

December 20, 2006

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Mr. Davis:

On behalf of my clients, DECOIN and Carlos Zorrilla, I am writing you to elaborate on the legal facts presented about Ascendant on DECOIN's Website, in regard to your letter, dated November 2<sup>nd</sup>, outlining your objections. In order to make it easier for you to understand, I am presenting it on the basis of the five areas you identified.

## **I Legal Proceedings**

### ***Habeas Data***

In September 2004, Ascendant Copper SA acquired rights to two mining concessions in the zone of Intag, Cotacachi canton. Those concessions affect the land where about 150 families live.

Pursuant to Canadian law, Ascendant Copper SA must make publicly available a document called a "prospectus," outlining the economic, legal and social details of their mining project. According to the plaintiffs, the social aspects of the document published by Ascendant provide such information about the inhabitants of the zone as:

*Ascendant has commenced a program of acquiring surface land*

from local landowners and has purchased now over 980 hectares, with an additional 1000 hectares under contract, in areas we anticipate could be impacted. With the sale of their surface rights to Ascendant, it is expected that many of the inhabitants have departed or are expected to decide to depart the area of their own volition.

To date, Ascendant's community relationships program has met with mixed results. CODEGAM has advised Ascendant that it represents 34 of the approximate 38 communities that could be impacted by development of the Junín property. CODEGAM has advised Ascendant that most inhabitants of these communities are in favour of Ascendant's plans for proceeding with exploration of the property. However, within Imbabura Province, there exists a vocal faction opposing any exploration or development of the Junín project. This opposition includes DECOIN, which is currently backed by several international environmental organizations, the Municipality of the Cotacachi Canton in which the Junín concessions are located, and, to a lesser extent, individuals particularly from within the four communities that would stand to be most directly impacted by development of the Junín project.

On Tuesday, 21 February 2006, 48 members of the communities of Barcelona, Cerro Pelado, El Triunfo, Junín, Chalguayacu Alto and Villaflora, belonging to the parishes of García Moreno and Peñaherrera, located in the region of Intag, canton of Cotacachi, presented a petition to the courts of Quito for **Habeas Data** to elicit all the information that the Ascendant Copper SA company publishes about them on the Website of the "System for Economic Document Analysis and Retrieval" (SEDAR - [www.sedar.com](http://www.sedar.com)). This proceeding, numbered 2006-0183, is currently under review by the judge of the Twelfth Civil Court of Pichincha.

Members of the plaintiff communities did not feel that CODEGAM represents their interests, had no knowledge of the plans implemented by Ascendant in the area, and had no knowledge of the "land purchase plan" created by Ascendant to promote emigration and/or displacement of their families. In fact, in 2005, representatives from the communities adjacent to and within the Junín mining project publicly expressed, through a signed document, that CODEGAM did not represent their interests, and that they opposed the mining

project.

The *Habeas Data*, an FOIA equivalent, is a constitutional remedy designed to prevent public or private bodies from taking action based on confidential information unknown to the plaintiffs, so that they can defend their rights. By submitting this appeal, the community members demanded to be given the "prospectus", translated into Spanish in order for that document to be explained to them, and for information to be provided on the development plans that Ascendant claims to have funded for social projects in their communities.

Such a constitutional writ is a remedy designed to protect the human right to information by obtaining the complete contents of the information from the holder thereof, clearly and truthfully. The purpose of habeas data is to prevent public or private institutions from basing their decisions or actions on confidential information, not made available to the interested parties, and which would prevent a person from defending him or herself.

The letter that you sent to the Canadian Embassy in Quito on July 12, 2006, alleging that a handful individuals supported by DECOIN and Glen Kuecker had committed violent acts against you, is a good example of how negative, incorrect information can affect a person's reputation, as you have done against Carlos Zorrilla and Glen Kuecker. If it had not been for the fact that we were able to obtain a copy of the letter anonymously, DECOIN would have been completely unaware of this slander, and unable to take any action to defend the affected parties' reputations. On behalf of my clients I will have to ask you to take the necessary measures to correct the above misinformation.

### **Illegal purchase of land**

Ascendant Copper SA, as planned in its prospectus, purchased several hundred hectares of agricultural land located inside the mining areas called Golden 1, Golden 2 and Magdalena 1. Agricultural land, according to Ecuadorian law, is made available by the Government to persons or groups who can demonstrate the ability and intention to pursue agriculture in rural areas such as Intag.

As you pointed out, Ascendant is a mineral exploration company. Its goal is simply, at this point, to explore its legally obtained concessions and seek to determine whether there are mineral deposits to be developed in a manner that can maximize benefits for all stakeholders while minimizing potential negative impacts on community residents, other stakeholders and, ultimately, the people of the Intag region.

As a consequence of the "land purchase plan" stated in your prospectus, together with the unfortunate inefficiency of INDA (Ecuador's Agricultural Development Institute) in properly administering rural land in Ecuador, a situation has been generated that in Ecuador is recognized as "land trafficking." Ascendant has not only generated it, but has also acted in complicity with different land traffickers. Evidently, such conduct could lead to legal actions against both, Ascendant and INDA.

I illustrate this situation with the following cases:

On July 22, 2005, INDA's Adjudication Resolution number 0506104529 granted a couple of individuals a piece of land located in Cerro Pelado, García Moreno Parish, Intag. These individuals paid fees of US\$ 238.42. On January 03, 2006, Ascendant Copper SA purchased the exact same agricultural property from the couple who received the INDA land grant, paying them US\$ 19,000 for it.

On October 03, 2006, INDA's Adjudication Resolution number 0610106182 granted an individual named Luis Fuentes a piece of land located in Junín Alto, García Moreno Parish, Intag. Mr. Fuentes paid fees of US\$ 3,822.70. In early December DECOIN got copies of a sale's contract whereas Ascendant pay US\$ 136,500 to Mr. Fuentes for the same land.

I should mention to you that at least in one case we have evidence that one of the public deeds through which the buying was executed does not comply with legal requirements.

### **Illegal adjudication of agricultural land in the Intag Region**

Ecuadorian law prohibits the award of agricultural land

where the existence of minerals has been proven.<sup>1</sup> On the 14<sup>th</sup> of March 2005, General César Villacís, a former student at the School of the Americas and an Ascendant employee, alerted INDA to the prohibition of granting land within the three mining concessions, indicating the studies that prove the existence of copper and molybdenum ore deposits.

The Golden 2 area includes the community of Cerro Pelado. For that reason, the land described in process number 0506104529 (above) should never have been granted.

Since Ascendant presents itself as socially responsible and respectful of local law, it would presumably be obliged to obtain legal counsel from lawyers who understand and are apprised of rural land issues before drafting its prospectus and before proceeding to buy agricultural land, some of which was granted to third parties through an illegitimate process.

### **Civic Commission to Control Corruption**

The Civic Commission to Control Corruption began investigating "the Intag case" *ex officio*, not at DECOIN's request. You can verify this, in the CCCC's own statement, in the progress report it published on 20 July 2006. The CCCC has never sent a copy of that report to DECOIN. Rather, DECOIN learned about it by subscribing to the CCCC bulletins through their Website. The progress report was published on the CCCC Website and sent in its regular bulletins one day before DECOIN published this report on its own Website.

Contradicting the information you apparently have, the CCCC has not yet concluded the case, nor does it refer solely to the Environmental Impact Studies. At present, the CCCC is investigating evidence of irregularities in the concession process comprising the Junín Project; the preparation of the Environmental Impact Studies; the "land purchase plan" under the Junín Project; and the award of agricultural land. DECOIN - like Ascendant - has provided this institution with documented information on the Junín Project.

The CCCC has investigated various projects involving the extraction of underground resources, such as the Block 24 petroleum concession in the Southern Amazon Region in 2002.

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<sup>1</sup> Law on Abandoned Land and Settlement, Article 14.

On that occasion, the CCCC found evidence of irresponsibility, "by the former National Hydrocarbons Director, Mr. Juan Carlos Bermeo, for not auditing the partnership contract and failure to fulfill his duties under Article 376(5) of the Organizational Law on Financial Administration and Control." According to your company's Website, Juan Carlos Bermeo is currently the manager of Ascendant Copper SA.

### **Comptrollership-General of the Nation**

On 18 May 2006, DECOIN submitted a series of documents to the Comptroller-General indicating some of the evidence of irregularities regarding the Junín Project, namely: a) Ascendant Copper has presented no preliminary Environmental Impact Assessment pursuant to the Mining Law and the Law's Environmental Regulations; b) the concession process for the Golden 1 and Golden 2 areas violates Article 88 of Ecuador's Constitution; c) mining projects planned for the Golden 1 and Golden 2 areas threaten the conservation of Ecuador's cultural heritage.

On August 8, 2006, the Comptroller-General notified DECOIN that, in its official letter No. 033140-DICOP, dated July 20, 2006, *the acting Assistant Comptroller-General of the Nation ordered the Director of Internal Auditing of the Ministry of Energy and Mining to conduct the relevant special examination to assess the degree to which environmental and legal procedures are being fulfilled in the Junín Mining Project.*

According to the information that DECOIN has received from the Ministry of Energy and Mining, this audit has not yet been concluded.

### **Ombudsman's Office**

On May 18, 2006, DECOIN presented the Ombudsman with a series of documents indicating some of the evidence of irregularities involving the Junín Project, namely: a) Ascendant Copper has presented no preliminary Environmental Impact Assessment pursuant to the Mining Law and the Law's Environmental Regulations; b) the concession process for the Golden 1 and Golden 2 areas violates Article 88 of Ecuador's Constitution; c) mining projects planned for the Golden 1

and Golden 2 areas threaten the conservation of Ecuador's cultural heritage.

On July 3, 2006, the Ombudsman's Office, after examining the facts regarding approval of the Terms of Reference, ordered the opening of an Ombudsman's dossier because the facts denounced "would indicate the presumed violation of Articles 24(6), 86, 87, 88, 89 and 91 of the National Constitution (...)" This procedure is still pending.

### **Constitutional Injunction**

On August 25, 2006, Edmundo Lucero, President of the Community of Junín, brought a Constitutional Injunction before the Judge of the Eighth Civil Court of Imbabura Province to stop the process of preparing and approving the Environmental Impact Study for Ascendant Copper's Junín Project. This appeal points out that the Environmental Protection Under-Secretariat has ignored various rights guaranteed by the Constitution and by international treaties, acting arbitrarily in preparing and approving the environmental impact studies for the Junín Project. On October 4, 2006, the Judge in Cotacachi rejected this remedy, and this is being appealed before the Constitutional Court.

On 19 October 2006, the President of Ecuador finally decreed the regulations for prior consultation regarding governmental decisions that could affect the environment. As argued by Lucero in his Appeal, the Decree establishes that consultation must be conducted by the Government and not by the private company with economic interests vested in the project.

### **Administrative Appeal for Annulment**

On October 5, 2006 an administrative claim was brought before the Environmental Protection Under-Secretary to nullify the approval of the Environmental Assessment Study's Terms of Reference. Similarly to the Constitutional Injunction, this appeal points out that the Environmental Protection Under-Secretariat has ignored various rights guaranteed by the Constitution and by international treaties, acting arbitrarily in preparing and approving the environmental impact studies for the Junín Project. This

process is still pending.

### **The Environmental Impact Study for the Junín Project**

On 28 August 2006, DECOIN submitted a brief analysis to the Under-Secretariat for Environmental Protection of the Ministry of Energy and Mining, of the document entitled: "Environmental Impact Study for the Junín Project, Ascendant Copper Corporation," prepared by Terrambiente Consultants Ltd. and delivered to local Parish Councils.

The errors identified by DECOIN in the EIA presented were not exhaustive, but only a warning about serious technical mistakes, inadequate enforcement, and even manipulation of information about archaeological data. The errors found by DECOIN cast doubt on the overall EIA contents.

### **Global Compact**

You say that Ascendant Copper has signed the Global Compact, a United Nations initiative for learning and dialogue, for the main purpose of increasing dialogue between companies and investors. Unfortunately the UN Global Compact does not yet have the necessary mandate to enforce its ten principles. However, insofar as a violation of those principles is proven, its mechanisms can be used to raise questions about companies seriously participating in this initiative.

## **II "Divide and Conquer" Strategy**

Ascendant Copper SA has employed local residents for different activities requiring unskilled labor. For this work, Ascendant pays more than the local rates, thus negatively impacting the sustainability of the Intag economy, since such activities are temporary.

Moreover, as the Under-Secretariat reported in the above-mentioned internal memorandum, there are people in the area who claim to work for Ascendant and have been proven to lie about their activities and connections of Ascendant with the Army Corps of Engineers.

### **Regarding the Meeting called by Polibio Pérez and the Cotacachi Municipality**



On June 6, 2006, the Mayor of Cotacachi explained to DAIMISERVICES S.A., a company engaged by Ascendant, the reasons for not having taken part in that meeting, which also explains the reasons of Mr. Polibio Pérez:

*We have proven the continuing strategy of division and manipulation applied by the former allies of Ascendant Copper, such as ex-military personnel, corrupt politicians linked to drug traffickers and large landowners, applied by DAIMISERVICES S.A., in the situation that arose in García Moreno parish, where on Saturday July 3, 2006, with funding and involvement of the Ascendant Copper mining company, as reported by the La Hora regional newspaper on Sunday, July 4, 2006, a parallel meeting was held, making decisions with people unrelated to the representative bodies with decision-making powers (i.e. Parish Boards and Community Council leadership, the Municipal Council or the Assembly of Canton-level Unity of Cotacachi), attempting to illegally validate the process of making known the terms of reference for the environmental impact study and agreements for the mining exploration phase in Junín.*

*The actions taken by DAIMISERVICES S.A. show total failure to agree with the invitation to dialogue by the Cotacachi Municipality - as the Local Government, with the presence of Local, National and International Observers. One can hardly pursue a process of dialogue while generating confrontations, division and manipulation, reaching the extremes of mobilizing children to support the mining project and hiring outsiders unrelated to the communities affected, supposedly as allies of mining, for the sole purpose of favoring the economic interests of the Ascendant Copper S.A transnational mining company.*

For that meeting, DAIMISERVICES S.A announced the participation of the prestigious Latin American School of Social Sciences (FLACSO) as a mediator. When asked about their role, FLACSO replied that "I am surprised that we appeared as moderators for an event, when we were notified just three days beforehand, and the conflict involved has been going on for over ten years."

In Ecuador, actions of this nature are viewed as "strategies to divide and conquer". For similar reasons to the above,

the Kichwa People of Sarayaku, located in Ecuador's Amazon region, have forbidden DAIMISERVICES to enter their traditional land.

### **The November 16th, 2006 Agreement with ODI**

I should say that the agreement that you signed with some people from the area on November 16, 2006, cannot be the basis for any claims by any legal channels, in the case Ascendant does not fulfill the promises that it probably made verbally to the ten local people that signed the agreement.

Half-way down page two of the agreement, there is a clause reading as follows:

*The Company will implement this agreement sixty days after taking effective possession of its properties.*

Since there is no indication of which company, what kind of property or where it is located, obviously the implementation of the agreement is completely at the whim of the company. This clause, however, is the heart of the agreement, what indicates that Ascendant expects more divisions among local people of Intag. This clause seems to be connected with the violent events that took place on December 2 and 3.

Moreover, there is never any identification of what ODI is, or what the positions of the people signing the agreement hold. In other words, although the agreement involves an amount of money that the local people signing it had never seen before, it never makes their rights or obligations clear. It is surprising that a company such as Ascendant would deal so lightly with four million dollars.

### **III Violence**

#### **Paramilitary Presence in Intag**

In June 2006, Ascendant Copper received a copy from the Under-Secretariat of Energy and Mining of internal memorandum 1916 from the National Directorate of Mining,

regarding the presence of armed individuals in the Intag zone. Local Parish Councils, the Cotacachi Municipality, and DECOIN learned of this notice only when it was published on the Ascendant Copper SA Website.

An extract of that memorandum, which we have edited for brevity because its full text is on the Ascendant Copper SA Website, states:

*In the village of García Moreno, policeman Víctor Peñaherrera was contacted, who was told of the purpose of the inspection and put Mr. Guevara in contact with two engineers who refused to identify themselves, but did claim to belong to a brigade of the Army Corps of Engineers out of Napo province. He stated that a total of four persons have been in García Moreno for a week now, waiting for (...) their boss (they gave only his name: Captain Checa) to arrive with the machinery they need to maintain the roadways to seven parishes located in the Intag zone, Cotacachi canton, under a cooperation agreement with the Imbabura Provincial Council. They denied categorically that their mission was to open up new roadways for the Ascendant Copper company. They also stated that on Wednesday, July 5, 2006, a group of 30 foreigners, under the auspices of ecologists working in the Intag zone, had entered the area and were making topographical measurements. They confirmed that a tractor, near Villa Dorita, and a grader, in the Peñaherrera area, both belonging to the Provincial Council, were already doing roadway maintenance for the Intag zone.*

*(...) **Sergeant Luis Jiménez**, head of the four-man group from the Army Corps of Engineers who have been in García Moreno for a week, was contacted. This army sergeant corroborated that four members of the Army Corps of Engineers have been doing preparatory work for another 26 persons from the Corps of Engineers, coming from the city of Tena, along with the necessary machinery, to enter the Intag area to maintain the roads (...) Their dealings with the Ascendant Copper company, according to Sgt. Jiménez, are because that company has maps of the area and has asked for technical support with this information (...)*

On July 10, 2006, DECOIN queried the Army Corps of Engineers about the armed individuals who claimed to belong to the Army Corps of Engineers. DECOIN reported about a uniformed

individual who said his name was **Luis Jiménez-Argote** was moving around Intag claiming to be a "military geographer" from the Army Corps of Engineers. When asked about his reasons for being there, he claimed he was there to "help" reach agreements regarding the construction of a roadway "from Loma Negra to Intag," in the province of Imbabura.

On July 11, the Army Corps of Engineers answered DECOIN that:

**Mr. Luis Jiménez-Argote does not belong to the Army Corps of Engineers**, either at headquarters or in any work group currently performing work in our country. Therefore, we are conducting the necessary investigations to clarify the reasons why they identify themselves arbitrarily as belonging to the Army Corps of Engineers. (...) The Army Corps of Engineers has not ordered any deployment in that region, until any authorization is concretely received from the Government of the Province of Imbabura to maintain their roadways (...)

When asked about the same situation by the Ombudsman, the Army Corps of Engineers offered, on August 2, 2006, the same information it gave to DECOIN, also attaching a copy of the letter sent by Ascendant Copper SA to the Corps requesting a budget to carry out roadway maintenance in some parts of the Intag area.

In September, the Mayor of Cotacachi and DECOIN met with high-ranking officers of the Army Corps of Engineers to discuss this issue. The ACE officers promised to investigate about the armed individuals in Intag. They also gave their commitment not to work in the area while the conflicts between Ascendant and local authorities continue.

Moreover, DECOIN learned that a major in the Armed Forces of Ecuador took part in the events on November 1<sup>st</sup>, 2006, when a group of Ascendant workers were confronted by local communities, who refused to let them trespass on their land. Ascendant's answer to the local press, regarding the occurrences of November 1<sup>st</sup>, was that some 40 people were attempting to enter Ascendant's land to carry out "agricultural work". The local press also published photographs of the local police confiscating tear gas canisters, which is not legally available for the civilian

population in Ecuador. The major declared that he had participated as an Ascendant employee, in his statement to the Ibarra government attorney. It would be interesting to hear from you why Ascendant employs active members of the Armed Forces to do "farm work". The Ombudsman's Office has received copies of this denouncement and is currently investigating. This illegal situation has also been denounced before the Ministry of Defense.

You mentioned, in your letter to the Canadian Consulate in Quito, that there are no paramilitary forces in the Intag zone. In Spanish, "paramilitary" defines a civilian organization with a military structure and discipline, such as the Civil Defense or the Boy Scouts. According to the above documented evidence, what is going on in Intag would be better described in Ecuador as "self-defense forces", which are illegal, and strongly rejected by Ecuadorian and international legislation.

Further, regarding your terminology, you should know that there is no political or legal definition in Ecuador for the term, "eco-terrorist," which you have used publicly to describe the inhabitants of Intag. I would demand for Ascendant Copper to apologize publicly for this affront, since it seriously slanders the honor and reputation of the local population.

#### **Burning Ascendant's farm**

You refer in your letter to Carlos Zorrilla to the significant loss of the Ascendant farm by burning. On October 16, the Ibarra Judge decided to dismiss the criminal lawsuit regarding the burning of the farm, which Ascendant has brought against a number of local leaders. There is no reason for you to suggest that DECOIN has any relationship whatsoever with that incident.

#### **IV Employees Board Members and Associates**

As you have stated, CODEGAM has approached DECOIN and the Community Development Council with a proposal to work together in anti-mining resistance. However, this does not mean that DECOIN works with CODEGAM. DECOIN's mission is to defend and conserve the natural resources of the Intag

region. Actions by DECOIN are transparent and abide by Ecuadorian law. For this reason, DECOIN publishes its activities on its Website, as an effort to make available all information, in Spanish and English, so that both Ecuadorian society and the international community can have access to such information clearly and transparently.

## **V Ascendant's Lies**

Ascendant Copper has also made different offers of social projects for the area, through CODEGAM, an organization initially funded with Ascendant monies. The President of CODEGAM has publicly told the people of Intag that Ascendant offered to provide 15% of the Junín Project's profits to invest in social projects; according to CODEGAM, this offer has not materialized. You can verify these statements for yourself in the video clip we are attaching hereto.

We would also invite you to see the video clip filmed during the peaceful, duly authorized march that the inhabitants of the Intag zone conducted in Quito on July 13, in order to protest against the presence of Ascendant in their area. You can certify that US citizen, Leslie Chaplin, who falsely denounced Carlos Zorrilla for the theft of a digital camera and 500 dollars cash, as well as physical battery, was passing out pamphlets against DECOIN during the march and that there were at least five policemen around her when they found out what she was doing. You can see that no demonstrator touched her and that none of her belongings were taken.

Unfortunately, this denouncement, in a process full of evidence of irregularities, which are being investigated by the cognizant authorities, led to the violent search of Carlos Zorrilla's home by the police, who strangely used force out of all proportion to the alleged crime - 19 policemen, heavily armed, two wearing ski masks - to "find evidence" of the theft of a digital camera and five hundred dollars.

In this regard, the Ecumenical Human Rights Commission, a non-governmental organization amply recognized for its 25 years of safeguarding human rights in Ecuador, stated on

October 18, 2006 that:

*Within the campaign of persecution, intimidation and aggressions begun in 2004 by the Canadian mining company, Ascendant Copper Corporation S.A., against leaders and residents who have opposed mining activity in the Intag zone since 1995, US citizen Leslie Brooke Chaplin, based on false accusations, presented a lawsuit, this time against Carlos Zorrilla, a resident of Intag and a member of environmental organization DECOIN (Defense and Conservation of Intag).*

It is possible that you are not apprised of these facts. Perhaps because the personnel of Ascendant Copper S.A. has been busy presenting criminal denunciations against Intag residents (eight so far) they have not gotten around to telling you about current procedures involving irregularities in the Junín Project.

I would like to inform you that the Inter-American Human Rights Commission has recently published a report identifying legal actions taken against human rights advocates as part of "smear campaigns and criminal prosecutions detrimental to the work of human rights defenders" in this Hemisphere.<sup>2</sup> Sections 179, 180 and 181 of that report state:

*179. In other cases, criminal proceedings are instituted without any evidence, for the purpose of harassing the members of the organizations, who must assume the psychological and economic burden of facing a criminal indictment. Some of these proceedings have gone to advanced stages, including the prolonged provisional detention of the accused. These proceedings generally involve charges of rebellion, attacks on public order or state security, and the formation of illegal groups. [156]*

*180. The Commission has received information and continues collecting more about situations in which it is alleged that the legal apparatus is being used to harm or suppress those who pursue, among other things, the work of documenting human rights situations, providing judicial defense for the criminally accused, representing victims before the courts, and accompanying communities in high-*

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<sup>2</sup> Report on The Situation of Human Rights Defenders in the Americas, IACHR, 2006.

risk situations.

181. The Commission has received complaints of the persecution and harassment of defenders through successive judicial proceedings that months later are dismissed due to the failure to find the persons tried liable. Notwithstanding such dismissals, new investigations -- mostly in cases with different evidence but similar accusations -- are opened, and, as a result, new detentions or judicial restrictions are ordered. The Commission has received several complaints describing situations in which criminal accusations are made and then dismissed, in the case of a single person, and the successive opening and dismissal of investigations into several leaders of the same organization or cause.

Sincerely,



Dr. Alejandro Ponce Villacís