

# La Colosa, AngloGold Ashanti Open-Pit Gold Mine, Cajamarca, Colombia

## Advocacy Brief

### Summary

La Colosa is AngloGold Ashanti's (AGA) proposed open pit gold mining project in the Department of Tolima, Colombia. This project is at the exploratory stage and threatens to have a devastating impact on the local farming communities, their livelihoods, history, and identity. As it will take place in important biodiverse ecosystems, the Nevados paramo<sup>i</sup> (Andean moorlands) and the Central Forestal Reserve.<sup>ii</sup> These ecosystems play a fundamental role in sustaining essential ecosystem services and the *Nevados* soils and vegetation provide efficient forms of carbon storage and sequestration as well as water production for millions of citizens.

In 2013, the government issued a new categorisation of La Colosa making it a project of "National and Strategic Interest" (PINES, Spanish acronym).<sup>iii</sup> This designation means that the Colosa mine, benefits from an additional series of measures to facilitate its implementation, including procedural fast-tracking and legal security. Under this categorisation, for example, companies can execute private and/or administrative evictions, unilaterally establish compensation amounts, and judges can issue summary judgments in expropriation disputes.<sup>iv</sup> As of 2010, AGA's mining concessions in Cajamarca, Tolima *totalled 69% of the municipality*. In a region known as the 'breadbasket of Colombia', where farmers provide organic produce for national consumption.

The Tolima region already suffers from water scarcity and droughts because of climate change and over-demand on the water supply,<sup>v</sup> and according to World Wildlife Fund, *Los Nevados* is one of the most important of Colombia's Natural Parks, 'the rivers that are born in the Nevados irrigate the agricultural lands and feed aqueducts ... The conservation of this and other water sources ... is vital for the center of the country.'<sup>vi</sup>

In 2017, due to profound concerns regarding the water situation and the local economy, as well as the negative environmental and social impacts of gold mining, local communities united to oppose the mine, and they were joined in this struggle by the municipal authorities, something that rarely happens in Colombia. They achieved a referendum, using a constitutional mechanism, known as a '*consulta popular*' (*Peoples referendum*), in this referendum local communities overwhelmingly voted to ban mining activities.<sup>vii</sup> This is a legally binding mechanism, and, in this way, the local population were able to put a brake on the plans for one of the world's largest open-pit gold mines.

However, despite the referendum decision, in 2018 the Constitution Court dramatically reversed its position on the *consulta popular* mechanism, in the context of extractive activities, in a case involving a challenge by an oil company to the results of a referendum held by the municipal in Curamal, Meta. In that case, the Court ruled in favour 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 their municipality. AngloGold Ashanti representatives have relied on this and subsequent rulings to try to declare null and void the Cajamarca Municipal Agreement which accepted the referendum results and suspended mining activities. The communities are now engaged in a difficult struggle to get AGA and the State to respect the referendum results.

### **International Investment Agreements (IIA) regime and investor-to-state dispute settlement mechanism (ISDS): Implications for Climate Change.**

Multinational companies with mining titles that reach into the Colombian *páramos* refused to accept the law that mining in the *páramos* is prohibited and to limit their mining operations to below the area where the paramos begin. As a result of Colombia issuing a law to protect the Paramos, three Multinational companies are suing Colombia in International Tribunals using the investor-to-state dispute settlement (ISDS) mechanism in bi-lateral investment agreements (BITs) and free trade agreements (FTAs). According to the UN Conference on Trade and Development (UNCTAD), the risk of private companies using the ISDS system to challenge climate policies is of major concern. They highlight that **reforms to the ISDS mechanism are "essential" to ensure investment treaties and their dispute**

resolution systems “don’t hinder states from achieving a just transition to low-carbon economies.”<sup>viii</sup> Concerns exist that if AGA is not allowed to mine in the Páramos, then it too will take Colombia to International Tribunal.

### Examples of what this means for Colombia.

- 1) The Canadian Mining Giant Eco-Oro (formally Greystar Resources Ltd) sued the Colombian government for USD 696 million<sup>ix</sup> because of the Colombian state’s refusal to allow mining in the Santurban *paramos in Colombia*. Eco-Oro has won this case. UNCTAD’s assessment is that the *Eco Oro case*, ‘signals that measures taken for the protection of the environment can be challenged and deemed in violation of International Investment Agreements’ and ‘sheds doubt on the effectiveness of explicit safeguards and exceptions’ included to ‘protect a state’s climate regulation’.<sup>x</sup> Two other multinational mining companies are in the process of suing Colombia, Galway Gold for 196 million dollars and Red Eagle for 118 million dollars due to the measures adopted to protect the páramos.<sup>xi</sup> The International Arbitration regime heavily favours investors, who as large multinationals have the skill and resources to outmanoeuvre states on the policy front and frequently have their own legal teams. A further concern is that Investor-state arbitration disputes are carried out in secret by trade arbitrators (lawyers who both defend and prosecute cases as well as presiding over tribunals) and not independent judges.
- 2) In October 2022, the Petro government moved a law on “Equality and Social Justice” designed to raise around 4.4 billion dollars<sup>xii</sup> for invest in social spending, through a surtax on the income tax of oil and coal companies.<sup>xiii</sup> This is all part of the Government’s plan to transition away from fossil fuels. The executive director of the Council of American Companies threatened to sue Colombia in international tribunal if the Petro Government’s tax reform passed, saying there was no need to move so quickly on this issue as it would make projects in Colombia relatively unfeasible.<sup>xiv</sup> Failing to recognise the urgency of the climate crisis.

Disproportionate investor protection can also impact human rights protections especially when implemented during an internal conflict or when a country is transitioning to peace, as it can restrict a government’s ability to make the policy changes required to reach a peace agreement and/or provide reparations to victims. The very prospect of claims being filed against a government frequently creates a “regulatory chill”. As investor protections in FTAs and BITs generally place enforceable obligations only on states, meaning that investors can win cases even if they have violated domestic law or other international norms, with claims and compensations adding up to billions of dollars.

### Impacts on those defending community rights - Environmental human rights defenders.

There has been attacks and stigmatisation of the environmental human rights defenders (EHRD) and organisations in Tolima that led the push for the *consulta popular*, by the company and the state<sup>xv</sup> – in a country where 169 defenders were killed in 2022. In 2013 four EHRDs opposing extractive activities were killed<sup>xvi</sup>. In 2019, EHRDs received threats from paramilitary groups,<sup>xvii</sup> fuelling a climate of fear and intimidation. Other EHRDs were forced to displace by armed groups. In addition, there has been increased militarisation of the municipality financed by the company.

### Key facts

- Colombia’s Environment Agency and the Inspector General’s Office supports community concerns regarding **climate change implications and water impacts** if the AGA Mine goes ahead.
- There are grave concerns about the potentially devastating impact of the mine on agricultural livelihoods and implications for democracy if the decision of the legally binding local referendum is not implemented.
- The UK has a responsibility to act as AngloGold is redomiciling in the UK; and AGA’s main holding company subsidiary has been based in the UK since 2017.
- There is serious questioning of ISDS globally with Australia and New Zealand no longer including these mechanisms in their trading agreements. Others are terminating old investment treaties in favour of extremely limited new agreements that abolish traditional ISDS. Thailand’s FTA with the EU is likely to resemble the deals with Vietnam and Singapore, with room to regulate on the climate front and restructured dispute resolution systems.
- EHRD need greater protection and prevention strategies to be implemented by the Colombian state.

As the world faces huge and interconnected challenges, the termination of BITs and the abolition of ISDS should be crucial steps in dismantling structures that are inhibiting countries in implementing climate change and human rights commitments, in moving from conflict to peace, and transitioning to sustainable energy sources.

### Recommendations to Parliamentarians to:

1. Given that AngloGold Ashanti will be headquartered in the UK, the climate change commitments made by the UK and Colombia, and the funding the UK has given to Colombia to address climate impacts, it is essential that the UK Embassy in Colombia is vigilant in monitoring what happens with the Colosa Mine, and that they engage with Siembra and Cosajuca in this monitoring.

2. To ensure that UK registered and/or domiciled companies are held to account for their climate change impacts and that they uphold human rights, it is essential that the UK introduce a new Business, Human Rights and Environment Act<sup>i</sup>. This is a UK mandatory human rights and environmental due diligence law, as called for by the UK Parliament's Joint Committee on Human Rights, and found to be legally feasible by the British Institute of International and Comparative Law. Such legislation would be in line with the UK's existing commitments to implement the UN Guiding Principles on Business and Human Rights.

3. The UK needs to consider doing the same as countries like Australia and New Zealand and omit ISDS mechanisms from their bi-lateral investment treaties and FTAs. There is an opportunity to do this with the UK/Colombia BIT from October 2024. Removing the ISDS mechanism will help to create opportunities that are essential to Colombia's ability to regulate to address climate issues. It will also demonstrate that the UK has a real and tangible commitment to support Colombia on climate change.

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<sup>i</sup> The Nevados Paramo are part of the high-mountain ecosystems that play a central role in maintaining biodiversity, premised on a unique capacity to absorb and restore water. The Colombian paramos represent about 50 percent of the world's páramo ecosystems. cited in *Eco Oro v. Colombia*, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021 p86.

<sup>ii</sup> 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>

<sup>iii</sup> 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), [www.colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3762.pdf](http://www.colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3762.pdf)

<sup>iv</sup> Law 388 of 97, art. 58-71

<sup>v</sup> The Contraloría General confirmed that the AGA water concessions were limited to three years and warned about the potential negative impacts that authorising 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).

<sup>vi</sup> Pacto por los Nevados: agua para el Eje Cafetero, Tolima y el país, 3 May 2016

<https://www.wwf.org.co/en/?269471/Pacto%2Dpor%2Dlos%2DNevados%2Dagua%2Dpara%2Del%2DEje%2DCafetero%2DTolima%2Dy%2Del%2Dpaís>

<sup>vii</sup> Of those who voted over 99% said no to mining

<sup>viii</sup> Watson Farley and Solicitors, ISDS and Climate Change: What Happens Next? <https://www.wfw.com/articles/isds-and-climate-change-what-happens-next/>

<sup>ix</sup> The exact amount of the payout is yet to be decided and published [italaw16212.pdf](https://www.wfw.com/articles/isds-and-climate-change-what-happens-next/)

<sup>x</sup> Cited in Watson Farley and Solicitors, ISDS and Climate Change: What Happens Next? <https://www.wfw.com/articles/isds-and-climate-change-what-happens-next/>

<sup>xi</sup> Transnational Institute y Colectivo de Abogados José Alvear Restrepo, ISDS Colombia, Boom de demandas de inversores extranjeros, May'23.

<sup>xii</sup> Law 388 of 97, art. 58-71.

<sup>xiii</sup> Fierro Morales et al, Analisis desde la perspectiva de amenazas socioambientales de una mina de oro a cielo abierto: caso de estudio La Colosa, Cajamarca (Tolima), February 2016, AngloGold Ashanti previously operated in Colombia through a subsidiary called Sociedad Kedahda S.A, registered in Colombia first in 1999

<sup>xiv</sup> Transnational Institute (TNI) y el Colectivo de Abogados José Alvear Restrepo (CAJAR), ISDS, Colombia, Un boom de demandas de inversores extranjeros, May 2023.

<sup>xv</sup> See Portafolio, Lo que pierde Cajamarca con la paralización del proyecto La Colosa, <https://www.portafolio.co/economia/lo-que-deja-anglogold-ashanti-en-cajamarca-505333>

<sup>xvixvi</sup> COSAJUCA, "Comunicado a la opinión pública del Colectivo Socio-Ambiental Juvenil de Cajamarca", 2017, <https://censat.org/es10/noticias/comunicado-cosajuca-sobre-atentado-recibido>

<sup>xvii</sup> See Contagio Radio, Amenazan promotores de consulta popular en Cajamarca, Tolima.