

## Extractive industries, natural resources and human rights in Colombia



In recent years, there has been an intense debate in Colombia about the role of mining in the national development process. The country is experiencing a boom in mining activity. In a decade the coal mined in the country has almost doubled, from 38,242 million tons in the year 2000 to 74,350 million tons in 2010<sup>i</sup>; in addition, the area of land given titles for mining has soared in recent years. In 2002 there were mining concessions over 1.1 million hectares, while in 2009, concessions had been awarded over 8.4 million hectares<sup>ii</sup>.

This boom has led to the emergence of and an increase in social conflicts linked to the presence of mining companies conducting exploration and development activities in rural areas. Between January 2001 and December 2011, 274 social struggles took place, associated with the extraction of oil, gold and coal<sup>iii</sup>. These social struggles are occurring within a context of repression and the criminalization of protest.

Below, we offer a summary of the multiple links between mining industry activities and human rights violations in Colombia, which demonstrate that mining policies have not led to a reduction in poverty or an improvement in the quality of life of the population in areas surrounding mining activity, and that on the contrary, the environmental and social consequences of such interventions threaten the rights of present and future generations in Colombia.

### Mining, poverty and economic, social and cultural rights

Large-scale mining has not contributed to overcoming poverty in municipalities where mining activities have been implemented for more than two decades. The overall data shows that in the departments with the greatest amount of mining activities, there is not a substantial improvement in social indicators compared with the national average. Indeed, in some cases the proportion of the population affected by poverty is greater than the national average:

Department	% of land granted for mining	% of poverty	% of extreme poverty
National average <sup>v</sup>		34,1	10,6
Antioquia	11	29,3	8,7
Bolívar	14	43,7	12,0
Quindío	25	40,8	11,7
Tolima	13	43,1	15,2

Sources: % of area mined: report of the Comptroller General's Office; % of poverty and extreme poverty by department - 2011

Moreover, data from within these departments shows that this trend is repeated. For example, in the mining municipalities in the centre of the Cesar department, where the greatest amount of coal was extracted in 2011, the proportion of people living with their basic needs unsatisfied was higher than 50%, while the departmental percentage stands at 30%. This situation is also linked to corruption and fiscal policy with regards to income from mining. The current policy aims to encourage foreign investment by reducing royalties, and by establishing tax exemptions and discounts for businesses.

For many rural communities, the installation of mines has transformed their lands and livelihoods. As a result of open cast mining, agricultural lands, which provided work to support the local population, have been lost; while access to water is limited and has deteriorated in quality. For example, the community of El Hatillo, located in the centre of Cesar, has lost more than 180 acres of farmland in the past 20 years, as a result of the installation of coal mines. State research estimates that in this department, 14% of ecosystems have been affected by large-scale mining and that a further 71% mining applications to the state body *Ingeominas* will affect the remaining 85% of ecosystems<sup>v</sup>.

Affected populations are turning to the courts to seek protection of their rights. In a recent decision, the Constitutional Court ordered the protection of the right to life, health, privacy and a healthy environment for citizens living in the catchment area of one of the open cast coal mines belonging to the North-American Drummond Company<sup>vi</sup>. Additionally, 3,500 indigenous Zenú families from the Córdoba department filed criminal complaints against the boards of Cerro Matoso (a nickel mine owned by BHP Billiton, a British-owned company) for the alleged liability of the company in “*damage to natural resources, environmental pollution, personal injury with permanent functional disability and permanent physical deformities*”<sup>vii</sup>.

### Lack of significant economic contribution

From an economic point of view, the Colombian Comptroller General’s report “Mining in Colombia: Basics to overcome the extractive model” shows the current lack of significant contribution by the extractive sector to the country since it produces raw material destined for export.

In addition there are significant tax losses to the State. The report notes that: “*the tax system in Colombia is characterized by its intricate complexity and precarious demands to companies to submit detailed information on their tax returns, with a consequent lack of transparency. There is also a wide range of deductions, rebates and exemptions to income tax under the current tax legislation in the country*”. According to data published in the report, the tax expenditure caused by deductions and discounts to income tax for the mining and hydrocarbons industry was 203% (that is to say “*for every 100 pesos actually paid for this concept, mining companies were entitled to discounts which ended up as losses for the State of more than 200 pesos*”) and 118% between 2005 and 2010, respectively. Although the situation improved in 2011 – with losses of 82% and 57% respectively - thanks to a “*mini-tax reform*”, in previous years there were significant losses for the country.

The Comptroller also reports tax evasion practices by mining companies such as “*under-invoicing transfer prices between associated companies*” and the failure to declare part of the production, proven by comparing the quantities of ore exported with the production levels declared by the mining authority. Failure to declare a part of the production royalties causes losses in royalties, as well as tax losses such as income tax and VAT. The major difference between declared production and exported ore leads the Comptroller General to speculate whether “*this is a simple case of evasion in the payment of royalties; or whether it corresponds rather to a systematic practice of fictitious exports aimed at illicit money laundering*” (report to Congress on the State of the Environment and Natural Resources 2011-2012).

### Mining, human rights and forced displacement of the population

The internal armed conflict in Colombia has been ongoing for the past 50 years. There is an overlap in the lands where extractive industries and armed actors are both present, leading to a co-existence between one and the other, in which the mining companies have benefitted from the activities of the armed groups.

Mining and oil extraction areas overlap with areas where gross human rights violations have occurred. The Comptroller noted that according to figures from the mining and energy sector trades union, “80% of the human rights violations occurring in Colombia, are taking place in the mining and oil municipalities; 87% of forced displacement occurs in these municipalities and those which receive royalties for mining and energy production; 78% of crimes against trade unionists, 89% against indigenous peoples and 90% against Afro-descendant peoples, are committed in mining and energy areas”<sup>viii</sup>.

The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) recently highlighted the overlap between mining and displacement: “*The map of the extractive industries coincides with the presence of non-State armed groups*”<sup>ix</sup>. This also presents a challenge to the restitution of land in areas where mining concessions exist.

The expansion of mining activities is a risk for the effective implementation of the land restitution policy. The Comptroller noted that “*almost all municipalities targeted for land restitution match the existence of current mining concessions*” which “*causes a series of challenges for restitution judges*”. It is important to remember that, according to the Consultancy for Human Rights and Displacement (*Consultoría para los Derechos Humanos y el Desplazamiento* - CODHES), more than 5.7 million people were displaced between 1985 and 2012, including 256,590 in 2012. And at the end of March 2013, OCHA warned of an increase in forced displacement in Colombia during the first quarter of 2013.

### Mining and the violation of ethnic groups’ rights

According to the Comptroller General, of the total amount of land collectively and formally titled by the State to black communities, 6% have been given to mining companies in concessions and 16.50% are under application for the development of mining activities. The situation is similar with regards to legally-recognised indigenous territories, where 1% of the area is under concession and 13.6 % is under application for mining<sup>x</sup>.

Mining exploration activities often ignore prior consultation procedures for the free, prior, and informed consent of indigenous peoples and Afro-Colombian communities. As noted by the UN High Commissioner for Human Rights (OHCHR) in its latest annual report on Colombia, after a “*broad participatory process*” on the

*right to consultation, "not a single best practice was identified", which threatens the survival of many indigenous peoples<sup>xi</sup>.*

### **Aggressions and threats against trade union leaders**

According to figures from trade union Funtraenergética (2011), which were reflected in the Comptroller's report, 78% of crimes against trade unionists are committed in mining areas. Several recent cases illustrate the dangerous situation for people who defend the labour rights of workers in mining and oil companies.

On August 4 this year, the paramilitary group "*Los Rastrojos - National Urban Commandos*", circulated a pamphlet declaring members of the unions SINTRAMIENERGETICA, FUNTRAENERGETICA and SINTRAIME as military targets and accusing them of having links with the guerrillas. They demanded, among other things, "*the lifting of any activity disturbing social order such as strikes or demonstrations*", and accused them of "*attacking the good and noble intentions of the high government of Dr. Juan Manuel Santos for peace and democratic prosperity, and stopping the progress of multinational companies such as Glencore, Drummond, Pacific Rubiales, AngloGold Ashanti*". The threat came within the context of a mining strike which began on July 17, 2013 and a strike by workers of the Drummond transnational corporation.

In addition to threats, over recent months an assassination attempt was carried out against a union leader from Sintramienergética, who is an employee of the Drummond transnational company<sup>xii</sup>. And a trade unionist from the USO was murdered. He worked for the TERMOTECNICA and in the past he had worked for the JM company, a subcontractor for transnational company Pacific Rubiales<sup>xiii</sup>. Despite low levels of union membership due to adverse conditions, Colombia is one of the countries where the most trade unionists are murdered in the world. They also suffer numerous threats. The International Trade Union Confederation (ITUC) reported that at least 18 trade unionists were killed and 359 received death threats in Colombia in 2012<sup>xiv</sup>. According to the Trade Union Confederation of the Americas (TUCA), "*in the last three decades, some 3,000 Colombian trade unionists have been murdered. Threats and torture are also prevalent in the country and 90% of crime goes unpunished*"<sup>xv</sup>.

### **Threats and attacks against human rights defenders in areas of resource extraction**

There are reports of persecution, slander and threats against local community leaders who protest against mining and its consequences. For example, in the months of July and August 2013, the NGO Network of Brotherhood and Solidarity with Colombia (*Red de Hermandad y Solidaridad con Colombia - Redher*) organized several hearings in different parts of Colombia as part of a political and ethical trial against transnational corporations for human rights violations. During this time

there were several attacks, particularly in relation to the oil hearing held in Puerto Gaitán, in the Meta department. During this hearing trade unionists, indigenous people and small-scale farmers spoke of human rights abuses resulting from oil exploration in the area, headed by the transnational company Pacific Rubiales. After the hearing, death threats and harassment were reported against participants, and the offices of Redher were attacked.

### **Mining and the violation of environmental rights**

The current legal framework views mining activities as priorities as being for general interest and public use. Legislation implies that in cases of conflict between extractive activities and other activities such as agriculture and environmental conservation, the former has precedence, to the detriment of the latter. In early May, the Colombian government issued a decree<sup>xvi</sup> under which local authorities are not allowed to manage the lands under their jurisdiction or exclude areas from mining and other extractive activities.

The decree in question would nullify the agreements adopted by three municipalities in south-western Antioquia who decided to ban mining in their municipalities<sup>xvii</sup>. Similarly, it fails to recognise the referendum in the municipality of Piedras, Tolima, in which citizens voted against transforming the use of their lands from agriculture to mining, to prevent the entry of companies which have been granted concessions for gold mining. The mayor of Bogotá has also been trying to ban mining in the territory of the capital city since August 2012.

In its report, the Comptroller's Office warned of the Colombian State's serious shortcomings in terms of environmental studies, control and monitoring of mining activities. The Comptroller's report also states that: "*Mining activities, whether open air or underground, legal or illegal, are implemented in many cases in strategic ecosystems for environmental conservation, such as moorland, forests, wetlands, rivers, floodplains, rainforests, and areas of water sources and aquifer recharge, causing the loss of important environmental conservation areas and the life of the inhabitants in these territories, including black communities, indigenous peoples, settlers, and small-scale agricultural producers*"<sup>xviii</sup>.

The Comptroller's report also highlighted the precariousness of data related to environmental health impacts in mining areas. Nevertheless, it noted that air pollution has led to the emergence of new respiratory diseases in mining areas. According to an epidemiological study in the department of La Guajira, where the Cerrejón is located, a coal-mining company with English and Swiss shares, cases of acute respiratory infections are the second leading cause of death in municipalities neighbouring the mine.

## Conclusions

- There are links between mining, conflict and human rights violations, in particular forced displacement, requiring the implementation of transparency and due diligence standards, for both the companies' activities in the field, and also in consumer countries.
- In the mining regions and municipalities, the economic, social and cultural rights of the population have not been guaranteed, nor has structural poverty been overcome.
- Open pit mining violates the right to land and territory for many rural communities and increases the risk of climate change.
- Large-scale mining is incompatible with guaranteeing the right to water for a large number of citizens.

## Recommendations

- Transparency initiatives (such as EITI) and for the implementation of the UN Guiding Principles on Business and Human Rights are important, but not sufficient. Progress is needed on the design and implementation of binding tools and mechanisms to enable access to justice for people and communities who have suffered violations of their rights related to the activities of mining companies. Access to justice should not be restricted to national courts. Instead access should also be facilitated to justice systems in the countries where businesses have their headquarters.

- The EU must demand that companies publish reports on the impacts of their activities (known as non-financial reports). These reports must be accompanied by social audits involving communities who have been directly affected and civil society organisations that accompany them.

- It is important to include Colombia in the "Conflict Minerals" initiative which seeks to apply stronger standards in terms of transparency and due diligence in extractive industries' supply chain for products coming from conflict areas. It is also important to apply a wide understanding of the word "conflict" in order to include high risk areas in which human rights violations are numerous or social conflict is high.

- It is fundamental to understand the long-term social and ecological consequences of mining, before establishing the income and market value gained from mineral and metal extraction<sup>xix</sup>. The colonial history of Latin America demonstrates that it is extremely difficult to create a development process using mining, that promotes comprehensive guarantees for the human rights of the whole population.

<sup>i</sup> Sistema de Información Minero Colombiano, "Producción y exportaciones de carbón en Colombia". Bogotá, 2011. Available at: [www.simco.gov.co](http://www.simco.gov.co)

<sup>ii</sup> Guillermo Rudas, "Minería, medio ambiente y cambio climático: una señal de alarma". In: Razón Pública, January 16, 2011.

<sup>iii</sup> CINEP/PPP. *Minería, conflictos sociales y violación de los derechos humanos en Colombia*. Bogotá, October 2012.

<sup>iv</sup> [DANE, Pobreza monetaria y multidimensional en Colombia, May 2012](#) – figures from 2011

<sup>v</sup> Fierro Morales Julio. *Políticas Mineras en Colombia*. Bogotá: ILSA, 2012

<sup>vi</sup> Constitutional Court, Sentence T-154 of 2013. Magistrado Ponente: Nilson Pinilla Pinilla.

<sup>vii</sup> "Demandan penalmente a directivas de Cerro Matoso", In: *El Heraldo*, Barranquilla, August 15, 2013.

<sup>viii</sup> Colombian Comptroller General (*Contraloría General de la República*)

<sup>ix</sup> OCHA, Humanitarian Bulletin, March 1-31, 2013

<sup>x</sup> Colombian Comptroller General (*Contraloría General de la República*)

<sup>xi</sup> A/HRC/22/17/Add.3, January 7, 2013.

<sup>xii</sup> [Amnesty International, Urgent Action, Trade Union leader shot at in Colombia, June 10, 2013](#)

<sup>xiii</sup> USO, El petróleo se tiñe de sangre obrera en Puerto Gaitán, December 11, 2012 and Amnesty International, Urgent Action –Trade union leader and family threatened, July 25, 2013

<sup>xiv</sup> [ITUC, Countries at risk: 2013 Report on violations of trade union rights](#)

<sup>xv</sup> CSA-TUCA, Repudio global a la violencia en Colombia, July 1, 2013

<sup>xvi</sup> Decree N° 0934 of May 9, 2013. Por medio del cual se prohíbe que los Concejos Municipales y las Asambleas Departamentales establezcan "zonas del territorio que queden permanentemente o transitoriamente excluidas de la minería mediante acuerdos municipales u ordenanzas departamentales respectivamente".

<sup>xvii</sup> [El Espectador, Municipios no podrán decidir sobre minería, May 18 2013](#)

<sup>xviii</sup> Colombian Comptroller General (*Contraloría General de la República*)

<sup>xix</sup> Moody, Roger. *Rocks and hard places. The globalization of mining*. Zed Books, New York, 2007.

*The International Office on Human Rights - Action Colombia (OIDHACO), represents a network of more than 30 European organisations. From its headquarters in Brussels, Oidhaco accompanies Colombian civil society initiatives which work towards the full respect of human rights and international humanitarian law, and a negotiated solution to the internal armed conflict. Since 2012, Oidhaco has been granted Special Consultative Status before the United Nations Economic and Social Council.*

*The Colombian Platform for Human Rights, Democracy and Development is a network of more than 100 social, communitarian and non governmental organisations from all the country. The Platform promotes strategic agreements among the different social and institutional actors which work for a development based on democracy and the respect of all human rights.*

With the support of :

