SECTOR WIDE IMPACT ASSESSMENT ON HUMAN RIGHTS

MINING UNSEEN

EXECUTIVE SUMMARY

CREER
Centro Regional de Empresas y Emprendimientos Responsables
Institute for Human Rights and Business

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

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

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We are indebted to the mining communities located in the eight departments and eighty-three municipalities visited, to the companies operating in several of these environments, to their executives and employees for having shown us the impacts, and their relationship with the industry and public policy. We hope that the information collected and analyzed will be useful for this three-way dialogue; which we consider to be essential in making progress towards mining practices which are protective and respectful of rights and which generate high social and economic value for everyone.

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Naturally, CREER is solely accountable for all the analyzes and opinions contained in the SWIA and not the organizations that have supported it, the participants in the discussions conducive to methodological validation, or the institutions, communities and companies that provided their vision and opinions.

TABLE OF CONTENT

Presentation..... 5

Introduction..... 6

Core topics:

1. Protecting rights: An opportunity for articulating the sector and the territory 11
2. The adaptive challenge of reaching environmentally sustainable mining practices 21
3. Challenges in the provision and access to security within mining scenarios 33
4. Challenges in the use of resources for strengthening local economies 39
5. Disparities in mining contexts for achieving decent working conditions 45
6. Difficulties in addressing migration and settlement issues associated with mining 51
7. Conflict and access to remedy in mining scenarios..... 57

Conclusions..... 61

PRESENTATION

This Sector Wide Impact Assessment on Mining is a proactive approach, from a human rights perspective, to the mechanisms that can make gold, coal and construction materials mining activities sustainable in Colombia. This involves identifying the impacts caused by mining on the territories where it is being developed and, based on this, defining the challenges faced by the State, businesses and communities to mitigate these impacts.

Both the diagnosis of impacts, as well as the identification of challenges is constructed based on methodologies that combine the qualitative analysis of primary and secondary information in the areas where mining takes place and a complementary quantitative analysis at the municipal level. In practice, the quantitative analysis enables the generalization of situations, and the qualitative approach facilitates the identification of causal mechanisms and actors involved. In this way, it is able to acquire sufficient evidence to support each argument and generalize the results in a sensible and accurate manner. In addition, the construction of this assessment is a result in itself. That is, the manner in which the diagnosis is done promotes opportunities for dialogue that facilitate reflecting on the changes that each of the actors involved - the State, businesses, and communities- must take to effectively address the problems surrounding the impacts.

Human rights constitute the cornerstone from which the diagnosis is established and the recommendations are built. This approach allows for a more accurate picture of the differences in each context, understanding that to the extent that rights are popular conquests of the protection standards that respond to the logical rules of social life, it allows for a more complete analysis of the actions that the State and companies must undertake to make mining viable.

The recommendations derived from the diagnosis are constructed in such a manner as to facilitate their implementation. That is, each one identifies the specific problems, the actors involved and the actions to be taken in order to structurally address the situation. These recommendations are directed towards both the government and businesses. The recommendations are framed within nine broad categories: (i) sectoral planning with a territorial approach; (ii) institutional alignment; (iii) coordination for the protection of rights; (iv) accountability and better relationships with the mining authorities; (v) managing the information for the prevention of impacts; (vi) citizen services for access to remedy; (vii) protection of the vulnerable population; (viii) effective relationships between companies, projects and the territory; and (ix) contributions and opportunities for peacebuilding.

INTRODUCTION

The Sector Wide Impact Assessment (SWIA) seeks to identify the factors that make gold, coal and construction materials mining sustainable in Colombia. Actually, this is the purpose that guides its recommendations. To this extent, these recommendations are supported by a diagnosis that defines the problems and structural impacts that jeopardize the exercise of rights and, consequently, the sustainability of the activity.

In order to study the impacts on human rights, it is necessary to enter into a discussion regarding the "do no harm" issue and the subject that causes the "harm". Thus, the analysis of impacts requires assigning a "who" or "what" as the originator of the impact. In addition, some impacts can be specific, but in other cases they may accumulate or have an effect on the sector's performance or on the situation of the region in terms of human rights. Under the precept of defining the structural problems and the cases that generate them, the SWIA's diagnosis focuses on identifying aggregate impacts, which are those with common root causes associated to a set of impacts, and which manifest their effects at a much broader geographical and social level. By its nature, its management requires cross-sectoral actions, and an institutional framework capable of guiding strategies at an aggregate level and coordinating their implementation at national and regional levels.

Therefore, the chapters in the SWIA analysis are structured from an integrated and systematic human rights perspective, which exclude diagnoses that neutralize differences totalizing or homogenizing formulas. The analysis follows a transversal logic that starts from the interdependence of the exercise, enjoyment and protection of rights. Based on this, the analysis is organized into seven core blocks structured around common factors involved in multiple impacts: (i) articulation of the sector- territory; (ii) environmental management; (iii) safety in mining scenarios; (iv) use of local resources; (v) decent and fair working conditions; (vi) migration and resettlement associated with mining; and (vii) conflict and access to remedy in mining scenarios. This approach facilitates the construction of recommendations, as it adds common causes to the diagnosis.

As a predominant element in all areas, almost every chapter criticizes public policies in the mining sector for their "*one size fits all*" approach. One of the premises to substantiate this criticism is the existence of a vulnerable population in the mining sector that deserves the differentiated attention and enhanced protection of their rights. The rights of these vulnerable people can more easily enter into conflict with corporate interests and those of other actors, some legitimate and others outside the law, in scenarios where State presence is weak or when legislation is opaque. Consequently, criticism of the *one size fits all* policies could be summed up in a stubborn refusal to address the need to activate devices in various contexts for the enhanced protection of these rights.

SWIA STRUCTURE – How to read this document?

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

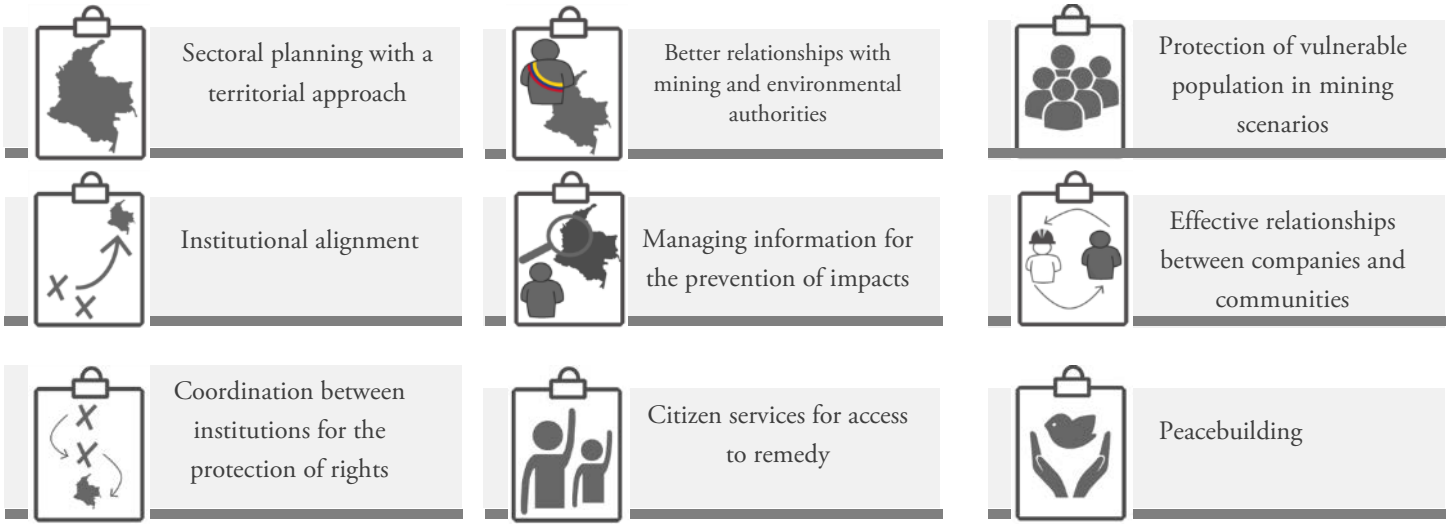
Aggregate impacts and cross-cutting issues

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

Some very important issues are addressed in these chapters, all of them approaching the nucleus of each analysis block, with the idea of making an accurate diagnosis of the problems, from a viewpoint determined by the specific rights studied in each section –taking care not to atomize or separate them from the others; and of the pubic interventions to address them and their consequences, which are sometimes as equally problematic as the problems themselves. It also serves the purpose of identifying new and viable possibilities to better manage the sector, that seek to stabilize it and allow for its sustainability in a weighted, sustainable and legitimate manner, directed towards the mandatory goals defined by the Constitution.

The purpose of the recommendations arising from each chapter and those which are transversal and formulated from logics beyond those specific to each subject, is to provide ideas for an institutional and legal adaptation that allows for the systematic and coordinated intervention of the Government in the sector. In order to trace the connection between general and specific recommendations, please make use of the icons presented below, which define the **9 different categories of recommendations**.

CATEGORIES OF RECOMMENDATIONS



Another goal of the recommendations presented by the SWIA suggests that corporate activities, including small and medium projects,[1] are governed by required due diligence human rights standards. This is possible when the sector encourages the revitalization of mechanisms for prevention, care and timely remedy, which are adequate and effective against risks or damages to the rights, and when strengthening the sector results rather in soundness and not misalignment of the constitutional system of rights and the distribution of public powers. Therefore, neither the diagnosis nor the recommendations are exclusively focused on, or directed to the State.

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

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

In this vein, besides this executive summary, the entire document is published, including its seven core blocks and additionally, all inputs used for the preparation thereof, as shown in the following graph:

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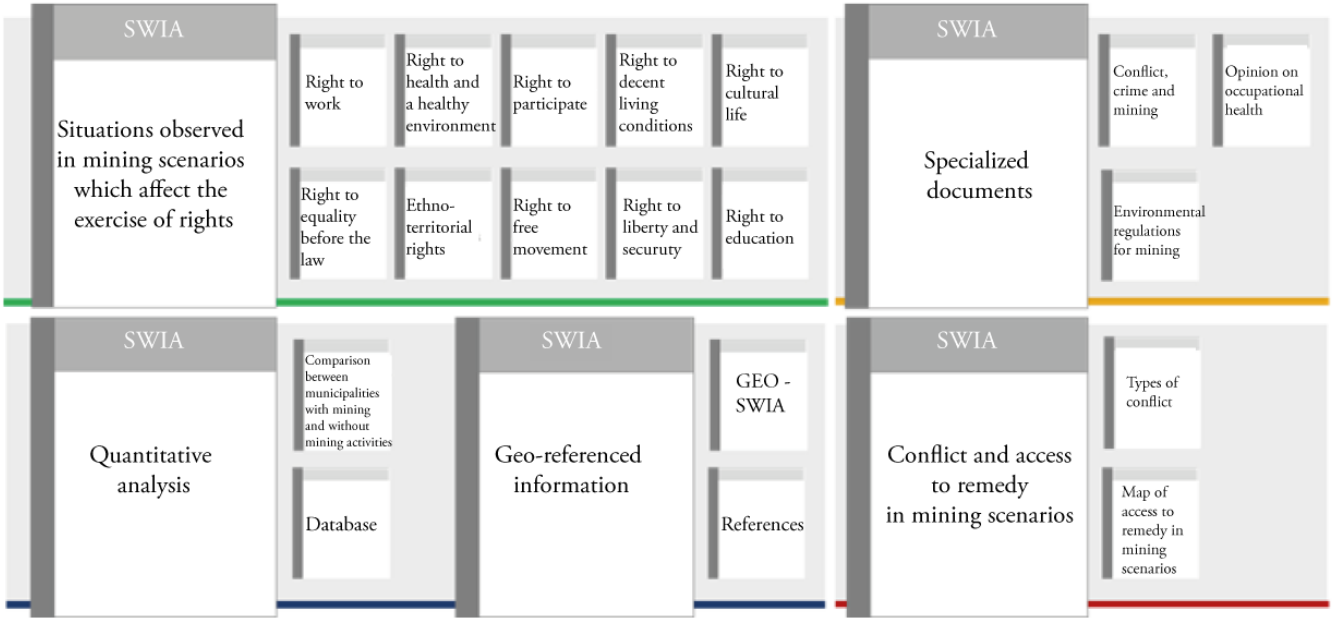
[1] Henceforth, unless otherwise indicated, when this document refers to "Companies," these must be understood as a set of actors dedicated to mining activities with some degree of organization, including large scale mining companies, and small and medium projects.

(i) Ten documents on situations observed in mining scenarios which affect the exercise of human rights.
(ii) Three documents specializing on issues highly relevant to the mining sector.
(iii) The results of the study's quantitative analysis.
(iv) The geographic information used.
(v) Two documents on the analysis of conflict and access to remedy in mining scenarios

Available at: http://creer-ihrb.org/proyectos-eisi/



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

IMPACTOS POSITIVOS Y NEGATIVOS
EXPLOTACIÓN MINERA

1

PROTECTING RIGHTS: AN OPPORTUNITY FOR ARTICULATING THE SECTOR AND THE TERRITORY

The SWIA provides evidence of the multiple conflict drivers in mining scenarios. Including, the effects of sectoral policies that affect spatial planning; the absence of policies that focus on protecting vulnerable populations; institutional weakness that interferes in ensuring equitable treatment in decision-making; and the absence of efficient and timely communication mechanisms between the sector and communities affected by mining activities; factors that generate conflict in the mining scenarios from which the investigation collected evidence.

A group of impacts are attributable to the absence of a human rights approach in the actions and decisions of the State for the management and operation of mining activities in the country. These impacts include a weakening of local governance; the lack of protection and increased risk of the vulnerable population; the implications on the right to material equality of the population which is at risk of becoming vulnerable; the impacts and loss of rights suffered by different ethnic communities; and difficulties accessing remedial mechanisms.

1. Misalignment of sectoral policies

The lack of alignment of sectoral policies with the territories generates conflicts between the community and institutions and undermines sector institutions, which in turn has an impact on governability and governance in the territories.[1] Misalignment between the sector and the territory can be seen in at least three highly important and relevant controversies regarding the security, protection and respect of human rights. First, the lack of alignment between territorial jurisdictions and the sector planning; second, the dismantling of titling processes and territorial realities; and third, the increased distance between the industry's authorities and the territories, which affects their governability and governance.

[1] This investigation understands these concepts as:
Governability as vertical decisions (from top to bottom) through which the State makes use of resources to address social, political, environmental, and economic issues (Hufty, 2006)
Governance as the multi-directionality of public power, including civil society as a key player in the decision making process and the protection and respect of individual and collective rights (Cante & Trujillo, 2014)

2. Increased distance between the industry's authorities and the territories

The increased distance between the industry's authorities, the territories and their needs is also reflected in the institutional weakness which interferes in ensuring the right to equality of small and medium-scale miners. Especially in gold mining scenarios, it has been found that the support given by these institutions to the miners is precarious, and the development of comprehensive inter-sectoral policies does not aim to ensure that the sustainability and profitability of small-scale mining. Under these circumstances neither the protection of mining rights, nor the respect for the rights of communities within its area of influence, can be guaranteed.

3. Public policy lacks a human rights approach

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

4. Absence of efficient and timely communication mechanisms between the industry and the communities

The absence of efficient and timely communication mechanisms between the industry and the communities affected by the development of mining activities jeopardizes the right to remedy, in addition to raising the level of conflict in the territories. Asymmetries in accessing information are a source of conflict and an obstacle in the exercise of rights, the dissatisfaction of communities regarding the access and quality of the available information is a recurrent issue in mining scenarios. This has become a source of conflict between communities and companies, as the former perceive that there is an imbalance regarding access to information. The communities consider that they do not have enough legitimate information regarding the effects of mining activities on the environment, their health and social welfare. Additionally, they perceive that institutions favor business when producing information and discourage opportunities where the communities can validate their complaints and disapprovals before the companies.

RECOMMENDATIONS

The nine types of recommendations stated, based on the analysis of the relationship between the sector and the territory are transversal, and influence in different ways how the aggregate impacts are managed, regarding the environment, safety, decent work environments, or those associated with migratory phenomena and the use of local content. Naturally, they also have an impact on the possibility of reducing conflict and creating an institutional environment conducive for stakeholders to have effective access to remedy.

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

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

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

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

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

Such coordination should include Territorial Planning, life plans for ethnic communities and other territorial planning mechanisms. Exclusion processes must be initiated during the earliest possible stage of the mining cycle, including options for the territories to benefit or not from the extraction of the resource.

1.3 Replace the *first come, first served* principle[2] in determining the awarding of mining titles: In order to solve many of the conflicts that arise from the titling procedures, the *first come, first served* principle as the regulation guideline must be eliminated; and restoring the strategy behind mining rounds should then be reconsidered. According to the ownership needs, this strategy sought to give the concession to the best qualified individual, or given the conditions of the territory to whomever provided the most appropriate manner to exploit the resource. In terms of the requests for previous consultation that arise regarding this strategy, it is necessary that this occur as part of the State´s responsibility to understand the territory, as part of the effort to seek the best prepared licensee, and thus enforce that it comply with the measures and agreements reached by the Government with the communities in those territories.

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

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

This regulation should focus on:

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

2. Institutional alignment for planning

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

[2] The term used in the mining is " primero en el tiempo en el derecho" which provides preferential treatment to the first applicant for a mining title regardless of its record in handling complex social and environmental issues.

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

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

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

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

4. Responsibility and better relationships with mining and environmental authorities in mining scenarios

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

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

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

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

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

6. Citizen services for access to remedy

6.1 Creating a single complaint system for the sector: in order to address and prevent conflicts arising both from the actions or omissions of the State, as well as from actions from the businesses themselves, the Ministry of Mines and Energy, in collaboration with the Ombudsman[3], and municipal ombudsmen, among others, need to develop a Citizen Service mechanism in mining scenarios which ensures secure access to information and procedures to address complaints and claims in an accessible, transparent, predictable, timely and culturally appropriate manner.

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

[3] Translator Note: Equivalent to the National Human Rights Institution (NHRI)

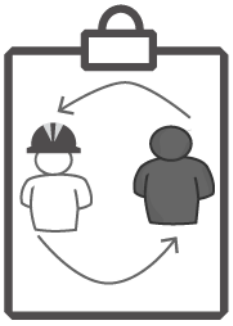
7. Protection of the vulnerable population in mining scenarios

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

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

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

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



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

- Opportunities to maintain a constant dialogue with the communities. These opportunities must ensure, to the extent possible, that the communities: i) are sufficiently informed about any issues that may affect them; ii) may easily present their requests and complaints; and iii) receive the responses required in a timely manner.

- ❖ Opportunities to dialogue with local and regional authorities, to ensure a sufficient level of involvement by the authorities in aspects relevant to the companies or mining projects that are of interest for local and regional development.
- ❖ Transparent communication mechanisms pertaining to information relevant to their actions, such as the payment of royalties and taxes, the jobs created, and production linkage in the territories, among others.
- ❖ Non-transactional relationship strategies with communities and local and regional governments. This implies the need for control systems to prevent conflicts of interest when constructing agreements with local stakeholders. In particular, specific controls must be established when negotiations involve the creation of jobs or the payment of compensations to communities, and construction works for the provision of public services.
- ❖ Systematic interaction mechanisms with communities and local and regional governments to provide a comprehensive knowledge of the territories affected by mining operations.

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

9. Peacebuilding

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

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

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

is essential to provide a conversion strategy with the resources, scope and institutional commitment for unsustainable mining towns to find options for their productive activities.

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

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

PUESTO
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2

THE ADAPTIVE CHALLENGE FOR ACHIEVING ENVIRONMENTALLY SUSTAINABLE MINING

Environmental impacts pertaining to mining in the territories are associated to weaknesses in land use policies, excessive reliance on command and control instruments as regulators for environmental resources, failure to monitor an activity which operates under high levels of informality, and limited information regarding the magnitude and the parties responsible for cumulative impacts in mining scenarios. In addition, these environmental impacts affect the exercise of other rights. For example, their relationship with the health of communities is one of the issues most frequently mentioned in the field, which in turn, highlights the absence of clear and timely information on the impacts attributable to mining, as one of the biggest concerns for communities in these environments. Environmental changes brought about by mining are of such magnitude, complexity and permanence in time that they require great effort, as well at the need to overcome the inertia common to all organizations, in order to achieve sustainable relationships and environments; which is the reason why this situation is configured as an adaptive challenge.[1]

1. The ineffective implementation of environmental management instruments becomes an obstacle in the preventive approach for protecting rights

Current environmental management instruments such as POMCA have not played a strategic role in the planning of the country's mining sector. As a result, the environmental and mining sectors often act in a divergent manner, making it difficult to protect the rights of the communities. For example, this is evident in the shortcomings regarding water management that have led, in some cases, to changes in the quality, availability and limited access to the resource for its use in other activities. This is particularly important in areas where vulnerable conditions are already evident, such as water scarcity, poverty and malnutrition.

[1] Heifetz, R. et al (2009) The practice of adaptive leadership, Cambridge Leadership Associates, Harvard Business Press.

2. Monitoring and control instruments as core pillars in the existing environmental governance are not enough

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

- Existing licensing instruments are very rigid when adapting to the different types of mining in the country. The requirements for a large mining concession are the same as those required for small-scale miners, regardless of their condition.
- They are insufficient when cumulative impacts need to become visible. For example, in Cesar, Guajira, Boyacá and Cundinamarca, although each mining project meets the requirements, communities and local and regional authorities report particulate matter air pollution as one of the greatest environmental impacts of coal and construction material mining.
- The way in which they are designed does not guarantee the ability of the environmental authority to monitor and control the activity. For example, the complexity of the operations for transporting construction materials in Boyacá and Cundinamarca requires an effort which exceeds the capacity of environmental authorities, because of the geographical dispersion and the number of production units involved.

3. Failure in the action and interaction between the different authorities creates mistrust

One of the biggest problems in mining scenarios, and one which is frequently mentioned by communities, is the lack of trust in that the actions carried out by the authorities are effectively neutral. While this occurs throughout the sector, 5 environmental issues of mistrust were identified:

- A lack of regular interaction between regional and national environmental authorities.
- The absence of national environmental authorities in local environments.
- Lack of coordination between the actions carried out by environmental and mining agencies
- Lack of clarity for the communities regarding the parties responsible for monitoring the environment.
- Lack of opportunities or suitable conditions for dialogue between companies, communities and mining and environmental authorities.
- Obstacles for the generation of legitimate information.

4. Absence of actions for addressing environmental liabilities in mining

There are many cases where the gaps in response to the consequences of environmental liabilities are evident. For example, there is no policy for addressing the environmental liabilities generated by inappropriate soil removal practices as part of unlicensed activities. The addressing of environmental liabilities is hindered by the complexity of assigning the responsibility to establish penalties or enforce obligations. Moreover, the country does not even have databases for the identification and reference of

abandoned mines, which can therefore be considered as environmental liabilities. However, it is clear that there is a significant accumulation of abandoned mining areas in the territory, which require immediate attention.

5. The absence of legitimate environmental information for communities living in mining scenarios hinders dialogue

One of the major findings during the dialogues with both community and institutional stakeholders, regardless of the region or type of mining, is the absence of clear and timely information regarding the environmental impacts attributable to mining activities and the consequences they have on the health of the communities. While there are inherent difficulties in the allocation of mining impacts[2] the manner in which environmental information is managed presents a challenge because:

- Instruments such as EIAs only have fragmented information regarding each of the mining undertakings. In addition, EIAs do not always properly identify the impacts on the ecosystems.
- There is a lack of integration between the environmental information generated by the different National Environmental System entities and that of the regional environmental organizations.
- There are no regional baselines that holistically describe the environmental and social context.
- Although there are some studies regarding environmental impacts and health, their results have no credibility among some stakeholders.
- Access to public information is difficult due to the excessive cost of the procedures involved and because citizens are not educated in how to access and use this information responsibly; this is an obstacle for control mechanisms supported by citizen oversight.

RECOMMENDATIONS

1. Cross-sectoral response to cumulative environmental impact management

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

[2] Assigning accountability in mining is difficult because i) the presence of multiple mining activities in one same region hiders the clear identification of who is accountable for the impacts and to what extent, ii) mining activities coexist with other activities that also generate impacts , iii) observable impacts may be the result of present or past activities.

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

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

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

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

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

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

1.3 The MADS should establish a program to develop skills, knowledge and research in the restoration of ecosystems affected by mining. In addition, it should establish protocols to monitor the reparation and restoration processes of areas included in the environmental management plans.

1.4 The MADS should review and restructure the environmental penalty system (Act 1333 of 2009) to include the following aspects:

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

1.4.2 Give greater importance to actions aimed toward the compensation and reparation of impacts and remediation of environmental rights and not toward fines and criminal penalties. For example, establishing mechanisms for the suspension of activities which cause the impacts and immediate reparation of the damage as an initial

response in order to prevent the damage from extending while the corresponding investigation process begins.

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

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

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

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

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

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

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

1.8 The MADS must define enforcement protocols for regulatory gradation and *rigor subsidiario*[3] in the assessment, prevention and resolution of territorial planning conflicts; delegating the regional environmental authorities with the ability to be proactive in the identification and prevention of conflicts. Accordingly, the MME must adopt a preventive approach to the compliance of environmental standards regarding processes for the certification of mining interests, with the technical support of other authorities. The first line of prevention, supervision and control should be the Ministry of Mines, as the agency responsible for the integrity (social and environmental sustainability) of mining undertakings. To this effect, the Ministry should implement a training program for local authorities to identify potential land use issues and harmonize the mining activities with the regulations proper to the territory.

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

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

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

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

[3] Translator note: *Rigor subsidiario* is a special power given to decentralized entities used to modify the current environmental legislation in defense of the local ecosystems. It is an administrative power based on the decentralization of autonomy that allows for a more rigorous local regulation than the national regulation.

2.2 Through the introduction of lighter EIA based on the collective construction of regional knowledge, which involve the company, indigenous communities, rural communities, local authorities and regional environmental authorities, include the bases for monitoring the operation and environmental compliance of the project into the environmental licenses and establish oversight and auditing programs as well as the presentation of management reports.

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

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

3. Strengthening management systems for effective access to information

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

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

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

4. Building trust based on transparent information

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

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

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

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

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

5. Adopting priority actions to protect the right to access water

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

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

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

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

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

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

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

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

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

7. Management geared toward the mineral value chain

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

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

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

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

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

9. Improving transparency and equity in participation and public awareness proceedings

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

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

- Understanding relevant policies in the mining sector
- Identifying and assessing environmental impacts in mining undertakings.
- Training citizen oversight committees

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

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

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

10. Adopting effective institutional and cross-sectoral coordination mechanisms

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

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

11. Adapting the scenario presented by the COP 21 Agreement

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

3

CHALLENGES IN THE PROVISION AND ACCESS TO SECURITY WITHIN MINING SCENARIOS

Environments where mining is developed have special characteristics that include an increased exposure to violence, the intensity of the armed conflict and common crime.

Security is defined as a set of actions aimed at protecting people from third party threats, which requires the legitimate use of force, either as a deterrent or for use where appropriate, accordingly (for example, United Nations, 2008). Violations of the enjoyment and exercise of the right to life, liberty and security are immediately linked to affectations of other rights. For example, if a person cannot travel to their place of work or study due to limitations to their freedom of movement or transit, it is not possible to exercise their right to work or to education, respectively.

1. Confluence of multiple criminal economies in mining scenarios

Different criminal economies converge in mining scenarios, such as drug trafficking, criminal mining, money laundering, extortion and kidnapping, among others. Some of the evidence suggesting the existence of a relationship between mining and crime include statements from (former) judicial officials in Cesar, who state that cases have been found associated with the collection of "taxes" on coal miner's salaries. In Antioquia "tax" payments to criminal gangs amounting to $ 50,000 to $ 100,000 pesos per dredger, and between $ 300,000 and $ 500,000 for the so-called "*dragons*" or mega-dredgers were also reported, in addition to payments to the FARC of up to $ 1 million per month for a backhoe. As for the relationship with drug trafficking, the quantitative analysis developed for this study suggests that gold producing municipalities have, on average, twice as many cocaine crops in comparison to similar municipalities. Lastly, in gold producing municipalities there are more kidnappings by the ELN (about double), as well as in coal producing municipalities, ELN (70%) and FARC (30%), in comparison to similar municipalities.

2. Stronger presence of illegal armed groups and organized crime that threaten the life and freedom of the people

The confluence of criminal economies results in a stronger presence of illegal armed groups and organized crime that threaten the life and freedom of the people. In particular, the quantitative analysis developed for this study indicates that the municipalities producing gold and coal inside the country have increased presence of armed groups. This is a pattern that repeats itself, regardless of the group:

- 16% of the municipalities compared reported the presence of the ELN, in contrast with 32% in gold producing municipalities.
- 35% of the municipalities compared reported the presence of the FARC, in contrast with 42% in gold producing municipalities.
- 12% of the municipalities compared reported the presence of the AUC, in contrast with 21% in gold producing municipalities.
- 27% of the municipalities compared reported the presence of the FARC, in contrast with 43% in coal producing municipalities in the nation's interior.

3. Deteriorating security conditions in mining scenarios

The risks associated with the increased presence of illegal armed groups and organized crime can be seen in different ways. In particular, mining scenarios report higher homicide rates, higher forced displacement rates due to internal conflict, and a greater number of landmine victims. As part of the quantitative exercise developed for this study, when the gold producing municipalities were compared with a group of similar municipalities, the results indicated a greater number of people displaced due to the presence of the ELN (about 10 times), a greater number of people displaced due to the presence of FARC (about 5 times), a higher number of false checkpoints set up by the ELN (about triple), a higher number of false checkpoints set up by the FARC (1.3 times), more injured civilians due to anti-personnel mines (about 4 times), and a greater number of massacres committed (40%). Similarly, municipalities in the upper range of coal production inside the country have more false roadblocks by the FARC (1.3 times) and a greater number of civilians wounded by landmines (threefold), regarding their comparison group. In terms of homicide rates, while the municipalities compared report 59 homicides per 100,000 inhabitants, gold producing municipalities reported 68. While coal producing municipalities inside the country report 48 homicides per 100 thousand inhabitants, the municipalities compared report 42 homicides per 100 thousand inhabitants. Finally, in the regions of Cesar and Guajira, while the control municipalities report 53 homicides per 100,000 inhabitants, coal producing municipalities report 64.

4. Insufficient police force to deal with crime

In mining scenarios, the deterioration of public safety and the confluence of criminal of economies lead to an insufficient number of police agents. This occurs due to the differences between the expected risks when planning police deployment (for example, when planning how many police stations are required in a territory, and how many men must be deployed), and the actual risks. This, added to flagrant conditions of informality, results in a lack of protection of private property. Thus, gold and coal mining scenarios exhibit a higher incidence of individual theft, auto theft and business theft in comparison to similar municipalities. Informality plays a significant role in this situation, while factors such as the low use of financial institutions (Bank of Opportunities, 2014), facilitate the occurrence of crimes against property.

RECOMMENDATIONS

1. Security and defense policy differentiated for mining scenarios

Mining scenarios are more vulnerable to deteriorating public safety due to common crime, and a greater exposure to the internal armed conflict and actions by organized crime. To this extent, we recommend that the Ministry of National Defense, in conjunction with the Ministry of Mines and Energy and other State agencies, design a security and defense policy differentiated for mining scenarios, aimed at the protection of rights, which at least includes the following aspects:

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

2. Formalization of local economies in mining scenarios to ensure control of the territories by the State

Environments where mining activities takes place, like the rest of rural Colombia, are defined by a high degree of informality. This informality facilitates the pursuit of criminal activities. In this context, we recommend a coordinated deployment of the state agencies responsible for the different activities to be formalized, based on a differentiated approach to the mining scenarios. Specifically, the Ministry of Mines and Energy needs to facilitate strategies that formalize the

mining activity and subsequent mining interests, in a sustainable manner; the Ministry of Commerce, Industry and Tourism through the Bank of Opportunities needs to promote the use of formal banking institutions; the National Land Agency or whomever acts in its stead needs to implement strategies to facilitate the formalization of land issues; and the Ministries of Labor and Health need to take actions that promote the formalization of labor and social security.

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

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

4. Recover the Government's monopoly on gold trade

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

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

5. Greater incentives for the development of legal economic activities in mining scenarios

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

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

6. Consider alternatives for inclusion in security agreements

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

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

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

7. Participatory assessment of security risks and human rights

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

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

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

7.3. Complaint and claims mechanisms against the performance of the armed forces which protect the identity of the complainants.

4

CHALLENGES IN THE USE OF RESOURCES FOR STRENGTHENING LOCAL ECONOMIES

The extraction of mineral resources within a territory can become an important source of opportunities for development, especially for the local economy. However, these positive effects on development should not only be measured by the economic growth of the regions, but also by the respect and enjoyment of their rights by the communities. While some cases offer opportunities for linkage, and these are desirable, in other cases, this linkage may not materialize, or result in economic and social costs which are not always predictable. Moreover, productive development created by the mining industry not only affects the creation of jobs and productive linkage in local environments; it also has implications for other productive activities in the territory.

It is difficult to control these effects due to their magnitude and ability to influence; therefore they affect the conditions for the enjoyment and exercise of rights at a local level. In addition, management of the available financial resources, which could play a positive role in addressing these impacts, is subject to a number of obstacles that hinder their use for local development. Therefore, local practices, policies and programs for productive development must move beyond direct linkage, facilitating the growth of local businesses and increasing self-reliance and sustainability in the communities.

1. The absence of the State and institutional weakness in environments living in conditions of poverty and where basic needs are not met, preclude the generation of productive linkage and the development of the local economies

On the one hand, within the area of influence of large corporate mining undertakings, the perception of communities regarding the lack of employment and productive linkage has made these groups accept the employment opportunities offered by mining, since they do not feel that the other productive dynamics in the territory are sustainable. However, there is a big difference in terms of new jobs according to the type of mining. Thus, the expectations of the communities in large-scale mining scenarios create a perception of an imbalance in the cost-benefit ratio due to the limited job opportunities offered in this activity in contrast to their undesirable impacts. On the other hand, small and medium-scale mining is an important source of employment and productive linkage, especially in remote rural areas with higher rates of non-satisfied basic needs. However, this presents major challenges associated with the formalization of small and medium-scale miners, especially women and ethnic communities who carry out their activities in an informal manner due to a multiplicity of factors

derived from complex socioeconomic contexts, a lack of recognition of their collective rights and limited access to resources, among others.

In both cases, effective State mediation is missing, in order to correct the negative effects and promote the development opportunities that mining brings; for example, a better and more timely coordination with educational plans or policies for the development of micro-enterprises. A systematic approach for the prevention of effects on the local production in the event of an eventual depletion of the mineral or the withdrawal of mining companies due to any other circumstance is not observed either.

2. The resources derived from royalties do not meet the needs of the communities due to inefficiencies and/or corruption

The Development Plans for both the national government, and the regional and local governments should strategically focus on identifying opportunities in the mining sector. Negotiations between companies and the government should focus on a common understanding of the benefits, risks, costs and responsibilities associated to the development of local content, in order to capitalize on the factors that positively affect the development, such as royalty payments. Thus, inasmuch as the available tax revenues are capitalized, the government can invest in infrastructure and other initiatives to promote the development and expansion of the productive base (Esteves, Coyne and Moreno, 2013). The testimonies of communities and institutions collected as part of the field research agree in that the amount of royalties does not correspond to the size and impact of the activity and, in some cases, the manner in which they are invested squanders opportunities which could address the most urgent needs of the communities, due to inefficiencies or corruption.

The review of documents and fiscal indicators from official sources corroborates the shortfalls of the royalty allocation mechanisms in helping prevent a decline in the quality of life of the mining municipalities. This is possible only when these resources are allocated to actions that mitigate the impacts associated with the activity and which support actions for the provision of government services. They could also help finance strategies to enable the viability of the regions in the event that the mining activity comes to an end. However, the problem of royalties is not limited to the lack of appropriate allocation guidelines. The management of investments derived from royalties presents difficulties arising from a lack of institutional capacity and from corruption. These are structural elements that are present in both mining and non-mining municipalities. However, when these factors coincide with the presence of an activity that generates significant revenue, it jeopardizes the possibility that these resources translate into concrete actions which promote local development.

3. Expectations associated to the generation of income due to the arrival of mining and / or the reduction of areas and land privatization results in the displacement of economic subsistence activities

Expectations regarding the generation of employment and the new configuration of the territory result in displacement of traditional economic activities such as agriculture, fisheries and livestock. The desire and need for better wages has led many people, especially young people, to work in the mining industry, leaving aside their peasant traditions. However, the general perception of those interviewed is that the labor supply of large-scale mining is not proportional to the needs and demands of the population. The decrease, and in some cases disappearance, of traditional subsistence practices has not

been offset by jobs in the mining industry. Meanwhile, changes in the configuration of the territories due to the reduction of areas and land privatization have also altered the communities' livelihood dynamics, threatening their food security. On the one hand, this occurs due to limitations in the access to public use areas "that include arable and grazing lands, as well as animal habitats " and on the other hand, to the deterioration of natural resources: "Water resources, air, land use and the flora and fauna have been transformed in the interest of mining, reducing their availability for the inhabitants of these territories "(CINEP, 2014: 52).

4. Changes in the territory due to the environmental degradation caused by small, medium and large-scale mining results in limitations to the use of resources

The impact to the environment resulting from large, medium and small-scale mining includes an environmental degradation which limits the use of natural resources by the communities and affects the development of mixed economies, social and cultural practices, as well as the health of its inhabitants. In particular, the large-scale exploitation of construction materials and opencast coal has left a mark on the territory; evident in the changes to the landscape, to the ecosystems, biodiversity, and water resources, among others. In turn, these impacts, have transformed the social, cultural and economic dynamics of its people for whom the access and use of natural resources has been restricted, directly impacting the exercise of their rights, both individual and collective. As is the case with large-scale mining, small and medium-scale mining have generated negative effects on the natural resources required for the communities' subsistence. Particularly in gold mining the arrival of stakeholders who use different techniques from those used in the traditional exploitation of the mineral, such as backhoes, dredgers or "dragons" has destroyed the land, leaving it barren and useless, and contaminated the water sources, affecting the survival and coexistence of the communities.

RECOMMENDATIONS

1. Responsible linkage in fragile environments

As part of the strategy to ensure responsible coordination between the undertakings and the environments, including a balanced assessment on the convenience of linkage versus the protection of traditional economies, the Ministry of the Interior and the Ministry of Mines and Energy, with support from the DANE and the National Planning Department (DNP) should consult local authorities, including community councils, indigenous reserves, etc., in an effort to gain extensive knowledge on productive callings and land use, which will help strengthen local economic callings, competitiveness and inclusive development independent from mining.

In particular, the prior consultation processes should include assessments on the impacts and opportunities on the callings and the use of resources by the different ethnic communities.

2. Assessment and monitoring of the use of local resources

In order to identify, mitigate and prevent socioeconomic impacts associated to the use of the local resources listed in planning instruments such as Environmental Impact Assessments, the Ministry of Mines and Energy, with support from the DNP, needs to develop indicators to measure and identify real and potential impacts on the use of local resources such as: the use of local labor, procurement of goods and services, and the effects on the availability and pricing of production factors. These indicators should include activities to monitor Environmental Management Plans and local and departmental development plans.

3. Strategy for the reparation of liabilities

The restoration of the territories, and the corresponding economic social sustainability through the use of non-active mine liabilities should be the priority in the allocation of fiscal resources derived from mining activities. Consequently, one of the priority allocations of the royalties should be the mitigation of cumulative impacts. In cases where the current royalty flows is insufficient, the General Royalty System should supplement the resources needed for the recovery of the mining territories. We recommend that the DNP develop and implement the appropriate mechanisms required to direct the resources through the General Royalty System.

4. Including mining in local development perspectives

In order for local economies to develop in accordance with community expectations, and the work force's capacities, participation and relevance in local development are recognized, the formulation of Territorial Planning, Local and Regional Development Plans and Life Plans for the Ethnic Communities, needs to include impact assessments and linkage opportunities with the existing or prospective mining activities.

To this effect, the Ministry of Mines and Energy and the DNP must design a protocol to ensure the appropriateness of the methodology and facilitate dialogue and interaction between the State and the communities, businesses and local authorities in an effort to recognize the particularities of the territories, the characteristics and individual needs of the communities and their importance in strengthening the local economy.

5. Due Diligence in linkages

As part of their due diligence process, companies must identify the aspects related to local development at its baseline. To this end, communities should be involved through transparent and inclusive mechanisms, devoid of discrimination risks, in order to access training opportunities, generate productive linkage and jobs.

To ensure continuance of the commitment, the due diligence process related to the use of local resources should be included in policies and programs, including clear procedures for disclosure and proper interpretation by the contractors.

6. Knowledge Management Program

We recommend that the UPME develop a knowledge management program in order for:

6.1. The UPME to identify and define the population, cultural and socioeconomic traits of the communities in the mining scenarios in order to identify potential responsible linkage opportunities from the earliest stages of mine planning.

6.2 The ANM to include the responsible linkage criteria in Social Management Plans, and agree with the municipalities the actions required to make the opportunities a reality. For compliance, traceability and transparency purposes we recommend that Social Management Plans are included into the PTO and are subject to the same treatment as all other aspects thereof.

7. Internal policies on hiring local labor

In an effort to encourage the involvement of local labor, we recommend that mining companies adopt a policy for hiring local labor, giving priority to areas where exploration and mining activities occur. Only when there is not enough skilled labor for these areas, should companies consider hiring personnel from neighboring municipalities or the rest of the country. In particular, companies should promote the recruitment of the more vulnerable population, such as ethnic communities and women, when they state their interest and have the necessary training and profiles.

8. Prevention, identification and mitigation of impacts on the use of local resources

Environmental impacts and the configuration of the territory as a result of mining activities, as well as changes to the landscape, ecosystems and water resources, among others, restrict the access and use of natural resources. Therefore, access to resources for traditional tasks by the communities may deteriorate. To this extent, we recommend that companies dialogue with local governments and communities to identify and address the major impacts to the local economy arising from mining activities. According to this identification, businesses, in conjunction with local governments, must design a plan for the prevention and addressing of the changes to the social, cultural and economic dynamics of the people, generated from the mining activity.

5

DISPARITIES IN MINING CONTEXTS FOR ACHIEVING DECENT WORKING CONDITIONS

Studying the impacts on rights in the workplace is relevant for understanding the effects of mining and the identification of weaknesses in scenarios other than the mining institutions that limit the ability of the State to protect and promote decent working environments. The subjects in this case are the people directly involved in the activity; however, government institutions responsible for managing and preventing impacts in the workplace are often outside the sector. This situation complicates the government's performance in situations where there is a low capacity for coordination and implementation of sectoral policies. Impacts on rights manifest themselves in the intervention of two factors:

- The difficulties to provide fair conditions of social protection by the State.
- The obstacles arising from the institutional environment and the way in which the production is organized that affect the ability of companies and projects to promote a culture of respect for human rights in the workplace, or at least mitigate the risk.

1. Public policy for the effective protection of decent working conditions is in transition

The public policies that stipulate the guidelines for social protection and risk prevention in the workplace [1] are currently in transition, and they aspire to provide a more robust framework for the protection of rights in the workplace. Given how recent these reforms are and the complexity of their implementation process it is difficult to draw conclusions on the effects of the policies on mining scenarios, simply because in many cases they are not yet observable. However, some of the elements that remain even after the reforms continue to be mediating factors that limit the capacity of the State.

- Act 1751 of 2015, establishes a new framework for the health policy in areas relevant to the impacts associated with decent working conditions, such as medical autonomy, which allows for a more timely attention to work disabilities, or the requirement to extend medical services

[1] Cabe destacar entre los instrumentos de política la Ley estatutaria de la salud (Ley 1751 de 2015), el nuevo Sistema de Gestión de la Seguridad y Salud en el Trabajo (decreto 1443 de 2014) y el Plan Decenal de Salud, que sienta los lineamientos de las políticas de salud pública hasta el 2021. Among the policy instruments, the following are worth highlighting: the statutory Health Act (Act 1751 of 2015), the new Safety and Health at Work Management System (Decree 1443 of 2014) and the Ten-Year Health Plan, which establishes the public health policy guidelines until 2021.

to marginal areas. How these and other aspects of statutory law are regulated will determine to what extent it can positively affect the factors involved in situations where the worker's rights are violated, for example, when they suffer from an occupational disease.

- 72% of the production units do not have workplace occupational health and safety procedures or policies (Ministry of Mines and Energy, 2016). On the other hand, although important advances have been made in terms of health insurance coverage, the percentage of miners who have professional risk insurance remains low (Ombudsman, 2015). The mining policy states as one of its objective to "generate higher human capital, technological and financial capacities" which among other things, help promote healthy work environments. However, the actions in this regard are still under design or have just recently been launched. On the other hand, its ability to include the most vulnerable groups, particularly in environments where criminal mining is present, requires complementary actions and a cross-sectoral approach whose actual implementation is not yet evident.

2. Difficulties in monitoring and controlling healthy work environments

The institutions responsible for the inspection, surveillance and control of the workplace risk management system have failed to respond to their mission, despite the fact that this problem was recognized long ago and that recommendations have been made to strengthen their surveillance duty. In particular, they show serious limitations in their ability to deter the controlled individuals from assuming certain hazardous behaviors; to impose sanctions when their actions deserve it; and, to monitor, in order to alert the corresponding authorities of the need for a timely intervention in order to contain or prevent further damages. They also show a limited ability in their capacity to accompany and prepare those who require special support in order for them to meet reasonable performance standards.

Outsourcing practices are also faced with difficulties in terms of monitoring and control. This contracting method creates conflicts because it fosters inequality, job insecurity and limitations to participate in collective bargaining or union activities. There is not enough monitoring of the outsourcing schemes to ensure the protection of rights, despite the fact that large-scale mining companies conduct audits to ensure they comply with rules and standards.

3. Limitations in information management affect the responsiveness of the authorities and promote conflict

One aspect that affects the effectiveness of the monitoring and control system is the limited capacity of state institutions to manage knowledge regarding the evolution of occupational diseases and reduce the issue of underreporting accidents (the latter is particularly serious in the case of underground coal mines). The lack of independent epidemiological studies is an obstruction to the factual planning of preventive interventions for the mining population, it also prevents the adoption of adequate criteria to prioritize actions and does not allow for the identification of health related advances that could be occurring in the workplace (in the absence of a baseline).

This incomplete picture of occupational hazards weakens the responsiveness of state agencies responsible for managing the occupational hazard system, because:

- It prevents the timely planning of the allocation of the health system's financial and technical resources in order to respond to the reality of this epidemiological profile.
- The opportunity to inform those responsible for the design and implementation of public health interventions is lost, both at the territorial (health departments, hospitals) and the central level (Ministry of Health).
- It prevents medium and small businesses and projects from obtaining reliable data on the behavior of these events and therefore weakens their own risk management and performance evaluation capabilities.

On the other hand, this situation sows fertile ground for an even greater mistrust between companies and workers.

4. Experience in the comprehensive management of impacts from the perspective of policies in favor of the elimination of child labor

Child labor has been a major human rights concern in small and medium-scale mining projects and has been at the core of several public policies (DPS, 2015). The decision to target mining regions in the Families in Action Program is a concrete example of the interventions required to prevent affecting human rights through:

- The proper articulation of cross-sectoral actions.
- Interventions designed according to the appropriate diagnosis of the factors involved in the dynamics of mining scenarios.

The targeting strategy, agreed in conjunction with the Ministry of Mines, in all cases includes gold mining municipalities where criminal and illegal mining is strong and is a concrete example of the kind of comprehensive actions required to address many of the aggregate impacts associated with mining.

RECOMMENDATIONS

1. Strengthening the preventive approach in institutional activities

1.1 In order to respond to occupation health risk situations in the context of informal mining, the Ministry of Labor in conjunction with the Ministry of Social Protection and the Ministry of Mines should:

- Strengthen institutional capacities in order to monitor and provide specific guidelines to this population, for them to approach State agencies responsible for implementing and monitoring promotion and prevention interventions in the workplace.
- Carry out active investigations on occupational diseases in mining scenarios where small-scale projects operate in order to reduce under-reporting and report plans according to the General Occupational Hazards System.
- The regulations for the statutory health law needs to consider specific provisions for the mining sector, in particular: service availability in isolated areas, design and application of criteria for the National Drug Policy.

1.2 The Ministry of Health should lead the regulation of Article 9, Act 1751 of 2015, considering the particular traits of the mining sector and adjust its business model accordingly. This effort should include participation mechanisms for non-corporate miners in identifying social determinants of health.

2. Improvements in the implementation of policies for the promotion of healthy working environments

Given that the health of the vulnerable mining population is influenced by social determinants of health arising from the activity itself, different measures are required to address the population's needs for prevention, promotion and treatment:

2.1 The Ministry of Labor and the Ministry of Health and Social Protection should develop strategies to unify protocols for the diagnosis and treatment of occupational diseases, coordinating and aharmonization the actions of the ARLs and EPSs. These measures should help speed up the response regarding disability processes and to monitor the job conditions of workers who must be relocated.

2.2 Faced with the occupational hazard situation found in small mining projects, the Ministry of Labor and the Ministry of Health and Social Protection is required to include guidelines in the General Occupational Hazards System in order to:

Implement actions for the promotion and prevention of self-care, giving priority to mineworkers who are more vulnerable.

- Properly monitor these interventions and gradually incorporate inspection, monitoring and control activities appropriate for the project's capabilities and characteristics.
- The Ministry of Mines and Energy in conjunction with the Ministry of Health should establish a dialogue with informal miners to ensure that miners adopt and participate in policy decisions regarding workplace safety

3. Strengthening knowledge management of occupational risks

3.1 In the framework of the health information management policy, as defined by the Statutory Health Law, the design of the single health information system, by the Ministry of Health, should consider the inclusion of data that defines the health and disease dynamics in people who are engaged in mining activities. The system should include mechanisms that include this information in the definition of public health policies and allow for:

- The analysis of social determinants of health in mining scenarios.
- The adoption of incremental measures in population interventions supported by epidemiological evidence for the mining sector.
- The addressing the fears of the community and workers through the use of timely and clear information.

3.2 The Ministry of Health, in coordination with the Ministry of Mines and Energy, should develop epidemiological baselines with suitable methods and results which are available to all stakeholders regarding the prevalence and incidence of occupational diseases. The quality and transparency of the production and dissemination process of epidemiological information should help reduce conflicts between employees and contractors regarding this issue.

3.3 The Ministry of Health with the support of the Ministry of Mines and DNP should develop a mechanism to ensure resources, for example, through a parafiscal fund to finance epidemiological studies in mining scenarios.

4. Protection against discrimination due to health conditions

4.1 The Ministry of Labor must adjust regulations in order to give companies clearer indications as to how to avoid incurring in suspicious discrimination practices during the hiring process. The guidelines and procedures should follow the minimal fundamental principles enshrined in Article 53 of the Constitution.

4.2 The Ministry of Labor must establish guidelines to accompany mining companies in the task of adapting their processes to avoid discrimination during the hiring process, particularly in cases where there is discrimination due to health conditions.

6

DIFFICULTIES IN ADDRESSING MIGRATION AND SETTLEMENT ISSUES ASSOCIATED WITH MINING

The impacts of migratory phenomena that occur in mining scenarios due to economic booms, displacements and evictions are caused by the absence or atomization of state regulation and corporate due diligence.

Migration and resettlements associated with mining are relevant to the human rights impact assessment in that they are associated with environments in which a person or group of people can be evicted or forcibly displaced by projects that impact the environment, the land, resources and even the safety of people. These migrations can intensify social conflict, inequality and segregation, and as a result affect populations which are socially and economically vulnerable, especially women, children, minorities and indigenous peoples.

In addition, migration associated with mining is also associated with situations where people decide to migrate to other areas where mining provides employment opportunities and income from the economic boom. In some cases, this can be considered as forced migration, as the result of the lack of opportunities in their hometowns. This type of migration affects the local economic, social and cultural dynamics which are not always compatible with the environments and its stakeholders. This coupled with institutional absence or weakness, limits the ability to protect the rights of the local population, especially in contexts which are vulnerable and suffer from scarcity.

1. Lack of regulatory frameworks for migration attention by mining undertakings in scenes of institutional weakness

There is no specific regulatory framework to address migrations caused by situations other than the armed conflict, such as displacement associated with project development or motivated by the search for income opportunities in mining scenarios. This gap increases the vulnerability of the migrant population, and manifests itself in the absence of tools to meet the demands generated by this type of migration. Therefore, even though Colombia has a policy to address forced internal displacement this policy excludes actions and tools regarding migrating populations other than those displaced by the armed conflict.

2. Resettlements or displacement caused by development affect the communities' social fabric, identity references and cultural practices

The loss of territories due to involuntary resettlement and displacement caused by the development of mining undertakings results in the fragmentation of the social fabric, the loss of identity references and the rupture of ethnic and cultural traditions of both host and migrant communities. For many of the resettled communities, rivers, wells, "*jagüeyes*", and communal savannahs, among others, are spaces available for social integration or that have a cultural significance within the collective memory of the communities. These spaces encourage the social cohesion of its members, while acting as a stage and tool for the transmission of community knowledge to the new generations. Thus, the loss of these spaces as a consequence of moving to a new environment affects their own development dynamics and compromises the continuity of cultural practices of African, indigenous and peasant descent. In addition, the fragmentation in the social fabric is further compromised through the loss of support networks with neighboring communities, as well the conflicts that arise between their members during negotiation processes with the companies.

3. Deficit in the provision of public goods, and imbalances in the work market due to the increase in demographics caused by the arrival of mining

Significant increases or reductions in the demand for public goods due to displacement caused by developments or migrations in search of opportunities for better income in mining, can lead to a deficit in the provision of such goods and imbalances in the work market (both formal and informal). Those mining municipalities with rapid population growth do not necessarily have a strong public administration that is able to respond appropriately to ensure the coverage of basic services. This coupled with poverty and vulnerability, results in the emergence of new social problems. These environments have overwhelmed the local authorities' capacities, which in view of the gaps in public policy and the lack of a coordinated effort by the national government in the implementation of instruments to address the situation, promotes a systematic deterioration in the enjoyment and exercise of rights. This type of impacts not only highlights the tensions arising from the settlement and mining activities by those who are not native to the territory, but can also feed the stigmatization of migrants as dangerous or undesirable, when in many cases they have already been victimized, and their vulnerable living conditions have forced them to migrate from their place of origin.

4. Breaks in the traditional forms of livelihoods due to a change in the productive callings, from farming to mechanized mining exploitation

This is evident in the case of the ethnic communities of Choco. Poverty and other vulnerability traits that arise amid the nomadic dynamics of the mining activities of these communities have not received an adequate response by the Governments in order to cope with the impacts. The arrival of stakeholders who exploit the mineral using techniques other than the traditional techniques, such as bulldozers, dredgers or dragons, has fostered a break in the customs of some of the municipalities of Choco. The nomadic nature of these jobs generates a break regarding the communities' traditional lifestyles by changing its productive callings from farming to mechanized mining exploitation. The need to run behind the backhoe, rather than continue with the "*barequeo*" is explained by the damage caused by this

machinery. The soils are infertile and useless, the water polluted and people have no livelihood opportunities, resulting in a scenario that favors economic and food insecurity.

RECOMMENDATIONS

1. Design a public policy to address migration issues

The absence of a public policy and subsequent instruments to address the damages arising from the mining boom migrations or displacements caused by development, promotes the multiplication of human rights impacts. For this reason, we recommend that the Ministry of Interior design a comprehensive policy to address population movements caused by factors other than forced displacement by armed conflict. This policy must be based on the precautionary principle and respect for human rights.

2. Develop an early warning system for migrations associated to mining activities

As a measure to foresee the migrations associated to mining activities, and build the capacities required to address them, the following actions are recommended:

2.1 The Ministry of the Interior should develop an early warning system to foresee the different migratory phenomena associated to the internal armed conflict.

2.2 The National Mining Agency should develop and update a risk map of the migrations associated to the mining activities, which feeds the early warning system. This requires, for example, the systematization and individualization of the communities that are engaged in the nomadic activity of alluvial gold mining.

2.3 The CAR and ANLA should ensure that the information collected for the EIAs and PMAs, is also included as input for the early warning system.

2.4 The early warning system must interact with institutional actors, at the national, regional and municipal level, whose actions are required for the proactive addressing of the migration phenomena.

3. Offer differential attention for the vulnerable population

In order to care for the vulnerable population who is specifically affected by migration, such as children, women and ethnic communities, we recommend that municipal and departmental governments develop specific protection strategies this vulnerable population based on common parameters directed by the Ombudsman. These strategies should ensure that municipal and departmental authorities involve the local institutions responsible for protecting these groups, and humanitarian aid organizations in a timely manner.

4. Prevent the stigmatization of the migrant population

Given the possibility that migrant populations looking for income are stigmatized, and the social problems derived from such stigmas, the Ombudsman, in conjunction with local authorities must develop mechanisms for the prevention and resolution of conflicts, which also support the inclusion processes of these communities in the receiving societies. In turn, these mechanisms become actions for the prevention of subsequent migrations, during the time the migrant population effectively becomes attached in the host territory.

5. Prioritizing actions for populations who are at risk of migrating

The Ministry of Mines and Energy, the Ministry of Education, the Ministry of Health, the Ministry of Labor and other state agencies need to include in their policies a differentiated intervention strategy focused on creating conditions to retain population through education and income generation programs, in an effort to avoid the forced displacement of people migrating due to the mining bonanza in search of opportunities to generate income and decent living conditions.

In order to effectively implement this strategy in environments which can potentially eject populations, the municipalities and state agencies mentioned above, should focus their actions on the groups identified by the Early Warning System, and the most vulnerable minerals in terms of this phenomenon, as is the case of gold.

6. Regulatory framework for involuntary settlements

The absence of a specific national policy on involuntary resettlement, results in the impossiblity to ensure that these are given fair treatment and, indeed, achieve an improvement in the quality of life of the resettled populations. Therefore, we recommend that the Ministry of Mines and Energy, in conjunction with the Ministry of the Interior and the Ministry of Environment, design a regulatory framework to effectively allocate the responsibilities among the various state agencies and businesses involved, in order to effectively implement the resettlement processes. This regulatory framework should at least consider the following:

- Detailed communication processes between the State, businesses and communities, in order that the population under resettlement has access to all the necessary information throughout the process.
- Conflict resolution mechanisms between the State, businesses and communities.
- Transparent complaint and claim attention systems, easily accessible to the general stakeholders.
- Verification mechanisms, with process indicators and visible results for conducting the verification process.
- The adoption of international resettlement standards. In particular, we recommend the inclusion of IFC-World Bank standards.

7. Responsibility of the State:

Among the responsibilities assigned to the State, as part of the regulatory framework for involuntary resettlement described in Recommendation 6, the following points should be considered:

7.1 The National Administrative Statistics Department DANE, with the support of the Ministry of Mines and the Ministry of Environment should perform and update population censuses in areas where there is a possibility of settlements occurring in the short, medium or long term. This would provide a consistent baseline regarding the population to be resettled whenever the resettlement effectively occurs.

7.2 The Ministry of the Interior with the support of the Ministry of Mines and the Ministry of the Environment, must be responsible for a transition plan for resettled populations, to ensure the provision of public goods and services to these communities durng the period after they depart from their territories and before their arrival to the designated resettlment site. Under no circumstances is it acceptable to violate the rights to a decent life, health, education, within a context of neglect of the aforementioned population.

7.3 The Ministry of Mines and Energy, with the support from the National Land Agency, cadastral authorities and the Office of Civil Registry should harmonize the POT's with the land and services needed in the territories, in an effort to define the places of origin and resettlement, ensuring that the real estate market is fee from speculation during the resettlement process.

7.4 Given the need to address and prevent conflicts arising from involuntary resettlement in mining scenarios, we recommend that the Ministry of Mines, in collaboration with the Ombudsman, local prosecutors, and other relevant institutions, as appropriate, develop a complaint system in the mining scenarios, which takes into consideration the attention to the population which has had to resettle due to mining activities.

8. Corporate Responsibility

Among the responsibilities assigned to companies within the involuntary resettlement policy framework described in Tecommendation 6, following points should be taken into consideration.

- Make the adoption of the IFC-World Bank standards a public and explicit matter.
- Refine reporting policies, to ensure they are efficient and that all the necessary information is presented to the communuty before, during and after the resettlement process.
- Ensure that the EMPs make an exhastive study into potential resettlement cases, reporting to the Ministry of Mines and other state agencies all pertintent information regarding these cases.

Regardless of whether communities are ethnic or not, corporate conducts should focus on ensuring their rights. Mechanisms for more effective dialogue between companies and communities should be guaranteed.

7

CONFLICT AND ACCESS TO REMEDY IN MINING SCENARIOS

The rapid increase of mining activities, both in regions where this line of production is traditional or other territories that are moving towards mining economies, has led to increased tensions between companies and mining projects operating in the mining territories and communities located in the area of influence. Specifically, the following situations have been identified: (i) conflicts associated with institutional actions and the effectiveness and implementation of standards; (ii) conflicts associated with weaknesses in due diligence processes by companies and projects and (iii) conflicts associated with the absence or illegitimacy of information. Furthermore, the study identified different conflict resolution mechanisms, both formal and informal, which include: (i) government level judicial remedial mechanisms; (ii) government level extra-judicial remedial mechanisms; and (iii) alternative conflict resolution mechanisms.

1. Conflicts associated with institutional actions and the effectiveness and implementation of standards

The analysis of everyday conflicts in mining territories, where gold, coal or construction materials are mined, identified the repeated occurrence of conflicts associated with institutional actions and the effectiveness and implementation of standards. In particular, it identified: (i) inconsistencies between instruments and decisions for land use and the communities' economic, social and cultural practices; (ii) inconsistencies between the decisions taken by the different entities regarding individual or groups processes; (iii) gaps, dysfunctionality or irrelevance of the regulations applied to the licensing and mining formalization processes; (iv) the absence or weakness of guarantees that ensure the freedom of opinion, expression and association against stakeholders interested in weakening of social organizations; (v) the absence of clear and fair rules regarding the regulation of commercial transactions and agreements; and (vi) insufficient capacity of the local authorities to plan and address migration-related phenomena caused by mining bonanzas.

2. Conflicts associated with weaknesses in due diligence processes by companies and projects

Moreover, conflicts associated to the lack of due diligence by mining companies and projects were also identified. Some of them include: (i) failure to comply with rules and regulations; (ii) ignorance in terms of the socio-cultural realities, customs and concepts; (iii) absence of actions required to address asymmetries in the access to natural resources; and (iv) differentiated treatment, which manifests as

exclusive and preferential actions toward certain sectors of the population, which are not based on their vulnerabilities.

3. Conflicts associated with the absence or illegitimacy of information

In addition, the analysis showed the repeated occurrence of conflicts associated with the absence or illegitimacy of information, among which three specific cases can be highlighted: (i) the absence or illegitimacy of information regarding impacts to the environment and health; (ii) incomplete information and lack of transparency; and (iii) the lack of transparency in information regarding nonconformity of agreements with public forces.

4. Remediation mechanisms immersed in complex procedures and with a limited scope

Moreover, the analysis identified the state mechanisms for access to remedy, that address citizen demands when the conflicts detailed in paragraphs 1 to 3 occur. However, it should be noted, that these mechanisms do not always provide a complete and easily accessible response to the communities, and sometimes they translates into a complex bureaucratic processes that rarely leads to definitive solutions. The following are among the mechanisms identified: (i) government-level judicial remediation mechanisms: habeas data, right of petition, habeas corpus, writ for the protection of fundamental rights, proceedings for compliance, public interest claim and class action suits[1]; (ii) government level extra-judicial remediation mechanisms: Ombudsman, National Contact Points for the OECD and public complaint offices, and mechanisms associated with citizen participation such as community action boards and community justice, among others; and (iii) alternative conflict resolution mechanisms: conciliation, amicable settlement, arbitration, justices of the peace, raising the public's awareness of environmental impact studies and environmental public hearings, among others.

[1] Translator note: A class action suit is a claim for damages. It aims to financially compensate the damage of "subjective or individual content", which arises from a damage which has already occurred or is in the process of occurring, these characteristics differentiate it from the popular action which is considered as a preventive measure and pursues the protection of collective rights. (OAHCR,2003) http://hchr.co/publicaciones/libros/mecanismos.pdf

RECOMMENDATIONS

The following are a series of recommendations that are considered relevant in order to address conflicts in mining scenarios and ensure effective access to remedy. These recommendations do not necessarily imply an immediate action. On the contrary they imply major changes within the State, in order for it to adequately comply with its duty to protect the human rights of its citizens in business environments.

1. Given the absence of a state mechanism that can identify the occurrence of conflicts and complaints from the communities living in mining scenarios at an early stage, we recommend the creation of an inter-institutional system for complaints and conflicts, which has the following characteristics: accessible, transparent, predictable in terms of processes, culturally appropriate, legitimate, equitable, consistent with fundamental rights and subject to regular upgrade and improvement reviews.

2. Due to general ignorance on the operation and scope of each of the entities that comprise the State, a single window is required, in order to present rights of petition in terms of business and human rights. The main objective of this window is to prevent citizens who lack specific knowledge on the structure of competencies and distribution of the State from raising a written or verbal right of petition at a single window to address human rights issues and companies for all sectors operated by the State.

3. Due to the lack of coordination between the different entities that receive complaints or reports of possible conflicts and impacts to human rights in mining scenarios, a technical consultation process is required for such entities (Ministry of Labor, Health and the Environment, ANLA, ANM, and Regional Autonomous Corporations, etc.) in order to ensure institutional cooperation and establish criteria for monitoring the system and the definition of the relevant criteria, and to distinguish issues concerning human rights situations from those which do not.

4. Faced with increasing conflicts between communities and mining companies caused by affectations by the latter to the effective enjoyment of human rights, it is necessary to evaluate and design 1) the potential pro-forma clauses for conflict resolution in formal agreements between communities and businesses, and 2) the circumstances, procedures and methodologies required to initiate conciliation, mediation, arbitration mechanisms and others based on the communities' socio-cultural traditions. This assessment exercise should involve businesses, communities, local and public authorities at the local and regional level.

5. Given that communities living in mining scenarios prefer legal mechanisms to access remedies in cases affecting human rights, and therefore alternative mechanisms for dispute resolution (ADR) are not considered as appropriate mechanisms for conflict resolution, is necessary to strengthen the work performed by the justice houses, centers for conciliation and arbitration, legal clinics, civic centers, community action boards, agencies and officials, on two fronts: 1) to raise awareness regarding the ADRs and 2) identify the opportunities they have for resolving conflicts in mining scenarios.

6. In view of the low use of ADRs as a mechanism for addressing and resolving conflicts concerning the violation of rights by business operations, the development of a training program aimed at conciliation centers, houses of justice, legal clinics and other instruments is required, in order for them to apply ADRs to mining legislation, responsible mining practices and disputes. This program should help strengthen the capacity of these centers to serve the different stakeholders.

CONCLUSIONS

Beyond presenting the specific recommendations to the different stakeholders in terms of sector policies or actions required, the Sector Wide Impact Assessment of the Mining Sector identifies a number of aspects that determine the nature of the interactions occurring within the territory where gold, coal and construction material mining are present. It also provides a better understanding of how these relate to the limitations for mitigating and preventing impacts on human rights, and their contribution to peacebuilding in their respective territories in the medium and long term. Five aspects stand out as recurring elements in this diagnosis:

Misalignment between mining policies, institutions and territories. In particular, we observe the absence of opportunities for informed dialogue between businesses and institutions, businesses and communities, and institutions and communities. In addition, the initiatives for formalizing the mining activity do not include participatory processes; mining agencies present in the territories are not capable of solving problems in an effective manner; and mining is not included in the territorial development plans as a resource that promotes development.

Absence of policies and programs for the protection of vulnerable populations. This situation is characterized by a gap in the responsibilities of the government agencies regarding the protection of the rights of miners at risk, as well as the absence of an approach based on the identification of migration and displacement risks. Moreover, we also observe the absence of a comprehensive regulatory framework for involuntary resettlement, which means that businesses implement it in any manner they deem appropriate, without the support of regulatory guidelines. Finally, policies aimed at combating criminal mining focus on the use of force, and do not include a human rights approach to address the needs of vulnerable populations involved in the actions of criminal groups.

Severity and inflexibility in the regulatory framework for mining. Mining policies follow a single approach, and make no significant efforts to account for the different characteristics of each environment. In particular, the regulatory framework for all mining projects is the same, regardless of the conditions and capabilities of the various types of production units or the distinctive characteristics of the environment. In the same vein, environmental regulation does not adapt to each environment, which results in weak monitoring of the large-scale mining and strict monitoring for small mining projects, which raises the costs of formalization. This is compounded by the existence of fines and sanctions which fail to result in remedial actions, and end up undermining the formalization process. Finally, the manner in which mining is classified, specifically when mining is carried out as a survival mechanism, ends un becoming a poverty trap for miners, given that they are no longer recognized by the State if they implement any actions to modernize their operation and improve their income.

Limitations regarding peacebuilding in the territories, conditioned by access to remedial mechanisms. Most conflicts in mining areas are associated with certain administrative actions or lack thereof. This situation is compounded by shortcomings in the due diligence process of companies and asymmetries in access to information. Additionally, deficiencies were identified in the access to remedy mechanisms, which are still insufficient in addressing the conflicts associated with mining. In fact, State agencies fail to interact in a consistent, predictable and consistent manner, in order to provide easy access to remedy. Other limitations to the peacebuilding process in the territories include, the State's inability to reconcile actions for land restitution, formalization of property and the granting of mining interests; and the lack of government action in scenarios where criminal mining is present, leaving

communities exposed to violence by criminal groups, abandonment and stigmatization of government agencies.

Deeply rooted distrust between mining companies and the communities. In addition to the institutional weaknesses witnessed in the mining environment, distrust between companies and communities makes it impossible to carry out effective actions for the protection of rights. The following are some of the aspects identified: (i) the absence of reliable opportunities for dialogue which address the violation of rights; (ii) the absence of conflict resolution mechanisms; (iii) confusion regarding the roles and responsibilities of the companies and the State; (iv) insufficient complaints and claims mechanisms required to access remedies; and (v) the perception by the communities of the coordinated actions between the State and companies.