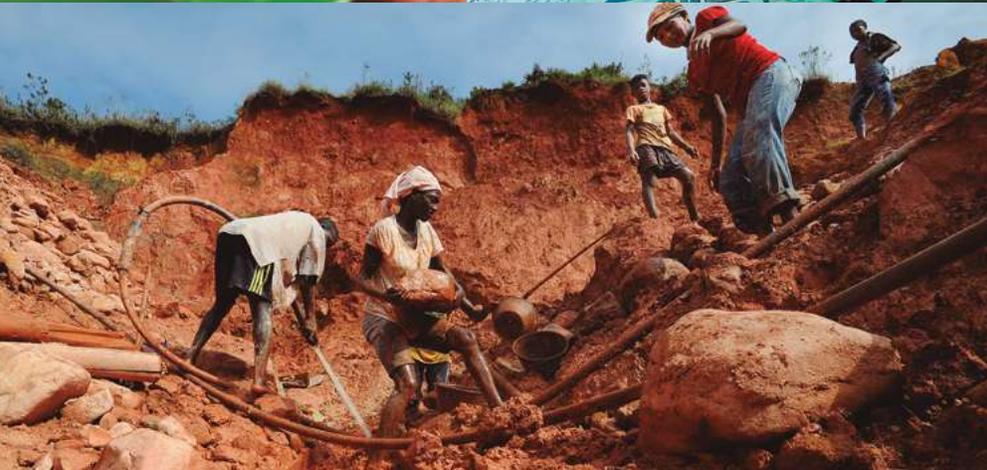




MINING PRODUCTION, TERRITORY AND CONFLICT IN COLOMBIA

María Soledad Betancur Betancur



MINING PRODUCTION, TERRITORY AND CONFLICT IN COLOMBIA

Global and Local Challenges for
the Protection of Human Rights

María Soledad Betancur Betancur

February 2020



MINING PRODUCTION, TERRITORY AND CONFLICT IN COLOMBIA

Global and Local Challenges for the Protection of Human Rights

© Germanwatch
© Instituto Popular de Capacitación -IPC-



ISBN: 978-958-56503-5-0

Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0)

Germanwatch e.V.

Stresemannstr. 72
10963 Berlin
Alemania
Teléfono: (+49 030) 28 88 356-0
Fax: (+49 030) 28 88 356-1
info@germanwatch.org
www.germanwatch.org
Representante: Silvie Kreibiehl

Instituto Popular de Capacitación -IPC-

Calle 52 49 - 28, Interior 1101
Ed. Lonja de Propiedad Raiz
Medellín, Colombia.
Teléfonos: Directo: (+57 4) 569 84 20
ipc@ipc.org.co
Presidenta: Luz Nelly Osorno Ospina

Broederlijk Delen

Carrera 27A#40A-68
Bogotá
Teléfono: (+57) 312 3636 380
<https://www.broederlijkdelen.be>
Representante en Colombia: Moritz Tenthoff

This publication was made possible through the financial support provided by the Heinrich-Böll-Stiftung Office Bogotá - Colombia, the Federal Ministry for Economic Cooperation and Development (BMZ) and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMUB) / Federal Environment Agency (UBA).

Author:

María Soledad Betancur Betancur

Concept and contribution of texts:

Johanna Sydow

Editing:

Broederlijk Delen
Germanwatch

Coordination of translation and editing of English Version

Johanna Sydow
Florian Huber
Angela Valenzuela Bohórquez

Revision of texts:

Johanna Sydow
Moritz Tenthoff
Wies Willems

Proofreading and Editing of English Text:

James O’Nion
Rebecca Heinz
Johanna Sydow

Traslation:

Carol O’Flynn

This is a translation of the publicacion:
Minería del Oro, Terretorio y Conflicto en Colombia

Graphic design:

Alejandro Scaff Herrera

Photographs

© Christian Escobar Mora - MIRA V
© Damien Fellous - MIRA V

Table of contents

4	Table of contents
8	Acknowledgments
9	Introduction
11	Chapter 1. The regulatory framework on human rights and business
12	1.1 Due diligence
12	1.2 European regulation
13	1.3 Human Rights and Business: The guiding principles of the United Nations and the limits of voluntarism
13	1.3.1 France has taken an important step forward regarding binding mechanisms
14	1.3.2 Colombia: implementation of the guiding principles
14	1.4 Towards a binding treaty
16	Chapter 2. The peace process, its risks and its sustainability: the context in which gold is produced in Colombia
20	Chapter 3. Small and medium-sized producers criminalised and expelled from the territories
24	3.1 Large enterprises, human rights and environmental law
24	3.1.1 The right to work and the right to territory infringed by the power of large companies
25	3.1.2 Social mobilisation has revealed the unrest, the exclusion and the agendas of miners
27	3.1.3 Small- and medium-scale mining disappears from the gold production chain in Colombia
29	Chapter 4. Relations between gold production and conflict in Colombia: specific cases
34	4.1 Antioquia: Main producer of gold in Colombia and the territory with the highest number of victims of the armed conflict
38	4.2 Department of Chocó, the second major producer of gold in Colombia: The objectives of sustainable development have not reached Chocó
39	4.2.1 Gold production, conflict and the right to the territory
41	4.2.2 The trap closes on local producers
41	4.2.3 The <i>barequeros</i>
42	4.2.4 Gold production and environmental deterioration
43	4.3 Department of Cauca: social leaders are murdered for the land and the gold
44	4.3.1 The rights to the territory and to its ancestral economic practices are being limited in ethnic territories

45	4.3.2 Impact on human rights violations
45	4.3.3 Traditional artisanal mining, obstructed by mining rights of multinationals and subject to pressure of armed groups that violate human rights
46	4.3.4 Impact on the territory
48	Chapter 5. Non-mining territories threatened by the expansion of the titling process
49	5.1 Mobilisation, popular consultations and municipal agreements are the strategy for defending the water and the territories
51	Chapter 6. Conclusions
56	Chapter 7. Recommendations and challenges
57	7.1 Human Rights and Business: Towards regulations that oblige companies to respect human rights and protect the environment?
61	Bibliography
68	Appendix
68	Appendix 1
70	Appendix 2

List of abbreviations

ACM	Asociación Colombiana de Minería/Colombian Mining Association
AGC	Autodefensas Gaitanistas de Colombia (criminal structure which is the heir to paramilitarism)
ANM	Agencia Nacional de Minería/National Mining Agency
APPRI s	Acuerdos para la Promoción y Protección Recíproca de Inversiones/Agreements for the Promotion and Reciprocal Protection of Investments
Bacrim	Bandas Criminales/Criminal bands
Conalminercol	Confederación Nacional de Mineros de Colombia/National Confederation of Colombian Miners
DANE	Departamento Administrativo Nacional de Estadística/National Statistics Department
DIAN	Dirección de Impuestos y Aduanas Nacionales/National Tax and Customs Administration
ELN	Ejército de Liberación Nacional/National Liberation Army
EU	European Union
FARC	Fuerzas Armadas Revolucionarias de Colombia/Revolutionary Armed Forces of Colombia
GAPF	Grupos Armados Postfarc/Post-FARC armed groups
ICGLR	International Conference of the Great Lakes Region
IIA	International Investment Agreement
IPC	Instituto Popular de Capacitación/Popular Training Institute
MME	Ministerio de Minas y Energía/Ministry of Mines and Energy
OECD	Organisation for Economic Cooperation and Development
PARES	Fundación Paz y Reconciliación/Peace and Reconciliation Foundation
RPP	Reconocimiento de Propiedad Privada/Recognition of Private Property
RUCOM	Registro Único de Comercializadores de Minerales/Unique Registry of Mineral Dealers
RUV	Registro Único de Víctimas/Unique Registry of Victims
UARIV	Unidad para la Atención y Reparación Integral a las Víctimas/Unit for Comprehensive Care and Compensation of Victims
UN	United Nations
Unimin	Unidad contra la Minería Ilegal (special unit of the National Police to combat illegal mining)
UPME	Unidad de Planeación Minero Energética/Mining and Energy Planning Unit
UPMs	Unidades de Producción Minera/Mining Production Units



Acknowledgments

The Instituto Popular de Capacitación (IPC) has contributed to a better understanding of the relations between conflict, human rights abuses and mining activities in Colombia. As author of the study, IPC would like to thank Germanwatch, Heinrich-Böll Stiftung and Broederlijk Delen, which have entrusted IPC with the work of the present study, provided support, and funding. We would also like to express special thanks to other cooperation partners in this context: Thanks go to Misereor, which have supported this line of research in the IPC and to Fastenopfer, for its support on documenting the socio-environmental impacts of mining activities by Mineros S.A.

The knowledge of local communities and organizations has contributed to and shaped the argument we hope to develop throughout this study. We will continue to work jointly with local stakeholders to transform Colombia's cartography of war into a cartography of life and peace by exposing a truth that explains the conflicts over resources and land in the different territories of Colombia.

Finally, we would like to thank Mauricio Soto for the excellent processing of cartographic information that illustrate the socio-territorial consequences of policies, which give priority to the economy over human rights in Colombia.

Introduction

The annual congress of the Colombian Mining Association was held on the 9th and 10th of May 2019. This organisation represents the large mining companies that control the mining titles, and therefore mineral exploration and exploitation in the country. Among them are the biggest producers such as Mineros S.A. and Gran Colombia Gold. These companies produce 8.7 tons per year, one fifth of the 41 tons that were produced in 2017. The proposals of the companies and the promises of President Iván Duque reveal a risk of deepening the exclusionary policies towards small-scale miners while extending the privileged treatment reserved for the large enterprises.

The commitments of President Iván Duque were the following: to create a special unit to combat the illegal extraction of minerals; to promote a bill to tighten up sanctions for those who carry out illegal mining operations; to have changes to the regulations regarding prior consultation, which the companies have seen as an obstacle to advancing in their extractive projects, ready in the second half of 2019 (Jiménez 2019). These commitments reflect the logic of the so-called ‘mining locomotive’, a Colombian concept that links a growing mining sector to approaches of socio-economic development and welfare. This assumption is mobilized to justify the provision of legal securities to investors and large enterprises.

Letters like the one addressed to the national go-

vernment by Gran Colombia Gold towards the end of 2018, in which the company demanded military intervention to expel untitled miners (in its Segovia and Marmato projects) using military and police deployment, as well as support with “any other force” show the pressure these companies exert to expel their local competitors, who are mainly small-scale miners and ancestral miners, from the territories (El Espectador 2019b). As shown in this paper, the conflict is expressed not only with respect to miners in the territories, but also towards those who defend the environment. For this reason, Colombia can contribute, as a case study, to the development of new analysis showing the need for binding rules that oblige companies to respect human rights and the environment and to commit themselves to reparation plans in communities and territories where the impacts have been generated.

This is necessary since there is broad protection for business investments in Colombia. International Investment Agreements (IIAs) seek to maintain favorable conditions for investors from other countries, and they include agreements for the promotion and reciprocal protection of investments. In addition, investment chapters in free trade agreements (Pro Colombia 2016) create the international legal framework for mining companies such as Gran Colombia Gold to bring lawsuits against the state before international tribunals when, for example, they found themselves affected by

the Constitutional Court's decision to protect the rights of miners of Marmato, in municipalities where the company has a gold-mining project in the department of Caldas (El Espectador 2019a). The challenge, therefore, of seeing that human rights are not subordinated to investment agreements requires arduous work on all territorial and international scales.

All this investor confidence allows companies to make optimistic projections. The companies that are members of the Colombian Mining Association expect to advance from producing 11 tons of gold in 2018 to 19 tons in 2020. By the year 2030 they expect to be producing 70 tons (ACM 2019). In mul-

tiplying its production by seven in the next decade, it must therefore expect to control the 20 tons which according to the National Mining Agency (Agencia Nacional de Minería, ANM) is produced by small-scale producers, presented in their totality today as barequeros.¹

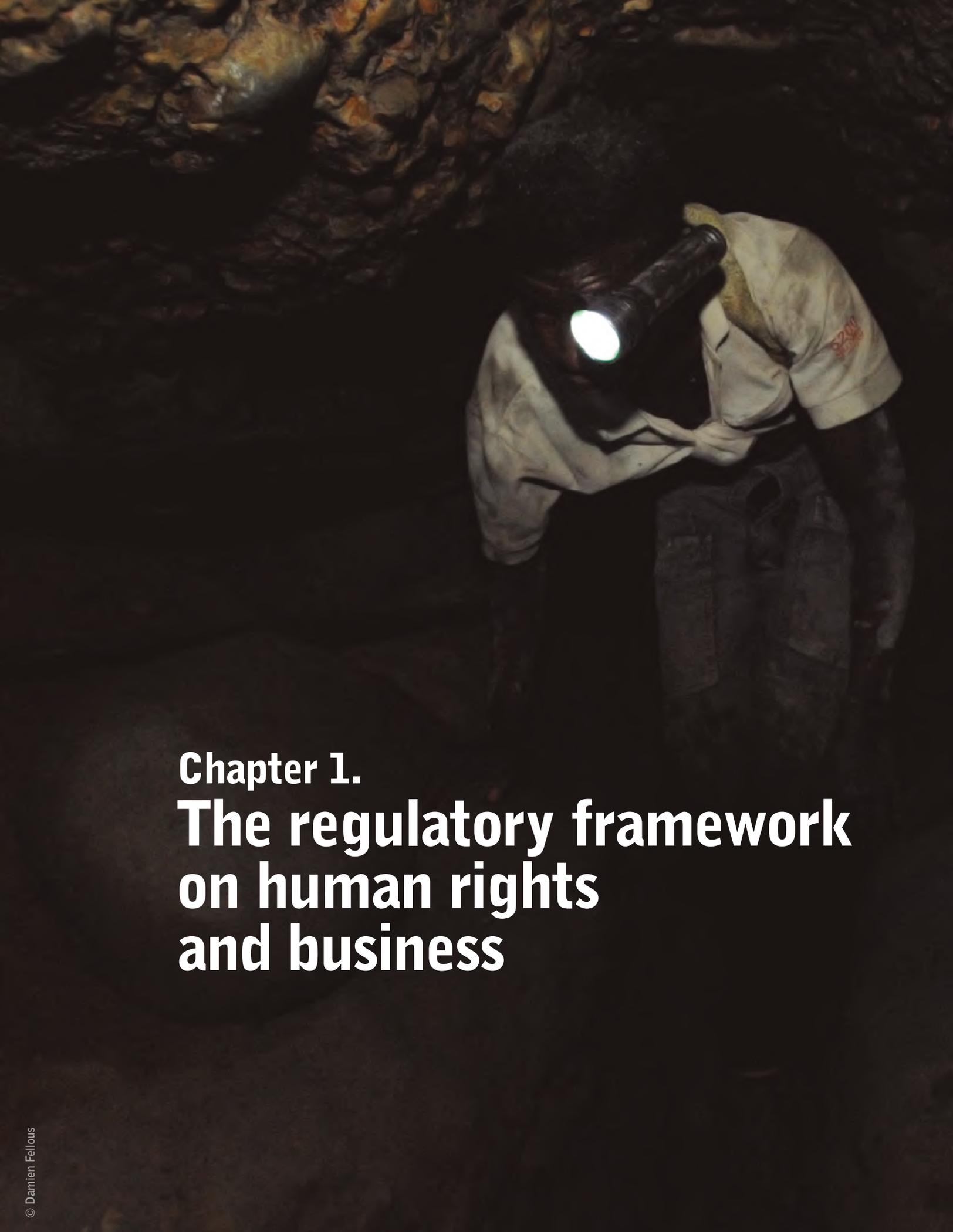
Mining rights for the production of gold and other precious metals granted up to the present amount to a total of 2,124,094 hectares. In the following chart we can see the five companies that have accumulated the greatest extensions of mining rights. They control more than half of the area titled for the exploitation of precious metals in the entire country.²

Table 1: Companies with the largest share of mining rights in Colombia

COMPANY	EXTENSION IN HECTARES
Anglo Gold Ashanti Colombia S.A. (This single multinational has brought together one third of all titles granted. In 2019 it decided to sell part of its rights to Royal Road Minerals, while keeping the strategic projects it has in Antioquia and Tolima for itself.)	693,562. To these are can be added 42,691 of its subsidiary Gramalote Colombia Limited.
Continental Gold Ltd.	209,298 (Dated from its report to August 2019). For the year 2013, it reported only 53,941 ha.
Mineros S.A.	153,118 ha.
Negocios Mineros S.A.	53,882 ha.
Proyecto Coco Hondo SAS.	45,812 ha.

1 Barequeros are those who extract minerals without machineries according to a definition of the Colombian Ministry of Mines.

2 Continental Gold (2019)

A person wearing a white shirt and dark pants is crouching in a dark, rocky tunnel. They are holding a flashlight that is turned on, illuminating the ground in front of them. The tunnel walls are rough and uneven, with some moisture visible. The overall atmosphere is dark and mysterious.

Chapter 1.
**The regulatory framework
on human rights
and business**

Chapter 1. The regulatory framework on human rights and business

“The fundamental discussion is whether human rights take precedence over commercial interests, or whether the rights of multinationals have priority over the rights of individuals and the environment.” (Gaberel, L. & González, E., 2015).

In the 70 years which have passed since the Universal Declaration of Human Rights, their respect has become a political reality. For that reason, Protect, Respect and Remedy must be the new framework for state-business-society relations in the world (Ruggie 2011).

1.1 Due diligence

Due diligence with respect to human rights seeks to have businesses –with great power they’ve had in the global economy since the 1990s– identify the risks that their operations will have on the realisation of the human rights of people along the entire supply chain. To this end, impacts must be measured, measures to counteract the effects must be followed up, and the strategies used to prevent the effects or neutralise the damage caused must be communicated. Companies should identify and evaluate the risks in terms of geographical context, the sector and the entrepreneurial relationships in their own activities (both in the parent company and in the subsidiaries) and in the value chain as well. The risks identified are for the human rights of persons and not for businesses (OHCHR 2018). This concept is the basis of many new laws and standards in the context of rights and companies. Some of their most important aspects will be mentioned below.

Processes with a specific focus: OECD Due Diligence Guidance for Responsible Management of Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

The OECD Due Diligence Guidance for “responsible management of supply chains of minerals from conflict-affected and high-risk areas” was approved by the Investment Committee and the Development Assistance Committee of the OECD and has the approval of the member states of the International Conference of the Great Lakes Region (ICGLR), which signed the Declaration adopted in December of 2010. The Gui-

dance seeks to help companies to respect human rights and to avoid contributing to conflict in the territories where they obtain the minerals. “With its annexes on tin, tantalum, tungsten and on gold, the OECD Guidance provides companies with a complete package to enable them to obtain mineral supplies in a responsible way, so that the mineral trade will serve to promote peace and development, and not contribute to conflicts” (OECD 2013: 3). Colombia adopted the OECD Due Diligence Guidance in 2012 and became a member of the OECD in 2018.

1.2 European regulation

In May 2017 the European Parliament approved a new regulation in which “obligations are established regarding due diligence in the supply chain with respect to EU importers of tin, tantalum and tungsten, their minerals and gold originating from conflict-affected or high-risk areas.” Among the considerations for the decision, it notes that it was part of the process for issuance of OECD “Due Diligence Guidance” on “responsible management of mineral supply chains from conflict-affected and high-risk areas” and recognises that these are in accordance with the UN’s Guiding Principles on Business and Human Rights (ibid.).

For the purpose of identifying zones of conflict, the regulation refers to “[areas] that are in a situation of armed conflict or fragile post-conflict, as well as areas with precarious or non-existent government or security, such as failed states, and generalised, systematic infringements of international law, including human rights violations.” (EU 2017: 6).³ Colombia fits into this category.

³ EU-Regulation 2017/821 of the European Parliament and Council of 17 May 2017, which establishes obligations regarding due diligence in the supply chain with respect to EU importers of tin, tantalum and tungsten, their minerals, and gold originating from zones of conflict or high risk.

This means that all smelters and refineries importing more than 100kg of gold powder from Colombia, for example, have the obligation to undertake due diligence measures as established in the OECD Guidance mentioned above. These actors must monitor all companies associated to the supply chain to detect the risks of forced labor, forms of child labor, violence on the part of state and private security forces, forced prostitution, direct or indirect support of armed groups. If any of these situations arise, they are obliged to take remedial measures and especially to implement a strategy to prevent them from occurring.

There are competent authorities in every member country of the European Union that must verify whether or not the companies fulfill their commitments of due diligence. In Germany, for example, there are around 200 companies, smelters and importers that have to comply with the regulation. It should be taken into account that the regulation strategy foresees accompanying measures “with the objective not only of reaching an elevated level of participation of the economic agents in the Union system, but also to guarantee the adoption of a global, coherent and exhaustive focus to promote responsible supply from zones of conflict or high risk,” (EU 2017: 5) including exporting countries.

From the viewpoint of civil society, these measures accompanying the regulation are welcome, but for the moment, civil society criticises the fact that the support process is not sufficiently participatory and that it does not take sufficiently into account the needs of the population in the countries the minerals come from –like Colombia. This document may be a contribution in that regard, and it presents recommendations for accompanying measures that could strengthen small-scale miners, thus producing a positive effect on equity in producer countries (one of the goals of the accompanying measures). In this document we insist, and we will show, that the accompanying measures decrease these risks. Furthermore, it is important to promote a binding due diligence that obliges all European companies to eliminate the risks of all human rights violations and halt the destructive impact of their operations on the environment.

1.3 Human Rights and Business: The guiding principles of the United Nations and the limits of voluntarism

Identification of the responsibilities of business in serious human rights violations, according to the United Nations (UN), was installed in the world political agenda in the 1990s, as a reflection of the worldwide expansion of the private sector within the framework of globalisation of the economy and thus of the increase in transnational economic activity (Ruggie 2011).

Ever since the adoption of the Guiding Principles –Protect, Respect and Remedy– in 2011, there has been increasing consciousness of the impacts that business activity has on the implementation or the violation of human rights in various territories. Nevertheless, the great limitation has been the inability to effectively reduce the rampant impunity regarding business responsibility in serious human rights violations in the territories where they operate. The Guiding Principles are non-binding directives on business and human rights that recommend that states strategically create National Action Plans to deal with the question. The creation of such plans is not obligatory, and when they come into effect in some countries, they do not always have the desired impact of curbing human rights violations on the part of companies (Sánchez 2018). It depends a great deal on each country’s will to see how such a plan is implemented. We will look at the cases of France and Colombia in detail below.

1.3.1 France has taken an important step forward regarding binding mechanisms

In February 2017, France approved a law that obliges large companies that have their headquarters in France to analyse and deal with the adverse effects of their activities on people and the planet, and also making them responsible for the impacts of the companies which they subcontract. The law requires them to publish annual oversight plans to prevent developments that can lead to human rights violations or damages to the environment. The sanctions imposed on companies

that do not comply include fines ranging from 10 to 30 million Euros if they fail to design and publish preventive plans each year (García, I. 2017).

Despite being considered a great advance, since it incorporates binding aspects that result in sanctions for companies, some civil society organisations have criticised this law for being too limited in terms of scope (the number of companies covered, which would be about 100), and because of the fact that in cases of violations denounced by the victims, the burden of proof falls on them, which maintains unequal relations of power. Ultimately, they think that in case the damages that are supposed to be prevented do in fact occur, the company will not be held responsible, since the law does not require that companies guarantee results, they are only asked to demonstrate due diligence to prevent damages.

Countries like Colombia must take advantage of this advance, by identifying which of these French companies operate in the country, or which Colombian companies have a contractual or commercial relationship with French companies, and demand compliance with the law as a way to advance the defense of human rights.

1.3.2 Colombia: implementation of the guiding principles

To strengthen the commitments made and the implementation of the United Nations Guiding Principles, the Colombian Government began the construction of the National Action Plan for Business and Human Rights in 2015. It was approved on 9th December of that same year by the President of the Republic, Juan Manuel Santos Calderón, with the objective of “guaranteeing that the Colombian state will properly protect human rights and that business activities in Colombia will be respectful of human rights and contribute to the sustainable development of the country” (Office of the Presidential Advisor on Human Rights n.d.: 6).

Colombia thus became the first non-European country to adopt a National Action Plan on the subject. On the one hand it is interesting to observe how the objectives of the action plan include the challenge of betting on a stable and lasting peace while simultaneously wanting to ensure that business commitment

to respect human rights will be seen as a competitive advantage (ibid.).⁴ As far as mechanisms for monitoring its implementation are concerned, the Office of the Presidential Adviser on Human Rights 2018 report reveals a complete lack of indicators for doing follow-up. Given that the term of this action plan only extended to December 2018, the outgoing government recommends that the continuity of the efforts made and advances accomplished be guaranteed for implementation of the Guiding Principles on Business and Human Rights and argues that it is necessary to renew the term of the action plan (Brunori 2018).

Finally, concerning whether investor rights take precedence over Human Rights, it is worth mentioning that, albeit belatedly, in June of 2019 the Constitutional Court of Colombia put a brake on the international treaties known as Agreements for the Promotion and Reciprocal Protection of Investment (*Acuerdos para la Promoción y Protección Recíproca de Inversiones, APPRI*) that open the door to rulings against the nation with enormous monetary costs (Reporteros asociados del mundo 2019). The revision of the treaty that Colombia signed with France in 2014 led to this pronouncement: “Foreign investors have ... so many guarantees that they are correlatively causing a loss of national sovereignty (...). Companies have used those clauses strategically to sue for any loss whatsoever in terms of expected profits and reduce the regulatory power of the state” (ibid.).

1.4 Towards a binding treaty

In June 2014, Resolution 26/9 of the United Nations Human Rights Council decided to install an intergovernmental open-ended working group on transnational enterprises and other companies with respect to human rights. Its mandate is to elaborate a legally binding instrument to regulate the activities of transnational enterprises and other companies in international human rights law and to see that human rights violations committed by transnational enterprises do not go unpunished. The treaty seeks to fill the gaps that resulted from the voluntary approach of the United Nations Guiding Principles on Business and Human Rights. In any case, from the very first

⁴ In this respect, see Specific Objective 10: “Potenciar la sostenibilidad y los derechos humanos como ventajas competitivas empresariales.”

session of the working group there has been a consensus on the fact that the Guiding Principles and the construction of a binding treaty are two processes that reinforce and complement each other (Permanent Mission of Ecuador to the United Nations Office 2015).

The reaction to the scope of what is legally binding led all the Member States of the EU, including Spain, to vote against it when it came time to approve the resolution.

The fourth session of the working group was held in October of 2018. Prior to these sessions, in the same month, the European Parliament approved a resolution that urged the European Union to support the UN's legally binding instrument on multinationals and human rights (European Parliament 2018).

During the fourth session, it decided that “the instrument should concentrate on the needs of those who were harmed by human rights abuses related to business activities and to consider the different effects that those abuses produce among different groups of rights holders” (Gallegos 2019).

The fifth meeting of the working group was held in October of 2019 to discuss the initial draft of the binding treaty drawn up in July of 2019. The said draft mentions that the treaty will be applied to all business activities, particularly transnational companies, and including all human rights. The treaty contains articles on the prevention of violations through due diligence, but also for example on access to justice, the protection of defenders, international cooperation and the institutions needed to implement the treaty (OHCHR 2019).

Various international civil society organisations have received the new draft in a critical way, but they have also made concrete recommendations to improve the text and contribute to the process.⁵

The process on the binding treaty at the level of the United Nations is very important and includes much more than due diligence. While this multilateral process may take a long time, the nation states and the European Union must start to implement binding laws

on due diligence regarding human rights right now. These laws must include all human rights and environmental standards.

5 See for example CIDSE www.cidse.org



**Chapter 2.
The peace process, its risks
and its sustainability: the
context in which gold is
produced in Colombia**

Chapter 2. The peace process, its risks and its sustainability: the context in which gold is produced in Colombia

In Colombia, up until August of 2019, 8,463,875 cases of victims of the armed conflict had been registered (Unidad Víctimas 2017). In 2012, the Colombian state initiated a negotiation process with the FARC guerrilla group that culminated, after many setbacks, in the “Agreement for a Stable and Lasting Peace” in November of 2016. The agreement includes provisions for comprehensive rural reform, and an agenda of political participation for historically excluded rural communities including the stipulation that 16 congressional seats would be reserved for them. It was also agreed to recognise the producers of crops of illicit use and to create a policy for the substitution of said crops that prioritises voluntary substitution and relegates glyphosate fumigation to marginal use only. Furthermore, the state committed to concentrating its anti-drug policy on combatting the armed structures that control the drug trafficking networks.

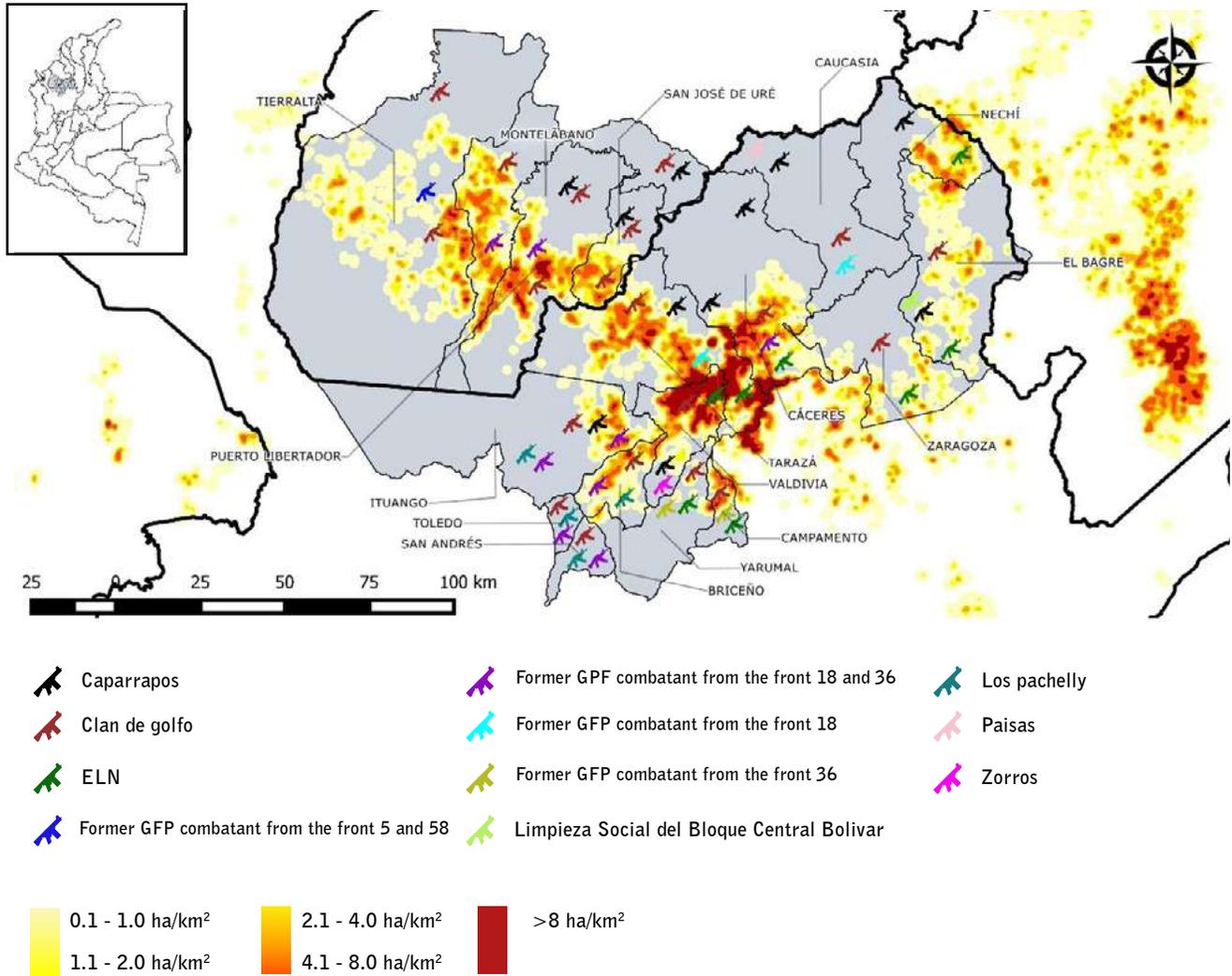
Unfortunately, there has been little or no progress in implementing the agreements, and some have been reversed as with the reactivation of fumigation, criminalisation of *campesinos* who cultivate coca, or prosecution of consumers. It was also agreed to create a transitional justice system that places the victims at the centre and sets up a new set of institutions to guarantee the entire implementation process over the next 20 years. The new institutions includes the following: The Special Justice for Peace, the Commission for Clarification of the Truth, and the Unit to Search for Persons Believed To Be Disappeared. To guarantee fulfillment of the agreements, they were instituted as state policy and temporarily incorporated into the constitution for the duration of three presidential periods following the signing of the accords.

The implementation process so far has been slow or has not yet begun in central aspects of the agreed agenda. This has put the construction of a new democratic scenario founded on the basis of a stable and lasting peace at risk. The current situation regarding the implementation of the peace agreements –with little progress, aspects which are stalled and even some reversals– suggests a country that is undergoing a “fragile post-conflict” process. This is one of the conditions for the implementation of due diligence associated with the traceability of minerals coming from conflict zones under EU regulations.

One fundamental commitment on the part of the state to prevent repetition of the history of armed conflict was to reach out to the territories in a comprehensive way and to dismantle the armed and neo-paramilitary structures. But the advances in this direction are insufficient.⁶ According to a study presented by the Fundación Paz y Reconciliación (PARES) in 2019, the year 2018 had been the most violent one for the Bajo Cauca subregion of Antioquia in the past six years, and the violence is felt with greatest force in the municipalities of Caucasia, Cáceres, El Bagre and Tarazá (Fundación Paz y Reconciliación, 2019: 54). The following map shows the presence of armed actors in the Nudo de Paramillo where the six municipalities of Bajo Cauca are located.

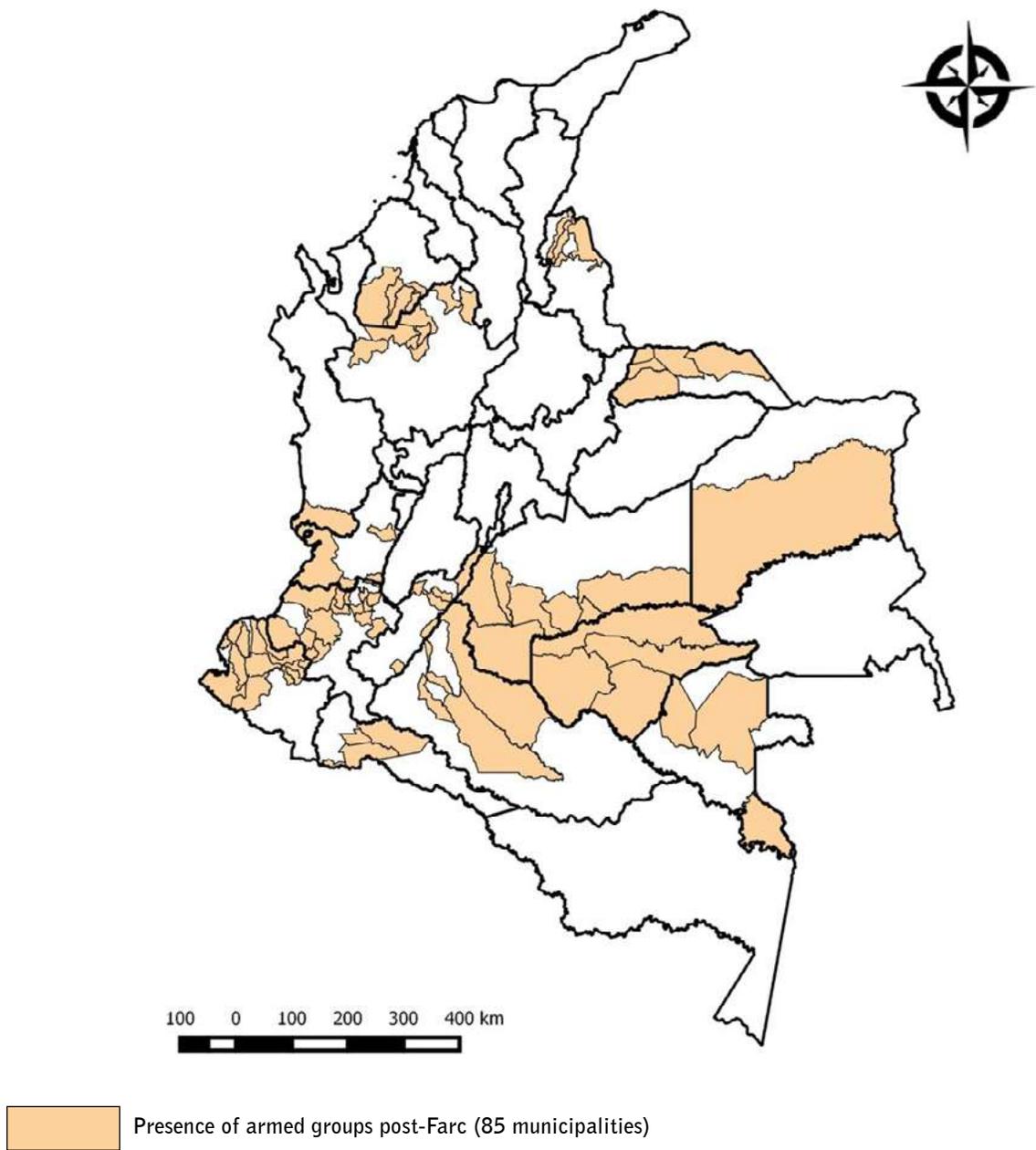
6 For further advances visit Misión de Verificación de las Naciones Unidas en Colombia. Available at: <https://colombia.unmissions.org/> (last accessed on 03.02.2020) https://colombia.unmissions.org/sites/default/files/s_2019_265_espanol.pdf

Map 1: Armed groups in the region of Nudo de Paramillo



Source: Fundación Paz y Reconciliación (2019: 48)

Map 2: Municipalities with presence of armed groups



Source: Fundación Paz y Reconciliación (2019: 30).



**Chapter 3.
Small and medium-sized
producers criminalised and
expelled from the territories**

Chapter 3. Small and medium-sized producers criminalised and expelled from the territories

“In Colombia, there is a preference for large projects run by multinational enterprises that tend to possess a high degree of political and economic ‘lobbying’ power. In recent years titles to mining rights have multiplied in favor of these multinationals while small-scale gold mining continues to develop practically on its own, with great limitations at the margin of the formal sector and aggravated by recent measures taken by the government that tend to confuse small-scale gold mining with criminal mining.”

(Pantoja and Pantoja 2019: 151).

The mining policy of Colombia contained in the Mining Code - Law 685 of 2001 – aims to promote the technical exploration and exploitation of state-owned and private-property mining resources.⁷ In all its articles, the territories are made ready for the entry of large multinational companies (Pardo 2019a). For researchers of Colombian mining policy like Álvaro Pardo, the mining policy has prioritised private interests over the general interests of the Colombian people and in fact “the mining code was drawn up by a group of lawyers working for multinationals” (Hernández C. 2016). Two aspects of the code that have been most hotly debated are Article 13, which declares mining to be of public utility and prioritises this economic activity over others like agriculture, for example, and Article 37, which prohibits municipalities and departments from excluding major mining companies from operating in zones within their territory. Despite the fact that the Constitutional Court declared the latter article unenforceable in 2016,⁸ mining companies continue to exert pressure to at least limit the possibility of any prohibition of mining activity in the territories, which is one of the obstacles they have encountered in executing their projects in recent years.

The following maps and graphs show the changes in the economic mining map of Colombia, before and

after the mining code. There was an evident expansion of titles to mining rights across Colombia during President Álvaro Uribe Vélez’s two terms in office, a tendency that was maintained albeit with less intensity during President Juan Manuel Santos’ two terms, and which seems to have intensified again in the current presidency of Iván Duque.

Simultaneously, the upward trend of gold prices on the international market also attracted armed actors. Both guerrilla fighters and paramilitaries have sought to control, either directly or indirectly, these resources in order to finance the war.

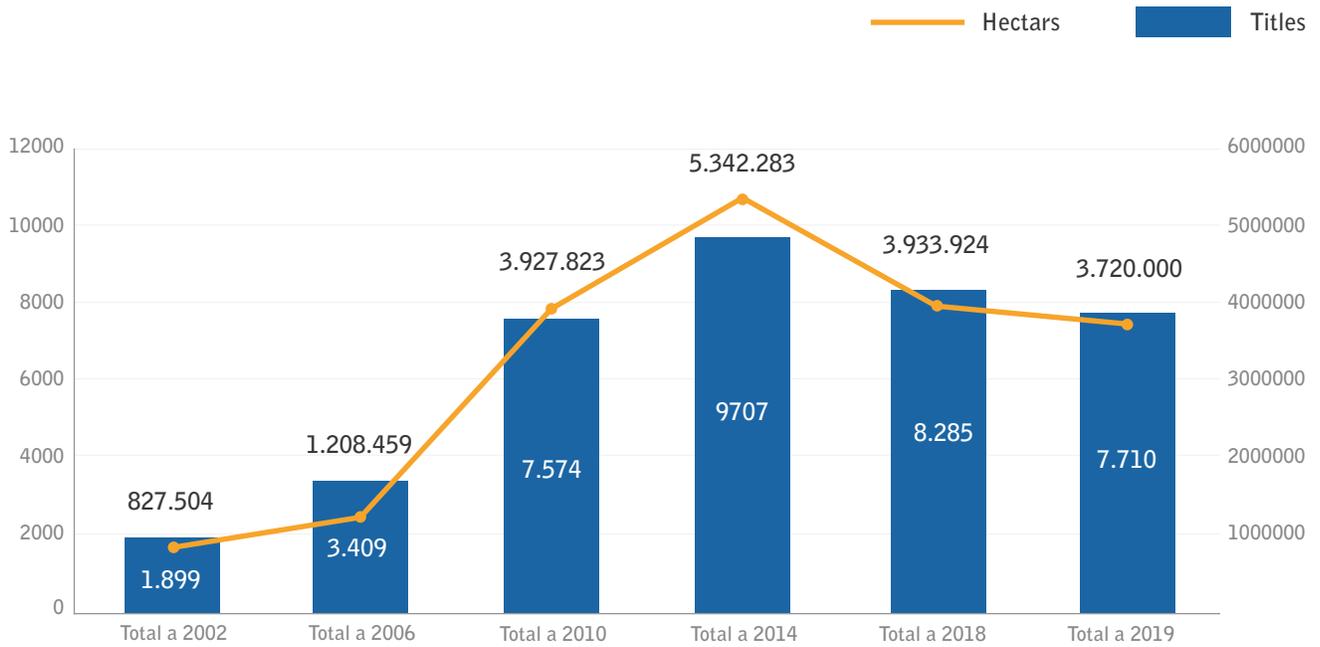
Thus, small- and medium-scale miners on their ancestral lands were trapped between multinational companies and armed actors, and subjected to a state policy of mining formalisation that criminalises them and expels them from the territory.

According to the Miners Association of Bajo Cauca, there are 1,200 informal mining- exploitation units, on which 45,000 people depend, but they maintain that the formalisation policy does not work. Of the governor of Antioquia’s commitment to formalise 800 units, in 2015, out of 150 mining units that had initiated the process, not a single one had been legalised. On repeated occasions while in the final phase of the formalisation process, they have been victims of army operatives who burned their mining machinery (Verdad Abierta 2016).

7 Colombian Congress, August 15, 2001. Law 685 DE 2001 https://www.anm.gov.co/sites/default/files/ley_685_2001_0.pdf

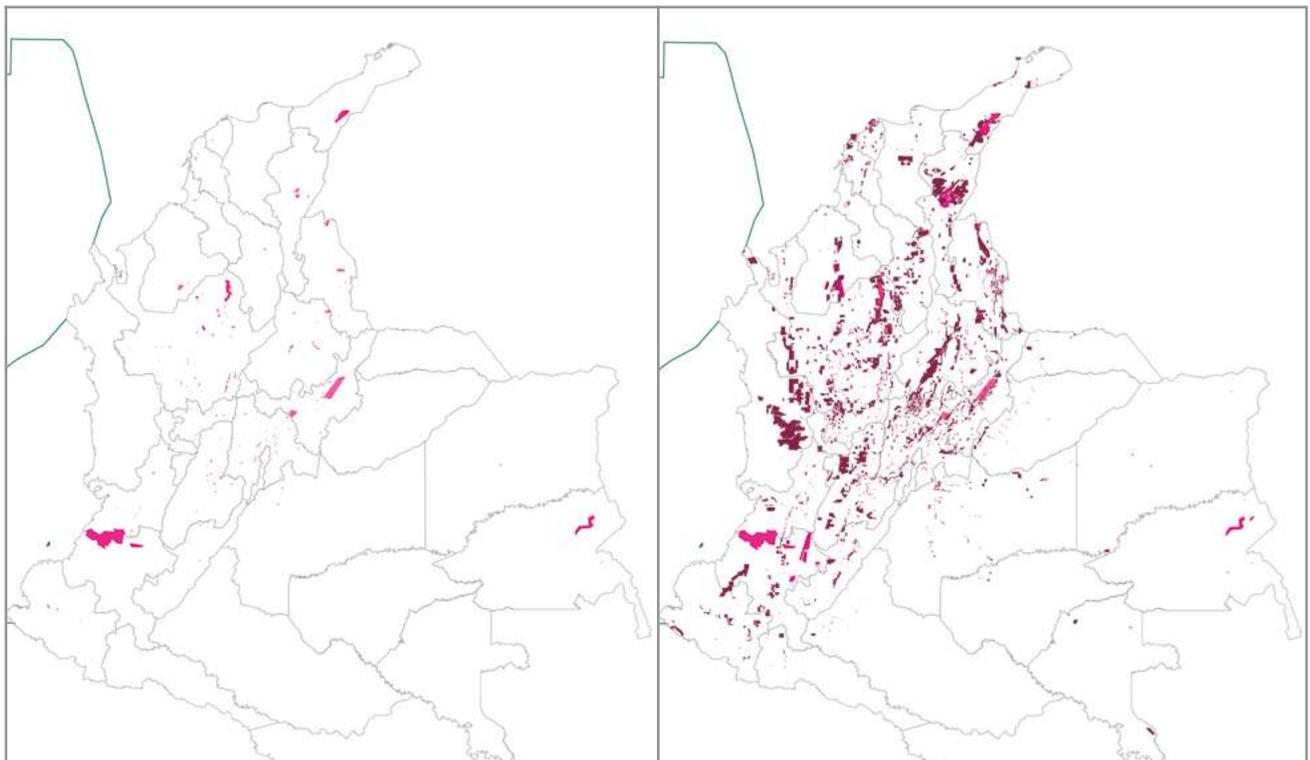
8 Constitutional Court decision C-273 of 2016.

Figure 1: Mining licenses and area granted



Sources: The Author's own elaboration based on: Rudas (2014) for the period 2002 to 2014; For 2018 Agencia Nacional de Minería (ANM); for 2019 Gonzales (2019).

Map 3: Evolution of granted mining licences from 1994 to 2015



Source: Rudas (2014).

In the case of Chocó, the small-scale artisan miners and *barequeros* were victims of the FARC before the Peace Agreement was signed with the Colombian State. The guerrilla group made money by collecting extortion payments equivalent to 3% of the daily production of gold. After the reincorporation of combatants into civil life it was expected that their situation would improve, but, on the contrary, the miners of Chocó feel that the situation has become more complex. On the one hand, the hope that the state would arrive and would help them escape from ‘informality’ has only meant greater restrictions for those

that are the weakest link in the gold-production chain. On the other hand there are now new armed actors controlling the trade, such as the National Liberation Army (Ejército de Liberación Nacional, ELN), criminal bands known as *bacrim*, and the Clan del Golfo, which are collecting extortion payments of up to 8% of daily production (Soto 2018).

The following chart shows the armed actors that currently operate in regions where most of the gold in Colombia is produced.

Table 2: Armed actors in mining territories after the signing of the peace agreement.

MAIN ARMED GROUPS OPERATING IN THE TERRITORIES AFTER THE SIGNING OF THE PEACE AGREEMENT WITH THE FARC (FOR MORE DETAILED INFORMATION SEE: FUNDACIÓN PAZ & RECONCILIACIÓN – PARES (2019). MÁS SOMBRAS QUE LUCES. LA SEGURIDAD EN COLOMBIA A UN AÑO DEL GOBIERNO DE IVÁN DUQUE.)	PRESENCE IN TERRITORIES WHERE GOLD IS PRODUCED
<p>Clan del Golfo or Autodefensas Gaitanistas de Colombia (AGC), (the criminal structure that is the heir to paramilitarism). It is present in 276 municipalities and can be considered the major Organized Armed Group at the national level. Both in terms of its widespread presence in different regions of the country and number of members (approximately 2,500), it is possibly the strongest criminal structure to follow in the tradition of paramilitarism in the country. (Pares, 2019: 35)</p>	<p>Bajo Cauca in Antioquia and Northeastern Antioquia, departments of Chocó, Cauca, Bolívar and Caldas.</p>
<p>Caparrapos, in a dispute with the <i>Clan del Golfo</i> over the territory</p> <p>Post-FARC armed groups/Grupos Armados Postfarc (GAPF) “The post-FARC or dissident structures operate in 85 municipalities, grouped in 23 structures with about 1,800 ex-guerrilla fighters and others with close to 300 new recruits. In the first year of the Duque government, these structures underwent impressive expansion, spreading out from 58 to 85 municipalities”, (Pares, 2019)</p>	<p>Bajo Cauca in Antioquia.</p> <p>Cauca, Nariño, Chocó, Bajo Cauca in Antioquia.</p>
<p>National Liberation Army (ELN) The ELN today has a little more than 3,000 combatants and is present in 136 municipalities in 6 regions: Arauca, Catatumbo, Magdalena Medio, Chocó, Cauca and Nariño.</p>	<p>Chocó, Cauca, Nariño, Bajo Cauca in Antioquia and Northeast Antioquia</p>

Source: Table elaborated on the basis of information from Pares (2019).
https://pares.com.co/wp-content/uploads/2019/08/Que%CC%81-paso%CC%81-con-la-seguridad-a-un-an%CC%83o-de-Duque-final-_compressed-Final.pdf

Table 3: Public security forces in mining regions of Antioquia

UNITS OF COLOMBIAN SECURITY FORCES THAT OPERATE IN THE MINING REGIONS OF ANTIOQUIA	PRESENCE IN TERRITORIES WHERE GOLD IS PRODUCED
<p>Security Force (Colombian Army) 11th Brigade and Aquiles Joint Task Force (Nudo de Paramillo) units of the Army's 7th division</p> <p>"The role of the security forces is seriously questioned by the inhabitants of Bajo Cauca. The inhabitants deeply distrust the police since they say that some members of the police force act in complicity with one of the armed groups." (Pares, 2019:76)</p> <p>In addition, there is the <i>Vial y Energético</i> Battalion No. 5 in the installations of Mineros S.A.</p>	Bajo Cauca in Antioquia
<p>14th Brigade (Colombian Army) through the <i>Vial y Energético</i> Battalion No. 8 (in the installations of the Gran Colombia Gold Mining Company (Antigua Frontino Gold Mines) and of Infantry Battalion 42, Batalla de Bomboná (Pares, 2019:77)</p>	Northeastern Antioquia

Source: Table elaborated on the basis of information from Pares (2019).

3.1 Large enterprises, human rights and environmental law

In 2017, three companies exported 46% of the 56.96 tons of gold which Colombia produced that year to other countries. All three of them have their headquarters in the city of Medellín in the department of Antioquia. Mineros S.A. carries out its production in the subregion of Bajo Cauca in Antioquia, in the municipalities of El Bagre, Zaragoza, Caucaasia and Nechí. Gran Colombia Gold produces most of its gold in the municipalities of Remedios and Segovia in northeast Antioquia, and a lesser portion in the municipality of Marmato in the department of Caldas. C.I.Gutierrez, which buys most of its gold from *barequeros* and sells it abroad, is presently under investigation for asset laundering.

Below we will deal with these three cases in such a way as to show their failure to comply with due diligence requirements in terms of human rights and respect for the environment in the territorial context. The cases of these companies can be seen in greater detail in the Appendix 2.

3.1.1 The right to work and the right to territory infringed by the power of large companies

Traditional and artisanal mining, especially of gold mineral ore, is an ancestral construction. For these producers, access to the mines is a source of employment that has enabled them to enjoy economic autonomy for decades. This has been truncated by the government policy that denies them the right to work and to land and repudiates them as economic subjects that can obtain land titles,⁹ as shown below.

The size of the informal mining economy in Colombia was shown in the last census of Mining Production Units (Unidades de Producción Minera, UPMs), which was carried out by the Formalisation

⁹ A Global Business Report of E&MJ (Engineering and Mining Journal) and titled "*Minería en Colombia. El último gran tesoro andino*" says that according to official reports, 70% of gold production in the country is informal, with some 3,600 illegal mines throughout the national territory, and that artisanal miners are found everywhere. On the same topic, one of the mining company managers interviewed said "he didn't believe the artisanal miners represented a difficulty, but rather a labor force that works hard and wants to work." (E&MJ Global Business Reports 2012: 113).

Directorate of the Ministry of Mines and Energy (MME) in 2011.¹⁰ That census reported 102,742 miners working in exploitation-related jobs and 14,357 registered UPMs. Of these, 63% lacked any title to mining rights. The greatest percentage of informality was identified in the production of gold. Of 4,134 UPMs that were producing the precious metal, 87% did not have titles to mining rights. This is seen clearly in the gold-producing departments of Antioquia with 80% and Chocó with 99% informality, i.e., lacking titles to mining rights (see Map). In the case of untitled mining production units, there is a 62.7% illiteracy rate among the miners working with them. Many of the policies after this mining census deepened their exclusion and their criminalisation.

Miners have tried to legalise their rights, but the system excludes them, as will be shown below. According to a study conducted by the Ombudsman's Office in 2010, 86% of all applications to formalise their activity through a mining title were rejected. But the exclusion and the criminalisation have been maintained and deepened throughout the entire decade. For this reason, from 2010 onwards the expansion of mining rights generated new conflicts with mining and ethnic communities, and with environmental movements that defend water and land. (See Appendix: Map of the 2010-2011 Census of Mining Production Units with titles and without titles.)

3.1.2 Social mobilisation has revealed the unrest, the exclusion and the agendas of miners

In July of 2013, 250,000 people from 18 departments of Colombia called on by the National Confederation of Miners of Colombia (Conalminercol), took part in the biggest mobilisation of small-scale miners ever held in Colombia. Among the nine points included on the agenda that they presented to the government, the following stood out: a call for changes to regulations that will permit miners to continue developing their mechanised or non-mechanised activities; the cessation of military operations that burn their machinery; an end to judicial proceedings against miners; and respect for ILO accords in Afro-Colom-

bian and Indigenous communities. With respect to the territory, they demand consultation with prior, free and informed consent, and priority for the communities in the territory (Berrio and Hernández (2013).

In spite of mobilisations, negotiations and agendas agreed with the state, the option the government has offered through its formalisation policies for small-scale miners has not contributed to their socio-economic inclusion. Rubén Darío Gómez of Conalminercol posed the problem in the following way in 2017 (as cited in Rojas T. 2017):

...In Antioquia there were only 13 formalisations during 2016, with the aggravating factor that it was the leading area in this process, which was practically nonexistent in the rest of the country.

The main element of this failure is the lack of political will on the part of the Government and multinationals who refuse to cede areas, or to sign formalisation or operating subcontracts. The offers are unacceptable and do not cover the costs of production and extortion payments.

Now smear campaigns are increasing and operatives have come to persecute subsistence mining and to criminalise anyone who practices it. [...] We also face negotiations that go nowhere. *The response to the clamour for formalisation during the past 20 years has been a combination of subcontracts that end unilaterally, zero entitlements, unknown formalisation laboratories, and arrest warrants issued on the basis of fabricated evidence.*

It is necessary to identify and implement solutions to the conflicts existing between ancestral, traditional, informal, small- and medium-scale miners on the one hand, and the large multinational mining companies on the other. There is also an urgent need to find solutions to conflicts arising from the impossibility of obtaining mining rights for informal miners. Clear legislation and real public policy are required in which the will to find solutions prevails over tendencies to delay and to continue generating false illusions. (Rojas T. 2017)

¹⁰ To the best of our knowledge, this is the latest mining census for Colombia. All available official information after this was published applies only to registered *barequeros*.

In 2017, between the months of July and September, one of the longest mobilisations ever experienced in the region of northeastern Antioquia took place in the municipalities of Segovia and Remedios. With the slogan “Miners yes, criminals no,” the ancestral miners demanded fair treatment, justice in economic agreements, non-criminalisation, and dialogue to deal with the conflict rather than the strategies of war that they witnessed during more than 40 days of the

strike. While the ancestral miners used the strike to apply pressure for a negotiation of their agenda, the Gran Colombia Gold mining company, registered in Canada, did the same in a paid newspaper advertisement titled “The cartel of explosives and criminal bands have Segovia and Remedios in checkmate” (El Combiano 2017). During its development, the protest was handled with warfare strategies and generated grave violations of human rights (Cahucopana, 2017).

Image 1: Advertisement in El Colombiano newspaper and image of miners' sit-in in Segovia and photo taken by IPC in September 2017.



Source: El Colombiano, August 18, 2017 and photo taken by the IPC in September of 2017. (Betancur 2017: 281)

In late 2018 that same company, Gran Colombia Gold, the largest producer of gold in the entire country, demanded that the national government undertake military intervention to expel miners without titles still remaining in the territory. It not only proposed that this should be done with military and police deployment, but that it should be supported with “any other force” as well (El Espectador 2019b).

The seriousness of the communiqué lies not only in the warmongering demand it contained, but the phrase that alludes to the possibility of using forces that are

not legal, when it states that the expulsion of the miners must be done “by means of military and police deployment, as well as by any other force.” One might ask: “To what other force does this refer? To the illegal armed groups that operate throughout the zone?” (Pardo 2019). For Rubén Darío Gómez, president of Conalminercol, the document is a call to violence and an extortion of the Government: “A demand for a scorched earth policy, and if necessary, that it be by blood and fire.” The Association of Traditional Miners of Marmato also spoke out and denounced the fact that the multinational is abusing its power and calling for war (El Espectador 2019b).

Likewise, the producers in Chocó describe the difficulties in becoming formalised. Two articles of the website of La Silla Vacía, one in 2015 (Bermúdez 2015) and another in 2018 (Soto 2018) have produced ample documentation on these difficulties and the practical impossibility for miners of passing from informality to legality in the department of Chocó.

“We begin as traditional miners. Then we become informal miners. From there, we become illegal. After that, [we were called] criminals. We are already [considered worse than] the drug traffickers. Just because we don’t have titles [to our mining rights]. And why? Because the government is only interested in granting them to the multinationals” ... All miners insist that they want to work within the sphere of legality, but they doubt that the government is really going to [help them to] do it.” (La Silla Vacía, 2015).

“We see that the government is not interested in formalising the miners, because they put many obstacles in our way, we have made many proposals to them at the Mining Round Table of Chocó such as, for example, differential titling, but they haven’t accepted it from us,” said the legal representative of Paimadó, who is also part of the national programme for Prior Consultation” (La Silla Vacía, 2018).

They were thus excluded as economic subjects from their territories. As they themselves tell the story, first miners, and in the past 6 years as criminals. According

they were treated as informal miners, later as illegal to the Ministry of Mines and Energy, illegal mining is that which is developed without being inscribed in the National Mining Register, and without rights to mining developed in an artisanal and informal manner outside the law (Ministry of Mines and Energy, 2012: 40).¹¹ But it was after 2012, when Decree 2235¹² authorized the police to destroy the machinery in untitled mining operations, when miners began to feel that their activity was becoming criminalised and that their rights to equality, to private property, to their good name, to due process and to defense are being violated (Court of Justice of the Community Andina 2017).

Additionally, their productive capacity was limited. Those known as barequeros are only allowed to produce 35 grams of precious metals per month, 420 grams per year, according to Resolution 40013 of 2017.

3.1.3 Small- and medium-scale mining disappears from the gold production chain in Colombia

The mining policy implemented during the last two decades in Colombia led to the disappearance of small and medium-scale miners from the map of producers who are recognised by the mining institutions of the country. After the census carried out in 2011, which is seen on the map, in the year 2018, the National Mining Agency showed a map of producers divided into holders of mining rights and barequeros, with an extremely low rate of legalisation applications and formalisation subcontracts.

Table 4: Production by type of mining in 2017

PRODUCTION BY TPE OF MINING IN 2017		
Mining titles	19,93 t	(47,86%)
Barequeros	19,34 t	(46,44%)
Application for legalization	0,88 t	(2,12%)
Applications for formalization	0,64 t	(1,54%)
Protected aereas	0,59 t	(1,41%)
Chatarra	0,26 t	(0,64%)

Source: ANM (2018)

¹¹ Ministerio de Minas y Energía, 2012. Mining Census 2010-2011. <https://www.minenergia.gov.co/documents/10180/698204/CensoMinero.pdf/093cec57-05e8-416b-8e0c-5e4f7c1d6820>

¹² Republic of Colombia Ministry of National Defense, 2012. Decree 2235 of 2012.

As is clear from the map in the Appendix (Barequeros en municipios de los departamentos de Bolívar, Antioquia, Chocó, Cauca y Nariño), the *barequeros* registered up to 2018 remain invisibilised, criminalised and excluded in the territories where the dispute over this resource permanently violates all of their rights.



Chapter 4.
**Relations between
gold production and
conflict in Colombia:
specific cases**

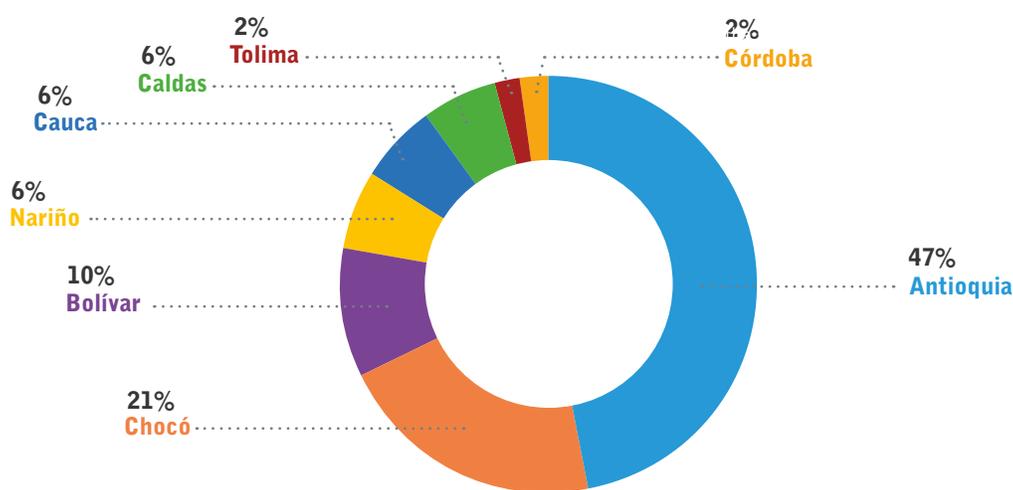
Chapter 4. Relations between gold production and conflict in Colombia: specific cases

Our aim is to advance in deepening the criteria of due diligence and respect for human rights in gold-producing territories, which are conflict-affected areas, and therefore, in this section we wish to show the relations that exist between the territories where 96% of Colombia's gold production takes place, with two indicators of conflict: 1. The total number of victims of the armed conflict between 1985 and 2018. 2. Social leaders, human rights advocates and former

FARC combatants murdered after the signing of the peace agreement between the Colombian state and the FARC to 2019. Tolima and Córdoba produce the remaining 4% of the country's gold.

Most of Colombia's gold is produced in 6 departments.¹³ Antioquia produces 47%, Chocó 21%, and Bolívar 10%. The departments of Nariño, Cauca and Caldas produce 6% each (see chart).

Figure 2: Percentage of gold produced in the different Colombian departments in 2017



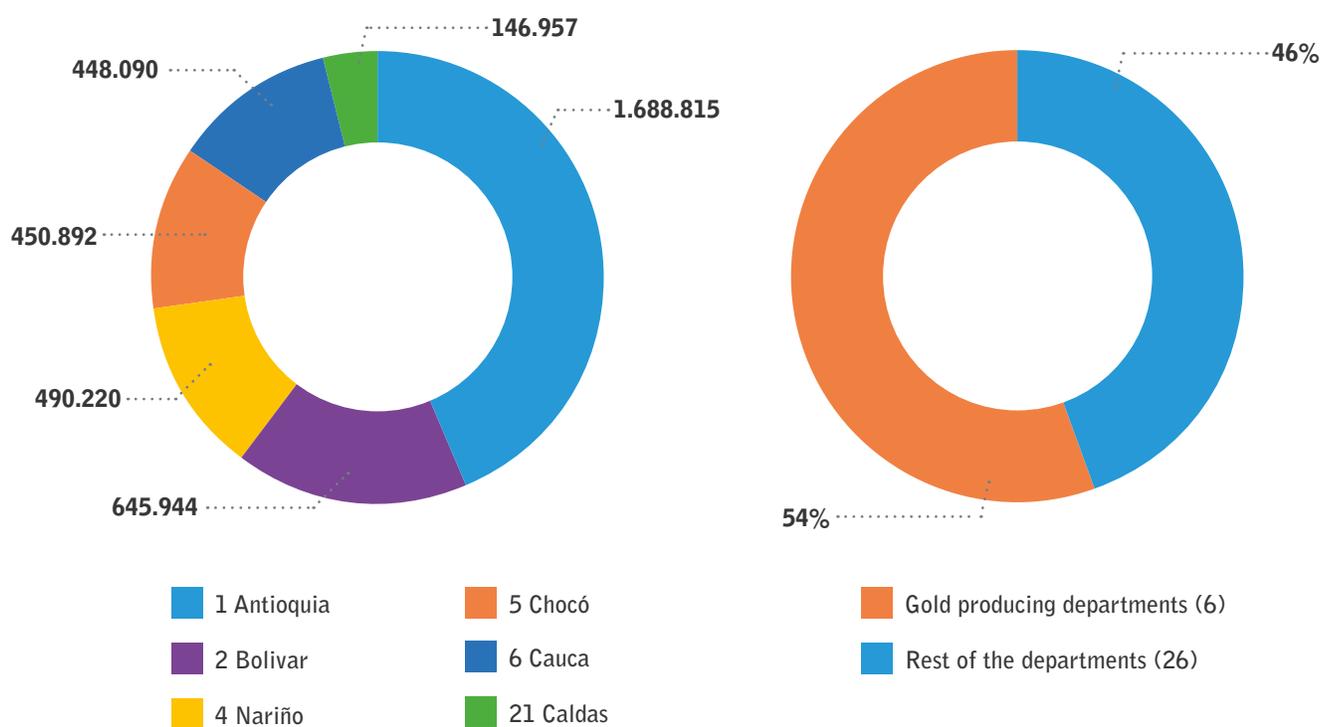
Source: The Author's own elaboration, based on: UPME, Boletín estadístico de minas y energía 2018. Available at: http://www1.upme.gov.co/PromocionSector/SeccionesInteres/Documents/Boletines/Boletin_Estadistico_2018.pdf

¹³ To help the reader to understand the political administrative division of Colombia, we should explain that the country is organized territorially in 32 departments (the first level) and 1,122 municipalities (the second level).

A total of 46% of the 8,493,100 victims of the armed conflict registered in Colombia between the years 1985 and 2018 were reported in these six departments. Furthermore, Cauca, Antioquia and Nariño are the departments where the highest number of social leaders and former FARC combatants have been murdered. The following charts and maps show us the magnitude of the consequences of the armed conflict in the territories where gold is produced in Colombia. While the disputes over mining resources have not been the only cause of this high number of victims, -in many cases coca plantations and drug trafficking have also been involved, for example- it is neverthe

less clear that in the territories where the minerals come from, the levels of conflict are high. Although it is generally claimed that the conflict arises from the dispute over resources produced by illegal mining and coca plantations, some indicators raise questions at the very least. While 13,681 hectares of coca crops were reported in Antioquia for 2017 (UNDOC 2017: 47), most of which were planted in the Bajo Cauca subregion of Antioquia, titles to mining rights in that same territory cover 349,921 hectares, approximately 40.8 percent of the territory of the subregion (Verdad Abierta 2014). The companies that have majority control of the territory are Mineros S.A, AngloGold Ashanti and Cerromatoso.

Figure 3: Victims of armed conflicts in administrative departments with higher mining production.

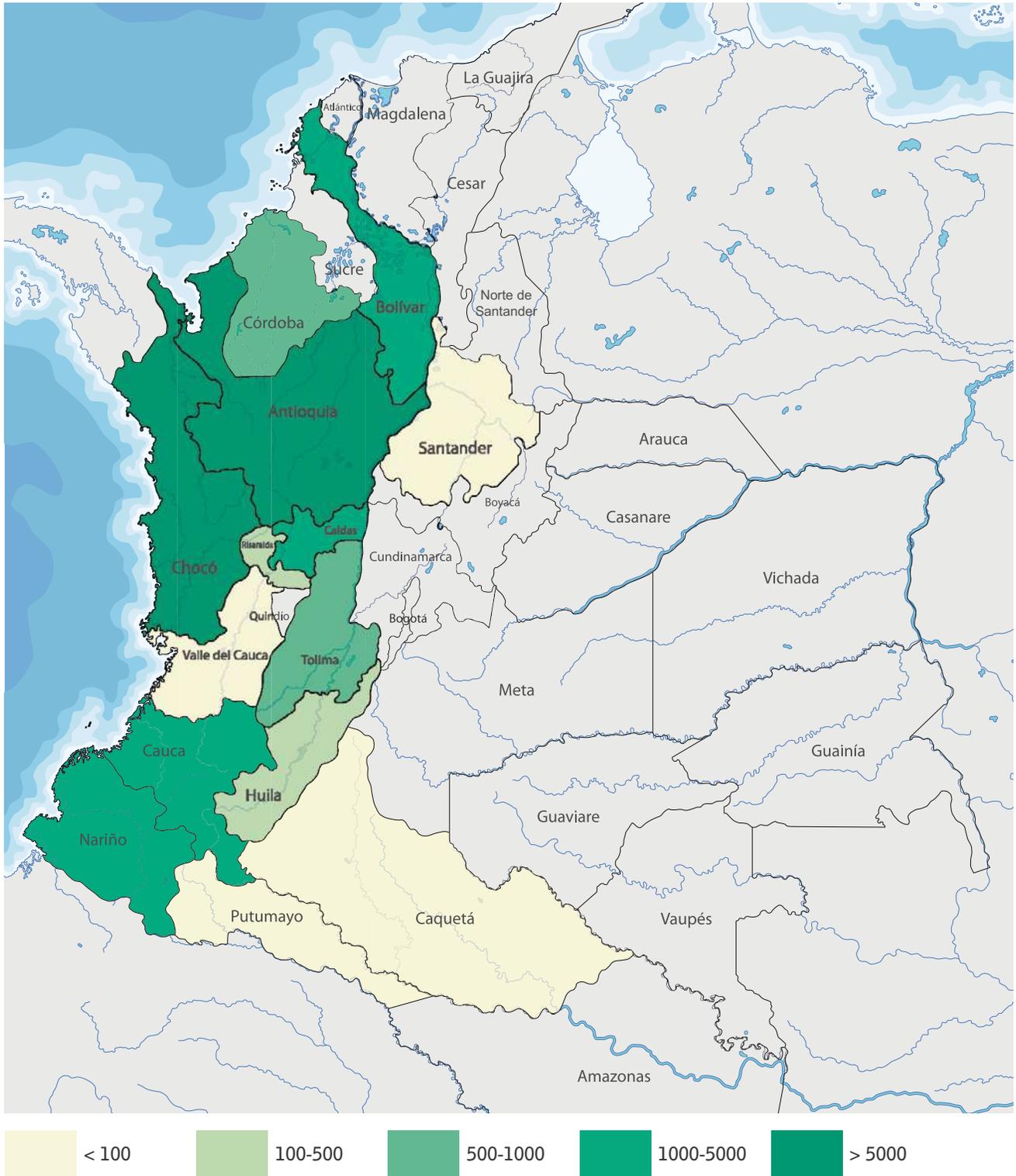


Source: The Author’s own elaboration, based on: UPME (2018).

To go a bit deeper into the relationship between gold-producing territories and armed conflict, we will analyse in more detail three of these departments. (i) Antioquia, which produces 47% of the country’s gold, registers the greatest number of victims of the armed conflict and is the department with the second

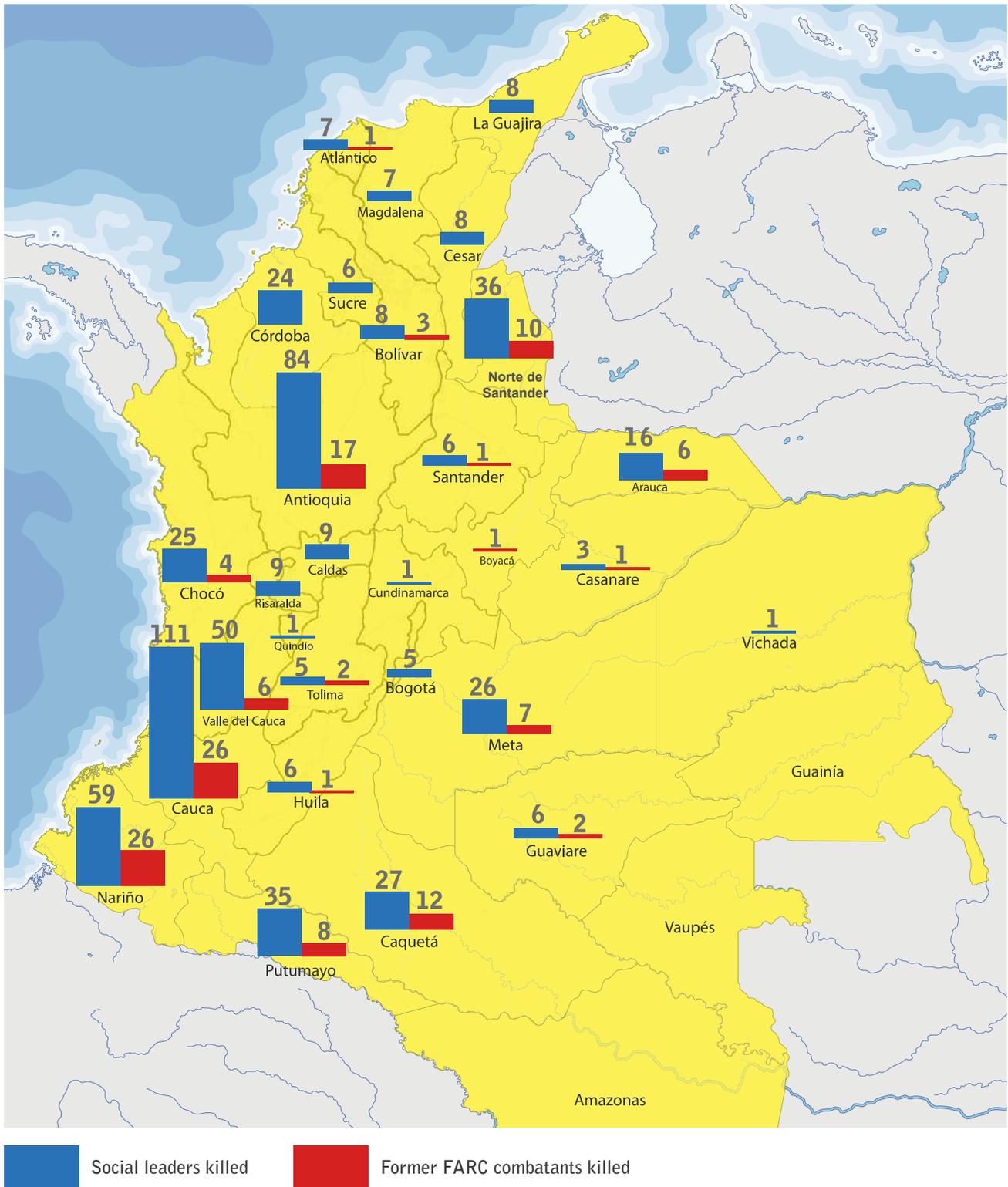
highest murder rate of social leaders. (ii) Chocó, which ranks second in the production of gold and fifth in the number of registered victims. (iii) Cauca, which produces 6% of the country’s gold and registers the highest number of social leaders and former FARC combatants murdered.

Map 4: Kilograms of gold produced in Colombia per department by 2017



Source: IPC elaboration, with data from: UPME, Boletín estadístico de minas y energía 2018. Available at: http://www1.upme.gov.co/PromocionSector/SeccionesInteres/Documents/Boletines/Boletin_Estadistico_2018.pdf

Map 5: Social leaders and former FARC combatants murdered between the years 2016 and 2019



Source: Author's own elaboration with data from Cumbre Agraria et al. (2019). Note the intensities in Cauca, Antio-

4.1 Antioquia: Main producer of gold in Colombia and the territory with the highest number of victims of the armed conflict

A recent OECD study (OECD 2016) states that there are high risks in Antioquia with respect to the aspects highlighted in Appendix II of the Due Diligence Guide. The risks referred to are war crimes or other serious violations of humanitarian international law, crimes against humanity or genocide, direct or indirect support to non-state armed groups, public or private security forces, bribes and misrepresentation of the origin of the gold, and money laundering.

“The department of Antioquia is not just the main gold-producing region in Colombia, *but one of the most challenging in terms of the risks detailed in Appendix II.*¹⁴ All of the actors in the gold supply chain operate in the region: artisanal and small-scale miners (the majority operating without titles), medium- and large-scale mining companies (both alluvial and vein mining, national and international), local traders, refineries and international gold trading companies. Nonetheless, the risk of obtaining a gold supply from Antioquia has increased due to the presence of illegal armed groups and criminal organisations that profit from mining operations, the generalisation of

money laundering that involves the gold trade and the corruption that these organisations generate.” (OECD 2016: 23)

Of the 20,404 kilograms of gold extracted in Antioquia, 8,715 came from Colombia’s two big gold production and export companies - La Gran Colombia Gold in Segovia and Remedios y Mineros S.A in El Bagre, Cauca, Zaragoza and Nechí. Two other companies (Continental Gold Inc. and the Red Eagle Mining Corporation) produce 259 kilograms.

Most of the remaining 11,430 kilograms come from small-scale or artisanal producers –classified as *barequeros* today- 36,235 of whom are registered in Antioquia (approximately 45% of the national total), as well as criminal structures that often make use of small-scale producers by appropriating their product through extortion, identity fraud or other mechanisms of asset laundering. This part of the gold goes to the local buyers and sellers and from these to the large gold-trading companies, most of which are located in Medellín,¹⁵ the capital of the department of Antioquia. The gold is exported by the two large companies located in Antioquia and by the international trading companies that receive gold from the *barequeros* registered in the Unique Registry of Mineral Dealers, or from informal or illegal producers.¹⁶

Table 5: Production and export of gold from large companies in Antioquia in the year 2017

EXPORTING COMPANY	2017 EXPORTS (VALUES IN KG)	2017 PRODUCTION (IN KG)
C.I. J. Gutiérrez y CIA S.A.	11,191.26	
Zandor Capital S.A. Colombia (Subsidiary of Gran Colombia Gold)	8,617.01	5,406.6
Mineros S.A.	4,090.91	3,308.6

Source: Legiscomex and the National Mining Agency (ANM 2018). There is evidently an important difference between the kilograms produced and those exported, especially in the case of the Gran Colombia Gold subsidiary. It exports 3,211 kg more than it produces, which is an important difference if compared with the amount produced by Mineros S.A. in 2017.

14 Appendix II of OECD Due Diligence Guidance (2013) refers to: Model Supply Chain Policy for a Global and Responsible Supply Chain in Conflict-Affected or High-Risk Areas. The Appendix highlights: Serious abuses associated with the extraction, transport and commercialization of gold; War crimes and other serious violations of international humanitarian law, crimes against humanity or genocide, direct or indirect support for non-state armed groups, public or private security forces, bribery and misrepresentation of origin of gold, graft, money laundering.

15 The most important smelters and international trading companies are located in Medellín, the capital of the department of Antioquia. (OECD 2016: 4)

16 Local trading companies take advantage. One trading company in the Bajo Cauca subregión of Antioquia, on condition of anonymity, says there are two ways: the first is to occupy the quota of subsistence miners that go to sell a few grams of gold. “One buys it from them and keeps a copy of the documents, and then makes more copies and falsifies the signatures so that one appears to be selling gold that one has already obtained elsewhere.” The second is a concerted action: “I offer a *barequero* 150,000 pesos per month, payable whether or not they bring any gold, I buy what they get and, the rest, up to a total of 35 grams monthly, I report it of the gold that I obtained in illegal mines,” says the trader. The middlemen are creative and they manage to flout the rules (El Colombiano 2019 <https://www.elcolombiano.com/especiales/tras-el-oro-turbio/comercio-oro-ilegal>).

In recent years, investigators from the Attorney General's office have identified the fact that gold exports have been increasing since 2012. This created suspicion of possible strategies to whitewash the gold resulting from illegal mining, and a preliminary inquiry was initiated regarding companies like Goldex, Escobar, Giraldo & Duque Ltd, Metales y Derivados S.A., C.I. IGSA, C.I. J. Gutiérrez y Cia. S.A., and Mineros S.A. (El Espectador 2017).

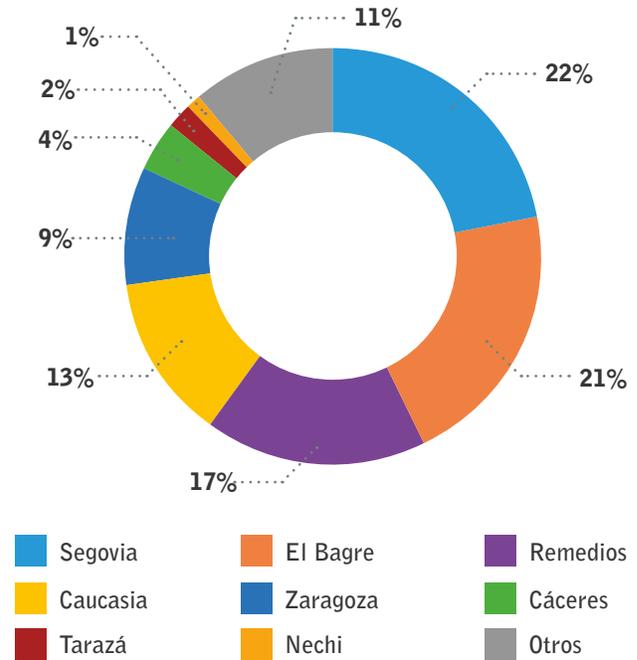
Since 2016, the National Tax and Customs Administration had been warning the Attorney General's office of irregularities in the export records of various international trading companies, including Gutiérrez, and despite that, 11,393 kg of gold exports were still registered in 2018. Of that amount, 5,949.62 kg went to the ARGOR-HERAEUS S.A. refinery in Switzerland, a subsidiary of the Heraeus Company, which is located in Germany.¹⁷

"The Attorney General's Office reported in a press release dated 11 April 2019 the alleged illicit activities of one of the oldest and most prestigious international gold-trading companies, C.I. J. Gutiérrez. This was discovered as part of an operation called "Legend of Eldorado," which uncovered irregularities that have characterised this sector of the Colombian economy for decades. These irregularities included the inexplicable growth of exports from one year to the next, gold registered with the identities of deceased persons, etc. and in the past ten years they have discovered various fictitious operations that compromise assets worth close to 2.4 billion pesos, (US\$800 million at today's prices)" (Pardo 2019b: 1).

Mineral extraction can be found in eight municipalities in the department of Antioquia. These municipalities present high rates of human rights violations, as well as the highest levels of poverty and unsatisfied basic needs among their inhabitants. Gold production and human development express opposing tendencies. The Bajo Cauca subregion (El Bagre, Caucasia, Zaragoza, Cáceres, Tarazá, Nechí) has one of the highest levels of multidimensional poverty in Antioquia, with 78.87% of the population suffering deficiencies in different dimensions of human development such as health, education and standard of living, all of which, taken together, constitute the most critical situation in the department

of Antioquia (FAO and Office of the Governor of Antioquia, 2016: 29) (FAO and MANÁ 2016).

Figure 4: Share of municipalities in the gold production of Antioquia



Source: The Author's own elaboration based on Rendón M. (2019) <https://www.elcolombiano.com/especiales/tras-el-oro-turbio/mineria-ilegal>

Neither the negotiations with paramilitary groups between the years 2003 and 2006, nor the peace agreements signed between the Colombian state and the FARC (former revolutionary armed forces) in November 2016,¹⁸ have decelerated the high levels of forced displacement in the territory. On the contrary, they have actually intensified at some points. As we will describe, the dispute over mining wealth by legal and illegal companies is a focus of conflicts old and new. Various studies have documented the relations between mining and conflict in this department. In the

18 The agreement was signed in order to construct a stable and lasting peace, which means putting an end to the historic cycles of violence. The following points were agreed: Point 1 deals with "Integral Rural Reform"; 2. "Political Participation: Democratic openness for constructing peace"; 3 "Ceasefire and Bilateral and Definitive End of Hostilities and the Laying Down of Arms"; 4. "Solution to the Problem of Illicit Drugs"; Point 5 contains the agreement "Victims," indicating that reparation of the victims should be at the center of any agreement, and creates the Integral System of Truth, Justice, Reparation and Non-Repitition; Point 6 contains the agreement "Mechanisms of Implementation and Verification" (Mesa de Conversaciones 2017; Final Agreement for the End of the Conflict and the Construction of a Stable and Lasting Peace).

17 Source: Banco de Datos de Comercio Exterior / BACEX / Ministerio de Comercio, Industria y Turismo

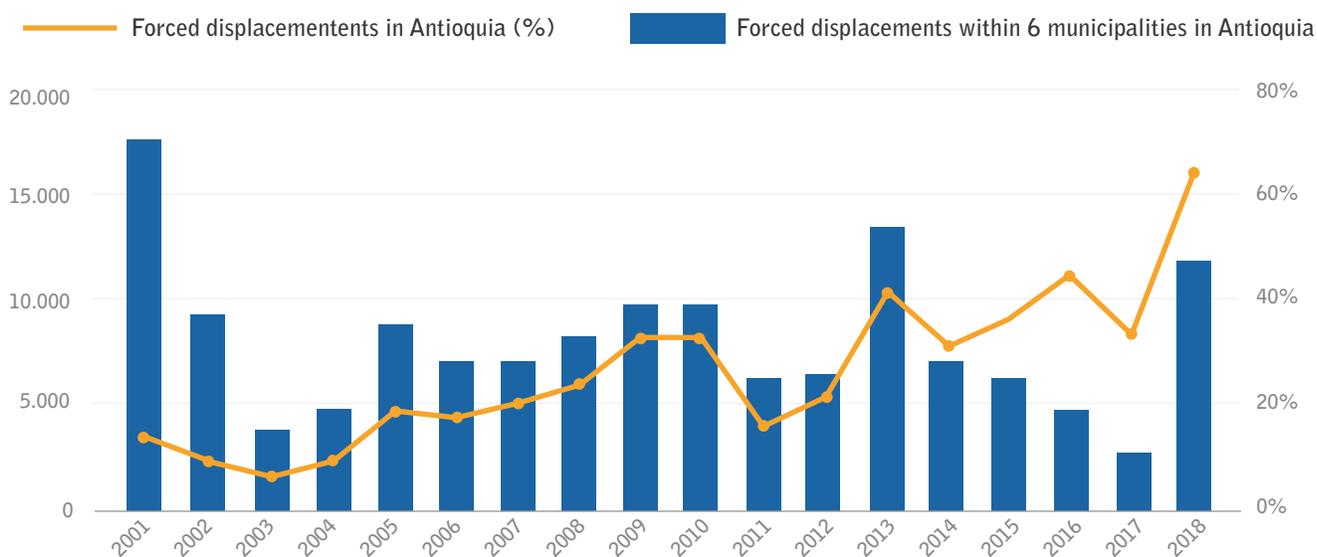
years 2015 and 2017, the Instituto Popular de Capacitación (IPC) included in its annual Human Rights Report three studies on the relations between mining and conflict in this region (Betancur 2015, 2017).

Mining activity has caused serious environmental damage while not having had any correlated effect in

improving the well-being of the inhabitants of these territories. On the contrary, there has been systematic and integral violation of human rights, death, displacement and loss of territory and their right to the land.

The chart shows the intensity of the displacement in six gold-producing municipalities.

Figure 5: Evolution of forced displacement in the 6 gold producing municipalities in the Lower Cauca Antioquia



Source: The author's own elaboration based on data from Unit for the Care and Compensation of Victims UARIV.

Paramilitary structures have established their presence in these municipalities (Bloque Mineros and Bloque Central Bolívar, before negotiations with the paramilitaries), as have guerrillas of the FARC (before the negotiations), the Road and Energy Mining Battalion No. 5, dedicated to protecting the operation of Mineros S.A. and the Road and Energy Mining Battalion No. 8 for protecting Gran Colombia Gold, both of which are attached to the Colombian Army (Betancur, 2015: 229), and the Army of Colombia, which is the main presence of the state within the territory.

Today, in addition to battalions and special operations of the Colombian Army, there are the Autodefensas Gitanitas and the Llamados Caparrapos, (neo-paramilitary structures), plus structures of the ELN guerrilla and some dissidents of the FARC. Since the middle of 2019, the region of Bajo Cauca has been declared to be in a state of humanitarian emergency.¹⁹

¹⁹ "Abandonment by the state in the six municipalities and lack of political will to resolve the confrontation between armed actors are some of the conclusions left by the humanitarian caravan that marched through this region of Antioquia" (Gallego 2019).

Socio-environmental impacts

It is in this territory, structurally shaped by the Nechí River, where the oldest and second most important producer of gold in the country (Mineros S.A.) extracts from the river and its wetlands 85% of the resources that go mainly to large family conglomerates. One of the major shareholders is the Pacheco Family, which owns Banco Colpatria, where Skotia Bank of Canada is also a partner. Sarmiento Angulo, the richest man in Colombia, is another one of its major investors and his stock is represented through Corficolombiana (Betancur, 2015: 245). Together with other partners they have been exploiting the river for the last 45 years. The title to the site where 85% of the gold the company exports is produced is classified as a Recognition of Private Property (RPP). It completely covers the river and its banks, extending over an area of more than 36,000 hectares. In RPPs, the titleholders are owners of both the soil and the subsoil. These titles are in perpetuity and only require payment of 0.4% of royalties, rather than the usual 4%. This represents a historic debt, with economic recompense required from companies to compensate for environmental damage

and improve the living conditions of the population settled in these municipalities. The researcher Álvaro Pardo calculates that between the years 2005 and 2015 that lower tax rate on their royalties meant a loss of 85 billion pesos worth of resources for the population of Bajo Cauca. There is also an environmental debt due to the deterioration of soils, rivers and wetlands (IPC 2017).

Photo taken from Google Earth. With data and information from the portal Tierra Minada, website <https://sites.google.com/site/tierraminada/> (Jaramillo y Sierra, 2017: 46): The red patch corresponds to the area covered by the mining rights title of Mineros S.A., of almost 37,000 hectares along the Nechí River and its wetlands, which includes sectors of the municipalities of Zaragoza, El Bagre, Caucasia and Nechí.

Image 2: Mining license of the company Mineros S.A. of case 37 thousand hectares on the river Nechí and its wetlands, covering the municipalities Zaragoza, El Bagre, Caucasia and Nechí



Image 3 Aerial foto of the environmental and social information with respect to mining activity and the illegal extraction of minerals in Colombia (May 2019)



Source: Google Earth and data from the platform Tierra Minada.

The previous image shows the impact on the Nechí River basin of legal mining titles such as that of Mineros S.A., as well as that of illegal and/or untitled mining. The Mineros S.A. operation has undertaken dredging of the river in a south to north direction, from Zaragoza to Nechí, passing through El Bagre and Cauca. The wetlands have disappeared in the process, and with them all of the biodiversity they hosted. The study carried out by the National University of Colombia in 2012 for the Unidad de Planeación Minero Energética (Mining and Energy Planning Unit, UPME), attached to the Ministry of Mines and Energy, states that, “due to such large volumes of material that Mineros S.A. moves in the 29 RPP titles it holds (encompassed today in a title of more than 36 thousand hectares) there are some serious impacts and the generation of large amounts of suspended solids.”²⁰ The magnitude of the operation can be seen in the following table presented in the study. The inhabitants of the area and the researchers from the National University narrate the story of the impact this has had on the ecosystem and “tell about ancient wetlands that currently, due to the quantity of sediment generated and suspended solids, have lost much of the fauna that used to live in them... it was observed that the fauna present in the wetlands where the exploitation is carried out is minimal, and along the whole riverbank only a few herons were seen. The presence of fishermen is minimal ...”. (UPME, Universidad Nacional, 2012: 117).

To date this impact has only deepened. In field trips conducted by the Instituto Popular de Capacitación (IPC) in the company of the riverside communities and organisations from the municipalities of El Bagre and Nechí in 2017 and 2018 it was possible to verify how the progress of the mining operations has resulted in further deforestation and the drying up of the wetlands, and continues to deplete the wider habitat on which the communities depend (IPC 2018; Jaramillo and Sierra 2017).

This scenario has left many local leaders indignant. In a workshop held by the IPC team on the 26th of February 2017 in the village of La Esperanza, in the municipality of Nechí, the indignation caused by the impacts described was clearly felt. “I don’t know

what’s happening with Mineros”, one fisherman said, “but look, when I started fishing here, because I’m 40 years old, you could put the line in the water and a fish would come out. Look how long it takes to fish today, put the line in and see what you catch: nothing” (Jaramillo and Sierra 2017: 52).

As we can see, the possibility of complying with the Guiding Principles on Human Rights and Business to protect, respect and repair seems remote. Nor do we see process of due diligence or the implementation of non-judicial mechanisms to establish compensation for the damages caused (ibid.: 46). On the contrary, the wealth obtained through mineral exploitation, with all the grave socio-environmental impacts generated as a result, have been a source of expansion of companies like Mineros S.A., such that since 2013 it has undertaken new projects in Latin America (Nicaragua, Argentina and Chile), taking advantage of the significant tax exemptions that the government of Colombia offers in the name of investor confidence.

Even if there is no exact measurement that differentiates the damage caused by companies that produce and export gold, such as Mineros S.A., and informal and illegal mining, it is clear that at least 45 years of exploitation of the Nechí River and its wetlands by Mineros S.A. has left a deep socio-environmental footprint in the Bajo Cauca subregion of Antioquia.

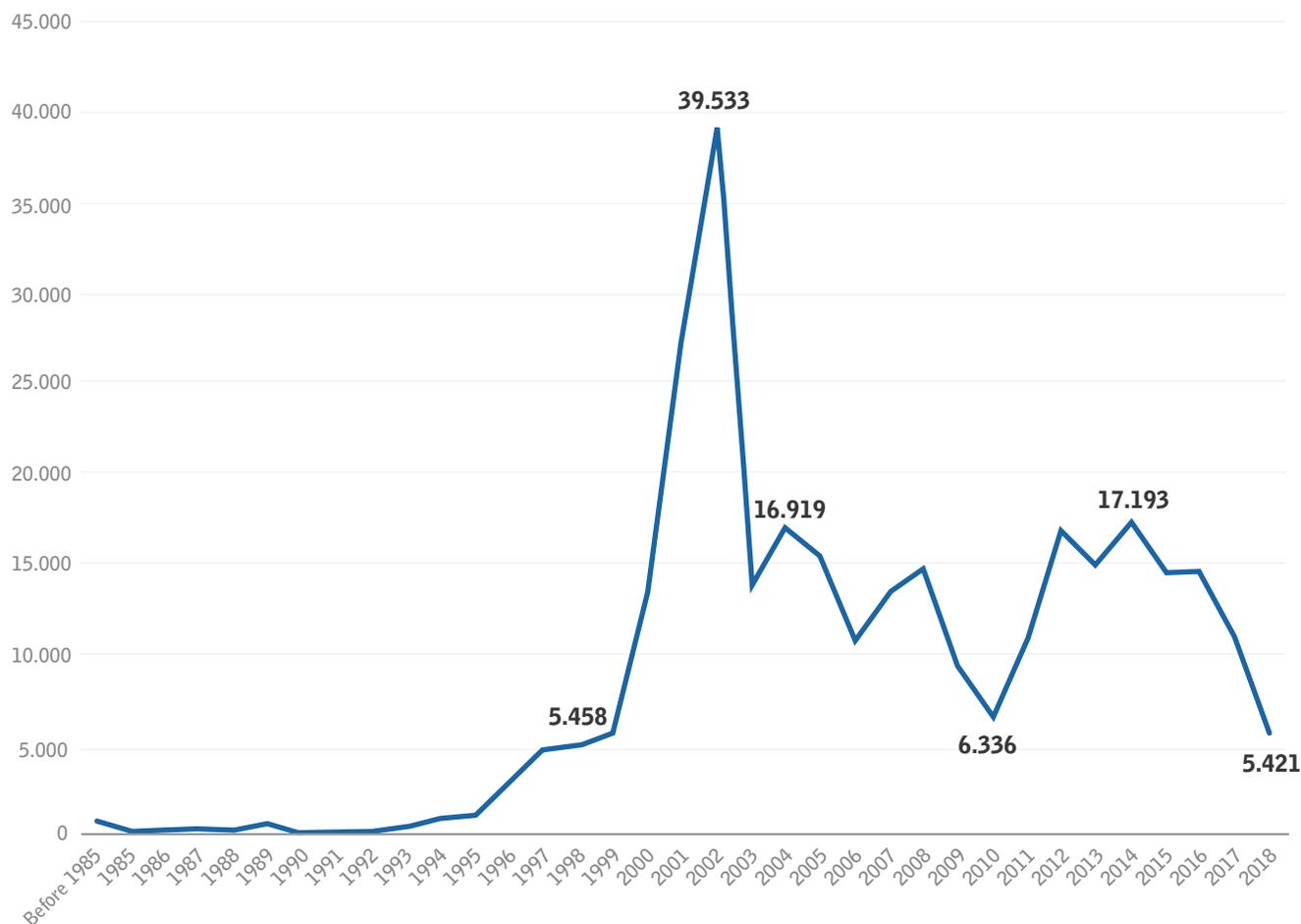
4.2 Department of Chocó, the second major producer of gold in Colombia: The objectives of sustainable development have not reached Chocó

Abandonment by the state, poverty, conflict and exclusion are characteristics of the country’s second major gold-producing department.

Death due to malnutrition (read: hunger), high rates of homicide and poverty, low levels of education and high rates of unemployment are the social map of the department that is the second major producer of gold and the top producer of platinum in Colombia, contributing 95.48% of national production. It has a 79% rate of unsatisfied basic needs, compared to the national average of 27.78%, according to statistics presented by the DANE for 2017. The mortality rate due to malnutrition is 44.25 per 100,000 inhabitants,

²⁰ UPME, Universidad Nacional (2012). Page 115.

Figure 6: Evolution of forced displacements in Chocó (1985-2018)



Source: The Author's own elaboration based on: Unidad para la Atención y Reparación Integral a las Víctimas UARIV

5 times more than the national rate (8.24 per 100,000 inhabitants) (Correa 2019). The case of the death of children under one year of age is the worst. The municipalities that show the highest infant mortality rates are the following: Bagadó with 64, Lloro with 57 and Alto Baudó with 56 for every thousand live births (DANE 2016).

The decrease in displacement towards 2018 would seem to be an encouraging development, but in reviewing the figures of the UARIV, what one finds is that this decrease is due to the fact that the communities are confined as a result of fighting between armed actors and of the territorial control they exercise; the number of confinements is 7,648.

4.2.1 Gold production, conflict and the right to the territory

Chocó, the second major producer of gold after Antioquia, progressed from an average production of 1,350 kilograms (kg) in the 1991-2000 period to 8,800 kg between 2001 and 2013. A total production of 9,315 kg was registered for 2017.²¹ Based on this average production indicator, it can be inferred that the policy of promoting mining as the locomotive of growth, and the 2001 code of mines (Law 685 of 2001), multiplied by seven times the dependence of the economy on this activity. There are 165 current titles registered, in an

21 It is interesting to see that Chocó's production level in 2011 was 27,915 kg, which made it the top producer that year https://www.dane.gov.co/files/icer/2014/ICER_Choco2014.pdf (Dane 2015: 70).

area of 310,881 hectares. AngloGold Ashanti controls one third of the titled area with 41 titles that have been conceded to it by the state. Many of these titles overlap with collective territories or indigenous reservations. Among the municipalities that are the main producers of precious metals are Istmina, Quibdó and Condoto. These contributed close to 50% of the internal production of Chocó (Dane 2015).

However, for the people of the department with the highest rates of poverty and unemployment in the country, the gold that comes out of its rivers, has not brought wellbeing (UPME 2018). On the contrary, the dispute over its natural resources has worsened their living conditions, devastated their habitat and exacerbated the armed conflict. As if that's not enough, its small-scale producers have borne the full cost of the criminalisation that the mining policy has deployed against the ancestral miners, eliminating the most important source of work and income for the inhabitants of the region.

The testimony of Luz Mercedes Martínez of the municipality of Condoto, given to Colombia 2020 by the newspaper *El Espectador* in February 2019, describes very well the way the department's small-scale producers are trapped by the current mining policy:

“We used to leave the children with sugarcane water, because there was nothing else, and go out to the field. One or two hours looking for metal to sell later. *Artisanal mining provides the livelihood of many women and families.*”

The arrival of multinationals and illegal groups that have vied for the extraction of minerals since the 1990s, and the lack of control and regulation, wound up causing serious impacts for the civilian population. And that's not counting the **cases of destruction of fauna and flora, of irregular appropriation of land, and even of forced disappearances.**

“The story that industrial mining offers us work is not true. They take advantage of older women, violate their daughters, and they recruit their sons. **What it has brought us is social decomposition;** they use us. The fish have tumors and the jobs grow scarcer.” (Vargas 2019)

The census conducted by the MME in 2011 showed that almost 100% of the mining production units (MPUs) in the department of Chocó lacked titles to mining rights. This did not serve to organise that reality in favour of the population or to support *barequeros* and small-scale producers. On the contrary, mining rights were handed over to multinationals like AngloGold Ashanti in indigenous territories and black communities.

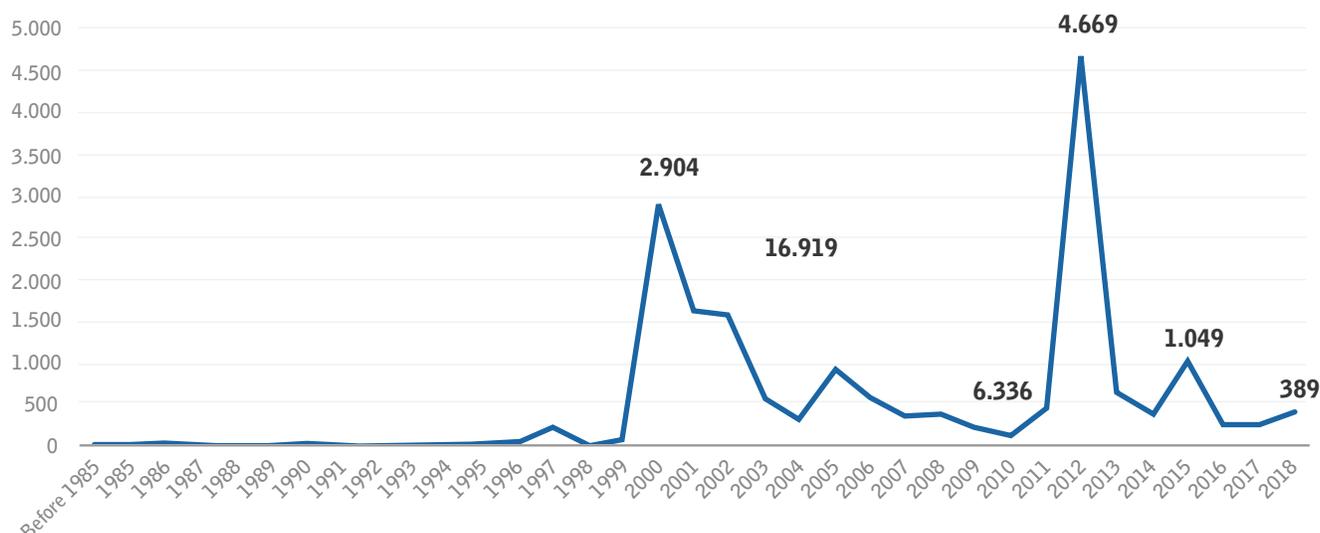
On the indigenous reservation of Alto Andágueda, located in the municipality of Bagadó in the department of Chocó, the Emberá-Katíos community lives in the midst of a war over control of the gold mines. “In 2012 the National Mining Agency awarded concession of the rights to 13,000 out of the 50,000 hectares of their reservation to five mining companies, and studied the possibility of granting them a concession of another 27,000 hectares. That same year, the Army bombarded the area, causing the displacement of 2,000 indigenous inhabitants, who recently began to be overwhelmed by the wave of illegal miners who extract the precious metal with 15 backhoe excavators.” These mining concessions were granted without complying with the constitutional precept of consulting the reservation in question. That same year, this municipality ranked 4th in the number of displaced persons — 4,406 en el 2012 — according to the UARIV.

In the year 2014, the first decision regarding restitution of ethnic lands returned 50,000 hectares to the Emberá-Katíos community. With respect to mining rights, the decision stated: “The overlapping area — bringing together titles granted and current applications — equals 62% or 31,000 hectares out of the total area of the reservation.” When the court of first instance handed down its decision, Continental Gold Limited Sucursal Colombia, Exploraciones Chocó Colombia S.A.S., and Sociedad AngloGold Ashanti opposed it. But paradoxically the Colombian state, represented by the National Mining Agency and the Public Prosecutor's Office, also appear as opponents of the judgment.

AngloGold Ashanti says that there is an “undue utilisation of the proceedings of restitution of territorial rights for obtaining titles to mining rights.”²² The

22 Tribunal Superior del Distrito Judicial de Antioquia, sala civil especializada en restitución de Tierras. Magistrado Ponente Vicente Landínez Lara. Sentencia 007, Restitución de Derechos territoriales. September 23, 2014.

Figure 7: Evolution of Forced displacements in Bagado (1985-2018)



relationship between human rights and business thus acquires a scope that society, the international community and the Colombian state can hardly ignore.²³

4.2.2 The trap closes on local producers

While the institution of the state as represented in the Ministry of Mines and Energy grants titles to indigenous territories and opposes judicial decisions in favour of land restitution to right the inherent wrong of state decisions, the miners who depend on this activity for their livelihood suffer the consequences of criminalisation.

A story posted by the online journal Verdad Abierta in February of 2018 shows the paradoxes in the fight against criminal and illegal mining driven by the government and the large companies. The article narrates a community's efforts to obtain its livelihood from mining activity despite their abandonment by the state. Their machinery and source of employment was destroyed in a law enforcement operation; the operation left them completely excluded: "Just because we try to survive, the government attacks us like this," says Jorge. "The State brings nothing! It gives us nothing. What is it trying to do? Not let us work, in order to bring in the multinationals. If we fail in any way, it's OK for them to tell us how to work, but not to destroy what we have built up with so much effort and then

leave 80 families with nothing to eat" (Jonkman 2018).

4.2.3 The *barequeros*

In Istmina, a municipality of Chocó located in the mid basin of the San Juan River, produces 30% of all the gold produced in Chocó. It also has the largest number of the country's *barequeros*: 11,189 subsistence miners who experience the complexities of mining formalisation and the vulnerability to which they are subjected. The *barequeros* feel trapped between the state with its requirements for formalisation, and those who take advantage of the difficulties these miners have in fulfilling the requirements imposed to launder money or to legalise the resources they appropriate with criminal methods.

Fuente: El Espectador, 2018.
Pedro Manuel Asprilla, the Secretary of Government of Istmina, in conversation with the newspaper El Tiempo in April 2019, describes the situation this way. According to Asprilla, the problem is that the *barequeros* do not have access to any kind of network which would allow them to meet the government's demands,²⁴ and which is aggravated by the lack of institutionality that accompanies the process. The conditions of exclusion and poverty of these mining producers are exploited by

²³ In this respect, see Betancur (2015)

²⁴ According to Resolution 40013 of 2017, each month, subsistence miners are only allowed to produce 35 grams of precious metals (gold, silver, platinum), 10 grams of emeralds and 200 grams of other types of precious stones. Control of said volumes is monitored through the RUCOM.

“mafias of intermediaries.” Instead of contributing to formalisation, this increases the presence of criminal actors. Artisanal miners are trapped between the inefficiency of the state and the criminals, since “they have to look for outsiders who do have all their papers in order and who charge them large amounts of money in order to sell their gold in City Hall.” Likewise, Istmina City Hall condemns the fact that the Government offers no alternatives to the *barequeros* who, due to different circumstances, have not been able to become legal. “For many of us it is hard to become legal because we don’t have the time or the money to obtain all the papers the Government requires” (Vivas 2019).

4.2.4 Gold production and environmental deterioration

Deforestation advances in Chocó as a result of mining expansion. The 2001 mining code once again marks the turning point. “In Colombia, more than 2,000 hectares of forests and vegetation disappear each month due to open pit mining for gold, and 46 percent of that deforestation occurs in Chocó. From 302 hectares affected in 2001, said department was to have a total of 36,185 hectares of forest destroyed in 2014 by backhoe excavators, dredgers and rafts that have devastated the land and the rivers” (El Tiempo 2016).

Image 4: Impact of the illegal mine in Mojana, sucre



Adobe Stock

The Ombudsman’s Office, in its 2016 report “Minería sin control” (Mining without Control), described the social impacts of mining activity and the territorial control generated by armed structures and by the policy of allowing the territory to be auctioned off by the state:

Although mining activity in the department of Chocó has been developed historically and has been a source of employment for the communities that live there, the conditions under which the activities involved in the mining of metals like gold and platinum are currently being carried out, as well as the socio-environmental conflicts that come together around mining, are violating the ri-

ghts of Afro-descendant ethnic communities, due to the pressure placed on their environmental heritage, the fragmentation of the social fabric of the ethnic communities, the departmental agencies’ incapacity for action, the armed conflict that is present in many areas of Chocó, as well as the dispute among different actors for control of the territory and control over its environmental assets. (Defensoría del Pueblo 2015: 62 -63)

With the mining locomotive as it is envisioned, where the state seeks to surrender the territory and its resources to multinationals and to expel the ancestral miners without dismantling the armed structures that

dispute the resource, does not contribute to creating a path to achieving the Sustainable Development Goals in Chocó. Here it is necessary that the principles of Protect, Respect and Repair be binding on the state and companies, since neither legal obligations, nor much less voluntary ones, will ever transform the relations between conflict, exclusion and mining in Chocó.

4.3 Department of Cauca: social leaders are murdered for the land and the gold

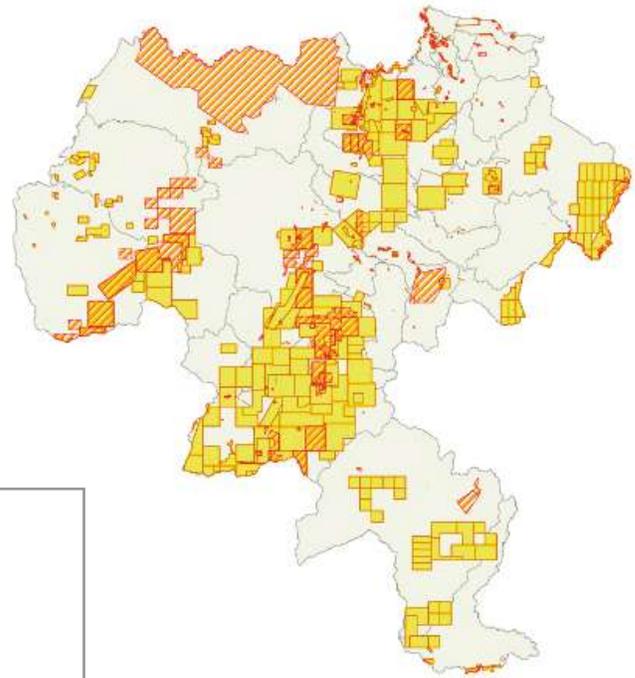
Cauca occupied third place among the country's poorest departments in July of 2019, after Chocó and La Guajira. A total of 50.5% of its population receives less than 213,930 pesos –more or less €61 per month– while the territory produces 6% of Colombia's gold. In the year 2017 it reported the production of 2,525.66 kg

of gold (Becerra E. 2019).

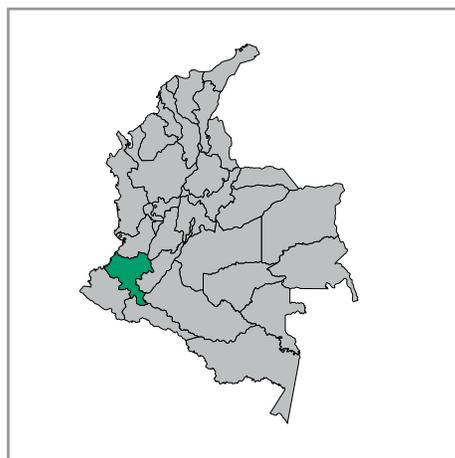
The dispute over mining wealth is led by actors that are carrying out illegal exploitation. Sometimes this is by illegal armed groups with heavy machinery which impacts the rivers, other times by companies that have titles to an area of approximately 353,188 hectares. This is why the tendency toward greater exploitation of the territory may explain the increasing number of human rights violations in the department. "According to research done by the Intercultural Studies Center of the Universidad Javeriana in Cali, of the 350,000 hectares with legal titles to mining rights as of December 2012, 82,000 overlap with community councils and 7,000 with indigenous reservations," (Verdad Abierta 2014a) but the study notes that the encroachment of mining rights into ethnic territories may be even greater.

Image 5: Applications and concessions of mining licenses in Cauca in 2014

In Cauca there are 353.188 hectares with mining titles. In addition to the mining areas, buffer zones of 5 km need to be considered, as these areas are ecologically affected by mining activities and as it presents a common approach in line with the mining norm. Thus, in total there are 1.292.000 hectares designated to the extraction of no- renewable resources.



Department within Colombia



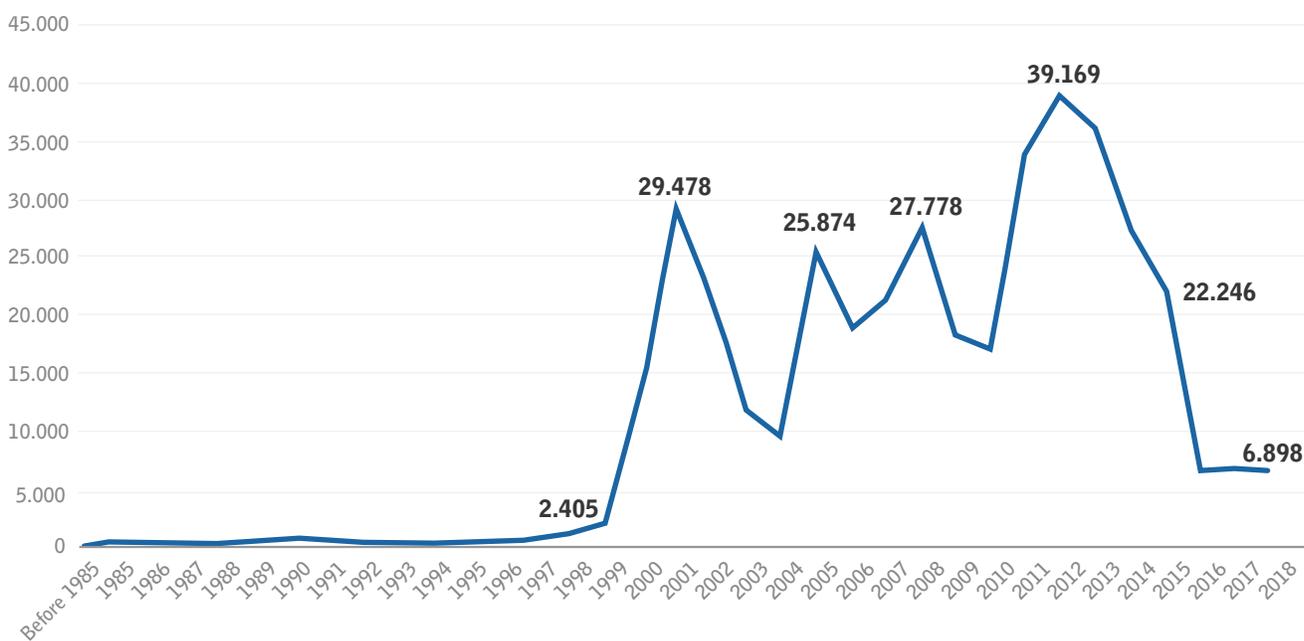
4.3.1 The rights to the territory and to its ancestral economic practices are being limited in ethnic territories

The Afro-Colombian communities in the department of Cauca in southwestern Colombia, have reported on many occasions that at the same time that mining rights were conceded to companies like Anglo-Gold Ashanti and to some private parties, paramilitary groups began to reappear, threatening leaders, murdering young men and raping women. Events that occurred in the year 2010 alerted the community to the challenge of strengthening their defence of the territory. In March of that year, in the ancestral territories of the Community Council of La Toma –located in the north of the department of Cauca– 300 police officers tried to evict the community from places where they practice artisanal mining and the Colombian state granted a 99-hectare title that overlaps with their territory. Eight local miners were also massacred in the region in

April of that year. That is why they have carried out a legal and organisational struggle in defence of these Afro-Colombian territories over the last decade (Márquez, and Salcedo 2012).

Human rights violations, displacements and death have continued to be the common denominator in the department of Cauca. A total of 111 social leaders and 26 former FARC combatants were murdered there between November of 2016 and May of 2019 (Cumbre Agraria et al. 2018). The flow of persons being displaced from their territories has not ceased since the year 2001, but there was a sharp increase in the year 2010, as can be seen in the following chart. This coincides time-wisely with the complaints that have been made since that time by the Afro-Colombian and indigenous communities of the region, who are sure that there is a relation between the escalation of violence and the granting of mining rights.

Figure 8: Evolution of forced displacements in the department of Cauca 1985-2018



Source: The Author's own elaboration, based on UARIV.

Francia Márquez, an Afro-Colombian leader and fierce defender of both the environment and the territory who has been victimized many times herself, has also been a permanent spokeswoman in denouncing serious violations of human rights and the right to the territory in the department of Cauca. She is one of the

leaders who have survived both forced displacement and assassination attempts. In an interview given to Caracol Radio on July 16 of 2019, she said that the leaders had been declared paramilitary targets because they are supposedly opposed to development.

In numerous interviews she has described how the defence of the territory against legal and illegal actors that vie for the mining wealth of the department is an explicit cause of death, displacement and threats to social leaders. Francia Márquez explained it in the following way to Caracol Radio on July 16, 2019:

(...)In fact the situation is very complicated, these constant threats. I think that it is a situation that the national government has to assume with responsibility, yes. Today the community of La Toma is very worried about this situation. We leaders, women and men alike, have been threatened, and the fact is that our companions have now been given deadlines to leave the territory. I don't think there is any place for this. *This has been happening since 2009 when multinational companies were granted titles to mining rights* in the context of the armed conflict and violating our fundamental right to prior consultation. Concerning what you have been saying about the military, yes, those of us who participated in La Toma found private security contracts from 2013 between AngloGold Ashanti, for example, and the Third Division of the army, a situation that has concerned us. *Since 2009 we have been receiving death threats from paramilitary groups that have declared us to be a military target because they say we are opposed to development.*

Francia Márquez leaves the question open, and the state must respond.

On the other hand, when asked about the relations between mining, conflict and territory in the department of Cauca, Moritz Tenthoff, the local representative of Flemish aid agency Broederlijk Delen in Colombia, identified the following impacts:

4.3.2 Impact on human rights violations

Among the main consequences for leaders who have opposed mining activities, both legal and illegal, are death threats, blacklisting and persecution in municipalities such as Buenos Aires, Suárez, Mercaderes, Santander de Quilichao, La Vega and Santa Rosa. The different communities have mainly identified the following impacts on human rights: individual threats, collective threats, displacements, and problems on freedom of movement throughout the territories.

4.3.3 Traditional artisanal mining, obstructed by mining rights of multinationals and subject to pressure of armed groups that violate human rights

The communities of the municipalities of Santander de Quilichao, Suárez, Buenos Aires, Guapi, Timbiquí and López de Micay, with a greater presence of ethnic communities and of artisanal and *barequero* mining traditions, have identified multinational companies' claims to mining-rights titles and mining applications as threats to their livelihood in their own territories. Cases include that of the Community Council of La Toma in the municipality of Suárez in 2010, where eviction attempts generated conflicts and tensions with the community. The community councils of Buenos Aires and Suárez which have always tried to bring together their mining activities in Mining Zones for Black Communities, have been hindered by the state's granting of titles to multinational companies.

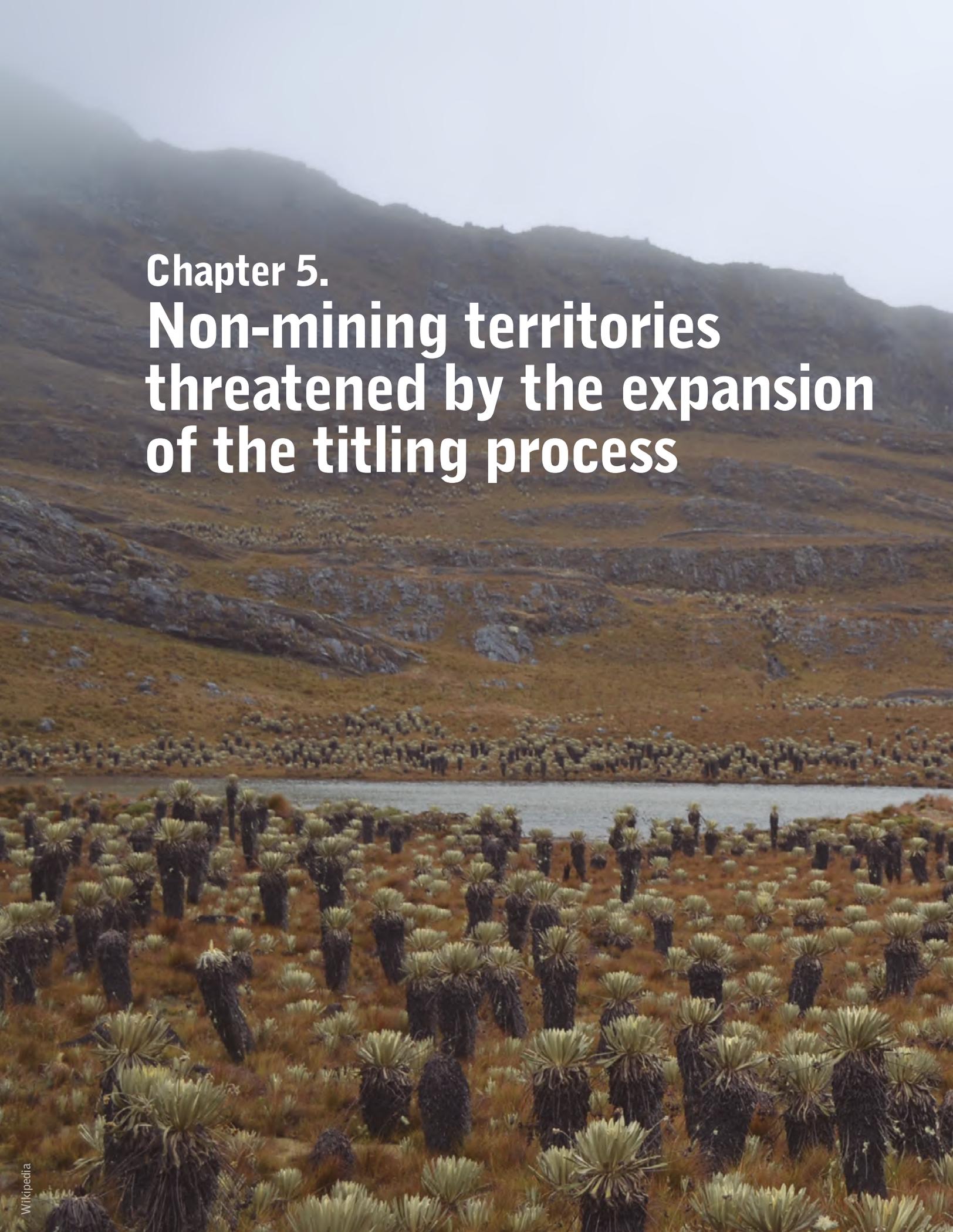
Finally, it is important to highlight events like the collapse of the illegal mine of Agua Limpia, (Santander de Quilichao) in 2014, where close to 30 people disappeared in an area whose mining rights are held by AngloGold Ashanti, which is responsible for the administrative protection of the area.

As far as the presence and relationship between armed illegal actors and mining, it can be said that in municipalities like Mercaderes, the authorities have established the relationship between groups such as the ELN and the presence of heavy machinery in the Samingo River. On the other hand, communities of northern Cauca have identified the fact that in illegal mining areas there was a relationship between this same group and illegal mining, based on the threats from groups like Los Rastrojos (a neoparamilitarian group) against ethnic and campesino social organisations and their leaders who have opposed illegal mining. It is good to note that the complaints of Afro-Colombian communities, like those mentioned above, show how the granting of mining rights to large companies arrived together with the threats from paramilitary groups or from other criminal groups (see Francia Márquez interview quoted above).

4.3.4 Impact on the territory

Regarding the impact in the territory, the following have been identified: contamination and changes in the courses and dynamics of the rivers, drastic impacts on aquatic fauna and flora, changes in landscapes, physical and chemical changes in soils and rivers (turbidity, suspended solids, presence of metalloids, soil erosion), as well as rupture of organising processes and family dynamics, and cultural impacts in the community-river relationship. The indigenous communities have thus undertaken acts of removal of machinery that is extracting minerals and redirecting the course of rivers. “We did an act of defense of the territory and of Mother Nature. We are concerned about the degree of environmental contamination this activity generates and about the damage caused by diversion of the Palo River” (El Tiempo 2014).



A landscape photograph showing a mountainous region. In the foreground, there is a field of numerous tall, dark, columnar cacti with spiky tops. A body of water, likely a lake or reservoir, is visible in the middle ground. The background consists of rugged, rocky mountains under a hazy sky. The text is overlaid on the upper left portion of the image.

Chapter 5.
Non-mining territories
threatened by the expansion
of the titling process

Chapter 5. Non-mining territories threatened by the expansion of the titling process

5.1 Mobilisation, popular consultations and municipal agreements are the strategy for defending the water and the territories

Between the years 2013 and 2018, nine public consultations were held in Colombia to say no to large-scale mining. That of the municipality of Piedras (2013) and of Cajamarca (2017) –both located in the department of Tolima– were decided at the ballot box where voters said no to the AngloGold Ashanti (AGA) project. This obliged the company to suspend exploration work on the project considered one of the largest gold mines in the world. But unfortunately for the social movement that has been opposing the implementation of mining projects in their territory for a decade now, the Constitutional Court handed down a decision that ruled against the consultation held in Cumaral (department of Meta) to halt the development of a hydrocarbon project. The Court held that these decisions must not be taken without the approval of the national government since the subsoil is property of the state. At least 135 pending consultations were suspended as a result of this decision.²⁵

While the community feels that their right to participate in decision-making on the management of their territory has been blocked, the Colombian Mining

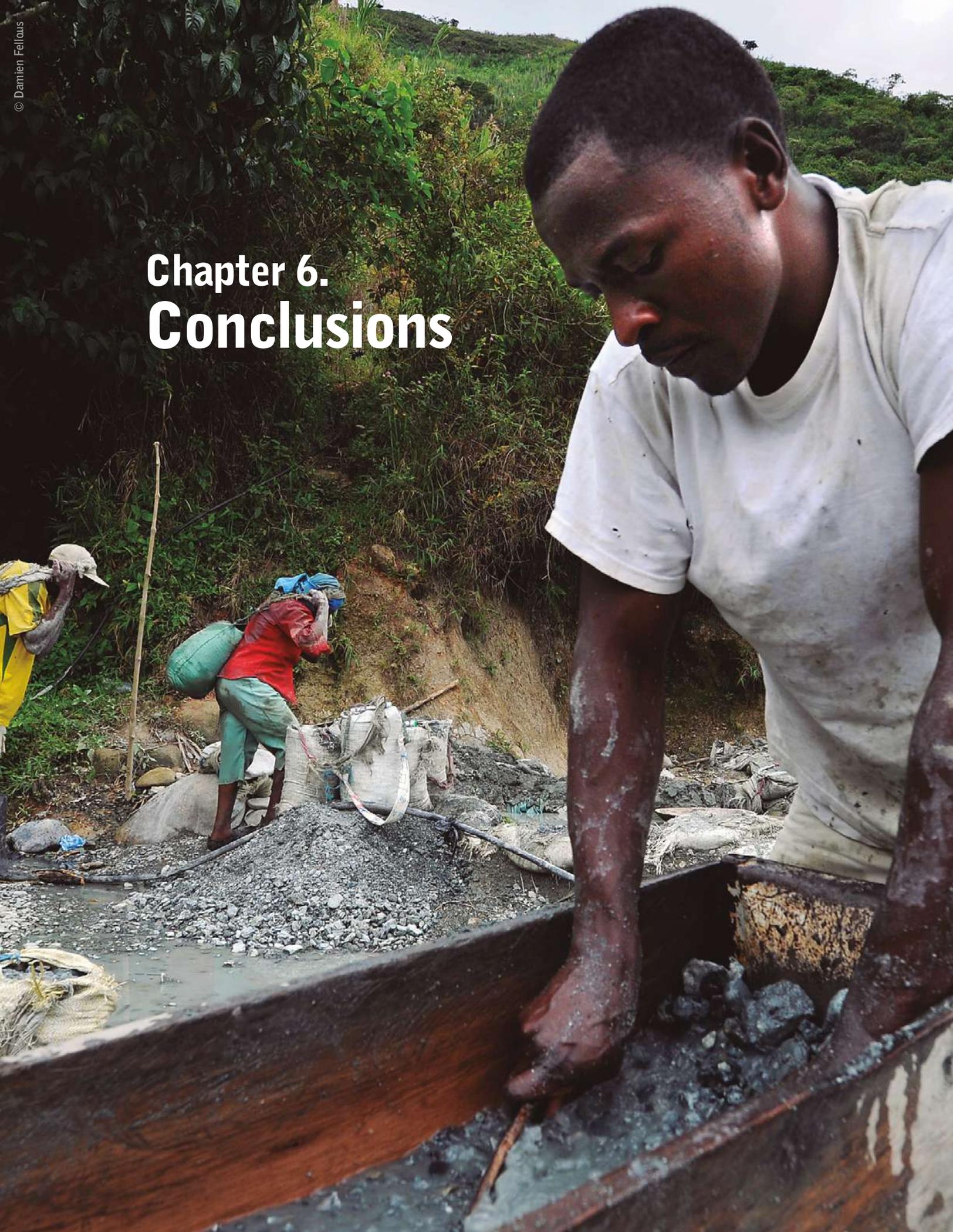
Association, which represents the large mining companies that control mining rights and mining projects throughout the country, professes optimism regarding the court ruling, “since it believes that this will permit the completion of various mining and energy projects that will enable the state to take advantage of these resources” (Semana 2018). According to the association, there have been 158 popular consultation initiatives and 135 municipal agreements that seek to stop large-scale mining activity. Some these municipal agreements were created at the initiative of the city councils of municipalities located in the southwestern part of the department of Antioquia. They sought to adopt these agreements in 2012 when they found that a proportion of their territory was requested to develop mining projects. The population of the municipality of Jericó, which is located in this subregion of Antioquia has been mobilising against the AngloGold Ashanti copper project, which is already developing its exploration work there. The agenda in this subregion is to defend the agricultural nature of the territory and the right to the water.

25 In the past 5 years environmentalists have managed to slam the brake on mining companies at the ballot box. With the Constitutional Court’s recent decision in the Cumaral case, this mechanism will lose its effects on the extractivist topic... According to the National Mining Agency in Colombia there are 135 municipalities where popular consultations have not yet been held (Semana sostenible 2018). Los 9 municipios que le dijeron No a la minería usando la consulta popular

NO A LA
MINERIA
TRANSNACIONAL



Chapter 6. Conclusions



Chapter 6. Conclusions

In Colombia, minerals are produced in conflict zones

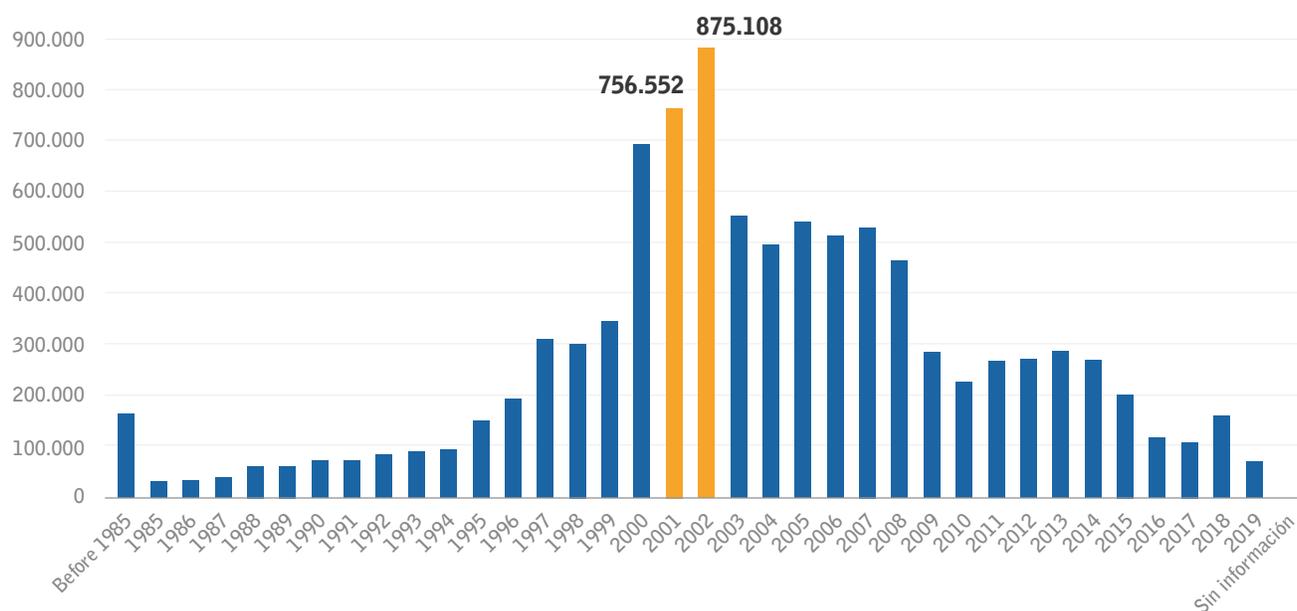
Gold is produced in the following six departments in Colombia: Antioquia (47%), Chocó (21%), Bolívar (10%), and Nariño, Cauca and Caldas (at 6% each). At the local scale, five municipalities in the department of Antioquia are ranked as the largest producers. There is clear evidence in these territories of the close relationship between gold production, armed conflict, and socio-environmental conflicts. Forced displacement, assassinated leaders, stigmatisation of local producers,

destruction of the environment and serious human rights violations are the consequences of this situation.

Consequences of mining policy in the gold-producing territories and their communities

The years 2001 and 2002 (see graph 9) saw the highest number of victims. This coincides with the launching of the mining code –Law 685 of 2001– which currently regulates the production of minerals in the country and the provision of titles to mining companies especially in these territories.²⁶

Figure 9: Historical evolution of victims in Colombia.



Source: The Author's own elaboration, based on data from Unidad Víctimas (2017)

²⁶ According to UARIV, 1,631,660 people out of 9,268,069 victims of the armed conflict (registered between 1985 and 2019), were registered in 2001 and 2002, the vast majority due to forced displacements. For more information, consult the statistics of the victims register available at: <https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394>



© Damien Fellous

The territories where high quantities of gold are produced have been the epicenter of these serious violations of human rights. For example, between the years 2016 and 2019, the greatest number of murders of social leaders, environmentalists and human rights advocates were recorded in the departments of Antioquia and Cauca, Colombia's first and fourth largest producers of gold.

Legislation favoured the entry of multinational mining companies, which have managed to obtain investment contracts with the state thanks to free trade agreements. In the case of Colombia, International Investment Agreements (IIAs) seek to maintain favourable conditions for foreign investors and include agreements for the promotion and reciprocal protection of investments. This has given them so much power that they have managed to have their interests take precedence over the protection of human rights. The Constitutional Court in Colombia has favoured the communities and their rights. However, this has led to lawsuits against the state in international tribunals, arguing the primacy of investor rights.

In the framework of this state-multinational alliance, security strategies have been created in Colombia to protect the the companies' operations. These include 21 "Mining and Energy Battalions" consisting of 68,000 people assigned to protect the mining and energy sector and its infrastructure and roads. Moreover, there are 1,229 agreements between companies and the police force, of which 24% correspond to mining

companies. Battalions No. 5 and No. 8 are stationed within the installations of Mineros S.A. and Gran Colombia Gold respectively (Cepeda C. 2015).

The miners who have historically inhabited the territories are not recognised politically. On the contrary, they are being treated as illegal and/or criminal producers. This stigmatising discourse has justified treating them with strategies of warfare. For that reason, after these battalions were installed, police and military structures were created to attack this so-called criminal mining activity. UNIMIN, the special unit of the National Police to combat illegal mining was created in 2012; BRCIMI, the Army Brigade to combat illegal mining was created in 2015. In 2019 President Iván Duque promised the big mining companies, grouped in the Colombian Mining Association, the creation of a special unit to combat the illegal extraction of minerals, headed by neo-paramilitary groups, as well as a bill to strengthen the sanctions for those who engage in such practices. The voices of many communities and miners' associations say that, instead of dismantling paramilitary successor structures, these measures are erasing small-scale and ancestral miners, not only in terms of the legislation, but from their territory as well.

Neo-paramilitary groups (Autodefensas Gaitanistas, Caparrapos, Clan del Golfo), the ELN and dissidents from the former FARC have occupied the territories where the FARC had operated in the past. The state has not worked effectively to protect the territories and to dismantle paramilitary groups. In exactly

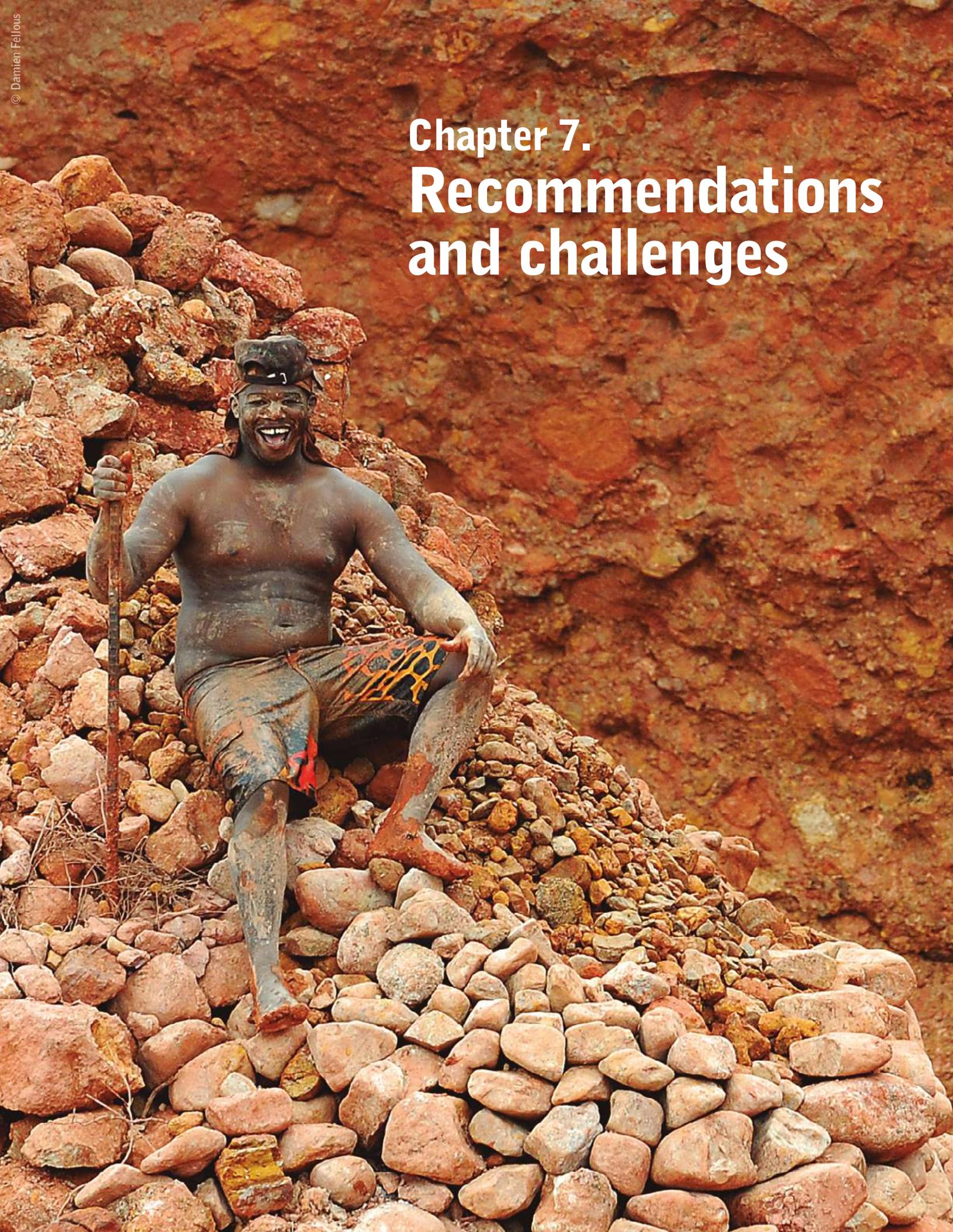
the opposite direction of state protection, the promotion of mining as the ‘locomotive’ of development, in addition to the high prices of gold on the international market, has incentivised armed groups to see the gold economy as a way to feed their finances, and in the process the war as well. In most cases they do not obtain this income as direct producers, but rather by extorting small-scale producers, or controlling the market of inputs (explosives, mercury, etc.) and the gold market itself. For that reason, the direct producers are not the criminals. Rather, the criminality lies in the armed structures that profit from different activities in the production chain, or with the international traders that export the minerals without implementing due diligence strategies, while actively engaging, in cases that are being investigated, in asset laundering.

The current treatment of artisanal and small-scale miners stigmatises and criminalises them, disregards their social status as citizens and repudiates their historic presence in the territory. It increases the historical tendency of the value generated in the gold-production chain to be appropriated at the international level by large mining companies, international traders and foreign refineries. Such companies capture the income and value generated in global economic circuits all along the gold-production chain, without regard for the origin of the metal or the consequences in terms of human rights violations in the territories where it is produced.

European regulation on the supply chain of minerals coming from conflict zones could actually worsen this situation of marginalisation if it focuses only on some aspects and fails to consider the overall impacts on human rights and the right to territory. Hence the importance of regulatory initiatives that go beyond the risks covered by the EU’s Conflict Minerals Regulation in order to include aspects such as the financing of armed groups and the worst forms of child labour and forced labour. There is a need for binding due diligence initiatives that incorporate all human rights and environmental standards. In this way, these initiatives can contribute to radically reducing the serious human rights violations and destruction of the environment in the territories where minerals like gold are obtained.



Chapter 7. Recommendations and challenges



Chapter 7. Recommendations and challenges

7.1 Human Rights and Business: Towards regulations that oblige companies to respect human rights and protect the environment?

General recommendations

- Given the analysis that current frameworks are not enough to protect human rights and the environment and the observation that binding supply chain approaches like the EU Regulation on Responsible Sourcing (also the EU Conflict Minerals Regulation) do not address most of the human rights violations committed by large scale-mining companies, there is a need for more comprehensive due diligence legislation. The concept of due diligence, based on the Guiding Principles of the United Nations, has to be implemented sincerely in binding regulations in mineral-importing countries. The EU and its member states must therefore develop and implement general and binding due diligence legislation.
- As this paper shows, these laws must include environmental standards to prevent the continued destruction of the environment, which also impacts the basis of life and human rights.
- Transparency or public relations initiatives by companies cannot replace the challenges and commitments of due diligence or the strategy of comprehensive restitution for affected communities in Colombia.
- Given the observation that the interests of corporations are prioritised over the protection of human rights as a result of to international trade agreements, within the framework of the Trade Agreement between the EU and Colombia, Ecuador and

Peru, proper follow-up must be provided to Chapter IX on Trade and Sustainable Development through the Domestic Advisory Group (DAG), paying special attention to the social and environmental conditions of mining production and implementing sanctions in the case of non-compliance.

- Furthermore, states should contribute constructively to the process of elaborating a Binding Treaty on Business and Human Rights at the level of the United Nations, based on the draft discussed the 5th session (October 2019).

Recommendations regarding the implementation of the EU Regulation on Responsible Sourcing:

For the **European Regulation on Responsible Sourcing**²⁷ to advance in the right direction, it is necessary that the accompanying measures take into account those aspects that are indispensable for the promotion of human rights, such as preventing further marginalisation of artisanal producers in zones where the minerals originate. Thus, it is important that civil society organisations of the mineral-producing countries involved in defending the rights of these producers are involved in the design of the accompanying measures. The following points also need to be taken into account:

- Based on this analysis and the anticipated goal of the European Union's accompanying measures to support small-scale miners, work should be

²⁷ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2017:130:TOC>)

done on the process of formalising the small-scale producers in order to give them the possibility of selling their products on the formalised and legal market.

- Programmes should be established in collaboration with the importing companies, focused on how to import raw materials from traditional and local producers, and strengthen them so that they can become formalised.
- A system should be established to ensure that the cost of certifications is distributed among all the actors in the supply chain, and not assumed only by the artisanal miners as it the case at the moment.
- It is necessary to assign resources for the development of pilot projects to implement the Due Diligence regulation, including environmental, health and human rights aspects. The results of these pilot projects must be taken into account in the revision of European Union regulations in the future.

Monitoring:

- The EU should establish an evaluation system that makes it possible to measure, in the producer countries, the advances achieved regarding implementation of instruments to support the due diligence of the OECD/EU.
- As part of the accompanying measures the EU should assign resources to an independent report from the viewpoint of civil society on facilitation of implementation of the OECD Guidance on Due Diligence for responsible management of supply chains of minerals coming from conflict-affected and high-risk areas. This report should be presented at the OECD Forum.
- The monitoring policy of any regulation should include a requirement for an analysis of participatory context, on aspects of mining, conflict, territories and protection of the environment in the auditing procedures established in the Due Diligence process.

Transparency:

- In the application of European regulation, reports of the individual companies on the implementation of due diligence have to be published, including supporting evidence. In these reports it is necessary to specify the steps taken and the risks encountered and mitigated. These reports must be published on the website of the competent authority to enable civil society in producing countries to approach the companies and competent authorities when they discover irregularities at a mining site.

In political dialogue with the government of Colombia, the EU and its member states should:

- Demand that the government of Colombia proceed in compliance with the agenda established in the Agreement for a Stable and Lasting Peace as the minimum condition to ensure that the minerals exported do not come from conflict zones.
- Demand that the Colombian government urgently increase its efforts to protect human rights and environmental defenders, as well as former FARC combatants, and that it implements the Regional Accord on Access to Information, Public Political Participation and Access to Justice on Environmental Affairs in Latin America and the Caribbean (The Escazú Convention).²⁸
- Remind the Colombian state of its responsibilities within the framework of international human rights treaties, of the Guiding Principles and the National Action Plan on Business and Human Rights and its obligation to protect communities from human rights violations by companies.

At the national level

Small-scale and artisanal miners have been expelled from their role as key actors in the produc-

²⁸ The Escazú Convention establishes the right to Access to Information, Public Participation and Justice in Environmental Matters, as well as the need to protect environmental defenders. Unfortunately, the Colombian government decided not to sign it because national and international instruments already exist that make it possible to achieve this objective (Semana Sostenible 2019).

tion chain, so it is up to the state to assist them in the process of recognition and inclusion into the formal supply chain so that they can deepen their knowledge of mining practices that respect the environment and demonstrate social responsibility, strategies they say they are willing to develop.

- The truth about the responsibility and consequences of the conflict in mining territories should be a priority case for the Commission for Clarification of the Truth.

- » Support the documentation of concrete cases of human rights violations by companies in specific mining territories.

- » Present cases to the Commission for Clarification of the Truth about what has been happening in mining territories over the past 50 years.

- » the following questions should be clarified: Has the state protected social organisations and their leaders? What degree of direct and indirect responsibility do the alliances of companies with the state have in relation to serious human rights violations? What should the reparation strategy be for the state and companies towards communities and territories whose human rights have been violated as a result of mining policy?

- The defence of the environment must be the foundation upon which to construct new mining policy and it must be accompanied by a strategy of inclusion and productive reconversion in territories of long-standing mining tradition while blocking the entry of mining projects into agricultural territories where ecosystems are put at risk.
- A new mining policy has to be constructed. The process of construction of this new mining policy has to be democratic, and has to focus on non-repetition of the tragedy caused by the conflict, territorial autonomy and the inclusion of local producers into the legal supply chain. That also includes the right to construct other models of life that go beyond extractivism. This requires the recognition of the value created by medium-scale and small-scale miners, as well as barequeros, just as

it commits them to and educates them about their social and environmental responsibilities.

- The defence of territories that are environmentally of fundamental importance has to be promoted and supported which in some cases means that the territory should not be exploited.



Bibliography

- Agencia Nacional de Minería, Colombia ANM (2018): *Tierra de oportunidades mineras*. Available at: <http://mineriaencolombia.anm.gov.co/images/Presentaciones/Presentacion-Presidente-ANM---Expomin.pdf> (last accessed on 20.10.19)
- Asociación Colombiana de Minería (ACM) (2019): Congreso Nacional de Minería. *La sostenibilidad es lo que nos une*. Available at: <https://acmineria.com.co/acm/wp-content/uploads/2019/02/CongresoACM-2019.pdf> (last accessed on 03.02.2020).
- Becerra E., L. L. (2019): *Así es el mapa de la pobreza en Colombia que debe sortear Iván Duque*. In: La República. Available at: <https://www.larepublica.co/economia/asi-es-el-mapa-de-la-pobreza-en-colombia-que-debe-sortear-ivan-duque-2884637> (last accessed on 20.10.19).
- Bermúdez, A. (2015): *En Chocó los pequeños mineros no le creen a Santos*. In : Lasilla Vacía (ed.). Available at: <https://lasillavacia.com/historia/en-choco-los-pequenos-mineros-no-le-creen-santos-51359> (last accessed on 16.10.19).
- Berrio, M. and Hernández C., Y. C. (2013): *Modelo de desarrollo y exclusión: causas de las movilizaciones agrarias y mineras*. In: Boletín del Observatorio de Derechos Humanos del Instituto Popular de Capacitación (IPC), Vol. 17. Available at: <http://ipc.org.co/index.php/publicacion/boletin-no-17-del-observatorio-modelo-de-desarrollo-y-conflictividad-social/>. (Last accessed on 16.10.19): 30-36.
- Betancur B., M. S. (2012): *Locomotora minera: concentración y despojo*. Instituto Popular de Capacitación (IPC) (ed.). Boletín del Observatorio de Derechos Humanos. No 16. Available at :<http://ipc.org.co/index.php/publicacion/boletin-no-16-del-observatorio-la-locomotora-minera-concentracion-y-despojo/> (last accessed on 17.10.19).
- Betancur B., M. S. (2015): *Derechos Humanos Minería y Ordenamiento Territorial en Antioquia*. In: Instituto Popular de Capacitación (IPC) (ed.). Relecturas. Vol 38. Available at: <http://ipc.org.co/index.php/publicacionrelecturas-38-la-paz-como-construccion-tensiones-y-realidades-del-conflicto-y-el-posconflicto-en-antioquia/> (last accessed on 16.10.19): 197-312.
- Betancur B., M. S. (2017). *Capitalismo político y acumulación por desposesión: su impacto en la subregión Nordeste antioqueño*. In: Instituto Popular de Capacitación (IPC) (ed.). Relecturas. Vol. 40: 225-325.
- Brunori, A. (2018): *Balance y recomendaciones para la actualización del Plan Nacional de Acción en Derechos Humanos y Empresa*. Statement of the UN Human Rights Representative (August 1, 2018). Available at: <http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2018/Statemen%20Brunori%20-20Evento%20PNA%20de%20DDHH%20y%20Empresas%20agosto%202018.pdf> (last accessed on 03.02.2020).

- Cepeda C., I.** (2015): *Convenios entre empresas del sector minero-energético y fuerza pública. ¿Cuál es el papel de la fuerza pública en el posconflicto armado?* Presentación Power Point. Available at: <http://www.ivancepedacastro.com/wp-content/uploads/2015/11/DEBATE-CONVENIOS.pdf>. (last accessed on 20.10.19).
- Continental Gold** (2019): Company representation. Available at: https://www.continentalgold.com/wp-content/uploads/2019/08/CNL_Corporate_PPT_19-08-09_sm_web.pdf (last accessed on 03.02.2020).
- Correa, M. V.** (2019). El Choco combate el hambre con lactancia. En *El Colombiano*. Disponible en <https://www.elcolombiano.com/colombia/el-reto-de-lactar-desde-el-corazon-del-choco-ID11037791> (last accessed on 18.10.19).
- Court of Justice of the Community Andina** (2017): Procesos 669 IP 2015. Available at: http://intranet.comunidadandina.org/Documentos/Procesos/669_IP_2015.pdf (last accessed on 03.02.2020).
- Cumbre Agraria, Marcha Patriótica & Indepaz** (2018) : *Todos los nombres, todos los rostros: Informe de Derechos Humanos sobre la situación de líderes/as y defensores de derechos humanos en los territorios*. Available at: <http://www.indepaz.org.co/8149/lanzamiento-del-informe-todos-los-nombres-todos-los-rostros/Cumbre-Agraria-Marcha-Indepaz> (last accessed on 16.10.19).
- Defensoría del Pueblo Colombia** (2015): *La Minería son control. Un enfoque desde la vulneración de los Derechos Humanos*. Bogotá. Colombia. Available at: <http://www.defensoria.gov.co/public/pdf/InformedeMinerIa2016.pdf> (last accessed on 20.10.19).
- Departamento Administrativo Nacional de Estadística (DANE)** (2015): *Informe de coyuntura económica regional*. Departamento de Chocó. Bogotá, Colombia. Available at: https://www.dane.gov.co/files/icer/2014/ICER_Choco2014.pdf (last accessed on 18.10.19).
- Departamento Administrativo Nacional de Estadística (DANE)** (2016): *Tasa de mortalidad infantil*. Boletín Técnico. Bogota. Colombia.
- El Colombiano** (2017): El Cartel de los explosivos y las bandas criminales tienen en jaque a Segovia y Remedios. Gran Colombia Gold. Paid advertisement.
- El Colombiano (ed.)** (2019): *Tras el oro turbio. Se comercia con engaño y trampa*. Available at: <https://www.elcolombiano.com/especiales/tras-el-oro-turbio/comercio-oro-ilegal> <https://www.elcolombiano.com/especiales/tras-el-oro-turbio/comercio-oro-ilegal> (last accessed on 03.02.2020).
- El Espectador (ed.)** (2017): *Ofensiva de la Fiscalía contra la minería ilegal del oro*. Available at: <https://www.elespectador.com/noticias/judicial/ofensiva-de-la-fiscalia-contra-la-mineria-ilegal-de-oro-articulo-685872>(last accessed on 16.10.19).
- El Espectador (ed.)** (2019a): *Los recursos de Colombia que están en juego en tribunales de arbitramento*. Available at: <https://www.elespectador.com/noticias/judicial/los-recursos-de-colombia-que-estan-en-juego-en-tribunales-de-arbitramento-articulo-849060> (last accessed on 03.02.2020)

- El Espectador (ed.)** (2019b): Gran Colombia Gold pide intervención militar en Antioquia y Caldas ante minería ilegal. Available at: <https://www.elespectador.com/noticias/nacional/gran-colombia-gold-pide-intervencion-militar-en-antioquia-y-caldas-ante-mineria-ilegal-articulo-832976> (last accessed on 03.02.2020).
- El Tiempo (ed.)** (2014): Ritual indígena para sacar minería ilegal en Caloto. Maquinaria con la que explotaban oro en cuenca del río El Palo fue desalojado. Available at: <https://www.eltiempo.com/archivo/documento/CMS-13779991> (last accessed on 20.10.19).
- El Tiempo (ed.)** (2016): Las cifras que tienen indignado al Chocó. Cinco días del paro cívico en el departamento que tiene los índices más altos de pobreza del país Available at: <https://www.eltiempo.com/colombia/otras-ciudades/las-cifras-que-tienen-indignado-al-choco-28264> (last accessed on 20.10.19).
- European Parliament** (2018): *Resolution of the European Parliament on the contribution of the Union to a binding instrument of the United Nations on transnational companies with respect to human rights*. Available at: http://www.europarl.europa.eu/doceo/document/TA-8-2018-0382_EN.html (last accessed on 03.02.2020).
- European Union (EU)** (2017): Regulation (EU) 2017/821. Available at: <https://op.europa.eu/de/publication-detail/-/publication/8b0e378b-3c59-11e7-a08e-01aa75ed71a1/language-en> (last accessed on 03.02.2020).
- Food and Agricultural Organisation (FAO) and Government of Antioquia, Management of Food and Nutritional Security of Antioquia (MANÁ)** (2016): *Sistemas de Abastecimiento Alimentario. Propuesta para modelos de abastecimiento alimentario subregión Bajo Cauca departamento de Antioquia Colombia*. Available at: <http://www.fao.org/3/a-i5213s.pdf> (last accessed on 16.10.19).
- Fundación Paz y Reconciliación (PARES)** (2019): Más sombras que luces. La seguridad en Colombia a un año del gobierno de Iván Duque. Available at: https://pares.com.co/wp-content/uploads/2019/08/SEGURIDAD-DUQUE_2019.pdf (last accessed on 03.02.2020).
- Gaberel, L. and González, E.** (2015): Ocho propuestas para un tratado sobre empresas y derechos humanos. Available at: <http://omal.info/spip.php?article7136> (last accessed on 17.10.2019).
- Gallego, Juan Camilo** (2019): La crisis humanitaria del Bajo Cauca que está lejos de resolverse. Agencia de Prensa IPC. 31 August 2019. Available at: <http://www.ipc.org.co/agenciade-prensa/index.php/2019/08/31/la-crisis-humanitaria-del-bajo-cauca-que-esta-lejos-de-resolverse/>
- Gallegos** (2019): *Informe del Grupo de Trabajo intergubernamental de composición abierta sobre las empresas transnacionales y otras empresas con respecto a los derechos humanos-sobresucuarto período de sesiones*. Human rights council (ed.) Available at: <https://www.business-humanrights.org/sites/default/files/documents/G1900040.pdf> (last accessed on 03.02.2020)

- García, I.** (2017): Francia sienta un precedente con la aprobación de la Ley del Deber de Vigilancia. Available at: <https://www.alainet.org/es/articulo/183778> (last accessed on 03.02.2020).
- Gonzales, J.R.** (2019): *Nuevo catastro: el juego minero se moderniza*. In: El Mundo (ed.). Available at: <https://www.elmundo.com/noticia/Nuevo-catastroel-juego-minero-se-moderniza/376659> (last accessed on 03.02.2020).
- Hernández C., Y. C.** (2016): *Para resolver los conflictos mineros, hay que reformar el Código de Minas*. Instituto Popular de Capacitación (IPC) (ed.). Available at: <http://www.ipc.org.co/agenciadeprensa/index.php/2016/12/01/hay-que-reformar-el-codigo-de-minas-si-se-quier-resolver-los-conflictos-mineros/4/> (Last accessed on 15.10.19).
- Instituto Popular de Capacitación (IPC)** (2017): *¿Cuál es la deuda socio ambiental del Estado colombiano y de grandes empresas como Mineros S.A. con el Bajo Cauca?* Available at: <http://www.ipc.org.co/agenciadeprensa/index.php/2017/05/05/cual-es-la-deuda-socio-ambiental-del-estado-colombiano-y-de-grandes-empresas-como-mineros-s-a-con-el-bajo-cauca/> (last accessed on 16.10.19).
- Instituto Popular de Capacitación (IPC)** (2018): *Seguimiento al ecocidio en humedales y ciénagas del río Nechí*. In: Observatorio de Derechos Humanos y Paz. No. 21: 69-73.
- Jaramillo J. E. and Sierra, D.** (2017): *Arrasando con la Vida. Impactos socio ambientales de la loco-motora minera*. In: Observatorio de Derechos Humanos y Paz No. 20. IPC: 44-64.
- Jiménez, A.F.** (2019): *Fudat, nueva fuerza contra minería ilegal*. El Colombiano (ed.). Available at: <https://www.elcolombiano.com/negocios/fudat-enfrentara-mineria-ilegal-JA10679891> (last accessed on 03.02.2020)
- Jonkman, J.** (2018). *A los mineros de San Miguel les quemaron un "dragón" amigable*. Verdad Abierta (ed.). Available at: <https://verdadabierta.com/los-mineros-san-miguel-les-quemaron-dragon-amigable/> (last accessed on 20.10.19).
- Márquez, F. and Salcedo, C.** (2012): *Defensa del territorio y resistencia afrocolombiana en el norte del Cauca*. In: Toro, C. et al., *Minería, territorio y conflicto en Colombia*. Universidad Nacional de Colombia. Bogotá: 427-436.
- Mesa de Conversaciones** (2017): *Final Agreement for the End of the Conflict and the Construction of a Stable and Lasting Peace*.
- Mining and Engineering Journal (M&EJ) and Global Business Reports (ed.)** (2012): *Miniera en Colombia*. Available at: <https://issuu.com/mundominero/docs/emj-colombia-spanish> (last accessed on 20.10.19).
- OECD** (2013) (second edition): *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. Available at: <https://www.oecd.org/corporate/mne/GuidanceEdition2.pdf> (last accessed on 03.02.2020).

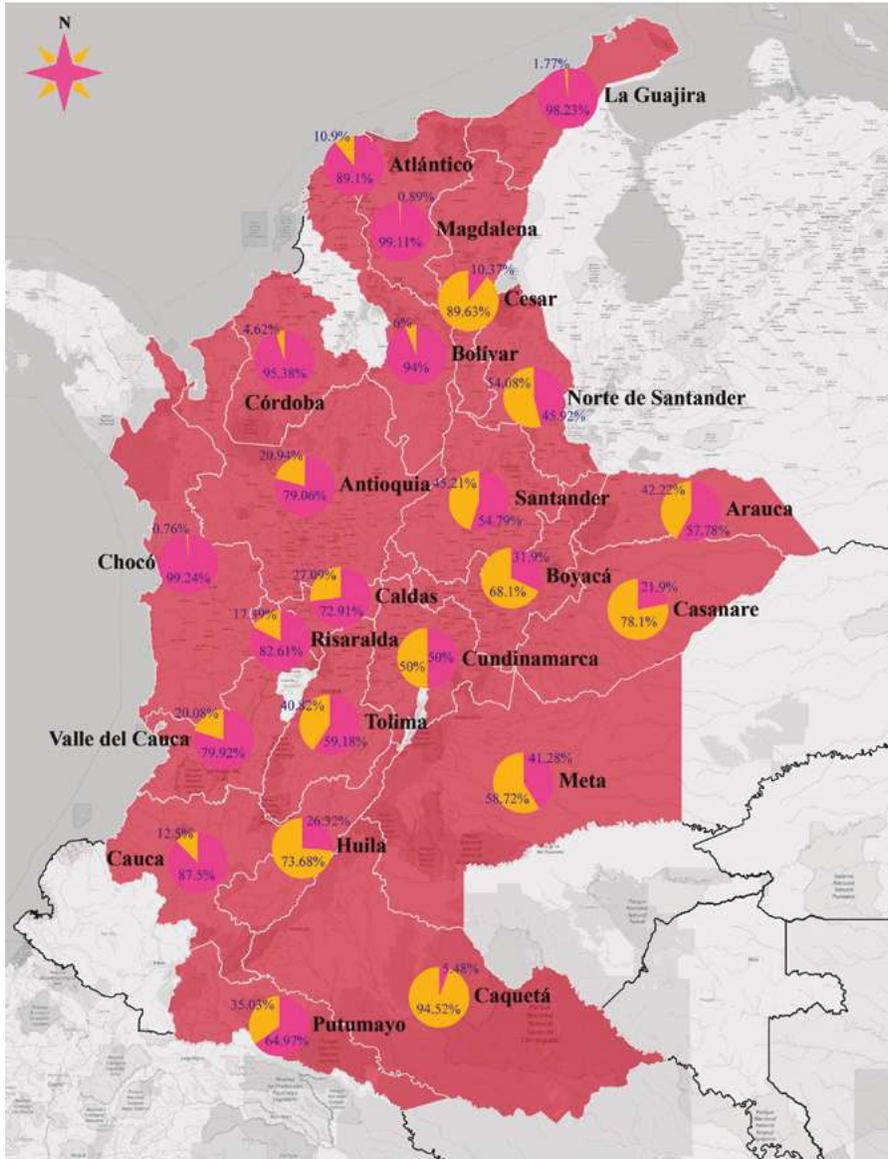
- OECD** (2016): *Responsible Business Conduct. Due diligence in the supply chain of Colombian gold mining in Antioquia*. Available at: <https://www.oecd.org/investment/mne/colombias-gold-supply-chain.htm> (last accessed on 03.02.2020).
- Office of the High Commissioner for Human Rights (OHCHR)** (2018): Resumen del informe del Grupo de Trabajo sobre empresas y derechos humanos a la Asamblea General, October 2018 (A/73/163). Available at: https://www.ohchr.org/Documents/Issues/Business/A_73_163_ExecutiveSummary_SP.pdf (last accessed on 03.02.2020).
- Office of the Presidential Advisor on Human Rights** (n.d.): *Colombia avanza: derechos humanos y empresa, plan de acción*. Colombia. Available at: http://www.ohchr.org/Documents/Issues/Business/NationalPlans/PNA_Colombia_9dic.pdf (last accessed on 03.02.2020).
- Office of the High Commissioner for Human Rights OHCHR (ed.)** (2019): *Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf
- Pantoja, F. and Pantoja, S.** (2019): *Problemas y desafíos de la minería de oro artesanal y en pequeña escala en Colombia*. In: *Revistas de Ciencias Económicas: investigación y reflexión*. Vol. 4 (2). Available at: http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0121-68052016000200009 (last accessed on 03.02.2020).
- Pardo, Á.** (2019a): *Las grandes mineras tienen mucho y van por más este año*. Available at: <https://www.razonpublica.com/index.php/econom-y-sociedad-temas-29/11685-las-grandes-mineras-tienen-mucho-y-van-por-m%C3%A1s-este-a%C3%B1o.html> (Last accessed on 19.10.19).
- Pardo, Á.** (2019b): *Mercado del oro en Colombia: ilegalidad en cada una de las cadenas de un negocio billonario*. Instituto Popular de Capacitación (IPC). Bogotá.
- Permanent Mission of Ecuador to the United Nations Office in Geneva** (2015): *Derechos humanos y empresas. La resolución A/HRC/RES/26/9 del Consejo de Derechos Humanos y el grupo de trabajo intergubernamental de composición abierta sobre empresas transnacionales y otras empresas de negocios con respecto a los derechos humanos*. Available at: <http://www.sela.org/media/2087987/luis-espinosa-representacion-permanente-en-ginebra.pdf> (last accessed on 19.10.19).
- Portal Oficial De Inversión de Colombia (Pro Colombia)** (2016): *Protección a la inversión extranjera*. Available at: https://www.inviertaencolombia.com.co/CAP1-Proteccion_a_la_Inversion_Extranjera.pdf (last accessed on 03.02.2020)
- Reporteros asociados del mundo (ed.)** (2019): *Freno de la Corte a tratados internacionales que acaban en condenas a la Nación*. Available at: <http://www.reporterosasociados.com.co/2019/06/freno-de-la-corte-a-tratados-internacionales-que-acaban-en-condenas-a-la-nacion/> (last accessed on 03.02.2020).

- Revista Semana (eb.)** (2019): *El Glifosato toma vuelo*. Available at: <https://www.semana.com/nacion/articulo/vuelven-las-fumigaciones-con-glifosato-por-lo-menos-por-un-ano/624432> (last accessed on 03.02.2020).
- Rojas T., J. F.** (2017): *Urge nueva ley para frenar minería ilegal*. In: El Colombiano (ed.). Available at: <https://www.elcolombiano.com/negocios/urge-nueva-ley-para-frenar-mineria-ilegal-YK5914247> (last accessed on 03.02.2020).
- Rudas, G.** (2011): *Contexto del Sistema Nacional Ambiental y la minería. Uso del suelo, recursos tributarios y capacidad de regulación*. Power Point Presentation. Available at: <http://www.nsi-ins.ca/wp-content/uploads/2010/07/Annex-7-rudas-Ileras.pdf> (last accessed on 01.10.19).
- Ruggie, J.** (2011): Principios rectores sobre las empresas y los derechos humanos: puesta en práctica del marco de las Naciones Unidas para «proteger, respetar y redimir». Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_sp.pdf (last accessed on 03.02.2020).
- Sánchez, L.** (2018): *Tratado vinculante*. Available at: <https://lolasanchez.eu/tratado-vinculante/> (last accessed on 03.02.2020).
- Semana (ed.)** (2018): 10 puntos clave del fallo de la corte que le pone freno a las consultas populares. Available at: <https://www.semana.com/nacion/articulo/10-puntos-clave-del-fallo-de-la-corte-que-le-pone-freno-a-las-consultas-populares/586574> (last accessed on 20.10.19).
- Semana Sostenible** (2019): *¿Por qué el Gobierno no se comprometió a firmar acuerdo que protegía líderes ambientales?* Available at: <https://sostenibilidad.semana.com/medio-ambiente/articulo/colombia-no-firmo-el-acuerdo-de-escazu/47010> (last accessed on 20.10.19).
- Semana Sostenible (ed.)** (2018): *Los 9 municipios que le dijeron No a la minería usando la consulta popular*. Available at: <https://sostenibilidad.semana.com/medio-ambiente/articulo/los-9-municipios-que-le-dijeron-no-a-la-mineria-usando-la-consulta-popular/41872> (last accessed on 20.10.19).
- Soto, L.** (2018): La Paradoja de la Formalización Minera Del Chocó. Available at: <https://lasilavacia.com/silla-pacifico/la-paradoja-de-la-formalizacion-minera-del-choco-65457>. (last accessed on 16.10.19).
- Unidad de Planeación Minero Energética/ Mining and Energy Planning Unit (UPME)** (2018): Boletín estadístico de minas y energía 2018. Available at: http://www1.upme.gov.co/PromocionSector/SeccionesInteres/Documents/Boletines/Boletin_Estadistico_2018.pdf (last accessed on 16.10.19).
- Unidad Víctimas (ed.)** (2017): *Víctimas conflicto armado*. Available at: <https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394> (last accessed on 20.10.19).

- United Nations Office on Drugs and Crime (UNODC)** (2018): Colombia. Monitoreo de territorios afectados por cultivos ilícitos 2017. Available at: https://www.unodc.org/documents/crop-monitoring/Colombia/Colombia_Monitoreo_territorios_afectados_cultivos_ilicitos_2017_Resumen.pdf (last accessed on 03.02.2020).
- UPME/ Universidad Nacional** (2012): *Estudio para determinar la metodología y los porcentajes de liquidación de regalías de los títulos de reconocimiento de propiedad privada*. Disponible en: <https://bdigital.upme.gov.co/bitstream/001/907/1/Informe%20final.pdf>. (last accessed on 10.08.19.)
- Vargas, D.** (2019): *El Chocó tiene algo que decir y el país debe escuchar: lideresas sociales*. Colombia 2020. In: El Espectador (ed.). Available at: <https://www.elespectador.com/colombia2020/territorio/el-choco-tiene-algo-que-decir-y-el-pais-debe-escuchar-lideresas-sociales-articulo-857694> (last accessed on 20.10.19).
- Verdad, A.** (2014a): *Minería en el Cauca: ¿riqueza para quién?* Available at: <https://verdadabierta.com/mineria-en-el-cauca-riqueza-para-quien/> (last accessed on 20.10.19).
- Verdad, A. (ed.)** (2014): *Cómo restituir el convulsionado Bajo Cauca Antioqueño*. Available at: <http://www.verdadabierta.com/lucha-por-la-tierra/5091-como-restituir-en-el-convulsionado-bajo-cauca-antioqueno> (last accessed on 01.10.19).
- Vivas, J.** (2019): *El lío en el que se convirtió la legalización de 73.000 barequeros*. In: El Tiempo (ed.). Available at: <https://www.eltiempo.com/colombia/otras-ciudades/lios-en-legalizacion-de-mineros-de-subsistencia-en-cauca-y-choco-347608> (last accessed on 03.02.2020)

Appendix 1

2010-2011 Census of Productive Mining Units with titles and without titles



Source: Made by IPC.

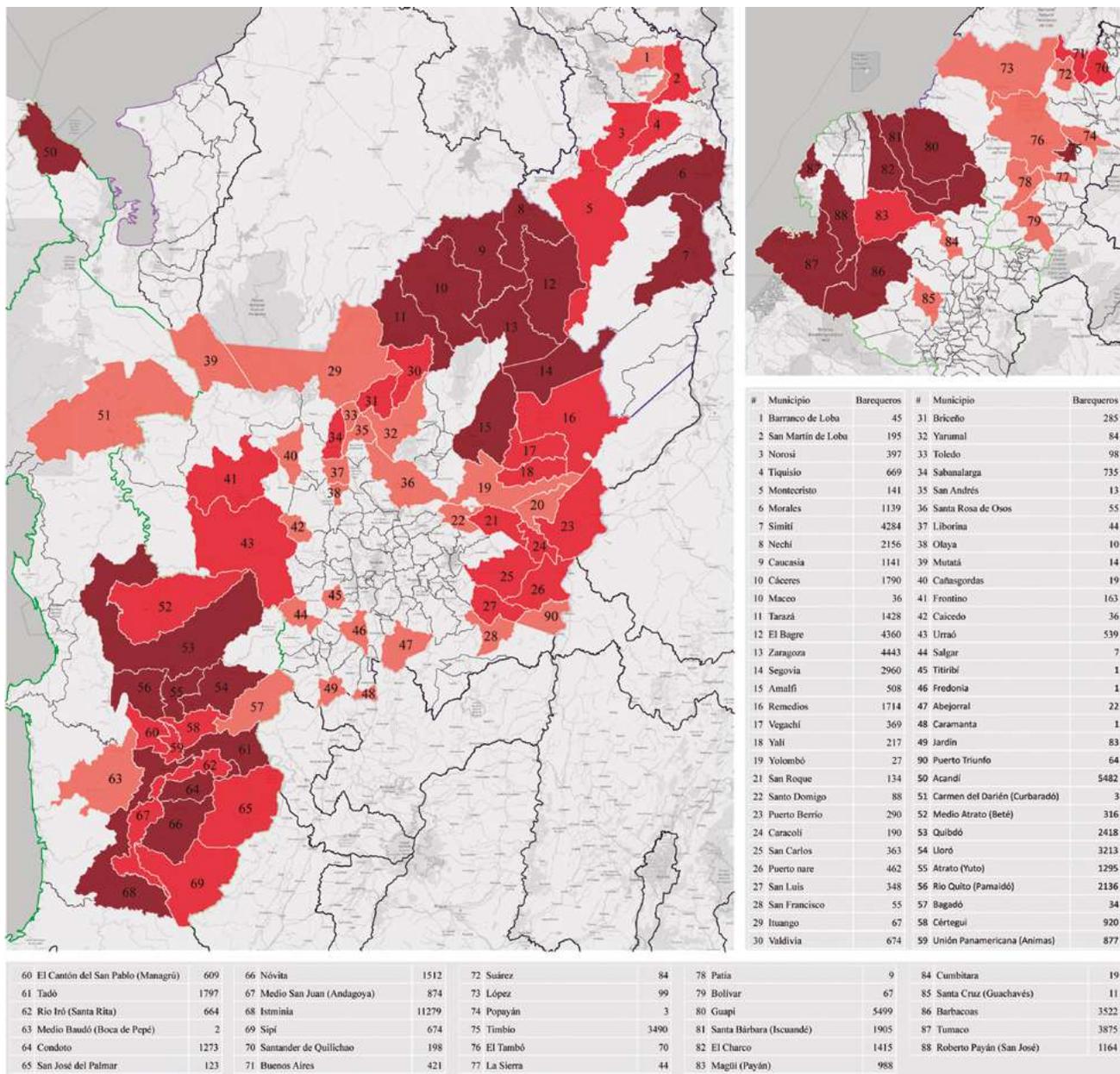


Departamento	Con título minero	Sin título minero	Total	%
Antioquia	424	1601	2025	14.09%
Arauca	19	26	45	0.31%
Atlántico	29	237	266	1.85%
Bolívar	86	1347	1433	9.97%
Boyacá	1804	845	2649	18.44%
Caldas	55	148	203	1.41%
Caquetá	207	12	219	1.52%
Casanare	82	23	105	0.73%
Cauca	68	476	544	3.79%
Cesar	121	14	135	0.94%
Chocó	4	523	527	3.67%
Córdoba	14	289	303	2.11%
Cundinamarca	696	696	1392	9.69%
Huila	308	110	418	2.91%
La Guajira	5	277	282	1.96%
Magdalena	5	559	564	3.93%
Meta	64	45	109	0.76%
N. de Santander	464	394	858	5.97%
Putumayo	179	332	511	3.56%
Risaralda	28	133	161	1.12%
Santander	477	578	1055	7.34%
Tolima	129	187	316	2.20%
Valle del Cauca	50	199	249	1.73%
Total	5318	9051	14369	100%

Mineral	Total		Con Título		Sin Título	
	#	%	#	%	#	%
Gold	4134	88.79%	550	70.51%	3584	92.44%
Silver	304	6.53%	156	20.00%	149	3.84%
Platin	112	2.41%	5	0.64%	107	2.76%
Copper concentrate	66	1.42%	33	4.23%	33	0.85%
Iron	35	0.75%	33	4.23%	2	0.05%
Lead	4	0.09%	2	0.26%	2	0.05%
Nicle	1	0.02%	1	0.13%		
Total	4656	100%	780	100%	3877	100%

- Productive mining units without mining titles
- Productive mining units with mining titles

Barequeros in municipalities of the departments of Bolívar, Antioquia, Chocó, Cauca and Nariño 2018



Source: Made by IPC.

Appendix 2

Large companies, human rights and the right to the environment

Three companies exported 46% of the 56.96 tons of gold that left Colombia for other countries in 2017. All three have their headquarters in the city of Medellín in the department of Antioquia. Mineros S.A. carries out its production in the Bajo Cauca subregion of Antioquia, in the municipalities of El Bagre, Zaragoza, Caucaasia and Nechí. Gran Colombia Gold produces

most of its gold in the municipalities of Remedios and Segovia in northwestern Antioquia, and a lesser portion in the municipality of Marmato in the department of Caldas. The C.I.Gutierrez Company, which buys most of its gold from barequeros and sells it abroad, is currently being investigated for asset laundering.

But do these companies fulfill the due diligence requirement in terms of human rights and respect for the environment? Let's look at the three cases.

Gold production and export of large companies in Antioquia

COMPANY	PRODUCTION IN KG IN 2017	EXPORTS IN KG IN 2017
C.I. J. Gutiérrez y CIA S.A.	11,191.26	
GRAN COLOMBIA GOLD and affiliate ZANDOR CAPITAL S A	8,617.01	5,406.6
Mineros S.A.	4,090.91	3,308.6

Source: Source: ANM, 2018 and Legiscomex.

1. Mineros S.A.

This company's mineral exploitation project is located in the Bajo Cauca subregion of the department of Antioquia. A total of 85% of its production in Colombia comes from its alluvial mining project that operates in the Nechí river basin²⁹ and its wetlands, over an area of approximately 37,000 hectares. It is the largest alluvial mining operation in the entire country. Different studies about the impacts of mining on ecosystems have concluded that the exploitation of alluvial gold and underground veins of gold have the greatest impact compared to other extractive ac-

tivities.³⁰ Gold mining causes chemical contamination with **mercury** and an **additional problem of suspended solids that results from the dredging of riverbeds**. The wealth produced by this company has not meant quality of life for the inhabitants of the area, and the social indicators show that it is the subregion with the highest levels of poverty and the lowest quality of life in Antioquia. The armed conflict deepens as the company uses the wealth obtained in the territory to expand to other regions of Latin America.

1. Environmental dimension: Mercury contamination: After having used mercury in its operations for 40 years, it was only in 2013 that the com-

²⁹ This is the main tributary of the Cauca River and it is now recognised as a subject of rights. The environmental impacts of this mining operation extend throughout the ecosystems of the Nechí River and its wetlands, as well as the Cauca River, and even affect the region known as La Mojana in northern Colombia where the country's largest complex of wetlands is located.

³⁰ Mosquera, A. et al. (2019). Identificación y análisis de impacto de la actividad minera y la explotación ilícita en los ecosistemas del territorio nacional. Available at: <http://www.humboldt.org.co/images/documentos/3-identificacin-de-impactos-expertos.pdf> (last accessed 04.02.2020)

pany announced the “implementation of the project to eliminate the use of mercury in the system for recovering gold *in two of the company’s five dredgers*.”³¹ This indicates that despite the fact informal mining is always blamed for mercury contamination, it was not until 2013 that the country’s second largest gold-producer initiated a process to eliminate the use of this material that severely contaminates the waters, is harmful to human health and thus has serious impacts on the activities of the fishing community. The contaminated waters not only affect the municipalities directly, but also an entire ecosystem whose conservation and ecological connectivity is of strategic importance to an area that extends as far as the zone of influence of Gran Mojana.³²

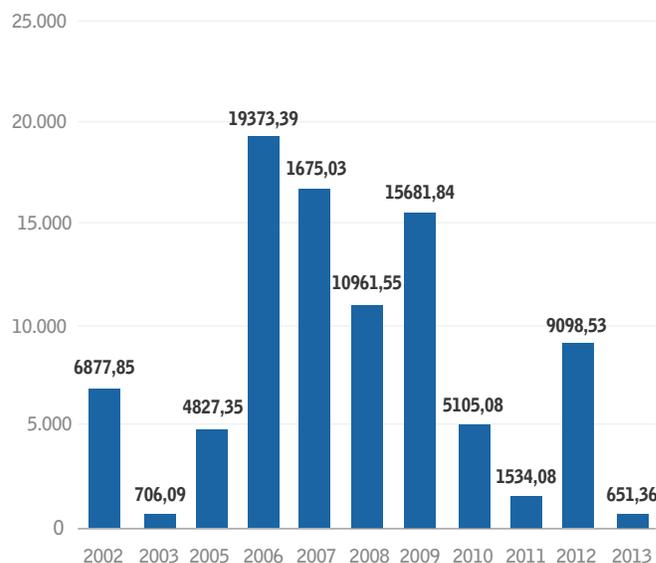
2. Disappearance of wetlands, destruction of flora and fauna: On field trips organised by the *Instituto Popular de Capacitación* (IPC) in the company of riverside communities and organisations from the municipalities of El Bagre and Nechí in 2017 and 2018 it was possible to verify how the progress of the mining operations has resulted in further deforestation and the drying up of the wetlands, and continues to deplete the wider habitat on which the communities depend. According to these communities, at least 80% of the wetlands has disappeared. The following photos taken during the field trips show the socio-environmental impact this has had on the Nechí River, its ecosystems and its communities.³³ This suggests that due to the load of contaminants –the amount of sediment and suspended solids generated– much of the fauna that thrived in the old wetlands of the region had disappeared.

3. Impacts on the right to land and the right to work: The riverside communities that have lived around the wetlands of the river for more than six

decades were displaced as the company’s operation reached their territory. Due to the contaminated water resulting from the activities of the Mineros S.A. Company and from informal miners in the region, “when the fish aren’t dead, they’re contaminated with mercury,” said a member of the Fishermen’s Association of the village of La Esperanza in the municipality of Nechí.³⁴

As the company increases its profits and receives new mining concessions from the government, the number of forced displacements and other serious human rights violations continues to increase in the territory. Today, the entire subregion has been declared to be in a humanitarian emergency. In 2018, 62% of forced displacement in the department of Antioquia, which has 125 municipalities, comes from just six municipalities in the Bajo Cauca subregion where the company operates. In 2018 the company constituted itself as a multinational business with affiliates in Guatemala, Chile and Argentina.

Evolution of the licensed mining area of Mineros S.A.



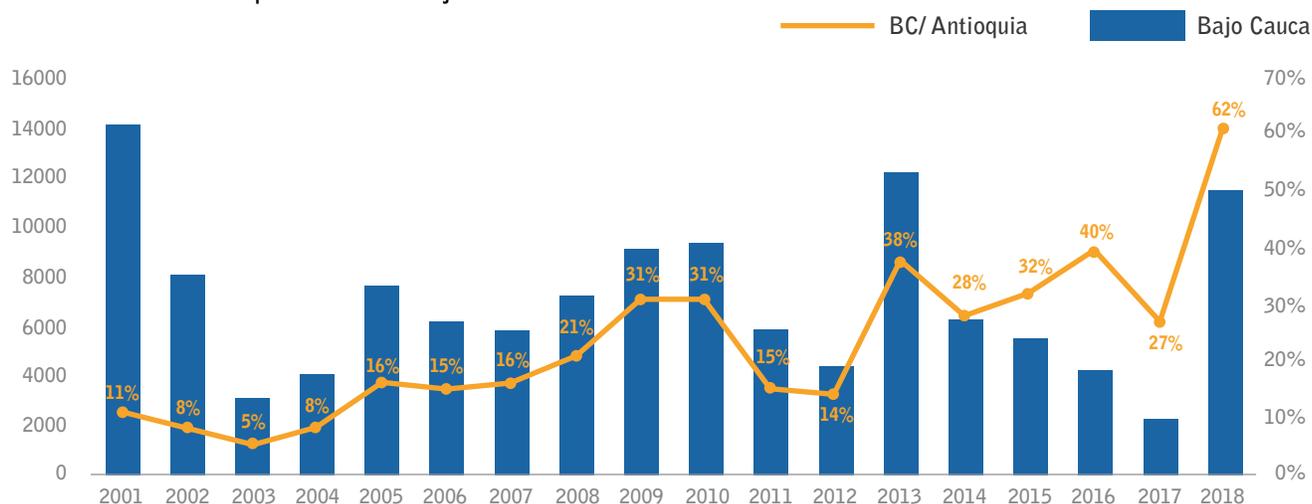
31 See: Relevant historical facts of the year 2013. Available at: <http://www.mineros.com.co/es/institucional/hechos-historicos-relevantes> (last accessed on 10.10.2019)

32 The region of La Mojana is located on the Caribbean coast of Colombia and it includes 11 municipalities in the departments of Sucre, Bolívar, Córdoba and Antioquia. La Mojana is one of the most complex river deltas in the world, with great ecological wealth, since it receives the waters of the three main rivers of the Andean zone (the Magdalena, the Cauca and the San Jorge rivers) and is composed of many swamplands, canals, meanders, and floodplain forests. Close to 405,625 people inhabit the region.

33 For further information regarding the reports and analyses of the process undertaken thus far, see: Jaramillo and Sierra (2017)

34 Pescadores denuncian que minería perjudicó su actividad en el Bajo Cauca (October 2016). Available at: <http://miregion360.com/pescadores-denuncian-que-mineria-perjudico-su-actividad-en-el-bajo-cauca/>

Evolution of forced displacements in Bajo Cauca



Source: The Author's own elaboration, based on data from the Ministry of Mines and Energy and the Unit for Comprehensive Care and Compensation of Victims (UARIV).

2. Gran Colombia Gold:

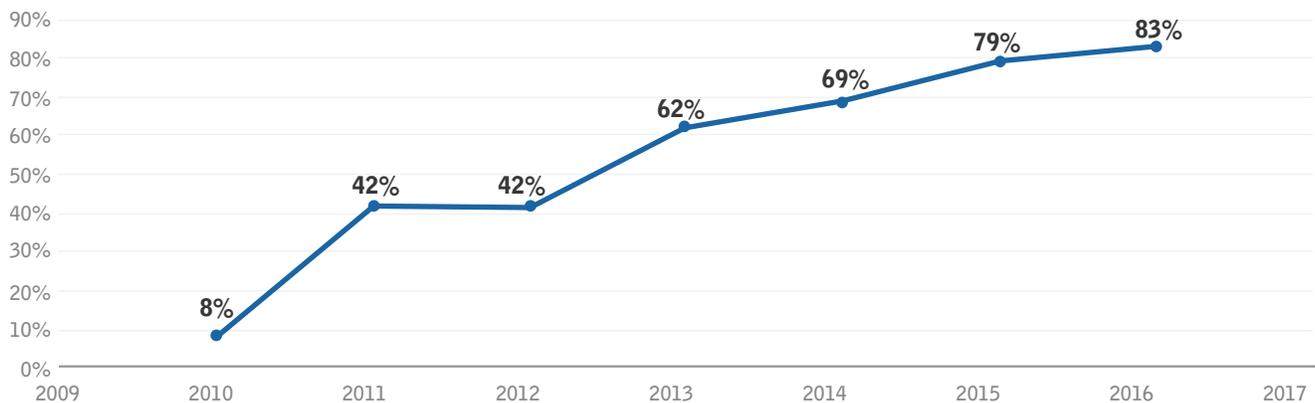
This is currently the country's second major exporter of gold after Comercializadora Internacional Gutiérrez. Founded in 2010, in the same year the company bought, in an irregular way as described by different studies, the Frontino Gold Mine. When it arrived in Segovia in 2010, it encountered 5,000 miners and proposed partnership contracts to them. "These contracts stipulate that the small-scale miners must deliver the mineral to Gran Colombia Gold for it to be processed at the company plant... *The income is then distributed between the company and the miners' association or cooperative...*"³⁵. But most miners have not opted for this system which they consider profoundly unjust, a situation that has led to repeated strikes that have cost the lives of numerous miners between 2010 and 2017, and permanent threats from paramilitary

groups that have led miners to seek the protection of the Inter-American Human Rights Commission, which resulted in protective measures for five miners of the *Mesa Minera* in November of 2016. The company returned to its irregular strategies towards the end of 2018. In a letter sent to the national government, the president of the company stated: "We request the Colombian Government to defend the rights granted to GCG, by means of military and police deployment, *as well as any other force*, needed to combat illicit mining, protect our employees, the inhabitants of the zone and the environment..." a matter that has caused fear and condemnation on the part of miners' organisations. The president of the **National Confederation of Small-Scale Miners, Rubén Darío Gómez**, considered the document a call to violence and an attempt to extort the government.³⁶

35 Bermúdez Liévano, A. (2012): Las multinacionales, a montar a los pequeños mineros en la locomotora. Lassila Avacacia (ed.). Available at: <http://lasillavacia.com/historia/las-multinacionales-montar-los-pequenos-mineros-en-la-locomotora-40694> (last accessed 04.02.2020).

36 El Espectador (ed.) (2019): Gran Colombia Gold pide intervención militar en Antioquia y Caldas ante minería ilegal. Available at: <https://www.elespectador.com/noticias/nacional/gran-colombia-gold-pide-intervencion-militar-en-antioquia-y-caldas-ante-mineria-ilegal-articulo-832976> (last accessed on 02.02.2020).

Share of gold produced by Gran Colombia Gold via subcontractors



Source: The Author's own elaboration, based on information of the GCG³⁷

To have an idea of the irregularities and violations that facilitate the enrichment of these 'entrepreneurs', who are also shareholders of oil and gas company Pacific Rubiales (recently renamed as Frontera Energy), the 2016 study of Pacific published by SOMO and INDEPAZ, **Petróleo: Acumulación de agua y tierras en la Altillanura**, is illuminating. The publication identifies all the different things the company is accused of, including human rights violations, and includes an account of the processes of illegal accumulation of unused land that add up to at least 55,000 hectares: 10,000 hectares of unused land from the Nation and 43,000 hectares of unused land awarded by the state.

3.C.I.J Gutiérrez

C.I.J Gutiérrez is the company that exports the greatest amount of gold from Colombia. Approximately 50% of it went to Europe in 2017 and 2018, especially to Swiss refineries.

In a press release dated 11 April 2019, the Attorney General's Office reported allegedly illicit activities on the part of the company, one of the country's oldest and most prestigious international gold traders. Operation "Legend of El Dorado" uncovered illegal gold laundering carried out through a front company.

The Attorney General's Office pointed out that accounting experts from that investigation "verified the transactions that the International Gold Trader CIJ Gutiérrez carried out in the past ten years and discovered various fictitious operations that compromised close to 2.4 trillion pesos in assets (US\$800 million at today's

prices) that corresponded to the buying and selling of gold."

Various top executives and employees of the company, which has its headquarters in the city of Medellín, were captured and prosecuted and their ownership terminated due to the commission of various crimes, including direct purchase of gold from non-existent persons, fictitious operations without justification, the use of exclusive suppliers, suppliers with criminal records, and operations with suppliers without economic capacity.

The charges brought against the executives of the international trading company correspond to the most frequent irregularities or illicit activities registered in the gold trade, but those same deeds extend all along the chain and have to do with the inefficiency or complacency of the state over maintaining informal activities without control, with the laundering of dollars coming from drug trafficking, governmental corruption, the existence of 'grey' companies that hide all sorts of illegal activities in their premises, and the complicity of other sectors of the economy that feed on illegal business.

When they speak of gold from different sources or of unspecified origin in Colombia, they are speaking of the use of gold to 'launder dollars' coming from illicit activities. Illegal organisations acquire gold on the international market and smuggle it into the country. Once it has entered the national territory, it is sold to national or international traders. *It is then mixed with the gold of barequeros and other miners that sell their gold in legal conditions* and subsequently enters the world of legality where it is difficult, if not impos-

sible, to demonstrate its illegal provenance.

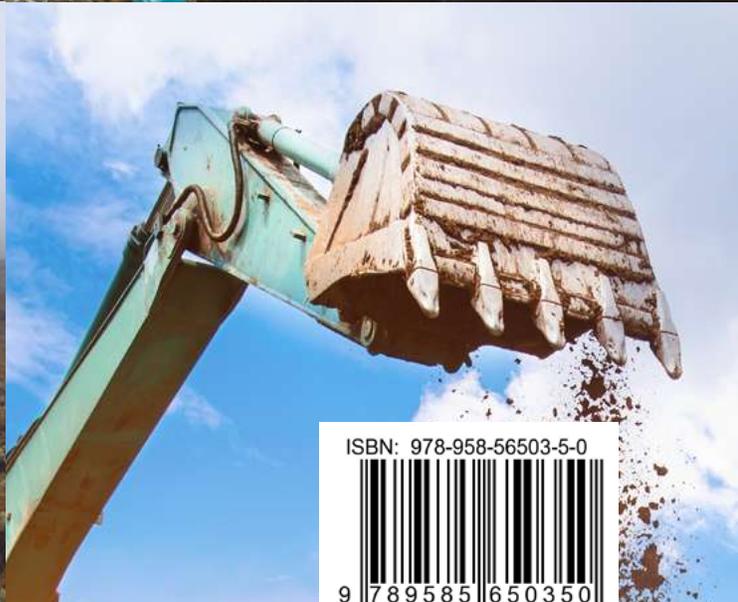
Decree 1102 of 2017 of the Ministry of Mines ordered *barequeros* to obtain what is known as the *Registro Único Tributario* or RUT (Single Tax Registration) to register in their local city hall in order to obtain the right to sell their gold to the trading companies, which in turn had to obtain the Unique Commercial Register or RUCOM – for purposes of buying and selling minerals extracted within the national territory.

Every law has its loophole. *Barequeros* have condemned the fact that strangers offer to help them with the task of obtaining their RUT, but they only received copies and not the original document. The original is used by the gold cartels to ‘legalise’ the sale of minerals to international trading companies and thereby to introduce the gold obtained through illegal activities into the legal gold market.³⁸

As described in the online journal *Verdad Abierta*, the problem is not the fault of the small-scale producers who are in fact the weakest link in the chain. “Along the road of falsification of certificates of origin there are *barequeros* and *chatarreros* [scrap metal dealers] who have accumulated records of up to a billion pesos on their tax registration for income supposedly derived from sales made in the years 2014, 2015, 2016 and the first three quarters of this year, far surpassing the limits established by the tax regulations for natural persons. But they don’t know it.”³⁹ One line of research that has not been developed relates to the fact that many of the people or companies with RUCOM that buy gold in tens of mining towns, mainly in Antioquia, Chocó and Cauca, are not independent; they form part of a network of the same international trading companies focused on purchasing small amounts of gold from *barequeros* and small- and medium-scale miners, and on acquiring gold of dubious origin, that is eventually mixed with other gold and taken to the international trading companies, the true heads of these criminal networks.

38 Verdad Abierta (ed.) (2017): ‘*Barequeros*’ y ‘*chatarreros*’, entre criminales y la DIAN. Available at: <http://www.verdadabierta.com/otros-negocios-criminales/6585-barequeros-y-chatarreros-entre-criminales-y-la-dian> (last accessed on 04.02.2020).

39 Ibid.



ISBN: 978-958-56503-5-0



9 789585 165035 0