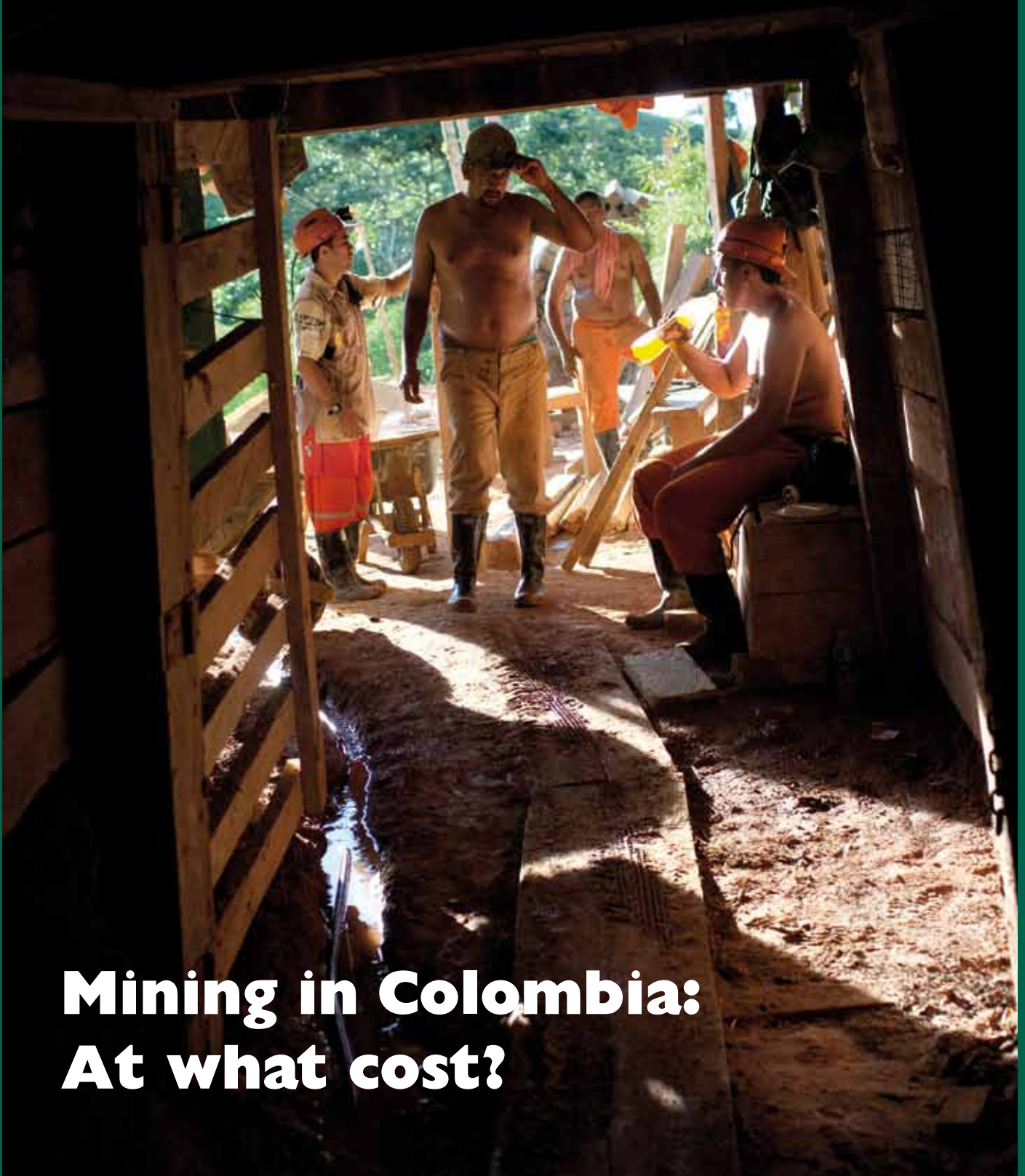


Colompbia



**Mining in Colombia:
At what cost?**

SUMMARY

- 4** The mining and energy “boom”
- 8** Mining legislation: Advancements and setbacks
- 12** International legislation
- 13** The legal framework for crude oil drilling
- 14** Land, water and nature: Symbols of the State
- 19** Is the Mandé Norte mining exploration and extraction project wanted?
- 20** “Before this country was even a republic there was mining in Colombia”
- 24** Artisanal mining in Northeast Antioquia
- 25** Guamocó: “Gold for life and not for death”
- 29** Cauca: The illegal take of La Toma
- 32** Coal for the world, setbacks for La Guajira
- 37** The U’wa people: Defending the blood of mother earth
- 41** Threats to Barí territory
- 42** Peru: “Mining creates poverty and pollution”
- 45** Mexico’s treasure



Photo: Jonas Wresch

On the cover Miners in Segovia (Antioquia)
Photo by Jonas Wresch, www.jonaswresch.com

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Contact: publicaciones@pbicolombia.net

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Ana Vicente, Neil Martin, Daniel James Slee, Moira Birss, Sylvain Lefebvre, Bianca Bauer

Emily Nelson

Bianca Bauer

Editorial CÓDICE Ltda. Tels.: 2177010 - 2494992. casaeditorial@etb.net.co

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EDITORIAL



Open pit mining
outside of Segovia
(Antioquia).
Photo: Jonas Wresch

Colombia is one of the most biologically diverse countries on the planet and is home to more than 10% of the world’s plant and animal species. But today, 40% of Colombia’s land has been licensed to, or is being solicited by, multinational companies in order to develop mineral and crude oil mining projects. This fact reflects the Colombian government’s intention to turn the country into a mining powerhouse, and entails significant consequences for the country’s ecosystem and rural communities.

With the objective of stimulating development in the mining sector, the government has promoted normative changes that have cleared the way for intensifying mining activities. The government has declared mining an “activity for public utility and social interest,” for which the unilateral expropriation of private property is allowed. The government also declared protests against the mining industry illegal, and has conceded mining licenses in protected areas such as moorlands, indigenous reserves, and collective territories belonging to Afro-descendent communities.

Through its presence on the ground and its accompaniment of human rights defenders, human rights organisations, and displaced and returning communities, Peace Brigades International has been able to observe that communities of small-scale farmers, indigenous peoples, and Afro-Colombians most directly suffer the environmental, cultural and socio-economic damages caused by these megaprojects. In fact, 80% of the human rights violations that have occurred in Colombia in the last ten years were committed in mining and energy-producing regions, and 87% of Colombia’s displaced population originate from these places.

Despite the fact that Colombia’s Constitution recognises more rights of ethnic minorities than most—more than 102 indigenous peoples and four million persons of African descent live in the country—and provides protections for their cultures and environment, mining companies and illegal armed actors have still violated their rights. This can be seen in the cases featured in this bulletin about the indigenous communities of the U’wa, Barí and Wayúu, and numerous afro-descendent communities. Moreover, many rural communities sustain themselves economically through small-scale mining. Now they are caught in legal limbo, as their work is no longer considered legal.

As a result of this situation, many communities have decided to organise themselves, resist, and struggle for their rights by using the legal and collaborative resources at their disposal. Some examples of these efforts are the Peasant Farmer Reserve Zone of the Cimitarra River Valley, and processes of prior, free, and informed consultation with local communities to decide the future use of certain lands. At a moment when Colombia is attempting to implement the Victims Law and carry out land restitution, PBI would like to highlight one of the principal causes of land evictions: competition over the use of the soil and subsoil for implementing economic projects. Given this situation, there is much that the international community can do to support these community initiatives.

The mining and energy “boom”

Photo: Jonas Wresch



Open pit gold mining outside of Segovia (Antioquia). In recent years, companies from countries like Canada, England and South Africa have intensified gold mining in Colombia, greatly increasing large-scale mining in the country.

Imagine a country rich in biodiversity—a country in which 11% of territory is protected by natural parks that are home to species little known in other parts of the world. A country with lush flora and one of the largest water reserves in the world. A country with every possible climate and landscape, from Andean mountains to eastern plains to Amazon forest; from the desert of La Guajira on the shores of the Caribbean coast to the choppy waves of the Pacific coast. But imagine that in the last 10 years concessions for more than 40% of this land have been awarded or solicited by mining and crude oil companies.¹

This country is not imaginary: of the 114 million hectares of Colombia’s extensive and prosperous territory, more than 8.4 million have been licensed for mineral deposit exploration and more than 37 million

hectares are licensed for crude oil exploration.² Moreover, according to the Ministry of Agriculture and Rural Development more than 5.8 million hectares of land were licensed for mining non-renewable resources in 2010.³ As cited in the articles, “Land, water and nature: Symbols of the State,” and “National legislation: how will Colombia become a mining power?” in this bulletin, some approved requests were granted in protected areas such as moorlands, national parks, indigenous territories and collectively-held lands pertaining to afro-descendent communities, among others.⁴ Currently, the National Mining Registry reports that 1,717 companies have active licenses for mining exploration and extraction, in addition to 7,200 licenses held by individuals.⁵

Until 2002, state policies were relatively conservative in terms of

awarding mining rights, but beginning this year the number of requests and concessions began to increase. Between 1990 and 2001 in Colombia, 1,889 mining licenses were awarded (157 per year),⁶ but by 2010 there were already 8,928 concessions (4,839,149 hectares)⁷ and 20,000 applications pending.⁸ In Latin American mining powers like Chile and Peru that have lived with large-scale mining practices for years, conceded territory topped 13 million⁹ and 27.1 million hectares¹⁰ respectively.

The mining “boom” currently underway was made public with President Juan Manuel Santos’ announcement that mining would become one of the “economic engines” (literally “locomotives”) of Colombia’s development, bringing “prosperity to all, more jobs, less poverty and more security.”¹¹ The government insisted on the

need to increase large scale and open pit mining for the country's development, as previously put forth in the "National Plan for Mining Development and Environmental Policy Vision Colombia 2019," in which the previous government decided to convert Colombia into "a mining country."¹² Following this decision, the government created what were known as "mining districts" and categorised them by their level of mineral concentration, their volume of production, and the tradition of mining in the area. In October 2010, there were 42 mining districts comprised of 328 municipalities¹³ in which resource extraction became a priority, to the disadvantage of small-scale miners attempting to compete with large multinational corporations (see "Before this Country was a Republic, there was already mining in Colombia," in this bulletin).

COLOMBIA: THE NEW PROMISED LAND FOR EXTRACTIVE INDUSTRIES

As world demand grows for oil and other minerals, Colombia has been loosening legislative regulations to allow for the mining of these resources¹⁴ (see the article "National Legislation: how will Colombia be made a mining power?"). In recent years the prices of coal and gold have

reached historic highs: the price of one tonne of coal increased from US\$90 in 2004 to nearly US\$160 in 2011,¹⁵ and an ounce of gold also increased in value from US\$700 in 2008 to its current price of US\$1,800.¹⁶

The policy of democratic security promoted by the previous government has also been key. Until 2005 few companies attempted to invest in Colombia given security concerns caused by the country's internal conflict. But the military victories of Colombia's armed forces against the guerrilla since 2005 have created a sense of security that has propelled foreign investment.

THE CURRENT SITUATION

The three products upon which Colombia's mining and energy development rest are gold, oil, and coal, although there is also mining of emeralds, silver, platinum, nickel and copper.

Today, Colombia is the largest producer of coal in Latin America,¹⁷ and the tenth largest in the world.¹⁸ This territory is home to the largest coal reserves in all of Latin America (calculations of potential coal deposits are estimated at 16.992 billion tonnes of which 7.063 billion are measured reserves). At the current rate of extraction, coal mining in Colombia would be able to continue for another 100-120 years.¹⁹ However, when

one takes into account projected increases, this resource will disappear far earlier: in 2005 coal production was 40 million tonnes,²⁰ it is currently at 72 million, and is estimated to increase to 145 million tonnes by 2019.²¹

Before Colombian gold was the objective of the conquistadors, this mineral was already a means of subsistence for a large part of the population. Even today the majority of gold produced in the country comes from small-scale mining operations. In recent years companies from countries like Canada, England, and South Africa have intensified their efforts to carry out gold mining projects in Colombia, significantly increasing large-scale mining. Small-scale miners, on the other hand, find themselves increasingly marginalised and in some cases persecuted for their traditional labour (for more information, see "Before this Country was a Republic, there was already mining in Colombia"). In actuality gold production has reached production levels of 40 tonnes annually, and according to the Vision Plan Colombia 2019, it is hoped that that will increase to 80 tonnes annually this year.²²

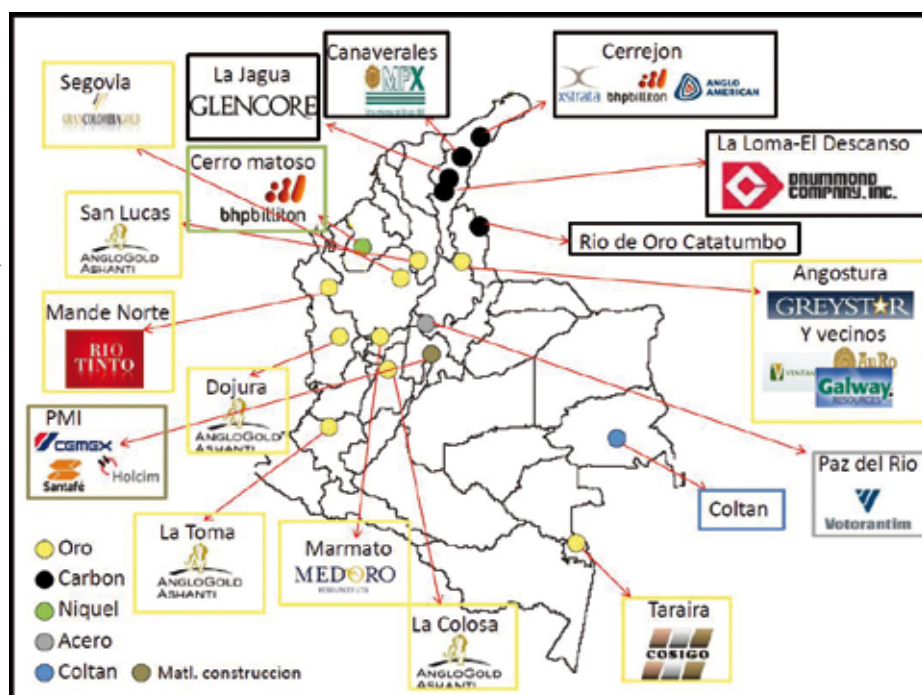
Oil is another energy source found in the country; it is currently, and has been for quite some time, the product most exported by Colombia,²³ and the government hopes to increase the current rate of production of 990,600 barrels a day to 1.4 million by 2014.²⁴ This may appear to be a relatively small amount compared to production levels of big oil-producing countries like Saudi Arabia (10,121 million barrels per day) or Iran (4.25 million barrels per day),²⁵ but it is comparable to production levels of other members of OPEC like Venezuela (2.78 million barrels per day),²⁶ and in fact surpasses Egypt (700,000 barrels per day).²⁷

VIOLENCE AND HUMAN RIGHTS

Multinational companies are not the only ones interested in this attractive business: illegal armed actors have also discovered that mining can be a source for supplementing their income. Looking at a map of Colombia, one can easily see that the location of these groups coincides with areas of mining operations.²⁸ This does not mean that these groups have deprioritised trafficking in illicit crops; in fact, natural resource mining

TODAY, COLOMBIA IS THE LARGEST PRODUCER OF COAL IN LATIN AMERICA, AND THE TENTH LARGEST IN THE WORLD

Map: Reclame Colombia





Miners in Segovia (Antioquia) preparing to work. Rates of human rights violations in mining zones are alarming.

is often used to launder money earned from exporting drugs.²⁹

The rates of human rights violations in mining zones are alarming. The latest report published by the United Nations Development Programme (UNDP) calls attention to this trend and indicates that competition for soil and subsoil rights could become a latent form of pressuring land evictions.³⁰

Generally in these zones, violence and the armed conflict seriously affect the civilian population, creating forced displacements and destabilising community life.³¹ A variety of social organisations have reported that some multinationals have financed paramilitary groups in order to protect themselves or to displace communities from lands that they wish to extract resources from.³² The latest report from the Consultancy on Human Rights and Displacement (CODHES) finds there to be a large military and paramilitary presence in mining zones: “The armed forces protect private investment and paramilitaries suppress social protest and create displacement.”³³

During a seminar held at

Colombia’s National University titled “Mining, territory and conflict in Latin America,” a presenter argued that “multinationals tend to appear in places that have previously suffered paramilitary attacks” and that these places have seen their population disappeared, assassinated, or displaced.³⁴ According to the National Mining Company Minercol Workers Union (Sintraminercol), 87% of all displaced persons originate from mining and energy-producing municipalities (35% of total municipalities), and 80% of the human rights violations and violations of International Humanitarian Law that have occurred in Colombia in the last 10 years were committed in these places.³⁵ This was exemplified by recent massacres committed in South Bolívar,³⁶ allegedly related to disputes between illegal armed groups over control of natural resources³⁷, or the 35 people working in mining from the municipality of Zaragoza who fled after receiving threats from paramilitary groups.³⁸

The situation of trade union rights for mine workers is equally bleak. Far from being respected, these rights

are continuously violated: at least 20 trade unionists from the mining and energy sector suffered attacks or attempted assassinations in 2010³⁹ and 78% of the crimes against trade unionists were committed in mining and energy areas.⁴⁰

THE ENVIRONMENT

The environmental degradation caused by mining in the fourth-most biologically diverse country in the world is already evident.⁴¹ Highly toxic products, like cyanide, are used to mine minerals such as gold. These chemicals contaminate the land and water sources in the region, to the detriment of resident communities. An example of this is the Angostura project, which planned to use 40 tonnes of cyanide per day during the 15 years for which the permit was to be valid⁴² (the company ultimately withdrew its request for a permit⁴³).

In addition, large-scale mining projects often require changing the course of rivers, and often the dynamite explosions create such heavy noise pollution that animals as well as humans are pushed out of their habitat, compelling them to

change their feeding and reproductive behaviours. Additionally, it is often necessary to build new infrastructure, leading to widespread deforestation.

WHO BENEFITS?

Taking into account forecasts for increased production in oil, gold, coal and other natural resources, Colombia's mining boom is a reality that entails important economic, social and environmental consequences. Some analysts point out that the "boom" in Colombia will bring development, employment, infrastructures, etc. However, it appears that not all that glitters is gold.

Despite the billions of pesos that the mining and energy sector will generate, this does not necessarily translate into social development for the country. The experience of the last decade is illustrative: regardless of huge incomes obtained from oil deposits, the Colombian people have seen few results. Public investment in health, education, basic sanitation, potable water, energy and infrastructure have been impeded by institutional weakness, corruption, environmental damage, organised crime and the exacerbation of social

conflicts.⁴⁴ Colombia is the number one producer of emeralds in the world, the number one producer of nickel and coal in South America and the tenth largest producer of gold in the world. And yet, the populations living where these resources are extracted have the highest rates in the nation of unmet basic needs.⁴⁵

With few expected social benefits, continuing violence, and the damage to the environment that large-scale mining will likely entail for the majority of Colombia's population, it appears that the trains of Colombia's mining locomotive may not have room for all Colombians.

HIGHLY TOXIC PRODUCTS, LIKE CYANIDE, ARE USED TO MINE MINERALS SUCH AS GOLD. THESE CHEMICALS CONTAMINATE THE LAND AND WATER SOURCES IN THE REGION, TO THE DETRIMENT OF RESIDENT COMMUNITIES

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Photo: PBI



Some mining concessions have been granted in protected areas like moorlands, one of the most fragile ecosystems in the world.

Mining legislation: Advancements and setbacks

Photo: Jonas Wresch



Miner with a sack holding gold rocks mined from the mountain. Each sack can weigh up to 90 kilograms.

Despite the country's extensive natural riches, the arrival of the extractive mining boom in Colombia is relatively recent (See "The Mining and Energy 'Boom'" in this bulletin). These new developments have been brought about in part by legislative reforms advantageous for the industry that have helped position the country as a "region of interest" for multinationals seeking investment opportunities.¹ However, the institutions responsible for safeguarding human rights and the consistent development of the sector have not been adequately strengthened, the effects of which became clear with the discovery corruption scandals involving the entities charged with overseeing mining development in the country.²

Reforms to mining legislation in Latin America began in the early 1970s. These efforts were led by Peru and followed other laws in the sector that were pioneered by Chile. In the 1990s, Mexico also began implementing reforms, as did Bolivia, Ecuador, Guatemala and Cuba. Colombia was late in beginning legislative reform, but experts point out that Colombia, motivated by the need to compete and make the country attractive to investors approved some of the most flexible mining policies on the continent.³

The "National Plan for Mining Development and Environmental Policy Vision Colombia 2019," developed by the administration of former president Álvaro Uribe, is intended to turn Colombia into a "mining country." This will involve

the complete extraction of existing natural riches in the country in order to achieve economic and social development⁴ (See "The Mining and Energy 'Boom'" in this bulletin). Despite being a recently-announced plan, the groundwork has been in process for several years.

THE MINING CODE

In 2001, Colombia approved Law 685, commonly known as the Mining Code. While it was being drafted, the State was directly advised by a law firm that, at the time, represented half of the mining companies found in the national mining registry,⁵ as well as by Canadian mining companies with significant interests in the land,⁶ the results of which can be demonstrated by the fact that 43.41% of mining companies in Colombia now are

Canadian.⁷ Having declared mining an “activity for public utility and social interest” and thus permitting the unilateral expropriation of land suspected of containing minerals irrespective of who occupied that land, the policy cleared the way for intensifying exploration and mining activities.⁸

Additionally, based on the recommendation of the World Bank, the Mining Code eliminated the State’s role in direct investment,⁹ thus eliminating the State’s participation in mining operations and leaving it to only regulate the industry and provide oversight. This ended the possibility of State earnings from net returns on natural resource mining, thereby almost entirely limited economic benefits to surface rights fees and royalties that companies pay during exploration and mining phases.

The issue of environmental licenses has been another point of contention. Until 2001, licenses were required for all phases of mining activity, but the new code only requires environmental authorisation to carry out “operating activities.”¹⁰ This prevents the possibility of rejecting a mining project before the exploration phase because of possible environmental damage it could cause. This violates the Rio Declaration on the Environment and Development, to which Colombia is a signatory, which states in its Principle 15 that “in order to protect the environment, the precautionary approach shall be widely applied by States.”¹¹

TAX BENEFITS

A number of laws favourable to foreign investors have been promoted in Colombia under the guise of increasing Colombia’s competitiveness over other countries in Latin America¹²: royalty levels were set lower than in the 1990s and taxes were reduced to levels that effectively cancelled out the amount of royalties awarded to the country¹³, among other measures. As various experts agree, tax exemptions are so high and the environmental and social damage so great, that in reality Colombia pays multinationals to extract their resources. According to Mario Valencia of the Colombian mining advocacy organization RECLAME, the benefits that are returned to the Colombian State for mining operations are negative: “The ‘government take’¹⁴ in Colombia is 22% but if we figure in tax exemptions, that number drops to 10%, and if we subtract environmental and social liabilities the result is negative, which is another way of saying that we are paying money to them so they come to mine coal, oil, gold, etc.”¹⁵

PROTECTED AREAS

In terms of land use, the Mining Code established areas protected from exploration and mining operations, like national and regional Natural Parks. But these safeguards are not respected. According to public statements by Carlos Rodado, ex Minister of Mining and Energy, since the Mining Code was approved in 2001, “mining concession have

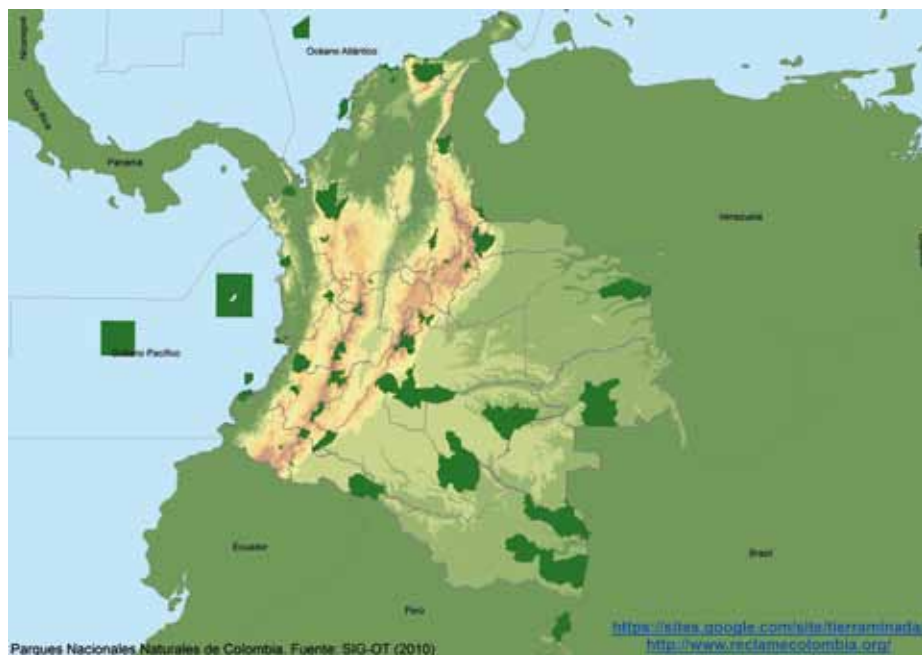
been granted in areas like national parks and moorlands, and there has been widespread speculation, titles issued without oversight and in some cases rather suspiciously, violations of the rights of indigenous and afro-descendent mining communities, and license hoarding.”¹⁶

In 2010, the Government approved Law 1382 (with funding from the Canadian International Development Agency¹⁷) that reformed the Mining Code passed in 2001. This policy increased the amount of areas protected from mine concessions, including moorland and wetland ecosystems recognised by the Ramsar¹⁸ system. On the other hand, reforms to the Mining Code designated a period of five years for the government remove from the Forest Reserves land needed to develop the mining industry,¹⁹ as laid out in the National Development Plan 2010-2014.²⁰

In the eight months between the approval and ratification of the Law²¹ the area licensed for mining increased by approximately 80%.²² In 2010 the Ministry of Housing and the Environment reported that exploration permits were approved for 130,000 hectares of moorlands situated outside of natural parks. Additionally, the Ministry reported applications for another 553,298 hectares,²³ just between 2006 and 2009 licensing in this ecosystem increased by 74%-this in an area that only makes up 1.7% of the country’s territory.²⁴ In the past year licenses in Forest Reserve Areas topped 1.3 million hectares,²⁵ with applications for another 264,140 hectares.²⁶ Moreover, there were at least 37 cases of mining titles that overlapped with Natural Parks areas.²⁷

Ultimately, the Constitutional Court abolished the reform because no prior consultation was done with the indigenous or afro-descendent communities that would be affected by the reforms, as stipulated by Colombian law (see “Land, water and nature: State symbols” in this bulletin). However, given that some provisions of the reform were deemed important, particular to environmental protection issues, the effect of the sentence was deferred for two years so that Congress may carry out the consultation and present the law

Map: Reclame Colombia



National parks of Colombia.

again.²⁸ As such, mining operations could continue under the conditions stipulated by the Code Reform until 2012, when it will be declared unconstitutional.²⁹

THE ROLE OF COMPANIES

There are no wide-reaching regulations at the international level to regulate the actions of multinationals involved in large-scale mining beyond voluntary, non-binding accords.

Starting in the 1980s, people began to question the supposition that companies merely had an economic responsibility. It was pointed out that their projects have a great overall impact that affects both nature as well as the people directly or indirectly involved with extractive activities, and as a result that companies have significant social and environmental responsibilities. These ideas were the precursors to the concept of Corporate Social Responsibility (CSR): "the process where companies voluntarily include social and environmental concerns in their commercial operations and relationships with partners."³⁰

Since then, several international declarations have emerged that seek to develop the concept and also utilise existing declarations to round it out. The Global Compact,³¹ a document proposed in 1999 by Kofi Annan, ex General Secretary of the United Nations, is a reference point. It is a voluntary non-binding regulating instrument that does not impose rules nor evaluate the actions of companies, but does make recommendations based on the Universal Declaration of Human Rights, the Declaration of Principles of the International Labour Organisation, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption of 2004. Despite the fact that many companies signed on to the pact, they do not always comply with its recommendations.³²

In their reports, many companies insist that they are making efforts to follow the objective of CSR,³³ but according to the environmental organisation CENSAT Agua Viva, the rates of human rights violations in mining and energy-producing zones in Colombia continues to be the same as before the Compact was signed. The state of the environment is even worse.³⁴ However, it is clearly thanks to these principles that many activities

of large companies have been limited and have also resulted in benefits for some communities affected by megaprojects.

The 22nd Session of the United Nations, held in August 2003, approved the "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights,"³⁵ which states that, "transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law."³⁶

Under this rubric, multiple accusations have been made against different multinationals for alleged ties with paramilitary groups that displaced or massacred the population in areas of interest for mining and energy production are made known.³⁷ The Institute for Peace and Development Studies (Indepaz) reports that there were about 14 documented cases between 2008 and 2009 in which multinational companies were implicated in serious human rights violations in Colombia, in some cases engaging in behaviour similar to the relationships with paramilitary groups carried out by Chiquita Brands.³⁸

There are many voices that have denounced how companies and their countries of origin have intervened directly or indirectly in the decisions of the Colombian government and in State policies, using economic coercion, political clientelism, military and police repression, torture, murder and displacement in order to increase their sources of wealth.³⁹ And although there are accords and compacts, there is neither binding policy nor a governing body to receive complaints and reprimand those responsible, all of which ensures that these human rights violations remain in impunity. Colombian policy was loosened to facilitate the arrival of multinationals, but at the cost of other regulations to protect the local population and the non-renewable riches of the country, meaning that local communities continue to be victimised by a conflict whose objective continues to be

control over the land, its surface, and what lies hidden beneath.

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12. González Posso, Op. cit.
13. CENSAT Agua Viva, Op. cit.
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27. Ronderos, Op. cit.
28. *Semana Magazine*, Op. cit.
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Muzo (Boyacá) is home to the largest emerald mine in Colombia. Mining companies throw out rubble from the extraction process and, once a week, allow women in the town to sort through the rubble in the hopes of finding small emeralds. With luck, the women can earn between 15,000 and 20,000 Colombian pesos (US\$7-10) in a day.



There are at least 6,000 mines in Colombia that are considered small-scale, from which five million people (miners and their families) live. These mines do not generate large incomes, and are a means of subsistence increasingly threatened by large-scale mining.



According to the photographer, this gold is worth about 70 million Colombian pesos (US\$35,000). The photo was taken at a sales stand in Segovia (Antioquia). In recent years gold prices have reached historic levels; one ounce of gold increased in value from US\$700 in 2008 to its current price of US\$1,800.

International legislation

“Protect, Respect and Remedy: a Framework for Business and Human Rights,” John Ruggie, UN Special Rapporteur of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (2008):

Lays out a framework for defining responsibilities and best practices of States and companies. It attributes human rights violations carried out for economic reasons to the lack of state regulation as a result of globalisation. This is based on three fundamental principles: the obligation of the State to offer protection in the face of human rights abuses committed by third parties, including companies; the obligation of companies to respect human rights; and the need to improve access for victims to effective means of reparation.

“Guiding Principles on Business and Human Rights,” John Ruggie, UN Special Rapporteur of the Secretary-General (2011):

Formulates recommendations to States and companies to guide the application and implementation of the Framework to “Protect, Respect and Remedy.” Its fundamental contribution is to identify the implications of norms and current methods employed by States and companies and to integrate them into a unique, coherent, and inclusive model, in addition to pointing out the weak points of the current system and possible improvements.

“UN Declaration on the Rights of Indigenous Peoples,” (2007):

Affirms indigenous peoples’ rights to land, territory, and resources that they have traditionally possessed or utilised (articles 3, 20 and 26); insists on States’ responsibility to obtain the free, prior, and informed consent of indigenous peoples before approval of any project that affects them, particularly in relation to development, the use of mineral, water and other resources (articles 18, 19 and 32); and insists on the responsibility of States to guarantee and recognise the rights laid out in this declaration (article 38); and likewise guarantee a just and equitable reparation for indigenous peoples in the case that their rights are violated (articles 8, 20, 28 and 32). Colombia formally expressed its support for this declaration in 2009.⁴

“Universal Declaration on Human Rights” (1948)⁵ and the “International Covenant on Economic, Social and Cultural Rights” (1966):

Although these do not specifically touch on the topic of mining, they establish several rights that could be potentially compromised by mining projects, particularly the right to self determination in terms of economic, social, and cultural development (article 1 of the Covenant) and the right to life (article 3 of the Declaration).

Convention 169 of the International Labour Organisation (ILO) (1989):

The cornerstone of Convention 169, on which all its provisions are based, is the spirit of consultation and participation. The Convention calls for consultation with all indigenous peoples and tribes on issues that affect them. It also requires free, prior and informed participation by these communities in development projects and policy processes (See the article “Land, water, and nature: symbols of the State”).

“Guiding Principles on Forced Internal Displacement,” United Nations (1998):

States that, “the prohibition of arbitrary displacement includes displacement in cases of large-scale development projects that are not justified by compelling and overriding public interests,” and adds that, “prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether.”

“The Rio Declaration on Environment and Development” (1992):

Provides that “States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage.” Additionally, “environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”

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2. United Nations, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” Human Rights Council, A/HRC/17/31, 21 March 2011.

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4. UNHCR, “UNHCR welcomes Colombia’s decision to support the UN Declaration on the Rights of Indigenous Peoples,” 24 April 2009.

5. NACIONES UNIDAS. Declaración Universal de los Derechos Humanos. 10 de diciembre de 1948

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7. United Nations, Guiding Principles on Forced Internal Displacement, 11 February 1998.

8. United Nations, Rio Declaration on Environment and Development, June 1992.

The legal framework for crude oil drilling



Map: Oil exploration and production zones.

Photo: Environmentalists and inhabitants of San Andrés, Providencia and Santa Catalina islands were victorious in October 2011 when the Colombian Government decided not to allow oil exploration or drilling in the archipelago. The original proposal has been controversial, considering that the area was designated a UNESCO biosphere reserve and World Heritage site.

In 1953 the Oil Code was established to regulate licenses, royalties, private property, transportation, refining, and other policies relevant to the subsector.¹ The Law is still valid but has undergone many modifications over the years.

In 1974 the Law-Decree 2310 modified the first two articles of the code, replacing the system of licensing concessions in place at the time with one employing partnership agreements. Essentially, this awarded Colombia's National Oil Company (ECOPETROL) exclusive power to explore and drill for crude oil directly or indirectly. ECOPETROL began its explorations and found oil reservoirs of commercial quantity. The costs of exploration and development were divided equally (between the respective company and ECOPETROL) and production was divided at 50% after deducting a 20% royalty fee. The foreign investor paid, in equal amounts, national and local taxes.²

In the 1980s Colombia became a net exporter of crude oil and it was at this moment when substantial changes were made to the legal framework that regulated crude oil drilling.

In 1987, 1989, 1994 and 1997 changes were introduced to make concessions more attractive to private investment: ECOPETROL would now contribute to the initial costs of exploration and receive fewer benefits from the drilling.

The current regulatory framework for the crude oil sector in Colombia is based on the Political Constitution of 1991, in which several articles assure equitable distribution of goods and services between the public and private sectors.

In 2002 Law 756 modified the royalty structure. Arguing that smaller fields were not sufficiently attractive and for that reason it was better to have lower royalties, the previous 20% royalty was eliminated in favour of a variable royalty system between 8% and 25%, just as many multinational companies had requested.³

In 2003 Law-Decree 1760 converted ECOPETROL into a public company (essentially, a corporation) with shares managed by the Ministry of Mining and Energy. Additionally, the National Oil Agency was created and given the task of administering crude oil reservoirs in the nation, relieving ECOPETROL of this function.

In 2004 the New Oil Contract was instituted, which eliminated the requirement of partnering with ECOPETROL in order to explore and operate oil fields, meaning that companies would assume all the risks but also receive all the rights to the oil produced.⁴

In 2006 Law 1118 authorized ECOPETROL to issue stock shares, thereby transforming it into a Corporation of mixed economy and of a commercial nature.

In 2009, Law 1274 certified the oil industry as a public utility at all stages of exploration, production, transportation, refining, and distribution, authorising the state to expropriate property for this purpose.

1. Canada International Development Agency, "Marcos regulatorios y el rol de las empresas estatales de hidrocarburos," November 2007.

2. Ibid.

3. Colombian Congress, Law 756 of 25 July 2002, Bogotá, Congress, 2002.

4. Canada International Development Agency, Op. cit.

Land, water and nature: Symbols of the State

Photo: Marcia Valverde



Women from the Kuna indigenous community (Chocó). There are currently 102 indigenous ethnicities in Colombia, of which only 87 are recognised by the State.

“Land, water, nature and good governance will be integral parts of the administration that we begin today.” These were the words of President Juan Manuel Santos in his inaugural speech in Bolívar Plaza in Bogotá. That morning, on 7 August 2010, the President visited a sacred place in the Sierra Nevada de Santa Marta, where Mamos¹ presented him with a sceptre and necklace with four stones: “one representing the land we should care for, one for water the source of life, one for nature with which we should be in harmony and the fourth for the government, that should respect nature’s order and the will of the Creator.”²

Currently 102 indigenous groups totalling 1,378,884 people³ reside in Colombia, in addition to 61,639 Afro-Colombian families⁴ made up of 4,261,996 persons according to

official statistics, and about 13 million according to social organisations.⁵ These ethnic groups generally reside in the midst of the armed conflict, on lands of great geostrategic importance, crucial to drug trafficking routes or with large concentrations of natural resources. Displacements, forced disappearances, assassination, threats, resource pillaging, and poverty have been slowly eroding this population, making development difficult and relegating them to forgotten positions in society.

PRIOR CONSULTATION

In 1970 indigenous and Afro-descendant movements began an organised struggle to defend their cultures, lands, knowledge, and wisdom, but it was not until the Constitution of 1991 that Colombia enshrined pluralism, recognising ethnic and cultural

diversity in the Nation and the right to prior consultation as stipulated by International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples. According to the ILO, prior consultation is a process whereby governments seek peoples’ opinions regarding different legislative proposals or projects that could affect them, with the purpose of obtaining their permission or arriving at some kind of agreement.⁶ However, the result of the consultation is not binding, and even if people reject the project, it can still continue if the State wishes.

Law 21 of 1991 ratified the ILO convention and the right to prior consultation for indigenous and tribal peoples in Colombia. Law 70 of 1993 recognised afro-descendant communities and establishes mechanisms for their protection.

Decree 1320 of 1998 regulated

prior consultation for natural resource mining in indigenous and Afro-Colombian communities. The policy establishes deadlines for the processes and specifies mechanisms for informing communities. It also stipulates that if the community representatives decline to participate or give a response, then the company can carry out an environmental impact study regardless of the consultation and assumes that consultation is only necessary before the exploitation phase despite the fact that the exploration phase can also generate negative impacts for these communities. Because of the way land is defined, the consultation would only apply to reserves or recognised territories, and not to ancestral or traditional lands, nor collectively held

untitled lands. Both the Colombian Constitutional Court and the International Labour Organisation have stated on multiple occasions that this decree is incompatible with Convention 169 as ratified by Colombia, and have been advocating for its revision and annulment.⁷

Despite its legal recognition, in practice prior consultation is not a mechanism that is frequently utilised. In fact, only 141 consultation processes have been carried out between 1994 (when it was established) and February 2011.⁸ Because of this, and the overall lack of clarity in its application, the Constitutional Court has issued a series of decisions intended to clarify its scope, and has even identifying it as a fundamental right.

PROBLEMS WITH CONSULTATION

Of the 102 indigenous groups in Colombia, just 87 are recognised by the State.¹⁰ Twenty-seven percent of the indigenous population¹¹ resides outside of the 715 authorised reserves¹², living instead on ancestral lands not recognised by the State. Their rights to their territories are not recognised, nor are their rights to the natural resources found within. According to Decree 1320, they do not have a right to prior consultation.

There are 159 recognised collective territories for the Afro-Colombian population. However, at least 60% of the Afro-descendant population in the Pacific region of the country does not have a guaranteed right to its land because it lives outside of territories recognised by the Government.¹³

In July 2010, the UN Permanent Forum on Indigenous Issues carried out a mission to Colombia and received information that indicated that mining concessions had been awarded in 80% of the legally recognised reserves and that land titling processes had been delayed in order to allow for other projects “without adequately following the consultation processes or without the free, prior, and informed consent of the affected peoples.”¹⁴

Today there are still 64 reserves that have been waiting years for their legal recognition¹⁵ and hundreds of hectares on the Atlantic Coast and Andean valleys awaiting collective titling as Afro-descendant territories,¹⁶ while mining concessions are processed in a matter of months and in some cases without any consultation with the affected ethnic minorities. In 2011, 168 mining licenses were granted in indigenous reserves, and 978 requests are currently pending.¹⁷ At the same time, the number of licenses granted in Afro-Colombian community territories reached 236, with 1,868 pending requests.¹⁸ In terms of crude oil, 8.8 million hectares of indigenous reserves are designated oil areas; many of them are already licensed for exploration and drilling while others are still being studied.¹⁹

Additional problems exist with the way prior consultation is currently conducted. Decree 1320 of 1998 established a timeframe of

Two of the Court's most important rulings with regard to prior consultation:

Writ of Protection-652 of 1998, which recognises the rights of the Embera Katío people of Alto Sinú, who were threatened by the construction of the Urrá hydroelectric project, and deems the right to collective property a fundamental right of ethnic groups over their lands, not just because of what it means for their survival, but also because land is part of Indigenous cosmogony and provides the necessary material basis for the development of their characteristic cultures.

Writ of Protection-129 of 2011 (the Chidima-Pescadito case) clarified and strengthened rules for prior consultation: that it should be conducted with respect for the spaces and times of the communities and should happen during the planning stage of the project and not when it is close to being carried out. Moreover, the ruling provides that projects not be allowed to move forward where the impact on the community will be significant and the community feels that the alternatives are equally damaging.⁹

Graffiti by Bastardilla





Maps: Indigenous reserves (left) and Afro-descendent community lands (right)

IN 2011, 168 MINING LICENSES WERE GRANTED IN INDIGENOUS RESERVES, AND 978 REQUESTS ARE CURRENTLY PENDING.

20 days for the company to inform the affected communities of the project's development, which does not provide sufficient time for leaders to adequately consult with their communities, nor does it allow them to follow their traditional decision-making processes.²⁰ In addition, the technical concepts and language used by authorities and company officials makes it difficult for these groups to understand what is happening, which means they often accept proposals without understanding what they accepted or the consequences.²¹

ILO Convention 169 stipulates that prior consultation be carried out in good faith, freely and with all the available information. The Inter-American Court of Human Rights has established that the State ensure that consulted community members "understand possible risks, including environmental and health risks, so that they are accepting the proposed development or investment plan with clear understanding."²²

There are various critiques about the ways in which companies are able to achieve their goals without taking into account these requirements: from presenting meeting attendance lists as if they were signatures of consent,²³ to making false promises about the benefits of a project.²⁴ Additionally, in many occasions the companies seek to satisfy the basic needs of the communities by providing education, health and other benefits.

Though they are essentially providing services that the State is obligated to guarantee, this often serves to convince the population to accept the project without considering future consequences.

Another obstacle to carrying out prior consultation is the signing of Free Trade Agreements (FTAs). Many FTAs contain clauses that allow foreign investors to sue and demand compensation from the Colombian government for violating their "rights" to free trade. For example, if the State denies an environmental permit to a company based on the result of the prior consultation, the company could sue the government and demand compensation. This represents yet another impediment to the development of this mechanism and additional advancement in human rights recognised by Colombian law.²⁵

CONSULTATION OR CONSENT

The fundamental purpose of the right to prior consultation is to protect the lives and integrity of indigenous peoples from the many looming threats. However, in practice this mechanism is seen by many of the involved parties as yet another hoop to jump through and not as the recognition of a right and the opportunity to create more favourable conditions for the well-being of ethnic groups.²⁶

As noted by the Institute for Peace

and Development Studies (INDEPAZ), consultation should be carried out on the principle of good faith, in participatory spaces that allow useful participation with sufficiently informed and representative spokespersons. It should ensure that the community has full knowledge of exploration and extraction projects planned for its lands, as well as the negative impact that these projects could have on societal cohesion and group survival. It should provide spaces for the community to debate advantages and disadvantages of the projects, as well the ability to have their concerns heard and be able to express their opinion of the project's viability.²⁷

What if the communities want to say 'no' to the proposal? The Inter-American Court of Human Rights and other national and international bodies²⁸ have indicated that when the issue concerns large-scale investment within territories in which there are ethnic groups, the State's obligation is not just to consult, but also to obtain to free, prior and informed consent of these communities²⁹ (See the article "Is the Mandé Norte mining exploration and extraction project wanted?").

To achieve a true prior consultation beyond merely identifying the geographical bounds of a town, it is necessary to take into account intercultural factors, as noted by Marcela Castellanos of the Luis Carlos Pérez Lawyers Collective, an organisation that advises communities on consultation processes: "If a community's notions of their land, of the relationships they have established with it, of the web that they weave



In October 2011 Afro-descendant communities took to the streets of Bogotá to demand their rights. More than 70,000 Afro-Colombian people were displaced from their lands in 2010.

are not taken into consideration... If technical parameters are the only consideration, then a project will never be implemented that doesn't affect the some of the many cultural facets of a people.³⁰

VIOLENCE AS A BARRIER TO CONSULTATION

After its most recent visit to Colombia, the mission of the UN Permanent Forum on Indigenous Issues stated that indigenous

AT LEAST 60% OF THE AFRO-DESCENDANT POPULATION IN THE PACIFIC REGION OF THE COUNTRY DOES NOT HAVE A GUARANTEED RIGHT TO ITS LAND BECAUSE IT LIVES OUTSIDE OF TERRITORIES RECOGNISED BY THE GOVERNMENT

peoples are often subject to forced displacement as a strategy to impose megaprojects on their lands without having to undergo the process of prior consultation.³¹ In 2010, fourteen large-scale displacements of indigenous communities that affected 4,061 people were reported.³² In terms of the Afro-descendant populations,

it is estimated that they comprise 1.2 million of the national total of around 5 million³³ and according to the Consultancy for Human Rights and Displacement (CODHES), 70,010 Afro-Colombians were displaced from their lands in 2010 because of threats, assassination of leaders, forced recruitment of minors, aggressions, and combats, among others reasons.³⁴

The United Nations Permanent Forum on Indigenous Issues (UNPFII), points out the obligation of States to

protect the lives and physical safety of these groups by preventing any act of genocide or other kind of violence, as well as to protect the recognition of their rights. In 2006 the United Nations called attention to the incursion of armed actors into indigenous and Afro-Colombian collective lands on behalf of private economic interests.³⁵ This is not just something of the

past: the latest report from INDEPAZ indicates that paramilitaries continue to be an active agent associated with megaprojects and their impacts. It notes that there are 398 reserves, 202 communities outside of the reserves, and 45 colonial reserves³⁶ where there are interests in carrying out megaprojects and whose territory is fully or partially located in one of the 275 municipalities that INDEPAZ reports as having paramilitary activity.³⁷

In this sense, ethnic minorities report that by simply defending their land and rights they are "treated as a military target, confined, exterminated; our claims and our organisations are criminalised, and we are condemned to disappear," as the National Indigenous Organization has stated³⁸ According to indigenous and Afro-descendant organisations, human rights violations suffered by ethnic groups have been concentrated in territories where there are crude oil, mining, and agro-fuel megaprojects.³⁹ In fact, statistics show that 89% of indigenous and 90% of Afro-descendants assassinated in recent years hail from mining and energy production areas.⁴⁰ And of the 32



In 2008, nearly 10,000 indigenous people marched from Cali to Bogotá to denounce human rights violations committed by armed actors in rural areas.

indigenous ethnicities designated as at risk of cultural or demographic extinction, at least 20 are currently affected by mining exploration and extraction projects.⁴¹

Colombia is one of the countries that affords the most rights to traditional and ethnic communities. But ethnic minorities do not merely want to see their rights down on paper; they desire true and effective recognition of their diversity, their lands, their culture and customs. They want their voices to be heard and not compromised by economic development if it simultaneously impedes their own development.

1. The Mamos are priests or sages in the community who pass on the wisdom of the elders and exercise religious power.
2. Camila Osorio Avedaño, "La locomotora de Santos se enfrenta a los mamos y a la Sierra," *La Silla Vacía*, 27 July 2011, <http://www.lasillavacia.com/historia/la-locomotora-de-santos-se-enfrenta-los-mamos-y-la-sierra-26120>.
3. Luis Evelis Andrade, "¿Cuáles son, cuántos y dónde se ubican los pueblos indígenas en Colombia?" National Indigenous Organisation of Colombia (ONIC), <http://www.onic.org.co/Pueblos.shtml>.
4. Camilo González Posso, "Empresas petroleras y los derechos de las comunidades y grupos étnicos," Camilo González Posso, "Renta Minera, Petróleo y Comunidades," Bogotá, Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ), 2011, p 88.
5. Toda Colombia, "La población negra o afrocolombiana," <http://www.todacolombia.com/etnias/afrocolombianos/poblacion.html>.
6. International Labour Organisation (ILO), Convention No 169 on Indigenous and Tribal Peoples in Independent Countries, Geneva, June 1989.
7. Inter-Church Justice and Peace Commission, "El derecho a la Consulta Previa en la Legislación interna y el Derecho Internacional," 2011.
8. Susan Abad, "Falta voluntad política para aplicar consulta: Reglamento de consulta previa transgrede otros derechos de pueblos indígenas," *Noticias Aliadas*, 24 June 2011, <http://www.noticiasaliadas.org/articles.asp?art=6407>.
9. Juan Esteban Lewin, "La consulta previa recargada: nueva carrilera para las locomotoras de Santos, La Silla Vacía," 2 May 2011, <http://www.lasillavacia.com/historia/la-consulta-previa-recargada-nueva-carrilera-para-las-locomotoras-de-santos-23889>.
10. UN High Commissioner on Refugees, "Pueblos indígenas en Colombia," <http://www.acnur.org/t3/pueblos-indigenas/pueblos-indigenas-en-colombia/>.
11. Andrade, Op. cit.
12. Colombian Commission of Jurists, "Informe sobre la situación del derecho al territorio de los pueblos indígenas y las comunidades afrodescendientes en Colombia," Bogotá, August 2011.
13. Ibid.
14. National Indigenous Organisation of Colombia, "Colombia: La Minga continúa," *MINGA Informativa de Movimientos Sociales*, 3 November 2008, http://www.movimientos.org/show_text.php?key=13383.
15. María Pindamó, "Verdades de los pueblos indígenas de Colombia que el gobierno desdibuja," *DH Colombia*, 2 November 2008, <http://www.dhcolombia.com/spip.php?article681>.
16. Colombian Commission of Jurists, Op. cit.
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Is the Mandé Norte mining exploration and extraction project wanted?



Photo: KOLKO

In 2005, the Colombian Government granted nine mining licenses to the U.S. company Muriel Mining Corporation (acquired by the Canadian company Sunward Resources Ltd in April 2011¹) for a period of 30 years to mine gold, copper and molybdenum as part of a project called Mandé Norte. These licenses cover 16,000 hectares in the lower and middle Atrato region (in Northwest Colombia) where there are ancestral territories belonging to Afro-descendent and indigenous Embera communities.²

The communities affected by the project stated that prior consultation was not adequately carried out due to fraud: "They invited some leaders to meetings during which they gave them food and drink and they never told them about the exploration that they were going to do. For the Government, this was a valid proceeding and so they started prospecting," said Yagarí, a member of the Indigenous Organisation of Antioquia (OIA).³ They also stated that the Government recognised spokespeople that did not represent the 12 Embera peoples or two Afro-Colombian communities in the area.⁴

Facing this situation, the

communities decided to carry out a consultation and answer the question: "Is the Mandé Norte mining exploration and extraction project wanted?" Between 24 and 28 February 2009, twelve indigenous communities from the reserves of Uradá, Jiguamiandó River, Chageradó-Turriquitadó River and Murindó River, as well as afro-descendants from the Pueblo Nuevo, Jiguamiandó River Humanitarian Zone, carried out the consultation. The answer was a strong and unanimous rejection of the project.⁵

In response to the writ of protection requested by the communities, the Constitutional Court issued ruling T-769 in October 2009, which suspended the exploration phase of the project until studies could be carried out on the social, environmental, and cultural impacts, and adequate prior consultation could be held with "the free, prior, and informed consent" of the affected community.⁶

Communities have reported that those who have expressed opposition to the mining project have been accused of being part of the guerrilla, been stigmatised, and their lives have been put in danger.⁷ In January

2010, after a military bombing left two indigenous persons seriously injured, the Inter-American Commission on Human Rights ordered precautionary measures for 87 families due to the risks created by the presence of armed actors in their lands, and designated their reserve a humanitarian zone.⁸

Today, rulings of the Constitutional Court regarding prior consultation and the required impact studies still have not been complied with by the national government. In fact, the Ministry of Justice and the Interior has asked the Constitutional Court to overturn the ruling.⁹

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“Before this country was even a republic there was mining in Colombia”¹

Photo: Jonas Wresch



A miner with the day's earnings. Before they were of interest to multinationals, many of these lands did not have a State presence to provide basic necessities or security.

In Colombia there are at least 6,000 small-scale mines,² from which millions of Colombians derive their livelihood. It is an activity that doesn't provide large incomes, but is a means of subsistence that is increasingly threatened by large-scale mining. The government's plan is to turn Colombia into a mining power in Latin America by 2019, and to do this it is necessary to increase production enough to double current coal and gold mining production,³ (see the article in this bulletin "The Mining and Energy 'Boom'") something small-scale miners are not capable of. Several organisations accompanied by Peace Brigades International work with indigenous communities, afro-descendants, and small-scale miners to help ensure their rights

are protected and provide them with alternatives "because," says mining expert Mario Valencia, "the solution cannot be to close the mines and drive them off their land."⁴ Natural resource mining is the way of life for such communities, and for some their only option.

Though Colombia was not considered a mining power until recently, this activity has been a means of subsistence since before the Spanish invasion. Indigenous, Afro-descendants, and later small-scale farmers have made it into a way of life. Five million miners, workers, and their families⁵ in 44% of Colombia's municipalities⁶ make their living from small and medium-scale mining.

There are three kinds of mining

in the country: 1) traditional, artisanal or small-scale mining by ethnic minorities since ancient times (and now also by displaced farmers); 2) medium-scale mining involving the use of dredgers and backhoes; and 3) large-scale mining conducted primarily by multinationals.⁷ Although the products, environmental impacts, economic benefits, state protection and tax exemptions they receive are all distinct, current Colombian law requires that all forms of mining must comply with the same requirements to operate in the country.

LEGALISATION

The Mining Code of 2001 eliminated the differences between these three kinds of mining and obliged small and medium-scale

mines to compete under the same conditions as large mines. It also allowed for penalising and halting mining that was not legally registered within three years of 1 January 2002.⁸

Many small-scale miners live in remote regions of the country, regions in which energy comes from gas generators and the roads are sandy trenches that even the most prepared vehicles cannot traverse. Legislative changes approved in Bogotá take a long time to reach these places, particularly during that period, when the armed conflict was in full swing. As such, many miners never knew that as of 2002 they would have needed to obtain a license for something they had done for years. Meanwhile, multinationals arrived in the country and began to request concession.

Thanks to the work of human rights organisations, some small-scale miners did find out about the new laws, but this did not make it any easier for them. Some didn't have sufficient economic resources

FIVE MILLION MINERS AND THEIR FAMILIES IN 44% OF COLOMBIA'S MUNICIPALITIES MAKE THEIR LIVING FROM SMALL AND MEDIUM-SCALE MINING

to complete necessary studies and procedures while others (upon requesting their license) discovered that their lands had already been ceded to large companies.⁹ The Colombian Institute for Geology and Mining (Ingeominas—the mining authority in charge of adjudicating licenses) received 2,845 requests to license mines, but only managed to license 23.¹⁰

In 2010 the government proposed reforms to the Mining Code, establishing an additional two years to register small-scale mines.¹¹ The reform law stipulated that if a requested area were already licensed, the mining authority would mediate between the two parties to arrive at an agreement. In practice, this meant that the small-scale miner had to either “sell, partner [with the company] or leave the area.”¹² Miners have until February 2012 to register their work, but in February and July 2011, the Ministry of Mining and Energy issued two resolutions suspending receipts of licensing requests for artisanal mines until 3 March 2012.¹³

The avalanche of exploration and operations requests overwhelmed Ingeominas's ability to process claims and for that reason they put a freeze on all new requests while they attempt to address the nearly 20,000 that have accumulated,¹⁴ and to revoke licenses granted in protected areas.

The Constitutional Court ruled the Mining Code reform unconstitutional, but deferred the effects of the ruling for two years so that Congress can present a revised bill (see article “Mining Legislation: Advances and Setbacks” in this bulletin).¹⁵ The new small-scale deadline license registration dates still valid, but because of the Mining and Energy Ministry's suspension, miners can no longer submit their registrations. Small-scale mining thus remains in legal limbo that no one knows how to resolve. Currently, 70% of artisanal miners do not have licenses, while in 90% of the mining zones concessions have already been granted to multinationals.¹⁶

ILLEGAL MINING-ARTISANAL MINING

According to various experts, current mining policy is designed to allow the State to pave the way for large mining projects by transnational companies, whose greatest obstacle is the small and medium-scale miners already working in areas where the companies intend to start open pit mining projects.¹⁷ The Director of Ingeominas, Oscar Paredes, and the Vice-Minister of Mines, Tomás González, deny that the objective is to persecute artisanal miners and insist that they will create an “entity that provides soft loans so that these communities can improve their operations, in addition to educating them on ways to protect the environment and increase job security.”¹⁸

What is certain is that, in addition to laws that discriminate against small-scale mining, members of the Government have begun to make statements that discredit the people who do this work. The former Minister

of the Environment, Housing, and Territorial Development stated that the ministry has begun a “great crusade” against illegal mining with “the objective of catching people in the act who work without a mining license or environmental permit.”¹⁹

One of the arguments against small-scale mining is that it “is a drain on the country's economy, does not take into account environmental impact, and creates more pollution by using obsolete technology.”²⁰ It is true that small-scale mining entails high environmental costs due to the processes and substances it employs in natural resource mining; in fact, Colombia is the country with the highest level of mercury pollution in the world,²¹ and Segovia, a traditional mining municipality, has the highest concentration of this element in the world.²² But social organisations report that the pollution created by large multinationals in their mining projects is even greater. One example is the Cerrejón mine in La Guajira Department, which in 30 years of operation has polluted rivers, caused lung diseases, made land fallow and displaced communities (see the article “Coal for the world, setbacks for La Guajira” in this bulletin).

The counter-argument most widely repeated by authorities is that un-licensed mining finances illegal armed groups. These groups, it is said, use mining to fund their operations, which is why such mining is often referred to as illegal mining.²³ However, the Government does not differentiate between illegal mining and informal mining (mining without a license) and in fact equates informal artisanal mining with illegal mining allied with the guerrilla in order to justify the militarisation of mining areas.²⁴ The former Minister of Mining and Energy, Carlos Rodado, asserts that “illegal mining is a crime and we need to prosecute that part of the mining industry in Colombia that, regrettably, has developed without respect for the law and that is destroying the environment.”²⁵ The National Development Plan justifies persecution by the armed forces, the appropriation of tools and production, mine closures and jail time²⁶ for whoever participates in illicit mineral mining as of January 2012.²⁷ In the first four months of 2011, the Government closed 191 mines and detained 600 people,²⁸ and



Children playing in water pumped out of the nearby mine.

MANY SMALL-SCALE MINERS LIVE IN REMOTE REGIONS OF THE COUNTRY, REGIONS IN WHICH ENERGY COMES FROM GAS GENERATORS AND THE ROADS ARE SANDY TRENCHES THAT EVEN THE MOST PREPARED VEHICLES CANNOT TRAVERSE

the Defence Minister announced that it was considering the possibility of increasing the manpower in charge of security for mining and energy infrastructure, which today consists of 80,000 individuals.²⁹

ILLEGAL ARMED ACTORS AND MINING

Many people who work in small-scale mines today were farmers who arrived in mining areas after having been displaced by the violence that battered Colombia, or being pushed out by the crash of the agriculture sector brought about by neoliberal policies implemented in the 1990s. Many of these farmers lost their lands and relocated to municipalities where mining was the way of life. Before they were of interest to multinationals, many of these lands did not have a State presence to provide basic

necessities or security. Today, poverty and illiteracy rates in these departments are among the highest in the country. Antioquia department has the highest number of illiterate persons (116,185) followed by other mining departments like Bolívar (83,671), Córdoba (81,934) and Valle de Cauca (39,432).³⁰ In departments like La Guajira, Cauca, and Cesar, more than half the population is poor despite income from mining royalties. Poverty rates in La Guajira and Cauca are 64.3%, and in Cesar, 53.6%.³¹

Statistics on violence are also alarming. These are areas that have been disputed by illegal armed actors for years. Inhabitants of these areas have been victims of massacres, economic blockades, forced displacements, threats, and assassinations carried out by paramilitary and guerrilla groups seeking to take control the land

and clear the way for the arrival of multinationals, or to control the benefits of the natural resources being mined. Thus, before the arrival of large companies, homicides increased in traditional mining departments like Antioquia, Bolívar, Guajira and Magdalena from 681 in 1995 to 1,667 in 2001. Massacres also increased from 36 in 1996 to 105 in 2001.³²

These are not problems of the past; this year inhabitants of Southern Bolívar reported massacres that were allegedly related to disputes for control over natural resources.³³ On 1 September of this year in Caldas, another mining area, Father Restrepo was assassinated. Fr. Restrepo had led a Civic Committee that opposed a megaproject in Marmato operated by Gran Colombia Gold, a Canadian company.³⁴ And in July of this year communities in Suárez (Cauca), alerted to the presence of armed actors in the dwellings of community leaders who had denounced retro excavators on their land.³⁵ Today, per capita homicide rates in mining departments continue to be the highest in the country: Antioquia 70.51, Valle del Cauca 77.66, La

Guajira 31.76 and Cauca 41.62.³⁶ The number of assaulted human rights defenders in these departments is also very high; the “We are the Defenders” campaign reports that of the 145 leaders or defenders that suffered some form of aggression between January and June 2011, 16 cases occurred in Valle del Cauca and Caquetá departments, 13 Antioquia, and 10 in Cauca. Additionally, of the 29 human rights defenders assassinated in this same period, at least three were working against large-scale mining and another five resided in areas of mining. One person also involved in these activities disappeared in February.³⁷

Admittedly, mining has been and continues to be a profitable business that for years has attracted illegal armed groups. These groups use mining to launder money obtained from illicit crop production (as explained in the article “The Mining and Energy ‘Boom’”) and also extort traditional miners, required monthly payments in the form of gross mining profits or a quota for each machine used by the miner.³⁸ Those who refuse to pay risk a whole host of human rights violations: “the State criticises us for paying the fee, but the State isn’t here to protect us,”³⁹ says one miner. Despite increased presence of the armed forces in these municipalities, miners continue to suffer day-to-day in the conflict. They are displaced, threatened, and assassinated by illegal armed actors and now persecuted and criminalised by the State for continuing the work they have done throughout the country for centuries.⁴⁰

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Photo: PBI



Artisanal miner in Segovia (Antioquia). Many people who work in small-scale mines today were farmers who arrived in mining areas after having been displaced by the violence in their home regions, or having been pushed out by the crash of the national agriculture sector brought about by neoliberal policies implemented in the 1990s.

Artisanal mining in Northeast Antioquia

Photo: Jonas Wresch



Small-scale miners have survived on the minimal production that they are able to eke out of their mines in the midst of armed conflict and abandonment by the State.

In this region of the department of Antioquia,¹ thousands of families have lived off of artisanal gold mining for centuries. Small-scale miners have survived in the midst of conflict and abandonment by the State, surviving on the minuscule production they were able to eke out of their mines. But according to the plans of Project Vision Colombia 2019 (see “The Mining and Energy ‘Boom’” in this bulletin), the mining district of Northeast Antioquia will become the nation’s principal mining district, to be carried out through increasing mining by multinationals and reducing artisanal mining. Large mining companies began to arrive in the region at the end of 2010; at the same time, seventy mines were closed and 118 individuals involved in unregistered mining were arrested.²

Since then, violence and militarisation in the area has increased. There have been threats from illegal

armed groups like the Black Eagles, the Rastrojos and the Paisas,³ paramilitary presence in villages in the municipality of Remedios,⁴ and mining leaders assassinated in Segovia.⁵ In response, miners have organised themselves into committees to fight for their rights. The Peasant Farmer Association of the Cimitarra River Valley has begun working with several of these committees, organizing workshops on current legislation and registration processes, environmentally sustainable mining practices, and human rights. The goal is to educate miners on self-protection measures and about the alternatives available through participation in the Peasant Farmer Reserve Zone of the Cimitarra River Valley.⁶

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Guamocó: “Gold for life and not for death”¹

Photo: PBI



Currently, nearly 90% of the population of Guamocó survives in precarious living situations. Water is brought to villages through collectively shared hoses from creeks that often are polluted by mercury or cyanide.

Legend tells of a magical place: a lake where indigenous people swam after covering their bodies in gold dust; a mystical place where each week chiefs and priests came to offer tonnes of gold, emeralds, and rubies to the goddess Bachúe. Those seeking gold could not find this secret city because each time they would get close to it, it would disappear. This mysterious place was given the name El Dorado, which would eventually become the nickname for gold-producing regions in different parts of the Americas where untold riches were believed to exist. Because of its lush landscapes, beautiful hills, and rich land, Guamocó was considered one of these mystical regions.

Located on the western coast of the San Lucas Mountains between Antioquia and Bolívar departments, Guamocó contains one of the

largest gold reserves in the world.² Named for an indigenous chief who once inhabited the land, Guamocó is remembered as the principal gold producing region during the Spanish occupation. Despite the fact that artisanal mining has been practiced there since ancient times, it is estimated that only 5% of the total reserves have been extracted.³ Inhabitants of the area continue to insist that they live on mountains of gold, most which has yet to be mined: “There is gold everywhere, in the rivers, the valleys and the bowels of the land,” they say.⁴

But gold is not the only resource there; the land also holds oil, silver, water reserves and wood. However, despite this large quantity of resources, Guamocó is a paradox— torn between the riches found in the depths of its soil and the cruelty of the conflict, misery and

under-development suffered by its inhabitants.

Indigenous peoples and later Afro-descendants are the original inhabitants of the area. Afterwards, settlers arrived in pursuit of the Legend of El Dorado. Many subsistence farmers from regions like Magdalena Medio and Valle de Cauca began arriving at the end of the 1940s after being displaced by political violence. Eventually the area was re-colonised in the 1970s by small-scale artisanal miners.

Currently, approximately 9,000 people working in artisanal mining live in the area, who struggle each day to stay on the land.⁵ In addition, there are many more small-scale miners from other regions of the country that come to Guamocó to work for a few months and use this money to support their families.



A total of five battalions operate for the purpose of, according to local miners, “providing security to mining companies.”

GUAMOCÓ WAS AND IS ONE OF THE REGIONS OF COLOMBIA MOST AFFECTED BY VIOLENCE

NATURAL RESOURCES AND VIOLENCE

Travelling to the heart of the area can be a real adventure. It takes days between cars, boats and walks through muddy trenches in the middle of the jungle and over the peaks of mountains. Backhoes used in medium and large-scale mining occasionally disrupt the idyllic forest scene. They appear suddenly in a clearing beside huge piles of sand and pools of brilliant green—a by-product of chemicals used in gold mining.

National and multinational companies started to focus on the area at the end of the 1990s. This is also when the paramilitary assault began.

Guamocó was and is one of the regions of Colombia most affected by violence perpetrated by illegal armed groups that, according to inhabitants, seek to exert power over the land and economic control over gold mining operations.⁶ An example of this violence was a massacre committed on 25 April 1997, when a paramilitary group entered Río Sucio (a municipality in Southern Bolívar) and killed 30 people. Among them was mining leader Juan Camacho Herrera, who the paramilitaries decapitated and, after playing football with his head,

placed it on a stick facing Guamocó. The paramilitaries told the villagers that they had come to take over the mines, and that they would turn them over to those who could best exploit the mines’ resources.⁷ From this point on the population began to suffer more massacres, selective assassinations, and displacement.

More than 36,000 people were displaced from the region between 1997 and 2009.⁸ The Agro-Mining Federation of Southern Bolívar (FEDEAGROMISBOL) documented 700 disappearances between 1999 and 2000.⁹ Additionally, the Magdalena Medio Peace and Development Programme (PDPMM) reported that illegal armed actors killed 380 civilians between 1997 and 2007¹⁰ and CINEP’s database recorded 333 extrajudicial executions in recent years.¹¹ The situation was serious enough that the 2003 International Opinion Tribunal in Paris called attention to the systematic human rights violations “motivated by economic interests” in the area.¹²

Today violence continues in this region so remote that cannot even be found on a map. Illegal armed actors continue to frighten the population with massacres, such as the 17 August 2011 massacre in Casa Zinc, a rural area of the Montecristo municipality. A group of 20 armed

men identified as the Black Eagles arrived and imprisoned, tortured, and killed three people, leaving one person injured, and threatened to retake control of Southern Bolívar;¹³ two weeks later, the Canadian company Midasco Capital announced that they had received mining licences for the region, including one in Casa Zinc.¹⁴ Thus far in 2011, there have been 40 assassinations in the Southern Bolívar mining area.¹⁵ Threats continue in the form of graffiti signed by the United Self-Defence Forces of Colombia (AUC),¹⁶ checkpoints manned by armed civilians, and the presence of a paramilitary base in the region.¹⁷

The paramilitary assault of the 2000s massacred the nascent social movement that had begun forming after a series of marches led by small-scale farmers in 1996 and 1998. Over the years many leaders of mining organisations were assassinated, disappeared, and stigmatised.¹⁸ Today, organisations like the Association of Mining and Agricultural Brotherhoods of Guamocó (AHERAMIGUA) and FEDEAGROMISBOL continue to denounce the persecution to which they are subjected both by the State and armed groups. They have experienced attempted assassinations,¹⁹ threats,²⁰ detentions and false criminal charges, such as in the case of Édgar Jiménez, a mining leader jailed on 22 June and freed several months later.²¹

The guerrilla groups National Liberation Army (ELN) and the Revolutionary Armed Forces of Colombia (FARC), are also present in the area. They tax stores and mines, impose economic blockades, and forcibly recruit minors for their ranks.²² The FARC have also threatened to take a series of “unfortunate” actions in the region.²³

MILITARISATION OF THE ZONE

Human rights violations occur constantly in Guamocó despite an increased presence of Colombian armed forces. A total of five battalions operate in the region, for the purpose of, according to local miners, “providing security to mining companies.” For example, 300 soldiers have taken up in the village La Marisosa to protect the 30 company workers there. The headquarters of one of the largest companies in the region is an hour’s walk from the



Multinationals have obtained concessions or filed requests for nearly 90% of the territory of Guamocó since their arrival in the late 1990s.

GUAMOCÓ CONTAINS ONE OF THE LARGEST GOLD RESERVES IN THE WORLD

village. There are checkpoints along the route and within company property where members of the Armed Forces take note of each person that travels through.

Multinationals have obtained concessions or filed requests for nearly 90% of the territory of Guamocó since their arrival in the late 1990s.²⁴ Today there are four large companies with exploration and operating permits in Colombia, including parts of the Magdalena Medio Forest Reserve Zone that were unlawfully appropriated in 2011 to allow a large company to carry out exploration activities there.²⁵ Those who lived and worked in these areas for years, however, can no longer work legally nor obtain titles to their homes or plots of land because the area was declared “protected” for economic activity and artisanal mining is prohibited unless the particular plot of land is administratively removed from the “protected” designation.²⁶ And even when many small-scale miners attempted to register their lands in accordance with the Mining Code, they were not allowed to do so: “when we attempted to register, we realised that all the land was licensed to multinational companies, and that they never cared that we had lived there all our lives.”²⁷

As explained by the article in this bulletin “Before This Country Was a Republic, There Was Mining in Colombia,” the law stipulates that the Ministry should mediate an agreement between the small-scale miners and multinationals when it grants concessions in areas where artisanal mining already exists. However, because of their fear of being left without a livelihood, many miners have contacted the companies themselves to try and reach an agreement. But as many of them report, these efforts were in vain: “We tried to convince the company that they should leave some parts of the area they acquired to us small-scale miners who had worked the land for years, or that they should cede some titles to us. But the company didn’t want to make any kind of deal.”²⁸

FORGOTTEN LAND

Annual production in the region reaches around five tonnes (a little over 10% of the national total), and entails royalties of over two billion pesos.²⁹ In contrast to what is widely believed, this income rarely is invested locally. Currently, nearly 90% of the population of Guamocó survives in precarious living situations. Water is brought to villages through collectively shared hoses from creeks

that often are polluted by mercury or cyanide. Those that have electricity get it from individual generators.³⁰ There are barely any health centres or professionals in the region and the centres that do exist are built and funded by the communities themselves. “If someone gets sick during the night, we have to either watch them die or hope that the day comes soon enough to get them out,” says one community member.³¹ It often takes as much as seven hours by car to get from the furthest village to the nearest health centre, or in other cases days of walking.³²

Access to education is similarly problematic. There are schools in some areas that have been built by local residents, but there are neither professors nor educational materials available,³³ and as such illiteracy rates are as high as 27%, with 75% of the population only achieving a primary level education.³⁴

ALTERNATIVES: PEASANT FARMER RESERVE ZONES

Many small-scale miners and community residents are organising themselves to confront this situation, with the assistance of the Agroecological and Miners Brotherhood Association of Guamocó (AHERAMIGUA). With the accompaniment of several organisations such as the Luis Carlos Pérez Lawyers Collective (CCALCP) and the Peasant Farmer Association of the Cimitarra River Valley (ACVC), (both accompanied by Peace Brigades International), the communities are developing educational processes in order to understand current mining policy and legal protection mechanisms. Among other strategies, they have begun an initiative to create a Peasant Farmer Reserve Zone in Guamocó.

The Peasant Farmer Reserve Zone (ZRC) is a legal entity recognised by Law 160 of 1994, which allows for small-scale farming and mining communities to establish territorial boundaries in which they may create their own development plan in order to take care of basic necessities, secure titles for their land, promote and stabilise markets for small-scale farmers and miners, and protect natural resources and the environment.³⁵ The idea is to prevent the indiscriminate pillaging of resources and instead substitute it with a more sustainable

operating plan. In the ZRC, property is divided into Family Agricultural Units (UAF) and no one person can own more than one UAF, which prevents multinationals from acquiring large swaths of land to carry out megaprojects.³⁶

According to the miners, if artisanal mining practiced are continued, there is enough gold for 400 or 500 more years.³⁷ Small-scale

miners in Guamocó want gold to be a source of life and not death. Above all, they want land for peace and not war; they want Guamocó to still be considered “El Dorado” and, as in the legend, a place where those who have access to the riches hidden in its soil exploit them in a sustainable way.

Unrecognised Ethnic Communities

Gold, water, and the biological diversity of the mountains that make up this region are essential parts of the material and cultural foundations of life for the ethnic minorities that inhabit this region. Several indigenous and Afro-Colombian communities live in Guamocó and the State does not recognise the rights of either.

In the municipality of Montecristo, a place of interest for mining, several Embera Katío communities have been affected by mining. They report that businesses have arrived, levelled their villages, and polluted their rivers. Some indigenous people are becoming

sick and many have left the area.³⁸ However, they have no way to defend themselves because they officially do not have right to those lands.

Maroon communities³⁹ arrived in Guamocó fleeing slavery, in search of a far-away place that was difficult to access so that they might live in peace. Since then, their descendants have lived and worked in this region, and they too lack collective, recognised territory (see the article “Land, Water, and Nature: Symbols of the State” in this bulletin for more information about the rights of Afro-descendant communities).

Photo: PBI



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Small-scale miners in Guamocó want gold to continue to be their life's work.

Cauca:

The illegal take of La Toma

Photo: Jonathan Luna



The 1,300 Afro-descendant families that have lived here since the beginning of the 17th century have traditionally worked in agriculture, fishing and, above all, artisanal gold mining.

D on the banks of the rivers that lap the ground of La Toma (Suárez municipality, in northern Cauca; the name literally means “The Take”), strong and hard-working men and women of all ages pan the waters looking for gold. The 1,300 afro-descendant families that have lived here since the beginning of the 17th century traditionally have worked in agriculture, fishing, and especially artisanal gold mining.¹ More than just a trade, artisanal mining has become an art of subsistence passed from generation to generation. But large companies and individuals hoping to mine gold in the area disrupted the artisanal mining lifestyle several years ago.

In Suárez, more than 10,000 hectares of land have already been granted to individuals and multinationals.² Between 2000 and 2009 a total of 14 gold mining concessions were granted.³ One of them belongs to businessman Héctor Jesús Sarría, who obtained a concession for gold mining operations on 99 hectares between 27 June 2007 and 26 June 2017.⁴

NO PRIOR CONSULTATION

Despite the fact that Law 70 of 1993 requires prior consultation with afro-descendant communities, this procedure was not followed in the case of La Toma.⁵ Eliana Antonio, a lawyer for Black Communities Process (Proceso de Comunidades Negras, PCN) recalls how the Ministry

of the Interior explained away the government’s certification that there were no communities in this town as “an error of fact.” PCN is comprised of ethno-territorial organisations that share the goal of defending the human rights of Afro-Colombian communities living in the midst of the armed conflict.⁶

WHO ARE THE TRUE OWNERS?

One of the most difficult problems the community has had to confront in defending its lands is the fact that they do not possess collective titles—a right recognised by the aforementioned Law 70, but one that the community has not been able to enforce.⁷

The heart of the war

It is for good reason that northern Cauca in southwest Colombia is described as the heart of the country's conflict and the epicentre of its war.²⁸ Throughout 2010, the FARC harassed the resident of municipalities in northern Cauca 42 times²⁹ and 33% of the early warning alerts issued by the Human Rights Ombudsman for the whole country in 2010 were focused on Cauca. The alerts report some level of risk in 65% of the territory and in 45% of the municipalities in Cauca.³⁰ At the beginning of July of this year there were six attacks by the FARC³¹ and the government's

response has been to intensely militarise the zone.³² In July Admiral Édgar Cely, commander of the Military Forces, transferred his main office to Cauca,³³ and the High Mountain Battalion No. 8 Coronel José María Vesga, comprised of 800 soldiers, established a base in the mountain region of Tacueyó.³⁴ In November 2011, soldiers from the National Army killed the chief of the FARC Secretariat, alias "Alfonso Cano."³⁵ The indigenous community rejected both the FARC attacks and the occupation of their lands by the Colombian Armed Forces.³⁶

were not for the international attention we have received, they would have killed everyone," says Lisifrey Araraf, an Afro-descendant leader from La Toma who also received threats.¹⁴

LEGAL VICTORY FOR THE COMMUNITIES

Since Héctor Jesús Sarría obtained his license to mine gold through an "error," he has attempted to exercise his mining right in these lands, demanding that Ingeominas (Institute of Geology and Mining) and the mayor of Suárez evict the inhabitants of the area.¹⁵ The community would not consider leaving their ancestral lands, and so between 2009 and 2010 the entire population of La Toma confronted three separate eviction orders.¹⁶ But this has not been easy: "If we have to march, we will march. If we have to go to a forum, we will go to a forum. If we have to make a documentary, we will make a documentary. [We are] resisting," says Araraf with a strong and hopeful voice.¹⁷

When the mayor of Suárez ordered the last eviction in May 2010, the community filed for a writ of protection. One year later, in April 2011, the Constitutional Court recognised the rights of the community and suspended Sarría's mining license and all others that had not been previously presented to and accepted by the community. In addition, the Court ordered Ingeominas to refrain from granting mining concessions in La Toma until prior consultations are conducted.¹⁸

This would appear to be a happy ending. But as Jorge González, another leader from La Toma, observes, "one cannot trust [so easily] and we are not so gullible. Those people have a strategy and whenever one of them disappears, another arrives and ends up taking power."¹⁹

But thanks to the resistance of local miners, the businessman has not been able to begin his gold mining.²⁰ The fact that the community has been able to resist in the midst of threats from the Black Eagles makes this achievement even more impressive. "Since the moment pressure about mining began, threats, selective killings, and displacements have increased," explains Araraf.

Photo: Jonathan Luna



Over the last two years, the Association for Social Investigation and Research (Asociación para la Investigación y Acción Social - Nomadesc) has accompanied the mining community of Suárez, helping to strengthen their organisational process and publicising the problems that affect them. PBI has accompanied Nomadesc since November 2010.

However, the community sees the 400 years they have spent mining here as reason enough to recognise their rights to it. According to the lawyer Jorge Reales, who has assisted the community, "these mines were given to the Afro-Colombian families who were enslaved and then freed. They were given to them in recognition of their time worked."⁸ Convention 169 of the International Labour Organisation (ILO) establishes self-identification as a fundamental criterion for characterising indigenous peoples and tribes.⁹

MINING, KILLINGS, AND THREATS IN SUÁREZ

Though slavery ended long ago in Suárez, violence has not. The Revolutionary Armed Forces of Colombia (FARC) have maintained a constant presence in the region in recent years,¹⁰ and the paramilitary group "Black Eagles" arrived in October 2009.¹¹ Then, in April 2010, unknown persons assassinated eight Afro-descendant miners that had arrived in La Toma in search of gold.¹² Just a few days later, mining leaders began to receive threats in the form of pamphlets and calls to their mobile phones from the Black Eagles.¹³ "If it



TRADITIONAL MINING

It's not just businesspeople and illegal actors that try to limit traditional forms of survival in La Toma. "The State itself has greatly restricted mining activity through what they call 'safe mining,'" says dice Lisifrey Araraf. "We had to turn over the explosives [used for gold mining] which means that one now has to [break the rock by hand] for 18 months, like what happened to us this last time, and at this rate we will not be able to survive."²¹

Traditional practices are changing gradually. Francia Márquez of the La Toma Community Council notes that people from other regions have started arriving and using more profitable mining methods that use cyanide²² and mercury that "are harmful to us, most of all to us women who give birth. We are going to give birth to deformed children," she laments.²³

It cannot be denied that small-scale mining also affects the environment. Some miners use highly toxic chemicals like cyanide and mercury in an irresponsible manner and, because of this, small-scale mining can also be damaging to the environment, says Reales. The water in the rivers of Suárez is copper coloured. However, the overall effects are less severe compared to large-scale mining. "It makes no sense to compare large-scale mining and artisanal mining,"

explains Plutarco Sandoval, leader of Black Communities Process. "Large-scale mining is not sustainable. We have to be crazy to eliminate our water sources, our natural resources. [...] It makes no sense to end life for money."²⁴

However, the sad reality is that the threats continue. In July 2011, Aníbal Vega, currently the legal representative of the La Toma Community Council, reported that he received a threatening phone call in which the caller referenced his opposition to a project to reroute the Ovejas river—a river essential to the survival of the black communities of La Toma.²⁵ Márquez maintains that since filing the writ of protection, threats have increased against leaders of the Community Council to the extent that they now receive threats every fifteen days.²⁶

Nonetheless, Lisifrey Araraf insists that the Court's decision recognizes them as ancestral miners and that now they need to be recognised as such. She says that the most important challenge that they face "is to get the State to respect the Court's decision."²⁷ The resistance in La Toma has prevented the arrival of multinationals until now and, as a result, the communities have been able to remain on their land and assert their traditional way of life.

Traditional practices are changing gradually. People from other regions have started arriving and using more profitable mining methods that use cyanide and mercury, chemicals harmful to human health.

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Coal for the world, setbacks for La Guajira

Photo: PBI



Luis Antonio Duarte was offered three million pesos (USD 1.500) for his small mud house where he and his family had lived all their lives.¹ Luis lives in a peninsular department in northeast Colombia called La Guajira, in the middle of the largest coal strip mine in the world—El Cerrejón.

“What does one do with three million pesos?” asks Luis Antonio. In Chancletas, the town of afro-descendant subsistence farmers where he lives, there are already several demolished houses that El Cerrejón has purchased. Other neighbours of Luis Antonio have accepted the relocation offer and left. In Nueva Chancletas, as the new village is called, they will have to learn to grow crops in small lots of arid land rather than the vast plots that they once had at their disposal. There is even more pollution there, as the strong winds of the peninsula bring in dust from the coal mine. And while Wilman Palmezano, representative to the Community Action Committee

of Chancletas, doubts that many farmers can survive in the new place, many have already headed there. Luis Antonio confesses that he already sold one farm after front men threatened to start legal proceedings to expropriate the land.²

This all began at the beginning of the 1980s when the Intercor mining company arrived in La Guajira and began the El Cerrejón project. At that time, inhabitants believed that coal mining in their land would bring great benefits and little by little the communities turned their lands over to the mine—which today covers approximately 70,000 hectares—the highway, the railroad, and a port to ship coal to Europe and the United States. Soon thereafter, the communities realised they had made a mistake.³

Ten years ago, 76 year-old Emilio Páez, a strong man with sad eyes who once owned large tracts of land and 350 cattle, lost his livelihood. By order of a judge in Barrancas—the owners of El Cerrejón had appealed

to local legal authorities to obtain the appropriation—1,200 Afro-Colombian residents of the agricultural town of Tabaco were evicted and their town destroyed.⁴ As Páez reports, the police beat him unconscious as he tried to defend his home. He would later need 56 stitches in his head.⁵

Tabaco is one of the most notorious and dramatic cases of evicting a community to make room for a mining company. In this case, “one can clearly see the effect of lobbying by the State and the company in the land eviction,” says Dora Lucy Arias of the José Alvear Restrepo Lawyers Collective, an organisation that has accompanied and advised communities affected by El Cerrejón.⁶ Despite the fact that Colombia’s Supreme Court ordered the town be rebuilt in May 2002, the Government has yet to comply with the ruling.⁷ Former residents of Tabaco today live in uncertainty, dispersed throughout La Guajira and Venezuela, awaiting their resettlement.⁸

IN NUMBERS

89,000 tonnes of coal produced daily by the mine.

The Colombian Government has received **\$1.461 billion** in royalties from El Cerrejón over the last 25 years.

70,000 indigenous persons from La Guajira and its neighbouring department Cesar have been displaced by mining operations

70% of the population of La Guajira lives in poverty.

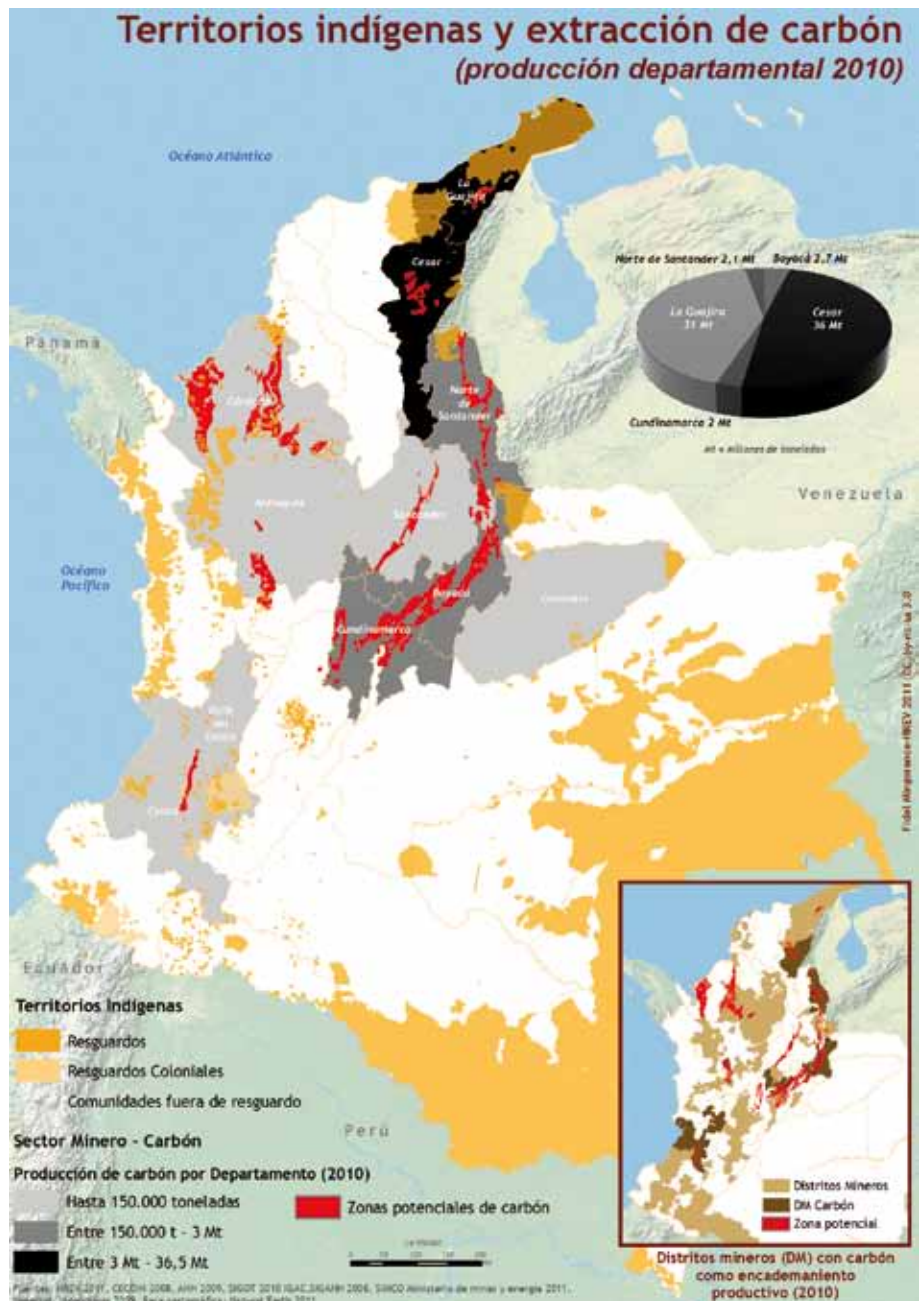
900 million tonnes of coal reserves exist in La Guajira.

INDIGENOUS WAYÚU SUFFER IRREPARABLE DAMAGE FROM COAL MINING

A mere 20 minutes from Chancletas travelling by car over a dusty dirt road, with a view of vast and arid mountains and passing dump trucks five stories high and with wheels two metres in diameter, is the indigenous Wayúu reserve, El Provincial. The Wayúu people have inhabited La Guajira since before the 1499 European invasion of the area.⁹

A pleasant breeze blows through the wide room covered with palm thatch roof in Mireya Gauriyú's house. Large, colourful *chinchorros* (hammocks) are hung from the wooden beams. Despite the fact that the Rancherías River (the most important to the peninsula) is just a few minutes away, the community of 120 families suffers from a lack of water because the neighbouring coalmine has polluted the river.¹⁰ Gauriyú's family is fortunate because they are able to buy water in the city, but the majority of the Wayúu inhabitants must drink polluted water and, as a consequence, they suffer diarrhea and skin rashes.¹¹

In the last 30 years, everything has changed for residents of Provincial. They once grew yucca, beans, and plantains; hunted rabbits and iguanas; and lived off of goat herding. Little by little, El Cerrejón bought the lands of the small-scale farmers in the area around the reserve where the Wayúu families raised and fed their animals. Now there is no longer land for planting or pasturing.¹² Before, the Wayúu were free to travel throughout their land.¹³ Today the coal mountains are covered with numerous signs that say "Cerrejón: Private Property." Privatisation of the land has limited the mobility of indigenous peoples.



Today Colombia is the largest producer of coal in Latin America, and the tenth largest in the world. This map depicts indigenous territories and coal extraction per department in 2010.

BEFORE, THE WAYÚU WERE FREE TO TRAVEL THROUGHOUT THEIR LAND

Photo: PBI



Female Nomads

The Wayúu woman traditionally focused her work on artisanal crafts and raising and educating her children.⁴¹ She has been the means of communicating knowledge from generation to generation. Today, many women are left without land and have had to leave for cities where there is no real possibility to support themselves in the way they know how.⁴² The quality of food is incomparable: many women “grow accustomed to eating ‘Bimbo’ brand bread and soda pop, even though they were once accustomed to eating fish, plantain, yam and fruit,” says Dora Lucy Arias. They have to find ways to feed their children because they no longer have traditional food sources. After eviction, women end up having to adopt a nomadic existence.

Photo: PBI



It is 150 kilometres from the mine to the port from where coal is shipped. In order to build the road and railroad and ship the coal, sacred places were opened and cemeteries moved, as if they were any old material object.⁴³

Photo: PBI



As a traditional authority figure, Valentín Ortiz, 76, knows the history of the Wayúu ancestors, language, laws, and culture. Together with traditional healers, he used to walk to Cerrejón Mountain, which today belongs to the mining company and bears the name of the coalmining project. These traditional healers would walk in search of traditional plants to cure members of their communities. Healers still cure patients, but with traditional plants brought from faraway places that have to be purchased in local markets.

If a cow or goat wanders onto the mine's property, it is lost; the owner will never be able to get the animal back.¹⁴

The community is dedicated to negotiating its relocation because of the pollution and because they are being forced to abandon their traditional means of subsistence. But its residents know what happened when the Chancletas community was relocated, and they want to make sure they acquire land suitable for raising animals and growing food.

The mine's current owners—BHP Billiton (Australia), Anglo American (UK) and Xstrata (Switzerland)—produce 32 million tonnes of coal annually (89,000 tonnes per day)¹⁵ and announced a few months ago that they intend to increase production to 40 million tonnes annually by 2015.¹⁶ In order to do this, they will need more land and water, and it is for this reason that they want to reroute the Rancherías River. But they first need the indigenous and Afro-descendant communities' approval via a prior consultation process.

The Wayúu of Provincial do not want the river rerouted, nor do they want mining operations expanded. "Our grandparents came here because they saw this river; this is why the community grew," says a resident.¹⁷ The Wayúu want the coal companies to compensate the communities for the damage caused over the last 30 years.

Besides, the Wayúu would be hard pressed to get work at El Cerrejón, as the company prefers to hire foreign workers. In fact, only 1% of the work force at El Cerrejón is from the Wayúu community,¹⁸ despite the fact that 45% of the population of the department is indigenous.¹⁹

Jairo considers himself fortunate because he has worked in the mine for more than a decade.²⁰ "Entering the mine is a privilege," he recognises. His family receives subsidised education for his children. Many Wayúu youths want to follow Jairo's example, but few are able to pass the entrance exams. With the destruction of their traditional *modus vivendi* (fishing, agriculture, pasturing) they are left without work. Jairo understands the resentment and frustration of his neighbours. For him, the company should, "give work preference to the Wayúu community because they are affected so directly."

Residents of Chancletas suffer a similar fate. Luis Antonio stands in front of his Honda motorcycle with his and his wife Rosmira's names painted over the red lacquer. For lack of other work, he now supports his family working as a motorcycle taxi driver. Others migrate seasonally to the large cities in search of work and send remittances back to their families. For Wilman Palmezano, president of the Community Action Board, excluding residents who live on the periphery of the mine is part of the company's strategy to negotiate the residents' relocation while they have "an empty stomach."²¹

For some leaders, representing their community and negotiating with the company has led to threats and persecution.²² Wilman Palmezano endured verbal threats and psychological pressure from 2009 to 2011. In 2009, unknown men followed him to his house at night and so for two months he slept elsewhere out of fear. He confirms that the last threat he received came from a worker for the mining company in August of this year, during the 10th anniversary of the eviction of Tabaco community.

Wilman's is not an isolated case. Several community leaders have denounced the constant persecutions, defamatory statements, and threats against them, the cause they represent, and their own lives.²³ Frequently, "the company pays part of the community, members of the Community Action Committees, to create divisions and build new 'leaders' separate from the democratically-elected leadership."²⁴ Wilman tells how the coal company offered him as much as 2.5 billion pesos (1.3 million dollars) if he would "leave the community."²⁵

For Wayúu leader Angélica Ortiz, it is clear that the company has continued to use the same strategies over the years to usurp coal-rich lands: the enclosure of rural communities by limiting the population's mobility; the purchase and privatisation of surrounding lands to impact the small-farmer economy; buying off leaders; and dividing communities.

ENVIRONMENTAL DEGRADATION AND ILLNESS

Damage to the environment is irreversible. Each tonne of coal

produced brings with it environmental degradation and illnesses. Indigenous fishermen living in the area near the port had to leave due to the coal dust brought in by strong winds.²⁶ The reserves are surrounded by dust and noise.²⁷ According to inhabitants of the reserves, the coal industry pollutes the air, soil, and water sources.²⁸ There are several studies that have been carried out regarding the health impacts of pollution. Two doctors confirmed in a report that the presence of coal particles in the air contributes to illnesses and premature death.²⁹ The reports agree that a large number of people suffer from respiratory problems, stomach pains, diarrhea and skin disorders.³⁰ Nowadays women suffer illnesses that they have never experienced before: cervical, breast, and stomach cancer. "You never saw this before in La Guajira," asserts Angélica Ortiz.³¹

PRIOR CONSULTATION

The coal bonanza hasn't stopped in La Guajira. As El Cerrejón prepares for its expansion, two other transnational companies have expressed their interest in the region. The Brazilian company MPX announced this year that they intend to begin exploration and to build a railroad and port in La Guajira.³² In addition, the Canadian company Pacific Coal purchased a coal mine in the municipality of Barrancas this year.³³

Convention 169 of the ILO establishes that arrivals of new companies and expansions of existing mining projects must be presented to the community (see article in this bulletin "Land, water, and nature: Symbols of the State"). The El Cerrejón project should have also carried out a consultation.³⁴ The initial impact assessment carried out by El Cerrejón in 1982, when the coal mining started, only considered environmental aspects and never took into account the indigenous communities,³⁵ and as a result, potential negative impacts on the population were never properly calculated.³⁶ In meetings with the communities, lawyer Dora Lucy Arias never tires of repeating the importance of guaranteeing a process of true, transparent, and informed consultation in good faith. "Plans need to be made for 10, 20 years into the future and one has to think about how to remain on the land," she advises the residents of Chancletas.



Indigenous fisher people living in the area near the port had to leave due to the coal dust carried in by strong winds.

Residents of the reserve feel that the Government and the mining company have abandoned them. Although the Colombian Government has received \$1.461 billion in royalties over the last 25 years,³⁷ La Guajira has one of the highest rates of poverty (70%) and insufficient services for health, education, and basic sanitation.³⁸ Investment from the Comprehensive Assistance Plan for Indigenous Communities between 1982 and 2002 was approximately five million dollars—the equivalent of two and a half days of coal production.³⁹ It is estimated that 70,000 indigenous persons from La Guajira and its neighbouring department Cesar have been displaced by mining operations.⁴⁰

“What will become of our grandchildren?” asks Valentín Ortiz. The Wayúu and Afro-descendants are worried that they will be left without their “Guajira.” When the coal is gone, the physical and social impacts will remain. For these communities, the future lies in strengthening their cultures in order to defend their land and in finding alliances to be able to confront these problems together.

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The U'wa people: Defending the blood of mother earth

Photo: Julián Montoni



A significant impact of the oil industry has been the exacerbation of armed conflict in the regions where it operates.

“As long as the U'wa people exist and have knowledge and power, we will not give up our struggle. If we could not do this, we would commit collective suicide because seeing our mother earth profaned in this way is very serious and very sad.”¹

These are the words of Henry Salón, an indigenous U'wa from the Chaparral-Barro Negro reserve in the northwest department of Casanare. Together with the neighbouring reserve of Sabanas de Curipao in Arauca, the U'wa territories add up to 35,000 hectares that extend from the vast planes of the Orinoco river valley to the peak of the Sierra Nevada de El Cocuy. They are home to approximately 500 people and contain diverse ecosystems, innumerable flora and fauna, many water sources and an indigenous culture that survives off of nature and has been

able to maintain its traditions despite continuous attempts to colonise it. Nonetheless, the U'wa people have lost a large part of their ancestral lands over the centuries² and what remains is under threat from the recent arrival of oil companies attracted by possible reserves of ultra light crude oil.

OIL EXPLORATION IN U'WA TERRITORY

The U'wa people are an indigenous nation of communities in the departments of Casanare, Arauca, Boyacá, Santander and North Santander, with a cultural view of the world inextricably linked to ecological balance and a means of sustenance dependent on the biological resources of their lands. But the reserve where Salón lives is located inside the Niscota block, an oil exploration concession operated by Hocol, a subsidiary of Colombia's

semi-nationalised company Ecopetrol, the Canadian company Talisman, and Tempa, a subsidiary of French giant Total.³

In an interview with *Semana Magazine*, the president of Hocol indicated that the company had drilled two exploratory wells inside the concession this year with the intention of expanding the field between 2013 and 2017.⁴ The first step for the consortium will be to conduct seismic tests, which consists in strategically opening a grid of lines throughout the territory at the ends of which they will drill holes and detonate explosives every 100 metres to determine appropriate sites for future wells.⁵ This process involves serious damage.⁶



Each year, the U'wa community comes together to commemorate the death of indigenous leader Álvaro Salón, a charismatic leader of the U'wa people of Casanare. Salón was recognised for his struggle to recover ancestral lands and this, say the U'wa, is why he had to die.



"Western science has still not calculated the total effect of exporting mineral resources like oil, gold, coal and emeralds. They are particles from mother earth. All these riches are particles and bones like in the system of a human being. If they take my arm, my bone, obviously I'm going to be left an invalid." -Henry Salón



The U'wa community seeks to strengthen its leaders and its culture. Today they are reclaiming the use of their native language. Many leaders are speaking it again, and soon, the community will begin to educate their children in both U'wa and Spanish.

CONSEQUENCES FOR THE U'WA PEOPLE

It is impossible to deny the drastic environmental and cultural effects the oil industry could have on a culture like that of the U'wa. In addition to the obvious effects of seismic exploration, the arrival of oil companies would also entail felling trees; building platforms, pools, wells, stations and oil pipelines and roads; depleting water sources; pollution from spills and waste; particles in the air; and noise and light from natural gas combustion.⁷ The jungle is the primary source of food, medicine, and spirituality for the U'wa culture. But the issue goes far beyond local damage. According to local inhabitants, oil extraction affects the balance of nature on a global scale. The U'wa people emphasise the vulnerability of ground ecosystems to climate change and criticise an economic model that relies on oil, which they consider the blood of mother earth.

Social and economic impacts to the region would be even more drastic. In similar situations, the oil industry has been accompanied by a great migration of people and increase in alcohol consumption, prostitution, and gambling.⁸ But even more damaging is the profound change to economic models and ways of life once farmers stop cultivating the land and lose their cultural traditions and means of sustenance.⁹ Companies publicise the increased employment and quality of life that they would bring, but in other parts of Casanare oil companies have offered just a few contracts of, at most, 28 days as a way to divide communities by creating competition for the scare opportunities.¹⁰

THIS IS NOT THE FIRST TIME THAT FOREIGN OIL COMPANIES' INTERESTS IN U'WA TERRITORY HAVE CONFLICTED WITH THE WILL OF ITS INHABITANTS

OIL, ARMED CONFLICT, AND VIOLENCE IN CASANARE

In addition to environmental, social, economic, and cultural impacts, another considerable effect of the oil industry has been the exacerbation of the armed conflict in the region. The 16th Brigade, located in Yopal, Casanare, was created in

the 1990s with funding from oil companies, precisely for the purpose of protecting industrial infrastructure from the threat of guerrilla groups.¹¹ In recent years the Armed Forces have installed heliports and military bases in sacred places within the U'wa reserves of Chaparral and Curipao without consulting the community. This entails, according to Salón, not only a deep cultural violation, but also a significant increase in combats in collective territory, environmental damages like extensive fires caused by aerial bombardments and more encampments lined with land mines.¹²

At the same time, the arrival of the oil industry to small municipalities in Casanare has brought with it the arrival of illegal groups looking to profit from oil royalties. Despite the increased FARC and ELN presence since the end of the 1980s, no one group has managed to control the oil industry as they were able to in northern Arauca.¹³ At the same time, AUC paramilitaries appeared with force in the department coming in from Meta, where they prospered from drug trafficking, and from Boyacá, where they had mined emeralds from mountains there.¹⁴ These groups exerted strong political influence in Casanare and therefore controlled the flow of direct royalties and those royalties managed by the National Royalties Fund, 67% of which went to Casanare between 1996 and 2002.¹⁵ In June of this year a court in Cundinamarca convicted six former mayors, all from oil municipalities, for signing the "Casanare Pact" of 2003 in which they promised 50% of their municipal budgets to the AUC.¹⁶ Moreover, León Valencia, Director of the New Rainbow Corporation (an NGO that investigates activities of

in the history of the country were discovered in the 1990s in Cupiaguas and Cusiana. Within a short period, this municipality was living through an era of terror caused by violent fighting between illegal groups. According to the confessions of former paramilitary commanders, hundreds of civilians who had no ties whatsoever to the illegal groups were tortured and disappeared during these conflicts.¹⁸ Taking people in broad daylight with a car from the mayor's office in collaboration with local police became a daily occurrence.¹⁹ It is not surprising that the people disappeared were frequently social leaders advocating for local investment of oil profits or improved working conditions.

THE HISTORY OF VIOLENCE REPEATS ITSELF ON INDIGENOUS LAND

The U'wa people of Casanare have already experienced the tragedy and violence of the oil industry. In 2007 Álvaro Salón, governor of the Chaparral-Barro Negro reserve where people organised against the oil companies, died in extremely suspicious circumstances in an explosion just a few metres away from members of the National Army Battalion No. 29 "Heroes of Alto Llano."²⁰ In the 1998 massacre of Cabuya, five people were killed, one of whom had refused an offer of money in exchange for facilitating the arrival of oil exploration in the area.²¹ Two former soldiers were convicted for aggravated homicide in relation to these acts.²² Both battalions involved in these crimes are part of the aforementioned 16th Brigade.

THE CONSTITUTIONAL COURT HALTS OIL DRILLING IN ARAUCA

This is not the first time that foreign oil companies' interests in U'wa territory have conflicted with the will of its inhabitants. In the 1990s a license was awarded to Occidental Petroleum in an U'wa reserve in Arauca Department without prior consultation. The indigenous community filed a writ of protection against the company's presence in the territory and, following years of debate, the Constitutional Court issued an historic ruling blocking oil drilling for lack of adequate consultation.²³



PBI accompanies the Committee in Solidarity with Political Prisoners and the Social Corporation for Community Advisory and Training Services, organisations that support and advise the U'wa community.

SEVENTY PER CENT OF ALL OIL CURRENTLY PRODUCED IN THE COUNTRY COMES FROM CASANARE, ARAUCA AND META.²⁵

"We are a territorial entity. The Constitution and international conventions recognises this...but the Government violates those rights. They do not consult us. Day by day our problems multiply because the Government wants to take possession of our riches. And this is not what we want."
Henry Salón

According to this and other rulings, State-administered prior consultation regarding any incursion into indigenous or afro-descendant lands is a fundamental right that should be carried out ahead of time, taking into account the uses and customs of the communities through permanent dialogue (see article in this bulletin "Land, water, and nature: Symbols of the State").

The U'wa people currently affected by the Niscota Block have repeatedly requested a dialogue with the Ministry of the Interior and Justice in order to establish parameters for an adequate consultation process, but to date, the Government has not shown itself to be open to this and no concrete advances have been made.²⁴

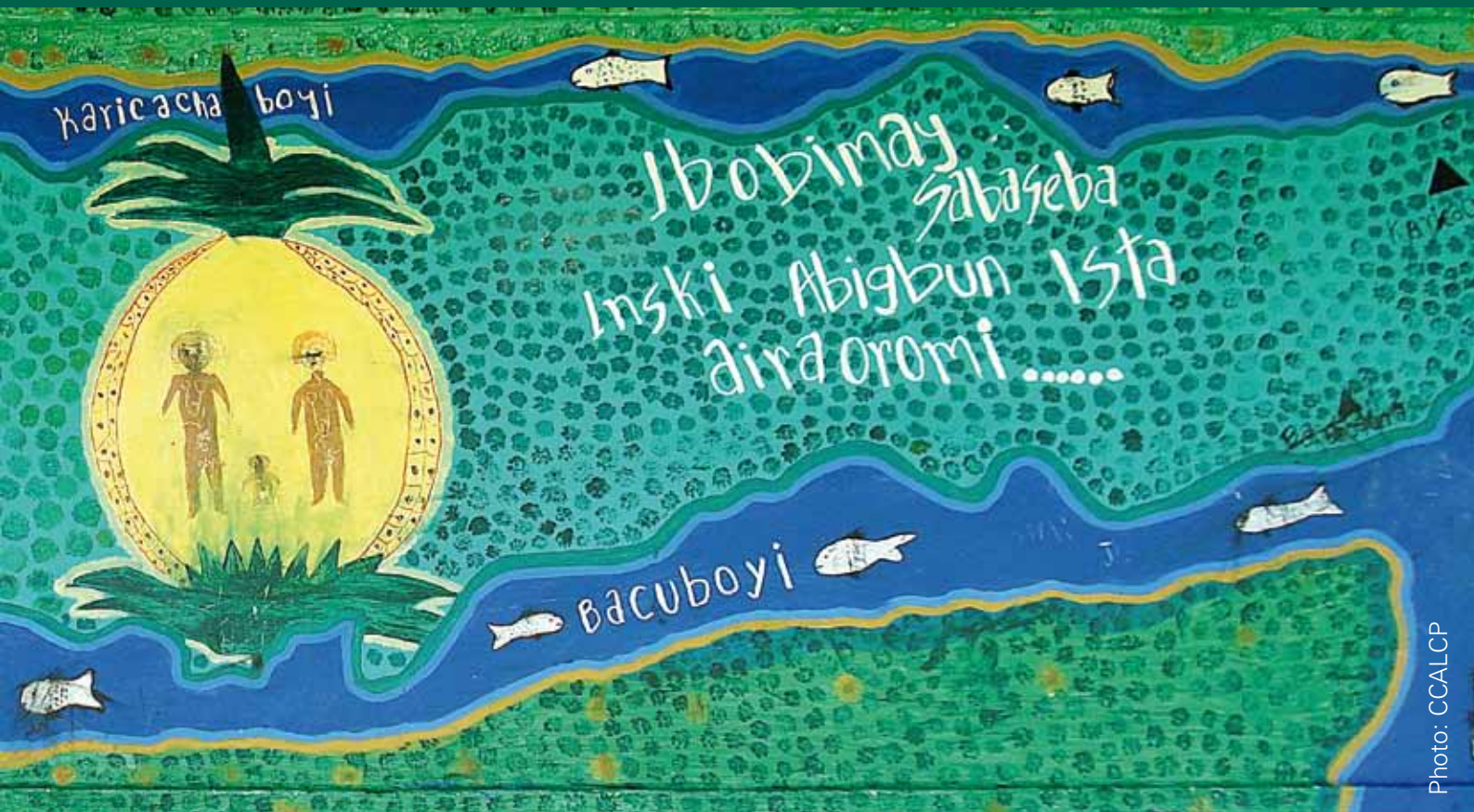
In its efforts to demand justice for human rights violations, encourage dialogue between different affected groups and build joint strategies for resistance, the U'wa community of Chaparral-Barro Negro has created

spaces for exchange between neighbouring communities, both indigenous and small-scale farmer, and a national support network. They count on the support of the Committee in Solidarity with Political Prisoners (FCSP) and the Social Corporation for Community Advising and Training Services (COS-PACC), two organisations accompanied by PBI. These organisations provide support in legal processes like prior consultation and in trainings on the effects of the oil industry. They also participate in spaces for exchange between different sectors of society directly affected by oil policy in the country.

In this regard, COS-PACC organised a forum on mining and energy in Yopal in November of this year between indigenous groups, farmers, trade unionists, academics and students with the objective of advocating for a political agenda united against the problems of the industry in the department. In addition to promoting an agenda of social justice, convenors and participants sought to call the country's and the world's attention to the devastating conditions in communities in Casanare, caused by the oil industry—where the interests of multinational companies are given constant attention, but the voice of the people most affected can hardly be heard outside their tiny villages.

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Threats to Barí territory¹



In 2000, the Colombian national oil company ECOPEPETROL entered the indigenous reserve of Catalaura² to carry out oil exploration and drilling studies. It did so without the approval of either the traditional authorities of the Motilón Barí people who reside there or relevant environmental authorities. In 2005, the Ethnic Groups Department of the Ministry of the Interior issued a resolution stating that, after conducting a flyover of the zone, they had confirmed that no Barís lived in the area where they intended to begin the Alamo Well I Project.³ Using this as a basis, the Ministry of the Environment, Housing, and Territorial Development granted an environmental license to begin exploratory drilling⁴ despite the fact that no serious study had been undertaken about the environmental impacts on the land and the community.⁵

The drilling took place in an indigenous community (Socbakayra) located in traditional Barí lands. In

response, the community filed a writ of protection with the assistance of the Luis Carlos Pérez Lawyers Collective, demanding that their rights be recognized and denouncing the lack of prior consultation.⁶ After 18 months, the Constitutional Court ruled in favour of protecting and safeguarding the rights of the indigenous people, ordering ECOPEPETROL to leave the area.⁷

Despite this recognition of Barí territory, other mining companies have falsified reports in order to be able to proceed with the coal strip mining on this land, without the communities' consent. In response, the Barí people presented a proposal known as "Samayna Ayu" at the end of 2010. Their goal is to develop a consultation process in coordination with State authorities that is culturally appropriate and guarantees respect for their rights. They have yet to receive an official response.⁸

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Peru: “Mining creates poverty and pollution”

INTERVIEW WITH MARCO ARANA

Photo: Albert González Farran, www.albertgonzalez.net/



La Rinconada is a city located in the Peruvian Andes, near to a gold mine. It is considered the highest city in the world, at 6,000 metres above sea level.

In October 2011, Father Marco Arana participated in a forum in Bogotá on mining and human rights. A native of Cajamarca, Peru—where strip mining has destroyed the environment—this priest has worked on campaigns in support of communities that oppose pollution of their lands and waters by large-scale mining projects. His work has earned him many awards, including Time magazine’s “Hero of the Environment” in 2009 for his work on social and ecological causes. PBI spoke with Arana about the mining situation in Peru.

PBI: Can you explain the extent of natural resource mining and the impact it has had on indigenous and farming communities?

Marco Arana: Large-scale mining in Peru started with the new laws¹ passed in the 1990s and spread to all parts of the country. Many communities dismantled as companies purchased or expropriated farmers’ land and created mechanisms of social control in support of their activities. This has meant that while in some areas communities have lost their lands and a part of the population ended up opposing mining, in other areas people have supported it.

The use of water and chemicals in mining activities are of such magnitude that they are causing massive pollution of irrigation canals and rivers. There have been mass deaths of trout. In some cases, like in my region, frogs have become extinct. In other areas, lakes and subterranean

water reservoirs have disappeared, which creates a two-sided problem: on one hand pollution, and on the other, water scarcity.

As a result, people no longer believe in the clean, sustainable, and responsible mining promoted by the Government and companies. Because of this, mining conflicts have begun to emerge in areas where there is mining.

In fact, Yanacocha, the largest gold mine in Latin America, is in my region and it is the most conflictive mining area in the entire country. In other areas there have been problems related to the use of private security forces by companies or, in some cases, the contracting of assassins or mercenaries to confront community leaders. In this context, mining has

become the principal source of socio-environmental conflicts and, in some areas, violence.

PBI: How capable are social movements in Peru of confronting large-scale mining?

MA: One has to talk about a differentiated social movement. In the case of Amazonía there is a relatively united resistance against oil extraction, mining and, in some cases, the agro-industry coming to plant bio-fuels.

In other cases, like in the southern part of the country, there are areas where, as in the case of the Aymará movement in Puno, the movement has asked for the total prohibition of all mining in the southern part of the department. But the Quechuas in the same department who have been doing artisanal mining believe that small-scale, controlled mining should be allowed.

Mining already exists in regions in the centre of Peru and some are pushing for more regulations or to limit expansion of mines so as to control the impact.

In the northern areas of the country there are communities that do not want to see any kind of mining activity and prefer only agriculture or, in the case of Cajamarca, a combination of the two. There are communities resisting all types of mining in some places and working

for regulations in other areas where mining already exists.

Basically what you have are two major branches: those who want to impose a combination of environmental, physical, labour and environmental conditions in areas where mining is already taking place; and, in other cases, those who propose a combination of restrictions to prohibit mining. Both intersect in the social movement of resistance and struggle against mining in Peru.

PBI: Are threats made against movement leaders who oppose mining operations?

MA: There is a complex strategy of social control. Initially, in 1992 and 1993, the companies began by ignoring the communities because they had struck a deal with the national government and they figured all was settled. Later, when they realised that local populations were going to start pressuring for their rights, they attempted to establish social responsibility programmes that were basically a combination of assistance, gifts or presents given to the population. They achieved a certain degree of success, at least enough to start their work. But when this stopped working, they started making agreements with local authorities to obtain their complete support.

Since this strategy also didn't work, they later started processes of

corruption by giving gifts and offering personal support. They offered me money for the parish, for my family, and when this didn't work they started defamation campaigns in the media, attempting to characterise us as eco-terrorists, delinquents, connected to drug traffickers, communists, etc.

And when this didn't work either, they started to combine this with spying operations in which they contracted security personnel to record our movements; not just mine, but also the entire working group of social activists. They made black lists of those of us who were targets as part of their strategy of social control and then we started to receive a lot of threats.

PBI: What do you think of artisanal mining in Peru?

MA: There is a formalised sector of small-scale mining in Peru, but it is in the minority. There is no registry system or cadastre for informal and small-scale mining in Peru, but it has nonetheless grown throughout country. There are calculations that at this moment more than 300,000 people depend on small-scale, informal mining, while large-scale mining only supports 110 to 115,000 workers directly.

There is another kind [of informal mining in Peru] that is normally associated with illicit activities: exploitation of child labour, chemical or explosive contraband, tax evasion and a lack of environmental controls. In some cases this is caused by poverty and the high price of minerals. In other cases, like in my region, this type [of informal mining] has been promoted by large mining companies in areas they could not access because of the presence of resistance movements. What they have done is to start out on the peripheries promoting informal mining, then later propose legalization as the solution, thus pulling small-scale miners into the large-scale mining sector.

So there is essentially a double-sided strategy: on the one hand, there are those who are driven by poverty and the high price of minerals who mine wherever they are able. And in other cases it is an activity promoted by large mining companies to do away

“MINING HAS BECOME THE PRINCIPAL SOURCE OF SOCIO-ENVIRONMENTAL CONFLICTS AND, IN SOME AREAS, VIOLENCE”

Photo: Julián Montoni



Marco Arana



La Rinconada, a city in southern Peru, has 30,000 residents. During the 1990s it became a place where people would arrive in search of opportunity. Gold turned La Rinconada into a mining city with many social problems. In the photo, a miner from the Santa Ana mine.

“I HAVE NO REASON TO BELIEVE THE ILLUSION OF THE MINING ‘ENGINE’ IN COLOMBIA, THAT THIS INDUSTRY WILL REDISTRIBUTE WEALTH AND BRING THE COUNTRY OUT OF POVERTY”

with local resistance.

So, what is clear is the need for stricter environmental and labour standards and the solution that we are seeing in Peru is that in some cases mining has to be stopped completely where, for example, there is no consent from the community, the damage or environmental impact is very great, or where the high levels of processing necessary would not allow sufficient profits to cover the labour, processing, and environmental costs.

In other cases you could see formalisation happening, but with that a part of the debate is that this would be for small-scale mining, but in no way serve as a pretext, like is happening here in Colombia, to paving the way for large-scale mining, because [with that] the environmental impacts would be much more destructive and the monetary benefits would be directed toward the headquarters of the corporations.

PBI: What could social movements in Colombia learn, given that mining has only recently become an issue here?

MA: I believe something important to remember is that Colombia has experienced decentralised development different than what happened in Peru, where

the combination of administrative activities, policies, and economics are concentrated in Lima. Mining activity in this sense is very dependent on the central government in Lima. I believe that there is a better space here for community and regional decisions that could be further strengthened. Local and regional government capacity could be strengthened to help avoid corruption like we have experienced in Peru, and subsequently ensure that support for communities is broadened by using tools like the Territorial Planning Law and the right of people to free, prior, and informed consultation, not just at the moment when the operation starts, but from the moment the concession is granted. I believe that that is the first lesson.

A second lesson that seems important to me is that in Peru companies that have not been able to defeat the resistance with their social responsibility programs and propaganda about clean mining are now turning to violent methods to impose their agenda. This could be very dangerous in Colombia where there is already structural violence; that mining could be implemented in a way that benefits from or derives certain legitimacy or normalcy from violence in order to carry out mining projects. So I believe that the struggle for land, the struggle for peace in

Colombia should be extended and that the implementation of mining activities should also be seen as a threat.

And in third place, I don't think we can defend the economics of an activity that in any event could threaten to turn itself into the main industry or source of foreign currency income. All economies dependant solely on one economic activity are extremely fragile. I believe the fact that the prices of metals are high is a great temptation for Colombia, but the answer that we have in Peru is that the prices are high, but this has not reduced environmental conflicts, nor has it brought Peru out from its problems with poverty. The quality of the country's education is only better than Bolivia's and Haiti's, despite the fact that we have the largest gold mine in Latin America.

I have no reason to believe the illusion of the mining “engine” in Colombia, that this industry will redistribute wealth and bring the country out of poverty; mining will concentrate profits and create enormous environmental damages, like we say in Peru, “Leaving only poverty and pollution.” It is a future that neither Colombia nor Peru deserves.

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Mexico's treasure

DEFENDING SOUTHERN COMMUNITIES' LAND RIGHTS FROM MINING CORPORATIONS

Photo: Centro de Derechos Humanos de La Montaña - Tlachinollan



Mobilisation against large-scale mining in Carrizalillo (Guerrero). Eight of the 11 main gold mines in Mexico are operated by Canadian companies, which control 70% of the country's gold production.¹

By PBI Mexico

Mexico's metal mining sector's returns of the last year, perceived by many as positive,² are contrasted by the situation for small-scale farming and indigenous communities affected by exploration and mining activities. Mexican legislation opened up land to private acquisition and use at the beginning of the 1990s by reforming Article 27 of the Constitution and by enacting the new Regulatory Mining Law in 1992. Signing the North American Free Trade Agreement, which went into effect in 1994, laid the groundwork for Canadian and United States corporations to be operating in Mexico.³

In southern states like Oaxaca, where a high percentage of the population is indigenous and many areas are highly or very highly marginalised, transnational companies operate without informing the population of the consequences of their activities. This is the case of the San José mine in the Oaxaca community of San José del Progreso in the Valles Centrales region, which is controlled by the Canadian company Fortuna Silver Mines. The corporation, which specialises in developing mining projects in Latin America, operates in Mexico through its subsidiary Cuzcatlán. According to the Mining Chamber of Mexico (Camimex), increased extraction of silver, the most profitable metal in the country, will increase 2011.⁴

COMMUNITIES CHALLENGE ECONOMIC INTERESTS

Since June 2010, the priest Martín Octavio García has not been able to return to the community of San José del Progreso. After facing a defamation campaign for distributing information about the negative consequences of the Frontino mining project, he was kidnapped on 18 June 2010 and beaten by people sympathetic to the Fortuna Silver mine. That same day, the President of the municipality and the Health Councilman were assassinated during combat nearby.⁵ Later, Father Martín was detained under the "arraigo" system⁶ and accused of homicide. Finally, on 30 June, he was released due to a lack



View of the Los Filos mine in Carrizalillo, Mezala region, Guerrero. Five million ounces of gold lay beneath these hills.¹²

of evidence.⁷

Father Martín is a member of the “Bartolome Carrasco Briseno” Regional Centre for Human Rights (Barca-DH), an organisation accompanied by PBI Mexico. Barca-DH has extensive experience with community organising and the promotion and defense of human rights. Some of the activities they engage in include training and assistance for populations affected by metal mining operations and distributing information about the rights of indigenous communities and land rights.

Barca-DH also provides legal support and training in the Southern Sierra of Oaxaca. In that area, the Santa María Zaniza Assembly already rejected the Tehuantepec⁸ project in 1998 for the potential environmental and health damages it could cause, in addition to the bad labour conditions offered to the community. The Assembly contacted Barca-DH after the company threatened to get the Mexican Army to force the community to accept the terms of the project.⁹

Members of the community and Barca-DH attended the Fourth Regional Forum of the Southern

Sierra of Oaxaca, in the municipality of Santa Cruz Zenzontepec in July 2011. The main goal was to share experiences and build unity between communities affected by mining activities and human rights defenders. Other organisations attended in addition to Barca-DH, such as the Jalisco Association of Indigenous Group Support A.C., from the State of Jalisco; the Opposition Front to San Xavier Mine and the Wirikuta Tamatsima Wahaa Defence Front, both from the State of San Luis Potosí.

Indigenous and small-scale farming communities and human rights defenders denounced the lack of rigour by Mexican authorities in complying with international commitments.¹⁰ They also produced a declaration to unify their strengths and confront the internal divisions suffered by some communities,¹¹ as in the case of San José del Progreso, marked by the events of last year while the company continues its operations.

1. “Canadá se lleva el Oro de México,” Wirikuta Tamatsima Wahaa Defence Front, 26 July 2011, <http://frenteendefensadewirikuta.org/wirikuta/?p=1153>.
2. Mining Chamber of Mexico (Camimex) states in their 2011 report that profits over the last year topped 15.474 billion dollars, 51% more than in 2009. Since 2010 Mexico has been first in the world for silver production. During that year eight new mines started operating in Mexico. CAMIMEX, “Situación de la minería mexicana 2010,” Annual Report 2011.
3. NAFTA eliminated conditions that obligated foreign investors to be treated the same as national companies (see Chapter 9, Investments).
4. Ibid.
5. Amnesty International, “Detainees at risk of torture and unfair trial,” AMR 41/046/2010, 25 June 2010.
6. “Arraigo” is a form of unofficial detention that allows for detention before beginning an investigation. Mexican Commission on Human Rights Protection and Defence, et al, “Informe sobre el impacto en México de la figura del arraigo penal en los derechos humanos,” presented to the Inter-American Commission on Human Rights, Washington, 28 March 2011.
7. Amnesty International, “Mexican priest released on bail,” AMR 41/055/2010, 20 July 2010.
8. Via the firm Altos Hornos de México S.A., the company Grupo Acerero del Norte owns concessions for the exploitation of iron deposits, among those that of Santa María Zaniza, considered the largest deposit in Latin America. “Minería, comunidades y medio ambiente”, Investigaciones sobre el impacto de la inversión canadiense en México, FUNDAR, Centro de Análisis e Investigación, México, July 2002.
9. Documento preparado con motivo de la visita a México de Rodrigo Escobar Gil, Relator de la Comisión Interamericana de Derechos Humanos, Red TeT, septiembre de 2011, p. 32.
10. The ILO’s Convention 169, ratified by Mexico in 1990, recognizes the right to prior consultation for indigenous communities, as does the Additional Protocol to the American Convention for Human Rights in the area of Economic, Social and Cultural Rights, which Mexico approved in 1996. It is important to note that in mid-2011 the human rights protected by international treaties and ratified by Mexico achieved constitutional recognition with the Constitutional Reform in the Area of Human Rights.
11. Declaratoria Final del IV Foro Regional Sierra Sur en Oaxaca. 19 de julio de 2011. <<http://www.barcadh.org/2011/07/19/declaratoria-iv-foro-regional-de-la-sierra-sur/>>
12. Frente en Defensa de Wirikuta TAMATSIMA WAHAA. Op. cit.



Miners in Segovia (Antioquia)

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PROTECTING HUMAN RIGHTS DEFENDERS IN COLOMBIA SINCE 1994

Peace Brigades International (PBI) is a non-governmental organisation recognised by the United Nations, which has maintained a team of international observers/accompaniers in Colombia on an ongoing basis since 1994. PBI's mission is to protect the working environment of human rights defenders, who face repression due to their non-violent human rights activities.

PBI Colombia teams remain in the field, at the request of local organisations, accompanying persons and organisations under threat. This fieldwork is complemented by significant dialogue and advocacy with civilian and military authorities, as well as with NGOs, the Church, multilateral bodies, and the diplomatic corp, in order to promote human rights and disseminate information on the human rights situation in Colombia.

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PBI International Delegation
Development House
56-64 Leonard St., London
EC2A 4JX, UK
Tel. (+44) 20 7065 0775
admin@peacebrigades.org

PBI Colombia Project
Rue de la Linière, 11
1060 Brussels (Belgium)
Tel. (+32) 2609 4400
info@pbicolombia.org

PBI Delegation in Colombia
Apartado aéreo 36157
Bogotá (Colombia)
Tel. (+57) 1287 0403
info@pbicolombia.org

