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ABColombia is a group of leading UK and Irish organisations with programmes in Colombia. We work on questions of human rights, development and forced displacement. ABColombia’s members are CAFOD, Christian Aid (UK and Ireland), Oxfam GB, SCIAF, and Trócaire. Amnesty International and Peace Brigades International are observer members.

ABColombia develops the collective advocacy work of members. Our members work with around 100 partner organisations in Colombia, most of them with little access to decision-making forums nationally or internationally.

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Giving It Away: The Consequences of an Unsustainable Mining Policy in Colombia

ABColombia
CAFOD, Christian Aid, Oxfam GB, SCIAF, Trócaire
Working for Peace and Human Rights in Colombia
Romero House, 55 Westminster Bridge Road, London SE1 7JB
Tel: +44 (0) 207 870 2216/7
Email: abcolombia@abcolombia.org.uk

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Mining in Colombia has been singled out to be one of the major drivers of economic growth for the Colombian economy, and yet this report reveals that in the case of coal, the Colombia Government was actually giving it away in 2007 and 2009. The lack of an effective and transparent tax system in Colombia has resulted in some multinational corporations making more from tax exemptions than they pay in corporate income taxes and royalties. With the proposed new Tax Bill, rather than raising income tax for mining corporations, the government plans to cut it from 33 per cent to 25 per cent. With the goal of doubling coal exports and generating mining jobs, the government has taken the positive step of piloting the development of a Colombian Strategy on these principles with the Colombian Government, it is hoped that this report and its recommendations can feed into both Colombian and UK strategies.

Colombian economic policy is based on the extractive industry being one of the major locomotives pushing economic growth over the next decade. However, this policy has been promoted in the context of an ongoing internal conflict and human rights abuses, including forced displacement. Despite the ongoing nature of the conflict, the government has passed a transitional law to restore approximately 2.2 million hectares of approximately 6.6 million that has been usurped or abandoned during the conflict.\(^1\) The drive to have Colombia known regionally as a ‘mining country’ is being undertaken before land restitution policies have been formulated, as is being undertaken before the completion of land restitution policies have been formulated.\(^2\) Despite the ongoing nature of the conflict, the government has passed a transitional law to restore approximately 2.2 million hectares of approximately 6.6 million that has been usurped or abandoned during the conflict.\(^1\) The drive to have Colombia known regionally as a ‘mining country’ is being undertaken before land restitution policies have been formulated, as is being undertaken before the completion of land restitution policies have been formulated.\(^2\)

\(^1\) Reuters, Colombia unveils tax reform to create jobs, close loopholes, 2 October 2012 http://www.reuters.com/article/2012/10/02/us-colombia-tax-idUSBRE8911B620121002

\(^2\) Internal Displacement Monitoring Centre and Norwegian Refugee Council, Building Momentum for Land Restoration. Towards property restitution for IDPs in Colombia, November 2010, page 10

\(^3\) Executive Summary

**Fuelling conflict and human rights abuses**

The conflict and forced displacement are closely related to economic interests. A 2011 report by CODHES\(^4\) that maps forced displacement and enforced disappearances with economic activity in Colombia demonstrates how economic interests, including mining, have impacted on the conflict. The report concludes that the mining sector, making more from tax exemptions than they pay in corporate income taxes and royalties, has impacted on the conflict. The report also states that the mining sector, making more from tax exemptions than they pay in corporate income taxes and royalties, has impacted on the conflict.

In Professor John Ruggie’s work on business and human rights, the former UN Special Representative on Human Rights and Transnational Corporations emphasises that it is the responsibility of States to protect human rights, and that both State and non-State actors are obligated to respect human rights. However, if the State is unable or unwilling to protect human rights, Ruggie says that the responsibilities of corporations increase, and they must ensure that they respect human rights and avoid complicity in violations of human rights and other obligations. Impunity for human rights abuses is a major obstacle to robust mechanisms in Colombia. According to Ruggie Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they occur, the State duty to protect can be rendered weak or even meaningless.\(^5\)

In 2009 the Colombian government lost 53 percent (including exemptions on hydrocarbons) of its possible income through tax exemptions to multinational corporations, amounting to approximately $3.82 billion Colombian pesos (COP). This amount far exceeds what the government has budgeted to spend in 2012 on victims of the conflict, which is $2.9 billion (COP).

The case studies in this report demonstrate that despite well-established Corporate Social Responsibility (CSR) policies, UK-based mining corporations do not always operate in a socially responsible way. Given the potetial for human rights violations, environmental degradation and the destruction of ecological capital that mining corporations are involved in, it is essential that States are held to account for their behavioural overseas. Home countries therefore also require robust governance mechanisms with which to do this. The changes that can be made to strengthen these mechanisms include transparency of information and specific human rights reporting. The United States have moved ahead of the European Union in the area of transparency of information through its Dodd-Frank legislation.

International financing and registration on stock markets should carry with them a requirement from the outset that companies reporting have a good track record on adherence to human rights due diligence.

Although voluntary guidelines serve to raise standards and may help steer companies in the right direction, and as such have a role in pushing incremental improvements, the major negative impact has been to undermine attempts to develop effective legal sanction, both at national and international level, without which it is not possible to prevent companies abusing rights of local communities.\(^6\) The UK has recently taken a regressive step in relation to judicial mechanisms with changes to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, making it financially unviable for victims of UK MNCs to gain access to justice in the UK if the UK is to uphold the spirit of the UN Guiding Principles, it will need to introduce new legislation to provide access to the UK justice system for communities in Southern countries in order to protect them from corporate abuses by UK Companies.

The role of multinational corporations and European governments

In 2011, the Colombian government lost 53 percent of its possible income through tax exemptions to multinational corporations, amounting to approximately $3.82 billion Colombian pesos (COP). This amount far exceeds what the government has budgeted to spend in 2012 on victims of the conflict, which is $2.9 billion (COP).
Recommendations to the UK and Irish Governments and European Parliament:

Ensure companies listed or headquartered in their jurisdiction do not contribute to or cause human rights abuses overseas as a consequence of their operations or those of their subsidiaries and joint venture partners.

Ensure that people whose human rights are adversely affected by the overseas operations of companies headquartered or listed in the UK can access effective remedy in the UK, including access to the courts.

Ensure that their Stock Exchange Listing Authorities require ethical reporting from companies and require specific disclosures on: any claims that may exist over the land on which exploration or mining activity is being carried out, including any ancestral or native claims; a company’s historical experience of dealing with concerns and which place companies in a situation of reputational risk; where the protection of ecologically sensitive areas is exposed; and where there is a risk of violations of the rights of Indigenous and Afro-Colombian Peoples and other vulnerable groups, and conflict with land restitution to victims.

In areas of conflict governments should require corporations to report on the provision of security for their operations either by the security forces or private security firms.

Ensure that it becomes mandatory for companies to report on their human rights impacts: under Section 172 (1) of the UK Companies Act 2006, which requires company directors to give proper consideration to the impact of the company’s operations on the community and the environment – strengthen this provision by making it mandatory.

To strongly support the proposed revisions to the EU Transparency and Accounting Directives to require disclosure of payments by corporations at project level. In order to achieve a robust outcome, the UK and Irish Governments should champion the definition of ‘project’ adopted by the JURI committee in the European Parliament.

To urge the Colombian Government to revise laws that conflict with international human rights obligations and which place companies in a situation of reputational risk; where the protection of ecologically sensitive areas are exposed; and where there is a risk of violations of the rights of Indigenous and Afro-Colombian Peoples and other vulnerable groups, and conflict with land restitution to victims.

Recommendations to Corporations:

In the case of Indigenous Peoples and Afro-Colombians, it is recommended that they respect the rights granted under the ILO Convention 169, the UN Declaration of Indigenous Peoples and jurisprudence of the Colombian Constitutional Court, including the rights to:

- An ‘informed’ consent process by ensuring that they provide environmental, social and human rights impact studies to the State prior to beginning any activities and prior to any consultation process to Indigenous and Afro-Colombian Peoples.

- ‘Free’ Consent Process, recognising that where communities are placed under pressure by any group, armed or otherwise, this is not a free process.

- A consent process that respects their decision-making processes, customs and traditions.

- Participate in all of the planning and implementation stages of extractive activities that might impact on their interests, and in joint meetings with the State, whilst maintaining their right not to consent to the project.

Avoid investments in regions where there are land disputes: the lack of a national land registry means that corporations undertake a reputational risk when investing in land. The current Land Restitution and Victims Law does not guarantee that lands stolen through human rights abuses and violations will not be provided with de facto legal status.

- Additional and detailed checks from independent sources regarding the status of the land should be undertaken by corporations when applying for mining concessions in Colombia.

- In addition to the legal requirements, it is recommended that additional consultations are undertaken with local human rights groups before embarking on a project.

Companies should be proactive in calling for a better human rights regime in Colombia through:

- The full implementation of UN human rights recommendations to the Colombian Government to end human rights violations and impunity and to guerrilla forces to fully respect human rights law and end human rights abuses.

Demonstrate a commitment to tax transparency by supporting the adoption of project-by-project reporting.

Recommend that the Colombian Government:

- Publicly recognise the right of Indigenous and Afro-Colombian Peoples to veto projects to extract natural resources in their territory as an exercise of their sovereignty in line with the ILO Convention 169, the UN Declaration on Indigenous Peoples, and recent Constitutional Court decisions as set out in the international legal and policy framework in the report of the UN Special Representative on Indigenous and Tribal Peoples.

- Take action to end impunity in cases of human rights abuses and violations as a means to avoid repetition and as a further step in ensuring the conditions for a ‘free, prior and informed consent’ process.

- Review current legislative frameworks to align with the UN Declaration on Indigenous Peoples, Constitutional Court and international jurisprudence. Making clear provisions for obtaining ‘free, prior and informed consent’ in all projects and plans affecting afro-Colombian collective territories, and Indigenous Peoples resguardos and ancestral territories. Regulations to make this happen should be produced by working groups which include indigenous and afro-Colombian leaders, and their appointed experts.

- Conduct a thorough review of tax incentives provided to the mining sector, abolish overly generous provisions and ensure that all incentives are fully costed and reflected in the annual budget. Consider incorporating windfall taxes or a variable profit tax to ensure that Colombia gets a fair deal from its natural resources.

- Improve transparency on what companies pay and the net revenue generated by the sector.

- Introduce ‘no go areas’ for mining which responds to concerns expressed by the Comptroller General to protect ecologically sensitive areas and by the Agricultural Minister to protect agricultural land.
The ongoing conflict

There has been an ongoing internal conflict for nearly five decades in Colombia with all armed actors targeting the civilian population. At the heart of this conflict has been the struggle for land, with the dispossession of land being a strategic objective not only for military gains but also for economic and political purposes. These economic purposes range from drug cultivation to mega-projects such as agro-businesses, infrastructure and mining. The accumulation of land is intimately related to the phenomenon of forced displacement16 and resource exploitation plays a prominent role in causing this displacement. UN Rapporteur Francis Deng identified displacement as a tool for acquiring land to benefit amongst other interests, large-scale projects to exploit natural resources as part of a ‘bouquet-agrarian reform’17 The exploitation of natural resources and large-scale projects involves both domestic economic interests and multinational corporations; including UK listed and headquartered companies. At particular risk of forced displacement are communities, predominantly indigenous, Afro-Colombian and peasant farmers (campesinos), living in areas of strategic importance and rich biodiversity. Colombia currently has the highest number of internally displaced people in the world, higher than Southern Sudan, Iraq or Afghanistan.18 Both the conflict and the forced displacement continue, with 268,000 people newly displaced in 2011. The economic model driving forced displacement includes money obtained by illegal armed groups exploiting illegal mining19 to fund their activities (see Case Study 1 for example) and by extorting money from multinational companies.20 This is despite a pronouncement by President Juan Manuel Santos that he would throw out of the country companies that paid armed groups. Attacks by the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia – FARC) on multinational extraction projects and infrastructure have increased in the last couple of years in January 2012 FARC guerrillas carried out bomb attacks against Emerald Energy,21 a UK-based oil company, reportedly because the company was extorting money from multinational companies.21 This is despite 20 section ‘Other forms of mining’ understanding the difference between illegal mining and informal, ancestral, small-scale and artisanal mining that has become characterised as illegal by the 2001 Mining Code.

The plan to use the energy and mining sector as a major driver of the economy was pushed forward during the previous Administration of President Álvaro Uribe Vélez (2002-2010) with the introduction of the Mining and Energy Vision 2019 (Minero Energético Visión 2019).24 This plan was designed to promote Colombia as a ‘mining country’ with the aim of being considered one of the most important in Latin America by 2019. This vision has continued under President Santos and is incorporated in the National Development Plan (NDP) 2010-2014, under the theme Prosperity for All: more jobs, less poverty and more security’. The NDP specifies that the mining and energy sector will ‘be... one of the backbones of the Colombian economy’.25 With the extraction of natural resources as a major driver of economic growth, Colombia’s objective is to achieve an annual growth rate of around 5 per cent.

Increasing FDI26 was a major economic goal during the second period of the Uribe Administration. Combined with his focus on mining, this led to granting the highest number of mining permits in the history of Colombia, alongside creating even more favourable investment conditions for MNCs.27 According to the Comptroller General, by the end of 2010 almost 60 per cent of Colombian territory was either under concession or had had applications pending.28

Law 685 of 2001 (Mining Code) introduced reforms that threatened to reduce safeguards for the environment and constitutional protections afforded to Indigenous Peoples. Furthermore, in 2012 the government passed Resolution 18, 2041 of 2012 and Resolution 0405 of June 2012 which declared millions of hectares as Strategic Mining Areas (see section 2.2 on Rainforest areas). Of particular concern is that both resolutions quoted a decision of 20 February 2012 made by the Directorate for Prior Consultations of the Ministry of Interior (Dirección de Consulta Previa del Ministerio del Interior). The language used by the Directorate suggests that the winner of the concession would be charged with the process of consultation; however, this would be carried out after they had won the contract.

The National Indigenous Organisation of Colombia (Organización Nacional Indígena de Colombia - ONIC) reports that 80 per cent of concessions for the implementation of economic projects in their territories were granted without prior consultation. This demonstrates the lack of State protection of their legal rights and poses a grave threat to their cultural survival.29 In 2010 the Colombian Constitutional Court declared 34 groups of Indigenous Peoples at risk of cultural or physical extinction; a further 30 have been identified by the ONU. Poverty is much higher among Indigenous Peoples (63 per cent) than the rest of the population (44.1 per cent) and 30 mining licences30 have been granted in territories of groups at risk of extinction.

For Afro-Colombian and Indigenous Peoples, land is essential for their cultural identity, their spiritual practices and for maintaining the social fabric of their community. As one Afro-Colombian explains: ‘Our land is our life, if we have to leave our land and our collective territory we will disappear as a group and end up living a western lifestyle in the city and losing our identity’.31

Colombia’s 2010-2014 National Development Plan specifies that the mining and energy sector ‘will be... one of the backbones of the Colombian economy’.32

Map 1: Mining concessions in Colombian territory

[Image 638x179 to 869x494]

“Colombia’s 2010-2014 National Development Plan specifies that the mining and energy sector ‘will be... one of the backbones of the Colombian economy’.32

[34] Human Rights Everywhere (HREV), Map of mining concessions in Colombia as of 2010, Fidel Mingorance, 201-2012
[37] See section ‘Other forms of mining’ understanding the difference between illegal mining and informal, ancestral, small-scale and artisanal mining that has become characterised as illegal by the 2001 Mining Code.
[41] For more information see the appendix of mining see INDAColombia Report, Returning Land to Colombia’s Victims, May 2011.
[44] Mining Areas’ (see section 2.2 on Rainforest areas). Of particular concern is that both resolutions quoted a decision of 20 February 2012 made by the Directorate for Prior Consultations of the Ministry of Interior (Dirección de Consulta Previa del Ministerio del Interior). The language used by the Directorate suggests that the winner of the concession would be charged with the process of consultation; however, this would be carried out after they had won the contract.
[46] Programa de las Naciones Unidas para el Desarrollo – ONU-Desarrollo, Políticas Indígenas Diversidad Étnica entre cultura, Cuaderno del Informe de Desarrollo Humano, Colombia 2010
[47] Programas de las Naciones Unidas para el Desarrollo – ONU-Desarrollo, Políticas Indígenas Diversidad Étnica entre cultura, Cuaderno del Informe de Desarrollo Humano, Colombia 2010
[48] Programa de las Naciones Unidas para el Desarrollo – ONU-Desarrollo, Políticas Indígenas Diversidad Étnica entre cultura, Cuaderno del Informe de Desarrollo Humano, Colombia 2010
Concerns around the rapid growth of mining and energy, combined with a lack of appropriate controls to protect human and environmental rights, have been expressed by NGOs, academics and a variety of government ministers and officials. There is also a concerning lack of coherence across government policy in these areas. This section reveals some of these contradictions in relation to the environment and human rights.

2.1 The environment

Colombia has laws to protect ecologically fragile systems via a system of forest reserves, national parks and special protection of the páramos43 (high altitude watershed areas). However, the introduction of the Mining Code poses a direct threat to this system of protection. The Mining Code (Article 34) makes provision for authorities to remove the environmental protection awarded to national forest reserves for the purpose of mining. Meanwhile Article 37 prevents municipal authorities from prohibiting mining, even if it is in competition with other interests in their jurisdiction; mining has been declared a public interest and therefore takes precedence over any other activity.

2.2 Rainforest areas: Orinoquia, Amazonia and Chocó

At the United Nations Conference on Sustainable Development (UNCSD) in 2012, President Santos announced that Colombia would promote policies on sustainable development and protection of the environment. At the same time, the Minister for Mines and Energy announced that Colombia would set aside 176 million hectares (Resolution 45, 005 of June 2012) as ‘Strategic Mining Areas.’44 The areas identified as ‘Strategic Mining Areas’ are to be sold at ‘auction’ in large blocks to MNC. These mining blocks include the páramos43 (high altitude watershed areas). However, the environment and local communities can suffer unwanted and irreversible damages from the exploitation of these areas, in recognition of the potential damage that could be caused by multinational companies in the rainforest and jungle areas, in July 2012 former Environment Minister Frank Pearl put forward a counter Resolution.

The Comptroller General Sandra Morelli has declared the government’s plans for the rapid expansion of mining threatens the drinking water of more than 40 per cent of the population (including ten departmental capital cities). Similar concerns were reflected in a report of the Ombudsman’s Office (Defensoría del Pueblo) which found that 22 páramos were at extreme risk of disappearing due to the impacts of mining.45 The páramos supply approximately 70 per cent of the population’s drinking water.

Morelli also expressed concerns regarding the inadequate management of the country’s wetlands subsequent to the introduction of the 2001 Mining Code. At the end of the 1990s Colombia’s wetlands covered an estimated 20 million hectares; however, by 2009 they had been reduced to 3 million.46

The Comptroller General raised grave concerns that La Colosa mine in Tolima, owned by UK listed MNC AngloGold Ashanti (AGA), could jeopardise the water basin, potentially reducing supply for agriculture and consumption.47 Despite these concerns, environmental protection procedures have been further reduced with the introduction of Article 134 in the 2010-2014 NDP which seeks to speed up the process for the issuing of environmental licenses. Rather than placing the emphasis on environmental investigation, Article 134 focuses on the time taken to issue a licence. If the Autodidacia de Licencias Ambientales (ANLA), which is responsible for granting the licence, takes longer than 90 working days to respond to a request for a licence then the decision will automatically pass to a committee that is made up of the National Director of Planning, the Secretary General of the Presidency, the Environment Minister as well as the companies’ representative for the sector. They then have 60 working days to respond. It is unclear why companies are represented in this group rather than the communities that will be impacted by the mine, particularly when the decision should be made by the government.

A further loosening of environmental protections can be seen in the change of requirements for environmental impact studies. Prior to the introduction of the 2001 Mining Code, an environmental impact study was required before the exploratory phase of a project; now it is only required after the exploratory stage and before the exploitation phase. However, both the environment and local communities can suffer unwanted and irreversible damages from the exploration stage of any project.48 Concerns regarding the removal of environmental safeguards have been expressed by the Colombian Constitutional Court in a series of decisions. These decisions establish important precedents regarding the protection of ecologically sensitive areas, including the importance of the Precautionary Principle (Sentence C-443, 2009), and the need for the authorities responsible for the environment and for granting environmental licenses to be independent of the Ministry of Mines and Energy.49 In addition to the potential environmental damage caused by granting concessions in protected areas, there is also extensive concessioning within indigenous reserves and collectively owned afro-Colombian territory.

2.3 Páramos, wetlands and underground water supplies

The Páramos supply approximately 70 per cent of the population’s drinking water in Colombia.50

2.4 Land restitution

Despite the ongoing internal conflict, President Santos in 2011 introduced the Victims and Land Restitution Law 1448 (Leey de Victimas y Restitucion de Tierra 1448) – a transitional justice policy that provides a framework for land restitution and reparation for the victims of the conflict. Between 5 and 15 per cent of victims wish to return,51 the majority of whom are organised indigenous afro-Colombian and campesino communities.52 There appears to be a conflict between the drive to make Colombia a mining country and land restitution; given it is the same communities that wish to return that are the most vulnerable to a second wave of displacement due to the exploitation of natural resources, agri-business and large-scale infrastructure projects on their land.53 There also exists a strong possibility that instead of facilitating the return of victims to their land, the Victims Law could create legal security for stolen lands on which some of the mega-projects may be located.54

Local woman in COCOMOPOCA territory.

2.5 Land titling

As well as returning land to those who have been violently dispossessed, the Colombian State is also in the process of delimiting and granting land titles to Indigenous and Afro-Colombian Peoples. This process has taken many years for communities like COCOMOPOCA, who struggled for 12 years to obtain their land title to 77,000 hectares. When they finally received it the land title was only for 7,300 hectares, of which 50,000 hectares had been granted in a mining concession to UK listed AGA (see Case Study 1). This illustrates the dangers for multinational corporations investing in land in Colombia, including the risk of finding that it is land from which victims have been forcibly displaced or other serious human rights abuses have taken place, and thus knowingly or unknowingly benefiting from the prior human rights abuses.

Páramos supply approximately 70 per cent of the population’s drinking water in Colombia.
2.6 Strategic Mining Areas

The Colombian State’s current model of development and public policies oriented towards the intensive exploitation of natural resources conflict with the Indigenous Peoples’ cosmovisión61 of development.62 This conflict regarding the vision of development has intensified social protest not only on the part of indigenous but also afro-Colombian and campesino communities.

Despite increasing protest relating to the decision to include mining as a locomotive of the Colombian economy, the government introduced Law 1450 of 2011 which contained within it Article 108.63 Article 108 promotes the concept of ‘Strategic Mining Areas’ (Reservas Mineras Estratégicas). Several ‘Strategic Mining Areas’ have been defined via Resolutions 929 of 2010 and 272 of 2011. These ‘Strategic Mining Areas’ include Orinocoqúa, Chocó and Amazonas; all of these departments have indigenous reservations and afro-Columbia territories. The Strategic Mining Areas are divided into large concessions and auctioned to MNCs. The winner then signs a contract with the Colombian Government. Once the contract has been obtained the prior consultation process is carried out. Language in this Article could effectively undermine the right to free, prior, and informed consent (FPIC) with Indigenous and Afro-Colombian Peoples. It is unclear how, once the MNC has a contract with the State, it will be possible for these groups to exercise their right to withhold consent or veto a project. When civil society organisations have questioned the Ministry of the Interior about these resolutions and FPIC, the reply that they have received is that a ‘Strategic Mining Area’ is declared it is only ‘appropriational’ that mining will be undertaken. Once the contract is signed it becomes ‘a concrete project’ and there is no need for prior consultation before the project is delivered. However, in reality this circumvents the right to prior consent. These areas are also in ecologically sensitive areas and yet no environmental impact study is required prior to declaring them ‘Strategic Mining Areas.’ It appears that these will only be required after the contract has been signed.

Case Study 1: COCOMOPOCA, Chocó

“T(he) president’s engine is going to crush us”64

COCOMOPOCA is made up of 43 afro-Colombian communities in the Chocó region (western Colombia) whose control of their ancestral lands has been encroached upon because of the conflict. In 1999 the communities applied for a collective land title under Law 70 (1993) in order to obtain the title to their land. Following their application, they suffered forced displacement, threats and killings. As a COCOMOPOCA community leader explains, “It’s awful to live with so much fear, guerrillas and paramilitaries killed people in my family. People watch and follow me. It’s hard to explain how bad the situation is.” When they received land title to 73,000 hectares, less than half of the full 173,200 hectares of ancestral land in the application, they discovered that AngolGold Ashanti (AGA) had been granted a mining concession on 50,000 hectares of the 73,000 hectares title. This directly contravenes their right to free, prior and informed consent’ under ILO Convention 169 for activities on their land. As a result of this contravention of their rights, the communities have been left in a state of uncertainty about how much control they can maintain of the land to which they were granted the title.

The communities of COCOMOPOCA, in addition to finding the majority of their territory in the land title they secured, had also found illegal armed groups protecting illegal mines in their territories. This mining was polluting the river on which the communities had to depend, and brought with it even more violence as the illegal mines paid protection money to the armed groups. These communities receive no support from the legitimate authorities in the area to deal with this problem. They have also denounced the illegal mining, as has the Diocese of Quibdó, to authorities at both a local and a national level, but to no avail.

Case Study 2: Awá Indigenous Peoples

The Awá—meaning people—were originally hunter-gatherers who moved around large areas of south-western Colombia with a population of about 21,000. The situation of the Awá people in Narino and Putumayo is particularly concerning since they continue to be exposed to actions by illegal armed groups, including enforced displacement, threats of recruitment, intimidation, killings, and retaliation after security forces enter into contact with the population.65

During the last three years the Awá have faced the problem of illegal miners in their territory. Early in 2009 the mining company La Esperanza set up an illegal gold mining operation inside Hojal a La Turiba indigenous reserve. The mining operation was split between Awá land in Colombia and across the border in Ecuadorian territory. The Awá had been calling for the removal of the illegal miners since 2009. The Ecuadorian authorities responded promptly by removing the illegal miners from their side of the border, which remains free of illegal mining.

However, the Colombian authorities took no action to remove the miners at that time or after a report by the Ombudsman66 recommending urgent action be taken. La Esperanza gold mine caused serious environmental damage by polluting local rivers, San Juan de Mayasquer and the river Mira with toxic chemicals, and threatened food security. In addition, the mine was causing internal conflict between Awá living in the reserve and those who were employed in the mine, and the rest of the community.

In August 2011, they finally obtained confirmation in writing from the head of La Esperanza José Didier Cadavid Salgado that his company would leave the site within two months; however, the mine continued to function until July 2012 when, due to the continued lack of action to implement the law, the Awá were forced to act in order to protect their community and their territory and they evicted all operators of the mining company La Esperanza from an illegal gold mine inside the Hoja La Turiba indigenous reserve.

Communities like the Awá are not alone in finding a lack of State protection and political willingness to implement the rule of law in their favour; other indigenous groups in Colombia have also started to remove illegal mining from their territories.67

61 Cosmovision is: Indigenous peoples experience nature in a holistic modality imbued with a sacred quality. Nature is revered as the primary source of life; it nourishes, supports and teaches humanity. Nature is the centre of the universe.
62 Analysing Misogyny, legal representation of COCOMOPOCA, is referring to the engine of growth of mining in the NOC.
63 According to it, an Indigenous experience change in a holistic modality sustained with a sacred quality factor is centered on the primary source of life; it nourishes, supports and teaches humanity the nature, the context of the universe.
64 César Rodríguez Gómez, Mis ojos del desplazamiento Político, derechos y supervisión del desplazamiento Forado en Colombia, Universidad de los Andes, 2009. http://terranova.uniandes.edu.co/pdfs
65 César Rodríguez, Más allá del desplazamiento: Políticas, derechos y superación del desplazamiento for Zonas, Universidad de Los Andes, 2009 http://terranova.uniandes.edu.co/pdfs
There has been a substantial increase in both the number and intensity of social conflicts associated with natural resource exploitation. CINEP found that between January 2001 and December 2001, 274 collective social actions associated with the extraction of petroleum, coal and gold took place in Colombia, with social protests against mineral extraction rising consistently from 2005.

2011 alone saw more than 50 anti-mining protests. These social conflicts arise due to different visions of development and are provoked when projects are undertaken without adequate consultation or respect for the rights of communities. Community concerns include severe damage to the environment and water resources; negative health impacts on surrounding communities; forced displacement of communities and the destruction of ancestral land which has spiritual and livelihood significance for Indigenous People. Large-scale economic projects in indigenous territories are major contributing factors to 64 groups being at risk of extinction.

Concerns around the impact of mining on water resources have united groups from very different perspectives – students, NGOs, communities, local businesses, local authorities, governors, mayors and politicians – to protest against mining in sensitive ecological areas and areas where agriculture has been the main source of income. This is the case in the paramos of Santurbán, with the multinational mining corporation Eco-Oro Minerals Corps (see Case Study 3), and with Gran Colombia Gold operating in Narino (see Case Study 4).

According to research, some 80 per cent of human rights and International Humanitarian Law (IHL) violations in the last 10 years have been carried out in mining and energy regions in Colombia. These have been committed by paramilitaries, the security forces and guerrilla groups. The UN Representative Francis Deng’s findings highlight this: “It is...not a coincidence that the areas

particularly those directly, or indirectly linked to land restitution processes and in zones of economic interest.” Death threats have been sent to various human rights defenders and community leaders who have contested the rights of mining companies in their territories, “You are the ones that will not allow development in this country... therefore you are on our death list.” On 1 September 2011, Father José Reinel Restrepo Idárraga was murdered. Father Restrepo was an outspoken critic of the Canadian multinational Gran Colombia Gold’s open-pit gold mining venture in Marmato, Antioquia. Communities calling for different development policies or human rights defenders working on land restitution and victims’ rights do so at the risk of being attacked and killed for this work.

There was more than one defender killed each week in the first 6 months of 2011, the majority of whom worked on land and victims issues.

*“Colombia’s water for Colombia not foreigners.”*

Large-scale economic projects in indigenous territories are major contributing factors to 64 groups being at risk of extinction.

**Case Study 3: Angostura mining project, Eco-Oro Minerals Corps**

“It is outrageous that such a damaging mining initiative has the backing of the World Bank... There could be some 20 counties whose water will be affected by this project” said attorney Miguel Ramos of the Committee for the Defence of Water and the Santurbán Páramo, a coalition of nearly 40 local groups.

Colombian law and jurisprudence provide specific protection for páramos. Law 99 of 1993 contains language defining páramos as areas of special protection, and the Council of State (Consejo de Estado) C-339 of 2002 established that mining should be prohibited in several ecosystems including páramos. Despite the 1993 legislation, the 2001 Mining Code did not exclude páramos from mining operations. The Council of State ruled that Article 36 of the 2001 Mining Code was partially unconstitutional because it contradicted standing laws excluding mining activities from areas other than national parks.

Article 34 of Law 1382 of 2010 which modified the 2001 Mining Code established the exclusion of páramos from any kind of mining projects. However, before the Mining Code was signed into law, there was a rush on the part of the government to grant mining licences in páramo areas. According to an article in La Silla Vacia, during the eight years of President Uribe’s government (2002-2010) the growth in the number of mining titles conceded in páramos was dramatic: by October 2010 over 6 per cent of the 122,000 hectares covered by these ecosystems were subject to mining titles. The vast majority of these titles had been conceded when Law 1382 of 2010 was approved but had yet to be signed into law by the Uribe Administration. It took around eight months to do this. In this period a large number of mining titles in the páramos were authorised; between July and October 2009 alone, 1,900 mining contracts were signed and some mining corporations were able to renew interests they already held arguing that they secured their mining titles before the 1382 Law was promulgated and were therefore entitled to continue exploiting their mining interest. The 1382 Law also contains an Achilles heel in the form of a sentence in Article 34 determining that páramos require formal geographical definition by environmental authorities before they are recognised as such: “To produce these effects, these zones must be defined geographically by an environmental authority based on social and environmental technical studies.”

Interbolsa, a company providing advice to investors, recommended investment in Greystar Resources Ltd on the basis that Law 1382...
would not be able to be applied retrospectively; thus enabling the Angostura project to continue, since Law 1822 did not exclude parcels from the area proposed for the paramo conservation project. The Ministry of Housing and Environment (MAVDT) called on Greystar Resources Ltd (now Eco-Oro Minerals Corp) to modify the Environmental Impact Statement (EIS) it had submitted in December 2009. Greystar lodged an appeal against the retrospective application of Law 1822 and the MAVDT reinstated the EIS in May 2010 allowing Greystar to continue the process and present the EIS publicly. The company was unable to compete on an equal footing with those companies who had failed to calibrate their projects in time with the new environmental laws. Consequently, it continued to draw down on its shareholders; in 2011 it was reported that the project was being developed in secret and that Greystar was in the process of selling the project.93

Santurban is geologically a páramo; however, it has not been legally declared as such due to regional authorities failing to delimit the páramos.94 The Eco-Angostura project has 56 per cent of its project above 3000 metres, which is the height determined by the Humboldt Institute as the limit line where páramos begin.95 Geyer reported that Greystar had altered its published policies to include páramo preservation and conservation of Páramo ecosystem.96

A complaint was accepted by the World Bank Group to evaluate its investment in Eco-Angostura mining project. The Compliance Advisor Ombudsman (CAO) will review the complaint that the World Bank failed to evaluate the project’s potentially severe and irreversible social and environmental impacts.97

In May 2011 due to immense social protest against the mine, the Colombian Ministry of the Environment rejected Eco-Angostura’s initial request for an environmental licence, citing environmental, constitutional and international law prohibiting mining activity in páramos.98 However, Eco-Angostura has not given up its intention of extracting gold and silver, as it plans to redesign its plans for a deep-pit mine, potentially causing severe damage to underground water and water supplies. Despite lodging an appeal when it operated under the name of Greystar Resources Ltd to block the retrospective application of the Law 1822, and its insistence on exploiting a páramo area, the company’s published policies emphasised its environmental credentials: ‘Eco Oro … develops best practices in environmental management… (and) is committed to protection and conservation of Páramo ecosystem.’99

Resistance and protest regarding mining and the damage it may cause to the livelihoods of small-scale farmers is increasing in Colombia. In addition to concerns expressed over agricultural production and the potential impact Stewart et al.92 have identified that the effects of exploiting a páramo area, the company’s published policies emphasise its environmental credentials: ‘Eco Oro … develops best practices in environmental management…(and) is committed to protection and conservation of Páramo ecosystem.’98

The Canadian multinational Gran Colombia Gold established its presence in the mining sector of the municipality of San Lorenzo and Santurbán, located in the paramo, in 2005.93 The project occupies 5,993 acres in Nirano and has its drilling platforms located in San Lorenzo and Arboleda, two municipalities separated by the Mazamorras ravine. Many of the municipalities in Nirano are purely agricultural and mining did not exist in these two municipalities prior to 2009. Only limited information was given to the local communities regarding the proposed Gran Colombia mining project prior to its arrival, and they have said that they were unaware of the negative impacts that mining might have on agriculture in the region.100

The region has plenty of water sources which are protected by local communities because of their importance for local farmers. Some of the farmers interviewed by ABICODEM had improved product prices through sustainable development and obtaining the Rainforest Alliance Sustainable Certification, both of which depend on clean water supplies.101

In addition to concerns expressed over agricultural production are those regarding the serious impacts on the social fabric of the community. As one community member expressed: ‘[the mining company] have robbed us of our peace and confidence. For instance, according to community members,67 insecurity had grown due to the mining company hiring “reinsertados” as guards. It is not unlawful to hire Reinsertados, they are paramilitary and guerrillas who have supposedly demobilised and returned to civilian life. The community however, would rather have its people as having committed terrible crimes. As members of private security firms can be armed, there have always been serious concerns that paramilitaries and demobilised guerrillas could be “recycled” into the conflict.’

94 For more detailed examples see the negative campaigns conducted against the Comisión Intereclesial de Justicia y Paz (CIJP) related to their work in the Curvaradó and Jiguamiandó river basins reported by PBI Colombia, quoted by PBI Colombia, Mining in Colombia: at what cost, Colompbia Newsletter 18, Bogotá, 2011.
96 The Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation and Multilateral Investment Guarantee Agency. The CAO responds to complaints regarding the lack of consultation unconstitutional, rather than the law itself, and gave the government two years to undertake the consultation on the law and suspended the application of its sentence for two years.

Case Study 4: Mazamorras Gold, Nirano

The Canadian multinational Gran Colombia Gold established its presence in the mining sector of the municipality of San Lorenzo and Santurbán, located in the paramo, in 2005.93 The project occupies 5,993 acres in Nirano and has its drilling platforms located in San Lorenzo and Arboleda, two municipalities separated by the Mazamorras ravine. Many of the municipalities in Nirano are purely agricultural and mining did not exist in these two municipalities prior to 2009. Only limited information was given to the local communities regarding the proposed Gran Colombia mining project prior to its arrival, and they have said that they were unaware of the negative impacts that mining might have on agriculture in the region.100

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As a result of negative social and environmental impacts and the lack of consultation with the community – including no social analysis of the potential social impacts – opposition to the mine grew. On 20 August 2011 the communities held a march against the mine. Protest against the mine continued and tensions increased leading to further violence erupted in October when Harner Quirós was shot dead; he was a social and trade union leader. The following day the mine workers became very aggressive towards community members resulting in one women and a child being badly injured. These protests continued until they resulted in a sit-in preventing the mine from operating. Tensions in the community remain high as they fear the mine’s encampments was burnt in October 2011. The local authorities were in negotiation with the protesters when national ESMAD police were brought in and further violence erupted. Mining activities were halted by Gran Colombia Gold as a result of the level of social unrest caused by its operations. It appears that Gran Colombia Gold is in the process of selling the project.102

In fact, so great has been the opposition across the region to mining that the mayor of San Lorenzo entered office elections in October 2011 on a ticket of ‘no to large-scale MNC mining in the region’ and the local and government inPasto are against any form of large-scale mining in the territory and have expressed the need to preserve agricultural areas by signing a public letter opposing opposition to mining in areas of predominantly agricultural land use. The political will supporting these statements can be seen in the Departmental Development Plans; however, as stated earlier in the report, regional authorities are not allowed to ban mining through their development plans.103
It is noticeable that a worrying pattern has emerged when there is social protest and resistance to mining. Similar to that identified in other countries, corporations often seek to divide communities. The UN Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, James Anaya, identified this pattern as one repeated globally: ‘(Corporations have) fuelled conflicts between Indigenous Peoples and the State and extractive industry corporations, as well as causing divisions within the Indigenous communities themselves.’

The UK listed MNC Rio Tinto has an 80 per cent option for a joint venture with Mural Mining Corporation (MMC) and has been an essential partner in barkoring the exploration stage of the Mandé Norte Project, in the departments of Choco and Antioquia. The Indigenous authorities of Grada allege that the prior consultation was characterised by deceit, misinformation and manipulation. However, MMC denied this allegation. They were taken to court for lack of proper consultation; the claim was upheld by the Colombian Constitutional Court. This pattern of accusations has also been made against other companies. For example, in La Guajira, Afro-Colombian and Indigenous communities state that pressure is being exerted by the companies and state authorities for expansion of the Cerrejón mine, and additional royalties, fees and sums, for their staff, hiring our Indigenous brothers, and in an arbitrary fashion entering our Indigenous and Afro-descendant communities (have) divided families, ignored our customs, traditions, community authorities, ways of living and the autonomy of the owners of the territory.’

The level of concern amongst Indigenous Peoples regarding the lack of accurate information given to communities, along with their experiences of bribery and falsification of signatures on land title deeds, has led to communities carrying out their own internal consultations. The Colombian Constitutional Court’s 1993 to 2006 Constitutional Court ruled in favour of Indigenous Peoples in about 18 cases due to the violation of the right to prior consultation. In the Mandé Norte case the Colombian Government considers that the norms governing FPIC give the right to consultation but ‘explicitly provide that communities have no right to veto the decisions made by the authorities.’ However, a consultation process lacks validity unless the real objective is to obtain consent. International covenants and law, as well as recent judgements by the Constitutional Court of Colombia, give prior consultation, necessitating that free, prior and informed consent of Indigenous Peoples should be obtained prior to the approval of the use by private industries of Indigenous Peoples’ land, territories and resources where economic projects are considered to have a considerable impact on the economic, social and cultural rights of these communities.

ONIC reported that there had been 83 prior consultation processes carried out between 1994 and 2009, but none of these were considered to be examples of good practice. In fact, they report the opposite being true – that the consultation process has been converted into a mechanism used to generate internal disputes and divisions. Frequently, Indigenous Peoples find multinational corporations arrive in their territories with government granted concession and with no prior notice or consultation having taken place. The lack of concrete information about the project, its social and environmental impacts, and lack of familiarity with legal mechanisms, often prevents Indigenous Peoples engaging from an early stage in decision-making processes affecting their territory. In addition, Indigenous Peoples have experienced longstanding delays in the legal recognition, titling, and demarcation of their lands, leaving them in a very vulnerable situation.

This promise of consent, and therefore the right to veto a project, is supported by Court decisions at regional (Inter-American Court of Human Rights – IACHR) and national level (Colombian Constitutional Court). The IACHR, in the Saramaka People vs Surinam judgement of 2007, made a groundbreaking ruling that the state had a duty ‘not only to consult but also to obey their FPIC, according to their customs and traditions’ in cases where ‘large-scale development or investment projects … would have a major impact … on territory’. The Colombian Constitutional Court decisions on the Mandé Norte case strengthened the framework for the right to veto. It recognised the threat to the cultural survival of the Indigenous People when large-scale projects are developed on their territory, and that in such cases consent should be obtained. Judgements by the Colombian Constitutional Court and the Inter-American Court, together with the UN Declaration on the Rights of Indigenous Peoples, expand and consolidate the principles contained in ILO Convention 169 in a number of ways. These include expressing Indigenous Peoples’ right to self-determination, and explicitly referring to FPIC prior to the approval of any large-scale projects affecting their culture, lands or territories, with specific reference to the development, utilisation or exploitation of minerals, water or other resources.

A later decision by the Constitutional Court in the Chidima case20 case (T-129 of 2011) of March 2011, explained this right to consent and to exercise their autonomy with respect to their ‘life plans’ (indigenous development plans) rather than conforming to market models of development; in other words the right to development in conformity with indigenous cosmology. This is supported by the UN Special Rapporteur, James Anaya, when he states that ‘permanent sovereignty over natural resources is an integral part of the rights of self-determination of Indigenous Peoples’.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) stated in 2010 that Indigenous and Afro-Colombian communities still suffer the brunt of the violence, intimidation, dispossession of lands and imposition of projects on their territory without consultation or participation, and continue to suffer violations of the rights laid down in ILO Convention 169.

The Commission urged the Colombian Government to immediately suspend the implementation of projects affecting Indigenous and Afro-Colombian communities until an end has been put to all intimidation of the affected communities and their members, and until the participation and consultation of the peoples concerned has been ensured through their representative institutions in an appropriate climate of full respect and trust; pursuant to Articles 6, 7 and 15 of the Convention.

In order to ensure that intimidation and dispossession of land does not occur it is essential that Colombia improves its prior consultation process. The consultation process should utilise all UN Conventions signed by Colombia and the recent Constitutional Court decisions, ensure communities have the right to veto projects affecting their territory whose ‘self-determination, autonomy, cultural identity and responsibilities to future generations are inextricably linked to their right to give — or withhold — their free, prior and informed consent to all projects and plans affecting their lands.’21 In a context of grave human rights violations, abuses and structural impunity, the right to FPIC cannot be guaranteed.

Permanent sovereignty over natural resources is an integral part of the rights of self-determination of Indigenous Peoples.

UN Special Rapporteur James Anaya22
4.2 Conflict and the right to consent

In the last twenty years paramilitary groups, repeatedly operating with the support and collusion of the armed and security forces, have carried out serious human rights violations, including sexual violence, torture, forced disappearances, killings, forced displacement or confinement, repression and control of local communities across Colombia. These communities have also been victims of guerrilla attacks, designed to either confine or displace communities. In recent years, all armed actors have provided security for national and international mining, gas and oil corporations.

This has made the process of ‘free’ consultation processes almost impossible to achieve as a result of the pressures that the presence of armed actors, whether legal or illegal, can have on communities’ perception of freedom to decide. The question of communities’ insecurity in the presence of the army was raised by the Colombian Constitutional Court as important for the State to examine in the Mandé Norte case when it ordered the Ministry of Defence to analyse objectively why the indigenous communities perceived its presence and activities as a support to the Mandé Norte project.

The Cerrejón coal mine in La Guajira, northern Colombia, is one of the largest open-cut coal mines in the world. Since beginning operations, it has been accused of infringing the rights of local people including indigenous groups. It is now under the shared ownership of UK registered multinationals, BHP Billiton, Krisco and Anglo American, who claim to be mitigating the social and environmental effects of the mine.

Cerrejón is planning to expand its operations to open new pits and increase production from 30 million tons to 60 million tons annually in the next couple of years. In order to do so, the company has to extract 500 million tons located beneath the largest river of the department – the Ranchería River – and proposes to divert the course of 26km of the Ranchería River. The Ranchería basin is 4000kmsq and the river is 248 kilometres long. The diversion and mining project will, by the company’s own estimates, lead to a loss of natural aquifer water in the area of about 40 per cent, or about 32 million cubic meters of ground storage capacity, which will have a potential impact on downstream water users, and in ecosystems and coastal water.

The company says it will attempt to mitigate the impact of the diversion but the consequences of such large-scale engineering on ecosystems are unpredictable and their mitigation can only be partial. Martha Ligia Castellanos, an environmental scientist at the University of La Guajira, points out that “whatever you do, the river cannot be replaced by any artificial habitat or ecosystem. The consequences would be devastating and irreversible.” Furthermore, Indigenous Wayuu people and other Indigenous Peoples in the area regard the river as sacred and therefore essential to their cultural lives.

The local communities, many of them indigenous and afro-Colombian, report that they had not been properly consulted on the project and they strongly oppose it. Community members stated that divisions were caused by the company offering incentives to people to support the project. They are dividing us and buying peoples support for the project... the river is the only good thing we have, it is our life and we are not going to allow them to take it from us.”

An open letter to President Santos, signed by local indigenous organisations of La Guajira and the CNCO, called for the suspension of all activity on the expansion project due to the ‘manifest ecological, social and cultural non-viability of the diversion of the Ranchería River.”

“We do not want the course of the Ranchería River to be diverted, nor the continued expansion of the mining project. For us as we have noticed in these 35 years of exploitation, if the expansion takes place the living conditions of the majority of the inhabitants of Guajira will worsen even further.”

The Cerrejón Mining Consortium denied these allegations stating that they had not attempted to buy the support of the communities with money or goods in exchange for approval for the mine expansion. Legal actions have been started against the mine in order to protect the communities’ fundamental rights.

Cerrejón claims to adhere to the United Nations principles of FPIC before using the lands of Indigenous People. However, it appears questionable whether the community members can both fulfi the principles and go ahead with the expansion project and the diversion of the Ranchería River considering the communities’ objections.

The contamination of rivers particularly impact on women’s health in poor riverine communities, as they spend a long time immersed in the river carrying out everyday tasks such as washing clothes and panning for gold. As a result, they experience skin problems and other complications from contaminated water.

Impacts of mining on women

Large-scale mining has led to the breakdown of the social fabric in many communities, with negative impacts particularly for women. This has implications for their personal safety, as does the militarisation of mining areas and the consequences of worsening conflict due to mining activity. Increased sexual violence is reported in areas where mining extraction is taking place and between 2001 and 2009, in 407 municipalities where armed actors were present nearly 18 per cent of women had been victims of sexual violence. Also reported to AsBCoLombia during interviews in June 2012, was the increase in child prostitution and youth pregnancy in mining regions.

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131 Xstrata recently merged with the Swiss company Glencore.
132 Declares (T-719 of 2009)
134 See for example a letter from a Wayuu writer to President Santos http://www.elenoticias.com.co/articulo/156498-carta-de-una-escritora-wayuu
135 Bermúdez Rico, Rodriguez Maldonado and Roa Avendaño , Mujer y Minería: Ámbitos de análisis e impactos de la minería en la vida de las mujeres - Enfoque de derechos y perspectiva de género, February 2012
138 Xstrata recently merged with the Swiss company Glencore.
139 Giving It Away: The Consequences of an Unsustainable Mining Policy in Colombia
140 The contamination of rivers particularly impact on women’s health in poor riverine communities, as they spend a long time immersed in the river carrying out everyday tasks such as washing clothes and panning for gold. As a result, they experience skin problems and other complications from contaminated water.
141 Bermúdez Rico, Rodriguez Maldonado and Roa Avendaño , Mujer y Minería: Ámbitos de análisis e impactos de la minería en la vida de las mujeres - Enfoque de derechos y perspectiva de género, February 2012, http://www.elenoticias.com.co/articulo/156498-carta-de-una-escritora-wayuu
142 See for example a letter from a Wayuu writer to President Santos http://www.elenoticias.com.co/articulo/156498-carta-de-una-escritora-wayuu
5.0 European Mining Investments in Colombia

Since 2003, the European Union has been ranked as the highest investor in the Latin America and Caribbean region, a key player in the mining and hydrocarbons sectors. European investments are mainly concentrated in South America, with Colombia receiving the third largest share of this investment.145 UK companies account for the largest share of increased European investment in the natural resource sector in Latin America.146 In 2011, Foreign Direct Investment (FDI) in Colombia reached a record high of US $13.234 billion, an increase of 92 per cent on the previous year.147 According to the UK Embassy,148 the UK is the second largest investor in Colombia with exports totalling £622 million in 2010.149 Major UK investors are: Anglo American and BHP Billiton (coal and nickel), SAB Miller (beer) and British Petroleum (oil).150 The Colombian Trade Minister, Sergio Diaz-Granados, announced that FDI in the mining sector had reached US $2 billion in the first eight months of 2012, a 42 per cent year-on-year increase.151 With major investments in the mining and hydrocarbons sectors, European corporations have seen their investments yield high incomes and commodity price rises have boosted FDI dividends for European countries of origin. Whilst the exploitation of Colombia’s natural resources has brought huge benefits for European corporations, this has come at immense cost to Colombia in terms of unsustainable impacts and violation of human and environmental rights, as shown in the earlier section of this report. With Colombia’s National Development Plan (NDP) intending to rapidly scale up the exploitation of natural resources, it is necessary to consider the economic benefits accrued through taxes and royalties, and what impact these have made on poverty and inequality.

5.1 UK mining investments in Colombia

FDI in the mining sector had reached US $2 billion in the first eight months of 2012, a 42 per cent year-on-year increase. With major investments in the mining and hydrocarbons sectors, European corporations have seen their investments yield high incomes and commodity price rises have boosted FDI dividends for European countries of origin. Whilst the exploitation of Colombia’s natural resources has brought huge benefits for European corporations, this has come at immense cost to Colombia in terms of unsustainable impacts and violation of human and environmental rights, as shown in the earlier section of this report. With Colombia’s National Development Plan (NDP) intending to rapidly scale up the exploitation of natural resources, it is necessary to consider the economic benefits accrued through taxes and royalties, and what impact these have made on poverty and inequality.

Table 1: Extractive projects of UK headquartered and listed companies operating in Colombia

<table>
<thead>
<tr>
<th>Company Name</th>
<th>London Stock Exchange quotation</th>
<th>British HQ</th>
<th>British HQ</th>
<th>Contract</th>
<th>Type of Property</th>
<th>Project Location</th>
<th>Project Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amherst Resources PLC</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>100% of both projects</td>
<td>Thermal Coal</td>
<td>Cerrejon, Mompox</td>
<td>Colombia</td>
</tr>
<tr>
<td>AngloAmerican PLC</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>100% joint venture with Minerve and BHP Billiton</td>
<td>Thermal Coal</td>
<td>Cerrejon, Mompox</td>
<td>Colombia</td>
</tr>
<tr>
<td>AngloGold Ashanti</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>100% ownership</td>
<td>Gold</td>
<td>Shaanxi, China</td>
<td>China</td>
</tr>
<tr>
<td>BHP Billiton PLC</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>100% ownership</td>
<td>Thermal Coal</td>
<td>Cerrado, Colombia</td>
<td>Colombia</td>
</tr>
<tr>
<td>Cambridge Mineral Resources</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>100% ownership</td>
<td>Nickel</td>
<td>Nickel, Nothern Province of South Africa</td>
<td>South Africa</td>
</tr>
<tr>
<td>Diamond Energy PLC</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>100% ownership</td>
<td>Oil</td>
<td>Malawi, Dowa, Nkhata Bay, Kasungu</td>
<td>Malawi</td>
</tr>
<tr>
<td>Glencore PLC</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>100% ownership</td>
<td>Copper</td>
<td>Beni, Bolivia</td>
<td>Bolivia</td>
</tr>
<tr>
<td>Greycat Resources Ltd* (new Eco-Oro Ltd)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>100% ownership</td>
<td>Gold</td>
<td>San Roque, Norte de Santander</td>
<td>Colombia</td>
</tr>
<tr>
<td>Gulf Oil International Group</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>100% ownership</td>
<td>Oil</td>
<td>Reggio Calabria</td>
<td>Calabria, Italy</td>
</tr>
<tr>
<td>Petrolatina PLC</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>100% ownership</td>
<td>Oil and gas</td>
<td>Puebla, Mexico</td>
<td>Mexico</td>
</tr>
<tr>
<td>Red Rock Reclaimer PLC</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>100% ownership</td>
<td>Oil</td>
<td>San Alberto, Colombia</td>
<td>Colombia</td>
</tr>
<tr>
<td>Rio Tinto PLC</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>100% ownership</td>
<td>Oil</td>
<td>San Roque, Norte de Santander</td>
<td>Colombia</td>
</tr>
<tr>
<td>Royal Dutch Shell PLC</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>100% ownership</td>
<td>Oil</td>
<td>La Plata, Bolivia</td>
<td>Bolivia</td>
</tr>
<tr>
<td>Touchstone Gold Ltd.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>100% ownership</td>
<td>Gold</td>
<td>Cerrado, Colombia</td>
<td>Colombia</td>
</tr>
<tr>
<td>Tomra Gold Inc.</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>100% ownership</td>
<td>Exploration</td>
<td>Cerrado, Colombia</td>
<td>Colombia</td>
</tr>
</tbody>
</table>

Map 2: Concessions belonging to UK headquartered and listed companies operating in Colombia

Zones of influence

Source: Information in this table was compiled by ABColombia from publicly available sources in October 2012. It doesn’t purport to be an exhaustive list. The list of companies may not be comprehensive due to difficulties in identifying operators not publicly listed.

* Greycat Resources changed its name to Eco-Oro in August 2011 and is now listed on the Toronto Stock Exchange.

145 ECLAC Report, Foreign Direct Investment in Latin America and the Caribbean, 2011
146 ibid pages 30-31
147 ibid page 5
148 ECLAC Report, Foreign Direct Investment in Latin America and the Caribbean, 2011
149 ECLAC Report, Foreign Direct Investment in Latin America and the Caribbean, 2011
150 ECLAC Report, Foreign Direct Investment in Latin America and the Caribbean, 2011
151 ECLAC Report, Foreign Direct Investment in Latin America and the Caribbean, 2011
6.0 Governance Mechanisms

6.1 Taxation

The correlation between abundant natural resources and non-equitable growth in the Global South has been discussed for some years. Disputed hypotheses for this correlation include a decline in competitiveness of other sectors, poor governance, and the volatility of revenues from primary resources. It has also been suggested that increasing inequality, a major factor if revenues are not collected and distributed well, is the channel through which poor development outcomes are transmitted. Most commentators agree that the role of institutions is crucial in order to avoid the ‘resource curse’. Good governance is crucial for the protection of human rights, the good management of natural resources, and the use of accumulated revenues. Those who argue in favour of the exploitation of natural resources for national growth point to the potential income benefits and their role in addressing areas of poverty, employment, improvements in health, and investment in infrastructure and development. However, this is only possible if revenue is effectively collected and redistributed.

In Colombia, economic benefits to the State from mineral extraction are realised through revenue collection on surface rights fees, taxes and royalties. In addition to taxes and royalties, mining companies operating in Colombia pay an annual licence fee for exploration and exploitation licences (surface canon).

With encouragement from the World Bank (WB), a series of tax reforms were initiated in order to lower Corporate Income Tax rates in Colombia from 35.5 to 33 per cent. This has reduced the total tax revenue as a percentage of Gross Domestic Product (GDP), a figure already low in comparison to other countries in the region such as Argentina and Costa Rica. In addition, the extractive sector has a complicated system of tax exemptions awarded to multinational corporations which, according to expert economist Guillermo Rudas, has resulted in Colombia gaining relatively very little in the way of income from the extractives sector. In fact, in the years 2007 and 2009 the government appears to have paid corporations to take its coal.

Table 2: Taxes and Exemptions

<table>
<thead>
<tr>
<th>Mining and hydrocarbons. Value of royalties, income tax and exemptions on income, in billions of pesos and percentages of net income 2007 and 2009</th>
<th>Petrol &amp; Gas</th>
<th>Coal</th>
<th>Rest of mining</th>
<th>Total with hydrocarbons</th>
<th>Total without hydrocarbons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income (net income before taxes)**</td>
<td>11.57</td>
<td>15.20</td>
<td>2.14</td>
<td>2.71</td>
<td>3.67</td>
</tr>
<tr>
<td>Royalties (direct and indirect)</td>
<td>4.85</td>
<td>4.59</td>
<td>0.72</td>
<td>1.61</td>
<td>0.39</td>
</tr>
<tr>
<td>Royalties on net income</td>
<td>42%</td>
<td>30%</td>
<td>33%</td>
<td>60%</td>
<td>11%</td>
</tr>
<tr>
<td>Income Tax Paid</td>
<td>3.43</td>
<td>2.95</td>
<td>0.28</td>
<td>0.53</td>
<td>1.11</td>
</tr>
<tr>
<td>Percentage of Income Tax on net income</td>
<td>30%</td>
<td>19%</td>
<td>13%</td>
<td>20%</td>
<td>30%</td>
</tr>
<tr>
<td>Nominal rate of tax on net taxable income**</td>
<td>34%</td>
<td>33%</td>
<td>34%</td>
<td>33%</td>
<td>34%</td>
</tr>
<tr>
<td>Total nominal tax payable (without exemptions)</td>
<td>3.93</td>
<td>5.02</td>
<td>0.73</td>
<td>0.89</td>
<td>1.25</td>
</tr>
<tr>
<td>Tax Exemptions on Income Tax</td>
<td>0.51</td>
<td>2.07</td>
<td>0.45</td>
<td>0.36</td>
<td>0.14</td>
</tr>
<tr>
<td>Exemptions on Income Tax payable (nominal)</td>
<td>13%</td>
<td>41%</td>
<td>62%</td>
<td>41%</td>
<td>11%</td>
</tr>
</tbody>
</table>

* This is for the rest of mineral mining excluding coal, gas and oil
** Calculated from value added (GDP) of each sector, by applying the share of capital income (GDP) in sector infrastructure
*** Nominal rate of tax on net taxable income (Tax Code, Art 240)
**** Value to pay on the nominal itself, less the value actually paid

In the years 2007 and 2009 the Colombian Government appears to have paid corporations to take its coal.

6.2 Royalties and taxes

Guillermo Rudas was employed in 2010 by the Colombian National Planning Council to research information related to royalty and tax payments in the mining sector. From this research he compiled Table 2. As you will see from the final columns in this table, in 2007 tax exemptions for coal and minerals amounted to 33 per cent of the revenue due. By 2009 that figure increased dramatically to 90 per cent, signifying that after exemptions Colombia only receives 10 per cent of the published rate.

Using Rudas’ initial calculations, Fierro Morales points out that in addition to these tax exemptions, multinational coal companies were receiving tax rebates on fuel amounting to 0.16 billion pesos in 2007 and 0.24 billion pesos in 2009. Once these are deducted from the tax bill, the real take on revenue for coal falls to 0.07 billion pesos in 2009 and -0.33 billion pesos in 2007. This table confirms concerns expressed by the National Comptroller General that one of the most worrying cases was that of coal, where tax deductions in 2007 were higher than the value of taxes paid by coal mining companies.

One of the major difficulties in understanding what corporations are paying in terms of taxes and royalties is the complexity of the system of exemptions. The information above reveals the lack of robust and accountable governance mechanisms. Along with the lack of transparency of information, this makes it impossible for communities or analysts to obtain the information needed for democratic oversight and to hold governments and corporations to account. This lack of transparency in taxation can only benefit corporations whilst also facilitating mass revenue loss to Colombia.

Countries with greater public access to information are more likely to have better fiscal discipline and less corruption. International accounting standards exacerbate this lack of transparency by only requiring multinational companies to report accounts on a global consolidated basis. As a result, money that Colombia could obtain from taxes and use on social spending to meet its obligations to the poor is being returned to companies via tax exemptions. According to Table 2, in 2009 the Colombian Government lost 53 per cent (including exemptions on hydrocarbons) of its possible income in tax exemptions to multinational corporations, amounting to approximately 3.82 billion Colombian pesos (COP). This amount far exceeds what the government has budgeted to spend in 2002 for example on victims of the conflict, which is 2.9 billion COP. This loss of revenue is likely to rapidly increase as Colombia moves towards doubling its coal exports by 2019. Colombia has one of the worst inequality rates in the region (only Honduras rates worse), and is the third most unequal country in the world. Its rural poverty rate is 62.7 per cent and urban rate is 43 per cent. Although there has been a small improvement in national poverty rates, in 2011 abject poverty actually worsened by 2.9 per cent.

Colombia has thus far failed to take advantage of possible revenue from the exploitation of its natural resources for social spending. Instead, it has returned much of this income to MNCs. In 2011 President Santos took a step in the right direction when he announced the decision to halt new requests for concessions, initiate a review of all pending requests and revoke the licences of corporations which, according to expert economist Guillermo Rudas, had failed to account. This lack of transparency in taxation can only benefit firms that had not paid required fees. However, these steps do not address the current exemptions that companies are legally entitled to, and the subsequent loss to Colombia of its natural mineral resources without proper compensation in terms of corporate income tax and royalty revenues. Whilst the Santos administration...
Superficiario) for 267 titles. Ingeominas reports that this amounts to reported that of 341 mining titles listed to AngloGold Ashanti, of less than 2,000 hectares. Similarly in Tadó, AGA applied for 13 concessions of 12,000 hectares, rather than one concession of 26,000 hectares. According to the Comptroller General, as of 29 September 2011, the Colombian Institute of Geology and Mining (Ingeominas) reported that of 341 mining titles listed to AngloGold Ashanti, how this money is being spent, particularly when one takes into account that after 30 years of coal mining from the largest open-pit mine in the country, 64 per cent of the population of La Guajira still live in poverty and 37.4 per cent in extreme poverty; one of the highest levels of extreme poverty in the country.47 While Cerrejón has a CSR policy, at the same time it plans to expand into environmentally and culturally sensitive areas with open-pit mining. Those already displaced have been provided with poor facilities and insufficient land.48 According to research by CENSAT, the ‘excessive number of security guards has generated fear in the local population, resulting in them preferring to pass the whole day without eating rather than risk their lives hunting small animals for food’.49 This has led to further economic impoverishment for those engaged in traditional practices. This was a recurring theme in interviews conducted by ABColombia in Colombia in 2012, for example in La Toma, Cauca.

6.3 Ethical practices
Legal but unethical practices have been uncovered with respect to some UK listed MNCs operating in Colombia. This has meant that they have been paying the same tax rate as small-scale mines. This tax avoidance is achieved by purchasing concessions of 2,000 hectares or less. UK listed corporation AGA owns the largest number of concessions in Colombia. In the Medio Atrato and Quibdó regions the department of Chocó, the company owns 156,000 hectares of concessions, 70 per cent of these were applied for in concessions of less than 2,000 hectares. Similarly in Tadó, AGA applied for 13 concessions of 12,000 hectares, rather than one concession of 26,000 hectares. According to the Comptroller General, as of 29 September 2011, the Colombian Institute of Geology and Mining (Ingeominas) reported that of 341 mining titles listed to AngloGold Ashanti, how this money is being spent, particularly when one takes into account that after 30 years of coal mining from the largest open-pit mine in the country, 64 per cent of the population of La Guajira still live in poverty and 37.4 per cent in extreme poverty; one of the highest levels of extreme poverty in the country.47 While Cerrejón has a CSR policy, at the same time it plans to expand into environmentally and culturally sensitive areas with open-pit mining. Those already displaced have been provided with poor facilities and insufficient land.48 According to research by CENSAT, the ‘excessive number of security guards has generated fear in the local population, resulting in them preferring to pass the whole day without eating rather than risk their lives hunting small animals for food’.49 This has led to further economic impoverishment for those engaged in traditional practices. This was a recurring theme in interviews conducted by ABColombia in Colombia in 2012, for example in La Toma, Cauca.

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7.0 Holding Corporations to Account: how do we increase accountability in the international arena?

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless. 190

In some circumstances, companies can already be held liable for offences overseas; for example, the UK has recently expanded its extraterritorial jurisdiction to include holding companies liable for bribery offences (Bribery Act 2010) committed outside the UK. The criteria available for extraterritorial jurisdiction include where it appears to be in the interest of the standing and reputation of the UK in the international community, 190 a criterion engaged in relation to the arms trade. The standing and reputation of the UK is undoubtedly affected by unprosecuted violations of human rights by its companies overseas. The Foreign and Commonwealth Office (FCO) and the Foreign Affairs Committee appear to have taken this position when recommending that, due to international human rights obligations, the UK Government should consider the extension of extra-territorial jurisdiction to cover actions overseas by businesses based in the UK, or by firms operating under contract to the UK Government, which have an impact on human rights. 191

They also recognise that ‘relying on local administration of justice may not be enough to preserve the international reputation of the UK for upholding high standards of human rights’ and recommended ‘linking provision of Government procurement opportunities, investment support and export credit guarantees to UK businesses’ human rights records overseas. 191

7.1 UN Guiding Principles

The UN Guiding Principles on Business and Human Rights were adopted by the UN Human Rights Council (UN HRC) in June 2011. These principles are elaborated in the Protect, Respect and Remedy Framework which is based on three principles. The first is the State’s duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. Second is corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing the rights of others and address their adverse impacts. Third is remedy. 192 Ruggie identifies there is a need for greater access by victims to effective remedy, both judicial and non-judicial. Each State now has to develop a strategy, and introduce appropriate policies and laws in order to implement these principles.

Whilst voluntary measures and principles such as Corporate Social Responsibility (CSR) are essential for guiding companies, and have served to raise standards due to their role in pushing incremental improvements, a major negative impact has been that they have undermined attempts to develop effective legal sanction, both at national and international level, without which it is not possible to prevent companies abusing the rights of local communities. 192 Ruggie highlighted that ‘States take appropriate steps to investigate, punish and redress business-related human rights abuses when they occur; the State duty to protect can be rendered weak or even meaningless.’193

7.2 Judicial mechanisms

Ruggie has raised concerns regarding ‘evidence of an expanding web of potential corporate liability for international crimes.’ In the conclusion of his report he stresses that the most consequential legal development in business and human rights is ‘the gradual extension of liability to companies for international crimes, under domestic jurisdiction but reflecting international standards.’ 194 The UK has recently taken a regressive step in relation to this by making changes to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which is the legislation that communities have been using to bring cases against UK MNCs for their abuses overseas. Changes made in 2012 will require success fees and insurance costs to come out of the damages awarded to the victims, instead of being paid by the transnational company that has lost the case. Damages awarded in the UK for human rights abuses are typically much lower because they occur in developing countries, meanwhile fees and insurance premiums reflect the costs of bringing a court case in the UK. As a result, many victims of transnational corporations will find access to justice restricted due to lack of financial viability.

The UK has been vocal in its support for the UN Guiding Principles on Business and Human Rights. However, if it is to uphold the spirit of these principles, the UK will need to look at bringing in new legislation to provide access to the UK justice system for poor communities in developing countries and, to enable corporations to be held to account for their behaviour abroad, especially in situations where States are unable or unwilling to take action to protect their citizens from corporate abuses.

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7.3 Improving governance and democracy

According to Ruggie, ‘States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.’ 195 Reporting mechanisms that will allow monitoring bodies to ensure that corporations respect human rights is an essential part of this process. Particular provision within human rights reporting should be given to Indigenous and Tribal Peoples’ territory 196 due to the serious potential consequences of resource extraction on their culture and way of life. One of the major instruments for guaranteeing Indigenous and Tribal Peoples’ rights is the prior consultation and consent process. It is therefore crucial that corporations are required to provide detailed reporting on how they have complied with this process. In the UK companies could be required to provide detailed annual reporting on human rights, social impacts and the processes are carried out appropriately and for an end to impunity for human rights violations.

7.4 Transparency of information and reporting requirements

Lack of transparency of information is a major obstacle for public scrutiny of corporations. If due diligence and respect for human rights are to be ensured then it is essential that reporting procedures are improved, both locally in the countries where corporations are operating and in the countries where corporations are headquartered or listed. Without access to information citizens cannot hold governments or companies to account.

The European Union is currently processing a new law which, if passed, will require corporations to ‘report all payments in excess of €10,000 (€4,300) to governments and local authorities in the countries where they operate, and also break down how much they pay with respect to individual projects, such as a mine or an oil field.’ 197 This will be achieved through proposed revisions to the EU Transparency and Accounting Directives. These revisions have already been elaborated by the European Commission (October 2011) and passed to the European Council of Ministers who will issue a final version of the directive to the European Parliament to be voted on in late 2012.

For these directives to complement the standard set by the United States (US) Securities and Exchange Commission, it is essential that...
the final directives require disclosure of payments at project level as well as country level. However, there is considerable resistance to project-by-project reporting from mining corporations who claim that the administration of this would be expensive, and that revealing what they pay per project could give rise to tensions due to the differences in payment between companies in the region and differences in what regional authorities retain. Yet project-by-project reporting is the only way that the information can help communities affected by natural resource extraction to hold their governments to account. US corporations are expected to report project-by-project and in order to 'level-up the playing field' European Corporations should be expected to do the same. Country-by-country reporting, whilst a step forward, will not provide the information necessary to ensure that citizens can hold their governments democratically accountable, nor allow communities to hold corporations to account.

The US has set precedent in this area, for the moment striding ahead of the EU in ensuring greater transparency of reporting with the approval in August 2012 of regulations to implement Section 1504, the Dodd-Frank Financial Reform and Consumer Protection Act. Section 1504 requires oil, gas or mining companies to report on an annual basis to the US Securities and Exchange Commission on payments at both country and project-level made to host governments.190 This enables citizens and communities in resource-rich economies to ensure that corporations are paying enough to extract their country's natural resources.

Transparency initiatives should also consider including, particularly in countries in conflict, that MNCs report on their security arrangements, including both private and state security.

**7.5 Ethical reporting on the London Stock Exchange**

There is a heavy weighting of "dedicated" mining companies on the London Stock Exchange (LSE). However, the Financial Services Authority (FSA)198 has done little to address the unique capacity of the London Stock Exchange (LSE). However, the Financial Services Authority (FSA)198 has done little to address the unique capacity of mining companies to "do harm".199 A recent draft bill proposing to abolish the existing FSA and transfer its role as UK Listing Authority to a new body called the Financial Conduct Authority (FCA) provides an important opportunity to address this gap. The FCA will have responsibility for overseeing new listings on the London Stock Exchange, Alternative Investment Market and PLUS Market, and for ensuring that listed companies keep to the appropriate rules. This presents an opportunity to tighten up regulations that will hold companies to account for their behaviour abroad, and bring the UK in line with the higher reporting requirements for the environment and human rights currently found on other stock exchanges, such as the Hong Kong Stock Exchange. It could also help to ensure that the UN Guiding Principles, especially aspects of 'due diligence' and the observance of human rights, are adequately taken account of before mining corporations are able to list on stock exchanges in the UK. As the London Mining Network have found, 'the compliance requirements set by other bodies such as the World Bank/International Finance Corporation (IFC) and OECD are often breached by UK-based mining outfits, but they are not required to announce such breaches under existing rules'.200 This is where improvements in line with the Hong Kong Stock Exchange requirements would be of benefit to the UK, as it requires that minerals companies comply with specific listing requirements that as yet have no counterpart in those imposed by the UK Listing Authority.201 These include disclosure of any claims that may exist over the land on which exploration or mining activity is being carried out, including any ancestral or native claims, and a company's historical experience of dealing with concerns of local governments and communities on the sites of its mines in respect of environmental, social, health and safety issues.

Worldwide, it is Indigenous and Tribal Peoples (including Afro-Colombians) whose rights are most often impacted on by mining corporations; which is certainly the case in Colombia. It is therefore essential that UK listed companies recognise agreements to which the UK is a signatory, including the UN Declaration on Human Rights and the UN Declaration on the Rights of Indigenous Peoples, and should have to comply with these and report accordingly.202

For the FCA to exercise its function as UK Listing Authority in a competent and acceptable manner it should include people with expertise in human rights and environmental protection – not only financial matters – in its governing body.

However, the amendment that was tabled to the Financial Services Bill in 2012, which would have placed responsibility on UK regulators to foster ethical corporate behaviour, including respect for internationally-recognised human rights203 was blocked by the government in October 2012. Despite the UK Government's support for the UN Guiding Principles, they appear not to be translating this rhetoric into actions that would penalise companies when they violate human rights abroad.

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191 The Financial Services Authority (FSA) is a quasi-judicial body responsible for the regulation of the financial services industry in the United Kingdom. When acting as the competent authority for listing of shares on a stock exchange, it is referred to as the UK Listing Authority (UKLA).
193 ibid
194 London Mining Network, UK-Listed Mining Companies & the Case for Stricter Oversight, February 2012
195 The Financial Services Authority (FSA) is a quasi-judicial body responsible for the regulation of the financial services industry in the United Kingdom. When acting as the competent authority for listing of shares on a stock exchange, it is referred to as the UK Listing Authority (UKLA).198
197 Even the basic reporting of company carbon emissions is not yet mandatory in the UK. In May 2012, a study by the UK Environment Agency of 50 FTSE All share companies showed that only a minority of UK publicly listed companies currently provide environmental statistics in line with government guidance. The majority do not even publish any environmental information in their annual reports but, even the Agency, its quality is highly varied as seen per below. See www.environment-agency.gov.uk/statistics/environmental/,
198 London Mining Network, "Giving It Away: The Consequences of an Unsustainable Mining Policy in Colombia", September 2011
199 London Mining Network, "In the Shadow of the Scandals Surrounding Bumi plc, Proposed Ethics and Human Rights Amendment to Financial Services Bill Blocked", 16 October 2012