



La Colosa: An Imminent Threat A Case Study on Extractivism and the Rights and Resistance of Peasant Communities in Tolima, Colombia

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La Colosa is AngloGold Ashanti’s proposed project for an open-pit gold mine spanning several municipalities in the department of Tolima, Colombia. This region is known as the “breadbasket of Colombia” because of its distinctive peasant culture, identity, and vocation. The case has become a national and international reference because of the organized resistance by the affected peasant communities and the David-and-Goliath victory secured by the Cajamarca community in 2017.

The company had been pursuing the project for years—first through an unrecognizable subsidiary and then openly when it officially registered as AngloGold Ashanti Colombia in 2007. In all this time, the affected communities have had no opportunity to meaningfully participate in any stage of the decision-making related to this project with massive impacts in their territory.

Thus, organizers have sought parallel spaces. Most notoriously, in 2017 the Cajamarca community managed to successfully invoke a binding, constitutional referendum mechanism called the *consulta popular*. The community overwhelmingly voted to ban mining activities in its territory, with 98% voting “NO.” With this, the peasant community of Cajamarca was able to put the brakes on the plans for one of the world’s largest open-pit gold mines – promoted by one of the largest mining companies in the world and with the full support of the Colombian national government.

However, the story does not end there. Since 2017, the company and the government have actively sought to disregard and undermine the legitimacy of the referendum and to advance the project at all costs—notwithstanding the community opposition, the documented environmental limitations, and the legal and procedural constraints.

In this way, the case of Cajamarca is not an outlier, but instead is paradigmatic of the systemic challenges that communities face to actually claim and exercise their rights in a context of dramatic asymmetries of economic, legal, and political power. These power imbalances, and the legal vagaries that enable them, render domestic rights guarantees and international human rights commitments absolutely illusory.

Having exhausted all available domestic routes to uphold the results of the referendum banning mining activities, this report aims to document the history and status of the case in order to expand the network of allies and explore effective routes for international advocacy and litigation. The report describes: (I) the key background of the case; (II) the challenges to the *consulta popular* mechanism in Colombia and in Cajamarca; (III) the frustrated efforts to intervene in the administrative approvals for the La Colosa project; and (IV) structural obstacles to realizing the human rights of peasant communities.

I. BACKGROUND

National Mining Context

In Colombia, the non-renewable natural resources of the country belong to the national government to manage in the public interest. All concessions for exploration and extraction are granted through mining concession contracts, or “mining titles,” signed between private parties and the Colombian state.¹

Over the past 20 years, successive governments have prioritized attracting foreign investment for large-scale mining, especially of precious metals. However, the actual role of mining in the Colombian national economy is relatively small. The mining and energy sectors are often reported together as making up more than 6% of the GDP. Taken independently mining (coal, nickel, gold) contributed an average of 2.1% of the GDP from 2010-2017.²

The Region

Cajamarca is a rural municipality in the department of Tolima, about 230 kilometers west of Bogota, in a region known as the “breadbasket of Colombia.” The peasant identity and agricultural vocation are defining features of the territory.³ While there have been exploratory studies for decades, there is no history of large-scale mining in the region.

Cajamarca is part of the Chilí-Barragán and Los Nevados páramo ecosystems, which are critical to the natural environment, to the water supply for several cities, and to the cultural identity of the region.⁴ Cajamarca is within the Central Forest Reserve.⁵ Nonetheless, the region has suffered water scarcity from droughts aggravated by climate change.⁶

The Project

La Colosa is a project of AngloGold Ashanti (AGA), headquartered in South Africa. The South African government is one of the largest single investors through its Public Investors Corporation.⁷ La Colosa would be an open-pit mine centered in Cajamarca that would produce an estimated 30 tons of gold per year.⁸ This would be the highest producing project for AGA⁹ and among the 10

¹ Colombian Political Constitution, art. 332; Mining Code, Law 685/2001, art. 14.

² See Luis Álvaro Pardo, *Los quince mitos de la gran minería en Colombia*, Fundación Heinrich Böll (2018).

³ Territory here refers to the multidimensional relationship between people or communities and their particular, sub-national natural environment. See e.g. FIAN, *The Right to Land and Other Natural Resources* (April 2021).

⁴ See Carlos Lozano, *What are the páramos and what can you do to protect them?*, AIDA, October 10, 2013, <https://aida-americas.org/en/blog/what-are-p%C3%A1ramos-and-what-can-you-do-protect-them>.

⁵ See Law 2/1959; WWF, *¿Qué son las Reservas Forestales Protectoras Nacionales?* 29 December 2020, <https://www.wwf.org.co/?365650/Que-son-las-Reservas-Forestales-Protectoras-Nacionales>.

⁶ Consejo de Estado judgment of September 17, 2020, file number 73001 23 31 000 2011 00611 03.

⁷ See AngloGold Ashanti, Shareholder information, <https://www.aga-reports.com/17/ir/shareholders/information>.

⁸ Unidad de Planeación Minero-Energética, *Plan Nacional De Desarrollo Minero Con Horizonte A 2025. Minería responsable con el territorio*, December 2017.

⁹ AngloGold Ashanti, Year-end 2020 - Results Presentation, https://thevault.exchange/?get_group_doc=143/1613995019-AngloGoldAshantiFY2020ResultsPresentationFINAL.pdf.

largest precious metals mines in the world.¹⁰ The project was in the exploratory phase and is currently suspended as a result of the referendum.

La Colosa is one of the central projects for the Colombian government in its extractivist push.¹¹ In 2013, the government categorized La Colosa as a “Project of National and Strategic Interest,”¹² which means that the project benefits from a series of measures aimed at procedural fast-tracking and legal stability.

The infrastructure required includes the open pit mine, a tailings dam for the chemical waste, water treatment plants, connection to the national electric system, and a pipeline for the transport and processing of the gold.¹³

Organized Resistance

The mobilized opposition to the project—and to the extractive development model more broadly—began to emerge as soon as AGA’s presence and intentions in the territory were made public in 2007.¹⁴ Several groups converged in 2011 to form the Environmental and Peasant Committee of Cajamarca and Anaimé (*Comité Ambiental y Campesino de Cajamarca y Anaimé*).

This Committee, in response to the lack of formal and democratic spaces to intervene in the economic and environmental decision-making in their territory, has mobilized opposition in a wide range of creative and strategic ways. They lead an annual “Carnaval March” and have promoted several initiatives to advance alternative proposals for the municipality. Among the wide range of resistance strategies, Cajamarca is most famous for having successfully invoked a local referendum for the community to express and exert its will over the extraction of resources in its territory.

II. CAJAMARCA’S “NO” VOTE AND THE STATE OF THE *CONSULTA POPULAR*

Cajamarca’s Referendum

The Colombian Constitution sets out a mechanism for citizens to participate directly in decision-making, a process known as a “*consulta popular*”.¹⁵ In this type of referendum, the state – whether

¹⁰AngloGold Ashanti, *La Colosa, una oportunidad de oro para el Tolima* (2015), <https://docplayer.es/26451880-La-colosa-una-oportunidad-de-oro-para-el-tolima.html>.

¹¹ Oxford Business Group, *The reinvigorated Colombian mining industry receives strong state support*, <https://oxfordbusinessgroup.com/overview/dig-it-reinvigorated-industry-receiving-strong-state-support>

¹² CONPES 3762 del 2013 “Lineamientos de política para el desarrollo de Proyectos de Interés Nacional y Estratégicos –PINES”. Other mining PINES include: Gramalote (Antioquia), Quebradona (Antioquia), Cerrejón (Guajira), Cerro Matoso (Córdoba), Buriticá (Antioquia), Soto Norte (Santander), entre otros. Available at: <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3762.pdf>

¹³ Fierro Morales et al, *Análisis desde la perspectiva de amenazas socioambientales de unmina de oro a cielo abierto: caso de estudio La Colosa*, Cajamarca (Tolima), (February 2016), https://generatietransitie.be/sites/default/files/bijlages/informe_amenazas_colosa_final.pdf.

¹⁴ AngloGold Ashanti previously operated in Colombia through a subsidiary called Sociedad Kedahda S.A, registered in Colombia first in 1999.

¹⁵ Colombian Constitution, art. 103.

at the local, departmental, or national level—holds a binding consultation with its citizens in the form of a yes-or-no question. Initially, this process could only be invoked by a relevant government authority and not by the people themselves.¹⁶

The municipality where the tailings dam of La Colosa was planned, Piedras, held the first *consulta popular* referendum related to extractive industries. In 2013 the citizens overwhelmingly voted “no” to mining activities in their municipal territory.¹⁷ Inspired by this result, the Cajamarca movements sought to hold a similar referendum; however, the local elected officials in Cajamarca who would have had to lead the process declined to do so.

In 2015 a new national law on “the promotion and protection of the right to democratic participation” expanded the mechanism to allow citizens to directly force a *consulta popular* by collecting enough signatures.¹⁸ In response, peasant and youth leaders in Cajamarca came together as the *Corporacion Cajamarca Despensa Hidrica y Agricola* to try to meet the onerous requirements of this new law to force a binding referendum on mining in Cajamarca.¹⁹

AGA launched several unsuccessful legal and administrative actions to stop the efforts to invoke a referendum, arguing inter alia that municipalities did not have the authority to interfere with national mining concessions.²⁰ In 2016 the Constitutional Court ruled on this issue in a case coming from the oil sector and confirmed unequivocally that a properly realized *consulta popular* at the local level can be used to challenge the mining concession contracts entered into by the national government.²¹

Emboldened by the clarification from the Constitutional Court, the Cajamarca community persisted and managed to fulfill all the requirements to force a referendum. Cajamarca held its *consulta popular* on March 26, 2017 with the ballot question: “Do you agree, YES OR NO, with mining activities and projects in the Cajamarca municipality?”²² The movement was massively successful in turning out the vote: 6,296 people showed up to cast ballots (out of a total of 16,314 registered voters), and 98% (6,165) voted “NO” against the mining project.²³

Following the resounding victory in this binding referendum, the Cajamarca Municipal Council issued Municipal Agreement 003 of April 27, 2017, which adopts the results and bans mining activities in the municipality.

¹⁶ Law 134 of 1994.

¹⁷ Registraduría Nacional del Estado Civil, *En consulta popular celebrada el domingo 28 de julio, los habitantes de Piedras, Tolima dijeron “no” a la exploración minera en su municipio*, <https://www.registraduria.gov.co/En-consulta-popular-celebrada-hoy,10769.html>.

¹⁸ Law 1757 of 2015.

¹⁹ The Committee filed a recognition request before the Registrar’s Office on February 19, 2016 to start the process.

²⁰ Following an unfavorable lower court ruling, AngloGold Ashanti filed a constitutional action (*tutela*) alleging violation of its due process rights, in which the Consejo de Estado upheld the constitutionality of Cajamarca’s referendum.

²¹ Constitutional Court’s judgment T – 445/2016.

²² Registraduría Nacional del Estado Civil, *Habitantes de Cajamarca (Tolima) dijeron No a la ejecución de proyectos y actividades mineras en este municipio*, press release, March 26, 2017, <https://www.registraduria.gov.co/Habitantes-de-Cajamarca-Tolima,23943.html>.

²³ Registraduría Nacional del Estado Civil, *Acta Parcial de Escrutinio – Formulario E-27*, March, 26, 2017.

In direct contradiction of the Constitutional Court’s interpretation, the Minister of Mining and Energy at that time made public statements rejecting the legal effects of the *consulta popular* in Cajamarca.²⁴ AngloGold Ashanti communicated that it was “forced to make the unfortunate decision to stop all activities related to the project, and with them the related employment and investment, while it waits for certainty related to mining activity in the country and in Tolima.”²⁵

Retgression in Participation Guarantees and the Response

In 2018 the Constitution Court dramatically reversed its position on the *consulta popular* mechanism in the context of extractive activity in a case involving a challenge by an oil company to the results of a referendum held by the municipal in Curamal, Meta. At that time, a total of 10 local *consulta popular* referendums in the country had delivered “NO” votes against extractive activity.²⁶ In that case the Court ruled in favor of the company finding that a *consulta popular* invoked by a local government cannot unilaterally intervene in decisions about the extraction of subsoil resources in municipalities. The reasoning was that the extraction of subsoil natural resources and the general economic directives are the purview of the national government, and therefore there are concurrent competencies with sub-national authorities making unilateral action unconstitutional. AngloGold Ashanti representatives have relied on this and subsequent rulings²⁷ to try to have the Cajamarca Municipal Agreement adopting the referendum results declared null.²⁸

Therefore, Cajamarca social movements, including the Environmental and Peasant Committee of Cajamarca and Anaimé, have joined up with a wide range of partners to seek to defend the *consulta popular* mechanism generally and the results in Cajamarca in particular. The domestic litigation efforts are described below.

III. EFFORTS TO INTERVENE IN THE LA COLOSA AUTHORIZATION PROCESS

Before securing the necessary environmental license for La Colosa, AngloGold Ashanti needs to clear several administrative and legal hurdles, including securing the related mining concession contracts or “mining titles” from the national mining authority, the concession for water use from the regional authority, and the specific permissions necessary for carrying out extractive activity in the Central Forest Reserve, as well as complying with the limitations related to protected páramo zones.

²⁴ El Espectador, *Consulta minera en Cajamarca no tiene la capacidad de cambiar la ley: Gobierno*, March 27, 2017, <https://www.elespectador.com/noticias/nacional/consulta-minera-en-cajamarca-no-tiene-la-capacidad-de-cambiar-la-ley-gobierno-articulo-686515>.

²⁵ Available on: <https://www.anglogoldashanticolombia.com/portfolio/la-colosa/>; see also AngloGold Ashanti Official Press Release, April 2017: <https://www.anglogoldashanticolombia.com/comunicado-oficial-la-colosa/1719/>.

²⁶ In 2013, Piedras (Tolima) and de Tauramena (Casanare); in 2017, Cabrera (Cundinamarca), Cajamarca (Tolima), Cumaral (Meta), Arbeláez (Cundinamarca), Pijao (Quindío), Jesús María and Sucre (Santander); in 2018 Fusagasugá (Cundinamarca).

²⁷ Including SU-085/2015, C-053/19, and T-342.

²⁸ The petitioners are citizens who have expressed their public support for the La Colosa mining project or have acted as attorneys for the project in other types of legal actions. The current proceedings against the Municipal Agreement No. 003 are before the Second Oral Administrative Court of the Circuit of Ibagué with file No. 73001-33-33-002-2020-00087-00; and before the Tenth Oral Administrative Court of the Circuit of Ibagué with file No. 73001-33-33-010-2019-00337-00.

The consideration of the project in each of these processes has excluded or disregarded the rights of the affected community to meaningfully participate in these decisions, each of which dramatically affect their territory. The company and the state’s intention to continue to advance the project above all is clear.

La Colosa Mining Titles v. the Consulta Popular

By 2010 AngloGold Ashanti had 19 contracts or “titles” with the Colombian government for mining concessions in Cajamarca, totaling 30,440 hectares or 69% of the entire municipality.²⁹

Following the *consulta popular* referendum, AngloGold Ashanti started a process to cancel 10 of the 19 titles³⁰ and to consolidate others. As is described further below, several of the contracts have been suspended by judicial order. Three of the original 19 titles are still in place,³¹ which still cover 14,529,06 hectares or 28% of the total land of Cajamarca. The peasant communities living within the territories at the heart of the contracts were not consulted at any stage of the issuance of or adjustments to these titles.

On the basis of the referendum results, the Cajamarca social movements petitioned the National Mining Agency to declare void all mining concession contracts in the municipality of Cajamarca. The National Mining Agency denied this request on two grounds: (1) that the company had “vested rights” (*derechos adquiridos*) and the Agency could not unilaterally void mining titles; and (2) that the municipal referendum results are only binding on municipal authorities and do not have any effect on national institutions. The national government has never recognized the duly realized *consulta popular* in Cajamarca.

In June 2019, Siembra, on behalf of the Corporación Cajamarca Despensa Hídrica y Agrícola, brought a “contractual controversy” action (*acción de controversias contractuales*) before the a departmental administrative tribunal (Cundinamarca) to have AGA’s three remaining mining concession titles with the National Mining Agency declared invalid.³² The lawsuit asserted that the *consulta popular* outcome made the object of the contracts convert from legal to illegal (*objeto ilícito sobreviniente*). In May 2021 the Tribunal dismissed the case in a summary judgement (*sentencia anticipada*) asserting that the claim had to have been filed by 2015, five years after the contracts were adopted. This ignores the main fact of the situation, which is that only in 2017 was the object of the contracts made illegal, through the *consulta popular* results. By summarily adopting an irrelevant time limitation, the Tribunal avoided considering the merits of the case: namely, how to determine the legal effect of a referendum that was properly realized before the dramatic reversal of the Constitutional Court. Siembra appealed this decision to the Consejo de Estado in June 2021.

²⁹ This total is drawn from the Mining Registry (Catastro Minero) and a formal inquiry submitted to the National Mining Agency.

³⁰ The cancelled mining titles are: ELJ-118, GLN-099, HEG-153, HHA-14251X, HHB-08231, HEB-166, JB6-15011, JB6-14541, GLN-09271X, and IFE-08081X.

³¹ CG3-145, GLN-143, and EIG-163. The mining title EIG-163 includes the previous titles: GLN-09261X, EIG-153, HEB-169, and GCF-151. EIG-167 was registered in May 2017.

³² The titles that are part of the legal process are: CG3-145, GLN-095, and EIG-163.

By consulting the National Mining Agency databases, civil society organizations have learned that different private actors have requested five new mining concession titles in Cajamarca in 2020 and 2021. Neither the local government officials nor the community had been notified of these requests. In February 2021 the Mayor's office, the Corporación Cajamarca Despensa Hídrica y Agrícola, and Siembra denounced the lack of participation and formally requested that the mining authority reject these titles. To date the National Mining Agency has not responded.

Water Scarcity and Permits

The La Colosa project also needs permits for water use—both surface and groundwater—and discharge. These are required before the exploration phase can begin. In Colombia, water concessions are granted by the regional environmental authority, which in this case is the Corporación Autónoma Regional del Tolima (CORTOLIMA). In 2007 CORTOLIMA temporarily awarded the waters of the La Colosa and La Arenosa brooks to AGA's first subsidiary, which passed to AngloGold Ashanti Colombia in 2010.

CORTOLIMA, a departmental authority, has been the only state institution to recognize the legal impacts of the results from Cajamarca's use of the *consulta popular* democratic participation mechanism. On the basis of the referendum results, CORTOLIMA cancelled AGA's two water concessions in 2018.³³ CORTOLIMA issued a resolution stating that: (1) it would not issue any environmental licenses, water concessions, permits, or other authorizations for the use of natural resources that are for the purpose of realizing mining activities in Cajamarca; (2) all authorizations that had been granted before the *consulta popular* had to be reviewed to take the necessary steps to revoke them; and (3) all pending requests related to mining activities had to be reviewed to ensure the *consulta popular* referendum results are respected. The company unsuccessfully challenged these decisions in 2020 and appealed in 2021. As recently as April 2021, CORTOLIMA has reiterated its stance of respecting the *consulta popular* results, duly recognized by Cajamarca Municipal Agreement No. 003.³⁴

Separately from consideration of the effects of the *consulta popular*, the impact on water and irregularities in pursuing those permits have been obstacles for advancing the project. In 2011, the Contraloría General de la Nación issued an official warning (*funcion de advertencia*)³⁵ about the negative impacts of the water concessions granted to AngloGold Ashanti in Cajamarca, recognizing that Tolima suffers from severe droughts stemming from climatic changes, aggravated by the over-demand on the water supply in the area.³⁶

³³ CORTOLIMA, Resolution Nos. 4424, 4425 December 16 2019.

³⁴ CORTOLIMA response No. 100.04.2021 (Apr. 22, 2021) to information request No. 4346 (Apr. 6, 2021).

³⁵ This function has since been declared unconstitutional on the basis that it conflicts with the competencies of other bodies. Constitutional Court C-103 (Mar. 11, 2015). It is nonetheless relevant in the documentation of risks related to the concession of water permits and the RFC permissions.

³⁶ The Contraloría General confirmed that the AngloGold Ashanti water concessions were limited to three years and warned about the potential negative impacts that authorizing the mining project could have on the ecosystems and on the economic activities in the department given water scarcity emergency. See Contraloría General, *Funcion de advertencia – Prevencion de amenaza al recurso hidrico en la ejecucion del proyecto La Colosa* (2011).

This led CORTOLIMA in 2011 to declare the groundwater in the Coello riverbed to be exhausted.³⁷ The Coello river runs through the La Colosa project site and is the main source from which the project planned to draw water. The Ibagué municipal *personero* prompted the departmental administrative tribunal of Tolima to order a precautionary measure,³⁸ and this led to a court order instructing the National Mining Agency to suspend two of AGA’s mining titles in 2013.³⁹

The Consejo de Estado recently reassessed the suspension and confirmed the continued impact on water in September 2020.⁴⁰ The Consejo de Estado concluded that the mining concessions under consideration (including those impacting Cajamarca) put the water sources at risk and ordered the continued suspension of all mining activities related to the concession contracts in question until the company could show CORTOLIMA and the National Mining Agency that they would use an alternative water source that would not jeopardize the Coello River and its tributaries.

Permission to extract from the Central Forest Reserve (RFC)

The entire mining project is within protected zones of the Central Forest Reserve (RFC). AngloGold Ashanti therefore is required to formally seek permission from the Ministry of the Environment to carry out extractive activities in a national forest reserve.⁴¹ AngloGold Ashanti has sought to be exempt from this requirement on the basis that their activities are considered to be in the public utility and social interest—a classification that the Mining Code extends to all mining activity.

AGA has made several extraction requests to the RFC related to its exploratory activities: in 2008, 2012, 2014, 2015, and 2018. AngloGold Ashanti currently has two partial extraction permits related to the Central Forest Reserve, but which are suspended and pending suspension respectively.⁴²

The process for considering these RFC requests initially included certain guarantees for democratic participation, but this has since been restricted. In the case of AGA’s first request, the Ministry of the Environment and Sustainable Development (MADS) recognized the participation of “third party intervenors”—namely the Procuraduría General de la Nación, or Ombudsmen’s Office. It also held a “Public Environmental Hearing.”⁴³ The Ombudsmen’s division charged with agrarian and environmental issues recommended that the permission in this case not be granted because of the negative impacts on the ecosystem. Nonetheless, MADS decided to grant the permission.⁴⁴ That decision was appealed by the affected communities and allied organizations, but the Ministry ratified the decision.

³⁷ CORTOLIMA, Resolution No. 1765 “Por la cual se declara el agotamiento del Recurso Hídrico Superficial de la Cuenca del Río Coello”, April 20, 2011.

³⁸ Tribunal Administrativo del Tolima, Collective Action, File No. 2011-00611-00, May 20 2016.

³⁹ CG3-145 and GLN-095, No. VSC 0958 of Nov. 8, 2013; No. 000796, Aug. 28, 2013.

⁴⁰ Consejo de Estado, Decision 73001 23 31 000 2011 00611 03.

⁴¹ See Resolution No. 1526 de 2012 and Decree 2106 de 2019.

⁴² Resolution No. 814 de 2009.

⁴³ Held on February 20, 2009, ruling 0085 of 2009.

⁴⁴ Resolution 814 of May 4, 2009.

For the subsequent requests, the Ministry changed its position and has no longer allowed the community or other institutions to participate in these processes. The Ministry has denied all requests by several civil society organizations to be recognized as third-party intervenors in the RFC permission processes and for public environmental hearings to be held.

In response, in December 2016 civil society organizations filed an action (*tutela*) before the Administrative Tribunal in Cundinamarca to seek protection of their fundamental rights of procedural due process and rights to participate in these proceedings. The aim was to situate the right to participate in RFC processes in the context of the growing line of Constitutional Court jurisprudence that has progressively guaranteed the rights of affected communities to participate in environmental decision-making.⁴⁵ This important line of developments represents a counterweight to the antidemocratic approach to extractive development that successive national governments have adopted. Nonetheless, these litigation efforts were not successful and the courts have not recognized a right for affected communities to participate in RFC processes.

Despite the exclusion of affected communities, in 2017 MADS concluded that the environmental impacts would be negative and in 2017 decided to deny the permission request from AngloGold Ashanti filed in 2015.⁴⁶ AngloGold Ashanti appealed this decision in July 2017, just three months after the *consulta popular* and publicly declaring its respect for the results.⁴⁷ On March 5, 2018, AngloGold Ashanti presented a new request for temporary RFC permission for additional exploration activities, which is still pending.⁴⁸

Conflicts with Environmental Conservation Zones

Finally, the pursuit of permissions for the mining project has also directly conflicted with national administrative and legislative efforts to delimit and protect the páramo ecosystems, which were long delayed. By the time the relevant ministerial resolutions were finally issued in 2016,⁴⁹ much of the páramo zones were already subject to AngloGold Ashanti mining concession contracts.

The 2016 delimitation resolutions prohibit the exploration and extraction of non-renewable natural resources within the delimited páramo zones and establish several actions to guarantee that. Following these delimitation resolutions, the La Colosa mining concession contracts were adjusted to exclude some of the protected areas, however there are still remaining overlaps between zones that are delimited as protected páramos but which are subject to a mining concession. AngloGold Ashanti intervened in the process to challenge the delimitation of the Los Nevados system to reinstate its rights, and the demand is still pending.⁵⁰ In 2018, national legislation to regulate the páramos passed, which reiterates the prohibition on extractive activity with the delimited zones.⁵¹

⁴⁵ See Constitutional Court Judgments: T-135/2013, C-123/2014, T-445/2016, C-273/2016, C-035/2016, C-389/2016, and SU-133/2017.

⁴⁶ Resolution No. 1087, June 9, 2017, MADS “Por medio de la cual se niega la solicitud de sustracción temporal de un área de la Reserva Forestal Central establecida por la Ley 2° de 1959.”

⁴⁷ El 28 de julio de 2017, bajo el radicado EI-2017-018239, la AngloGold Ashanti presenta el recurso de reposición.

⁴⁸ No. EI-2018-006633, to the Dirección de Bosques, MADS.

⁴⁹ Resolutions 1553 and 1987 (2016), MADS.

⁵⁰ Filed before the administrative tribunal of Cundinamarca on June 12, 2017, file no.25000234100020170092400.

⁵¹ Law 1930/2018, art. 5.

IV. STRUCTURAL CHALLENGES TO REALIZING THE RIGHTS OF PEASANT COMMUNITIES

Several trends and structural factors explain the intractability of the obstacles faced by the Cajamarca community, despite dynamic and organized activism and legal guarantees in the international and domestic framework. The continued marginalization, violations, and threats to the rights of the Cajamarca community are contrary to Colombia’s human rights obligations and AGA’s public commitments to adhere to its human rights responsibilities.

1. *The declaration of mining as a whole, and the La Colosa project in specific, as a strategic priority in the public interest sets an impossible path for exercising rights in practice.*

The procedural framework regulating mining is designed to facilitate extractive development at the national level. The 2001 Mining Code declares all mining projects—in every manifestation and phase—to be in the “public utility and social interest.”⁵² This declaration has specific legal consequences: namely, to minimize the obstacles and claims that can be made in opposition. There has not been a robust public consideration of the Mining Code and what is in the national interest. This blanket declaration does not factor in the varying economic, social, and cultural identities of the territories and instead homogenizes the country in service of the extractive development model nationwide.

Likewise, the designation of “Project of National and Strategic Interest,”⁵³ which La Colosa received in 2013, means that a project will benefit from a series of measures aimed at procedural fast-tracking and legal stability, intended to facilitate its smooth and timely implementation. Cajamarca communities were not able to participate in the processes that put this project into the special characterizations—whether via the Mining Code or the PINES. Yet these decisions set the project on a legal and political path where future engagement and consideration of the rights of the communities was necessarily prejudiced.

2. *The claim that the company has vested rights despite being in the exploratory phase is mistaken legally and has been used to further undermine rights claims by the community.*

La Colosa is still far from securing an environmental license, which is the authorization for a mining project to move into the extraction phase once all requisite permissions described above have actually been secured. However, the company has argued, despite not having the environmental license, that it has a consolidated legal situation with acquired rights that cannot be violated by the Colombian government.

Colombian jurisprudence distinguishes between vested rights (*derechos adquiridos*) and legitimate expectations (*expectativas legítimas*) that do not reach that bar and can be justifiably modified to pursue constitutional objectives.⁵⁴ Because the La Colosa mining project is still so far from securing the environmental license, it is untenable to assert that AngloGold Ashanti has

⁵² Law 685/2001, art. 13.

⁵³ CONPES 3762/2013 “Lineamientos de política para el desarrollo de Proyectos de Interés Nacional y Estratégicos –PINES”.

⁵⁴ Constitutional Court judgment C-983/2010.

consolidated and vested rights stemming from the mining titles for La Colosa. According to the Constitutional Court, even in the case of vested rights, there are no absolute protections; if those rights are in conflict with other rights and needs of the public or social interest, the private interest must cede to the public.⁵⁵

3. *Especially in the exploratory phase, environmental and mining regulatory proceedings are treated as technical administrative proceedings outside the purview of constitutional and human rights to participation.*

The La Colosa case reveals how the mining code and related administrative proceedings are not adjusted to comply with constitutional principles and rights. The Mining Code is not regulated in a way that includes procedures to guarantee the rights of affected communities. Likewise, the RFC processes have consistently been administered to exclude any third-party participation. The State has a duty to inform and guarantee spaces for participation to the municipality and the communities that possibly affected by these types of decisions, but it fails to do so in these administrative and environmental proceedings. Overall, the exploratory phase is defined by weak state intervention and virtually no democratic controls.

4. *The change to the status of the consulta popular mechanism represents a retrogression in the rights of affected communities.*

The change in the Constitutional Court’s position on the *consulta popular* referendum mechanism—affirming the rights to participation for affected communities in 2016 and then in 2018 denying them—is a flagrant retrogression in terms of the rights of affected communities to participate in decision-making that affects their economic, social, and cultural rights.

5. *Despite advances, there is a gap in terms of the protection of peasants’ rights in Colombia.*

The mobilization in Cajamarca is an example of a peasant movement expanding beyond a traditional agrarian focus to include environmental justice considerations and new tactics for confronting the power and influence wielded by transnational corporations. The La Colosa case reveals the urgency for stronger mechanisms to ensure the exercise and protection of the rights of peasants, including rights related to democratic decision-making in their territories. Although the Constitution does not recognize peasant communities as an distinct political subject, it does provide a specific State duty to ensure the progressive realization of rights for the peasants population.⁵⁶ The Colombian Constitutional Court has used this constitutional standards to enact the category of peasants as a “specially protected subject.”⁵⁷ Nonetheless, this case demonstrates how much more is needed to operationalize and protect peasant rights in the context in which they are made most vulnerable—namely, in the imposition of the extractivist development model at all costs.

⁵⁵ Ibid.

⁵⁶ Article 64.

⁵⁷ Corte Constitutional judgments such as SU-426/2016; C-028/2018; C-644, 2012; C-006/2002; T-052/2017.

6. *Documented substantive human rights impacts without participation rights are not sufficient to contain and regulate extractive projects.*

For more than a decade, the La Colosa case has accumulated a solid base of independent, state, and even company-sponsored research⁵⁸ that confirms the massive impact on the enjoyment of a range of human rights, including those related to livelihood, water, food, cultural identity, and a safe and clean environment. These harms are related to but also independent from the rights of the communities to participate in the decision-making. Although the case includes several instances of state institutions making evidence-based decisions acknowledging the environmental harm, these have been by and large trumped by national efforts to facilitate the authorization process.

7. *The imposition of the project has meant threats and stigmatization for environmental and human rights defenders.*

The individuals and organizations that led the referendum in Cajamarca and other resistance efforts have been stigmatized—by the company and by the state—as opponents of development, and by extension, the nation. In 2011 and 2013 there were particularly grave incidents of peasant community members involved in the opposition to the mine being (incorrectly) signaled as members of guerrilla groups. More broadly, community leaders have been repressed directly and indirectly by factors such as violence by the armed forces, forced displacement by armed groups, and the increased militarization of the municipality, financed by the company. The climate of fear and intimidation has been fueled by threats received by environmental and peasant organizations, and by the assassination of four community leaders who opposed the mine—killings that have not been sufficiently investigated by national authorities and which remain in impunity.⁵⁹

CONCLUSION

The La Colosa mining project is paradigmatic of the challenges that peasant communities face when large-scale extractive projects are imposed on their territories. It highlights how peasants' distinctive relationship to the land and other natural resources are ignored by law and policy. The massive impact of mega development projects in peasant territories is not acknowledge and communities are left without recourse to assert rights to participation and to defend substantive rights related to water, food, health, livelihood, and cultural identity.

The approval process for extractive development, especially in the exploratory phase, is only weakly regulated, with virtually no democratic controls. This case demonstrates a complete lack of democratic civic space in decision-making spaces, even and especially those with massive impacts on the environmental and human rights.

By recounting the history and current status of this case, this report aims to leverage support for the community of Cajamarca in their effort to defend their territory, to advance the rights-based and democratic approach to economic and environmental policy-making, and to create space for alternative visions of promoting and realizing human rights for rural communities.

⁵⁸ Fierro Morales, et al., *Análisis desde la perspectiva de amenazas socioambientales*, 52.

⁵⁹ COAJUCA, “Comunicado a la opinión pública del Colectivo Socio-Ambiental Juvenil de Cajamarca”, 2017, <https://censat.org/es/10/noticias/comunicado-cosajuca-sobre-atentado-recibido>.