreas Protegidas
UMA	Unidad de Manejo Ambiental

Introduction

This document summarizes three cases from three different countries. These are cases in which the rights of indigenous peoples with regard to their ancestral territories and their ways of caring for their environment enter into conflict with the establishment of protected areas as imposed by state authorities, partly due to the insistence of international institutions. The cases addressed involve: the Q'eqchi' people in the Livingston municipality, in the Guatemalan department of Izabal; the Kichwa indigenous people settled at the slopes of Cerro Mojanda in the Imbabura and Pichincha provinces of Ecuador; and the Zapotec community of Santiago Lachiguiri, located in the Isthmus of Tehuantepec in Mexico.¹

The purpose of the first section of this document is to give a brief panorama of the issues involved, the international context and the relevant legal principles and norms. The three cases are presented in the second section, and the third section includes a brief comparison of the situations presented. The demands made by indigenous peoples as a result of the experiences can be found in the appendix.

It would have been impossible to document the three cases without the trust and hospitality of the communities and organizations involved and without their willingness to explain the details of each of their respective situations. We wish to especially express our gratitude for the support provided by representatives of Encuentro Campesino and AVANCSO in Guatemala, FICI in Ecuador and CENAMI and SER MIXE in Mexico.

¹ A summary cannot do justice to the full complexity and scope of the topic addressed here. Thus, we wish to point out that there are more complete documents for each of these cases that can be consulted at www.eed.de/biodiv.

1. Protected Areas and Indigenous Territories: the issues, international context, legal principles

Protected Areas (PA) have recently become a popular trend. While the concept has been around for many decades, these areas have been especially promoted during the last 15 years. One of the goals established in the Convention on Biological Diversity (CBD) of 2002 is for signatory countries to make a commitment to maintain more than 10 percent of national territory as protected natural areas. Article 8 of the CBD (In-situ Conservation) stipulates the following:

“Each Contracting Party shall, as far as possible and as appropriate: (a) establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; (b) develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;(...).”

Consequently, Protected Areas (PA) are considered to be a central element in any national strategy for conserving biodiversity. Many countries have reformed their laws to be able to include Protected Areas. Governments and conservationist organizations view PA as crucial instruments for counteracting the effects of climate change and CO² emissions, or at least they use this justification for their measures and projects. A distinguishing characteristic of PA is that they generally focus on areas where there is still a great deal of biodiversity. This logic for establishing PA is especially used in countries identified as having what is referred to as mega-biodiversity. The interests involved are not, however, always focused on protecting the environment. Protected areas that have a great diversity of flora and fauna also arouse greed. The key word in this respect is bioprospection, which, in most cases, results in biopiracy. And there are also other interests such as ecotourism, exploitation of underground natural resources and water resources – and these are often promoted by actors who previously had no relationship at all with the territories in question.

There is another concern. Usually the areas declared by government authorities to be protected areas are inhabited or there are populations living nearby. In countries with an indigenous population, protected areas are frequently located in territories that have, for centuries, been used and cared for precisely by the indigenous peoples who are settled there – and this frequently leads to conflicts.

An additional dimension is added to the discussion on protected areas by the Program for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD), which has been promoted since the end of 2008 by the United Nations (UN) and national governments. Most REDD resources are concentrated on forested regions that are almost completely intact. In other words, there is practically no focus at all on recuperating forests severely affected by environmental deterioration. This program will increase the pressure on indigenous peoples who inhabit territories that they have ancestrally conserved. This is the same interpretation given by representatives of native peoples who attended the UN Permanent Forum on Indigenous Peoples held in Bonn, Germany, in early August 2010. They considered the REDD program to be “one more of the many unnecessary mechanisms

that national governments and their allies have conceived of in order to erode [our] legitimate ownership of territories and natural resources.”

At the beginning of this millennium the growing division between indigenous movements on the one hand, and environment conservation organizations and institutions on the other, became more evident. The immense de facto influence wielded by international organizations and the impositions by government authorities – justified as environmental protection – inevitably enter into conflict with some of the principles and norms of international law established in recent years. Especially worth mentioning is the principle of Prior Informed Consent (PIC) as referred to in the CBD in 1992 respectively of Free Prior Informed Consent (F-PIC) as fixed in the United Nations’ Declaration on the Rights of Indigenous Peoples from September 2007 that relates to the decisions made regarding activities that could impact the lands or other resources ancestrally occupied or used by indigenous peoples or other communities. In this regard the indigenous delegates’ closing statement at the Fifth World Parks Congress in 2003 in Durban, South Africa, included the following: “The declaration of protected areas on indigenous territories without our consent and engagement has resulted in our dispossession and resettlement, the violation of our rights, the displacement of our peoples, the loss of our sacred sites and the slow but continuous loss of our cultures, as well as impoverishment. It is thus difficult to talk about benefits for Indigenous Peoples when protected areas are being declared on our territories unilaterally. First, we were dispossessed in the name of kings and emperors, later in the name of State development and now in the name of conservation.”

In that congress, indigenous peoples reaffirmed Prior and Informed Consent (PIC) as one of their demands and declared in their final statement that “Indigenous Peoples must reserve at all times the right to say ‘no’.” This concept of PIC finds strong support in the International Labor Organization’s Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, which has been in effect since 1991. Article 6 of this convention establishes that member states shall commit to “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly,” and that “the consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”

Article 7 of this convention reinforces the idea of the determining participation of indigenous peoples:

“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly.”

In this context it is also worth mentioning Article 13 of Convention 169, which links the right to be consulted with the concepts of peoples’ lands and territories:

“1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationships with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.”

A more recent and equally important instrument for the self-determination of indigenous peoples in relation to their territories and natural resources is the already mentioned UN Declaration on the Rights of Indigenous Peoples, approved by the UN General Assembly on September 13, 2007. The preamble of this declaration addresses “the urgent need to respect and promote the inherent rights of indigenous peoples (...) especially their rights to their lands, territories and resources.” The Declaration, at times repeating almost textually the contents of Convention 169, states in Article 25 that “indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.” Article 26 of the Declaration is more explicit in relation to land:

“1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”

Further, Article 32, which is extremely relevant in the context of this study, states the following:

“1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”²

Lastly, there is evidence that indigenous peoples have the benefit of an ally serving as the UN Special Rapporteur assigned to the area of human rights and fundamental liberties of indigenous peoples. James Anaya is currently in this position and has repeatedly addressed the relationship between the rights of indigenous peoples in terms of lands, territories and natural resources and the different kinds of interventions by third parties, whether states or private companies. The most recent example can be seen in the observations he made in the context of his visit to Guatemala (June 13-18, 2010) to personally look into the case of the Marlin mine, which is affecting a number of indigenous peoples in Guatemala.

² All of these provisions of the United Nations’ Declaration on the Rights of Indigenous Peoples are much clearer and more favorable to the rights of indigenous peoples than the weakly-stated terms in Article 8 (j) of the Convention on Biodiversity, which furthermore presupposes the existence of PAs and establishes: “Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

In practice, however, the concept of Free Prior Informed Consent remains subject to interpretation and to the particular position of power enjoyed by each of the parties involved. Furthermore, it is very uncommon for a state to recognize the absolute right of a community to say ‘no’ and more frequently states use the argument of ‘public interest’ or ‘social interest’ to justify making a decision against the will expressed by communities. In the three examples presented in the following section of this document, we will see some evidence supporting these statements.

2. Case studies of Izabal/Livingston (Guatemala), Mojanda (Ecuador) and Lachiguiri (Mexico)

2.1 Izabal/Livingston

2.1.1 National context

The first declaration of Protected Areas (PA) made by the Guatemalan state dates back to 1950. At the end of the 1980s PA became more important, with the enactment of Decree 4-89, the Protected Areas Act (Ley de Áreas Protegidas), which created the National Protected Areas Council (Consejo Nacional de Áreas Protegidas—CONAP) and the Guatemalan Protected Areas System (Sistema Guatemalteco de Áreas Protegidas—SIGAP). Currently, nearly a third of Guatemala’s territory falls under the “Protected Area” (PA) classification.

Nevertheless, the Protected Areas Decree was enacted in the context of technical non-field studies and satellite maps. “Green” areas where forests remained were declared (PA) without considering whether indigenous or campesino communities were living there. The Protected Areas Act mentioned above did not contemplate society’s participation or prior consultation. The declaration of PA has entered into conflict with other legal processes: They have detained de facto many requests by communities in relation to the establishment of title deeds to their lands before the National Agrarian Transformation Institute (Instituto Nacional de Transformación Agrarian – INTA), even though communities have been in this process of acquiring their title deeds for 30 to 40 years. Thus, by protecting the country’s natural resources and biodiversity, the declaration of protected areas made the already complicated agrarian situation in these areas even more complicated. The law even facilitates turning communities into usurpers of the territory they have inhabited ancestrally (Title V “On Violations and Penalties,” Chapter I “Offenses and Crimes,” Article 82bis: “Usurpation of Protected Areas”), and threatens them with “relocation.”

2.1.2 Data on the Izabal department and the Livingston municipality: geography, population and Protected Areas

The Izabal department is located in the northeastern region of Guatemala. It is especially important because it is the only Guatemalan department that borders the Atlantic Ocean, and

also because of its wealth of natural resources. The department covers a land area of 9,000 square kilometers. Izabal Lake, located at the center of the department, is the country's largest, approximately 50 kilometers long by 25 kilometers wide. Río Polochic feeds into Izabal Lake, and it drains into Río Dulce. Nearly 365,000 people live in Izabal, including mestizos, Garifunas and the indigenous Q'eqchi' population. The latter settled in Izabal beginning at the end of the 19th century. Currently, there are over 150 indigenous Q'eqchi' communities in the department.

Livingston is one of the five municipalities in Izabal. It has nearly 50,000 inhabitants, of whom 78% live in rural areas. The population of the municipal seat of Livingston is dominated by the Garifuna population (an ethnic group of African descendants that live in Central America, the Caribbean and the United States), with which the Q'eqchi' people maintain a good relationship. Of the municipal population, 52% are Q'eqchi' campesinos, 47% are mestizos and 4% are Garifunas.

Currently, there are 12 protected areas and 11 private reserves in the Izabal department, covering a total land area of 3,427 square kilometers or 38% of the department's territory. In addition there are processes underway to declare more protected areas. One of these is the Sierra Santa Cruz, which would add 106,974 hectares and include parts of the Livingston and El Estor municipalities. The "oldest" PA in the Livingston municipality is the Río Dulce National Park, declared in 1955. A number of other PA have been established under the Protected Areas Act of 1989 (Decree No. 4-89) system, and are located near the Río Dulce National Park. Perhaps the most important is the Río Sarstún Multiple-Use Reserve (2005).

2.1.3 Cosmivision and practices of Q'eqchi' communities and the issue of land and territory

Long before protected areas were declared, Q'eqchi' communities coexisted with nature in Izabal and particularly in the Livingston area. Taking care of the forests was strongly linked to their practices of self-management of natural resources, transmitted from generation to generation. In the cosmivision characterizing the Q'eqchi' people, the idea of territory is much different than in the Western model. Territory is not conceptualized as a piece of land, but instead it is a much broader concept for the Q'eqchi'. There are no boundaries and it is shared by all the communities. Territory signifies everything found in or on it: land, forests, rivers, air, sun.

"All that exists, because it is together what gives us life, what feeds us, what inspires us, what gives us strength. This is how our grandparents, our ancestors, used to coexist", explained Santiago, a Q'eqchi' who works in the organization known as Encuentro Campesino. He adds: "Even though our grandparents cannot read or write, they bring knowledge in their minds that, for example, the trees near a natural spring should not be cut down, so that the river will not dry up. It's true that traditional agriculture involves burning the land to prepare it for a new harvest, but this is always done based on the knowledge of our elders. You see the opposite in the lands of the big livestock ranchers: there they have cut down all the forests and the rivers have dried up."

2.1.4 Stakeholders in Izabal and the Livingston municipality

In addition to the communities settled in the region and particularly in the areas that are currently considered to be protected areas, there are a number of stakeholders whose interests are often intertwined: state institutions, private organizations and foundations in the

environmental and conservationist sphere, plantation owners, and national and international companies.

In the case of Livingston, one of the strongest institutions is the Foundation for Ecodevelopment and Conservation (Fundación para el Ecodesarrollo y la Conservación—FUNDAECO). It was founded in 1990 by its current president Marco Cerezo, the son of former Guatemalan president Marco Vinicio Cerezo. Since 1993 it is a member of the International Union for Conservation of Nature (IUCN). FUNDAECO works closely with CONAP, which is a government entity, in a case of public-private cooperation.

Mario López, who works with AVANCSO, describes three different political stages in the region:

First stage, from 1990 to 1996: In this first stage both conservationist entities and the state failed to take the communities into consideration when declaring PA, and the long-standing racism against indigenous populations persisted. It is also important to note that during this period the communities were fighting more to defend their lives than to defend their territories, given the internal armed conflict underway. Also, the presence of conservationist institutions was still minimal during this period.

Second stage, from 1997 to 2005: During this period, the communities initiated processes to revitalize their community and inter-community organization, and began to enter into negotiations and manifest resistance. They were supported by the Pastoral de la Tierra (Pastoral Letter on Land Issues) from the Claretian priests in Izabal and by the National Indigenous and CONIC. However, during this period the communities were totally disregarded by conservationist entities, which declared new protected areas without taking their demands into consideration. Also during this period CONAP, FUNDAECO and other conservationist NGOs expanded their presence in the region in the context of the RECOSMO (Región de Conservación y Desarrollo Sostenible Sarstún-Motagua) project.

Third stage, from 2006 to the present: First of all, there are territories currently in the process of being declared as protected areas. And secondly, there is resistance and negotiations are underway in relation to areas already declared as protected. In the first case, the communities' rejection of the declaration of Sierra Santa Cruz as a protected area was clearly demonstrated in a popular consultation carried out in 2007. Out of 43 communities, six did not respond to the consultation, 30 emphatically rejected the declaration, and the remaining seven conditioned an affirmative response on a number of demands, including: that they would receive title deeds for the land, that they would participate in the administration of the protected area, and that the resources granted through forestry or conservation incentives would be received by the communities.

In the second stage we find, for example, the Q'eqchi' communities settled around Río Sarstún and organized in the Amantes de la Tierra association that are in constant opposition to FUNDAECO's activities in the region. Another example is the resistance expressed by communities linked to Encuentro Campesino, in Cerro San Gil and Río Dulce.

The JADE (Justicia Ambiental, Empoderamiento Comunitario y Equidad Social para la Conservación de la Región Sarstún-Motagua, or Environmental Justice, Community Empowerment and Social Fairness for the Conservation of the Sarstún-Motagua Region) project shows the problems from the perspective of indigenous peoples. JADE can be considered to be the continuation of the RECOSMO project. The language used by environmental organizations has changed somewhat in recent years. In order to establish the viability and legitimacy of protected areas, their administrative entities have found it necessary to gradually open themselves up to "community participation." One of the cases in which this

community participation has begun to at least formally expand is precisely this JADE project, for which a “Community Forum” was created. According to community representatives, however, this so-called forum is actually used to co-opt and divide the communities. The Q’eqchi’ communities also criticize the composition of the JADE project’s Technical Administrative Council. Despite the numerous communities in the area, only one position on the Council is given to the indigenous communities, while 10 positions are given to organizations from the outside.

“This is how it works: These institutions come and say ‘Let’s sign a Master Plan to develop a cooperation agreement with the communities.’ But we don’t sign anything anymore. There are other communities that accept little projects in exchange for their signature. But we see it as blackmail, because if we sign, these institutions have the authority to subject us to planning – which includes the eviction of indigenous and campesino communities,” emphasizes a Q’eqchi’ representative who was recently thrown out of the Ak’Tenamit organization for having a different opinion.

Ak’Tenamit also forms part of the JADE project and has a position on its Technical Administrative Council. According to Mario López from AVANCSO, this is an NGO with a great deal of presence in Q’eqchi’ communities. Nevertheless, he comments that Ak’Tenamit’s perspective on “development” appears quite “western” and is focused on the “indio permitido” who does not question the structures of domination and exploitation, but rather assimilates and adapts to these structures. “We don’t want this concept of education. They don’t teach us anything of the wisdom of our ancestors, but they put ideas into the heads of our young people about making money and opening a restaurant,” the Q’eqchi Santiago says. Recently, Ak’Tenamit has fired a number of teachers because of their links to Encuentro Campesino and for having questioned the concepts promoted by Ak’Tenamit.

While the press has gone to the extreme of calling indigenous people a “cancer” in the forests, communities feel that other stakeholders are permitted to act with complete freedom. “There are oil, mining, and tourist interests, and personal interests of individuals occupying territory. This is also an area where drug trafficking takes place. All of these factors are threats to the territory, to diversity and to the communities living there,” Santiago emphasizes.

In fact contradictions in the conservationist discourse are visibly apparent. There is a great deal of activity in and around the waters of the beautiful Río Dulce. The fact that this territory is a protected area is not evident. Tourists go out in boats with large motors. What used to be a little fishing village is now a small tourist city with innumerable hotels and restaurants. The wharfs around the city have been turned into marinas. There is now a popular trend among the wealthy to build chalet-type luxury homes on the river’s shore – within the protected area. “All of these homes have been built right under the noses of environmental organizations. No environmental impact studies have been conducted for any of them. If the people building them are rich, no further questions are asked,” Santiago comments. He tells how a hotel company used heavy machinery to open up channels into the forest to build a five-star hotel inside the National Park. And none of these buildings have sewage treatment plants.

“The plantations that have moved into the area are another threat,” Santiago adds. In many places there is nothing more than a “facade” of a few meters of forest, behind which are livestock ranches or plantations of Melina, an exotic tree that is planted to later cut down for its wood. Large semi-trucks transporting large amounts of logs are impossible to miss. “There’s a huge lumber business going on throughout the entire area. This is taking place right in the front of environmentalists’ eyes, but they don’t do anything about it, because they’re afraid of getting in the way of large corporations,” comments another resident of a Q’eqchi’ community in Livingston. The exact opposite happens when an indigenous person is found

cutting down a tree to build a canoe. They take away all of his equipment and leave him with absolutely nothing.

2.1.5 Repression and resistance

In 2007 many activists who currently belong to the grassroots organization Encuentro Campesino peacefully opposed the eviction of the Buena Vista community. Community leader Ramiro Choc successfully intervened as a mediator of this conflict, and in the end the community was not evicted. A few months later, in 2008, the National Police arrested Choc at Río Dulce. He continues in prison because of his peaceful resistance. He was falsely accused of usurping land and stealing a police weapon.

The communities have become tired of this situation. After innumerable meetings with government representatives, they feel deceived time and time again. One of the indigenous representatives speaks of his personal experience: “Recently, seven of us went as representatives to meet with high government officials to negotiate. There were no results from the meeting, but we made the huge mistake of signing the list of participants. A few weeks later the National Civil Police issued arrest warrants against the seven of us, since now they had our complete names and identification numbers.”

The Q’eqchi’ communities are recuperating their territories. They take collective actions in the territories occupied by those coming in to build their chalets or by government institutions, and they install themselves peacefully, obliging the invaders to leave. The organized Q’eqchi’ communities in the Encuentro Campesino organization are demanding that conservationist institutions withdraw from Q’eqchi’ territories, that tourism be removed, that the historic rights of indigenous peoples be respected and that their struggles not be criminalized. The Q’eqchi’ communities do not want nature to be privatized or commercialized. Instead, they want nature to be respected and for humans to establish a coexistence with nature.

2.2 Mojanda

2.2.1 Protected Areas in Ecuador and their Legal and Institutional Foundations

In Ecuador the National Protected Areas System (Sistema Nacional de Áreas Protegidas—SNAP) was created in 1976. Ecuador’s National Constitution, enacted in 2008, establishes in Article 405 that the SNAP will guarantee the conservation of biodiversity and the maintenance of ecological functions. The state is mandated to allocate the necessary economic resources for the system’s financial sustainability and promote participation by communities, peoples and nationalities that have ancestrally inhabited the protected areas, in the administration and management of those areas. Protected areas are grouped by categories, in line with the objective of their management: Biological Reserve, Ecological Reserve, National Park, Geobotanical Reserve, Wildlife Sanctuary, National Recreational Area, Reserve for Wildlife Production, and Marine Reserve. A sub-system of the SNAP, the Natural Protected Areas Heritage (Patrimonio de Áreas Naturales Protegidas—PANE), is composed of 40 natural areas with 48,077 square kilometers of the country’s land area, 1,164 square kilometers of marine continental protection and 47,098 square kilometers of territorial waters for safeguarding the Galapagos Islands.

Article 261 of the new constitution states that the central state will have “exclusive authority over protected natural areas and natural reserves.” This changes the legal foundations on which the Lagunas de Mojanda Protected Area was created in 2004. There are two other articles in the Constitution of 2008 that are especially relevant in relation to the self-determination of indigenous peoples who have settled on the lower slopes of Cerro Mojanda, specifically with regard to their territories and natural resources. In Article 57 indigenous peoples are allowed “in accordance with the Constitution and with human rights pacts, agreements, declarations and other international instruments (...) to conserve the imprescriptible ownership of their community lands, that are inalienable, unseizable and indivisible (...) to maintain the possession of ancestral lands and territories and obtain their free adjudication (...) prior, free and informed consultation, with a reasonable period of time, regarding plans and programs for prospection, exploitation and commercialization of non-renewable resources found on their lands and that may affect them environmentally or culturally (...) to not be displaced from their ancestral lands (...) to be consulted prior to the adoption of a legislative measure that may affect any of their collective rights.”

2.2.2 General information on the Lagunas de Mojanda and the Otavalo and Pedro Moncayo municipalities

Three lakes, named Karikucha, Yanakucha and Warmikucha, are located in a caldera more than 3,500 meters above sea level (masl). They are actually old craters of the extinct Cerro Mojanda volcano that rises up as high as nearly 4,000 masl. Together, these three lakes form one of the most spectacular landscapes in the region corresponding to the Ecuadorian provinces of Imbabura and Pichincha. Surrounding these Lagunas de Mojanda are native and introduced forest and grassland (pajonal). The landscapes at these heights are also known as paramo. The Lagunas de Mojanda area is uninhabited, but there are communities located on the lower slopes of the mountain. Most of these are communities from the Kichwa, Otavalo and Kayampi indigenous peoples.

The Lagunas de Mojanda and the paramo are the primary sources of water for the entire region. Rainwater filters through the grassland (pajonal) and an immense amount of water is contained in the ground, flowing into the water basins. Farther below, at an elevation of 2,500 masl and at least 20 kilometers away, is the city of Otavalo (in the Imbabura province), which has approximately 50,000 inhabitants, most of whom are indigenous. Also nearby is Pedro Moncayo (in the Pichincha province). The official border between the two municipalities cuts right through the lakes.

In addition to the two municipal seats, there are also many small indigenous communities located in the two municipalities. The people inhabiting the communities in the Otavalo municipality are Kichwas and in the Pedro Moncayo municipality, Kayampis. Some of these communities are located very close to the lakes. According to Washington Cuascota, a native of Pedro Moncayo, the community at the highest elevation is located at 3,400 masl, and there are isolated settlements as high as 4,000 masl. According to Marco Guatemal, a leader of the Kayampi Kichwas and current president of the Indigenous and Campesino Federation of Imbabura (Federación Indígena y Campesina de Imbabura—FICI), which brings together the Kichwa peoples of the Sierra Norte of Ecuador, the indigenous peoples living at high altitudes have not chosen to live there, but “because the most fertile land was in the hands of large landowners until only a few years ago.”

2.2.3 Environmental and social deterioration in the Mojanda area

No one doubts there is environmental damage in the Mojanda area. The factors involved vary greatly, and many of them are the result of socioeconomic changes. Washington Cuascota of the TURUJTA organization in the San Pablo de Agualongo community located in the Pedro Moncayo municipality, explains: “The most drastic changes started with the arrival of the flower-growing companies beginning in the 1990s, such as the Royal Flowers company. The companies came because of the high-quality fertile lands in the region, characterized as a food-producing region. As time passed, the companies took over the best lands.”

Young people in particular began to work for the various flower-growing companies. One consequence is that the relationship between the community and individuals began to deteriorate, with respect to doing volunteer, collective community work (“makipurashun” in Kichwa). Another consequence is that instead of seeing green fields covering the valley, one now sees flower plantations covered in plastic. The land and the people gradually become toxic because of the pesticides used in the flower plantations, and consequently the companies must move on to other lands. “They go to the paramo and look for fertile soil to put in their seedbeds,” Cuascota comments.

For the people of the communities, land became increasingly scarce. As a consequence of insufficient land, the agricultural frontier moved increasingly higher up the Cerro Mojanda. This has also meant that sources of water have diminished. An additional threat each year is posed by the fires provoked by unknown individuals. These fires destroy the grassland (pajonal) that serves to protect the water supply.

2.2.4 The declaration of the Lagunas as a Protected Area

In 2004 authorities from the Otavalo and Pedro Moncayo municipalities approved an ordinance known as an ordenanza bicantonal (a joint decree by two municipalities). The establishment of a Protected Area is specified in this ordinance. The decision is justified with the argument that “the Mojanda area (...) overall constitutes a unique ecosystem that is very important in ecological, hydrological, biological, economic, social, cultural, historic and tourism aspects for the Otavalo and Pedro Moncayo cantons.”

The ordinance also refers to the area as “a fragile ecosystem that is currently experiencing degradation processes caused by the poor use, abuse and waste of its natural resources and economic potentialities.” Another element of justification is stated in the preamble: “Our country is a signatory country for numerous international commitments (...) and the Convention on Biological Diversity, which with the aim of conservation and sustainable use of biological diversity, proposes the adoption of specific strategies, plans and programs.”

The ordinance promises to “initiate a comprehensive process of management, recuperation, protection and conservation of the area.” The document refers to “various work sessions between technicians, citizens on the Canton Development Council and the entire councils for each canton, in which the present ordinance and the Area Comprehensive Management Plan project have been discussed and analyzed.” The idea of the Protected Area, specified in different articles of the ordinance, created a type of barrier around the area, which no one could enter without permission from municipal offices. The norms specified in the ordinance contemplated restrictions on cutting trees down, the use of vegetation in general, and livestock grazing.

2.2.5 The communities' perspective based on their cosmovision

From the beginning, the communities located around the Mojanda area rejected the proposal for a Protected Area. Benjamin Inuca, former president of the Indigenous and Campesino Federation of Imbabura (FICI), stated the following: “At the core of this rejection was the fact that the communities were not consulted or taken into consideration in the management of Cerro Mojanda – even though these are ancestral community lands.” Not even a type of co-management with the communities was planned. The anger felt in the communities increased with the intention to block comuneros from entering the area by setting up check points.

The concept of a Protected Area as a space that is closed off, without any access by the people clashed with the cosmovision of indigenous peoples. The relationship between land and human beings is very strong in the Kichwa culture. It is also reflected in the language. An example is the word “llakta,” which means territory and the human beings inhabiting it. Based on the concept of “llakta”, indigenous tradition related to territory implies that boundaries are not imposed.

2.2.6 Resistance against the Protected Area and invasion from the outside

In theory, the ordinance allowed municipal governments to even charge people a fee to enter the area. In other words, it would have served to prevent indigenous people from enjoying the right to free movement in their ancestral lands. In addition it appears there were plans to turn over management of the paramos in the Lagunas de Mojanda to the Natura Ecuador Foundation, without having consulted the communities in any way. And while restrictions were being imposed on the communities, the Pedro Moncayo municipal government granted a businessman a license to operate in the Lagunas de Mojanda basins, even though the local communities had filed a complaint in this regard with the Ecuadorian Confederation of Indigenous Nationals (Confederación de Nacionales Indígenas del Ecuador—CONAIE). The businessman blocked access to the area where he had livestock and a trout farm, imposing a fee for entering the area of ancestral lands.

Given this situation, opposition to the PA and to the ordinance's enactment was expressed from the very beginning. And beginning in 2006, this opposition became more organized. There was a meeting in Quito of the Confederation of the Peoples of the Kichwa Nationality of Ecuador (the name in Kichwa is Ecuador Runakunapak Rikcharimuy, ECUARUNARI), and the case of the PA and the ordinance was addressed. The president of ECUARUNARI at that time, Humberto Cholango, commented: “The communities (...) with over 250 delegates reaffirmed their determination to fight to recover these paramos, to assure that they will be administered by these very communities and organizations. Ecuador's National Constitution guarantees that the communities are the legitimate owners – not foundations or municipal governments seeking to take control of them, to then turn them over as a way to privatize water, and to take control over the biodiversity in our Andean paramos.”

The first strong community reaction took place when local inhabitants broke through the fence that had been built by the businessman and destroyed the trout farm facilities. They practically threw the businessman out of the region. The struggle for land had already intensified prior to the ordinance, due to the dubious way things were handled by the National Institute of Agrarian Development (Instituto Nacional de Desarrollo Agrario, INDA), currently run by new authorities because of numerous irregularities in its administration. Benjamin Inuca explains: “We found ourselves in conflict with the State when individuals who were not originally from the area were supposedly the owners of lands in the

Mojanda area, due to a proceeding carried out with INDA. The State “legalized” the community lands over to them, claiming that INDA has the authority to grant lands to other individuals. There were even companies that managed to obtain a license giving them the right to the waters of the Laguna de Mojanda, but the communities rose up and threw out the companies (...). So, the ordinance seems to be something more like a means for protecting the new owners, and that’s why the community mobilized to completely reject the new owners of these lands.”

One of the most important local and regional actors is the already mentioned Indigenous and Campesino Federation of Imbabura (Federación Indígena y Campesina de Imbabura—FICI), founded in 1974. FICI has set out to recover the Mojanda area through efforts made by the communities, and to return to their traditions of caring for the environment. FICI and other indigenous organizations in the area rule out the possibility of changing the ordinance through negotiations. Instead, they are determined to ignore the ordinance and implement their own proposals. As explained by Juan Castro, president of the Union of Campesino Communities, Indigenous People and Tabacundo Neighborhoods of the Pedro Moncayo municipality (Unión de Comunidades Campesinas, Indígenas y Barrios de Tabacundo del municipio de Pedro Moncayo): “Three years ago we got organized to establish exactly how far the agricultural frontier has extended, and since then, we have no longer advanced toward the paramo.”

Throughout the entire area, collective actions are being carried out to reforest the area with native plants. “We also work in establishing firebreaks, by clearing the weeds from strips of land four meters wide,” states Washington Cuascota, president of the TURUJTA community organization in San Pablito de Agualongo (Pedro Moncayo).

The work of reforesting the area with native trees and plants also involves reversing a situation provoked by the intervention by the private Ecuadorian enterprise known as the Programa Face de Forestación (PROFAFOR) in 2006. “They planted pine trees in the paramo. We didn’t know these trees drink a lot of water, and destroy the ecosystem,” commented Francisco Males Caguasqui, former president of the Calpaqui community.

In the context of the “Andean Paramo Project” study, the foundations involved—the Brethren and Unida Foundations, as well as Ecociencia—which appear to take actions more similar to those of the communities—support what the communities have said: “In a number of cases the communities themselves have defined internal mechanisms for stopping the advance of the agricultural frontier, and also burning practices, in order to recuperate their function of regulating water for human consumption.(...) Most of the general population agrees with the measures taken.” Their conclusions also criticize the attitudes of the municipal governments involved: “Concrete actions by the Otavalo or Pedro Moncayo municipal governments aimed at conserving the Mojanda paramos have not been identified, with the exception of the issuing of the bi-cantonal ordinance which has, instead, generated conflicts.”

2.2.7 The proposal for Indigenous Territorial Districts

FICI aspires to create Indigenous Territorial Districts (Circunscripciones Territoriales Indígenas, CTI) in order to guarantee self-determination and self-management of the Lagunas de Mojanda and the surrounding area. The CTI are contemplated in Article 60 of the New Constitution of 2008 as “special systems.” This Article stipulates that “ancestral, indigenous, Afro-Ecuadorian and Montubio peoples will be able to constitute territorial districts for the preservation of their culture. The law will regulate the forming of these districts. Communes

with collective ownership of lands are recognized as an ancestral form of territorial organization.”

Clearly, these norms can serve as a good starting point. In many cases, however, the regulations for laws have not yet been created, or their wording is not very clear. As commented by Benjamin Inuca: “Ecuador’s laws have many contradictions, and this is apparent in the legal vacuum. There is no legislation for regulating community lands or collectively owned property, not for the paramo, not for CTI. The laws have been written up and approved by the National Assembly only recently.”

2.3 Lachiguiri

2.3.1 Protected Natural Areas and Payment for Environmental Services in Mexico: The legal and institutional context

The history of Protected Natural Areas in Mexico dates back to 1876. Starting in 1988, however, and especially since the beginning of the new millennium, there has been a boom in PA in Mexico, accompanied by the corresponding legal and institutional tools. In 1988 the new General Act on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente, LGEEPA) entered into effect, and with it the National Protected Areas System (Sistema Nacional de Áreas Protegidas) was created. In 2000 LGEEPA Regulations for PA were established. That same year, the National Commission for Protected Natural Areas (Comisión Nacional de Áreas Naturales Protegidas, CONANP) initiated its activities as a decentralized entity of the Ministry of the Environment and Natural Resources (Secretaría de Medio Ambiente y Recursos Naturales, Semarnat).

CONANP currently administers 174 federal natural areas, representing over 25,384,818 hectares or nearly 13 percent of national territory. These areas are classified into the following categories: Biosphere Reserves, National Parks, Natural Monuments, Areas for Protection of Natural Resources, Areas for Protection of Flora and Fauna, and finally, Sanctuaries. Generally, PA in Mexico are established through a declaration issued by the country’s President (Article 57, LGEEPA). However, there is also the possibility of making a request for a PA before the Ministry of the Environment and Natural Resources (Semarnat). This is stipulated in the LGEEPA’s Article 59, and was the proceeding followed in the case of Santiago Lachiguiri: “Indigenous peoples, social organizations both public and private in nature, and other interested individuals may request that the Ministry establish protected natural areas in land they own or through a contract with third parties, in the case of areas dedicated to the preservation, protection and restoration of biodiversity.”

In CONANP’s web page, this “voluntary” certification of PAs is described as a “unilateral process on the part of the party proposing such, and CONANP participates as a civil servant authorized to attest to the party’s will to conserve its lands and to the policies, criteria and actions that the party intends to carry out in order to achieve its objectives.” CONANP’s strategies explicitly anticipate the “development of direct and indirect economic instruments for payment of environmental services.” In other words, in the beginning PA and so-called Payment for Environmental Services (PES) went hand in hand. The concept of PES was more strongly introduced and with support from the World Bank at the beginning of this decade in Mexico, and a significant expansion of PA can be noted at the same time. The first payments for environmental services in Mexico were made in 2003.

In general, PES is designed for four strategies that are sometimes combined:

- Carbon sequestration
- Watershed services
- Biodiversity conservation
- Landscape beauty

PES projects are presented to the National Forest Commission (Comisión Nacional Forestal, CONAFOR), under Semarnat's jurisdiction. Resources are allocated to ejidal or communal authorities, for example, for five-year periods. In general PES is linked to the temporary suspension of the exploitation of certain territories and a restriction on agricultural activities. Since 2007, payment for environmental services is conditioned on compliance with obligatory improvement and protection activities that must be carried out in the forest. It is important to emphasize that PES is, in the end, focused on incorporating natural resources into markets—something totally removed from the cosmovision of many indigenous campesino communities in Mexico. The authors of a study funded by the Ford Foundation and published in 2002 make this perfectly clear: “PES strategies (...) share premises with Mexico's guiding policies on privatization and decentralization of public functions.” And they make a statement worth mentioning here: “It is important to acknowledge that national policy points clearly to a gradual reduction in the campesino population.”³

2.3.2 General data on Santiago Lachiguri

The Santiago Lachiguri municipality is governed by a system of uses and customs, not by the political party system. The community's highest authority is the general assembly of comuneros, which every three years elects a municipal president, Commissioner of Communal Lands and supervisory council. The municipality is located in the Isthmus of Tehuantepec in the Mexican state of Oaxaca, and covers a total land area of nearly 26,000 hectares of communally owned land. There is a partially paved dirt road leading to the Santiago Lachiguri municipal seat, and the other communities in the municipality are connected by dirt roads.

Much of the municipality is mountainous and covered with forests. Especially worth mentioning is Cerro de las Flores, which has virgin forests at its highest elevations, according to local residents. These are cloud forests and cypress pine forests. Due to its elevation (over 2,000 meters above sea level) and the type of rock it is composed of, Cerro de las Flores functions as a natural sponge that captures and filters a large amount of water. There are numerous natural springs on the mountain that are used by the community for its own water consumption and they also provide water for the Benito Juárez dam, which at the same time serves as infrastructure for the irrigation system used in the flat lands characterizing the Isthmus of Tehuantepec. The climatic conditions lead to exuberant vegetation covering much of the municipality.

Land title deeds establishing the collective rights of this agricultural community over its territory were granted by the Spanish Crown in 1525. However, the Zapotec people had already lived in this place before the Spaniards' arrival. In addition to the municipal seat of

³ http://www.undp.org/cu/eventos/aprotegidas/Pago_Serv_Amb_Mexico_Fund_Ford.pdf. The study was realized within the project “Pago por Servicios Ambientales en las Américas”, under the auspices of the FORD Foundation and elaborated by the PRISMA foundation.

Santiago Lachiguiri, there are currently approximately 30 settlements and communities in the municipal territory. The great majority of the population of nearly 8,000 inhabitants is Zapotec. The municipality's economy is based on corn. The lands referred to as *acahuales* are used by local residents to cultivate primarily corn, however often in combination with other crops such as beans, squash and chilies. Many *comuneros* also grow coffee. While corn and the other crops mentioned are used primarily for family consumption, the coffee grown is sold to obtain at least a small amount of income for buying some basic necessities other than food.

2.3.3 Certification process

Santiago Lachiguiri is third on the list of the 193 PA voluntarily certified in Mexico. It was officially the first community to accept this scheme, since the two prior cases (according to their certification dates) correspond to a PA promoted by Pemex, Mexico's state-owned oil company, and a PA promoted by an individual. This makes the process in the Santiago Lachiguiri community especially important.

According to the scheme of voluntary certifications, CONANP authorities are not those who propose a PA, but instead the initiative comes from those directly involved. In this case, that would be the community of Santiago Lachiguiri. Nevertheless, if the testimonies from *comuneros* are reviewed, it appears that what happened was the opposite. The *comuneros* describe how in 2001 and 2002 "the commission arrived," "they said nice things," and "they painted a picture of numerous benefits." The many testimonies from inhabitants of the community give the impression that the individuals sent by CONANP were those who urged the community to "voluntarily" request the certification of a portion of their communally owned property, specifically Cerro de las Flores. CONANP representatives did have the support from the individual who at that time served as the president of communal lands. But if the events are reconstructed, it is impossible to speak of broad-based participation and consultation with the community.

A requirement for certification is the Comprehensive Territorial Ecological Ordinance (*Ordenamiento Ecológico Territorial Integrado*). In Santiago Lachiguiri, the territorial ordinance covers 23,984.23 hectares of communally owned land, or in other words, nearly all the communally owned land. Most of its contents were taken from another document, the technical study justifying CONANP certification. The two documents were the basis for requesting the certification of a preservation area covering 1,453.86 hectares (just over 6%), including the summit and a significant portion of the lower slopes of Cerro de las Flores. Another 2,803.66 hectares (nearly 12%) were designated for conservation; 628.32 hectares (2.62%) for restoration; and 19,042.74 (79.52%) to exploitation.

The documents never clearly state the specific consequences of a "preservation area" or a "conservation area," nor do they explain the effects for *comuneros* who plant corn or care for their coffee plants in such an area. It is only mentioned in passing and without any particular explanation that lands in the preservation area are "untouchable." At the same time the Santiago Lachiguiri community's great capacity for caring for their territory can be seen. And there is even a focus on the positive effects of *acahuales*: "These areas are left fallow for certain years, constituting different and new ecosystems in the landscape, with a highly important biological function for a number of fauna species. (...) As well, there is wood in the *acahuales* that can be used for cooking, and in the areas used for a shorter period of time, medicinal and edible plants."

According to the testimonies collected, neither of the two documents was presented to the Santiago Lachiguirí comuneros at the appropriate time. Without this information, the comuneros present at the General Assembly on August 15, 2003 decided that an area of Cerro de las Flores consisting of 1,453.86 would be certified as a “preservation area” for five years, expecting government support as compensation. It was not, however, until 2008 and 2009, after having seen the file documents related to the certification, that it became evident that this General Assembly procedure and the subsequent official certification were totally flawed. There were different versions that did not coincide with the official document prepared at the Assembly on August 15, 2003, and there was a request signed later by the president of communal lands at that time, manifesting the community’s alleged interest in preserving the zone in “perpetuity.” In response to the request, the CONANP president issued the certificate for the “Cerro de las Flores preservation area” on October 31, 2003, to be in effect for 30 years.

Since certified PA are considered to be untouchable, all productive activities in the area were prohibited. Furthermore, other areas were soon committed through the Payment for Environmental Services (PES) program, implying their restricted use. The set of measures, together with the lack of clear boundaries for the different areas, and the lack of sufficient information generated great confusion. Based on a decision made by the Commissioner of Communal Lands and CONANP authorities, nearly 140 comuneros were prohibited from using the area for productive activities, even though their families had for generations worked in their acahuales and their coffee fields on the lower slopes of Cerro de las Flores. Suddenly, this mountain had been converted into a conservation area without any people, and 140 comuneros and their families had been robbed of their traditional livelihood for producing their own food.

With regard to payment for environmental services, it was to take place through the Commissioner for Communal Lands. However, the same thing happened with the introduction of payment for water services as with the approval for the preservation area – it was done without any real participation by comuneros. And for those directly affected, from one day to the next, the lands they had worked became PA. The payment of 400 pesos per hectare per year would not have compensated for the production or the income that the affected comuneros could have obtained by using their land plots. But even worse, according to their own testimonies, the comuneros affected by these measures never received a single payment for environmental services.

2.3.4 Compensations and development projects

To compensate local residents for not using the land, Semarnat authorities had promised financial compensation and new productive projects. According to the comuneros directly affected, the compensation payments corresponding to the certification ended up in the hands of others, including people from communities in nearby municipalities, while those affected in the Lachiguirí community never received anything.

Economic resources from the government have been a constant factor creating divisions in the community. “Money from authorities was simply thrown at us to fight over it,” was the complaint expressed by comuneros on various occasions during our visit. This phrase was also used in relation to the different “productive” projects introduced in the Santiago Lachiguirí community in the certification’s framework. Three factors creating divisions are particularly important to mention:

- In at least some cases those receiving benefits were not those directly affected.

- “Inadequate“ use of resources
- “Productive” projects were unrelated to the communities’ uses and customs, including ecotourism and fruit tree nurseries.

A description of how some of these projects ended up is illustrative:

- Water commercialization: A water bottling plant was installed in the community, but the cost of the bottling process is higher than the price paid for water in potential client areas.
- Peach tree nursery to supply an agro-forest system: The nursery was established in 2007 and still exists. The first plants have been transplanted into fields, however comuneros consider this project to have little potential for profit in comparison to what they previously received in terms of corn for their families.
- Raising white-tailed deer (for meat consumption) in what is referred to as an Environmental Management Unit (Unidad de Manejo Ambiental, UMA): The project only lasted a very short time, and due to the UMA’s neglect, the white-tailed deer that had not been consumed escaped happily into the forests.
- Ecotourism: Ecotourism is a favorite concept of Semarnat (not only in Santiago Lachiguiri). It seems to be aimed at turning campesino comuneros into guides for tourists. In the specific case of Santiago Lachiguiri, CONANP resources were granted for building cabins for lodging in the El Porvenir community, for preparing trails, and for training “local environmental interpretation promoters.” The resources ended up in the hands of a previous communal authority who, together with some other individuals, created an association that was going to administer the project. Left behind are two half-built cabins.

Nevertheless, what has caused the most discontent among comuneros has not been the failed projects, but the prohibition of working in their acahuales in Cerro de las Flores—with the argument that they are destroying the forests. For the comuneros, their acahuales are much more than places where corn is planted. Instead, they represent nothing short of a way of living with nature and also with other comuneros. The work in and with acahuales in Santiago Lachiguiri has very particular characteristics of what is known as the “slash and burn” system. Contrary to what is usually assumed when the term “slash and burn” is used, the system used to work the acahuales actually helps care for the environment. To explain this, we can use the example of the Leoncio Villanueva Domingo, a comunero from the Lachidola community and directly affected by the preservation area.

Don Leoncio has a 14-hectare acahual in Cerro de las Flores. When he was still allowed to work in his acahual, he did so in the following manner: “Before the rainy season, which typically begins during the second half of May or the early weeks of June in Lachiguiri, he got a two-hectare land plot ready to plant corn. First, he cleared the land, or in other words, he cut the weeds back and then felled the trees, and lastly—not before making a firebreak wide enough to prevent the fire from extending beyond these two hectares—he burned the plot. When the first rains came, he planted, alternating corn with squash, beans or green beans.”

According to Don Leoncio, the land in his acahual was always very fertile. Five months after planting—and without using any chemical fertilizer—he harvested approximately a ton of corn per hectare. His harvest produced abundant, high-quality, yellow corn—enough to feed his family during the entire year, plus he sold a small amount. The following year he worked a different two hectares, and so on. In this way the first plot could lie fallow for six years to recuperate its fertility. Due to the climatic conditions, lush vegetation grew back again during that time. After the corn was harvested, the seeds of other plants germinated, and many of the trees that had been cut down grew back again. And because of this, there was no soil erosion.

The trees grew a meter per year, and in the seventh year when they were cut down once again, they provided a good amount of cooking wood. Now, Don Leoncio has to buy corn at the government-operated CONASUPO store. In addition to the financial burden this causes, another disadvantage is that “the corn is of very poor quality.” Don Leoncio says that if it wasn’t for his two sons who migrated to the city and who help to support him, he would have to look for a way to support himself outside the community. Don Leoncio’s situation is repeated with different nuances 140 times in Lachidola, Buenavista and El Porvenir. The work in acahuales is often done among various people. “It’s a custom from our ancestors. When we burn, we are also interacting with our friends,” another campesino explains.

In the list of projects, it is also specified that 115,000 pesos were paid in 2006 for a Management Plan for the Cerro de las Flores Certified Area. Nonetheless, it appears that this plan was never distributed among the comuneros. Nor could they mention any person or institution that had been given the task of developing such a plan. However, after a brief investigation online it turns out that an NGO called Grupo Mesófilo mentioned precisely this Management Plan in Santiago Lachiguiri in 2006 among its projects carried out recently. It remains to be clarified whether this was a project never completed or simply one never shared with the community. In theory this Management Plan should have served as the means for the comuneros to become informed of the situation for each of their land plots and to find out if their plots were located within the protected area.

2.3.5 The comuneros’ rebellion and their proposal for a communal statute

By 2008 it had been practically five years since the certification, and dissatisfaction had been growing. The affected comuneros requested access to the agreements established for the preservation area. They were now able to benefit from the support of new communal authorities. The more information that came to light, the more the dissatisfaction grew. At the General Assembly held in January 2009 the comuneros in attendance decided to request the “early cancellation or modification of the Certification.” At their General Assembly on May 28, 2010 they ratified this decision before a public notary, as witnessed by a representative from the agrarian attorney’s office in the city of Tehuantepec. The Assembly unanimously decided to reject funds for environmental services subject to conditions defined by the federal government. The decision was made to initiate the corresponding legal proceedings. The Assembly also stated emphatically that it was the responsibility of all the inhabitants of the municipality to preserve and care for Santiago Lachiguiri’s natural resources, referring explicitly to their “ancestrally conserved lands” (that include Cerro de las Flores and other parts of the municipality). The management of these lands was established in the new communal statute prepared by the community.

The statute clearly manifests the community’s intention and firm wishes to express itself as a collective entity, conscious of its rights as an indigenous people and determined to manage its own territory. In a number of its articles, the statute attempts to establish limits that will make it impossible to repeat the process that led to the certification, or to repeat what communal authorities did without the people’s involvement. Also, clear rules are established for caring for and conserving the municipality’s natural resources. There are strict provisions regarding the way in which acahuales can be worked in order to avoid affecting the environment. The statute identifies the acahuales as “an ancient, traditional agricultural system that maintains the balance between food production and caring for the mountains and forests.” Other articles of the statute address, with the same attention to detail, the use and management of water resources, especially natural springs.

Article 75 of the statute establishes the limits on certification and other imposed conditions, for example, through payment for environmental services: “The regulation, supervision and maintenance of ancestrally conserved lands will remain the community’s responsibility(...); therefore, certifying or inscribing these ancestrally conserved lands under any type of official conservation is prohibited(...). The economic resources administered or proposed to be granted to the community with the aim of maintaining the conservation of ancestrally cared-for lands will be received without the imposition of any conditions.”

The Santiago Lachiguiri communal statute can be considered one of the most advanced of its kind. It provides the community with an instrument for managing the vital affairs of its inhabitants. It also strives to conserve the natural resources in its territory in an exemplary manner. However, it considers a type of conservation that also leaves room for the inhabitants and producers in the territory.

3. Conclusions

In the three cases presented, indigenous peoples have manifested their rejection of the protected areas. The documented cases of Livingston, Lagunas de Mojanda and Santiago Lachiguiri provide a number of lessons:

- Actions taken by authorities signify the violations of the rights of the Q'eqchi', Kichwa and Zapotec peoples with regard to their ancestrally inhabited territories, even though these rights are stipulated in international agreements such as the ILO's Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. No respect on the part of state authorities toward the communities' lands and territories can be perceived in any of the three cases. Rather, communities have found themselves forced to take steps to defend their ancestral rights and protect themselves from outside interventions. In the case of Livingston the violation of rights is also associated with direct repression and the criminalization of protest.
- There is extensive evidence of the capacity of indigenous peoples to care for and keep watch over their natural resources, and there is an enormous wealth of ancestral knowledge and local traditions in this regard. But in fact, this wealth is ignored by government authorities as well as by many environmental entities.
- Also evident is the lack of will, on the part of state authorities and the institutions and organizations that work with them, to consult the indigenous populations directly affected by the declarations of protected areas. In the best of cases there are consultations and processes that formally comply with legal requirements and international principles of Free, Prior and Informed Consent, however a genuine interest in consulting the affected populations is not evident, and there is not even any intention in this regard.
- The applied concept of Protected Areas (PA) promotes an environment that is without people and does not take people into consideration. The mechanisms for achieving such an environment are sometimes indirect, by restricting the activities allowed in these areas, and at other times are direct, as in the case of threatened eviction. The PA model contradicts indigenous peoples' customs of coexisting with nature in their ancestral territories, and this means living, working, producing, caring for and conserving.
- The declaration of protected areas does not offer any guarantee that nature will be protected from the outside interests seeking to take advantage of its resources. To the contrary, what can be perceived is that PA are the gateway for these interests – to the detriment of the indigenous populations residing in their ancestral territories.
- Indigenous peoples have reacted to this situation in different ways. Depending on the circumstances, they have taken immediate actions such as recuperating their lands (Livingston), throwing out the invading companies (Mojanda), making the decision to ignore the official declaration of a Protected Area (Mojanda), and revoking the decision agreed upon – although the reaction from authorities is still pending (Lachiguiri).
- Especially noteworthy are the multiple and specific measures proposed by the communities in the three cases for conserving their environment. They have formulated concrete proposals for strengthening their capacities for protecting their territories, whether through the development of a communal statute as in Lachiguiri, the proposal CTI as in the case of the Lagunas de Mojanda, or the enhanced unity of people working together in organizations like Encuentro Campesino in Livingston.

Appendix

In order to exchange experiences regarding the three case studies presented here, and to further study the topics of the effects on Protected Areas and on the human rights of indigenous peoples, delegates from the indigenous peoples and communities in the respective regions in Guatemala, Mexico and Ecuador, as well as the Kuna de Kuna Yala people of Panama, met together in Heredia, Costa Rica on September 22-24, 2010. During the course of the three-day meeting, participants entered into an intense debate on visions and positions, leading to the unanimous approval of the summary document of the three cases. In addition the delegates wrote a joint declaration: The Declaration of Heredia contains the political demands of the indigenous representatives and its objective is to make these demands known, to in this way continue to move forward in this necessary debate. The declaration is presented below:

Declaration in Defense of Mother Earth and Against Environmental Policies

Children of Mother Earth, members of the Kuna, Kichwa, Kayampi, Q'eqchi' (in Livingston), Bene Gulash and Ñu Savi peoples meeting together in Heredia, Costa Rica on September 22-24, 2010 to analyze the problems arising from the establishment of Protected Natural Areas, environmental policies and the future implementation of the REDD project in the lands and territories of indigenous peoples and communities, and taking into consideration our concrete experiences in relation to these matters, and in response to COP 10 of the CBD and COP 16 of the Kyoto Protocol on Climate Change, consider it to be vitally important to let our voice be heard through this declaration. Having concurred:

- That we, as indigenous peoples, have maintained an ancient relationship of harmonious and totally respectful coexistence with Mother Earth and with other material and spiritual natural beings inhabiting her, and this situation has made it possible to create and maintain the biodiversity and natural wealth we have today. Our practices and wisdom do not seek the destruction of nature. This very ancient presence generates, for our peoples, rights to their territories that no State, government or national or international policy can deny, and to the contrary, must respect.
- That western models of development have been characterized by placing man above nature, attempting to dominate nature, with the exclusive intention of generating economic profit, through extraction and commercial models that exploit and destroy nature. This vision of development has also implied that all those not sharing this same vision are excluded, discriminated against and forced to accept this model as the only one possible.
- That environmental policies designed by multilateral entities are one more expression of this development model, which has been assumed by national States to the detriment of recognized rights, and in the case of indigenous peoples, in violation of their territorial and autonomous rights.

- That the establishment of Protected Natural Areas in the territories and lands of Indigenous Peoples and communities does not guarantee to the world that nature will be preserved, since what they impose is a conservation model that does not contribute anything to our peoples; to the contrary, it generates conditions for the commercialization of nature, as we have seen in the concrete cases of our peoples.
- That the mechanisms designed thus far by governments and environmental NGOs to establish Protected Natural Areas, such as Payment for Environmental Services and now the REDD, condition the delivery of economic resources to communities on their acceptance of rules that contradict and destroy our traditional wisdom on the use and management of biodiversity, and provoke the displacement of our communities and the biodiversity that we have created and maintained in our lands.
- That many of the Protected Natural Areas have been established in territories of indigenous peoples because these territories are rich in biodiversity, suggesting that this is being used as a mechanism to gain access other riches such as petroleum, minerals and water.

In light of this situation, WE DEMAND:

Recognition and respect for the property of indigenous territories in all of its forms, and the exercise of their free determination in relation to such property. No government, no environmental policy or legislation can be imposed above our territorial rights, which are guaranteed in Convention 169 of the International Labor Organization and the United Nations Declaration on the Rights of Indigenous Peoples.

That no more Protected Natural Areas be established in indigenous territories, that those decreed to date be cancelled, and that consequently, such lands and territories be returned to the communities and peoples they were taken from.

That governments oblige capitalist companies to remedy the devastation they have created over the last centuries, and to reduce the emission of pollutants, as a fundamental requirement for stopping the planet's destruction.

That the criminalization of the struggle undertaken by Indigenous Peoples in the defense of their territories cease, and that all those imprisoned for defending the earth be given their freedom.

That the harmonious relationship that we have created, as Indigenous Peoples, be recognized for maintaining the biodiversity that is found in our territories. We are in agreement with continuing to maintain life on the planet, and maintain respect for Mother Earth in line with the conceptions and philosophy that we have inherited from our ancestors, the reason for which we do not accept impositions such as those that some are currently attempting to impose on us.

That environmental NGOs cease their attitude of complicity and complacency with environmental policies that jeopardize our territories and our mother nature. We will be watchful of their actions.

Finally, we call upon indigenous communities and peoples to exercise their free determination over their territories, and to not allow environmental policies to be implemented without their consent, manifesting their objection and opposition in all cases.

San Rafael de Heredia, Costa Rica, September 24, 2010



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