SECTOR WIDE IMPACT ASSESSMENT ON HUMAN RIGHTS

MINING UNSEEN
The **Regional Center for Responsible Businesses and Entrepreneurship** (CREER for its acronym in Spanish) aims to be a regional hub and a center for South-South learning, knowledge and sharing experiences. As regional headquarters of the **Institute for Human Rights and Business in Latin America**, CREER is committed to:

- **Facilitating and strengthening informed dialogue between companies, governments and civil society.** CREER has the task of building useful, public and shared knowledge regarding the responsibilities and duties surrounding the protection and respect of human rights within specific economic activities.
- **Ensuring effective communication between the various stakeholders.** CREER proposes establishing spaces for dialogue based on: Trust, Quality Interventions, Relevance and Applicability.
- **Strengthening capabilities** that add value to rights holders, companies and governments based on the efficient management of self-knowledge, in order for this to translate into: Empowerment, Good practices and Effective policies.

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![Embassies Logos](image)

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Naturally, CREER is solely accountable for all the analyzes and opinions contained in the SWIA and not the organizations that have supported it, the participants in the discussions conducive to methodological validation, or the institutions, communities and companies that provided their vision and opinions.
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This assessment does not seek to prove that mining in Colombia is impossible from a social and environmental standpoint, nor does it seek to conclude that what is happening in mining scenarios and in illegal mining operations is the result of a conspiracy between companies and the State, nor a take-over of the sector by predatory organizations. Neither is it an investigation to assess the performance of a specific ministry or agency. This Sector Wide Impact Assessment of the Mining Sector seeks to show that in order for Colombia to have mining practices it can accept, practices with which it can live, mining has to be based on sustainability and inclusion criteria and be as zealous in attracting investment to the sector as in protecting the populations living in mining scenarios. Hence, institutionalizing the mining activity throughout the territories is the first requirement for achieving not only that mining become and remain a legal activity, but also that it it is seen as legitimate by the society. This hope entails challenges for the State, for companies and communities. This assessment is effectively one approach to the identification and analysis of these challenges.

Sector Wide Impact Assessments –SWIA- are different from the multiple approaches available for assessing the impacts on human rights because they adopt a broad perspective throughout their stages: in the gathering of information from multiple sources; in the identification of stakeholders and in the analysis of the intervening factors that explain the presence of impacts. A SWIA is not limited to assessing the impacts of a specific project, or the perception of one specific stakeholder. On the contrary, it has multiple layers of analysis, as explained in the methodology of this assessment.

Given their design, SWIA’s allow for a more complete identification of the potential causes of the impacts, focusing on the associated aggregate impacts within a sector and identifying the interaction dynamics of various stakeholders whose behaviors favor or mitigate the effect of the impacts. Recommendations and other valuable products are obtained from this wealth of information:

- Government entities will find recommendations for public policies to address the protection of rights, and the prevention and mitigation of damages.
- Companies and local communities, cooperation agencies for development and other civil society organizations, will have a comprehensive assessment of the situation on human rights which will allow them to act in a more informed manner and strengthen the culture of respect for rights, based on an action without harm approach.

Not only is the added value of SWIA information, obtained through a combination of sources and methods, and made available to the public very important; the path taken for the construction of the SWIA is also a result in itself: the manner in which the diagnosis is made promotes opportunities for dialogue that facilitate the reflection by each of the stakeholders regarding the change that each one must take to effectively address the problems associated with the impacts. Thus, the SWIA contributes to transforming institutional behaviors that can in effect be a source of impacts and conflicts, and seeks to motivate all stakeholders to consider their actions in terms of the prevention of future impacts.

The general sector which interests this SWIA is mining in Colombia. As part of the assessment, the current situation of coal, gold and construction material mining were specifically included. The section on context information provides an overview of the economic, social and institutional factors present. This document
offers a description of the findings identified during the SWIA, and is organized around seven core blocks, which allow for the orderly understanding of the logic behind the aggregate impacts on human rights.

Before entering into the detailed analysis of impacts, it is worth briefly recalling the advantages of adopting human rights as a conceptual category in the analysis, in terms of the results and consistency for the entire exercise. The following sections help clarify the significance of this approach and offer guiding elements for those who are not familiar with the concept of impact assessments of human rights.

First, it shows how the rights-based approach produces more comprehensive diagnostics and allows for a more precise understanding of the differences in each context and how these particular traits are linked with the enjoyment of rights. In turn, this holistic approach encourages the creation of policies which respond to the mandate of protecting human rights. The strength of this approach is later discussed in the context of making visible the circumstances of the subjects in each context. Finally, as a result of this ability to perceive the diversity of conditions and contexts, two important conclusions arising from the SWIA are presented: a diagnosis that invariably points to the need for a State which is able to respond in its duty as protector, and recommendations regarding the creation of policies which are sensitive to these differences.

**SWIA Structure – How to read this document?**

In the introductory section of the SWIA, the legal reasoning that frames the existing approaches are reviewed, as well as the direction of those that should be designed. The mechanisms studied and proposed in this chapter aim to either prevent that corporate actions in the sector cause harm or place rights at risk, or address them promptly and properly in order to avoid them becoming social conflicts; which in a larger scale can generate greater imbalances both in terms of the self-efficacy of rights and the constitutional mission of any business; or finally, remedy them in a just and appropriate manner, according to the minimum standards required for the available resources.

The analysis chapters of the SWIA are structured from an integrated and systematic perspective of rights. That structure and the ensuing analyses are the result of extensive field research, from whose findings the literature on the sector can be reinterpreted, in order to propose critical angles that can work as instruments of enhanced precision for the aforementioned diagnosis and subsequent recommendations.

Because of its rights-based approach, it excludes diagnoses that neutralize differences and totalizing or homogenizing formulas. Almost every chapter criticizes public policies in the mining sector for their “one size fits all” approach. One of the premises to substantiate this criticism is the existence of a vulnerable population in the mining sector that deserves the differentiated attention and enhanced protection of their rights. The rights of these vulnerable people can more easily enter into conflict with corporate interests and those of other actors, some legitimate and others outside the law, in scenarios where State presence is weak or when legislation is opaque. Consequently, criticism of the one size fits all policies could be summed up in a stubborn refusal to address the need to activate devices in various contexts for the enhanced protection of these rights. It constitutes the neglect of a constitutional obligation by a constitutional State; which is evident from the very definition of the fundamental rights, whose optimization should favor the weakest. In addition, it seeks to comply with the constitutional mandate of material equality, which means that States must ensure real equality, at least in the opportunity to exercise their rights, and especially in scenarios of power asymmetry as those created with the entrance of a large corporation into a territory with high levels of poverty, institutional weakness, and often with terrifying indices in terms of the effects of the armed conflict.
According to the explanations given by the ECLAC, vulnerability is the result of exposure to risks, coupled with the inability to confront them and the inability to actively adapt. Of course none of these conditions are attributable to the subjects living in this condition, but rather to the contextual factors that make them more likely to face adverse situations in terms of their social integration and personal and collective development.

Vulnerability also represents a high risk of being excluded from the benefits of a regulated supportive social system, where individuals can access rights to property and the enjoyment of services, and in which the equality is a given.

Vulnerability and risk of exclusion, both define the populations of small miners who perform this activity for their livelihood, in the absence of other less risky and more stable options; because historically it has been part of their social identity; or because of other reasons. Both conditions should be surmountable through the implementation of sectoral public policies that address their particularities, respect their life choices, collective identities and their right to decent living without giving up their freedom to choose a trade.

On the contrary, currently the grid that filters the analysis of the mining establishment is defined by categories of activity and the miners which constitute a veritable poverty trap. According to these categories, individuals are only considered subsistence miners if the production in their region is derisory, i.e. if they agree to continue working without reaching the minimum living conditions to enable them to overcome poverty. However, if the production increases, or they use technology to improve their activity and reduce the risks to their personal integrity, they improve their status, and thus gain access to a certain protection from the government, but at the cost of legal charges that would not withstand a constitutional proportionality test.

**Aggregate impacts and cross-cutting issues**

The seven core blocks that structure the SWIA include (i) relationships between mining sector institutions and the territory, (ii) the environment and health, (iii) perspectives on security and conflict, (iv) the use of local resources, (v) work conditions in mining activities, (vi) migration and resettlement, and (vii) conflicts and access to remedy in mining scenarios.

Some very important issues are addressed in these chapters, all of them approaching the nucleus of each analysis block, with the idea of making an accurate diagnosis of the problems, from a viewpoint determined by the specific rights studied in each section –taking care not to atomize or separate them from the others; and of the public interventions to address them and their consequences, which are sometimes as equally problematic as the problems themselves. It also serves the purpose of identifying new and viable possibilities to better manage the sector, that seek to stabilize it and allow for its sustainability in a weighted, sustainable and legitimate manner, directed towards the mandatory goals defined by the Constitution.
The purpose of the recommendations arising from each chapter and those which are transversal and formulated from logics beyond those specific to each subject, is to provide ideas for an institutional and legal adaptation that allows for the systematic and coordinated intervention of the Government in the sector. In order to trace the connection between general and specific recommendations, please make use of the icons presented below, which define the 9 different categories of recommendations.

CATEGORIES OF RECOMMENDATIONS

- Sectoral planning with a territorial approach
- Better relationships with mining and environmental protection of vulnerable population in mining scenarios
- Institutional alignment
- Managing information for the prevention of impacts
- Effective relationships between companies and communities
- Coordination between institutions for the protection of rights
- Citizen services for access to remedy
- Peacebuilding

The problems surrounding this coordination are caused by the atomization of criteria and the remote application of the operating mandates of fundamental rights. For example, the reluctance of the sector institutions to address issues related to criminal mining, is due to the absence of a policy on rights that allows values and legitimate security objectives to become absolute. This methodology for the design and implementation of public policies in a sector such as mining, does not allow for the option of weighting rights because it neutralizes the condition of exclusion suffered by certain individuals, from the perspective of the fragility of their rights.

Another goal of the recommendations presented by the SWIA suggests that corporate activities need to be governed by required due diligence human rights standards. This is possible when the sector encourages the revitalization of mechanisms for prevention, care and timely remedy, which are adequate and effective against risks or damages to the rights, and when strengthening the sector results rather in soundness and not misalignment of the constitutional system of rights and the distribution of public powers. The sector needs to encourage a shift in the relationship between the public and the private stakeholders, which will generate a sustainable and widespread impact in the improvement of rights, a domino effect regarding those conditions that until now have made it difficult for individuals and communities to benefit from the mining activity, and that it take root as a source for prosperity.

Therefore, neither the diagnosis nor the recommendations are exclusively focused on, or directed to the State. Although according to the diagnosis of conflicts included in this document, the cause behind most of them is rooted in an action, inaction or lack of government coordination, the fact is that companies have routes and constitutional conditions that need to be met with the same rigor, without trying to replace the State in terms of authority or management in the territories. The companies’ ability to self-regulate
constitutes a key element, given that they are active social agents capable of causing damages through their actions. However, this behavior does not transform corporate social responsibility into a social and political superstructure in their areas of influence.

To that end, all the chapters point to the revival and strengthening of the regulatory, inspection, monitoring and control duties of the State, as a turn-back from the disorderly deregulation that has created an imbalance in the relationship between the State and the agents engaged in mining activities in the territory. This situation has consequently left the subjects of the rights helpless in terms of their protection and security, and created a greater distance to the goal of overcoming the vulnerability and exclusion of key populations in the mining sector.

In short, reading this work invites you to think of the mining sector from the perspective of the State’s obligation to enforce the constitution, with a practical approach inspired by the findings of a field study that covered 83 mining municipalities, by the discussions with experts, and the collection and analysis of data and geo-referenced information. CREER, in its commitment to the construction of shared knowledge, dialogues based on trust, and processes for strengthening local capacities has published on its website the following documents, which were a key input in the analysis presented here.

In this vein, besides this executive summary, the entire document is published, including its seven core blocks and additionally, all inputs used for the preparation thereof, as shown in the following graph: i) Ten documents on situations observed in mining scenarios which affect the exercise of human rights; ii) Three documents specializing on issues highly relevant to the mining sector; iii) The results of the study’s quantitative analysis.; iv) The geographic information used, v) Two documents on the analysis of conflict and access to remedy in mining scenarios

**Available at:** [http://creer-ihrb.org/proyectos-eisi/](http://creer-ihrb.org/proyectos-eisi/)

Assessment exercises such as the SWIA contribute to emphasizing that rights are not just the motor for democracies, but that when companies respect them and governments guarantee their protection and security, this ensures the stability of an economic sector.
Calibrating radars in the mining sector

Approaching the mining sector from a human rights perspective allows for the presentation of diagnoses and recommendations in order for this activity to fit into the minimum constitutional parameters concerning development models.

Our constitution does not impose, nor does it specifically exclude, a single development model, but rather delegates to the Government and Congress, the design of the model that best meets the interests of legitimate electoral majorities. However, for a development model to be constitutionally permissible it must comply with at least four mandates: (i) it must respect the natural wealth and conform to all standards of environmental law; (ii) it must be designed and implemented without sacrificing the individual and collective fundamental rights that influence the entire Colombian legal system and are binding regulations of the highest level; (iii) it must be developed without creating institutional imbalances of any kind, in particular those that prevent the enforcement of constitutional principles, such as the democratic principle that governs all public actions and which it is essential in maintaining the decentralized dynamics of Colombian territorial planning; and (iv) it should be oriented to fulfilling the essential purposes of the State, such as facilitating participation in the economic life of the country and promoting the general prosperity of its inhabitants.

The clear rights-based approach included in the four points that make up the minimum constitutional framework for any development model, not only applies to mining operations finding a legitimate place in the social, cultural and economic performance of the country but to ensuring that the sector is legally stable and secure for all stakeholders whose interests and rights are involved.

The human rights perspective, as an approach to manage the sector in an orderly and harmonious manner, requires a serious contextualization exercise. This exercise is still pending, and the analysis presented here is a step in this direction.

A detailed and participatory map of the realities found in the regions where the sector operates, would provide basic diagnoses, such as the differential characterization of these regions. In this manner at least two broad categories could be identified: regions without a mining tradition into which the sector arrives with all its institutions, and those with a mining tradition that have troubled relations with the sector.

A clear understanding of these categories is required to understand the political and social identity of the subjects (individuals and groups) in each region. Only from that diagnosis can the origin, content and scope of the claims of their rights be understood.

For example, northern Cauca is a traditional mining region, while the coffee belt is an agricultural region. The groups that are protesting in the north of Cauca largely identify themselves as miners, therefore the

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1 For the purpose of this analysis, sector is understood as the collection of institutions, regulatory framework, practices and stakeholders who gravitate around the mining activity. Observing the interaction between these elements is what allows for the analysis of impacts, their consequences and relates conflicts.
claims of their rights are rooted in the traditional manner in which they see the mining operation, therefore even if they claim the right to water, or land, these demands will never have the scope or intent to absolutely put an end to this activity. In contrast, peasant groups in the coffee belt would surely protest to demand respect for the same rights, but with the intention of excluding mining from their region.

Only when the decision-maker understands the political, social, economic and cultural identity of each region is he/she able to build a map to identify individuals who are in a vulnerable situation or at risk of exclusion or marginalization. These individuals should be seen as the most important population group from a human rights management standpoint; however, gaps in the construction of these sector social maps, condemn them to invisibility and prevent public policies from addressing their rights.

With just one look from a rights-based perspective the above mentioned map can be properly and completely built. Properly, because a rights-based approach necessarily fixes the attention on the subjects and their context, which automatically implies knowledge of their identifying characteristics, their standard of living and living conditions, their social, cultural, political and economic position within a specific scenario of human and environmental relationships that define both the territory and the habitat in which each right is exercised or claimed.

Human rights are institutionally perceived as an ineffective criterion both in the manner in which they represent reality, as well as in the activation of state intervention in an economic sector, and even as an element that hinders governance. That perception, verifiable in planning documents (National Planning Department - DNP, 2103), and in some documents specific to the mining sector (Mining and Energy Planning Unit -UMPE, 2014A and 2014B, and the Ministry of Mines and Energy 2016), highlights the need to recalibrate the radars.

The radars which help build the maps on which public policies for the mining sector are designed are calibrated to achieve significant levels of accuracy in terms of productivity planning. These criteria refer to the existence of certain types of mineral in the regions, the demand of the domestic market and a weighted analysis of the extraction and production costs versus the benefits. One might think that the cost - benefit analysis includes a calculation of the impact on human rights, however in planning documents, human rights are not included across the board, but rather in a specific and isolated manner.

The fragmented and timid way in which rights are included in the diagnosis, design, implementation and evaluation of public policies in the mining sector, is the main obstacle to visualizing subjects accurately and therefore addressing their needs through assurance measures and the protection of their rights.

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2 In this document, human rights management is approached from the logic behind the United Nations Guiding Principles for Business and Human Rights, according to which the State’s obligation to ensure, protect and respect human resources is in force, and the obligations in terms of respect are carried out by the businesses.
Rights as the lens with which to see mining unseen

Rights are popular conquests of the protection standards that respond to the logical rules of social life. The fragmentation of rights is therefore not consistent with the manner in which they really operate. Rights are inevitably related to each other. Thus, for example social rights such as housing and education, are related to environmental rights such as the right to a healthy environment, water or unpolluted air. In turn, these rights are related to individual rights such as the right to physical integrity and life.

In addition, the fulfillment of these rights constitutes the starting point for the exercise of political rights. On the one hand, all impacts described reduce the possibility of a full and effective enjoyment of political rights, for example, because disease or fragility operate as true obstacles to their exercise. Moreover, the recognition of environmental rights has been a conquest achieved through the mobilization of the civil society, which has resulted in the inclusion of participation mechanisms in the legal systems for their protection. For example, in Colombia the environmental licensing processes include opportunities for participation. However, these scenarios become weakened participation mechanisms, as a means for the protection of environmental rights, among other reasons, because the low level of effectiveness of other rights prevents citizens from accessing these opportunities and being heard.

If rights are necessarily related to each other, the fulfillment of the exercise of one right increases the levels of exercise of another. In reverse, the alteration of a right always assumes a level of alteration in another, therefore the impacts on rights, generated by a particular economic activity, are also interrelated.

The possibility that the impacts of an activity influence various rights, that different environmental footprints can accumulate their effects regarding one or more of them, and that these impacts remain over time, progressively deteriorating the effective exercise of the rights of groups more or less extensive, is included in the term "cumulative impacts".

In conclusion, the diagnosis of the reality of a region must take into account the manners in which the life and alteration of rights interconnect and strengthen each other in terms of the specific identity context of their subjects. This analytical formula will enable decision makers to lift the veil that has traditionally prevented the "unseen mining" from being addressed. This term defines mining activities that are activated by individuals who, despite being the least powerful players in the market, are important pillars in the social structures of their communities.

One size fits all: the key to public policy inefficiencies

The acknowledgement of the interdependence of rights not only allows individuals to become visible; it also allows for the design of public policies which are sensitive to differences, based on diagnoses which are true to complex and diverse realities. When this holistic approach is unattainable, policy issues a “one size fits all” formula. These “one size fits all” formulas reveal their ineffectiveness in contexts where diversity exists or where the linkage of industry dynamics is different in nature. Take for example what happens in regions like Cauca, where there are several dynamics that are connected to each other: small ancestral miners, small mining undertakings, informal and criminal mining. These dynamics are part of the mining sector, whose institutions should be able to respond differentially to the subjects who take part in them, and are rights-holders to which the State has an obligation.
An undesirable consequence of these interventions is the homogeneous formulation of standards which for some are undemanding and for others unachievable. For those mining production units with sufficient resources and knowledge to minimize impacts, these standards are flexible and permissive. For other vulnerable operations or at least for those with less access to resources and knowledge, but which according to public policy are also considered as a productive unit, these standards are impossible to meet.

Another consequence as serious as the previous one occurs when uniform standards ignore the rights of the subjects. This circumstance generates resistance because individuals and groups are not willing to sacrifice their fundamental rights in exchange for the development of the sector.

The inconvenience of having a fragile State for corporate human rights due diligence

The role of the State in a globalized world has changed due to the power of transnational economic organizations, as recognized by John Ruggie, when he presented the guiding principles for business and human rights in 2010. However, that does not mean that people should be governed by corporate economic interests, but rather by public systems operated through democratic political mechanisms.

States continue to be valid as a way in which populations can be organized, and continue to respond to functional standards that have more or less progressively guaranteed that social conquests become standards, and are applied equally.

From that perspective, the fact that life in the areas of influence of major companies are governed according to their corporate social responsibility standards may raise a red flag: ultimately, the rise of corporate social responsibility as a social regulation and environmental system seems to need (or bet on) States that are considered failures according to constitutional law and minimum human rights standards.

The United Nations has expressly insisted that States should not presume that companies benefit from public inaction. The Guiding Principles for Business and Human Rights –UNGP- recognize that to protect rights holders and businesses (regardless of size or origin), clarity in the legislation and assertiveness of public policies regarding the market and human rights is required, such as the regime to access land, including property systems and use of the soil and subsoil.

Thus, from the perspective of the UNGP the option of privatizing the State’s duties of regulating and protecting human rights, or those related to research, control and punishment, is not even considered.

As explained in the implementation manual for the UNGP, the first founding principle of the State’s duty to protect the rights is based on the general consensus stipulated in International Human Rights Law regarding

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its role as the main guarantor of rights. Based on this role international law assigns the State the obligations to respect, protect and fulfill the human rights of individual within its jurisdiction, including violations by third parties, even if such third parties are legal businesses or enterprises.

The UNGP insist that the State, in fulfilling its obligation to protect human rights continues to be the institution that links companies and the validity of individual human rights. The State cannot abandon human rights management to corporate logic without carrying out any type of assessment, monitoring or control. On the contrary, the recommendations by the United Nations, derived from the State’s obligation to protect and fulfill human rights, in corporate activity scenarios, extend from the direct determination of corporate behavior in commercial and financial rules, to counseling strategies for companies on due diligence methods in human rights.

In this regard, the UNGP are clear in that it is the responsibility of the State to enforce laws that require that companies respect rights, and if the legal system is not suitable for this purpose, the State must adjust it to meet with this obligation. According to international law, the State’s obligation to protect, respect and fulfill human rights, translates into an obligation to also respect fundamental rights which, thanks to the Articles 93 and 94 of the Constitution, include all human rights expressly recognized as such, as well as those which are inherent to the individual, yet are not listed.

This catalog of rights is enough for the UNGP to become binding for the country, and consequently, for the State to establish relationships with companies, based on the keys to those principles, without further regulations.

This is partially due to the fact that the UNGP offer no new or revolutionary contents in term of the current international regulations. What this instrument does is organize and propose the standardization of currents standards from the perspective that companies and other specialized social stakeholders have the ability to impact the rights.

However, it is also true that while the State does not develop or adopt these principles into specific domestic standards, some of them may not be fully complied with, because the monitoring, control and sanction duties require detailed legal frameworks to guarantee the monitored or controlled subjects (businesses, in this case), the right to a due process and the legality of the punishment if applicable.

Companies, like individuals and other stakeholders, have the ability to violate human rights, or in terms of domestic law, fundamental rights.

The classic conception of rights according to which the State is the only party obligated to not violate them, is definitely obsolete. Therefore, both the Constitution and international human rights law of are now not solely directed to States but also to other stakeholders. Not least of all because many rights would significantly see their effectiveness diminished if only the public authorities were bound to them.

The UNGP state that companies must respect all the rights contained in the International Human Rights Bill, regardless of the existence of domestic laws that expressly require it.
The UNGP concentrate much of their strength on the preventive duties of companies to ensure rights are respected, without them ignoring their obligation to be proportionally liable, according to the severity of their actions, of any negative consequences on the rights. The UNGP state that businesses should politically commit to the rights, implement due diligence processes that include the identification, prevention and mitigation of impacts, and are accountable in terms of human rights. Finally, they should provide ways to repair the damage caused to the rights due to their actions and omissions.

In any case, when resolving a conflict in which a company has caused an impact to a fundamental right, its final characteristics may end up being those of a conflict of rights, which ultimately must be resolved by a judge. That means that prosecution can only be avoided through the means indicated in UNGP, and that in any case, once the damage is caused, companies must have the necessary resources and effective procedures to redress in a proportional and fair manner.

The diagnoses and recommendations presented in this document rest on this logic, which is respectful of each party’s role: companies in their obligation to respect and prevent causing damages to rights, and cooperate in access to remedy; and the State in its obligation to guarantee and protect, which extends to the primary task of not transferring its regulatory, monitoring, control and enforcement role to the particular dynamics governed by market rules.

Without the comprehensive observation of conditions for protection and respect and an understanding of interdependence in specific contexts, it is impossible for sectoral policies, business practices and governance to succeed in connecting the mining processes with the different realities that define the material characteristics of the various types of mining. In other words, designing public policies which are blind to details and differences, from an approach based on the homogenization and simplification of complex and diverse realities, produces “one size fits all” formulas for all subjects and linkages. Ignoring details, complexity and differences leads to policies and strategies which are formulated according to the aforementioned logic, and results in setting very low targets for mining production units which have the necessary resources and knowledge, and very high target for those who need help.

**Mining is not considered a symptom of recentralization**

As stated before, the construction of public sector policies should be based on diagnoses from a rights-based perspective. In this sense, as previously mentioned, the only perspective possible is one that understands that rights are interconnected. Based on this concept, opportunities for strengthening are necessarily acknowledged, because political rights are included less in the planning, implementation and evaluation of the mining sector policies, despite their close relationship with environmental rights and other rights such as integrity, health, water, or food.

This reality, which ignores the synergistic nature of rights, is partially due to the disparaging conception of participation rights in government arenas where decisions with high technical content are made. In these public decision scenarios the natural democratic control exercised through participation mechanisms is usually ignored, given that it is not considered a legitimate device to influence matters of a technical nature. Hence the significant trend to recentralize decisions regarding the use of the soil and subsoil, preventing local authorities from activating participation mechanisms which illustrate the realities of its population and the traditional identities which have given meaning to the social construction of the territory. This analysis
necessarily leads to an initial diagnosis on the ineffectiveness of the guiding principles of public duty, and the deterioration of the democratic principle as the cornerstone in the autonomy of local authorities, on a territorial model defined by constant tension between the central government and the regions.

The recentralized manner of approaching the territories which will be influenced by the mining sector, guarantees the invisibility of significant portions of the population: those who have dedicated themselves to small-scale mining activities based on market rationale, those who have fallen into criminal mining networks or those who due to their cultural tradition have built a territorial identity which is not compatible with mining activities.

In other words, the formulation of these types of public policies from a purely technical logic, and as part of the exercise of de facto recentralized powers, in based on the pretense that the territory is a blank canvas. Consequently, land rights and their subjects disappear, and with them, the individual callings of each region.

Therefore, the lack of political and legal attention to the individuals living or suffering from this unseen mining constitutes the best indication to measure the ineffectiveness of recentralization. This issue is one of the basic pillars that support many of the analysis chapters of this document.

**Mining, Crime and Human Rights**

This SWIA focuses on understanding the obstacles, opportunities and identifying actual or potential alterations to the exercise of said rights. That is why observations, documentation, interviews and interactions do not exclude any scenario or condition of the individuals or communities associated with mineral extraction.

Although obvious, this clarification is important, in order to define the scope of this study and its final reports: the manner in which the SWIA approaches the protection of rights is not confined to scenarios and populations covered by a certain policy or regulatory framework in the mining sector. The exercise of human rights within the scope of the investigations carried out in this project is framed within the general obligation of the State to protect rights, an obligation that is not limited to the regulatory scope and policies of the ministries or agencies that regulate the mining activity itself.

It is clear for CREER that the inclusion of organized crime and other organizations outside the law into the mineral extraction operation is a source for the serious abuse of individual and community rights. Without eradicating crime, these environments will never achieve the inclusion of mining in the territories, in a sustainable and decent manner; nor can they secure livelihoods\(^4\) for those individuals who due to environmental, social and economic reasons cannot find in the mining activity an opportunity to ensure their livelihood. However, it must also be clear that the State has the unavoidable duty to protect these populations, their rights to legal means and stable lives, to their environment and their institutions.

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\(^4\) In order to further analyze mining and crime as part of this investigation, CREER prepared the document “Conflict, Peace Building and Mining in Colombia”, it is available at [www.creer-ihrb.org/wiki-eisi](http://www.creer-ihrb.org/wiki-eisi)
Mining scenarios which are controlled by illegal organizations additionally have to deal with the complexity that much of the population is also a victim of these organizations. They do not have many options to protest against the criminal instigators or to resist, and limited alternatives for formalization or reconversion, an option that is still very new.

At the base of the criminal mining operations, controlled by criminals, there are also victims, trapped in territories where no there is no legality and where little progress has been made in terms of guaranteeing the rights of the vulnerable populations. Therefore, when considering the impacts on human rights, all of the circumstances of the populations involved in the extraction, processing and trade of minerals need to be taken into account.

The legal-illegal dichotomy, both complex and simplistic in terms of mining and human rights in the country, actually leads to the exclusion of individuals and populations whose protection is the duty of the State - the entire State. Therefore, this study also addresses unseen mining, although it does not limit itself to the matter.
The essential concepts of the SWIA methodology

It has been argued before that the identification of differences in contexts should contribute to State actions that ensure the enjoyment of rights and allow for the effective sustainability of development models. This identification is only possible by observing situations which reveal the contexts of the mining sector in which the State’s intervention is needed for activating mechanisms for the protection of rights.

These situations show evident patterns of the realities in mining contexts. For example, changes in the physical conditions of housing, insufficient state support for improving practices and formalization processes, incentives to reduce school truancy or contradictions between the mining sector policies and environmental planning. A review of this list reveals the complexity of managing the impacts associated with such situations.

Defining capabilities in terms of tasks: the path towards the recommendations

This inevitably leads to the question regarding the ability of State institutions to perform this task. The SWIA explores if these capabilities are present and compares this diagnosis with the tasks, actions or interventions required for managing the impacts on human rights. The premise of this analysis, which establishes the correspondence between the task and the competence, is that if the competencies are exercised according to the meaning and proportion of the tasks pending, sector risk decreases. For example, there is a high risk of failing to protect the right to participation in all processes across the sector; although there is jurisprudence which established guidelines and criteria, the little existing regulation does not include them, and the State has multiple flaws when it comes to implementing actions, and therefore its ability to protect the rights is weak.

From the standpoint of state institutions, various elements affect the level of competence in undertaking a task, including the existence of rules, the consistency between them, adapting them to the reality of the sector and the ability to implement them, the possibility of institutional coordination and institutional skills to manage knowledge, among others. Competence from a corporate perspective can also be discussed, where the core elements include the skills to manage knowledge and the ability to comply with the regulation.

One approach to determine the degree of competence of the mining sector’s institutions is analyzing their ability to lead the productive dynamics of an economic sector where the State intervenes through the constitutional channels of the redistribution of wealth, the creation of welfare, overcoming poverty, the...
respect for the rights of the population, the strength of the territorial planning system, the stability of public funds at all levels and environmental sustainability.

No one benefits from the opacity, fragmentation, fragility or absence of state action. And since the State is not an individual for whom everything is permitted, said action can only be one which respects the constitutional mandates regarding its objectives and the principles that influence its operation. The objective dimension of the fundamental rights and the guarantees of its subjective dimension are, in that sense a compulsory part of any state action in managing any economic sector. For example, according to the logic of tasks and responsibilities, any State that is unable to direct its intervention in an economic sector, condemns it to high levels of risk for those who invest their resources in this activity, who will then face hardship and abandonment by the State, significant levels of mistrust, legitimate acts of resistance against the activity, and changing policies that far from benefiting private corporate interests, condemn them to the worst of risks: legal uncertainty.

The relationship between the goal to protect and the ability to perform tasks defines the attributes of an institutional sector, and to that extent determines the level of implementation of the principles of its administrative duties (effectiveness, efficiency, communication and transparency, and the general interest). A competent State will be able to complete the tasks that correspond to certain contexts. For example, it will have the necessary installed capacity and standards to ensure that corporate due diligence in human rights is enforceable, in accordance with at least the minimum parameters established in the UNGP.

In that sense, Colombia is missing a regulatory or public policy instrument through which it can identify how to prevent or promptly address the impacts that pose a risk to the stability of the investments. Of course impacts affect objects, interests or legally protected positions. Therefore, in this view, rights are once again the main pillar from which the sector’s management logic should be built.

Long ago, rights overcame their liberal individualistic notion. Now rights include, in terms of individual rights: integrity, life, dignity, freedom of thought, association and protest, among others; and in terms of collective fundamental rights: the right to a healthy environment, which includes among others, the right to water, air, an environment without noise pollution, and other collective rights such as prior consultation, food sovereignty, or public safety. In addition, the discourse on rights, which should cross-cut all public interventions in the economy, includes what the Constitutional Court has called the rights of territorial entities that are conformed by a group of rights for the protection of their autonomy and powers in decisions related to the welfare of the population, and the environmental and cultural sustainability of their territory.

If the State’s task is not self-defined and based on its institutions, according to these minimum standards of public logic, it becomes volatile, unpredictable and unable to generate social stability for industries or economic activities that by definition leave significant social, cultural, economic, and environmental footprints in the communities. The effects of these mining footprints can occur after a participatory process for the collective acceptance of logic warranties and proportionality, or after the unilateral imposition of the central government, which will lead to a breakdown of the basic terms of the social contract and guidelines agreed by the constituents regarding the structure of the State.

This is why the structure of this work includes not only a chapter on access to remedy, but also six other blocks of issues, in terms of rights, that invite the reader to revisit the sector through a comprehensive
perspective of its sustainability and legitimacy, which requires overcoming the reductionist (and contradictory or impossible) position of attracting investment at all costs.

The assessment of impacts on human rights in the mining sector has much in common with any exercise for the identification and analysis of evidence regarding the effects of an activity under development. Some of these common elements are:

- The limitations of the measuring instruments applied to the variables of interest; and examining the impacts on rights with other partners who do not always include the categories of rights in their speech or, when they do, they do not always report the impacts based on their own needs. Therefore, mechanisms are needed to establish the connection between rights and social, economic and environmental realities, in order for the findings to become substantial.

- The lack of clearly defined concepts, as they are understood in different ways. Every citizen has his own perception of what constitutes an action without harm. The SWIA intends to incorporate these different perspectives. The comparison of these perspectives results in rather than a convergence of visions. An additional challenge is that the person affected can perceive the situation as normal. For some, living amongst mercury may be "normal". In the background there are ethical and complex ontological issues which need to be addressed.

- The multi-causal nature of the links between the phenomena studied. Studying human rights in mining implies exploring the coordination between the three dimensions which are included in addressing human rights in a productive activity. The methodology should help discern the observations of any potential impact, or lack of protection of rights, if the impact is attributable to actions of the State, and how the situations are associated with weaknesses in regulation, monitoring, surveillance or faults in how companies auto-regulate their actions, or a combination of the two.

The two questions presented in the SWIA, regarding what is the action that originates the impacts on rights, and who is the actor or actors who carry it out, are not easy to answer and require making inferences. Therefore, the methodological challenges of the SWIA arise from at least three sources. On the one hand, the results which need to be identified, quantified and explained are not readily observable and even when observable data is obtained, their interpretations can be different. On the other, the exercise requires defining what is mining and its manifestations within different contexts. Finally, procedures are required to help validate with links between that activity and the exercise of rights, which is the intended outcome.

On the other hand, one of the strategic intentions of the methodology is protecting the conversation about mining and its impacts from becoming instruments used to seek political results, which are not necessarily based on evidence. Also, if a model to improve the allocation of impacts is designed, it is possible to open this conversation to a wider range of actors, beyond the mining companies and institutions. In complex cases, such as scenarios where criminal mining is present, where it is very easy to adopt a simplistic view of the phenomenon, which will probably lead to counterproductive or ineffective responses, this broader invitation would involve other actors who are essential in the process for addressing the impacts.

When it is possible to clearly establish the allocation of impacts, it is also possible to open opportunities for dialogue regarding the public policy characteristics or the actions taken by the undertaking, what is relevant in terms of its association with mining and what is not, yet is critical in these scenarios. This also contributes to avoid that some impacts become instruments.
Hence the great effort required to build a methodology which responds to the SWIA’s objectives. Several attributes were identified which help meet this expectation:

- The methodology should help make the processes for the collection and analysis of information more visible.
- The results should be obtained in such a manner that these can be generalized within the field of mining. Although case studies are available, it is important to verify the existence of other reports including common elements, or if other sources of information corroborate a particular finding. The sample of locations and information should be broad enough to draw conclusions on the sector and make inductions, which could reasonably serve as the basis to make general recommendations relevant to the mining sector’s policies, and not just for the municipalities studied.
- The analysis of the findings should help explore possible root and proximate causes (intervening factors) of impacts on rights, in such a manner that the recommendations for the different actors can be based on evidence.

**Perspective: a viewpoint from the mining sector.** The analysis approach of the impacts from the perspective of a particular sector has the advantage of facilitating the identification of the factors involved. This is possible because the sectors differentiate the impacts and have their own way of relating to the scenarios.

**Instruments and methods**

- Fieldwork: workshops and semi-structured interviews, non-participatory observation. The visits resulted in transcripts of the interviews, graphic material and in some cases policy documents, corporate documents and instruments and reports from other sources.
- Geographic Scope: 83 municipalities in 8 departments. The selected municipalities illustrate the diversity of contexts for the minerals which interest this SWIA. These municipalities allow for comparisons from a sufficiently representative set of observations from mining scenarios that capture the variability and diversity of the phenomena to be studied.
- Minerals which interest the SWIA: coal, gold and construction materials. Although mining in Colombia encompasses a much broader group of minerals, these three conform a very representative group, both in terms of production volume, production structures and relationship patterns with the territory.
- Literature Review: In addition to the documentation collected in the field, during the preparation of the SWIA, policy documents, specialized reports, standards, laws and other regulatory instruments were identified, as well as newspaper articles and scientific articles which refer to the problems present in mining scenarios.

**The unit of analysis.** The basic analysis units in the SWIA are "situations", which are expressed as statements. Given that the impacts are not directly observable, they are defined in terms of situations, which are visible: through the disaggregation of mining processes, which constitutes the activities that originate the impacts. Testimonial information, statistical data, quantitative analysis results of other studies and direct observation of the scenarios were used to build the categories of situations. Situations help group the facts reported by the interviewees into conceptual homogeneous categories, the findings of analytical papers on mining territory issues and quantitative evidence found in the descriptive statistics of a set of socio-economic variables.
Primary sources. The strategy for the fieldwork included 3 types of stakeholders. Companies and small and medium undertakings; community members, and government officials working for national, departmental and municipal entities. The information from these sources was obtained through interviews, workshops and focus groups.

Secondary sources. The SWIA draws on two types of secondary sources: a) a set of quantitative variables obtained from different official databases including socio-economic information at the national, regional and municipal levels b) documents obtained during visits to the field and from the literature review.

The process for analyzing the results. The inputs to the analysis result from the convergence of two processes:

- The classification of qualitative information, finding common categories and exploring the nature of their relationship.
- The manipulation of quantitative information (socio-economic variables) using an econometric design\(^8\) for comparing the variables of interest in mining and non-mining municipalities, in such a manner as to identify changes in these variables, which are specific to the municipalities where mining activities take place. To this extent, when the text refers to control municipalities or municipalities compared, it means those non-mining municipalities that are indeed comparable with the mining municipalities. Consultation workshops were part of the process, where experts validate both methodological aspects of econometric exercises as well as the results. From the results of these sessions, new analysis elements were incorporated and the econometric strategy refined.

Using these inputs, common patterns were analyzed and situations were defined. In addition, the analysis of these pooled categories facilitated the identification of stakeholders and helped establish which are the factors that make such situations become manifest. Then the interaction of these situations with the impacts was established, by inquiring how situations relate to the rights, and which rights are impacted in a more immediate manner.

When speaking of human rights universal principles, abstract categories of analysis need to be contextualized. Sometimes, there is margin for interpretation in terms of what constitutes a violation of rights. Then, in order to establish both the responsibility and the nature of the impacts, it is important to first identify the characteristics of the specific scenario. The constant feedback between the quantitative and qualitative analysis instruments enriched this process and also gave strengthened the conclusions.

Understanding the impact. In order to study the impacts on human rights, it is necessary to address the discussion on the "no harm" matter, and on the subject that does the damage. Impact analysis requires assigning responsibility, defining who or what originates the impact. This is why the added observation on the potential effects of mining requires a statistical analysis and a discussion between qualitative and quantitative approaches.

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\(^8\) A paired differences model was used, where the municipalities processed are those where mining activity is carried out, and control municipalities are those located in the same region where mining is nor practiced, and in addition share common socioeconomic characteristics such as: population, poverty and literacy rates in the early 1990s. A detailed description can be found in the methodological appendix.
Impacts can be specific, but in other cases they can be cumulative or have an effect on the sector’s performance or on the region’s human rights situation. From this point, three categories of impacts arise.

- **Impacts caused by specific projects or activities within the mining process.** They are the closest to the scope of due diligence of companies and undertakings.
- **Cumulative impacts.** In time or geographical locations, caused by one or multiple stakeholders. Their management requires institutional capacities and companies need to cooperate in a harmonious manner.
- **Aggregate impacts,** those which are closely associated with the common root causes for a set of impacts and manifest their effects at a much wider geographical and social level. Because of their nature, their management involves cross-sectoral action and an institutional framework capable of guiding strategies at an aggregate level, as well as coordinating the implementation at national and regional levels.

The 7 analysis chapters in the SWIA arise from a classification of observed situations that come together around core themes that share the factors involved, cross-cutting across multiple impacts. For this reason, these chapters collect aggregate impacts.

### Warnings on the interpretation and limitations of the assessment

Potential impacts vary according to the characteristics of mining activities and the scenarios in which these are developed.

The complexity of these realities and the efforts to achieve the construction of a valid and reliable methodology has already been discussed. However, it must be noted that the identification of responsibilities in mining is difficult, despite the methodological development efforts described above, because:

- Fragmented information on impacts prevents a holistic view of the scenarios before the arrival of mining.
- Mining activity coexists with other productive activities which also have impacts and these relationships are not always well documented.
- The presence in a region of multiple mining activities that relate differently with the scenario makes it impossible to clearly establish who is responsible for the impacts, and to what extent.
- Observable impacts in the territories can be the result of current activities or may be the legacy of other previous activities.

Among the contributions this SWIA makes toward improving methodologies for assessing human rights impacts, the refining of procedures for the analysis of information and the adoption of quantitative and qualitative mixed methods whose design and implementation mutually grew during different times of the process is worth noting. An increasingly systematic and replicable methodology makes it possible to think that in the future the information from other SWIAs can be added, and thus build a more complete picture on human rights realities.
SWIA Methodological workflow

**Defining the scope and developing the methodology**
- Minerals studies
- Selected regions
- Identifying stakeholders

**Collecting and analyzing information**
- Bibliography
- Data bases
- Interviews with stakeholders
- Focus groups
- Econometric model and analysis

**Understanding impacts**
- Impacts caused by projects and activities
- Aggregate impacts
- Cumulative impacts

Qualitative – Quantitative discussion
The mining sector is important for the country’s economy, both for the central government and for the producing regions. At the aggregate level, mining production has implications for foreign investment flows, exports, revenues and taxes such as royalties, income tax and estate tax, among others. At the regional and local level, mining production generates employment and productive linkages, changing the dynamics of land use and other local resources, and generating sub-national taxes and contributions that are important for the finances of local authorities. In this case, the importance of mining is heterogeneous among regions, although it is more relevant to some than others. In addition, for some of these elements, this importance is not determined by the existence of a mining title. For example, the production units that have no title generate employment, which in turn provides a livelihood for many people. This section aims to briefly describe, the context and the importance of mining in Colombia.

Participation of mining in the country’s economy

As of 2015, Colombia’s gross domestic product amounted to $800 trillion pesos. At the national value-added level, coal mining represents 1.4%, while metal ores and non-metallic mining represents each, 0.4%. Figure 1 illustrates the change in the participation of these subsectors in terms of value added. As noted, 2015 levels are similar to those of 2004 in the case of coal, in 2002 and 2006 for non-metallic minerals, and a record low is observed for the last 16 years in the case of metallic minerals.

Foreign direct investment in mining and quarrying activities (including coal) amounted to US $533 million in 2015, a similar level to that reported between 2000 and 2003. The highest level in the last 16 years was observed in 2009, when foreign direct investment in this activity exceeded US $3,000 million, achieving 56% of total foreign investment, aside from oil. Figure 2 illustrates the recent performance of foreign direct investment in the activity.

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5 GDP is the sum of gross domestic value added, amounting to $732 trillion pesos of the economy’s value added during this period, plus taxes, less subsidies on products. The percentages mentioned in this section correspond to the share of value added.
Coal has an important share in the exports of mining products, and is one of Colombia’s main exports. Its average share in traditional exports was 20.9% between 2000 and 2015. By the end of 2015 the share of coal was 21% compared to traditional exports (equivalent to 14% of total exports). The largest share in recent years was in 2009, when coal represented 30% of traditional exports. Other mining subsectors contribute less to the national exports. Gold, for example, contributed 3% of exports in 2015. Figure 3 shows the recent performance of coal exports.

The importance of mining around the year 2009 and its subsequent drop in share in the national economy are partly explained by the behavior of mineral prices. As shown in Figure 4, the prices of both gold and coal achieved historic levels between 2008 and 2011, in the 25 years analyzed. In the figure, the prices of both minerals are indexed at 100 for 2005. By August 2008 coal prices reached 250, i.e., an increase of 150% in three years. In the case of gold, the historical peak was achieved in March 2011 when indexed prices reach 250. This represents an increase of 150% between 2005 and 2011.
The share in employment of mining and quarrying activities (including oil), was 1.08% between 2001 and 2015. As shown in Figure 5, employment in mining behaves cyclically, as in other activities. Specifically, the second quarter of the year shows the highest occupancy levels and the lowest during the fourth quarter. However, cycles have softened in recent years. For the first quarter of 2016 the number of persons employed in mining and hydrocarbons was 184,000. Of these, 101,000 were working in urban areas and the remaining 83,000 were scattered across towns and rural areas. Of those working in urban areas, 20,000 did so in 13 of the major metropolitan areas in the country. This situation reveals the importance of the employment generated by this activity in rural areas and smaller population centers.

Similarly, Figure 5 makes clear the activity’s high value added per worker. While mining participation in added value exceeds 2%, its share in employment is about 1%.

Recent times have been characterized, in turn, by a sharp increase in the number of mining titles granted and in mining production. As shown in Figure 6, in 2005 Colombian municipality lands that had been granted a mining title for gold, coal or construction materials represented on average less than 1% of the land. By 2010, on average, more than 3% of municipal land had been granted a mining title for gold, coal or construction materials. This indicates that the Colombian Government has strengthened the granting of concessions for exploration and mining.
Likewise, the upward trend of mineral production is observed in Figures 7, 8 and 9. In 2000, Colombia produced 37 thousand kilos of gold. In 2015, 53,000 kilos were reported. Peak production was reached in 2012 with 66,000 kilos. Coal production has shown a more sustained trend, increasing from 38 million tons in 2000 to 85 million tons by 2015, with a peak in 2012 of 89 million tons. Finally, the production of construction materials, particularly grey cement, increased from 7 to 13 million tones between 2000 and 2015.

Figure 6
Change in the percentage of municipal land that has been granted a mining title
Source: Based on data from the DANE and the Colombian Mining Cadaster

Figure 7
Recent performance of gold production
Note: 2015 corresponds to Q1 data.
Distribution of mining revenues

Gold, coal and building materials mining 10 generates income for the nation, departments and municipalities. The manner in which these revenues are distributed has several implications for the potential development of the regions. The regions favor direct investment in the communities they serve, while the Nation, although it may make investments in specific projects, concentrates the use of their resources in more general needs ranging from investments in roads to the running costs of the ministries. The estimates for these allocations are presented below, including information from mining companies from the subsectors described in the Extractive Industries Transparency Initiative, for which Colombia is currently in the process of affiliation. These companies are Cerrejón, Drummond and the Prodeco Group, which produce coal, and Mineros which extracts gold. Given that these are the largest companies in these market segments, the distribution exercise presented below is presumed to be sufficiently representative. The data is sourced from the Ministry of Mines and the EITI (2015).

The revenues associated with these companies’ activity are obtained from income tax, income tax for equity (CREE), the estate tax, the tax on gold, silver and platinum, royalties and compensation, ground rent, and sub-national taxes and contributions, including industry and trade tax, property tax, street lighting, housing and registration tax. Each of these rents has a destination, as presented in Table 1.

10 The impact assessment presented in the analysis chapters of this document refer to these three groups of minerals.
Table 1. Destination of mining revenues

<table>
<thead>
<tr>
<th>Source</th>
<th>Destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td>National Budget</td>
</tr>
<tr>
<td>Income tax for equity CREE</td>
<td>National Budget</td>
</tr>
<tr>
<td>Estate tax</td>
<td>National Budget</td>
</tr>
<tr>
<td>Tax on gold, silver and platinum</td>
<td>National Budget</td>
</tr>
<tr>
<td>Royalties</td>
<td>General Royalty System</td>
</tr>
<tr>
<td>Compensations</td>
<td>General Royalty System</td>
</tr>
<tr>
<td>Ground rent</td>
<td>National Budget</td>
</tr>
<tr>
<td>Sub national taxes and contributions</td>
<td>Regional Budgets</td>
</tr>
</tbody>
</table>

Source: Adapted from the Ministry of Mines and EITI (2015)

Resources for the Nation’s General Budget are allocated by Congress, and distributed as operating costs and investment. Similarly, regional budgets are allocated to matters approved by the departmental assemblies and municipal councils. For its part, the resources from the General Royalties System –SGR- are distributed according to the regulations established by the system, which is currently in the process of transitioning to less direct royalties and more royalties for competitive government funding. The distribution for 2013 is presented in Table 2.

Table 2. Distribution of the General Royalties System for 2013

<table>
<thead>
<tr>
<th>Destination</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operation</td>
<td>4.7%</td>
</tr>
<tr>
<td>Savings</td>
<td>28.2%</td>
</tr>
<tr>
<td>Investment</td>
<td></td>
</tr>
<tr>
<td>Science, technology and innovation fund</td>
<td>9.5%</td>
</tr>
<tr>
<td>Regional Development Fund</td>
<td>9.6%</td>
</tr>
<tr>
<td>Regional Compensation Fund</td>
<td>19.1%</td>
</tr>
<tr>
<td>Direct to the municipalities</td>
<td>12.5%</td>
</tr>
<tr>
<td>Direct to the departments</td>
<td>16.0%</td>
</tr>
<tr>
<td>Rio Grande de Magdalena and Canal Municipalities</td>
<td>0.5%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

As shown, municipalities and departments have direct access to 19% of the royalty resources and may participate in the Science, Technology and Innovation funds, and Regional and Regional Development and Compensation funds by submitting projects. The total revenue generated by these companies is presented in Table 3. The total exceeds $2.1 trillion.

### Table 3. Gold and Coal mining revenues. Values in millions of pesos (COP)

<table>
<thead>
<tr>
<th>Source</th>
<th>Destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td>$419.125</td>
</tr>
<tr>
<td>Income tax for equity CREE</td>
<td>$190.816</td>
</tr>
<tr>
<td>Estate tax</td>
<td>$113.086</td>
</tr>
<tr>
<td>Tax on gold, silver and platinum</td>
<td>$8.836</td>
</tr>
<tr>
<td>Royalties</td>
<td>$1,060,580</td>
</tr>
<tr>
<td>Compensations</td>
<td>$207,971</td>
</tr>
<tr>
<td>Ground rent</td>
<td>$1,490</td>
</tr>
<tr>
<td>Sub national taxes and contributions</td>
<td>$141,179</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,143,083 COP</strong></td>
</tr>
</tbody>
</table>

Drummond and the Prodeco Group (coal) and Mineros (gold)

As described in Table 4, the Nation has direct access to 53.7% of these revenues. Departments and municipalities have direct access to 23.8% and can access resources by presenting projects to the General Royalties System’s investment funds for the remaining 22.6%. To the extent that SGR reforms move forward, the departments’ and municipalities’ direct royalties will reduce their share, and the corresponding investment funds will increase.

### Table 4. Allocation of coal and gold revenues.

<table>
<thead>
<tr>
<th>Allocation of resources</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct to the nation</td>
<td>53.7%</td>
</tr>
<tr>
<td>Direct to the departments and municipalities</td>
<td>23.8%</td>
</tr>
<tr>
<td>Investment funds</td>
<td>22.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Source: constructed according to information from the Ministry of Mines and EITI (2015).
Mining and the departments

This section illustrates the representativeness of the fieldwork performed as part of the SWIA. Fieldwork for this assessment was conducted in 83 municipalities, in seven departments where coal, gold and construction materials mining operate, under different forms of extraction, titling conditions and other factors that represent the generality of Colombian mining production.

In order to study coal mining, the departments of Cesar, La Guajira and Boyaca were visited. As shown in Figure 10, in 2014 these departments concentrated 94% of the total coal production. That same year, the department of Cesar occupied the first place in production (53% of the national total), followed by La Guajira (39%). In Boyaca coal mining is done underground, unlike fields in Cesar and La Guajira which are open pit. This department supplies 1.2% of domestic production.

To the study gold mining, the departments of Antioquia, Chocó, Cauca and Nariño were visited. In some municipalities of these departments large-scale projects operate, as in El Bagre, Antioquia. Other cases present complex scenarios involving illegal and criminal mining. In addition, in Cauca and Nariño ethnic communities sometimes use traditional mining methods. As shown in Figure 11, these departments account for 62% of the domestic production of metallic minerals. Antioquia produces 35%, Chocó 16%, Nariño 6% and Cauca 5%.
Finally, to study construction materials mining the departments of Boyacá and Cundinamarca, and the city of Bogotá were visited. These regions account for 32% of the domestic production of non-metallic minerals. As shown in Figure 12, Bogota concentrates 18% of production, Boyacá 9% and Cundinamarca and 5%.

**Figure 12**

Share in national non-metallic mineral production

Source: Based on data from DANE.

Department accounts

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**The scope of unseen mining**

The information presented in the previous section corresponds to the administrative records of the Government of Colombia and some of its agencies in charge of development-oriented policies in the mining sector. These include, for example, the Ministry of Mines and Energy, the National Mining Agency, the Ministry of the Environment and the National Agency for Environmental Licenses, among others. The Government has made efforts to formalize mineral production in Colombia, as will be seen in greater detail in this document. However, an important amount of illegal mining still takes place. The share this group has in terms of total mining is a first attempt to quantify the size of the unseen mining which was alluded to in the introduction: mining operations that sneak through the cracks of mining policies and whose incorporation before other instances of State intervention, is fragmented, if and when it occurs.

The scope of this mining is evidenced by the Departmental Mining Census data published by the National Government in 2012. The census identified 14,357 mineral production units in the country, distributed as shown in Table 1, according to the mineral and the legality of the mine. These figures indicate the following: of the national total, 37% of mines have a title and 63% do not. 40% of the coal mines do not have a title, as well as 60% of construction materials mines and 87% of gold mines. These mines, as noted above, are devoid of policies other than formalization.
Table 5. Distribution of mining production units according to the mineral and legality of the mine.

<table>
<thead>
<tr>
<th>Mineral</th>
<th>With title</th>
<th>Without title</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal</td>
<td>1.670</td>
<td>1.107</td>
<td>2.777</td>
</tr>
<tr>
<td>Construction</td>
<td>2.664</td>
<td>3.914</td>
<td>6.578</td>
</tr>
<tr>
<td>materials</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gold</td>
<td>549</td>
<td>3.584</td>
<td>4.133</td>
</tr>
<tr>
<td>Others</td>
<td>433</td>
<td>436</td>
<td>869</td>
</tr>
<tr>
<td>Total</td>
<td>5.316</td>
<td>9.041</td>
<td>14.357</td>
</tr>
</tbody>
</table>

Source: Department Mining Census.

In addition, the census reveals that at least 102,000 people work in the mines. Of these, 51,000 work in mines with a mining title and 52,000 in mines without a mining title. If we consider the people working in the mines and their dependents, there are 226 thousand people tied to mining activities with a mining title, and 264,000 to mines without a title. That is, of the total 490 thousand people who are economically dependent on mining, national sectoral policies only address the requirements for 46%. There are no institutional efforts for the remaining 54% that are not covered by institutional efforts in the mining sector other than formalization programs. This situation reflects the rigidity of sectoral policies, whose limitations are discussed in the mining and human rights section, in the “One size fits all” section: the key to public policy inefficiency.

One size fits all policies, turning their back on reality

The manifest inability to meet the needs of the population, who is dependent on mining units without a title, has several implications on aspects which are relevant to the development of the activity. Besides the absence of title, this can be seen in other dimensions of the formalization process: problems associated with industrial safety, hygiene and occupational health and damages to the environment. For the other dimensions of formalization, Figure 13 shows the distribution of mining production units according to the royalty payment report. As noted, 64% of the units reported do not pay royalties. Among the units without a title, 80% reported not making royalty payments.

Figure 13
Report on royalty payments by mining units

Source: Based on data from the Department Mining Census
Moreover, as shown in Figure 14, 19% of mining production units reported not having anyone to manage the tasks regarding social security work. Contrary to the payment of royalties, this situation becomes more complex for the production units that do have a title. Of the units with a title, 22% are not affiliated to the social security system, and of the units without a title this percentage is 17%. Affiliation to the subsidized scheme makes the difference, 70% of units without a mining title are registered to this scheme.

Another dimension of formalization process corresponds to the use of accounting tools. In this case, as shown in Figure 15, 69% of the mining production units surveyed reported not using accounting. The situation is exacerbated in the production units without a title: 84% do not keep any accounts.

For its part, in terms of actions aimed at industrial safety, hygiene and occupational health, 72% of mining production units do not report having implemented these strategies. This situation is shown in Figure 16. Among the mines without a title, the figure rises to 84%.
Finally, Figure 17 illustrates the limitations in obtaining some form of environmental authorization by mining production units. 76% reported having none, a figure that rises to 93% regarding mines without a title.

These indicators refer back to the question of what are the policies and programs that sector institutions have to address the demands to formalize labor, royalties, accounting and social security management of the mining production units without title. The same question applies to industrial safety, occupational health and environmental care programs. It is precisely in this area where there is a gap in policies which, as will be illustrated in this report, has implications on the protection and enjoyment of rights in the communities.

Mining Institutions

The Ministry of Mines and Energy is the body that manages nonrenewable natural resources in Colombia, and in this regard guides the development-oriented policies in the sector. According to Article 2 of Decree 0381 of February 16, 2012, Article 59 of Act 489 of 1998 and other applicable laws, its duties include: coordinate the formulation, adoption and implementation of public policies in the mining and energy sector; formulate, adopt, direct and coordinate national policy regarding the exploration, exploitation, transportation, processing, marketing, transformation and distribution of minerals; formulate policies in order to develop activities through which companies in the mining and sector can guarantee the sustainable development of non-renewable natural resources, among others.

Its structure includes two vice ministries, the Vice Ministry of Mines and the Vice Ministry of Energy. The Vice Ministry of Mines focuses on activities relevant to the sector, those covered by the Department of Corporate Mining and the Department for the Formalization of Mining. These departments are responsible for developing plans and programs aimed at promoting the development of the sector and its formalization. The Department of Corporate Mining has delegated to the Government of Antioquia duties regarding mining matters pertaining to this department.

Mining institutions also include agencies attached to the Ministry which supplement the missionary efforts of the Ministry. Among these the following are worth noting: the National Mining Agency, the Colombian Geological Service and the Mining and Energy Planning Unit.

The National Mining Agency was created by Decree 4134 of 2011 and is responsible for the comprehensive management of mining resources owned by the State. The Agency is also responsible for:
- Granting rights for exploration and exploitation;
- Promoting, holding, managing and monitoring concession contracts and other mining titles; managing the mining cadaster and the national mining registry;
- Calculating, collecting, managing and transferring royalties and other considerations derived from the exploitation of minerals;
- Reserving areas with mining potential, in order to grant them under a concession contract.

For its part, the Colombian Geological Service, in accordance with the provisions of Decree Law 4131 of 2011, is responsible for conducting the basic scientific research to determine the potential of subsoil resources; track and monitor geological origin and manage subsoil information; and the comprehensive management of geoscientific knowledge, research and control of nuclear and radioactive issues, according to the priorities established in the National Government policies.

The Mining and Energy Planning Unit –UPME– is governed by Act 143 of 1994 and Decree 1258 of June 17, 2013. The UPME is responsible for conducting the comprehensive planning of the mining and energy sector through assessments, supply and demand diagnoses of resources, and the preparation of indicative plans. It is also responsible for managing information pertaining to the energy and mining sectors in order to support the decision-making process of both public and private stakeholders.

Figure 18 summarizes the institutional framework of the mining sector. Decree 0391 of 2012 issued by the Ministry of Mines and Energy details the structure of the current mining institutions.

**Figure 18 Mining Institutions in Colombia**

PROTECTING RIGHTS: An opportunity for articulating the sector and the territory
This chapter reviews a broad and complex set of situations where the relationship between the sector (and its agencies) and the communities living in mining territories show a certain degree of conflict and misalignment that may affect the State’s duty to ensure protection and effective enjoyment of rights.

The effects of sectoral policies that affect territorial planning; the absence of policies that focus on protecting vulnerable populations; institutional weakness that hinder the assurance of equitable treatment in decision-making processes; and the absence of efficient and timely communication mechanisms between the sector and the communities affected by mining activities, are some of the factors that generate conflict in the mining scenarios from which the SWIA - Sector Wide Impact Assessment-collected evidence.

A human rights approach is suggested, as a possible coordinating element for the sector and territories. This is an analytical approach for reconciling operational, development and investment objectives with the essential obligation to protect rights, which rests solely on the State. The investigation found that the protection of rights is not included at the core of sectoral policies and institutional actions, thus becoming one of the factors hindering the prevention of impacts, as well as the differentiated and comprehensive attention of mining and non-mining populations affected by the development of activities within the territories.

The following are among the main impacts caused by the absence of a human rights approach in the actions and decisions of the State regarding the management and operation of mining activities in the country: weakening of local governance; the lack of protection and increased risk of vulnerable populations; the implications on the right to material equality of the population which is at risk of becoming vulnerable; the impacts and loss of rights suffered by different ethnic communities; and difficulties accessing remedial mechanisms.

### MAIN SITUATIONS AND IMPACTS

<table>
<thead>
<tr>
<th>Situation</th>
<th>Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>The lack of alignment of sectoral policies with the territories generates conflicts between the community and institutions and undermines sector institutions, which in turn has an impact on governability and governance in the territories.</td>
<td>ᵇ Right to participate in public life ᵇ Right to equality before the law</td>
</tr>
<tr>
<td>Institutional weakness to ensure the right to equality of small and medium-scale miners.</td>
<td>ᵇ Right to material equality ᵇ Right to work ᵇ Right to health</td>
</tr>
<tr>
<td>Public policy and actions taken by sector institutions lack a human rights approach which hinder the prevention of impacts and threaten the most vulnerable populations.</td>
<td>ᵇ Right to equality before the law ᵇ Ethic-territorial Rights ᵇ Right to decent living conditions</td>
</tr>
<tr>
<td>The absence of efficient and timely communication mechanisms between the industry and the communities affected by the development of mining activities jeopardizes the right to remedy, in addition to raising the level of conflict in the territories.</td>
<td>ᵇ Right to Access to remedy. ᵇ Right to equality before the law ᵇ Right to participate in public life</td>
</tr>
</tbody>
</table>
1. PUBLIC POLICY CHALLENGES IN THE PROTECTION OF RIGHTS REGARDING THE RELATIONSHIP BETWEEN THE SECTOR AND THE TERRITORY

1.1 DO MINING AND TERRITORIAL PLANNING CONVERGE?

Colombia lacks a single territorial planning policy to guide soil and subsoil activities, which makes the actions and policies of the many public institutions in this field, uncoordinated and often contradictory. This situation results in a lack of clarity for both citizens and companies in terms of the use of soil (GDIAM - Dialogue Group on Mining in Colombia-, 2015). The territories do not include the use of minerals in their visions for development, therefore institutional performance becomes the response to local aspirations and, in the opposite sense, national sector institutions have not adopted local development visions as a regular process to define the actions of the sector, neither to promote nor approach mining from a cautious standpoint in terms of impacts. The lack of control in awarding mining titles during the first decade is a sample of the above (see chart below).

Valid titles as of 2014, by year of award

Source: Based on data from the Colombian Mining Cadaster

In addition, or perhaps because of the absence of a systematic and comprehensive territorial planning system, there are contradictions between institutions at different government levels regarding the definition of the calling of soil, which hinder the regulation and management of the different productive activities and ecosystem services in the territories. Specifically with regard to mining, the regulatory framework establishes that the subsoil and non-renewable natural resources are owned by the State, which consequently determines its management and use, is responsible for its operation and receives the corresponding economic compensation.
Soil and Subsoil Management:

**Callings, use, eco-system service and complementarities**

The National Mining Management Plan –PNOM–, warns that one of the main challenges which the sector must face the absence is a "shared medium and long term vision in the mining sector and other sector related to the use of land" (UPME - Mining and Energy Planning Unit -, 2014). The lack of alignment and coordination between mining and territorial planning can be explained by the erroneous pretense of seeing the subsoil as an element which is independent from the soil (both in the physical sense as political).

In 2014, the Court ruled on the matter and determined that although Article 37 of the Mining Code is based on the constitutional principle of the State as a unitary organization and its privileges concerning the exploitation of natural resources, it must also consider other constitutional pillars of equal value within the State, which are essential in the life of the communities, such as the protection of water basins, the health of the population and economic, social and cultural development of their communities (Judgment C-123 of 2014).

The Court concluded that "Article 37 of Act 685 of 2001 –Mining Code- is consistent with the Constitution, provided that in the authorization process for conducting exploration and mining activities, regardless of the name given to the procedure for issuing said authorization by the State, coordination and competition matters are taken into account, based on the constitutional principle of territorial autonomy "(Judgment C-123/14).

To ensure the constitutional principle of territorial autonomy, the Court considered it necessary to frame the industry-territory relationship within the principles of coordination and concurrence. This implies, on the one hand, that the central government is not the only competent authority and the municipalities and districts for which the mining titles are requested must be involved in the process and the decision to grant the titles or not; and on the other, municipalities and "the government should have decided on the criteria under which a municipality could say NO to mining in certain areas of its territory" (Viana & Negret, 2015).

In response to the Court’s judgment on December 23, 2014 the Ministries of Mines, Environment, Interior and Agriculture issued Decree 2691. This decree, contrary to the agreement reached between the central and local governments in Judgment 123 of 2014, raises obstacles and limits the possibilities for effective dialogue between the central government and the territories. The so-called "Christmas Decree" implements at least three elements which are directly in contradiction with the judgment¹ (Viana & Negret, 2015)

- First, the procedure through which a municipality proposes the exclusion of mining in its territory does not respond to the agreement dictated by the judgment, it merely contemplates the possibility that the municipality raise protective measures, which are accepted or rejected by the central government. The absence of a dialogue designed for concertation complicates, to the point of impossibility, the exclusion of mining from a territory as a preventive measure.

¹ For additional information on the implications of the decree see: http://sostenibilidad.semana.com/medio-ambiente/articulo/el-decreto-2691-regalo-navidad-para-mineros/32422
The divergence between the sector and the territory can be explained from quandary between the soil and the subsoil, and the erroneous pretense of independently planning one from the other.

- Second, the Decree orders that municipalities have technical studies to begin the dialogue with the central government; and according to these they can justify their decisions regarding territorial planning, as well as the protection measures. These technical studies on the one hand are hired and paid for by the municipality, which violates the right to equality before the law when considering the disparity of resources in the different municipalities. Furthermore, because of their general nature, they are insufficient for the development of specific protection measures. In addition, it can be considered a detriment to municipal resources given that the diagnosis of impacts on mining at that level has been previously documented by various public and non-governmental organizations.

- Third: the decree imposes a high level of responsibility on the municipalities. While the National Mining Agency continues to grant mining titles, the municipalities have to deal with the paperwork and procedures to defend their heritage and autonomy.

- During the preparation of this document, the Constitutional Court issued another statement regarding the quandary between sector and municipal territorial planning; insisting that the latter have the authority to manage their territory and as such they must be respected in the process for defining the mining reserve areas; and in this manner "ensure that the design and offer of such areas are compatible with the corresponding territorial plans" (Judgment C-035/16).

In its Judgment C-035 of 2016 regarding Article 108 of Act 1450 of 2011 and Articles 20, 49, 50, 51 and 52 (partial) as well as various excerpts of Article 173 of the 2014-2018 National Development Plan, which regulated the national system for National Interest and Strategic Projects –PINES-, the Constitutional Court stated, among others, that:

- The definition of mining reserve areas must be previously agreed with the local authorities of the municipalities where they will be located, in order to ensure the constitutional power that the municipal authorities have to regulate land use, in accordance with coordination, concurrency and subsidiarity principles.

- The definition of mining reserve areas by the ANM – National Mining Agency -and the Ministry of Mines should be compatible with municipal territorial plans.

- Excluding the Regional Autonomous Corporations –CAR- from the procedures for processing environmental permits and licenses for the PINES violates their autonomy.
Mining titles:

Convergence between the rights to use the property, among which are mining title, and other vehicles for the formalization of property which need to be harmonized

The impacts generated by the misalignment between the sector and the territory’s management are the main source of conflict between communities and mining institutions, and are largely what originates conflicts between companies and communities. In cases where the titling process for the development of mining activity is not coordinated, on the one hand, with the expectations and needs of the communities in the territory; and on the other, with the skills and capacities of regional authorities to regulate the activity and address their impacts, the resulting consequences include impediments in the exercise of the constitutional right to public participation and material equality as a fundamental principle in the relationship between the State and its citizens.

The current Mining Code only has one type of model contract: the mining concession. In order to become a licensee, this code offers two processes: the request for a contract through the mining counter, or a public bid. In addition, it has two mechanisms for special concessions to ethnic communities, those derived from the implementation of a special reserve zone and concessions as a result of the exercise of the right of priority.

The first of the processes, granting a mining concession through the mining counter, is based on the “first come, first served” principle. This principle states that any natural or legal, national or foreign person may apply for a mining title. Once there is a formal request on the website, and the supporting documents have been delivered to the Colombian Geological Service, the ANM verifies any existing overlaps and defines the free area available. In this process the applicant is responsible for: (i) notifying if there is any overlap with special excluded or restricted areas; (ii) submitting the requested area maps signed by an accredited geologist engineer or geologist, and (iii) paying a ground fee (Viana, 2014).

Perhaps the most harmful effect for the sector and for the exercise of rights in formal mining scenarios is that the “first come, first served” is based on the undesirable and misguided premise that all stakeholders are potentially eligible to exercise mining activities. The consequence of this is that public policy is unable to determine the type of mining that the regions can accept, the territories where they want to carry it out, and the holders that have the desired capabilities and experience. In short, this principle means that mining in Colombia is the result of processes lacking direction, dominated by the appropriation of income, and not the product of social agreements. It is hard to imagine a more complex obstacle to building peace in the territory.

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2 “Art. 14. - As of the effective date of this Code, the right to explore and exploit state-owned mines may only be given, stated and proved through the mining concession contract, duly issued and registered in the National Mining Register”.

3 Policy documents also refer to this concept as “first come, first served”. For an explanation on the formalization of this principle within the Colombian regulatory framework, see: http://www.contraloriagen.gov.co/documents/10136/188941280/07_Desarrollo+Minero.pdf/492069f5-4dd7-4778-9d21-1ec3492a9a97?version=1.0
than a sector which is present in all regions of the country, and is not guided by a social agreement but rather by the indeterminate and possibly opaque effects of a random granting of titles.

Likewise, this principle hiders the prevention and management of cumulative impacts by granting equal rights to the title holders without further consideration of the impacts generated by other mining projects within the same scenario.

The Strategic Mining Areas for public bidding, established by Resolution 180241 of 2012, are “a concept created by the government in order to define areas in the country with the greatest potential for this activity, and where there is a greater probability of finding resources such as gold, copper, iron, and platinum, among others”. This resolution states that “the mining authority shall determine the minerals which are of strategic interest to the country, for which it may define special areas in areas that are free, for which no new proposals or mining concession contracts will be received or signed”. According to the above, the Strategic Mining Areas are free areas which “(i) have potential for the exploration and exploitation of strategic minerals or (ii) are free as a result of the expiration of the mining title, and where there are deposits which may possibly yield said strategic minerals”.

The Resolution also dictates that “the areas which are defined by this Act as strategic mining areas, will be awarded through a special concession contract by means of an objective selection process, in which the Mining Authority shall establish minimum economic considerations, other than royalties, that the stakeholders will provide, in strict compliance with the provision stipulated in Article 108 of Law 1450 of 2011”. The definition of these areas was performed according to a study (“Areas with mining potential for the definition of strategic reserve areas”) by the Colombian Institute of Geology and Mining –INGEOMINAS- updated as of February 2012.

Once an area is declared a Strategic Mining Area the government carries out what is known as the Mining Rounds. These are meetings where the government “presents the areas that it intends to grant in concession, reveals relevant information thereof, and publicly offers them in order that those parties interested in obtaining a mining concession submit their proposals to the ANM”.

In May of 2015, Strategic Mining Areas were provisionally suspended by the Council of State when it considered that before the application of the decrees a consultation process with the communities living in the 20’470.200 hectares defined as strategic areas was required; a process that had never occurred. The Council’s decision was based on the action for nullity filed by the Center for the Study of Social Justice - Tierra Digna, which argued that the resolutions issued by the Ministry of Mines and Energy violated the rights of the communities to prior consultation, in addition to the right to food, access to water and other collective rights such as a healthy environment and cultural heritage.

With the suspension of the strategic mining areas, the mining counter system makes it impossible for public policies in the mining sector to be effectively executed, as projected at the time of their design. Granting titles without taking into consideration the existing ancestral or informal mining communities in the concession areas threatens the formalization policy. For example, if someone applies for and obtains a mining concession
that overlaps with any of the traditional holdings in these communities, formalizing it will be impossible. Henceforth only the concession holder has the right to explore and exploit that concession. Ignoring the fact that other miners were there before, has a transformative effect in the people living in the territory: they are no longer small informal miners but rather the usurpers of a mining title, i.e., administrative and even criminal offenders.

**Governability and governance in mining territories:**

**Decisions enjoy the legitimacy of national politics and local visions thanks to convergence**

Governability is understood as the vertical decisions (top-down) through which the State assigns resources to address social, political, environmental and economic issues, including at least four criteria, as stated by Hufty (2006): 1) guarantees for citizen security and respect for the law; 2) effective and equitable public administration; 3) accountability by political leaders; and 4) transparency and accessibility of information (Hufty et al, 2006. In: Cante Paredes Maldonado & Trujillo, 2014)

At the local level, and specifically in mining contexts, these criteria draw attention to the ability of local governments to ensure the exploitation of mineral resources is effectively monitored. In this matter, the investigation revealed two phenomena that weaken local governance.

First, the fact that the licensing processes for large mining projects are carried out by national agencies with little presence in the territories and that they occur far away from places where the mining would take place, has hampered transparency and the accessibility to the information, as well as access to the complaints systems regarding the development of mining projects, directly impacting the right of the communities to access remedy.

Additionally, the increased distance between national agencies responsible for sectoral planning and local authorities responsible for territorial planning, has strongly affected the local authorities’ abilities to maintain their legitimacy before their communities; who in terms of mining projects perceive them as incompetent.

In cases of large-scale corporate mining, as in the departments of Cesar and La Guajira, the nonconformity of the communities located within the area of influence of mining projects is evident. They perceive that local authorities shirk their responsibilities regarding the social and environmental impacts caused by the projects, by stating that these are under the responsibility of national agencies. However, some argue that there is complicity between the authorities and the companies; others read “fear” or ineptitude in the actions of weak authorities when faced against companies with more and better opportunities to exert influence on the national agencies.

Second, the databases and their analysis did not find a correlation between institutional weakness and mining, suggesting that the existence of mining activities in a municipality is not a direct determinant of the high levels of corruption; this is a situation that occurs in both mining municipalities and non-mining municipalities, which are comparable in all other respects. However, in the mining municipalities where there are high levels of corruption and, therefore, institutional quality is decimated, it is not possible, on the one hand, to limit the
implementation of informal, illegal and criminal proceedings; and on the other, to capture the benefits of mining itself. In many cases this generates negative citizen perception regarding the mining sector, attributing said corruption to mining activities and not to the political and social dynamics that seek to capture the State and its revenues in an effort to reproduce power structures and territorial control.

In this regard, the Comptroller stated that, “despite having received most of the royalties, the quality of life of the population not only didn’t improve, but in most cases, cemented the fact that it lags behind other regions of the country” (Contraloría General de la República, 2013, p. 29). Meanwhile, a spokesperson from a State agency stated the royalty investment can be seen in “coliseums and other works used by the governing authorities to show investment, however the basic needs of the population remain unmet, thus contributing to the impoverishment of these areas” (interview with a spokesperson from a State agency).

The poor investment of resources from mining has also affected the legitimacy of the sector and influenced the deterioration of relationship between the community and mining companies, “the action or inaction of the government makes it difficult for companies to fulfill their commitments with communities” (interview with a corporate stakeholder).

For corporate stakeholders, the lack of trust in local institutions by the communities, and the absence of the central government in the territories have two further implications: the perception that mining is responsible for many of the local problems and that companies can provide solutions to the communities’ requests even if these are in effect the responsibility of the State.

The impacts recorded in terms of governability, as set out above, must be understood in association with the impacts on governance. This investigation understands governance as the multi-directionality of public power, including civil society as a key player in the decision making process and the protection and respect of individual and collective rights. As stated in Cante & Trujillo (2014), “governability responds to a top-down view, while governance to a bottom-up vision, without them being exclusive or contradictory, but rather complementary.”

Thus the Council of State, the Constitutional Court, and various civil society and academics organizations have drawn attention to the importance of citizen participation as a mechanism to ensure the legitimacy of territorial planning. In this regard, the GDIAM (2015) points out the importance of (...) considering the existence of citizen participation mechanisms that allow different sectors of the population to influence public decisions regarding mining issues, not only in terms of the free and informed prior consultation mechanism, but of institutional and non-institutional devices that exist in Colombian law, as a way to channel the voice of the people and take it into account during the discussion on the convenience or inconvenience of mining activities in the territory.

One of the citizen participation mechanisms that has been implemented in several municipalities is the Popular consultation. Initiatives in locations such as Piedras, Tolima; Tauramena, Casanare; as well as others which are in progress in the departments of Antioquia, Tolima, Cauca and Casanare, are examples that give an account of the tensions between the decisions of the state and the interests of some communities.
This mechanism is protected by Act 136 of 1994, by which dictates the rules designed to modernize the organization and functioning of municipalities. Article 33, on land use, stipulates that when the development of tourism or mining projects or others, threaten to generate a significant change in the use of land, which will lead to a transformation of the traditional activities of a municipality, a Popular consultation should be conducted, in accordance with the law. The respective municipality will be responsible for these consultations.

In terms of the processes that have been carried out, the Comptroller (2013b) states that “this is a legitimate claim to the extent that it is protected by constitutional rights and instruments, and reflects the rejection of non-consulted central government decisions that affected the territories and the lives of the community. "(Contraloría General de la República, 2013, p. 70)

It is worth clarifying that the requests for participation in the sector are not homogeneous. In some regions, small and medium-scale miners seek the recognition and support of the government in order to exercise their activities, and the guarantee that they will be given the opportunity to participate in decisions about the sector, which tend to give priority to the entry of large companies to territories that local miners have exploited for years. In other regions, the priority of the communities is the protection of the environment and / or defense of other traditional productive activities such as agriculture or fishing.

The absence of a comprehensive national territorial planning policy and the contradictions raised, affect the manner in which the impacts of mining activities in the territories are addressed, and the possibility that these translate into impacts to the rights of the population.

Why make local or regional development plans, which imply the joint effort of agreeing to an including the life plans of communities of indigenous and African descent, if the central government implements policies without consulting with local authorities and communities and from Bogota decides that Cauca is a mining department?

Government oficial from Cauca
In January of 2016 the mayor of Ibague, Guillermo Alfonso Jaramillo, presented the City Council with a proposal for a Popular Consultation to prevent the development of large-scale mining projects in the municipality; which was approved by the Council of Ibague on February 29, 2016. In addition, local media reported that the Administrative Court of Tolima also approved of the mayor’s initiative and would publish the ruling by which it issued a favorable opinion regarding the constitutionality of the Consultation1.

This initiative is motivated, according to the Mayor, by mining projects, mainly the “La Colosa” projects, which affect water resources in the municipality, especially the Coello River Basin, “a tributary that feeds the complementary aqueduct which continuously provides 80,000 people with water, and who rely on the community’s water systems”.2. Also, according to the positions in favor, the proposal seeks to prevent that mining affect agriculture, the city’s tourism, in addition to the primary claim of defending the autonomy of the territory.3

The purpose of the consultation is to ask the population of Ibague the following question: Do you agree with, (yes or no), the execution of projects and mining activities in the municipality of Ibague that could contaminate the soil, cause the loss or pollution of water or affect the agricultural and touristic calling of the municipality? This question has been criticized by those opposed to the consultation, who claim that the wording necessarily leads to a negative answer.4.

However, as argued by the former director of citizen participation for the Office of the Governor, and a lawyer and researcher from the Dejusticia organization, the intention of the consultation is not to go against general mining in the territory, but against the type of mining that affects the water and land use5. The lawyer argued: “The idea behind the consultation is the protection of the environment, avoiding mining activities which produce contaminating effects. Citizen will vote on whether or not they want mining projects that pollute water or soil. It does not seek to stop all mining, only that which contaminates water and threatens agricultural activities.”6

The Mayor’s proposal has sparked an intense national debate. In this regard, the Environmental and Agrarian Deputy Inspector has stated on several occasions that calling for a popular consultation on mining is not appropriate “because the Nation is the competent body who decides on the use of subsoil, and not the mayors

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4 http://lasillavacia.com/historia/en-ibague-se-cocina-el-futuro-de-la-mineria-53141
5 http://www.elespectador.com/noticias/nacional/concejo-de-ibague-aprueba-consulta-popular-minera-articulo-619478
6 http://www.elespectador.com/noticias/nacional/concejo-de-ibague-aprueba-consulta-popular-minera-articulo-619478
and municipal councils.

Meanwhile, the company has indicated that the popular consultation would have no effect on La Colosa project, given that the project operates in the neighboring municipality of Cajamarca, therefore it does not affect Ibague. Another opposing argument is that curbing such projects would have a negative effect on public property that could amount to 10,000 million pesos, as evidenced by the Oversight Network. The truth is that this has not been the only initiative of its kind. In July of 2013 in the town of Piedras, Tolima, a popular consultation was held, to vote on the operation of AngloGold, which resulted in the closure of the mining operation. Meanwhile, in Cajamarca the process for the public consultation was put to the consideration of the Council, however this initiative was unsuccessful.

The Dejusticia director, an organization that has closely followed the process, explained repeatedly that municipalities may decide whether they want mining in their territories or not. He argued that precisely that is what the territorial peace approach is about, which has been defended by the Government’s team for peace and post-conflict, and which seeks to strengthen participatory democracy in the territories. He also recalled that the Constitutional Court has issued two rulings in reference to mining, defending the autonomy of municipalities and the Regional Autonomous Corporations, which, he argues, serve as grounds for the central government to allow the Popular Consultation in Ibague.

1.2 ONE REGULATORY FRAMEWORK FOR ALL TERRITORIES?

The need to build a broad and inclusive policy capable of preventing conflicts and violations of rights through a differentiated approach to the realities of the entire population affected by the mining developments, draws attention to the diversity of individuals and conditions that affect their rights, and their high level of dissatisfaction regarding the manner in which the authorities involved in the sector relate to them.

Mining and vulnerable populations

Policy is indifferent to territorial heterogeneity

As recorded in the documents pertaining to the situations observed in mining scenarios, particularly for those elements which determine the exercise of ethno-territorial rights, access to decent living conditions, among other rights, the populations and contexts are diverse, and communities show vulnerabilities due to the governance conditions of the place where they live, the violence and dispossession processes they may have
experienced, poverty and lack of access to resources and the inability of the authorities to protect them. Given that mining is a high impact activity that attracts the interest of both legitimate and violent stakeholders, the vulnerability of populations living in mining territories, will have to be the linchpin in the deployment of the mining policy and serve as the differentiating criterion.

Small and medium-scale miners, stakeholders in the production chain, and communities directly or indirectly related to mining activities, among others, are the subjects that are affected by the absence of a strong policy focused on preventing human rights impacts and protecting the vulnerable population.

The definition of this population as a vulnerable population is based on the fact that due to the conditions and contexts where they develop mining, these communities are more exposed to exclusion, poverty, the effects of inequality and violence.

Some of the conditions of vulnerability that characterize gold, construction materials and open pit coal mining scenarios include a weak presence by the State, and therefore limited access to the services it should provide, and the fragile institutional development at local and regional levels to ensure the basic needs of populations raises the risks associated with the vulnerability. Therefore it is worth noting that, except for the municipalities sampled for construction materials, gold, and coal located in the interior of the country and in the north, they all show a greater number of people living in poverty as measured by the multidimensional poverty index than municipalities in the comparison group.

### Number of people living in poverty as measured by the multidimensional poverty index

- **Gold**: mining municipalities have a poverty incidence* 20% higher than their comparison group
- **Coal in the interior of the country**: mining municipalities have poverty incidence 32% higher than their comparison group.
- **Coal in Cesar and La Guajira**: mining municipalities have poverty incidence* 90% higher than their comparison group.
- **Construction materials**: mining municipalities show no significant differences in the number of people living in poverty

* Incidence refers to the number of people living in poverty during the observation period

In addition, these scenarios are characterized by difficulties in the communication with the central government and other regions which are decisive in strengthening local economies, as well as by a relationship of dependency and imbalance with the market economy. The type of mining described here as typical of a population in a vulnerable situation, is also characterized by being located mostly in inaccessible areas or the marginalized outskirts of urban centers.

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16 For more information on the methodology used for these calculations refer to CREER document: Methodology for the econometric model available at [http://creer-ihrb.org/wiki-eisi/](http://creer-ihrb.org/wiki-eisi/)
One of the environmental and context conditions, that the Ministry of Education and other ministries have defined as an indicator of a vulnerable population in developing guidelines for differentiated care of this population, is the “lack of sustainable management for the environment, the deterioration of ecosystems due to phenomena caused by the indiscriminate extraction of natural resources”, which coincides with the discussion in the chapters of the Environment and Migration, as one of the factors involved in both the proliferation of health risk factors, and migration caused by the development of mining activities.

In these scenarios, organized crime and the guerrillas have different relationships regarding the extraction of resources; “in some areas they limit themselves to collecting extortion money and in others they directly manage both legal and illegal activities” (FIP - Ideas for Peace Foundation-, 2016), which exponentially increases the risk of these populations to forced displacement, extortion and other effects caused by armed violence. For example, the rate of eviction by forced displacement is about 60% higher in gold producing municipalities, compared to non-mining municipalities with comparable characteristics.

Regarding health variables which are decisive in the comprehensive exercise of rights, health risks in this population arise from:

- Increases in the levels of particulate matter,
- Increased noise levels
- Accident risks and threats to their physical integrity due to infrastructure collapses, falling rocks, and mass removal phenomena
- Decrease in the quality and quantity of water available and access to water sources
- Exposure to toxic substances such as heavy metals
- Exposure to mercury due to consuming contaminated food and inhaling mercury vapor.
- Increased exposure to vector-borne diseases such as malaria, due to water accumulation
- For people working in the mines, increased susceptibility to musculoskeletal disorders due to physical requirements

Finally, it is necessary to consider the access to service variables and quality of education as conditions that determine the vulnerability of the mining population. The Ministry of Education (20005) emphasizes the low levels of education and internal efficiency, and the difficulties faced by the learning processes as factors which define a vulnerable population. In this regard, the comparison exercise between mining and non-mining municipalities indicates that:

- School overcrowding is a phenomenon that is widely seen in municipalities with high mining production; it is particularly significant in northeastern Antioquia and southern Bolivar, which is one of the regions with a high level of gold production.

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17 For more information on the effects of travelling for ethnic communities please refer to the CREER document Situations observed in decisive mining scenarios in the exercise of the right to education, available at [www.creer-ihrb.org](http://www.creer-ihrb.org)
When analyzing the number of students per teacher, quantitative evidence suggests that the mining municipalities do not have enough teachers. This difference is statistically significant in all cases. Systematically, municipalities which produce gold, coal in the interior and in Cesar and La Guajira, and construction materials have a higher number of students per teacher than their comparison groups.

- Students in mining municipalities show lower school performance. In particular, the overall results of the Saber 11 tests are significantly lower in 1% of the municipalities which produce gold, coal in the interior, and construction materials than their comparison group. While this difference is systematically present across all sectors analyzed, it becomes more relevant in the analysis of the effects of mining on school performance.

In absolute terms, the figures imply that municipalities which produce gold and coal in the interior have between 0.4 and 0.6 more students per teacher. For the coal municipalities of Cesar and La Guajira this rises to 1.4, and for the municipalities producing construction materials, 1 student more per teacher (as a benchmark, comparison municipalities have about 22 students per teacher on average). 

*Every two students less per classroom represents approximately an additional month of learning per year.*

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**Inflexible policies in terms of economic and socio-cultural diversity**

The lack of flexibility of the existing policy, which operates according to the categories explained below and whose limits easily become blurred in some cases and in others do not reflect certain realities, can generate conflicts for those miners interested in formalizing their activity. The investigation registered constant complaints by small and medium-scale gold, coal, and construction materials miners who perceive that the mechanism for formalization are inappropriate for addressing their characteristics, possibilities, resources and needs. According to the National Police it happens because "the parameters established to regulate and legalize mining have not been subjected to previous studies involving population, social, environmental, territorial and economic contents" (Policía Nacional de Colombia, 2012).

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**Definition and characteristics according to the the Ministry Mines:**

- **Panning (Art.155 Mining Code)**
  
Panning, or “barequeo”, as a popular activity of the inhabitants of current floodplains will be permitted, with the restrictions listed in the following articles. This activity consists of manually washing sand without any help from machinery or mechanical means in order to separate and collect precious metals contained in these sands. The collection of precious and semiprecious stones using similar means to those mentioned in this Article will also be allowed.

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### Definition and characteristics according to the Ministry of Mines:

<table>
<thead>
<tr>
<th>Type of Mining</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Formal Mining</strong> (Mining glossary)</td>
<td>Made up of operating units of varying size, exploited by legally incorporated companies.</td>
</tr>
<tr>
<td><strong>Subsistence mining</strong> (Mining glossary)</td>
<td>Mining developed by individuals who devote their workforce to the extraction of some mineral using rudimentary methods, in association with a family member or others to generate subsistence income. This name is given to the exploitation of small-scale alluvial mining, also known as panning, and the occasional extraction of clay, in its different forms, and construction materials.</td>
</tr>
<tr>
<td><strong>Illegal Mining</strong> (Mining glossary)</td>
<td>Mining activities developed without being registered with the National Mining Register and, as such, have no mining title. It includes artisanal mining, mining developed outside the law; and exploration works that do not have a mining title. It includes mining operations which are covered by a mining title, but where extraction, or part thereof, is carried out outside the licensed area.</td>
</tr>
<tr>
<td><strong>Informal Mining</strong> (Mining glossary)</td>
<td>Formed by small and medium operating units, individually owned and which do not keep any accounting records.</td>
</tr>
<tr>
<td><strong>Legal mining</strong> (Mining glossary)</td>
<td>Mining covered by a mining title, which is the written administrative act by which a right is granted for the exploration and exploitation of state-owned soil and subsoil, according to the Mining Code. The mining title must be registered at the National Mining Register.</td>
</tr>
<tr>
<td><strong>Occasional Mining</strong> (Art. 152 Mining Code)</td>
<td>The occasional and transitory open pit extraction of industrial minerals executed by the owners of the surface, in small quantities, at a shallow level, using manual means, and does not require a government concession. This extraction may only be used for the owners’ personal use, for works and repairs to their homes and facilities after obtaining permission from the property owner. All other industrial or commercial use given to the extracted minerals under this Article, are prohibited.</td>
</tr>
<tr>
<td><strong>Traditional Mining</strong></td>
<td>Traditional mining is understood as the activity performed by individuals or groups of individuals or communities, where state-owned mines are exploited without a title</td>
</tr>
</tbody>
</table>
Definition and characteristics according to the Ministry of Mines:

(Decree 2715 - 2010) registered with the National Mining Register and proving the following two (2) requirements: a) that mining operations have been continuously active for five (5) years, supported by technical and commercial documentation b) have a minimum existence of at least ten (10) years prior to the effective date of Law 1382 of 2010.

The recently published Colombian Mining Policy, issued by the Ministry of Mines and Energy in April of 2016, announced the issuance of the regulations that define the mining sector, large, medium and small-scale mining, and subsistence mining. The policy establishes the classification of mining according to production and size, under the premise that this strategy would enable policies and programs that meet the specific needs of each of these groups. Faced with this form of classification, some very relevant questions arise in the field of human rights, such as: how do you ensure that this classification does not become a poverty trap for artisanal and ancestral miners, and those who are mistakenly called subsistence miners?

In the case of miners in Antioquia, Cauca and Nariño it is important to understand the dilemmas that arise from a rigid and decontextualized policy. A large proportion of them have not developed mining in the manner in which the norm understands traditional mining, however, they are interested in formalizing their activities. In these cases they usually claim that the formalization or legalization of their activity is done by way of the State recognizing that their activity is traditional, because other categories are not accessible to them, or because they do not have more information. The most serious consequence of this is that when faced with difficulties and failures in the process, these miners desist from formalization and are exposed to extortion and other illegal activities that endanger their life, liberty and security.

As an example of the effects of insufficient policies for the comprehensive and differentiated care of the mining communities, in the case of the 3 mineral studied, particularities were found that reaffirm the need for a differentiated approach by the public policy for formalization. The following paragraphs present some cases that illustrate the diversity of local dynamics.

In the case of the exploitation of construction materials there are limitations to the formalization process associated with the traditional and cultural practices of the local population. According to an official from the mayor’s office in the municipality of Ráquira, Boyaca, "Most artisans do not associate the extraction of clay with mining, and much less with environmental licensing. The biggest problem is that the clay is all around the municipality. Families extract the clay from the lots where they live." As stated, families see the extraction as an ancestral work and have no knowledge of the implications it has on the landscape, soil and water sources. In this same vein, an official from the mayor’s office in the municipality of Nemocón, Cundinamarca, said that there are problems associated with the history of land ownership. He said that given that the extraction activity is more than 80 years old it “is very difficult to formalize it. Most lots have false Certificates of Tradition because they are inherited, and the processes were not completed”.
The mining tradition of Boyaca is clearly illustrated through the story of an association of traditional miners who declare that they have always exploited clay for bricks, and coal for baking them. "That was how the village church was built. Coal was sold to Termopaipa back in 1975 through a cooperative that existed at that time." Others point out that traditional mining has been transmitted generation to generation, however it no longer generates income and there are no benefits from the State, "We have given away our health to the State, there are no scholarships for the children of the coal miners".

In many gold mining regions, the conditions of the miners are largely caused by the weakness of institutions, the roles of the various community organizations, and the presence of armed groups who act as middlemen in the value chain, or organize various acts around the mining activities. For example, in Buritica in western Antioquia, the mass migration of miners from the northeast exceeds the operational capacity of local institutions. According to an official from the mayor’s office, the State "needs to legally enter complex scenarios where illegality is the norm; and this strains its capacities." In this context it seems artificial to try and separate the influence of legal and formal mining from the influence of informal and illegal mining. The population’s situation is the result of a combination of all these forces, framed within a context of poor governance.

A representative of the community of El Bagre emphasizes the importance of mining traditions and callings for this population, which is located in the lower Cauca region of Antioquia. He explains that a “barequero” (miner using the panning method) can earn $1,100,000 pesos per month, while a farmer does not even earn the minimum wage. Small-scale mining is considered the preferred type of livelihood by the community. Meanwhile a “minidraguero” in the municipality of Ayapel, Córdoba, explains that "people start mining because they need to" and that in regions like this, mining "is the only activity that allows people to quickly find a way out of poverty." This situation is repeated in traditional gold mining regions, such as the northeast of Antioquia, northern Cauca, and the Andean region in Nariño and Chocó. In these contexts, communities emphasize that formalization policies must be differentiated and consistent with each territory’s realities.

In the municipality of Andes, Antioquia, some miners explained that the problem with the formalization policy is that the processing centers, “barequeros” and “chatarreros” do not fit into the corporate model, with its contracts and modernization. In the same vein, coal miners in Boyaca said they felt at a disadvantage compared to large-scale mining, and claim that they should not be measured "with the same yardstick with which they measure Cerrejón" referring to the technical requirements and tax and royalties payments.

In Caucasia, Antioquia, they emphasized the lack of recognition of itinerant miners (as “barequeros”, “minidragueros” and “motobomberos”) by the Government, and the uncertainty regarding the manner though which a non-static nature, variable and diverse activity can be stimulated, "what if the “barequero’s” business grows or he find ways to invest in mechanization [to improve his production capacity, income and quality of life]?".

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19 The Chapter on Security discusses the different income possibilities available to miners.
20 Translator Note: Scrap dealers
21 For example, in many regions, “barequeros” interact with large-scale mechanized mining.
In short, there is a widespread need to transform a policy that sets the same requirements for everyone without differentiating their contexts and vulnerabilities.

**Challenges for the protection of rights in contexts where there is crime**

Faced with the growing phenomenon of mining associated with crime and its complex interactions with illegal mining in some areas, mainly gold mining, the Government’s main challenge is to achieve control of the expansion and therefore the impacts of illegal and criminal mining. The Ministry of Mines and Energy, does not regulate this type because legally it is outside its scope, and is in fact closer to the scope of national security and criminal law.

As a result of several decrees aimed at controlling illegal and criminal mining, territorial authorities (including CAR), the police and the army have carried out operations for the seizure and destruction of machinery, with the unfortunate consequence that miners who do not have a mining title but are looking to formalize their operation, have been declared criminals.

According to the National Police, between August 2010 and September 2014, actions have been taken against 1925 informal mines, 1282 have been closed, 6067 arrests have been made and about 1520 backhoes have been seized nationwide (Policía Nacional de Colombia, 2014). The aforementioned police actions respond, among others, to the so-called Comprehensive Intervention Strategy against Illicit Mining-EIMIL-, a strategy that has sometimes led to actions against illegal and informal mining which have the intention to become formal, even though it states the following:

- "the parameters established to regulate and legalize mining have not been subjected to previous studies involving population, social, environmental, territorial and economic contents"
- "the Mining Code addresses the issue of illegal mining by referring solely to those activities which have no current title or authorization by the owner of private property, thus declaring the informal miner a criminal, but without considering strategies to fight against the smuggling of minerals".
- "mining has suffered setbacks as a result of the ambiguity and gaps in its regulation which creates legal uncertainty for recipients of the norm" (Policía Nacional de Colombia, 2012)

The fundamentals of the strategy recognize the responsibility of the State, regarding the fact that licensing is so easy that even the GOAML and the criminal organizations could have used it to "launder dollars and appropriate royalties from some municipalities, as well as to generate wealth through the exploitation of mines bought through frontmen, and illegally exporting the minerals " (Policía Nacional de Colombia, 2012).

Colombia already experienced the failure of this approach in the fight against drugs and drug trafficking when it addressed the eradication of illicit crops from the standpoint of punishment only. What it finds, specifically in the small-scale gold mining scenarios in Antioquia, Cauca, Chocó and Nariño where it coexists with several illegal armed groups, is that not contemplating strategies to address and incorporate these communities, as it

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22 Criminal scenarios in mining are further discussed in the Chapter on Security.
happened with illicit crops, leads to the double victimization of these populations, once by the armed groups and then through the absence of State protection.

Policy is not directed toward the prevention of impacts and the protection of rights

In reference to the people who are directly or indirectly related to the activity and suffer the impacts caused by its development, sectoral policies do not consider human rights impacts as a decisive criterion to determine the viability of mining developments, and therefore do not designate institutional responsibilities for their prevention.

In accordance with the commitments made by the Colombian government after the adoption of the United Nations Guiding Principles for Business and Human Rights – UNGP-, its desire to join the OECD - Organization for Economic Co-operation and Development -, and more recently the publication of the National Action Plan for Business and Human Rights, Colombia should have measures to prevent, investigate, punish and redress situations of human rights abuse, as stated in Principle 1 and 2 of the UNGP.

The State’s actions and tools, and specifically those of the mining sector, designed to meet the needs of the population, either for the development of an activity or to prevent or mitigate a critical situation, reviewed in the light of the United Nations Guiding Principles show that these policies do not give priority to the prevention and management of impacts on rights.

<table>
<thead>
<tr>
<th>UN Guiding Principles on Business and Human Rights</th>
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<tbody>
<tr>
<td><strong>Principle 1</strong>: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.</td>
</tr>
<tr>
<td><strong>Principle 2</strong>: States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.</td>
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The National Development Plan, specifically in the chapter on mining, offers guidelines for the protection and respect of human rights through two tools: the mining title and its corresponding environmental license, which aim to ensure the rational exploitation of resources and support the miners in their formalization process.

The cross-cutting strategies proposed in the plan are also essential; namely: competitiveness, social mobility, transformation of the countryside, security, justice and democracy for peace-building, good governance and environmental growth.
There is no doubt that these measures express the commitment to move towards action without harm in mining, establishing requirements for the activity; however, they do not provide explicit guidelines for foresight and prevention as part of the systematic processes for the sector. They do mention effects and risks to the environment; however, they do not include the prevention of impacts on rights, which should include understanding social scenarios and their potential impacts.

The Mining Code establishes the necessary measures to "promote the technical exploration and exploitation of private and state-owned mining resources" (Art. 1). Based on the above, the Code restricts mining in certain territories where the operation cannot be carried out (Art. 31 to 38), highlighting that those areas are operated by ethnic groups (Art. 39 to 44). It also defines mining operation on a smaller scale: panning (Art. 152 to 157) and establishes the obligation that this type of exploitation is performed by Black communities (Art. 158). Likewise, it stipulates the measures under which illegal mining is defined (Art. 159-165). These measures prevent and minimize the impact of projects on the areas of influence, through predetermined punishments.

Likewise, the Code defines the guidelines for resolving conflicts in different scenarios (Art.306-316). In this regard, it is important to establish what types of areas are suitable for exploitation, exploration and research and which are not (Art. 122-136). These guidelines are established in order to ensure the proper exploitation of mineral resources, minimizing environmental and social impacts within the area of influence of mining developments.

By establishing guidelines which define the illegality of mining activities without knowing and understanding the different players, the Code treats the originators of illegal activities and individuals who may be associated with the illegality but can also its victims, in the same generic manner, therefore the Code fails to comprehend, recognize and treat the specific rights of those individuals and / or groups who carry out mining activities as part of their livelihood and / or the use of their ancestral lands.

The Code does not include guidance or requirements for the protection of rights of individuals or populations in mining environments. The absence of specific actions for operators and mining concessionaires to carry out due diligence for the identification of social impacts is worth noting, as well as measures for monitoring the addressing of such impacts, and other contractual commitments. This is where the gaps in foresight and prevention of impacts and conflicts become evident.

As mentioned earlier, in April 2016, the Ministry of Mines and Energy published the document: Mining Policy in Colombia, bases for future mining. In it, the Ministry committed to "developing mining, at all levels, in an orderly, inclusive, competitive and responsible manner, in such a manner that that the positive externalities in mining territories increase employment, income, royalties and taxes, among others, and adapt to changes imposed by the international context in terms of prices, markets, climate and alternative energy sources ".

This policy identifies 11 challenges the sector must address, which are important not only in terms of competitiveness and viability, but also for the protection and exercise of rights in mining territories: i) lack of coordination between institutions, ii) high levels of informality, iii) multiple names for mining, iv) illegal
extraction of minerals, v) social unrest in the regions, vi) delays in the proceedings, vii) deficiency in information systems, viii) limited territorial planning and gaps in its coordination, ix) lack of productive linkages, x) poor infrastructure, and xi) lack of competitiveness. To address this diagnosis, the policy establishes six pillars or lines of work: i) legal certainty, ii) competitive conditions, iii) legitimate trust, iv) infrastructure, v) information and vi) strengthened and efficient mining institutions.

In terms of the State’s duty to ensure the protection of rights, which includes Principle 1 of the UNGP, the policy reveals significant progress in proposing specific actions to strengthen dialogue between companies, authorities and communities, such as creating opportunities for information and training and the creation of a business and human rights policy applied to the mining and energy sector.\(^{23}\)

The UNGP emphasize the responsibility of the State to ensure that third parties complete their due diligence. In order to achieve this it should ensure access to adequate and timely information to enable the prediction and prevention of impacts. The policy succeeds in identifying information management as an essential pillar for building sustainable mining; however, the scope of the proposed actions focus on the production of technical information and geological knowledge, and ignores the measures and actions needed to strengthen the production of information that provides tools for preventing human rights impacts, not only to large-scale but also small and medium-scale mining.

Another action proposed in the policy, considered essential for the purpose of ensuring responsible, sustainable and inclusive mining is strengthening mining institutions, by improving citizen services through the use of tools to facilitate access to information and strengthening the presence of the mining authority in the territories.

However, there are still shortcomings that are not addressed by this policy. In the minutes for the single concession agreement, the responsibility of the mining project to the communities is limited to the development of a social management plan following the criteria established in the environmental mining guidelines. These clauses only establish the obligations of the concessionaire to carry out its activities in a manner that promotes economic and social development and meets the ANMs environmental mining guidelines –GMA–; and present a Social Management Plan -PGS- that includes at least one of the components set out in articles 251 to 256 of the Mining Code.

Therefore, in the single agreement, the option to include in its PGS just one of the legal obligations is left to the discretion of the company, when this plan which should act as the project’s due diligence manual for rights; this means choosing between percentage of national workers, regional labor, use of domestic goods, or location of community facilities. It does not mean that the concessionaire is absolved from fulfilling its legal

\(^{23}\) This policy is included within the framework of the National Action Plan for Business and Human Rights which is led by the Office of the Presidential Advisor for Human Rights. For more information visit the webpage for the Office of the President of follow the link below:
obligations, but rather that the ANM missed an opportunity to clarify the minimum social standards that should be part of corporate due diligence in terms of human rights. For example, regarding the hiring of local personnel and their conditions, which is one of the most frequent causes for conflict, it should have defined them as contractual obligations controlled by the agency itself.

With the exception of cases where exploration occurs in areas where ethnic minorities live and prior consultation is practiced (ILO 169), the other projects do not have to follow any standard for to implement public awareness proceeding, and consultation or involvement with the stakeholders. These practices occur within the context of environmental impact assessments, management plans and social components applicable to construction, assembly and production stages. However, the inclusion of the Environmental Mining Guidelines in this clause binds it closer in terms of the logic behind the contract, as the ANM may require that at least these standards are complied with, as part of the contractor’s obligations.

The Environmental Mining Guidelines are documents that seek to organize the exploration and exploitation processes in a mine; in an effort to prevent and minimize the impacts caused by the projects in their area of influence. Prevention is evident in the assessment methodologies and the environmental impact management included in the document. These are guidelines that the mining authority established to ensure the proper exploitation of mineral resources, minimizing environmental impacts, and implicitly protecting the right to a healthy environment of the people who live within the project’s area of influence.

This tool is important in planning and developing the activities for any mining project and / or undertaking, however, because it focuses on identifying risks without establishing a link with the exercise of rights, the tool is inefficient in identifying possible conflict scenarios and / or impacts, and therefore it ignores their addressing and foresight. For example, in the case of identification of social impacts associated with employment generation, these guidelines are limited to the identification of the number and type of jobs generated, without inquiring about the quality and conditions of the job, the level of education of the population, the conditions of labor supply and traditional labor in the region, among many other conditions which determine the exercise of the right to decent work, and yet also affect socio-cultural and socio-economic impacts not foreseen by these projects.

Planning tools as proceedings and not as a management tools

In the dialogues with institutions and NGOs on the scope and use of instruments such as the Work and Construction Plans –PTO– and Environmental Impact Assessments –EIA–, it became evident that the formality of the approval process for the requirements can weaken the objective that led to the regulation of technical planning and identification of impacts. When the purpose of these instruments focuses on compliance with a requirement, and not on integrating prevention into the activity’s management, the necessary knowledge to diligently address the characteristics, vulnerabilities and operating risks is not generated.

A first impact resulting from the formalistic approach to the public awareness proceedings of the projects can be seen in that the communities living in mining and oil territories perceive a lack of transparency. Indeed, the
most common complaints shared in dialogue with communities, and recorded in other public awareness proceedings\textsuperscript{24} indicate: i) difficulty understanding the technical terms contained in the EIA ii) superficial involvement by reducing public awareness proceedings to a specific time and not offering it as a continuous consultation process, iii) illegitimacy of the spokespeople, frequently allowing the companies to explain the procedures regarding the participation and protection of rights of the citizens and the community, iv) lack of mechanisms previously agreed to regarding conflict or dispute resolution or differences.

Article 15 of Decree 2041 of 2014 provides that the communities should be informed of the scope of the project, highlighting the impacts and management measures proposed, and the contributions received during that process should be evaluated and included in the environmental impact assessment, when deemed appropriate. Another situation which has also been diagnosed as a "contaminant" in the public awareness proceeding is the inclusion of commercial agreements, in employment and the procurement of goods and services. Mixing these interests causes the discussion on impacts to lose its independent nature and carries the risk of limiting the scope of the definition of impacts and management measures.

This scenario is known as the public awareness proceeding of the EIA, and in it companies and communities discuss the project. Sometimes those responsible for the work or project take on commitments with the people. It is common to reach agreements on the purchase of materials in local quarries, or hiring local staff for managing and working on the project. However, as these are informal agreements with just the minutes as supporting documents, they become legally impossible to enforce. In many cases these violations, which are very common, generate conflicts in the communities and resistance to the project.

The risk that the public awareness proceeding is approached in a superficial manner and its processes are diverted are a reflection of the differences between a proceeding-based approach, which seeks to meet the requirements, or one which seeks to develop a genuine relationship based on trust. The first possibly speeds up the permit process, but more often generates conflicts and mistrust which are sometimes insurmountable; the second encourages the relationship as an essential objective of a project and turns the licensing processes and preparation of EIA and PTOs into part of the routine management activities.

Additionally, there is the question of the ability, skill and motivation that small and medium-scale mining operations in Colombia have to carry out these types of assessment, because in many cases the parameters and requirements go beyond their resources, and do not represent an explicit and evident benefit to the development of their business.

Faced with this challenge, an official from the municipality of Sogamoso mentions the cases in which miners contract the preparation of an EIA "without really understanding the commitments this entails" ... "and then when the environmental authority arrives and closes the mine they have no idea why it happened." The official states that the same applies to the Works and Construction Plans, in many cases, the miners forget they had that plan, they file or lose it, and then they are fined for having a completely different mine than the one

\textsuperscript{24} See: ACP (2013) “Guía de socialización de proyectos de hidrocarburos, relacionamiento sostenible con comunidades y autoridades gubernamentales. Available at: http://docplayer.es/9952875-Guia-de-socializacion-de-proyectos-de-hidrocarburos-relacionamiento-sostenible-con-comunidades-y-autoridades-gubernamentales.html
which was initially approved.

It is worth noting that the National Mining Management Plan –PNOM- suggests carrying out a Risk Analysis as a preventive measure. This tool seeks the early identification of threats, recommend prevention and mitigation alternatives, provide for contingencies and monitor the operation, mine closure and management of environmental liabilities. Likewise, risk management should allow for experimentation and learning, rather than be use prohibition as the only alternative when faced with uncertainty.

The PNOM identifies lines of work that will mark the roadmap in the comprehensive management of the mining sector and other entities. The four fundamental organizing principles are: creating value, assessment and risk management, efficiency, and consistency. Based on these principles the goal it is to achieve the responsible use of mining resources, which will lead to greater prosperity and development for the production regions and the country.

The fact that the PNOM includes risk analysis as a tool is considered a major breakthrough, given that the identification of risks embodies the concepts of foresight, knowledge of contexts, and understanding operational risks; and the prevention thereof. While the PNOM moves to protect rights by articulating and assessing the understanding of social impacts, and taking into account that social impacts are common to the different forms of mining, it could offer more specific recommendations for the inclusion of these issues in the risk analysis.

Prior Consultation, as a policy instrument applicable to the mining sector, should be understood as an opportunity for intercultural dialogue, to be held at the earliest moment possible for any project capable of causing an impact to the rights of ethnically distinct populations. If it were seen in this manner it would be a perfect opportunity to prevent socio-environmental conflicts. However, the weakening of the law due to government and corporate practices, puts it at risk of being turned into a useless administrative process from a rights standpoint, and bad practice from a corporate due diligence standpoint, as it becomes the seed for future conflicts arising from a lack of legitimacy of the agreements, if any, or the lack of legitimacy of the project, if there are none.25.

The absence of an approach for the prevention and management of impacts, as will be seen below, increases the distance between the institutions and the territories, because there are no guidelines that imbue institutions with the powers to identify and prevent impacts on human rights. This explains why the performance of key Ministries in the protection of rights (Health, Education, Environment, Housing, Defense, etc.) is limited to reacting once an accident or incident that attracts the attention of these institutions occurs and not as a result of a differentiated and comprehensive policy aimed at preventing these impacts.

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Difficulties faced by the agencies regarding the instruments which protect the rights of indigenous communities, in term of mining.

A study conducted by the Sustainable Mineral Institute’s center for social responsibility in mining on the gaps in the participation or inclusion of society in the construction and implementation of mining policy (Viana, 2014) analyzed how mining regulations approach on the differential treatment that the State must practice in order to guarantee the rights of ethnically distinct populations.

In this context, the document mentions the two figures for the protection of the rights available to the communities in terms of mining. One is the mining areas for indigenous and black communities, and the other is the special reserve zones. However, what is most interesting is that the study presents the most relevant issues regarding the problems with prior consultation in this sector.

The mining areas for indigenous and black communities were created as mechanisms for the protection of these communities’ land rights, because their system requires the sine qua non condition for the right of priority to be activated. However, these mechanisms are evil if understood as a form of protection.

Aside from the legal background regarding how these areas should be declared, the fact is that today the ANM declares both types of zones only at the request of a party, shifting the burden of paying for technical studies to the communities concerned, and ignoring prior consultation on the basis that if requested by the people, there is no need to activate the right. Omitting the consultation, as well as imposing the obligation to pay the technical studies, are both culturally inadequate and even constitutionally disproportionate (Viana, 2014).

Far from what some communities have understood, placing these areas under one of the above categories does not imply the reservation or exclusion of mining activity from its territory which could prevent granting a title to a third party. On the contrary, the activation of the right of priority means that the communities who exercise it become miners (Viana, 2014).

If a third party requests a mining title in an area that overlaps with an Indigenous Mining Zone –ZMI- or Black Community Mining Zone –ZMCN-, the corresponding community authorities can exercise their right of priority within a set period of 30 days. The priority right is exercised by requesting a mining title on behalf of indigenous or black community who holds the ZMI or ZMCN, as appropriate. The title will be granted only if they fully and rigorously comply with all the requirements that any applicant would have to meet, because these conditions are not culturally adapted to make them affordable to these populations (Viana, 2014).

Assuming that the community is granted the title, and prevents a third party from exploring and mining minerals in its territory, it acquires the obligation to operate the title or otherwise it will be punished by the mining authority. For example, if by obeying the ban on affecting the soil or extracting its wealth, which is part of their traditional law, they cannot exploit the title granted, it will be very difficult to grant them another one in the future, or they may not exercise their right of priority again.
In another context, if the community does not have the sufficient financial resources to take on the exploitation of the title, they end up outsourcing the grant, as permitted by law, and opening its territory to third-party interventions, which they initially wanted to avoid (Viana, 2014).

The special reserve zones –ZRE- offer more guarantees for protecting the rights of the ethnic populations. However, the manner in which the Ministry of Mines and Energy has interpreted the rules, stipulating that the concurrence of special forms of territorial protection is impossible for them, has taken away from the protection they might have had. The main limitation arising from this interpretation is that the population which holds the titles to the territory cannot apply to have it declared a ZRE because it involves superimposing two protection mechanisms, as interpreted by the ministry (Viana, 2014).

These reserves are areas where for a long time informal ancestral mining or traditional mining have operated. The purpose behind having them declared a ZRE is to allow those peoples whose cultural identity includes mining to continue practicing in a regulated manner. The areas are declared by the government after studying and defining the area with the participation of the community. The area is then excluded from the available areas, and at the end of the process it is given in concession to the ethnic community which has traditionally exploited it. In this case, unlike what happens with the ZMI and the ZMCN, no fees for exploitation are required because it is understood that the community holding the title has spent years exploiting it. Simply the title is granted for them to continue to do so (Viana, 2014).

Finally, with respect to prior consultation, this assessment clarifies that this right is activated whenever a mining project may have a direct impact on the rights of peoples, especially but not only, regarding land rights. This means that due to the nature of mining project, case law has been emphatic on the fact that consultation should be carried out whenever their habitat is affected, and not only when it affects the indigenous or black communities’ homes. A community’s habitat also includes the areas where they practice cultural and spiritual activities and where they have traditionally carried out their ancestral survival activities (Viana, 2014).

Although the main obstacle to guarantee this right has been the interpretation of the mining authorities, contrary to a series of decisions issued by the Constitutional Court, according to which the consultation only applies to the assembly and operation, it is also true that the mining counter makes it impossible to have a coherent and sustainable system that allows these populations to exercise this right in accordance with their constitutional protection standards.
Prior consultation of strategic mining areas would have immense advantages, while the consultation of each mining concession does not, some of which are: a) its purpose would be the assignment and use of ethnic territories, b) it would gradually set up a nationwide territorial planning map for mining, c) it would enable a true dialogue between the national development model and the options for the people, and d) it would allow the mining authorities to initiate the mining rounds offering blocks which are free from unsurmountable ethnic opposition, in which the dialogue would focus on how and where, and cease to be back-and-forth monologues between irreconcilable positions that prevent the real exercise of ethnic rights and achieving the goals projected for the sector (Viana, 2014).

In June 2016, the Constitutional Court revoked the Strategic Mining Areas for not having consulted with the people onto whom the responsibility for these huge estates was assigned.
2. ACTIONS BY MINING INSTITUTIONS IN THE TERRITORIES

2.1 IS THE SMALL MINER BEING TREATED EQUALLY?

One of the main symptoms of inadequate sectoral public policy for the protection of rights is the gap in competencies to address recurring conflicts.

In addition, the failure to articulate institutional actions between the central and the regional government and between same-level entities is also a symptom of a policy which is unable to prevent impacts and protect rights. The lack of coordination and skills, essential in the comprehensive care of the population, is evident in at least two phenomena, identified through the investigation.

(i) First, there are those who are associated with a weak or absent guarantee of the right to equal opportunities, enhanced by the condition of vulnerability and the risk of exclusion. The abandonment or persecution of small mining undertakings condemns them to a poverty trap due to the asymmetry of the relationship with the competitive market, as benefits are monopolized by large companies, regardless of the fact that they are also not entirely satisfied with the capabilities of the sector’s legal system, although it has been formulated to ensure a type of economic growth that is only possible through the involvement of the corporate sector.

(ii) Second, phenomena were recorded regarding the formalization processes and the challenges that arise from subcontracting operations.

The small miner does not receive equal treatments in terms of the protection of rights

The set of decisions and actions taken by the State, through the Ministry of Mines as the agency responsible for the mining policy, to ensure the protection of rights of small miners, not only reveals a lack of interest by the mining authority, but also its ignorance in terms of the realities and challenges faced by this population.

To illustrate the above, the Mining Policy of Colombia (Ministerio de Minas y Energía, 2016), based on the grounds that strategic lines have been defined according to the specific characteristics and needs of each type of mining, states that large-scale mining requires government accompaniment and medium-scale mining its support. In reference to small-scale mining it states the following “in the case of small-scale mining, the government has stated that in order to access formality mining operations need to follow regulation, i.e., operate under the protection of a title and an environmental instrument. Consequently, some mining activities which currently have no titled will not be able to continue exercising the activity, and will be forced to access the option to reconvert. However, the miners who choose not to access one of the two options will be subjected to legal actions, as stipulated by the regulations.” (Mining Policy, 2016 Pg. 29)

However, within the framework of the policy’s actions, competitiveness and infrastructure are a positive result in that they address two of the great challenges faced by small-scale miners. While these two pillars are
primarily linked to medium-scale mining, it necessary to ensure that their scope will cover small-scale mining because as detailed below, the absence of guarantees for competitive small-scale mining results in failures by the State to ensure the right of small miners to material equality, and therefore the effective exercise of other rights.

There are no mechanisms for small producers to develop a competitive activity throughout the value chain. This condition is a common factor in the cases for the three minerals studied. For example, in construction materials and coal mining operations in the department of Boyacá, the high transport costs associated to the precarious road infrastructure represent one of the biggest competitive challenges for the small mining undertakings. Fedesarrollo –Center for Social and economic Research - figures reveal that according to the Ingeominas Mining Census 77% of road infrastructure in Boyaca available to the mining sector are dirt roads (Fedesarrollo, 2011).

The poor state of the roads affects the competitiveness of all economic players, including cement and steel companies, which in the case of Boyaca also require the use of roads; however, not all are affected equally. While large companies have their own fleet of trucks, and use the roads, in many cases affecting their quality and condition, it is the small miners who have to bear the extra costs due to the poor state of roads, or sell the mineral at the mine entrance at a lower price.

A producer in the municipality of Sogamoso made the following calculations: the price per ton is $ 96,000, which results in a net income between $ 5,000 and $ 7,000 after deducting transport and production costs. Small miners in the area of Gámeza, point out that they are financially affected because the tax is calculated based on the final price of coal and not the price at the entrance of the mine. However, this calculation does not take into account the payment of the transport tax: "they charge us double, the transportation tax which is already paid, and the coal tax", which cuts into their profits.

According to the GDIAM (2015), one of the most important challenges for the consolidation of small and medium-scale mining companies is connecting their areas of operation with the productive and commercial centers of the country, which implies: (...) strengthening tertiary and secondary road networks, especially in conflict areas and where illegal exploitation of minerals occurs. It is important to consider that in certain areas, Chocó for example, tertiary roads are rivers; therefore public authorities need to implement more effective communication and connection mechanisms (GDIAM, 2015).

Coal mining in the interior of the country and small-scale gold mining share similar challenges associated with brokering of the mineral for its trade and marketing. The research reported cases of miners who because they do not meet the technical and environmental requirements, cannot sell directly to companies that require product traceability; therefore middlemen take advantage of this situation by paying the miners well below the asking price. In the case of gold mining, the deregulation of the trading houses and processing centers, and the intervention of legal and illegal armed groups in the value chain, exacerbates the unfair sale conditions.

A common difficulty faced by all minerals and regions, is accessing loans and in general gaining access to financial institutions, which affects the miners’ ability to improve their operating conditions. The Artisanal
and Small-scale Mining Report (2002) states that funding and access to loans is one of the most pressing needs for small-scale mining operations.

On November 12, 2015, as part of the framework for the Mining Policy in Colombia, the Ministry of Mines and Energy and Banco Agrario de Colombia signed a cooperation agreement to facilitate access to financial institutions and loans for small mining title holders. According to the Ministry of Mines and Energy, "the agreement’s main objective is to ensure that small and medium-scale miners gain access to good conditions for working capital loans and for investments in machinery and facilities that will allow them to improve their productivity and competitiveness. Currently, the departments of Boyacá, Antioquia and Magdalena have already given out loan approvals, and by year-end 2016 this number is expected to increase, thus improving the conditions for small-scale miners."26

The communities and local authorities confirm the findings of Eslava et.al (2014), which show that when these challenges cause the small and medium-scale miner to become prey to irregular brokerage and lose the righteous benefits of their work.

In addition, small and medium-scale gold, coal and construction materials miners recurrently complain against institutional actions that seem to favor punishment instead of accompaniment as a mechanism for improving their practices. In this regard, the Ministry of Mines, the ANM, the and SENA present improvement plans and programs directed toward said improvement; however, the perception of the mining communities and various literature sources (ARM, GDIAM) is that the deployment of resources to punish and close UPMs is greater than that directed to accompany the improvement of mining processes.

**Challenges for formalizing mining operations**

The high rates of informality of the mining production units in the country, which mostly affect the small and medium-scale mining operations 27 28, represent major challenges for the sector and its institutions. The main challenges include the need to transform the approach and support tools to ensure the right to material equality, access to decent work and compliance with technical, environmental, economic, labor and social parameters by all mining operations. In the eyes of the institutions, mining is largely invisible; almost two thirds of them operate informally. From the standpoint of protection of rights possibly the greatest challenge to ensure that mining, as a sector, guarantees their protection is to move towards the formalization of the activity through stronger structural actions, than the significant yet timid current efforts.

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26 Response by the Ministry of Mines to a questionnaire presented by CREER.
27 According to the last Mining Census (2012), of the 14,000 mining units surveyed, approximately 98% correspond to small and medium-scale mining operations.
The government does not help the legalized miner. It does not care for the peasant, the miner, they do not invest in educating the miner, or his children. They do not offer training. There are only threats, and if you don’t comply you go to jail.”

Miner from Boyacá

For informal miners there is an enormous gap between the formal rules, established in Bogota, and the informal rules, which correspond to practices and traditions in the territories. In this sense, one of the main challenges is the application of a differential and inclusive approach to ensure equal access to the sector, recognizing the diversity of contexts where mining is practiced. This should translate into gradual measures for its formalization, in line with the specific characteristics of the operation, i.e. to the mineral, and the type and size of the mining performed.

The effort to legalize the activity without first coordinating with the industry the resources, capabilities and expectations in the territory, as mentioned above, is one of the main challenges for formalization. Another challenge, as also mentioned, is the lack of flexibility regarding the forms of classification, which exclude the realities of many miners, and limit their ability to operate under the protection of law and formal conditions.

These challenges, coupled with the lack of understanding the costs for legality for the small miner, as part of the formalization policies, translate into practical and operational challenges of the process, because if there are no guidelines in the design of the policy, certainly when implementing policies, institutional action will prove to be insufficient.

The dialogue between small-scale gold, coal and construction materials miners in Cundinamarca, Boyaca, Antioquia, Chocó, Cauca and

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**Informality in mining production units**

<table>
<thead>
<tr>
<th>Mineral</th>
<th>With title</th>
<th>Without title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>Materials</td>
<td>41%</td>
<td>59%</td>
</tr>
<tr>
<td>Gold</td>
<td>15%</td>
<td>85%</td>
</tr>
<tr>
<td>Others</td>
<td>24%</td>
<td>76%</td>
</tr>
<tr>
<td>Total</td>
<td>37%</td>
<td>63%</td>
</tr>
</tbody>
</table>

Source: Mining Census, 2012

29 As mentioned by the Colombian Dialogue Group for Mining, GDIAM-, “the challenge is understanding the nature of artisanal mining, informal mining, small-scale mining in general, to clearly differentiate the type of mining that is interested in formalization from other types of mining (...)”(Grupo de Diálogo sobre Minería en Colombia –GDIAM-, 2015, pág. 25)
Nariño helped identify some common concerns and difficulties related to the formalization and / or legalization processes, from which a fundamental question arises: how to overcome informality when the legitimacy of the State is in crisis?

In general terms, for the three minerals studies, in all regions visited, the most frequent complaints are associated with costs, slowness and uncertainty regarding the formalization process.

First, the costs associated to the process, without even counting the costs involved once the operation is formalized, become an obstacle for the small miners who wish to formalize. These costs are associated with the absence of the effective and regular presence of certain mining authorities; for example, miners from different locations stated that having to travel to the capital of the department in order to be able to talk with certain agencies or to access information needed to meet the requirements was a disincentive to formalization.

The absence of state institutions in the regions hinders access to information, and limits the capacities to address and resolve conflicts. For a small miner, the cost of having to travel to the national or departmental capital in order to talk with certain agencies or to access information necessary to develop their undertaking is a disincentive and limits competitiveness.

In the case of Antioquia, small-scale mining communities claim that one of the main obstacles in the process for formalization is the absence of effective tools for the timely transmission of information. This coincides with what was observed in Cauca where small miners allege that the process for requesting information is complicated, and can be considered as a counter-incentive to the process of formalization.

In the department of Boyacá, municipality of Sogamoso, a community leader said: "We have had three meetings with professionals in order to comply with the mining process because we have no knowledge on the matter." Faced with this situation, Corpoboyacá has provided some training; and the miners also have an environmental standard to serve as a guide, called the "Fixed Sources Protocol". However, the community leader argued that complying with the rules continued to be difficult for them, because they did not have sufficient knowledge on the matter: "We need a professional who knows about environmental issues and can help us with the compliance requirements." In the municipality of Andes, in the west of Antioquia, miners expressed their ignorance regarding qualifications, contracts and formalization regulations and instruments and the lack of legal advice to negotiate on equal terms.

The lack of information or knowledge regarding information requirements, how to access it and the absence of effective mechanisms for dealing with complaints has led many miners to become victims of deceit or fraud by professionals who take advantage of the situation, because there are no rules, criteria, established rates or compliance policies, and they prepare low quality documents at very high prices.30

This was evident in Boyacá, where coal miners have hired engineers or lawyers to process an application title, but the request is denied, and they lose their plot. Later they find that the title was given to another person

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30 According to several interviews carried out during the field research, the costs for a PTO and a PMA range between 20 and 40 million pesos each.
who has a relationship of some kind with the professional who was advising the small miner. It also happens that the professionals they hire to design their PTO or PMA, charge high sums that exceed the actual cost of the study. In other cases, they pay for these services and the professionals disappear with the money without delivering the requested product. This clearly reflects the need for a closer and more efficient support by the State.

In terms of the costs once the process begins, qualitative findings indicate that improving projects require very high investments that few miners have resources for, especially without the help of a loan. For example, small-scale miners who produce bricks in Boyaca and Cundinamarca agree that one of the biggest obstacles is the lack of resources to modernize the furnaces and thus enable them to comply with environmental regulations.

The requirements go beyond the available time, technical and regulatory knowledge, and financial capacity of the miners. In this regard, the ARM states that "to think that from one day to the next small miners will meet the entire universe of criteria for formalization is naive and causes frustration among all stakeholders, because of the few results gained from the formalization efforts" (ARM).

In the case of all 3 minerals, the miners consulted reported obstacles associated with procedures that hinder compliance with the requirements for formalization. In several municipalities of Antioquia, Chocó, Cauca, Nariño and Boyacá, miners referred to the difficulties in obtaining requirements such as the National Mineral Traders Registry (RUCOM)\(^{31}\), Certificates of Origin \(^{32}\), the PTO\(^{33}\), the Environmental Management Plan - PMA\(^{34}\) and the environmental license\(^{35}\), among others\(^{36}\), in order to exploit and market the mineral at a fair price, thus the absence of these requirements forces them to sell their products on the black market.

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\(^{31}\) The National Mineral Traders Registry (RUCOM), aims to certify all natural and legal persons marketing minerals in Colombia, in an effort to offer more transparency. The RUCOM is managed by the National Mining Agency. It entered into effect on January 1, 2015, therefore the trader who is not currently certified will be subject to penalties and seizures (Agencia Nacional Minera, 2015)

\(^{32}\) Decree 0276 of February 17, 2015, which regulates the National Traders Registry (RUCOM)-, determined that the Authorized Mineral Trader should have a Certificate of Origin issued by the Mining Operator. The Certificate of Origin is the document issued to corroborate the legitimate origin of a transported, transformed, distributed, brokered or marketed mineral. It is also managed by the ANM.

\(^{33}\) The Works and Construction Plan (PTO) is included in Art. 84 of Act 685 of 2001. It consists of the final report of the exploration stage, which provides the technical, logistics, financial and commercial bases for investing and developing a mining Project. Before the exploration stage expires, that is, 30 days prior, the concessionaire must present the PTO for approval before the National Mining Agency (Agencia Nacional Minera, 2015)

\(^{34}\) In parallel with the PTO, the EMP must also be presented, which demonstrates the environmental feasibility of the project. Without its approval and the corresponding environmental license the works and construction may not begin. (Act 685 of 2001. Art. 85)

\(^{35}\) The environmental license is the authorization granted by the competent environmental authority (Ministry for the Environment or the CAR) for the execution of a project, construction or activity, which can cause serious harm to the renewable natural resources or the environment, or cause significant or evident alterations to the landscape.

\(^{36}\) Some areas call for other requirements such as archeological studies.
In conjunction with the above, there are also delays and non-compliance of deadlines by the institutions in the response to the various requests of the miners. In Soacha, Cundinamarca, difficulties arise because the CAR does not comply with the timeframe (90 days) to respond to an environmental license application which would allow miners to formalize. This was expressed by some miners who participated in a workshop:

"In the past 4 to 8 years miners have invested money for nothing, they receive no answers (...) Meanwhile they implement proceedings and close mines. (...) The CAR sets down the terms for the PMA, documents are presented, no response is received, the explanation given by the CAR is that employees are contractors and the contract was not completed. They are killing the small miners."

According to the Guiza-Suarez study (2014), "in more than 50% of Latin American countries, the same conditions to legalize their activity apply to miners who use manual techniques, as to large mining concessions." In dialogue with small and medium-scale gold, coal and construction materials miners this assumption is confirmed, as they recurrently manifests that their main concern is "being measured with the same yardstick as the multinationals".

**Operating Subcontracts**

There is a general perception of dissatisfaction in municipalities with small and medium-scale mining operations where titles are granted to large companies, in terms of time, share and benefits of the existing tools for formalization, through contracts with the holding company. In this regard, small and medium-scale miners in Antioquia, Chocó, Cauca, Nariño and Boyacá consider that there are profound asymmetries in the participation model and redistribution of income in the sector.

When given the opportunity to dialogue, small and medium-scale miners from several mining municipalities complain that through formalization subcontracts, companies "paid piecwork", i.e. a percentage of the production, which does not benefit the small miner. In addition, the areas of operation are very limited (in Segovia there is talk of 6ha per subcontract). They also believe that the time frames are very short, which does not allow them to recover their investment. They further explains that through this type of contract, informal miners would carry out the exploration work for the company without any guarantee of permanence, as renewal is not mandatory, "we will be used to carry out exploration for the multinationals" (Interview with small miner the village of La Toma, Suarez, Cauca).

Another difficulty for small miners regarding these types of contracts is related to delays by the institutions mentioned above. In Sogamoso, a cooperative of small miners wants to own the title which they exploit through a subcontract; to date, they not been able to apply despite the fact that the title has already expired because the corresponding agency has not issued the administrative act to terminate the original contract and free the area. The situation is further complicated because they fear that this administrative act will not happen.

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soon because the holder is not up to date with the legal requirements, which is a prerequisite for closing the contract.

2.2 ASYMMETRIES IN ACCESSING INFORMATION: SOURCES OF CONFLICT AND OBSTACLES FOR THE EXERCISE OF RIGHTS

One of the main findings of the efforts made to identify tensions between mining communities and institutions was the recurrent dissatisfaction of communities regarding the access and quality of the available information.

The effectiveness of institutional mechanisms to ensure the timely obtainment of public information is one way to ensure the full exercise of rights (Alzate, 2011). Therefore the lack of information systems, due to the absence of institutional standardization and coordination, becomes the main barrier identified in mining scenarios.

Many of these municipalities do not have mechanisms to catalog information nor systems which allow easy access to the different officials. According to research by the Foundation for Free Press in Colombia "in many cases the public official has trouble delivering the information, since it has not even been generated, standardized or filed" (FLIP, 2011, p. 22) or because they do not have the authorization to deliver the documents requested; and then the applications must be sent to central-level institutions.

Perception in the territories is that "officials, routinely refuse or hinder any citizen’s request to access information to which he/she is entitled, either because they ignore the regulation or because doing so implies additional time to locate and deliver the document "(Alzate, 2011, p. 26).

In addition, the communities do not have the necessary knowledge on regulations required to guarantee the transparency and accessibility of public documents, therefore they do not know which are the tools needed to exercise their right to access information. This situation has a serious negative affect in terms of the asymmetry with the corporate world; organization which benefit from all the technical and legal support available to activate the mechanisms required to unravel the information when the State does not respect the mandatory standards on transparency. Thus, government deficiencies further undermine the people’s trust in companies, which are perceived as inexplicably favored by the institutions.

Also, by not providing a context on the information supplied to the citizen opens the door to misinterpretation. An example illustrating the potential damages caused by delivering incomplete information was registered in Tunja, where one citizen assumed that all mining in his municipality was illegal, because the response of the ANLA to his right to petition requesting a list of the licensed projects in his municipality was: There are no licensed projects in this municipality; without giving further information on theCAR’s competence in the licensing process for mining projects.
Opportunities for dialogue and concertation with key institutions for mining scenarios

Mechanisms to ensure effective and timely dialogue between communities, companies and authorities at the central level do not fully address the issues and emerging conflicts in mining scenarios. In addition, existing mechanisms are perceived as illegitimate by the communities, as they are considered validators of decisions previously taken and not as real participation mechanisms that enable participatory project planning.

<table>
<thead>
<tr>
<th>Special mechanisms that allow for the participation of the communities and the mining sector</th>
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<tbody>
<tr>
<td><strong>Third party hearing and participation</strong></td>
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</table>
| Hearing community representatives and social groups is a requirement of the mining procedures preceding the concession contract; these must be called or notified to ensure their real and effective appearance in the procedure. That is, to guarantee their right to participation.
| Article 259 of Act 685 of 2001, Mining Code |
| **Public Environmental Hearings** |
| Public Environmental Hearings offer the opportunity to report on the application of environmental permits and licenses, the existence of a project and the impacts that it can generate and the suggested or implemented management measures to prevent, mitigate, correct and / or compensate these impacts; as well as receive opinions and information from the community and other public or private entities. This is done as part of the process to issue or modify the environmental license or permits required for the use and exploitation of natural resources, or when violations to the license requirements or environmental occur. In addition, this mechanism can be requested to the environmental authority by petition of national or regional authorities or by at least 100 citizens.
| Decree 330 of 2007 |
| **Environmental mining guidelines** |
| These guidelines set down the general requirements to establish social management plans, which are designed in accordance with the criteria and decisions of the mining concession. |
| **Lidera** |
| This initiative, led by the Ministry of Mines seeks to strengthen the players knowledge in terms of industry issues (including: seismic, exploration, production, and transport chain stages, what contracts consist of and their annexes, etc.) in order for them to set up and make claims based on the required technical knowledge on the subject. |
Special mechanisms that allow for the participation of the communities and the mining sector

The mining concession must submit to the Mining Authority a Social Management Plan which includes programs for the benefit of the communities living in the area of influence; according to the terms of reference of the PTO and mining environmental guidelines applicable according to each stage of the mining project.

Chapter 7 – Conflict and Access to remedy in mining scenarios makes a detailed review of this and other mechanisms for the addressing of conflict and dialogue.

Challenges to citizen participation and accountability in mining scenarios

Communities living in mining scenarios, often lack access to information regarding royalties and public investment; therefore they do not have the resources to assess the quality of management by regional and local administrations. This is one of the factors contributing to the deterioration of governance in these scenarios, as it limits the role of citizens as observers.

Difficulties in the effective monitoring and understanding of the impacts of mining; as in the case of the Environmental Management Plans. While such information is protected by Transparency and Access to Information Act, various local players, mostly community leaders, expressed their frustration when recounting the application process they have gone through without receiving a response.

It is also important to mention that the way in which this information is presented sometimes does not comply with timeliness, clarity and transparency conditions. As an example of this, communities in Cesar state that the public awareness proceeding process regarding air quality, besides not being broad and inclusive in its summons, does not generate interest because the results presented are not easily translated into information that communities can use to understand the impacts on air quality and the effects of these on their health.

Limits on the access to quality and timely information as a source of conflict between communities, companies and authorities, are evident in Cesar and La Guajira, where both the community and some of the regional and local institutions report that they feel at a disadvantage in the discussion with other authorities and companies because they lack the technical studies required to establish the relationship between mining and the effects to the environment, as well as the epidemiological studies to explain the impact of coal mining on the health of their communities.

The absence of opportunities and mechanisms for continuous and informed dialogue between the communities, authorities and companies, represents one of the main symptoms of misalignment between the sector and the territory. As a result, the sector is affected because companies and mining authorities lose
legitimacy, communities are deprived from the information they need to help them make decisions and participate in the planning of their territory, and unrest in the territories increases.

2.3. CORPORATE MINING’S CHALLENGES AND PROGRESS IN CORRUPT ENVIRONMENTS

According to management indicators developed by the National Planning Department – DPN-, mining scenarios do not present significant differences compared to nearby regions where there are no mining operations. In particular, when mining municipalities are compared to control municipalities, matched according to common population and development characteristics, the indicators established by the DNP to measure municipal development show no significant difference. These indicators were developed by the DNP in conjunction with departmental and municipal governments, and supported by multilateral institutions such as the Development Bank of Latin America - CAF. Its scope measures, among other things, elements such as performance of the development plan based on the achievement of targets, the efficient use of resources for education, health and drinking water, and compliance with legal requirements.

This situation reflects a different reality from that perceived by the communities in mining scenarios. In fact, during the interviews held as part of the fieldwork, this situation became apparent. For example, when a leader of an ethnic community in Choco was asked on the role of the State in the many social and environmental problems associated with mining in its territory, he said that "the role of the State can be seen through its institutions and what is perceived is pure politicking and corruption.” Similarly, some miners in the Northeast and Lower Cauca of Antioquia consider that corruption is the way through which the State implements its instruments, in order to favor the interests of large companies, ensuring that institutions give them priority. Even local government officials refer to corruption issues. A government official in the north of Cauca said that "mining in the country is associated with corruption dynamics across all levels”.

In light of the quantitative results, this perception of corruption is not directly attributable to mining, and on the contrary corresponds to the territories’ internal dynamics. In other words, in municipalities where mining operations exist today, and corruption concurrently occurs, if the main economic activities were agricultural or services, possibly the cases of corruption would be similar.

This draws attention to two types of actions. First, the measures which control entities need to develop in these territories, which should not discriminate by economic activity but rather consult the structural determinants of corruption, in order to eliminate the root problem. Second, mining companies should make an effort to change the public’s perception of its forms of action. On this last point the EITI - Extractive Industries Transparency Initiative - becomes relevant, of which the main companies in the extractive sector are a part of. This initiative aims to facilitate greater citizen control of the mining sector, through transparent reporting mechanisms and presentation of information, among others. However, it calls for both small and medium mining to take parallel actions, so as to facilitate similar citizen control over them.
3. DO NOT HARM PRINCIPLE: COMPANIES, MINING UNDERTAKINGS AND THE TERRITORY

There are great opportunities for improving practices in terms of relationships, especially in the manner in which action principles aligned with objectives for respecting human rights are incorporated into the companies’ daily operations. The field research identified different situations where companies or mining ventures fail to mitigate the effects of their actions. In particular, these are: i) inadequate opportunities for dialogue, where communities are unable to express their ideas and debate their position with other players in the mining industry; ii) deficiencies in the communities’ ability to access information, which generates relationships based on the lack of trust; and iii) business practices that impair social capital. Some multi-stakeholder initiatives, such as Colombia Guides, of which large companies in the sector are a part of, serve as a mitigating measure towards achieving a greater understanding of the social dynamics in the mining environments. However, the companies that are part of it are a very small percentage of the stakeholders involved in mining production, and the perception remains that similar initiatives of which medium or small undertakings can be a part of, do not exist.38

3.1. INADEQUATE OPPORTUNITIES FOR DIALOGUE

The interaction between the sector and the territory is determined by the right to citizen participation. Mining companies must promote a participatory and inclusive dialogue regarding decisions related to the mining sector, with a view to reducing territorial conflicts and guaranteeing community rights. However, the current situation reflects a limited participation by the communities regarding decisions that affect them. In a context of building ‘territorial peace’, it is unavoidable that participatory planning processes promoted by companies, involve a broad knowledge of the territory and the history of local stakeholders. In order to achieve this, communities need to be recognized as active agents in the public awareness processes and participants in the dialogue with companies, and not as mere recipients of information.

In this sense, the efforts made by companies operating in producing departments and exporters of coal in the north of the country to develop risk analysis and impacts on human rights are seen as positive steps in the process to strengthen due diligence. Their participation in initiatives such as the Voluntary Principles on Security and Human Rights and Better Coal is also considered positive, as well as working on establishing a dialogue between law enforcement agencies and the communities to prevent negative behaviors in terms of security management; and finally, their participation in the EITI.

The opportunities for dialogue between the companies and the communities may prove to be insufficient, when there are no strategies sensitive to the social and cultural specificities of mining scenarios. This lack of strategies is manifested in the inappropriate use of technical language in public awareness proceedings, and insufficient efforts to ensure their contents are understood. For example, some communities consulted in the

38 For more information on the scope of the initiative, see FIP (2013)
southwest of Antioquia claim that the interventions of company spokespeople during the public awareness proceedings are usually led by officials who abuse technicalities, which makes it difficult for the communities to understand, and generates mistrust. According to a community leader in the region, "the company comes in and does not carry out any public awareness proceedings for the project, nor does it disclose the information; and they present their projects in English."

Bearing in mind that these opportunities are intended to ensure that communities have all the information necessary to understand the impacts that the projects will have on their life and that of their community, the absence of an adequate communication strategy poses an obstacle to freedom of information and expression, and consequently the right to participation.

In line with the corporate regulation and self-regulation initiatives enshrined in policy frameworks such as the UN Guiding Principles on Business and Human Rights, the Voluntary Principles on Security and Human Rights, the rules of the International Finance Corporation, the Global Compact, and the Global Reporting Initiative, among others, companies must provide opportunities for community participation regarding the decisions that affect them, in order for them to obtain a 'social license'.

However, there are few cases in which companies included in the studied areas have implemented programs aimed at strengthening citizen participation. Community spokespeople for various mining scenarios expressed a high degree of dissatisfaction regarding the public awareness proceedings dialogues between the companies and the community. In the department of Cesar, for example, community leaders constantly state that the presentations made by the companies and environmental authorities regarding the results of the air quality networks do not replace the need for opportunities to dialogue on the impacts (perceived and potential) of mining operations in terms of the current health status of the communities; especially when these opportunities do not occur within the scope of dialogue and participation, but are rather a one sided presentation.

Furthermore, given that generally the opportunities for interaction are neither permanent nor predictable, these scenarios are often utilized for purposes other than those originally planned. Many interactions which were supposed to discuss impacts end up being used to discuss employment issues, imbuing the dialogue with a transactional content that distorts the public awareness objectives of the project. In Firavitoba, Boyaca, for example, community leaders argued that companies use public awareness proceedings to offer gifts to members of the community, in hopes that they endorse the mining activities. Meanwhile, in Tabio, Cundinamarca a member of the local government said that companies take advantage of the public awareness proceedings to conduct hearings that present the benefits of mining projects. Some community members said that the community is not always informed on these opportunities for interaction.

Even when there have been corporate initiatives which consider a rights-based perspective, the participation of stakeholders at the local level still needs to be strengthened. For example, the initiative by the Mining and Energy Committee on Security and Human Rights – CME -, is a manifestation of the companies’ willingness to address their activities through a human rights approach, particularly in matters related to security. However, that same CME (2013) notes that not considering a truly participatory process with the
communities is among the most significant shortcomings in the security and human rights risk assessment processes.39

In the absence of inclusive, transparent and participatory opportunities for dialogue, promoted by mining companies, communities have implemented complaint mechanisms and advocacy practices such as civic strikes, marches, roadblocks, riots, squatting, sit-ins and civil resistance acts. Representatives from various communities state that sometimes protests are the only way to address conflicts or specific situations between companies and communities, not only by the government but by the companies themselves.

3.2. DEFICIENCIES IN THE COMMUNITIES’ ABILITY TO ACCESS INFORMATION, AND THEIR LACK OF TRUST IN COMPANIES

In terms of the requests for information regarding monitoring and claims of malpractices, although such information is protected by the Law of Transparency and Access to Information (Act 1712 of 2014), various local stakeholders expressed their dissatisfaction; stating that they do not receive a response to their requests for information, including Environmental Management Plans, or results on the assessments and monitoring of mining projects.

For example, in the municipality of Nobsa, Boyacá, the community claims that limestone mining activity is impacting the water sources in the territory. A community member said that in order to know whether companies are acting according to their environmental commitments, some community representatives have requested the PMAs of the companies involved, however, they have not received a response.

Although companies are called upon to ensure transparency and access to information, some communities in the departments of Boyaca, Cundinamarca, Antioquia and Nariño, expressed their dissatisfaction in that companies reserve information which is considered public. This situation generates a high degree of distrust by the communities towards the companies operating in the territories. In the municipality of Suesca, Cundinamarca, for example, community leaders said they had requested information from mining companies regarding their environmental management plans, and have not received a response.

Something similar happens with accessing accurate information to file a claim; according to several interviewees, companies do not have a complaint system, as in other sectors. However, regardless of it being mandatory, the absence of these systems becomes a barrier to access to information that could be voluntarily provided by the companies. In Antioquia, Cauca and Nariño, both local miners and social organizations for the defense of the territory explained that there are numerous obstacles for obtaining information on accurate and valid titles, holders and businesses in the territories, as well as on the scope and impacts of mining projects.

39 More information on the challenges regarding security and human rights assessment is further detailed in the [chapter on security](#).
In addition, communities often have no knowledge on the regulations for accessing public documents; therefore they do not have the necessary tools to assert their right to information, after having been denied by the companies.

Moreover, communities perceive that they do not have sufficient legitimate information on the effects that mining activities have on the environment, health and social welfare. This situation has created a climate of distrust in which communities feel they do not have enough information and do not trust the studies they are presented with.

The companies do not address this lack of trust. For example, in the departments of Cesar and La Guajira, both the community and some of the regional and local institutions report that they feel at a disadvantage when entering into discussions with other authorities and companies given that they do not have the technical studies required to establish the relationship between the mining activity and the effects on the environment (water: supply and quality; air: dust and noise, ground: vibrations, explosions and impacts to homes), as well as epidemiological studies to explain the impact of coal mining on the health of the communities. A community leader in the municipality of Suesca, Cundinamarca stated: "Because there are no studies, or they are invalid because they were not done by accredited experts, as we do not have the resources to pay them, then there is no baseline regarding any issue, therefore in future we will not be able assess the impacts caused by [mining company]."

In addition, communities perceive, on the one hand, an excessive closeness in the relationship between the Ministry of Mines and companies, and secondly, that institutions favor companies when producing information and discourage opportunities where the communities can validate their complaints and disapprovals before the companies. Therefore, communities do not trust a control agency which seems to have a close relationship with the companies. A community leader in Bosconia, Cesar stated: "We went there and found the ANLA officials in a meeting with the [company’s] environmental engineers establishing the measures together, spending time together, using the same car, they ate and slept together, and all that. How can the control agency, which is supposed to monitor a company that is generating impacts, be together with that same company?"

One way to mitigate this situation is through the EITI, which constitutes an important effort by the government and member companies to facilitate access to information in a transparent manner. This exercise also allows communities to use easily accessible mechanisms to monitor the companies’ actions. For example, the Ministry of Mines and the EITI (2015) explain in detail the payment of national and local taxes and royalty payments by the mining companies that are part of the initiative. However, there is still some way to go regarding specific activities, such as gold and construction materials mining, which do not have significant participation in the initiative. It is also worth noting that currently only large gold and coal mining companies are part of the initiative, leaving out smaller companies that also generate impacts on human rights.
The nine types of recommendations stated, based on the analysis of the relationship between the sector and the territory are transversal, and influence in different ways how the aggregate impacts are managed, regarding the environment, safety, decent work environments, or those associated with migratory phenomena and the use of local content. Naturally, they also have an impact on the possibility of reducing conflict and creating an institutional environment conducive for stakeholders to have effective access to remedy.

Therefore, this set of recommendations is of a general nature, and the specific issues related to each of the other core blocks developed in the following chapters are addressed in the corresponding section. By recognizing the link between the specific actions suggested in other chapters and those presented here, the stakeholders can see changes in policies and practices at a macro-structural level as well as those which specifically focus on smaller areas of influence, yet are no less important. To trace the connection between general recommendations and those specific for each of the other aggregate impacts, use the icons that appear in front of each recommendation as a guide.

1. Sectoral planning with a territorial approach for the protection of human rights in mining scenarios

1.1 Strengthening territorial participation: in order to ensure that policies and institutional actions respond to the needs of the territories, it is essential that the Ministry of Mines and Energy, in conjunction with the National Mining Agency and other relevant ministries (Environment and Interior) build or strengthen opportunities for the analysis and discussion of impacts aimed at building territorial strategies for the protection of rights in mining scenarios.

These opportunities for dialogue should involve the communities and local authorities, and we recommend the participation of the Public Ministry, especially the General Ombudsman’s Office and municipal ombudsmen. The current mechanisms must be identified in an effort to ensure that additional mechanisms are not created, but rather that those already existing in the territories are strengthened.

1.2 Agreement in the criteria for planning mining activities in the territories: in response to the rulings of the Court on the need to ensure effective coordination between the territory and the sector, we considered it essential that sector and territorial authorities jointly comply with the criteria that would allow the exclusion of mining within a territory.

Such coordination should include Territorial Planning, life plans for ethnic communities and other territorial planning mechanisms. Exclusion processes must be initiated during the earliest possible stage of the mining cycle, including options for the territories to benefit or not from the extraction of the resource.
1.3 Replace the *first come, first served* principle\(^{40}\) in determining the awarding of mining titles: In order to solve many of the conflicts that arise from the titling procedures, the *first come, first served* principle as the regulation guideline must be eliminated; and restoring the strategy behind mining rounds should then be reconsidered. According to the ownership needs, this strategy sought to give the concession to the best qualified individual, or given the conditions of the territory to whomever provided the most appropriate manner to exploit the resource. In terms of the requests for previous consultation that arise regarding this strategy, it is necessary that this occur as part of the State’s responsibility to understand the territory, as part of the effort to seek the best prepared licensee, and thus enforce that it comply with the measures and agreements reached by the Government with the communities in those territories.

In order to make this action feasible, the Colombian National Agency and the Colombian Geological Service should have complete information to make informed decisions.

1.3.1 Regulation of the secondary market for mining titles: another conflict associated with the current strategy to determine ownership is the secondary market for mining titles, which hinders the monitoring and control of licensees by sector authorities, generates distrust issues in the territories, minimizes the Government’s possible gains in granting titles and enables bad business practices. In order to resolve this, we considered that the National Mining Agency needs to take steps to regulate the secondary market for mining interests.

This regulation should focus on:

- Monitoring and control of junior companies, ensuring that they have the appropriate capabilities to prevent generating impacts on rights.
- Avoiding tax evasion and avoidance.
- Guaranteeing that the income that under certain circumstances should correspond to the State is effectively collected.
- Attaining and maintaining technical information.

\(^{40}\) The term used in the mining is “*primero en el tiempo en el derecho*” which provides preferential treatment to the first applicant for a mining title regardless of its records in handling complex social and environmental issues.
2. Institutional alignment for planning

2.1. Mechanisms for Interaction and Alignment. As a measure to address the lack of policies and mechanisms that focus on the prevention of impacts on rights, we recommend that the Ministry of Mines and Energy design a mechanism for interaction and alignment with the National Mining Agency and other Ministries for the protection of rights, and with other relevant agencies (DNP, DPS) to ensure a preventive and continuous monitoring of impacts on rights.

This interaction mechanism for continuous action must include a regulated process, standards and objective parameters for the prevention of impacts; such as understanding the environment, identifying risks and impacts, and a complete mapping of stakeholders, among others.

Early warnings and information should result from the implementation of this mechanism, which should therefore allow the Ministry of Mines and Energy to request the timely intervention of agencies and ministries in actions directed toward the protection of rights in mining scenarios.

3. Coordination between institutions for the protection of rights in mining scenarios

3.1 Design a model for inter-sectoral management. A reduction of the degree of discretion between the levels of coordination is required. The Ministry of Mines together with the DNP must lead the construction and implementation of this model in order to assign the initial responsibility, in terms of prevention and action, to the Ministry of Mines. This model must guarantee transparency; be triggered by legitimate stakeholders; replicable in the territories, and become a follow-up mechanism to the complaints and claims of the communities and a mechanism to activate coordination between the sector and the territories.
4. Responsibility and better relationships with mining and environmental authorities in mining scenarios

4.1 Government leadership in the consultation process for mining titles and mining undertakings: In order to ensure that the consultation process of a mining project and / or venture occurs according to the highest standards of citizen participation, transparency, timeliness and relevance, the State, through the Ministry of Mines and Energy, together with Ministry of Environment and Ministry of the Interior (and its attached agencies), needs to take on the following tasks: communicate and generate awareness regarding the policy, develop censuses and baselines, adjust Territorial Planning and agree on sectoral and territorial goals, among others, which have currently been delegated to the licensee and should in fact be the sole responsibility of the State.

All those measures and agreements deemed necessary by the State, once the consultation processes for a mining right and / or project have been complemented, may be subject to contractual clauses between the State and the licensee, in order to ensure greater control and monitoring.

5. Managing information for the prevention of impacts and attention to conflicts

5.1 Information Management to facilitate formalization processes and ensure the prevention of impacts: The challenges faced by small-scale miners during the formalization process are determined by the precariousness of the information available, which prevents them from fully complying with the requirements associated with the preparation of technical studies. If the objective of these studies is once more to ensure that timely and relevant information is made available for the design of prevention and mitigation of impacts strategies, we recommend that the State, led by the National Mining Agency, manage the information, and therefore be made responsible for making the census, baseline and context information available to any licensee or miner who is in the process of formalization.

This measure seeks to address three situations: (i) the waste of resources in the development of studies that do not generate cumulative knowledge; (ii) disincentives associated to the formalization process in terms of the challenges faced when accessing information; and (iii) the assimilation of studies as a requirement and not as a management tool to help ensure the viability of the project.
6. Citizen services for access to remedy

6.1 Creating a single complaint system for the sector: in order to address and prevent conflicts arising both from the actions or omissions of the State, as well as from actions from the businesses themselves, the Ministry of Mines and Energy, in collaboration with the Ombudsman\textsuperscript{41}, and municipal ombudsmen, among others, need to develop a Citizen Service mechanism in mining scenarios which ensures secure access to information and procedures to address complaints and claims in an accessible, transparent, predictable, timely and culturally appropriate manner.

6.2 Clauses for linking mining rights holders to the single complaint system for the sector: in order to achieve preventive monitoring of the conflicts arising from business activities, we recommend that the ANM include clauses in the concession contracts to ensure that all mining rights holders provide information to the single complaints system for the sector and facilitate its use by communities in their area of influence. This system should ensure transparency, offering the public access to the complaints and claims received, except in cases restricted by law.

7. Protection of the vulnerable population in mining scenarios

7.1 Comprehensive protection of the mining population: The Ministry of Mines and Energy, as the authority responsible for the sustainability of the sector and the responsible extraction of resources, needs to design comprehensive coordination mechanisms with the DPS to develop policies for the protection of the mining population who is exposed to greater vulnerability risks.

7.2 Formalization Policy with a human rights approach: Given the vulnerability of communities that participate in small-scale mining, most of which are not covered by the protection given by a mining title, they should be covered by policies aimed at protecting their rights. The Ministry of Mines and Energy needs to include this approach within the formalization policy to prevent these communities from becoming an "easy target" for illegal armed groups, and protect their rights, regardless of whether they become formalized, are eligible for conversion, or none of the above.

\textsuperscript{41} Translator Note: Equivalent to the National Human Rights Institution (NHRI)
7.3 Areas available for formalization: The areas available for formalization are so limited that we recommend that the ANM implement a more robust strategy for returning areas, as this is one of the main obstacles to the process. This recommendation highlights the need to reassess the subcontracts for operation as the only option, given that research has indicated a certain resistance and negative perception by the mining communities regarding this option, which could trigger conflicts in these territories.

8. Effective relationships between companies, mining projects, communities and the territories

8.1. Strengthening corporate relationship strategies: companies and mining projects have not implemented relationship strategies with the communities that allow them to mitigate the effects generated. Conversely, sometimes these practices create additional effects. We recommend that mining companies and projects of any size, design business practices that at least consider the following aspects:

- Opportunities to maintain a constant dialogue with the communities. These opportunities must ensure, to the extent possible, that the communities: i) are sufficiently informed about any issues that may affect them; ii) may easily present their requests and complaints; and iii) receive the responses required in a timely manner.
- Opportunities to dialogue with local and regional authorities, to ensure a sufficient level of involvement by the authorities in aspects relevant to the companies or mining projects that are of interest for local and regional development.
- Transparent communication mechanisms pertaining to information relevant to their actions, such as the payment of royalties and taxes, the jobs created, and production linkage in the territories, among others.
- Non-transactional relationship strategies with communities and local and regional governments. This implies the need for control systems to prevent conflicts of interest when constructing agreements with local stakeholders. In particular, specific controls must be established when negotiations involve the creation of jobs or the payment of compensations to communities, and construction works for the provision of public services.
- Systematic interaction mechanisms with communities and local and regional governments to provide a comprehensive knowledge of the territories affected by mining operations.

8.2. Initiatives such as Guías Colombia, the Energy Mining Committee for Safety and Human Rights - CME and Extractive Industries Transparency Initiative - EITI, among others, facilitate the mitigation and control of issues affecting human rights by businesses and related enterprises. However, only few, most of them large companies, are part of these initiatives. We recommend that mining companies and projects of all sizes, which are exploiting any mineral, participate in these initiatives, or similar ones, to facilitate the adoption of management systems and controls to prevent that rights get affected.
9. Peacebuilding

9.1 Access to Remedy and Conflict Resolution. As shown in the chapter on conflict and access to remedy, the various kinds of conflicts between mining stakeholders and the State or companies lack predictable, accessible, credible and effective mechanisms for resolution. A large part of these conflicts are associated with administrative actions or omissions in the execution thereof; others are associated with corporate due diligence and others with access to information, and informed participation in mining undertaking processes. The absence of access mechanisms to the justice system leads to the continuous erosion of State legitimacy and criminal organizations taking over, including the implementation of their own forms of conflict resolution and meting out "justice".

Implementing measures for conflict resolution in mining scenarios is required, through the enabling of judicial and non-judicial mechanisms, in order that their actions are effective and relevant.

9.2 Ensuring coverage and accessibility to conversion. Notwithstanding the efforts for the formalization and support of artisanal mining in the territories, particularly in the case of gold mining, there is a limit to the ability to sustain populations engaged in mining activities. Currently, the lack of opportunities leads to a greater migration of individuals in search of new opportunities in extraction activities, which results in social conflicts within the municipalities receiving the immigrants and a strengthening of the criminal structures which subjugate these vulnerable populations. Consequently, it is essential to provide a conversion strategy with the resources, scope and institutional commitment for unsustainable mining towns to find options for their productive activities.

9.3 Building trust between communities, businesses and institutions in the sector. In large mining scenarios the polarization and distrust between companies and communities is clearly evident, as well as the lack of credibility in the national institutions and local governments. This originates from the absence or ineffectiveness of opportunities for dialogue, information asymmetries or little to none effective attention regarding complaints and claims, and especially from the fact that the opportunities for participation and information are given under the pretense of the licensing and prior consultation processes, and not as a continuous resource for monitoring, discussing and validating how the impacts are managed. The absence of opportunities for discussion and monitoring of impacts contributes to a continuous and inconvenient confusion of the responsibilities and obligations of companies, national institutions and local governments. Establishing opportunities for dialogue, information and interaction between companies is required, through which positive and negative impacts can be tracked and where those responsible for managing the resources originated through mining (royalties) are made accountable regarding their use and administration.

9.4 Truth and Reconciliation. Armed conflict has not been absent in the regions where large-scale mining operations exist, and has caused varying degrees of forced displacement, dispossession and crimes against civilians. Companies have also been subjected to violence, as have their workers and unions. Mining regions and their communities will need to implement truth and reconciliation
processes in order to advance towards regional peacebuilding. Changing the polarization climate is not feasible without the citizens, institutions and economic stakeholders working jointly on the construction of the truth surrounding the conflict, reconciliation and non-repetition of the past. Civil society, communities and businesses, with the help of agencies such as the Ombudsman, need to start building processes to acclimate peace, based on dialogue mechanisms and clear responsibilities, as outlined in section 9.3 above.
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THE ADAPTIVE CHALLENGE TO
ACHIEVE ENVIRONMENTALLY
SUSTAINABLE MINING
THE ADAPTIVE CHALLENGE TO ACHIEVE ENVIRONMENTALLY SUSTAINABLE MINING

This chapter identifies the relationship between environmental impacts and the rights associated to a healthy environment. In addition, it identifies the actions of State agencies, mining undertakings and communities in an effort to describe how they interact with the dynamics of said impacts. Environmental changes brought about by mining are of such magnitude, complexity and permanence in time that they require a great effort as well as the need to overcome the inertia common to all organizations, in order to achieve sustainable relationships and environments, which is the reason why this situation is configured as an adaptive challenge (Heifetz et al, 2009).

In the context of mining activity the State has the duty to protect the right to a healthy environment, according to constitutional provisions (Articles 79 and 80.), within the following scope:

- Protect the diversity and integrity of the environment, among others, the conservation of areas of special ecological interest.
- Prevent and control factor which deteriorate the environment. The following three sections analyze the difficulties in adopting a precautionary approach and the insufficient instruments available to mitigate the impacts.
- Indemnify and compensate for any environmental damages caused. Judicial and non-judicial remedy refers to the means by which a right is made effective or redressed through one or more of the following actions: compensation, correction or future prevention. The Constitutional Court (Judgment C-401 of 2010) provides that the indemnity must be understood as "the obligation, [...] as expressly provided for in article 80 of the Constitution, to repair the damages"1.

In turn, citizens have the obligation to protect natural resources and ensure the preservation of a healthy environment (art. 95). However, the allocation of responsibilities to the State and individuals does not always translate into cooperative behaviors that seek to achieve mining practices which are in harmony with sustainable development goals. In fact, in the mining municipalities it is often observed that there is no clear allocation of responsibilities for managing environmental impacts.

Recognizing the need to adopt a holistic approach when referring to the rights, the following analysis incorporates the perspective of the environment as a determinant of health,2 highlighting the obstacles to the promotion of healthy environments and the protection of services provided by ecosystems. The impacts on the right to a healthy environment also have implications on other rights such as participation, decent life, decent work and education, among others. The environmental impacts affect both those working in the

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1 See the discussion surrounding the difference between punishment and redress in Judgement C-632/11.
2 For more information on the effects on health, please refer to the CREER document on Situations observed in decisive mining scenarios in the exercise of the right to health available at http://creer-ihrb.org/wiki-eisi/
mining industry and communities in their areas of influence, and increase the vulnerability of certain groups, particularly children, who need to be explicitly considered in policies and practices.

### MAIN SITUATION AND IMPACTS

Environmental management instruments have not played a strategic role in the planning of the country’s mining sector. For example, this is evident in the shortcomings regarding water management that have led, in some cases, to changes in the quality, availability and limited access to the resource for its use in other activities.

### EFFECTS ON RIGHTS

- Right to a healthy environment
- Right to health
- Right to decent living
- Right to participate in cultural life
- Right to food safety
- Ethic-territory rights
- Right to free movement

The allocation of management responsibilities through command and control instruments, such as environmental licenses and permits for the use and exploitation of natural resources is not enough to define the convenience of an activity within an environment, not only because much of the mining activity is not covered by these instruments (informal mining) but also because:

- They are very rigid when adapting to the different types of mining in the country
- They fail in managing when cumulative impacts. For example, particulate matter air pollution in licensed coal projects continues to be a concern for the communities.
- They are inefficient in ensuring the monitoring and control duties of the environmental authority.

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3 The effects on the right to a healthy environment have different effects on population groups. For example, the health vulnerability is different for children or pregnant women, and these differences should be explicitly incorporated in policies and practices. On the other hand, regions where there are already factors which contribute to the vulnerability of the environment (malnutrition, water scarcity, among others) the additional pressure caused by the mining activity, even at a small scale, can lead to an untenable situation.
<table>
<thead>
<tr>
<th>MAIN SITUATION AND IMPACTS</th>
<th>EFFECTS ON RIGHTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The lack of coordination between environmental and mining authorities, and regular interaction between national and regional environmental authorities, and the absence of national authorities in local environments generates distrust, causing: discrepancies in the requirements for miners, obstacles for improving their productive practices and the perception that authorities are not neutral in their actions.</td>
<td>✤ Right to a healthy environment ✤ Right to health ✤ Right to decent living ✤ Right to participate</td>
</tr>
<tr>
<td>There is no policy for addressing the environmental liabilities generated by inappropriate soil removal practices as part of unlicensed activities. The addressing of environmental liabilities is hindered by the complexity of assigning the responsibility to establish penalties or enforce obligations.</td>
<td>✤ Right to a healthy environment ✤ Right to health ✤ Right to decent living ✤ Right to participate in cultural life ✤ Ethnic-territory rights</td>
</tr>
<tr>
<td>Community and institutional stakeholders consider that there is an absence of clear and timely information regarding the environmental impacts attributable to mining activities and the consequences they have on the health of the communities.</td>
<td>✤ Right to a healthy environment ✤ Right to health ✤ Right to decent living ✤ Right to participate</td>
</tr>
<tr>
<td>The consequences of the use of mercury in gold mining are of particular concern both because of the extent of its damage as for the lack of abilities to manage the impacts caused.</td>
<td>✤ Right to a healthy environment ✤ Right to health ✤ Right to decent living ✤ Right to food safety</td>
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The need for an agreement regarding the general goals to regulate the activity can be seen in the diagnoses on environmental institutions: for example, in the Strategic Environmental Assessment of the mining sector (DNP, 2014 p 193-194), and the National Mining Plan (UPME, 2014 p.13). The lack of alignment is generated by a lack of common goals and institutional mechanisms to sufficiently ensure compliance with the existing goals (DNP, 2014 p. 168 and 196). This is especially important in the case of long-term sustainability, where the "country is faced with the challenge to properly include biodiversity and ecosystem services, to ensure the ecological and social function of the territory" (Rojas and Cusva, 2014 p.41).

The results of this misalignment are observed in the territory: for example, in the mining municipalities the different stakeholders agree that the environmental authorities should be responsible for ensuring the rights of the communities before granting a license to a company. It is worth noting that these conflicts are so clearly evident even though the licensing process includes a strong citizen participation component (See regulations on environmental public hearings).

Given that the environmental policy in Colombia is unable to provide strategic guidance, this results in coordination problems between the different entities and the formulation of incompatible goals between the mining, energy, environment and health sectors. While many of these differences are explained in detail in the Sector-Territory Chapter, in terms of the environment divergent actions occur, such as:

- Overlapping of powers and jurisdictions between mining and environmental authorities.
- International commitments for protecting the environment competing with policies to accelerate the development of mining and energy.
- Conflicts in land use encouraged by decisions on extractive projects that overlap with regional planning.

In these circumstances the protection of rights is conditional on the self-regulatory capacity for managing impacts of those who develop mining activities, whether large corporations or small and medium mining undertakings. The following situations illustrate the relationship between the weak formulation of strategies and impacts on the right to a healthy environment.

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4 In the case of Article 13 of the Mining Code, which defines mining as public utility activity, and in its application requires resolve dilemmas facing environmental goals such as the National Mining Development Plan 2014; for example: "Contribute to the sustainable development of the community and ecosystems".

5 In interviews with community members and officials in Bosconia, La Jagua de Ibirico and Valledupar, in Cesar and Barrancas (Tamaquito and Chancleta) in La Guajira
1.1 THE INEFFECTIVE IMPLEMENTATION OF ENVIRONMENTAL MANAGEMENT INSTRUMENTS: AN OBSTACLE IN THE PREVENTIVE APPROACH FOR PROTECTING RIGHTS

Article 7 of Act 99 of 1993 defines environmental planning as “the role assigned to the State to regulate and guide the process for the design and planning of land use and renewable natural resources in the nation, in order to ensure its proper exploitation and sustainable development” (Act 99/93, Article 7). According to this act, the Ministry of Environment is responsible for “issuing and updating the zoning statute for the appropriate use of land for its proper planning and the national regulations on land use with regard to its environmental aspects” (Act 99/93, Art .5). This means that the environmental management establishes land uses that territorial planning should consider⁶. For its part, the National Mining Agency is responsible for managing subsurface mineral resources (Decree 4134 of 2011).

The harmonization of soil and subsoil use requires that the differences between the environmental management tools and mining planning are resolved (UPME, 2014 p.14). However this does not happen when these instruments are disjointed: examples of this lack of coordination are the discrepancies between the guidelines developed based on strategic environmental assessments and mining plans. In this regard, the Strategic Environmental Assessment EAE (DNP, 2014) stresses the need to ensure that the findings of these assessments are incorporated into national strategies and sectoral plans. These inconsistencies in the strategic guidelines also reflect in decisions to issue mining licenses in areas with an environmental protection calling, either because they are environmentally sensitive (see box below), or because they are a high priority in terms of conservation. According to the EAE, the overlap of mining titles and areas considered a high conservation priority amount to 1,673,830 ha. (DNP, 2014 p.209)

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⁶ Ángel Massiris Cabeza. “Determinants in territorial planning” digital publication from Banco de la República, Luis Angel Arango Library’s virtual page,. Available on March 1, 2016 at www.banrepcultural.org/blavirtual/geografia/deter/1.htm
Overlaps between mining titles and environmentally sensitive areas

This graph illustrates the thousands of hectares in mining titles valid as of 2014, located in areas which are important in terms of the environment.

Source: Based on information from (DNP, 2014 p.209-210)

The situation has led to the Constitutional Court to rule on the articles included in the 2014-2018 Development Plan; the ensuing ruling stipulated that mining plans should be subject to territorial planning tools, and that mining in moorlands (Case C-035 of 2016) is prohibited. This ruling may favor the protection of the right to a healthy environment, as long as appropriate institutional conditions exist, as discussed in the Sector-Territory Chapter, which addresses this and other contradictions.

Excerpts from the Constitutional Court’s ruling on the National Development Plan (Judgement C-035 de 2016)

- “By harmonizing the States unitary organization with the territories’ autonomy, the Court that the definition of mining reserve areas must be previously agreed with the local authorities of the municipalities where they will be located”
- “Excluding the Autonomous Regional Corporations (CAR) from the procedures for processing environmental permits and licenses for the PINES violates their autonomy.”
- “Mining and hydrocarbon exploitation in moorlands ignores the duty to protect special ecological areas and violated the right to water”


In addition, the shortcomings of these planning instruments have led to “loading the command and control instruments, such as environmental licenses and permits, authorizations and concessions for the use of renewable natural resources, with the apparent responsibility to resolve use of soil conflicts generated by the development of mining activities in areas which are not compatible with the environmental characteristics of
the territory” (Blanco, Sanclemente, 2014 p.343). As explained in section 1.2 the prevalence of these instruments as agents for managing the territory is insufficient to determine the sustainability of mining activities.

Responsibility in protecting the right to water

One aspect of the environmental management problem is the lack of clarity in the allocation of responsibilities for protecting the right to a healthy environment and this is particularly serious in the case of water. Pressures related to water resources originate both in the competition for its use, as well as in the alterations to quality and physical changes that limit access to the resource. In addition, other activities, such as deforestation, can reduce the ability to retain water and thus indirectly impact the resource.

Colombia’s regulations are specifically aimed at the harmonious use, protection and preservation of the ecological function of water resources. This was conceived from the idea that managing the national territory was subject to the well-structured knowledge (careful consideration of environmental attributes and their dynamics in time) of the country’s major river basins. This was done in order to solve some shortcomings of Act 388 of 1997 on Territorial Planning, which was very oriented towards urban development, and strengthen the environmental component of the Organic Law on Territorial Planning - LOOT - (Act 1454 of 2011). There is cause to doubt the effectiveness of the implementation of these regulations when the departments of Cesar and Guajira, which have dry weather and low water retention, constantly suffer from water deficits and quality problems (IDEAM, 2015 p 61.62; Defensoría del pueblo, 2014 p .114), and in the department of Chocó the negative effects on health and dignified life of communities increase due to their dependence on rivers for food and transport. Problems related to shortfalls in the management of water resources also favor the dynamics of cumulative impacts such as water shortages; when El Niño occurs 65% of the country’s municipalities suffer and 90% of the reservoirs are required for power generation.

The decrease in the availability of surface and groundwater has been documented for these and other regions, particularly in the case of gold and coal mining. For example, in Cesar "more than 15 bodies of water have been directly affected by mining." (Defensoría del pueblo, 2010, p. 17) Meanwhile, the National Water

7 The changes in the quality of water attributable to mining depend on the type of wastewater resulting from the different types of mining. In general terms, the changes are due to: residue, mineral material and water sediments. These are the greatest concerns in terms of water pollution for coal and construction mining. (Fierro & López, 2014). Wastewater containing common residues for all types of mining include: fuel oil, and others specific to certain minerals, as in the case of acid drainage and mercury contamination (which will be further detailed).
8 These limitations are associated with changes to the course of the river. On one hand, deviating rivers is a major concern in large-scale coal mining, and the accumulation of sediment for gold alluvial mining and construction material mining.
9 Impacts associates with changes to the landscape discussed in this chapter illustrate other indirect links between mining and water resources.
10 Illegal mining is the main cause for deforestation in Colombia’s Pacific region and the northeast of Antioquia IDEAM (2015b). In addition, according to the United Nations Office on Drugs and Crime, deforestation caused by alluvial gold mining is three times that of deforestation by cocaine crops, and is mostly present in the departments of Chocó, Antioquia, Nariño, Valle and Bolívar (UNODC, 2015 p.103)
11 Decree 1640 of 2012 – Use and Management Plan for Water basins (POMCA)
Study indicates that the mining sector exerts the greatest pressure for the use of water in regions where coal mines operate, in Cesar and Guajira (IDEAM, 2015, p. 178).

The confluence of these circumstances triggers conflicts over water availability, which are in the spotlight in these regions (See Censat, 2014; Tierra Digna, 2015). Indeed, according to the Environmental Justice Atlas, Colombia is the Latin American country with more environmental conflicts, with a total of 72 conflicts recorded to date (followed by Brazil with 58 and Ecuador 48), of which 42 are on water and associated to mining (Environmental Justice Atlas, 2016).

The effects on water sources have also meant a shift in the traditional practices that are part of relationship with the territory. For example, the drying and diversion of rivers and streams involves the disappearance of sacred sites, meeting places and water collection areas. The lakes and rivers are seen as spaces for meeting, congregation and interaction by the ethnic communities, "where women went to wash clothes, youngsters to swim, where food was prepared for the festivities, and families and entire communities met to celebrate" (CINEP, PAS & ASK, 2014 p.54).

The discussion on the project to divert the Bruno stream 12 illustrates the effect of the lack of institutional capacity to manage water basins in a comprehensive manner. The project was included in the Company’s environmental management plan for 2005 and is covered by an environmental license issued by the ANLA, contrary to a decision by Corpoguajira which considered that "the temporary modification of the stream would generate significant impacts on the gallery forest, the biodiversity and balance of the ecosystem of the basin" (Resolution 0096 issued by Corpoguajira on January 20, 2014 quoted by CENSAT, 2015 p16). Meanwhile, the Comptroller in its latest report on the ANLA’s performance concludes that “it is not possible to identify all the bodies of water within the area of a mining title and therefore impacts [on the hydrology of the region] will not be quantified.”(Contraloría General de la República, 2015B, p. 10). In this case, the prior consultation process of the mining projects does not optimize the communities’ knowledge of their water resources. At the time this repost was completed, the Administrative Court of La Guajira, upon ruling on a writ for the protection of fundamental rights 13, ordered the suspension of the authorizations for the intervention of the Bruno stream for one month, and also ordered the coordination of consultation processes with the communities and an interagency technical committee to ensure that the deviation does not wipe out the water in the Bruno stream.

12 The Company which operates an open pit coal mine in La Guajira which in order to continue with its exploitation Project […] planned for the partial alteration of the natural cause of the Bruno Stream, by deviating 3.6 kilometers, 700 meters north away from its natural course. This stream is an important tributary of the Rio Ranchería and affects underground waters sources. (Censat, 2015 p. 5)

13 The Colombian justice system provides a judicial mechanism to rapidly obtain redress when a citizen’s fundamental rights are at risk of being breached. It is called a writ for the protection of fundamental rights, or “acción de tutela”.

“The alterations to the water sources have caused the disappearance of some of the communities’ sacred places (...). The ponds where the women went to wash clothes or collect water have also disappeared. Community leader from La Jagua de Ibirico, Cesar
The circumstances surrounding this project demonstrate the need for environmental authorities to devote their efforts to overcoming the uncertainties regarding the impacts, and cast a doubt on the ability of the authorities responsible for licensing to make informed decisions aimed at protecting the access to water for the communities in this and other regions.

As part of their programs for redress, mining companies have the obligation to respond to these environmental impacts. Such is the case of the Forest Redress Program in the Serrania de Perija, operated by the Pro-Sierra Nevada de Santa Marta Foundation. Seven mining companies from the department of Cesar, who between 2009 and 2013 contributed the resources to provide economic incentives to “families who protect the environment”, participate in this program, aimed at the protection of the forest and improving water retention. During the next 11 years the families who participate in the program, with the support of the companies and Corpocesar should guarantee that the actions for protection continue. In addition, the model includes the promotion of productive activities for the communities. (Fundación Pro-Sierra, 2015). By 2013, this had resulted in the recovery of 900 hectares of forest as a result of conservation measures implemented in these areas (Lobatón, 2013).

Water management goes beyond simply preventing the contamination of bodies of water in the areas where minerals are extracted and transported. The comprehensive management of the resource requires further regulatory efforts for the protection of key areas. These efforts, towards which some companies have already implemented, may be directed toward initiatives such as reforestation of the key areas for water retention, environmental training in terms of water care and actions to ensure water supply to vulnerable communities. However, these efforts can in no way replace the companies’ responsibility to prevent their activities from threatening access to clean, safe and healthy water for the communities living in the area of influence of their mining activities.

In conclusion, the environmental planning regulations based on water basins and relevant services, through the POMCA, have not been taken into account and nor have they played a strategic role in the development planning of the country’s mining and energy sector. Regional environmental authorities argue that they not have the resources to carry out the baseline studies and environmental zoning required, while the Ministry of Environment, Housing and Territorial Development and the ANLA have stripped them of the ability to use the resources that had been allocated to them through Act 99 of 1993, and other resources such as the forced investment of 1% of the value of extractive projects and infrastructure (Paragraph-Article 43 of Act 99) cannot be used entirely for the preparation of these management plans.

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14 See “of corporate income” in Act 99 of 93
Building trust which has been weakened by gaps in planning

The Bruno case illustrates another consequence of the problems in the strategic direction of environmental planning: the lack of trust in the performance of the environmental authorities originating in the lack of predictability in the behavior of these institutions, which is possibly linked to shortcomings in the planning processes (DNP, 2014, pp. 190-192), and the lack of clarity regarding the responsibilities and management of the CARs. This is a common factor present in the regions which affects the legitimacy of the decisions made by the environmental institutions. Several members of the communities commented on this trust issue, “Corposesar does not play any role here, the Sororia river is now dry, and there are days when there is no water [...] huge trees have been knocked down by the bank of a Sororia river tributary and Corposesar has not been seen around here.” (Community in La Jagua de Ibirico, Cesar)

1.2 THE CONSEQUENCES OF USING LICENSING AS THE CENTRAL AXIS IN ENVIRONMENTAL GOVERNANCE

The implementation of the environmental policy in the mining sector is highly focused on efforts to ensure the licensing process. In the context of mining activity in Colombia, the licensing process is not enough to guarantee the protection of the environment and other related rights. This is because the mining sector has a high share of informal activity and illegality, and where cumulative impacts are frequent, which are also not measured by formal mining. Due to their very nature, these first two elements constitute an obstacle to making licensing possible. As for the third, the manner in which the licensing process is implemented does not allow for the inclusion of cumulative impacts as a decision criterion. Hence the fact that licensing falls short of the need to establish the convenience of a certain sector in the environment.

The “one size fits all” issue

The existing licensing instruments are rigid when adapting to the many types of mining in the country. The same requirements for an environmental or mining permit apply to small-scale miners who develop mining activities as a means to guarantee their livelihood, as to large mining concessions (Guiza, 2013

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15 Other elements related to the execution of policies which affect trust are discussed in Section 2.1
16 The lack of predictability is also evident when companies violate their social and environmental commitments, something that can become frequent due to the lack of monitoring by the environmental authorities.
17 Decree 2041 of 2014 established the ANLAs and the CARs competencies regarding licensing and monitoring of mining activities and the issue of operation and use of resources permits. However, there are situations where these competencies are not clear, for example in Cesar they do not apply, as in this region the ANLA is responsible for both monitoring the mining activities and managing the issue of operation and use of resources permits.
18 More information on the challenges for managing cumulative impacts can be found in Section 2
19 This rigidity is also evident in other Instruments, such as the environmental management plans, the permits, authorizations and concessions or the use of renewable natural resources. More information on the rigidity of these instruments can be found in the Chapter on Sector Territory
Air pollution by particulate matter is considered by communities and local and regional authorities as one of the greatest environmental impacts of coal and construction materials mining\(^{20}\). However, in practice these instruments are inapplicable for artisanal and small-scale mining activities and perpetuate their informality (Blanco, Sanclemente, 2014). It seeks to improve the implementation of environmental licensing so that the procedures established are consistent with the characteristics of the exploitation and mining process. (UPME, 2014 P.23)

Licensing – giving its back to the territory - the case of particulate matter

Air pollution by particulate matter is considered by communities and local and regional authorities as one of the greatest environmental impacts of coal and construction materials mining\(^{20}\). The most frequently mentioned diseases during the interviews could be associated with exposure to particulate matter\(^{21}\), presenting a problem for both workers and the communities adjacent to the areas where the mining activity takes place\(^{22}\).

Local communities and institutions in regions like Guajira and Cesar, frequently express their concern about the cumulative impacts on air quality caused by mining operations and their impact on health. There is uncertainty concerning the association of these impacts with mining (As explained in section 2.2 of this Chapter), however it is a matter of significant importance for children, since it not only affects their right to health, but also limits the right to education, as it causes absenteeism. An epidemiological study estimated an increased risk of respiratory diseases in children in living in areas influenced by mining activities in Cesar (Quiroz, et al., 2013)

Companies respond to this risk through management actions, which are often tailored to best practices. However, individual actions are not necessarily a strong enough response to the impact. For example, despite the fact that in Cesar all mining activities in the region were properly licensed, the air pollution situation led the Ministry of Environment to order the resettlement of three communities located in the area of influence of the mining projects, this situation is further detailed in the Chapter on Migration and Resettlement.

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\(^{20}\) Activities related to the transportation of coal and construction materials, as well as their excavation, extraction and transformation (such as turning coal into coke, and baking limestone and clay to produce lime and bricks) are a source of particulate matter.

\(^{21}\) In the case of individuals who work directly in the mine, exposure is associated to a series of lung problems such as pneumoconiosis, silicosis, decreased lung function and COPD (Chronic Obstructive Pulmonary Disease) (Huertas, Huertas, Izquierdo, & González, 2012) (Palmer, et al., 2010) (Pulido, 2014). Another effect of particulate matter which is less probably found in these testimonies, but on which there is sufficient evidence, is the increase in heart disease and cancer (some sources illustrating this evidence are presented by Olivero Verbel, 2014).

\(^{22}\) For more information in the exposure to particulate matter please refer to CREER document on Situations observed in decisive mining scenarios in the exercise of the right to health available at: www.creer-ihrb.org/wiki-eisi/
Licensing without monitoring loses its efficacy

The impact of transportation associated with mining activities illustrates the limitations of environmental licensing to ensure the monitoring and control duties of the environmental authority. The manner in which these impacts materialize is very similar\textsuperscript{23} in both coal and construction materials however their treatment requires two different approaches. While the transportation of coal produced in large-scale operation is done by railways to a small number of ports, construction materials mined in Boyacá and Cundinamarca are taken by trucks to multiple destinations (roads or urban centers). In the case of impacts caused by railway transport, because there is clarity on which the operators and companies involved are, the actions required to mitigate the impacts would be directly attributable to one or another. The second case requires a greater effort, which exceeds the capabilities of the environmental authorities, because of the geographical area covered and the number of production units involved.

\textbf{Vehicles transporting construction materials in Cundinamarca}

Source: Field work CREER

The case of environmental pressures associated with transport activity and the difficulties to control the situation can be seen in Nemocón, Cundinamarca. Large-scale limestone mining is carried out in this municipality; the material is then transported to the municipality of Madrid, where it is transformed into lime; it is then taken to the town of Sopó where it is used for construction; and the finished product is transported to urban centers. This same activity is replicated depending on the number of quarries and their production chains (in Cundinamarca there are 744 construction materials UPMs)\textsuperscript{24}). Therefore because of the characteristics of this chain, these municipalities suffer from the continuous traffic of dump trucks. The

\textsuperscript{23} Communities and institutions in La Guajira, Cesar, Boyacá and Cundinamarca report increased levels of traffic accidents, noise and dust emissions.

\textsuperscript{24} Ministry of Mines- Department Mining Census 2011-2012
environmental authority monitors the individual management plans, but does not have a mechanism which can holistically manage cumulative impacts.

In addition, this is a situation where it is difficult to apply “the polluter pays” principle, which derives in this becoming an argument to evade responsibility, from both the environmental authority and the productive units.

2. THE CHALLENGES OF CUMULATIVE ENVIRONMENTAL IMPACT MANAGEMENT: Decisive actions and omissions by institutions in the exercise of rights

Alterations to the environment can be caused by mining, or other activities. In addition, it can originate in other regions or be the legacy of activities which have already ceased. Therefore, the continuous and comprehensive assessment of cumulative environmental impacts is of particular interest, especially when communities are exposed to multiple sources of contamination. The presence of individual and collective social vulnerability factors can amplify the effects of exposure to these impacts (Solomon, Morello Frosch, Zeise, & Faust, 2015).

2.1 INTERDEPENDENCE BETWEEN THE EXECUTION OF POLICIES AND ACTIONS TAKEN BY COMPANIES AND UNDERTAKINGS

The obstacles in guaranteeing the right to a healthy environment not only manifest themselves in policies and plans. The enjoyment of this right also depends on the ability to execute policy interventions through the implementation of good practices by companies and small and medium-scale undertaking. This section examines these aspects.

Public Policy – Execution requires coordinated efforts

Better coordination between those responsible for ensuring a healthy environment facilitates the prevention of impacts, which is the basis of protection. Protecting this right requires effective actions by all institutions and, in this regard, there are gaps in the implementation of policies. These are some of the problems associated with coordination in the implementation of government actions:

- Inadequate coordination between environmental agencies and those responsible for mining policy: the complementarity of actions and mutual cooperation between the mining and environmental authorities is not always achieved by setting up the different ministry agendas, and resorting to other coordination instances included in the regulatory framework are not considered (Contraloría General de la República, 2015 p. 69).
Problems in the implementation of procedures that promote coordination between the agencies responsible for environmental policies, between the central and regional government, and between the local environmental authorities (DNP 2014, Part 2 pg.198 and 201).

One of the signs that a coordination problem exists is the lack of regular interaction and communication between entities which are mainly motivated by the need to react to current situations or crisis scenarios. It is difficult to achieve the preventive approach required to contain cumulative impacts if actions are not planned well in advance.

Public officials often manifest the need for a greater presence by the Ministry of Mines, the ANM and the ANLA in the territories, a greater unity between the institutions of the central level and the local authorities and better effectiveness in their actions (interviews with departmental and municipal officials and DNP 2014, Part 1 p. 17).

On the other hand, these conditions do not favor institutional cooperation, an opportunity for each entity to contribute with its strengths to the implementation process. While the technical capacity of the regional environmental authorities is not equate with that of the ANLA, it is the corporations who have current knowledge on the status of the territory and communities.

The lack of coordination also produces discrepancies in the requirements set for the miners, which do not necessarily lead to better management. They are frequent testimonies regarding the asymmetries in the capacities of the environmental authorities. For example, the spokesperson for a cooperative of miners which operates mines in the jurisdictions of two autonomous corporations, mentions that one of these "demands more requirements than those established by the Ministry, while [the other] is older, knows the sector better, has more experience and its requirements are more reasonable".

Finally, the lack of coordination "can lead to inaction and the dilution of responsibility in the environmental monitoring of the projects," particularly in processes such as the assessment of feasibility studies, environmental impact assessments and environmental management plans or in the interaction between controlling mining activities and environmental monitoring (Contraloría General de la República 2015 p. 69).
Building trust which has been weakened by discretion in the execution

One of the weaknesses in the implementation of the control duties is manifested in communities’ perception that there is a lack of neutrality in the actions of the authorities. Implementing protocols to ensure the transparency of decisions is not a priority and this undermines the legitimacy of the institutions: "“How can the control agency, which is supposed to monitor a company that is generating impacts, be together with that same company?” (Community member of Bosconia).

In addition the environmental authority’s monitoring conditions, known for its sporadic presence, based on project cycles or the need to address a crisis, may favor that companies and undertakings fail to comply with their social and environmental commitments. More so if said monitoring by the environmental authorities is usually directed at each project individually and not at the cumulative environmental impacts caused by the different mining activities in the territory. Therefore, the precautionary approach that the environmental authority should use is limited, in addition to the factors related to planning, given the way manner in which they are implementing monitoring and control.

Developing mining – opportunities to strengthen management

Environmental Impact Assessments (EIA), from processes to management.

The rules for conducting impact assessments, environmental planning and licensing often become an exercise in processes; which are not geared towards achieving clear objectives for the protection of the environment; and from where problems such as the failure to comply with management plans, inefficiency and contradictions in the Government’s surveillance and control actions and difficulties in formulating harmonious goal for managing the territory arise. Having third parties conduct the EIAs is one of the sources from which planning, monitoring and control issues arise, regarding the environment, for companies and undertakings. When no specific action is planned to ensure that such information is taken into account during the decision making process, even large companies with complex management systems face problems.

For small and medium-scale mining undertakings, the EIAs do not respond to their administrative and technical capacity. The policy does not provide sufficient guidance, and these miners contract studies that do not necessarily meet quality standards; they also have to pay several times for the same study, as expressed

“We only meet with them [...] when mining companies need to carry out a project’s public awareness proceedings, or else the ANLA will suddenly appear, without them and say, we’ll see [...] what the community says [...] and all that, aside from the Company I have never seen them”

Community spokesperson form La Jagua de Ibirico

25 For illustration purposes only, the ANM, in its most recent assessment reports that of the total number of titles assessed, 93% fail to comply with its contractual obligations, of which environmental obligations are the most frequent. See: http://www.anm.gov.co/?q=ResultadosFiscalizacionMinera
by small miners in the regions visited, and is a challenge that the Ministry of Mines has already identified. Consequently, in addition to preventing them to be from being included in productive dynamics for growth, and access formalization programs, it prevents them from incorporating appropriate prevention and mitigation measures for their environmental impacts.

**Opportunities for improving productive processes**

In an effort to address the challenges faced by miners seeking to improve their production practices, without the government’s support, local organizational processes have been created to allow for proper monitoring and opportunities for improving the environmental performance of their activities. This means an improvement in terms of environmental performance for each of the projects, and, because these initiatives bring together small miners, it results in an environmental management that addresses the cumulative environmental impacts thereof.

In Boyacá for example, associations that accompany coke producers in the environmental processes are common. In these, each miner has his own environmental management plan but the association helps them improve their processes thus avoiding punishments from the environmental authority.

An association of medium-sized companies in Bogota is another successful example of association schemes that work to improve the environmental performance of mining projects. In an area where many families dedicated to the extraction of clay and making bricks (small brickyard or “Chircal”) were generating air pollution and other environmental impacts, the Association joined all the brickyards under one mining title and took on the responsibility of the operation’s environmental management. Today the association provides each business with the support required to comply with environmental regulations; and acts as facilitator in order to ensure that the environmental authorities’ requirements are included in their environmental management practices.

**Physical changes to the landscape exacerbate the vulnerability of the communities**

Mining developments take over areas and create a new landscape, changing the visual environment and causing other environmental impacts through different ways. These transformations are differentiated according to the scale and type of exploitation. However, all types of transformations can generate impacts on the communities surrounding the mining activities, as mentioned by one member of the community in Bogotá: "By destroying a mountain a beautiful natural landscape it broken, by definition it is beautiful, then you wake up and the mountain is no longer there, but a dredger is, this change is aesthetics hits you mentally, psychologically, and emotionally”.

26 Interviews with small miners in Antioquia, Boyacá and Nariño
27 CREER interview with Ministry of Mines officials
28 On the difficulties to Access formalization programs see the Chapter on Sector-Territory
29 http://www.anafalco.com.co/
30 Even though all environmental impacts have as a consequence alterations to the landscape (such as alterations in the quality and quantity of water, and air quality), the alterations referred to specifically relate to the soil, geomorphic conditions, visual scenarios, biodiversity and other alterations to ecosystem services other than water and air.
Ways in which mining can change the landscape

Mining changes the geomorphic conditions of the terrain, due to drilling, excavation, opening tunnels and moving soil and river bead material.

Source: CREER fieldwork

Underground mining in Nariño

Alluvial gold mining in Chocó

To access the mineral, the soil* and topsoil need to be removed.

* Soil is defined as the natural medium for plant growth. When the soil is removed, living organisms do not have the necessary nutrients to grow in this medium.

Source: CREER fieldwork
Discharges and residues can cause contamination if not handled properly. This reduces the ecosystem’s capacity to provide goods and services *.

Source: CREER fieldwork

* In the course of the fieldwork, the communities identified a link between the removal of the topsoil and an increase in local temperatures, and between soil removal and the loss of productive soil for agricultural activities.

Mountains of sterile material from coal mining in Cesar

Visual changes caused by the installation of operations and storage facilities.

Source: CREER fieldwork
Changes in the natural cycles of water, caused directly by the deviation of rivers or the indirect alteration of river course due to sedimentation

Source: CREER fieldwork

Changes due to backhoe mining in Chocó

Fragmentation of ecosystems and negative effects on the biodiversity. The extent of these impacts depends on how they are managed. In addition, the changes due to the geological conditions of the areas may affect the ecosystems’ water retention capacity

Source: CREER fieldwork

The removal of topsoil, soil and the movement of material to access mineral, transforms the geomorphological conditions of the land and alters the river courses. The improper handling of these changes generates ground instability, landslides and disruptions to the river courses. These phenomena are especially significant in the case of alluvial gold mining and mining conducted by the riverbanks. These environmental changes are directly connected to the exercise of other rights; for example, soil removal can cause accidents, affect the conditions of homes located in adjacent areas, affect the ease of travelling through rivers, alter the

31 Mining performed with backhoes or dredgers removes tons of material from the riverbeds and riverbanks, causing not just a change in the river course but also significant alterations to the water, including infiltrations and runoffs, and to its physiochemical conditions (IIAP, 2014).
physicochemical conditions of rivers and reduce the possibility of obtaining aquatic resources for food (IIAP, 2014).

**Extent of the impact and addressing of environmental liabilities**

The extent of the impacts on the landscape depends on the scale of the activity, and the confluence of multiple activities in the field. For example, the extent of the transformation to the landscape in the case of an open pit coal mine is not comparable to the transformation caused by gold artisanal mining, but it could be compared to the impact caused by multiple backhoes and small and medium-scale mining activities in one same area. Not restoring and neglecting these areas produce environmental liabilities. Addressing environmental liabilities is hindered by the complexity of assigning responsibility to establish punishments or enforce obligations. Moreover, the country does not even have a database where abandoned mines can be identified and referenced as environmental liabilities, and therefore policy makers do not have sufficient information to intervene (Contraloría General de la República, 2015 p.73). Thus, the addressing of environmental liabilities caused by mining raises the need for regulations such as those suggested in the EAE (DNP, 2014, p. 200). The evaluation exercise concludes that there is “significant accumulation of abandoned mining areas in the territory” and suggests that a measure to develop a restoration procedure should be implemented and jointly supervised by mining and environmental authorities.

**Changes caused by illegal mining and the absence of policies for the restoration of affected areas**

Illegal mining caused environmental impacts which require comprehensive attention by the environmental, mining and judicial authorities. These changes exacerbate conditions of vulnerability and magnify the effects of extreme conditions of drought or floods.

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32 Environmental Liabilities due to Mining (PAM) refer to “an area where there is the need to restore, mitigate or compensate for non-managed environmental damages or impact caused by inactive or abandoned mining activities, which jeopardize health, quality of living, private or public goods. (Arango & Olaya 2012 p.125)

33 For a detailed review of environmental impacts caused by illegal mining see Fierro (2013)

34 As Fierro states (2013): “A conceptual difficulty arises when environmental impacts are presented based on the legal/illegal nature of the processes (...) However it is evident that mining activites not protected by an environmental license may generate more social and environmental effects than a similar project which has taken into account certain consideration which seek to prevent, correct, mitigate or compensate for said effects” (Fierro, 2013 p.194-195)
The extent of the changes to the environment can be seen in the recent disappearance of the Sambingo River in Cauca, one of the largest rivers in the region. Although the El Niño phenomenon is partly responsible for the riverbed drying up, mining has exacerbates its degradation.

Source: Semana http://www.semana.com/nacion/articulo/fenomeno-de-el-nino-se-seca-el-primer-rio-en-colombia/458485

These are all red alerts regarding the insufficiency and dispersion of environmental licenses, for the projects, and the need to address the discussion in terms of accountability of the accumulation of impacts, i.e., settle between:

- Place the responsibility of the accumulation of environmental impacts caused by prior mining activities on the last holder of the license
- Define mechanisms for the State to take responsibility for the exercise and compliance of its obligations

Moving forward with this debate requires making decisions on the need to hand the projects to individuals who are already licensed and consulted, and are ready for implementation, and turning the commitments and conditions into contractual obligations for the concession.

2.2. OPPORTUNITIES TO IMPROVE KNOWLEDGE MANAGEMENT

One of the main findings identified during the dialogue with stakeholders, both at the community and institutional level, in the entire coal mining process, is the absence of clear and timely information regarding the environmental impacts attributable to mining and their effects on health.

While there are inherent difficulties in

“Environmental authorities have to believe what the user says, the government should be the one to determine the baseline, if the baseline was clear to us no one would lie to me about what their activity generates (...) management measures should be set by the government”

Regional environmental authority official

35 The issue on access to information goes beyond the environment, to this end see the Chapter on Sector-Territory
attributing impacts to mining activities  

the manner in which environmental information is managed presents a challenge because:

- Instruments such as Environmental Impact Assessments only include fragmented information on each of the mining projects. In addition, the EIAs do not always identify the impacts to the ecosystems.
- There is a lack of integration between the environmental information generated by the different National Environmental System entities and that of the regional environmental organizations.
- There are no regional baselines that holistically describe the environmental and social context.
- Although there are some studies regarding environmental impacts and health, their results have no credibility among some stakeholders.
- Access to public information is difficult due to the excessive cost of the procedures involved and because citizens are not educated in how to access and use this information responsibly; this is an obstacle for control mechanisms supported by citizen oversight. Access to information makes citizen participation possible, which has been recognized as a key element to address environmental issues since the Rio Declaration on Environment and Development (1992).

In order to address these challenges, the National Mining Plan has identified the need to "implement and coordinate early warning systems using key information for the comprehensive management of renewable natural resources" (UPME, 2014. P. 24). Given this diagnosis, the National Environmental System entities (SINA) are moving forward with the purpose of integrating the information that each institution has hitherto fragmented. However SINA officials state that the resources devoted to information management are insufficient in terms of the proposed goals.

One of the initiatives to integrate environmental information in the country is the Colombian Environmental Information System (ACIS), a platform that seeks to integrate the stakeholders, policies, processes and

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36 Assigning responsibility to mining is difficult because:
- Having multiple mining activities in one same region makes it difficult to clearly assign responsibilities to a specific operation, or to define the extent of the responsibility for the impacts.
- Mining activities coexist with other productive activities which also generate impacts.
- The impacts seen in the territories may originate from current activities or be the legacy of activities which have already ceased.

37 For example, this lack of credibility may be caused by the fact that the companies which are being assessed are the ones who contract the assessments.

38 All the information contained in the EIAs is public, however accessing it is not so simple. For example, in order to access and Environmental Management Plan for a project licensed by the ANLA the interested party must visit the main office in Bogotá, request the file number for the project, review the entire file to find the Environmental Management Plan’s file number and request a copy, once the request is placed it takes three business days for delivery.

39 Principle 10 of the Rio Declaration on Environment and Development (1992) stipulated that: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." (ONU, 1992).
technologies involved in the management of environmental information in the country. This initiative is an opportunity to facilitate knowledge management, and is a step forward to integrate the information of the mining projects monitored by the ANLA. However, the initiative presents its own challenges. It still does not consider the inclusion of information from the Regional Autonomous Corporations (CAR), a difficult process because due to the autonomy they each have regarding the different criteria for gathering information, integration is difficult. Similarly, in terms of integrating this environmental information with the mining sector’s information there are problems in the articulation of cartographic information, as information is not up to date or sufficient (DNP, 2014, p. 218).

Another effort to integrate information on the territories is the ANLA Regionalization instrument, which seeks to conduct an comprehensive analysis of the environmental and socioeconomic conditions in special interest areas, for example the mining area in the center of Cesar.

The production of information is not enough to generate knowledge, and community participation is one element that would help towards the incorporation of information on institutional performance. For example, the Humboldt Institute has clear indicators as to the fact that it is providing relevant information on their territories on its website, according to positive comments published by communities which use this information. On this specific point, prior consultation with ethnic groups and peoples offers important opportunities, as these opportunities offer the chance to test the communication processes as ways by which to manage knowledge, and rework them so that their contents are culturally appropriate and contribute to the reduction of asymmetries between the speakers.

Knowledge is a necessary condition for practices to produce results

Mining companies in Cesar and Guajira have procedures for the treatment, disposal and monitoring of discharges. However, as manifested by the communities’ testimonies, one aspect of pollution on which there is little information to establish its origin, is the contamination of groundwater. Some of these impacts took place decades ago; however their consequences are still felt, as manifested by different communities in two departments. One example of is this the case of a water well for consumption and agricultural use, "3 months after [the company] began explorations the water mill was damaged. They drilled near the well and the water turned the color of the “guayacán” flower, yellow. The pipes were also damaged. It was a coppery yellow. The water was like “aguapanela” but salty”. Some time ago the mill was reactivated, but the hosepipes were covered with charcoal and "we realized that we were drinking coal dust in the water, white rice was put on the stove and gray rice was served, so we left that mill alone”. In cases like this, the lack of clarity about the

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40 More information on this initiative and a geographic view of the country can be found at: http://www.siac.gov.co/siac.html#

41 For more detailed information on the challenges of accessing information in the mining sector see the section on the right to association and participation in the typology of impacts.

42 According to testimonies by entity officials.

43 Interviews by community members and officials in La Jagua de Ibirico, El Paso (La Loma and El Hatillo), Valledupar and Albania in Cesar, and Barrancas (Tamaquito, Las Casitas, Chaneleta, Roche), Hatonuevo and Riohacha in La Guajira.
source of the problem precludes the allocation of responsibilities and fosters distrust, conditions conducive to conflict even when responsible practices exist, aimed at ensuring the commitment to respect rights.

**The importance of the precautionary principle**

The Colombian regulatory framework recognizes the precautionary principle as a criterion to guide government intervention in environmental matters. Under this principle the absence of scientific certainty should not be used as a reason for postponing the adoption of effective measures to prevent environmental degradation where there is a risk of serious and irreversible damage (Article 1 Law 99/93). However, the National Mine Management Plan -PNOM incorporates proactivity as a performance principle and creating tension when the State needs to act regarding its obligation to protect the right to a healthy environment. To resolve these tensions the State needs to discern what are the acceptable risk levels, which are the product of social constructions and political context (Arbelaez & Viana, 2015).

The relationship between mining and health is just one of the instances in which the need to apply the precautionary principle is made evident. In this situation, the precautionary principle provides elements to weight between the right to a healthy environment, to health and other rights. Mining can result in the dumping of chemicals\(^4\), and for example, in the case of acid drainage,\(^4\) its origin and its effects have not been clearly established. Regardless of this uncertainty, the presence of heavy metals in the environment is a considered a health concern, given their association with different types of cancer, neurodegeneration, reproductive disorders, diabetes, chronic kidney disease, and lung and liver pathologies, among others (Guerrero Castilla, Olivero Verbel, & Marrugo Negrete, 2014). In fact, the quantitative evidence presented in the document on the impacts on the right to health, suggests a possible association of mining with heavy metal poisoning.\(^4\) The grounds for a measure to protect the public from exposure to these substances would be based precisely on the precautionary principle, given the seriousness of its consequences. However, in the light of the proactivity principle, no protective measures would be implemented, or they would have a more limited scope.

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\(^4\) Some are common for all types of exploitation, for example fuel oil drainage, and others are specific to certain minerals, as in the case of acid drainage and mercury contamination.

\(^4\) Acid drainage is a phenomenon that occurs in certain types of mineral deposits when the exposed rock enters in contact with water and frees heavy metals which contaminate the water and soil. The limited evidence available suggests that this is especially relevant in coal mining (Olivero, Caballero & Guerrero 2013 p.233), although there are also reports of it occurring in gold mining (Fierro & López, 2014 p.139) and limestone and aggregate mining (Fierro, 2013 p.226).

\(^4\) In the case of gold mining, when the simple is limited to the group of municipalities with the highest level of production (the half that produces more), the incidence of intoxication by heavy metals is 1.7 times more than in the municipalities compared. In the case of construction materials mining, there is a 50% higher rate of intoxication due to chemical substances other than pesticides, solvents and medication, than the municipalities compared.
Potential greenhouse effects – the need to generate specific information

Among the minerals studies, coal mining, the cement industry and coking coal were identified as processes that can potentially contribute to greenhouse gas emissions (GHG). Although the global contribution of these industries is significant, countries like Colombia do not contribute significantly to the emissions. Coal mining produces approximately 5% of the energy sector’s emissions, which are really low in comparison to the transport industry (40%); On the contrary, cement production represents almost 50% of emissions of the industrial sector nationwide (IDEAM, UNDP, MADS, DNP, Ministry of Foreign Affairs, 2015). Although these estimates help visualize the sector’s contribution to the emissions, they do not reveal the true extent of the problem, since they do not consider other relevant variables associated with the activity, such as deforestation, and environmental liabilities, including emissions from abandoned coal mines, a subject on which there is no information in the country (IDEAM, UNDP, MADS, DNP, Ministry of Foreign Affairs, 2015).

It is especially interesting to consider the emissions generated by the use of Colombian coal in other parts of the world. According to the current framework for accounting and reporting greenhouse gases (GHG), under which emissions are reported in terms of what is issued within each country, Colombia’s Intended Nationally Determined Contributions (INDC) incorporates its fossil fuel GHG emissions (UNFCCC, 2015). In the case of Colombian coal and oil production the INDC includes fugitive emissions associated with said production. However, Colombia is not responsible for the accounting of GHG emissions arising from coal and gas exported by Colombia to another country. The country that imports and consumes the fuel must account for the emission, i.e., the demand side of the operation.

This framework creates a potential source for distortion: countries can increase their supply of fossil fuels, ensuring a floor for important future issues, but without causing an effect on their own emission inventories (Stockholm Environment Institute, 2013).

Colombia’s INDC mentions a possible slowdown in the production of coal and oil. It does not provide details about the assumptions underlying the INDC, and certainly more detailed work is required to understand its scope and the implications of this commitment.

Regardless of the GHG’s history the INDC, it seems appropriate that Colombia begin to consider an accelerated transition toward a lower production of coal and oil. The adoption of a different GHG accounting framework is likely, in order to transfer more responsibility to the producer, rather than the consumer. According to some experts, GHG accounting based on extraction, whereby the emissions attributable to the country where the fuels are exploited, is the clearest method to account for the emissions (Stockholm Environment Institute, 2013). It is also possible that global expectations on the accounting of fossil fuel extraction become even stricter, driving a change in responsibility, by placing it in the hands of the

47 According to the IPCC, the cement industry contributes with 13%, and coking coal with 1% of the GHG emission of the industrial sector. The industrial sector represents el 21% of total global GHG emissions (Fischedick, et. al 2014)
48 Total GHG emissions in Latin America do not amount to more than 7% of industrial emission worldwide.(Fischedick, et. al 2014 p.743)
producing country. Colombia should consider alternatives for addressing these changes brought about in the international arena surrounding the debate on accountability for GHG emissions.

Using the United States as an example, with the financial turmoil of its coal companies, and even cases of bankruptcy\(^49\), it may be appropriate that Colombia consider a scenario in which it accelerates the transition, enabling the country to:

- Reduce current levels of coal and oil production
- Prepare for the negative consequences on employment, tax revenues and other benefits derived from this activity.

This transformation will require a proactive strategy which will allow the country to plan according to a different view of the country’s future and the callings of the territories. The elements which could define the real possibility for the implementation of this strategy are the ability to align strategic objectives and coordination between sectors, which the SWIA has indicated repeatedly as one of the factors that mediate the management of impacts.

### Uncertainty regarding the effects on the geologic conditions of the territories, water retention and the effects of mining on strategic ecosystems

This is another example that requires explaining the need to apply the precautionary principle, as it involves the right of access to water. This means understanding the effects caused by explosions and vibrations to the geological conditions of the territories, fractured subsurface layers and damage to drains and aquifers (MAVDT, UNIANDES, 2010, p.107). These factors, along with the reduction of common topsoil for open pit and underground coal and construction materials mining could threaten the water retention capability of strategic ecosystems such as moorlands, wetlands and marshes.

In Cesar, the concern focuses on mining projects that are “located in the intermediate zone between the Serrania del Perija and the wetland complex located in the Zapatosa Swamp, which interrupt the flow of surface water and underground, and will cause water sources to decrease in the near future” (Cabrera, Fierro, 2013). In fact, the government of Cesar has stated that this impact could already be seen in the drought conditions of some of the municipalities that depend on these drains.

#### 2.3. DIFFICULTIES IN THE TIMELY ADDRESS OF MULTIPLE IMPACT RISKS

Section 2.2 discusses how knowledge management on environmental impacts is important to ensure the protection of the right to a healthy environment. It mentioned that even under conditions of limited knowledge regarding the effects and sources of impacts, the application of the precautionary principle forces taking protective measures. In other cases, responsibilities are clear, and the challenge, in terms of respect and protection of rights, lies in the timely implementation of risk management measures. This can be particularly

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difficult in conditions where there has been no State intervention, and there are multiple stakeholders and multiple impacts.

Large-scale coal mining develops procedures to address environmental risks associated with its operation. However, the coal dust case in Cesar highlights the need for a more active presence by the State, in order for individual efforts to effectively address the protection of air quality. Even the measures taken by a company acting in accordance with the due diligence principle, may prove to be insufficient against such impacts.

THE RÍO QUITO CASE: CITIZEN PARTICIPATION MECHANISMS DO NOT ALWAYS HELP PROTECT THE COMMUNITIES’ RIGHTS

In the case of large-scale coal mining, loading the coal in the port generates “impacts which affect the beach areas, and some bodies of water.” (Defensoría del Pueblo, 2010 p.18) In this regard, carbon particles found in sediments from the beaches, in the ocean and on the seabed (Contraloría General de la República, 2013), indicate the deterioration not only of the water’s quality but of the ecosystem and landscape, as well as damages to other callings, such as tourism. In addition, for the communities living near the coal ports this results in limitations on the exercise of the traditional practice of artisanal fishing (Tierra Digna, 2015 p. 139).Río Quito is a town where since the beginning of this century artisanal gold mining has been displaced by illegal mining. “The mines are controlled by illegal organizations who paid ‘operating taxes’ to the FARC, ELN and criminal gangs like the Rastrojos or Urabeños.” Initially, communities tolerated the presence of these miners, but given that the expected economic benefits have not been achieved and environmental damage has become more obvious, they have turned to two instruments, with the support of the NGO Tierra Digna:

- A public interest claim placed before the Administrative Court of the Judicial District of Bogotá in 2011, which, among others, sues the ministries of Mines and Environment and the General Attorney, for alleged inefficiencies in solving the environmental and public health problem associated to mining. Four years later this process has not moved forward.

- 75,000 members of the Black community, including the inhabitants of Río Quito, by means of a writ for the protection of fundamental rights demanded that 27 public entities address the environmental and health disaster caused by government neglect and the illegal extraction of gold and timber throughout the Atrato River basin. The ruling declared that the writ for the protection of fundamental rights did not apply, because it affected a collective right and that, therefore, the way forward was a popular action. The ineffectiveness of these mechanisms in the case of Río Quito, casts a doubt on the ability that these processes have to respond to the imminence of the damages.

Artisanal and small-scale gold mining (MAPE), along with coal burning are the primary sources of mercury emissions in the world, followed by metal and cement production (UNEP, 2013, p. ii). In Colombia, mercury pollution is an environmental problem associated mainly with the use of this substance as an input for processing gold. The use of mercury in Colombian mining districts exceeds 3 gr. per gram of gold and in some cases it can even reach 35 gr. (UNEP-MADS, 2012, p. 26). In contrast, the average measurements for other countries like Brazil, estimate between 1 and 2 grams of mercury per gram of gold (Souza and Veiga, 2007, p. 9). While not all operations make use it, and progress has been made regarding its elimination, mercury is still used and has been used to amalgamate the gold particles.

Mercury is used to create an amalgam that separates gold from other materials. The amalgam is then heated, vaporizing the mercury (Olivero Verbel, 2014). Vaporized mercury can be inhaled during burning; in Colombia, people who live and work near these gold establishments and foundries are exposed to intermittent and extreme concentrations of mercury vapor (Cordy et.al 2013). In addition, the mercury used in processing the mineral is deposited in bodies of water and transformed into methylmercury, which affects fish and the people who eat it (Olivero Verbel, 2014).

Mercury is a good example of the challenges posed by cumulative environmental impacts, given that this type of contamination produces impacts that transcend the time and space scales of mining activities. Its reach extends to water resources, air and soil quality, and all this multiplies the population’s opportunities for exposure (Olivero Verbel, 2014). In addition, environmental damages caused by mercury use are such that they impact a wide range of other rights, as illustrated below:

50 For more information on the effects of mercury, please refer to the CREER document on Situations observed in decisive mining scenarios in the exercise of the right to health available at http://creer-ihrb.org/wiki-eisi/
Mercury has a direct impact on the food security of communities that do not necessarily live in mining areas, who can ingest contaminated fish on a daily basis.

Mercury has direct effects on health, however these are difficult to diagnose, given that they begin to show in people who have been chronically exposed to the substance. In addition, the effects are often mistaken with the symptoms for other diseases (Olivero Verbel, 2014 p.497)

Its effects are mainly associated with neurological damage, but are not limited to alterations in the nervous system, it also affects the cardiovascular system, and lately its role in as an immunotoxin has been considered (Olivero Verbel, 2014 p.497)

Children and pregnant women are particularly vulnerable. They are exposed to the substance through food intake or when they are near the mercury vapor (Cordy et.al 2011). Children are most affected at a neurological level because their nervous system is still under development (OliveroVerbel, 2014 p.497); in addition to affect their health, this also limits the enjoyment of the right to education, by decreasing their academic performance and eventually the right to work, due to the fact that people with cognitive disabilities find it difficult to find a job.

**Regulatory framework for mercury in Colombia**

Colombia joined the Minamata Convention in 2013 and that same year enacted the Mercury Act. This law (Act 1658 of 2013) stipulates the provisions for the marketing and use of mercury in various industrial activities in the country. Among its objectives is the complete eradication of the use of mercury in mining by 2018. In addition, it intends to regulate its use within certain period of time before eliminating it and identify current users to guarantee proper monitoring. However progress in the elimination of mercury has been slow. According to the Alliance for Responsible Mining ARM, the mining sector’s efforts to eradicate mercury have not been done in coordination with other sectors such as the Ministry of Health and the Ministry of Environment; besides the programs defined in the Sector Plan to support the transfer of technology to small-scale miners have been slow and only by year-end 2015 (two years after enacting the law) the access to banking and financial services program, yet the time limit given is inviable, taking into account the financial and technological capabilities of the miners (Villa, 2016).

In dialogues with gold miners from Antioquia, Chocó, Cauca and Nariño, most acknowledge the effects of mercury on their health and the environment.

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51 The national mental health survey (Ministerio de salud, 2015, p.131) reveals a “significant problem in schooling” in areas such as abnormal language, difficulties in learning math and literacy, and notes the incidence of mental retardation as one of its possible causes. It is impossible to establish the extent of the contribution of the environmental impacts caused by the mining sector, since mental retardation can be caused by multiple factors, but undoubtedly exposure to mercury is one of the associated factors.
In addition to this regulatory framework, there are other initiatives which aim to reduce the use and loss of mercury in mining processes; for example, Bioredd 52 and the Colombia Mercury Project. 53 In fact, in dialogues with gold miners in Antioquia, Chocó, Cauca and Nariño with gold miners, most acknowledge the effects of mercury on their health and the environment, however they still use it because it is easy to use and access, it is effective and cheaper when compared with other methods (Telmer & Veiga, 2009). In contrast, there are mining initiatives in areas such as La Llanada in Nariño and in other gold mining regions in Cauca where the miners are interested in changing their production practices and eliminating the use of mercury.

As shown throughout this chapter, the ability of environmental policy and the implementation of said policies are overwhelmed by the challenges presented by this type of pollution. As presented below, these intervening factors clearly surface with the mercury issue.

### The case of Mercury

<table>
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<tr>
<th>Weaknesses in the health system</th>
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<tbody>
<tr>
<td>Health personnel are not prepared to respond to the effects caused by mercury. Difficulties in the coordination between sectors are revealed, when an environmental impact is detected, and it translates into a necessary response needs from other sectors (health, education). According to statements by the health authorities, the surveillance system is reactive and not proactive, and only works in the case of acute poisoning, and not for chronic poisoning (mercury). However, there is a monitoring system that notifies when there is an outbreak.</td>
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<tr>
<th>Opportunities to improve knowledge management</th>
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<tr>
<td>Environmental and health authorities have no knowledge of the levels of contamination, and its sources are not identified in a timely manner. Identifying mercury levels and assigning responsibility for its effects on the environment and health is difficult because:</td>
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<tr>
<td>- Current levels of mercury in the environment are the result of both its current use in multiple activities as well as the historical legacy of previous activities;</td>
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<tr>
<td>- There is uncertainty regarding the magnitude of the impact, although there is already evidence on its environmental and health impacts54, epidemiological studies are scarce (Olivero Verbel, 2014 p.497) we are far from being able to quantify the use of mercury55, its effects on health, on the affected communities, and the actual state of the bodies of water and food contaminated by mercury</td>
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52 Among the different activities carried out by the BIOREDD + USAID Program is the "promotion of the use of alternative technologies to eliminate the use of mercury and reduce the environmental impact of gold mining" (USAID, 2015). This project has already been implemented in parts of the Northeast and the lower Cauca in Antioquia.

53 Joint project between the United Nations Organization for Industrial Development (UNIDO), the government of Antioquia, the National University and the University of British Columbia. The project sought to reduce the use and loss of mercury in artisanal mining in Antioquia. By 2013 the project was able to reduce the average of mercury used by 43% and mercury loss by 63%, compared to 2010 levels (García Veiga, Cordy, Suescún, Molina, & Roeser, 2015)

54 To this end see: Cordy, et al., 2011; García et.al, 2015; IIAP, 2014 and Olivero Verbel, 2014

55 The country does not have detailed information on the number of mines, processing centers and production plants to allow for a more rigorous calculation on the use of mercury in artisanal gold mining and small and medium-scale
<table>
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<th>Difficulties in the timely addressing of risks</th>
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<tr>
<td>The impossibility of assigning responsibilities, within a monitoring scheme which focuses on the punishment, dilutes the responsibility of the State to protect the rights. For example, an official of the CAR mentioned that mercury is not measured because it is not known how long it has been there, and because they cannot identify the source, they cannot issue a punishment. Other officials also stress the importance of studies and protocols to protect the health of the communities, as mentioned by an official in Bogota: &quot;There is no baseline on the use of mercury and cyanide. Their impacts on health can be seen, yet protocols for mercury poisoning are required, as well as medical training.&quot;</td>
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<th>Obstacles for improving productive practices</th>
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<tr>
<td>There are two factors that hinder the development of organizations which seek to develop best practices in terms of environmental matters:</td>
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<tr>
<td>❖ Mining policy does not provide a comprehensive response to the obstacles faced by miners in the adoption of cleaner methods.</td>
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<tr>
<td>❖ When small miners manage to overcome obstacles to meet environmental standards, other policy elements (not always in the field of mining policy) intervene to hinder these initiatives.</td>
</tr>
<tr>
<td>For example, the case of La Llanada, Nariño, illustrates circumstances where the access to mining titles, and the strengths of the community’s social fabric created association schemes that allowed the setting up of mercury-free sustainable processing plant. However, even this successful enterprise was not obstacle-free. On the one hand, regulations do not provide for the existence of associative schemes, for example, health insurance requirements that do not recognize the mine workers as employees. In addition, the lack of alignment between the mining community’s interests, and the criteria for allocating land use, has generated uncertainty regarding the plans to continue the operation of the processing plant.</td>
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mining. Collecting this information is complex given the particularities of the sector, such as informality, its nomadic nature (particularly in the case of alluvial MAAPE which can be developed for very short periods, and move from one area to another), its location in areas where there is armed conflict, to name a few; coupled with the lack of capacity by the State to carry out these tasks (PNUMA, MADS, 2012 p.26).
1. Cross-sectoral response to cumulative environmental impact management

Managing cumulative impacts is one of the biggest challenges for the protection of the right to a healthy environment, because of its multi-causal nature, the time horizon in which they occur and the extent of their effects on the natural environment and the communities with which they interact. Following are specific actions aimed at strengthening the protective action of the State, so as to prevent, mitigate and compensate for these types of impacts.

1.1 The Ministry of Mines and Energy (MME), the Ministry of Environment, Housing and Territorial Development (MADS) and other state institutions with responsibilities in this area should:

1.1.1 Work together on improving the National Territorial Planning System and incorporating into it the National Mining Management Plan in order to redefine the areas available for mining interests based on water basin calling.

1.1.2 Define conditions to assess the feasibility of mining activities in the area in conjunction with territory governments and based on Departmental Territorial Planning and Water Basin Zoning Plans. These assessments should be carried out before granting mining interests and/or issuing environmental licenses.

1.1.3 Define the guidelines for citizen participation in the preparation of the Environmental Impact Assessment of the undertakings, in order for them to be led by the regional government and environmental authorities, under the supervision of the Ministry of Mines and Energy, the ANLA and the Ombudsman as agencies which guarantee the construction of the environmental baseline, proper understanding of the impacts and participation in the definition of appropriate management measures.

1.1.4 Define protocols for the control of individual interests during the participatory process for formulating management measures based on the collegiate baseline diagnostic.

1.2 The MADS and the ANLA must ensure that the licensing process takes into account a comprehensive study on the availability and quality of water for all users of the area of influence of the mining project, and includes the limits for individual air, water and soil pollutants in air, water and soil stipulated in current regulations in any monitoring program, so that both the cumulative impacts of mining activities and other factors which generate synergistic and cumulative impacts can be observed.

1.3 The MADS should establish a program to develop skills, knowledge and research in the restoration of ecosystems affected by mining. In addition, it should establish protocols to monitor the reparation and restoration processes of areas included in the environmental management plans.
1.4 The MADS should review and restructure the environmental penalty system (Act 1333 of 2009) to include the following aspects:

1.4.1 Establish quality and compliance policies for the EIAs regarding the commitments agreed to as part of the Environmental Licenses Management Plans, so that companies can ensure the implementation of their undertakings in an environmentally and socially sustainable manner.

1.4.2 Give greater importance to actions aimed toward the compensation and reparation of impacts and remediation of environmental rights and not toward fines and criminal penalties. For example, establishing mechanisms for the suspension of activities which cause the impacts and immediate reparation of the damage as an initial response in order to prevent the damage from extending while the corresponding investigation process begins.

1.4.3 Establish mechanisms in order for fines and penalties to become effective measures in addressing the impact and reparation of the affected area, so that under no circumstances can the penalty be interpreted as a permission to generate new affectations.

1.4.4 The penalty should be dissuasive and the direct beneficiaries should be the social and environmental environments which were affected.

1.5 The MADS, in coordination with the National Environmental System (SINA) authorities must devise mechanisms for the direct management of the restoration processes of the ecosystems affected by mining activities, when owners fail to comply with current regulatory requirements or commitments set out in the environmental licenses. To this end we suggest that experiences such as the superfunds are analyzed and modified. Superfunds help the US Environmental Protection Agency (EPA) to restore and clean orphan areas, while allowing it to search for and identify the parties responsible for the damage, and ensuring their cooperation. This cooperation can be direct, by taking on the cleanup process, or indirect by reimbursing those who have been delegated to perform it. Such instruments turn the penalty into effective reparation. The policies required as part of the the concession processes should include the coverage of these contingencies.

1.5.1 We suggest that these procedures provide for management mechanisms in the case of impacts caused by criminal mining.

1.5.2 The administration of this management mechanism can be coordinated between the SINA and the National Unit for Disaster Risk Management (UNGRD).

1.6 The Ministry of Health and Social Protection, in conjunction with the MME must develop the necessary actions to implement the strategies stipulated in the occupational health and public health policies, and develop baseline epidemiological studies for each mining environment. Moreover, these two ministries, together with the SINA, must coordinate programs to monitor environmental risks in the different regions. Monitoring should focus on protecting the health of the local population. The results of the epidemiological studies should be widely communicated ensuring their adequate understanding by the communities, local authorities and mining production units.

1.7 The National Planning Department (DNP) in conjunction with the Ministry of Mines and the Ministry for the Environment should develop tools to guarantee greater visibility of the
cumulative impacts. The implementation of these instruments should help improve knowledge on the combined impacts of various economic activities and include said information in the formulation and updating of land use and territorial development plans.

1.8 The MADS must define enforcement protocols for regulatory gradation and *rigor subsidiario*\(^{56}\) in the assessment, prevention and resolution of territorial planning conflicts; delegating the regional environmental authorities with the ability to be proactive in the identification and prevention of conflicts. Accordingly, the MME must adopt a preventive approach to the compliance of environmental standards regarding processes for the certification of mining interests, with the technical support of other authorities. The first line of prevention, supervision and control should be the Ministry of Mines, as the agency responsible for the integrity (social and environmental sustainability) of mining undertakings. To this effect, the Ministry should implement a training program for local authorities to identify potential land use issues and harmonize the mining activities with the regulations proper to the territory.

1.9 The *rigor subsidiario* principle should be developed to ensure that the interventions by the CAR in the evaluation of the EIA and PMA are governed by applicable standards according to the characteristics, vulnerabilities and productive capacity of the macro basins that make up the country.

### 2. The Impact Assessment and Socio-Environmental Management Plan as Planning and Management Tools

Environmental Impact Assessments and their corresponding management plans are essential tools for the proper planning of policies, undertakings, works and activities. They are also a key tool for small and medium-scale miners to plan their operation and use them as management tools. These must act as participatory, articulating and binding instruments for the prevention of possible impacts and the transparent and inclusive management of environmental corporate responsibilities. Environmental license must be strengthened as a tool for the ANLA and the CAR to monitor and supervise companies in order to verify that companies have included their EMPs and the commitments stipulated in the environmental licenses in auditable quality assurance management systems. In this regard we recommend the following:

2.1 Reverse engineer the system and procedures for developing environmental impact studies: currently the EIAs are rigid academic and scientific documents whose evaluation is made based on the quality of their content and not on their functionality in participatory planning. The construction of such documents has created difficulties in the gathering of information, not only from companies (especially small and medium-scale mining), but also from scientific research organizations and the academic community.

\(^{56}\) *Translator note:* *Rigor subsidiario* is a special power given to decentralized entities used to modify the current environmental legislation in defense of the local ecosystems. It is an administrative power based on the decentralization of autonomy that allows for a more rigorous local regulation than the national regulation.
2.2 Through the introduction of lighter EIA based on the collective construction of regional knowledge, which involve the company, indigenous communities, rural communities, local authorities and regional environmental authorities, include the bases for monitoring the operation and environmental compliance of the project into the environmental licenses and establish oversight and auditing programs as well as the presentation of management reports.

2.3 Include the information obtained in the EIA baseline studies, coupled with periodic follow-up reports and monitoring of SIAC databases, in order to maintain an integrated data system on land and resource use to enable strategic decision-making regarding the feasibility of additional programs for extractive, manufacturing or infrastructure development.

2.4 Regardless of the requirement or not of an environmental license as a legal instrument, any development policy, management plan and project must carry out an environmental impact study to use as a planning tool and for its harmonization with environmental and social callings.

3. Strengthening management systems for effective access to information

3.1 The constitutional and legal requirement to access public interest information should be made effective in order for mining projects and companies, authorities and interested communities to gain access to the information contained in Territorial Planning management, water basin development plans, licensing processes and monitoring of extractive projects. To this end, electronical access is required, as well as the elimination of red tape and the expansion of the scope of the Environmental Information System of Colombia (SIAC).

3.2 The National Statistics Department (DANE), the Agustin Codazzi Geographic Institute (IGAC) and the IDEAM should formulate a strategy to unify the national geographic information system, to ensure clear and easily accessible information for users, and develop protocols and guidelines for all environmental studies entered into this information system, so as to contribute to the management of cumulative environmental impacts, making it public and transparent, and allowing it to include baseline studies for the projects in order to make informed decisions about mining interest qualifications and / or licensing.

3.3 The MADS, in conjunction with the SINA, must prepare regular reports on the transformations of ecosystem service capabilities, in order to use them as a preferred benchmark in environmental impact assessments and for the continuous updating of PNOM by the ANM regarding the ranking of mining scenarios, with the help of the territories.
4. Building trust based on transparent information

In order to strengthen the legitimacy and transparency of the production of baseline information and the participatory analysis of environmental impacts, we suggest that the conflict of interest risk that arises when the petitioner pays the ANLA for the environmental impact assessment service and contracts the preparation of compliance reports needs to be acknowledged. To this end, the following should be taken into consideration:

4.1 Replace the payment for assessment services with a quality assurance fund for the EIA, which will help finance citizen participation actions in the construction of the baseline, impact assessment and formulation of the EMP, under the supervision of the CAR and the ANLA.

4.2 The ANLA should modify the assessment methodology for the EIAs, in an effort for it to evolve from being an assessment process with the technical severity of a scientific-academic paper to becoming a practical and dynamic process that, by way of citizen participation, allows for the joint construction of applicable, realistic and differentiated monitoring processes.

4.3 Establish unified methodologies for the production, storage and use of baseline information that can be immediately entered into the Environmental Information System (see section 3), the POMCAs and Territorial Planning, in order to add value to prior environmental information.

4.4 Implement programs that incorporate education and communication activities that promote the responsible use of this information as a means to empower local communities and institutions in the participatory development of Territorial Planning, POMCAs and their regular updates.
5. Adopting priority actions to protect the right to access water

5.1 By using the Plan for the Use and Management of Water Basins (POMCA) as an essential management tool, decision-making processes regarding permits, licenses and authorizations for the use and dumping of water in mining undertakings should be geared towards the protection of the community’s right to access water. We recommend that the ANLA and the CAR explicitly include criteria ensuring that communities living around the mining undertakings have access to clean, safe and healthy water.

5.2 The SINA, under the leadership of the IDEAM, should establish comprehensive mechanisms to assess the availability of water resources and adopt allocation criteria and limits on the use of water resources depending on the season or the prevailing cyclical phenomena.

5.3 In areas of jurisdiction where Corporations that have not yet developed their POMCA, 100% of the forced investment of all undertakings, regardless of the requirement for environmental license, shall be allocated to its preparation (Paragraph of Article 43 of Law 99 of 1993). In areas that already have POMCAs, the investment should be applied according to the management measures indicated therein.

6. Promoting good environmental practices according to the different types of mining

Successful examples of organizational processes in communities in various departments highlight the potential for policies that promote partnership schemes aimed at improving formalization processes and continuous improvement. The State, in conjunction with the MME, ANM and SINA, must establish a chain of positive incentives that facilitate this improvement through the adoption of measures such as:

6.1 Establishing mechanisms for free access to reliable environmental information (IGAC, IDEAM, DANE, SIAC).

6.2 Establishing financial support mechanisms for the associative implementation of clean technologies that lead to improved operating processes and mineral processing.

6.3 The participation of the CAR in mining scenarios must be continuous, and follow a preventive approach, implemented in conjunction with SINA and local authorities. The support offered to the communities should include actions to improve environmental management of impacts generated in multiple activities, other than mining. In addition,
these interventions should highlight the importance of changing attitudes and behaviors and the need for continuous improvement to fit the conditions of small-scale projects.

6.4 The Ministry for the Environment, the ANLA and the CARs must implement a support services program to enable the obtainment of licenses, stipulating requirements according to the complexity of each mining project. The focus of these services should be the promotion of continuous improvement. Actions should include the development of information resources and planning of a collective interest in order for small and medium-scale miners to meet environmental requirements.

7. **Management geared toward the mineral value chain**

7.1 The State must implement effective and efficient programs for the control of imports, manufacturing and trade of mining products that can be used inappropriately. This recommendation is complemented by the suggestions included in the Chapter on Safety regarding controls to the input market.

7.2 In addition, strict controls should be established for the import and transport of equipment and machinery that can be used in criminal mining operations.

7.3 Finally, a control chain for the marketing of minerals produced and technical fair trade standards must be established in order to facilitate export to countries that require compliance.

8. **Cross-sectoral management to control the use of mercury**

In Colombia most miners who are involved in gold mining are aware of the toxic effects of mercury; therefore the response cannot focus on informing on the risks associated to the use of this substance. On the contrary, efforts that require cross-sectoral coordination should be directed toward other factors: the control of mercury trade and accompanying actions and the access to loans for technological upgrading.
9. Improving transparency and equity in participation and public awareness proceedings

9.1 The Ministry of Mines, the Ministry for the Environment and the ANLA should encourage the creation of transparent, inclusive and symmetric opportunities for participation in the access and use of information during each of the mining stages, which involve the ANM, relevant environmental authorities, local authorities, the project owner and the community.

9.2 Extractive companies and state institutions must take the necessary actions to ensure that within the context of the preparation of environmental impact studies, participatory processes meet transparency and inclusion requirements, in a holistic manner and at every stage (starting from policy decisions, mining interest, land use policies and licensing). Companies should strengthen practices that ensure transparency in the processes for creating public awareness of the environmental impacts and accountability. The dialogue between companies, communities and institutions should enable companies to understand the environment and cultural, social, political and economic traits. In turn, they should allow communities to identify and participate in decisions regarding how the impacts are managed, according to their vulnerabilities. The Ministry of Mines, the UPME and ANM must implement a training program for building capabilities in mining scenarios to enable communities in:
   - Understanding relevant policies in the mining sector
   - Identifying and assessing environmental impacts in mining undertakings.
   - Training citizen oversight committees

9.3 In order to strengthen the role of the Public Ministry as guarantor for transparency and adequacy in the public awareness proceedings, the processes and results that need to be visible must be defined, in order to validate institutional or corporate actions regarding the community.

9.4 The meeting of national and regional authorities with the communities should not be subject to the existence of mining undertakings. We recommend that the environmental authorities, mining and regional governments establish direct, autonomous and permanent relationship programs with the mining scenarios, regardless of project development and according to Territorial Planning and the POMCAs.

9.5 The ANLA, in conjunction with the CAR should implement a Complaint System that complements the existing citizen participation resources (public hearings, oversight committees and / or third party speakers). The system must adhere to the attributes of the remedy mechanisms outlined in the UN Guiding Principles (Principle 31).
10. **Adopting effective institutional and cross-sectoral coordination mechanisms**

10.1 In developing the cross-sectoral management model, we recommend the reactivation of the National Environmental Council and the Technical Advisory Council for Environmental Policy (included under Law 99 of 1993) and the creation of work groups to address environmental aspects of the extractive sector in the territorial planning councils.

10.2 In order to ensure timely action by the authorities and mining companies and projects, the environmental management and territorial planning policy of the territorial units should precede the mining interest and licensing processes. For example, in strategic mining areas, the productive use and capacity of the soil should be compared according to the available territorial environmental information. This requires strengthening a comprehensive vision of the environmental policy including the surface, subsurface and sectoral activities performed in the territories, including mining and agriculture.

11. **Adapting the scenario presented by the COP 21 Agreement**

In order to ensure a timely response to the consequences of the environmental justice agenda (Paris 2015 cop21), the DNP in conjunction with the Ministry of Mines and Energy and the Ministry for the Environment, Housing and Territorial Development must conduct an assessment on the effects of substituting coal with other energy sources on the domestic and regional economies. This analysis should provide inputs to generate a proactive mitigation strategy and build national and regional plans that respond to changes in the entry or exit of coal mining investors.


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CHALLENGES FOR THE PROVISION AND ACCESS TO SECURITY IN MINING SCENARIOS
Security comprises a set of actions aimed at protecting individuals from third parties’ threats, and requires the legitimate use of force, either as a deterrent or to be used as appropriate and proportionately (see as example Naciones Unidas, 2008). Infringements on the enjoyment and exercise of the right to life, liberty and security are immediately linked to effects on other rights. For example, if a person cannot travel to their place of work or study due to limitations on their freedom of movement or transit, they are thus unable to exercise their respective right to work or education.

As detailed in the diagnostic in the subsequent sections, the scenarios where mining takes place present certain special characteristics, which comprise a greater exposure to violence, an intensity of the internal armed conflict and common crime. Mining scenarios are characterized, for example, for presenting a higher incidence of homicides, personal and commercial robberies, and forced internal displacement associated with conflict, extortion and negative effects due to landmines. This weakness is compounded by the advancement of criminal mining, which is accompanied by the consolidation of territorial control by illegal armed groups and organized crime in regions where mineral exploitation is performed. Likewise, the close connection between criminal mining and other illegal economies such as drug trafficking, extortion, money laundering and kidnapping (OECD, 2016) represent challenges to State action, the last lacking in certain situations the policy instruments and institutions capable of tackling crime. Moreover, in territories where State presence is low, the violent nature of some illegal groups facilitates the effective replacement of State services. There, it is the illegal groups who are the leading providers of security and justice.

When the mining activity conducted is large-scale, the companies foresee the possible exposure of their projects due to security effects, and thus reach agreements with the Ministry of National Defense to complement the available security in the project’s area of influence. The companies contribute resources to these agreements that are intended to cover, for example, logistics activities and support for troops. These agreements are intended to protect the States’ strategic assets, such as subsurface minerals, among other aspects. This situation poses a dilemma for the State, where it must weigh the need for those resources to expand its coverage with the loss of legitimacy of its institutions within the territory. This is the result, on the one hand, of negative effects on rights arising from the presence of the police in some areas, and on the other, of the civil perception of security as a private service rather than a right. Actually, in legal terms, the Constitutional Court has established a framework for comprehending the right to security by interpreting this concept in three different dimensions: “(i) as a constitutional principle, (ii) as a collective right and (iii) as a fundamental right.”(Corte Constitucional, 2014).
Accordingly, this chapter addresses the issues of security in mining scenarios from three perspectives. First, it analyzes the public policy framework and its role in the provision of instruments for the protection of rights. Second, it appraises how the action or omission of the State facilitates infringements and negative effects on the exercise of rights based on existing policies. Finally, it analyzes the implications that might arise from the agreements resolved between the State and the companies, and those weaknesses in their structure that increase the risk of rights violations.

### PRINCIPAL SITUATIONS AND IMPACTS

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<tr>
<th>ALTERATIONS TO RIGHTS</th>
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<tbody>
<tr>
<td>In mining scenarios, different criminal economies coalesce, such as drug trafficking, criminal mining, money laundering, extortion and kidnapping, among others.</td>
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<tr>
<td>➢ Right to security</td>
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<td>The coalescing of criminal economies results in a greater presence of illegal armed groups and organized crime that endanger the lives and liberties of the communities.</td>
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<td>➢ Right to security</td>
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<td>➢ Right to freedom of movement and right to remain</td>
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<tr>
<td>The security risks are manifested in various manners. In particular, a higher incidence of homicides, a higher incidence of forced displacement due to internal conflict and a higher number of kidnapping and landmine victims can be observed in mining scenarios.</td>
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<tr>
<td>➢ Right to security</td>
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<tr>
<td>➢ Right to life</td>
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<td>➢ Right to freedom of movement</td>
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<td>In certain contexts, the combination of insufficient law enforcement to deal with crime and a high informality favors the lack of protection of private property. In particular, mining scenarios exhibit a higher incidence of theft to individuals, auto theft and commercial theft.</td>
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<td>➢ Right to security</td>
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1. **PUBLIC POLICY FOR THE PROTECTION OF THE RIGHT TO LIFE, LIBERTY AND SECURITY**

The issue of security in mining contexts involves four public policy dimensions: i) general aspects of security policy and its implications on the legitimacy of the State; ii) aspects related to public security, defense and sovereignty; iii) aspects related to citizen security; and iv) aspects related to the presence of military forces in mining enclaves, as well as the role they play in this array of agreements between the companies and the Colombian State. This section elaborates on each of these aspects, undertaking an assessment of the main policy instruments available, and their implications in the exercise and enjoyment of human rights within mining contexts.

Initially, as the general framework regarding public policies related to security aspects is the Comprehensive Security and Defense Policy for Prosperity (2011) that determines, among other aspects, the nature of the interventions of public forces regarding matters of defense and security. In particular, this policy characterizes three different behaviors in accordance with the different enemies identified: disjointed actions when the enemy is the FARC, the ELN, emergent criminal gangs or drug trafficking; consolidation actions when the enemy is drug trafficking, militias or criminal networks; and citizen security actions when the enemy is common crime, terrorism or drug trafficking. Mining contexts are characterized by the presence of all the enumerated enemies, and in this regard, they are the object of disarticulation, consolidation, and citizen security actions by public forces. This implies, for example, the need to simultaneously coordinate the actions of military forces to disarticulate criminal gangs with those of the police in the fight against common crime.

This situation poses a challenge of institutional coordination as well as a number of potential risks to the legitimacy of the State in mining contexts for two principal reasons. On the one hand, mining in Colombia takes place in territories where State presence is fragile. On the other, because of its missionary nature, in many of these territories the military and police forces are the only State institutions with a presence. In territories where the main link between the State and the citizens is accomplished through public forces, the legitimacy of their actions determines the legitimacy of the State. If public forces participated in acts of extorting mining producers, as evidenced by the 2013 report of the Comptroller General’s Office of the Republic of Colombia, or in abuse on civilians in mining areas, as in the cases of the so-called “False Positives”, the legitimacy State is called into question, and all links built on public confidence in the institutions are broken. The relevant point

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1 Further information on the presence of the State can be found in the chapter **Sector. Territory**.
2 Several cases have already been resolved and received convictions by the Colombian justice system, as documented in the various media. See, for example, [http://www.elcolombiano.com[colombia/coronel-gonzalez-del-rio-condenado-por-falsos-positivos-GY3463459](http://www.elcolombiano.com[colombia/coronel-gonzalez-del-rio-condenado-por-falsos-positivos-GY3463459)], or [http://www.eltiempo.com/noticias/condena-de-militares-por-falsos-positivos](http://www.eltiempo.com/noticias/condena-de-militares-por-falsos-positivos).
on this subject derives from understanding that the legitimacy of the State in the territories is closely related to the general public having the possibility of recourse to mechanisms for the protection of rights as well as the possibilities to access redress.

Second, by reason of the internal armed conflict currently underway in Colombia, it highlights public safety issues involving the defense of sovereignty within the territory. This dimension is facilitated by the relationship between criminal mining and the armed conflict, the relationship between criminal mining and drug trafficking, and the relationship between criminal mining and other illegal economies such as money laundering, kidnapping and extortion (these associations are documented in OECD, 2016). A crosscutting factor between these relationships is the territorial control required by illegal armed groups in order to take part in these economies, with its consequent effects on forced displacement and other manifestations of violence. This relationship is detailed in the following section of this chapter. A series of public policies coalesce here. For example, the National Development Plan 2014-2018 includes, among its crosscutting security and defense strategies, actions intended to "erode the armed capability of the armed groups outside the law" and "fight against criminal mining.” In addition, the National Police, within the framework of the National Citizen Security and Coexistence Policy3, has proposed 16 operational strategies focused towards the consolidation of territorial control and the fight against organized crime (Policía Nacional de Colombia, 2012). In particular, comprehensive strategies against drug trafficking, illegal mining and strengthening rural safety are offered. Finally, the State has a National Policy against Money Laundering and for combating the Financing of Terrorism (2013), which implies understanding both phenomena beyond drug trafficking. Among the objectives of this policy, the strengthening of monitoring schemes for specific sectors of the economy, such as mining, that present particular opportunities for money laundering and the illegal procurement of income are emphasized.

These policies pose an important advance in the development of instruments for combating criminal mining in an internal armed conflict context. In particular, they evidence the difficulties and their relationship with organized crime and informal economies, as well as their consequences on political, social, environmental and cultural aspects of mining scenarios. However, as appreciated in this diagnostic, a vacuum is evidenced in the public policy framework, with possible consequences for the effective enjoyment and exercise of human rights. In particular, beyond the relationship between criminal mining and money laundering detailed in the strategies of the National Police (Policía Nacional, 2012), there is a lack of implemented strategies aimed at disjuncting the patterns of growth and consolidation of other predominant criminal economies found in mining contexts and in instances directly related to criminal mining, such as drug trafficking, extortion, or informal economies associated with cash, like speculation and illegal gambling. In turn, controls on the sale of illegally mined gold have proved to be insufficient, and do not provide the State adequate tools for its control. Evidence of this is the proliferation of criminal mining in some territories in the country, as detailed in the next section. This sets the precedent of a deficit in public policy instruments available to protect the life and

3 Citizen coexistence refers to regulations for good citizen habits to prevent conflict and to promote harmony.
Mining contexts generate dynamics that incur a potential deterioration of public safety conditions, irrespective of whatever happens with the armed conflict, drug trafficking and other illegal economies in these territories. This is facilitated by changes in the economic and population dynamics of the region, and the effective absence of a police force in rural scenarios. This is due particularly to the potential increase in the income of these territories, greater cash flows, and a reduced availability of security forces, especially of police, in relation to the number of people living in the mining areas. At this point, although the National Citizen Security and Coexistence Policy seeks the protection of citizens in any area of the territory, it lacks the instruments to prioritize actions in mining contexts, resulting in an increased vulnerability to incidents of common crime that may there occur. In this sense, once again, the policy falls short of the instruments provided by public forces to effectively protect the right to life, liberty and security of the individuals.

Lastly, there are the aspects related to the presence of military forces in mining enclaves, particularly in relation to the partaking of collaboration, cooperation and coordination agreements between the mining companies and the Ministry of National Defense. These agreements are contained within the Manual for Collaboration, Cooperation and Coordination of Agreements for Defense and Security of the Ministry of National Defense and it is Executive Units (Manual de Convenios, 2014). In general, these agreements are designed to facilitate the exchange of supports between public forces and a private company. The support from public forces usually translates to the deployment of troops in a given territory, and the support from private enterprise comprises funds raised through internal reserves of one of the armed forces to finance, for example, food, fuel and other goods or services that are not directly war resources like ammunition or weapons.

The nature and regulatory framework of these agreements displays at least two vacuums that directly limit or infringe upon the exercise and enjoyment of rights. On the one hand, in the Agreements Manual Chapter II, “Decision-making, Monitoring and Control Stages”, ascribes the Advisory Committee of the Ministry of National Defense the function of providing recommendations regarding the subscription, execution, modification and termination of agreements; to the General Command of the Armed Forces is ascribed the function of verifying the conceptualization and execution of the agreements; and the Minister of Defense its subscription. An obvious vacuum corresponds to the participation of the citizens that could be directly or indirectly affected by the entering into or the

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4 This situation is detailed in the specialized CREER document “Conflict, the building of peace and mining activity in Colombia”. Available at www.creer-ihrb.org/wiki-eisi/
implementation of the agreement, and whose actions, disagreements or grievances would have to follow the regular fiscal, disciplinary, and criminal control channels in Colombia, without recourse to any mechanism that, given the extraordinary nature of these agreements, would facilitate their citizen control. On the other hand, the performance of the agreements poses an additional questioning regarding the legitimacy of the State in the affected territories. This situation is compounded by the lack of citizen participation in the entering into or performance of the agreements. Expressly, if a Colombian citizen observes, to his understanding, that the presence of public forces in their territory is exclusively facilitated by the celebration of an agreement between a private company and the State, this citizen’s trust in the institutions may be impaired, with the consequent limitations on the exercise of rights this entails.

2. THE PERFORMANCE OF THE STATE WITHIN THE FRAMEWORK OF PUBLIC SECURITY AND CITIZENRY SECURITY

Within the policy framework described above, the State has limited possibilities for action. In this regard, mining scenarios have been characterized by a structural situation of insecurity that, as noted in this section, is distinguished by both a high incidence of common crime as well as factors associated with internal armed conflict and organized crime. Generalized crime and widespread violence have direct negative effects on the right to life, to liberty and to security of individuals, as well as to other rights that are intrinsically affected when life is not protected, such as the rights to education, health or a dignified life. This section reviews: i) the generalization of common crime acts in mining contexts; ii) aspects related to territorial control and an increased incidence of internal armed conflict in mining scenarios; iii) the incidence of criminal mining and its relation to drug trafficking as a mechanism that exacerbates the impairment of security; and iv) a discussion is established and a policy based conceptual framework focused on rights is outlined for the fight against insecurity.

2.1 COMMON CRIME IN MINING SCENARIOS

As detailed in the chapter related to migrations and the right to remain, the quantitative analysis performed in this study suggests a sustained impairment of the different insecurity measurements within mining scenarios. In particular, in the gold and coal mining municipalities, it is found that the homicide rate is significantly higher than in the comparable municipalities. In municipalities with gold and coal mining, the rates of commercial theft, theft to individuals and auto theft are deteriorating. The informality in the economies of mining scenarios is one of the elements that facilitates the development of criminal activities. Other factors such as low ratios of those

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5 For further details regarding these figures, see the CREER document, “Situations observed in decisive mining scenarios for the exercise of the right to life, freedom and security” available at www.creer-ihrb.org.
banking services that are predominant in Colombia’s rural areas (Banca de las Oportunidades, 2014), are crucial for the likelihood of incidence of crimes such as those against property.

This situation of insecurity limits the exercise of rights among the citizens living in mining scenarios. For example, mobility at nighttime may be limited, which in turn may have an impact on the right to work or to health if they were unable to meet work obligations or health care needs. Several academic studies have documented this relationship. Dell (2011) found that the incidence of violence might have consequences such as a decrease in the involvement of women in the labor market, as well as a general income decrease for formal jobs. Meanwhile, Robles et al. (2013) found that the conditions of insecurity and generalized crime bring about a decrease in economic activities. In addition to the immediate infringement on the exercise of the right to work, the families of those who are unemployed may end up restricted in regards to the exercise of their right to education or health.  

2.2 TERRITORIAL CONTROL AND ARMED CONFLICT IN MINING SCENARIOS

The conditions of insecurity and of lawful protection by the State are limited when territorial control passes thru illegal armed groups and organized crime. In this regard, the quantitative analysis conducted for this study displays an increased presence of armed groups in the mining municipalities relative to the comparison group for gold and coal inside the country. The municipalities that are gold producers have a greater presence of the ELN, FARC and the AUC. Principally, while 16% of the control municipalities for gold reported a presence of the ELN, 32% of the producing municipalities reported said presence. In addition, while 35% of the control municipalities for gold reported a presence of the FARC, among producers the reported presence of this group was in 42% of the municipalities. Finally, while 12% of the control municipalities for gold reported the presence of the AUC, among producers 21% of these municipalities reported said presence. The following figures illustrate the increased presence of the ELN, FARC and the AUC in municipalities with gold mining. For their part, the coal producing municipalities located in the interior of the country have a higher presence of the FARC. While 27% of the control municipalities reported the presence of the FARC, 43% of the collection of municipalities with greater coal production reported the presence of this armed group.

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6 For a more detailed analysis on the direct and indirect costs of crime, see Ortega and Sanguinetti (2014).
Proportion of municipalities with ELN presence

* Comparison of sample mining and non-mining municipalities

Source: Based on data from CESED – Universidad de los Andes and the National Ministry of Defense

Proportion of municipalities with FARC presence

* Comparison of sample mining and non-mining municipalities

Source: Based on data from CESED – Universidad de los Andes and the National Ministry of Defense

Proportion of municipalities with AUC presence

* Comparison of sample mining and non-mining municipalities

Source: Based on data from CESED – Universidad de los Andes and the National Ministry of Defense
Territorial control consolidates to the extent that these groups supersede State functions in the territory. In particular, they regulate economic activity, charge a form of tax and impose social norms, in most cases thru violence, which leads to a direct infringement of the rights to security and freedom. The mechanisms in which they rely include threats, homicides, displacements, withholdings and dispossessions towards those who oppose their territorial control.  

Territorial control by illegal armed groups has generated an increased incidence of internal armed conflict in mining municipalities. Particularly, in the quantitative analysis conducted for this study, in the comparison of gold producing municipalities against their control group of municipalities, the results suggest a greater number of people displaced by the ELN (about tenfold) than those displaced by the FARC (about fivefold), a greater number of those kidnapped by the ELN (about double), a higher number of false checkpoints by the ELN (about threefold), a higher number of false checkpoints by the FARC (1.3 times more), a greater number of civilians injured by landmines (around fourfold), a greater number of massacres committed (40% more), and a greater presence of illicit crops (around double) relative to the comparison group of municipalities. Similarly, municipalities with higher coal production in the interior of the country have a higher number of victims kidnapped by the ELN (70%) and the FARC (30%), a higher number of false checkpoints by FARC (1.3 times more) and a greater number of civilians wounded by landmines (threefold), compared to their control group. In fact, other studies have documented the link between criminal mining and various illegal economies. It is estimated that the income obtained by the FARC from extorting miners in Antioquia may be up to $ 2 million USD per month. (Giraldo and Muñoz, 2012; McDermott, 2013).

The problematics of territorial control take on greater relevance in the face of the eventual signing of a peace agreement with the FARC, as well as the possibility in the medium term of an agreement with the ELN. The situation in mining scenarios with the presence of these groups will be subject to the stakeholder that assumes its place in the territorial control. In the case where this is the State, its presence will facilitate the building of capabilities in the territories. On the contrary, if the territorial control is taken over by other illegal armed groups and organized crime, the mining scenarios will potentially face deterioration within the post-conflict context.

The heightened incidence of conflict has profound implications on the possibilities for the enjoyment and exercise of rights by the communities. This also has long-term consequences, for example, it has been documented that the areas affected by the conflict suffer an impairment of their production structure due to the exit of companies (Camacho et al. 2014). This generates direct negative effects on the possibilities of exercising the right to work. Other studies have found that the incidence of violence

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7 As previously noted, the threat from illegal groups to the rule of law is often more credible than that imposed by formal institutions. For a more comprehensive context, see the specialized document “Conflict, constructing peace and mining activity in Colombia.” Available at www.creer-ihrb.org/wiki-eisi/

8 For a broader discussion about the characteristics of forced displacement due to internal conflict in mining scenarios, see the CREER document “Situations recorded in decisive mining scenarios for the exercise in the right to property, ethno-territorial rights and consult.” Available at www.creer-ihrb.org/wiki-eisi/
generates mental disorders in the displaced population, which leads them to a situation of chronic poverty (Moya, 2014). This situation results in limitations on the exercise of the rights to work, a dignified life and education, among others. Finally, Pshisva and Suarez (2010) found that the incidence of kidnappings limits investment by the private sector, which in turn limits the generation of jobs and delivers lower tax revenues. This limits, for example, the capacity to invest in healthcare, education or public services by the municipal administrations.

It is important to note that both the increase of negative effects due to common crime, as well as the increased incidence of conflict and greater territorial control by illegal armed groups and organized crime is observed in small, medium and large-scale mining scenarios. However, it is important to highlight that substantial differences were observed in the fieldwork between the different contexts where small and medium-scale mining is carried out. In some scenarios, no strong influence of illegal armed groups was present, as in the case of coal and construction material mines in Cundinamarca and Boyacá. In others, primarily in those associated with gold mining, these groups exert some degree of territorial control and act with different levels of intensity, as in Antioquia, Cauca, Nariño, Chocó, as well as southern Córdoba and southern Bolivar.

2.3 CRIMINAL MINING

Criminal mining plays an important role in the deterioration of security in mining contexts. The disposition of the soil in some mining regions of the country is defined de facto by other stakeholders. In these contexts, other factors tend to coalesce, such as the presence of the armed groups already referenced, minimal State presence and the absence of economic alternatives for the population, which limits the possibilities of the communities to oppose territorial transformations influenced by criminal mining practices. In particular, the relationship between groups like the FARC, the ELN and criminal gangs with the development of criminal gold mining has been documented (OECD, 2016). The following figure, taken from OECD (2016), describes these relationships.

**Relationship between illegal armed groups, criminal organizations, and the gold extraction sector**

Source: OCDE (2016)
This criminal mining develops without titles, without the intention of legalization, and without consideration to the negative externalities, it generates on its surroundings. For example, it has a significant impact on the environment because of the manner in which they operate and its uncontrolled use of inputs such as mercury⁹. In turn, the impossibility of the State to control the sale of gold and provide traceability to its source facilitates their existence. OECD (2016) provides a conceptual description of criminal gold mining, which is characterized by having no title or environmental license, and additionally differentiates it from informal mining, which generally lacks a title, but is destined to abide by the legislation. The following figure, taken from OECD (2016), illustrates the position of criminal mining amongst the different types of mining.

In some regions with low State presence in the departments of Antioquia, Chocó, Cauca and Nariño, the speculative economic activities are intensified to the detriment of the rights of the most vulnerable local population. This "facilitates the presence of armed and unarmed stakeholders who wield illegitimate power and social control in the territory and that exacerbate the bellicose expressions of the social and armed conflict in areas surrounding the mining complex." (Contraloría General de la República, 2013b, p. 59)

This type of dynamics are associated not only to mining, but to "all those intensive interventions, augmented and profound, performed in the territories with the purpose of extracting and disputing the riches, especially those originating from non-renewable natural resources." (Contraloría General de la República, 2013b, p. 59)

⁹ Further information on the environmental impacts of illegal mining can be found in the chapter Environment
According to research by The Institute for Studies for Development and Peace - INDEPAZ and the concepts provided by the Ombudsman\textsuperscript{10}, the confluence of armed stakeholders and mining responds to disputes over territorial control, where the civilian population is the main party affected:

According to the report conducted by INDEPAZ, since 2010 there is a linkage between armed groups outside the law with illegal mining, which has been generating community displacements and is the leading cause of dispossession and neglect.

(...) the intensification of mining exploitation with backhoes and dredges in the middle and upper parts of the basins and tributaries of the Timbiquí river have intensified the disputes between the illegal armed groups FARC and the Rastrojos, due to the interest of these groups to control the entry of workers and foreigners to the area, impose levies and administer the daily life of the locals (follow-up note to the risk report N 017-10 A.I. of the Early Warning System -SAT of the Ombudsman\textsuperscript{11}).

The map displays the areas of influence of illegal armed groups, particularly the FARC, ELN and emerging criminal gangs, and criminal mining. As noted, a large part of the mining territories of the country are vulnerable to criminal mineral extraction.

\textbf{Areas of influence of illegal armed groups (FARC, ELN and BACRIM) in mining}

The map displays the areas of influence of illegal armed groups, particularly the FARC, ELN and emerging criminal gangs, and criminal mining. As noted, large part of the mining territories of the country are vulnerable to criminal mineral extraction.

Source: Based on data from the National Police (Policía Nacional de Colombia, 2012, pp. 82-83)
Community actors have been victims of threats and harassment in several municipalities in the southeast of Antioquia, the Colombian Massif, and in northern Nariño and Chocó. Some leaders and organizations in these municipalities who denounce the negative impacts of large-scale mining in the development plans of the communities, such as environmental pollution and the breakdown of the social fabric, among others, are constantly victimized. In these contexts, environmentalists, community leaders, representatives of community councils and indigenous leaders, women and youth organizations express being victims of surveillance, threats, harassment and killings committed because of defending their territory from the large-scale commercial and illegal mining. (Interview with an official of the Ombudsman in northern Cauca)

Likewise, community stakeholders have been victims of threats and harassment in several municipalities in the southeast of Antioquia, the Colombian Massif, and in northern Nariño and Chocó. Some leaders and organizations in these municipalities who denounce the negative impacts of large-scale mining in the development plans of the communities, such as environmental pollution and the breakdown of the social fabric, among others, are constantly victimized. In these contexts, environmentalists, community leaders, representatives of community councils and indigenous leaders, women and youth organizations express being victims of surveillance, threats, harassment and killings committed because of defending their territory from the large-scale commercial and illegal mining. (Interview with an official of the Ombudsman in northern Cauca)

In the area of the Massif, the Integration Committee of the Colombian Massif - CIMA, has denounced on multiple occasions the attacks and threats against the life and integrity of their representatives. In a recent statement, the organization denounced the constant threats to communities and leaders of the farmer and indigenous organizational process of Almaguer, Cauca, and the homicide of two of their associates in the last month:

(...) The municipality of Almaguer, located in the Colombian Massif, presents several of the risk factors for the generation of violence as identified by the Humanitarian Panel of Cauca, among these the presence of legal and illegal armed stakeholders who exert pressure against the communities and challenge their autonomy, the development of mining at the hands of individuals, and the interests of multinationals in their natural and mining resources of the territory, as well as the risk due to the alternative electoral political participation. (...) The CIMA calls for the Colombian State to fulfill the responsibility to protect the lives and integrity of all citizens, and to investigate the allegations and prosecute the material and intellectual perpetrators of the
The BACRIM charge between $50,000 -$100,000 per dredge, and between $300,000 and $500,000 for a dragon dredge, while the FARC charges $1,000,000 per month for retro.”

Gold buyer in Antioquia

Although some of the most visible leaders have managed to receive protection from the authorities, most leaders agree that their requests for protective measures have not been met, nor is there an investigation processes to clarify the facts and those responsible for the attacks. Thus, there is widespread concern about the high levels of impunity for crimes against the human rights defenders, and a slowness and inefficiency in the judicial system to address these cases. In Northern Cauca, a representative of a community council asserts, "to be a leader here is very risky," adding that access to justice is nonexistent, as "complaints only serve to expose us even more." This situation forces many leaders to abandon the territories in order to protect their lives and their families.

Meanwhile, regarding the collection of extortion fees, an ex-judicial officer in Cesar stated in an interview that there have been multiple cases associated with the collection of vaccines on the wages of coalmine workers, especially during the time of the paramilitary boom in the area. In Antioquia, predominantly informal miners also reported similar situations. In interviews carried out in the lower Cauca, interviewees stated to have been subjected to extortion by guerrilla groups (FARC and ELN), BACRIM, and some members of the public forces whom they call "Green Eagles". An interview with a gold buyer from lower Cauca provides an approximation regarding some of the fees charged by some groups who extort money from miners, "the BACRIM charge between $50,000-$100,000 per dredge, and between $300,000 and $500,000 for a dragon (dredge), while the FARC charges $1,000,000 per month for retro”.

In this context, that the consequences of non-payment of extortion escalate to the exercise of violence against the person, and therefore their stay within the territory is compromised. On this matter, a miner from western Antioquia explains, "If we confront these people [armed groups and organized crime] we have to leave this place." (Interview with the informal miner in Antioquia).

In scenarios where criminal mining takes place, communities are subjected to coercion and dispossession dynamics through the use of force. This has led many people to migrate to other municipalities as their territories fail to provide possibilities for their livelihood. This situation, evidenced in the fieldwork, is backed by quantitative analysis that finds a higher incidence of forced displacement in mining scenarios in relation to similar municipalities. Territorial control strategies and the imposition of the rule of law in scenarios where criminal mining is developed, gain greater importance where there is also overlap between this illegal activity and drug trafficking. In particular, many Colombian territories, such as lower Cauca in Antioquia and the departments of Nariño and Cauca are characterized by having, in addition to criminal mining exploitations, the
presence of coca crops. In addition, areas such as Tumaco in Nariño or lower Cauca in Antioquia are strategic territories for drug trafficking in the transformation of coca into cocaine, and constitute corridors for export. The following map depicts the overlap between mining licenses and illicit coca fields in 2014. As noted, the territories covered by the titles, where in general there is a coincidence with criminal mining, intersect in many areas of the country with illicit crops. Particularly notable overlaps exist in the departments of Norte de Santander, Antioquia, southern Bolivar, Cauca and Nariño.

Zones of overlap between mining titles and illicit crops in 2014

The following map depicts the overlap between mining licenses and illicit coca fields in 2014. As noted, the territories covered by the titles, where in general there is a coincidence with criminal mining, intersect in many areas of the country with illicit crops. Particularly notable overlaps exist in the departments of Norte de Santander, Antioquia, Cauca, Nariño, and southern Bolivar.

Source: Based on data from the National Mining Agency and UNODC.

Cases were also identified in the departments of Antioquia, Chocó, Cauca and Nariño where criminal mining enters the territories through dynamics of land cornering in asymmetric competitive conditions resulting from access and land use.

For example, in interviews conducted with members of a community council in northern Cauca, they claimed that various stakeholders in the mining bonanza "came with bundles of thousand peso bills to buy land from the farmers." Likewise, an official of the Autonomous Regional Corporation of Cauca -
CRC, stated that the entry of large-scale illegal mining in the Cauca "came about through force and the purchase of land at very low prices in circumstances of poverty."

For its part, the Environmental Research Institute of the Pacific -IIAP (2014) stated that in the case of Choco:

The determining circumstances that identify the processes of mining exploitation in the hydrographical basin of the Quito river are marked by circumstances of individual and family benefits that relate to a new behavior of land tenure: not to possess it as owners, but to commercialize it thru leasing, rental or short sale businesses with the vendors, who are the consortia who sometimes, with or without institutional permission, penetrate reservations of the indigenous and Black communities of this riverbed, introducing in an inconsiderate manner degrading machinery such as dragons, dredgers and backhoes that are the elements that have been recently generating the greatest negative impact, that the historical panorama of the capital of the department Choco had designated as a geographic sanctuary (Environmental Research Institute of the Pacific, 2014).

This competition for access and land use associated with mining activity often becomes a source of social conflict, with the consequent increment of the incidence of crime and violence. The biogeographic case of Chocó clearly exemplifies this issue: "(...) with the arrival of the backhoes, in the 80s, [mining] ceased to be an alternative activity and became a conflict over land, because traditionally mining was not the principal activity, but rather it shared with other activities that also need the land, such as agriculture, and in this manner the conflict became a conflict over land tenure." (Public official in the regional mayoral office of San Juan, Chocó).

Locally, both community stakeholders and local authorities identify the main problematic associated with the control of the criminal mining is related to vacuums in the law and the avoidance (intentional or unintentional) of responsibilities by the institutions. Regarding intervention of armed groups in the activity, to the extent that the space covered by these groups can be interpreted as vacuums in the exercise of the law, these situations point to possible omissions by the State. In this regard, the Comptroller (2013b) notes that:

(...) macro-criminal acts (of the guerrilla, paramilitaries and some State agents) and the military response by the State not only place communities in a plane of humanitarian vulnerability, but also put into question the State’s ability to guarantee the exercise of rights by the communities through the loss of the weapons monopoly, with which the context of multiple violence is functional to satisfy the legal, illegal and "gray" interests. (Contraloría General de la República , 2013b, p. 58)

In effect, the communities complain about the flexibility of the State’s position in terms of the absence of concrete and effective actions to attack criminal mining, which should include the control of the entry of backhoes and fuel into the regions. For example, in several regions of Cauca, communities
explained that when the mayoral offices command a policing operation, the Police appeals to different answers for inaction.\textsuperscript{12}

The subject of the entry of machinery and inputs into the regions is another major concern of the local communities and authorities. Across the board, an omission was identified in the reporting of the entry of backhoes, as well as of foci of criminal mining exploitation. For the communities, the balance regarding local governance on mining activity is summarized as “the State neither prevents nor acts.” This explains, in turn, the lack of action by the State against the most vulnerable links in the criminal mining value chain, for which the use of intelligence is crucial.

Moreover, the absence of coordination between mayoral offices, the police and army, and the Public Prosecutor results in actions that fail to comprehensively attack the problematics of criminal mining. In this sense, both local authorities as well as community stakeholders point to the seizure of machinery and mine closures as failing to solve the problem, because they do not dismantle criminal structures with large economic and power assets who are behind the activity, and instead mainly affect the operators of the machines. In general, communities perceive a lack of investigative processes to identify the owners of the illegal mining complexes.

For example, in 2014, in the Vereda de San Antonio in the municipality of Santander de Quilichao, twelve people died, buried by a landslide in a foci of illegal exploitation within a mining title of a multinational. According with that recounted by community leaders, the authorities as a response suspended the activity and seized the machinery for a few hours, but finally returned it to their owners as no judicial process was initiated, and the police responded that a machine within a title should belong to the titleholder.

Nonetheless, communities have worked in diverse citizen initiatives as a reaction to the territorial problematics associated with the impacts of mining. For example, in the area of the Colombian Massif, through municipal forums, the farmer and indigenous communities have promoted large regional mobilizations for a dignified life, the territory and the environment.\textsuperscript{13} These forums provided inputs to the Public Hearing on Mining and Energy, which took place in November 2015, and where the main concerns of the people associated with the existence of mining in the territories were submitted to the national government, including the damages to the environment, as well as proposals and demands of the sector before the competent institutions. Several officials, mainly from the Ombudsman and the Autonomous Corporation of Cauca, support these mobilizations opposed to corporate, illegal and criminal mining in a region that has been declared by UNESCO as a biosphere reserve.

\textsuperscript{12} See as example the case in El Hoyo, Patia, where the community requested from the Army Battalion located 10 kilometers away, during 3 years, an operation to burn three backhoes.

\textsuperscript{13} See as example: \url{http://www.elespectador.com/noticias/actualidad/vivir/el-macizo-colombiano-se-moviliza-articulo-407568}
Meanwhile, indigenous and Black communities of northern Cauca have organized demonstrations in
dissent of the river pollution caused by criminal mining\(^{14}\). In these demonstrations, the communities
organized themselves in order to remove the heavy machinery used in open pit mining throughout the
region. The leaders of the demonstrations have received threats from the criminal gangs.

These community demonstrations, while they attain the closure of entry mechanisms and halt the
consolidation of criminal mining in the territories, they also make evident the dissatisfaction of
communities about the manner in which the State addresses these issues.

### 2.4 AN ALTERNATIVE FOCUS FOR THE ANALYSIS OF ILLEGAL ECONOMIC
ACTIVITIES: THE CITIZENS’ RATIONAL DECISION.

There are areas of the country, such as Nariño, Cauca or the lower Cauca in Antioquia, where the
practicing of illegal activities is widespread. Criminal mining and the link to the drug trafficking
chain come to be particularly relevant in these contexts, as detailed in the previous section. When it
comes to the communities living in these territories, usually the conjunction with drug trafficking
relates to the cultivation of the coca leaf. The analytical framework developed in this section is not
intended to be exhaustive. It proposes to be a conceptual tool to analyze the mechanisms of
intervention of the State in relation to illegal activities in mining scenarios.

In the conceptual framework proposed by Becker (1968), a rational person makes the decision to
engage in illegal activities when assessing the expected revenues and costs of each one of their likely
alternatives. For this exercise, we may consider a person located in the department of Nariño, who
has four alternatives of income generation for their family. Each of these alternatives has an income and an
expected cost, as follows:

a. **Engage in legal agriculture.** The expected income (net of production costs)
corresponds to the proceeds from the sale of their products less the costs incurred for their
harvest. This is the monetary equivalent of what the farmer has available to meet the needs of
his family. The expected cost corresponds to the threat of the illegal armed groups with
territorial control in the production site. This threat becomes effective if the person decides
to engage in legal activities. The illegal armed group intendeds that the person should grow
coca or engage in criminal mining.

b. **Engage in legal gold mining.** In this case, the expected income of the person
corresponds to the salary they get when they manage to be hired by a gold mining company,
which performs its activity with a title\(^{15}\). The expected cost is the same if he were to engage in


\(^{15}\) In this abstract thinking exercise, we can suppose that this possibility is available to the person, as are the others,
though it is not necessarily the case. The same reasoning applies for the other alternatives.
legal agriculture; in other words, the threat of armed groups because they will not perform the illegal activities of their interest.

c. **Devote themselves to coca cultivation.** The expected income (net of costs, as in legal agriculture) corresponds to the proceeds of their sale less the cost of their inputs. The expected cost, in turn, corresponds to the threat of the State to impose criminal penalties for performing illegal activities.

d. **Pursue the criminal gold mining.** This mining can be assumed to be under the control of an illegal armed group. Therefore, the expected income corresponds to the salary the person obtains from this group. As in the coca cultivation alternative, the expected cost corresponds to the threat of the State to impose criminal penalties.

As follows, in order to analyze what the person’s rational decision is, it is necessary to provide approximate values to each of these activities, both for income as well as for the expected costs. It is possible to allocate hypothetical values to the expected costs. That is, the money equivalent to the threat of illegal armed groups can be called G, and money equivalent to the threat of prosecution by the State can be called E (in law, this would amount to the deterrent effect of sanctions). Based on the work completed by CREER\(^\text{16}\), it can be assumed that G is greater than E; in other words, that the threat of the illegal armed groups is more credible and more damaging than the threat of the State.

Likewise, the expected income can be approximated from available information. For example, according to the Great Integrated Household Survey conducted by the National Administrative Department of Statistics -DANE in 2014, the net income of a farmer in the south of the country is $265,000 COL per month\(^\text{17}\). Moreover, the monthly income, net of costs, of a coca growing family is about $425,000 COL, according to data from UNODC (2015).\(^\text{18}\) Finally, based on the 2010-2011 Departmental Mining Census conducted by the Ministry of Mines and Energy, the average salary of a person employed by a titled gold mine in the departments of Cauca and Putumayo it is approximately $616,000 COL, and for an untitled gold mine it is $678,000 COL. Thus, the expected benefit to the peasant in each of these alternatives is:

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\(^\text{16}\) This is the result of fieldwork and the specialized document, “Conflict, constructing peace and mining activity in Colombia.” Available at www.creer-ihrb.org/wiki-eisi/.

\(^\text{17}\) This calculation includes information for the departments of Nariño and Cauca. It corresponds to an approximation, as the survey is not representative for these two departments for the quarters and segments of the economy analyzed.

\(^\text{18}\) This approximation takes as basis an approximate gross annual income of $5,800 USD, a cost-benefit ratio of between 50% and 62% as noted in the report and an average exchange rate for 2014.
It parts from the assumption that the threat of the illegal armed group is more credible and potentially harmful than that of the State. What is therefore clear between these alternatives is that the best alternative - in the sense of the potential to generate the highest expected benefit to the person - is to become involved in the criminal exploitation of gold mining. Moreover, the worst alternative is to engage in legal agriculture.

In an approach based on the foundation of individual rights, the State may intervene to achieve the results that are in their own interest, which is to say that, the person engage in legal agriculture or legal gold mining. There are several alternatives to achieve this end. First, as is common in areas where the State has little presence, it can increase its threat (E). This is achieved by, for example, the increased deployment of security forces. In fact, if this threat is sufficiently high enough, the legal alternatives become more attractive to the person. Second, the State can intervene by increasing the expected income of legal agriculture and legal gold mining. This can be achieved through the provision of public goods such as irrigation districts or access roads, and adequate conditions for the development of the legal mining, such as clear processes and a well-defined and functional mining cadaster.

Increasing the threat of the State is a short to medium term solution, while increasing the expected income of the legal alternatives is a medium to long-term solution. To the extent that the territorial control of the illegal armed groups is stronger, it is more difficult to provide public goods other than the deployment of public forces, and this, naturally, makes the State’s decision neither immediate nor easy. However, if the State seeks to protect the rights of the communities living in similar situations to the abstract we developed, it is clear that the starting point is to interpret their decision as rational, and not a deliberate act to take part in criminal activities. This naturally draws attention to the approach the State needs to follow when it intervenes.

The dilemma, in the end, is not only for the State; it is for its citizens who need income in order to exercise rights, whose protection by the State is not always clear.

<table>
<thead>
<tr>
<th>Alternative</th>
<th>Expected Benefit</th>
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<tbody>
<tr>
<td>Legal agriculture</td>
<td>$265,000 – G</td>
</tr>
<tr>
<td>Legal gold mining</td>
<td>$616,000 – G</td>
</tr>
<tr>
<td>Coca cultivation</td>
<td>$425,000 – E</td>
</tr>
<tr>
<td>Criminal gold mining</td>
<td>$678,000 – E</td>
</tr>
</tbody>
</table>

Source: Based on data from the DANE, Departmental Mining Census and UNODC
To the extent that security is a public service provided by the State, the effects on the enjoyment and exercise of rights related to the development of mining activities are mediated primarily by the dilemmas associated with the subscription to agreements between companies and the State regarding security for the projects. This is especially relevant, as the fieldwork showed no negative effects on rights of any kind based on the use of private security by the companies. This was an important aspect in the assessment, as it has proven a problem elsewhere in the world.19

In spaces for dialogue and initiatives where multiple stakeholders from the government, companies and civil society take part, among others, such as the Energy and Mining Committee on Security and Human Rights - CME, there is a recurring discussion about the implications of conducting partnerships agreements between private entities and the government. Especially in matters relating to the legitimacy of public forces and the State in the territories, as well as their effects on the enjoyment and exercise of rights of populations living in scenarios where such agreements take place. In fact, the CME (2013) encompasses various shortcomings found in the assessment of risks associated with security in the territories, a structural element for the implementation of the agreements, which involve potential risks to these populations. Two more relevant aspects are described below20:

First, risk assessments do not consider all available and relevant information for a proper evaluation. In particular, stakeholders such as the Ombudsman draw attention to the consult of early warning systems, and information from the Family Commissions and the Public Prosecutor, among other institutions, which allow to more precisely characterize the security risks in mining scenarios. In addition, UNODC highlights the need to achieve a greater understanding of the criminal dynamics, including both issues of common crime as well as those of organized crime. The inclusion of older sources, as noted by the Ombudsman, allows for an integral territory assessment, which takes into consideration the ethnic, demographic, regulatory, cultural and environmental aspects, among others.

Second, risk assessments do not always include a participatory process involving companies as well as the State and the communities. On the one hand, the Colombian peace building NGO - Redepaz notes the importance of including in the process the local authorities, who besides being the constitutional authority on policing matters in their territory, are closer to the realities of their jurisdiction. On the other, USAID stresses that in order to have a proper assessment of the risks, the community’s concerns on these must be taken into account, as they are not always a participant in the process. Communities,

19 See for example the recollections of the 2nd Mining Security and Crisis Management Forum: http://www.miningsecurityforum.com
20 The items detailed bellow are taken from CME (2013)
being excluded from the process of risk assessment, perceive that the presence of security forces is attributed to a contracted private service through the agreements with the companies. The vacuums in this situation, which implicate the legitimacy of the State, are an impediment to the effective protection of rights, possibly hindering the provision of services.

These two aspects become more relevant in the light of State stakeholders involved in the implementation of the agreements. Particularly if the leading stakeholder is considered to be the National Army and not the National Police. The Police, and not the Army, provide public safety services in Colombia. To this extent, the nature of the acts carried out by the Army in the deployment of Mining and Energy Battalions in mining exploitations do not immediately consider the coverage of the effects, such as those associated with acts of common crime. As evidenced in this chapter, mining environments, beyond having greater vulnerability to internal armed conflict, also develop individual incentives for common criminal acts such as individual or commercial theft. Thus, the nature of the agreements motivated by companies can sidestep a dimension of security that leads to negative effects on the right to life, liberty and security, as well as other rights that may also be infringed.

Another relevant issue relating to the agreements is the amount of resources provided by the companies and their destination. In 2015, the total contribution of companies to the agreements subscribed with the Ministry of Defense was for $158 billion. Of these, the agreements associated with mining operations totaled about $16 billion. This sum is equivalent to 0.0006% of the Defense and Security budget of the National Government for the year 2015. The economic importance of this figure is questionable, in light of its alleged importance to cover the security of national strategic assets such as mining projects. In this vein, the possible effects on the enjoyment and exercise of human rights mediated by the existence of the agreements take on a different connotation. That is, the dilemmas associated with the subscription to the agreements are weighted on the one hand by the need for resources to address security, and on the other by the possible loss of legitimacy and negative effects on rights during its implementation. If the economic aspect of this dilemma is marginal, it is unclear why the agreements are needed to mediate the actions of public forces in these territories. This presence could arise from the budgeted missionary actions sponsored by the national government for defense and security.

Finally, it is important to note that the allocation of the resources provided by companies is not consistent with the human rights risks implicated. For example, the Directive 0214 of 2014 that regulates the distribution of these resources by category, establishes 2% to cover human rights acts. That is to say, of the agreements for mining activities in 2015, about $320 million was allocated for human rights activities. While this figure is complementary to the Ministry of National Defense’s budget for these activities, it is not clear that is sufficient to cover the risks for possible rights violations associated with the implementation of the agreements.

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21 There figures are found in the session notes no. 2015-12-14 of the CME workgroup (CME, 2015).
22 The 2015 budget for the Defense and Security sector was for $28.2 billion COL.
Mining scenarios are more vulnerable to deteriorating public safety due to common crime, and a greater exposure to the internal armed conflict and actions by organized crime. To this extent, we recommend that the Ministry of National Defense, in conjunction with the Ministry of Mines and Energy and other State agencies, design a security and defense policy differentiated for mining scenarios, aimed at the protection of rights, which at least includes the following aspects:

- Differentiated instruments for criminal mining, which requires a clear definition of its nature.
- Instruments that facilitate the pursuit of intelligence activities by the authorities against inputs and manufacturing products used in criminal mining, including mercury and machinery.
- Elements that reduce the margin of discretion and provide clear guidelines for the intervention of military and police forces.
- Containment strategies, which include the participation of government agencies such as the Department for Social Prosperity, to mitigate the risk of community members participating in illegal activities, particularly those associated with criminal mining. For example, these strategies may include the design of conditional subsidies to encourage students to remain in the education system, thus reducing the risk of youths participating in illegal activities. A pilot project for the Families in Action program is already underway, that targets mining municipalities in an effort to not only achieve positive results in education, but act as a protection barrier against criminal activities as well; its design could be reviewed in the light of its results.

Environments where mining activities takes place, like the rest of rural Colombia, are defined by a high degree of informality. This informality facilitates the pursuit of criminal activities. In this context, we recommend a coordinated deployment of the state agencies responsible for the different activities to be formalized, based on a differentiated approach to the mining scenarios. Specifically, the Ministry of Mines and Energy needs to facilitate strategies that formalize the
mining activity and subsequent mining interests, in a sustainable manner; the Ministry of Commerce, Industry and Tourism through the Bank of Opportunities needs to promote the use of formal banking institutions; the National Land Agency or whomever acts in its stead needs to implement strategies to facilitate the formalization of land issues; and the Ministries of Labor and Health need to take actions that promote the formalization of labor and social security.

3. Building the State in mining scenarios in line with post-conflict actions

Increased exposure to criminal and violent actions in mining scenarios and complementarity of criminal mining with other illicit economies such as drug trafficking, money laundering and extortion, represents a risk to the actions required for the post-conflict in these territories. In this vein, we consider that the Ministry for the Post-conflict, the Ministry of National Defense and the Ministry of Mines and Energy, need to coordinate their actions for the creation of institutions and the increase of government presence in the mining scenarios, supported on the resources and actions for the post-conflict. This coordination should pay special attention to public goods in order to prevent the effective replacement of the State by illegal armed groups. For example, immediate needs will be addressed by Houses of Justice, Police Inspections, the local District Attorney and the Courts.

4. Recover the Government’s monopoly on gold trade

Criminal mining of minerals depends on how easy it is to market. This situation requires government action in terms of the control and traceability of the origin of the minerals traded. The problem, as evidenced in the diagnosis, is more critical in the case of illegal goldmining. In fact, today the gold market operates without any control, facilitating criminal mining, money laundering and terrorist financing. Any changes involving greater government control are desirable.

In this context, we recommend that the State, through the Ministry of Mines and Energy and the Ministry of Finance, regain control of the gold market, returning the State to the condition of sole legitimate buyer. This poses an institutional challenge in terms of establishing controls, however it opens up the possibility of implementing the control measures that the State deems necessary, a situation that currently is impossible to even consider.
5. Greater incentives for the development of legal economic activities in mining scenarios

The incentives for the development of illegal activities in mining scenarios partly depend on the expected benefits generated from taking part in legal activities. These benefits may increase, as suggested in the diagnosis, through the provision of public goods, including measures that, for example, reduce the costs of agricultural production and the development of legal mining. To this extent, we recommend that the Ministry of Mines and Energy, the Ministry of Agriculture and Rural Development, the Ministry of Commerce, Industry and Tourism, and the Ministry of Transport, devise strategies for the provision of public goods with a differentiated approach to the mining scenarios, especially those which are more vulnerable to common crime, the internal armed conflict and the presence of organized crime.

These strategies should provide at least greater facilities in the administration of the mining interests, irrigation districts, roads and other infrastructure projects, with a specific focus on reducing the costs of inputs and production in legal economic activities.

6. Consider alternatives for inclusion in security agreements

The State is faced with controversies regarding its failure to access security for strategic assets, due to the existence of agreements between certain companies and the Ministry of Defense. For this reason, we recommend that the Ministry of Mines and Energy and the Ministry of Finance design a mechanism to charge and collect fees from mining operations in order to give the Ministry of National Defense additional resources to expand the coverage of its actions. This mechanism would replace the agreements. The resources should be specifically allocated to the security of the corresponding mining scenarios.

In this manner, the Government obtains resources for the greater deployment of security forces to protect strategic mining assets. However, it guarantees that the presence of military troops and police forces effectively protect the entire mining scenarios and not a specific project. In addition, it facilitates the provision of public security to mining sub-sectors such as construction material mining, which are usually excluded from the benefits associated with the current security agreements.

Finally, by centralizing the collection of resources from mining companies under the figure of contributions to security, the State can become more efficient in the use of resources for the expansion of coverage in terms of defense and security forces.
7. Participatory assessment of security risks and human rights

Given the shortcomings in the analysis and assessment of security risks and human rights in mining scenarios, the Ministry of National Defense and the Ministry of Mines and Energy, in conjunction with mining companies, need to redesign the methodologies for assessing safety risks in these environments. This redesign should at least include the following:

7.1. Assigning specific responsibilities and institutional coordination mechanisms to each of the parties: the State, businesses and communities. The communities should be given a leading role, given that they are the most vulnerable.

7.2. Local authorities and communists must understand the impacts, through participatory mechanisms that take their opinions into account in an explicit and informed manner.

7.3. Complaint and claims mechanisms against the performance of the armed forces which protect the identity of the complainants.
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UNODC- Oficina de Naciones Unidas contra la Droga y el Delito - (2015). Monitoreo de Cultivos de Coca, producido por la Oficina de Naciones Unidas contra la Droga y el Delito –UNODC y el Gobierno de Colombia. Bogotá D.C.
CHALLENGES FOR THE USE OF RESOURCES FOR STRENGTHENING LOCAL ECONOMIES
Whereas the definitions of the concept of local development are broad, in this chapter the issues related to this concept are associated with the development and preservation of local human capital through job creation, training opportunities and responsible attention to the expectations of the local workforce. In turn, they include the productive linkages through local businesses and the hiring of local suppliers and the management by local authorities thru the use of royalties and strengthening of institutions.\(^1\)

In this order of ideas, the extraction of mineral resources in a territory can become an important source of development opportunities, especially for the local economies of the territories. These positive effects on development are not only measured by economic growth, but also by the respect and enjoyment of the rights of the communities.

The economic benefits of mining activity require significant planning, because of the particular challenges facing companies in the territories. Some of these challenges are associated, for example, with a lack of access to financing, technology, information or skills of the suppliers. In particular, small and medium-sized companies have difficulties accessing mining supply chains and generating productive linkages, as sometimes they are unable to meet the environmental and regulatory requirements. In turn, those programs aimed at strengthening the local economy generally benefit a specific group of individuals and therefore they can engender inequalities or feelings of rejection towards the industry within the communities. These obstacles are further aggravated when mining activity takes place in remote areas or in areas with high indices of poverty and institutional weakness (Social Responsibility Initiative - CSRI at Harvard Kennedy School, International Council on Mining and Metals-ICMM, International Finance Corporation - IFC, 2009). Therefore, the adoption of a human rights approach becomes unavoidable for analyzing the use of local resources and mining in Colombia.

Whereas in some cases opportunities for linkages are presented, and these are desirable, in other cases these linkages may not materialize, or the resulting economic and social costs are not always predictable. Therefore, said practices relating to the use of local resources call attention to the need for productive development policies and programs that go beyond the direct linkages that facilitate the growth of local businesses and increase the self-sufficiency and sustainability of the communities.

In this manner, comprehensive development becomes a key concept for this study, as it responds to the building of capabilities that contribute to economic development and to the strengthening of the communities where mining activity is carried out. In fact, the contribution to the development of mining companies is intimately linked to the incorporation of the value added of the place in which

\(^1\) For greater depth on the concept of local development, see as example: Harvard SCIRI, ICMM and IFC workshop, 2009.
they operate. This is due to productive linkages that are generated backwards and forwards in the
territories, related to activities such as the development of human talent, hiring practices and social
investment by companies.

Primarily, this chapter explores the correlation of human rights that are infringed upon by the impacts
associated with the use of local resources in the territories. In particular, the right to decent work,
which has implications in the rights to a decent life, participation and education.

<table>
<thead>
<tr>
<th>PRINCIPAL SITUATIONS AND IMPACTS</th>
<th>ALTERATIONS OF RIGHTS</th>
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<tbody>
<tr>
<td>The absence of the State and institutional weakness in contexts of poverty, and the unmet basic needs preclude the generation of productive linkages and the development of the local economy in the territories.</td>
<td>◆ Right to decent work ◆ Right to a decent life ◆ Right to equality before the law ◆ Right to food security</td>
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<td>The value of the mining royalties or, in some cases, the manner in which the opportunities are invested or wasted in order to meet the most urgent needs of the communities, do to efficiency or corruption.</td>
<td>◆ Right to equality before the law ◆ Right to a decent life ◆ Right to education ◆ Right to health</td>
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<td>Expectations of job creation, coupled with the environmental impacts of mining activities, as well as the new territorial planning, resulting in displacement of traditional economic activities such as agriculture, fishing and livestock.</td>
<td>◆ Right to a healthy environment ◆ Right to property ◆ Ethno-territorial rights ◆ Right to a decent life ◆ Right to work ◆ Right to food security</td>
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<td>The effect on the scenarios as a result of large, medium and small-scale mining scale implicate the environmental degradation which limits the best use of natural resources by the communities and affects the development of mixed economies, social and cultural practices, as well as the health of its constituents.</td>
<td>◆ Right to health ◆ Right to a healthy environment ◆ Right to participate in cultural life ◆ Right to work ◆ Right to a decent life ◆ Right to food security</td>
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1. PUBLIC POLICY IN THE FRAMEWORK OF STRENGTHENING THE LOCAL ECONOMY

Among the mining sector policies\(^2\), the National Plan for Mining Regulation (2014) and the National Mining Development Plan (2013) partially develop the public policy framework for the first two aspects of the use of local resources, which is to say: the hiring and training of the workforce, and the development of productive linkages.

1.1 ACHIEVEMENTS AND CHALLENGES FOR TRAINING AND HIRING OF THE WORKFORCE.

In particular, the National Plan for Mining Regulation specifies certain actions aimed at strengthening the sector. On the one hand, it proposes to complement the Intersectoral Committee for Human Resource Management, established by Decree 1953 of 2012 of the Ministry of Labor, in order to accomplish the "harmonization of sectorial plans in the short, medium and long-term for the purpose of improving the relevance of academic programs offered, strengthen the competency of current programs and create new academic offerings for the Colombian mining sector."

The proposed enhancement aims to overcome the institutional discoordination and facilitate the implementation of sectorial education plans. This modification, however, has not materialized, and by this measure, the difficulties of coordination have not been overcome for the training of the human resource in the competencies demanded by mining activities. In addition, the National Mining Development Plan considers as one of its objectives, "develop the knowledge and encourage the creation of a larger number of quality human capital," that proposes, the participation of Colombia’s Administrative Department for Science, Technology and Innovation - Colciencias, and Colombia’s national training program - SENA, among others, in the advancement of specialized programs to develop the skills required by the sector.

Although disarticulation problems are evident, this framework facilitates the availability of policy instruments for the training of the workforce. However, additional weaknesses are found in both the training of the human resource as well as the hiring processes. First, the proposed policies for the training of personnel do not specifically addressed the problems that can arise from mining cycles. For example, although there are guidelines for the SENA to establish centers for mining and environmental training, such as those existing in the lower Cauca and northeast of Antioquia, the training programs are unresponsive to the limited availability of the resource, or the cycles associated with the prices that involve seasonal exploitation possibilities. Thus, there are no clear countercyclical mechanisms that

foresee the possibility of other occupations for local labor when mining is not profitable enough to maintain its exploitation, or when the mineral is close to exhaustion.

Second, while the hydrocarbon sector has a specific regulatory framework, even if not without its difficulties, that promotes the hiring of unskilled labor, advanced thru Decree 2089 of 2014, and which utilizes the Public Employment System, the situation in mining is different and relies on the particular contexts and agreements concluded between companies and communities. The consequences of this vacuum are heterogeneous, depending on the type of mineral being exploited and the conditions of the companies present in the territories. These weaknesses reveal potential vulnerabilities in the enjoyment and exercise of the right to work of those who potentially can be employed in mining activities. Likewise, in virtue of the integrity of the exercise of rights, the lack of income can generate vulnerabilities, such as in the exercise of the right to education by the children of the potential workers, or the exercise of the access to health by these potential workers and their dependents.

1.2 ACHIEVEMENTS AND CHALLENGES FOR THE DEVELOPMENT OF PRODUCTIVE LINKAGES.

The National Plan for Mining Regulation proposes an action aimed at developing regional innovation systems and productive linkages thru the structuring of public-private agendas, building roadmaps aimed at improving departmental competitiveness and a differentiated public policy in accordance with local capabilities. Such actions would be complemented by those noted in the National Mining Development Plan, which proposes specific linkages by type of mined mineral. For example, it points to high value jewelry as a forward linkage in gold mining, and housing and civil works as forward linkages in the exploitation of construction materials. This plan also highlights the services associated with exploration and exploitation as activities with great potential for the development of backward linkages.

These actions occur by means of crosscutting policies for microenterprise development and the advancement of productive chains, established by Law 590 of 2000, also known as the Mipyme Law (MSME Law), which contemplates the creation of instruments such as the Colombian Fund for the Modernization and Technological Development of Micro, Small and Medium Enterprises - Fomipyme, supplemented by Law 905 of 2004 and Law 1150 of 2010, which gave the Fomipyme access to stand-alone equity of the INNpulsa program of the Ministry of Commerce, Industry and Tourism.

Since the inception of this latter program, the promotion of productive linkages is conducted through national tender. However, a disarticulation is evident between the sectorial policies proposed by the National Plan for Mining Regulation and the National Mining Development Plan, and the crosscutting proposals led by the Ministry of Commerce, Industry and Tourism. In particular, the success stories of the tenders for productive linkages are associated with the infrastructure, hydrocarbons, energy, wood,
footwear and leather goods, and metal mechanics sectors, among others. The share for mining has been less.

In relation to productive linkages, there is an evident absence of counter-cyclical policies in order to generate alternatives for the linkages, both forward and backward, once the operation of mining exploitation contracts because of market behavior, or when minerals are close to exhaustion. These contexts require the development of innovation capabilities in the linkages, so they include the possibility of transforming their services in accordance to changes in the economic structure of the mining territories. Similarly, to the situation with training processes and labor hiring, weak policies oriented to facilitate production linkages generates potential vulnerabilities for the comprehensive exercise of rights.

1.3 TRANSFORMATIONS OF THE SYSTEM OF ROYALTIES AND ITS INCIDENCE ON THE GUARANTEE AND THE PROTECTION OF RIGHTS

Aspects of institutional development are included in another dimension of the use of local resources. On this point, the royalties derived from mining operations play an important role, and have undergone structural changes in recent years. The 1991 Political Constitution establishes the State as owner of the nonrenewable natural resources and, in general, of the subsoil. The Constitution also states that the main beneficiaries of resource royalties from exploitation are the territorial entities where the exploitation takes place. Likewise, Article 361 of the Constitution established the National Royalties Fund as a mechanism for the transfer of indirect royalties to the non-producing territories. The Stockholm Environment Institute - SEI and Econometrics (2014) document that between the early 90s and 2011 the distribution of royalties was assigned 80% to producing territorial entities and 20% to other non-producing entities, making use of the National Royalties Fund.

In 2011, with the approval of the Legislative Act 5 of 2011, a new General Royalties System was created. Among other aspects, the allocation of royalty resources was modified in the new system, noting that these resources "will be destined to finance projects for the social, economic and environmental development of the territorial entities; to be saved towards their pension liabilities; for physical investments in education; for investment in science, technology and innovation; for generating public savings; for the oversight of the exploration and exploitation of deposits and knowledge and

4 See as example the cases referenced in: http://www.innpulsacolombia.com/es/casos-de-exito/caso-de-exito-encadenamientos-productivos-la-apuesta-para-el-crecimiento-empresarial
http://www.innpulsacolombia.com/es/casos-de-exito/caso-de-exito-encadenamientos-productivos-mipyme

5 By mid-2016, a joint project began with the participation of the Ministry of Mines and Energy, the National Mining Agency, the Energy and Mining Planning Unit, the Colombian Association of Mining and Colombian Association of Industrialists -ANDI. This project aims to contribute to the development of productive linkages in mining territories.

6 Other recipients of royalty resources were the Oil Savings and Stabilization Funds - FAEP, created by Law 209 of 1995 and the National Fund of Territorial Pensions - FONPET, who participated with 5% of the direct royalties with the issuance of Law 863 of 2003.
geological mapping of the subsoil; and to increase the overall competitiveness of the economy seeking to improve the social conditions of the population."

For this end, the new General Royalties System, whose operation is regulated by Law 1530 of 2012, creates the Funds for Science, Technology and Innovation; Regional Development; Regional Compensation; and Savings and Stabilization. These funds are earmarked as follows:

- Fund for Science, Technology and Innovation: "increase the scientific, technological, innovative and competitive capability of the regions."
- Regional Development Fund: “improve the competitiveness of the economy, as well as to promote the social, economic, institutional and environmental development of the territorial entities."
- Regional Compensation Fund: "finance impactful regional or local development projects in the poorest territorial entities of the country."
- Savings and Stabilization Fund: "absorb the fluctuations in the value of the royalties."

The new General Royalties System aims, thru the performance of its mission’s purpose, to achieve a more equitable distribution of the resources derived from royalties, so that in practice the distribution is reversed: 80% for indirect royalties and 20% for direct royalties.

These structural changes in the allocation of royalty resources have different implications on the economic, social and environmental development of the territories, and in particular on the conditions for the enjoyment and exercise of rights. In fact, the changes in the distribution aimed at increasing the amount of resources available in territories with high poverty levels can promote the exercise of rights among the vulnerable populations within these territories. In addition, the orientation of resources towards science, technology and innovation activities can facilitate the development of high value added initiatives in mining and non-mining territories, which would allow in the medium and long-term to counter the cyclical effects of mining or of other primary production activities.

However, these changes in the distribution also entail sacrifices and potential vulnerabilities in mining areas. The General Royalties System does not provide for mitigating actions regarding the risks associated with mining. It is only necessary to review of the impacts attributable to mining as indicated by this study quantitative exercise results, to realize the scope of the externalities associated with this activity, and the need to have mechanisms available for resources allocation that can effectively address these:

a. A negative association between the development of mining and health effects resulting from exposure to hazardous materials, with results that deserve special attention in the case of gold and underground coal.7

7 Further information on exposure to hazardous materials by mineral type can be found in the chapter Decent Work.
b. An association between the development of mining activities and a systematic drop in teacher availability. The size of this effect is greater in regions with large-scale coal exploitation (1.4 more students per teacher), but it is observed with all types of minerals. The differences may seem small at first glance, but these marginal changes in the ratio of students per teacher reflected significant decrease in the number of cumulative teaching hours during the school year. Moreover, regions with the presence of minerals other than large-scale coal have underperformed by 2% compared to the score of the comparison municipalities.

c. The association between the activity and the expulsion by forced displacement, in the case of municipalities with gold mining, which expelled 19 people per thousand inhabitants per year, while comparison municipalities expelled 12 people per thousand inhabitants per year.

d. An effect on the number of people living in poverty is detected in municipalities with gold or coal mining (according to the multidimensional poverty index8), as follows:
   i. The incidence of poverty in municipalities with gold mining is 20% higher than in their comparison group9.
   ii. The incidence of poverty in municipalities with coal mining in the interior of the country is 32% higher than in their comparison group.
   iii. The incidence of poverty in municipalities with coal mining in Cesar and Guajira is 90% higher than in their comparison group.

e. The association between the presence of mining and homicidal violence, where differences in the homicides rate among mining and comparison municipalities are particularly noticeable in gold and large-scale coal: 68 per one hundred thousand inhabitants (compared to 59) for the first group and 64 (compared to 53) for the latter.

Neither the pre-reform royalty scheme nor the current regulation provides for an allocation mechanism to ensure attention is given to these impacts. In addressing environmental impacts, for example, contrary to what occurs in countries like Bolivia, Ghana and Nigeria, in Colombia there is no specific destination of royalties towards environmental mitigation. (Morgandi, 2008, SEI and Econometrics (2014) carried out a comparative analysis on the destination of royalties). Other risks such as dropout rates among adolescents seeking income in mining could also be mitigated with these resources, but there is no provision to ensure this correspondence between needs and uses.

To this extent, the distribution of royalties with decreased participation of the mining territories can deepen the vulnerability in the enjoyment and exercise of the

8 For additional information on the methodology used in these calculations, please refer to the CREER document, “Methodology for the econometric model” available at http://creer-ihrb.org/wiki-cisi/
9 Incidence refers to the number of people in poverty during the observation period.
rights of its inhabitants. The cash flows generated by mining should ensure that there is no deterioration in the quality of life in the mining municipalities, and this is only possible when the impacts are mitigated and actions are taken to ensure the provision of State services, and strategies are foreseen to allow the viability of the regions in the eventuality of a cessation of mining activity. In this manner, the royalties would effectively contribute to the protection of rights, although it would also require an adequate administrative capacity, as discussed in section 2.3 of this chapter.

Nonetheless, according to the Ministry of Mines and Energy, some of these risks could be mitigated if the funds for regional development, regional compensation, or science, technology and innovation were used. However, this implies formulating and presenting projects to the agencies endorsed by the General System of Royalties, which poses two limitations: (i) response times may not be sufficient to address the urgency of some risks; and (ii) the formulation of projects implies the availability of human capital in the municipalities, which can be impaired if some of the precise risks it seeks to mitigate were to manifest

Finally, according to the nature of the Colombian territorial planning and the homogeneity in the structures of the branches of power in local and regional scenarios, a vacuum is evident in the public policies aimed at balancing the forces of political power in mining contexts. In particular, there may be imbalances between the legitimate powers of the State and those of the companies in certain specific contexts where large companies are present or where miners’ organizations concentrate political power

Sometimes, for example, the same local authorities require that companies effectively replace their natural mission to build schools and hospitals. Despite the fact that companies have programs whose aim is to promote the sustainability of the territories where they are present, this relationship between the State and companies is not specifically regulated, beyond the linkages that may exist in other non-mining contexts. Likewise, some companies may assemble, as is natural in areas of mining enclaves, a significant amount of the territory’s workforce. This is particularly true in the coal exploitations of Cesar and La Guajira, as well as in gold mining in El Bagre, Antioquia. This situation can lead to the weakening of the political power of the local authorities, such as mayoral offices and councils, and on the ability of the companies may have to influence public policy.

In the mining sector, the local economy should be considered throughout the entire value chain of the extractive industry. Productive linkages in all stages of this chain promote the economic development of the territories and, therefore, highlight the need for institutions to facilitate local and industrial development, incentivizing and enabling groups of companies, suppliers and public agencies to create or participate in industrial conglomerates (ICMM, 2006).

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10 Response from the Ministry of Mines to the questionnaire sent by CREER.
11 For further information on the relationship of institutions, companies and territories, please refer to the chapter Sector-Territory.
The actions of public institutions, as well as the policies related to local economic dynamics, should not only focus on an immediate increase of local employment, but should also be aimed towards the long-term strengthening of the local economy. For example, the training of local labor creates and enhances local capabilities that can be transferred to other non-mining sectors (World Bank, 2013). Thus, the growth of the local economy incentivized by the government and public policy tends to promote the development and preservation of local human capital, taking into account the increase in training opportunities, job creation and the responsible undertaking of the expectations of the local workforce. In addition, the development of human capital as part of the local economy, in the long run, becomes more relevant in light of the cycles of the mining projects. That is, once the projects end, the possibilities for further development depend, in part, on the human capital that has been accumulated.

It is necessary to highlight that the government and the public institutions are obliged to create conditions conducive to improving the quality of life of the communities. In particular, the government should be responsible for proposing policies and productive development programs that facilitate the growth of local businesses and increase sustainability in the territories.

2.1 THE ABSENCE OF THE STATE AND INSTITUTIONAL WEAKNESS IN TERRITORIES PRECLUDES THE DEVELOPMENT OF THE LOCAL ECONOMY IN CONTEXTS OF LARGE-SCALE MINING

In the communities within the area of influence of large-scale mining projects, the perception of the communities towards the lack of employment and productive linkages, coupled with the impacts of the mining activity, has generated differences among the local population. "If there were employment for community, these impacts could be withstood," says a community stakeholder in Cesar. This statement upholds the point that communities accept employment as the only way to admit the inadmissible, because they do not feel that what remains in the territory is a process of installed capacity for the town. Therefore, there is evidence of the perception of an imbalance between the cost-benefit relation that large-scale mining has due to the lack of employment opportunities in the department.

Various community stakeholders consulted ratify that in areas with large-scale mining exploitation, such as Antioquia, Cesar and Guajira, the companies arrive to provide jobs in contexts of poverty. In these contexts, the communities perceive that they are not free to choose the type of job they want to access, as high unemployment and unmet basic needs forces them to accept any job that will provide them with a minimum subsistence income. A community stakeholder in the southwest of Antioquia stated, "This region with high unemployment is the ideal scenario for the company to enter and offer the minimum conditions of employment."
Meanwhile, a mining company in Cesar declared that the arrival of companies, from any economic sector, into a region with very high levels of unemployment, increases employment options and the freedom of choice. Similarly, companies in Antioquia declared that starting with their Corporate Social Responsibility Policy (CSR); they establish strategic directives that allow for contributions to the sustainable development of the territory through productive projects, training and community strengthening.

In Corrales, Boyacá, a member of the community declared, "People leave because they do not have dignified living conditions, they have no job, there is no work (...) the older folks stay because they care very much for their land and do not see opportunity elsewhere.” So, while large mining companies can contribute to the development of the regions through the generation of local employment, this situation shows that the situation of marginalization in these contexts, characterized by poverty and unmet basic needs, requires the State institutions to ensure the guarantee of the right to work and access to decent living conditions in the territories12.

Even when a company favors local employers to contribute to the local economic development, problems or difficulties may occur in the relationship between the communities and companies due to the regulatory requirements by the State (Zandvliet and Anderson, 2009). Sometimes, in order to comply with government regulations and reduce the risks for the companies, local employees must comply with a number of administrative requirements with which many are not acquainted or are unwilling to comply. As a leader in Bogotá stated, "Here they gave work, for example, to the dump truck drivers, the small and medium-sized dump truck driver, and unfortunately the national government imposed on them a thousand conditions, (...) they fired them all and brought in new equipment imported from Mexico, (...) so now they no longer need anything.”

12 In depth information on job creation in mining territories can be found in the CREER document “Situations observed in decisive mining scenarios for the exercise of the right to decent work,” available at [www.creer.ihrb.org/wiki-eisi](http://www.creer.ihrb.org/wiki-eisi)
2.2 STATE ABSENCE AND INSTITUTIONAL WEAKNESS IN THE TERRITORIES PRECLUDES THE DEVELOPMENT OF THE LOCAL ECONOMY IN SMALL AND MEDIUM-SCALE MINING CONTEXTS

In contexts of poverty and lack of employment alternatives, small and medium-scale mining presents major challenges associated with the execution of the State in the territories. In particular, the work of small and medium miners is hampered by limitations in the regulatory instruments and in processes of formalization. In fact, medium-scale companies in the construction materials sector in Cundinamarca and Boyacá maintained that the formal requirements for medium-sized mining companies might exceed the scope of their financial resources and technical knowledge.

In the case of small-scale miners in Cauca, Nariño, Antioquia and Choco, the difficulties facing the protection of the right to work and a dignified living are intensified as the scenarios in which the main stakeholders who develop the mining activities are ethnic communities and/or women who find in this labor the only alternative for subsistence. The share of employment aimed at different groups of people can create tensions and conflicts within communities. This, in turn, may be related back to the particular characteristics of the politics and governance of the host country, or the policies and practices of the mining company (ICMM, 2006).

Many of these communities carry out their activity informally due to a multiplicity of factors ranging from traditional subsistence practices, to complex socioeconomic contexts and constraints to legalize due to the absence of recognition of collective rights and/or lack of resources, among others. In addition, the right to work and dignified living conditions for these population groups is compromised by other factors associated with the effect of regulatory and jurisprudential instruments.

In the case of participation of women, in most cases of underground mining, their work is limited to cook for miners and working with waste. The last is associated with the prohibition of women in mining as stipulated in the Substantiative Labor Code and that despite it having been declared unconstitutional in 1997 by the Constitutional Court, according to some community stakeholders it continues to predominate in the collective imagination of communities engaged in mining. Some stakeholders do not believe this prohibition implies discrimination. For example, in the Andean region of Nariño, some miners believe that this prohibition makes sense to the extent that it protects the women from a difficult, hard and very risky activity. In a space for dialogue with the Community Councils in Northern Cauca, several women confirmed they can only perform ancillary tasks, which is attributed to the Black community’s patriarchal structure. However, in many miner enclaves of the

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13 Further information on obstacles faced by small and medium miners can be found in the chapter Sector-territory
14 Further information on this topic may be found in the CREER document, “Situations observed in decisive mining scenarios for the exercise of the right to property, ethno-territorial rights and consult.” Available at www.creer-ihrb.org/wiki-eisi
Black community, it was observed that the women perform work related with the river and stone, and even some are owners of the business.

Meanwhile, regarding the participation of ethnic communities, in a space for dialogue with the Community Councils in Northern Cauca, the participants expressed their concern regarding contradictions such as the principle of state ownership of the subsoil, in conflict with the reality of communities who live on the soil. In addition, they identify contradictions associated with the constraints posed by the Mining Code in terms of territorial autonomy and participation of stakeholders in the territories in constructing the model for mining development. In addition, they argue that there is excessive autonomy in decision-making by the Ministry of Mines and the National Mining Agency- ANM, and the absence of articulation with the recommendations of the Mining and Energy Planning Unit - UPME, the Ministry of Interior and the Ministry of Environment.

**2.3 PRINCIPAL CHALLENGES IN THE MANAGEMENT OF THE INVESTMENT OF ROYALTIES OF THE MINING SECTOR**

Both the national government, as well as the regional and local governments, should take into account a broad overview of economic policy to perceive the opportunities of the mining sector. The negotiations between the companies and the governments must focus on a common understanding of the benefits, risks, costs and responsibilities related to the development of local economies to take full advantage of factors that affect the development, such as the payment of company royalties.

Therefore, to the extent that the available tax revenues are maximized, the government can invest in infrastructure and other initiatives to promote the development and expansion of the industrial base (Esteves, Coyne and Moreno, 2013). In this manner, the benefits from the royalties may be spread to other sectors, maximizing the local economy and sustainable development. Under the Initiative for Transparency in the Extractive Industries - EITI, the economic development initiatives in the mining territories concerning the payment of royalties must benefit from coordinated acts between governments, businesses and civil society that are aimed at promoting transparency regarding the management of royalties.

In the fieldwork, there was specific evidence found of a mismatch in the perception of what occurs with the investment of royalties according to region and type of mining. However, the communities and institutions agree in pointing out that the amount of the royalties does not correspond to the size and impact of the activity and, in some cases, the manner in which it is invested squanders opportunities to meet the most urgent needs of the communities, whether for reasons of efficiency or due to corruption problems.

In the case of gold mining in the municipalities of Chocó, Antioquia, Nariño and Cauca, community stakeholders argued that one of the main problems associated with the commercialization of gold is related with the evasion and diversion of royalty resources. According to official in Cauca,
"Approximately 80% of the gold produced in Colombia does not pay royalties, and the remaining 20% pays a 4% tax, which is to say it does not even enrich the public treasury."

In municipalities in Boyacá and Cundinamarca, community, business and institutional stakeholders agree that the payment of royalties from the mining of construction materials is minimal, specifically of 1%. For this reason, members of the community of municipalities like Sogamoso, Corrales, Tunjuelo, Firavitoba, Tibusos, Nobsa and Tabio argue that royalties are not equitable in relation to the utilization of mining resources. Add to this the scant investment from royalties towards educational programs and projects. As a community leader stated in Boyacá, "It is very difficult to develop educational projects. Royalties are naught and of no use, because no projects are performed here."

Contrary to what happens for construction materials, coal’s share in royalty income from the mining sector is very high, especially in cases of large-scale exploitation. However, community and institutional stakeholders argue that this is not reflected in the department’s development. As a public official in Cesar asserts, “The wealth produced by coal mining is inversely proportional to the poverty in which the people live.” In this scenario, another official references, "The most affected sector has been social investment, as the building of infrastructure has been privileged." The departments of Cesar and Guajira suffer from another problem noted by those interviewed, and which is determinant in the absence of social investment: corruption. The resource resulting from royalties, in terms of infrastructure, "(...) is not reflected in schools, hospitals, housing programs, food, but rather in coliseums and other types of works used by the governing officials to show investment; however, the basic needs of the population are not satisfied, and that plays part in the impoverishment of these areas."

Some interviewees agree in pointing out that the change in the royalty regime affects investment in sectors such as education15, "With the former royalty regime there was investment in infrastructure through the construction of schools [both at the urban and rural levels]. However, the question today is, 'how to sustain this infrastructure if that resource is no longer there?'". In the case of small municipalities with mining exploitation, the new royalty regime represents an obstacle to social investment, as they no longer receive royalty resources to counter negative impacts of mining. The municipalities do not have sufficient resources or capabilities to submit projects to the Royalties' Collegiate Administrative Body - OCAD. Government officials argue that the new royalty regime has contributed to defund the mining municipalities, deepening the gap of Unmet Basic Needs - NBI between these municipalities and the rest of the country.

15 For more information on investment of royalties in education, please consult the CREER document, “Situations observed in decisive mining scenarios for the exercise of the right to education.” Available at www.creer-ihrb.org/wiki-eisi.
In line with the evidence already mentioned, a United Nations Development Program -UNDP report (2014) has reviewed the weakness of the State in the department of Cesar. It identifies the difficulties local governments have had "to become the development managers in their communities." State policy has demonstrated "technical, political and administrative weaknesses" that have not allowed a realization of actions aimed towards the improvement of the overall situation of the department, which is characterized by profound limitations in the coverage and provision of basic services compared to the national context (PNUD, 2014).

**Inefficiency and corruption prevent the transformation of royalties into benefits and protection of rights**

Corruption is one of the intervening factors that severely limits the possibility that the resources generated by mining translate into improvements in the development and welfare of the mining municipalities. An emblematic example is La Jagua de Ibirico, which is among the municipalities that have received the largest amount from royalties per capita; resources in the 2004-2012 period amounted to 519 billion pesos. The huge level of corruption resulted in investigations that have led to lawsuits against the mayors of this municipality and findings such as those reported in 2015 by the Comptroller. The entity discovered, in a project of one thousand housing units, irregularities that represented royalty resource losses of 7 billion pesos. This financial detriment also was at the expense of the physical security of the population, since "the houses, delivered to poor and vulnerable families, have cracks and in some cases crumbling walls and other weaknesses in design and construction "(Contraloría General de la República, 2015).

For its part, the municipality of Segovia, a place where artisanal gold mining coexists with large-scale mining as well as legal and criminal stakeholders, illustrates the institutional constraints to manage royalty resources to take care of such serious impacts as those caused by mercury pollution in this area. Segovia received 27 billion pesos in royalties during the 2004-2012 period. A report by the Comptroller (Contraloría General de la República, 2014) on the implementation of royalties concluded that, although the projects financed with royalties met the goals set out in the municipal development plans, there are findings that indicate transparency problems in contracting, weaknesses in the monitoring of the project’s execution, and other administrative shortcomings.

Neither the institutional capacity for management nor the corruption are problems caused by mining. They are actually a structural element that is present both in mining and non-mining municipalities. Nevertheless, when these factors coincide with the presence of an activity that generates significant revenue, the possibility that these resources will translate into real improvements in the quality of life of the population is put at risk. Moreover, the net result in terms of welfare may end up being negative, because public institutions cannot effectively respond despite having these resources available.
2.4 DIFFICULTIES AND OPPORTUNITIES IN THE DEVELOPMENT OF LINKAGES THRU PRODUCTION CLUSTERS

In general, the possibilities to generate linkages proposed by the public policies that the State promoted not always materialize. Furthermore, depending on the type of mineral, they may take various forms. One possible result of the disjointment that exists between the mining sector policies and the cross-sectional industrial development policy of the State regarding the generation of productive linkages is precisely the heterogeneity in the possibilities of linkages. The following graph compares the evolution in per capita tax collection of the industry and commerce tax in different industrial conglomerates of mining production* at constant 2012 prices. The ascending trend is evident in the rate of per capita industry and commerce tax collection, which points to an increase in commercial and industrial activities in these territories. Nonetheless, it is also clear that the linkages have been substantially more successful in the cases of coal and construction materials in Cesar and Boyacá, relative to what occurs with gold in Antioquia, southern Bolivar and southern Cordoba. In this case, as is made evident, the industrial and commercial activity seems to have remained almost static, with a slight increase during the observed period.

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**Per capita revenue from industry and commerce tax**

* Averages for the gold cluster municipalities in the lower Cauca and northern Antioquia, southern Bolivar and southern Cordoba are exhibited; the building materials cluster of Sugamuxi in Boyaca; and the coal cluster of Cesar.

Source: Based on data from the National Planning Department - DNP.
Constant 2012 prices
3. IMPACT IN LOCAL ECONOMIES DUE TO THE DEVELOPMENT OF MINING ACTIVITY

Given the importance of the opportunities generated by the productive linkages in the regions, and the need to ensure the respect and enjoyment of the rights of the citizens, companies become corporate citizens whilst they are stakeholders in the development of the territories where they operate.

In the case of the mining sector, the total employment it generates represents less than 1.5% of total employment in Colombia (OECD, 2014). According to the field work findings, in the case of small-scale mining compared with large-scale mining, there is a greater generation of employment and productive chains that results in greater local development. According to the Mining Census data (2012), the distribution of the number of employees by size in large-scale mining is 1.5%, while small and medium-scale mining add up to 98.5%. The following figure represents the percentage of share of employment per sector, illustrating a reduction in the share of agriculture and industry in employment, which was not offset by job creation in the service and mining sectors (ANIF, 2012). In the mining sector in particular, while its share of production increased from 2% to 7% of GDP between 1975 and 2008, employment progressed from 0.4% to 1.2% of total employment during the same period. That is to say, the mining sector remains an area of high productivity per worker (ANIF, 2012).

Share of employment by sector

Source: adapted from the National Association of Financial Institutions - ANIF, 2012

According to the Mining Census data (2012), the distribution of the number of employees by size in large-scale mining is 1.5%, while small and medium-scale mining add up to 98.5%.
3.1 Challenges and Opportunities of Large-Scale Mining for the Development of the Local Economy

In the case of the department of La Guajira, according to Hawkins (2014), while mining and quarrying extraction remains the main sector of the departmental economy, it has lost relevance during the last 14 years. While the share of primary mineral extraction was 60% for 2000, in 2013 it had fallen to 40%. This space has been taken over by sectors such as social and community services, whose participation in 2013 amounted to 16% of the economy, and agriculture that accounted for 4% of the economy during the same year.

In the case of Cesar, the economy is mainly concentrated around the primary extraction of minerals. This concentration has increased during the last years. While the sector of mining and quarry extraction accounted for 32% of the departmental economy in 2000, by 2013 it had increased to 54%. Namely, more than half of its production. In contrast, sectors such as social and community services and the agricultural sector accounted for 16% and 9% of the departmental economy for 2013, respectively (Hawkins, 2014). However, “this has not translated into many jobs for the population of Colombian workers: in 2013, the coal industry contributed only 1.1% of all domestic employment.” (Hawkins, 2014)

In the case of construction materials, community stakeholders in some municipalities in the departments of Cundinamarca and Boyacá perceive that, despite having a trained work force in the regions, people do not find employment alternatives in large companies. In Corrales, Boyacá, for example, a community leader in the municipality stated, “The population is trained, there are professionals and there is also machinery and vehicles, but there is no local hiring; people do not find work in the companies.”

In these departments, local stakeholders note that expectations of job creation generated by the arrival of large-scale coal or construction materials mining generated a shift from traditional economic activities, such as agriculture, fisheries and livestock. Since then, the desire and need for better wages has led many people, mainly the younger population, to want to work in the mining industry, leaving aside their tradition as farmers. However, the general perception of those stakeholders interviewed is that the labor offer of large-scale mining is not proportional to the needs and demands of the population. The decrease, and in some cases the disappearance, of traditional subsistence practices has not been offset by jobs in the mining industry. As a municipality official in Hatonuevo, La Guajira mentioned, “By virtue of the displacement of the agricultural activity, the main trend of the population is to gain employment in the company; however, the number of jobs generated is very low.”

“By virtue of the displacement of the agricultural activity, the main trend of the population is to gain employment in the company; however, the number of jobs generated is very low.”

Official of the municipality of Hatonuevo, La Guajira
large-scale in the Guajira, which promoted the construction of a hotel in the town of Albania to incentivize the development of tourism in the region, generating local employment and stimulating the growth of service providing businesses.

Similarly, the environmental impacts of mining activity as well as the new configuration of the territory have represented a loss of traditional occupations. A local official in the Guajira estimated that there is shortage of land for cultivation in the department because today property is private. “Hunting is not permitted, and spaces to enjoy their scenarios belonging to the communities living in the region have been reduced.” In the same vein, a resident of a community of this department stated that river access was restricted after the arrival of the company to the territory, “because it became a private area, and for us the river is not private; it is available for the free circulation of any person, and more so if their activity is fishing, because it is their tradition.”

Meanwhile, documented sources refer to this reduction of areas as an impact of large-scale mining. For example, for Cesar the Research and Popular Education Center - CINEP (2014) analyses how different common goods have been affected, altering the dynamics of community livelihoods and threatening their food security. On the one hand, limiting access to areas of collective use "that constituted arable and grazing land, as well as a habitat for animal species" and on the other hand, affecting natural resources, "The water resources, air, use of the soil, and flora and fauna have been transformed in function of mining, reducing their availability for the inhabitants of these territories." (CINEP, 2014: 52)

However, analysis of this reduction of areas and land privatization should go beyond a logical consequence of an activity of such magnitude. As previously mentioned at the beginning of this chapter, and the chapter corresponding to Sector-Territory relations, the discussion must involve controversies around the regulation of the subsoil for the development of mining activity and public management of the territory.

In this respect, it should be mentioned, for example, the titling of vacant land as another source of conflict in the departments of Cesar and Guajira. Previously, according to local stakeholders, local communities used public land for agricultural and grazing purposes; however, many of these plots were ascribed for mining exploitation. In this regard, the quantitative evidence for municipalities with coal mining in Cesar and Guajira exhibits a lesser amount, by 60%, of vacant land extension than that observed for the comparison group. This evidence suggests, possibly, that in municipalities with coal mining in these territories a greater titling of vacant land occurred.

16 See: CINEP (Center for Research and Education in the Public Interest), 2014; Toro et al. 2010; Tierra Digna, 2014
17 Translator’s note: Vacant land is in Spanish "Baldío". It refers to state owned land that can be assigned for different purposes
In environmental terms, the exploitation of open pit coal has left traces in the territory that are evident in the landscape changes and negative effects on ecosystems, biodiversity, water resources, among others. These, in turn, have generated transformations in the social, cultural and economic conditions of its inhabitants, for whom the access and use of natural resources has been restricted, directly affecting negatively the exercise of their rights, both individual and collective. The rural populations of these two departments have based their sustainability on the use of resources offered by the scenario and in relationships of trade and barter between neighboring communities. It is for these communities for whom their methods of production are an essential part of their identity as farmers, indigenous people, and Black communities.

Upon making a comparative reflection between what the territory was before the arrival of mining, and what it is today after 30 years of exploitation, the community stakeholders declared, "people grew everything needed for food and the rest was bartered with neighboring communities," while with mining, "medicinal plants became polluted, crops were declining (...) we lost our capacity for self-subsistence".18

Other perceptions of community stakeholders in municipalities of Cundinamarca and Boyacá recount the benefits large-scale responsible mining has brought to the economy of the regions. In the construction materials sector, the relations with large companies have generated more linkages backward and forward. In Cogua, Cundinamarca for example, where large, medium, and small-scale brickwork enterprises coexist, an institutional stakeholder affirms, "Without mining here, there would be fewer resources for infrastructure works. Probably agriculture and tourism would be stronger, but the growth of these two could never equate the benefits that the municipality produces from mining". Accordingly, a director of a foundations associated to the corporate social responsibility of these companies states,

"In the section of the municipality they have generated more than 200 jobs. Most “chircales” (small brickwork factory) no longer exist because the large companies merged them. They bought their land and some joined the companies as employees. Mining has represented a significant source of employment for the town."

Similarly, local stakeholders who inhabit municipalities with large-scale mining mentioned relevant opportunities of productive linkages that have boosted the economy of some regions. In Cesar and in some municipalities of Boyacá and Cundinamarca, for example, the arrival of the floating population employed by large companies has contributed to the indiscriminate growth of business such as lodgings, billiard parlors, restaurants, among others. These activities have become an important economic and employment source for the municipalities (Beltran, Lobato and Barcosa, 2010).

18 To delve further into the impacts related to changes in the subsistence practices and the cultural practices of communities, please refer to the CREER document, “Situations observed in decisive mining scenarios for the exercise of the right to participate in the Cultural Life.” Available at www.creer-IHRB.org/wiki-eisi
The presence of this floating population in the municipalities of the area of influence of the mining projects can also bring difficulties. In these circumstances, the potential benefits of linkages that enhance the development of the regions may be offset by undesirable pressures on local markets, particularly regarding labor (World Bank, 2013).

In fact, the awarding of contracts to persons from other municipalities can lead to resentment among local businesses and contractors. Sometimes, communities feel they must have preference to offer local contracts, as they are directly affected by the presence of the company. (Zandvliet and Anderson, 2009) In these occasions, the conflicts arise with both the company and the employed population that comes from other municipalities. According to local institutions in Cesar and Guajira, people from other parts of the country come to these departments competing for employment opportunities, generating scenarios of conflict with the local population.

**Participation by gender in large-scale corporate mining**

In the field work carried out in the departments of Antioquia (for gold), Cesar and Guajira (for coal) and Boyacá and Cundinamarca (for construction materials), a lessened participation of women in large-scale corporate mining was observed. According to data from the 2012 Mining Census, among workers in the mining sector only 3% on average are women.

In the department of Cesar, the hiring of female labor is not evidenced as equitable, according to the testimony of local stakeholders. For example, union stakeholders affirm that there are few women in the workforce. An owner of a contracting company mentions that in one of the companies, the hiring of women is lower than that of men because "then end up being more expensive and do less". The last refers to, for example, maternity leave or licenses for women during their menstrual period. This inequity, reflected in the testimonies of local stakeholders, is consistent with company data. In reports reviewing the practice in coal mining companies, in none does the participation of women in this activity exceed 10%.

In the case of construction materials, in the departments of Cundinamarca and Boyacá, community stakeholders perceive that the employment relationship by gender is not equitable, as local recruitment of women is very low. In an interview with a mining company in Bogota, the staff member in charge of occupational health asserted that mining is characterized as a risky occupation conducted specially by men, and where women generally only have access to administrative positions.

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19 Further information on conflicts related to migration can be found in the chapter [migration](#).
Participation of ethnic groups in the large-scale corporate mining

Regarding the hiring of ethnic communities by large-scale commercial gold mining and construction materials companies, scant information was collected in the fieldwork. However, according to the 2012 Mining Census, among workers in the mining sector only 3% on average belong to ethnic groups.

Indigenous Tekia community in the department of La Guajira

In the case of coal mining, considering that in the department of La Guajira, mainly in the area of upper Guajira, a large part of the population is indigenous, the hiring of the ethnic population is essential. According to the company, the contractor companies in the area of the coal shipping port all include Wayúú in their workforce. In fact, one of the contractors is an association of workers of this ethnic group. However, union leaders claim that outsourcing through contractors or through employment exchanges can generate job instability for these communities.20

20 For more information on the impact of itinerancy on ethnic communities, refer to CREER document, “Situations observed in decisive mining scenarios for the exercise of the right to decent work and participation in Cultural Life.” Available at www.creer-ihrb.org/wiki-eisi
3.2 CHALLENGES AND OPPORTUNITIES OF SMALL AND MEDIUM-SCALE MINING FOR THE DEVELOPMENT OF THE LOCAL ECONOMY

Small and medium-scale mining of gold, coal and construction materials is a labor-intensive activity, linked to the cultural traditions of certain groups that have adopted it as a subsistence practice, complementary to other productive activities such as agriculture, fishing, hunting and small-scale logging. This makes it an important source for job generation and productive linkages, especially in remote rural areas with higher indexes of unmet basic needs. Specifically for the case of small-scale mining of coal, according to the Center for Social and Economic Research - Fedesarrollo (2011), in Norte de Santander, it generates on average about 10,500 direct jobs and an estimated 20 thousand families live from coal. In Boyaca, it is estimated that the same activity generates between 4,000 and 8,000 jobs, and in Cundinamarca and the figure rises to 16,000 jobs (Fedesarrollo, 2011, p. 22).

Specifically, in the case of coal mining exploitation in the country’s interior, ”the mayors of the municipalities with small and medium-scale coal mining find great benefits to this activity. Among these a large employment pool, which is not always opposed to the agricultural activity of the farmers, but on the contrary, complements it.”(Zapata, 2014. p. 315). The Alliance for Responsible Mining, also refers to this small-scale mining characteristic, noting that worldwide it has been an activity "developed by many local inhabitants, usually with the help of the whole family; and it has been configured as an important source of employment and as an opportunity for sustainable development "(Guiza, 2015. p. 16).

Likewise, Hawkins (2014) states that:

"In the departments in the country’s interior, the estimates regarding the number of coal mining workers are very rudimentary, due to the large number of small-scale artisanal mines and extralegal character of labor relations and employment contracts. However, it can be said, even of the most technologically advanced companies, that the staffing intensity is much higher compared to open pit coal mining activity."

As for the construction materials sector, midsize companies have managed a significant contribution towards the generation of employment and productive linkages. In the locality of Ciudad Bolivar, Bogota, for example, an association of medium-sized mining enterprises located in the Industrial Mining Park El Mochuelo has played an important role in job creation for the neighborhood in which it operates. According to members of the association, “There are 900 people directly employed, and over 3,000 indirectly employed. Thanks to this, the relationship with the community is good, because those who work here are from the same community.”

Such references would be in line with comments made by the Dialogue Group on Mining in Colombia - GDIAM regarding the major challenges, both for the national government as well as for local authorities, in relation to mining activity:
Inclusive mining must be compatible with the development of other economic activities and cultural uses for the land, such as agriculture, livestock, agroindustry, tourism, and eco-systemic preservation. Colombia’s riches in terms of natural resources and its poverty and inequality indicators require that all productive sectors generate inclusion, employment and income, so they might constitute new sources of riches in a legal manner (GDIAM, 2015).

In this context, it is unwise to recourse to a public policy that encourages large-scale mining without acknowledging the importance of small and medium-scale mining as a means of generating subsistence employment and productive linkages, especially in rural areas with high levels of poverty and unmet basic needs.

On the other hand, as with large-scale mining, the damages to the scenario produced by medium and small-scale mining activity also implicate an environmental degradation which limits the use of natural resources by the communities and impacts on the development of mixed economies, social and cultural practices, and the health of its members.

Small and medium-scale mining to can affect the natural resources available for subsistence. For example, in areas where small-scale mining is one of the main subsistence activities, such as Chocó and northern Cauca, the arrival of stakeholders who exploit gold through techniques other than the traditional, such as backhoes, dredges or dragons, has generated a displacement for the traditional activities. Indeed, the machines deteriorate the land, leaving the soil sterile and useless and the water contaminated, affecting the survival and coexistence of traditional practices such as artisanal mining and agriculture.

The communities are forced to proceed behind the machines to “barequear”21 as the only possibility of livelihood, “those who were farmers have been left without land to cultivate, and ended up changing agriculture for the “barequeo” that goes behind the backhoe.” The itineracy in these communities generates disruption over traditional ways of life associated with the change of productive vocation, from a mixed production to an exclusive mechanized mining exploitation.

On the other hand, the incorporation of backhoe mining, first on the river banks, and then on the channel itself, has affected the relationship the Black communities have established with these water sources. For these communities, rivers are a source of food, transportation, recreation, meeting places, among others. In turn, a factor previously mentioned and that is also deeply affected, is the ability to access areas of communal use.

In regions with non-mining vocations, as the Colombian Massif and southeast of Antioquia, the entrance of the legal, illegal and criminal mining activity has also deeply affected activities such as

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21 Choco region term for panning
agriculture and tourism, which depend on the availability, access and quality of the land and water resources. The entrance of mining to these regions has also limited the use of space for cultural life.\(^2\)

In particular, in the southeast of Antioquia, where the vocation is predominantly coffee, the arrival of mining in any form is frowned upon. The relationship between land grabbing and mining projects has led to a breakdown in traditional subsistence activities. As a community stakeholder in the area affirmed, "there is a displacement of labor from agriculture to mining; coffee is being lost." In several municipalities of this region, the peasant and indigenous communities and grassroots organizations have organized marches in defense of the territory and demonstrations to make known and denounce the problems facing the region, associated with the entrance of mining into the territory. In addition, these initiatives have strengthened the union and resistance processes that are taking place against the environmental, economic, social and cultural impacts of mining.

**Participation by gender in small and medium-scale mining**

Small and medium-scale mining enjoys a particularly active participation of women, which is differentiated by region, and especially depending on the type of mining. According to Güiza (2013), 72% of women who perform operational work in the mines do so in small-scale mines without a mining title, indicating that the high demand for worker when pertaining to women in the sector occurs in small-scale informal mining (Guiza, 2013).

During the fieldwork, in the departments of Nariño, Cundinamarca and Boyaca, it was found that wherever small and medium-scale mining is present, some of the women are owners of their mines, and work under the same conditions and with the same tools as men, or in managerial and administrative tasks, as in Boyaca. Furthermore, in the municipality of La Llanada, Nariño, one of the five mines formalized and certified Fair-minded is owned by a woman who is knowledgeable about all the tasks associated with the mine, is exemplary in the region for its level of technological development and responsible work.

\(^2\) See, for example, the story about the 80 Black community women who came from Cauca to prevent illegal mining from sweeping away the ancient craft of "barequeo." Published by Natalia Orduz (18 December 2014), "Women of Cauca’s gold". Las2orillas. Available at: [http://www.las2orillas.co/las-mujeres-del-oro-en-el-cauca/#.Vk_Q8u134ZE](http://www.las2orillas.co/las-mujeres-del-oro-en-el-cauca/#.Vk_Q8u134ZE) Accessed November 26, 2015.
In gold mining, the women that work in mining generally perform four types of task:

- “Chatarreras”: Women charged with the collection selection and processing of mine residue.
- “Barequera”: Women that perform the artisan gathering of gold from river banks.
- “Hueveras”: Women that go to the processing center (“entable”) and ask for processed residual materials (“balto”).
- “Costaleras”: Women who use the packing sacks to recover the residues.

In a space for dialogue with women chatarreras (scrap collectors) from Segovia and Remedios, the women explained that what leads them to collect scrap is the high level of unemployment throughout the region, as well as scrap collection tradition passed from generation to generation. They claim to prefer to engage in scrap collection than work as domestic employees or in formal employment, because despite the instability of this labor activity, it gives them a wide margin of freedom in terms of schedules and rules. Many of these women are female heads of household and the informal nature of the scrap collection offers them flexible schedules to care for their children. According to a scrap collector, their children accompany them to the workplace from the time they are small and grow up with this mining tradition.

Integrating technical advances in small-scale mining in these regions would imply a centralization of mine residues in large recovery facilities, ending these women’s source of income, which also accounts for a large number of jobs in the mines. In a mine visited in Segovia, for example, about 50 employees are men in various jobs, along with 120 scrap collecting women. Hence, a 2 to 1 female to male labor ratio is observed.

In other municipalities of Boyacá and Chocó, the ancestral mining activity for gold and clay, gives women some autonomy in the processes of subsistence. Particularly in Ráquira, Boyaca, women have dedicated themselves to handicraft production thru the artisanal extraction of clay. Meanwhile, in
The benefits of education are not only received by the direct employees, but the skills can also be transferable from the people trained to their families or community members for the benefit of current and future mining operations, as well as other sectors the economy. 

Choco many women are involved in mining production through various techniques, such as the “mazamorreo” or “barequeo”, “zambullidera”23, by waterjet and underground mining.

### 3.3 OPPORTUNITIES FOR IMPROVEMENT FOR THE MINING SECTOR THROUGH EDUCATION AND TRAINING

Education is an important part of the contribution to the local economy that a mining company can provide, and must be carefully addressed by recognizing the population characteristics of the communities. The benefits of education are not only received by the direct employees, but the skills can also be transferable from the people trained to their families or community members for the benefit of current and future mining operations, as well as other sectors the economy (ICMM, 2006). Particularly, in some regions with the presence of both large-scale as well as small and medium-scale mining, programs for sectoral strengthening and the training of company employees and communities have been implemented.

In these contexts, the role of the SENA is critical, because despite its limitations in terms of resources and capabilities, it is an institution that has a presence in mining areas through training on priority issues. For example, in La Sierra, Cauca, the institution performs mining rescue training and support for the communities to reduce risks associated with the artisanal mining infrastructure. In addition, the SENA has specialized centers for the mining sector, such as the Center for Mining and Environmental Training of Bajo Cauca, located in the municipality of El Bagre, Antioquia, which is also funded by the mining industry and local and regional institutions. Also, through partnerships between regional institutions, companies and/or miners cooperatives, they have created mining training centers, such as the Mining Environmental Center of Andes -Sotomayor in Nariño.

A widespread request in the departments with gold mining extraction is for education for the local population in tasks such as jewelry and goldsmith’s work, which would allow them to transform the material into value-added products and generate productive linkages in the extraction zone. Even though in some regions there is small-scale work being performed in these areas, the artisans insist on the importance of creating and strengthening the schools and training centers in order to develop technical knowledge and technology, and improve product quality so they may enter international markets.

Other projects are related to the substitution of mining for other economic work. The Fundación Alisos - Partnerships for Sustainability Foundation in Bajo Cauca, for example, conducts a program for the purpose of replacing informal mining for agroforestry crops through a Public Private Partnership - APP, including training with experts. On occasion, the risk of these programs has to do with the non-

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23 Chocó region term for river bed sand pumping
participatory nature of the proposals. That is, they approach communities with alternatives, instead of building alternatives with the communities, taking into consideration its features, capabilities and real needs. 24

Regarding the construction materials sector, the Chamber of Commerce of Sogamoso, in conjunction with the environmental authority of Boyacá- Corpoboyacá and the Federation of Coal Producers of Boyacá- Fenalcarbón, developed an environmental window through a project called SIGMA. One of the officials of the Chamber of Commerce mentioned that this is an instrument of institutional management at the service of businesspeople and mineworkers, focused at improving environmental management, productivity and competitiveness of small-scale miners and the internationalization of the companies. The official maintained that through this tool, they have conducted sensitizations with the pottery, liming and mining sectors on environmental responsibility, through workshops, videos and trainings. Regarding this project, a member of a construction materials company noted that the benefits of this project extend to large companies, because through these trainings they supports small-scale miners who participate throughout the entire value chain of the industry.

24 For further information on training programs in mining contexts, please refer to the CREER document, “Situations observed in decisive mining scenarios in the exercise of the right to decent work.” Available at www.creer-ihrb.org/wiki-eisi
1. Responsible linkage in fragile environments

As part of the strategy to ensure responsible coordination between the undertakings and the environments, including a balanced assessment on the convenience of linkage versus the protection of traditional economies, the Ministry of the Interior and the Ministry of Mines and Energy, with support from the DANE and the National Planning Department (DNP) should consult local authorities, including community councils, indigenous reserves, etc., in an effort to gain extensive knowledge on productive callings and land use, which will help strengthen local economic callings, competitiveness and inclusive development independent from mining.

In particular, the prior consultation processes should include assessments on the impacts and opportunities on the callings and the use of resources by the different ethnic communities.

2. Assessment and monitoring of the use of local resources

In order to identify, mitigate and prevent socioeconomic impacts associated to the use of the local resources listed in planning instruments such as Environmental Impact Assessments, the Ministry of Mines and Energy, with support from the DNP, needs to develop indicators to measure and identify real and potential impacts on the use of local resources such as: the use of local labor, procurement of goods and services, and the effects on the availability and pricing of production factors. These indicators should include activities to monitor Environmental Management Plans and local and departmental development plans.

3. Strategy for the reparation of liabilities

The restoration of the territories, and the corresponding economic social sustainability through the use of non-active mine liabilities should be the priority in the allocation of fiscal resources derived from mining activities. Consequently, one of the priority allocations of the royalties should be the mitigation of cumulative impacts. In cases where the current royalty flows is insufficient, the General Royalty System should supplement the resources needed for the recovery of the mining territories. We recommend that the DNP develop and implement the appropriate mechanisms required to direct the resources through the General Royalty System.
4. Including mining in local development perspectives

In order for local economies to develop in accordance with community expectations, and the work force’s capacities, participation and relevance in local development are recognized, the formulation of Territorial Planning, Local and Regional Development Plans and Life Plans for the Ethnic Communities, needs to include impact assessments and linkage opportunities with the existing or prospective mining activities.

To this effect, the Ministry of Mines and Energy and the DNP must design a protocol to ensure the appropriateness of the methodology and facilitate dialogue and interaction between the State and the communities, businesses and local authorities in an effort to recognize the particularities of the territories, the characteristics and individual needs of the communities and their importance in strengthening the local economy.

5. Due Diligence in linkages

As part of their due diligence process, companies must identify the aspects related to local development at its baseline. To this end, communities should be involved through transparent and inclusive mechanisms, devoid of discrimination risks, in order to access training opportunities, generate productive linkage and jobs.

To ensure continuance of the commitment, the due diligence process related to the use of local resources should be included in policies and programs, including clear procedures for disclosure and proper interpretation by the contractors.

6. Knowledge Management Program

We recommend that the UPME develop a knowledge management program in order for:

6.1. The UPME to identify and define the population, cultural and socioeconomic traits of the communities in the mining scenarios in order to identify potential responsible linkage opportunities from the earliest stages of mine planning.

6.2 The ANM to include the responsible linkage criteria in Social Management Plans, and agree with the municipalities the actions required to make the opportunities a reality. For compliance, traceability and transparency purposes we recommend that Social Management
Plans are included into the PTO and are subject to the same treatment as all other aspects thereof.

7. Internal policies on hiring local labor

In an effort to encourage the involvement of local labor, we recommend that mining companies adopt a policy for hiring local labor, giving priority to areas where exploration and mining activities occur. Only when there is not enough skilled labor for these areas, should companies consider hiring personnel from neighboring municipalities or the rest of the country. In particular, companies should promote the recruitment of the more vulnerable population, such as ethnic communities and women, when they state their interest and have the necessary training and profiles.

8. Prevention, identification and mitigation of impacts on the use of local resources

Environmental impacts and the configuration of the territory as a result of mining activities, as well as changes to the landscape, ecosystems and water resources, among others, restrict the access and use of natural resources. Therefore, access to resources for traditional tasks by the communities may deteriorate. To this extent, we recommend that companies dialogue with local governments and communities to identify and address the major impacts to the local economy arising from mining activities. According to this identification, businesses, in conjunction with local governments, must design a plan for the prevention and addressing of the changes to the social, cultural and economic dynamics of the people, generated from the mining activity.
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5 DISPARITIES IN MINING CONTEXTS FOR ACHIEVING DECENT WORKING CONDITIONS
The concept of decent work adopted by the International Labor Organization - ILO concerns the promotion of "opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, safety and human dignity" (ILO, 1999). The dimensions of decent work encompass many aspects, from job creation to the conditions for social dialogue. This chapter will be devoted to the discussion of an aspect which manifests itself in diverse forms in mining contexts, and clearly illustrates the essential role of the State as an enabler of institutional conditions conducive to the enjoyment of rights. It relates to the elements that favor or hinder situations where workers can labor in safe environments that allow them equitable access to social protection and, in all cases that befit human dignity. There are other elements of decent work that are not discussed here, although they are not less important, since their determinants are directly related to the factors identified in the chapter on the relation of the sector with the territory and in the chapter that addresses the issue of employment generation and productive linkages.

The positive effects of the mining presence on safety in work scenarios jump into view when it comes to companies with robust risk management systems that incorporate international safety standards, even when mining involves activities that are by their very nature risky. However, this is not the situation in most of the units of mining production, where informality, on the one hand, and the presence of the phenomena of criminality associated to exploitation, on the other, are conditions hardly conducive to promoting good safety practices in the workplace, and severely limit the State's ability to ensure that at the least the legal provisions in this area are met. The same could be said of the conditions of access to social protection, where the dynamics of the intervening factors is very similar.

Nonetheless, in the context of large-scale mining, there are challenges but of a different nature. For example, there are tensions between unions and businesses, and issues related to the timely care of occupational illnesses and disabilities are a functional part of the conflict between these two stakeholders.

For its part, some of the challenges in the workplace in small and medium-scale enterprises have to do with barriers to access protection regarding disabilities, the absence of a risk prevention culture, extensive working hours (that do not necessarily occur in a subordinate work relationship) and traditional forms of outsourcing (Delgado & Tovar, 2016).

The problem of “one-size-fits-all” in labor legislation is manifested in the case of mining working conditions. There are requirements for risk management system in the workplace that exceed the technical and financial capabilities of

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1 For further information about other dimensions of decent work, refer to the CREER document, “Situations observed in decisive mining scenarios in the exercise of the right to decent work.” Available at [www.creer-ihrb.org/wiki-eisi/](http://www.creer-ihrb.org/wiki-eisi/)

2 Outsourcing is "a mode in which the obligations relating to benefits and social security of the workers are assumed by themselves and not by those who benefit from the work. Outsourcing occurs through different forms such as an independent contractor, the civil contract for the provision of services, a contract for the provision of services to the State, and worker cooperatives" (Procuraduría General de la Nación, 2011).
artisanal miners, and these populations are not conceived unequivocally in the regulation as vulnerable groups requiring targeted actions to achieve the prevention of accidents and disabilities.

Like the other chapters that adopt a comprehensive approach to rights, this chapter the link between the right to decent work and others that are infringed upon by the impacts associated to work environments. In particular, it explores the link between the right to decent work and the right to health, and some aspects of the correct conditions for a dignified life. Studying the impacts on rights in the workplace is relevant for understanding the effects of mining and the identification of weaknesses in scenarios other than the mining institutions that limit the ability of the State to protect and promote decent working environments. The subjects in this case are the people directly involved in the activity; however, government institutions responsible for managing and preventing impacts in the workplace are often outside the sector. This situation complicates the government’s performance in situations where there is a low capacity for coordination and implementation of sectorial policies. Impacts on rights manifest themselves thru the intervention of two factors:

- The difficulties of the State to provide fair conditions of social protection.
- The obstacles arising from the institutional environment and the way in which production is organized that affect the ability of companies and projects to promote a culture of respect for human rights in the workplace, or at least mitigate the risks.

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<th>PRINCIPAL SITUATION AND IMPACT</th>
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<td>Limitations of the institutions in their capacity to manage knowledge, coordination of joint</td>
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<td>inter-sector actions and design of interventions sensitive to the diversity of work contexts</td>
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<td>in mining operations.</td>
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<td>Weaknesses in the institutional capacity to implement effective actions for inspection,</td>
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<td>Recruitment schemes that for various reasons obstruct the assuring of good labor practices</td>
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3 The introductory chapter of *mining and human rights* provides a discussion of the inflexibility of the mining regulations and in general, the regulatory framework in Colombia, which is not sensitive to the diversity of the mining contexts and production schemes.
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<td>Barriers to progress in the formalization processes for reasons of cost, time required for the</td>
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<td>changes, limited resources for providing support to the productive units and opportunities to</td>
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<td>Stigmatization of union activity and weak institutional contexts that prevent collective action</td>
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<td>by the workers to participate in the social dialogue.</td>
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1. PUBLIC POLICY FOR THE EFFECTIVE PROTECTION OF DECENT WORKING CONDITIONS IS IN TRANSITION

1.1 THE PROMISE OF REFORMS TO HEALTHCARE POLICY

Public policies that enunciate the guidelines for social protection and risk prevention in the workplace\(^4\) are in a transition process, aiming to provide a more robust framework for the protection of rights in the workplace. Given how recent these reforms are, and the complexity of their implementation process, it is difficult to draw conclusions on the effects of the policies on mining scenarios, simply because in many cases they are not yet observable. However, some of the elements that remain, even after the reforms, continue to be mediating factors that limit the State’s capacity.

**Construction materials quarry, Cundinamarca**

\(^4\) Statutory Healthcare Act (Law 1751 of 2015), and the new Management System for Safety and Health at Work (Decree 1443 of 2014), the Ten-Year Healthcare Plan, which sets the guidelines for public health policy up to 2021.
The Statutory Healthcare Act (Law 1751 of 2015) is the most recent reform to Colombia’s healthcare system. This law corrects some of the limitations of the previous regulations, which constituted barriers hampering access to care and medicines, and incorporates ambitious measures in areas such as price controls. Another relevant aspect concerning the impacts associated with decent working conditions is the requirement to extend medical services to marginal areas. How these and other aspects of statutory law are regulated will determine to what extent it can positively affect the factors involved in situations where the worker’s rights are violated; for example, when they suffer from an occupational disease.

However, the regulation of this law is not immediate (two more years at minimum to complete the whole implementation process); given the complexity of the schemes and planning, the Ministry of Health must conduct to determine sustainable regulatory conditions. Among the most notable elements in the new law that have positive consequences on the right to healthcare, in general, as well as for workers, are:

- **The explicit recognition of the right to health** in the sense expressed by international instruments on this matter (Article 12 of the International Covenant on Economic, Social and Cultural Rights, ICESCR, among others). This is the structural change with the largest potential impact on the ability of the State to offer a more comprehensive protection of this right. Of course, the expected consequences would be the access of mining workers to healthcare. It is particularly interesting to see the effect this new approach will have on the opportunities that itinerant mine populations, miners engaged in seasonal activities, and those with unstable contractual conditions will have to access the assurances (see chart).

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**Modes of employment agreement**

Source: Adapted from Ministry of Mines and Energy - Minminas /MME (2016) with information from their 2010-2011-Departmental Mining Census
54% piecework; 7% provision of services; 18% indefinite term work contract; 12% definite term work contract; 9% temporary.

**The adoption of the principle of medical autonomy.** This is expected to reduce response times for the diagnosis and treatment of events related to work disability. If this happens, the result would be a reduction of dissatisfaction and complaints from the population with work disabilities who, as described below, often encounter bureaucratic requirements and difficulties for drug approval, with the consequent deterioration in the quality and timeliness of service.

**The problem of “one-size-fits-all” on the System of Occupational Risks.** Although regulatory progress has been made requiring the adoption of systems for the management of occupational risks, adopting guidelines that comply with international standards, the productive structures of most mining contexts have limitations on their ability to attain these standards. Most mining production units do not uphold the guidelines established by Decree 1443 of 2014. According to the census, 72% of production units do not have occupational health and safety workplace procedures or policies (Ministerio de Minas y Energía, 2016). On the other hand, although important advances have been made in terms of health insurance coverage, the percentage of miners who have professional risk insurance remains low (Defensoría del Pueblo, 2015)\(^5\). The mining policy establishes in its framework the following actions to promote competitiveness:

"Generate higher human capital, technology and financing capacities in the mining sector with the purpose of carrying out this activity under high environmental, security, social and economic standards in order to achieve major positive impacts on the regions of mining influence, directly and indirectly." (Ministerio de Minas y Energía, 2016)

However, the ability of these actions to address the issues of security in the workplace in situations with a strong presence of criminal and informal mining requires comprehensive and inter-sectoral approaches that are not yet evident in the design of the sector’s policies. While interventions that promote formalization are welcome, due to their positive effect on working conditions, an important set of stakeholders are not the subject of these actions\(^6\).

### 1.2 WEAKNESSES OF REGULATORY FRAMEWORK FOR DISABILITIES

One of the main findings in coal mining environments is the recurrent discussion on inadequate care for workers with sicknesses/disabilities. This research does not provide a definitive conclusion on the causes of this phenomenon, but draws attention to it, since it is the cause of larger conflicts and rifts between the companies and the communities. Evidence suggests that the parties have failed to enter into an effective dialogue, both because of the absence of information, as well as the distrust reigning between the parties. One of the intervening factors is the difficulty, at least under the regulatory framework before the Statutory Healthcare Act, for the assurance system to respond promptly to events of disability, as explained below. Other factors were also identified, whose dynamics are discussed in other sections of this chapter, such as the gaps in epidemiological information and strains in the relationship between the companies and the unions.

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\(^5\) Equivalent to the NHRI (National Human Rights Institution)

\(^6\) Further information on the limitations of formalization can be found in the chapter [Sector-territory](#)
Law 776 of 2002 establishes the employer’s obligation to place the worker, once their temporary medical disability is over, once again in the position previously held or relocate them to another position for which they are trained. These two articles describe the employer’s obligations:

- "At the end of the period of temporary disability, if the worker regains his ability to work, the employers are required to place them in the position previously held or relocate them to any other for which they are qualified, in the same category" (Art. 4)
- "Employers are required to place the partially disabled worker in the position previously held or relocate them to any other or provide a position compatible with their abilities and skills, for which they must make the necessary staff relocations" (Art. 8)

The intent of the norm is to protect the worker in a condition of disability, but in practice, the institutional weaknesses of the health system due to factors such as delays in response times for the authorization of the disability and a lack of clear criteria in the same processes to define cases of disability have a negative effect on the right to decent work. On the one hand, workers and unions perceive arbitrariness in the management of disabilities. On the other, large mining companies face an uncertain environment that is not conducive to the proper management of these as they occur. The multiple testimonies gathered during fieldwork in Cesar and Guajira corroborate the presence of these situations.

Small enterprises are even more vulnerable when there are weaknesses regarding the detection, care and insurability of disability in the healthcare system. It is the latter that would most benefit from a strengthening of the public insurance capacity. On the one hand, because they are the ones facing the greater difficulty in applying the temporary disability norms mentioned above. However, above all, because when universal coverage is achieved under appropriate terms, the insurance costs would be distributed among the population, making it possible for this group of miners to have adequate coverage.

### 1.3 WIDER, MORE TIMELY AND MORE TRANSPARENT EPIDEMIOLOGICAL INFORMATION

An example illustrating the challenges of having adequate information to guide the design of policies and the formulation and monitoring of goals is in the case of mining fatality indicators, which corroborate the high risk of the mining activity (Unit of Mining and Energy Planning - UPME, 2014). There are two sources that provide this information: the reports of the National Mining Agency on reported emergencies, and the fatality rate of the Management and Results Assessment System (SYNERGY). In both cases, there is a favorable evolution of the indicators, except for 2014, and it has been possible to maintain the indicator below the fatalities target of the Development Plan. However, the problems that entities, such as the Comptroller, have detected in the inspection and control systems of the healthcare system, and the obstacles in the capacity for action by the same mining authorities, allow inferring the possibility of underreporting in informal and criminal mining cases. These are precisely the types of exploitation where it is much more likely that no appropriate management practices for these risks exist. This case calls attention to the importance that the design of the indicators does not make invisible the most vulnerable population.
It should be highlighted that the government and public institutions are obliged to create conditions conducive to improving the quality of life of these miners and, in order to achieve it, an insufficiency of policy instruments is detected, which is partly engendered by the information gaps to comprehend the realties of working conditions in mining contexts. The same mining policy formulated by the Ministry of Mines and Energy recognizes this constraint, stating, "The management of information and knowledge regarding issues relating to safety in the industry will be improved" (Ministerio de Minas y Energía, 2016).

1.4 MONITORING AND CONTROL OF OUTSOURCING SCHEMES AND CONTRACTORS FOR THE PROTECTION OF RIGHTS

The conditions of poverty in areas with exploitation of large-scale gold, construction materials and coal mining, such as Antioquia, Boyacá, Cesar and Guajira, may foster businesses to use unfavorable contracting schemes with consequences to the social protection of workers and abuses such as long working hours and exposure to toxic substances in the workplace. Communities do not freely choose these conditions, and in many cases cannot resort to citizen participation mechanisms or associations in order to assert their rights.

Challenges and conflicts of outsourcing schemes in the mining sector

Large-scale mining uses different contracting modalities in the development of its activity to employ workers, among these is outsourcing through contractors. In this contracting mode, the workers themselves or the contractors assume their obligations related to benefits and social security, and not the entity receiving the service. (Procuraduría General de la Nación, 2011). This form of contracting generates conflicts:

- Inequities in the conditions of the direct employees with the contractors (wages, lack of access to paid leave and benefits, among others)
- Job insecurity
- Inability to negotiate working conditions or to participate in union activities
Regarding working conditions, coal companies in the north of the country affirm that they have taken steps so that contractors comply with all the requirements of law, such as the payment of benefits, etc., and that they have autonomy with respect to payment, salary and length of contracts conditions. In this manner, companies perform audits of their contractors to verify compliance with the norms; for example, that there is no recruitment of minors, or discriminatory practices based on gender, among others. Contractors are also incentivized to employ the local population. However, institutional stakeholders in Guajira note that, although contractors employ the local population, the job offer is still very low.

In the region of Cesar, one of the most frequent complaints from workers is precisely the lack of uniformity in the working conditions of the multiple companies that conform the business groups, as well as the dissatisfaction due to the lack of transparency about how the group operates and their inter-relationship, which further increases distrust and conflict.

As a way to shelter contract workers, both in Cesar and Guajira, national unions support these workers when they face situations of abuse by employers. Likewise, unions have been formed based on contractor companies.

**Inequality in the protection of contractors by type of mining**

The protection of the contractors’ workers in industrial safety and occupational health matters presents challenges of inequality between large and small-scale mining.

Large-scale coal mining operations and some of the large limestone, clay and ceramics transformers have standards to certify the capabilities of contractors regarding industrial safety and occupational health. Some have their own systems monitored by their parent companies, other are externally assessed and certified, as in the case of the RUC⁷. It is noteworthy that in the case of the gold mining business, only one company is known to use RUC as an assurance measure.

Other measures that exist to ensure the protection of contractor workers is the indispensable requisite to enlist all workers, directly or through a contractor, with an Administrator of Occupational Risks - ARL. Apart from their own capacities and investments, the services these agencies provide to support risk management plans, safety systems management, accident prevention and training are part of the protection package that any mining operation must ensure.

Evidence notes that large mining projects require their contractors comply in this respect, in contrast to the situation of small and medium-scale mining, which can hardly meet the enrollment standards and requirements of the ARL, and therefore will rarely be able to require their own contractors to comply with this requirement. For example, in the case of coal mining in the country’s interior, it is estimated that only 30% of workers are insured by an ARL (Center for Social and Economic Research- Fedesarrollo, 2011), and therefore the vast majority of workers in this sub-sector have no industrial safety and occupational health protection.

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⁷ Certified contractor’s registry for safety, occupational health and environmental management, RUC
1.5 THE RIGHT OF ASSOCIATION AND ITS RELATIONSHIP WITH WORKING CONDITIONS

While research provides no information that allows for the conclusion that there is a systematic approach by companies against union activity, it is evident that the relationship between the companies and the unions is characterized by mistrust.

On the one hand, according to that expressed by union leaders in Cesar, belonging to the union has resulted in situations of labor discrimination within the companies, as well as not being considered for promotions or suffering wage freeze. They also claim that this discrimination discourages other workers from joining the union, because they fear being fired if they enroll.

Faced with the above, the companies in Cesar avowed that workers are not discriminated against because they belong to a union. One of the companies stated, "more than 60% of our employees belong to at least one union, and presently we have five (5) unions. Some contractors have their own unions as well."

In addition, it is necessary to remember that the thermal coal producing regions, Cesar and Guajira, were victims of the presence of paramilitary groups that systematically attacked the trade unions in the country, and while it was not the objective of the research to establish the relationship of companies with these liabilities of the Colombian armed conflict, it is necessary that efforts to build trust between companies and unions do not dismiss this reality that remains latent in the territories.
State absence and institutional weakness in the territories makes it difficult to adopt good practices in small and medium-scale mining contexts. Formalization processes do not have the scope, nor are they always designed to meet the realities of workplace safety and social protection challenges faced by small-scale miners. There are no strategies to disseminate to the population who most require it the technical knowledge and access to safer technologies. In fact, in many cases, disincentives are generated to operate legally, and this becomes another factor perpetuating the vicious cycle impeding the improvement of working conditions.

"On the hill El Burro there are 537 open mine entrances where mining activity is carried out illegally, which leads to unsafe practices such as: trafficking of explosives or illegal manufacturing, handling of explosives by people without
expertise, fraudulent and dangerous connections to the power grids, unventilated mines and absence of protective elements for mine work. " (Defensoría del Pueblo, 2015)

The institutions responsible for inspection, surveillance and control under the framework of the system of workplace risk management have failed to respond to their mission, even though this problem was recognized long ago and recommendations were made to strengthen their monitoring. In particular, there are serious limitations in their ability to deter monitored subjects from assuming certain risky behaviors, to punish when their performances merits it, to monitor in order to alert the entities in charge to contain or prevent further damage with timely intervention. They also have limited ability to assist or prepare those who require special support to meet the reasonable performance standards.

The Comptroller General’s Office (Contraloría General de la República, 2014) assessed the role of monitoring, control, and surveillance -MCS, (or IVC for its Spanish acronym) of the territorial entities (2011-2013), and amongst the departments with the highest rating are Cundinamarca, Boyacá and Guajira. Chocó, on the other hand, has one of the lowest MCS performances of the country. These differences in the institutional scenario have consequences on the State’s ability to ensure adequate control of health and environmental risks in work environments, and is a key component for the General System of Occupational Hazards - SGRL to achieve its objectives.

"The National Health Superintendency, as the governing body of MCS, and in the development of its mission, contracted in 2013 with the company Haggen Audit Ltda. for the performance of sixty-four (64) comprehensive audits of the Territorial Entities, visits that also take into account the information reported by the grievances, complaints and request mechanisms - PQR by users of the General System of Social Security in Health - SGSSS, in preparing its visitation plan.

In order to measure the effectiveness of the MCS function, the activities system’s central themes were evaluated (financing, insurance, public health, quality, service delivery, user care, and special measures and actions) in the different entities duly qualified for MCS in the SGSSS, as well as in the other objectives. Ninety-three (93) regional authorities were accounted for in the "in situ" verification, which initially evidenced deficiencies at not finding, in many, reports that accounted for the execution of the MCS function.

No case evidenced the consolidation of information that the control entities carry out in the exercise of the MCS function by the health secretariats."

An important component of MCS actions has to do with occupational epidemiological surveillance, and the Ten-Year Public Health Plan establishes that local authorities must define priorities to plan their interventions according to economic activity. The Plan explicitly mentions informal mining as a priority, where surveillance should include chemical, ergonomic and accident risks (Ministerio de Salud, 2012). The time horizon of this Plan is for the period 2012-2021, and therefore actions formulated by it are still being performed. If progress were achieved by this strategy, it would address a compelling aspect of the information problems identified in section 2.3 of this chapter. It should be noted that compliance with this plan has its difficulties, to the extent that there are no mechanisms to ensure funding.

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8 Equivalent to NHI (National Human Rights Institution)
and continuous monitoring of advances regarding the targets, and that there exists obstacles for the effective coordination of actions with the regional health authorities.

2.1 THE ROLE OF LARGE-SCALE MINING IN PROMOTING PROPER SAFETY IN THE WORKPLACE PRACTICES

Coalmine pit in La Guajira

Source: CREER Fieldwork

In the case of the department of La Guajira, the epidemiological surveillance activities of the large-scale mining companies are carried out with the support of experts, usually with universities, and are a valuable input for management within each organization. In some cases, when grouping several companies, as happened with the project INDEXYS (Cerrejon - Universidad del Rosario university, 2009), they permit the identification and management of risk, as well the comparison of performance against those of other companies and other sectors.

However, these diagnoses cover a small percentage of mineworkers (this is easily deduced from the indicators of labor protection in untitled mining and criminal mining data discussed in the Context chapter. Therefore, from the point of view of the sector, the workplace health profile for most of those engaged in mining activity is unknown. Often these gaps in epidemiological information occur due to limits in the technical capacity of the production structures. These units do not generate third party reports and, even if they did, in any case the local health authorities are occasionally not prepared to manage this information. In some cases, this combines with the lack of incentives to
allocate resources to the monitoring of events such as accidents or musculoskeletal disorders common in many mining activities. It should be noted that these gaps are already recognized in the public health policy guidelines, as stated above, but there is yet no evidence of progress in this matter.

As discussed in section 1 regarding the status of healthcare policy in the workplace, this incomplete labor risk panorama weakens the response capacity of State agencies responsible for managing the occupational hazards system because:

- Prevents timely planning to allocate financial and technical resources of the healthcare system to respond to the reality of this epidemiological profile.
- Misses the opportunity to inform those responsible for designing and implementing public health interventions, both at the central (Ministry of Health) as well as the territorial level (health secretariats, hospitals).
- Prevents medium and small-scale enterprises from having reliable data on the behavior of these events, and therefore weakens their own capacities to manage such risks and to measure their performance.

On the other hand, this situation generates fertile ground for mistrust between companies and workers to take stronger root. During the fieldwork, the lack of independent studies on trends in workplace health and safety indicators identified it, in a context marked by relations of distrust, as a constant source of conflict. Workers and unions perceive arbitrariness in the handling of disabilities, and are active in denouncing that companies benefit from the weakness of the institutional framework to act counter to the rights of workers. There have been public complaints to companies in the sector due to malpractice in serving the population of workers in the process of obtaining medical disabilities, as well as the limitations and obstacles used by businesses to make it difficult for workers to access medical disabilities, and the absence of transparency in reporting disabled workers.

Another worrying result of the contradictions between the stakeholders involved are the measures taken by large-scale coal mining companies, who use additional medical assessment diagnostics for hiring personnel. Given that the health conditions of the communities living in these scenarios are not comparable with those for the average population in Colombia due to health inequities, these minimum requirements for hiring place this population at a disadvantage, since these selection standards end up being an exclusion factor that may be considered as suspicious discrimination.

Notwithstanding the warnings about improvement opportunities for the quality and transparency of information, available data indicate that in large-scale coal mining there are more favorable indicators on safety conditions. Accident rates are lower than even for activities other than mining production and compare favorably with mining accidentally in the United States (Cerrejon - Universidad del Rosario university, 2009).

Faced with the controversy surrounding illness-disability, large-scale mining faces an uncertain scenario that is not conducive to proper handling when these cases occur, suggesting that to meet this challenge, companies have

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9 Further information on the relationship of distrust can be found in the chapter Sector-Territory.
opportunities to improve the quality and transparency of the information, as well as mechanisms to ensure better care for this population.

When considering exposure to hazardous substances, a similar conclusion is reached regarding the large differences in work scenarios, with situations requiring special attention of the responsible authorities for ensuring the integrity of workers in gold mining, and the exploitation of coal mining in the country’s interior\(^\text{10}\). The diagram below summarizes the results of this study quantitative analysis regarding cases of exposure to hazardous substances in comparing data of mining and non-mining municipalities. While intoxication cases correspond to the aggregate of the municipalities’ reports (they are not always occupational exposures), it is very clear that in the case of underground coal mining the principal state of exposure occurs in miners and not workers of other community groups. In the case of mercury, which is the main metal associated with a significant proportion of gold production, an undefined segment of these cases occur in the workplace\(^\text{11}\). In large-scale coal mining, this is not a major risk; and in construction materials, the opportunities for exposure are not specific to the mining working scenarios and have to do with other social dynamics.

| Cases of poisoning due to toxic substances in zones with mineral exploitation |
|---------------------------------|---------------------------------|
| Gold                            | 1.7 more poisoning cases due to heavy metals |
| Coal in the country’s interior | Incidence of poisoning is 7 times higher due to carbon monoxide and other gases |
| Coal in Cesar and Guajira       | No difference observed in poisoning reports due to dangerous materials |
| Construction materials          | 50% more poisoning case are reported due to chemical substances other than pesticides, solvents and medicines |

The intervening factors involved in the case of dangerous substances are different for underground coal and gold mining. In the first case, the reasons have to do with institutional weakness to generate policy actions that encourage companies and enterprises to adopt better safety practices to prevent exposure to gases.

\(^\text{10}\) Further information on exposure to toxic substances by mining can be found in the chapter Environment. 

\(^\text{11}\) The impacts of mercury on the environment and health transcend the places where this is used. On this subject, see CREER document, “Situations observed in defining mining scenarios in the exercise of the right to health.” Available at www.creer-ihrb.org/
"Consults due to carbon monoxide poisoning are very frequent; so far in 2015 there have been 10 deaths from this cause, and 123 accidents, of which 25 were for mishandling explosives; also, most consults are for multiple injuries and muscle spasms." San Antonio Hospital, Caldas (Defensoría del Pueblo, 2015)

In gold the problem, instead, has to do partly with the presence of criminal mining, and in some cases with the logic of informal production units, which have difficulty making the transition to cleaner technologies. It is clear that the actions required in these two minerals to reduce this risk are very different. In addition, if the goal is to strengthen the preventive approach in underground coal mining, it is necessary, but not sufficient, to continue investing in equipment and training for rescue.

### 2.2 CHALLENGES AND OPPORTUNITIES OF SMALL AND MEDIUM-SCALE MINING FOR THE DEVELOPMENT OF A CULTURE OF DECENT WORK

Small and medium-scale gold, coal and construction materials mining is labor intensive, which is interconnected to the cultural traditions of certain groups. In this regard, there are synergy opportunities with the objectives and strategies of the National Public Health Plan. This instrument again emerges as an element of great potential, with the exceptions already noted, since it envisages among its objectives, "To strengthen and promote the creation of organizational instances of workers groups and their participation in protecting workplace health by promoting a culture of prevention" (Ministerio de Salud, 2012). Concrete actions targeted towards this goal would contribute to overcoming the rigidity of social protection policies, which often do not adapt to the conditions of small enterprises, whose capacity to adapt is limited by institutional obstacles to associativity, among others.

**Child labor**

Child labor has been one source of greater concern regarding human rights in small and medium-scale mining enterprises, and has been the subject of attention by public policies (DPS, 2015). The decision of the Families in Action program to focus on mining regions is a concrete example of the interventions required to prevent impacts on rights by means of:

- A proper coordination of inter-sectoral actions.

- Interventions designed from the appropriate diagnostics of the intervening factors in the dynamics of mining contexts.

The intervention includes activities to identify children at risk, mechanisms to take protective measures, interagency coordination strategies with Colombia’s national training program - SENA and the Colombian Institute for Family Welfare - ICBF to provide comprehensive interventions and monitoring and evaluation activities; the results are yet to be known. The success of this type of intervention is essential to protect not only the physical integrity of the child population in an activity listed among the Worst Forms of Child Labor (International Labor Organization - ILO 2000), but to protect as well the right to education that is also violated, as amply documented in the literature (Huebler, 2008, Department of Social Protection - DPS, 2015). In turn, the design of appropriate incentives in public policy allows for both education and social protection to effectively act as protective factors against the risk of child labor (ILO, 2015).
Education to promote a culture of workplace safety in the mining sector

Educational programs on occupational hazard prevention practices not only have consequences on the workplace itself, but safe behavior are also transferred by the people involved in these interventions and applied to other areas of their daily lives. Mining policy provides lines of action regarding this matter.

The preeminent institutional stakeholder in workplace education is the SENA, and safety and mining rescue is included in the topics addressed in their programs. However, the targeting of educational activities does not yet effectively care for the most vulnerable groups in mining activity. There are interesting opportunities for State institutions to strengthen such actions when there are appropriate organizational structures amongst small miners. Such is the case of the Andes-Sotomayor mining training center in Nariño.

Mining accidently

According to the accident statistics report consolidated during the 2005-2015 period by the Mining Safety and Rescue Group of the National Mining Agency- ANM, the following accidents associated with mining may occur (ANM, 2005):

- Mining accident due to a fall to a different level: Event or sudden event that occurs because of a person falling from an upper level to a lower level.
- Mining accident due to collapse: Event or sudden incident occurring in underground labor due to the collapse of the rock mass.
- Mining accident due to electricity: Event or sudden incident that occurs due to contact with electrical current when managing networks and electrical equipment
- Mechanical mining accident: Event or sudden incident that occurs due to the handling of hand tools, unexpected release of loads, machines with their components and accessories used for transport, ventilation, drainage, lighting and other mining operation services.
- Mining accident due to explosion: Event or sudden incident that occurs due to the use of explosives, coal powder, and/or the concentration of explosive gases.
- Mining accident due to slope instability: Event or sudden incident that occurs in open-air activities by landslide phenomena.
- Mining accident due to fire: Event or sudden incident that occurs due to endogenous and/or exogenous combustion.
- Mining accident due to flood: Event or sudden incident that occurs due to the excessive presence of water covering all or part of mining operations.
- Mining accident due to ventilation or tainted atmospheres: Event or sudden incident caused by insufficient oxygen, concentration of gases outside permissible limits, or accumulation of unbreathable air.
Mining accident due to heavy machinery: Event or sudden event due to the handling and/or usage of machinery used in mining operations for the booting, loading and transport of material.

Mining Emergencies and Fatalities that occurred between 2007-2015

Source: Adapted from ANM (2015) http://goo.gl/g3qBj5

The highest mortality occurred in underground coalmines due to the risk involved in this activity. As mentioned by Vice President of Monitoring and Control of the National Mining Agency, “underground coal mining presents more risks because of the existence of methane gas, and therefore, if there is no adequate ventilation infrastructure, any spark can cause an explosion of great magnitude.” In July 2015 for example, in the municipality of Samacá, Boyacá, five miners working in underground coal mining died in a methane gas explosion. (Portfolio newspaper, 2015) Mortality figures have risen considerably, establishing mining as an activity that constitutes a latent risk of death.

In addition, the ANM admits that there may be underreporting of mining accidents, as complete information for explosion accidents occurring in untitled mines is not available. Sometimes informal or illegal miners prefer not to notify the authorities about these accidents to avoid sanctions. Mining expert Eduardo Chaparro attested in an interview for the newspaper Portafolio that the mining accidentally in the country is connected mainly to the informality of the sector, "in Colombia, it is a problem associated primarily with illegality, which is not sheltered by adequate industrial safety measures."

In any case, mining accidents take a high numbers of lives, and authorities are aware of this problem. Therefore, the functions of the authorities should not be limited only to control measures for formal mining, but should go a step further and include accident preventive measures for both those who operate legally, as well as those who operate informally or illegally.

When comparing the mineral producing departments against the statistics on emergencies, it is evident that those departments with the largest contribution to the exploitation and export of minerals, such as Cesar and Guajira (90% of total production, according to data from Fedesarrollo, 2011), report minimal levels of emergencies (1% of total incidents recorded), while the departments characterized by the development of small and medium-scale projects recorded a significant number of emergencies. This draws attention to inequity in access to insurance and protection mechanisms, and the need for urgent attention by mining authorities to assist this type of mining.
In the case of illegal mining and that associated with the development of criminal activities, the panorama is even more disturbing because of the double victimization to which workers may be exposed in criminal mining scenarios: subjugated by illegal organizations and subjugated by the limitation or impossibility of State protection for those who are, often despite themselves, part of a criminal activity. This extreme situation occurs in the context of gold mining due to the connection of illegal armed groups with extraction. However, mining with or without a title of minerals other than gold exhibit conditions where accident prevention is almost null, and therefore have higher risks than monitored mining.

**Mining emergencies by department that occurred between 2005 - 2015**

Source: Adapted from ANM (2015)  
http://goo.gl/g3qBj5
1. Strengthening the preventive approach in institutional activities

1.1 In order to respond to occupation health risk situations in the context of informal mining, the Ministry of Labor in conjunction with the Ministry of Social Protection and the Ministry of Mines should:

- Strengthen institutional capacities in order to monitor and provide specific guidelines to this population, for them to approach State agencies responsible for implementing and monitoring promotion and prevention interventions in the workplace.
- Carry out active investigations on occupational diseases in mining scenarios where small-scale projects operate in order to reduce under-reporting and report plans according to the General Occupational Hazards System.
- The regulations for the statutory health law needs to consider specific provisions for the mining sector, in particular: service availability in isolated areas, design and application of criteria for the National Drug Policy.

1.2 The Ministry of Health should lead the regulation of Article 9, Act 1751 of 2015, considering the particular traits of the mining sector and adjust its business model accordingly. This effort should include participation mechanisms for non-corporate miners in identifying social determinants of health.

2. Improvements in the implementation of policies for the promotion of healthy working environments

Given that the health of the vulnerable mining population is influenced by social determinants of health arising from the activity itself, different measures are required to address the population’s needs for prevention, promotion and treatment:

2.1 The Ministry of Labor and the Ministry of Health and Social Protection should develop strategies to unify protocols for the diagnosis and treatment of occupational diseases, coordinating and aharmonization the actions of the ARLs and EPSs. These measures should help speed up the response regarding disability processes and to monitor the job conditions of workers who must be relocated.
2.2 Faced with the occupational hazard situation found in small mining projects, the Ministry of Labor and the Ministry of Health and Social Protection is required to include guidelines in the General Occupational Hazards System in order to:

- Implement actions for the promotion and prevention of self-care, giving priority to mineworkers who are more vulnerable.
- Properly monitor these interventions and gradually incorporate inspection, monitoring and control activities appropriate for the project’s capabilities and characteristics.
- The Ministry of Mines and Energy in conjunction with the Ministry of Health should establish a dialogue with informal miners to ensure that miners adopt and participate in policy decisions regarding workplace safety.

3. Strengthening knowledge management of occupational risks

3.1 In the framework of the health information management policy, as defined by the Statutory Health Law, the design of the single health information system, by the Ministry of Health, should consider the inclusion of data that defines the health and disease dynamics in people who are engaged in mining activities. The system should include mechanisms that include this information in the definition of public health policies and allow for:

- The analysis of social determinants of health in mining scenarios.
- The adoption of incremental measures in population interventions supported by epidemiological evidence for the mining sector.
- The addressing the fears of the community and workers through the use of timely and clear information.

3.2 The Ministry of Health, in coordination with the Ministry of Mines and Energy, should develop epidemiological baselines with suitable methods and results which are available to all stakeholders regarding the prevalence and incidence of occupational diseases. The quality and transparency of the production and dissemination process of epidemiological information should help reduce conflicts between employees and contractors regarding this issue.

3.3 The Ministry of Health with the support of the Ministry of Mines and DNP should develop a mechanism to ensure resources, for example, through a parafiscal fund to finance epidemiological studies in mining scenarios.
4.1 The Ministry of Labor must adjust regulations in order to give companies clearer indications as to how to avoid incurring in suspicious discrimination practices during the hiring process. The guidelines and procedures should follow the minimal fundamental principles enshrined in Article 53 of the Constitution.

4.2 The Ministry of Labor must establish guidelines to accompany mining companies in the task of adapting their processes to avoid discrimination during the hiring process, particularly in cases where there is discrimination due to health conditions.
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DIFFICULTIES IN ADDRESSING MIGRATION AND RESETTLEMENT ISSUES ASSOCIATED WITH MINING
Migration is usually defined as the movement of a person or group of people from one geographical area to another different from their place of origin, to settle indefinitely or temporarily (International Organization for Migration - OIM, 2016). Migrations are also understood as a social phenomenon. When a person departs their territory, they leave behind social networks in their society of origin, among other elements. And, in turn, upon reaching the society of destination, they not only bring with them an array of expectations and interests arising from the social networks where they are members, but also the capacity to incorporate themselves and create new networks in the place where they arrive (Roll-Leal and Castro, 2010). These interactions between people reveal the importance of social capital as a resource that is closely related to social ties between individuals and therefore is particularly impactful on migratory networks 1.

Therefore, migration phenomena offer opportunities, but also pose significant challenges in obligations related to the full exercise of human rights. According to the Guiding Principles on Business and Human Rights (UN, 2011), it is the duty of States to respect, protect and fulfill human rights and fundamental freedoms, and businesses as well must accept to comply with applicable laws and respect human rights. This is the conceptual framework of this document, from which the protection of people and communities affected by migration effects is studied 2.

The migrations addressed here are specifically related with gold, coal and construction materials mining contexts in the departments of La Guajira, Cesar, Cauca, Nariño, Antioquia, Chocó, Cundinamarca and Boyacá. It includes situations in which a person or groups of people can be evicted or forcibly displaced by development projects that affect the environment, land, resources and even the security of persons; or contexts in which people decide to migrate to other areas where mining provides employment opportunities and income generation because of an economic boom. The particular case of the alluvial gold mining is also addressed, which poses a phenomenon of constant mobility by small miners who move from one place to another, contingent on the presence of the mineral (see, for example, Cardenas and Chaparro, 2004).

**Examples of alluvial gold mining in Choco**

Source: CREER fieldwork
Foremost, displacements and forced evictions may intensify social conflict, inequality and segregation, a situation which affects the most vulnerable social and economic sectors, especially women, children, minorities and indigenous peoples (Office of the High Commissioner for Human Rights - OHCHR, 2007). In addition, the loss of access to areas where the communities conduct activities related to their cultural identity, such as spiritual rites and other symbolic or social acts, may threaten the social fabric, cultural practices and the very survival of Black, indigenous and farmer communities. In this manner, displacement and forced evictions because of development constitute serious violations of human rights. In particular, regarding the rights to a dignified life, a cultural life, to territorial ethnic rights and to those who depend on them, to education, health, employment, personal security and freedom of movement.

Furthermore, the rapid population growth, either because of a floating corporate workforce or because of the migration of people who come searching for income opportunities in the territories, disrupts the local economic, social and cultural dynamics (Beltran, Lobato and Barbosa, 2010). These dynamics are not always compatible with the context and its stakeholders, and therefore the transformations, in which these migrations are also included, coupled with institutional absence or weakness, may impact the rights of the local population, especially in contexts of vulnerability and scarcity. In this specific case, the rights to education, work, to a dignified life and to a cultural life. Nonetheless, although the nature of these migrations is oriented to the development of economic activities, it cannot be absolutely interpreted as a voluntary movement. Many of the people who migrate in search of opportunities in mining do so to substitute for the lack of opportunities in other sectors, or because their skills are only useful in that task. In some cases, it can be considered a forced migration, because it is motivated by the lack of opportunities in their places of origin.

Considering the growing relevance of migration in the territories, this section offers a synthetic analysis of the principal impacts associated with imbalances in the labor markets, the supply and demand for public services and goods and the fragmentation of the social fabric, the loss of identity references and the breakdown of ethnic and cultural traditions. These impacts are described according to their fundamental origin, that is, by virtue of their relationship with institutional aspects of public policy, of the implementation capability of State agencies, or by the development itself of business activities. This section does not discuss the forced displacement caused by armed groups operating outside the law, given that these matters are discussed in the chapter on Security.

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3 For more information on situations observed in decisive mining scenarios in the exercise of rights, refer the documents prepared by CREER at [www.creer-ihrb.org/wiki-eisi](http://www.creer-ihrb.org/wiki-eisi)
### PRINCIPAL SITUATIONS AND IMPACTS

Absence of a regulatory framework for attention to migrations for causes other than the armed conflict, such as displacement because of development or seeking of income opportunities in mining contexts, increases the vulnerability of the migrant population, and explains the lack of tools to attend to the demands generated by this type of migration in the territories.

Loss of the territory due to involuntary resettlement and displacement because of development produces fragmentation of the social fabric, loss of identity references, and rupture with ethnic and cultural traditions of both the host communities as well as migrant communities.

Significant increases or reductions in the demand for public goods caused by displacements associated with the dynamics of development or migration in search of income opportunities in mining contexts can generate deficits in the provision of such goods and labor market imbalances (both formal and informal).

Change of productive vocation from farming to mechanized mining exploitation, for example, by the arrival of stakeholders who exploit gold using backhoes, draglines or dragons, resulting in a rupture with traditional livelihoods, loss of customs proper to some communities, and economic and food insecurity.

### ALTERATIONS TO RIGHTS

- Right to equality before the law
- Right to a dignified life
- Right to participate in cultural life
- Right to property
- Ethnic-territorial rights
- Right to food security

- Right to participate in cultural life
- Right to equality before the law
- Right to a dignified life
- Ethnic-territorial rights
- Right to freedom of movement and right to remain

- Right to decent living conditions
- Right to equality before the law
- Right to health
- Right to work
- Right to education
- Right to security

- Right to food security
- Right to dignified living conditions
- Right to participate in cultural life
- Right to a healthy environment
- Right to work
- Right to education or
- Ethnic-territorial rights
Even though Colombia has a policy to attend to forced internal displacement, this policy excludes actions and tools regarding the internal migrant population other than those displaced by the armed conflict. In fact, Vidal et al. (2011) are emphatic in stating that the concept of forced displacement in Colombia is "limited to exoduses generated because of the internal armed conflict in the country."

On the one hand, the institutional framework providing comprehensive care to people in situations of forced displacement focuses on the stages on prevention, humanitarian assistance, economic stabilization, relocation and integration (Rubiano and Mojica, 2013). Law 387 of 1997 so established it, which is further supplemented by Act 1190 of 2008 and in turn by the provisions of the Law 1448 of 2011.

In particular, Article 1 of Law 387 of 1997 regarding forced displacement defines a displaced person as:

"... any person who has been forced to migrate within the national territory, abandoning their place of residence or usual economic activities because their lives, physical integrity, security or personal freedom has been violated or is directly threatened due to any of the following situations: internal armed conflict, internal disturbances and tensions, generalized violence, massive violations of human rights, violations of international humanitarian law, or other circumstances originating from prior situations that may drastically alter the public order."

On the other hand, the Constitutional Court has developed an extensive jurisprudence founded on the sentence T-025 of 2004, which introduced a rights-based approach. T-025 of 2004 declared unconstitutional the state of affairs regarding the situation of the displaced population in Colombia, and ordered several State agencies to provide priority attention to this population. To this extent, the sentence supplemented the policy guided by Law 387 of 1997, emphasizing a number of obligations of the State towards the population displaced by the armed conflict.

In general, the forced displacement policy has been influenced by the international system for the management of internal displacement. Moreover, the Basic Principles and Guidelines on Development-Based Evictions and Displacement (OHCHR, 2007), have been incorporated into the Colombian dynamics through various rulings, given that these principles recognize as forced displacement, among others, those linked to infrastructure development projects such as dams, power projects and mining industries, and uncontrolled land speculation, unlike the Colombian norms that only cover those who are expelled by the internal armed conflict.

Particularly with regard to the protection required by Black communities, Auto 005 of 2009 recognizes that the displacement of these population groups can occur because of "the existence of mining and/or agricultural processes in certain regions that impose severe stresses on their ancestral territories and has favored their divestment." Although this Auto accommodates situations other than the armed conflict,

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4 Law 1448 of 2011 concerning the reparation of victims of the armed conflict, states in Article 60 that attention to displaced population will be supplemented by that provided for in Law 387 of 1997.
it has had no impact on the practice of policy design. Thus, the Auto complies with promoting inclusion of these communities in the programs developed within the framework of Law 387 of 1997, but the rest of the State has fallen short in the regulatory progress (Rubiano and Mojica, 2013).

Thus, regulatory and policy progress on the subject of the displaced population has left out two alternative manifestations of internal migration in Colombia. For the one part, migrations associated with development projects are left out, which is to say it leaves out those who are expelled from their territory due to mining projects, whether or not they are relocated. For the other part, these policies do not consider the migrant population pursuing income opportunities associated with mining activity or linkages. This dimension contains an aggravating factor, that the decision of all those who migrate seeking income is not voluntary. If people migrate because their places of origin failed to develop competencies in other trades, but in other circumstances they would have chosen another activity, then this decision is adopted without the option to face what Bowles called the classical constitutional conundrum: those social interactions where people have the liberty to choose their actions, and also prevents results that no person would have chosen (Bowles, 2010, p. 41).

Replicating this absence of public policy, sectorial policies also leave aside the migrations not associated with the armed conflict. These include, for example, the ten-year health and education plans, whose only references to migration concern the forced displacement due to conflict. The same applies to the comprehensive housing policy and the national security and coexistence policy. In respect to labor, the vacuum is even more obvious, as there is a specific income generation policy for the population in extreme poverty or displacement that does not consider migrants different from those displaced by the conflict.

As these policies do not grant prominence to alternative migratory phenomena different from the displacement caused by the conflict, they do not contain the bases to justify the creation of instruments to meet the demands generated by this type of migration and neither do they create them directly. For example, while the ten-year education plan considers within its scope to guarantee the right to education throughout the national territory, by not specifically considering changes in population patterns that could be generated by mining activities, it lacks the sufficient tools to foresee and meet the increases in demand for education arising from the arrival of people, or deterioration in the supply due to the migration of teachers, associated to mining contexts.

The implications of the absence of policies go beyond the sub-provision of public goods, loss of traditions and cultural identity, and imbalances in the labor market (both formal and informal) associated with forced displacement by development or migration in search of income opportunities. Sometimes, the host population earmarks the migrant population that arrives in new territories as the cause of social problems. Therefore, migration policy that considers other displaced people than the victims of the armed conflict, should develop instruments to mediate cultural encounters and avoid the social problems and conflicts arising from them.

Migratory phenomena, regardless of their origin, partially determine the availability and accessibility to public goods in the places of arrival and departure of people. In fact, several studies have found a deficit in the provision of public goods when migration entails significant increases in the demand or reductions in the supply of such goods. This situation adds to the loss of cultural traditions and

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5 Citizen coexistence refers to policy regulating good citizen habits to prevent conflict and to promote harmony.

6 See, for example, Alessina et al. 1999, Calabrese et al. 2006, and Winkelmann and Schulhofes-Wohl, 2015.
2. THE ACTIONS OF THE STATE REGARDING ATTENTION FOR MIGRATIONS ASSOCIATED TO MINING

The absence of a national policy framework that includes migrations for reasons other than the internal armed conflict is a limiting factor for addressing its impacts on the territories. This situation obliges local authorities to concentrate efforts to provide effective responses to this phenomenon. However, the viability of these actions depends on budget constraints and the execution of many municipalities and departments. In terms of public territorial planning, local and regional governments, via their competencies regarding the territorial planning and attention to the problems arising from internal migration, should not only exercise the powers they already have, but act in a coordinated manner to execute them articulately.

In the subject of attention to migration, the weakness and inability of public administration can influence the fragmentation of the social fabric, the loss of identity referents, and the breakdown of cultural and traditional practices.

2.1 RELEVANCE OF THE GENDER PERSPECTIVE FOR MIGRANT PHENOMENA

Migrations need to be viewed from a gender perspective, because they affect men and women differently in their displacement process. Migrant women, in particular, are vulnerable with regard to their reproductive health, especially when they have no access to medical care in their place of destination. For example, in the municipality of Nobsa in Boyacá there are no hospitals to provide medical care for the inhabitants, so people have to travel to Sogamoso and Tunja. "People neither die nor are born in Nobsa, so women have to migrate to other municipalities to give birth," states an official of a building materials company in Boyacá.

Concerning the economic migrant, men and women are absorbed by different sectors of the labor market at their place of destination and therefore have different experiences. During the fieldwork, a general tendency was found for men migrating to mining municipalities to concentrate mainly in the mining of coal, gold or construction materials; women, however, are predominantly employed in domestic service. For example, in the municipality of Cogua, Cundinamarca, according to a community stakeholder, some families have arrived from other towns to work in mining, but women dedicate themselves to care for their children and their homes. In fact, these conditions not only determine the definition of roles and relationships between men and women migrants, but have also had an impact on the family life of the communities.
Regarding the forced displacements due to development, men and women are also affected differently and therefore their needs for protection and assistance should be differentiated. In these situations, women feel the effects more acutely, because they must face a challenging environment, assuming responsibilities previously held by the men, while in a vulnerable position due to discrimination, exploitation or abuse (OIM, Section 2.10). For example, in Tabio, Cundinamarca, a community leader who was displaced due to coal mining in Cesar argues that her role in society has changed since then, having to take on more responsibilities without receiving social support. This situation has also created different dynamics in the relationship with and involvement in community activities in the municipality.

2.2 LOCAL GOVERNMENT WITHOUT THE CAPACITY TO ATTEND TO THE CHALLENGES OF MIGRANT PHENOMENA IN LARGE-SCALE MINING CONTEXTS

In large-scale coal and construction materials mining, institutional and community stakeholders in the departments of Cesar, Boyacá and Cundinamarca noted the impacts generated by the population increase due to migration in mining territories. Overall, they mentioned the decrease in the supply of public goods and services, the emergence of social problems and negative effects on cultural practices. For example, according to an official of the municipality of Hatonuevo in La Guajira, approximately 40% of the municipality’s population is floating, and the arrival of people from different regions of the country has led to a loss of own customs. The main problem lies in the way the tensions are resolved and in the manner, that misery degrades the individual and collective capacity to exercise the rights to freedom and political participation, and to access mechanisms for remedy or to prevent conflicts. Generally speaking, the minimum vital right decisively interrelates with other rights.

Moreover, the quantitative analysis suggests an association between the development of large-scale coal mining activities and a deepening of poverty conditions. This situation, in light of the opportunities for income generation in contexts with formal job offers and with a State presence not weakened by mining, may be associated with changes in population patterns associated with mining activity. In particular, in municipalities with coal mining in Cesar and Guajira, 64% of households are observed to have unsatisfied basic needs, while in the comparison municipalities this figure is 58%. This deterioration of poverty conditions can be interpreted, in turn, as a symptom in aggregated scale of the inability of local governments to meet citizens’ demands in various dimensions. The focal point, in the context of migrations, is the relationship between changes in the demands that may result from changes in population patterns. In this case, particularly related to the enjoyment and exercise of the rights to adequate housing and education.

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7 This is a perception that reduces the possibility of generating peaceful cultural crossbreeding.
8 This index, constructed by the National Planning Department, includes information on the following variables: inadequate housing, critically overcrowded housing, housing with inadequate services, housing with high economic dependence, housing with school-age children not attending school.
9 This result relates to that evidenced by Rudas and Espitia (2013), regarding the inefficiency in the distribution of income in the mining municipalities.
Small and medium-scale mining municipalities presenting a rapid population growth do not necessarily have a strong public service administration that is able to generate an efficient coverage of basic services (Beltran, Lobato and Barbosa, 2010). This, coupled with the situations of poverty and vulnerability of the territories, leads to the emergence of new social problems. For example, in the municipality of Nemocón, Cundinamarca, institutional stakeholders mentioned that the population growth in the area of Patio Bonito exceeds the capacities of the local government. “Nemocon has another municipality within it, because of all those people in Patio Bonito engaged in mining who came from Chita and Jerico. There they have formed their nuclei. They are all families. We would like to do more there, but it is a village within a village, (...) the area is far, so it is very difficult for us to control,” states an official in the municipality of Nemocón, Cundinamarca. They also claimed that resources are not sufficient to meet the needs of the communities, and for this reason, they have been unable to perform many programs focused on the social problems of the area. This context has exceeded the local authorities’ capacity for attention, which in the light of the public policy vacuum and lack of coordinated care instruments from the national government, contributes to a systematic deterioration in the enjoyment and exercise of rights.

Likewise, in this municipality, members of the local government purported that those who are not natives of the territory have dedicated themselves to mining practices, where the commercial and relational dynamics between community members are associated with factors such as alcohol, violence and other social problems. This not only attests to the tensions arising from the settlement and practice
of mining by those who have migrated to the municipality\textsuperscript{10}, but also these perceptions fuel the stigma of the dangerousness of the economic migrant, who in many cases is a victim of conditions of vulnerability that forces them to migrate from their place of origin.

In the case of the ethnic communities of Choco, poverty and other characteristics of vulnerability that arise amid the itinerancy of the mining activity of these communities, has not had adequate State response for coping with the impacts. The arrival of stakeholders who exploit the mineral through techniques other than the traditional, such as bulldozers, dredgers or dragons, has fostered a rupturing with the customs of some municipalities of Choco.

**Dreger bulldozer or dragon in the municipality of Choco**

In Río Quito, Choco, the administrative court ruled in a class action suit on behalf of the communities. The judgment recognizes the State’s inaction regarding the environmental degradation of the municipality (Tierra Digna, 2015). The itinerancy in the activity of these communities generates ruptures with traditional forms of life, since the change of vocation from agricultural production to mechanized mining exploitation has affected the behaviors and dynamics of the communities. The need to travel behind the backhoe to continue the “barequeo” is due to the damage to the land where the machine passes. The soils become infertile and useless, water is polluted, and people end up without

\textsuperscript{10} This particular case is further developed in the CREER document, “Situations observed in decisive mining scenarios for the exercise of the right to participate in the Cultural Life.” Available at [www.creer-ihrb.org/wiki-eisi](http://www.creer-ihrb.org/wiki-eisi)
livelihood opportunities, and therefore the resulting panorama of economic and food insecurity is central\textsuperscript{11}.

In Buriticá, Antioquia, according to reports from officials of the local authority, for the past two years around ten thousand people have entered the municipality, mostly from northeastern Antioquia, motivated by a growing expectation of gold mining. In 2010, according to information from the DANE, the town had about 7,000 inhabitants, which suggests an increase of about 243%. The situation has overwhelmed the potentials of the local territorial entity to provide health care and other services.

Interviews with community members underscored situations such as the lack of infrastructure, overcrowding, poor waste management, and pollution associated with the use of mercury in water sources in the banks of the Cauca River, and in the air due to gold purchases in urban areas, as well as methylmercury contamination. In fact, some miners expressed concern about “a future without water for future generations.” The difficulties of the municipal administration to meet the demand for healthcare services led to the issuance of a decree of public calamity in October 2013\textsuperscript{12}, in order to demand action from the national and departmental governments, and support the work of the census. Its issuance led to daily flows of miners from Buritica to other nearby areas, where they built sites to process the mined gold in other municipalities. As a result, environmental and health impacts have transcended the municipal level, creating a regional problem in western Antioquia\textsuperscript{13}.

\textsuperscript{11} For more information on the impact of itinerancy on ethnic communities, refer to the CREER document, “Situations observed in decisive mining scenarios for the exercise of the right to participate in the Cultural Life.” Available at www.creet-ihrb.org/wiki-eisi

\textsuperscript{12} Decree 089 of 2013 of the Municipality of Buritica

\textsuperscript{13} Limited access to healthcare services may be aggravated by the inability of families to provide their children with adequate care. This last point is supported by various studies. For example, Valore et al. (2014) and Graham et al. (2014) found that children of migrant parents report a deterioration in the conditions of mental health and behavior problems. In turn, the channels for this mental health deterioration has primarily been associated with difficulties in adjustment problems of children to new territorial contexts, as documented Smith-Greenaway and Madhavan (2015).
“When the mining boom took place in Buritica in 2003, thousands of informal miners arrived from lower and northeastern Cauca.”

In the case of educational services, the quantitative information analysis also confirms the decline in the supply of infrastructure available in the mining municipalities. In particular, the results of the quantitative exercise suggest an association between gold mining, small and medium-scale coal in the country’s interior and construction materials, with a deterioration of the educational infrastructure available per capita. While the comparison municipalities for gold, coal inside in the country’s interior and construction materials have on average 243, 312 and 254 educational establishments per 100,000 inhabitants, respectively, the municipalities with greater mining activity have, 228, 187 and 196 respectively. Under the assumption that any change in the number of educational establishments in a municipality is more likely positive (with new establishments) rather than negative (closing existing ones), this evidence can be interpreted as a manifestation of the imbalance between supply and demand of educational services due to changes in population patterns.\(^\text{14}\)

\(^{14}\) For an further information regarding the deterioration in the provision of educational services, refer to the CREER document, “Situations observed in decisive mining scenarios in the exercise of the right to education.” Available at www.creer-ihrb.org/wiki-eisi
2.4 COMMON SITUATIONS OF INFRINGEMENTS DUE TO INSTITUTIONAL WEAKNESS IN LARGE, MEDIUM AND SMALL-SCALE MINING SCENARIOS

A common dimension in the deterioration of the enjoyment and exercise of the right to education is derived from the migration of teachers overstretched by the increase in the cost of living in municipalities with gold mining bonanzas, as is the case in Buritica, Antioquia. According to accounts of local authorities’ officials, the contrast between the cost of living and the income of teachers has led them to leave the municipality, resulting in an educational deficit. This situation materializes, on the one hand, a risk for the full exercise of the right to education of the students who are exposed to overcrowding in its schools, and on the other hand, an impact on the right to work of teachers who are forced to seek job opportunities elsewhere. This phenomenon is evident in the quantitative analysis performed within the framework of this study, particularly the decrease in the number of qualified teachers in mining municipalities. Quantitative evidence suggests that the number of teachers relative to the municipal population fell by 3% in gold producing municipalities, 12% in small and medium-scale coal producing municipalities in the country’s interior, 15% in large-scale coal producing municipalities in Cesar and Guajira, and 10% in municipalities producing construction materials, in all cases displaying a significant difference versus the control group municipalities.

In addition, quantitative evidence provided by the Comprehensive Sectorial Impact Assessments - EISI suggests a worsening of security conditions in municipalities with small and medium-scale gold mining, coal in the country’s interior and large -scale coal in Cesar and Guajira. In the case of gold, while the control municipalities present 59 homicides per 100,000 inhabitants, the mining municipalities have 68. In the case of coal in the country’s interior, while the comparison municipalities have 42 homicides per 100,000 inhabitants, the mining municipalities have 48, a statistically significant difference. Finally, in the case of coal in Cesar and Guajira, while control municipalities have 53 homicides per 100,000 inhabitants, coal-producing municipalities have 64. Other indicators also show a deterioration of public safety. Municipalities with gold mining have a rate of commercial theft 14% higher and a rate of theft to individuals 14% higher than that of the comparison group. In addition, small and medium-scale coal producing municipalities in the country’s interior have a rate of commercial theft 72% higher, auto theft 30% higher, and a theft to individuals 35% higher than the comparison group.

In addition, the deficit in the performance of local authorities has led to an imbalance between supply and demand for decent housing conditions. For example, in small-scale gold mining contexts, the formation of settlements of precarious conditions were observed in areas surrounding mining projects established by migrants arriving in search of income. This situation was witnessed in the municipalities of Condoto in Chocó, Buriticá in Antioquia and Santander de Quilichao in Cauca. Moreover, the service infrastructure deficit typically observed in these settlements became apparent in the interviews, in particular regarding energy, potable water and wastewater. Meanwhile, in the large-scale coal mining

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15 For further information on the deterioration in the provision of educational services, with implications for labor markets, refer to the CREER document, “Situations observed in decisive mining scenarios in the exercise of the Right to Work and Right to available Education.” Available at www.creer-ihrb.org/wiki-eisi

16 For further information of the negative effects on public safety in mining context, refer to the CREER document, “Situations observed in decisive mining scenarios in the exercise of the right to life, liberty and security.” Available at www.creer-ihrb.org/wiki-eisi
contexts, quantitative evidence suggests an association between the development of coal mining in Cesar and La Guajira, and an increase in the percentage of the population deprived of exterior walls in their homes, one of the dimensions of the multidimensional poverty index\textsuperscript{17}. While in the control municipalities about 7% of households do not have exterior walls around their homes, in the mining municipalities this figure is about 12%. This difference is statistically significant.

2.5 ACTIONS BY PUBLIC AGENCIES AND CIVIL SOCIETY STAKEHOLDERS TO PREVENT OR MITIGATE THE EFFECTS OF MIGRANT PHENOMENA

In public policy, there is no explicit strategy for the prevention or mitigation of the negative effects caused by migratory phenomena. According to the Ministry of Mines and Energy\textsuperscript{18} “regarding the effects of migration due to economic opportunities related to mining, no mechanisms have been identified alerting to population movements associated with labor, economic or development expectations generated by mining activity.” On the one hand, the study by the Unit of Mining and Energy Planning - UPME, \textit{The mining municipalities in Colombia: characteristics and impacts on development} examines the income derived from mining of municipalities, demonstrating that mining municipalities have higher revenue in absolute terms; but, when calculating the per capita figures, the income per capita is higher in non-mining municipalities, a situation that is explained by mining exploitation, which encourages migration to those municipalities.

On the other hand, some local entities have developed initiatives with civil society stakeholders that, although not specifically focused on migratory phenomena, do respond directly to the consequences of their resulting problematic. For example, in the village of La Loma, Cesar, the departmental government, the Colombian Institute for Family Welfare - ICBF and some organizations shared the strategies they are implementing for educating adolescents and young people and for the support of their families. Similarly, regarding sexual exploitation for commercial purposes in the same municipality, the identification of the problem has led to the development of responsiveness and prevention campaigns by the provincial government, together with the Ministry of Labor and the unions. In addition, in the municipality of Bosconia, Cesar, educational institutions in the urban center cannot cope with the student demand, so efforts are being made to enroll students in schools in rural areas. This in order to avoid school desertion and reduce or eradicate the problem of child labor going on in the municipality.

In addition, in Nemocón, Cundinamarca, public officials exposed the issue of child labor. The Family Commissariat of the municipality developed in 2014 a conjoint study with the Compensar Compensation Fund to diagnose child labor in the mining area of the municipality. According to an

\textsuperscript{17} While some indicators of the multidimensional poverty index have not been culturally adapted, it should be noted that the comparison is made with non-mining municipalities within the same department that also share similar population and development patterns during the 1990s.

\textsuperscript{18} Response from the Ministry of Mines to the questionnaire sent by CREER.
The actions of producers and mining companies also have direct or indirect impact on the negative effects arising from migration that disturb the exercise of the rights of the communities. When mining activity impacts the environment, health, territory or dignified life of the inhabitants, it can generate displacement and forced evictions brought along by development. These migrations can significantly affect the social fabric, identity references and cultural practices of communities.

Large-scale mining activity in the coal and construction materials sectors, given its characteristics, has a large probability of rupturing the relationship of the villagers with the territory in areas of incidence, and thus undermining the social fabric and cultural practices of the communities\(^{20}\). Coal not only requires an extensive surface for its exploitation, but also in some cases requires the diversion of rivers, streams and creeks, which may limit the access of communities to the resources necessary for their subsistence practices and possibly cause the displacement of people to urban centers\(^{21}\).

Likewise, in the Guajira and Cesar, involuntary resettlement have occurred where communities have to leave their territories due to mining to be relocated elsewhere. In these processes, populations have changed their lifestyles radically, because territory loss involves changes in the traditions and customs of indigenous populations, farmer and Black communities\(^{22}\). These resettlements are caused by the expansion of mining projects and environmental impacts (air pollution specifically) resulting from the exploitation of the mineral. Various resettlement processes are underway in the Guajira and three are underway in Cesar\(^{23}\).

The resettlements in Guajira have been under the direct responsibility of the company without any State mediation, while those in Cesar obeyed a decision of the national government. By way of resolutions 0970 and 1525 of 2010 the Ministry of Environment, Housing and Territorial...
Development (now Ministry of Environment and Sustainable Development) ordered the resettlement of three communities living in the area of influence of the mining projects.

This decision was made based on the levels of air pollution, which exceeded the limits established by the Colombian Law. The execution of the resettlement was to be headed by the three companies operating in the area (Colombian Natural Resources, Drummond and Glencore). Each of these companies was assigned a participation percentage in the resettlement process, according to the levels of pollution emitted by its mining projects. Within two years, the companies, by way of an operator, must resettle the communities of Plan Bonito, El Hatillo and Boqueron.

In both cases of Cesar and Guajira, the implementation process for resettlement faces the challenge of the absence of a specific regulatory framework providing the implementation guidelines. Given this absence, "the resettlement is executed by companies based on the development of their corporate social responsibility policies and on the policies of multilateral organizations such as the Inter-American Development Bank and the World Bank" (The Institute for Development and Peace Studies - INDEPAZ 2011 pp. 9), which "by their very nature are general and do not take into account the particularities of the Colombian territorial planning system" (Vargas, 2014) and do not always meet minimum standards for the protection of the compromised rights.

This same lack of regulatory framework leads to the lack of delineation of functions for local authorities to ensure that the resettlements occur under fair conditions and result in improved quality of life for the resettled populations. Similarly, the distancing between local authorities and national authorities, product of the definition of competences for monitoring large-scale mining projects, has also limited the action of local institutions.
In the case of Cesar, resolution 0970 of 2010 ordering resettlement includes the participation of the Municipality and the Regional Ombudsman\textsuperscript{24} in the resettlement consult committees, requiring them to be active and binding as guarantors of the rights of the population, but according to testimonies of the communities involved there is a breach of these conditions. In fact, local authorities are perceived as inactive in the process. Local institutions affirm that their economic, human and technical resources are insufficient to have adequate participation in these processes.

In addition, the problems linked to the absence of State support are exacerbated when the responsibility is entirely transferred to companies without establishing the functions of coordination, supervision and monitoring corresponding to the State entities. In the case of Cesar, resolution 0970 of 2010 ordering resettlement includes the participation of the Municipality and the Regional Ombudsman\textsuperscript{24} in the resettlement consult committees, requiring them to be active and binding as guarantors of the rights of the population, but according to testimonies of the communities involved there is a breach of these conditions. In fact, local authorities are perceived as inactive in the process. Local institutions affirm that their economic, human and technical resources are insufficient to have adequate participation in these processes.

For the communities of Boquerón, Bonito Plan and Hatillo in Cesar, currently in negotiations with the companies, the resettlement announcement has brought greater State abandonment. In these communities, public investment has been reduced to a level that jeopardizes access to services and securement of the rights of the inhabitants. Communities perceive that the resettlement becomes an excuse for the authorities to disregard their obligation to ensure access to healthcare and education services, among others. For example, as expressed by a community member in La Guajira, the response of the mayor’s office to requests by the Community Action Committee “is that this will disappear and no investment in infrastructure can be made” (social mapping workshop with community).

Another difficulty in the process with these communities is that the resolution ordering the resettlement gives some general guidelines to carry them out, but several are counterproductive to the process itself. For example, it provides general and common guidelines for the three communities, despite of the large difference amongst them. Some of them are ancestral inhabitants of the territory, while others, such as the case of Plan Bonito, and denoted by an entrepreneurial stakeholder, arise from migratory phenomena associated with mining.

The deadlines established in the resolution for the design and implementation of the resettlement have also been detrimental to the process. According to the environmental authority, they must happen within two years for the communities of El Hatillo and Boquerón and one year for Plan Bonito. However, the involuntary resettlements should be complex conciliation processes that should avoid pressures of unpostponable terms, and that consult the rhythms of such traumatic decisions for the community.

To date, the original deadlines have already expired, and the only community that was already relocated is Plan Bonito, which carried out a process of several individual negotiations in lieu of a collective agreement. This community is in the restoration of livelihoods phase. For some members of the other two communities, the fact that their deadlines have already expired represents a breach by the companies, while for the companies it is a sign of the complexity of the process.

\textsuperscript{24} In Spanish “Defensoría del Pueblo” Equivalent to the NHRI (National Human Rights Institution)
The allocation of responsibilities to companies has generated great controversy between the parties. The companies question how the decision ordering the resettlement of three communities was taken, and if this measure is today the most appropriate to deal with the situation. In a conversation with some of them, they referenced the positive developments and expectations that are happening in the process underway with the community of El Hatillo. However, in the case of the community of Boquerón, they argue that the results of the measurements recorded by the monitoring stations show a decrease in dust emissions, which would be within the limits set by environmental regulations. Therefore, they consider that a more viable and possibly more positive alternative for the community would be to avoid resettlement and instead promote the local development processes with investment and assistance from the mining companies.

For the two departments, difficulties in the negotiation process and the stabilization stage also lie in the differences in the notion of wellbeing of the communities and the companies. For example, the resettlements have implied a brusque and abrupt approach by rural communities to urban dynamics. Although the companies associate this change to a better quality of life and development, the inclusion of these external dynamics into the community can generate significant changes in the lifestyles of its members.

In the Guajira, the loss of territory brought about by the resettlement of the Tamaquito, Casitas, Chancleta and Patilla communities has generated impacts in the economic, social and cultural life of these communities. For many of the resettled communities, the rivers, wells, *jagüeyes* (artesian well), communal savannas, among others, are spaces of social integration or cultural significance within the community’s collective memory. These spaces encourage social cohesion among members, while serving as the scenario and instrument through which community knowledge is transmitted to new generations. Thus, the loss of these spaces when moving to a new environment affects the proper development and compromises the continuity of cultural practices for the Black, indigenous and farmer communities.

These communities also mention fragmentations of their social tissue due to the loss of networks with neighboring communities that were part of this tissue, as well as conflicts among its members during the negotiation process with the company. The indigenous communities in particular referred to difficulties with productive projects, because they consider that these do not meet the characteristics of their community, nor result in economic benefits. Given this, the company mentions in a statement issued on December 2015 that, “the company is aware of the difficulties in achieving successful productive projects, but does not share the accusation of a mayor failure. Currently 97 projects are in operation, and only 20 are inactive.”

These type of impacts are exemplary of the need for greater State intervention, both nationally and territorially, to ensure that the negotiation processes are conducted on fair and equitable terms; that the

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25 For further information on the impacts of involuntary resettlement see INDEPAZ, 2011; Contraloría General de la República, 2013; González, 2013; PAS, 2015; Tierra Digna 2015. Also refer to the CREER documents “Situations observed in decisive mining scenarios in the exercise of Ethno-territorial rights, Right to Education, Right to Participate in Cultural Life, the Right to Free Association and Participation.” Available at www.creer-ihrb.org/wiki-eisi

26 Available at: http://business-humanrights.org/sites/default/files/documents/DECLARACI%C3%B3n%C3%A9%20CERREJ%C3%A9%OF%C3%93%20SOBRE%20The%20INFORME%20DEJUSTICIA%20and%20BHRRC%20Dic%202015.pdf
ensuing agreements respond to the specific needs and characteristics of each community; that transfers are made under dignified conditions and following appropriate procedures; and, of course, to ensure that there is no infringement upon the individual and collective rights of these communities.

In the case of construction materials, the effects on the environment due to mining practices can also impact the soil, air, water and other resources, causing farmers and community members to travel to other municipalities. These impacts not only affect subsistence activities, but also alter the social fabric of the communities, impinging on the organizational processes of civil society.

In Corrales, Boyacá for example, a company that extracts building materials for construction has caused pollution on water sources and pasture, preventing farmers from continuing their productive activities and impinging by the loss of social and cultural ties. "In assembling the operation, they have covered water sources and ditches. [...] The problem is that now the locals are leaving the area because there are no dignified living conditions, no water for crops, the pollution reaches the grasses and these get sick. Therefore, the people are going to Sogamoso to work and the community becomes fragmented. We have not been able to organize ourselves because people have to leave," declared a member of the Corrales community.

Likewise, according to some community leaders of Suesca and Tabio in Cundinamarca and Firavitoba and Nobsa in Boyaca, the constant traffic of dump trucks has led to the deterioration of roads and excess particulate matter and formation of fissures in the houses, leading many inhabitants of these municipalities have felt the need to migrate to other places.

"The problem is that now the locals are leaving the area because there are no dignified living conditions, no water for crops, the pollution reaches the grasses and they get sick. So the people are going to Sogamoso to work and the community becomes fragmented. We have not been able to organize ourselves because people have to leave."

Member of the Corrales community in Boyacá

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27 For further information on the environmental impacts of mining, refer to this document’s chapter on environment and the CREER document, “Situations observed in decisive mining scenarios in the exercise of the right to health.” Available at www.creer-ihrb.org/wiki-eisi
Sometimes mining companies flock to the purchase the plots of land at significantly lower prices. A community leader in Firavitoba stated, "The companies displaced the land owners because they bought the land for pennies, (and) most came to the city and here they have nothing in which to occupy themselves."  

Nevertheless, migration generated by mining booms in the extractive industry have a major impact on the increase of the floating population in the municipalities. Companies hire people coming from other regions to work in mining because they are more qualified than the local population. Therefore, people from other municipalities are creating business opportunities such as lodgings, restaurants and canteens to provide services to the company’s employees. This creates an environment in which employment opportunities for the local communities are very slim, while food products and services are very expensive.

Betrán, Lobato and Barbosa (2010) argue that the activities of the migrant population in the large-scale coal mining scenarios "have become the main economic and employment activity of mining municipalities, since the local inhabitant have been enrolled in agricultural activities and lack the skills to participate in the early years of large-scale mining, and even less in the following years of its expansion and modernization. Thus, not only did the mining activity gradually replaced or displace agricultural activities in the area, but at the same time it displaced the local inhabitants seeking to enroll in the industry.”

Although the development of mining activity does not directly generate the negative effects that emanate from these migrations, the floating population arising from the companies' hiring does present

28 For more information on the effects of mining on the forced displacement due to development, refer to CREER document, “Situations observed in decisive mining scenarios in the exercise of the right to Free Movement and Permanence.” Available at www.creer-ihrb.org / wiki-eisi
an indirect impact on the communities and their territories. Therefore, the need for companies to position their activities with due diligence, in coordination with the local and regional institutions in the territories in which they operate, in order to propitiate the protection of the rights of the citizens is unavoidable.

Finally, due care to the migrant population in Colombia which is forcibly displaced by development or which finds better opportunities due to the mining boom, under a human rights approach, presents great challenges for public administration and for companies operating in the territories. Primarily, and as a first measure, it requires a defined conceptual framework to address internal migrations generated by the effects of mining. As a second measure, institutional coordination becomes increasingly necessary between the various sectors of public administration, jointly with the coordination of the central level with the local territories. Finally, mining companies should strive for due diligence, which implies a "continuous, proactive and reactive process through which the companies can ensure that human rights are respected and do not contribute to conflict." (OECD, 2013)
RECOMMENDATIONS

1. Design a public policy to address migration issues

The absence of a public policy and subsequent instruments to address the damages arising from the mining boom migrations or displacements caused by development, promotes the multiplication of human rights impacts. For this reason, we recommend that the Ministry of Interior design a comprehensive policy to address population movements caused by factors other than forced displacement by armed conflict. This policy must be based on the precautionary principle and respect for human rights.

2. Develop an early warning system for migrations associated to mining activities

As a measure to foresee the migrations associated to mining activities, and build the capacities required to address them, the following actions are recommended:

2.1 The Ministry of the Interior should develop an early warning system to foresee the different migratory phenomena associated to the internal armed conflict.

2.2 The National Mining Agency should develop and update a risk map of the migrations associated to the mining activities, which feeds the early warning system. This requires, for example, the systematization and individualization of the communities that are engaged in the nomadic activity of alluvial gold mining.

2.3 The CAR and ANLA should ensure that the information collected for the EIAs and PMAs, is also included as input for the early warning system.

2.4 The early warning system must interact with institutional actors, at the national, regional and municipal level, whose actions are required for the proactive addressing of the migration phenomena.
3. Offer differential attention for the vulnerable population

In order to care for the vulnerable population who is specifically affected by migration, such as children, women and ethnic communities, we recommend that municipal and departmental governments develop specific protection strategies based on common parameters directed by the Ombudsman. These strategies should ensure that municipal and departmental authorities involve the local institutions responsible for protecting these groups, and humanitarian aid organizations in a timely manner.

4. Prevent the stigmatization of the migrant population

Given the possibility that migrant populations looking for income are stigmatized, and the social problems derived from such stigmas, the Ombudsman, in conjunction with local authorities must develop mechanisms for the prevention and resolution of conflicts, which also support the inclusion processes of these communities in the receiving societies. In turn, these mechanisms become actions for the prevention of subsequent migrations, during the time the migrant population effectively becomes attached in the host territory.

5. Prioritizing actions for populations who are at risk of migrating

The Ministry of Mines and Energy, the Ministry of Education, the Ministry of Health, the Ministry of Labor and other state agencies need to include in their policies a differentiated intervention strategy focused on creating conditions to retain population through education and income generation programs, in an effort to avoid the forced displacement of people migrating due to the mining bonanza in search of opportunities to generate income and decent living conditions.

In order to effectively implement this strategy in environments which can potentially eject populations, the municipalities and state agencies mentioned above, should focus their actions on the groups identified by the Early Warning System, and the most vulnerable minerals in terms of this phenomenon, as is the case of gold.
RECOMMENDATIONS RELATED TO RESETTLEMENTS

6. Regulatory framework for involuntary settlements

The absence of a specific national policy on involuntary resettlement, results in the impossibility to ensure that these are given fair treatment and, indeed, achieve an improvement in the quality of life of the resettled populations. Therefore, we recommend that the Ministry of Mines and Energy, in conjunction with the Ministry of the Interior and the Ministry of Environment, design a regulatory framework to effectively allocate the responsibilities among the various state agencies and businesses involved, in order to effectively implement the resettlement processes. This regulatory framework should at least consider the following:

- Detailed communication processes between the State, businesses and communities, in order that the population under resettlement has access to all the necessary information throughout the process.
- Conflict resolution mechanisms between the State, businesses and communities.
- Transparent complaint and claim attention systems, easily accessible to the general stakeholders.
- Verification mechanisms, with process indicators and visible results for conducting the verification process.
- The adoption of international resettlement standards. In particular, we recommend the inclusion of IFC-World Bank standards.

7. Responsibility of the State:

Among the responsibilities assigned to the State, as part of the regulatory framework for involuntary resettlement described in Recommendation 6, the following points should be considered:

7.1 The National Administrative Statistics Department DANE, with the support of the Ministry of Mines and the Ministry of Environment should perform and update population censuses in areas where there is a possibility of settlements occurring in the short, medium or long term. This would provide a consistent baseline regarding the population to be resettled whenever the resettlement effectively occurs.

7.2 The Ministry of the Interior with the support of the Ministry of Mines and the Ministry of the Environment, must be responsible for a transition plan for resettled populations, to
ensure the provision of public goods and services to these communities during the period after they depart from their territories and before their arrival to the designated resettlement site. Under no circumstances is it acceptable to violate the rights to a decent life, health, education, within a context of neglect of the aforementioned population.

7.3 The Ministry of Mines and Energy, with the support from the National Land Agency, cadastral authorities and the Office of Civil Registry should harmonize the POT’s with the land and services needed in the territories, in an effort to define the places of origin and resettlement, ensuring that the real estate market is free from speculation during the resettlement process.

7.4 Given the need to address and prevent conflicts arising from involuntary resettlement in mining scenarios, we recommend that the Ministry of Mines, in collaboration with the Ombudsman, local prosecutors, and other relevant institutions, as appropriate, develop a complaint system in the mining scenarios, which takes into consideration the attention to the population which has had to resettle due to mining activities.

8. Corporate Responsibility

Among the responsibilities assigned to companies within the involuntary resettlement policy framework described in Recommendation 6, following points should be taken into consideration.

- Make the adoption of the IFC-World Bank standards a public and explicit matter.
- Refine reporting policies, to ensure they are efficient and that all the necessary information is presented to the community before, during and after the resettlement process.
- Ensure that the EMPs make an exhaustive study into potential resettlement cases, reporting to the Ministry of Mines and other state agencies all pertinent information regarding these cases.

Regardless of whether communities are ethnic or not, corporate conduct should focus on ensuring their rights. Mechanisms for more effective dialogue between companies and communities should be guaranteed.
7.5 vida digna, la salud, la educación, entre otros, en función de la desatención de las poblaciones en transición.

7.6 El Ministerio de Minas y Energía, con apoyo de la Agencia Nacional de Tierras, las autoridades catastrales y la Superintendencia de Notariado y Registro debe armonizar los POT’s y las necesidades de tierras y servicios en los territorios, para delimitar las tierras de origen y destino de los reasentamientos, garantizando que no se produzcan especulaciones en el mercado inmobiliario de tierras durante el proceso de reasentamiento.

7.7 Ante la necesidad de atender y prevenir los conflictos que surgen de reasentamientos involuntarios en contextos mineros, se recomienda que el Ministerio de Minas, en colaboración con la Defensoría del Pueblo, Personerías, y otras instituciones que sean relevantes según el caso, desarrolle un sistema de quejas y reclamos en entornos mineros, que considere la atención de población reasentada por la minería.

8. Responsabilidad de las Empresas

Entre las responsabilidades atribuidas a las empresas en el marco normativo para reasentamientos involuntarios descrito en la recomendación 6, deben considerarse por lo menos los siguientes puntos.

- Hacer pública y explícita la adopción de los estándares de la IFC-Banco Mundial.
- Afinar las políticas de reporte, de forma que sean eficientes y que se presente a la comunidad toda la información necesaria antes, durante y después del proceso de reasentamiento.
- Asegurarse que los PMA profundizan en los casos de potenciales reasentamientos, reportando al Ministerio de Minas y a otras agencias del Estado que considere pertinentes, toda la información sobre estos casos.
- Independiente de si las comunidades son étnicas o no, el trato de las empresas debe estar enfocado en garantizar sus derechos. Debe haber mecanismos de diálogo más efectivos entre empresas y comunidades.


OIM (Sección 2.10) Migración y Género. Fundamentos de gestión de la migración. Vol. 2 Recuperado el 11/03/16 de: http://www.crmsv.org/documentos/iom_emm_es/v2/v2s10_cm.pdf
OECD- Organización para la Cooperación y el Desarrollo Económico -OCDE (2013) Guía de Debida Diligencia de la OCDE para Cadenas de Suministro Responsables de Minerales en las Áreas de Conflicto o de Alto Riesgo. Ministerio de Comercio, Industria y Turismo, Colombia


CONFLICT AND ACCESS TO REMEDY IN MINING SCENARIOS
In recent years, the national government has seen an increase in mining exploitation, either because of new regions that are revolving their local economies towards mining, or because regions which have always had this economic enterprise are increasing their production. The aforementioned has led to increased tensions between companies and mining ventures operating in the mining territories, and communities located in the area of influence. At the same time, a series of related conflicts have gained visibility, associated with: 1) the lack of institutional coordination between departmental entities responsible for the proper and effective implementation of the norms; 2) minimal legitimacy afforded to communities in the spaces and scenarios for dialogue with local authorities and companies; 3) due diligence failures by companies and mining ventures; and 4) fallacies in the information used to identify the risks and impacts of business activity in the region.

The aforesaid is an approach to grouping the types of conflicts identified in the regions where mining exploitation is presently underway by either large multinationals or small endeavors. This indicates that conflicts in the territory are not the same in all departments, but vary depending on the type of stakeholders intervening in the region and the type of mining being exploited. That is to say, that even when referring to conflicts associated with mining, it is necessary to look closely in order to understand the type of exploited resource, the communities impacted by this activity (rural, farmer, urban, ethnic, etc.) and government entities involved (local, departmental or national). All these variables provide a particularity to the conflict, requiring that the actions implemented to address them be specific to the contexts in which they occur.

Based on the above, investigations such as this are necessary to identify the categories of conflicts derived from mining activities, and also identify originating causes thereof, which are necessarily specific to each context analyzed. This, in turn, is not only an analytical tool for understanding the context, but also provides strategies for early responsiveness to conflicts, delivers actions that prevent the escalation of tensions, and are themselves ways to consolidate peacebuilding scenarios.

Hence, understanding the types of conflicts present at the local level is an especially relevant task, to the extent it allows to identify remedial measures aligned with the conflicts, so actions that do not resolve the situations are not deployed, which may ultimately either exacerbate those conflicts present or generate new conflicts.

This document presents a typology of the conflicts and an analysis of the mechanisms to access their remedy. These results are part of the joint effort of the Comprehensive Sectorial Impact Assessments - EISI research with a research more detailed and extensive in scope (including other economic sectors) developed by CREER in collaboration with the United Nations Development Program - UNDP. Said document is part of the set of contributions provided by EISI available at www.creer-ihrb.org/wiki-eisi.
Mining is currently taking place in different scenarios within the country. These areas have particular characteristics that present the conflicts arising from this activity in a manner that, at first glance, may seem generalized and even similar, but in a detailed review reveals a number of differences, requiring their particular and specific analysis in the territory where they occur. Regardless of the above, it is possible to identify macro categories that permit us to understand the general situations that recur in the regions, but that materialize in different forms.

Hence, in the development of this conflict typology, three broad categories have been defined, each referring to a major cause of conflict, and these in turn are divided into subcategories that facilitate an understanding of how State and company actions and omissions function effectively as a vector of the conflicts between the stakeholders in the territory, with the communities at the center of the conflicts. This occurs because, in most cases, the communities are the ones whose rights are mainly affected by the causes of conflict.

1.1 CONFLICTS ASSOCIATED WITH INSTITUTIONAL ACTIONS AND THE EFFECTIVENESS AND IMPLEMENTATION OF REGULATIONS

This category of conflict refers to the actions of the State, the lack of coordination between the entities and the consequences this has on communities and companies with mining exploitation in the region. The six conflict subcategories identified are listed below:

- **Contradictions between instruments and decisions for territorial planning, and the communities’ economic, social and cultural practices.** In these cases, the vast majority of related conflicts are between State institutions and individuals or communities, because of planning decisions or policy designs that did not take into account as basis the directly affected population, or did not take into account the local authorities of the arranged territory. One example are the environmental management plans or the constitution of territorial or cultural protection figures, who arrive unto the population unaware of their cultural practices or economic methods.

- **Inconsistencies between the decisions taken by the different entities regarding individual or group processes.** Here, the conflict is between State entities and individuals suffering the effects of administrative incoordination, translated into the contradiction of administrative policies and criminal policies regarding the formalization of mining. It also includes the effects of administrative discoordination on decision-making by entities in the same sector, such as when a Regional Autonomous Corporation - CAR closes a Mining Production Unit - UPM which is in the process of formalization. This problem reveals the power of administrative incoordination to generate conflicts, resulting in contradictions between decisions made by different entities on individual or group processes, which seriously compromise the principle of legitimate trust.
Gaps, dysfunctionality or irrelevance of the regulations applied to the licensing and mining formalization processes. These are problems between institutions and individuals related to the disproportional nature of costs and actual times for these processes. It also refers to conflicts concerning the lack of programs for productive improvements concerning the closing of “chircales” (small brickwork factories) or productive units of informal mining, revealing difficult tensions regarding the right to a living wage and the principle of legitimate trust with the right to a healthy environment and principle of administrative efficiency.

The absence or weakness of security guarantees that ensure the freedom of opinion, expression and association against stakeholders interested in weakening the social organizations. Most of these conflicts are between companies and communities or between companies and their unions. The first combination responds to the problems of stigmatization of the social movement and the second refers to cases of threats to union leaders. Both cases compromise the rights to honor, non-discrimination, participation, trade union association, and not to be subjected to inhuman or degrading treatment.

The absence of clear and fair rules regarding the regulation of commercial transactions and agreements. Some of these conflicts are between companies and individuals or small mining ventures because of abuse in the purchasing conditions of the minerals, to the point that companies purport to retain them due to poor quality, but on the suspicion that they end up using them, an act clearly violating the property rights of small-scale miners.

Local authorities lack the capability to plan and address migration related phenomena caused by mining bonanzas. These situations, and the disputes arising from them, threaten social cohesion due to problems between people.

This group conflict has to do mainly with State actions, that to date are not working properly, in order to prevent and protect the human rights of individuals and communities in the zone of influence of mining exploitation projects. A lack of coherence in the existing policy and lack of coordination between municipal, departmental and national institutions is evident. In the absence of a State with the ability to work articulately between the nation and the territory, it is very likely that the conflicts between communities, companies and government will occur continuously, demonstrating the need to achieve an articulation and an inter and intra institutional coordination to reduce conflict in the mining regions.

**1.2 CONFLICTS ASSOCIATED WITH WEAKNESSES IN THE DUE DILIGENCE PROCESSES BY COMPANIES AND PROJECTS**

This category of conflict, as the title suggests, refers to performance failures by mining companies in their areas of operation in terms of their expected due diligence, not only to comply with laws and regulations within the State, but also to understand and acquainting themselves with the communities within their area of influence, leading to possible actions infringing on rights and non-compliance with national and international standards concerning respect for human rights in the context of business operations.
Failure to comply with rules and regulations. Although in most cases the protagonists are the companies and communities, it is easy to triangulate them with the State, who has the duty to monitor and control compliance with the norms but fails to do so, or fails to legally provision itself to empower its institutions. Among some situations reflecting such conflicts are problems between companies and communities for breach of i) minimum standards in resettlement processes, ii) protocols for the protection of archaeological sites of high cultural value, iii) terms of environmental licenses, or iv) commitments acquired in socialization processes, to the detriment of the good faith of the communities.

Ignorance of the realities, and socio-cultural uses and notions of territory. This subcategory groups conflicts between companies and communities due to resettlements without recognition of the agricultural vocation of the communities, infringing upon or jeopardizing food sovereignty; or due to displacements or transfers of ethnic communities without reaching agreement on their agricultural vocation, infringing on the right to prior and informed free consent as a reinforced standard.

Lack of action to address asymmetries in access to natural resources. This subcategory groups conflicts between the companies and communities because of water quality, the negative effects on basins because of mining activities, or by difficulties in accessing water sources due to the privatization of land, which in turn generates constraints on agricultural, hunting and fishing practices. All these conflicts compromise water rights and food sovereignty.

Differentiated treatment, which manifests as exclusive and preferential actions toward certain sectors of the population, which are not based on their vulnerabilities. This last subcategory refers to conflicts between companies and communities because of discriminatory treatment towards sectors of the population. For example, different treatment between workers and employees, jeopardizing the right to equality and non-discrimination.

This group conflict emphasizes the need for the judicious exercise of due diligence by the business sector to prevent and mitigate possible effects on human rights. However, at the same time it evidences a lack of capacity of State institutions to adequately monitor business activities regarding the management of impacts and risks and, in general, the due diligence processes they must carry out. The lack of human and technical resources of local entities encourages responsible companies and enterprises to present regulatory breaches that materialize as infringements on the rights of individuals and communities.

1.3 CONFLICTS ASSOCIATED WITH THE ABSENCE OR ILLEGITIMACY OF INFORMATION

The legitimacy existing between the stakeholders in the territory is a key element for the operation of a company in a given area, as well as to build fluid communications and connections that permits coordinated work for the prevention and mitigation of impacts.
Absence or illegitimacy of information regarding impacts to the environment and health. The first subcategory refers to conflicts between companies and communities in situations such as the inability to access studies and environmental management plans, which threatens the symmetry of the discussions, the right of petition, the right to participation, the right to a healthy environment and, in the case of ethnic groups, the right to prior consultation. Although it concerns a reported conflict between communities and companies, it is true that the control and monitoring of these studies and of the management measures derived from these is a State matter and, as such, the State should guarantee access to all these documents. It has also been reported that these conflicts prevent the right to access justice due to lack of evidence. This subcategory also includes conflicts between companies and workers who are being denied labor worthiness due to their diseases.

Incomplete information and lack of transparency. The second subcategory groups conflicts associated with incomplete information and lack of transparency on the impacts of mining on social welfare and the socio-economic development of the territories. These are generally conflicts between companies and communities due to the low percentage of local workers employed.

Lack of transparency in information regarding nonconformity of agreements with Law Enforcement. The third subcategory groups conflicts over the lack of transparency in information on the agreements of the companies with the public forces. Although these conflicts are reported between companies and communities, it is true that the main protagonist is the State. The most common causes of these conflicts have to do with the lack of care provided to the community for problems foreign to the project, with negative effects on their crops, restriction of movement, the inappropriate use of “jagüeyes” (water ponds) and wells, withholding of tools, and physical and verbal aggression.

This group of conflicts highlights the lack of three essential attributes in communication processes and information flows, which are transparency, trust and legitimacy. These attributes are interconnected in such a manner that, to create legitimacy, it is necessary for the other two to be present in the relationships between the stakeholders. To overcome such conflicts requires constant work, extensive but necessary, between communities and companies, where the State also plays a decisive role in building trust and legitimacy, supplemented by processes of collection and flow of information that is transparent for all the stakeholders involved.

Similarly, the conflict typology makes it evident that many of these situations can be resolved early, that can be addressed through mechanisms of access to non-judicial remedy, which is to say before escalating to lawsuits or manifesting irregularities. To achieve this, it is essential not only to work on relationships of trust between the stakeholders, as previously mentioned, but also on the exercise of recognition of remediation, not only as economic compensation, but necessarily as a process that guarantees the measures required for non-repetition. It is in this manner how we appraise below the State’s judicial and non-judicial mechanisms of recourse to remedy.
Recourse to remedy is an essential measure for the non-repetition of those practices that were the cause of the negative impacts, and therefore it is the duty of the State and companies to have mechanisms and strategies for its prevention. Similarly, having identified the many negative effects that business activity produces on human rights in different contexts and communities, it is crucial to find the manner to guarantee remedy. This means having mechanisms, State and non-State, which are appropriate and at the same time will enable individuals or communities to process through them their complaints or possible negative effects.

Among the remediation responsibilities under the competency of the State are, "(...) take appropriate measures to ensure, by judicial, administrative, legislative or other means as appropriate, that when such abuses occur in its territory and/or jurisdiction those affected have access to effective redress mechanisms" (OHCHR, 2011). The aforementioned means that necessary measures should be implement to investigate, punish and redress human rights infringements related to business operations. These measures should be the gateway for individuals or communities to raise their complaint or grievance, but the mechanism itself does not offer remediation, but rather it is coordinated with government entities and specific strategies to respond to this challenge. Therefore, the State’s grievance mechanisms, both judicial and non-judicial, should establish the basis of a broader system that allows for those who feel their rights infringed upon to effective access remedy and have guarantees of non-repetition.

2.1 JUDICIAL REMEDIATION MECHANISMS OF THE STATE

Judicial mechanisms that exist in Colombia are exercised through judicial action, which seeks to protect a real loss, infringement or threat of the fundamental rights that have been enshrined in the country’s Political Constitution. In those cases where possible, it is expected that the actions defined by these mechanisms result in restoring things to their previous state, in other words, that those affected will be able to enjoy their rights as they did before resorting to judicial action.

The mechanisms are: habeas data, right of petition, habeas corpus, tutela, enforcement action, collective redress and class action (OHCHR, 2003). To ensure access to these mechanisms, the State should ensure that: i) citizens know and understand the objective of these mechanisms, ii) they are clear

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1 For further detail, refer to the Regional Report for Latin America and the Caribbean on Businesses and Human Rights - Panorama on the latest developments. Developed in September of 2013 by the Resource Center for Business and Human Rights. Available at: [http://business-humanrights.org/sites/default/files/media/documents/informe_regional_america_latina_y_el_caribe.pdf](http://business-humanrights.org/sites/default/files/media/documents/informe_regional_america_latina_y_el_caribe.pdf)

2 When referring to State mechanisms, both judicial and non-judicial are included. The latter relates mainly to Alternative Mechanisms for Conflict Resolution - MASC.

3 The non-State mechanisms are also non-judicial and refer to the mechanisms for complaints that companies implement in their operating environments and for their different interest groups.

4 Colombia justice system provides a judicial mechanism to rapidly obtain redress when a citizen’s fundamental right is at risk of being breached. It is called a writ of "tutela".
about how they can be accessed, and iii) provide the necessary support (financial or expert) for stakeholders to access these mechanisms when necessary. The framework of judicial remedial mechanisms includes those that are part of the State’s judicial system, explained below.

**Judicial system**

This system provides impartial, transparent, legally secure, predictable and independent spaces to administer justice as a way to resolve conflicts, or prevent or repair damage to fundamental rights via the application of rules and sub-rules interpreting the positive law. The main guarantee of this system is that it is transversely determined by the strict validity of the right to due process that, in its complex structure, integrates such important fundamental rights as the right of defense, contradiction, double jeopardy and *indubio pro reo*, as well as special principles that are part of it in the case of summary proceedings for the protection and repair of constitutional rights.

These systems to access repair transverse across all sectors of the national economy, including mining. The judicial system relies on specific and summary actions such as *tutela*, collective redress and other remedial actions that are not specifically designed for fundamental rights but provide a mechanism for access to remedy and redress. Meanwhile, criminal law is the ultimate instance for the protection of rights, which in some cases coincides with fundamental rights that may be infringed upon by the companies’ activities, omissions or business relationships.

### 2.2 NON-JUDICIAL REMEDIATION MECHANISMS OF THE STATE

Non-judicial State mechanisms also exist and were established in the country as a result of various obstacles. Primarily, due to the high costs of filing complaints and hiring lawyers for this purpose; secondly, due to the difficulties of access to procedures of the judicial system; and thirdly, because of the lack of human resources at the State level to deal with cases of business and Human Rights (UNHCHR, 2012). Taking into account said obstacles and to some extent the judicial congestion that impedes access to remedy, it became necessary to rely on other non-judicial mechanisms, such as the administrative, that could articulately provide response and remedy to any possible infringement on human rights.

Non-judicial mechanisms have been included in the pillar of Remedy, given the need to consider mechanisms able to provide solutions to problems not necessarily resolved in the legal sphere. Within these mechanisms can be included the management conducted by State entities such as the National Human Rights Institutions, that in Colombia are the Ombudsman, the National Contact Points of...
the Organization for Economic Co-operation and Development - OECD\(^7\) and the Public Offices for Grievances.

In addition to these mechanisms, in Colombia there is a complex and rich institutional or State offering for handling situations or conflicts that are endangering the effective enjoyment of rights by a community or person. These mechanisms constitute a system that functions in two moments: at the time of conflict prevention or early attention to tensions that can lead to a violation of rights, and at the time of repair or remedy and provision of guarantees of non-recurrence of damage to rights. Some operate across all economic sectors, and there are others that are offered and operate in specific sectors.\(^8\)

Those that operate transversely correspond to the five remedy access systems that include the mechanisms for early attention to tensions - MATT or conflict prevention, and access mechanisms to access remedy or reparation and Access to Remedy Mechanisms - MAR. These systems have varying degrees of importance, complexity and efficiency and are mentioned in the order they have within the Colombian State. This document does not provide a comprehensive presentation of the mechanisms, but only mentions them according to the type of conflict cited in the previous section.

**Citizen participation**

This first system is the most important, because it allows the population to communicate, request and complain directly and immediately to the companies and/or authorities their concerns or grievances, and also effectively allows the citizenship to contribute to decisions that depend on the management of public affairs and the actual effectiveness of their rights. The spaces and mechanisms must guarantee that the issues are attended to in a timely and thorough manner.\(^9\)

This system also includes the application of the democratic principle tied to the principle of decentralization, functioning as a pillar of the Colombian territorial planning that balances the unitary principle with that of political and administrative decentralization. The mechanisms available to this system are community action boards - JAC, and community justice mechanisms.

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\(^7\) The Organization for Economic Co-operation and Development (OECD) is an international organization whose mandate extends to “promote policies that improve the economic and social well-being of people around the world.” In 2011 the OECD guidelines for Multinational Enterprises were updated to incorporate a chapter on human rights and due diligence. This chapter picks up on the UN Framework “Protect, Respect and Remedy” and its Guiding Principles (Mc Corquodale, 2015).

\(^8\) For more information on this topic, see the CREER working document "Mechanisms for Early Care to Tensions and Remedy Access Mechanisms under the Guiding Principles on Business and Human Rights of the United Nations: Diagnosis and proposals." Available at [www.creer-ihrb.org / wiki-eisi](http://www.creer-ihrb.org/wiki-eisi)

COMMUNITY ACTION BOARDS

They are civic, social and community organizations for social management, to generate community processes for the identification, formulation, implementation, management and evaluation of community development plans, programs and projects. They exercise the legal function of civic oversight as a democratic representation mechanism for monitoring public governance and include coexistence and reconciliation committees that understand and resolve susceptible community conflicts including those of transactions, waivers and reconciliations, through equity conciliation procedures.

COMMUNITY JUSTICE MECHANISMS

Community justice mechanisms are part of the community justice system that is an alternative to State justice and are defined by their own or traditional community forms for equity dispute resolution. They are conciliatory or imposed mechanisms according to the traditions and ancestral strength of the agents recognized by the communities.\(^\text{10}\)

Although civic participation such as the remedy access system is designed to rely on two mechanisms for direct communication between stakeholders, in actuality they do not have the necessary legitimacy to consolidate as scenarios for dialogue and conflict resolution among stakeholders. Despite being mechanisms that enjoy certain level of legitimacy for the generation of community processes and civic oversight of public administration, they are not necessarily identified as spaces for the resolution of conflicts arising from business transactions, whether they are conflicts between communities and companies or between government entities and communities.

### 2.3 ALTERNATIVE MECHANISMS FOR CONFLICT RESOLUTION - MASCs

The Guiding Principles invite the use of alternative mechanisms for resolving conflicts arising from business activities. These mechanisms constitute a manner of resolving disputes between individuals, social groups and even States, which seek to "avoid the conventional jurisdiction of judges, courts or institutional bodies." (Osorio, 2002). In the country, the Alternative Mechanisms For Conflict Resolution - MASC become relevant not only in the context of business and human rights issue, but in a general framework where the same are identified as a result of changes brought about by the Political Constitution of 1991, guaranteeing the right of every person to access the administration of justice, as stated in Article 229.

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\(^{10}\) See Uprimny, 1994)
**CONCILIATION**

Conflict resolution mechanism to manage the settlement of differences with the help of a neutral and qualified third party, known as a conciliator. The conciliatory agreement applies claim preclusion and the conciliation settlement provides right of execution. The conciliation may be i) non-judicial, ii) judicial and iii) in equity.

**FRIENDLY STRUCTURE**

It is a mechanism that delegates to a third party, called a friendly compositeur, the power to determine, with binding force to the State, the parties and the manner to comply with a particular legal business. The friendly compositeur may be singular or plural.

**ARBITRATION**

According to the National and International Arbitration Statute, this is a mechanism by which the parties defer to arbitrators to settle a dispute concerning matters of free disposition or those authorized by law. The principles and rules governing this mechanism are impartiality, suitability, swiftness, equality, orality, publicity and contradiction. The arbitration award is the judgment determined by the arbitral tribunal and may be in right, in equity or technical.

**JUDGES OF THE PEACE**

This is a special jurisdiction that seeks the comprehensive, peaceful and autonomous resolution of community or individual conflicts that voluntarily submit to its judgement, on matters susceptible to compromise, conciliation or withdrawal and that are not subject to formalities in accordance with the law, in amounts not exceeding one hundred (100) current legal monthly minimum wages. Its decisions are in equity, in accordance with the justice criteria of the community.

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One of the main challenges identified regarding the MASCs is the lack of legitimacy they have for access to remedy in situations of rights infringements associated with business activity. This is due largely because in most cases the remediation sought is economic and punitive, which is usually only achieved through judicial mechanisms, or because of the inability of the parties involved to reconcile or resolve the conflicts early on. For these reasons, those affected prefer to resort to lawsuits - even when they recognize the obstacles that this entails for access to remedy, they consider it to be the most legitimate manner to achieve it. In these situations, remediation is based on compensation and not necessarily on prevention or mitigation of the impact and, of course, does not guarantee its non-repetition.

To ensure that the MASC be conceived as the ideal way to achieve remediation, whether it is through compensation, prevention, mitigation or correction, it is necessary that access to remedy is understood not only as a process that leads to a positive or negative response for the affected party, but as an

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12 IBID

13 “Compositeur” is the internationally recognized term, which roughly translates as mediator or fixer

exercise of both the State and companies that guarantees protection and respect for human rights in the context of business operations.

**Administrative system**

Administrative and legislative mechanisms are required to bear the burden of responding to all allegations of infringements or negative effects on rights. The mechanisms that make up this system are based on the assumption that it is not always necessary to resort to judicial redress, and that this is not always the best solution for all claimants (OHCHR, 2012).

The administrative system for early attention to tensions and for conflict resolution is key to balance the asymmetries of bargaining power between companies and individuals, in the area of access to information within the intervened economic sectors. The mechanisms that are part of this system are: right of petition and complaint, National Point of Contact - PNC, Management Protocol for Conventions between Companies and the Armed Forces (Defense subsystem) and the *Avanza* program (Ministry of Interior subsystem). The Colombian State has the houses of justice and the conciliation centers, as well as the institutions that allow for the implementation these mechanisms.

### ADMINISTRATIVE SYSTEM

| **RIGHT OF PETITION AND COMPLAINT** | Through this mechanism, one may apply for recognition of a right, the intervention by an entity or official, the resolution of a legal situation, the provision of a service, or one can request information, consult, examine and request copies of documents not subject to legal reserve. Consults, complaints, grievances and claims and appeals can also be filed. |
| **NATIONAL POINT OF CONTACT - NPC** | It is a mediation mechanism created by the OECD, which must be implemented by its member States as well as those in the admission process. In Colombia, it was created by Decree 1400 of 2012, and it is located in the Ministry of Commerce, Industry and Tourism at the Department of Foreign Investment. |
| **MANAGEMENT PROTOCOL FOR AGREEMENTS BETWEEN COMPANIES AND THE ARMED FORCES** | This protocol is developed by the Ministry of Defense for the management and alignment of security provided by the army to the mining and hydrocarbon industries in areas with difficulties arising from conflict or other aspects of national security with human rights. |
| **AVANZA PROGRAM** | The precursors of this program were the partnerships for prosperity, and it resurfaced on the matter of civic participation as a planning and participation exercise between the government, the industry, and the communities. It is part of the Territorial Strategy for the Equitable and Sustainable Management of the Hydrocarbons Sector and is conceived as a mechanism of early attention to tensions (MATT) to perceive any early warning or potential conflict. |
As the mechanisms mentioned above, those that are part of the administrative system are designed for early conflict resolution. However, they lack the legitimacy to be the appropriate scenarios, and the communities’ lack of knowledge about them makes their use difficult. These four mechanisms can address the different conflicts mentioned in the previous chapter, because many of them are related to State and company actions that, if prevented or corrected, could avoid and resolve existing tensions in the territory.

It is the work of the State to ensure the public’s knowledge of these mechanisms and their accessibility to all citizens. These are two necessary characteristics from the access to remedy mechanisms set out in the Guiding Principles of the UN Framework.

**Environmental system**

This system guarantees the principle of civic participation through institutional spaces in which individuals and communities can contribute their knowledge to generate solutions or plural forms of management of potential impacts or conflicts, or submit written or verbal requests regarding the management and destination of natural, social and cultural resources of their environment, in order to protect the stability of the environment and the construction of specific models of sustainable development. The mechanisms this system relies on are the socialization of Environmental Impact Assessments and the Public Environmental Hearings.

<table>
<thead>
<tr>
<th>SOCIALIZATION OF THE ENVIRONMENTAL IMPACT ASSESSMENT - EIAs</th>
<th>AUDIENCIAS PÚBLICAS AMBIENTALES</th>
</tr>
</thead>
<tbody>
<tr>
<td>According to current regulations, communities should be informed about the project with emphasis on its impacts and measure, so those responsible for this socialization may assess whether to include these contributions in the environmental licensing process.</td>
<td>These hearings were created to inform about the existence of a project, work, or activity, its impacts and the administrative measures to prevent, mitigate or compensate them. It is also useful for receiving documents that should be taken into account when making decisions that will not be adopted during the public hearings.</td>
</tr>
</tbody>
</table>

These two mechanisms that make up the environmental system are widely known by the communities located in the area of influence of the projects or mining enterprises. However, due to the lack of trust between the stakeholders and the low legitimacy given to the information submitted by the companies under these scenarios, they are not conceived as mechanisms for early dispute resolution. As mentioned in the conflict typology section, the information submitted by companies to the communities regarding the identification of risks or impacts is discredited, which makes it difficult to access an effective remedy through these mechanisms, with the understanding that remediation can also encompass prevention, mitigation and corrective actions, which can be identified and defined jointly by the parties under the framework of these scenarios.

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15 Decree 2041 of 2014.
The mechanisms for conflict resolution lack sufficient legitimacy, mainly because they are not sufficiently known by those seeking access to remediation. Colombia has a number of systems and mechanisms to deal with conflicts, complaints, claims, or diverse situations of rights infringements between i) communities, ii) companies and communities, and iii) State and communities, among others. However, these mechanisms have a number of weaknesses that must be overcome to achieve their effective use by those who are subject of right infringements and require their restitution.

The first obstacle is the lack of sufficient legitimacy to be conflict resolution scenarios, mainly because they are not sufficiently known by those seeking access to remediation. The scant use of these alternative mechanisms, as well as excessive use of legal mechanisms for conflict resolution, is not a response to an absence of dialogue and reconciliation scenarios, but rather to the lack of legitimacy of these as mechanisms to ensure that the rights are restored and guarantees of non-repetition are given.

A second obstacle is related to the lack of knowledge of what remediation implies. Usually those who whose rights have been infringed upon believe that remedy is based on financial compensation, which translates to a fine for the offender (company or State, as appropriate). To achieve access to effective remedy, according to the proposals of the Guiding Principles, not only should the diffusion and legitimation of alternative mechanisms mentioned above be started, but also an exercise is need to understand the real dimensions of remediation, encompassing more than just legal sanction and compensation, which includes actions for prevention, mitigation and correction by those affecting human rights in the context of mining operations in the country.

A third obstacle that must be overcome to achieve effective access to the remedy processes is related to the human and technical capacity of the entities present within the territory. In many cases, conflicts cannot be resolved at an early stage by these mechanisms because there is not enough staff able to carry out support tasks in the alternative dispute resolution processes and the oversight of agreements resulting from these dialogue scenarios. For the aforementioned reasons, the responses of the entities is merely to refer, and does not lead to a solution of the particular situation, which results in an escalation of the conflict where the affected party ends up preferring the legal and judicial means to get an answer, although this does not always signify access to remedy.

This obstacle related to the ability of State institutions to respond intersects with other barriers, such as the lack of legitimacy of the mechanisms, lack of knowledge about what remedy entails, and, additionally, the lack of trust between stakeholders in the territory. In this vein, the fourth obstacle is related to the distrust of the communities (those most affected by the operation of enterprises and the lack of State capacity) towards the business sector and the State, making it impossible to reach real and

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16 In this document, access to remedy follows the conceptual indications of the UN Guiding Principles, the OECD’s Guidelines, and the proposals of the National Action Plan for Business and Human Rights of the Presidency of the Republic of Colombia
accomplished agreements between the parties. Due to the absence of credibility, it is not possible to find different paths other than lawsuits and economic sanctions to feel that they have managed to solve a problem.

A fifth obstacle to access remedy in conflict settings such as those mentioned in the first chapter is the lack of coordination and articulation of the State, not only to avoid tensions in the territory but also to provide effective and timely response. This obstacle goes beyond the technical capabilities of the State and is related to the need for the national government to coordinate and ensure policy coherence at all levels, in such a manner that the actions to resolve a conflict and access to remedy respond to the requirements of those who seek them.

Therefore, the State has created other scenarios for dialogue, especially to address the increase of conflicts in areas of exploitation of natural resources, such as mining, that can serve as a mechanism for identifying and overcoming tensions between stakeholders in the territory. An example of these are the Dialogue Tables, with national, regional or local scope, and differentiated by economic sectors (agriculture, mining, power generation, etc.). To the extent that they consolidate as dialogue scenarios for building trust between stakeholders, it is possible that by and by they are also recognized as mechanisms for conflict resolution.

Another example of the aforementioned is the Territorial Strategy for the Equitable and Sustainable Management of the Hydrocarbon Sector17. Although this strategy is only implemented for the hydrocarbon sector, it serves as benchmark of how to incorporate new actions by the State to address conflicts in all economic sectors; namely, that such initiatives could be effective to solve some of the situations mentioned in the conflict typologies in mining environments. This Territorial Strategy is divided into four programs18, which are advance, cohabitation, lead and demonstrative actions aimed at strengthening the stakeholders in the territory and generating the conditions necessary for the consolidation of participatory scenarios. This strategy, which has been active for about two years, provided the basis for the State to have a mechanism that allows for alternative dispute resolution and the legitimization of extraction activities in the territories. If it were replicated in the mining sector, given its territorial approach, it could be beneficial to the communities and the companies operating in mining scenarios by consolidating a dialogue scenario and joint construction between different stakeholders.

The efforts already being made by the State to provide dialogue scenarios for the prevention of conflict and human rights violations adds to the international debate on the minimum requirements that these

17 Led by the National Hydrocarbons Agency - ANH, the Ministry of Mines and Energy, Ministry of Interior and Ecopetrol, with the support of the Presidency, Vice-Presidency, Ministry of Labor and the Employment Service; UNDP is in charge of the methodological component. The strategy has four objectives: i) coordinating the stakeholders involved in the hydrocarbon sector, ii) strengthen and build capacities in communities, governments and businesses, iii) prevent and transform conflictive relations, and iv) build joint and sustainable visions for human development in the territories. For more information see: http://www.co.undp.org/content/colombia/es/home/operations/projects/poverty_reduction/estrategia-territorial-para-la-gestion-equitativa-y-sostenible-d.html

18 For detailed information regarding the objectives of each of these programs, see:  
should include to ensure an effective remedy and guarantees of non-repetition. This is the sixth obstacle that must be overcome if the State really wants to ensure the non-repetition of situations that violate human rights. Recapitulating the conflict typology, these were focused on i) low policy coherence, ii) shortcomings in companies’ due diligence and iii) discredit of information, which are actions that occur repeatedly in mining contexts or scenarios. This is to say that currently none of the mechanisms for conflict resolution has the tools to ensure the non-repetition of actions that infringe upon human rights, making it possible that situations presented as examples in the conflict typology are repeated over and over again.

Both the UN Framework and the Guiding Principles, as well as different scenarios for international discussion, have been tasked with providing recommendations on the way to improve the effectiveness of judicial and non-judicial mechanisms for access to remedy in situations negatively effecting or infringing on human rights in the context of business operations (Mossavar-Rahmani, 2007). The effectiveness criterion articulated under the Guiding Principle 31 of the Guiding Principles of the United Nations is the most prominent and authoritative guide for access to an effective remedy. This principle states that, “In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible (internationally recognized by the country) and a source of continuous learning; and operational level mechanisms should also be based on participation and dialogue.”

This means that the road to be traveled is long, but that the efforts that have been made in the country are in line with the expectations of some sectors to have more expeditious channels for conflict resolution and building legitimate reconciliation and dialogue scenarios between the different stakeholders (State, businesses and communities). Nevertheless, the national government has a very important task in order to overcome the obstacles that currently prevent the use of non-judicial mechanisms and effective access to remedy. These barriers pose a wide range of possibilities, ranging from misinformation about the functioning of the mechanisms to the lack of legitimacy of the same and the entities in charge of their operation, including the absence of institutions within the territory to launch or operate reconciliation scenarios, the distrust between stakeholders (leading to the courts as the only legitimate way for remediation) and the misconception that the financial compensation, meaning the fine for violators, is the main form of remediation.

The typology of conflicts in mining environments is demonstrating that the actions to prevent and avoid the occurrence of these situations lies not in financial compensation, but in the transformation of actions by the State to protect human rights, as well as the companies to respect human rights, and also the State to monitor and ensure the companies’ compliance in terms of respect. As mentioned earlier in this document, the mechanisms are only the starting point or instruments to reveal a situation that must be corrected by one of the parties involved. Therefore, efforts should not focus solely on the existence and functioning of the mechanisms described in the second section of the document, but rather on the actual capacity and scope that these have to resolve the conflicts already evidenced.

Being able to rely on this conflict typology is an important starting point to identify actions the State must deployed to overcome the scenarios that prevent the construction of dialogue and relations of trust between the stakeholders in the territory and strengthen the mechanisms provided for the same. This typology seeks to point out the conditions for reducing conflict in mining environments, and where necessary, acquire access to remedy with equity criteria for the parties.
The following are a series of recommendations that are considered relevant in order to address conflicts in mining scenarios and ensure effective access to remedy. These recommendations do not necessarily imply an immediate action. On the contrary, they imply major changes within the State, in order for it to adequately comply with its duty to protect the human rights of its citizens in business environments.

1. Given the absence of a state mechanism that can identify the occurrence of conflicts and complaints from the communities living in mining scenarios at an early stage, we recommend the creation of an inter-institutional system for complaints and conflicts, which has the following characteristics: accessible, transparent, predictable in terms of processes, culturally appropriate, legitimate, equitable, consistent with fundamental rights and subject to regular upgrade and improvement reviews.

2. Due to general ignorance on the operation and scope of each of the entities that comprise the State, a single window is required, in order to present rights of petition in terms of business and human rights. The main objective of this window is to prevent citizens who lack specific knowledge on the structure of competencies and distribution of the State from raising a written or verbal right of petition at a single window to address human rights issues and companies for all sectors operated by the State.

3. Due to the lack of coordination between the different entities that receive complaints or reports of possible conflicts and impacts to human rights in mining scenarios, a technical consultation process is required for such entities (Ministry of Labor, Health and the Environment, ANLA, ANM, and Regional Autonomous Corporations, etc.) in order to ensure institutional cooperation and establish criteria for monitoring the system and the definition of the relevant criteria, and to distinguish issues concerning human rights situations from those which do not.

4. Faced with increasing conflicts between communities and mining companies caused by affectations by the latter to the effective enjoyment of human rights, it is necessary to evaluate and design 1) the potential pro-forma clauses for conflict resolution in formal agreements between communities and businesses, and 2) the circumstances, procedures, and methodologies required to initiate conciliation, mediation, arbitration mechanisms, and others based on the communities’ socio-cultural traditions. This assessment exercise should involve businesses, communities, local and public authorities at the local and regional level.
5. Given that communities living in mining scenarios prefer legal mechanisms to access remedies in cases affecting human rights, and therefore alternative mechanisms for dispute resolution (ADR) are not considered as appropriate mechanisms for conflict resolution, it is necessary to strengthen the work performed by the justice houses, centers for conciliation and arbitration, legal clinics, civic centers, community action boards, agencies and officials, on two fronts: 1) to raise awareness regarding the ADRs and 2) identify the opportunities they have for resolving conflicts in mining scenarios.

6. In view of the low use of ADRs as a mechanism for addressing and resolving conflicts concerning the violation of rights by business operations, the development of a training program aimed at conciliation centers, houses of justice, legal clinics and other instruments is required, in order for them to apply ADRs to mining legislation, responsible mining practices and disputes. This program should help strengthen the capacity of these centers to serve the different stakeholders.
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CONCLUSIONS

Beyond presenting the specific recommendations to the different stakeholders in terms of sector policies or actions required, the Sector Wide Impact Assessment of the Mining Sector identifies a number of aspects that determine the nature of the interactions occurring within the territory where gold, coal and construction material mining are present. It also provides a better understanding of how these relate to the limitations for mitigating and preventing impacts on human rights, and their contribution to peacebuilding in their respective territories in the medium and long term. Five aspects stand out as recurring elements in this diagnosis:

Misalignment between mining policies, institutions and territories. In particular, we observe the absence of opportunities for informed dialogue between businesses and institutions, businesses and communities, and institutions and communities. In addition, the initiatives for formalizing the mining activity do not include participatory processes; mining agencies present in the territories are not capable of solving problems in an effective manner; and mining is not included in the territorial development plans as a resource that promotes development.

Absence of policies and programs for the protection of vulnerable populations. This situation is characterized by a gap in the responsibilities of the government agencies regarding the protection of the rights of miners at risk, as well as the absence of an approach based on the identification of migration and displacement risks. Moreover, we also observe the absence of a comprehensive regulatory framework for involuntary resettlement, which means that businesses implement it in any manner they deem appropriate, without the support of regulatory guidelines. Finally, policies aimed at combating criminal mining focus on the use of force, and do not include a human rights approach to address the needs of vulnerable populations involved in the actions of criminal groups.

Severity and inflexibility in the regulatory framework for mining. Mining policies follow a single approach, and make no significant efforts to account for the different characteristics of each environment. In particular, the regulatory framework for all mining projects is the same, regardless of the conditions and capabilities of the various types of production units or the distinctive characteristics of the environment. In the same vein, environmental regulation does not adapt to each environment, which results in weak monitoring of the large-scale mining and strict monitoring for small mining projects, which raises the costs of formalization. This is compounded by the existence of fines and sanctions which fail to result in remedial actions, and end up undermining the formalization process. Finally, the manner in which mining is classified, specifically when mining is carried out as a survival mechanism, ends un becoming a poverty trap for miners, given that they are no longer recognized by the State if they implement any actions to modernize their operation and improve their income.

Limitations regarding peacebuilding in the territories, conditioned by access to remedial mechanisms. Most conflicts in mining areas are associated with certain administrative actions or lack thereof. This situation is compounded by shortcomings in the due diligence process of companies and asymmetries in access to information. Additionally, deficiencies were identified in the access to remedy mechanisms, which are still insufficient in addressing the conflicts associated with mining. In fact, State agencies fail to interact in a consistent, predictable and consistent manner, in order to provide easy access to remedy. Other limitations to the peacebuilding process in the territories include, the State’s inability to reconcile actions for land restitution, formalization of property and the granting of mining interests; and the lack of government action in scenarios where criminal mining is present, leaving
communities exposed to violence by criminal groups, abandonment and stigmatization of government agencies.

Deeply rooted distrust between mining companies and the communities. In addition to the institutional weaknesses witnessed in the mining environment, distrust between companies and communities makes it impossible to carry out effective actions for the protection of rights. The following are some of the aspects identified: (i) the absence of reliable opportunities for dialogue which address the violation of rights; (ii) the absence of conflict resolution mechanisms; (iii) confusion regarding the roles and responsibilities of the companies and the State; (iv) insufficient complaints and claims mechanisms required to access remedies; and (v) the perception by the communities of the coordinated actions between the State and companies.
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