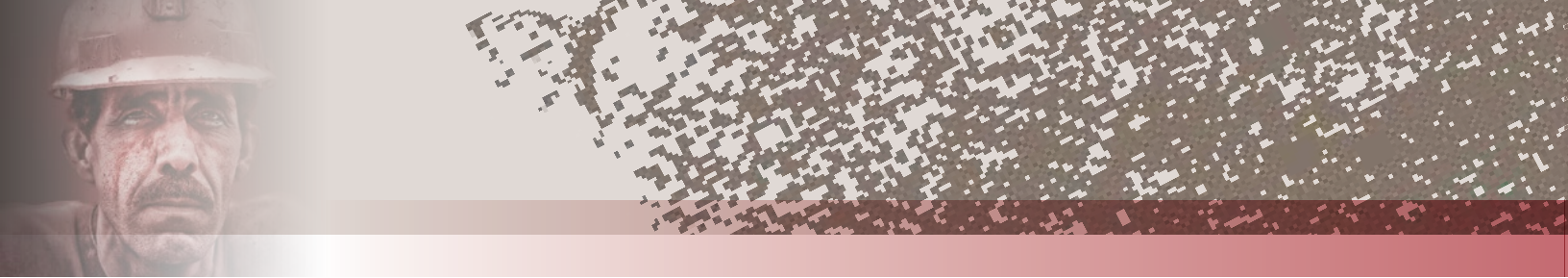




Large-scale mining in Colombia: Human rights violations past, present and future





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MAY 2013

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Introduction

Large-scale mining is officially considered one of five “engines” of the Colombian economy.¹ During the last twelve years, over 1.5 million hectares of Colombian land have been sold off to large-scale mining corporations for exploration and exploitation of Colombia’s extensive mineral deposits, changing drastically the landscape of landownership and use in Colombia’s countryside.² Everything from emeralds to coal to gold is mined throughout Colombia, often in pristine ecosystems such as forests or tropical mountain ranges.³ This investment in large-scale mining is hugely controversial in Colombia for a wide variety of reasons ranging from environmental concerns to labor standards, to community consent and the

economic displacement of artisanal mining, which has traditionally been an important source of income for many Afro-Colombian communities. However, one aspect of the mining boom that has been little explored is its potential effect on the human rights situation in Colombia. Amidst an ongoing civil conflict which is closely tied to issues of land tenure and access to resources, uncontrolled mining threatens to usher in Colombia’s next big human rights crisis.


Over the past 28 years, around 5 million people in Colombia have been forcibly displaced, primarily from the countryside, leaving millions of hectares of land abandoned.⁴ Much of that land was taken over by paramilitaries and sold to corporations.

¹ President Juan Manuel Santos coined the term “locomotives of the economy and development” during his inauguration in 2010, by which he referred to five broad policy issues: housing, infrastructure, mining, agriculture and innovation. León Juanita, “Santos, entre los mamos y las locomotoras,” *La Silla Vacía*, Agosto 17, 2010. <http://www.lasillavacia.com/historia/17424>

² The Colombian Geological Service (SGC) revealed in 2012 that 18 companies hold 30% of the total number of titled lands for mining exploration and exploitation (i.e. 694 titles out of a 9,134 registered total as of February 2012). The estimate, however, does not include subsidiary companies that have been registered under different names. Anglo Gold Ashanti and Mineros S.A. hold the largest number of titles, which represent 59% of the 1.5 million land hectares owned by large scale mining. *Portafolio*, “30% de áreas tituladas la tienen 18 grandes mineras,” April 8, 2012. <http://www.portafolio.co/economia/30-areas-tituladas-la-tienen-18-grandes-mineras>

³ In February 2012, the Colombian government advanced an auction system for mining companies to compete for 1,9 million hectares through administrative mechanisms. The new system allowed the government to modify a 1959 law that protected certain forest reserves and other restricted areas from being used for mining projects and turn those areas into “strategic interest zones” that could be adjudicated through auctions with interested companies. *Portafolio*, “1,9 millones de hectáreas mineras serán subastadas,” February 8, 2012. <http://www.portafolio.co/economia/19-millones-hectareas-mineras-seran-subastadas>

⁴ Since the Consultancy for Human Rights and Displacement (CODHES) began monitoring in 1985, it has counted 5.2 million displaced people while the government’s total is 3.6 million since it started counting in 2000. Internal Displacement Monitoring Center, <http://www.internaldisplacement.org/idmc/website/countries.nsf/%28httpEnvelopes%29/A7E1B7BD7528B329C12575E500525165?OpenDocument#expand>.



Though the Colombian government is now in the process of restituting a portion of those stolen lands to a fraction of Colombia's displaced, at the current pace of restitution and with the limited resources allocated for this endeavor, it is evident that not all victims will be compensated. Furthermore, full agrarian reform that would allow the majority of the 5 million victims to return to the countryside to work the land is untenable and not even being debated at the negotiating table. At the same time, the Colombian government is making it increasingly easier for corporations to invest, become part of the new mining boom and occupy more of Colombia's lands, through finalized or potential Free Trade Agreements with several countries⁵ and by reforming existing mining laws.

Identifying the connection between large-scale mining projects and human rights violations is particularly important since the Colombian government has adamantly refused to negotiate its "mining engine" or citizens' rights to mineral resources⁶ as part of the current peace process. While the peace talks currently discuss rural development issues and the government's landmark Victims Law may contribute to addressing certain displaced communities and rural population's needs and concerns related to land use and tenure, unregulated investments in an extractive economy will continue to pose major challenges to peace and

sustainability, demanding continued research and advocacy at the grassroots level. As such, exploring these processes will help the involved actors and organizations analyze ways to solve the escalating tensions around access to mineral resources and the social and humanitarian impact of unregulated extractive industries.

In recent years, conflict and violence centered on large-scale mining projects has increased, primarily seen in protests and strikes in mining communities by environmental activists, news coverage of companies suing communities and the increasing number of extrajudicial killings targeting union leaders and land rights activists. Afro-Colombian and indigenous communities tell of repeated violations to their national and international rights to Free, Prior and Informed Consent (FPIC⁸), and other communities speak of their struggle against displacement by the very mining companies that claim their presence will enrich the community. This report is an attempt to analyze these trends and suggest important transformations needed to safeguard communities and their rights.

⁵ Colombia implemented Free Trade Agreements with Canada (2011) and the United States (2012), has signed agreements with South Korea (2013), currently studies an accord proposal with the European Union and expects to increase the number of treaties with other African and Asian countries in the following years. Portafolio. Conozca los próximos tratados de libre comercio de Colombia. July 5, 2012. <http://www.portafolio.co/negocios/conozca-los-proximos-tratados-libre-comercio-colombia>

⁶ "Derechos al subsuelo," literally "sub-surface rights."

⁷ Latest reports include: Peace Brigades International: "Mining in Colombia: At what cost?" (2011); ABColombia: "Giving It Away: The Consequences of an Unsustainable Mining Policy in Colombia" (2012); CINEP: "Minería, Conflictos Sociales y Violación de Derechos Humanos en Colombia" (2012).

⁸ The internationally recognized framework for prior-consultation processes around development projects aiming to access indigenous territories.

The rise of large-scale mining and the threat it represents

Over the last decade, the Colombian government has softened its restrictions on mining exploration and exploitation in its territory as part of a national strategy to attract foreign capital and make extractive industries a major “engine” of its economic growth.⁹ In the process of reforming the existing guidelines and laws around resource exploitation, the Colombian state has driven away from actively running the mining industry and has instead become a mere administrator and overseer of incoming multinational corporations that invest in the country. Through increased contracting and environmental licensing, the state has sought to access “strategic exploitation areas” and demonstrate its commitment to assist entrepreneurship in large-scale mining projects. The increased promotion of large-scale mining investments is problematic because Colombia’s natural, social and political landscape constitutes unmapped territories for such activity. In other words, large-scale mining projects in other world regions have not taken place in areas comparable to Colombia’s environmentally pristine, culturally rich and structurally violent context. As opposed to other mineral-exporting countries like Chile, Peru and South Africa where mines are located in deserts, most extraction

sites in Colombia are located in humid and tropical mountain ranges.¹⁰ These zones of high biodiversity also often host politically and historically marginalized ethnic and rural communities unable to compete with corporate

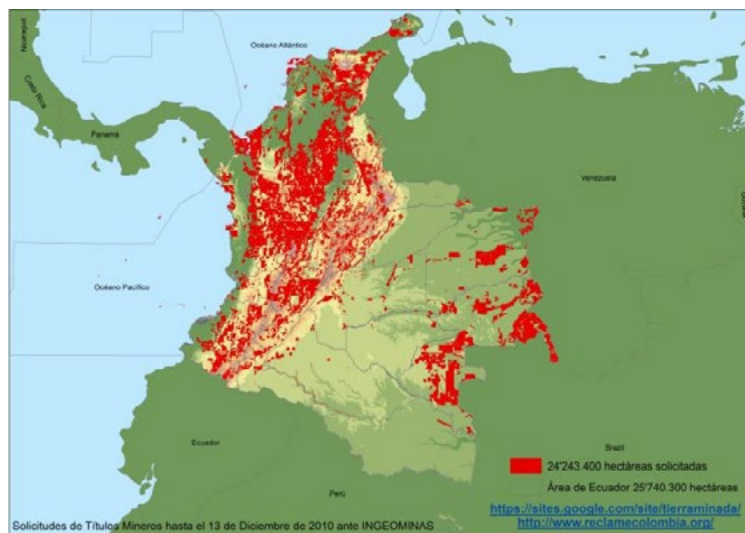


Photo: Ingeominas

interests and their disproportionate economic and political power. In fact, most mining projects aim to exploit territories of great ecological richness and/or the lands inhabited by campesinos or ethnic minorities. In this context, it is especially worrisome that Colombian entities responsible for oversight have failed to provide effective guarantees for ecosystems and communities’ protection, particularly for the most politically marginalized populations such as Afro-Colombian and indigenous peoples. Thus, now that industrial developments have ventured to carry out mining explorations and promise to establish massive exploitation sites in these areas, this development model poses a high risk of generating a humanitarian crisis.

⁹ Between 2003 and 2009 mining activities averaged a 1.54% of the Colombian GDP, coinciding with the National Plan on Mining Development that establishes that “[i]n the year 2019 the Colombian mining industry will be one of the most important in Latin America and will have broadened significantly its participation within the national economy.” Furthermore, between 2007 and 2008, foreign direct investment (F.D.I.) increased 16.7% (from 1.515 to 10.564 million dollars), from which 20% had been destined to the mining sector. Additionally, in 2008 F.D.I in oil and mines increased 5.686 million dollars, representing 53.8% of the total foreign investment in the country. Ministerio de Minas y Energía: Anuario Estadístico Minero Colombiano, 2009. http://www.simco.gov.co/Portals/0/Otros/DOC_ESP.pdf

¹⁰ Said ecologist Julio Carroza, speaking at a panel discussion on the environmental impact of large-scale mining in Colombia. Canal Capital. Las Claves: Minería ilegal en Colombia y la sustitución de cultivos.” December 20, 2012. <http://www.canalcapital.gov.co/las-claves/9046-mineria-ilegal-en-colombia-y-la-restitucion-de-cultivos-ilicitos>

As this report reveals, effective institutional oversight has been unable to mitigate environmental risks and secure respect for communities' rights with the few mines that already exist, making the mining engine's continued deployment an imminent threat.

The mining engine's legal trajectory constitutes a threat to the wellbeing of peoples and ecosystems and has undermined local communities' leverage to preserve their collective territories. In fact, three major laws have been responsible for changing the magnitude of extractive industries' involvement in Colombia and their increasingly negative impact on vulnerable communities. The first legal action took place in 1988, when Bill 2655 known as "National Mining Code" defined mining as a source of foreign capital inflows. A second effort occurred in 2001 when Bill 685 aimed to lower restrictions on large-scale mining projects also defined underground resources within the national territory as a "public utility" Labeling underground resources as a public utility meant that national development plans would take precedence over local interests by law. As such, municipal authorities lost their ability to forbid mining within their jurisdiction and prior consultation of ancestral lands for Afro-Colombian and indigenous communities became legally non-binding. Civil society organizations began to challenge the new Mining Code because it promoted large-scale mining at the expense of guarantees for environmentally protected regions and ethnic minorities. Among others, local and indigenous communities

in Nariño confronted transnational Gran Colombia Gold for not respecting prior consultaion processes, while miners challenged the company's Mazmorras Gold project for not complying with national labor standards.¹¹ In Antioquía and Chocó, the Embera de Murindó and the Carmen del Darién indigenous peoples blocked a Muriel Mining Company project interested in their sacred territories while the regional indigenous council in Cauca mobilized to protect ancestral territories from being granted to the mining giant Anglo Gold Ashanti.¹² While some of these mobilizations have pushed state authorities to halt licensing and concessions due to the high risk of cultural extinction they pose,¹³ the rise in protests began to signal the unwelcomed and injurious effects of loosened mining regulations and communities' disenfranchisement concerns around national development discussions.

A third and final legal action took place in 2010 when the Santos Administration proposed yet another reform to the Mining Code aiming to boost the mining sector and transform it into a primary source of economic development. This 2010 Mining Code reform, however, did not address all environmental concerns and further exacerbated ethnic minorities' disenfranchisement. The new code established that internationally protected natural reserves could not be used for mining, but it allowed projects that had already gained environmental licenses in high-biodiversity areas to be carried forward regardless.

¹¹ CINEP. Special Report: Mining, Social Conflict and Human Rights Violations in Colombia. October 2012. (P. 17) http://alainet.org/images/IE_CINEP_octubre_2012.pdf

¹² *ibid*

¹³ Regarding the Embera Katío indigenous peoples in Chocó in particular, a land judge suspended all licenses, concessions and studies for mining titles for 6 months in 50'000 hectare. The judge has protected 80% of the collective territories and stated that control agencies need to begin an in-depth investigation and move forward impact studies tailored to measure whether coal mining threatens the group's subsistence. El Tiempo, "Freno a minería en territorio indígena de Chocó," February 11th. http://www.eltiempo.com/justicia/mineria-en-territorio-indigena-de-choco_12589101-4

Regarding prior consultation processes with ethnic minorities, the reform set such a short and strict timelines that no process could comply with international standards and communities' demands for an informed procedure.¹⁴



Photo: RECLAME

Not surprisingly, the Colombian Constitutional Court found that not consulting affected communities was unconstitutional and demanded the government to amend the bill's flaws within the next two years. However, since the Code contained important environmental and logistical considerations that had updated the previous 2001 bill, the Constitutional Court allowed the 2010 reform to become current law despite its unconstitutionality. In other words, "[Colombians] have been living unconstitutionally for two years; [b]ut government officials have said they will not present a new bill and that it will instead withhold the obsolete 2001 Code, so there will be no legislation that can protect these communities" said Leonardo

Gonzales, from the Peace and Development Studies Institute (INDEPAZ).¹⁵ Though the amended Mining Code reform is due on May 11th, 2013, a confidential source told the US Office on Colombia that government ministers called on a private meeting with the Constitutional Court's Magistrates in March 2013 to extend that deadline. This source denounced the meeting as untimely, since the state had two years to address a remarkably vital issue like the survival and collective rights of ethnic minorities, and inappropriate because deadline extension petitions on constitutional matters are generally conducted in public hearings.¹⁶ In short, the state has deployed unconstitutional large-scale mining policies and governmental officials continue to engage in practices that are at odds with democratic and transparent rule-making. Most importantly, however, these legal frameworks and governmental disregard have already unfolded in various attacks against communities' safety and traditional livelihoods.

In fact, the increasing number of social mobilizations demanding government accountability in protecting citizens' rights in the face of transnational large-scale mining demonstrates that mining policy and its effects have become a contested issue in Colombia. According to the Center for Investigation and Popular Education (CINEP), over the last decade and particularly

¹⁴ Orduz, Natalia, "Las polémicas del Código Minero que tendrá que enfrentar Renjifo," September 2, 2012. <http://www.lasillavacia.com/historia/las-polemicas-del-codigo-minero-que-tendra-que-enfrentar-renjifo-35697>

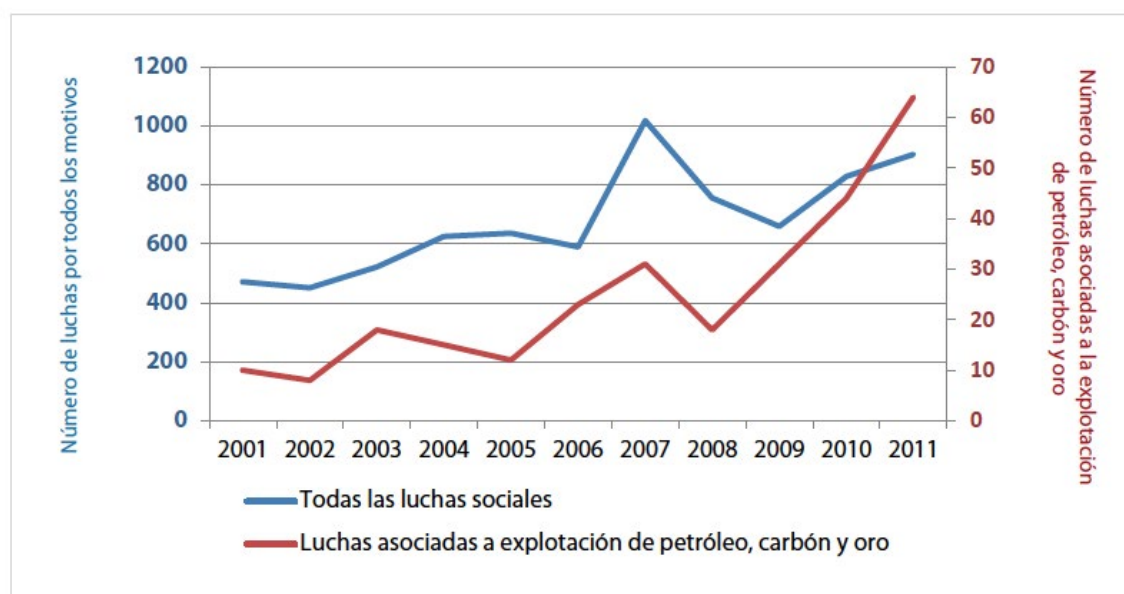
¹⁵ In phone interview with Leonardo González. February 13th, 2013.

¹⁶ The Constitutional Court denied the government an extension to present a new reform to the Mining Code on April 24, 2013. According to the Mines and Energy Ministry, the government will seek to expedite presidential decrees to protect those loopholes (mostly in environmental issues) that arise as a result of returning to the obsolete 2001 Mining Code. Bermudez, Andrés, "Estos son los efectos de volver al viejo código minero," La Silla Vacía, April 25th, 2013. <http://www.lasillavacia.com/historia/estos-son-los-efectos-de-volver-al-viejo-codigo-minero-44135>

since 2008, communities have mobilized to oppose multinational projects that triggered explicit attacks on their livelihoods.¹⁷ As such, the rising trend in social unrest exposes how mining activities constitute an imminent threat for local communities, primarily because mining projects, their surrounding legislation and corporate practices have been unconstitutional and no substantial modifications seem to be on the horizon.¹⁸ In other words, the rising trend in social mobilizations has responded to recent legal and governmental efforts to ease restrictions on large-scale mining at the expense of constitutional rights and guarantees.

Recent Free Trade Agreements (FTA) between Colombia and countries hosting mining companies (or countries from which large capital inflows support these companies' operations) further exacerbate Colombia's mining policy conundrum. In 2011 Colombia enacted a FTA with Canada, which supposedly increases security for investing companies but ultimately imposes further restrictions on the Colombian government's ability to protect its environment and vulnerable populations. Jaime Kneen from Mining Watch Canada explained that under the treaty, Canadian companies see legislation aiming to protect pristine natural

Gráfica 1: Trayectoria de las luchas sociales asociadas a extracción de carbón, oro y petróleo Colombia, 2001-2011



Fuente: Base de Datos de Luchas Sociales de CINEP/PPP

¹⁷ Trajectory of social mobilizations associated with coal, gold and oil extraction in Colombia, 2001-2011. (Blue: All social mobilizations) (Red: Social mobilizations associated with oil, coal and gold exploitation). Source: CINEP: "Minería, Conflictos Sociales y Violación de Derechos Humanos en Colombia" (2012). <http://justiciaambientalcolombia.org/2012/10/10/cinep-publico-informe-especial-mineria-conflictos-sociales-y-violacion-de-derechos-humanos-en-colombia/>

¹⁸ Speaking at the Large-Scale Mining Second Congress, President Juan Manuel Santos said "We will not support abrupt changes to the legislation that may affect [investors]" Portafolio, "Gobierno pedirá más plazo para presentar el Código de Minas," February 21, 2013. <http://www.portafolio.co/negocios/presentacion-codigo-minas-del-gobierno>

natural areas (e.g. páramos or moorlands) or local communities (i.e. rural towns surrounding large mineral reserves) as obstacles to effective trade, which enables them to sue the Colombian government.¹⁹ While no company has undertaken legal actions against Colombian authorities, primarily because the Santos administration has promised “judicial security” for large-scale mining enterprises²⁰, companies elsewhere have begun to threaten governments, such as Infinito Gold’s threat to advance a multimillion lawsuit against the Costa Rican government.²¹ In addition, under the US-Colombia FTA the Colombian government is expected to experience increased pressure to satisfy companies’ desires despite the weak institutional guarantees for communities in mineral rich territories. Moreover, mining giants have already begun legal attacks against community officials for allegedly “obstructing their right to do business.” Specifically, Anglo Gold

Ashanti sued the mayor of Piedras, Arquímedes Ávila Rondón, for peacefully protesting last January 31, 2013 against the gold-mining company in the Doima district and blocking the entry of its mining vehicles.²² This incident should serve as a warning about future political and legal pressures expected to be exerted on Colombian institutions.

The mining engine threatens the defense of human rights

While civil society movements and organizations have advanced constitutional appeals to challenge the policies that promote large-scale mining, Colombia’s historical cycles of state and conflict-related violence, along with ongoing high levels of impunity, make the negative effects of large-scale mining a human rights issue that requires national and international attention. Contemporary large-scale mining policies and practices harm communities living near strategic areas of mineral wealth in several ways: damaging their environment and health, threatening their physical safety, and undermining their traditional way of life. Regarding mining’s environmental impact, transnational companies’ disconnectedness to the land they exploit is already resulting in negative externalities such as pollution and permanent damage to ecosystems, as



Photo: RECLAME

¹⁹ In personal interview with Jaime Kneen. April 17th, 2013.

²⁰ El Espectador, “Santos se comprometió a mantener estabilidad jurídica en minería,” February 21st, 2013. <http://www.elespectador.com/noticias/nacional/articulo-406175-santos-se-comprometio-mantener-estabilidad-juridica-mineria>

²¹ NTN24, “Minera canadiense amenaza a Costa Rica con millonaria demanda,” April 4th, 2013. <http://www.ntn24.com/noticias/minera-canadiense-amenaza-85507>

²² The protesting community feared that establishing a large mine and using cyanide could devastate the region’s ecological balance. In response, Anglo Gold Ashanti has promised formally present the project to the community house by house. El Espectador, “Un pueblo que se opone a Anglo Gold Ashanti,” February 21st, 2013. <http://www.elespectador.com/noticias/actualidad/vivir/articulo-406278-un-pueblo-se-opone-anglogold-ashanti>

corporations enjoy few incentives to create techniques that are friendly to the soil and surrounding species, including humans. Moreover, when these negative externalities occur in the territories of historically marginalized populations, the negative impact of unregulated extractivist policies constitute even more condemnable violations.

Large-scale mining companies fundamentally threaten the environment

The U.S.-owned coal business, Drummond Company, exemplifies foreign companies' disregard of local ecosystems. On January 13th, 2013, Drummond dumped about two thousand tons of coal in the Caribbean coast of Colombia in order to save a sinking barge.²³ Despite the incident's long-term consequences, Drummond was only suspended for two months and allowed to resume operations on the promise that it would develop a better contingency plan to account for future mishaps, highlighting the limited repercussions that companies face when committing environmental disasters. In fact, since Drummond began extractive operations in the Cesar department in 2005, it has been cited for environmental degradation, including water and soil contamination that affected both plant and animal life in the region.²⁴ As such, transnational and ungrounded extractive industries can easily cause environmental damages since governmental policies primarily focused on promoting foreign investment structure incentives in such a way that companies may hold little respect for extraction locations and the risk at which surrounding communities are exposed. Furthermore, the legal regulations surrounding mining businesses have even benefited companies

while undermining ecosystems. For instance, while Colombian authorities demanded Drummond compensate the state for environmental damages with 30 billion pesos (over 16 billion US dollars), the state had to pay Drummond 600 billion pesos (over 328 billion dollars) for not fulfilling its transportation commitments months prior to the Caribbean coast coal spill.²⁵ In this legal context, where environmental damages matter little compared to the revenues to which companies can bring in, mining policy legislation also constitutes a major ecological and fiscal threat.

Indigenous livelihoods caught between mining concessions and alleged guerilla activity

Regarding Colombians with legally-differentiated statuses resulting from their historical and disproportionate marginalization (i.e. Indigenous, Afro, Raizal, Roma and Palenquero), the entry of large-scale mining has extensively undermined their rights. In fact, statistics reveal a concerted effort to depopulate areas of mineral wealth: despite the fact that the Indigenous National Organization of Colombia (ONIC) reported in 2013 that 65 indigenous peoples are under imminent risk of physical extermination (corresponding to 62,7% of the total 102 indigenous groups in the country), much indigenous land has been promised for large-scale mining. Half of the land of each of 27 indigenous reservations has been titled for mining while 14 reservations have been completely granted for mineral exploration.²⁶ The granting of large-scale mining concessions in such a way constitutes a

²³ Emery and Medina, "Colombia Suspends Drummond's Coal Ship-Loading License," Bloomberg. February 6th, 2013. <http://www.bloomberg.com/news/2013-02-06/colombia-suspends-drummond-ship-loading-license-agency-says.html>

²⁴ Ruiz Hermiso, "Doubts of Drummond Coal Megaproject in Cesar, Colombia," Mac: Mines and Communities. October 2, 2007. <http://www.minesandcommunities.org/article.php?a=2712>

²⁵ Canal Uno. Noticias Uno Video. https://www.youtube.com/watch?feature=player_embedded&v=np44tQLu0ds#

²⁶ Redacción Vivir, "65 pueblos indígenas corren peligro de desaparecer: ONIC," El Espectador, March 20, 2013. <http://www.elespectador.com/noticias/nacional/articulo-411328-65-pueblos-indigenas-corren-peligro-de-desaparecer-onic>

form of environmental racism, which in turn is a form of institutionalized discrimination where the “actions or practices carried out by members of a dominant group (racial or ethnic—i.e. mestizo) have differential and negative impacts on members of subordinate (racial and ethnic) groups.”²⁷ Specifically, titling indigenous lands for mining explorations has become a deadly practice because of Colombia’s violent context and weak FPIC institutions. Moreover, the presence of illegal armed groups has legitimized military government intervention in zones where the state may value mineral rich over cultural and ethnic diversity.

A case in point is that of the Embera indigenous people in the Antioquia and Chocó departments, which illustrates how a US company’s drive for gold led it to circumvent prior consultation laws triggering a direct attack against a historically conflict-battered population.²⁸ Specifically, in the Careperro Hill, The Muriel Mining Corporation failed to gain informed consent and instead allied with the government to resort to violence between 2009 and 2010.²⁹ The Mandé Norte mining project, as it became known, was reported to have violated the informed consent rights of the Embera in 2009 which triggered the Directory of Ethnicities from the Ministry of Interior and Justice to hold meetings with members of the community.



Photo: El Espectador

Yet community spokespeople were chosen arbitrarily and did not represent collective interests, revealing the government’s rushed approach to a delicate and crucial matter prescribed by the Constitution. Moreover, the Colombian army bombed a home in the Embera community in January 2010, alleging it was a military operation against the guerilla.³⁰ Indigenous leaders at the time denounced that no guerilla presence existed in the area and that the bombings demonstrated an evident interest by the state and multinationals to displace the indigenous peoples.³¹ The Muriel Mining Corporation, however, was later taken over a by joint venture between Sunward Resources and Rio Tinto, one of the world’s largest mining companies, which diffused corporate responsibility and lowered accountability. This transfer pointed to the fact that, as companies are sold to larger stakeholders, they may find loopholes to exempt themselves from responsibility

²⁷ Joe R. Feagin and Clarece B. Feagin, *Discrimination American Style: Institutional Racism and Sexism*. Malabar, FL: Robert E. Krieger (1986); Christopher Bates Doob, *Racism: An American Cauldron*. New York: Harper Collins, 1993.

²⁸ The Constitutional Court declared the Embera people in grave danger of displacement and disintegration due to the armed conflict, which has historically placed indigenous populations in the pacific region amid agro-industrial interests that displace them and illegal armed groups’ activities that threaten their lives. Constitutional Court of Colombia. Auto 004/09. <http://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm>

²⁹ Congote Gutierrez Nicolas, “Lucha embera por el cerro de los espíritus,” *El Tiempo*. November 29th, 202. http://www.eltiempo.com/Multimedia/especiales/febredeoro/ARTICULO-WEB-NOTA_INTERIOR_MULTIMEDIA-12408422.html

³⁰ ABC Colombia: Caught in the Crossfire: Colombia’s Indigenous Peoples. October 2010. http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf and No a la Mina, “Comunidades Embera defienden su vida de la megaminería” Marzo 30, 2010. <http://www.noalamina.org/mineria-latinoamerica/mineria-colombia/comunidades-embera-defienden-su-vida-de-la-megamineria>

³¹ El Espectador, “Advierten que bombardeos buscan desplazar a los indígenas,” February 2nd, 2010. <http://www.elespectador.com/noticias/nacional/articulo185479-advienten-bombardeos-buscan-desplazar-los-indigenas>

and further entrench impunity for human rights violations. Simultaneously, the state exacerbated the humanitarian crisis, as three bombings within Embera Katío peoples' territories have already taken place in 2013.³² As the government attacks indigenous lands under the guise of persecuting insurgent groups, these aggressions serve to depopulate mineral rich lands and exterminate already endangered indigenous peoples. The government's alliances with multinational corporations in the search for mineral wealth create conditions of tolerance for extreme human rights abuses that arise as extractive industries develop. Whether the Colombian security forces are falsely using the guerrilla threat as a pretext to invade indigenous areas on behalf of mining companies (as indigenous organizations denounced at the Inter-American Commission on Human Rights on March 2013³³), or the state is failing to provide appropriate infrastructure and investment in indigenous territories because its interests lie in promoting large-scale mining instead, the ultimate reality for indigenous peoples remains the threat of forced displacement and ongoing violence and extermination.

Deadly attacks on artisanal miners and Afro-Colombians

The rights and well-being of Afro-Colombian communities have also been under threat by the transnational mining engine via legislation actively conflating artisanal mining with "illegal

mining activities to money launder drug trafficking revenues, it has also functioned as a tool to stigmatize communities that have ancestrally performed small-scale or artisanal mining. Colombia's high indexes of informal land tenure³⁴ have also contributed to the mining industry's oppression of many communities on the ground that have performed mining activities for centuries. In fact, the Ombudsman's Office has noted that article 159 of the Mining Code labels all mining exploration or exploitation without land titles



Photo: La Silla Vacía

illegal, despite the fact that 15.000 families subsist directly from small-scale mining revenues.³⁵ In other words, the term "illegal mining" problematically encompasses a heterogeneous group of campesino, indigenous, Afro-Colombian and settler mining communities who do not hold governmental authorization or land titles with insurgent and drug-trafficking armed groups, suppressing subsistence

³² Redacción Vivir, "65 pueblos indígenas corren peligro de desaparecer: ONIC," El Espectador. March 20, 2013. <http://www.elespectador.com/noticias/nacional/articulo-411328-65-pueblos-indigenas-corren-peligro-de-desaparecer-onic>

³³ Consejo Regional Indígena del Cauca (CRIC), "Alarmante situación de Derechos Humanos a Grupos Indígenas en Colombia," April 6, 2013. <http://www.cric-colombia.org/portal/alarmante-situacion-de-derechos-humanos-a-grupos-indigenas-en-colombia/>

³⁴ Much of the Colombian countryside is in the hands of people who have never had a title to their land, which explains the recent push for titling along with the restitution process. Informality in land tenure stems from multiple social factors, such as lack of information and formalization costs, high taxation and low redistribution, an oral and trust culture and high illiteracy. Duica Amayam, L.(n.d.) "La informalidad de las relaciones sobre la tierra en Colombia: Por qué y a quién le sirve," Contra Punto. <http://contrapunto.co/nota/332-la-informalidad-de-las-relaciones-sobre-la-tierra-en-colombia-por-que-y-a-quien-le-sirve.html>

³⁵ Ombudsman's Office. Minería de Hecho en Colombia. Defensoría Delegada para los Derechos Colectivos y del Ambiente. December 2010 <http://www.defensoria.org.co/red/anexos/publicaciones/mineriaColombia.pdf>



labor and further stigmatizing already disadvantaged communities. Moreover, the Colombian-based Institute for Development and Peace Studies (INDEPAZ) reported that the state has granted mining concessions in the Nariño, Cauca and Chocó departments without authorization from local Afro-Colombian councils.³⁶ While studies have indeed documented guerilla and neo-paramilitary use of small-scale mining activity to launder drug-trafficking revenues, the government has chosen to override Afro-Colombian rights by seeking to end so-called “illegal activities” and impose instead a new transnational model based on large capital investments.

Rather than contributing to lasting peace and improved conditions for the local populations, the transnational approach has proven deadly for Afro-Colombian artisanal miners. A case in point is the assassination of Afro-Colombians after mining giant Anglo Gold Ashanti entered the Cauca department in 2009. Originally, the government tried to evict the Afro-Colombian community in La Toma, in the Suárez municipality by declaring them “squatters in bad faith” and giving them a date for eviction despite the fact that the inhabitant’s ancestors had lived on and mined the land since 1636.³⁷ Moreover, the neo-paramilitary organization “Black Eagles” (Águilas Negras) later threatened the Afro-Colombians for their opposition to AngloGold Ashanti’s operations and declared these individuals “military objectives” for “opposing national development.”³⁸ In 2010, eight people were massacred in La Toma region, but local authorities dismissed the case as an act of vengeance between informal miners,

never identifying the perpetrators.³⁹ As in other cases, the violence was dismissed as being associated with guerilla or paramilitary actions but unrelated to mining activities. Yet local dwellers have established the connection between rising threats and attacks and the entry of large-scale mining projects. While speaking to U.S. Congressional staffers about displacement, Clemencia Caravalí, an Afro-Colombian community council member from la Toma, said that, “we know that the guerillas in Colombia are a problem, just like the paramilitaries are a problem. But in reality what we see is that there is an interest in exploiting the natural resources in the strategic areas where the African descendants are living.”⁴⁰ In short, civil society voices, like those who advocate for La Toma inhabitants’ rights are threatened with violence and death and know that unregulated extractive industries only increase the frequency of abuse.

Indeed, when transnational projects aim to establish or expand themselves within conflict areas, their entry can induce the militarization of strategic wealth zones and threaten the rights and safety of local populations through the use of the national army, utilized to protect private investment, or the paramilitaries, who suppress social protest and produce displacement.⁴¹ For example, in addition to recent environmental scandals, the Drummond Company was brought to court in the

³⁶ Leonardo González Perafrán, “Impacto de la Minería de Hecho en Colombia.” INDEPAZ. January 2013. <http://www.indepaz.org.co/wp-content/uploads/2013/01/Impacto-de-la-miner%C3%ADa-de-hecho-en-Colombia-Indepaz.pdf>

³⁷ Escobar, D. MAC: Mines and Communities. “AngloGold Ashanti says goodbye to Suárez, Colombia.” (2009). <http://www.minesandcommunities.org/article.php?a=9664>

³⁸ Women, War and Peace. The War We Are Living. November 11, 2012. (Minute: 19:41) <http://www.pbs.org/wnet/women-war-and-peace/full-episodes/the-war-we-are-living/>

³⁹ Semana, “Oro, violencia y muerte en Suarez, Cauca,” April 8th, 2010. <http://www.semana.com/nacion/problemas-sociales/articulo/oro-violencia-muerte-suarez-cauca/115274-3>

⁴⁰ Women, War and Peace. The War We Are Living. November 11, 2012. (Minute: 47:15) <http://www.pbs.org/wnet/women-war-and-peace/full-episodes/the-war-we-are-living/>

⁴¹ Consultancy on Human Rights and Displacement (CODHES). ¿Consolidación de Qué? Information Bulletin no 77. February 2011. http://www.es.lapluma.net/index.php?option=com_content&view=article&id=2222:ultimo-informe-de-codhes-sobre-desplazamiento-forzado-en-colombia&catid=92:desplazamiento-forzado&Itemid=424

United States for having paid millions of dollars to a Colombian paramilitary group the United Self Defense Forces of Colombia-AUC to kill two union leaders in 2001 and trigger the assassination of 67 people in total.⁴² As part of the federal lawsuit, the plaintiffs presented a 60-page complaint that outlined allegations of paramilitary brutality and psychological intimidation against the coal company's workers and their relatives. Additionally, a Drummond businessman, Jorge Blanco Maya, surrendered as the mediator between Drummond and the AUC's Northern Block and testified at a hearing in Bogotá that Drummond had financed the paramilitaries since 1995 via food contracting (i.e. Drummond destined ten percent of the total price paid for workers' lunches to finance paramilitary protection) because "guerilla attacks did not allow [Drummond] to fulfill its international demand."⁴³ Moreover, one of the attorneys from the Florida-based law firm handling the case claimed that "this type of corporate behavior unfortunately was not unusual for foreign companies doing business inside Colombia at that time, as paramilitary groups pretty much acted within impunity from government intervention."⁴⁴ The Drummond case clearly exposes how paramilitary presence adds instability to the areas where large mining projects take place, which increases the

risk of systemic human rights violations that seek to depopulate regions with mineral wealth as they suppress popular discontent and union organizing. Moreover, despite governmental assertions that paramilitary activity ended after the 2005 Peace and Justice Law, multiple sources have asserted that many so-called criminal bands constitute neo-paramilitary organizations that represent an ongoing threat to social mobilizations through Colombia.⁴⁵

The threat of militarization: extrajudicial killings and paramilitary activity

The national army's actions are perhaps the most exemplary cases of how state forces ally with mining corporation's interests to depopulate wealth zones and repress local communities. Mining Watch Canada has documented that increased militarization generated violence against local civilian populations and benefited large-scale mining rather than providing a safer environment for these communities.⁴⁶ Military forces and the police have historically repressed demonstrations against large-scale mining and violated workers' right to freedom of assembly and unionizing. In particular, extrajudicial killings of union leaders and human rights defenders, threats and attacks, stigmatizations and unfounded judicial proceedings brought against defenders can

⁴² Colombia.com, "Caso Drummond, una historia de muerte vinculada al paramilitarismo," November 23, 2010. <http://www.colombia.com/actualidad/nacionales/sdi/2330/caso-drummond-una-historia-de-muerte-vinculada-al-paramilitarismo>

⁴³ No a la Mina. Drummond, multinacional estadounidense implicada en asesinato de sindicalistas colombianos. May 03, 2012. <http://www.noalamina.org/mineria-latinoamerica/mineria-colombia/drummond-multinacional-estadounidense-implicada-en-asesinato-de-sindicalistas-colombianos>

⁴⁴ PR Newswire, "Federal Lawsuit Alleges U.S. Mining Company Drummond Paid Millions to Colombian Paramilitary Terrorists Who Killed 67"; Including 'Execution' of Union Leaders. May 28 2009. <http://www.prnewswire.com/news-releases/federal-lawsuit-alleges-us-mining-company-drummond-paid-millions-to-colombian-paramilitary-terrorists-who-killed-67-including-execution-of-union-leaders-61634382.html>

⁴⁵ The Ombudsman revealed in 2012 that 80% of the intimidations and threats to human rights defenders come from the criminal bands (i.e. bacrim) that emerged after the United Self-Defense Forces of Colombia demobilized and formed neo-paramilitary structures (there had been 1400 threat reports in 122 municipalities in 23 departments as of December 2012). Semana, "Alerta por amenazas a defensores de derechos humanos," December 6th, 2012. <http://www.semana.com/nacion/articulo/alerta-amenazas-defensores-derechos-humanos/268944-3>

⁴⁶ Mining Watch Canada. "Land and Conflict: Resource Extraction, Human Rights, and Corporate Social Responsibility - Canadian Companies in Colombia" (2009) <http://www.miningwatch.ca/land-and-conflict-resource-extraction-human-rights-and-corporate-social-responsibility-canadian-comp>

benefit corporations by eliminating criticism and resistance to their projects. For example, Case 3 in this report documents how local battalions executed two civilians in the Serranía de San Lucas in the southern region of the Bolívar department. Officers alleged that the two local leaders were associated with the National Liberation Army (ELN) rebel group but the executions were later exposed as extrajudicial killings of opposition leaders who mobilized against large-scale mining.⁴⁷ In this case, the military killed innocent civilians, delegitimized communities' concerns around the negative environmental and social implications of mining projects, and justified their actions arguing that the victims shared the ELN's insurgent agenda (i.e. outright rejection of extractive industries and attacks against its infrastructure). Similarly, large-scale mining companies have been denounced for hiring or entering into agreements with local security forces, who in turn engage in stigmatizations, repression or extrajudicial executions.⁴⁸ These practices contribute to the explicit violation of internationally protected rights such as the right to life, and freedom of speech and freedom of assembly. Moreover, the presence of unregulated mining projects throughout the country may also be implicitly violating more positive rights of Colombians such as the right to a healthy and ecologically balanced environment, the right to wellness and public health and the right to personal integrity.⁴⁹

In this report we contend that the increasing development of large-scale mining projects in



Photo: El Espectador

Colombia adds a new dimension to the attacks and threats that human rights defenders (including, but not limited to, indigenous and Afro-Colombian community leaders, union organizers, environmental activists and other civil society actors and organizations) face on a daily basis. Moreover, mining projects have brought or threaten to bring unambiguously negative impacts to the communities living over massive mineral reserves and those that surround already existing extraction sites due to the government's full commitment to assist multinational corporations in developing resource exploitation plans with little regard to constitutional rights or international standards on human rights. To provide a unified picture of how the government's unregulated promotion of extractive industries contributes to the violation of human rights, we have chosen three emblematic cases: 1) the threat of massive forced displacement in Marmato, Caldas; 2) violation of constitutionally mandated FPIC processes in medium and lower Guajira; and 3) increased militarization and extrajudicial executions in southern Bolívar. These cases demonstrate how development trends in resource exploitation industries have worsened the human rights

⁴⁷ El Espectador, "En la Serranía no brilla el Oro," January, 8th, 2008. <http://www.elespectador.com/impreso/cuadernilloa/actualidad/articuloimpreso-serrania-no-brilla-el-oro>

⁴⁸ *ibid*

⁴⁹ A positive right is a right to be subjected to an action of another person or group. In theory, while a negative right forbids others from acting against the right holder, a positive right obligates others to act with respect to the right holder. In the context of globalized capital, the distinction is useful because it helps international law address how transnational companies cause environmental and social externalities, which may not attack one single individual or community, but may be indirectly undermine their well-being,

situation in Colombia and further threaten human rights defenders' work. From communities' displacement, through the violation of indigenous rights, to violent attacks repressing and stigmatizing social mobilizations and human rights defenders, large-scale mining interests and interventions in Colombia expose the state's unwillingness and/or inability to effectively protect and respect human rights. Under current governmental practices that place corporations' rights over people's rights, the deployment of the mining engine is expected to clash with the rule of law, internationally upheld human rights and the prospects for sustainable peace in Colombia.

Long-term sustainable peace in particular will require a comprehensive discussion around mineral rights. As renowned Colombian academic Absalón Machado said in an international conference on

land rights in Washington, D.C. on April 2013,⁵⁰ dealing with issues of rural and human development necessitates a discussion about rights to mineral resources, which are enshrined in the constitution. "What prevails—the right of families to feed themselves or [the government's goal] to exploit the soil? As of today, the imbalance is producing too much conflict and we should aim to find equilibrium between the right to food and the mining engine's development," said Machado. Furthermore, several confidential sources have expressed concerns that a successful peace accord with insurgent groups may fully legitimize the sales of land and mineral resources to foreign investors. As the government strives to formalize land holdings, civil society organizations and the international community must continue to advocate for democratic and substantial solutions to the underlying causes of the conflict; specifically, the huge disparity in access to natural resources.

Marmato: the threat of massive forced displacement

"While an open-pit mining project in Marmato drives our economy to focus on raw materials, and sets up a neocolonial business model, it is us, resistance social movements who have been portrayed as public enemies by national legislation that considers underground minerals as public utilities. All this happens to extract a mineral that isn't even required for current technological developments [gold] and based on an industry that would only last twenty to twenty-five years. The company has cynically claimed that it will leave a lake once the exploitation is over, but who would ever want a lake poisoned with cyanide?"

--Oscar Gutierrez, MOIR-CALDAS Coordinator and community organizer

Marmato is one of Colombia's oldest towns, where mining has been at the center of the localeconomyoverits475years ofexistence. In 1954, constitutional decrees established that the hill where Marmato is located had to be divided into a high region allocated for small-scale miners and a

lower region where medium and large-scale mining could take place.⁵¹ Yet, following the discovery of massive gold reserves underneath the 'Donkey Hill', there has been a rising trend in companies' interest in the region and subsequent exploration projects that enjoy governmental approval. If the

⁵⁰ View Land and Peace Conference Webcast at <http://vbouvier.wordpress.com/2013/04/08/land-and-peace-conferenceconferencia-sobre-tierras-y-paz-webcast-now-available/>

⁵¹ Arenas Villegas, Dario. "Marmato, despojo a cielo abierto," <http://www.fundacionportafoliocultural.co/55-marmato-despojo-a-cielo-abierto.html>

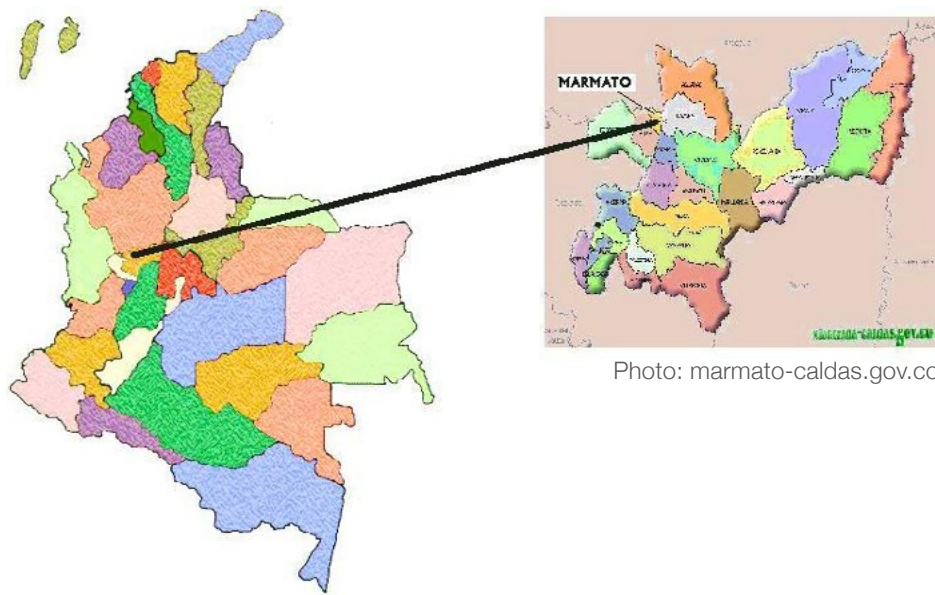


Photo: marmato-caldas.gov.co

government allows companies to purchase the land and exploit the territory, however, Marmato dwellers will be displaced, unemployed and uprooted, while their town's centuries-long traditions, customs and history will be destroyed. While resettlement of communities is indeed a common practice within extractive industries, as people inhabiting resource rich areas cannot live where companies develop mining projects; resettlement practices in Marmato are linked to a series of illegal actions that override labor and indigenous rights, and have also involved the killing of a resistance movement organizer. In particular, Marmato's case demonstrates that economic displacement and people's relocation derive from the ways in which current legislation and companies' behavior seek to generate a boom in the mining and energy sector at the expense of local populations' rights to the land and their livelihoods, which threatens to reproduce Colombia's historical patterns of massive forced displacement.

The mining legislation conundrum in the face of gold reserves

The Colombian government has facilitated multinational corporations' exploratory operations of gold reserves in Marmato over the past two decades. Transnational Medoro Resources was first to appear in the region after studies had found 7.5 million ounces of gold and predicted 8 billion dollars in revenue from its exploitation.⁵² The reserves, currently estimated at 11.8 million ounces,⁵³ are underneath Donkey Hill, which had been exclusively adjudicated to small-scale miners in 1946.⁵⁴ Yet, according to Yamil Amar, President of the Civic Committee for the Defense of Marmato, after the Colombian company Mineros Nacionales was sold to Medoro Resources, 85 local mines were immediately shut down and nine of eleven windmills in town were destroyed, creating over 2500

⁵² Ibid.

⁵³ Gran Colombia Gold website. Marmato Overview. <http://www.grancolombiagold.com/operations-and-projects/marmato/overview/default.aspx>

⁵⁴ Alfredo Molano Bravo, "El Espejismo de Marmato," *El Espectador*. October 1st, 2011. <http://www.elespectador.com/impresso/nacional/articulo-302997-el-espejismo-de-marmato>

unemployed people.⁵⁵ While seeking to ultimately access the gold-filled land, the company did not aim to immediately exploit the resource but sought to intimidate and demoralize the population in hopes that they would want to relocate to a different area, according to Amar. In fact, some miners were threatened that their properties would be expropriated by the state due to the national government's emphasis on minerals as public utilities. This contributed to a portion of miners agreeing to sell their properties and relocate to other towns where they could work in other industries. To access the gold reserves through an official resettlement process requires companies to cover the costs of relocation, which Medoro had considered by hiring The Social Capital Group (SCG), a company experienced in relocating whole towns in Chile and Peru. Yet, Medoro Resources preferred to use fear of expropriation as a tool to pursue the company's interests, transforming economic displacement into a subtle form of forced displacement as miners had no other option but to move after experiencing economic need, political pressure and psychological intimidation.

In 2006, Medoro began a campaign to promote the relocation of the town to the valley area, arguing that Marmato was under risk of natural disaster. Such claims derived from an incident in which waste-products from gold-mining called "steriles" produced an avalanche that reached Marmato's downtown. Although local miners acknowledged that the incident resulted from the combination of a harsh winter and some poor waste-removal planning, the company and promoters of large-scale mining alleged that Marmato was at risk of

natural disaster and proposed that the whole town to be resettled to the adjacent low lands.⁵⁶ However, Marmato's soil morphology, including the gold-filled "Donkey Hill", is not soft volcanic soil but a solid land that hosts "beta gold" and allows mining tunnels in the region to extend up to 200 meters long without needing supporting wooden structures, demonstrating rare strength. Yet, the company insisted on relocation due to environmental reasons, demonstrating an aggressive strategy that large-scale mining corporations enact against small communities, with little regard of their traditional livelihoods. According to Oscar Gutierrez, a political leader from the Independent and Revolutionary Laborer's Movement (MOIR) and a vocal advocate against the displacement of Marmato's population, "the small number of 'Marmateños' (Marmato's inhabitants) hold little bargaining power over government sponsored multinational corporations and their livelihoods are under threat, whether as they are passively forced to resettle, or as their jobs disappear, their incomes drop and their occupational autonomy decreases." In short, in addition to legislation that favors corporations, newly found gold reserves and economic downturns for subsistence miners, communities have also faced active displacement attempts via environmental litigation.

Miners who remained in the area began to identify the company's blatant interest in displacing the community and soon discovered that national legislation sought to intensify such displacement by attacking small mining. Since the 2010 reform to the Mining Code aimed to reduce "illegal mining" and made no specific distinction for artisanal

⁵⁵ Amar, Yamil. President of the Civic Committee for the Defense of Marmato, in phone interview on January 8th, 2013.

⁵⁶ Medoro's then president Juan Manuel Peláez told La Patria newspaper in 2009 that "We are looking to prove reserves to carry out large-scale exploitation and for that [purpose] we need the town... We have US\$30 million for the exploratory plan and US\$20 million that would cost the resettlement." Alfredo Molano Bravo, "El Espejismo de Marmato," *El Espectador*. October 1, 2011. <http://www.elespectador.com/impreso/nacional/articulo-302997-el-espejismo-de-marmato>

Replacing Canadian Medoro Resources, Gran Colombia Gold entered the scene in 2011 and purchased several land titles that were previously owned by local mine managers and employed subsistence miners. After obtaining the land, the company closed the mines, ended production and left small miners unemployed.⁵⁹ Marmato defenders argued that companies should not expel subsistence miners from territories that had been especially adjudicated for the small-scale activity before underground minerals were labeled public utility, nor



⁵⁹ Agencia Prensa Rural, "Multinacional Gran Colombia Gold sigue creando problemas en Marmato," November 29th 2011. <http://www.prensarural.org/spip/spip.php?article6878>

should miners be removed from mines only to allow companies to consolidate large-scale operations.⁶⁰ In December 2011, Gran Colombia Gold also violently confronted small-scale miners, aiming to remove them from a few mines. Miners responded by blocking the major highway that leads to the hill and protested the unlawful removal appealing to the Mining Code's prescription that mines need to be used for production or else returned to the state within 6 to 12 months.⁶¹ Facing popular discontent, the company thus decided to end the harassment and appealed to administrative protection measures. As such, despite laws that benefited subsistence miners for over 50 years, the government agreed to provide bureaucratic mechanisms that would give companies advantages and would retain them for future investments in large mineral reserves, demonstrating the development model's bias toward corporate interests and neglect of populations' livelihoods.

In the face of miners' resistance and the inability to prove environmental reasons for displacement, projected profits continued to motivate the transnational to persuade the community and advance mineral exploration and exploitation goals. Gran Colombia Gold set up buildings that supposedly benefited the community and gave goods to local town dwellers in order to persuade the population to willingly relocate to the low lands. However, instead of viewing such investments as promoting human development for the region, many local residents perceived these strategies as a form of distasteful patronage. According to Mario Pandarice,

a local miners' organizer associated with MOIR, the multinational built a hospital and a police station in the low lands to incentivize Marmato inhabitants to move, but the move did not improve residents' trust in the company since "it is unlikely that the residents would give up their livelihoods at the centuries-long and historically rich town," thus increasing people's skepticism. Similarly, the company has been denounced for providing school kits to families with small children at the beginning of the school year to buy their allegiance and promote relocation.⁶² In Oscar Gutierrez's words, "in Colombia's long tradition of buying people's votes, plus the population's limited economic and educational resources, the company has blatantly tried to purchase people's consent." Local organizers fear that transnational companies' patronage and purchase of consent attempts to legitimize displacement and polarize a community that has not even been offered a balanced description of the positive and negative impacts of the eventual large-scale mining project. This shortcoming is particularly salient in the case of indigenous and Afro-Colombian right to Free, Prior and Informed Consent)—addressed later on in this chapter.

Marmato organizers believe the new company follows a business logic colloquially known as "Junior Corporation," by which companies seek to obtain legal rights over mining sites but do not engage in exploitation activities, waiting to sell the titles when most profitable.⁶³ Oscar Gutierrez believes that Gran Colombia Gold's (GCGC) goal in entering the region is to exclusively

⁶¹ In personal interview with Oscar Gutierrez in Bogotá, December 6th 2012.

⁶² Fundación Angelita Luz. Donación Kit Escolares Marmato, Caldas. http://www.angelitosdeluz.org/index.php?option=com_content&view=article&id=139:donacion-kit-escolares-marmato-caldas&catid=3:actividades

⁶³ The mining concession system facilitates speculation and induces companies to purchase lands without exploiting them. Since transnational companies enjoy economies of scale and hold large capital, they can bring surveillance mechanisms to protect those strategic areas and pay lawyers in their defense. Marcela Ramos. "El sistema de concesión minera se presta para una concentración gigantesca, abuso y mal uso," Centro de Investigación Periodística. Mayo 18 de 2011. <http://ciperchile.cl/2011/05/18/%E2%80%99Cel-sistema-de-concesion-de-propiedad-minera-se-presta-para-una-concentracion-gigantesca-abuso-y-mal-uso%E2%80%99D/>



advance exploration projects, preparing the ground to later sell and transfer all the acquired land titles to larger corporations with the capital and infrastructure to finalize open-pit or other large-scale mining projects.⁶⁴ Among these global enterprises, Gutierrez mentioned several possibilities such as Rio Tinto, Anglo Gold Ashanti or Glencore, which already have exploitation projects in Colombia and some of which have been associated with serious human rights violations and support for local criminal networks in Colombia and abroad.⁶⁵ While the speculation strategy would require the company to pay royalties on production, despite allowing local miners to carry out the exploitation, this approach allows the company to maintain legal rights over the territories and benefit in the long-run due to the mining code's permission to consolidate areas for mineral exploitation. The current Mining Code's "integration of areas" article allows companies with legal rights to scattered lands that occupy neighboring lands of a certain territory to apply for the whole area on the promise of a profitable large-scale project.⁶⁶ In fact, if open-pit mining becomes a reality, the pursuit

will be highly profitable: "if an ounce of gold costs 1700 dollars, and the location's potential is currently estimated to be 13.2 million ounces, the estimated revenue of such a project is huge" remarked Gutierrez.⁶⁷ As such, the integration clause implies that if Gran Colombia Gold or a larger company eventually establishes a promising extractive plan, the government will facilitate the integration of lands throughout the Donkey Hill, which means selling the rights to the underground resource and making displacement of Marmateños inevitable.

Inadequate prior consultation produces uncertainty and displacement

If carried out without an adequate consultation process for indigenous people, the development of a large mining project seeking to relocate the town of Marmato also constitutes force displacement, as it violates FPIC laws.⁶⁸ According to Colombia's National Survey Institute (DANE), 18% of Marmato's population was indigenous in 2008²⁹; yet, government officials have dismissed consultation processes

⁶⁴ Gran Colombia Gold has openly expressed its willingness to consolidate the region for a large-scale operation, stating that "The various areas of the Marmato mountain were consolidated in 2009 and 2010 by Medoro: the Zona Alta exploration project, the Zona Baja mine and the Echandia exploration project to the north (...) The consolidation of the different areas means the company is in a position to explore, develop and, subject to feasibility and permits, mine the deposit as a whole. The ability to explore and drill the structure from all three license areas, including from underground, significantly improves the potential to increase and upgrade the gold resources at Marmato," available at Gran Colombia Gold's website: <http://www.grancolombiagold.com/operations-and-projects/marmato/overview/default.aspx>

⁶⁵ Human Rights Watch. D.R., "Congo: Gold Fuels Massive Human Rights Atrocities," <http://www.hrw.org/news/2005/06/01/dr-congo-gold-fuels-massive-human-rights-atrocities>

⁶⁶ Article 101, labeled "Integration of Areas" states that "When areas from several titles belonging to one or more beneficiaries of the same mineral are adjacent, or neighboring but not adjoining, if belonging to the same deposit, will be included in a single exploration and exploitation program so that they can carry out works and maintenance simultaneously or alternatively with unified production objectives and goals. For such purposes, the areas will be integrated in a single contract. INDEPAZ. Reforma del Código Minero Colombiano. August 2012. http://www.indepaz.org.co/wp-content/uploads/2012/08/Documento-de-trabajo_Observaciones-al-proyecto-de-reforma-del-CODIGO-DE-MINAS_Ago-2012.pdf

⁶⁷ Gutierrez, Oscar. In personal interview in Bogotá, December 6th 2012.

⁶⁸ The ILO Convention 169 ratified in Law 21 of 1991 and the United Nations Declaration on the Rights of Indigenous Peoples state that prior, free and informed consent should take place before any adjudication of land is granted for resource extraction in territories inhabited by indigenous or Afro-Colombian communities.

⁶⁹ El Espectador, "El Espejismo de Marmato," October 1st, 2011. <http://www.elespectador.com/impreso/nacional/articulo-302997-el-espejismo-de-marmato>

in the past and local indigenous leaders have experienced the executive's unwillingness to establish consent processes.⁷⁰ Adriana Palomino, governor of the Cartama indigenous reserve of Marmato, reported that there has never been a process of prior consultation or pre-consultation in the town, and that the indigenous community had to mobilize in response to the company's abuses by taking down all the exploration plots that Gran Colombia Gold has set up on river shores.⁷¹ In fact, Palomino acknowledges that since the law is not enforced, nine rural towns in the district of San Juan in Marmato have mobilized and destroyed the exploration plots that Gran Colombian Gold places in its territories. Governor Palomino asserted, "if the company did not have the government's approval, it would not be doing what it is currently doing; if there was a truly sovereign constitution, the government would not be allied with multinational corporations," since FPIC regulations would have required that current concessions, titling and project developments be studied and approved with indigenous consent and input.

Governor Palomino has also denounced political persecution after her outspoken opposition to foreign companies that do not respect the indigenous constituency's worldview, which gives sacred status to human beings' connection to the land.⁷² According to Palomino, in 2012 the Gran Colombia Gold public relations representatives sought to anticipate civil opposition and drafted an unofficial contract in which indigenous governors agreed to provide information about local resistance.

On the promise of personal gifts such as cars, or community investments such as improved roads, the corporation was buying officials' loyalties and dividing the indigenous population. Since Palomino refused to sign the aforementioned contract, the public relations representative, Luka Altamura, began to publically discredit and personally attack the governor claiming that her efforts were futile since Gran Colombia Gold "already owned the town." While Palomino lodged a complaint with the Attorney General's office, no investigation was open because the actions did not "constitute a threat." However, the indigenous leader has continued to fight against these pressures and reported the lack of governmental support for indigenous affairs to local colleagues (i.e. The Marmato Defence Committee and the Regional Indigenous Council of Caldas CRIDEC).

Vested interests increase negative impacts on civil society

The safety of human rights defenders (those opposing forced displacement) and small-scale miner unions have also been under attack as Gran Colombia Gold deploys mining exploration plans. Jose Reinel Restrepo Idarraga was among the main leaders of the Civic Committee in Defense of Marmato and had outspokenly opposed the town's displacement. Restrepo, one of Marmato's Catholic priests, was assassinated on September 2nd 2011 soon after he had travelled to Bogotá to denounce Gran Colombia Gold for attempting

⁷⁰ Former Minister of Mines Hernán Martínez Torres said on July 29th, 2009 that "It's clear that a process of prior consultation will not take place." Mining Watch Canada, "Response from Marmato, Colombia to the murder of Father Jose Reinel Restrepo," September 09, 2011. <http://www.miningwatch.ca/news/response-marmato-colombia-murder-father-jos-reinel-restrepo>

⁷¹ In phone interview with Adriana Palomino on January 10th, 2012.

⁷² "[The entry of multinational corporations has been] harmful because it end one's culture and rootedness. Beyond gold, we hold rootedness to the land, [if not in the land] all free will ends; all wealth ends. But since they are foreigners only searching for wealth they don't have a connection to the land. We live with dignity, we have gold which is precious, but how will we end up with nothing?" Personal interview with Adriana Palomino on January 10th, 2012.

to convince him to move his church to the low lands and facilitate Marmato's resettlement.⁷³ While authorities have no identified the perpetrators of the crime and there is no evidence to prove the company's involvement in the assassination, the company indirectly benefited from this crime given that father Restrepo had been a central character in exposing Gran Colombia Gold's intention to displace Marmato.⁷⁴ Gran Colombia Gold Company has also had a history of poor socially responsible practices in its mining site in Segovia, Antioquia. The multinational's presence has contributed to the instability of the area by outsourcing the production process, avoiding its responsibility to provide effective protection measures for local miners, who local paramilitaries blackmail and threaten.⁷⁵ Despite the company's promise that its operations in the region are contributing to the modernization of the industry and providing increasing social and occupational security benefits to miners, union organizers have complained about the corporations' unmediated power and their carelessness in regulating the environmentally damaging exploitation techniques.⁷⁶ In other words, and echoing Mining Watch, corporations "may inadvertently encourage the reorganization, persistence, and strengthening of paramilitary and successor structures that seek to economically

benefit by maintaining social and political control through actions that involve human rights violations ([causing] unintended and undesirable incentives to commit human rights violations)."⁷⁷

Moreover, former Ministers' executive roles in mining companies suggest the current government's vested interest in legislation in favor of transnational corporations. In 2011, the news site La Silla Vacía denounced how six highly-ranked officials of former president Alvaro Uribe went from the Ministry of Mines and Energy to directing roles in the most powerful transnational mining companies.⁷⁸ Among them, the current President of Gran Colombia Gold is Colombia's former Minister of Foreign Relations, Maria Consuelo Araújo. Araújo claimed that



Photo: El Espectador

⁷³ Agencia Prensa Rural, "Asesinato de cura de Marmato causa conmoción," September 4th 2012. <http://prensarural.org/spip/spip.php?article6412>

⁷⁴ RCN Noticias, "Asesinato el párroco de Marmato, líder de oposición a empresas mineras," September 3rd, 2011. http://www.canalrcnmsn.com/noticias/asesinado_el_p%C3%A1rroco_de_marmato_l%C3%ADder_de_oposici%C3%B3n_empresas_mineras

⁷⁵ RCN Noticias, "Bandas criminales, apoderadas de minas de oro en Antioquia," October 21st, 2012. http://www.canalrcnmsn.com/noticias/bandas_criminales_apoderadas_de_minas_de_oro_en_antioquia

⁷⁶ El Tiempo, "Oro en Segovia, Antioquia refleja la problemática social," December 4th, 2012. http://www.eltiempo.com/colombia/medellin/ARTICULO-WEB-NEW_NOTA_INTERIOR-12422502.html

⁷⁷ Mining Watch Canada. Land and Conflict. September 2009. http://www.interpares.ca/en/publications/pdf/Land_and_Conflict.pdf

⁷⁸ Among other cases, Hernán Martínez Claudia Jiménez was the presidential advisor in charge of coordinating relations with unions but moved on to become the executive director of the large-scale mining sector. Osorio Avendaño, Camila, "Los expertos de la administración Uribe se cotizan en las empresas mineras," La Silla Vacía, March 23rd, 2011. <http://www.lasillavacia.com/historia/los-expertos-de-la-administracion-uribe-se-cotizan-en-las-empresas-mineras-22761>

the escalating violence in Segovia demanded the need for increased police presence and promotion of large-scale and formal mining.⁷⁹ Such transition of government officials into corporate CEO positions, after belonging to a cabinet outspokenly committed to strengthening large-scale mining as national development policy, underscores the state's vested interest in developing mega mining at any cost. These blurry lines between public and private office may contribute to weaken the state's commitment

to protect labor and ethnic minorities' rights, like in Marmato, or in securing rights in areas where mega-projects place small-miners and local communities under higher risks of increased violence, like in Segovia. The state-corporation partnership revealed in the Mining Code and in former government officials' current corporate roles may inhibit the State's ability to recognize that it is civil society who bears the largest burden when development projects are enacted in unstable and unsafe environments.

Cerrejon: mining interests undermine indigenous informed consent processes

"The state has taken the prior consultation process as a form of legalized eviction, where entities like the Ministry of Interior believe that the process is only a way to provide information to the communities so that they say 'yes.' But that is not the spirit of the prior consultation process. La Guajira continues to be one of the poorest regions in the country, and the state takes advantage of the communities' poverty. Via the so-called pre-consultation processes, the state allies with the company, offering groceries and vehicles in order to buy people's consent."

-- Jackeline Romero Epiayu— Wayúu Women's Force Movement (Movimiento Fuerza de Mujeres Wayúu)

About one in two people in La Guajira lives under the poverty line and one in three live in extreme poverty despite living in a department with one of the largest open-pit coal mines in the world.⁸⁰ The semi-desert department is also territory of the Wayúu indigenous peoples, who have faced multiple attacks against their communities in the past thirty years due to their location in strategic territories in which large transnational corporations have mined for coal since the 1980s. Their territories

have also faced recurring pressure and attacks from guerilla and paramilitary groups, particularly waves of massacres and armed conflict triggered by paramilitary forces during the 1990s. The emblematic eviction of the town of Tabaco in 2002 also demonstrated how state violence within Colombia's internal war had the ability to devastate the Wayúu people and forcefully displace communities in attempts to develop extractive industries.⁸¹ As such, large-scale mining projects have explicitly

⁷⁹ W Radio, "Enfrentamiento entre bacrim por minería ilegal han dejado 280 muertos en Segovia este año," October 26th, 2012. <http://www.wradio.com.co/noticias/actualidad/enfrentamientos-entre-bacrim-por-mineria-ilegal-han-dejado-280-muertos-en-segovia-este-ano/20121026/nota/1785833.aspx>

⁸⁰ According to the National Department of Statistics, by 2011 poverty in La Guajira reached 57,4% and extreme poverty a 28,1%, while the Gini coefficient for the region was 0.567. DANE. Press Newsletter. January 2nd 2013. http://www.dane.gov.co/daneweb_V09/files/investigaciones/condiciones_vida/pobreza/boletin_pobreza_guajira_2011.pdf

⁸¹ "In January 2002, bulldozers completed the demolition of the village of Tabaco after many of its residents had been forcibly evicted from their homes in order to clear the way for the mine's expansion. Some of Tabaco's 1,100 Afro-Colombian residents, many of whom are direct descendents of the town's original founders, were violently attacked by the more than 200 soldiers and police dispatched to remove those who refused to voluntarily abandon their homes." Leech, Garry (2002, November 11) Generating Power and Poverty. Colombia Journal. Retrieved from <http://colombiajournal.org/generating-power-and-poverty.htm>



and implicitly been major contributors to these attacks and currently threaten to forcibly displace communities, escalate violence and repression, and assist in the stigmatization of indigenous communities and social movements. As massive new coal reserves are found in La Guajira and international coal prices decline, these cycles of violence and dispossession are on the rise, since the conflict now revolves around whether transnational corporate interests will triumph and dramatically modify the ecosystem to remain in business at the expense of those who inhabit these lands. La Guajira's case will demonstrate how ineffective implementation of FPIC processes threatens to reproduce another wave of forced displacement and violent attacks against indigenous communities and the environmental degradation of their ancestral lands.

Cerrejón is a conglomerate company managing the coal open-pit mine operations in northern Guajira since 1984. In 2012, the company released its plans to expand carbon production and further develop its infrastructure,⁸² which involved a proposal to re-direct 27 kilometers of a major local river called the Ranchería river. The proposal faced widespread opposition since the river is a major water resource in the area, especially for the Wayúu indigenous communities. While Cerrejón officially postponed the project asserting it was only one of multiple expansion opportunities, Cerrejón's labor union President, Igor Díaz Lopez, reported that the company's CEO confidentially told the union that "the future long-term productivity and sustainability of Cerrejón were exclusively relying on the growth of production. And the growth of production is dependent upon extracting the 500 million tons of the highest quality coal found under the 26.5 kms of the Rancheria river."⁸³ As such, if the company has an unequivocal interest in accessing these reserves, which in turn necessitates a modification to the river, Wayúu lands and livelihoods will be under imminent threat. However, because the river cuts across indigenous land, any modification to the river requires their approval⁸⁴ under FPIC laws



Photo: El Colombiano

⁸² In 2011 the company released its plans to expand carbon production from 40 tons to 60 tons per year and aiming to build a dual highway for its railway system El Tiempo, "Indígenas Wayúu protestan contra Cerrejón," August 11, 2012 http://www.eltiempo.com/colombia/caribe/ARTICULO-WEB-NEW_NOTA_INTERIOR-12119115.html.

⁸³ Video of Igor Díaz's intervention at the rally: http://www.youtube.com/watch?v=oP_CFMFOXno

⁸⁴ La Silla Vacía, "Desviación del Río Ranchería, ¿sí o no?" August 20, 2012. <http://www.lasillavacia.com/historia/desviacion-del-rio-rancheria-si-o-no-35572>

enshrined in the National Constitution.⁸⁵ Yet, like in Marmato, no FPIC process up to international standards or aligned with constitutional mandates has been undertaken. Thus, unless FPIC is effectively implemented, displacement and dispossession will devastate indigenous lives in Guajira. In addition to exposing the flaws in former prior consultation processes, this chapter will also explore the stigmatization and unfounded prosecution of Wayúu people.



Photo: gegenstrom13

“FPIC” that secures corporate interests, not indigenous rights

The Colombian government does not adequately implement laws protecting indigenous rights, to the extent that it was social movement and civil society mobilizations, and not FPIC, that actually halted Cerrejon’s coal-mining expansion projects. In fact, a 2012 Oxfam America and the Due Process of Law Foundation study found that, despite the highly developed Colombian normative and legal foundation for FPIC processes, there have been no best practices in FPIC in the country, but instead, total governmental disregard for the right to prior consultation.⁸⁶ As for Guajira, despite the company’s official statement that it would desist from the expansion project interested in re-directing the river due to decreasing coal prices⁸⁷, local organizers such as Felipe Santiago Rodriguez,

⁸⁵ Free, Prior and Informed Consent is a human right, since the principle is protected by international human rights law as “all peoples have the right to self-determination” and linked to the right to self determination is “all peoples right to freely pursue their economic, social and cultural development.” Moreover, the right to FPIC is affirmed in the United Nations Declaration on the Rights of Indigenous Peoples and in the jurisprudence of the international human rights treaty bodies that the Colombian Constitutional Court has given constitutional status.

The Colombian Constitutional Court has ratified the following three regional instruments: (a) the Charter of the Organization of American States, giving rise to the jurisdiction of the Inter-American Commission on Human Rights (IACHR) over those countries with respect to recommendations of a general nature and pertaining to individual cases (BINDING); (b) the American Declaration of the Rights and Duties of Man; (c) the American Convention on Human Rights. It has also accepted the contentious jurisdiction of the Inter-American Court of Human Rights to take up cases of noncompliance with the obligations enshrined in the American Convention. Internationally, Colombia approved the United Nations Declaration on the Rights of Indigenous Peoples adopted by the U.N. General Assembly on September 13, 2007, ratified the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.

Finally, Colombia also ratified ILO Convention 169 on Indigenous and Tribal Peoples, which envisages the right to prior consultation, and they have been the subject of a number of observations issued by the ILO’s Committee of Experts on the Application of Conventions and Recommendations. Due Process of Law Foundation and Oxfam. The Right of Indigenous Peoples to Prior Consultation; The Situation in Bolivia, Colombia, Ecuador, and Peru. <http://www.oxfamamerica.org/files/the-right-of-indigenous-people-to-prior-consultation-exec-summary.pdf>

⁸⁶ Due Process of Law Foundation and Oxfam. The Right of Indigenous Peoples to Prior Consultation; The Situation in Bolivia, Colombia, Ecuador, and Peru. <http://www.oxfamamerica.org/files/the-right-of-indigenous-people-to-prior-consultation-exec-summary.pdf>

⁸⁷ El Espectador, “Cerrejon postpone studios sobre la posible desviación del rio Ranchería,” November 8, 2012. <http://www.elespectador.com/noticias/economia/articulo-385969-cerrejon-pospone-estudios-sobre-posible-desviacion-del-rio-ranch>



coordinator of the Civic Committee of Guajira in Defense of the Ranchería River and the Cañaverales Water Spring, claims that it was local mobilizations that stopped the Cerrejón Company.⁸⁸ In August 2012, national and international organizations mobilized to oppose the project⁸⁹ and argued that the royalties promised as a result of exploiting the coal under the river could not offset the damages brought about by changing the ecosystem, particularly because royalties from the last 30 years had not help improve the region's standard of living.⁹⁰ Adamantly opposed to endorsing coal mining as a source of human development, organizers achieved a temporary victory by halting the company's expansion project. Yet, the organizational coalition remained committed to pressuring the government to avoid discussing the project again, while it also demanded that Cerrejón further contribute to recovering the ecological balance of areas in which it has intervened. Most importantly, demonstrations demanded the government set up a resettlement policy that actually benefited displaced communities and respected international FPIC laws for indigenous peoples.

As local populations opposed re-directing the river through social mobilizations, the government was simultaneously advancing flawed informed consent processes in alliance with Cerrejón.⁹¹ On October 10th 2013, opposition party Senator Jorge Enrique Robledo denounced in Congress that Cerrejón had held meetings to establish a

“false prior consultation” on a project that had not applied for environmental licenses, which was illegal. Robledo denounced that the Ministry of Interior and Cerrejón employees had written 65 agreements, labeled “pre-consultation agreements in the context of the expansion project,” and collected signatures from the Wayúu population. Robledo confronted these actions with Colombian law (article 12 in decree 1320 of 1998) and clarified that mining companies need to give indigenous communities participation in assessing the environmental implications of any project, but that this does not constitute a prior consultation process. The 65 agreements were problematic because the company had not even filed an environmental licensing process, which meant there was no reason to conduct any meeting with indigenous peoples. Nonetheless, the Ministry of Interior and the company conducted the meetings and attempted to gain community consent. Stating that the community had consented to the mining project in exchange for cattle and farming materials, the agreements were in complete opposition to the values enshrined in FPIC legislation. Indeed, the Office of the UN High Commissioner for Human Rights in Colombia (UNHCHR) documented in its 2012 annual report that “lack of coordination among the Ministry of Interior, the Ministry of Mines and Energy and the Ministry of Environment and Sustainable Development, and confusion as to the role and responsibility of the business actors were widespread.”⁹²

⁸⁸ Movimiento Obrero Independiente Revolucionario, “La Guajira frena la locomotora minera,” November 12, 2012. <http://www.moir.org.co/La-Guajira-frena-la-locomotora.html>

⁸⁹ Soon after the company revealed its expansionary intentions, the department hosted a mobilization of 120 people from Germany, the United States, and other civil society organizations who gathered at a local indigenous reservation in Barrancas and opposed changing the course of the water body. A Wayúu organizer who opposed the project also wrote to President Santos publically and explained that indigenous communities' subsistence depended on the river. El Espectador, “La carta de una escritora Wayuu a Santos,” April 13, 2012. <http://www.elespectador.com/impreso/vivir/articulo-338238-carta-de-una-escritora-wayuu-santos>

⁹⁰ 50% of Wayúu children are malnourished and the Guajira has the highest level of poverty and inequality in the country at 64% according to Vicenta Siosi. El Espectador, “La carta de una escritora Wayuu a Santos,” April 13, 2012. <http://www.elespectador.com/impreso/vivir/articulo-338238-carta-de-una-escritora-wayuu-santos>

⁹¹ Rodriguez, Felipe Santiago. In personal interview on December 7th, 2012.

⁹² Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia. January 1th, 2013. Available at <http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informe2012en.pdf>

Given that the Ranchería River is the only river that provides water for the semi-desert area of mid and lower Guajira, where most inhabitants are Wayúu, these so-called prior consultation meetings performed by a transnational



Photo: El Heraldó

corporation and a national ministry were in clear violation of internationally agreed and nationally mandated FPIC norms for historically marginalized ethnic minorities. Similarly, Comptroller Sandra Morelli echoed Robledo's indignation and claimed that the company's actions had to be investigated for supplanting the judicial order and alienating collective rights with strategies that resembled the Spanish conquest.⁹³ Jackeline Romero, from the Wayúu Women's Force Movement (FMW), also confirmed Senator Robledo's allegations in Congress about unlawful "prior consultation" and reported that approximately 90 communities living on the Ranchería river's shores were asked about the Cerrejón expansion projects: "The Ministry of Interior and the company held a meeting, (...) in which they told the communities: 'here's a project,' and described its benefits. Sometimes money was given out but never information about the project's pros and cons. The process would end up being a buy-sell agreement with

the communities, which is illegitimate because the process had not provided all the tools for proper community participation."⁹⁴ Evidently, Cerrejón and the Ministry of Interior attempted to purchase local consent and take advantage of a community with material needs and little understanding of the implications of agreeing to expansion and river modification plans.

Community organizers have pointed at the company's ability to lobby politically in the region as a contributing factor to the lack of commitment in developing effective FPIC processes, since those involved in regulatory institutions have vested interests in mining projects or are hired by Cerrejón itself. According to Romero, "there is an administrative and bureaucratic mafia within the Guajira's political leadership. When Jorge Ballesteros [Colombian Senator from Guajira] says that he is concerned that the CCX's projects [a major Brazilian mining company] have been blocked, and says that those actions will harm the Guajira's economy, I ask: which Guajira economy? Certainly, the economy of corrupt politicians." For the Wayúu leader, government and corporate alliances harm politically marginal communities and undermine their constitutionally protected rights. Similarly, Felipe Rodríguez notes that "indigenous communities do not know how to differentiate between the government and Cerrejón, [because] officials arrive in the multinational's vehicles wearing the company's helmets and get off the Cerrejón's cars. There is a well-deserved distrust between the community and the role that the government performs and avoids to perform."

⁹³ El Espectador, "Los reparos de la Contraloría a Cerrejón," November 2, 2012. <http://www.elespectador.com/noticias/actualidad/vivir/articulo-384775-los-reparos-de-contraloria-cerrejon>

⁹⁴ Personal phone interview with Jackeline Romero. January 28th 2013.



As a matter of fact, these alliances have a legal foundation since the 2010 reform to the Mining Code encourages that environmental evaluations and audits be conducted by personnel hired and paid by mining executives.⁹⁵ Thus, Cerrejón's legal entitlement to undertake prior consultation with indigenous communities, which costs little compared to mining profits (i.e. the goats and tools allegedly requested by some Wayúu individuals cost nothing compared to expanding the multi-million earning coal mine), contradicts the supposedly transparent and unbiased regulatory mechanisms seeking to protect indigenous communities from unlawful displacement that large-scale extractive projects may produce.

When companies offer economic gains to individuals in order to divide communities and eliminate opposition to their projects, this also constitute an unethical and illegal practice in consent processes. Wayúu leaders denounce this practice as actively fragmenting communities and tricking uninformed populations to give up their rights. Some community leaders have denounced threats and persecution resulting from their resistance work, such as Wilman Palmezano who told Peace Brigades International about a series of verbal threats and psychological pressure between 2009 and 2011 urging him to leave his community. According to Palmerazo, Cerrejón offered him as much as 2.5 billion pesos (1.3 million dollars) to "leave the community," clearly seeking to divide the Community Action Committees that he presided and mobilized against coal exploitation.⁹⁶ Similarly, Jackeline Romero, who

has worked over a decade in resistance indigenous movements, summarized the situation noting that "it is easy for the company to arrive to the region and divide locals, since there will indeed be people within the community who consent, but who would be seeking personal gains, not because they truly understand these projects' social, collective and environmental repercussions." Thus, multinational corporations' ability to actively divide the population and buy the consent of indigenous communities often not well equipped to exercise collective power is a major obstacle against effective FPIC implementation. Furthermore, because these unlawful bribes sometimes occur in explicit partnership with governmental institutions, such as the Ministry of Interior, these practices are masked as "prior consultation processes" for indigenous groups despite constituting a major violation. Furthermore, in the long-run, extractive industries provoke a change in land use that modifies the social structure of communities negatively, by contributing to "the loss of traditional knowledge and the substantial deterioration of their organizational, decision-making and self-governing capabilities," as reported UNHCHR.⁹⁷

Stigmatization and unfounded prosecution of indigenous protesters

Beyond flawed informed consent processes, large-scale transnational mining interests have also triggered the stigmatization of indigenous protests. The FARC and ELN have historically been present in La Guajira,

⁹⁵ INDEPAZ. Reforma del Código Minero Colombiano. August 2012. http://www.indepaz.org.co/wp-content/uploads/2012/08/Documento-de-trabajo_Observaciones-al-proyecto-de-reforma-del-CODIGO-DE-MINAS_Ago-2012.pdf

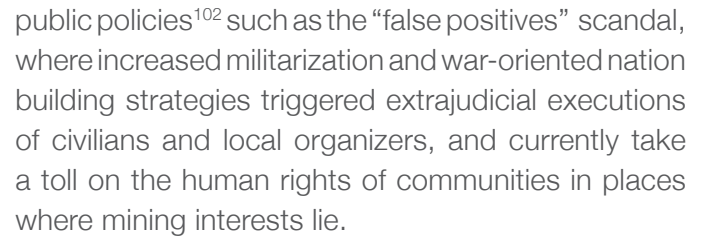
⁹⁶ Peace Brigades International. Mining in Colombia: At what cost? November 2011. Pp.35

⁹⁷ Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia. January 1th, 2013. Pp. 18 Available at <http://www.hchr.org.co/documentoseinformes/informes/altocomisionadoinforme2012en.pdf>

First, a violent attack against peaceful Wayúu protests in 2012 demonstrated repression of local dissidence against large-scale mining in Guajira. Unidentified armed groups acting in accordance with corporate interests attacked Wayúu protesters as they mobilized to confront Cerrejón for planning of a new project without conducting effective FPIC processes. Specifically, on August 11th, 2012,

Second, Wayúu indigenous peoples were unjustly accused of collaborating with the criminal bands that smuggle drugs and arms in the region. On September 27th, 2012, four communities in Manaure were raided, and 14 people were detained, including three women with infants. The police accused them of having connections with the “Urabeños” criminal organization and of fabricating, selling and holding arms. Seven people were freed after the arrests were declared illegal following their trial, but two of the arrested women remained detained. According to Romero, “under the pressure of satisfying the needs of the mining and energy boom, [military officers and the police] are presenting everyone they can as ‘results’” –or as evidence of successful military actions and

¹⁰⁰ Personal phone interview with Jackeline Romero Epiayu, January 28th, 2013.



"We have always rejected violence, from wherever it may come. (...) we believe in peoples' sovereignty and autonomy. Our fight is less against the multinationals' excavators and more against those who govern and protect those multinationals at the expense of the environment and the citizenry."

of experiencing another wave of violence and displacement. While actual gold-extraction operations have not yet begun, communities mobilizing against large-scale mining have been violently repressed by military forces aligned with corporate interests. As such, local social movement organizers have been explicitly targeted for their opposition to large-scale mining projects, which violates not only Colombians' freedom of assembly and right to protest but also their right to life, safety, and effective state protection. This case demonstrates that entry of large-scale mining interests to regions experiencing armed conflict is likely to increase militarization, which threatens to repress civil society and reproduce or escalate existing violence.

Mining legislation aligned with paramilitary interests

As paramilitary forces consolidated in southern Bolívar during the 1990s, mining companies sought the department's lands by legal means. Specifically, as the multinational corporation Corona Goldfields attempted to settle over the territories where small-scale miners had traditionally worked, its presence contributed to a series of social disruptions that marked a peak of violence in the 1990s. While paramilitaries achieved domination in the region by killing agricultural and mining leaders and thousands of town dwellers, burning down settlements and blocking food deliveries, medicines and small-scale mining exploitation materials,¹⁰³ Corona Goldfields sponsored Colombian Lawyer Luisa Fernanda Aramburu to draft a reform to the 1998 Mining Code in favor of the multinational's interests.¹⁰⁴ The reform sought to 1) change the terminology of protected areas, whereby formerly "prohibited" zones such as natural and archeological reserves became "restricted" for exploitation, making exploration possible if the government authorized it; 2) exclude mining projects from requiring environmental licenses; 3) establish that the earliest applications filed would be prioritized for exploitation projects—which dispossessed current occupants, who were generally subsistence miners.¹⁰⁵ The final proposal was submitted to Congress



a day before paramilitary offenses had renewed operations in southern Bolívar, and the reform clearly aimed to circumventing subsistence miners' legal claims to the land and its preservation. Nonetheless, members of the local miners' union Fedegromisbol allied with national and international civil society organizations to confront the bill and organized a series of protests that ultimately blocked the bill's approval.¹⁰⁶

Southern Bolívar experienced a peak in violence in 1998, when over 10,000 campesinos fled

¹⁰³ Corporación Sembrar, "Sur de Bolívar Resistiéndose al Despojo," January 17, 2011. Sur<http://www.corporacionsembrar.org/?q=node/52>

¹⁰⁴ In personal correspondence with Francisco Ramirez, author of "Processes of Extermination: Big Mining in Colombia" (2004) on April 7th, 2013.

¹⁰⁵ The Law Project 187 reforming the Mining Code was submitted to the Colombian congress on April 26th 1996 and the related articles were 7, 29 and 99.

¹⁰⁶ According to "Processes of Extermination: Big Mining in Colombia" (2004 by Sintraminercol, 37-42) Canadian, US and British mining companies, through the Canadian International Development Agency and the Canadian Energy Research Institute, sponsored a Colombian lawyer to create the 1999 mining code project and to legislate in favor of corporate interests at the expense of small miners who resided in the area of southern Bolívar. In response to this new code, protests in front of the US embassy erupted, while Amnesty International and Sintraminercol run a campaign exposing the irregularities in the case, prompting president Ernesto Samper to postpone the code's modification (29-30).



to major urban centers escaping paramilitary violence and demanded the government to provide effective guarantees for their return. The regional crisis even led the then President Andrés Pastrana to promise an increase in investment in social programs in order to mitigate the exodus of campesinos and miners on October of 1998. Despite broad evidence and multiple witnesses testifying about the connections between corporate interests and paramilitary activity, cases denouncing the connections between multinationals' and paramilitary groups remained under impunity.¹⁰⁷ Similarly, the legislative reforms to the Mining Code that had triggered much of the violence over these territories continued. After failing to reform the mining code in 1998, aforementioned lawyer Aramburu became an adviser to Canadian-sponsored Colombian Lawyers bar to draft the 685 bill of 2001. According to Francisco Ramirez Cuellar, author of "The Profits of Extermination: Big Mining in Colombia" (2004), "Congress approved this bill because the Canadian Cooperation Agency and the then paramilitary-backed local politicians had allied to profit from pillage. An allegation supported by the fact that almost all of the House and Senate's Fifth Commission that approved said bill has been condemned for nexus with paramilitaries in recent years"¹⁰⁸ Two exemplary cases are Alvaro Araújo and Edgar Ulises Torres, Congressmen who advocated

for the bill's approval in 2001 but who have been sentenced to 9 years in prison for allying with the AUC's Northern and Calima Blocks respectively.¹⁰⁹ As such, it is noteworthy that Ramirez has received life threats and attacks due to his exposés of these major coalitions between paramilitaries and incumbents¹¹⁰ and how paramilitary attacks correlated with explicit mining interests and legal debates in Congress. Overall, unions and communities contend that these violent and legal pressures sought to depopulate and expropriate the gold-abundant and profitable territory.

Stigmatizations and extrajudicial executions

Most gold mines in Bolivar are located in the municipality of Santa Rosa, which is also home to the Agro-mining Federation of Southern Bolivar (Fedeagromisbol), an organization that spearheaded the protests against Kedhada in 2006. Kedhada S.A. had purchased mining land titles from Corona Goldfields during the early 2000s, but stigmatization and execution of leaders opposing large-scale mining projects took place between 2006 and 2007, who were precisely targeted for outspokenly resisting to the company's interests. According to Teofilo Acuña, a founding member of Fedeagromisbol, the union opposed the company's entry into the area because

¹⁰⁷ "The Profits of Extermination: Big Mining in Colombia" (2004 by Sintraminercol, [41]) and El Espectador, "Ochenta empresas financiaban a paramilitares del Bloque Norte: Así lo denunció el ex militante, alias 'don Antonio'," February 3rd, 2010. <http://www.elespectador.com/noticias/judicial/articulo185699-ochenta-empresas-financiaban-paramilitares-del-bloque-norte>

¹⁰⁸ In personal communication with Francisco Ramirez Cuellar on April 6th, 2013.

¹⁰⁹ Reuters, "Condenan a nueve años al ex congresista Alvaro Araujo por la 'parapolítica'," March 2010. <http://www.elmundo.es/america/2010/03/18/colombia/1268941682.html> and El Espectador, "Pliego de cargos contra dos excongresistas chocoanos por parapolítica," August 2012. <http://www.elespectador.com/noticias/judicial/articulo-370336-pliego-de-cargos-contra-dos-excongresistas-chocoanos-parapolitic>

¹¹⁰ "Francisco Ramírez Cuellar is no stranger to death threats. The President of SINTRAMINERCOL, the union representing the workers of Colombia's now privatized and disbanded state mining company, has had his office bombed and has survived numerous attempts on his life. In 2004, after Ramírez and his two young nieces barely escaped being shot by a gunman on a motorcycle the Inter-American Commission on Human Rights of the Organization of American States ordered Minercol Ltd. and the Colombian government to provide the union leader with protection in the form of an armored car and two armed bodyguards." Sean Donahue, "Is the Colombian Government Conspiring with Drummond to Silence Francisco Ramirez?" The Narco News Bulletin. October 18th, 2006. <http://www.narconews.com/Issue43/article2189.html>

it threatened small-scale mining. Projects also threatened to contaminate the department's adjacent rivers and the company's model would fail to provide as much employment as it had promised during conversations with miners. In the context of social resistance against exploration projects, and perhaps in part as a consequence of it, the area became heavily militarized. Acuña remarks that, "before, authorities would mobilize from their bases in the central areas of various municipalities; later, bases were placed in the higher regions of the mountain range. Communities were told that [militarization] generated development, but miners and leaders began to be threatened, and the process of securitization began to prohibit [the entry of] materials [for small-scale mining]. Then houses began to be set on fire."¹¹¹

Following militarization, cases of stigmatization and extrajudicial executions began to appear in southern Bolívar. For instance, Alejandro Uribe was killed by the Batallion Nueva Granada in the Santa Rosa municipality, which demonstrated the explicit targeting and execution of civilians who mobilized to oppose Khedada S.A. On September 19th of 2006 Uribe was executed and the Batallion's perpetrators alleged he had been "killed in combat," reporting that he held assault weapons at the time of his execution.¹¹² In reality, however, the Attorney General's Office later found that Uribe had been shot point



Photo: Project Accompagnement Solidarité Colombie

(In Orange) "Teofilo Manuel Acuña Agro-Mining Leader" (In Red) "We demand his immediate release"

blank and that there had been no intelligence information or order that substantiated his killing. Yet, officials reported Uribe belonged to the ELN or FARC because he held meetings to organize local miners against Khedada S.A., which made the case an evident extrajudicial killing¹¹³ exposing that the attack was explicitly targeting anti-mega-mining protesters through stigmatization that associated them with guerilla members.

A second case of a deadly stigmatization is that of Carlos Mario García, killed by Batallion Calibío in the Ojos Claros rural town on March 25th of 2007. The Army's Cabilío Battalion accused García of belonging to the FARC, yet Carlos Mario was a 22 year-old man

¹¹¹ Personal interview with Teofilo Acuña, February 5th 2013.

¹¹² September 19th 2006, Alejandro was killed. Nueva Granada Batallion commander stated that Uribe had leaded a FARC and ELN strategy to organize small farmers against the state. The official statement submitted to the Attorney General's Office stated that Alejandro Uribe had been found with: AK 47 rifle, a hand grenade, 54 cartridges, 5 rifle providers, a black vest, documents and a small and large SONY cassette. See statement. Semana, "Oro y Plomo," July 28, 2009 <http://www.semana.com/nacion/problemas-sociales/articulo/oro-plomo/105494-3>

¹¹³ The Direction of Operations of the national army did not hold any data related to Alejandro Uribe's killing and none of the commanders were informed (Matamoros general responds to Semana). Semana's sources close to the forensic services agency, confirmed that Uribe had been killed at 50 centimeters of distance, which means he was shot point blank. Semana, "Oro y Plomo," July 28th, 2009 <http://www.semana.com/nacion/problemas-sociales/articulo/oro-plomo/105494-3>



who belonged to the Community Action Committee of the Ojos Claros rural town and the youth group of the Small-farmer Association of the Cimitarra River Valley (ACVC).¹¹⁴ As in Uribe's case, the perpetrators reported García to have been found with assault weapons at the time of his execution.¹¹⁵ The local community in the municipality of Remedios, who knew García, however, did not believe the official report since they had already reported 6 assassinations that occurred in unclear circumstances. In fact, the skepticism around the case resulted in 350 campesinos marching to the military station and demanding that the corpse be turned over to them.¹¹⁶ The killers alleged that García consistently carried out extortions and blackmailed regional cattle raisers and miners, but the young man that accompanying Uribe the day he was killed testified in the case and reported that the soldiers had deliberately attacked the two of them.¹¹⁷ Only a year and seven months later, in October 2008, authorities determined the killing had indeed been extrajudicial; yet, journalists found that none of the military officers implicated in the case were listed in the Human Rights database of the Attorney General's office, which would have prompted their investigation for extrajudicial executions. In Acuña's words: "despite so many hearings, public

documents and discussions on the table, there is a sea of impunity. There are a few soldiers in prison, but there is not an investigation to identify those with the largest responsibility. That is, captains, colonels and generals, but also defense ministers, or the president himself, who is the maximum defense authority in the country. Yet, there is no willingness and instead we move backwards, given the reform to the military justice system."¹¹⁸

Stigmatization cases have also targeted Fedeagromisbol organizers. Specifically, small-scale mining leader Teofilo Acuña began to mobilize the population and protest the blatantly repressive assassination of Alejandro Uribe, for which he was later targeted and arrested. Alleging that Uribe's extrajudicial execution intimidated the local community, Acuña led a local campaign to denounce the Battalion's actions. In response, the local Battalion wrote a document stating that Acuña was "conducting political proselytizing meetings in favor of the ELN, taking advantage of small farmers' innocence"¹¹⁹ However, Acuña says the arguments behind his detention were illogical: "they accused me of rebellion, because I held meetings to prevent the company's entry, [but] thanks to the national

¹¹⁴ The IACHR recognized the ACVC work in the defense of human rights, who gave this organization protection measures in 1999 and 2000 to some of its threatened members. This organization has also historically opposed large-scale mining.

¹¹⁵ Colonel Jorge Alberto Segura presented the corpse and said that he had been terminated during 'Operation Atenea' and that an AK-47 rifle and munition had been confiscated from him after the killing. *Semana*, "Oro y Plomo," July 28th, 2009 <http://www.semana.com/nacion/problemas-sociales/articulo/oro-plomo/105494-3>

¹¹⁶ *Ibid.*

¹¹⁷ See the Inspector General's Office at http://www.semana.com/documents/Doc-1922_2009723.pdf

¹¹⁸ According to several civil society organizations, Colombia's recent passage of a constitutional amendment that expands military jurisdiction in cases of human rights violations is a major setback for justice. The reform would allow grave human rights crimes to be investigated and tried by the military justice system, in direct conflict with years of jurisprudence of Colombia's high courts and the Inter-American Court of Human Rights. http://www.usofficeoncolombia.org/_files/1_2013-Public-statement-FINAL.pdf

¹¹⁹ See online report published by *Semana* magazine at http://www.semana.com/documents/Doc-1932_2009727.pdf Corporación Sembrar, "Oro y Despojo en Sur de Bolívar," July 27th, 2010 <http://www.corporacionsembrar.org/?q=node/32>

Despite army's denial, as stated by Ricardo Vargas, Fifth Brigade commander, the testimonies of community members involved in the investigations and the correlation between militarization and the nature of the stigmatizations pointed at unofficial protection agreements between army officials and the multinational Keshada. *Semana*, "Oro y Plomo," July 28th, 2009. <http://www.semana.com/nacion/problemas-sociales/articulo/oro-plomo/105494-3>

and international pressure that made Alejandro Uribe's killing visible, [I was supported and set free]. But five days after I was released I began to receive threats saying that because I had been liberated, the task was now to kill me." Despite being labeled insurgent and detained for 10 days in April of 2007, Acuña has continued to mobilize, fighting to keep over 35,000 jobs in local artisanal mining. In contrast, the local army was found "not rigorous" in its actions by the judge handling the case and an internal army investigation following the 2006 "false positive" scandal throughout Colombia pushed officials to fire the soldiers involved in these cases. Following Acuña's unfounded imprisonment, the state provided Acuña with protection measures since attacks had clearly targeted him for his organizing work within Fedeagromisbol.¹²⁰

Increasing militarization throughout the 2000s correlated with the enactment of the 2001 Mining Code, as well as with the then President Alvaro Uribe's policy of Democratic Security and the arrival of Keshada S.A. to southern Bolívar. While Keshada officially left the region after stigmatization incidents had unfolded and began to be investigated, opposition voices have long denounced a single

and coherent push for developing mining projects in the area and requesting the area be securitized for such purposes. Keshada S.A. transferred all land titles to Anglo Gold Ashanti soon after major gold reserves had been found in the department of Tolima in a mine called La Colosa in 2007, which prompted the South African company to formally disclose its interest in Colombia (Anglo Gold Ashanti maintained the same identification number which indicated no formal change in the actual company but only a public acknowledgment that the giant South African mining corporation had been involved all along¹²¹). Most importantly, according to an in-depth investigation by *Semana* magazine in 2009, some of the mining companies involved in southern Bolívar region had signed special protection agreements with the Armed Forces.¹²² Specifically, the report stated that "these agreements are secret, where the army commits to guarantee the security of mining activities of companies and [companies] pay a yearly fee in return. These protection agreements are careful about not leaving a written record stating that the money given to the military cannot be used for offensive actions/attacks or to buy weapons or munitions."¹²³ Thus, Uribe and García's extrajudicial executions and Acuña's unfounded

¹²⁰ According to a public statement released by several community organizations following the case, the Attorney General's Office administratively attached to Human Rights and Humanitarian Law National Unit of Cartagena highlighted that: "the actions of human rights defenders, unfortunately, sometimes are not well seen by some Army members, who have stigmatized as subversive everyone that defends their rights from the aggressions that they represent (...) Through this mindset, very good and important people for the working class were sacrificed, since they were satisfying their partners urgent needs and sought welfare and stability for their union peers, as well as justice and social and even economic demands." Corporación Sembrar, Fedeagromisbol and Asociación Nomadesc, "Fiscalía General de la Nación absuelve al líder agrominero Teófilo Acuña Ribón," *La Pluma* Net. February 22, 2011. Retrieved from http://www.es.lapluma.net/index.php?option=com_content&view=article&id=1612:fiscalia-general-de-la-nacion-absuelve-al-lider-agrominero-teofilo-acuna-ribon&catid=103:violacion-de-dh&Itemid=447

¹²¹ *Semana*, "Oro y Plomo," July 28th, 2009. <http://www.semana.com/nacion/problemas-sociales/articulo/oro-plomo/105494-3>

¹²² Consultancy on Human Rights and Displacement. (CODHES). "¿Consolidación de Qué?," Information Bulletin no 77, February 2011, http://www.codhes.org/index.php?option=com_content&task=view&id=1002

¹²³ Human Rights Watch revealed that AngloGold Ashanti, second largest gold producer in the world, paid the Nationalist and Integrationist Front (FNI) so that it could extract gold from the Mongbwali mine, in the northeastern region of the Democratic Republic of Congo, and to benefit from the protection from the FNI to export the metal to Uganda. Human Rights Watch. "D.R. Congo: Gold Fuels Massive Human Rights Atrocities," June 2nd, 2005 <http://www.hrw.org/news/2005/06/01/dr-congo-gold-fuels-massive-human-rights-atrocities>



prosecution correlated with the area's militarization, which combined to repress local and legitimate dissidence through assassination and arrest. While local residents and organizers have found it difficult to prove that southern Bolívar's militarization brought about these executions, possibly through protection agreements between corporations and the army, the extralegal practices of the armed forces to protect private investment and secure large mining interests have been undeniable.¹²⁴

Contemporary landscape and fears of renewed violence

While Anglo Gold Ashanti has been marginally involved in Bolívar, primarily due to larger reserves found elsewhere in the country, the company's record represents an imminent risk for a region that has suffered conflict and forced displacement in the past few decades.¹²⁵ In fact, the company's involvement in other gold exploitation projects in Colombia have threatened the safety of constitutionally protected populations and failed to communicate plans with local populations who fear their techniques will destroy their town's ecological balance. Anglo Gold Ashanti's interest in southern Bolívar is also

unequivocal, as its exploratory team has studied the area since 2004 and conducted systematic explorations in Bolívar of over 11 million hectares.¹²⁷ As of 2008, the company had expressed interest in 172 thousand hectares in the San Lucas mountain range.¹²⁸ In this context, Teófilo Acuña claims that "today the risk [of displacement and violence] is higher, since concessions have been requested for all of southern Bolívar. Now that multinationals have been requesting this land for 15 years, the wait will push them to take very strong actions against the community. We know we have to fight administrative reforms to the Mining Code that try to exterminate the small-scale miner, but at the same time we face military repression and disappearances."¹²⁹ Considering Bolívar's history of violence and extrajudicial killings and stigmatizations, the fear is a legitimate concern over the safety of people who happen to live and depend on a mineral that corporate interests and paramilitary forces endlessly attempt to take a hold of as they actively try to depopulate its encompassing territory.

¹²⁴ The South African company AngloGold Ashanti has a record of human rights' violations that questions its socially responsible corporate practices and contradicts its robust public relations campaign to overturn negative sentiments of human rights abuses. The company received the 2011 Public Eye Award, given to AGA as the "worst company" for "mistreating people in Ghana and polluting rivers." Quandzie, E. "AngloGold Ashanti gets world's worst company award for bad corporate behaviour in Ghana," Ghana Business News.(2011). <http://www.ghanabusinessnews.com/2011/01/31/anglogold-ashanti-gets-worlds-worst-company-award-for-bad-corporate-behaviour-in-ghana/>

¹²⁵ Corporación Sembrar, "Sur de Bolívar Resistiéndose al Despojo," January 17, 2011. <http://www.corporacionsembrar.org/?q=node/52>

¹²⁶ El Espectador, "En la Serranía no Brilla el Oro," January, 8th, 2008. www.elespectador.com/impreso/cuadernilloa/actualidad/articuloimpreso-serrania-no-brilla-el-oro

¹²⁷ Personal interview with Teófilo Acuña, February 5th 2013.

¹²⁸ According to CODHES, 32% of the registered 280.000 displaced people in Colombia in 2010 came from zones where mining economic activities have notoriously increased. Radio Nederland Wereldomroep Latinoamerica. Colombia: Las consecuencias del "boom minero." February 22nd 2011. <http://www.rnw.nl/espanol/article/colombia-las-consecuencias-del-%E2%80%9Cboom-minero%E2%80%9D>

¹²⁹ Regarding current governmental initiatives, transnational mining contradicts the government's stated interest in compensating victims. In particular, despite the establishment of the Victims' Law, continuous displacement of communities facilitated by mining legislation will perpetuate the problem that created the victims in the first place. Not only is the Victims' Law currently projected to be unable to retribute everyone, but at the pace of displacement that transnational mining exacerbates, there will be a renewed cycle of human rights violations with no substantive change in the vulnerability of marginal communities.

Conclusions: Dispossession, Displacement and Depopulation

Forced displacement

The unregulated and pro-transnational large-scale mining engine advocated by contemporary government officials contributes to the cycle of land dispossession and forced displacement in Colombia. Recent human rights violation cases demonstrate how increasing mining exploration and exploitation activities have exacerbated the risk of indigenous peoples' extermination, assassination of Afro-Colombians and union leaders, and the contamination of ecological environments from which local communities depend. As public policies have prioritized mineral extraction by transnational companies these policies have also violated crucial laws intended to defend the human rights of politically marginal populations. Similarly, as investment in the mining engine makes legislation more flexible and favorable to large-scale investments, companies such as Gran Colombia Gold or Cerrejón engage in persuasion strategies that intimidate or bribe the population. In other instances, companies' interests align with local paramilitaries or armed forces, which results in allegedly concerted efforts to depopulate areas with mineral wealth. Yet, regardless of purposeful intent, the vulnerable situation of local communities worsens as the state grants exploration and exploitation concessions to mining corporations or fails to provide effective oversight of already existing mining projects. Even if only a small fraction of current concessions to large-scale mining companies become actual exploitation sites, the contemporary mining engine is likely to produce massive forced displacement. Overwhelming weaknesses in the institutions responsible for protecting communities living over mineral reserves threaten to make mining projects a source of illegitimate land dispossession, expelling people against their will.

Our case studies illustrate how the state's regulatory agencies have failed to provide guarantees for citizen's constitutional rights and internationally upheld human rights. Thus, as large-scale mining projects demarcate land, obtain legal concessions and environmental authorizations, and begin to establish their mining sites, those resisting communities will have no other choice but to move, as economic displacement (Marmato), bribes (Guajira) or intimidation (Bolívar) are implemented to depopulate mineral-rich areas. Today, local residents are caught in between political pressure that labels sub-surface resources as public utilities and transnationals' high economic and political influence (exerted through strategies such as bribing and fragmenting communities, or through lobbying performed by current government officials who partake in corporate decisions or former officials who have become corporate stockholders and managers). In cases like Guajira, state officials even collaborated with Cerrejón to advance flawed prior consultation and FPIC processes, which also constitutes a type of forced displacement since the government thereby overrides international law and constitutional protections for indigenous and Afro-Colombian communities. In all cases, transnational mining threatens to become the next phase of forced displacement in Colombia since governmental practices continue to disregard citizen's rights and prioritize capital inflows. In short, the state actively contributes to massive forced displacement via its "mining engine model" by allowing armed groups, via coercion or intimidation, or economic forces, via resettlement or uncompensated liberalization, to depopulate areas.



Indeed, Colombia has experienced high levels of displacement in zones where there are large prospects of mining and energy source exploration, demonstrating a policy to depopulate those lands with the highest strategic wealth. According to Marco Romero, President of the Consultancy for Human Rights and Displacement, “there is a political economy of the conflict, and the different kinds of pressure from illegal groups combine sometimes with state officials and open space to a policy of massive intervention in the territories with strategic resources.”¹³⁰ In southern Bolivar, for example, Anglo Gold Ashanti’s presence (then Kedhada S.A.) triggered extrajudicial executions that repressed social mobilization and threatened activists who were aware of the negative social and environmental impacts of the company’s projects. As such, stigmatization has become another kind of depopulation mechanism, resembling Colombia’s long history of dispossession of land and the use of violence to access territories that lead to good roads (for arm and drug-trafficking) or contain fertile lands for agro-industrial activities.¹³¹ The current economic model and the flexibility given to mining corporations allow the state and involved companies to reproduce these violent practices as instruments of dispossession of peoples’ lands. In other words, the current mining business model will continue the model of dispossession and attacks against local populations, making mining exploitation the new cause of forced displacement and creating a new humanitarian crisis.

Sustainable Peace

Despite the Santos administration’s apparent commitment to engage all sectors of society to build robust public policies, the development model that applies to transnational mining continues to prioritize the interests of capital at the expense of underresourced and politically marginalized communities. The future of the Colombian conflict, with or without an agreement with the FARC, will continue to be founded upon access to land and natural resources, which are currently privatized and sold despite popular discontent. Since the Colombian government has adamantly refused to speak about the economic model of the country at the negotiating table, mineral rights and communities’ access to natural resources will remain contested even after an eventual peace agreement. Specifically, the pace at which the mining engine grants concessions to individuals and transnational companies is not in sync with the implementation of human rights laws. This lack of synchrony between the government’s economic model and the proper implementation of constitutional mandates protecting communities’ rights contributes to the continuation of the Colombian conflict because it generates social unrest on various fronts.

i. The model liberalizes traditional economies without compensating the new markets “losers” and governmental practices disregard vulnerable communities’ rights since transnational mining undermines artisanal forms of mining. By

¹³⁰ In radio interview with Radio Nederland Wereldomroep Latinoamerica on February 22nd 2011. <http://www.rnw.nl/espanol/article/colombia-las-consecuencias-del-%E2%80%99Cboom-minero%E2%80%99D>

¹³¹ Although the Constitutional Court ruled the reform to the National Mining Code unconstitutional in 2010, the Court also allowed the Code to become law for the following two years, a period in which the government was expected to present a new reform addressing the establishment of effective prior consultation processes. By the time of this report’s release, the Colombian government had expressed it wouldn’t present a new reform to the mining code. According to renowned professor Manuel Rodriguez Becerra, government’s negligence was the major factor in the delay and turn back to the obsolete 2001 mining code. Manuel Rodriguez Becerra in an interview with Contagio Radio on April 26th, 2013. http://www.contagioradio.com/index.php?option=com_content&view=article&id=6446:%E2%80%99Cen-colombia-hay-problemas-m%C3%A1s-graves-que-el-retroceso-en-el-c%C3%B3digo-minero%E2%80%99D&catid=8:otra-mirada&Itemid=2.

devastating a small-scale economy, the engine affects an already underprivileged community such as Afro-Colombians, further threatening their livelihoods, especially because neo-paramilitary groups continue to exert political control in their territories.

ii. The model allows the establishment of large-scale extractive operations in indigenous peoples' sacred or ancestrally upheld bio-diverse environments, while the government neglects effective FPIC processes. This combination overrides the internationally protected and nationally recognized autonomy of indigenous tribes and peoples and their ecosystems. In most cases, the mining engine endangers communities that already live in unstable and conflictive environments or who are at risk of extinction, exacerbating violence rather than providing stability and human development. Indeed, history and our case studies confirm that it is civil society who faces the largest burden when companies enter violent contexts.

iii. Impunity, stigmatizations and the lack of guarantees for local social organizers and human rights defenders who oppose large-scale mining makes the mining engine model deeply opposed to the social rule of law as it undermines the right to life, to freedom of speech and freedom of assembly. Moreover, the lack of secured

civil society participation in the consolidation of public policies obstructs the protection of other equally important rights, such as the right to a healthy and ecologically balanced environment, the right to wellness and public health and the right to personal integrity, since large-scale mining has been described as unsustainable by definition.¹³² Thus, if the Colombian government aims to remain committed to advocate for a development model proven to cause serious environmental and social externalities, it must first demonstrate a commitment to compensate and remedy these collateral effects, with the most vulnerable populations at the forefront of its commitment and by guaranteeing human rights defenders' safety, participation and engagement.

We recommend that the aforementioned institutional weaknesses be addressed with an emphasis on the political economy of the conflict—one that displaces and dispossesses communities with the intent to depopulate territories. Moreover, we recommend that to avoid “negative externalities” that would harm thousands of politically marginal Colombians depends on the provision of appropriate regulatory frameworks that counteract the large-scale mining's social and environmental devastation. The proverbial mining engine cannot run over unprotected territories without completely devastating the life within them.

Recommendations

To the Colombian government

1. Fully investigate and prosecute those responsible for threats, attacks and assassinations of community leaders resisting large-scale mining projects.

¹³² Constitutional Court ruling SU-383 of 2003, M.P. Alvaro Tafur Gavis. Consultancy for Human Rights and Displacement (COHES). The Fundamental Right to Prior Consultation: constitutional court jurisprudence line on the issue. June 2012. Page 113.



2. Abstain from granting titles and permits for mineral exploitation projects until a clear normative framework is established for protecting Colombia's citizens and its natural environment from unintended consequences. Specifically, we recommend that the new reform to the Mining Code make FPIC a central component, recognizing its importance in safeguarding the rights of indigenous and Afro-Colombian communities.
3. Acknowledge that the right to prior consultation constitutes not only a right to participation but also a veto mechanism to guarantee the survival of groups at risk of extinction, as recalled by UNHCHR in its 2012 annual report.
4. Conduct a rigorous revision of projects implemented since 2010 in which FPIC procedures were not properly conducted and halt projects that did not comply with the law, keeping in mind that:
 - a. All projects that directly affect Afro-Colombian and indigenous communities are subject to FPIC, and those communities' rights extend to all lands "ancestrally occupied and that constitute the traditional environment of their social, economic, religious and spiritual activities."
 - b. The right to FPIC is not satisfied with mere administrative proceedings, extratemporaneous efforts, nor is it valid when the consultation is exclusively with "representatives" of the community not recognized by the community itself as representing their interests.
 - c. Pre-consultation processes with Afro-Colombian and indigenous communities should provide for FPIC proceedings that take into account the cultural specificities of each group.¹³⁶
 - d. Administrative decisions related to development projects require prior consultation processes, including environmental licenses, concession contracts and mining concessions.¹³⁷


¹³³ Constitutional Court ruling C-030 of 2008, M.P. Rodrigo Escobar Gil; C-461 of 2008, M.P. Manuel José Cepeda Espinosa; ruling C-175 of 2009, M.P. Luis Ernesto Vargas Silva; and C-366 of 2011, M.P. Luis Ernesto Vargas Silva. Consultancy for Human Rights and Displacement (COHES). The Fundamental Right to Prior Consultation: constitutional court jurisprudence line on the issue. June 2012. Page 104. http://www.codhes.org/images/stories/pdf/1_derecho%20fundamental%20a%20la%20consulta%20previa.pdf

¹³⁴ Constitutional Court ruling C-461 of 2008, M.P. Manuel José Cepeda Espinosa. Consultancy for Human Rights and Displacement (COHES). The Fundamental Right to Prior Consultation: constitutional court jurisprudence line on the issue. June 2012. Page 108.

¹³⁵ Constitutional Court ruling T-693 of 2011, M.P. Jorge Ignacio Pretelt Chaljub. Consultancy for Human Rights and Displacement (COHES). The Fundamental Right to Prior Consultation: constitutional court jurisprudence line on the issue. June 2012. Page 113.


¹³⁶ See this article on legal arguments to promote FPIC processes for campesinos, which argues that article 64 in the Constitution provides guarantees to protect access to properties and to broadly recognize social rights, while article 79 opens up a space to establish consultation process with campesinos in any decision that may affect them. Furthermore, that article 7 and 9 protect ethnic and cultural diversity, for which campesino communities may represent cultural patrimony ought to be protected despite them not having a visually or differently recognized race or phenotype. Articles 25 and 26 guarantee the right to choosing one's occupation with dignity and justice while law 160 of 1994 recognizes Campesino Reserve Zones. Quesada, Carlos. "Aproximación a tres preguntas sobre la consulta previa a comunidades campesinas," Agencia Prensa Rural, February 24th, 2013. <http://prensarural.org/spip/spip.php?article10298>

¹³⁷ In March 2013, the Colombian government requested the US State Department to respect the immunity status of former president Alvaro Uribe who had been called on to testify at a US court regarding the case of the Drummond mining company and its links to paramilitary forces in Cesar. Days later, the District of Columbia Tribunal ruled in Uribe's favor without providing further explanation.

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5. Strongly consider including FPIC rights for campesino communities and organizations in the new reform to the Mining Code.
 6. Increase research on the effects of large-scale mining on humid and warm tropical environments where such projects are not common, with an emphasis on the long-term trade-off between mineral exploitation revenues and biodiversity loss for the global ecosystem.
 7. Ensure that under the new reform to the Mining Code, companies will not be able to appoint or hire their own consultants to carry out environmental impact studies, but rather will be forced to use independent consultants for such studies.
 8. Provide adequate physical and political means of protection for community leaders resisting mining projects.
 9. Establish participatory mechanisms in which communities can express alternative proposals to land use and underground resources, emphasizing less environmentally damaging exploitation techniques and protecting the vulnerable population of artisanal miners.
 10. Study the impact of prioritizing large-scale mining over other sectors of the economy such manufacturing and agriculture. Conduct independent studies on the relationship between devaluation of the peso and reliance on mining and oil extraction, as well as the long-term impact on job creation and environmental degradation produced by increased mineral exploitation.
 11. Improve transparency in the relationship between influential government officials in charge of designing mining policies and large-scale mining corporate officials.
 12. Open participatory platforms in which local communities can contribute to the drafting and reforming of the Mining Code in collaboration with the Ministry of Mines.
 13. Generate a national dialogue between affected groups (Afro-Colombians, indigenous and campesinos) and government decision making bodies, particularly in addressing the tension between the right to food security and ecological conservation and the state's right to exploit mineral resources.

To the US government

1. Ensure companies listed or headquartered in the US do not contribute to or cause human rights abuses in Colombia as a consequence of their operations or those of their subsidiaries and joint venture partners.
2. Support research and transparency initiatives seeking to reveal how US capital invested in joint mining ventures may be contributing to gross human rights violations in Colombia. Advocate for legally binding disclosure guidelines within the US Security and Exchange Commission for mining companies that can improve governments' accountability to the general public.^t

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3. Urge the Colombian Government to revise laws that conflict with international human rights obligations and which place companies in a situation of reputational risk: where the protection of ecologically sensitive areas are exposed; and where there is a risk of violations of the rights of Indigenous and Afro-Colombian Peoples and other vulnerable groups, and conflict with land restitution to victims.
 4. Ensure that people whose human rights are violated by US companies in Colombia can access redress in the United States, including thorough investigation of all alleged involved actors.

To Corporations

1. Conduct an independent conflict impact assessment to determine the risk of provoking or exacerbating violent conflict through the company's operations.
2. Ensure that projects provide net conservation benefits that are consistent with maintaining the natural resources and ecosystems on which local communities depend.
3. Abstain from adopting policies that create or intensify divisions in communities, including hiring traditional enemies of the local community or one faction of an internal division in the community as security guards.
4. Provide training modules for public relations staff members around the history and cultural importance of indigenous and Afro-Colombian cultures and traditions and the importance of respecting communities' traditional livelihoods, autonomy and empowerment.

To the International Community

1. Invest in research on the security, economic and environmental implications of large-scale mining.
2. Urge the Colombian and US governments and involved mining companies to implement practices outlined above.
3. Ensure companies listed or headquartered in your country do not contribute to or cause human rights abuses in Colombia as a consequence of their operations or those of their subsidiaries and joint venture partners.

U.S. Office on Colombia
connecting civil society to policymakers

